



# Seminars: Goods & Services

## the Equality Act (Sexual Orientation ) Regulations 2007

Torbay, Exeter, Truro  
May 2007

with vital support from Torbay Council, Devon County Council and Cornwall County Council

Michael Halls *Executive Director*  
Paul Roberts *Community Development Manager*  
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### **Main office**

01392 201015      [admin@intercomtrust.org.uk](mailto:admin@intercomtrust.org.uk)

### **Confidential South-West Community Helpline**

0845 6020 818      [helpline@intercomtrust.org.uk](mailto:helpline@intercomtrust.org.uk)  
01392 678744      (office)

### **Lynx South West: infrastructure & community development**

01392 201012      [lynx@intercomtrust.org.uk](mailto:lynx@intercomtrust.org.uk)

[www.intercomtrust.org.uk](http://www.intercomtrust.org.uk)

*We expect our brand-new up-to-date website to be uploaded in early June*

## **lesbian, gay, bisexual and trans resources in the South West**

**The intercom Trust**  
Registered charity 1072772

**PO Box 285 Exeter EX4 3ZT**  
**Main line 01392 201015 Helpline 0845 6020 818**

**[www.intercomtrust.org.uk](http://www.intercomtrust.org.uk)**  
**[admin@intercomtrust.org.uk](mailto:admin@intercomtrust.org.uk)**

## The Intercom Trust

lesbian gay bisexual & trans  
community resources

in Cornwall, Devon, Dorset & Somerset

Registered Charity 1072772. Founded 1997



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## Equality Act (Sexual Orientation) Regulations 2007

Michael Halls                      *Executive Director*  
Paul Roberts                      *Deputy Director*  
Andy Hunt                      *Helpline & Advocacy Project*



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## Intercom's Service-areas



- Helpline & Advocacy project
- Lynx South West: infrastructure & community development
- CEDAR: Community consultation, skills, and research observatory
- Training & consultancy services

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## Intercom's major projects



Community Safety & Crime Reduction



JAAHB: Joint Action Against Homophobic Bullying



LGB/T History Month / Community Heritage



Police Liaison Group, Devon & Cornwall

**Equality Tick: Services & Goods**



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## The Equality Tick Project



- Sign up to a sector-specific declaration of non-discrimination
- Get listed in our website directory
- Use the logo where & when you want
- No cost involved.



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## Intercom's contact details...

...are in today's handouts



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## This design of slide...

...contains purely factual information about our understanding of the Regulations.

We have worked hard to ensure accuracy of phrasing and fullness of coverage, but we are not lawyers, so ...

*errors and omissions always excepted!*



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## This design of slide

... has a question-mark in the top left-hand corner, and contains an example of our own, which we believe likely to be an accurate reflection of the way the Regulations will turn out; but we cannot be entirely definite.

These examples reflect our knowledge of where LGB people in the peninsula have encountered problems in the past.



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## This design of slide...

...has no question-mark. We are confident that these examples reflect a clear fact about the basic operation of the Regulations.

These examples also reflect our knowledge of where there have been problems in the past.



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## Equality Act (Sexual Orientation) Regulations 2007

- Came into force on Monday 30 April 2007
- Prohibit discrimination in the provision of goods and services
- Apply to all sectors: statutory, commercial, educational, community & voluntary...
- ...with limited exemptions
- Cover indirect as well as direct discrimination
- Also cover victimisation



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## What is indirect discrimination?

Indirect discrimination is when general...

- Provisions
- Criteria
- Practices

...put people of a particular sexual orientation at a unjustifiable disadvantage compared with others.

*Unintentionally or intentionally—makes no difference*



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## Indirect discrimination: possible example 1

*With no sound operational reason, a project asks all its prospective service-users to give the name of their partner.*

This would force some lesbian and gay people to Out themselves beyond their wishes.



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### Indirect discrimination: possible example 2

*A project tries to promote good citizenship by offering preferential access to all service-users who have given blood.*

This would discriminate against gay men, who are prohibited from being blood-donors.



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### Indirect discrimination: possible example 3

*A public authority invites the voluntary sector to bid for funding to provide vocational training. Successful bidders must undertake to provide a list of the names of all who access the service.*

This would mean that LGB community organisations could not bid for the funding, since they could not insist that their service-users Out themselves to the funders.



