

# **Harassment and sexual orientation in the health sector**

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## **Introduction**

The Department of Health's Sexual Orientation and Gender Identity Group (the Better Employment work programme) have commissioned this guide. It explores the nature, extent and effects of homophobia in the Department of Health, the NHS, and Social Care. It demonstrates some of the current structures for addressing this that exist within the health sector, and makes some suggestions as to why these structures might not always be adequate. It explores some of the innovative systems that other organisations have introduced to encourage the prevention, and the reporting of homophobic incidents in the work place. It makes recommendations about the next steps that the health sector might want to take.

The guide should be useful for all those involved in implementing equality within the health sector, including equality in service delivery, but will be particularly useful for central agencies who wish to consider new methods of protecting all staff in the health sector from harassment. It will also be useful for Human Resource managers who work for the Department of Health, the NHS, Social Care, and allied health organisations who wish to implement a pro-active, local approach for tackling homophobia.

## Executive Summary

Bullying, harassment and discrimination has a significant and detrimental effect on staff in the health sector. It discourages staff from considering the health sector as a viable employer, makes people reluctant to stay in the health sector, and contributes to a person's attitude to work. In the health sector, the ability to work in a team, and to be comfortable in work, is crucial to effective service delivery. Bullying, harassment and discrimination jeopardises this.

Homophobia, a fear or hatred of lesbian gay and bisexual people (LGB), is a form of discrimination. Research conducted by MORI for Stonewall has indicated that LGB people were one of the most likely social groups to elicit prejudicial views. Further research found that gay people also experience significant rates of benign prejudice, including stereotyping. Homophobia does not just affect LGB people. It affects their friends and families. Also heterosexual people can experience homophobic bullying either because they are perceived to be gay, or because they are accused of being gay as a form of harassment. Furthermore, discrimination and the expression of discriminatory attitudes has an impact on the general working environment.

Homophobia exists in the health sector. Research conducted by GLADD (the Gay and Lesbian Association of Doctors and Dentists), the RCN magazine *Nursing Standards*, and research conducted by Sigma and Stonewall indicates that prejudicial attitudes do exist in the health sector and this has an impact on both patients and staff. Homophobia and discrimination in the workplace has a significant impact on employees. Staff are more likely to leave an organisation if discrimination continues, especially if they feel that they cannot report incidents, or that reporting will have a limited impact. Research conducted by Unison revealed that only 5% of employees who had experienced discrimination were satisfied with the response from their employers.

Tackling homophobia is the responsibility of all employers. Bullying and harassment procedures, and reporting structures, exist within the health sector. Structures consist of:

- Informal complaints without intervention from others
- Informal with help from others
- Formal complaints procedures
- Appeals
- and, in some cases, Employment tribunals.

However, barriers exist that prevent staff from using these structures. These barriers are primarily created because of a culture in a workplace that indicates an acceptance of homophobia. Further barriers are created if:

- A member of staff is not aware that they are entitled to be protected from discrimination
- Feel that they will not be treated fairly because the arbitrator is homophobic
- Feel that their complaint will not be kept confidential
- Or are concerned that complaining will make things worse.

The health sector can start to tackle those barriers, and make LGB staff feel more comfortable about reporting incidents of homophobia. This can be done by demonstrating a commitment to protecting and supporting LGB staff, tackling and challenging homophobia, and ensuring that staff will be treated with dignity and respect when they do make a complaint. Extra steps can be taken, such as named

LGB bullying and harassment officers, anonymous reporting systems, and posters indicating that homophobia will not be tolerated in the workplace.

As learnt from other organisations, such as The Royal Navy, HM Prison Service, and NHS Scotland, the health sector may also benefit from the introduction of national support programmes or projects. These organisations provide advice and guidance to their respective sectors about increasing reporting of homophobic bullying, as well as a central resource for staff who are experiencing homophobia. The Department of Health should consider the feasibility of introducing such an initiative for the health sector.

## **Part one: What is sexual orientation?**

### **This section examines:**

- The definition of sexual orientation: lesbian, gay, bisexual and heterosexual
- Why sexual orientation is relevant to staff
- Why sexual orientation is relevant to patient care
- Where we are: How the health sector is currently tackling sexual orientation issues

The term sexual orientation refers to an individual's orientation (emotional or sexual) towards:

- persons of the same sex (lesbians or gay men)
- persons of the opposite sex (heterosexual people)
- or persons of the same or opposite sex (bisexual people)

It is the term used in European and domestic legislation to describe heterosexual, LGB people. Domestic law, including the Human Rights Act, and European law, states that people should be free from discrimination regardless of their sexual orientation.

For some, sexual orientation is a highly personal matter. Society however encourages people who are heterosexual to be open about their sexual orientation.

For example:

- Soaps and dramas on the television are generally about heterosexuals.
- In school, children's books all have heterosexual depictions.
- Politicians are usually seen in public life with their wives or husbands.

Heterosexual people tend to be open about their sexual orientation in the work place; they feel able to discuss their families and relationships, even if the discussions are not directly relevant to other people or their work. Some lesbian, gay and bisexual (LGB) people also want to be able to be open about their sexual orientation in society, and in the work place.

LGB people, or people who are thought to be LGB, can however experience discrimination on the grounds of their sexual orientation. Sometimes they are treated differently to others. For example, a same-sex couple is asked to leave a restaurant because of their sexual orientation. There may be discrimination within an organisation. For example, a gay man may not be promoted because it is perceived that he will not be able to attend formal occasions with a female partner. LGB people may experience harassment from members of the public, and other staff. Some people have negative attitudes about LGB people, and issues, and express this in a variety of contexts.

It is the responsibility of local and national government, employers and service providers to ensure that everyone is entitled to freedom from discrimination, including LGB people. It is now illegal to discriminate against people on the grounds of their sexual orientation. Further information can be found in Part three.

## **Part two: Discrimination, bullying and harassment in the workplace**

**This section examines:**

- What groups of people are most likely to experience discrimination
- How ACAS defines bullying, harassment and discrimination
- Definitions and examples of homophobia
- Who is affected by homophobia, including LGB people, and heterosexual people
- Circumstances when homophobia might be mistakenly considered acceptable – moral and political freedom.

One of the fundamental principles of equal opportunities is to tackle bullying, harassment and discrimination because these are major barriers to full inclusion. Ensuring freedom from discrimination, and tackling discrimination, is an integral part of equal opportunities work.

Discrimination occurs when an individual or a group of people is treated less favourably than others. It is unlawful to discriminate against someone on the grounds of:

- Sex or gender or gender identity
- Race or ethnicity or nationality
- Disability
- Pregnancy status
- Religion or belief
- Membership, or not, of a trade union
- Part-time status
- Sexual orientation

Legislation outlawing discrimination in relation to age is forthcoming in late 2006.

Treating a person or group less favourably can occur in virtually every context and aspect of working life. For example:

- A senior house officer may not be allowed to undertake training to be a consultant because she is pregnant.
- A senior administrator might be denied promotion because he is Asian.
- A nurse may not be given a space to pray during her break.
- A medical student may not be allowed a car parking space close to a hospital even though they have a physical disability.
- A hospital porter may be bullied by his line-manager and called “poof” on a regular basis.

Preventing bullying, harassment and discrimination is an integral part of the health sector, and recognising manifestations of bullying and harassment is a key aspect of training and work programmes to prevent discrimination. Potential employees are less likely to work for an organisation where they will experience discrimination. It also affects the morale of staff, and their attitudes to work. The Health and Safety Executive estimates that bullying costs employers up to 80 million working days a year in lost productivity and over £2 billion a year in lost revenue. Bullying and harassment damages the reputation of an organisation and can lead to costly tribunals.

ACAS defines bullying and harassment as the following:

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

*Advice Leaflet - Bullying and Harassment at Work: A Guide for Managers and Employers*

ACAS also advises that bullying and harassment can include:

- Spreading malicious rumours or insulting someone on the grounds of race, sex, disability, sexual orientation and religion and belief.
- Ridiculing or demeaning someone
- Exclusion or victimisation
- Unfair treatment
- Overbearing supervision or other misuse of power or position
- Unwelcome sexual advances
- Making threats about job security without foundation
- Deliberately undermining a competent worker by constant criticism
- Intentionally blocking promotion or training opportunities

And that bullying and harassment can occur:

- Face to face
- Via written communications
- Via email, blog, message board, or private and instant message
- Phone and pager
- Via automatic supervision methods

Extensive legislative provisions have been introduced that protects people who are most likely to be discriminated against. Organisations are familiar with these legislative provisions in relation to race, gender, disability, sexual orientation, religion and belief, and recognise the importance of protecting staff from discrimination. A failure to comply with this legislation can result in costly tribunals. Further information about how the law relates specifically to sexual orientation can be found in Part three.

Preventing discrimination is therefore an established and integral aspect of any employment function, and is a concept with which the health sector is familiar. Preventing discrimination and harassment on the grounds of gender, race, disability, age, religion and belief and sexual orientation ensures compliance with legislation, makes good business sense, and is the right thing to do.

## What is homophobia?

Homophobia is discrimination, and like race, disability and gender, has particular unique aspects. Understanding the nature of homophobia is key to tackling it in the work place.

Homophobia is a term that generally describes a fear or contempt of people who are lesbian, gay or bisexual, or are perceived to be lesbian, gay or bisexual (LGB). This can include:

- An aversion to, or rejection and exclusion of, people who are LGB, for example:
  - Not participating in social activities with someone because they are gay.
  - Refusing to let people work in certain disciplines, such as children's medicine.
  
- A disagreement with the visibility of LGB people, prompting the silencing of gay people, for example:
  - Objecting to people being open about their sexual orientation on the grounds that it should be a private matter.
  - Objecting to people wearing items of jewellery, for example, a rainbow flag badge, that might indicate their sexual orientation to others.
  
- A fear of being incorrectly identified as LGB, for example:
  - Failing to challenge homophobia in case it is thought that the person challenging is gay.
  - Not addressing sexual orientation in equality work in case it is thought that the person who raises the issue is gay.
  
- A disapproval or invalidation of LGB people, for example:
  - Openly expressing the view that gay people are objectionable.
  - Refusing to provide specific services for gay patients on moral grounds.
  
- An assumption that being gay is just about sex, for example:
  - Asking a person who is LGB about their sex life.
  - Refusing to participate in sexual orientation training because "what they do in their bedroom is up to them."
  
- Discrimination against LGB people, for example:
  - Believing that gay people should not work at senior levels.
  - Not allowing a person to make a presentation, because they are "too gay".
  
- An opposition to same-sex relationships, for example:
  - An objection to civil partnership, or adoption.
  - Not allowing gay people to have married people's accommodation.
  
- Gossiping or speculating about a person's sexuality, for example:
  - Telling someone else about a person's sexuality without his or her consent.
  - Speculating that a person might be gay because, for example, "they look it."
  
- Teasing, bullying, and harassment of someone because they are LGB, for example:
  - Constant jokes and innuendo about sexual orientation, even at a low level.
  - Directly insulting someone who is LGB.

Homophobia can also manifest itself in physical violence (sometimes referred to as a "hate crime"). This can include:

- Physical assault:

Police are appealing for witnesses after two men were seriously injured in a homophobic attack in Clapham after leaving a local gay bar. The men left the bar at around 3.25am on Saturday evening when they received homophobic abuse from a group of between three and five males and were then attacked. One of the victims, aged 27, received a serious head injury and was taken to a south London hospital where he is in a stable condition. The second victim, a 24 year old, received minor injuries. After attacking the pair, the group, described as in their early 20s, made off.

