

Equality and diversity – a new dimension

Managing equality tensions: a resource paper exploring sexual orientation and religion or belief



Executive summary

The passage into law of the Equality Act 2010 with its core emphasis on nine protected characteristics has brought into focus the possibility of tensions between the interests of people who share different such characteristics. One such tension is between people with the protected characteristics of religion or belief and sexual orientation.

A workshop was held in June 2011 by LSIS (Learning and Skills Improvement Service) to explore these issues. This paper presents a summary record of the main inputs to and outcomes from the workshop.

A core part of the workshop was input from a panel of people who were able to present their views and experiences as individuals who shared the protected characteristics of religion, or sexual orientation, and people who share both these protected characteristics.

There have been a number of high profile cases and these were also discussed during the workshop. This paper summarises these cases together with practical implications for providers.

The capacity to manage equality tensions will increasingly become an important part of the skills set needed by effective equality and diversity practitioners and others. It is hoped that the New Dimensions workshop will be the first of many events to continue the debate and contribute to the development of such skills.

Introduction

The passage into law of the Equality Act 2010 with its core emphasis on nine protected characteristics has brought into focus the possibility of tensions between the interests of people who share different such characteristics. These “equality tensions” and the need to resolve them have become one new and standard part of the equality and diversity environment. They occur in many contexts including the further education sector. Recent research and much anecdotal evidence suggests that equality tensions within the sector that can sometimes be acute are between people with the protected characteristics of religion or belief and sexual orientation.

LSIS recognises that sector staff and learners need support to play an effective role in managing and resolving equality tensions. They may be inhibited from doing so because of a fear of inadvertently unlawfully discriminating, because of uncertainty about how to go about it, or because they have yet to think through this aspect of equality and diversity.

“Equality and diversity – a new dimension” workshop, held in June 2011, provided an opportunity to explore these issues. It represents a response to the general duty placed on public sector bodies by the Equality Act 2010 to foster good relations between people who share different protected characteristics.

The workshop

The workshop provided a platform for discussion and exploration. It brought together a panel that highlighted the views and experiences of those who personally share both the protected characteristics of religion or belief and sexual orientation and who, therefore, have managed the tensions in their own lives. It offered insights into how the possible tensions between these two protected characteristics can be

managed. It began to identify how those who have different views and beliefs can, nevertheless, make the journey to equality and diversity together.

This paper presents a summary record of the main inputs to and outcomes from the workshop.

A new equality landscape

In force from October 2010, the Equality Act 2010 (the Act) brings together, streamlines and strengthens previous equality legislation. The Act identifies nine ‘protected characteristics,’ aspects of identity that are protected from discrimination, harassment or victimisation. These are:

- Race
- Disability
- Gender
- Gender reassignment
- Age
- Sexual orientation
- Religion and belief
- Pregnancy and maternity
- Marriage and civil partnership

This widening of protection creates a more complex equality ‘landscape’.

The Act also introduces a new public sector duty, which came into force from April 2011. This duty replaces previous duties to promote race, disability and gender equality, and requires providers to have due regard to the need to:

- eliminate discrimination, harassment

and victimisation

- advance equality of opportunity for people who share a protected characteristic
- foster good relations between people who share a protected characteristic and people who do not share it.

This public sector duty is extended to cover 8 of the 9 protected characteristics of the Act (marriage and civil partnerships only applies to the first 'arm' of the duty, namely to eliminate discrimination, harassment and victimisation).

Having '**due regard**' means deliberately and consciously thinking about all three 'arms' of the above duty when planning, delivering and evaluating services. It involves ensuring that equality issues influence design and decision-making activities as employers and providers of education and training.

Fostering good relations involves tackling prejudice and promoting understanding between people who share a protected characteristic and others.

