

# LESBIAN GAY CHRISTIANS

## “Getting Equal: Proposals to Outlaw Sexual Orientation Discrimination in the Provision of Goods and Services”

Response to the Consultation by the Lesbian and Gay Christian Movement (LGCM)

### Introduction

1. Members of LGCM and their friends are uniquely placed to comment on these proposals. As Christian believers, we are both protected by and subject to the exemptions of Part 2 of the Equality Act; under these proposals those of us who are lesbian, gay or bisexual could receive comparable protection, provided the Government makes the right choices in the light of the consultation.
2. LGCM **strongly supports** the vision set out by Ministers in the Foreword, and in particular the principle of “**respect for the dignity and worth of each person**”, the recognition that lesbian, gay and bisexual people “**face unacceptable prejudice in their everyday lives**”, and the view that gay men, lesbian and bisexual people “**should have the same basic rights and freedoms as heterosexual people.**” We therefore entirely support the aims and general thrust of the proposed Regulations. Unfortunately, as we note below, many faith groups (or at least loud voices among them) disagree with these views. **The issue is how far their voice should be allowed to prevail in public institutions, supported by public money, in their effort to diminish, dilute or destroy a consensus which, we believe, is shared by the rest of society**, and which is rooted in natural justice.
3. Those religious individuals, groups and organisations which are opposed to equal rights for lesbian, gay and bisexual people always claim that they are happy to see the State come down on “irrational” homophobia, but insist on their right to collective and individual conscience, on doctrinal grounds, as permitting them to denigrate, undermine and condemn same-sex orientation and relationships in a way which in practice **encourages and fuels** such homophobia. **These two cannot in practice be separated, as we have documented in our own research work into Christian Homophobia, of which copies are available to the Government.** The “love” they say they feel and preach is not manifested in respect for or acceptance of the God-given capacity of homosexual people to experience even the maturity of mutual lifelong commitment that is implied by the new status of Civil Partnership. **Pleas from such quarters for wholesale exemptions, on conscience grounds, for those who share their own attitude - which is not that of all their fellow-believers - must be recognised for what they are - an attempt to sabotage as far as they can the general purpose of the Government’s proposals.**

4. In practice, their own doctrinal position is neither consistent nor even true to Biblical witness. They will say that Christians are bound to accept and practise everything required by the Bible, but in fact they pick and choose from both Testaments just what they now consider relevant. This extends to condemning same-sex relationships, but ignores for instance the New Testament acceptance of slavery and the inferior position of women - even in church - let alone the dietary and other rules of Old Testament teaching.

5. An example of this is given in their attitude towards civil partnerships. They are opposed to recognising the factual equality of this status, in virtually every legal aspect, to marriage (to which it is strictly parallel). They are against any religious blessing for such unions. Civil partnership does not necessarily imply any sexual relationship, but it does imply a very strong mutual emotional and hopefully life-long commitment. One would expect them to welcome and celebrate this, especially since their view of the same-sex covenant made between Jonathan and David [see I Samuel ch.18 etc.] is that this relationship "must" also have been non-sexual. The implication should follow that the covenant made between these two "before the Lord" was wholly praiseworthy. In logic, therefore, it should form a precedent for the blessing of civil partnerships. But they will not face up to this.

6. We quote this example to underline that there is great dispute about what is or is not correct religious doctrine. LGCM has a long list of extremely distinguished theologians and others who contest the fundamentalist position, in every denomination. **We do not think the law should be framed in such a way as to encourage fundamentalist groups within any religion to exercise a veto over others within their own tradition who would otherwise be prepared at least to live with a more open attitude, and preferably encourage it.** For that reason we opposed, and continue to oppose, the last-minute exceptions parachuted into the Employment Equality (Sexual Orientation) Regulations 2003, **and we do not think they should be repeated here. We also think the exceptions provisions of Part 2 of the Equality Act, in relation to discrimination on religious grounds, are not as they stand a suitable model for these new Regulations. We set out our own ideas on exemptions and exceptions below.**

### **The scope of the Regulations [Q.1 and Q.2]**

7. We **agree** that the Regulations should apply generally to goods, facilities and services, using definitions **as similar as possible** to those found in the other main pieces of anti-discrimination legislation, in particular on race and gender, and that **their scope should not be less - and preferably more - than that in other enactments, especially Part 2 of the Act (see above).**