*Report on [www.rainbownetwork.com](http://www.rainbownetwork.com) 13<sup>th</sup> March 2006*

- Sexual assault (including rape):

A man who raped a lesbian at London Pride celebrations has been jailed for life. Dominic Mailat raped the woman after meeting her in a bar and talking to her about pride celebrations. After she told him she could not get a ticket, he posed as gay and offered to drive her to the North London park where the event was being held. He then took her to a squat and raped her. He beat her with an iron bar and held his hands around her neck whilst raping her in a terrifying ordeal that left the woman traumatised.

*Report on [uk.gay.com](http://uk.gay.com) 21<sup>st</sup> February 2006*

- Attempted murder and murder:

Police are appealing for witnesses following the murder of a 24 year old man on Clapham Common in what is believed to be a homophobic attack. Jody Dobrowski, a bar manager from East London, was found unconscious in the early hours of Saturday but died later in hospital. The incident is being treated as homophobic as anti-gay insults were heard at the time of the assault.

"This attack was abhorrent and the victim was assaulted violently. Officers who attended the scene were shocked by the level of injuries," said Detective Chief Inspector Nick Scola. "There were other people in the area at the time of the attack and homophobic insults were heard. For that reason I am convinced it was a homophobic attack."

*Report on [www.rainbownetwork.com](http://www.rainbownetwork.com) 17<sup>th</sup> October 2005*

Physical, verbal, and insipid homophobia has an affect on an individual or a group of people and is detrimental to a working environment. Causal homophobia does not necessarily lead to physical abuse, but a failure to challenge homophobia in the workplace gives license to homophobic attitudes and behaviours that inevitably has an impact on wider society.

## What are the effects of homophobia, and who is affected?

Homophobia affects different people, and groups of people:

- LGB people and individuals
- Friends and families of LGB people
- Heterosexual people and individuals
- The workplace in general

Broadly speaking, general homophobic attitudes and behaviour can make LGB people feel uncomfortable about being open about their sexual orientation and make them feel that they cannot be themselves. Stonewall's Diversity Champion's Programme (a programme to help employers support and include LGB staff) states that "people perform better when they can be themselves". Homophobia prevents gay people from being themselves and therefore affects their morale and performance:

- Róisín Ryan-Flood in *A case study of lesbian and gay workers in a local labour market in Britain* (2004) found that sexuality affects decisions about employment opportunities, prior to a person applying for a job. Respondents stated that they had made deliberate choices not to enter certain professions because they perceived them to be homophobic.
- *'The Pink Ceiling is too low' Workplace Experiences of Lesbians, gay men and transgender people'* (1999) by Jude Irwin found that 36% of gay people would change jobs if discrimination continued and 59% of respondents had experienced homophobia in the work place. 55% of those who faced discrimination reported that this had a negative impact on their work. 20% also revealed that they had considered suicide.
- A survey of UNISON's lesbian and gay members in 2003 found that 52% had experienced discrimination because of their sexuality. Only 5% felt positive about the way their employer had dealt with the incident.

For **friends and families** of LGB people, the affect can be the same. Homophobia prevents people being open about their lives, and leads to a sense of isolation from other colleagues and anxiety about how homophobia affects the people that they know, for example:

- A group of office workers are amending forms to include civil partnership and think that is a waste of time, "loads of hassle for the gays." One member of staff has a son who is gay, and is offended by the comments.
- A group of male staff have images in their lockers of lesbians in sexually provocative poses. One of the men has a daughter who is a lesbian, and is particularly offended by the images.

**Heterosexual** people can also be affected by homophobia. A person does not have to belong to an ethnic minority background to be offended by racism, or be a woman to be offended by sexism. Homophobia can be damaging to any person who observes it or hears about it, for example:

- A member of staff constantly refers to any situation that is inferior or laughable as “gay” for example, “that meeting was so gay” and only stops doing so when gay people are around. The rest of the staff however, find it equally offensive.

Heterosexual people can also be affected, when it is used to undermine them and insult them, even if it is known that they are heterosexual, for example:

- A junior house doctor is upset and is found crying in the changing rooms. His colleagues call him a “jessie” and a “gay-boy” for being sensitive.
- A nurse does not discuss her relationships with her work colleagues. In order to prompt her to disclose details of her private life, they start asking her if she is a lesbian.

These examples, even though they do not affect LGB people, still constitute homophobia and discrimination.

Homophobia can have a significant impact in the work place, for example:

- Staff take more time off work, or leave the place of employment
- Staff don’t perform as well, and are less motivated to perform well
- There may be conflict between employees, and poor working relationships, and a poor team dynamic
- Unchecked homophobia in the work place means that it is less likely to be tackled at home. Homophobic bullying in schools, in sport, and across society is prolific
- Cases may be taken to tribunal, which are costly and disruptive, and damage reputation.

It is universally recognised that tackling discrimination in the workplace is an important aspect of protecting the health, safety and dignity of employees. Protecting employees from homophobia is equally important. The cost of failing to tackle homophobia in the health sector is clear: a higher level of absenteeism, a less efficient health service, more team morale which may have a direct impact on patient care, and the extensive costs that are associated with tribunals and replacing staff.

### **Is homophobia ever acceptable?**

As with all incidents of bullying and harassment, behaviour that is considered bullying and harassment by one person, may not be considered bullying by another person. In common with all other equality strands however, if a recipient perceives comments or actions or processes as demeaning or unacceptable, they have the right for that to be investigated.

Most people are able to agree with extreme cases of bullying and harassment but sometimes other cases can be hard to recognise. Particularly in the case of homophobia, it may not be obvious to others, and may be insidious. The complainant may be concerned that they are being “over-sensitive” or “weak” or will be accused of “over-reacting”. These problems and barriers are familiar to equality and diversity practitioners and finding ways to counteract them is a key aspect of equality work.

Some people think that the label “homophobia” is unfairly applied to people who are expressing a political or moral opinion about LGB people. For example:

- A person may object to gay people on religious grounds and during an informal discussion states “gay people should not be able to work in certain professions”. A complaint is made that states that he has expressed discriminatory views. The person feels that the complainant is restricting his religious freedoms.
- A person feels that the introduction of the Civil Partnership Act, and paternity rights for lesbians, are inappropriate and are not to be welcomed. A complaint is made that she has expressed discriminatory views. The person feels that the complainant is restricting her freedom of speech.

Like other aspects of equality legislation, proving or disproving cases of discrimination can be complicated but the fact that comments have been made in the context of a political or religious framework does not necessarily indicate that they are not discriminatory.

For example, if a person expressed the view that he believed that women should not be able to work, it might be inferred that this had an impact on his judgement about women in the workplace, and might have an affect on the way he treats women he comes into contact with. The comment would have to be investigated to establish that the personal view did not lead to discriminatory practices in the work place. Similar principles and practices should be employed in relation to homophobia.

### **Part three: Sexual orientation and the law**

#### **This section examines:**

- The scope and range of the Employment Equality (Sexual Orientation) Regulations 2003
- Tribunal cases brought so far
- The Civil Partnership Act 2005 and its impact on staff and patients
- The Equality Act 2006 and the public duty to provide goods, facilities and services
- The single equality act – implications for the health sector

There are several pieces of legislation that exist, or are forthcoming, which protect patients and employees on the grounds of their sexual orientation.

#### **The Employment Equality (Sexual Orientation) Regulations 2003**

The Employment Equality (Sexual Orientation) Regulations were introduced in 2003. These were the first regulations to protect LGB people, or people who are perceived to be LGB, in employment.

The regulations outlaw discrimination, which includes:

- direct discrimination
- indirect discrimination
- harassment
- victimisation

in employment and vocational training.

The regulations apply to discrimination on the grounds of orientation towards persons of the same sex (lesbians and gay men) and the same and opposite sex (bisexual people). The regulations also apply to people who are heterosexual.

**Direct discrimination** occurs when an individual is treated less favourably than others based on their sexual orientation, or perceived sexual orientation. If an employer does not employ someone or promote someone, or dismisses them, or provides adverse terms and conditions or benefits, or refuses to provide training, this would constitute direct discrimination.

- There is a training weekend for middle NHS managers to help them apply for senior managerial posts. A manager decides not to send a member of his team who he knows to be a lesbian because he thinks that she will not bond well with the other (supposed heterosexual) people on the course.
- A patient refuses, on religious grounds, to be treated by a junior doctor who she perceives to be a lesbian. The consultant provides an alternative junior doctor.

**Indirect discrimination** occurs when an individual is subjected to a particular provision, criteria or practice, which disadvantages a particular group compared to others in the same circumstances.

- A gay man is not offered married couples accommodation on the grounds that it is assumed that he does not require it.
- A new mother wants a community midwife who has had children herself.

**Harassment and bullying** refers to any conduct or comment which is unreasonable, unwelcome or offensive and causes the recipient to feel threatened, humiliated or embarrassed, either intentionally or unintentionally. Bullying is the aggressive misuse of power and/or position. It may include behaviour that criticises, condemns and/or humiliates people and can undermine their ability and confidence. Organisations may be held responsible for their employee's conduct and may be ordered to pay compensation unless they can show that they have taken reasonable steps to prevent harassment and bullying in the workplace.

- A nurse receives suggestive text messages, and emails from a gay pornographic website, and experiences name calling and teasing on the grounds that his colleagues think that he might be gay.
- A patient, whilst being given a routine procedure for the removal of earwax, talks informally about how she is "fed up of all these gays on the telly". The nurse, administering her treatment, feels harassed and offended.

Victimisation occurs if an individual has been treated less favourably because they have complained about discrimination or supported someone else who has.

A woman supports a colleague who makes a complaint under the sexual orientation regulations. It is assumed by her other colleagues that she is gay and she is treated differently (harassment) and she is given inconvenient and inferior shifts because, her manager says, she is a trouble maker.

These four categories of classifying discriminatory practices have existed in race, disability and gender legislation for some time. For example, a patient would not be able to refuse treatment from a nurse who is African-Caribbean, a group of staff could not bully and harass a person because they were in a wheelchair, a member of staff would not be treated unfairly for participating in an employment tribunal. Compliance with these rules and principles has therefore been a part of employment culture for some time. It therefore should be straightforward to apply these principles to LGB people.

## **Case law**

Several cases have been brought under the sexual orientation regulations. For example:

### **Whitfield v. Cleanaway UK**

Mr Whitfield experienced discrimination from his colleagues and from his manager over a sustained period of time. He initially perceived the harassment to be low level yet five months of sustained abuse and homophobic taunts left him feeling uncomfortable and distressed about attending work. Attempts to informally resolve the problem failed. Whitfield received **£35,000** as a result of an employment tribunal.

### **Whitehead v. Brighton Marine Palace and Pier Company**

Mr Whitehead brought a complaint against his manager after he had left the organisation. He had felt that Mr Quelch had been undermining his work and avoiding him. Mr Whitehead did not feel able to raise his concerns with Mr Quelch. Mr Whitehead then took leave after the death of his father. On his return to work, he was told by a colleague that she had heard Mr Quelch referring to him as a "f\*\*\*\*\* chutney ferret". Mr Whitehead resigned a few days later. A tribunal awarded him **£10,000** for injury to feelings.

