

### Exploring the impact of the 2003 equality regulations on sexual orientation and religion or belief

In this issue of Acas' *Employment Relations Matters*:

- Sexual orientation and religion or belief regulations written by Ben Savage, Acas Senior Research Officer
- Vulnerable workers
- The Leitch review

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*Employment Relations Matters* is intended to be as accessible as possible. Further reading will be suggested where appropriate.

Features will mostly be written by members of Acas' Strategy Unit or other Acas colleagues. From time to time, however, they may be especially commissioned externally.

We welcome your comments and opinions. These should be sent to the editor, John Purcell, [c/o strategy@acas.org.uk](mailto:c/o_strategy@acas.org.uk)

The views expressed in *Employment Relations Matters* are those of the authors/editor and not the Acas Council.

The 2003 employment equality regulations made it unlawful for employers to discriminate against their employees on grounds of sexual orientation or religion or belief (SORB).

As part of its wider programme of work around the regulations, the DTI funded Acas to conduct research exploring the impact of the SORB regulations.

The research included:

- in-depth interviews with SORB claimants
- a survey of calls received by the Acas Helpline related to SORB issues
- an analysis of the Acas individual conciliation (IC) database records of SORB cases
- a thematic analysis of the forms which SORB claimants and employers submit when placing or responding to a claim.

#### Numbers of cases

The IC database analysis suggests that 470 individuals brought cases between January 2004 and September 2006 where discrimination on grounds of sexual orientation was the main jurisdiction. A further 461 brought cases where discrimination on grounds of religion or belief was the main jurisdiction.

These numbers are small when compared with the numbers of claims brought

under other discrimination jurisdictions (7,421 sex discrimination cases and 2,521 race discrimination cases in 2005/06 alone).<sup>1</sup>

#### Claimants

Both sexual orientation and religion or belief cases were more likely to be brought by men (two-thirds of cases under both jurisdictions).

More sexual orientation and religion or belief claimants lived in London than any other region. However, this was more the case amongst religion or belief claimants, of whom a third lived in London. Sexual orientation claimants were more evenly spread around the country, with one in six living in London.

#### Characteristics of sexual orientation discrimination

The sexual orientation discrimination largely involved bullying or harassment. This was found in the interviews with claimants, the analysis of tribunal applications and the survey of calls received by the Acas Helpline. Verbal abuse was perhaps the most common form, involving name calling and threats.

*'The Claimant was involved in an incident when [a colleague] spat on her and informed her that he had "people f\*\*king queuing up to do you in and you had better lock your windows,*

*lock your doors and your car because you are going to get it.*" (Lesbian, manufacturing)

However, sexual harassment or physical attacks were also mentioned by some interviewees and in some of the employment tribunal application forms:

*'The Claimant was assaulted, he was hit on the back... and kicked in the groin...'* (Gay man, public administration)

Several application forms and some calls to the Acas Helpline gave indications that bullying or harassment had gone on for months or even years.

### Characteristics of religion or belief discrimination

Religion or belief claims were found to be about a wider variety of issues. Bullying or harassment did feature, again largely in the form of verbal abuse. However, other forms of discrimination around terms or conditions, unfair dismissal or recruitment emerged as more prominent issues, as in the following case:

*'The headmaster... refused to interview me on the grounds that I wasn't approved by the Catholic Church... He said to me, "I'm not giving you it. I'm not interviewing you."*' (Non-Catholic, male, teacher)

The most common theme of calls to the Acas Helpline from both employees and employers was concerns over working hours, time off, or leave. These callers included:

- Muslim employees who wanted or were being denied paid leave for Eid
- Christian employees who did not want to work on Sundays
- Jewish and some Christian employees who

wanted to leave work early on a Friday.

Only a small number of calls were received regarding workplace dress codes, including the issue of wearing the veil or niqab. This was perhaps surprising given the level of attention this issue had received in the UK media during the fieldwork period (October to November 2006).

### SORB Research

The following reports will shortly be available on the Acas website at [www.acas.org.uk](http://www.acas.org.uk)

Sexual orientation and religion or belief in the workplace, Ben Savage, Acas

The experience of sexual orientation and religion or belief discrimination employment tribunal claimants (Ann Denvir et al, Institute for Employment Studies).

