

Research Paper

Management handling of sexual orientation, religion
and belief in the workplace

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Prepared by Sarah Dickens, Martin Mitchell and Chris Creegan (NatCen)

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Report

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Date: February 2009

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The views in this report are the authors' own and do not necessarily reflect those of Acas or the CIPD. Any errors or inaccuracies are the responsibility of the authors alone.

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Foreword

As with all the dimensions of the equality and diversity agenda, fair treatment at work regarding sexual orientation, religion and belief is integral to Acas and the CIPD. Both organisations were among the first to issue comprehensive guidance when the Regulations on sexual orientation and religion or belief (SORB) came into force in December 2003. But the diversity landscape has matured in the five years since then, and the time is now ripe to reappraise the growing experiences, knowledge (and challenges) facing employers in handling sexual orientation, religion and belief at work.

That is why Acas and the CIPD have jointly funded Britain's largest independent social policy research institute – the National Centre for Social Research (NatCen) – to undertake this important study exploring the impact of management handling of sexual orientation, religion and belief at work. On a topic upon which media attention continues to thrive, systematic research on the actual experiences of employers and managers remains in short supply. That is why this paper is so important: since it draws directly on employers' experiences of the reality of handling these aspects of employing people in the workplace.

We are grateful to NatCen for the insight that this study has provided. It offers rich new information on managing SORB at work and the real challenges employers face in doing so. What is more, by using 'deliberative' techniques, the research went beyond employers' current knowledge and understanding to produce actual solutions and strategies – ranging from educating managers in the appropriate and judicious use of discipline and grievance procedures through to building commitment to diversity into line managers' job descriptions and appraisals. Significantly, whilst SO and RB were shown to present some common management handling issues, on the whole they were found to be distinct entities, requiring different approaches and solutions.

It is clear from the findings that employers feel that there is a shortage of evidence-based guidance and case law around SO and RB issues in the workplace. For that reason, and in keeping with the practical-minded nature of this study, Acas has already taken on board some of its key points – in relation to guidance on monitoring and reviewing – in producing a new advisory booklet, 'Delivering Equality and Diversity'. Equally, the CIPD is producing guidance based on the research in their *CIPD Research Insight* series. In this way it is our hope that the research will facilitate the positive handling of sexual orientation and religion or belief at work, with a view, ultimately, to creating harmonious and successful workplaces.

Stephen Williams, Acas Head of Equality and Diversity
Dianah Worman OBE, CIPD Adviser, Diversity

1 EXECUTIVE SUMMARY

Introduction

In March 2008 Acas and the CIPD jointly commissioned NatCen to facilitate a study on management handling of SORB in the workplace. Following the introduction of the Employment Equality (Sexual Orientation) Regulations (2003) and the Employment Equality (Religion or Belief) Regulations (2003), the study used a one-day 'deliberative' event to explore the experience of SORB issues among employers and managers; the challenges they faced; examples of good practice; and the generation of solutions to challenges identified by participants. In total 48 participants took part in eight discussion groups (38 employers/managers; 4 Acas Advisers and 6 speakers). These were digitally sound-recorded, transcribed verbatim and thematically analysed in relation to the key aims and objectives of the study. It is anticipated that these findings will contribute to new guidance on management handling of SORB issues for employers and managers to be produced by Acas and by the CIPD.

Management of Sexual Orientation (SO) and Religion or Belief (RB): Issues, Challenges and Solutions

General issues

1. Reflecting previous research in the field, RB issues tended to be focused on indirect discrimination and the practical aspects involved in accommodating religious observances such as requirements for days off to attend services or ceremonies, or specific dietary or dress issues. Conversely, SO issues were more concerned with the need to challenge prejudice and discrimination in relation to lesbian, gay and bisexual people and to deal with the inappropriate behaviour (teasing, negative comments), harassment and victimisation that could result. There was a perception among participants that managers and trainers were less comfortable dealing with SO issues than RB issues because SO issues were still viewed as somehow more controversial.

Prompts to good practice

2. Prompts that stimulated employers to review and improve their practice included legislative requirements stemming from the Employment Equality Regulations themselves; comprehension within an organisations' leadership and/ or HR department that there was a clear business case for promoting equality and tackling discrimination in the organisation; specific problems of discrimination, harassment, bullying or bad practice being revealed within the organisation.

Barriers to improving practice on SO and RB issues included:

3. The view that line managers lacked the interest and/ or the ability to handle SO and RB issues (viz. the case for addressing SORB issues had still not been adequately put to them, or that they avoided addressing the issues because they were not confident as to how best to do so).
4. Focus on certain equality and diversity strands at the expense of others (e.g. reluctance to address SO, or reluctance to address SO and RB relative to race, gender, disability)

5. Persistent and engrained cultures of harassment and bullying.
6. Lack of diversity within an organisation in terms of staff profile.

Challenges and solutions

Handling day to day issues

7. Key topics in terms of handling day to day issues were how to deal fairly with different demands around religious observances, flexible working requests, etc. among employees; identifying the legitimate balance to be struck between the demands of employees in the context of the Employment Equality Regulations and the needs and aims of business; and how to improve management confidence and efficiency in the handling of complaints and grievances, as well as issues such as teasing or jokes around an employee's SO or RB.
8. Suggested facilitators were for organisations to aim for transparent allocation systems in terms of employees' working days, trying not to favour one over another. There was also felt to be a need for organisations to try to fit employees' needs around their business needs, but to have the confidence to prioritise business needs where appropriate. In relation to managers specifically, it was felt important to instil them with the confidence and skills to tackle harassment, complaints and grievances early, and with the appropriate support.
9. Actual examples of good practice in relation to this area included the use of flexible working practices to accommodate religious needs plus other reasonable employee requests; provision of prayer rooms and quiet spaces; having clear procedures for handling bullying, harassment, discipline and grievances, and support for managers around when and how to use them; use of internal and external mediation experts, where needed, to help resolve complaints and grievances; communication regarding the outcomes of complaints or grievances to the whole workforce; training programmes or working groups to identify and address teasing, bullying and harassment within an organisation; and clear messages from management about what they regarded as unacceptable behaviour and what the consequences of such behaviour would be.

Building greater knowledge and understanding of SORB issues

10. Key challenges in relation to this area were encouraging trainers to give equal weight to all diversity 'strands' (especially with regard to SO); making training messages applicable, relevant and practical; and improving managers' awareness of relevant good practice guidance and existing case law in relation to SO and RB.
11. Specifically in relation to managers, there was felt to be a strong need to equip them with the confidence and capability to address SO and RB issues. The following were thought necessary in this respect: timely and relevant support and advice from HR and senior leadership; ease of access to authoritative and accessibly-written external advice and support, particularly around the practical implications of the equality legislation, and how to deal with day to day issues in a confident, timely, objective and well-informed way; and, where appropriate, mentoring by larger or more experienced organisations.
12. Good practice in terms of building knowledge and understanding included implementing well-thought out training programmes (all staff receiving

diversity training within the organisation; basing training around actual past incidents in the workplace; incorporation of scenarios and/or role play, inclusion of diversity issues within generic training); and the inclusion of positive performance on diversity in managers' job descriptions and appraisals.

Managing and sustaining changes in organisational culture

13. Key topics in relation to organisational culture were ensuring good management of SO and RB issues are understood and practiced throughout an organisation; avoiding any discrimination in recruitment practices; establishing a culture in which managers and employees feel confident that SO and RB can be discussed openly and with respect, and handled well; ensuring employees understand and respect each other's differences, and avoid proselytising or conflict.
14. To meet these challenges, it was felt important to have transparent recruitment processes; to embed awareness and good management of SO and RB issues in the values of an organisation, for example by making it part of induction, job descriptions, appraisals and rewards systems; for organisations to benchmark with others in order to learn good practice; for leadership to set patterns of good behaviour; for managers to act on complaints in a way that is competent, consistent and fair; and for organisations to encourage staff to celebrate differences, talk to each other and contribute to dialogue and policies around SO and RB issues.
15. Actual strategies cited involved 'mainstreaming' and cascading existing knowledge on good practice through an organisation and creating a culture of diversity and respect. Mainstreaming and cascading were achieved through giving specific individuals ownership as disseminators around diversity issues; and taking a reflective stance when things had gone wrong and changing practices and policies accordingly. Developing a culture of respect was also achieved by signalling that an organisation embraced a diverse workforce (e.g. diversity celebration, sponsorship of events); attempting to galvanise people from different backgrounds around common purposes or goals; and establishing staff groups or networks where LGBT people or people of faith could access peer support.

Policies and practices

16. In relation to policies and practices, issues arose around how to integrate equal opportunities policies in relation to SO and RB with the other strands; how to keep policies up to date, accessible and relevant; and how to ensure a balance between demonstrating a commitment to employee rights in the policies on the one hand, versus ensuring that the organisation's business needs took precedence. In relation to monitoring specifically, key issues were how to improve monitoring in terms of the disclosure of SO and RB and the impact of such monitoring on future policies and practices.
17. Good practice in relation to organisational policies and practices included: ensuring equal opportunities policies and procedures for handling discipline and grievance issues were accessible and user-friendly; incorporating policies into training, and including in them concrete examples, preferably based on actual cases, of what is and is not acceptable; ensuring that the purpose of equal opportunities monitoring was clearly explained and that it was used as a practical tool to improve practices within the organisation; conducting additional research and/ or equality impact

assessments on SO and RB issues; treating policies as active works in progress that were regularly reviewed.

Advice and Information Needs

18. Participants thought that there was a shortage of accessible best practice guidance on the nature of SO and RB issues in the workplace and how to manage them. Where information existed participants were not always aware that it was available.
19. Sources of existing advice, information and learning included employment lawyers and specialist consultancies and a range of other sources (e.g. CIPD, BERR, websites, trade unions). Additionally, participant learning was said to stem from observing how others in their own/partner organisations or other employers dealt with the issues and challenges.
20. Where participants were aware of Acas, the information used was regarded as accessible and relevant, although unsurprisingly given that the participants were there as employers, there were some calls for the advice given to be swayed slightly more towards the employers' point of view. There was also call for self-diagnostic tools on diversity issues to be made available.¹
21. Above all, participants suggested that information and advice should be better publicised, available through a single portal and have relevance and applicability to day-to-day issues.
22. In the absence of dedicated HR personnel or departments, smaller employers in particular identified the need for better signposting around what they needed to know about SO and RB issues and where to locate accessible relevant information. There was some discussion about whether the organisations representing small businesses or larger employers could assist in this process.

Other General Conclusions

23. Whilst SO and RB are understood to present some common management handling issues, on the whole they are seen as distinct entities, requiring different approaches and solutions. In particular, there is a sense that whilst RB issues are more likely to concern everyday administrative practicalities, SO issues are more concerned with the need to challenge prejudice and harassment.
24. Employers and employees need to better understand the balance between the rights of employees versus the needs and priorities of an organisation apropos the Employment Equality Regulations.
25. Examples of SORB good practice often stemmed from existing best practice relating to other equality 'strands' such as race or gender. Good practice in relation to SO and RB may benefit from the extension of knowledge in those areas.
26. Some organisations fell short of the good practices outlined above and in this report, particularly when it came to implementing several policies at once. Achieving good practice will require that a number of policies and practices are implemented simultaneously (e.g. equal opportunities

¹ In fact, such a tool already exists and can be found at Acas.org.uk/Tools/Equality and Diversity. Acas also provides a free automated version of the sexual orientation audit tool and up to two days of consultancy to examine the results of the audit and develop an action plan in partnership with employers.

monitoring is not thought likely to be successful without other demonstrations of respect for individuals' differences).

27. There were several specific issues facing smaller employers - for example difficulties in relation to the ability to accommodate flexible working arrangements; potential lack of peer support for LGBT people or people of faith within an organisation; and a lack of dedicated HR or diversity experts. Good practice guidance will need to address specifically such concerns among smaller employers.
28. There were some concerns that perceived tensions between the two strands could inhibit good practice – for example where it was felt that open discussion of SO issues might offend employees with religious beliefs.

2 INTRODUCTION AND METHODOLOGY

2.1 General Context

In March 2008 the Advisory, Conciliation and Arbitration Service (Acas) and the Chartered Institute of Personnel and Development (CIPD) jointly commissioned the Qualitative Research Unit at the National Centre for Social Research (NatCen) to conduct a study on management handling of sexual orientation and religion or belief (SORB) in the workplace. Sexual orientation (SO) and religion or belief (RB) are relatively new equality 'strands' compared with other, more established strands, such as race, gender and disability. Although a body of research has begun to develop in relation to the impact of Employment Equality Regulations relating to SORB, this has largely reflected the need to establish the number and nature of grievances, and particularly formal Employment Tribunal applications raised by employees, and their experiences of this process. The experience of employers and managers has been relatively neglected; particularly their experiences of handling such issues, the challenges arising, examples of good practice and further information and advice needs. This study aims to contribute to good practice guidance on managers' handling of SO and RB issues.

2.1.1 Legal context

The Employment Equality (Sexual Orientation) Regulations and the Employment Equality (Religion or Belief) Regulations both came into force in December 2003, making it illegal for employers to discriminate against workers on the grounds of sexual orientation and religious belief respectively. The fact that the two strands – sexual orientation and religious belief – were introduced together was a question of timing, not because they were regarded as intrinsically alike.

Sexual orientation is defined in the Regulations as being 'a sexual orientation towards (a) persons of the same sex; (b) persons of the opposite sex; (c) persons of the same and opposite sex'. The phrase 'on grounds of' has been taken to mean that discrimination can occur on the basis of presumed sexual orientation or the basis of association or connection with people of a particular sexual orientation.

There has been considerable discussion over the scope of the religion and belief legislation. Under the Equality Act (2006) the scope of the Regulations was clarified such that (a) '**religion**' means any religion; (b) '**belief**' means any religious or philosophical belief; (c) a reference to religion includes a reference to a lack of religion, and; (d) a reference to belief includes a reference to a lack of belief. This means that religion has been interpreted widely to include less established religions as well as those more commonly known such as Christianity, Judaism, Islam, Hinduism, etc. A reference to a lack of religion or belief means that people such as atheists or non-believers are also protected by the Regulations, including from discrimination or harassment by people who may hold particular religious views or beliefs.

