

EIS EQUALITY

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The Educational
Institute of Scotland

LGBT GUIDELINES

‘Unfortunately, discrimination does happen in workplaces... It is the responsibility of teachers and management to challenge such behaviour.’

Introduction

Within wider society, prejudice and discrimination towards people who are lesbian, gay, bisexual and transgender remain prevalent. Unfortunately, this can be the case in schools, colleges and universities also, both for teachers/ lecturers and young people who are LGBT.

This guidance is intended to inform and support EIS members who identify as LGBT specifically, as well as EIS members generally, on issues related to sexual orientation and gender identity.

Legal Framework

As someone who works within the education sector you are supported by legislation. The principal legislation offering protection against prejudiced or discriminatory treatment is the Equality Act 2010. Within the Act, sexual orientation, gender reassignment and marriage and civil partnerships are termed 'protected characteristics'. Protection is provided by the Act to those who are lesbian, gay, bisexual or heterosexual; those who are transgender, having undergone, undergoing or proposing to undergo gender realignment; and those who are in a same-sex marriage or civil partnership.

All public sector bodies have a responsibility to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) encourage good relations between those who share a protected characteristic and those who do not.

The terms of the Act apply to educational establishments of all religious denominations and none, though the co-existence of the Education (Scotland) Act, 1980 as it relates to faith schools should be noted. This piece of legislation remains alongside the Equality Act 2010 and sets out the right of the Catholic Church or other denominational body to approve all appointments within schools which are conducted in its interest, on the grounds of religious belief and character.

Discrimination

There are four forms of discrimination that are prohibited by the Act.

Direct Discrimination

Direct discrimination consists of treating a person, on the grounds of any of the protected characteristics, within which sexual orientation and gender identity are included, less favourably than others are or would be treated in the same or similar circumstances. Direct discrimination claims can be brought by people who have been treated less favourably because of their own sexual orientation or gender identity, because they associate with someone of a particular sexual orientation or gender identity, or because they are wrongly perceived to be of a particular sexual orientation or gender identity.

Indirect Discrimination

Indirect discrimination is more complex. Indirect discrimination can occur when there is a condition, rule, policy or even a practice in your workplace that applies to everyone, but particularly disadvantages people who are of a particular sexual orientation or gender identity. Indirect discrimination can be defended if the person or organisation can show that it was a proportionate means of achieving a legitimate aim. A 'legitimate aim' might be any lawful decision a person makes; being 'proportionate' means being fair and reasonable

Victimisation

Victimisation occurs if a person is treated less favourably because they have made or supported a complaint under the Equality Act in relation to a protected characteristic such as sexual orientation or gender identity, or because they are suspected of doing so. An example of victimisation would be an employer providing a bad reference for an ex-employee because she/he has complained of discrimination.

It should also be noted that the protection does not apply if a false allegation of discrimination or harassment was maliciously made or supported against an employer.

Harassment

Harassment is when there is conduct in the workplace that is related to sexual orientation or gender identity that has the purpose or effect of violating a person's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. For example, it may take the form of homophobic language, verbal abuse, graffiti, malicious gossip or 'outing' someone at work when it has not been their choice to disclose details of their sexuality or gender identity in the workplace. It is not necessary for the conduct to be related to the victim's personal characteristics; it could be related to the personal characteristics

in relation to gender identity or sexuality of someone that they associate with, or a misperception of the perpetrator that the victim is of a particular sexual orientation or gender identity. It does not matter whether the harasser intended their behaviour to be offensive- the effect is just as important. So-called 'banter', which is homophobic in nature, constitutes harassment. Harassment does not have to be targeted at any particular person. It is enough that someone who witnesses the conduct finds it offensive.

For example, a heterosexual teacher overhears frequent homophobic remarks from colleagues/pupils/students and this creates an offensive working environment for her/ him, constituting harassment.

Liability

Employers are liable for acts of harassment by their employees if they have failed to take all reasonable steps to prevent it happening, for example, by failing to put in place adequate policies and provide training to staff that makes clear that such behaviour will not be tolerated.