The IC database analysis suggested that there is a strong overlap between race discrimination and religion or belief discrimination. Two-thirds (66%) of cases where religion or belief discrimination was the main jurisdiction had race discrimination as a secondary jurisdiction.

There was also evidence that a few Muslim claimants felt that they had been bullied or dismissed following the July 2005 London bombings:

*'The London bombing triggered racist tension at work between colleagues. I was the target because I was the only Asian employee... The day the London bomb happened my days were over at this [organisation]...'* (Muslim woman, health and social work).

### Extent of discrimination

In some of the application forms it appeared that the alleged discrimination was largely related to the actions or attitudes of one or two managers. In one such case it was alleged that the manager showed a disregard for the impacts his actions might have on the organisation:

*'I told [the manager] that unless he stopped I would be speaking to a solicitor... [He] replied, "I don't give a f\*\*k - it's the company you'll sue, not me".'* (Muslim woman, call centre).

However, in other cases, it seemed that the alleged discrimination was part of a wider problem relating to the organisation as a whole:

*'Homophobia was at such a scale in the office, I was frightened to cause a fuss...'* (Gay man, transport, storage and communications).

### Internal grievance procedures

Claimants were largely unhappy with internal grievance procedures. It was felt that such procedures were used by employers as either a chance to cover up the discrimination that had occurred, a chance to intimidate the claimant into not pursuing their case or as a delaying tactic to prevent the claimant from being able to submit a claim to an employment tribunal.

### Advice and representation

The findings from both the interviews with claimants and focus groups with conciliators suggest that claimants' access to advice and representation varies significantly depending on the amount of money

available to the claimant and the geographical location in which they live. Conciliators suggested that free or low-cost advice and representation was largely confined to London and other large conurbations. One conciliator cited the following example of a claimant living in a rural area:

*'He couldn't get anybody to help him... there was a CAB in [the area] but nobody did employment law. He was really struggling to find somewhere ... his wife was on the phone crying to me saying "We can't get any help, we don't know what we're doing, we can't get any help..."'* (Acas conciliator)

Advice and representation appeared to be key in determining the outcome of cases. One claimant, unable to afford a solicitor, settled just before the final hearing in part because of the absence of legal support without which she felt she couldn't cope.

### Responses of employers

The analysis of the response forms submitted by employers suggests that most employers simply deny the claims made by SORB claimants:

*'The respondent denies the allegations made by the claimant that the Head Chef... is bad tempered and has been violent and abusive to other members of staff...'* (Hotels and restaurants, Muslim male claimant)

However, some employers also asserted their equal opportunities policy as a defence. Other forms also included counter accusations of poor performance or misconduct by the claimants.

A number of the response forms asserted that the claimant's case was invalid. This was either because the alleged acts or incidents of

discrimination had occurred more than three months prior to the claimant submitting their claim to the employment tribunal, or because the claimant had failed to follow internal grievance procedures prior to submitting their employment tribunal claim.

Where the claimant had instigated formal grievance procedures, the employers' response forms asserted that these had been fully investigated.

### Outcomes

Around half of both sexual orientation cases and religion or belief cases resulted in a settlement between the claimant and the employer, slightly more than race discrimination cases and sex discrimination cases. Between a quarter and a third of cases were withdrawn by the claimant, about the same as race discrimination cases but less than sex discrimination cases. Only one in seven cases from either jurisdiction went to a full employment tribunal hearing, less than race discrimination cases but more than sex discrimination cases<sup>2</sup>.

Acas conciliators felt that most settlements involved employers giving the claimant a sum of money. The IC database analysis confirmed this, showing that only around one in ten sexual orientation or religion or belief claimants whose cases reached a settlement received no financial compensation, similar to the proportion of claimants from other types of discrimination case (10%) whose settlements did not include a sum of money<sup>3</sup>. Of those claimants from both SORB jurisdictions who did settle and received financial compensation, the majority (two-thirds) received less than £5,000. Large settlement awards of £10,000 or more were relatively rare,

accounting for one in eight settled cases.

