

SCHOOLS OUT

Working for equality of lesbian, gay, bisexual and trans people in education since 1974

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lesbian
gay
bisexual
trans
history
month

BM LGBT History Month, London WC1N 3XX.

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patrons: **Sarah Weir**, Executive Director of Arts Council England, **Cyril Nri**, actor, director and writer, **Sir Ian McKellen**, actor.

Response to the Consultation Document 'A Framework for Fairness', on the Single Equalities Bill

Schools OUT and LGBT History month welcome the chance to respond to the consultation on the Discrimination Law review.

Both Organisations are passionate about equality and diversity. On both websites you will find clear recognition of the diversity of our community.

The Schools OUT website states

Lesbians, Gay Men, Bisexual and Trans People are:

*Black, White, Dual Heritage,
Daughters, Sons,
Aunts, Mothers, Sisters, Brothers, Fathers, Uncles, Nephews, Nieces, Grand Mothers,
Grand Fathers, Friends,
Colleagues, Workers, Non-Waged,
Students, Teachers,
Customers, Disabled And Non Disabled, Living In Both Rural And Urban Locations
Jewish, Hindu, Sikh, Muslim, Christian, Pagan,
Of All Religions And None,
Old And Young,
Women And Men,
And From*

Every Political Perspective.

And the LGBT History Month site states

We are lesbian, gay, bisexual and trans people and their friends.

We exist in all times and places. We speak each and every language. We laugh and cry. We talk and remain silent.

We are emperors and peasants. We are conservatives and revolutionaries. We are actors, artists, bricklayers, bookies, cab drivers, cooks and clowns. We are employed and unemployed. We raise our children and we bury our dead.

When we can, we attend school, college and university. When we can, we go out into the streets. We read the papers and watch the TV. We attend church, synagogue, temple and mosque. We are free and confined. We celebrate and we hide. We are happy and sad. We are supported and alone.

Our lives are both ordinary and extraordinary. This website celebrates all we were, all we are and all we may yet be.

This philosophy will therefore inform our response to the consultation.

Broadly, we welcome the report because it has the scope to rid us of the hierarchy of inequality; to simplify the processes and implementation of the processes; and to address the issue of multiple discrimination.

We have some serious doubts about the green paper however, and they are listed below. General concerns are included. Those that are LGBT specific are highlighted.

We want to endorse the DRC, EOC and CRE in their belief that the proposed Single Equality Act would benefit greatly from a clause setting out its purpose and principles.

We wish to endorse the Equalities Review concept of 7 strands the 7th being gender identity.

We are deeply concerned that the paper seeks to undermine the processes that have begun to mainstream diversity, such as the use of the Equality Impact Assessment with its crucial element of consultation of the stakeholder groups.

Schools OUT and LGBT History Month have found that working with the CPS, MPS and MPA to help them write their single equality policy - which includes all 7 strands – to be a vital process. Consequently, the policies are a response to our needs and ideas, so the action plans produced provide a clear way of working with the organisations, which is both transparent and accountable. The proposed switch to principles in the Green Paper is a severe watering down and means we become reliant on personalities and champions for equality work. We are at a loss to understand why there needs to be a change from the recent Gender Equality Policy, which lays a duty on organisations to design actions that have clear outcomes and plan ahead for 3 years.

We would say from our long experience of working on equality issues of over 30 years that such a switch will mean that the steps we have made in the last few years since the Race Relations Amendment Act - which meant that there was no room for choice on the work - will be eroded. Too often, we have seen a passionate person on equalities lead a school into doing exciting inclusive work, which enhances the exam results, burn out and leave the school. The work was

quickly eroded and lost, since not all staff understood it, were not enabled or trained to do it, or were not in tune with the ramifications or ethos behind it.

Equality requires training, time and commitment. Therefore, it is crucial that we work with universal structures that were being explored in the last 3 duties on race, disability and gender; and are extended to age, sexual orientation, gender identity and religion and belief. To produce anything less is a severe back slide in commitment and process.

We are acutely aware of the problems of LGBT teachers and staff in education due to discrimination and prejudice. Reports by ACAS, the NUT and The Teacher Support Network make it clear that the present process to support LGBT staff in education is inadequate. (See: Sexual Orientation and Religion or Belief Discrimination in the Workplace <http://www.schools-out.org.uk/research/docs/Discrimination%20in%20the%20Workplace.pdf> NUT Report http://www.schools-out.org.uk/research/docs/A_Serious_Business.pdf Teacher Support Info: Results on survey on workplace discrimination against LGBT teachers and lecturers <http://www.schools-out.org.uk/research/docs/LGBT%20survey%20findings.doc>)

We therefore need in the Single Equality Act clarity that for all the strands there must be:

- A duty to promote the rights and acknowledgement of the needs of all 7 strands.
- Monitoring of all strands in both employment and service delivery, so as to amend practices to meet the needs of disadvantaged groups.
- Monitoring of all bullying and harassment on all 7 strands.
- The Inclusion of Harassment for all 7 strands in both employment and in the provision of goods , facilities and services, education, premises and the exercise of public functions.
- protection from indirect discrimination for all 7 strands.
- Discrimination by association and/or perception of all 7 strands needs to be outlawed.