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### What is victimisation?

Victimisation is when someone is treated less favourably because

- they have brought, or are intending to bring, proceedings under the Regulations, or
- are co-operating with an investigation, or proceedings, relating to a possible breach of the Regulations.



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## Equality Act (Sexual Orientation) Regulations 2007

- Text of the Regulations

Statutory Instrument 2007/1263

<http://www.opsi.gov.uk/si/si200712.htm>

- Explanatory memorandum

<http://www.opsi.gov.uk/si/si200712.htm>

- Guidance document

Dept of Communities & Local Government, April 2007

<http://www.communities.gov.uk/index.asp?id=1510066>



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## Scope of the regulations: 1

The Regulations cover discrimination based on:

- Actual or perceived sexual orientation of the recipient of the goods or services, and
- Actual or perceived sexual orientation of a family member or other friend or associate

"sexual orientation" = being straight, lesbian, gay or bisexual



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## Scope of the regulations: 2

- "Goods and services" includes (for example):
  - Purchase of goods and access to financial services
  - Travel, or any other service or facility
  - Accommodation, entertainment & refreshment
  - Access to a place or premises already open to the public (e.g. a theme-park or country house)
  - Professional or trade services
  - Sale and purchase of property... etc

The Regulations apply whether or not a charge is made for the goods or services.



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### Scope of the regulations: 3

Great Britain:

England, Wales and Scotland

=== similar regulations in Northern Ireland ===

- Immigration services: includes acts outside as well as inside the UK
- Includes travel facilities, services etc. on any British-registered aircraft, ship or hovercraft



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### NOT covered by the Regs: Gender Identity

That is, being or not being:

- Transgendered, or
- Transsexual or formerly transsexual, including
- Having a Gender Recognition Certificate

These are issues of gender

—nothing to do with sexual orientation.

They are dealt with in separate Sex Discrimination legislation & case law



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### NOT covered by the Regs: sharing of premises

- **The Regulations DO apply to the sale or renting of property, including private houses...**

**...but (roughly) do NOT restrict the renting out of part of a small private home.**



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**NOT covered by the Regs:  
targeted services**

- It is still perfectly lawful to provide services and goods that are likely to be of interest to a particular group.
- Gay bars can set out to target gay customers, but they must not turn away straight customers (for being straight).
- And vice versa.



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**NOT covered by the Regs:  
churches, mosques, etc.**

- The Regulations do NOT apply to the core work of religious organisations, provided that they can show that discrimination against LGB people is necessary so as to:
  - “comply with the doctrine of the organisation”, or
  - “avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers”.



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**No effect on most religious organisations**

- The Regulations will NOT therefore bring about any changes in:
  - the conduct of religious services
  - admission to membership of a congregation or religious community, or
  - admission to religious services or events
  - access to goods and services provided on a non-commercial basis to members of a religion.



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## Question

- Some ministers of religion are employed by a public organisation, e.g. prison chaplains, or in education, e.g. school chaplains.
- Public organisations and educational institutions are covered by the Regulations.
- So... are the chaplains exempt?
- Looking at the text of the Regs, we suspect they may not be exempt.




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## Also not covered by the Regs:

Blood transfusion services  
and the life-insurance industry...  
... provided they can show that they have  
some good reason for discriminating,  
based on factual evidence.




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## Has the landscape really changed?

For many organisations,  
the new Regulations will be  
found, in general, to reflect  
existing internal policies  
and good practice.




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## New remedy

When policies and good practice protocols are breached, there is no remedy or redress for the breach except privately, through the organisation's internal complaints procedure.

But the new Regulations provide a public remedy through the Courts, which can order financial (or other) compensation.



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## What is the key issue?

- Is prejudice the key issue?
- No. The key issue is not what motivates someone...
- It is the effect their actions (or omissions) have on the local service environment.
- No-one has to prove prejudice,
- ...they just have to prove a discriminatory effect.
- A service-manager's worst fears are probably
  - Ignorance
  - Lack of awareness, and
  - Thoughtlessness.



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## An example. Last week...