Working with differences

A feature of the workshop was that its two facilitators took and explained their different positions with regard to religion or belief and sexual orientation. They opened the event by each making a brief position statement, Dr Christine Rose as a heterosexual woman and committed Christian and Phil Barnett as a gay man and an atheist. They reflected on how their positions influence their approaches to sexual orientation equality and equality on the grounds of faith. In doing this they modeled the key workshop theme – the possibility and value of working with and respecting difference, finding common

ground, and working, from different positions, for shared equality objectives.

Panel transcript

A core part of the workshop was the panel comprising Dan Morrow, Rabbi Mark L Solomon, Interfaith Consultant for Liberal Judaism and Gurdev Singh Bal, Regional Development Officer for the National Council of Faiths and Beliefs in Further Education (fbfe). Mark and Dan were able to present their views and experiences as individuals who shared the protected characteristics of religion or belief and sexual orientation. They modelled the fact that is central to understanding this particular equality tension – that many individuals are lesbian, gay or bisexual *and also* hold a religion or belief. They resolve or work at resolving the tensions that may arise from these characteristics within their own personalities and lives and exemplify the possibility of successfully managing and resolving these tensions – sometimes with difficulty, but nevertheless, with success. Their experience also acts as a rejoinder to the over easy default tendency to think about these two protected characteristics as inherently incompatible, separate and different. They are not necessarily so. Holding this in mind and working with it is one key to the effective management and resolution of this equality tension.

What follows is an edited version of the comments of all three panel members followed by a brief section that emphasises key points from each speaker.

Key points

Mark I am very happy to take part in the discussion with you and the other panel members.

So we have the potential clash between two important principles – protection against discrimination on grounds of religion or belief and protection against

discrimination on grounds of sexual orientation.

Speaking as a Jew, it's obvious, I hope, that the issue of religious freedom is vital to us. The experience of Jews as a minority over the centuries and particularly in modern times was one of the foundations of religious equality legislation as an important principle in our society. We constantly experience the need for the protection of religious freedom and protection against discrimination. This is a very real issue for many Jews encountering casual or less casual anti-semitism.

But speaking as a Liberal Jew, there is also a need which we feel constantly for the recognition that the Jewish community is not monolithic. It contains a diversity of views and cultures, and this includes diversity in relation to issues around sexual orientation. Often we find within the Jewish community things are presented as though, "this is the Jewish view" to which all Jews subscribe. Typically it will be the view of Jonathan Sacks the Chief Rabbi, who is the orthodox Chief Rabbi who does not represent or recognise Liberal Judaism as a valid form of Judaism and does not speak for Liberal Jews on any issue, unless of course, we happen to decide we agree with him on something.

There are several Jewish denominations or movements within British Jewry of which Liberal Judaism in religious terms is the most radically untraditional and constitutes about 10% of all Jewish movements. Then you have the Reform movement which is twice as large and very similar in most ways and we both count as "Progressive" Judaism. Then you have a very traditional Masorti movement in the middle which straddles a number of currents and is very small, and then the largest section is orthodoxy of various sorts the most common of which is modern orthodoxy of the type represented by the Chief Rabbi. That accounts for about 65/70% of Jews who are affiliated to the organised community. There are also a large number

of secular Jews who have nothing to do with organised religion but who are proud and happy to call themselves Jews on a cultural level.

As a Liberal Rabbi who was ordained as an orthodox Rabbi in 1991, I left orthodox Jewry mainly because I was coming out and accepting being gay and could not find a home within orthodox Judaism which has traditional prohibitions about homosexuality based on biblical verses which you may have come across. I found a very happy home in Liberal Judaism in 1992. Then I was the only openly gay Rabbi in Liberal Judaism. I have since been joined by a number of lesbian and gay colleagues. In 1999 I introduced into our discussion as Rabbis the issue of same sex commitment ceremonies, or gay marriage.

That is the main issue on which I have been personally involved within Liberal Judaism. That is by far the most actively discussed issue along with whether to ordain lesbian and gay Rabbis. That latter has been accepted for many years within Liberal Judaism and is not within orthodox Judaism.