### **Gismondi v. Durham City Council**

Durham City Council was found guilty of discriminating against a gay theatre worker who suffered months of bullying and harassment at the hands of his manager. The Council were also found to have constructively and unfairly dismissed Mr Gismondi, who was group bookings coordinator at Durham's Gala Theatre. Mr Gismondi was repeatedly referred to as "gay boy" by his manager Ed Tutty. The tribunal commented that "it is hard to envisage conduct more likely to shatter the trust and confidence of an employee in his employer," and the council had "signally failed in their duty to an employee who has been bullied and harassed, contrary to their own express policies." Durham City Council and the harasser were both found by the tribunal to have breached the Sexual Orientation Regulations.

## The Civil Partnership Act 2004

The Civil Partnership Act was introduced on December 5<sup>th</sup> 2005. The Act enables same sex partners to form a civil partnership, which grants the same rights and responsibilities as civil marriage. This legislation has an impact on the health sector, in relation to its function as employers and service providers.

Implications for staff include:

- Employers need to adapt their policies to recognise civil partners on any occasion when they recognise marriage as a significant legal status. For example, if a trust grants special “honeymoon” leave to a newly wed member of staff, this benefit would have to extend to a member of staff about to enter into a civil partnership.
- Monitoring forms, and staff information forms, that ask about marital status should also ask about civil partnership. The form would read:  
*What is your marital status: Married/ In a civil partnership*
- All staff should be aware of the Civil Partnership Act and managers should ensure that an increased visibility of lesbian and gay people does not lead to an increase in discriminatory practices in the form of harassment.
- The Health sector is a public sector organisation, and will therefore have to provide survivor pensions for civil partners, for service from 1988.

For patients:

- Patients who enter a civil partnership are now entitled to next of kin rights for their partner. It will now be discriminatory to ignore the wishes of a civil partner in relation to treatment.
- Any children born into the family will be the responsibility of both civil partners – the birth mother and the civil partner, or the two men in a surrogacy arrangement. All parents and potential parents should be treated as such by all health care professionals who come into contact with the couple.

The Adoption and Children Act 2002 also enables same sex couples to adopt children, and same sex couples are therefore entitled to take adoption leave, in line with the provisions available to heterosexual people. Paternity leave and adoption leave is also available to the non-biological parent of any child born in a partnership. For example, a woman whose partner had given birth would be entitled to paternity leave.

## **A Single Equality Act?**

There is a commitment from the government to legislate, in this parliament, for a Single Equality Act. Investigations are being conducted across government in order to make this happen, and a consultation document is expected. A Single Equality Act may significantly change the responsibilities of public sector organisations to their LGB staff.

At present, each equality strand has different statutory requirements and this has an impact on the way in which the health sector supports each equality group. Although LGB people are protected by the legislation detailed above, there is no statutory requirement to follow specific or general duties as outlined in the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005, and the Equality Act 2006.

There is therefore currently no duty to:

- Develop an action plan or targets to tackle inequalities
- Conduct an impact assessment of every policy, practice and procedure to ensure that there are no discriminatory practices
- Implement positive actions to help counteract discriminatory practices
- Promote good relations
- Eliminate unlawful discrimination
- Promote equality of opportunity
- Monitor staff and service users
- Implement positive actions
- Follow a public duty
- Communicate and consult with relevant stakeholders about actions.

These aspects of equality legislation provide a framework for employers and service providers to tackle discrimination and remove institutional discriminatory barriers for certain groups and individuals. They help organisations prevent incidents of discrimination, and allow them to demonstrate that they have taken steps to tackle discrimination. Crucially, the emphasis has shifted away from the need for individuals to report incidents of discrimination, and instead requires organisations to pro-actively prevent discrimination.

The clearly stipulated framework makes it easier for organisations to comply with legislation, and provides an established course for judicial proceedings, designed to safe guard the legal rights of the individual.

As these duties will eventually exist for sexual orientation, some organisations are anticipating this change and already taking steps to ensure that they promote measures that prevent discrimination in general on the grounds of sexual orientation, as well as protecting individuals from discrimination.

## **Part four: Sexual orientation within the health sector**

### **This section examines:**

- The work that the health sector has done so far to protect and support LGB staff
- The nature of homophobia in the health sector – some crucial differences
- The short term and long term effects on staff

The Department of Health, the NHS, and Social Care have taken steps to include sexual orientation in their equality and diversity agendas, for example, in equal opportunities policies. The Department of Health has developed a Sexual Orientation and Gender Identity equality strategy. The value statement of the strategy reads:

The DH Sexual Orientation and Gender Identity Advisory Group places at the centre of its work Lesbian, Gay, Bisexual and Transgender people who use and deliver health and social care services, in order to ensure opportunities for their experiences to inform service development and improvement.

Our work is underpinned by,

- a commitment to equality, human rights and social justice;
- a respect for diversity;
- and a commitment to challenge discrimination and exclusion within the organisations and communities on whose behalf we are working.

The advisory group has four work programmes; Better Employment, Reducing Health Inequalities, Transgender, and Inclusive Services. It is clear that equality on the grounds of sexual orientation is now part of the equality and human rights work undertaken by the Department of Health, and there is senior level support for this work.

The NHS Employers programme, Positively Diverse, also makes explicit reference to sexual orientation in its training programme and includes resources on their website. It states on the website:

NHS Employers is committed to supporting all employers in the NHS respond to the needs of lesbian, gay and bisexual (LGB) people and to tackle discrimination against them.

The website, and training materials, supports this statement.

The trade unions and associations have also taken positive steps to consider sexual orientation in the context of their equality and diversity work. The British Medical Association (the BMA) published *Sexual Orientation in the Workplace* (2005), which explores some of the issues experienced by LGB people working in the health service.

The Royal College of Nursing has an LGB group, and the Royal College of Midwives has published reports about LGB issues in midwifery. Unison has an LGB group, has

published research, and has dedicated staff to support policy development relating to LGB members (see further resources, Annex B).

Some Primary Care Trusts have also demonstrated a commitment to sexual orientation. For example, Wandsworth PCT has an LGBT employee-networking group. Bolton PCT provides web-based information about the laws that exist to protect LGB people and the impact this, and discrimination, has on employees. East Sussex County Health Care Trust attend an LGB recruitment fair. Furthermore, several PCTs are monitoring their staff on the grounds of sexual orientation.

There has been an increased commitment to the inclusion of sexual orientation in the equality and diversity work in the health sector and this has been reflected in the increased discussions about sexual orientation equality in the health service, as experienced by staff and service users. The vast majority of health care organisations now make explicit reference to sexual orientation in their policies.

Despite the efforts by individuals and organisations however, there are still some problems within the health sector in relation to discrimination on the grounds of sexual orientation. It is apparent that there is a gap between policies, and actions undertaken to support LGB staff.

- The GLADD report *NHS Trusts and Equal Opportunities 2004* found that out of 100 trusts randomly selected, only 27% made explicit reference on their website to sexual orientation (42% made reference to race) and only one trust referred to the Employment Equality (Sexual Orientation) Regulations.
- The *Nursing Standard* readers survey on awareness and attitudes to lesbians and gay men (2006) revealed that 45% of respondents did not know if their employer had a policy that related to sexual orientation.

Stonewall's Diversity Champions Programme (a programme to help employers fully support LGB staff) has observed a marked difference in levels of engagement with the programme from the health sector compared to other sectors.

25 health organisations participated in Stonewall's 2006 Workplace Equality Index (a process of auditing an organisation to assess how they protect and include lesbian and gay staff). The health sector was the second highest participating sector (35 local authority agencies participated, 164 organisations participated in total) yet the health organisations were the lowest performing sector in the entire index. The average score for the top 100 participating organisations was 66; the NHS average was 41. The average score of investment banks (a sector not traditionally associated with taking steps to protect staff on the grounds of sexual orientation) was 70.

In order to receive the highest possible score, organisations had to have:

- A written policy barring discrimination based on, and using words referring to, "sexual orientation" promoted to all staff in the UK
- A working group or diversity team covering the UK that includes LGB issues
- A diversity lead person for LGB issues in the UK at Board/Chief Executive level
- Audited policies and procedures for employees and service users to ensure compliance with the Civil Partnership Act

- No successful employment tribunal hearing that included a complaint on the basis of sexual orientation in the last 12 months in the UK
- Automatic survivor pension entitlement to same-sex partners of employees in the UK
- Equal benefits offered to married straight couples and same-sex partners in the UK now
- An officially recognised LGB employee network group based in the UK
- An officially recognised LGB employee network group routinely involved in discussions on employment rights, benefits and development in the UK
- Engage with LGB staff on sexual orientation issues in the UK in various ways, for example, posters/leaflets, intranet pages, diversity emails, diversity LGB meetings
- Completed compulsory diversity awareness training that specifically mentions or refers to “sexual orientation” for all levels
- Support offered to LGB staff in the UK (other than an LGB staff group), for example, mentoring, LGB leadership training, counselling
- Monitoring of UK staff sexual orientation at all stages
- Monitoring of UK staff sexual orientation at all grades
- A regular comprehensive UK staff attitude survey that specifically asks about sexual orientation
- Ensure UK suppliers and contractors fully comply with policies against discrimination on grounds of sexual orientation and monitor this
- Recruited staff or advertised products or services in any UK LGB media (magazine, newspaper, website)
- Sponsored, or otherwise supported, a UK LGB community organisation or event
- Openly LGB members on UK board of directors/senior management team

Of 179 organisations that are permanent members of the Diversity Champions programme, only three are from the health sector.

Despite the fact that sexual orientation is now included in equality work (it is one of the “six strands”), there is not a uniform and systematic commitment to tackling and eradicating discrimination across the health sector.

This could be perceived as a lack of commitment to protecting LGB staff and patients by the health sector. If this perception is accurate, then it is likely that discrimination and discriminatory practices continue to exist.

## Homophobia in the health sector

Homophobia is prolific in society. Research carried out by MORI for Stonewall (*Profiles of Prejudice*, 2003) found that LGB people were one of the most likely social groups to elicit prejudicial views. Further research (*Understanding Prejudice*, Stonewall, 2004) found that gay people also experience significant rates of benign prejudice, including stereotyping. It is therefore likely that homophobia is a feature of the health sector.

There is a perception amongst some health care providers, potential employees, current employees, and patients that some aspects of the health sector are homophobic and that it sometimes fails to protect its staff or deliver effective services to its patients:

- GLADD found, in their research *Dignity at work for Lesbian and Gay doctors and dentists, medical and dental students*, that 20% of the medical profession were homophobic.
- The *Nursing Standard* readers survey on awareness and attitudes to lesbians and gay men (2006) revealed that 5% of respondents felt that there are areas of nursing not suitable for lesbians and gay men.
- The Sigma report, *It makes me sick: Heterosexism, homophobia and the health of Gay men and Bisexual men* (2005) found that half of respondents had not disclosed their sexuality to their GP, and that of those, 39% had no intention of doing so. The report suggested that this was because of an anxiety that a GP will not hold the information confidentially, and that the quality of service provision would decline because the GP would be homophobic towards the patient.

The recent BMA report, *Career Barriers in Medicine: Doctor's experiences* (2004) explored some of the difficulties experienced by employees working in the health sector. One of the contributors stated:

'If I look at my friends who are gay doctors they don't have the freedom to be open about their sexuality, partially because their perception of the risk of being open about their sexuality is so great that they perceive it is going to stop their career progression. Or they are going to experience discrimination in the workplace or people aren't going to communicate with them, that they would rather stay closeted at work than come out.'