In both cases the Regulations apply to all employment and vocational training and include issues such as recruitment, terms and conditions, promotions, transfers, dismissals and training. They cover:

Direct discrimination – this is treatment of a person less favourably than others because of their actual or perceived sexual orientation or religion or belief. It includes deciding not to employ someone, dismissing them, refusing to provide them with training, denying them promotion, giving them adverse terms and conditions or denying them access to benefits because of their sexual orientation or religion or belief.

Indirect discrimination – this is the application of a criterion, provision or practice that is intended to apply to all people equally but which disadvantages people of a particular sexual orientation or religion or belief. Indirect discrimination can be unlawful whether it was intentional or not. However, in contrast to direct discrimination, indirect discrimination will not be unlawful if it can be objectively justified. In order to justify such discrimination an employer must show that there is a legitimate aim (e.g. a real business need for the discrimination) and that the practice is proportionate (viz. it is necessary and there is no alternative means).

Harassment – includes subjection to unwanted conduct that violates a person's dignity or that creates an intimidating, hostile, degrading, humiliating or offensive environment from the reasonable point of view of the victim. It may involve nicknames, teasing, name calling or other behaviour which is not with malicious intent but which is upsetting. It can also include threats, intimidation, verbal or physical bullying or physical assault. An action does not have to be targeted at a particular individual in order for it to constitute harassment or for an individual to make a complaint about the action to their employer. It may consist of a general culture within an organisation that, for example, tolerates sending of jokes by group email that can be regarded as homophobic or offensive to a particular religion. Organisations may be held responsible for the actions of their staff as well as the staff being individually responsible, particularly where it can be shown that they made none or limited attempts to address such harassment.

Victimisation – is where a person is victimised because he or she has made or intends to make a complaint or allegation of discrimination, or has given or intends to give evidence in relation to a complaint of discrimination on grounds of sexual orientation or religion or belief. An example might be where an employee is labelled a 'troublemaker' and denied promotion or ostracised by colleagues. Organisations and individuals can be liable where such victimisation is not prevented.

At the point that the Regulations came into force, Acas issued guidance booklets on both sexual orientation and religion or belief at work. Given the passage of time, and the fact that the Regulations have been in place since 2003, this study provides an opportunity to examine the impact of the Regulations (and managers' responses to them) within a relatively embedded policy context, and to explore lessons learned and challenges experienced by managers.

2.1.2 Relevant literature

Previous research in this field has either tended to focus on the implications of the SO and RB Employment Equality Regulations from the point of view of employees (e.g. Denvir et al, 2007; Colgan et al., 2006) or to provide reviews of the number of grievances taken (e.g. Savage, 2007) and published cases that have reached Employment Tribunals (e.g. Fitzpatrick, 2007).

Existing research has shown that sexual orientation claims have tended to centre on employee claims of bullying and harassment by managers and colleagues (Denvir et al. 2007 p. 3). Other themes have included discrimination relating to the employment contract where it was assumed or suggested that the person could not do their job as well as other colleagues because of their SO. There was a view amongst SO claimants that disciplinary procedures were unfairly or excessively used against them to force them from the organisation and dismiss them (ibid. p. 5-6).

Religion and belief claims have tended to relate to terms and conditions of work that made the observance of religious practices impossible (Denvir et al., 2007 p. 3). Notably, issues relating to religious observance arose more commonly in calls made to the Acas helpline than workplace dress code (Savage, 2007 p. 6).

What little research that there has been on the management of SO and RB in the workplace suggests that managers have in the main been unsuccessful at implementing effective policies to deal with these issues or at handling such cases where they have arisen (e.g. Colgan et al, 2006; Fitzpatrick, 2007). Managers have been said to feel deficient in the capacity to deal with SO and RB issues (e.g. DFID, 2007) - with many employees lacking faith in them to adequately handle cases of SO and RB discrimination or harassment as a result (e.g. Colgan et al., 2006). Poor handling of cases has also brought about negative impacts, with people making complaints or taking grievances on such grounds as poor mental health and even having to change jobs or move away from a specific area (Denvir et al., 2007). Other issues have focused on the challenges of equal opportunities monitoring, including the best way to conduct such monitoring and the resulting difficulties associated with effectively developing policies and practices as a result (e.g. Aspinall and Mitton, 2008; Creegan et al, 2007; Mitchell et al., 2008).

Furthermore, a number of good practice guides have also been produced on the significance for the SO and RB Employment Equality Regulations, most particularly those produced at the time of the Regulations (and subsequently updated) by Acas (Acas 2005a, b and c) and the CIPD (2003, 2008), but also, for example, by the Chartered Management Institute (2008). This research therefore provides a timely opportunity to explore what has been learned.

2.1.3 Aims and objectives of the study

Despite the body of literature and good practice guidance identified above there has been little discussion of the management of SORB issues in relation to the actual experiences of employers and managers. As a result, the main aims and objectives of this study were:

- To gain a better understanding of the experiences, knowledge and challenges facing employers in handling sexual orientation, religion and belief at work – including but not exclusively, when such issues are associated with areas of conflict;
- To find out where employers seek advice and information in such circumstances and their satisfaction with that advice;
- To seek ideas to facilitate the positive handling of these aspects of employing people with a view to creating harmonious workplaces, and fair treatment;

Other aims and objectives included identifying:

- Management experiences of handling SORB at work – from recruitment to day to day challenges and opportunities;
- Positive and negative issues associated with these areas;
- Strategies and policies: successes and failures;
- The position of SORB in relation to other diversity issues;
- Conflict resolution strategies in relation to SORB – including use of grievance and disciplinary processes, role of third parties, and mediation;
- Advice and information needs in these areas, including awareness of the law and support services such as Acas.

These aims and objectives are also specifically addressed with a view to identifying good practice and solutions to challenges faced in the management of SORB issues. These will be incorporated into future good practice guidance by the CIPD and Acas.

2.2 Sample and Methodology

2.2.1 Deliberative event and discussion groups

The research took the form of a one-day deliberative event held in central London at the end of June, 2008. Deliberative methods involve using stimulus material to enable the research to go beyond respondents' current knowledge and understanding and to produce solutions or strategies around policy issues.² The event included 48 delegates, and combined plenary sessions involving all participants alongside a series of focused break-out discussion groups. The process began with 'mapping'-type discussions of current experiences, policies and practices and moved towards solutions, good practice and facilitators to practice development. The deliberative method was chosen because it offered a good opportunity to capture data from a wide range of participants in a short period of time. Moreover, it offered a discursive and dynamic context, ideally suited not only to exploring the main issues and challenges people faced in relation to the management handling of SO and RB issues, but also to generating solutions to these issues.

Given the group format of the deliberative event, the methodology did not allow as great an exploration of detailed case examples as would have been the case in individual in-depth interviews. Specific case examples have been given however where there was sufficient time in the groups for these to be discussed. Contributions and case examples have been explicitly anonymised, except where the organisations or individuals involved have given their consent for their organisation to be named.

The discussion groups were digitally sound recorded, transcribed verbatim and systematically analysed using thematic analysis. Analysis focused on both anticipated and emergent themes.

² The Qualitative Research Unit at NatCen has considerable experience of this methodology, most recently a one day workshop with schools staff as the final part of the evaluation of On Track (DFES as was); and an (ongoing) evaluation of Special Educational Needs mediation services for the DCFs, whereby local authority staff are being encouraged to focus on good practice and practical recommendations.

2.2.2 Sampling strategy and recruitment

The sample was drawn primarily from the CIPD's membership database, although selected participants were also invited via Acas and the TUC. Invitations were sent via email to selected individuals with prospective participants asked to contact a freephone telephone number or email address to register interest in taking part.

In order to achieve a purposive sample of participants, invitations were offered to a range of different sized organisations; employers from the private, public and voluntary sectors; and in order to include managers with a variety of different types of management experience (e.g. chief executives, line managers, human resources managers). Participation was voluntary, but careful monitoring meant that it was possible to achieve a diverse sample.

2.2.3 The Day

The event was organised with introductory speakers from Acas and the Equality and Human Rights Commission, followed by 4 x 2 smaller 'break out' discussion groups simultaneously running in the morning and the afternoon. The smaller group work was then followed by a brief plenary at the end of the day to draw issues together (see Appendix A). The focus of the morning groups was on mapping knowledge, experiences and challenges. The focus of the afternoon groups was on identifying existing good practice and generating solutions to challenges identified and prioritised by participants. Participants remained in the same groups in the morning and afternoon in order to achieve continuity of discussion.

The 'break out' groups were facilitated using a topic guide and employed a range of deliberative techniques to facilitate discussion and reflection (e.g. small group work and feedback to the wider group, flip chart work with the whole group and reflections and discussion on the points raised, 'think sheets' and 'feedback forms' designed to focus the discussions on consolidated thoughts). A number of vignettes drawing on Employment Tribunal cases and past research were sent to participants in advance and used to facilitate discussion on the day. Basic information about the Employment Equality Regulations was also sent in advance (topic guides and other materials used on the day can be found in Appendix B).

2.2.3 Composition of groups

Participants were divided into four groups reflecting:

- small employers (n=10);
- medium employers (line managers) (n=8);
- medium employers (human resources managers) (n=10);
- large employers (n=10).

The groups included a range of experiences from the private, public and voluntary sectors and of different experiences of addressing and SO and RB issues. Additionally a small number of participants with specific experience of equality and diversity or religious belief issues also took part in the event. As well as the NatCen facilitator, each group was also allocated an Acas adviser, to assist in relation to information on legal and procedural aspects of taking a grievance and

on dispute resolution. Each group also had one or more speakers from the introductory and plenary sessions taking the role of active listeners to help focus the discussion or draw together the issues arising from the day. In total 48 participants took part on the day, including 38 employers/ managers; four Acas Advisors; six speakers.

2.3 Structure of the Report

Chapter 3 of the report discusses the issues and challenges in relation to SO and RB identified by participants. Chapter 4 addresses barriers to good practice and examples of existing good practice provided during the discussion groups. It also identifies the challenges in relation to SORB issues that participants identified and prioritised. Chapter 5 identifies advice and information needs among employers and managers. Finally, chapter 6 draws together conclusions from across the report.

Notably, the same thematic headings identified in chapter 3 to discuss issues and challenges are also used again in chapter 4 to address examples of good practice and possible solutions. General implications from the research for the development of future good practice guidance on promoting equality and tackling discrimination based in SO and RB are discussed in the executive summary and conclusions. Specific implications for the development of guidance are also addressed at the end of each section and in a box at the end of each chapter.

Whilst the report very broadly follows the order in which subjects were discussed during the day, some issues pertinent to chapter 3 were discussed in the afternoon, and some to chapters 4 and 5 in the morning. As such, the report should be regarded as a thematic treatment of the key issues discussed, rather than as a sequential report of the day's discussion.

3 MANAGEMENT OF SO AND RB – ISSUES AND CHALLENGES

This chapter starts by giving a broad outline of participants' general knowledge and views about the issues raised by the management handling of SO and RB in the workplace. It then goes on to look, thematically, at the key areas raised by participants. Under each theme, the main uncertainties and challenges identified by participants are described. A box at the end of each section then outlines the main barriers and facilitators for good management handling that they associated with the issue. In this chapter, the facilitators mentioned by participants are deliberately kept general, and are drawn from participants' general discussions about the challenges presented by the issues that they discussed. Chapter 4 then goes on to discuss specific good practice examples and facilitators from participants' own workplaces, and their strategic solutions to the issues that they chose to focus on as priorities.

3.1 General knowledge about SO and RB issues in the workplace

The extent to which participants felt knowledgeable and confident about the handling of SO and RB issues depended on their role within the organisation and the amount of time their role allowed them to dedicate to acquiring knowledge, either through attending training or reading up on the issues. A further influencing factor was their personal experience of engaging with SO and RB issues in the workplace, whether dealing with conflicts or challenges, or promoting awareness. These issues are discussed in more detail throughout the report, but a number of broad themes relating to knowledge and views of the issues around handling SO and RB in the workplace are detailed in this section.

The first was the perception that, because SO and RB were relatively new legislative areas, there was currently a shortage of best practice examples and case law from which to draw guidance. This was coupled with awareness that there were high profile cases - most notably, the Islington Registrar³ case - that remained unresolved at the time of the workshops. This resulted in a general view that there was a need for organisations to feel their way somewhat carefully around these issues at present, and refer to appropriate advice and support where necessary (see Chapter 5). HR managers expressed a concern that in the absence of well publicised sources of support and advice, the less confident or knowledgeable organisations in particular might be tempted to wait for evidence about handling of SO and RB to emerge from Employment Tribunals, rather than seek at the outset to clarify and implement approaches and policies to tackle discrimination and promote equality in the workplace.

A further broad theme was the perception, held particularly by HR managers, that there was a lack of knowledge amongst management about the legal requirements relating to SO and RB issues, and how best to handle them. They felt that this was particularly the case in smaller companies and amongst middle managers in larger companies. HR managers also felt there was a tendency amongst middle and line managers to abdicate responsibility for SO and RB issues, and to pass them on to HR. This was regarded as particularly problematic

³ A registrar of marriages and civil partnerships in Islington took her case to an Employment Tribunal after she was suspended for refusing to conduct same sex civil partnerships on the grounds that it went against her religious values and conscience. The case was ongoing at the time of fieldwork.

where delegation occurred some way through a dispute or problem, by which point it had become unnecessarily inflamed.

3.2 Key issues associated with SORB in the workplace

In terms of the positioning of SO and RB issues in relation to the other strands of the diversity legislation, it was generally agreed that whilst it was important to look for commonalities between the strands in relation to management handling, it was also necessary to accept that each strand also presented its own unique challenges and considerations.