The context of the discussion in 1999 about same sex commitment was a huge controversy that erupted within the Reform movement on this very issue of marriage and commitment ceremonies for same sex couples. This unleashed a very unpleasant wave of homophobia in the Reform movement which surprised a lot of people. I then introduced the topic within Liberal Judaism firstly amongst my own Rabbinical colleagues and then in the wider movement. I encountered a genuine commitment to a calm reasonable discussion and an overwhelming conviction on the part of my colleagues – a group of at most 30 Rabbis – that this was an issue of justice and equality and although some of the more traditionally minded colleagues possibly from an older generation, were a bit uneasy, and we are talking a long time ago now, there was no homophobia, no

rejectionism, none of the bitter controversy I had encountered elsewhere.

The movement went on to set up a study which produced a report which advocated same sex commitment ceremonies and I went on to produce a liturgy for this which was published in 2005. The liturgy was well received within the movement. It has been used many times since.

There was a consensus that we should not call it marriage. Some people felt this would be a step too far. In recent months we have moved that step forward in the light of the current struggle for marriage equality and decided that henceforth, for those couples who want it, we will speak of marriage in completely equal terms for same sex couples and heterosexual couples.

Liberal Judaism has been supporting an organisation called The Cutting Edge Consortium which includes secular bodies like the TUC as well as the Quakers and the Unitarians in the political advocacy of marriage equality.

So that's the perspective from my own religious point of view. What about the wider Jewish community? In the controversy in the last year or so about the equalities legislation, people will know that there were vocal protests from some Christian groups, by and large fairly extreme ones, but also voices of caution and protest from some of the major churches and from some Islamic groups. No official voice from within the Jewish community was raised to oppose equality legislation as regards sexual orientation – or anything else. This was not an issue on which the Chief Rabbi or any other official representative felt moved to protest. There are other big issues that the Jewish community gets hot under the collar about, such as anti-semitism locally, Israel issues - that's where all the real arguments happen - and so by and large the Jewish community tends to be relatively liberal and progressive on social issues. On an

anecdotal level when I speak to Jews from orthodox synagogues about gay issues there is a general feeling of "what's the problem?" That does not necessarily mean they want their synagogues to start having gay marriages, but on a general social level these are not issues that get the Jewish community too hot and bothered. There are some minority fringe elements that on one occasion did turn out to protest against the equalities legislation, but that was all.

While religious freedom is a very important value this does not include any right of religious coercion. Religious organisations should have a public voice but not a veto on progressive social legislation. I still feel though, as a Liberal Jew that I can respect the right of orthodox synagogues to limited opt-outs on certain matters of religious conscience such as not having to hold gay weddings.

Gurdev I am from fbfe. We are a very small charity now with three members of staff. We work to provide advice and guidance to the FE sector. We support and guide chaplaincy and offer a number of different models of multi-faith chaplaincy suitable for different types and sizes of provider.

We recently surveyed staff and learners about values beliefs and faiths. About 80% of learners said that colleges should make some provision for them to explore and practice faith and religion. This is in a context of some college principals saying that there is no space for faith in colleges.

We have produced the Welcome to Chaplaincy training programme for multi-faith chaplaincy in FE. We welcome the LLUK report on Managing the Interface between religion and belief and sexual orientation, and supported the research that gave rise to it.

Our latest production is the SMSC Report (Planning and delivering spiritual, moral,

social and cultural support in the learning and skills sector).

Cuts to our funding and to that of the sector have challenged our capacity to provide the support we would like to and it has made the future of some college based chaplaincy a bit fragile going forward.

We feel that chaplaincies have an important role in challenging homophobia. Examples of good chaplaincy practice include Cambridge Regional College and Salford City College and South Tyneside College

In multi faith panels I have run in colleges the issue of homosexuality comes up all the time and we have to have positive responses to it.

All our publications are on the FbFE website and we also recommend you look at the All Faiths and None (AFAN) website too for some exciting multi-faith materials and resources.