To decide not to include a carer for instance is perverse: if a carer is not allowed into a theatre when they are accompanying a disabled person or is not allowed to sit with their companion then that is clear discrimination. We are clear that association and perception for all 7 strands is essential because when prejudice led bullying and harassment occur the perpetrator will attack anyone they think is a member of the group and anyone who associates with them.

- There are references to human rights and human rights legislation, but they are add-ons and the green paper is all about equality issues. Equality is a human right but there are many others. Human rights legislation could be used to identify multiple inequalities and

deal with conflicts between them; address potential conflicts between strands whilst protecting parties from offensive language or terminology; and extend rights to individuals.

- **The use of the word ‘transsexual’ is unhelpful, since it refers to people who have had, are having or are going to have gender reassignment surgery; and excludes other groups within the trans person spectrum. Trans person/people would be better; or at the very least transgender.**
- **This becomes an issue when (1.24) the paper says there is no case for “protection from discrimination on the grounds of perceived gender reassignment.” It goes on to give the example of people choosing to adopt the appearance of different genders as a “lifestyle choice”. Self-identity is a human right and that is what the Act should be defending.**
- Objective justification (1.40) is problematic; not least because of the term ‘legitimate’. The definition of a legitimate aim could well be imposed from above (e.g. the employers) as a defence for discriminatory practice(s). Legitimate aims should be agreed between employer and employee in advance.

To give an example. As the LGBT Working Party on a trades union, we wish to protest against the overlap of the TUC LGBT Conference and subsequent Pride in London with the Union’s Education Conference on the grounds that Conference attendees who attend Pride - and promote the Union in doing so - cannot attend the Education Conference, which would contribute to their Continuous professional development. The Union is, therefore, discriminating against LGBT members who attend the Conference and Pride by denying them access to this other service/provision, which could enhance their careers. Could the Union claim ‘legitimate aims’ as a justification for continuing to have the Education Conference on the same date every year, thereby denying dual access to their services to LGBT people on a continuous year on year basis? We also feel that clear job descriptions are crucial and changes to work time need to be signposted and given in a reasonable time frame.

- **Insurance. There seems to be an ambiguity in paragraph 1.85. Whilst we welcome the ‘intention’ to get rid of the provision that allows differential treatment by insurance companies on the grounds of sexual orientation, it goes on to say that any exception thereafter needs to conform to the industry’s best practice. This implies that the industry’s cooperation is voluntary rather than mandatory.**
- We feel that the use of positive action is vital and necessary across all 7 strands in tackling under representation, disadvantage, special needs in relation to education, training or welfare or any ancillary benefits
- Public sector equality duties. Paragraph 5.10 c requires public authorities to identify race, disability and gender equality objectives. Sub paragraphing to consider whether there

should be a requirement for public authorities to identify sexual orientation and religious faith/belief. This is a return to the hierarchy of inequality' in which some groups are served first. **After all, paragraph 5.64 says: "There is still anecdotal evidence that some public authorities still plan on the assumption that they have no lesbian, gay or bisexual population"**.

- Atheism, agnosticism, paganism and humanism are beliefs and should be respected as such, both in equality and human rights terms. This refers to the whole area of religious belief/faith. If 'religious' belief is protected under the Single Equalities Act, the four groups mentioned above are excluded and thereby discriminated against.
- Private Sector paragraphs 6.7 – 6.10. The Single Equality Act should be putting laws into place. To give Equality Standards and awards to the private sector for complying with good practice and meeting required standards is not the way forward. The private sector should be subject to the mandatory requirements of the Act and should have to implement them to escape prosecution.
- Equal opportunities monitoring in the private sector is rejected as too burdensome in paragraph 6.11. While this may be the case for some very small companies, it should be done in larger organisations, and, in particular, it should be mandatory in the field of private education.
- The question of private sector procurement is dismissed in paragraph 6.16. This is not acceptable, since it is crucial that the public sector, given the plethora of services that are contracted out, must be able to know that the provider is bound by the same laws as them.
- Disputes in the workplace. Paragraph 7.11 bullet-point 4 "providing a new advice service on dispute resolution, accessible by telephone and internet." We feel it would be far more productive to support both financially and in training the support groups that already do this
- Bullet point 5 recommends the removal of fixed conciliation periods, which we welcome.
- Bullet point 10 (penultimate) says "simplifying management of multiple-claimant claims" which we welcome
- Representative actions in goods and services cases. At first sight paragraphs 7.28 – 7.30 seem to propose that only individual claimants will be allowed to take legal action for discrimination in the provision of goods and services. However Nicola Hosfield, who represented the Government, at the London CVS Meeting said that this was not the case, and that the CEHR would take action in support of individuals or groups if necessary. There is some ambiguity here as it does not say this in the green paper. We want to be

able to bring representative actions and have the tribunal result, if finding against the employer, to have an affect on their employment practice.