This was evident in relation to general discussions about SO and RB issues, where the overall sense was that RB issues were much more likely than SO issues to concern everyday administrative practicalities – for example, the accommodation of requests in relation to religious observances, such as need to attend services or adhere to a particular dress code. By contrast, there was a broad feeling that SO issues were concerned much more with need to challenge prejudice and deal with the harassment and victimisation that could result.

Related to this idea was the perception that SO issues were often more hidden to managers than RB issues because a lot of SO-related problems went unreported. One explanation given for this perceived discrepancy between SO and RB was that employees were more likely to be open about their RB than their SO because of the need to make practical requests regarding the former. A further explanation for this perceived discrepancy was a lack of acceptance of lesbian, gay, bisexual and transgender people (LGBT) within certain organisations. This was said to have manifested itself in several forms, from '*hate crime*' through to a more general undertone of harassment or intolerance, for example jokey emails or informal comments made in social conversations either within or outside of work. As a result, it was felt that LGBT employees in such organisations were unlikely to want to disclose their SO, for example by raising a grievance, for fear of a hostile backlash, or because of a lack of confidence in the ability of management to handle their grievance in a satisfactory way.

Because SO issues were perceived to be more hidden, and to present fewer obviously practical issues to remedy than RB issues, there was a feeling that certain managers or trainers were less comfortable with the idea of addressing SO issues in the workplace than RB issues. This discomfort was assumed to be borne out of a fear of saying the wrong thing, a hostile backlash, or offending other groups. An example given of this was of trainers '*tacking the issue*' onto the end of diversity training which had covered the other strands in some detail (see also section 3.3.2, below).

Going further still, there was some feeling that SO issues were perhaps treated with less respect by managers or Employment Tribunals than the other strands of the equality legislation. Participants speculated that there was some embarrassment about the handling of SO issues, or even that LGBT employees were seen as deserving of prejudice and discrimination in some way. An example of this was the case, ongoing at the time of the fieldwork, of the Christian registrar who was challenging at Employment Tribunal the requirement that she perform same sex civil partnerships. Some felt that the registrar's objection to conducting same sex civil partnerships was being treated more seriously than

would have been the case if her objections had focused on a different strand of the equality legislation, and used this as evidence that SO issues currently came lower down the equality hierarchy than the other strands.

A further broad issue, also raised by HR managers, was the danger of organisations 'shoehorning' RB and SO issues together with the other strands of the equality legislation before breaking each new issue down in terms of its implications for company policy and practice. This was a concern to them because of their view that each strand presented its own challenges and issues, and therefore deserved its own consideration.

3.3 Key SO and RB areas identified – knowledge, challenges, and general barriers and facilitators to good management handling

This chapter now goes on to discuss thematically the key areas raised by participants in relation to the management handling of SO and RB issues, as described in the introduction to this chapter. Responses to the vignettes (see Appendix B) are included where relevant. The issues have been arranged under four main headings, set out in Box 3.3, below.

Box 3.3 - thematic areas discussed in the remainder of the chapter

Key thematic areas identified in relation to the management handling of SO and RB issues

Handling day to day issues and challenges...

Accommodating employee requests in relation to SO and RB issues

Handling complaints and grievances

Building knowledge and understanding...

Training issues

The role of leadership and managers

Managing and sustaining change in organisational culture...

Recruitment processes

Organisational culture and knowledge in relation to SO and RB issues

Diversity and respect

Organisational policies and practices...

Monitoring practices

Organisational policies – creation and dissemination

3.3.1 Handling day to day issues and challenges

Accommodating employee requests in relation to SO and RB issues

Discussion of this issue was prompted by Vignette 3 (see Appendix B), where an employer introduced Sunday working, and, so as not to alienate other staff, insisted that an employee who was a churchgoing Christian must work some Sundays. It therefore focused on employer accommodation of religious observances, most notably the attendance of religious ceremonies on specified

days, but also time off during the day for prayer, and issues around religious dress.

There was general agreement that if the introduction of Sunday working in the vignette had involved a change of contract, then it was the duty of the employer to discuss with individual employees whether or not they were willing to accept the changes, and to try as far as possible to accommodate needs. More broadly, the extent to which participants felt confident about employees' rights in this area varied, and uncertainty was expressed in relation to two main areas. The first was whether employees requesting time off for religious observances should take priority over those requesting time off for other reasons, particularly reasons not covered by law, for example social or family obligations. The second was whether observances *actually* dictated by a religion were more unassailable in terms of the need for employer accommodation than practices which were *interpreted* by employees to be part of their religion. A topical example at the time of the fieldwork was of the BA employee who regarded it as part of her Christian faith to wear a cross around her neck at work.

In relation to the former, one participant said specifically that a recent tribunal case had deemed family responsibilities to demand equal consideration to attendance at religious ceremonies. Other participants were unclear whether this was in fact the case, and often felt that precedent was unclear, and that they would welcome further guidance. There was further discussion about how the difference between *actual* versus *interpretative* religious requirements might be difficult to distinguish, and how the emphasis should be on trying to accommodate rights whilst ensuring that the organisation's business case took priority. Out of these discussions, a number of challenges were identified.

The first was around the practicalities of accommodating the potentially diverse and conflicting demands of employees in these areas. Interestingly, both small and large employers perceived themselves to be at some disadvantage in this respect; small employers because it was felt that they had more limited ability to accommodate the demands for flexible working; larger employers because of the perception that their much greater pool of employees created the potential for having to deal with many more demands. There was a general consensus, however, that the operational needs of the organisation should take precedence.

In addition to practical issues, the challenge of how to deal with different demands fairly was discussed, particularly with reference to whether there should be a hierarchy of demand, or whether everyone's demands should be treated with equal consideration, religious or not. There was concern that conceding to one employee's demands but not others would create resentment amongst what was referred to as the '*disenfranchised majority*' who often appeared to be unprotected by law. Balancing this, however, was a fear of so-called '*blank equalisation without any form of differential treatment*'. This refers to the concern - held amongst large employers in particular - that trade unions would press for specific concessions made in particular and specific circumstances to be widened to encompass all employees. This was felt to be practically unworkable.

Getting the balance right between accommodating reasonable demands, versus disallowing demands that are unreasonable - '*an excuse for time off*' as one participant put it - was identified as a further potential difficulty. This was said to be particularly challenging for managers who lacked confidence and knowledge in

this area. The concern was that these managers would be so anxious about potential litigation that they would concede to every demand made under Employment Equality Regulations, rather than considering each one on its own merits and fit with the organisation's business needs.

Finally, drawing several of these issues together, an overall challenge was felt to be how best to take forward the positive action requirement of the new Equality Bill (2008) without overlooking employees who are not covered by its strands, and whilst making clear distinctions between reasonable and unreasonable requests.

Box 3.3.1a – barriers and facilitators to accommodating employee requests in relation to SO and RB

Barriers

- *Current shortage of case law examples causing:
...uncertainty about how to deal with conflicting rights, particularly a right covered by case law, and a right not covered by case law
...uncertainty about what is a reasonable/unreasonable request, and what is a requirement of religious practice versus an interpretation of a religion*
- *Management lack of confidence and knowledge around issue resulting in fear of litigation and tendency to concede to unreasonable as well as reasonable requests*
- *Concern about unions pressing to roll-out specific concessions to the wider workforce*
- *Difficulties related to size of employer e.g. for smaller employers in relation to the ability to accommodate flexible working arrangements and for larger employers in relation to fears of the possible level of requests*

Facilitators

- *Having an open discussion with employees about their requirements prior to their joining the organisation, and preceding a change to their working requirements once they have joined*
- *Aiming for a transparent, open allocation system in terms of working days, trying not to favour one employee's needs over another*
- *Trying as best as possible to fit religious and other needs with the operational needs of the organisation, but having confidence in operational needs taking priority when there are good business reasons for it*

Handling complaints and grievances in relation to SO and RB issues

Discussion of this issue was prompted by Vignette 2 (see Appendix B), where there was both a harassment claim on the part of a lesbian employee and a charge of poor performance on the part of the employee's line manager. Suggested approaches for dealing with this varied. One suggestion was to gather information about the harassment and poor performance claims in turn, and proceed by treating them as separate issues. Other participants did not think that it would be easy to disentangle the issues, and said that the person dealing with the case would need to look carefully at whether the poor performance was caused by the harassment.

The judgement arising from this discussion was that there is a challenge for people dealing with dual harassment and poor performance cases to get the balance right between on the one hand not being afraid of tackling poor performance, whilst on the other hand recognising where poor performance might be linked to perceived or actual harassment or discrimination on SO or RB grounds.

A broader challenge that was mentioned was getting managers to overcome ignorance or fear of dealing with complaints or grievances, or intolerant cultures - for example, those which permitted teasing or jokes around an employees' SO or RB - and to prevent issues escalating by addressing them early and tapping into appropriate sources of support. A further perceived challenge involved making employees feel confident that they could trust their employer to deal with their grievance, rather than '*keeping their head down and putting up with banter*' for fear of a backlash, or further harassment.

Finally, representatives from smaller organisations expressed concern about the potential impact that a dispute could have on other employees because of the disruption that could be caused to working relationships within a small company. A related concern was that, whereas larger organisations could build credibility by publishing the types of complaints and outcomes of complaints that had been made, smaller organisations were often not in a position to do this, because the identity of the parties concerned would be likely to be revealed. Conversely, it was argued that in some cases smaller organisations might be at an advantage over larger companies in terms of handling complaints, since in smaller firms managers could '*really talk*' to and build personal relationships with employees.

Box 3.3.1b – barriers and facilitators to good handling of complaints and grievances in relation to SO and RB issues

Barriers

- *Manager fear/ignorance about SO/RB, causing them either to ignore intolerant cultures, complaints or grievances or conversely to over-react*

Facilitators

- *Organisational policy to have bias towards giving employee another chance when there is both a complaints procedure and a charge of poor performance*

- *Managers to refrain from getting emotionally involved in complaints and grievances, or manifestations of intolerant behaviour, to remain objective and to focus on behaviour and outcomes*

- *Managers to tackle complaints and grievances and evidence of intolerant cultures early, tapping into appropriate support, whether from HR or other sources of advice (see Chapter 5)*

3.3.2 Building knowledge and understanding

Training staff around SO and RB issues

There was widespread agreement about the importance of staff training in awareness and management handling of SO and RB issues, particularly given that that these areas were relative newcomers on the diversity agenda, and given the relevant lack of case law to refer to.

Some participants felt that training they had already experienced in relation to these areas had been inadequate. In particular they talked of trainers seeming uncomfortable with SO issues, or giving them inadequate coverage. Speculation was that this arose either due to trainers' own ignorance or discomfort around how to introduce the issue sensitively and appropriately or from their fear that discussing SO issues could lead to conflict with religious members of their audience.

There was also concern that in certain organisations training occurred more out of a need to 'tick boxes' than out of a genuine desire to see employees embracing and taking ownership of diversity issues. There was acknowledgement too that, even where the motives for training were laudable, the messages conveyed could easily be forgotten when employees returned to the everyday demands of their roles. Making the messages of training applicable, relevant, practical and sustainable was therefore felt to be an additional challenge.

Box 3.3.2a – barriers and facilitators to good training practices around SO and RB issues

Barriers

- *Trainers lacking the knowledge or confidence to introduce SO in sensitive and appropriate way, and give it the appropriate weight relative to other equality strands*
- *Training occurring to 'tick boxes' rather than out of genuine organisational desire to address issues*

Facilitators

- *All staff members to receive training on equality issues, training to be followed up by regular refresher training*
- *Training to be backed up by line and senior managers, for example discussing with staff why they are going on the training, and following it up by discussing what they got out of it, and how it is going to affect their practice*
- *Trainers adopting a positive, rather than scaremongering tone about SO and RB issues, for example by emphasising that good handling of these issues is part of being good at business*

Management skills in relation to management handling of SO and RB issues

Early discussion around this issue focused on the perceived shortcomings of managers in relation to SO and RB issues. A key concern was that line managers often lacked the necessary awareness of the issues and case law relating to SO and RB, and that this resulted in a lack of confidence in handling SO and RB issues.

It was also felt that fear of litigation could result in managers avoiding tackling situations of conflict, over-compensating by making inappropriate concessions, or delegating the issues encountered to HR without any direct engagement. In particular, there was concern that this fear could result in managers failing to raise justifiable performance issues with employees from particular groups. One participant cited an example of a manager who did not want to pursue an employee's long history of poor performance because the employee had recently come out as a lesbian. Another concern was that putting off tackling complaints or grievances could mean that the issue escalated unnecessarily.

As a result of these issues, it was felt paramount to improve managers' understanding about SO and RB issues in the workplace, and the relevant legal parameters, case law and good practice guidance in relation to handling these issues. Also felt to be important was convincing line managers to put this new understanding into practice by adjusting their own management approaches, and ensuring that knowledge was disseminated to their staff.

In order to tackle these challenges, it was considered important that managers were equipped with the basic requisite skills around handling difficult situations and having difficult conversations. A specific concern was that these skills were often particularly lacking amongst managers in very small organisations. Addressing these skills gaps was regarded as a priority.

Box 3.3.2b – Barriers and facilitators to good management skills in relation to SO and RB issues

Barriers

- *Manager ignorance and fear of issues, or not perceiving issues as their responsibility*
- *Managers lacking basic people management skills (e.g. handling difficult conversations)*

Facilitators

- *Training to educate managers about legal status of SO and RB issues, recent case law, and their legal obligations*
- *Managers to be made aware of their liability, and responsibility for good management of SO and RB issues to be embedded in their personal performance objectives*
- *In organisations with HR departments, HR to ensure knowledge about and ownership of SO and RB issues are filtered down throughout organisation*
- *Clear sources of support for smaller organisations with no HR or diversity teams*
- *This to be coupled with clear support mechanisms for managers, so that they know where to go for suitable advice and support over handling SO and RB issues*

3.3.3 Managing and sustaining change in organisational culture

Recruitment processes

Discussion of recruitment processes in relation to SO and RB issues were prompted by Vignette 1 (see Appendix B), in which a Muslim journalist complained about not being short-listed for a job he was suitably qualified for. There was some consensus here that the employer's lack of transparency over their recruitment processes had left the organisation open to charges of discrimination on the grounds of race or religion even if this had not actually been the case. The example prompted debate about the importance of an organisation's demographic make-up reflecting the geographical area in which it was based. Although some regarded this as imperative, others argued that whilst this aim was commendable in principle it might be the case that for historical reasons, particular job skills might take a while to 'filter down' to diverse groups within the local population.