Dan When I was a teenager I definitely struggled. As the son of two Irish migrants and with more brothers and sisters than I could count plus a very strong sense of Irish Catholicism my identity and my cultural identity were definitely in conflict. I struggled from an early age and I started to buy into the argument that was given to me that to have a different sexuality was incompatible with faith. And I do not like the terms of the argument because it is a false dichotomy. Religious freedom and Christianity at the moment is having the same issue that I had as a teenager – it is searching for its identity. It is searching for what it means to be true to itself. The debate regarding sexuality and faith is often based on the entirely false premise that the two need to be reconciled. In fact it is not a conflict situation. The view that there is a conflict is predicated on the view that any form of sexuality is inherently sinful. This goes to scripture in the wrong way. It goes to the law and to the rules. It goes to religion rather than faith. The point

in the New Testament is that sin is alienation from God and to be alienated from God is not to follow your heart and the redemptive love of Jesus Christ. And so I spent years rejecting my faith because I genuinely believed that I could not have my faith and my sexuality together. But, the terms of the argument changed. Through maturity and through holding many deep and challenging discussions I have changed my view of what faith is about. It's not about reconciling faith and sexuality. It's recognising that the two do not need to be reconciled. Therefore I happily say I am a gay Christian because for me Christianity is about love and the whole of the New Testament is based on love. So entering into any discussions about sexuality and equality I have to recognise that saying there is Christianity is like saying there is an Indian language. There is not. You have Hindi, Urdu etc and in Christianity you have every brand and denomination going. For me the gospel of Christ is about freedom - freedom of expression and the sure knowledge of God's love and it is about being true to ourselves by being true to our faith. So this is absolutely not about "hate the sin and love the sinner."

I don't judge Christians who judge me. I think they miss the point. What they are doing is alienating themselves. I pray for them and I hope for them. But, I won't engage on those terms. To do so would be to condone the line of argument that some people take. Some take a scriptural basis for it but in doing so miss the point of what the bible is. If they take a cultural line on taking an anti equality agenda then they miss the cultural line of where Christianity is.

My own experience as a school leader working for Oasis is that for them my sexuality is simply not an issue. It hasn't been discussed. End of story. And that's beautiful because that is equality. However, there is definitely a tension. The staff and adults in the academy know of my sexuality. The children do not. There is the bite. What is best for the students? I would

find it best to be open and honest in all situations. With the cultural and religious backgrounds of a number of our students, the effectiveness I have as a school leader would be diminished – at least initially - if my sexuality was common knowledge. Now, you might say that this is cowardice. If you can't stand up and lead and be proud of who you are then you are effectively saying that there is something to hide. However, that is a little naive. What you must be able to do is change a culture and that has definitely happened within the academy. Staff now see it as their responsibility to have conversations with students based on the equality agenda. Do I sometimes struggle when students ask me directly about sexuality? Yes, because I don't like to lie so I tend to dodge the bullet, as it were. What does this mean for my future and the future of the children and learners in my care? The truth is this – and some of you may see this as a “sell out” but I don't think it is - if I were to come out at this juncture with the learners where they are, and where we are in the process of changing the culture of what was a failing school only two years ago, I think it would affect the learners negatively. In a few years I anticipate this being different. But, the fundamentals have to be that before an organisational culture change can take place, there has to be a clear lead from a school leadership that is fully aware of what the equality and diversity debate is. And they must know how to effect change. So, its not about me as an individual. Its about me as part of a mechanism for change. How I can best do that is to support all of my colleagues in their understanding of the nature of what equality is and how all of them need to tackle any issues they come across – whether its a physical issue, a gender or a sexual orientation issue, all of us have something that marks us apart and that is the beauty of humanity. Celebrating that and ensuring we don't judge others for it part of our job as school leaders.

Questions

To Dan so the terms of the debate – religion versus sexuality – are the wrong terms for you?

Dan Yes. Absolutely. That is to set people up against each other. As soon as you say the word “reconcile” it means bringing back together and the assumption therefore that we were apart. Whereas we are in fact just at different points in a journey. I think of it far more as travelling on the same road at different points. That is so much more helpful. There needs to be a debate about this, and there is. But, debate is not the same as argument.