- What is clear from paragraphs 7.28 – 7.30 is that the green paper proposals include preventing “an equality commission or a trade union” from taking representative action. This is unfair. Paragraph 7.29 adds: “(some) stakeholders, including business, have expressed reservations about creating a further mechanism for litigation.” The conclusion seems to disengage an equality commission or a trade union from the process. These organisations usually include experts in the field with professional legal representation thereby denying legal support to victims of discrimination.
- There are only 4 paragraphs covering multiple discrimination, followed by two huge questions that are put to us. Before any policy framework can be developed around multiple discrimination, we need thorough research into what forms it takes and what its effects are; with a particular view to the extent to which it prevents victims from coming forward. **We know that LGBT people are particularly vulnerable in this area.**
- **Gender reassignment and schools. The green paper says nothing about transgendered children, gender dysphoria among children or intersex children. It reduces the whole transperson spectrum to ‘gender reassignment’ and goes on to say that (paragraph 10.12) “It will be very rare for a child to be planning to undergo or undergoing the process of gender reassignment etc.” It may well be, but that does not mean the child will not require protection! The Equality Review had a very clear awareness of the discrimination issues based on gender identity we wish to see this reflected in the legislation.**
- **The Act needs to include gender dysphoria and intersex in its description of transgender or trans person. It must then use ‘transsexual ‘only if and when it refers to those trans people, who have undergone, are undergoing or intend to undergo gender reassignment surgery.**
- **Paragraph 10.12 goes on to argue that there needs to be no further protection against discrimination on the grounds of gender reassignment because laws to protect schoolchildren around this issue are already in place. Since bullying is rife in schools, and since homophobic and transphobic bullying are the most common forms of bullying taking place in schools, it is clear that these laws are not protecting schoolchildren. Therefore, it is necessary to bring trans or transgendered schoolchildren within the remit of the Single Equality Act.**
- **We note paragraph 14.13 with concern and look forward to equal protection for LGB people as soon as possible.**
- **Annex a Table 1**

We do not agree that the exceptions should be retained by:

Organised Religion, Ethos based on religion and belief, Faith Schools

Goods facilities and services: premises; general exceptions

Organisations relating to religion or belief, Faith Schools, Blood Donation, Education in schools

“Faith Schools”

We welcome the removal of all the exceptions

Our response to the DLR document: *Equality Impact Assessment*

- **Paragraph 5.10 rejects protection against discrimination on the grounds of perceived gender. This is wrong, since it will leave transgendered (but not transsexual), intersex and people who are wrongly perceived to be transsexual unprotected. The use of transsexual here is not just a question of semantics; it is clearly exclusive.**
- **Paragraph 5.21 is unclear on the issue of perceived sexual orientation. Will protection against victimisation protect people whose perceived sexual orientation is LGB? Or will it only protect those whose actual sexual orientation is LGB? We believe it must do both.**
- **Paragraph 5.32 on the issue of equal pay: “There are no statistics on the number of claims related to pay brought by members of other (i.e. not sex equality) equality strands. We are interested in views on this.” Views are useless unless they are related to evidence and evidence can only be found from research. Therefore we need some government funded research into differences in pay for workers within the other strands.**
- **Paragraph 5.52 relates to Section B and making the law more effective. It refers to some public authorities that might be obliged to promote “a gay lifestyle”. There is no such thing as a gay lifestyle. Although it is in quotation marks, we find the term unhelpful and offensive.**
- **The use of the term “gay lifestyle”, together with the invitation for people’s views on the issue of public sector duties as regards sexual orientation, suggest an attempt to reawaken the prejudices that led to the introduction of Section 28. This is exacerbated by the use of the term “promote”.**
- **The same paragraph links sexual orientation with religion and belief as strands that may pose problems regarding public sector duties. We reject this. Sexual orientation is existential. Religion is faith. If there are questions regarding public**

sector duties concerning these two strands, then they are not the same sets of questions.

- **Public sector duties concerning sexual orientation should therefore apply to sexual orientation in the same way as to race, sex, disability and trans people.**
- **In paragraph 5.75 the issue of discrimination of trans schoolchildren is raised and their protection within the Act is dismissed. The use of the term transsexual and the fixation with gender reassignment is exclusive and discriminatory in itself. Children may be transgender, intersex and/or going through gender dysphoria. They need protection.**
- **We are delighted that schools and colleges are to be obliged to reproduce educational awards with revised names to trans people.**

We wish it noted that we support the following organisation's contribution to the debate

DRC

Stonewall

NUT