- *A colleague from a Racial Equality Council and I were at a big CVS meeting*
- *The two of us were referred to by a senior manager in a service-provider agency...*
- *...quite without malice, as...*
- *"BME people and... what have you."*

*"... what have you."*



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## Intercom's commitment...

Intercom does not wish:

- to find ourselves providing time-consuming advocacy.
- to need to support claimants in County Court.
- to see our stakeholders having to manage negative media coverage.



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We would rather encourage policy-makers and service-managers to take control at an early stage, by auditing practices, policies, and staff awareness levels...



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... and Intercom will help, within our capacity. That's what these seminars are intended to demonstrate.

We can also provide targeted consultancy, environmental health checks, and staff training for individual organisations.

Let's head off trouble before it reaches the pass.



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## Overarching issues: couples

- Civil partnerships

As far as providers of goods and services are concerned, there is now “no material difference” between people in a same-sex civil partnership and people who are married. Except where there is an exemption, goods & services must be made available:

- to civil partners on the same basis as they are offered to married couples
- to same-sex couples who do not have a civil partnership on the same basis as to unmarried opposite-sex couples.



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## Example: Accommodation for couples

- A bed and breakfast, hotel, or care-home can provide:
  - double beds for all couples, or
  - double beds only for married couples & couples with civil partnerships, or
  - single beds for everyone.

*It cannot reserve its double-beds for opposite-sex couples.*



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## Overarching issues: advertising

- Advertisements for goods or services must not suggest that there is discrimination in the provision of the goods or services.
- A gay package-holiday firm cannot advertise as “only for gays”, or refuse to arrange a holiday for a heterosexual.
- However, they are allowed to advertise their services as being “gay-friendly”.



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## Overarching issues: liability

- Employers are liable for the discriminatory acts of their employees
- So are the employees personally
- But it can be a defence for the employer to demonstrate that they took reasonable steps in advance to prevent any breach of the regulations.



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## Overarching issues: No exemption on grounds of conscience

- **Wherever the Regulations apply, there is no provision for any individual to claim a personal exemption on grounds of conscience.**



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## Religion & Belief Regulations

- If for reasons of religion or belief an employee cannot carry on in a job that will require them to comply with these new Regulations, they can ask their employer to be redeployed.
- The employer will need to determine what protection may be offered to the employee by the Employment Equality (Religion or Belief) Regulations 2003.



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The details:  
**PUBLIC AUTHORITIES**



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**Public Services**

The Regulations cover all public authorities and agencies, including

- Central government
- Local government at all tiers, including parish councils and statutory CDRP member agencies
- The criminal justice system
- The health service (NHS and private)

There are limited exemptions...



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**Public services: exemptions**  
(roughly!)

- Parliament and Ministers of the Crown
- The Courts
- The security services (*why?*)
- Legislative bodies  
(e.g. Welsh Assembly, Scottish Parliament, General Synod of CoE)
- All prosecuting authorities (e.g. CPS, HM Customs, local Trading Standards)—but only in respect of decisions not to prosecute. (*Again, why?*)



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## No new duty...

- The Regs do NOT impose on public authorities a new duty to promote equality or social harmony.
- There is no equivalent to the Race and Gender Duties
- There is no requirement to produce an Equality Scheme such as the Race Equality Scheme.

...but...



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## ...there is a duty to be compliant with the Regulations.

Apart from those limited exemptions...

- all officers of public authorities, and
- all officers of the Crown

have a duty to be compliant with the new Regs: to provide services and goods on behalf of their employer (or the Crown) without discriminating on the basis of sexual orientation.



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## Example: health services

- A GP refuses to have LGB patients on her list.  
Direct discrimination.
- A psychiatrist becomes hostile and patronising when he finds the patient is LGB.  
Direct discrimination:  
“providing services in a less favourable manner”



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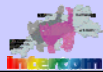
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## Example: youth services

- A statutory youth service's strategic plan
  - Focuses on helping young people develop healthy relationships and illustrates this with pictures of happy young people, all in opposite-sex pairs
  - has a full page on support for pregnant teenagers.
- But the only reference to young LGB people is a footnote saying that they may be affected by homophobia, HIV and low self-esteem.