The BMA then published a report *Sexual Orientation in the workplace* (2005) that found that steps to ensure the implementation of equality on the grounds of sexual orientation was rarely pursued by employers within the NHS. The guidelines provide comprehensive advice about how to tackle discrimination in the health sector to try and help change that situation.

*GLADD Membership Survey* (2004) found that 76% of respondents thought that it was important to be able to be open about their sexual orientation in the work place yet only 39% were to close work colleagues, and only 1% had told their superiors about their sexual orientation. Furthermore, 29% of respondents had experienced

homophobia at work, and 13% felt that their sexual orientation had impaired their career.

Some respondents commented:

- “I have been asked about my private life in most of my job interviews in General Practice, for example, what does your husband do?”
- “I was not appointed to Specialist Registrar job because of my declared sexual orientation.”
- “I mostly hear homophobic comments from patients, and from ex-practice principals. Nothing that one wouldn't overhear from your average thug on a Saturday night”
- “General negativity. ‘Back against the wall’ type jokes. Worst comments from work colleagues who were supposedly good friends.”
- “Snide comments”
- “Surgeons commenting on appearance, doctors and colleagues making veiled comments.”
- “It's usually quite covert, but I was subject to a degree of speculation about my lifestyle and sexual practices.”
- “More insidious of recent years and less direct, though word does get back to me that some colleagues make very homophobic remarks behind back.”
- “Repeated discriminatory behaviour behind my back and gossip; heterosexist attitude from NHS management.”
- “Jokes and comments about gay people.”
- “Harassment at the medics’ ball (with my girlfriend)!”

Homophobia does exist in the health sector, and it seems that there could be, in some areas, a lack of compliance with the Employment Equality (Sexual Orientation) Regulations 2003. As was seen in the case of *Gismondi v. Durham County Council* (page 15), the manager was judged to have harassed a member of staff, but, crucially, the Council was also judged to have breached the regulations because they had failed to take any steps to prevent the harassment occurring. The health sector could find themselves in a similar position to Durham County Council if a case is taken to an employment tribunal.

There are some areas of the health sector that are tackling homophobia, and some LGB staff do not feel that their sexuality has been a barrier at any stage of their career. There are some other areas and organisations however, that have yet to take proactive steps to challenge homophobia, and homophobic practices within the work place. The health sector must take steps to prevent homophobia, and challenge it when it occurs, in order to comply with the legislation and to protect staff.

## What are the consequences of homophobia in the health sector?

The health sector is unique. Many of the people who work in the sector do so after considerable and costly training. For doctors, the decision to enter the medical profession is usually made at a young age prompting five years initial training, and a significant number of years in subsequent training. A potential doctor may not have realised that they were gay, prior to deciding to pursue a career in medicine.

GLADD's opening statement on their web page reads:

Realising that you may not be heterosexual can be a challenging experience, especially when you are involved with a profession not noted for its tolerance. Although many of our members have no problems at work as a result of their sexuality, others fear that being open and honest with their peers will have negative consequences. This can lead to a great deal of unhappiness and isolation.

This sentiment reflects some of the anxieties of those who work in the health sector. Despite a lack of comprehensive research, anecdotally it is understood that being LGB can lead to some of the following concerns about working in the health sector:

- Are LGB people able to work in certain areas of the health sector, such as obstetrics and gynaecology, or can they be a paediatrician?
- Are LGB people able to perform intimate examinations on patients?
- Are patients allowed to refuse to be treated by a person because of sexual orientation?
- Can there be any reference to sexual orientation on application forms, for example, that a candidate was President of LGB Society at university?
- Will a complaint about harassment jeopardise future career opportunities?

Such questions can have an unequivocal impact on the health sector. If young people become more aware of their sexual orientation at a younger age, they may assume that a job in the health sector is not appropriate for them and instead choose an industry that is **actively recruiting** LGB people (see *Starting Out*, [www.stonewall.org.uk/students](http://www.stonewall.org.uk/students)). Alternatively, medical students and trainee allied health care professionals may **not complete** their training. LGB students might not provide a **complete picture** of their experiences via the MDAP system (the matching process) if they feel that they will be discriminated against, yet this may mean that they are not allocated the best, or most suitable jobs.

Certain areas of the health sector may continue to be dominated by certain types of people and **not reflect society**, and may not reflect the best talent that is available. Barriers to full inclusion simply result in a workforce that does not reflect the population, and is not meritocratic. It is difficult to recruit staff, staff do not remain in an organisation that is discriminatory, and the reputation of the health sector suffers as a result.

Anecdotally, homophobia in the health sector has a greater impact than in most other sectors because a health care professional can have intimate and confidential contact with patients. This leads to a heightened anxiety about sexual orientation and has the following affects:

- A person's happiness in the workplace
- Their ability to do their job as effectively
- The amount a person wants to be in work
- The type of jobs they want to do
- The team dynamic on a ward (for example), or in an acute situation
- The amount a person wants to invest in their career or their employer

Protecting staff from homophobia, and tackling it when it does occur is essential if LGB staff are to feel comfortable in the work place. It is also essential if the health sector is to reasonably assure patients and service users that the sector is not discriminatory against anyone on the grounds of their sexual orientation.

## **Part five: Current structures for reporting homophobia**

### **This section examines:**

- The current, basic structures that must exist in the health sector, and how LGB people might use these structures.
- The institutional barriers and attitudes that may prevent LGB staff using these structures.
- What can local organisations can do? How to make the existing structures work better for LGB people.

On 1 October 2004 the Employment Act 2002 (Dispute Resolution) Regulations 2004 came into force giving new rights and responsibilities to both the employer and employee. All employers must now have minimum procedures for resolving grievances, disciplinary action and dismissal.

There is no doubt that all organisations in the health sector recognise their obligations to protect staff from bullying, harassment and discrimination and have in place procedures to ensure that staff can make complaints. In some cases, procedures may not make explicit reference to homophobia, or discrimination on the grounds of sexual orientation, but it should be clear that any member of staff can use the mechanisms to raise issues of concern.

General issues of discrimination, such as the existence of discriminatory practices, policies and procedures (which may have an impact on homophobia) can usually be brought to the attention of the Equality and Diversity department, or the Human Resources department. Sometimes these departments publish an equality action plan, that makes explicit reference to sexual orientation, and staff are encouraged to make comments on that plan. Even if a department is primarily preoccupied with race, disability and gender and makes no reference to sexual orientation, in order to comply with the Employment Equality (Sexual Orientation) Regulations, they need to be receptive to any comments about this area of equality.

Staff use a standard set of procedures when making a complaint:

### **Stage one: Informal resolution**

ACAS recommends that informal resolution is the desired method of resolving problems because it minimises the stress experienced by the complainant and the person being complained about. Formal resolution of cases can be distressing for both parties and therefore it is felt that it should be avoided where possible.

The member of staff is encouraged to raise the issue with the person concerned. The complainant is encouraged to state that the behaviour is unacceptable and that it must stop. This can be communicated via email, telephone, in writing, or face-to-face. Sometimes, the complainant is unfamiliar with raising an issue with a colleague, or a senior member of staff. Raising a concern therefore can sometimes result in a counter-claim of bullying and harassment, especially if it is felt that the original complainant is being malicious or frivolous.

If a member of staff feels unable to do this, a friend, colleague, trade union representative, member of the Human Resources department, or a manager, can intervene on the complainants behalf and attempt to resolve the issue at this stage:

An openly gay health care assistant has been working weekend shifts on a ward. Every time he prepares to wash a male patient, a nurse who is on shift with makes some remark or innuendo about how he will probably enjoy this task more than his other tasks. The health care assistant tells the nurse that he finds her offensive, but she tells him not to be so sensitive. The health care assistant therefore asks the matron to intervene on his behalf. The matron does so and also warns the nurse that any further behaviour will breach the bullying and harassment code of the hospital. The nurse modifies her behaviour.

Informal resolution can also provide a mechanism for responding to general homophobia that might exist in a place of work. Informally indicating that comments and discussions, albeit casual, are offensive, can help prevent staff from making comments:

A midwife, Sian, works on a shift with a team of others. She is not gay, but thinks that a new midwife who has joined the team might be. Over a coffee break the discussion turns to a latest plot development in a popular soap opera. A long-standing female character has left her husband and now lives with another woman, who she is having a relationship with. The majority of the staff discuss how disgusting this is, and how television shouldn't be portraying such people, and that being gay is unacceptable. Sian does not contribute to the conversation, and also notices that the new midwife is more and more withdrawn with the team. This has an impact on communication and trust amongst the team. Sian tells the head of the department that she is unhappy with the casual homophobia that exists on the ward. The head introduces a compulsory awareness raising training session for all staff and reiterates the bullying, harassment and discrimination policy, and highlights how it relates to sexual orientation.

Informal resolution can therefore provide a means of tackling homophobia in the work place, and help ensure compliance with the legislation to protect staff on the grounds of sexual orientation.

### Stage two: Formal resolution

Formal procedures are introduced when informal steps have not been successful, or are not appropriate depending on the case. Usually, a complaint is taken through a disciplinary procedure and all parties involved seek advice and representation from a trade union representative, or from someone impartial in the human resources department, or a bullying and harassment representative within the workplace.

As a consequence of evoking the formal procedure, it is usual that a thorough and impartial investigation takes place as soon as possible after an incident has been reported. At this stage, changes are sometimes made to working arrangements. If a complaint is valid, action (which can sometimes result in dismissal) is implemented. Sometimes, relocation is necessary. The case will also be monitored, certainly in terms of race, gender and disability, to provide more information about the nature of discrimination within the workplace.

An ambulance care assistant asks her manager about the possibility of going on a course to become an ambulance paramedic. Her manager says that he will look into it for her, but doubts she would get on very well because patients don't like it when "the first thing they look at when they are ill is a woman who looks like a bloke." The ambulance care assistant finds this comment highly offensive, and too serious to be resolved informally. She therefore makes a formal complaint.

Formal resolutions often prompt policies, practices and procedures to change, but the individuals affected have to feel able to make the complaints.

### Stage three: Appeal

If a complainant is not happy with the outcome of a formal complaint, there is usually an opportunity to appeal against the decision. This means that the complainant can challenge the outcome of a formal complaint, as can the person who has been investigated.

### Stage four: External resolution

If a complaint has been made, and the employer has had 28 days to respond, or has responded and the complainant disagrees with the outcome, a case can be made to an employment tribunal. A trade union representative, or a legal representative can also be present during those procedures. Sometimes, the employment tribunal refers the case to ACAS for a period to see if the matter can be resolved. If this does not work, the case is usually heard and, if successful, a number of outcomes could be recommended. Some might involve costs, or financial awards, or reinstatement, or dismissal.

There is also an opportunity to appeal against the findings of the tribunal.

## **The Role of Unions and Associations**

Protecting staff in incidents of bullying, harassment and discrimination is an established function of unions and associations and they all now have an explicit commitment to equality on the grounds of sexual orientation:

- The TUC provides explicit information about discrimination in the work place on the grounds of sexual orientation: [www.worksmart.org.uk](http://www.worksmart.org.uk)
- Unison has an LGBT caucus and a full-time member of staff to support members: [www.unison.org.uk/out](http://www.unison.org.uk/out)
- The Royal College of Nursing and the Royal College of Midwives both provide services for their members to protect them if incidents of discrimination occurs: [www.rcn.org.uk](http://www.rcn.org.uk) or [www.rcm.org.uk](http://www.rcm.org.uk)
- The BMA has published guidelines and posters that explicitly state that discrimination on the grounds of sexual orientation is illegal.