Interviewed claimants were frustrated by the emphasis of the employment tribunal system on money, mentioning how they wanted to get 'justice' rather than a sum of money.

*'What I actually wanted... was for an independent body to say the [employer] has behaved unjustly, has acted in a discriminatory fashion... I want something like that really as opposed to here you are, have some money.'* (Lesbian, civil servant)

### Impacts

A theme emerged from the application forms, claimant interviews and conciliator focus groups that claimants who have been bullied or harassed may suffer from mental or physical health problems as a result of the bullying or harassment, including anxiety and depression; some sexual orientation claimants had also contemplated suicide.

Such problems could also be compounded by financial problems resulting from the discrimination and knock-on effects on claimants' personal lives:

*'I've lost a relationship, I nearly lost my life. I nearly lost my mind. It upset my family. Nearly lost my home... I lost my job. Lost my sex drive, that's still not right. Lost my confidence. I don't know, just everything, just everything. Financially, I'm in debt. I'm totally f\*\*ked to be honest with you, to be perfectly honest with you.'* (Interviewee, gay male, IT manager)

<sup>1, 2</sup> Acas Annual Report and Accounts (2005/06), [www.acas.org.uk](http://www.acas.org.uk)

<sup>3</sup> DTI Survey of Employment Tribunal Applications 2003, [www.acas.org.uk](http://www.acas.org.uk)

## Vulnerable workers: falling through the gaps

The term 'vulnerable workers' has become common currency in the latest debate on employment relations. We look below at what the term means and why certain groups are falling through the gaps in existing legal protection.

### Defining vulnerability

Defining the term 'vulnerable worker' is by no means clear cut. But it could be argued that there are three main circumstances that make an individual truly vulnerable – where a person in employment:

- falls below the usual floor of rights
- works for an employer who systematically flouts existing legislation either from ignorance or intent
- has little or no opportunity for redress for a variety of reasons. These might include a highly dependent relationship with the employer, a lack of support or finance, or a lack of social or language skills. These problems are often compounded by societal prejudice and discrimination based on their race, gender etc.

### Legal protection

The Government has not stood still on this issue. Since Labour came to power we have seen the introduction of a raft of new measures that aim to protect workers in a range of ways including anti-discrimination legislation, extension to maternity rights, part-time workers rights and the creation of the Gangmasters' Licensing Authority. In *Success at Work*, the Government set out a policy statement on protecting vulnerable workers

and supporting good employers, and it is currently consulting on measures to protect vulnerable agency workers.

The Department for Trade and Industry (DTI) has established two pilot schemes in partnership with a broad church of organisations including the TUC, Acas, and Marketing Birmingham, in London and Birmingham to address practical ways in which to support these workers. These include:

- helping workers understand and secure their employment rights
- helping workers access skills and other training to improve their job prospects, and meet employer expectations
- helping employers overcome difficulties in understanding and complying with the law.

On other areas there has been less movement. The TUC accuses the Government of blocking the progress of the EU Temporary Agency Worker Directive, and is critical of the limited remit of the current agency workers consultation.

### Falling through the gaps

There is, however, a significant minority of vulnerable workers who are falling through the gaps, despite these initiatives. A report by the Policy Studies Institute (PSI) for the TUC<sup>1</sup> highlights migrant workers, agency and temporary workers and those in the informal sector such as domestic workers, workers paid cash in hand, those working on a casual basis, and home workers, as most at risk.

The challenge of organising these 'atypical workers' has brought into question traditional

models of trade unionism, and the PSI report examines some of the initiatives that unions are currently engaging in to recruit, organise and support these workers. Many workers, however, remain unrepresented. One sector that illustrates the experiences of some of Britain's most vulnerable workers is the hotel and catering industry.

### An inhospitable sector

The Working Lives Research Institute has recently published a research paper co-funded by Acas. *The experience of migrant and ethnic minority workers in the hotel and catering industry*<sup>2</sup> examines the experience of workers in London, the West Midlands and the South West.

The report highlights low pay, failure to provide paid holidays, long working hours of 40-50 hours a week, little awareness of contractual and legal rights and low levels of unionisation in the sector.