The Equality Act makes employers potentially liable for harassment by people (third parties) who are not employees, such as pupils, students or parents. Harassment may take place within a face-to-face or social media context. Employers will only be liable when harassment has occurred on at least two previous occasions (it doesn't have to be the same third party), the employer was made aware of those two previous occasions and failed to take reasonable steps to prevent it happening again.

As in other areas of discrimination, protection begins from the first day of appointment to a job and in the recruitment, selection and interview process. Protection continues throughout the employment period. There should be no detriment on the grounds of sexual orientation or gender identity in access to and procedures for promotions or transfers, training or receiving any other benefit. LGBT members, however, should be aware of the need for Catholic approval in relation to securing any post in a denominational school. Members need not be Roman Catholic to acquire approval but require to be judged to meet appropriate criteria in relation to character and belief and their consistency with the Charter for Catholic Schools in Scotland.

An employer may argue that an employee must be of a particular sexual orientation if it can be shown that this is a genuine and determining occupational requirement of the post to be filled. It is envisioned that the circumstances where this will happen will be rare.

It is unlawful in certain circumstances to discriminate against a former employee after the employment relationship has ended e.g. by not providing a reference. Once an employment tribunal or court is satisfied from the facts that there is a case to answer, the burden of proof is on the employer to show that the difference in treatment was justified.

General and Specific Duties of the Act

All educational establishments, in compliance with the Act, must:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between different groups
- consider how different people will be affected by proposed activities
- deliver policies and services which are efficient and effective, that are accessible to all and meet different people's needs
- foster good relations between different groups
- publish data to show compliance with the duty annually
- set equality objectives at least every 4 years.

Positive Action

The Equality Act allows organisations to target initiatives at particular groups if it is a proportionate way of them addressing under-representation, a disadvantage they reasonably think the group has suffered, or a different need they have.

The Equality Act also contains a provision which allows employers to use a protected characteristic, such as sexual orientation, as the tipping factor when deciding between two candidates who are 'as qualified as each other'.

Trade Unions and the Act

Trade unions have responsibilities under the Act as employers and providers of services. They must ensure that they do not discriminate in either capacity.

Despite many years of campaigning against discrimination and homophobia, and changes in attitude of government, society and employers towards LGBT people, fears and myths are still all too easily exploited.

Trade unions have represented members experiencing discrimination and harassment, and have negotiated with employers to develop anti-discrimination and bullying and harassment policies which include reference to LGBT people. They have developed education programmes and training for their own membership.

The STUC and TUC have been prominent in campaigning for improved rights for LGBT employees and an end to unjustifiable and discriminatory legislation. The STUC has established a network of LGBT trade unionists representing many trade unions in Scotland. The EIS also has a network for teachers who identify as LGBT.

Advice to EIS Members as Employees

LGBT members have the same right to share information about their private lives or to decide not to as all other colleagues. It is up to each individual to decide the extent to which they wish to be 'out' at work to colleagues, management, pupils/students and parents.

Unfortunately, discrimination does happen in workplaces. 1 in 5 incidences of bullying and harassment are reported by LGBT people to have occurred in the workplace, with 1 in 4 cases, managers being the perpetrators. In a school, college or university setting, it can be at the hands of pupils or students and parents. In all cases, it can lead to isolation, harassment or violence. It is the responsibility of all EIS members- both teachers/lecturers and management to challenge such behaviour whether it was intended to cause hurt or was wrongly judged to be humour.

If you believe you have been discriminated against on the grounds of sexual orientation, either actual or perceived, or on the grounds of gender identity contact your EIS Branch Representative in the first instance or your EIS Local Association Secretary.

If you do decide to pursue a case, you must follow the appropriate protocols about which you will be advised. As in all areas of discrimination the pursuit of cases may be complex and require professional advice.