All unions and associations also have help-lines that provide advice and guidance to members about their rights, and the steps they can take to report homophobia.

Unions and associations can also help employers implement equality of opportunity without necessarily relying on LGB staff taking responsibility for change.

Specifically, GLADD also provides some support for LGB staff in the health sector. Their aims are to:

- Provide professional and social support for gay, lesbian and bisexual doctors, dentists and medical and dental students
- Combat discrimination against gays, lesbians and bisexuals particularly if expressed by or towards doctors and dentists
- Collect and disseminate information on gay, lesbian and bisexual issues relevant to the practice of medicine and dentistry

The unions and associations can therefore play a crucial role in supporting staff in the health sector to report incidents of homophobia and fully inform staff about their rights under the legislation.

The role of the unions, the legally binding complaints procedures, and increased awareness about rights under new and existing legislation, means that all staff should be able to report incidents of homophobia within the health sector. The reality is, however, that LGB people are sometimes reluctant to use these procedures as detailed in the next section.

## **Barriers to reporting homophobia**

Staff should be able to report incidents of homophobia. Since 2003, legislation protecting staff on the grounds of sexual orientation has been introduced, and regulations to ensure that there is a guaranteed minimum set of procedures to support staff to make complaints. Unions and associations have also emphasised the importance of protecting staff on the grounds of sexual orientation.

However, barriers do exist that can prevent staff using these existent structures and policies to report homophobia. Organisations generally do not conduct impact assessments of all policies, practices and procedures and therefore it might not be clear to the health sector where barriers might exist. Only by implementing a thorough process of investigation, in communication and collaboration with staff, will an organisation be able to establish the exact nature of the barriers that exist.

It is possible, however, that staff may not feel able to report homophobia for some or all of the following reasons. Each of these barriers may affect different staff in different ways, and therefore there is no order of importance.

### **Lack of knowledge and confidence by staff**

Legislation protecting staff on the grounds of sexual orientation has only been in place since 2003. Equal rights for same sex couples were only introduced in 2005. LGB people may be used to the fact that they are not protected in employment by legislation, and may not understand how the legislation protects them. Despite awareness-raising campaigns by Stonewall, ACAS, and the Unions, there might still be some reticence about using the legislation. There is also, as yet, no commission in the UK for LGB people although the Commission for Equality and Human Rights, introduced in 2007, will include sexual orientation. Gay people, therefore, may not associate themselves with employment equality rights, and discrimination. This is further heightened if sexual orientation is not included in training, or explicitly mentioned in policies, practices and procedures:

A cleaner who works in a large hospital was in town, holding hands with her partner, when her supervisor spotted her. Since then, she feels that she has been given less time to do more work, and her supervisor has reprimanded her on a more regular basis. The member of staff thinks this is one of the consequences of being gay, and it reaffirms her belief that it is best not to be “out” at work. She starts looking for another job where her supervisor will not know about her sexual orientation.

### **Attitudes**

If an organisation has failed to demonstrate that homophobic attitudes are discriminatory, staff may feel that reporting incidents of homophobia will be futile because an organisation is unable to “change” the attitudes of those who are homophobic. This is similar to the initial concerns expressed around reporting racism in the workplace. It was felt that reporting cases would not stop a person being racist, nor would it stop them being racist in work. It is now understood that tackling racism is primarily about indicating that it is not tolerated in the workplace, rather than just about changing attitudes. Expressions of racism, in general or directed at an individual, and incidents of racism, can result in dismissal. The majority of staff understand this. Taking active steps to tackle discrimination changes culture in a workplace and this, in turn, changes attitudes and confidence in reporting racism.

A similar confidence does not exist in relation to the reporting of homophobia. Due to a lack of emphasis in the work place, it is felt that homophobia is a “less serious” form of discrimination than other forms of discrimination that relate to race, gender or disability. The culture within a workplace is one in which homophobia is tolerated. The legislative protection from harassment is the same however, and staff can and should be protected from homophobic incidents. Failure to protect them is a failure to comply with the legislation:

A consultant, a junior doctor and a nurse are performing minor surgery on a patient. A report about the Civil Partnership Act and the ceremony of Elton John and his partner is a news feature on the radio. The consultant and the nurse joke about which of the two men will wear the dress, and generally express how sickened they are by gay marriage. The patient and the junior doctor are both shocked by the views expressed. The junior doctor considers raising the issue with the consultant and nurse, or raising the issue with the Human Resources department but decides that it is probably not worth it as the two were only expressing their personal opinion, and they are entitled to hold that opinion. The patient later makes a complaint against all three staff.

#### **Limited understanding by arbitrators**

Even if policies, practices and procedures explicitly state that they include discrimination on the grounds of sexual orientation, and extensive anti-discriminatory mechanisms are in place, a member of staff may not necessarily believe that those arbitrating or judging a complaint will not be homophobic himself or herself. There might also be a lack of confidence in their ability to handle the case correctly, or the issues arising from the case. Unless it is explicitly demonstrated to the contrary, this may mean that staff lack confidence in using the systems that are in place to report homophobia:

A member of staff makes a complaint to the head of human resources about the people in her office who have been gossiping and speculating about her sexual orientation. She also objects to the fact that people in other departments have been told that she is a lesbian. The head of human resources finds it difficult to know how to handle the complaint because he knows that the member of staff is a lesbian from her next of kin information. He therefore feels that no slander or lies have been spread and dismisses the complaint.

#### **“Hierarchy of rights”**

It is sometimes felt that certain groups and individuals have greater rights than others. This is in part due to the fact that organisations have to comply with more extensive legislation relating to some groups than others so there is greater emphasis on some groups than others. It is also caused by the fact that some people don't feel that staff should be protected because of their sexual orientation. This unequal emphasis in legislation and attitudes sometimes leads staff to conclude that in the investigation of a complaint, the person with greater legal protections has a greater right to be homophobic, than the member of staff has to be protected from homophobia. This is not the case; all staff are protected from incidents of discrimination, regardless of the reasons behind that discrimination.

This again is connected to a lack of visibility about the rights of LGB staff, and a lack of confidence in an employer's ability to handle complex, or “grey area” incidents of

discrimination. Again, unless it is demonstrated that homophobia is not tolerated in the workplace, staff may be reluctant to complain when it does occur:

A member of an administrative team is a Christian. A PCT places posters around the offices to advertise an LGBT History month event for schools that is taking place in collaboration between the local police, the PCT, and the Local Council. The member of staff objects to the PCT being associated with the initiative and feels that it is morally wrong to be teaching children about “the homosexual lifestyle”. Emboldened by the PCT’s support for the event, a member of staff makes an informal complaint about the views expressed by the Christian. The Human Resources team advises that he is entitled to his view and it would be inappropriate to ask him not to express it.

### **An anxiety about being labelled and confidentiality**

All staff, regardless of sexual orientation, are protected by the Employment Equality (Sexual Orientation) Regulations 2003, yet it is often assumed that only LGB people can and will use the regulations. It is also assumed that only members of staff who are openly LGB will use the regulations. Neither of these assumptions are true. Staff are protected on the grounds of their *actual* or *perceived* sexual orientation, and cases should be handled sensitively in order to protect staff from unnecessary disclosure about their sexual orientation. In order to ensure that this happens, staff handling complaints need to be fully aware of the law and how it protects staff, and demonstrate an understanding of this issues to all staff:

A hospital porter makes a complaint to the Human Resources department that his manager calls him “weak” like a “poof” because he is unable to carry as much as him. The porter feels that this is harassment and discrimination on the grounds of sexual orientation. The Human Resources department investigate the case and ask the porter to attend an interview. The interviewer, in attempt to put the member of staff at ease, asks if he has ever experienced discrimination before, because he was gay. The trade union representative points out that the member of staff has not revealed his sexual orientation, and his sexual orientation is not relevant to the case of harassment.

### **No mechanism for reporting**

Medical students, and students training in allied health care professions, perceive that they are not protected by the complaints procedures in the health sector, or by the university or college in cases of homophobia when they are on placement. Students are also concerned about future employment prospects and are therefore reluctant to challenge discriminatory behaviours. Students are protected in legislation (in both employment and vocational training) and therefore mechanisms should exist that will enable them to report incidents of homophobia. The fact that they feel no mechanism exists is an unequivocal barrier to reporting homophobia:

A medical student is on a paediatric attachment. He enjoys his rotation but it is suggested by the Senior House Officer that he might require additional chaperoning when interviewing children on the grounds that he is gay. No similar suggestion is made to another student, who is heterosexual. The student thinks that this is discriminatory but feels he has no form of address in the hospital, or in his medical school. He concludes that he will not work with children when he qualifies, even though he has enjoyed this attachment the most.

### **A concern about victimisation**

Some staff might also be concerned that if they report incidents of homophobia, this will have an impact on their employment opportunities and experiences at work. This concern might be particularly relevant in the health sector because of the perception that the mechanisms for promotion and advancement are often informal. Furthermore, in the same way that there is not a high level of understanding of rights relating to harassment and discrimination, LGB people may not be aware of the rights in place to protect them from victimisation. Explicit explanations about how staff are protected from victimisation might go some way to removing this barrier:

A nurse who is in her first year of work constantly hears a senior nurse make homophobic and disparaging comments. She feels that this is wrong, and it is making her less happy about her new job. She does not want to make a complaint however in case the senior nurse finds out about it, and she is generally known as a trouble-maker. She feels this might effect her opportunities for promotion.

### **Lack of confidence in policies, practices and procedures**

Even if an organisation, or a union, or an association, has demonstrated a comprehensive commitment to equality on the grounds of sexual orientation, if this is not backed up by an understanding of the issues surrounding sexual orientation, and by actions, there will be a lack of confidence in their ability to support staff, or to respond constructively to complaints. Mistakes may be made unwittingly, but can have an impact on how a member of staff responds to policies. A lack of confidence is one of the major barriers to reporting homophobia:

A union/association has very comprehensive and explicit policies against homophobia and in support of LGB staff. During conference, LGB members decide to have a closed meal (in common with other minority group members). The meal is only open to LGB staff in order to allow members who are not openly gay to attend the meal without disclosing their sexual orientation to others. Other senior members of the union/association attend however (with their opposite sex partners) because they do not understand the significance of the fact that the meal is "closed". This makes many members of the group uncomfortable and vulnerable, and undermines confidence in the union/associations ability to support their LGB members.

Ultimately, in common with other barriers that exist for reporting discrimination, it requires time and effort to pursue a case through internal and external mechanisms and systems. If barriers exist, this makes the task of reporting even harder. This means that while homophobia might be endemic throughout the health sector, those in a position to change this may not be aware of the problem and therefore may not make the necessary changes. Research demonstrates that LGB staff would rather leave an organisation than continue to experience discrimination.

- *'The Pink Ceiling is too low' Workplace Experiences of Lesbians, gay men and transgender people'* (1999) by Jude Irwin found that 36% of gay people would change jobs if discrimination continued and 59% of respondents had experienced homophobia in the work place. 55% of those who faced discrimination reported that this had a negative impact on their work. 20% also revealed that they had considered suicide.