Although the National Minimum Wage (NMW) was commonly paid to bar and restaurant staff, hotel porters and housekeeping staff, the research also found a high incidence of flat rate payments per shift or per week, regardless of hours worked, below the NMW, and often paid cash in hand. This low level of remuneration was further exacerbated by workers being expected to work extra hours 'until the last customer has left' without extra pay.

Despite poor working conditions many interviewees were unusually tolerant of their treatment. Many accepted that the hospitality industry was a tough sector generally, while others made comparisons with their work in their home country or the hardships of migration. The study found that bullying and verbal abuse including racial harassment were common. Although this treatment was accepted to some

extent as part of the 'mentality of the kitchen', it was also seen as a strategy to get rid of long serving employees in favour of cheaper casual staff. There was also anecdotal evidence of discrimination in recruitment and promotion that favoured younger and white workers.

Few interviewees felt empowered to raise issues. Many were unaware of their rights or how to enforce them, even where they had them. Perhaps unsurprisingly none of those working informally in the restaurant sector had written contracts. However the report also found that it was common for legitimately employed workers in hotels and restaurants not to have written contracts, or for it to take time for them to be provided. Interviewees also reported a general lack of awareness of employment rights by employers in this sector and a tendency to 'formulate law by themselves'. In Indian and Bangladeshi restaurants in the Midlands, for instance, an informal policy of two weeks leave operated in many places. Most felt that any complaints would simply lose them their job, particularly if they were migrant workers.

The research highlighted low levels of awareness of support agencies including trade unions, Citizens Advice Bureaux and Acas, but where workers were able to access services they found them supportive and helpful.

### Acas experience

The research reflects much of Acas' own experience<sup>3</sup>. Calls to the helpline from migrant workers continues to grow, in particular from Poland and Eastern Europe. In the worst cases complaints involve unpaid wages, or wages paid well below the minimum wage, illegal deductions, and threats

to report workers to the Home Office if they complain. And there are those employers who believe that migrant workers do not have the same rights as indigenous workers and some typical questions include 'Can I pay my east European bar staff £2 per hour' and 'They (migrant workers) don't get holiday pay do they?'

The exploitation of migrant workers, who are often willing to accept lower wages because lack of bargaining power and comparatively high rates offered compared to those in their home country, can have a knock-on effect on employment relations more generally. Acas has been conciliating in a number of collective disputes that have been sparked by the increased use of cheaper, more vulnerable labour. At Gate Gourmet for example, the predominantly Asian workforce took industrial action in protest at their employer's plans to bring in Polish workers on lower rates of pay.

The lack of awareness of employment rights and how to access information – on the part of both individuals and their employers – as well as deliberate abuse, and difficulties in access to justice, are problems that Acas deals with on a daily basis, and not just in relation to migrant workers. Small employers (and this includes small multi-site workplaces), can feel overwhelmed by the complexity and quantity of employment legislation, and respond by taking a 'do nothing' approach until things go wrong. Often Acas conciliators find that disputes are simply a result of a breakdown in communication, poor line management, or lack of knowledge around employment relations.

Increasingly, the legalisation of the employment tribunal system and the upward trend

in the use of solicitors to represent parties means that those without access to representation – often the most vulnerable workers – find themselves doubly disadvantaged in a system that was originally designed to provide an 'easily accessible, informal, speedy, and inexpensive' route to dispute resolution.

### Challenges ahead

A specific challenge currently facing Acas is to find ways to provide conciliation to those workers that do pursue tribunal claims but who are unrepresented and speak little or no English. Acas has recently introduced a telephone interpreting facility for both the helpline and conciliation.

Perhaps more important, however, is the availability of clear, simple information on basic rights and responsibilities in the workplace for employees and help and support for employers on how to overcome difficulties in understanding and complying with the law.