To Dan Listening to what you have said it seems to me that you are just altering the elements of Christianity to suit your views and needs so they fit in with your views and experiences. If you do this is there anything we can call Christianity left?

Dan I am a Christian because I believe in following the message of Jesus Christ. In terms of denomination or the various politicised brands of religion, I was raised a Roman Catholic and I would describe myself as Anglican in the broadest sense and I attend church regularly. For me church is community. Within the community my sexuality is known and it is just not an issue. The point of Christianity is this – it is about how you as an individual respond to God and therefore it is incumbent on all of us to pick and choose because all of us have the care of our own relationship with God.

To Dan May I ask you a very personal question? You come from a very religious background. What was it like when you told your parents that you were gay?

Dan When I told my mum who is a lovely lovely woman in many ways her first reaction was “I didn't give birth to a shirt lifter” was her exact line, followed by “I

don't want to see you burn in hell." My mum's religious views are very much based on her interpretation of biblical law. We have had so many discussions since then. To me, hell is alienation from God's love. And in the first two years after coming out my personal hell was my alienation from my family's love. However, just as I believe with my connection to God, although the bond is sometimes strained it is never broken. My family has accepted me for who I am. When I took my partner's surname, because I have been in a relationship for fourteen years, my mum was one of the two witnesses who witnessed the change of name. So, just as I think God will accept anything in us and accept who we are I think our families, much as they might be shocked, much as they might go to what they were taught from a young age and go to prejudice, love means that that will turn around. Not in all cases, clearly, but certainly in many. And I would say to Christians who judge me because of who I am, if my mum can do it God certainly can too.

To Mark I'd like to explore the transition process. You spoke about the differences between orthodox and Liberal Judaism. If an orthodox Jew is gay and comes out, are they excommunicated? And if so, how do you support them?

Mark The short answer is no, not at all. That is not to say that sometimes members of Jewish communities who come out, as with those in non-religious communities, don't face rejection. They do – although that is much less common nowadays than it was. My parents did not reject me when I came out. In fact, although they may not have been positively delighted to have a gay son, it led to a much more positive, deeper and open relationship between us. A much happier relationship, especially with my father, than I had ever had before. I am a great believer in coming out. Within Liberal or Reform families there would be general acceptance of people coming out, whether in the family or in the community. These two communities have had for some

time now an official policy of being welcoming to and inclusive of lesbian and gay people. There was a bit of a blip with the reform movement in the 1990s but we are over that now. Within orthodox Judaism it's more difficult because there are the laws that Dan referred to. In Liberal Judaism we do not regard the Torah – the five books of Moses – to have been actually dictated by God to Moses. We do not see all the laws as God given. We see them as man-made, except for fundamental ethical principles, like "love your neighbour as yourself" – which is also in Leviticus. And I must say, that the characterisation of the Old Testament God as a God of vengeance is not one that Liberal Jews or many other Jews would go along with.

In mainstream orthodoxy people who are members of orthodox synagogues tend to pick and choose the elements of their own religious lives. By and large Jewish people in general tend to take the whole issue of lesbian and gay people pretty lightly. Jewish identity is often as much about cultural identity as about a deep commitment to a set of religious laws. There tends to be a general liberalism on social issues. Most kids who come out would be accepted by their families. In the ultra orthodox community which constitutes about 5/10% of the Jewish population it would be much more difficult for people to come out. If they did it is quite likely they might be ostracised within the community and be edged out. There are organisations for Jewish people who come out which offer support. There are, especially overseas, organisations that specifically support ultra orthodox Jews to come out – eg in New York and in Israel.