A particular challenge raised with regard to recruitment was how to deal with charges of in-built discrimination associated with particular recruitment methods. An example given was the perception that people of some faiths felt that assessment centres were discriminatory to people of certain faiths, although the reasons for this were not gone into. There was also discussion around how to avoid charges of discrimination on SO and RB (or other grounds) when an applicant had met the job specification but did not have the personality that the team was looking for. However, there was a strong feeling that a thin line exists

between this scenario, and one in which employers consciously or subconsciously set out to recruit someone *'like them'*. It was argued that, if a particular personality type was required, this should be made absolutely explicit on the job specification.

Box 3.3.3a – Facilitators to good recruitment practice in relation to SO and RB

Barriers

- *Managers consciously or subconsciously looking for new recruits to match current staffing make-up*

Facilitators

- *Having transparent application and recruitment processes, with a well documented audit trail*

- *Advertising jobs within diverse places within a community*

- *Having a diverse short listing and interview panel*

- *Removing demographic information about an employee (gender, race, religion, SO, etc) from their application forms for purposes of assessment*

Organisational culture and knowledge in relation to SO and RB issues

This heading refers to the discussion which took place around how organisational cultures can be made more accommodating and respectful of SO and RB issues.

A broad concern here was how to create an organisational culture in which people felt comfortable about disclosing their SO or RB. It was generally believed that serious harassment or discrimination were less likely to occur in organisations where employees felt comfortable about being open. The assumption here was that employees working in such environments are more likely to raise concerns at an early point, and are also more predisposed towards respecting each other's differences.

Discussion of how to create such an environment raised particular challenges. The first centred on how to overcome both employee and employer fears of raising SO and RB issues, based on their concerns about saying the wrong thing. In relation to this, creating a culture where it was acceptable to make mistakes - provided the mistake had not been intentionally harmful - was felt to be important.

A further perceived challenge was how managers could become aware of and address an *'active ripple'* of prejudice, harassment or broadly intolerant behaviour in relation to SO in particular: for example a culture of teasing, cajoling, innuendo and jokes which took place within and outside of work time, or via emails.

In terms of creating a comfortable, accepting culture it was also felt important, if challenging, for organisations actively to own and commit to having good management of SO and RB issues, as opposed to regarding them as *'just another thing'* to which they had to demonstrate adherence. There was a clear overlap here with a number of areas already discussed, such as the judicious use of training, monitoring, embedding SORB into management objectives and active dissemination of organisational policies (see also 3.3.2 and 3.3.4).

Although the discussion focused on creating an accepting, comfortable environment, the need for employers to emphasise that they also had rights was stressed, particularly in relation to the delicate balance between accommodating

SO and RB requests as far as possible, whilst at the same time being true to the organisation's values and business needs, and other employees' needs (see 3.3.1).

Finally, a further, broad challenge related to organisations' perceived inability to address these issues - particularly small businesses which lack HR or diversity experts to devote time to the issue.

Box 3.3.3b – Barriers and facilitators to developing comfortable/ accepting culture of SO and RB issues

Barriers

- *Employer and employee fear of raising issue, for fear of prejudice, litigation, or saying wrong thing*
- *Harassment occurring away from managers' from their direct 'line of vision', for example social emails, work social situations*

Facilitators

- *Embedding awareness and good management of SO and RB issues in values of organisation, for example making part of induction, job descriptions, appraisals and reward systems*
- *Talking about and promoting SO and RB issues in a collective way*
- *Making awareness of and good management handling of SO and RB issues the responsibility of all, and not just one department*
- *Getting people to understand that they will never know everything about different groups, but to understand general principles of tolerance and respect*
- *HR and other managers to convey to employees that there is a clear business case for embracing diversity*
- *Good management handling of these issues, see 3.3.2*
- *Clear message from management that certain behaviours will not be tolerated, and what the consequences of these behaviours will be*

Building respect for individuals' differences in the workplace in relation to SO and RB issues

Discussion about this issue was prompted by Vignette 4 (see Appendix B), in which a religious employee in a large charity was distributing material condemning homosexuality. Discussion focused on the overarching challenge of how to create a working culture where employees acknowledged and respected each other's differences, whilst avoiding proselytising or conflict. There was consensus was that the employee who had been distributing materials in the vignette had clearly been in the wrong, although whether or not he should have been dismissed was felt to depend on whether the organisation had clearly explained its equal opportunities and diversity policy to him.

Despite this broad consensus regarding the vignette, a couple of uncertainties were expressed about the management handling of such cases in practice. One of these related to whether the homophobic action at issue would still have been an offence if it had been undertaken outside of work time. This continues the theme of uncertainty - raised under other headings in this chapter - about where the line should be drawn in relation to work and non-work activities, and specifically how employers should deal with comments, jokes, teasing or other intolerant activities taking place outside of the work place offensive to people of a certain SO or RB.

A further area of uncertainty was whether the employee's actions could only be deemed an offence if they were proven to have had a negative impact on other employees within the organisation. Whereas some thought that this possibly was the case, others felt strongly that such an action should not be judged according to its impact, but about whether it was acceptable or not to the organisation *in principle*. They said the law was clear that whilst employees had the right to be protected from harassment about their SO or RB, they did not have the right to try to convert others, and that organisational policies should reflect this clearly.

Participants spoke of the importance of setting up and supporting different network groups for staff, for example for different SOs or different religious beliefs (discussed specifically in Chapter 4), but this was also felt to raise a number of issues. One was how to decide which groups to support and how to avoid conflict between them. Another was how to avoid unwittingly defining people by their SO or RB by encouraging the establishment of groups in relation to these areas. Specifically, it was felt that over-zealous or insensitive promotion of network groups could risk suggesting to an employee that this part of their identity was more important than another. How to support employees in smaller organisations who might, for example, be the only person with a particular SO or RB was also raised in this context.

A further challenge centred on how to deal with a case where an employee fulfils the technical duties of his/her role, and displays no overt intolerance, but harbours private views which, if widely known, might result in a negative impact on attempts to create a diverse and respectful organisational culture. This was felt to be a particular issue where the employee was a figurehead of the company in some way. A specific example given was of a diversity officer who did not want his role to involve actively having to condone homosexuality. Although this meant in principle that he could fulfil all his job requirements, the concern was that this gave out a bad message to LGBT staff. Participants in the group which discussed this issue seemed divided over whether or not this employee should have been allowed to continue in the role.

Box 3.3.3c – facilitators to promotion of respect for individuals' differences in relation to SO and RB issues

<p><u>Barriers</u></p> <ul style="list-style-type: none">- <i>Uncertainties about how to handle comments, jokes, teasing or other intolerant activities taking place in and outside of the working environment</i> <p><u>Facilitators</u></p> <ul style="list-style-type: none">- <i>Having positive culture around welcoming openness about employee's SO and RB, but avoiding proselytising</i>- <i>Making clear that the organisation welcomes people of different SOs and RBs</i>- <i>Tapping into the expertise of different staff members and encouraging staff and network groups to talk to each other, make space for each other, and establish boundaries</i>- <i>Respecting people as individuals, and recognising that people with the same SO or RB might face very different issues, and might not want to define themselves by this issue</i>

3.3.4 Organisational policies

Organisational policies in relation to SO and RB

Discussion of the development and role of SO and RB policies within organisations was often prompted by the example in Vignette 2 (see Appendix A), where an HR department responds to a harassment claim by posting the company policies on a notice board. This was widely felt to have been bad practice, merely 'paying lip service' to policies.

In relation to developing equal opportunities policies, one potentially difficult area was felt to be how to integrate SO and RB with the other strands, for which there existed more abundant case law. Making equal opportunities policies accessible, relevant, up-to-date and easy to access was also considered challenging, as was getting the balance right between permitting employees reasonable rights in the policies on the one hand, versus ensuring that the organisation's business needs took precedence on the other.

Finally, the practical challenge was raised of how to communicate company policies to temporary or agency workers or different sectors or a large corporate body.

Box 3.3.4a – Barriers and facilitators to developing organisational policies in relation to SO and RB issues

Barriers to developing/implementing organisational policies in relation to SO and RB

- Lack of current case law could make integration of SO and RB issues into organisational equal opportunities policies difficult in short term
- Management ignorance/ lack of buy-in

Facilitators to successful monitoring for SO and RB

- Policies to be communicated clearly to staff on joining the organisation, and staff to be updated on policies by refresher courses
- Managers to take responsibility for their staff learning about and upholding the policies
- Policies to be explicit about where a line should not be crossed and what would count as harassment or discrimination

Monitoring of employees in relation to SO and RB

Knowledge of and opinions about equal opportunities monitoring for SO and RB varied quite widely. Some participants spoke specifically about the recommendation in the new Equality Bill that employers monitor for SO and RB alongside the other strands, whereas others seemed unaware. Opinions as to the merits of monitoring for SO and RB also varied. At one end of the spectrum was the opinion that monitoring for SO and RB when new employees joined an organisation is intrusive and unnecessary. Conversely, others argued strongly that monitoring was critical in enabling employers to track recruitment and promotion by different groups, and employ positive action where the monitoring showed it to be necessary. A further argument in its favour was that it signalled to employees that an organisation took SO and RB issues seriously.

Whatever people's views about monitoring for SO and RB, the major obstacle was agreed to be overcoming employee reluctance to disclose SO or RB on monitoring forms; in this respect several participants cited low response rates in their own

organisations. One of the main stumbling blocks was felt to be employees' lack of certainty on joining an organisation about how accepting it was to people from particular groups. A further challenge was felt to be achieving employer support for the principle of equal opportunities monitoring. Some participants said that they knew of employers whose attitude was that they would rather not know, since not knowing meant that they could be cleared of any potential discrimination charges in relation to an employee's SO or RB.

More practically, participants raised the issue how organisations could best use monitoring data to assist with their diversity policies and strategies. The feeling was that sometimes the data just '*sat there in HR*' without any clear organisational understanding of why they had the information, or how it could be used.

Box 3.3.4b – Barriers and facilitators to successful SO and RB monitoring

Barriers

- *Employer nervousness or opposition to monitoring and/ or lack of awareness of the benefits*
- *Reluctance of staff to respond, resulting in low response rates*
- *Not knowing how to act on the data gathered*

Facilitators

- *Clear explanation of why the organisation is asking for the data, who will see it, and how it will be used - emphasis that data is being collected to promote fairness and tolerance*
- *Organisation being well known to have accepting culture – employees more likely to disclose (see 3.3.3)*

3.4 Implications of findings for development of guidance

The findings from this chapter suggest several areas where guidance would be appreciated, set out in brief in Box 3.4, below.

Box 3.4 – guidance needs emerging from chapter findings

General

Overview of the key issues likely to occur in relation to managing SO and RB in the workplace, accompanied by case examples and descriptions of case law precedent

How to deal with harassment/ discrimination amongst work colleagues that takes place outside of the working environment

Accommodating employee requests in relation to SO and RB

How to deal with demands for time off/flexible working, particularly when conflicting demands within an organisation, and where some demands are covered by case law (for example relating to RB) whereas others are not

Distinguishing reasonable from unreasonable requests

Dealing with demands for exceptions to be applied to all employees

Monitoring

Reasons for monitoring for SO and RB

Tips on how to get good response rates in monitoring exercises

Training

Advice for trainers on how to incorporate SO and RB issues into training

Advice for organisations on how to ensure that training is applied, and refreshed

Conflict management

Dealing with the dual issue of harassment/ discrimination claims and poor performance charges

Policies

Practical tips on making policy documents user-friendly, relevant, and applied

Management

How to disseminate learning amongst managers, and equip managers with the confidence to address any SORB management issues early, and with the right support

4 GOOD PRACTICE AND SOLUTIONS TO THE MANAGEMENT OF SO AND RB ISSUES

This chapter focuses on the practical solutions suggested by participants for the management handling of SO and RB issues in the workplace. Section 4.1 describes the reasons for, and barriers to addressing SO and RB issues within participants' own workplaces. Section 4.2 focuses on approaches and solutions, again drawn from participants' own workplaces. Section 4.3 then discusses the solutions generated by participants in small group work in response to the issues they identified as particular priorities in managing SO and RB issues.

4.1 Reasons for and barriers to embracing SO and RB issues within organisations

Chapter 3 has described participants' general knowledge about SO and RB issues in the workplace. This section now looks at the extent to which participants felt that their own organisations had an understanding of, and good practice relating to, the management handling of SO and RB issues. This varied considerably. A number of organisations, particularly though not exclusively larger, appeared to have acknowledged the need for policies and good practice in relation to this area, and specific examples are provided in Section 4.2, below. In other cases, the feeling amongst participants was that their organisation, or client organisations, faced particular barriers to embracing these issues in a learned and appropriate way. This is discussed further below.

Although there was a perception amongst public sector and particularly central government representatives that the public sector was generally ahead of the private sector in terms of embracing diversity issues - and specifically regarding new requirements around SO and RB - it is interesting to note that in this particular research exercise, good practice examples emerged from both public and private sector organisations (see 4.2, below).

Where participants said that their organisations were attempting to embrace SO and RB issues, several triggers were mentioned. Most obvious were the SO and RB Employment Equality Regulations, which were said to have prompted some organisations to look specifically at their approaches to SO and RB issues. In this respect, one participant described how their organisation had started to look at SORB issues because they were '*the in thing*' but was surprised following a *Stonewall*⁴ audit around workplace issues - in relation to SO in particular - which showed that the organisation was not doing nearly so well as they had thought.