<sup>1</sup> *The hidden one in five*, available in hard copy priced £5.00 from the TUC [www.tuc.org.uk/publications](http://www.tuc.org.uk/publications), or phone 020 7467 1294

<sup>2</sup> [www.acas.org.uk/index.aspx?articleid=1212](http://www.acas.org.uk/index.aspx?articleid=1212)

<sup>3</sup> *Back to basics. Acas' experience of equality and diversity in the workplace*, [www.acas.org.uk/index.aspx?articleid=401](http://www.acas.org.uk/index.aspx?articleid=401)

## The Leitch Review: Building better employment relations to seize the prize

*'In the 21<sup>st</sup> century, our natural resource is our people – and their potential is both untapped and vast. Skills are the key to unlocking that potential. The prize for our country will be enormous – higher productivity, the creation of wealth and social justice.'*  
Lord Sandy Leitch, December 2006<sup>1</sup>

The *Leitch Review of Skills* is widely acknowledged to be the most far reaching strategy for the world of work released so far this decade. Its central vision is for the UK 'to become a world leader in skills by 2020'. The reason for the review's huge impact is simple: for many years, the UK has been dogged by a productivity gap compared to its main competitor nations. The sobering comparison of output levels per worker in the UK compared to that in countries such as France, Germany and the US has been much vaunted in the press. More recently, even less favourable comparison with the fast developing economies of India and China has prompted a note of panic to enter the productivity debate.

These disappointing statistics have pushed productivity and 'high performance workplaces' to the top of the employment policy agenda. So far, the Government's solution has focused on one of the key drivers of productivity – raising skill levels. In his foreword to the report, Leitch acknowledges that the challenge 'is formidable'. Despite a stable and growing economy and almost record levels of employment in this country, out of 30 OECD countries the UK is ranked only 17<sup>th</sup> on low skills, 20<sup>th</sup> on intermediate skills and

11<sup>th</sup> on high skills. Almost one-half of all adults (17 million) have difficulty with numbers and one-seventh (five million) are not functionally literate. Lord Leitch's ambitious vision for 'economically viable skills' is clearly not before time: but what does the vision mean for employers and employees, and will it deliver what is needed to turn the UK into a world leader in skills?

### The vision

The review's focus is on adult skills: this is because 70% of the 2020 working age population is already in employment. Realising the vision for the UK to become a world class leader in skills by this date means doubling attainment at most levels, the report says. For example:

- 95% of adults to achieve the basic skills of functional literacy and numeracy – an increase from 85% in literacy and 79% in numeracy
- more than 90% of adults qualified to at least Level 2 (broadly equivalent to a GCSE grade A to C)
- boosting the number of apprentices to 500,000 a year
- more than 40% of adults qualified to degree level and above.

Five principles underpin delivery of this raised ambition:

- **shared responsibility.** Employers, individuals and the Government must increase action and investment. Employers

and individuals should contribute most where they derive the greatest private returns. Government investment must focus on market failures, ensuring a basic platform of skills for all, targeting help where it is needed most.

- **focus on economically valuable skills.** Skill developments must provide real returns for individuals, employers and society. Wherever possible, skills should be portable to deliver mobility in the labour market for individuals and employers
- **demand-led skills.** The skills system must meet the needs of individuals and employers. Vocational skills must be demand-led rather than centrally planned
- **adapt and respond.** No one can accurately predict future demand for particular skill types. The framework must adapt and respond to future market needs
- **build on existing structures.** Don't always chop and change. Instead, improve performance of current structures through simplification and rationalisation, stronger performance management and clearer remits. Continuity is important.

The report also contains a raft of key recommendations, including funding increases to improve adult skills across all levels and a new 'Pledge' for employers to voluntarily commit to train all eligible employees up

to Level 2 in the workplace. If, on this latter recommendation, the improvement rate is insufficient by 2010, it is proposed to introduce a statutory entitlement to workplace training at Level 2 in consultation with employers and unions. The report also proposes strengthening the employer's voice – for example, by creating a new Commission for Employment and Skills – and increasing employer engagement and investment by reforming, relicensing and empowering Sector Skills Councils (SSCs). There are also plans to increase people's aspirations and awareness of the value of skills and to develop 'employer-led' employment and skills boards to influence skills delivery.

Apart from the considerable structural reform they represent, nearly all these recommendations place the role of UK employers at their heart. Most employer bodies gave a cautious welcome to the new demand-led skills and training framework, although some expressed reservations about introducing any form of compulsion on employers to delivering basic skills in the workplace.