## Improving reporting on a local level

Homophobia is sometimes ignored in the health sector, and there is a lack of emphasis within existing structures and policies, on the importance of tackling discrimination on the grounds of sexual orientation. This means that it is easy to continue to be relatively inactive about such discrimination. The consequence is that there is a general lack of confidence that homophobia is challenged in the work place. There is also a lack of faith that if incidents are reported, career prospects are protected.

There are several steps that an employer can take to begin creating an atmosphere where LGB staff feel comfortable in the work place. Full details can be found in the guidance: *Monitoring sexual orientation in the health sector*. Brief details are provided below.

On a local level, an organisation can implement some or all of the following measures. By doing so, staff recognise that steps are being taken to prevent discrimination, and employers can demonstrate that they take homophobia seriously:

- Organisations can ensure that all policies relating to discrimination make explicit reference to sexual orientation, and these policies are circulated to all staff.

Every organisation that featured in Stonewall's Work Place Equality Index 2006 made explicit reference to sexual orientation in discrimination policies.

- By setting up a working group, or allocating responsibility for sexual orientation to people within existing equality and diversity committees, the organisation can begin evaluating homophobia.
- Leadership is extremely important in indicating a commitment to protecting staff on the grounds of sexual orientation. Identifying and naming a person responsible for sexual orientation issues at a senior level will be useful in raising awareness and demonstrating commitment.

In order to support LGB staff more effectively in the work place, Nottingham PCT managers are made fully aware of some of the barriers that might exist that prevent staff from making complaints. Managers respond to anonymous complaints by increasing training in specific departments or teams, and championing equality on the grounds of sexual orientation. The lead comes from the top rather than relying on staff to implement change through complaints procedures.

- Establishing an officially recognised LGB employee network group, who is routinely involved in discussions about discrimination and barriers to reporting provides a means for effective communication and consultation.

The Department of Health's staff network group, PRISM, provides feedback and input into the department's equality and diversity agenda. They also provide advice and guidance to staff who are experiencing discrimination, and help improve structures for reporting homophobia.

- Direct communication and provision for LGB staff, for example, posters reiterating discrimination policies, named bullying and harassment contacts for LGB issues, anonymous reporting systems (these are useful for all areas of discrimination), all help build confidence.

Halton PCT advertise the bullying and harassment structures via internet, email, and posters. They also have a "buddy scheme". A buddy is a mediator between staff and employer, who can help staff navigate the bullying and harassment structures that exist. They are currently looking for a buddy who can be advertised as a person who understands the particular issues around sexual orientation.

- A link to, and description of, the national support organisations, such as GLADD ([www.gladd.org.uk](http://www.gladd.org.uk)) that will enable employees to find further resources and help.

Mersey Care NHS Trust have a page on their website of useful links to a number of equality and diversity organisations, including GLADD and Stonewall.  
[www.merseycare.nhs.uk](http://www.merseycare.nhs.uk)

- Detailed information about the Employment Equality (Sexual Orientation) Regulations on websites to inform staff about their rights.

Bolton PCT provides full information about the regulations, the responsibilities of the trust, and the rights of the employee. It also provides information about some of the barriers for LGB staff, as well as links to further information and research.  
[www.bolton.nhs.uk](http://www.bolton.nhs.uk)

- Ensuring that diversity awareness training includes specific mention of sexual orientation helps raise awareness amongst all staff that homophobia is unacceptable.

Oxleas NHS Trust provide equality and diversity training for managers that includes a specific section on sexual orientation. It covers issues such as confidentiality, disclosure, and equal treatment, as well as exploring some of the barriers that exist which prevent LGB staff from reporting homophobia.

- Support structures explicitly available for LGB staff. For example, stating that a counselling service is available for staff on the grounds of sexual orientation. Even though existing services may not turn away gay staff, stating that they will support them is important in building confidence and trust.
- The introduction of monitoring on the grounds of sexual orientation in order to develop a better idea about the nature of discrimination within the organisation.

Nottingham PCT monitors staff on the grounds of sexual orientation through recruitment procedures. It is therefore able to establish whether LGB staff are applying to work at the trust, and what barriers might exist to them applying.

- Including a question about sexual orientation on anonymous staff satisfaction surveys.

Oxleas PCT include a question about sexual orientation on their anonymous staff survey. It has enabled them to start finding out about the experiences of their LGB staff, without it being necessary for staff to disclose their sexual orientation. The exercise has empowered gay staff, and alerted all staff to the fact that sexual orientation is as important as other equal opportunities categories.

- Advertising equal opportunities policies in LGB media, including press releasing any steps taken to increase inclusion. This demonstrates that an organisation is thinking about its LGB staff.

Bromley PCT, Coventry Teaching PCT, and the Department of Health are members of Stonewall's Diversity Champions Programme. One of the benefits of this membership is that they are listed with the other champions every week in *The Pink Paper*. They are also listed on the Stonewall website, and the *Pink Paper* Internet recruitment pages. *The Pink Paper* also offers free distribution to Diversity Champions members to help to raise the profile of LGB staff within the work place. [www.pinkpaper.com](http://www.pinkpaper.com) and [www.stonewall.org.uk/workplace](http://www.stonewall.org.uk/workplace)

By incorporating steps to include sexual orientation in equality and diversity activities, organisations can begin to create a culture where homophobia is not tolerated, and staff feel able to report incidents of discrimination. On a local level, steps such as those listed above can enable individual organisations to begin the process of protecting staff.

## **Part six: Encouraging reporting: steps taken by other organisations**

### **This section examines:**

- The national response to homophobic bullying and reporting
- The role of leadership
- The experiences of other organisations; Manchester City Council, Barnardo's, The Royal Navy, HM Prison Service, and NHS Scotland.

Some of the difficulties encountered when encouraging staff to report homophobia are not unique to the health sector. Every organisation that employs staff has had to begin to dismantle the barriers that restrict lesbian and gay inclusion, and take steps to enable staff to use the regulations that have been introduced to protect them. Some organisations are introducing innovative methods for protecting staff, and demonstrating inclusion.

There are also national organisations that have had to ensure that the message of inclusion has been consistently disseminated through regional and national departments and offices. Ensuring that all employees and managers are “on message” is a challenge for any large organisation, especially those where branches are hard to reach, or there are difficulties insisting on the implementation of certain policies, practices and procedures.

This section considers organisations that have similar structures or issues as the health sector, but have taken pro-active steps to support LGB staff. The organisations were identified because it was known within the LGB community that they are particularly effective at supporting staff, or because they had scored highly in the Stonewall's Workplace Equality Index. Lessons can be learnt by the health sector from these organisations, and the health sector can consider replicating some of the structures that have been proven to work well in supporting staff.

**The Department of Health has an unequivocally essential role to play as leaders to demonstrate to the rest of the sector the importance of preventing discrimination on the grounds of sexual orientation, and supporting staff who are lesbian, gay or bisexual:**

*“It is impossible to rely entirely on individual trusts and organisations to get this right, simply on an ad hoc voluntary basis. We need strong, directive leadership from the Department of Health, to ensure that support is available to all LGB staff. This needs to be coordinated and monitored nationally, with help provided as necessary to organisations which struggle. The provision must be ongoing and sustainable. The Department of Health should be a strong role model for LGB equality.”*

A spokesperson from GLADD

The organisations below provide some insight into how leaders in other sectors have demonstrated a commitment to tackling homophobia.

## **Manchester City Council**

### Type of organisation:

Manchester City Council is a Local Authority. It is a political organisation and central government gives guidelines on how it should be run. Manchester is divided up into 33 wards and each ward returns 3 Councillors, elected by Manchester residents in the local elections.

The council employs approximately 25,000 staff. Funding for services comes from areas such as the central government, Council Tax, Business Rates and the European Union. The City Council has to provide certain services to its residents as required by central government.

The City Council can either provide services directly to the public or arrange for others to do so. Manchester City Council is located in city centre Manchester. Manchester is the regional capital of the North West. The city itself has a population of around 430,000 and is the largest of the 10 Greater Manchester districts.

### Particular barriers for LGB staff:

The council employs a large number of staff across a number of disciplines and departments. Monitoring has indicated that there are a significant number of LGB staff throughout the council. The equality and diversity department are aware that particular barriers may exist for LGB staff, such as an anxiety that sexual orientation might be disclosed if a person makes a complaint, or a perception that their manager will not take them seriously, or that they will not be judged fairly. The council recognises that these barriers might prevent staff using the grievance and harassment procedures that exist if they want to make a complaint.

Staff may be anxious about using the existing structures to report discrimination and therefore feel isolated. The equal opportunities department discussed their dignity at work policy and grievance procedures with the LGBT staff network, which provided information about where barriers might exist. The council recognised that it was important to remove these barriers if they wanted to retain staff and continue to reflect the population of Manchester.

### Steps taken to remove barriers:

Manchester City Council has taken significant steps to demonstrating that they are an inclusive employer. In particular, the council has a team of Conciliation Officers, who can mediate and support employees in cases of discrimination and harassment.

Conciliation Officers are available to:

- Listen and allow the parties to express their feelings;
- Explore underlying issues and challenge and encourage where necessary;
- Spend time with each party both separately and jointly, exploring what caused the breakdown in the working relationship;
- Use their judgement to consider involving other parties in the process (e.g.. the manager), where they feel this will add value to discussions;
- Help both parties to examine areas of possible agreement as well as disagreement.

Conciliation Officers receive training in all areas of equality legislation, and attend sessions on issues and barriers that might affect certain groups or individuals. They have the information needed to support staff and inform them about acceptable and unacceptable behaviour.

The Council also advertises that lesbian, gay or bisexual Conciliation Officers are available for staff who want support from someone who has a personal knowledge of sexual orientation issues. It is clear that LGB staff are approaching the officers for informal support and advice. The scheme is felt to be highly effective for all groups who are more likely to experience harassment and discrimination.

Costs:

The Conciliation Officers are volunteers from the council who receive training from the council. There are therefore no additional costs to provide support for LGB staff. It is thought that this initiative helps solve problems informally, and prevents cases from being taken through formal disciplinary procedures, or potentially costly employment tribunals. It therefore provides a mechanism for challenging general, low-level homophobia in the work place, improving general conditions, and helps educate and inform staff about homophobia.

Relevance to the health sector:

A network of Conciliation Officers throughout the health sector can be of benefit to all staff that are particularly vulnerable to harassment and discrimination. It is a system that organisations could support and would be an effective way of ensuring grass-root buy-in to equality and diversity strategies and principles.

## **Barnardo's**

### Type of organisation:

Barnardo's is a children's charity that works with the most vulnerable children and young people in the UK. The aim is to help them transform their lives and fulfil their potential. They support 120,000 children and families through 370 services across the UK. Barnardo's provides a series of services to support young people, and their families. This includes working with the community, and providing opportunities for fostering and adoption. Barnardo's is also a campaigning charity. As one of the largest organisations working to protect children, they are a respected voice in national policy development relating to children.

Barnardo's employs 6,500 staff, across ten regions and has a comprehensive volunteering programme. Volunteers can work with groups of young people; assist care leavers to achieve independence, and befriend vulnerable young people. Barnardo's also identifies potential foster parents, or people who can adopt children.