An additional prompt could be the feeling, amongst senior leadership and/ or HR within an organisation, that there was a clear business case for following the logical implications of the Employment Equality Regulations that discrimination and intolerance were no longer acceptable in the workplace. The strongest of these implications was the feeling that being known to be tolerant,

⁴ The lesbian, gay and bisexual rights lobbying group Stonewall runs a *Diversity Champions Programme*. This is a 'good practice forum in which employers can work with Stonewall, and with each other, to promote diversity in the workplace'. The programme publishes a corporate equality index which benchmarks and showcases the leading 100 companies for lesbian and gay employees and publishes good practice guides to assist in the implementation of specific equality strands (Stonewall, 2007 p. 28).

accommodating and diverse resulted in employers having access to a wide talent pool. Where an organisation had user groups, it was also felt that having a good reputation in relation to diversity issues, including SO and RB, would help ensure that they attracted as diverse a client group as possible. There was also what was referred to as the '*negative*' business base: the perception that failing to tackle SO and RB issues could lead to litigation, which in turn could result in substantial pay-outs and damage to organisational reputation.

A more negative prompt for reviewing practice in this area was uncovering evidence of problems in an organisation. One participant described how it had become evident in their organisation that there was a culture of harassment and bullying towards employees from particular ethnic groups, or with particular beliefs or SOs. In another case, a full-scale review of diversity policies and practices within the organisation had been prompted by an employee's suicide over what was believed to have been bullying based on his ethnic origin, which was followed by an Equality Rights Commission assessment of the workplace.

However, as mentioned above, there were also participants who felt that either their own organisations, or their client organisations, were either doing very little, or not doing as much as they could to embrace management handling of SO and RB issues in the workplace. Several specific barriers or problems were mentioned.

First, there was a feeling that line managers lacked either the interest and/ or ability to handle these issues, a challenge discussed in Chapter 3. Specifically, participants talked of line managers failing to tackle conflicts, either '*brushing them under the carpet*', or waiting for a tribunal to deal with them. There was also talk about line managers being reluctant to attend diversity training or support staff attendance at network groups, and about managers regarding the whole diversity area as HR's responsibility, not theirs.

Second, it was suggested that participants' organisations had focused on certain aspects of the diversity agenda to the detriment of others, and consequently had a lot more work to do. One participant, for example, said that whilst their organisation was very good at overt demonstrations of tolerance, for example setting up events around LGBT history week, or particular faith-related festivals, their performance as an organisation in relation to equal opportunities monitoring was poor. Another participant felt that their organisation had focused entirely on recruitment in relation to achieving a diverse work force whilst neglecting staff integration in the workplace. A consequence was that the '*bottom*' 20% of the organisation consisted of ethnic minority staff working in isolation.

There were also participants who were open about their organisations having had persistent problems around harassment, either towards minority groups in general, or in some cases specifically in relation to the SO of individuals.

Finally, monitoring was said to have shown that representatives' organisations lacked diversity, or in one case, according to monitoring data, apparently put LGBT groups at a disadvantage in terms of career progression.

4.2 Organisational approaches and solutions to key areas in the management handling of SO and RB issues

This section now looks at specific examples of good practice mentioned by participants in relation to the same thematic headings used in Chapter 3.

4.2.1 Handling day to day issues and challenges

Accommodation of day to day issues/ terms and conditions

One of the main ways that was described as a means of dealing with the challenge - discussed in Chapter 3 - of allowing time off for religious observances whilst treating all staff fairly, was through the employment of flexible working practices. One organisation represented in the research allowed employees to take alternative bank holidays so that they could observe their own religious festivals, where these differed from those in the Christian calendar. In another large organisation, half of the staff were on flexible rosters because of the nature of their work, which enabled the employer to accommodate time off for particular religious observances, as well as for reasons that might not be represented in case law.

In relation to another area of accommodation, there were also examples of organisations who had rooms available for prayer; Transport for London (TfL) for example has over fifteen different faith rooms within its organisation. There were also smaller organisations with less space and capacity who had made one room available as a general faith room, although in some cases problems had arisen when different groups wanted to use the room at the same time. As described in the case example below, there was evidence of some organisations thinking carefully and creatively around these issues.

Case example 1 – accommodation of religious beliefs (British Library)

The British Library held a "Sacred Exhibition" for Judaism, Islam and Christianity. There was insufficient resource space in the Library to be able to provide separate prayer or quiet room facilities for the anticipated level of visitors of different faiths. After consultation with key Faith Leaders alternative arrangements were made for listings on the website and handouts detailing local religious establishments that would be able to accommodate visitors who wanted to go and use their facilities.

The Library is also custodian of a wealth of rare and irreplaceable books and other materials. Security of these is paramount. The Library had to sustain the requirements of the formal "Conditions of Library Use" including dress codes required for security reasons, whilst determining a careful balance between the accommodations that could be made for readers and visitors wearing devout religious dress, and not discriminating against other readers.

In general, the feeling among participants was that it was easier for larger organisations to accommodate employees in these areas than smaller, as a result of having more space⁵, and a larger staff pool which helped ensure that other employees' time off would be covered.

⁵ Notably, a guide on good practice in relation to the provision of prayer rooms and quiet space at work, including case examples, has been produced by St Ethelburghs (2008) the Centre for Reconciliation and Peace.

Tackling bullying and harassment

In relation to dealing with displays of intolerance from work colleagues – for example, teasing or jokes or harassment around a colleague's SO or RB - several types of good practice, drawn from participants' organisations, were mentioned. Sometimes participants pointed out that they had been implemented as a result of problems, rather than to anticipate problems. These practices were: regular staff consultation about the types of issues coming up, and how they were best resolved; staff education to raise awareness of diversity issues, and teach managers how to challenge behaviours such as bullying and harassment; a clear message from the top about what was and what was not acceptable; and implementing this message by dismissing employees who behaved in an intolerant way. The two case examples below incorporate several of these strands.

Case example 2 – tackling bullying and harassment (organisation anonymised)

The HR department at this organisation identified that there was anecdotal evidence of homophobic undercurrents within the organisation. A training programme was introduced which will run through the whole organisation, and take three years to complete; there is one programme for managers, to teach them how to challenge and manage such behaviour, and one for all other employees. The training addresses diversity in general, but a lot of the conversation focuses in particular on sexual orientation. So far, in areas where the training has occurred, they are seeing more reported incidents of harassment. It is HR's perception that these incidents are also being dealt with more appropriately by line managers, often informally, as opposed to inappropriately spiralling up to senior managers.

Case example 3 – tackling bullying and harassment (organisation anonymised)

As a result of a serious incident of racial discrimination, an organisation (on the back of recommendations by the Equality Rights Commission) introduced a working group, whereby managers and frontline staff meet several times a year, on a rotating basis. The purpose of these meetings is to go over best practice and issues in relation to diversity in the workplace and how to resolve them. Out of these meetings, training has been developed that is delivered to all the managers and frontline staff. They also have work-time 'listen and learn' sessions that are run for half an hour every week, for every employee throughout the business. In addition, they have set up a helpline run by an independent organisation, and have a panel of independent investigators who make recommendations on what needs to happen in particular cases. They have gone from being in a '*dire state*' in relation to workplace harassment and bullying, to people knowing it '*just won't be tolerated*'.

A further good practice example was provided by a participant from Transport for London (TfL), who said that the organisation had funded the training of specialist trade union harassment representatives; specifically, four LGBT harassment representatives had recently been appointed at their employees' union.

Finally, having clear disciplinary and grievance policies in place, and advice for managers around implementing them was felt important. This is discussed below.

Resolving conflict

Chapter 3 described how a key perceived challenge in relation to resolving conflict lay in getting managers to overcome ignorance and/ or fear of dealing with SORB issues, enabling them to address them early on and tap into appropriate sources of support. Having clear procedures for handling discipline and grievance issues was mentioned by several as being important here, as well as ensuring that they were clearly disseminated throughout the organisation. Alongside these policies, it was felt important that managers receive support and training in their implementation, particularly around where it might be appropriate to implement them early to prevent a situation becoming further inflamed, versus where it might be more fitting to intervene informally in the first instance. Encouraging managers to tap into appropriate sources of advice and support when handling conflict – whether more senior management, HR, external agencies, or mediation services (see below) was also felt important.

Several organisations represented in the research specifically said they had used mediation experts, whether external or internal, to step in and assist managers in resolving conflict. One organisation, for example, spoke of having a mediation service which operated independently of HR. They regarded it as a way of encouraging employees to reach a mutual understanding of the issues, and to move forward and work together in a positive way.

Another organisation who used mediation services described how they had tapped into an external chaplaincy service to talk to a religious group about why they felt that having openly gay employees was a problem, and to put forward management's perspective. The service had then brought the religious group and gay employees together to talk.

A final example provided of good practice relating to resolving conflict was where an organisation had internally publicised where complaints were made, and what the outcomes had been. This was felt to be a significant step towards building up a culture of trust amongst employees of particular SOs/ RBs that the issues they faced were being taken seriously. However, this was again felt to be easier to implement in larger, rather than smaller organisations, where it was felt that publicising would lead to confidentiality being jeopardised.

4.2.2 Building knowledge and understanding

Training issues

Several examples of perceived good practice were said by participants to have occurred in their organisations in relation to training. The first was ensuring that all staff within the organisation received diversity training, and that refresher courses were run every time new legislation was introduced, for example on the addition of SO and RB to the equality agenda. In terms of the content of the training itself, basing the training around actual previous incidents in the workplace was mentioned by some as having been successful, as was incorporating some scenarios-based role play into training. For example, delegates played the role of a manager talking to someone who felt that they had experienced harassment on SO or RB grounds, or participated by stopping the interaction they were observing at junctures where they felt a party had responded inappropriately. Finally, one participant said that as well as running

specific diversity courses, their organisation also included diversity issues within more generic training where relevant. A course around negotiation, for example, had discussed how someone's cultural assumptions might influence their negotiating styles.

The role of management and leadership

Chapter 3 described how equipping middle and line managers with the skills and inclination to handle SO and RB issues in a sensitive and appropriate way was seen as a particular challenge. Some good practice examples around these issues are outlined under 'Organisational culture' in section 4.2.3, notably the examples of organisations that had specific policies and practices in place to ensure that learning and policies around diversity issues were cascaded to managers. There were also examples of organisations that had incorporated positive performance by managers in relation to diversity issues into managers' objectives and performance assessments. One participant, for example, said that every manager in her organisation had specific targets in relation to equality inclusion. This approach was felt to be much more applicable to larger organisations than smaller, however, as larger organisations were proportionately more likely to have the diverse employee pool which made targets relevant.

4.2.3 Managing and sustaining change in organisational culture

Organisational culture and knowledge in relation to SO and RB issues

Some of the discussion of good practice in relation to this area focused on what was referred to as 'mainstreaming', whereby the idea of ensuring that good understanding and management of SO and RB and other diversity issues is entrenched throughout the organisation, and does not just sit with organisational leadership or HR departments. Several participants said that their organisations had active policies to ensure 'mainstreaming' of a commitment to diversity.

One approach to 'mainstreaming' was to have strategies in place to ensure that learning about diversity issues was cascaded throughout the organisation. One organisation went about this by having a weekly 'cascade mechanism', passing information from the executive meeting down to senior leads, who then informed their teams. This approach had been used to filter down awareness about new diversity policies. Another example of cascading was where management had translated the organisation's diversity policy into a number of actionable bullet points for local area managers. Each area manager had also been given a few specific objectives to ensure that they met the requirements of the policy.

Picking out specific members of staff to take ownership of, and act as disseminators of learning around diversity issues was also mentioned as a way of ensuring awareness of diversity issues throughout an organisation. This is described in the box below.

Case example 4 - 'mainstreaming' (organisation anonymised)

This organisation's approach to 'mainstreaming' involves using a selection of managers from across each of the organisation's areas of business to act as champions for equality and diversity issues. When new legislation arises, it is the responsibility of this group to absorb its implications, and take it back to their area and discuss it with area managers. They also report on the policy and its repercussions to the senior management and the board.

There was also discussion around how organisations had in practice faced up to and constructively tackled problematic cultures, such as undercurrents of intolerance towards people with particular RBs or SOs. There was a strong feeling in this respect, as illustrated by the quote and case example below, that it was critical to encourage organisations to reflect on what had gone wrong, particularly where cases had gone to litigation, and build this learning into their future policies and training.

“One of the things that we always do when we are defending a discrimination client is look at what went wrong and why did it go wrong. Yes we’ll defend it to the hilt, maybe we’ll win, maybe we won’t but something went wrong that we ended litigating over it. [We look at] what can we do to ensure this doesn’t happen again, how can we take the learning back to the organisation. We do lots of training and learning and all that sort of thing with the clients, to actually help them benefit, because they spend all this money on litigation... but it does involve being candid and admitting, you know, yes we didn’t get that quite right, if only we’d known this, if only you hadn’t done that, if you’d stopped to think about it and gone and said the other, and so on. [Through this] people get, you know, the courage to share, when they understand that nobody would expect them to get it all right all of the time” (Representative of medium sized organisation).

Case example 5 – facing up to cultural problems in positive way (organisation anonymised)

One participant worked with a large national voluntary organisation which ran a biannual event picking out themes of bullying that did not seem to be surfacing via any direct routes. They also convened some diversity events, facilitated by the participant, the purpose of which was twofold: trying to get some genuine case study stories of what happens in the organisation, and trying to understand why their [diversity] scores had been so low. Out of these events, they got some *‘painfully clear and good’* examples of discriminatory behaviours, which they then used as part of their training programme. Through this work they uncovered a culture not so much of bullying, but of *‘bullishness’* which, whilst it had stopped short of formal grievance processes, was actually very *‘thwarting of people’*.