The far reaching proposals put forward by Lord Leitch are to be welcomed as a much needed step in the right direction to improve the UK skills base. But are they complete?

### The missing link

In its first pages, the Leitch report refers to the importance of both skills provision and management as important elements in increasing productivity. For example, the executive summary says that differences in management practices between the USA

and the UK explain 10% to 15% of the productivity gap in manufacturing between the two countries. The report also highlights the need for improvements to management and leadership skills. For example, it is proposed that small and medium size enterprises (SMEs) will be able to access a grant for management and leadership training 'to help them maximise the bottom line impact of their employees' skills development'. But, apart from this proposal and a general recognition that skills need to be effectively used 'for the benefits to be fully realised', the review takes insufficient account of the role that effective employment relations and good management practices play in organisational performance. While the new, employer-led framework for developing functional skills is laudable, it is *how* skills are used in the workplace that remains a key driver of workplace productivity.

Over the past few years, responsibility for people management has increasingly been devolved to line managers. Often, a lack of adequate training means that managers are ill equipped to manage the 'people dimension' of their role. There is a mounting body of evidence that employees need to feel motivated and committed if they are to use their skills to their highest potential. For example, the Acas report *Information and consultation at work: from challenges to good practice*<sup>2</sup> finds clear evidence to link good information and consultation procedures with more effective workplaces. And in its final report to government, the Accounting for People Taskforce, chaired by Denise Kingsmill, recommended that, due to the high importance

of the people dimension in boosting performance, reports on performance-focused human capital management (HCM) should be published externally in the Operating and Financial Review (OFR) – although this did not come to fruition.

Over thirty years' experience of working with organisations has convinced Acas that it is the quality of the employment relationship, and how well people are managed, that is the key differentiator in workplace performance. It is for this reason that we have developed the *Acas model workplace*<sup>3</sup> that draws on our unique experience to set out a range of factors to improve organisational effectiveness.

Sadly, the evidence indicates that significant progress is still needed on this front. The UK has a higher ratio of manager to employee than almost any other Western country but often managers are part of the problem rather than the solution because they lack the confidence and competence to engage and motivate their teams. The 2004 Workplace Employment Relations Survey (WERS)<sup>4</sup> found that, while managerial perceptions of the employee relations climate had improved between 1998 and 2004, employees' perceptions suggested little improvement. Employees had poorer perceptions of relations than management in half (51%) of all cases in 2004, whereas the opposite was true in only 13% of cases.

The Leitch review says that the prize for realising its vision – apart from a 'more prosperous society' – is estimated as a possible net benefit of at least £80 billion over 30 years. This return on investment would come from a boost in the productivity growth rate of

up to 15% and an increase in the employment growth rate of 10%. This is an impressive incentive, but the investment in skills cannot be fully maximised if employers themselves do not possess the employment relations skills needed to deploy their employees' skills effectively. Acas looks forward to building on Lord Leitch's recognition of the importance of management skills in the productivity agenda.

<sup>1</sup> *Prosperity for all in the global economy – world class skills*, final report, December 2006, HM Treasury, [www.hm-treasury.gov.uk/leitch](http://www.hm-treasury.gov.uk/leitch)

<sup>2</sup> *Information and consultation at work: from challenges to good practice*, Gill Dix and Sarah Oxenbridge, 2003, [www.acas.org.uk/index.aspx?articleid=409](http://www.acas.org.uk/index.aspx?articleid=409)

<sup>3</sup> *The Acas Model Workplace*, available at: [www.acas.org.uk/index.aspx?articleid=335](http://www.acas.org.uk/index.aspx?articleid=335)

<sup>4</sup> *Inside the workplace: findings from the 2004 Workplace Employment Relations Survey*, Barbara Kersley, Carmen Alpin, John Forth, Alex Bryson, Helen Bewley, Gill Dix, Sarah Oxenbridge, [www.dti.gov.uk/employment/research-evaluation/wers-2004/dissemination-results/page25904.html](http://www.dti.gov.uk/employment/research-evaluation/wers-2004/dissemination-results/page25904.html)

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