**A bad case of indirect discrimination.**



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The details:

## BUSINESS AND COMMERCE



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## Businesses

- There are no exemptions of any kind for businesses or commercial firms.
- Commercial firms or enterprises that are run by or for religious organisations must still be compliant with the Regulations.

Question

Does this include charity shops?

We don't know.



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## Example: sports & fitness

- A fitness centre or country club has staff who openly express homophobic banter in the hearing of the customers.
- LGB visitors feel they cannot join the club because of the negative atmosphere they encounter.

A breach of these Regulations, and also of the Employment Equality regulations of 2003. The employer could be liable on both counts.



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## Example: a printing firm

- A small printing firm refuses to accept an order from the local LGB Helpline for leaflets about reporting homophobic crime, on the grounds that young people in his family would see them.

Direct discrimination.

- The same firm refuses to accept an order for highly-explicit illustrated safer-sex leaflets from the local PCT, on the same grounds.

We think the printer is on solid ground this time.



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## Basic principle here:

Lesbian, gay or bisexual issues and needs have no necessary connection with sexual behaviour!

It can be discriminatory to act as though every LGB-related issue automatically has something to do with sexual activity.



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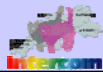
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## Example: a family hotel

- A family hotel has a sign in the window reading “MIXED SEX COUPLES ONLY”.  
Direct discrimination.
- A family hotel makes it clear to residents that same-sex couples don’t count as “family”.  
Again, direct discrimination



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The details:

## EDUCATION



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## Education

- The Regulations apply across the sector, including:
  - All maintained and other state schools
  - All independent schools
  - All colleges and universities
  - All training providers.
- There are no exemptions at all for any religious or faith-based educational institutions.



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### Example: schools

- A Deputy Head responds to a case of homophobic bullying by asking the victim to learn to behave in ways that will give the impression he is heterosexual.
- A Sex and Relationships teacher avoids addressing the emotional and health needs of young LGB people, stating “if anyone I’m teaching is LGB it’s their responsibility to let me know”.

Direct discrimination in both cases.



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### Example: schools again

- A teacher explains as a fact that some Christians and some Muslims regard homosexuality as sin, and says this is the school’s position.

Not unlawful.

- The teacher then points at an Out gay person in the class and says, “You must change or go to hell.”

Direct discrimination.



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### Key guidance for all schools

“The subject must be dealt with appropriately in accordance with existing guidance. Haranguing or harassing a particular student or group of students is not an acceptable way to convey a belief within an educational context, and such behaviour could constitute unlawful discrimination.”

Government guidance, p. 18.  
Their emphasis



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The details:

## COMMUNITY & VOLUNTARY ORGANISATIONS



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### Community and voluntary sectors

- The community and voluntary sectors are fully covered by the Regulations...  
*with one partial exemption  
and one full exemption:*



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### Partial exemption: Faith-based VCOs

- **Faith-based VCOs** are **exempt** on the same basis as religions & places of worship, **unless...**
  - They are operating on a commercial basis, **or**
  - They are providing the service in question under a contract with a public authority.
- To the extent that either of these is the case, faith-based VCOs must comply with the Regulations.



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## Definition of faith-based VCOs

- “Organisations whose sole purpose is to:
  - practice, or
  - advance, or
  - teach the principles of...a religion or belief, or to
  - enable persons of a religion or belief
    - to engage in any activity, or
    - receive a benefitwithin the framework of that religion or belief.”



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## Full exemption: LGB VCOs

Lesbian gay and bisexual charities and social groups can continue to exist, on the grounds that they provide social benefits targeted on shared community needs — e.g.

- peer support
- safe space
- protection from being Outed
- help for victims of homophobic crime
- etc.



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## Example: mixed-sector

- A local authority enters into a contract with a religious organisation to provide drug and alcohol rehabilitation services—but for straight people only. (Direct discrimination.)
- An authority contracts with an organisation which claims to be open to LGB people, but attempts to “cure” or “convert” them away from being LGB. (Indirect discrimination.)