Examples were also provided of how organisations had signalled to staff that they had an accepting culture towards people’s SO and RBs. This was said to have occurred through the organisation of events, such as LGBT history months, celebration of different religious festivals, or through actively supporting or marketing events such as *Gay Pride*⁶. Clear endorsement from an organisation’s leadership of tolerance within the organisation was also felt to be good practice; for example, active support from leadership for events, and staff network groups. The case example below incorporates several of these strands.

⁶ Gay Pride, also known as Lesbian and Gay Pride, is an annual street march and series of events held in London to celebrate the lesbian and gay community and to highlight discrimination. The event has been sponsored by a number of commercial organisations, trade unions and public bodies (e.g. the London Mayor’s office). Regional Pride events are also held across the UK in a number of cities, towns and counties.

Case example 6 - signalling organisation has accepting culture towards SO issues (Department of Health)

For LGBT history month, the participant and their team organised an event in the atrium of their biggest building in London. The secretary of State for Health gave a keynote speech. The Chief Medical Officer also spoke, and Chris Smith gave a speech about being the first openly gay MP and cabinet minister. There was a gay choir and a gay comedienne. The participant felt that the endorsement and involvement of senior figures was critical in signalling that the Department had a culture and policy of tolerance.

Where an organisation's leader had publicly come out as being lesbian or gay, this was also felt an effective way both to signal a culture of tolerance, and to cause a rapid shift in workplace culture.

However, as a caveat, although there was widespread agreement that supporting such events was positive, there was some perceived danger that events could merely be '*smokescreens*' without parallel processes in place to tackle problems. As an example of this, a participant felt that whilst their organisation was quick to celebrate specific events, such as LGBT history month, they were poor at monitoring staff diversity, and therefore ill equipped to judge whether there was any organisational bias in terms of practices around recruitment and career progression.

Diversity and respect

Discussion of good practice around this issue focused on two main areas. The first was how to get employees to understand and respect staff difference, whilst avoiding conflict. Participants felt that specific events they had organised had achieved this in an informal and enjoyable way - for example running different diversity celebrations in the workplace which involved people bringing in and talking about foods and practices relevant to their culture. Examples were also given of using role play situations in training to encourage employees to empathise with each other. An example was cited of an organisation which encouraged employees, in a training session, to talk about their weekend without indicating the gender of their partner. This was felt to have helped delegates understand SO in a more informed and sophisticated way.

More broadly, there was discussion of how some organisations had been successful in getting people from what might be assumed to be conflicting backgrounds to unite around common goals and purposes. Participants considered the HIV sector as a particularly successful example of LGBT and African religious communities working together. Here, buy-in to the shared goal was felt to be so strong that it overcame potential conflict.

The second area of discussion relating to good practice was around having outlets for staff where they could access peer support. Supporting staff network groups was mentioned as a positive way forward, for example LGBT network groups, or network groups for staff of different faiths. However, there were also participants whose organisations were said to have experienced problems with getting network groups started, because staff had seemed to be reluctant to come forward and participate. The following actions in particular were seen as facilitators to the successful formation and use of network groups: allocating money from a central budget to groups; managers signalling support for staff attendance at network groups; and providing network groups with an initial event

or goal around which they could focus. One organisation said that they had doubled their membership of the LGBT group by publicising its presence on their SO monitoring questionnaire.

Case example 7 – successful use of staff network groups (Transport for London)
TfL has seven staff network groups including an LGBT group and faith network groups. The groups are self-managed, and TfL provides specialist and budgetary support. TfL did a lot of promotion work in the beginning to get these groups started, and initially provided an event around which they could participate, to give them a sense of purpose, for example to feed into a DVD, or managers' guidance. The TfL representative stressed that the groups are not intended to usurp the role of TUs, but are largely used to give an indication to management about whether TfL's commitment to and policies around diversity are working on the floor. The groups are sponsored by managing directors and directors.

As with other areas, achieving best practice around diversity and respect was often felt to be more problematic for smaller organisations, which might not have sufficient numbers of employees with a particular SO or RB either to support each other, or to want to be part of a network.

4.2.4 Organisational policies and practices

Developing, implementing and sustaining organisational policies

Two general strands of good practice (based on participants' own organisations) were described. The first was to treat equal opportunities policies and procedures for handling discipline and grievance issues as active, working, practical documents - for example making sure that the language was accessible and user-friendly, incorporating them into training, and including in them concrete examples, preferably based on actual cases, of what is and is not acceptable. The second strand of good practice was to ensure that policies were regularly reviewed and modified in the light of changes to legislation. The case example below describes how an organisation's approach to policies and monitoring was felt to have resulted in a positive cultural change.

Case example 8 – revising policies and introducing monitoring (organisation anonymised)
This large organisation decided that diversity was a 'buzz word', and that they needed to focus on it. Moreover, as a result of external audits they realised that they were not as good at it as they thought they were, and that there was room for improvement. The management team therefore looked at what changes they could make to give their statement of intent some real substance. They set up a steering group, and liaised with other organisations around best practice. As a result of this, they agreed a new policy and cascaded it across the organisation – staff and TU representatives were involved in agreeing it. They have also recently carried out their first diversity survey asking, amongst other things, about SO and RB. Whilst some staff did not want to cooperate, they have had sufficient response for it to be statistically valid, and a consultant is going to come in and talk them through its implications. As a result of these exercises, the participant felt that there have been a number of changes in the organisation: the jokes are very different to what they were three years ago; and managers are now actively challenging HR about what they can and can not do. Complaints on the grounds of discrimination have increased – a development thought to be positive, because it is a sign that trust has improved.

Monitoring practices and Equality Impact Assessments

One of the main challenges around equality monitoring in relation to SO and RB - discussed in Chapter 3 – concerned how best to encourage reticent staff to fill in those sections of equality monitoring forms relating to SO and RB, particularly in organisations which did not have a positive reputation around dealing with these areas. Several good practice examples were mentioned in this respect. In one case, an organisation had addressed and started to overcome low response rates by amending their monitoring form to explain more about why they were monitoring. The value of having support networks for staff alongside monitoring was also stressed; one participants' organisation had publicised the presence of staff network groups on the monitoring forms, which they felt had improved response rates, and increased membership of the groups. Using monitoring data as a tool to effect change and improve practice in relation to SO and RB was also cited as good practice, as described in the case example below.

Case example 9 – encouraging staff to take part in monitoring exercises

During the course of the deliberative event, the police were cited by participants in two different groups as an example of an organisation that had good practices in place to encourage people to take part in monitoring exercises. They had been prompted to monitor for SO by the Police Authority, who wanted information about this as well as ethnicity. Good practices were felt to include: explaining to recruits the purpose of monitoring; setting up staff network groups to complement the monitoring; clearly using monitoring as a practical basis for effecting change and improving practice, by looking at the drop-out rate, and who is getting through each stage of the recruitment processes; being transparent and constructive about negative findings; and putting policies in place to address negative findings.

As well as monitoring, there were organisations represented at the event who said that they carried out additional research amongst staff. The participant from TfL, for example, said that whilst TfL had been monitoring for SO and RB for several years, they had recently also begun a programme of staff research to understand the experiences of staff of particular SO and RBs in the wider context of the workplace culture.

There were also organisations who said that they were carrying out specific equality impact assessments now in relation to SO and RB as well as the other strands of the diversity agenda. There was a feeling that where done well, this practice could give organisations concrete information about their organisational performance, for example in relation to the career progression of people from different groups. The participant quoted below believed that such practices were much more common amongst public than private sector employers.

“Up until now, a lot of the things we’ve talked about [in relation to] equality and diversity [have been] anecdotal and a bit woolly and based on a lot of assumptions. But what the equality impact assessment process makes us do is give evidence to support the claims that we’re making. So if we’re saying this function [or] this service doesn’t discriminate against that group, we need to provide evidence to support that. We can’t just say, ‘Oh, we don’t think it does’; we’ve actually got to prove it, so we need to go out and talk to people, we need to have evidence in terms of monitoring, take up of service, satisfaction with service, whatever it is, so that we’re actually now quantifying it.”
(Representative of small organisation).

4.3 Solutions to key issues identified

The chapter now goes on to discuss the priorities and solutions generated by participants in small group work. Both the priority issues and solutions were generated within each of the four groups, although on several occasions a solution to the same priority was considered by more than one group. The priorities identified have been set out, below, as questions, in relation to four different thematic headings:

- building knowledge and understanding
- managing and sustaining change in organisational culture
- delivering messages and providing guidance
- monitoring progress.

4.3.1 Building knowledge and understanding

How can management capability for handling SO and RB issues in the workplace be improved?

This was a theme that was touched on several times throughout all of the group sessions, as described in Chapter 3, above. Suggestions for tackling the perceived lack of knowledge and confidence of line managers around these issues were as follows:

- HR to empower organisational leadership to understand what the legal requirements are, and to help them cascade this knowledge down the organisation
- Managers to receive a clear message from organisational leadership/board about what line managers are expected to take in relation to SO and RB issues in the workplace
- Mentoring to be made available to managers around SO and RB issues, particularly for managers in smaller organisations: for example, larger organisations could make mentoring available to smaller organisations; public sector organisations could mentor the private sector organisations that they work with
- For managers to have access to relevant support and advice – see directly below, and also 4.3.4.

How can employers best be helped to understand the legal requirements around handling SO and RB in the workplace?

Tackling this issue was considered a priority given the perceived lack of knowledge about the legal requirements relating to SO and RB issues, particularly given the relative shortage of published case law, discussed in 3.1 above. The solutions suggested were primarily around information needs, an issue discussed further in 4.3.4 and Chapter 5, below:

- Employers to be signposted to sources of friendly, trustworthy advice when new legislation is passed
- Employers to feel confident that the source of guidance they are turning to will give them authoritative advice, and not report them to the authorities for wanting to discuss areas where they lack confidence or have perhaps not dealt with the issues in the best way in the past
- Advice to be written in accessible language, which recognises that even basic aspects of employment law might need to be explained.

How can training in relation to SO and RB issues in the workplace be made as good as it can possibly be?

As described in Chapter 3, ensuring that trainers give SO and RB issues their due weight in the course of diversity training was considered a challenge. A further challenge was to ensure that training was not merely an attempt by an organisation to *'pay lip service'* to the diversity agenda, but rather an exercise which influenced and affected people's practices, behaviour and working lives. Suggestions were based around the second challenge, and entailed:

- Managers to receive routine training in people management skills
- Training to be creative and targeted to specific groups, for example: HR training to focus on employment practice; training with managers to focus on handling difficult conversations and tackling grievances and displays of intolerance; training with frontline staff to focus on delivery
- Specific, tailored training to be complemented by some generic training, for example organisational values and policies and the implications of new legislation for practices within the organisation
- Training to focus on equipping people with the practical skills and knowledge to be aware of SO and RB issues in the workplace, and to handle them well; for example by use of role play, real case examples, case law
- Organisations to have a forum where employees can share good practice in relation to the management handling of SO and RB issues; for example, incorporating good practice into training courses, having a database of good practice on the intranet.

How can organisations ensure that employees realise they have responsibilities as well as rights?

This report has already (Chapter 3) described the perceived challenge of getting the balance right between accommodating reasonable demands on the part of an employee, versus having the confidence to refuse demands which conflict strongly with an organisation's business needs or ethos. Suggestions for tackling this challenge were:

- Employers to be clear to employees from the outset about the organisation's ethos in relation to diversity, and what this means in terms of employee's rights and responsibilities
- Unions and staff networks also to ensure that staff are aware of their responsibilities
- Managers to understand that legally they can be taken to court as individuals, and have *personal* responsibility for accommodating employee requests where reasonable

4.3.2 Managing and sustaining change in organisational culture

How can organisations ensure that good management handling of SO and RB issues are understood and practiced throughout the organisation?

Participants often referred to the challenge of ensuring that there was good understanding of and practice around SO and RB issues throughout an organisation, rather than just embedded within senior leadership or HR. This was sometimes referred to as *'mainstreaming'*. Without this happening, it was argued

that an organisation's commitment might collapse when a senior staff member left who had been supportive of the agenda. Suggestions were as follows:

- Making an organisation's values with respect to the diverse make-up of its staff explicit from the pre-recruitment stage onwards
- Senior management to convey active support of the equality and diversity agenda, and to demonstrate this support in their practices – 'walking the walk as well as talking the talk'
- Senior management to convey the clear business case for embracing staff difference: for example, the benefits of having a large talent pool to draw from; the downsides in terms of litigation costs if failing to embrace diversity; and that commitment to the diversity agenda can help brand an organisation in such a way that they can attract the 'cream of the crop'
- Staff to have an understanding of their responsibilities in relation to equality and diversity
- Training around diversity issues to be ongoing, and to cover all new regulations and legislation
- Organisations actively to engage their workforce in the equality and diversity agenda: for example, using staff events to launch codes of conduct; consulting staff through means of focus groups and surveys
- Using TU representatives and staff network groups to engage with the equality and diversity agenda, and to convey the message to other staff
- Imparting a clear message to staff in team meetings and training about the importance of respecting equality and staff difference, and how they fit with core business values
- Integrating equality and diversity into HR practices, induction, business planning and objectives, appraisals and team meetings
- Managers held accountable for equality and diversity in the same way that they are held accountable for budgets and health and safety.

How can organisations build trust by creating a culture where people feel confident in the ability of the organisation to handle issues fairly and competently?

Building employee trust regarding an organisation's commitment and ability to handle SO and RB issues was felt to be a linchpin of good management handling of SORB issues. Without this trust, it was felt that employees would be unlikely to disclose issues of discrimination and harassment, SO and RB issues would be forced underground rather than out in the open, and problems would spiral. Ideas for how best to build trust were as follows:

- Organisations to assess their policies and actions in relation to SO and RB issues, to look at whether they are making a visible difference on the ground
- Organisations to benchmark with others, to learn good practice
- Leadership to convey 'zero tolerance' of bullying and harassment
- Senior managers to act on complaints in a way that is consistent and fair, so that the same levels of tolerance are applied across an organisation
- Managers to be respected and competent, so it is easy for people to approach them, and have conversations about problems
- The rationale for monitoring and surveys on SO and RB to be made clear to staff, and results of exercises, and their implications, to be conveyed
- Leadership to set patterns of good behaviour

- Organisations to be proactive in encouraging staff to contribute to dialogue and policies around SO and RB issues.