Dan May I add something? It relates to our discussion about opposing positions. In the last six months something interesting has happened in my personal life. I have come out of a fourteen year long same sex relationship and to be honest I do not know what the gender of my next partner will be. Some of my gay friends have reacted more negatively to that than some of the hardest line Christians have reacted to my being

gay. So the point seems to be that every group, unfortunately, draws lines and those lines are unhelpful. Whether they are drawn on grounds of faith or sexuality it may be that by nature we look to those who are like us and seek to distinguish ourselves from those unlike us and perhaps that will always be the case. So perhaps our responsibility and job is to mitigate the negativity that all of us sometimes promote.

Key points

Reflections on Dan's thoughts

- The importance of recognising that different views and interpretations of scripture are held by people within a single religion such as Christianity. A number of Christians, for example, do not see any conflict between faith and sexuality
- People will not necessarily hold the same view of faith and sexual orientation throughout their life. As their understanding of their faith grows, for example, so might their viewpoint on issues change. People of faith will recognise that they are on a journey of understanding in relation to their faith
- Gay, lesbian and bisexual people may also be on a journey, in respect of accepting who they are and becoming open about their sexual orientation. Staff have a right to keep aspects of their life private at work, including their sexual orientation. However, having said that, gay, lesbian and bisexual staff who are 'out' at work can be effective ambassadors and role models for gay, lesbian and bisexual students. The challenge for education providers is to explore how they might create an environment where staff and students are comfortable to be open

about their sexual orientation. For many, this will involve culture change

- Clear leadership for senior managers is a critical success factor for successful culture change
- Dan mentions that some Christians have used the expression 'hate the sin, love the sinner' to explain their position in relation to sexual orientation. This can be viewed as an extremely unhelpful phrase. In society, peoples' understanding of sexual orientation has shifted and there is a growing acceptance that this is not simply a 'lifestyle choice' but who people are – their orientation. We have changed our language to reflect this change in understanding, from 'sexual preference' to 'sexual orientation' for example. That makes the phrase 'love the sinner, hate the sin' extremely unhelpful, because if behaviour equals identity, then hating gay behaviour is the same as hating the gay person

Reflections on Mark's thoughts

- The importance of recognising difference within religious traditions is emphasised by Mark's explanation of the place of Liberal Judaism within British Jewry. Those differences are the basis for significantly different positions on sexual orientation equality within organised Judaism as a whole.
- The dynamic nature of the attitudes of religious traditions to sexual orientation equality is illustrated by Mark's explanation of how views have evolved and changed in different congregations, sometimes in response to direct challenge and sometimes in response to the spirit of wider social change

- The view taken by Liberal Judaism that the Torah is not to be seen in a literal sense as being dictated to Moses by God, but as religiously informed manmade laws – open to thought, interpretation and change – is central the Liberal Judaism's ability to take its supportive and inclusive approach to sexual orientation equality
- The key transformative role of individuals coming out as lesbian or gay is emphasised as is the need many lesbian and gay people within religious communities have for the support of their religious communities
- Mark notes that a shared approach to sexual orientation equality has enriched, and to some extent proceeded from interfaith dialogue and cooperation – in this case between Liberal Judaism, the Quakers and the Unitarian Church

Reflections on Gurdev's thoughts

- Gurdev stressed the support of fbfe for the inclusion and support of and respect for all lesbian, gay and bisexual people in the FE sector
- He explained that well-functioning chaplains or chaplaincies should have a key role to play in challenging inequalities of all kinds including homophobia.

Case Law to consider

At the time of writing this resource, there have been no significant cases in the post-16 education sector that involve tensions between sexual orientation equality and equality on the grounds of religion and belief. However, there have been a number of high profile cases outside the sector that have practical implications for providers.

Ladele v London Borough of Islington

The case

Lillian Ladele was employed as a registrar of births, deaths and marriages for the London Borough of Islington. She asked to be excused from conducting civil partnership ceremonies, as she believed such unions were in breach of her Christian faith. Two gay members of the council's staff complained, saying that she should be required to comply with the council's dignity at work policy

The decision

An employment tribunal (ET) initially upheld Ladele's claims of religious discrimination and harassment. However, the Employment Appeal Tribunal (EAT) overturned the decision, saying that the council was entitled to require all registrars to perform a full range of services. The Court of Appeal (CoA) upheld the EAT decision.