8. On **Q.3**, we are reluctant to see any exemptions from the prohibition. We see the argument that certain **very limited** services might need, for practical reasons, to be exempted. An example might be **telephone help lines** designed specifically for those at odds with or confused about their orientation. But even here we come down **against** an exemption. There is no reason why such help lines should not deal with calls from anyone, whether or not gay or lesbian, who is concerned about their true sexuality. More widely ranging family support services eg offering **marriage guidance**, should equally **not** be exempted (and therefore such services should be extended to cater also for those in or envisaging civil partnerships).

## Premises

9. We are aware that many who oppose the acceptance in society of lesbians and gays will be campaigning vigorously for at least **some** commercial services provided by individual "believers" - such as bed and breakfast accommodation - to be exempted from the Regulations. **In our opinion there is no case for such an exemption, and we support the proposals made in paragraphs 3.17 and 3.18, and implied by Q.5.** It should be noted that such service suppliers **do not have an exemption under the parallel provisions of Part 2 of the Act. In other words, they cannot refuse accommodation or other services to people of whose beliefs they disapprove - whether Satanists, atheists or followers of a religion which they believe to be inspired by the Anti-Christ** [as some, for instance, regard the Prophet of Islam]. They should **not** therefore be allowed lawfully to discriminate against **lesbians or gays - who may indeed very well be their fellow-believers** - on the grounds that they run a "Christian garage" or a "Christian B.& B" which is not prepared to accommodate or provide services to those they regard as "sinners".

## Members Clubs

10. In general we are **against** exceptions and exemptions being made to the rules that bind the rest of society. While we understand that several associations or clubs may now specify an orientation as a membership criterion, it would be preferable if the test were not that of **orientation** but of **attitude** (as it is indeed in LGCM). In other words we should like to see any tests related to support of, or sympathy with, the primary purposes of the association (which could well have as their main purpose fostering mutual support and friendship between eg gay/bisexual men). **This would require a different approach to the proposal set out in Q.7.**

## Public Functions

11. We agree with the proposals implied by **Q.8**, and that the Regulations should extend to public functions with the exceptions set out. We have no additions to propose to those exceptions. We note here, however, that some organisations are campaigning for the right of **individual employees**, on grounds of conscience, to be permitted in practice to discriminate. **This should no more be allowed than was permitted to Registrars who wished to duck out of conducting civil partnership registration on conscience grounds.**

12. We repeat our belief that **any organisation carrying out public functions with public money should be caught by the Regulations.**

## Education

13. We agree **most strongly** that the Regulations **MUST** apply to education. We have argued separately to the Equalities Review that unless the problem of bullying, and particularly homophobia, is tackled ruthlessly within our schools there is no chance of the vision set out by Ministers (quoted above) being realised.

14. We find the Government's present attitude towards the suppression of bullying of all kinds to be unacceptably weak. We have already criticised as grossly inadequate the proposal in "Higher Standards for All..." to circulate the Anti-Bullying Code every two years, in the pious hope that schools which have hitherto ignored it will do something about it, . **In our opinion, any school which is receiving public funds must be required to adopt the Code - including that part of it which deals with tackling homophobia - and be**

**prepared to be inspected upon what it has done by OFSTED.** We agree with paragraph 3.30 that schools cannot be directly responsible for the misdeeds of their pupils, but this paragraph does not go far enough, since it **leaves open the possibility of a school doing nothing at all about any kind of bullying.** In this whole area we recommend that the Government consider especially seriously the views, based on their long experience, of **"Schools Out"**.