### Particular barriers for LGB staff and volunteers:

Barnardo's is a charity that specialises in working with vulnerable children. There was originally a perception that there was no place for lesbian, gay or bisexual people in the work that Barnardo's does. It was felt that gay people should not volunteer to work with young people, or be able to foster or adopt young people or teenagers.

Like the health sector, this has sometimes had an impact on the way staff and volunteers have been treated which has meant that the organisation has not always been able to recruit or attract the best staff and volunteers. It has also meant that staff might have been exposed to homophobia, but felt unable to report it if that meant disclosing their sexual orientation to others, thus jeopardising their role in working with children. It was felt that it was essential to change this perception and to actively work to demonstrate to the LGB community that there were opportunities for them within Barnardo's.

This has been identified as a key area of work for the Head Office, but there have also been problems in ensuring that this message is understood and openly communicated throughout the regions. The drivers for change (from the top) have had to develop strategies to communicate messages throughout the organisation.

### Steps taken to remove barriers:

Barnardo's is firmly of the view that being lesbian, gay, or bisexual does not preclude a person from working with children, or vulnerable young people and have stated this position clearly:

#### **Frequently asked questions:**

*I am gay, can I adopt or foster?*

Barnardo's will consider applications from gay or lesbian couples or individuals.

You will go through exactly the same process as any other applicant.

Barnardo's has not avoided the issue, but explicitly stated that gay people are able to look after children. The charity is also a member of Stonewall's Diversity Champions Programme, which means that they are listed in *The Pink Paper* every week, and they participate in the Workplace Equality Index. In 2006, they came 46<sup>th</sup> in the top 100 employers. They are the only children's charity in the index, and their inclusion

demonstrates clearly that gay people can and do work with children and young people.

*“LGB staff are telling us that they selected Barnardo's as their employer of choice because we are members of the [diversity champions] programme, and in an environment where quality recruits are hard to come by that gives us a competitive advantage.”*

Ian Theodoreson, UK Director, Corporate Resources & Lead Director LGB Issues, Barnardo's

Barnardo's has also taken steps to ensure that this tolerance and acceptance at the top of the organisation is communicated throughout the regions. The fact that this has been driven from the top indicates to local projects and organisations that this is important and should be taken seriously.

Barnardo's head office has therefore published a series of posters that depict same-sex relationships and families. The posters indicate that an office or space is a “safe-zone” for LGB staff, volunteers and service users.

The posters are only displayed once staff have undergone training to ensure that they will not discriminate on the grounds of sexual orientation. The posters also alert staff that homophobia will be taken seriously and challenged. Incidents of homophobia would be a breach of the policies explicitly displayed on the walls.

The creation of safe-zones, and a clear message about homophobia, has led to increased staff confidence in reporting structures and mechanisms. Staff feel more comfortable about using the bullying, harassment and grievance procedures because they are confident that those hearing the complaints will understand some of the issues, and be receptive to supporting the staff.

#### Costs:

The costs of producing posters, and extending training to include sexual orientation is minimal. Changes to website text and resources to indicate a commitment to sexual orientation also has limited costs.

#### Relevance to health sector:

Barnardo's recognised that the public and staff felt that employing gay people posed a risk to young people. They realised that to remain silent on this issue was a tacit perpetuation and endorsement of the view. They identified that it was necessary for the head office, and senior members of staff, to openly state that LGB people were welcome to work for the charity, as staff and volunteers. This drive came from the top of the organisation, and has effected a change in culture and attitude throughout the national and regional offices thus improving reporting of homophobia. Key lessons can be learnt from the health sector about this approach.

## **The Royal Navy**

### Type of organisation:

The Royal Navy employs 37,500 staff and is part of the Ministry of Defence. The First Sea Lord is responsible for the health, safety and morale of all those who serve in the Navy.

The Royal Navy contributes to the security of the UK and its citizens world-wide, both in peacetime and at times of war. It participates in the Defence Diplomacy initiative through the building of international trust.

Effective team work in a crisis, and trust and respect between personnel, is essential for the Royal Navy to work effectively.

### Particular barriers for LGB staff:

Until January 2000, it was illegal for LGB personnel to serve in the armed forces. There was a high degree of public opposition to the suggestion that this should change, and the Ministry of Defence fought legal challenges brought by Stonewall.

Now the situation has changed, the Ministry of Defence in general, and the Royal Navy in particular, recognise the need to demonstrate a commitment to LGB staff, and to protect them from discrimination. This is especially important because personnel of the Royal Navy have to work effectively together. Any form of discrimination effects morale, and influences how efficient a unit is.

This task is made particularly difficult because of the history of homophobia within the armed forces. Less than six years ago, LGB people could be subjected to investigation and discharged from the forces. Changing attitudes takes time and effort. Further barriers are caused by the fact that personnel are frequently spread across the world and it is difficult for a central agency to maintain an emphasis on the importance of supporting people regardless of sexual orientation.

### Steps taken to remove barriers:

The Royal Navy have taken considerable steps to demonstrate commitment to staff on the grounds of their sexual orientation. As well as joining Stonewall's Diversity Champion's Programme, they have ensured that public messages of support have been made, as well as ensuring structures exist throughout ships.

"I am committed to ensuring that the Royal Navy has a culture in which all our people are valued for themselves and are thus able to give 100 per cent to their jobs."

Vice Admiral A J Johns CBE ADC, Second Sea Lord and Commander-in-Chief Naval Home Command at Stonewall's Workplace Conference.

The Royal Navy have recognised that increasing support for LGB staff is most effectively achieved through existing structures and cultures. For example, a key concept within the Navy is the idea that officers, or those in a position of leadership, protect those underneath them. This means that the Navy has put considerable resources into educating and training those who have responsibility for personnel, or those who are in a position of authority. The officers therefore condemn incidents of homophobia, and treat all personnel with respect.

Senior personnel have been encouraged to take on this role because that is their general responsibility to service men and women. If a unit is in a crisis situation, then all personnel have to rely on the rest of the team, and the capabilities of the leader. The leader therefore acts as a role model for other members of the Navy by demonstrating a zero tolerance of discrimination.

Structures exist to help support all personnel within the Royal Navy if they want to report or discuss incidents of discrimination and harassment. Service men and women can approach the chaplain (there is a chaplain on every ship), advisors, and officers are in a position to support staff. These personnel have also therefore received training regarding sexual orientation issues.

The Royal Navy has also produced a booklet entitled "*Equality and Diversity and You*" which is given to every service man and woman in the Navy, and makes explicit reference to sexual orientation. This is supported by leaflets, posters and lectures which reiterate the Navy's position on discrimination and harassment. LGB service personnel are also able to browse a website with specific resources about sexual orientation. There is also a support line which is available for all LGB staff to report and discuss incidents of discrimination.

Costs:

It is difficult to estimate costs because these initiatives are part of the Royal Navy's general commitment to tackling discrimination and therefore is part of the general work conducted by the Diversity and Equality Policy Cell.

Relevance to the health sector:

The Royal Navy has demonstrated a commitment to supporting LGB staff and has ensured that mechanisms to provide support have been integrated with existing structures. There has however, also been senior level commitment and central engagement with the issue, and a consistent emphasis on the importance of tackling discrimination on the grounds of sexual orientation. This is despite the case that the armed forces are perceived as being traditionally homophobic, and their location makes it difficult to communicate broad policy positions. The health sector can learn from the Royal Navy's approach and commitment.

## **HM Prison Service**

### Type of organisation:

HM Prison Service is a large public sector organisation spread throughout the UK. The prison service provides a service to the public by keeping in custody those who are committed by the courts. The purpose of the prison service is to look after prisoners and help them lead law-abiding and useful lives in custody and after release. Promoting diversity, equality of opportunity and combating unlawful discrimination is a key principle to the prison service's work.

The Prison service employs 40,000 staff over 140 prisons.

### Particular barriers for LGB staff:

Staff within the prison service often find it difficult to bring complaints of discrimination or bullying. In common with the health sector, there are many different types of staff within the prison service, and the emphasis is usually placed on supporting the prisoner, rather than the staff. This means that there can be a lack of emphasis on supporting staff from discrimination from each other, from managers, from prisoners, or members of the public.

Problems are also created because the staff are spread across the service, but work in small teams. This sometimes makes it difficult for individuals to report discrimination, without feeling that a complaint is likely to jeopardise working relationships.

Further problems are created because not all staff have access to a desk or a computer or a telephone and often work in small units. Like the Royal Navy, and the health sector, trust and respect between employees is essential for the organisation to work effectively. Homophobia and discrimination is recognised as one of the barriers to achieving this.

### Steps taken to remove barriers:

The central offices of the Prison Service house a Race and Equalities Action Group. The Action Group work centrally on policies, practices and procedures to tackle discrimination within the prison service.

Part of this work includes GALIPS – gays and lesbians in the prison service. GALIPS was set up six years ago. The national LGB staff forum investigated the possibility of employing people, full time, to support staff across the prison service. A case was made by examining the incidents and extent of discrimination within the prison service, and estimating the cost that the prison service would incur if cases were taken to employment tribunals. Due to the disparate nature of the service, it was accepted that it would be difficult to support LGB staff exclusively and effectively in each prison, and that it would be more useful to have a central resource.

Two members of staff were therefore appointed to support LGB staff throughout the service. Staff could join GALIPS, either as full members or as honorary members, which means that heterosexual people can also be involved in the work. Staff were made aware of GALIPS by senior staff within the prison service, intranet and internet resources, posters and emails. GALIPS keeps a confidential database of all members and honorary members and sends information about events, meetings, and employee rights via email, or post. Members can also wear a pin badge that denotes that they are a member. GALIPS has therefore contributed to raising awareness about the existence of LGB staff in the prison service.

GALIPS also provides a confidential phone line service that staff can call to report homophobia, or receive advice about how to pursue a case of discrimination informally, and formally. The staff at GALIPS sometimes act as a “friend” to the member of staff and accompany them to meetings or tribunals. The staff at GALIPS also visit prisons and provide advice and guidance about local steps that can be taken to support staff. The staff at GALIPS are able to be experts about the Prison service, and reflect and communicate the experiences of LGB people within the service. This level of expertise could not reasonably be achieved in every local organisation.

The central work of GALIPS is supported by staff in the regions. Each region releases a member of staff for four days a month to attend events and meetings throughout the region to raise awareness of LGB issues. For example, a member of staff might address the staff at another prison about sexual orientation issues. They are also available to provide more local support to staff experiencing discrimination.

These two structures work together to support LGB staff effectively, and complements the general work that is taking place in prisons. Staff feel able to approach GALIPS and talk frankly with them about their concerns and are fully informed about the steps that they can take. GALIPS therefore also empowers lesbian and gay people to challenge homophobia when it occurs.

Costs:

The initial start up costs for GALIPS was £40,000 and costs approximately £140,000 per year to run.

Relevance to the health sector:

Like the health sector, the Prison service is a large organisation with local employment structures and complaints mechanisms. They have recognised that effective protection of staff on the grounds of sexual orientation is achieved more effectively if provided centrally, in collaboration with individual agencies and organisations. This conclusion might be useful to the health sector, who face similar difficulties.

## **NHS Scotland**

### Type of organisation:

NHS Scotland is the national health organisation for Scotland, which has devolved responsibility for health care provision and the health sector in Scotland. The Scottish Executive take a universal approach to all aspects of equal opportunities and the same emphasis is placed on the importance of tackling discrimination on the grounds of race, gender, gender identity, disability, sexual orientation, age and religion and belief. The Scotland Act states that the Scottish Executive must strive towards equal opportunities for these groups. This is enshrined in the White Paper "Partnership for Care" which makes specific reference to sexual orientation. The Scottish Executive health department have therefore stated that they will use the framework in place to ensure equality on the grounds of race, for all other equality strands.