Ms Ladele has now taken her claim to the European Court of Human Rights. No decision has been made at the time of writing this briefing,

McFarlane v Relate Avon Ltd

The case

Gary McFarlane was a counsellor for Relate Avon, which provides relationship-counselling services. In line with its equal opportunities policy and code of ethics, Relate offers its services to both same-sex couples and heterosexual couples. McFarlane refused to work with same-sex couples where sexual issues were involved, as he believed that same-sex sexual activity was sinful. Relate initiated its disciplinary procedure and, following a disciplinary hearing, McFarlane was dismissed.

The decision

The ET dismissed McFarlane's complaints of discrimination and harassment. It pointed out that Relate would have treated any counsellor, who for reasons unrelated to Christianity, refused to provide counselling to same-sex couples and therefore unwilling to abide by Relate's equal opportunities policy, any differently. The EAT upheld the ET decision, saying that Relate's actions were a proportionate means of achieving a legitimate aim, namely to provide non-discriminatory services

Mr McFarlane has also taken his claim to the European Court of Human Rights, under a joint claim with Ms Ladele. No decision has been made at the time of writing this briefing,

Gabriels v London borough of Lambeth

The case

Mr Apelogus-Gabriels was dismissed for distributing a range of biblical texts to a work-based prayer group and other staff working at his organisation. The texts were considered to be homophobic.

The decision

The ET dismissed Gabriels claim of direct discrimination, saying that it was his conduct that harassed others, rather than his religious belief, and it was for this reason that he was dismissed

Mitchell v Strathclyde Fire and Rescue

The case

A Christian fire-fighter was disciplined for refusing to hand out fire service leaflets at a Gay Pride march, claiming that such an action was against his religious beliefs. Strathclyde fire and rescue service reached a settlement before an employment tribunal considered the case. The fire service withdrew its disciplinary sanctions and apologised to Mitchell.

The decision

This is not 'case law' as such, as the case was settled out of court. However, the case raises the issue of what might and might not be justified as a proportionate means of achieving a legitimate aim. In this case, the fire service would probably have had difficulty in convincing a tribunal that handing out leaflets at a march was a crucial and integral aspect of a fire-fighter's job role and responsibility.

Hall & Preddy v Bull and Bull

The case

Peter and Hazelmary Bull were Christian hoteliers who said that they had a policy that unmarried couples could not share double rooms. Their hotel website said: 'We have few rules but please note that out of a deep regard for marriage we prefer to let double accommodation to heterosexual married couples only.' When Martyn Hall and Steve Preddy arrived at the hotel they were refused a double room. The two men explained that they had entered into a civil partnership but were still refused a room. They subsequently sued the Bulls, saying that this refusal discriminated against them. The Bull's contested the claim, saying that their double bed policy applied to all unmarried couples regardless of sexual orientation.

The decision

The judge at Bristol County Court ruled that the hotel had directly discriminated against Hall and Preddy on the grounds of their sexual orientation and awarded them compensation. The court considered the rights of the Bulls to hold their beliefs, but recognised that they used their premises for a public service. Hall and Preddy were entitled to be treated in the same way as a married heterosexual couple.

Johns and Johns v Derby City Council

The case

Eunice and Owen Johns were registered as foster carers with Derby City Council and applied to be considered for short-term / respite fostering. They were advised to withdraw their application due to the Council's concerns that the Johns' views on homosexuality did not meet the requirements of their National Minimum Fostering Standards.

The decision

The Equality and Human Rights Commission (EHRC) applied to intervene in the case. While the EHRC acknowledged the right of prospective foster parents to hold a religion, they considered that the manifestation of the beliefs of the Johns would disproportionately infringe on the rights of a child to equality on the basis of his or her sexual orientation. At no stage was it suggested that people holding Christian beliefs were automatically unsuitable as foster carers or adopters. The religion of the prospective couple was not an issue; rather, it was their disapproving views of homosexuality that was the issue. The same response would be applied to a couple with no religion but who expressed disapproving views of homosexuality.