15. Paragraphs 3.31 - 3.33 deal with **teaching, and this is absolutely crucial. How can a school suppress homophobic attitudes and bullying among its pupils if its teaching, in all relevant areas, denigrates and condemns those with a same-sex orientation** (eg as "objectively disordered")? We understand that there are some "faith schools" whose practice on this is exemplary. More often, however, the respect and self-worth which ought to be encouraged for and among young gay or lesbian pupils - and indeed their teachers - is simply going by the board. The extent of the resulting problems are well documented by Schools Out and others - including the Interim Report of the Equalities Review. **We are therefore against the weaselly mantra of whatever is "relevant and appropriate" to the school's "ethos" being the deciding factor in how the subjects listed in paragraph 3.31 should be taught. Instead, a programme offering proper training to teachers in how to tackle these subjects, where they relate to sexual orientation and its practice, should be a high priority - so that their "comfort" level in handling them is ratcheted up.** Beyond that, it should be possible for school authorities to arrange things so that teachers who are not able to put things across neutrally are not asked to take the relevant classes.

16. Paragraph 3.33 suggests that on top of the "escape routes" already proposed in the previous paragraph "faith" schools should enjoy even greater freedom to "balance" their obligations under the law with the need to operate consistently with their "ethos". **As noted above, we do not think things can be left like that because then nothing will change, and with a growing number of schools being run by faith bodies the bad effects on young gay and lesbian pupils, and on homophobia and bullying, will increase too. We believe that if they are using public funds faith schools should be under the same obligations as all others. Within this framework, as a way forward, we propose that a comparison of the "ethical" requirements of all faith schools be carried out, best practice in existing forward-looking schools be circulated, and arrangements be made for discussing and sharing the results between the relevant governing bodies so that adjustments to conform with the law can be brought in progressively over time.**

17. It is further **essential** that **religious education should be completely separated from religious instruction.** We believe that religious education has not had the place it deserves in the syllabus, and that an understanding of the widely-differing traditions and beliefs - and non-beliefs - prevalent in British society is crucial to our increasingly multi-cultural future. That education must include an understanding of the different attitudes and trends within the tradition which the school's governors may represent. Obviously, however, all such schools must be **absolutely free to teach what they wish as religious instruction,** and parents must continue to be free to withdraw their children from such classes.

18. There are other areas of the curriculum whose content is crucial to the growing acceptance of lesbians and gays in society. We believe that schools receiving public money **should be required to follow the National Curriculum in relation to both PHSE and citizenship - subject to the right of parents to withdraw their children, if they wish, from sex education [but not other such classes, except R.I.]**. We also expect such curriculum material to reflect the principles behind the proposed Regulations (and the Equality Act generally).

19. Our answers to **Q.9, Q.10 and Q.11** are therefore that we **agree** that schools should be covered; that we do **not** agree that any school receiving public money should be exempted, but that a plan for the practical application of the Regulations in faith schools and the identification of best practice should be the preliminary (with emphasis on application of **all of the** Anti-Bullying code, and the training of teachers in how to handle orientation issues in differing class subjects); that special attention should be given to the content and teaching of religious education - especially within faith schools - and its separation from religious instruction; and that adoption of the Anti-Bullying code and monitoring of its application, together with use of the National Curriculum for PHSE and Citizenship Education, should be a universal requirement for all schools receiving public funds.

### **Religious Organisations**

20. This section brings us slap up against the issue we highlighted in paragraph 2 above. The proposal to narrow any exceptions to the Regulations to activities "closely linked to religious observance or practices that arise from the **basic doctrines** of a faith" raise the question - who is to decide whether a point is doctrinally "basic" or not? Much of the current heat over same-sex partnerships has been engendered because several faith leaders regard the alleged doctrine of "marriage" as basic; but others do not. It is not, for instance, within the Five Pillars of Islam, which anyway regards marriage as a civil, not a religious, rite. In the "Catholic" tradition marriage is a "sacrament" - but not in the "Reformed" tradition. Moreover, there are those in each tradition who are challenging the older attitudes. But these are not matters which can sensibly be settled by the judicial process, and the arguments which continue in every church are not likely to be resolved soon. **On the other hand we disagree strongly with the possibility of using the formula that discrimination may be permitted "to avoid giving offence to a significant number of the followers of that religion", or some such phrase, which - as we have pointed out above - merely puts the fundamentalist objectors in the position of being able to block any change for the better in the attitudes of other believers.**