How best to create a culture where employees understand and respect each other's difference, but do not have conflicts or cross the line?

This question refers to the challenge - discussed in Chapter 3 above - of how best to create a working culture where employees acknowledge and respect each other's difference, whilst avoiding proselytising or conflict. In this respect it was agreed that the ideal scenario was a workplace where people could have proper dialogue with one another, and appreciate each other as people with rich, interesting, diverse lives. The following solutions were put forward:

- Line managers to make clear that conversations which enable people to learn about each other in a positive way should be encouraged
- Line managers to be active in considering how to build inclusive teams
- Line managers to appreciate that people have different thresholds in terms of what they think is acceptable
- Positive action to be based around skills and not identity; for example, should not be about recruiting a Muslim policeman for a Muslim area but a police officer with the experience and knowledge to work with a Muslim community
- Similarly, tackling problems to be based around the problem, not on someone's identity; for example, organisations to tackle bullying, not 'SO'
- A clear emphasis within organisations that behaviour beyond certain points will not be tolerated, and could result in dismissal; for example blatant disregard for another employee, hateful behaviour, harassment, bullying, teasing on grounds of SO or RB
- Organisations to anticipate where there might be inadvertent or indirect discrimination or causes of conflict, such as social evenings in the pub/ employee attendance at lap dancing clubs etc.

4.3.3 Delivering messages and providing guidance

What messages should be delivered to line managers about SO and RB issues?

It was recommended that managers should be taught:

- What legislation means in practice; for example, the meaning of EU directives translated into English law, what is meant by direct/ indirect discrimination, what the SO and RB Employment Equality Regulations require managers to do
- To engage employees in debate about what 'respecting colleagues' means in practice
- To raise diversity issues in a professional, non-judgemental way, ensuring that their approach is clearly tied in with business aims of the organisation
- How to deal with day to day issues with confidence, including: how to manage difficult conversations and to know where professional boundaries lie; how to know when a request is reasonable or not, and how to handle this; how to respond to complaints; how to know when they need further advice before making a decision; how to express this confidently

- How to explain decisions they make in such a way that illustrates that they are based on clear, evidence-based principles
- To incorporate the equality framework into every single aspect of their business development
- Where to go if they need additional support and advice.

How can small and medium sized organisations best receive practical advice and guidance?

A recurrent theme throughout the research was the feeling amongst participants that smaller organisations faced a more difficult task than larger organisations in relation to some of the areas discussed above. This was said to be because smaller employers: were less likely to be able to accommodate flexible working; had less in-house expertise on personnel issues and time to dedicate to the issues; and also because small numbers meant that people of particular SO and RBs within the organisation might lack peer support. There were several suggestions for ways to support small and medium sized businesses:

- A mechanism to be put in place for small businesses to learn from each other; the Chamber of Commerce, for example, to act as information broker, and facilitate networking
- Larger organisations to provide mentoring and advice to smaller organisations, for example those in their supply chain
- Small employers to be able to phone up a well-publicised helpline for support around handling SO and RB issues in workplace; helpline to be backed up by accessible, easy to understand web-based information, focusing on practical guidance
- Web-based programme or tool to be made available which allows small businesses to 'self-diagnose' how well they are doing in relation to good management handling of SO, RB and other diversity issues⁷
- Information to be targeted in particular at 'those businesses who don't know that they need to know', to avoid danger of preaching to the converted
- Ideally, all the information needed to be in one place.

4.3.4 Monitoring progress

How can Equality Impact Assessments be made as useful as possible?

Finally, one group considered this question, which they felt was important given their view that it was desirable for organisations to extend Equality Impact Assessments (EIAs) from focussing solely on race equality issues to also encompass other subjects under the diversity banner, including SO and RB. Suggestions were:

- EIAs to be approached as a risk assessment, as with health and safety, and to be incorporated into business case development manuals and templates
- Specifically, organisations assume the mindset of anticipating what might be problematic, or have a negative impact, on someone of a particular SO

⁷ In fact, such tools are already available, for example through Stonewall's Diversity Champions Programme, and at Acas.org.uk/Tools/Equality and Diversity

and RB, and therefore build anticipated positive and negative impacts into project designs

- Organisations to be equipped to carry out EIAs by collecting clear and relevant demographic information about their staff and customer base
- Results of EIAs to be made publicly available on the staff intranet and/ or Internet, in order to share learning and good practices with other organisations.

Although this group focused on EIAs this was not specifically linked to equal opportunities monitoring.

5 ADVICE AND INFORMATION NEEDS

This chapter describes the sources of information currently used by participants with regard to handling SO and RB issues in the workplace. It then covers participants' views on this information as well as their observations about the types of information that would be most useful to them. The chapter ends with a box setting out participants' responses to the question - asked both in the groups and the feedback forms - about what information they would most like to see in guidance for employers and managers on handling SO and RB issues.

5.1 Extent of existing learning, and current sources of information

Chapter 3, above (Section 3.1) described the general perception that, because SO and RB were relatively new equality 'strands', there was currently a shortage of best practice examples and case law from which to draw guidance. In the absence of relevant case law, several different sources of learning on SO and RB issues were mentioned.

In the first instance, there were participants who said that they largely acquired learning on good practice from observing the way that others in their organisation or partner organisations had dealt with SO and RB issues. This learning could sometimes occur as a result of observing what was perceived to be bad as well as good practice; as one participant put it, *'You see bad practices happening, and you learn the way not to do it'*.

There were also participants who said that, where they had experienced an issue which had no case law precedent that they were aware of, a solution had been reached, and learning progressed, through careful consideration of the likely impacts and outcomes of the different potential options for dealing with the problem. The participant quoted below was one of these:

"We use a form of impact assessment...there's been a couple of times over the last year where there hasn't been a precedent set anywhere and we've had to just sit down and think, "Ok well what is the best thing we can do, what's the worse thing that could happen, if we did this what would happen with that?"" (Medium sized employer).

In addition, several participants mentioned that they had used employment lawyers or specialist consultancies either for advice on handling a particular issue or problem in relation to SO or RB, or for help with drafting organisational policies. What were referred to as special interest or advocacy groups were also sometimes mentioned as a source of information in this respect, for example Stonewall in relation to SO, or Opportunity Now – Business in the Community in relation to gender. The participant quoted above had also held a transgender consultation to discuss the issue in question.

A number of more specific sources of information were also mentioned. Acas was referred to several times as a useful source of information on the *'dos and don'ts of particular religious beliefs'*, tackling discrimination in employment, addressing problems or issues in relation to SO and RB in the workplace, and reviewing or writing policies. Users of Acas information had either accessed their website, helpline, or spoken to an advisor face to face. The information accessed was

usually regarded as accessible and relevant, and Acas often seemed to be people's first or main port of call.

"I've got to say I always end up back at Acas, wherever else I go for information, I normally can't find it so Acas is normally where I go. We get HR bulletins as well and HR alerts and the information isn't always there, I always end up back at Acas" (HR representative).

Unsurprisingly given that the participants were there as employers, there was some call for Acas information to be swayed slightly more towards the employer, and for its website to include a self-diagnostic tool enabling organisations to self-assess their practices in relation to SO and RB⁸.

The Department for Business, Enterprise and Regulatory Reform (BERR) (formerly the Department for Trade and Industry (DTI), and referred to by participants as such) and the CIPD were also mentioned frequently as sources of authoritative advice on employment law. However, one participant did say that they usually turned to Acas for interpretation of DTI information, which could be rather '*cold and hard*'.

A further major source of advice for some participants was learning from other employers, either by looking at the websites of major companies to tap into their good practice, networking with colleagues working in similar environments or through employer's forums or federations or the CBI. One employer's federation, the Engineering Employer's Federation was said to have an excellent service for small to medium sized businesses, enabling members to make use of a helpline and, where appropriate, team of lawyers.

The usefulness of learning from others was also evident from the self-completion questionnaires filled out by participants at the end of the workshops. In response to the question about what learning had been gained from the day, by far the strongest response was the value of hearing about other organisations' approaches to SO and RB issues, both in terms of organisational strategy and day to day handling. The reassurance of realising that other organisations were also looking for clarity and understanding of SO and RB issues in the absence at present of significant case law or widely acknowledged good practice guidance was also thought to be valuable.

In terms of other websites, Businesslink.gov.uk, the self-help portal for small and medium sized businesses was mentioned as a useful web-based source of information. Also mentioned were the Sage HR Advice website, and croner.co.uk, the site offering businesses advice and consultancy to comply with the relevant legal requirements. The latter was said by one participant to be particularly useful for small to medium sized businesses who lacked HR departments, although there was also a comment that its website was difficult to use, and that the information was very general. There were participants too who had simply used search engines such as *Google*, to look for examples of case law; one participant said that they had found useful information in this way about how organisations in Australia and New Zealand had dealt with the issue of accommodating requests regarding religious belief.

⁸ In fact, such a tool already exists and can be found at [Acas.org.uk/Tools/Equality and Diversity](https://www.acas.org.uk/Tools/Equality%20and%20Diversity)

Finally, trade unions (TUs) were advocated by some participants as a useful source of information on the implications of new legislation. However, it was also argued that TUs did not seem to have the resources to keep abreast of changing diversity legislation, or to convey the changes to employers, and that TUs had the potential to play a larger role than they did as information disseminators on SORB issues.

5.2 Observations about information available, and information needs

A number of comments were made about the (in)adequacy of current information, which fell under several broad themes. First, there was a feeling that whilst there may be a lot of information about SO and RB issues, people were not always aware that the information was out there or how to access it. This was evident from exchanges which took place in the workshops, because there were instances where a participant mentioned a particular information need, for example an audit tool for employers, only for another participant to say that such a tool already existed.

Related to this, a strong emerging theme around information needs was for the information employers needed about SO and RB issues to be available in a single portal, rather than employers feeling that they needed to search the sites of several different organisations to find what they needed.

“There are some excellent resources you can get your hands on but it’s really about keeping it all together” (HR representative).

There was also a strong sense that the information should, as far as possible, be simple to understand, and framed in such a way that employers were able to see its immediate relevance and applicability to day to day issues, rather than needing someone further segment and interpret it for them. Including case studies and practical examples of management handling was felt very useful in this respect.

There was some call too for organisations to have access to authoritative and confidential advice. Confidentiality was seen to be important because organisations were fearful of being reported if, for example, they had not handled issues particularly well in the past. For example, it was said that some organisations might be wary of approaching the Equality and Human Rights Commission for this reason. Other participants thought that Acas already fulfilled this objective, providing *‘authoritative advice which was mutual and friendly’* on the subjects of handling problems and implementing new legislation. There was some agreement that this was therefore more of a publicity issue than an information gap.

The advice needs of smaller organisations in particular were also discussed. Because they lacked dedicated HR departments or diversity experts, these types of organisations were felt to need clear signposting around what it was they needed to know about diversity issues, as well as where to go for accessible, relevant information. Suggested solutions to this issue have been set out in detail in Chapter 4, section 4.3.3 above, and included opportunities for

networking with other small businesses and larger organisations, and a self-diagnostic tool or website coupled with a helpline, ideally with the same branding.

Finally, there was some feeling that the government could help employers by providing guidance to upcoming legislation well in advance of it becoming a legal requirement, and by improving their communication about SO and RB issues through the mainstream media. In this respect, there was a feeling that the '*red tops*' (tabloid newspapers) tended to dominate coverage of these issues, and did not always do it in a balanced and informed way.

5.3 Information participants wanted to see in guidance for employers on handling SO and RB issues

The box below sets out participants' responses to the question, asked both in the groups and in the feedback forms, about what information they would most like to see in guidance for employers and managers on handling SO and RB issues. It should be noted that some participants were not referring to their own information needs, but to what they perceived to be the key information needs of line managers, based on experiences within their organisations.

Box 5.3 – Advice participants wanted included in guidance for employers in handling SO and RB issues

- Clear definition of what is meant by 'religious belief'
- Clear information on legal requirements in relation to SO and RB, why law is necessary, and implications if law is broken
- Practical examples, based on case studies, of the common issues that might arise in relation to handling SO and RB in the workplace
- Examples of best practice handling of SO and RB issues
- 'Headline' information on the likely needs and aspirations of different SO and RB groups
- Information on the 'dos and don'ts' of different religions, whilst acknowledging that these might not apply to everyone with these religions
- Advice on developing a business case for diversity
- Guidelines for developing policy in relation to SO and RB
- Information about value of monitoring, and how monitoring information can be used positively by organisations
- Guidelines on the value and practicalities of carrying out Equality Impact Assessments for SO and RB
- Advice on developing practical tools to train and engage staff around SO and RB and promote dialogue
- Advice on how to embed the 'respect' agenda throughout an organisation, from policies down to actions of managers and other staff
- The benefits of dealing with SO and RB issues ASAP rather than waiting for Employment Tribunals
- Advice on how to empower middle managers to have confidence to address SO and RB issues
- Advice to small businesses about how to handle having only one or a small number of employees with particular SOs or RBs within their organisation
- Clear signposting to sources of help and advice – including what types of help and advice the different sources offer, and who they are aimed at

6 CONCLUSIONS

6.1 Management of SO and RB Issues – Knowledge and Challenges

It is evident from these findings that employers felt that there was a shortage of evidence-based guidance and case law around SO and RB issues in the workplace, particularly relative to the other 'strands' of the equality and diversity agenda.