Practical implications for providers

- Many of the above cases are concerned with how a person's religious belief is compatible with their professional roles and responsibilities rather than the validity or otherwise of that belief
- Employers should carefully consider all employee requests related to religion or belief. However, requests should be balanced by the business needs of the organisation. Providers need to be aware that they can justify some types of discrimination if they can robustly demonstrate that their decision is a proportionate means of achieving a legitimate aim.
- Services offered by a provider must be free from discrimination. It is reasonable to expect all staff to deliver services in a non-discriminatory way
- People are concerned about the freedom to hold their religious beliefs. It is helpful to make clear that all are entitled to hold their religious beliefs providing conduct at work or during learning doesn't cause the discrimination or harassment of others
- Employees are free to hold religious beliefs but employers are entitled to require them to comply with their policies. An employer's commitment to an equal opportunities policy can, in appropriate circumstances, objectively justify any indirectly discriminatory treatment
- Providers should have clear and explicit policies including, for example an E&D policy and a dignity at work policy, and these should be well-known and robustly implemented
- The right of staff and learners to manifest their religion is not absolute and can be limited to protect the rights and freedoms of others, including gay, lesbian and bisexual people. While staff and learners have a right to hold their religious belief, others have a right not to experience discrimination or harassment while they are working or learning in the organisation
- Providers should ensure that their policies are not discriminatory. This highlights the importance of a robust means of carrying out equality impact assessments.

Key messages and conclusions

The new equality landscape creates potential tensions between people who share different protected characteristics. Such tensions, while rare, can damage good relations within an organisation. Part of a provider's responsibility, in meeting the new public sector duty, will be to develop a confident and informed approach to tackling equality tensions. The capacity to manage equality tensions will increasingly become an important part of the skills set needed by effective equality and diversity practitioners and others.

This will be an important contribution to meeting that part of the general duty placed on public authorities by the Equality Act 2010 to foster good relations between people with protected characteristics. It will also support meeting the other parts of the general duty – to eliminate discrimination and advance equality

Managing such tensions as may arise between religion or belief and sexual orientation will very often not be as intractable as it may at first appear – especially if we keep in mind that the characteristics are often shared within the lives of many individuals and that views and positions within groups are often both varied and dynamic

The key challenge explored by the workshop was how to live and work peacefully and respectfully with differences that coexist and that cannot be negotiated away. The need is to find ways of establishing common ground on which to work while respecting differences and allowing them to persist without that deflecting from the goal of creating learning organisations that are genuinely inclusive.

We hope that the New Dimensions workshop will be a contribution to that journey – the beginning rather **than** the end

of a conversation that needs to continue and intensify.

We look forward to the possibility of future events of this kind in different parts of the country so that these issues can be explored as widely as possible within a sector context

Dr Christine Rose & Phil Barnett

Further resources and sources of information

For further information on the Equality Act see the LSIS briefing 'The New Equality Act 2010 – what does it mean for the learning and skills sector?'

www.lsis.org.uk

For further information on research in the sector on managing equality tensions between sexual orientation equality and equality on grounds of religion or belief, access the LSIS Excellence Gateway. From September 2011 it will be hosting the sector guidance – *Managing the interface: sexual orientation and faith* – published in 2010 by LLUK and The Forum for sexual orientation and gender identity in post school education.

Useful websites:

The Equality and Human Rights Commission: -
[www.http://www.equalityhumanrights.com/](http://www.equalityhumanrights.com/)

Stonewall:
<http://www.stonewall.org.uk/>

Faith and Beliefs in FE:
<http://www.fbfe.org.uk/>

Liberal Judaism
<http://www.liberaljudaism.org>

Lesbian and Gay Christian Movement
<http://www.lgcm.org.uk>

Imaan – Muslim LGBT
<http://www.imaan.org.uk>

Safra Project for Muslim LGBTQ Women
<http://www.safraproject.org>