21. So far as religious observance or practices are concerned, we can accept that a religious body must be free to restrict its membership as it wishes. **But that restriction should be openly stated to everyone before they cross its threshold.** Any church or congregation which did not ban outright the attendance and participation of lesbians and gays - and proclaim that openly - should have **no right** to ban them afterwards from its activities. Individuals might occasionally fall under a religious sanction (eg a ban from receiving Communion) because of something they had done or not done, but such a sanction should not be unlawful provided other individuals with the same orientation were treated as individuals and not as a class, and provided the sanction were applied to people equally whatever their orientation. For the rest, **religious bodies must have full freedom to conduct their own worship, prayer and religious instruction exactly as they see fit**, without being open

to a charge of unlawful discrimination. But there are also many activities which might be argued to be **"closely linked" with religious observance** in which discrimination would be totally wrong. **For instance, barring the children of those within a civil partnership from Sunday schools or similar child- or youth-based activities would be unacceptable, as would barring the admission of civil partners to social church-based groups catering for eg "young marrieds"**. As an example, a church might organise an excursion and picnic for the children or young people within its congregation. To bar from this a child whose parents are same-sex, or a young person who was, or was thought to be, gay or lesbian would grossly discriminate against them. Consequently **we are not satisfied that the lines can be satisfactorily drawn as paragraph 3.35 suggests, and we propose that the exemption be confined to the conduct and organisation of prayer, worship and religious instruction only.**

22. Therefore on **Q.12 and Q.13** we agree that there should be exemptions for individual churches **which proclaim beforehand their unwillingness to admit any lesbian, gay or bisexual**, and for **"the conduct and organisation of prayer, worship and religious instruction"**. (Thus a church might refuse to appoint a lesbian or gay member to teach religious doctrine, but not to the Parochial Church Council.) **We agree very strongly with the contents of paragraphs 3.36 - 3.38.**

### **Charities**

23. We are not happy about legislating for special treatment even for charities aimed at LGB beneficiaries, since the logic is then inescapable that similar exemptions must be possible for other groups. **All charities providing community or public services should fall within the scope of the Regulations.** We appreciate that in s.58 of the Equality Act charities are exempted from pursuit if the instruments under which they operate require the restriction of benefits to persons of a particular **religion or belief**. Similar restrictions in any existing instruments relating to **sexual orientation** seem to us to be in a different category, and discrimination just as unacceptable as if the category related to **race - not least because both are fixed conditions, unlike belief**. Where a religious charity claimed exemption under s.58 of the Act, it should be required to prove that the discrimination did in fact relate solely to that - **a charity aimed at helping elderly Christians should not be allowed to discriminate against elderly gay or lesbian Christians on the grounds of their orientation, any more than if they sought to discriminate on grounds of the race of the relevant believer.**

### **Direct/Indirect Discrimination, Victimisation and Harassment**

24. We **agree strongly** with paragraphs 4.4 - 4.6. We argued in the context of the Civil Partnership Bill (as it then was) that comparable treatment must be required by law for the registration of civil partnerships and civil marriage. We also **agree** with the proposals to cover indirect discrimination and victimisation **[Q.15]**.

25. We also agree that harassment should be left aside for the moment. We found the original proposals for Part 2 of the Equality Act unsatisfactory, because the exemptions given to faith schools etc. would have legalised harassment by/within them while banning it for the rest of society. We agree that discriminatory practice should be included **[Q.16]**.

### **Instructions to Discriminate**

26. We **agree** with the proposal to include these as proposed in paragraph 4.27 [Q.18]

### **Validity of Contracts**

27. We **agree** that the validity of contracts should be covered [Q.19].

### **Enforcement: The CEHR**

28. We have commented separately on the role of the CEHR, and its priorities, in our response to the Interim Report of the Equality Review. We have expressed alarm at the failure to identify **as its main early priority** the need to give support against discrimination in both employment and the provision of goods, services and facilities to those "strands" which have not so far enjoyed the backing of a special body - including both sexual orientation and religion or belief. We **support** the proposals in paragraphs 5.7 - 5.12 **including especially the enforcement and investigation powers** mentioned in paragraph 5.12 [Q.21].

29. We also **agree** that the enforcement provisions for these Regulations should match those provided for the other equality enactments [Q.19]. **In particular the similarity should be stressed of sexual orientation to gender, race and disability, in that - unlike belief - this is a fixed characteristic, even if it is not always immediately apparent to a third party.**

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