Advice to EIS Representatives

The EIS believes discrimination and harassment of a person on the grounds of sexual orientation or gender identity is unacceptable and constitutes professional misconduct. Any LGBT member who experiences harassment or discrimination has the right to contact her/his EIS Representative or her/his Local Association/Branch Secretary for advice. All enquiries must be treated confidentially, the Rep or LA/Branch Secretary bearing in mind the need for sensitivity in relation to the extent to which the individual seeking support is 'out' at work. If assistance is required, advise the member that you need to seek additional advice in the first instance from the Local Association Secretary or Area Officer for members in FE/HE.

Equality policies must exist in all educational establishments. They are required to cover all aspects of working life and education, and must be accompanied by procedures which assist in ensuring fair appointments and promotions as well as dealing with complaints. Reps/Branch Secretaries should have access to such policies, as should all members of staff. A collegiate approach would involve both management and teacher trade union representatives in policy design/updating. EIS Reps/Branch Secretaries are advised to seek such an approach.

Advice to Head Teacher Members

Head Teacher or other EIS members with responsibility for management and personnel matters such as discipline and grievance procedures must ensure that equality policies reflect best practice and current legislation. They must include reference to sexual orientation and gender identity.

Establishing an ethos in which people can openly discuss problems or potential areas of conflict is conducive to good employee relationships.

Unfortunately, there may be occasions when formal procedures will be used. It is essential that such procedures are followed fairly and competently.

Advice to EIS Members in Supporting Pupils and Students

Anti-LGBT Discrimination in Educational Establishments

Education for equality prepares young people to live in a society which includes LGBT people. The EIS recognises that it is essential to address issues of gender identity, sexuality and sexual orientation positively and sensitively. Teachers and lecturers must be supported in providing safe, secure learning environments. Each educational establishment should understand and accept its obligation to prevent anti-LGBT discrimination and to provide a curriculum and ethos which will prepare children and young people for the diverse society in which they live. All teachers, whatever the educational setting, denominational or non-denominational, and lecturers, have a responsibility to deliver the curriculum as operated within their establishments. Teachers and lecturers, schools and colleges, external agencies and parents should work co-operatively to ensure accurate information is given to young people about sexuality, sexual orientation and gender identity.

Many young people go through puberty and adolescence with few problems; for others it is a time of uncertainty and anxiety. Teachers should be able to support young people through difficult periods in their lives. It is important that there is

a framework of support for professionals to do this. There are national and local guidelines and other national documents which contain advice and support material.

Children and young people acquire knowledge about LGBT people from a variety of sources, with varying quality of information. It is far better they learn accurate information in the classroom than inaccurate information in the playground or from the media. Often young people have a sense of fairness that is underestimated and which can lead to valuable discussion about how people treat each other. Pupils and students can discuss complex questions such as prejudice, discrimination, racism, sexism, homophobia and transphobia. Attitudes about LGBT people say a great deal about attitudes towards men and women and the various stereotypical gender roles. This may form part of personal and social development programmes but can also be addressed in other areas of the curriculum. It always must be addressed in a non-discriminatory way.

Teachers and lecturers should challenge all forms of homophobic/ transphobic discrimination, including that which is unintentional, for example the use of the word 'gay' as a derogatory term to describe something which the user dislikes or is opposed to.

A workplace where staff members themselves are included and valued is in a strong position to promote equality of opportunity by providing role models for children, young adults and adult learners. The presence of LGBT role models is of positive value.

Homophobic and Transphobic Bullying

It is the responsibility of all involved in education to ensure that all learners are provided with a safe and secure environment. However, the school experience of many LGBT people can be particularly unhappy and stressful. Surveys conducted by Stonewall and LGBT Youth Scotland consistently find that young people who identify themselves as LGBT face homophobic and transphobic bullying. Homophobic bullying is also experienced by many young people, including primary-aged children, as a form of general abuse. This is unacceptable. It can lead to truancy, low self-esteem, serious mental health issues, self-harm. Worse still, suicide is a serious issue for LGBT youth. It is the responsibility of the school to protect young people's health and well-being and safeguard them from the impact of homophobic and transphobic bullying.

Within the FE setting, often students who are homosexual or transgender attend as an alternative to the school setting because within that, they suffered homophobic or transphobic bullying. A degree of sensitivity is necessary in these circumstances

to ensure that LGBT students such as these are able to reach their full learning potential second time around.