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### Example: safer communities

- A church or mosque could get a grant from a local authority or the police to survey opposite-sex domestic violence within their congregation. Presumably the survey would be a lawful activity for them: no formal contract is involved.
- However, it could be argued that the authority's decision as it stands is unlawful, being indirectly discriminatory against same-sex couples.
- The authority should also take parallel steps to enable equivalent consultation of LGB members of the congregation.




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### QUESTION: What is a “contract”?

*In law, the essence of a contract is that party A provides a good or a service in return for a consideration (e.g. money) from party B.*

- Is a Service Level Agreement a contract within the meaning of the Regs?
- Or a simple grant, if it is understood that the grant is to enable certain work to be done?




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## Action Points

Our suggestions




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## Check your policies & protocols

- Make sure your paper documents are compliant.
  - E.g. **Schools**: make sure...
    - your anti-bullying policies specifically deal with homophobic bullying
    - your healthier school programme explicitly covers the emotional, social and mental health of young LGB people
    - your Every Child Matters outcomes explicitly cover the needs and expectations of LGB young people
    - Your Sex and Relationships Education gives full coverage to LGB issues and young people's needs.



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## Check your policies & protocols

- E.g. Care Homes, Nursing Homes, and Adoption and Fostering Agencies
  - make sure your policies, including your application forms,
    - give Civil Partnerships equal treatment with marriage
    - give unmarried and un-CP'd partners equal treatment
  - make sure you are not putting young or other vulnerable people (who may be LGB for all you know) into the care of people who will provide a hostile, discriminatory or prejudiced environment for them.

... and so on.

What policies & practices does your organisation need to look at?



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## Check your operations and contracts

- E.g. Primary Care Trusts and GPs
  - Make sure your mental health teams (including psychiatrists, psycho-therapists, occupational therapists and CPNs) are fully up to speed about their new obligations, and trained.

How confident is your PCT about these things?



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## Check your operations and contracts

- E.g. Local Government and the CJS
  - Make sure your Contracts colleagues are checking the terms of all contracts
  - ensure your current partner agencies are fully up to speed about their new obligations...
  - (...Are their staff adequately trained?)



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## Contracts and responsibilities

- The law obliges the service-provider to get it right.
- It will not be a defence for them to say that their contract did not specifically outlaw discrimination on grounds of sexual orientation.
- But if the contract does have a gaping hole, and the commissioning agency cannot show that they drew the provider's attention to the requirements of the law, it might be argued that the commissioning agency was also liable for a discriminatory act of omission.



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## Faith-based VCOs

- Check whether or not you have an exemption
- If so, check how much of your work the exemption actually applies to.

**(Remember, it's the effects that count, not the actual motivation.)**



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## Non-exempt Voluntary and Community Organisations...

... including infrastructure organisations, community halls, and everyone else...

- Inform and train all your volunteers, employees and Trustees;
- Check all your operational practices
- Check your strategic and business plans, etc.

**(Remember, it's the effects that count, not the actual motivation.)**



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## So much depends on TRAINING

- Staff need to know where they stand, in fairness to them.
- As part of a defence of “having taken reasonable precautions”, the employer may need to bring evidence that staff were effectively trained.

(What staff does your organisation have who may need to be trained on this?)

**(Remember, it's the effects that count, not the actual motivation.)**



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## Elected members

- These issues are now covered by the Code of Conduct for Councillors, which prohibits “unlawful discrimination”.
- This includes funding policies, strategic planning and grant-making decisions.

(What programme does your authority have for member-training?)

**(Remember, it's the effects that count, not the actual motivation.)**



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## Customer awareness

- These Regulations are a new world for LGB people.
- People may never have complained in the old days, when there was no legal protection...
- But now they may want to celebrate the fact that legal protection has arrived at last.
- They may now be open about being dissatisfied.

**We don't want them to need to complain.**

**Let's all deal with things now.**



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## And finally... Love your HRA

**The Human Rights Act 1998**  
established the  
**Principle of Proportionality**  
which protects everybody.

- If you have to discriminate (e.g. between two equality strands)
  - ensure your decision is proportionate to the relative needs
  - ensure it is lawful in itself
  - document your evidence & the basis of your decision

...and be secure against challenge.



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**THANK YOU ALL**

and remember

We know about the issues

We want to help



**intercom**



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