### Particular barriers for LGB staff:

Like the health sector in England and Wales, NHS Scotland experiences similar problems in protecting staff from discrimination, and enabling them to report homophobia. NHS Scotland have also identified that a failure to protect, and retain staff on the grounds of sexual orientation has an impact on service delivery to patients. They recognise that policies and processes put in place to protect staff help ensure effective service delivery to patients.

### Steps taken to remove barriers:

NHS Scotland, in partnership with Stonewall Scotland, has set up an LGBT Inclusion Project ([www.lgbthealthscotland.org.uk/home](http://www.lgbthealthscotland.org.uk/home)). The Inclusion Project aims to provide support and evidence necessary for NHS Scotland to achieve its aim of including people who are lesbian, gay, bisexual or transgender, whether they are service users or staff, and to challenge homophobia within the NHS.

The aim of the Inclusion Project is to enable sexual orientation issues to be included in NHS equality and diversity strategies. It does this in a number of ways:

- Provides on-line message boards for employees within the NHS to share experiences of homophobia and resources. This helps compensate for the lack of local LGB staff forums
- Helps the NHS, Scottish Executive, and other organisations develop specific strategies to address LGB health issues, including harassment, across the NHS
- Raises awareness within the health sector about sexual orientation issues and ways to tackle discrimination
- Provides on-line resources for patients, health care professionals, staff and employers
- Is a "critical friend" to the sector, providing advice and information when things are not working as well
- Develops information sources in relation to health and well-being and service use
- Conducts research and engages in policy development
- Collates best practice examples from across the health sector, to share information between the sector, and examples of projects that have not worked so well
- Produced publications: *Getting it Right: LGBT Research Guidelines*; *Good LGBT Practice in the NHS*; *Towards a healthier LGBT Scotland*
- Collates research relating to LGB health care needs

- Provides a forum for LGB health researchers to come together to share findings
- Provides an on-line mechanism for researchers to inform the project about new research
- A staff of experts who have a detailed knowledge of the health sector, and sexual orientation issues.

The Inclusion Project provides an innovative way to support the inclusion of LGB people within the health sector.

Costs:

The Inclusion Project costs £140,000 per year to run.

Relevance to the health sector:

There are clear parallels between the health sector in Scotland, and the health sector in England and Wales and key lessons that can be learnt from the steps Scotland has taken to help the sector tackle discrimination and help staff report homophobia.

## **Part seven: Next steps for the health sector**

It is clear that homophobia, and barriers to reporting homophobia, are a problem within the health sector. It is impossible at this stage to fully identify the extent and scope of the problem but anecdotal evidence and evidence derived from existing research, indicates that homophobia is a barrier to full inclusion within the health sector in England and Wales. Further, more wide-reaching and **comprehensive research** of LGB employee experiences would help formulate a better picture of the problems that exist in the sector. Nevertheless, the Department of Health and the rest of the sector must begin to address these barriers.

The health sector cannot, and should not, ignore incidents, or potential incidents of discrimination. The sector must comply with clear legislation, which prevents discrimination on the grounds of sexual orientation. It must also prepare for new legislation that is introduced in October 2006 that will prevent discrimination in the provision of healthcare to patients on the grounds of their sexual orientation. Thorough compliance with this legislation will depend on the insight and information provided by LGB health care professionals and practitioners. **Clear guidance** should be produced by the Department on both the employment and service provision laws, setting out best practice for managers.

There are some steps that can be taken immediately to improve existing structures and those measures should be implemented by all organisations within the health sector as soon as possible. **Local measures**, such as introducing anonymous reporting systems, putting up posters and ensuring all policies include sexual orientation are vital first moves. Further steps can then be taken, for example, creating LGB bullying and harassment officers, and raising awareness among all staff of sexual orientation equality. It is the responsibility of employers to implement these processes in order to protect staff from discrimination.

There is also scope however, for an organisation the size of the health sector, to provide a central, **national project** to encourage reporting of homophobia, support staff who wish to make a complaint, and generally improve the provisions on the grounds of sexual orientation within the health sector. GLADD provides this service to doctors, and dentists, but volunteers run GLADD on a minimal budget. Furthermore, their remit does not include all other health care professionals who have equal need of protection. The organisations detailed in this guide all provide innovative ways for the health sector to address these problems, particularly HM Prison Service, the LGBT Health Inclusion Project, and The Royal Navy. Valuable lessons can also be learnt from the individual approaches of Manchester City Council and Barnardo's. Best practice ideas and approaches do exist in the UK, and public sector agencies are tackling this problem. We strongly recommend that the health sector in England and Wales starts to do the same within an agreed timetable.

## **Annex A: Organisations interviewed**

Many organisations contributed to this work, informally, as well as formally, who do not wish to be named.

The following organisations provided recorded interviews and supporting evidence:

- Barnardo's
- British Medical Association
- Department of Health
- GLADD
- Halton PCT
- HM Prison Service
- Manchester City Council
- NHS Employers
- NHS Jobs
- Nottingham PCT
- Oxleas Mental Health Trust
- Positively Diverse
- Royal College of Midwives
- Royal College of Nurses
- The Royal Navy
- Stonewall Scotland Health Inclusion Project
- A number of other PCTs
- Employees of the health sector who are lesbian, gay or bisexual, canvassed via message boards and on-line forums

Each organisation was asked a series of questions pertinent to their organisation. The interviews were conducted over the phone and were recorded and later transcribed. Further information and resources were supplied, and follow up questions were answered via email.

## **Annex B: Further resources**

The Department of Health Sexual Orientation and Gender Identity Group –  
[www.dh.gov.uk/PolicyAndGuidance/EqualityAndHumanRights/EqualityAndHumanRightsArticle/fs/en?CONTENT\\_ID=4102667&chk=sVzqRJ](http://www.dh.gov.uk/PolicyAndGuidance/EqualityAndHumanRights/EqualityAndHumanRightsArticle/fs/en?CONTENT_ID=4102667&chk=sVzqRJ)

Health and Social Care Information Centre - [www.ic.nhs.uk](http://www.ic.nhs.uk)

NHS Employers - [www.nhsemployers.org/](http://www.nhsemployers.org/)

NHS Jobs - [www.jobs.nhs.uk/](http://www.jobs.nhs.uk/)

NHS Equality - [www.equality.nhs.uk](http://www.equality.nhs.uk)

Stonewall – [www.stonewall.org.uk](http://www.stonewall.org.uk)

### **Trade Unions and Associations:**

The British Medical Association (the BMA) – [www.bma.org.uk](http://www.bma.org.uk)

The Royal College of Nursing – [www.rcn.org.uk](http://www.rcn.org.uk)

The Royal College of Midwives – [www.rcm.org.uk](http://www.rcm.org.uk)

Unison – [www.unison.org.uk](http://www.unison.org.uk)

GLADD (Gay and Lesbians Association of Doctors and Dentists) – [www.gladd.org.uk](http://www.gladd.org.uk)

### **Literature relating to harassment**

Advisory, Conciliation, and Advisory Service (ACAS)- [www.acas.org.uk/](http://www.acas.org.uk/)

Consilio, Sexual Orientation and Religious Discrimination - [www.spr-consilio.com/artemploy14.htm](http://www.spr-consilio.com/artemploy14.htm)

DirectGov, Sexual Orientation Discrimination-  
[www.direct.gov.uk/Employment/Employees/DiscriminationAtWork/DiscriminationAtWorkArticles/fs/en?CONTENT\\_ID=10026540&chk=g1Lynq](http://www.direct.gov.uk/Employment/Employees/DiscriminationAtWork/DiscriminationAtWorkArticles/fs/en?CONTENT_ID=10026540&chk=g1Lynq)

DTI- report on New Equality Legislation and Protection against Discrimination at Work on the Grounds of Sexual Orientation-  
[www.dti.gov.uk/er/equality/sexual\\_orientation.pdf](http://www.dti.gov.uk/er/equality/sexual_orientation.pdf)

General Medical Council, Sexual Orientation discrimination guidelines- [www.gmc-uk.org/guidance/library/valuing\\_diversity/sexual\\_orientation.asp](http://www.gmc-uk.org/guidance/library/valuing_diversity/sexual_orientation.asp)

Health and Safety Executive- [www.hse.gov.uk](http://www.hse.gov.uk)

Your Rights (Liberty)- [www.yourrights.org.uk/your-rights/chapters/right-to-reeive-equal-treatment/sexual-orientation-and-transgender-discrimination/employment.shtml](http://www.yourrights.org.uk/your-rights/chapters/right-to-reeive-equal-treatment/sexual-orientation-and-transgender-discrimination/employment.shtml)

### **Further resources**

Stonewall's Diversity Champions Programme – [www.stonewall.org.uk/workplace](http://www.stonewall.org.uk/workplace)

Network Groups: setting up a LGB employee group -  
[www.stonewall.org.uk/workplace/1214.asp](http://www.stonewall.org.uk/workplace/1214.asp)

The Health needs of LGB people –

Monitoring sexual orientation in the health sector -

The Scotland LGBT Health Inclusion Project -  
[www.lgbthealthscotland.org.uk/home.htm](http://www.lgbthealthscotland.org.uk/home.htm)

Department for Constitutional Affairs- Human Rights Act: FAQ-  
[www.dca.gov.uk/hract/hrafaqs.htm](http://www.dca.gov.uk/hract/hrafaqs.htm)

Department of Trade and Industry- White Paper for Commission for Equality and Human Rights  
[www.dti.gov.uk/access/equalitywhitepaper.pdf](http://www.dti.gov.uk/access/equalitywhitepaper.pdf)

Cabinet Office- Sexuality and Good Practice-  
[www.civilservice.gov.uk/diversity/sexuality/good\\_practice/index.asp](http://www.civilservice.gov.uk/diversity/sexuality/good_practice/index.asp)

Commission for Racial Equality- [www.cre.gov.uk/](http://www.cre.gov.uk/)

*It Makes Me Sick: Heterosexism, Homophobia, and the Health of Gay Men and Bisexual Men*; 2005  
[www.sigmaresearch.org.uk/downloads/report05a.pdf](http://www.sigmaresearch.org.uk/downloads/report05a.pdf)

National Centre for Social Research; Health and Sexuality-  
[www.natcen.ac.uk/natcen/pages/or\\_healthandsexuality.htm#discrim](http://www.natcen.ac.uk/natcen/pages/or_healthandsexuality.htm#discrim)

Office for National Statistics- [www.statistics.gov.uk/](http://www.statistics.gov.uk/)

### **Legislation**

The Civil Partnership Act 2004-[www.opsi.gov.uk/ACTS/acts2004/20040033.htm](http://www.opsi.gov.uk/ACTS/acts2004/20040033.htm)

The Employment Equality (Sexual Orientation) Regulations 2003-  
[www.opsi.gov.uk/si/si2003/20031661.htm](http://www.opsi.gov.uk/si/si2003/20031661.htm)

The Equality Act 2006- [www.opsi.gov.uk/acts/en2006/2006en03.htm](http://www.opsi.gov.uk/acts/en2006/2006en03.htm)