Homophobic and transphobic bullying should be included in bullying and harassment policies within all educational establishments within all sectors. It is important that these forms of bullying are dealt with as seriously as other forms of bullying and verbal abuse.

Dealing with Homophobia and Homophobic Bullying in Scottish Schools – Teachers’ Toolkit

This is an extensive and effective resource for teachers to use to tackle homophobia and homophobic bullying. It is available on the Education Scotland website to download. Its aim is to provide confidence and skills for teachers and school staff to recognise, prevent and deal with homophobia and homophobic bullying in schools. It has been developed by LGBT Youth Scotland, the national youth organisation for LGBT young people, in partnership with Education Scotland and funded by the Scottish Government.

The strength of this resource is that it is based on research with teachers, education authority staff and young people.

Contained within this toolkit are materials designed to build confidence in the following areas:

- challenging homophobia and homophobic bullying
- supporting LGBT young people in school
- including homophobia and homophobic bullying in the school’s policy
- including LGBT issues and anti-homophobia work in the curriculum through lesson plans that support Curriculum for Excellence experiences and outcomes and development of the four capacities (successful learners, confident individuals, responsible citizens, effective contributors).

Advice to EIS Members

Where a pupil/student seeks advice on sexuality or gender identity, the role of the teacher/lecturer must be confined to educational/pastoral responsibilities. This applies to all pupils/students, regardless of their sexual orientation or gender identity.

It is important to distinguish between advice to individuals and teaching in class. Providing general and factual information about sexuality and gender identity is an

important part of a school's sex education programme but is quite different from giving advice on an individual basis. In colleges, lecturers also have a pastoral role, and may deal with learners who are struggling with their sexuality and/or gender identity. The same sensitivity and confidentiality should be applied in dealing with learners in a post-16 context.

If in any doubt, seek advice or assistance. Local authorities have policies and guidance to schools on legal issues such as children's rights, care and welfare which you are required to follow.

Before teachers/lecturers offer advice to young people on sexuality or gender identity, training must be provided.

Thereafter, in offering advice to young people:

- ensure your advice is appropriate; some advice should be given by health professionals or other appropriate personnel
- seek advice about recommended external agencies
- use the appropriate school support system to assist
- ensure all advice is sensitively handled and confidentiality maintained where appropriate.

It is important that teachers and lecturers are aware of their responsibilities under legislation and of their employer's policies, advice and codes of conduct. They should also be aware of their duties under the GTCS standards.

If you require further assistance please contact your EIS Local Association/ Branch Secretary in the first instance.

CPD

Staff development on equality issues including anti-homophobia and anti-transphobia should be recognised as essential and not peripheral to training needs and should be part of an on-going CPD programme. Any focus by members on equality or specifically LGBT issues may be included in the Professional Update process since the GTCS Standards directly address the themes of equality and social justice, in addition to the wellbeing of learners.

Further advice is available from the following website sources:

www.eis.org.uk – for EIS policy and advice

www.stuc.org- for general trade union policy and advice

www.tuc.org.uk – for general trade union policy and advice

www.scotland.gov.uk – for access to Education and Lifelong Learning Departments as well as the Equality Unit

www.acas.org.uk – for advice to employers and employees on policy, legislation, codes of practice on employment and discrimination

www.equalityhumanrights.com – for all information on equality and human rights legislation, enforcement, codes of practice, guidance on all aspects of equality and discrimination

www.lgbtyouthscotland.org.uk – for advice, support and information for young people relating to rights in employment and education

www.stonewallscotland.org.uk – for advice, policy, support for LGBT people

www.equality-network.org - for news, updates, policy, support, advice, links for LGBTI issues

www.scottishtrans.org- for advice, policy, support, news and information on transgender and intersex equality

www.gtcs.org.uk – for information about standards and registration in the teaching profession in Scotland.



The Educational
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Printed and published by
The Educational Institute of Scotland
46 Moray Place
Edinburgh
EH3 6BH
www.eis.org.uk

October 2014