As described in the introduction, the fact that the two strands - SO and RB - were introduced together was a question of timing, not because they were regarded as intrinsically alike. This said, a number of management issues were felt to be common to both SO and RB, in particular: integrating them into equal opportunities policies and monitoring practices; having open recruitment processes; putting mechanisms in place to create, and maintain tolerant organisational cultures; and educating managers in the key issues likely to arise for each strand, how to handle them, and where to go for advice. It will be noted that these approaches were felt important for other strands of the diversity agenda too.

However, it was also clear that in many ways participants viewed SO and RB as different entities, requiring different approaches and solutions. On the whole, employees were expected to be open about their religious beliefs. As a result, there was a feeling that good management handling of religious beliefs could constitute in part proactive, tangible, administrative responses on the part of employers - in particular around the accommodation of practical requests such as respecting holy days, attendance at services, space for worship and specific dress requirements. By contrast, SO was not regarded as something that employees would necessarily be open about, particularly in cultures with a reputation for intolerance. It was also the case that there was apparently a lack of understanding about issues relating to SO, and a good deal of fear or hesitancy in addressing them. As a result, management handling of SO issues was usually talked about as being necessarily more low key and seen as more discretionary than was the case for RB issues. Most notably, there was perceived to be a need to: maintain a culture of tolerance and respect in a climate of changing moral values and legal requirements; respond appropriately and sensitively to claims or evidence of prejudice, harassment and discrimination.

In relation to RB specifically, there was a lack of clarity about the priority employers should give to accommodating religious beliefs versus other employee needs that are not as clearly protected by law. Most notably, Acas' booklet on religion and belief in the workplace (Acas, 2005b) and other reviews of ET decisions (e.g. Fitpatrick, 2006) are clear that, although employers should ensure they do not discriminate and make reasonable accommodations, there is generally no requirement for them to do so. A key requirement in the guidance will be the need to clarify the balance of rights and responsibilities between employers, managers and employees in relation to RB in the workplace. How to draw a line between allowing people to express their faith versus disallowing

proselytising, or hostility towards LGB people, was also an issue associated with the RB Regulations.

In relation to SO there was felt to be a need in particular for diversity trainers to be better equipped to handle training around SO issues. This in turn was felt likely to help instil management with a confidence to address SO issues rather than shy away from them for fear of doing the wrong thing or causing offence. It will be important for future guidance to provide examples of SO issues, how best to handle them, when and where to seek additional support, and how a culture of respect and tolerance can be established and maintained in the workplace.

6.2 Good Practice and Barriers to Good Practice

This research has identified existing evidence of good practice around management handling of both RB and SO issues. In some cases good practice was prompted by the Employment Equality Regulations, coupled with embracement of the business case. In other instances, good practice had been prompted by external reviews, or events that had occurred within an organisation that suggested action needed to be taken.

Many of the examples of good practice provided by participants reflected existing published good practice advice and guidelines (e.g. Acas, 2005c). However, these were also complemented by new examples of good practice and solutions to challenges identified by participants. Salient examples of good practice identified in the study included:

- Flexible working, which allows accommodation of religious needs, plus other reasonable employee requests
- Educating managers in the appropriate and judicious use of discipline and grievance procedures, as well as when and how it would be appropriate to handle issues more informally
- Prompt use of mediation services to resolve conflict where deemed appropriate
- Tailored training for staff throughout an organisation
- Basing training around role play and case examples
- Building commitment to diversity into line managers' job descriptions and appraisals
- Regular staff consultation on diversity issues
- Clear message from organisation leadership about what is and is not acceptable
- Having mechanisms in place to cascade learning about diversity issues throughout an organisation
- Having a reflective culture which involves prompt and detailed assessment of any problems that have occurred
- Demonstrating that an organisation has supportive and tolerant culture by supporting SO/RB events and network groups
- Monitoring for SO/RB, and having a clear rationale for doing so, which is explained to staff
- Building consideration of SO/RB into EIAs
- Reviewing policies in light of new legislation, and ensuring awareness of policies is cascaded throughout an organisation

It should be noted that several of the examples of best practice listed above involve extending to SO and RB what are existing practices around other strands of the diversity agenda. This again relates back to the comparative recency of SO and RB on the equality and diversity agenda. Indeed, there was a shared sense amongst participants that they would have to learn more and implement additional initiatives as they faced new issues. They could also learn more from SO and RB cases in other organisations.

There was a view that ideally best practice should involve the implementation of policies and practices in combination in order to optimise impact, and that there were risks attached to implementing initiatives in isolation. For example, equal opportunities monitoring was not thought likely to be successful without other demonstrations of organisational tolerance. Overt demonstrations of tolerance such as supporting diversity events were not thought to be adequate without being accompanied by assessment of an organisation's performance in relation to such markers of equality as recruitment and career progression.

At the same time, there was acknowledgement that continuing bad practice could result from a lack of interest, knowledge or confidence to deal with SO and RB issues among managers. A key barrier was thought to be a *lack of knowledge or confidence* amongst line managers in handling SO or RB issues. This was particularly important given that they were felt to be the linchpins in terms of whether or not an organisation can be said to be successful in this area. There was a feeling that without their significant support in this area, messages from the top, and organisational policies will fall down. There was also a view that poor handling by line managers - most commonly perceived to be failures to tackle issues because of fear or lack of knowledge - can cause problems within an organisation to spiral. Other barriers to good practice were thought to be:

- Lack of knowledge about case law and good practice, leading to a sense amongst some organisations of being ill-equipped to handle the issues; particularly where accompanied by lack of knowledge about where to go for advice and a dearth of HR or other staff who have the expertise to implement and interpret advice and legislation;
- A view among some small organisations without dedicated HR or diversity experts that there is a lack of time and resources to address these issues;
- Engrained workplace cultures where lack of tolerance towards particular SO and RB issues is felt to exist beneath the surface, or sometimes even overtly.

Additionally, for smaller organisations in particular, further barriers were thought to relate to greater difficulties accommodating flexible working (particularly relevant to RB issues), and the potential lack of peer support for people with particular SO and RB issues (e.g. difficulties establishing networks or support groups for staff).

6.3 Advice and Information Needs

This evidence suggests a strong need for existing information about handling SO and RB issues to be clearly signposted to employers; including awareness-raising amongst employers who might not even *'know what they need to know'*. A key

issue was that participants felt that they and their colleagues were struggling to understand and deal with SO and RB issues in the face of the absence of case law and good practice guidance. The fact that such case law and good practice guidance has begun to be developed suggests that employers and managers may be unaware of it or that existing guidance is not meeting their needs. Evidence from this study suggests that a lack of awareness appears to be the primary issue, with the need for such guidance to be consolidated in one, easily accessible place. Discussion throughout this report also provides an indication of how existing Acas and CIPD guidance could be developed and improved. However, a future review of the extent and quality of good practice guidance could make a substantial contribution in this field.

In terms of specific information needs, *practical pointers* to the main issues expected to arise in relation to these areas are likely to be highly valued, as are case examples of issues that have already arisen, alongside 'good' and 'bad' responses to them. It is also important that people feel that the source of information they refer to is easy to understand, non-threatening, and will support them in handling the issues better in the future. This approach was preferred to one which was overly critical about past incidences, and carried the associated risk of prosecution.

Information needs as described in chapter 5 relate both to the day to day handling of SO and RB issues, and more strategic areas such as devising and implementing policies, equal opportunities monitoring, building up management capacity, creating a business case and carrying out Equality Impact Assessments. There was also evidence that information on the following would be valued:

- The importance of implementing several good practice strands at once;
- The need to tackle issues arising promptly;
- Sources of support/ advice for handling day to day problems as well as strategic issues;
- How to ensure that training around these issues is as practical and relevant as possible;
- How best to empower and inform line managers.

There is a further need for information to acknowledge and address the particular issues which might be faced by smaller employers, and also for all the relevant information on legislation and the practicalities of responding to it (including the case law and case examples discussed above) to be in one place. Establishing new or publicising existing mechanisms to enable organisations to network, support each other and share good practice would also be valuable.

7 REFERENCES

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Managing sexual orientation and religious beliefs in the workplace

Monday 30th June, 10 am – 4.30 pm, Royal Institute of British Architects,
66 Portland Place, London WB1 1AD

Programme			
Time	Activity	Content	Room
10.00-10.30 am	Registration, tea and coffee		Soane room
10.30-11.00 am	William O'Connor, Director Qualitative Research Unit, NatCen Ed Sweeney, Acas Chair Alan Christie, Policy Director, Equality and Human Rights Commission	Welcome Introductions, context and aims of the day Role of EHRC, importance of fair treatment and good relations in the workplace	Lutyens room
11.00 am – 12.45 pm	Break out groups – session 1	<ul style="list-style-type: none"> o Mapping experiences, knowledge and issues in relation to SO and RB o Identifying challenges, problems and areas of conflict, from recruitment to day to day issues o Sources of internal and external advice and information, the usefulness of such advice and information 	Group 1, Lutyens room Group 2, Aston Webb room Group 3, Indigo Jones room Group 4, Voysey room
12.45 – 1.45 pm	Lunch		Soane room
1.45 – 3.30 pm	Break out groups – session 2	<ul style="list-style-type: none"> o Identifying solutions to problems identified in the morning session o Examples of good practices and policies o Facilitators to positive handling of SO and RB issues and to achieving harmonious workplaces and fair treatment o Advice, information and guidance needs 	Group 1, Lutyens room Group 2, Aston Webb room Group 3, Indigo Jones room Group 4, Voysey room
3.30-4.00 pm	Tea and coffee	Opportunity to network and share ideas	Lutyens room
4.00 – 4.30 pm	Dianah Worman OBE, Adviser Diversity, CIPD Sarah Veale, Head of Equality and Employment Rights, TUC Chris Creegan, Deputy Director, QRU, NatCen	Plenary session - feedback from group sessions, summing up What happens next, thank you and close	Lutyens room

Appendix B Topic guides and other materials

Management handling of sexual orientation and religion and belief in the workplace (P6204)

Topic Guide – Morning Session

Focus of morning session (11.00 am – 12.45 pm)

- Mapping experiences, knowledge and issues in relation to SO and RB
- Identifying challenges, problems and areas of conflict from recruitment to day to day issues, including the level of understanding of these issues relative to other diversity issues
- Levels of knowledge in relation to internal and external advice and information on SO and RB issues, and the usefulness of such advice and information

N.B. participants will be allocated to groups depending on the size of their organisation and issues should be addressed in relation to how large, medium and small organisations might experience different issues and challenges.

(1) Organisation of the session

(10 minutes, 11.00-11.10, not to be recorded or transcribed)

- *Allow participants to settle down*
- *Introduce the Facilitators and their roles (NatCen, Acas Advisors, Trades Union representatives, Roving Experts, Reporter). N.B. do not ask each participant to introduce themselves to the group as there will not be sufficient time*
- *Explain the aim is to share experiences, knowledge, views in an open way BUT keep contributions brief*
- *The morning session is mainly about mapping the issues in relation management of SO and RB. The afternoon will focus on good practice and problem solving*
- *Explain recording of the session (digital sound recording and flip charts), anonymity of responses*
- *Explain that there will be small-group deliberation and opportunities for group discussion*

(2) Small group work using vignettes

(15 minutes, 11.10-11.25, not to be recorded or transcribed)

The aim of this session is to start participants thinking about sexual orientation and religion or belief issues in their workplace. The vignettes are designed to reflect different aspects of employment where employers and managers have a role in handling SO and RB issues. It is likely that employers will have different levels of experience of these issues, so the vignettes should be used flexibly (a) to stimulate thinking about whether participants have experienced similar issues in their organisation (b) how they have handled such issues OR, if they limited experience of such issues, how they would handle the cases given in the vignettes

(c) where they would seek advice and information in relation to the handling of such issues (N.B. participants will have been sent these case studies in advance of the event in order to start their thinking).

Divide the participants into small groups of 3-4 and ask them to look at the vignettes and discuss the issues associated with them. Ask some groups to start with V1 and work forwards; ask others to start with V4 and work backwards.

We suggest that you ask participants "what they think"? about each vignette in turn and whether they have experienced similar issues; then do the same for V2, V3, etc.

N.B. these are fictitious cases but based on real cases and issues arising from the research literature on SO and RB issues and grievances in the workplace.

Vignette 1 – Recruitment

A Muslim journalist has made a complaint to an Employment Tribunal that he was not short listed for a job as a News Editor despite being suitably qualified for the job. The organisation is a large employer based in an area that is ethnically and religiously diverse. The journalist has made a case for direct discrimination based on race and religion. Your investigation reveals that it is unclear exactly how the person specification and job criteria were related to the candidates who were short-listed by the short-listing panel. Of the ten Editorial posts in the organisation you note that none are occupied by people from minority ethnic groups or by people with non-Christian backgrounds. Could there be a case of religious discrimination to answer? How could you address the issues raised?

Vignette 2 – Complaint of Harassment and Bullying

A lesbian worker employed in a call-centre made a complaint to the human resources department that she suspected that she was being ostracised and harassed after her partner telephoned the office and asked to speak to her thereby revealing her sexuality. A number of homophobic jokes have been circulated via email and she believes that her Supervisor is giving her unrealistic targets to meet in terms of the number of calls she must handle compared to her colleagues. The HR department initially tried to address the complaint informally with her colleagues and posted copies of the equal opportunities policy on the notice boards. However, they also stated that her Supervisor had said that her performance was poor. Since the complaint the number of jokes has increased and offensive graffiti has been written on the displayed equal opportunities policies. The worker has now complained to you as the Managing Director of the company. Do you think there would be a case of sexual orientation harassment to answer? How would you now handle this complaint? Where would you seek advice?

Vignette 3 – Accommodation of Religious Observances

You run a small cleaning company providing cleaning services for local care homes. Until recently it was not necessary for your staff to work on Sundays but a drive to improve cleaning standards in the homes means that you have been asked to provide services all week. One of your staff is a devout Christian and has refused to work on Sundays arguing that this will prevent her from attending her local church service and being with her family on that day. You have a diverse workforce and say that the employee must work some Sundays in order not to alienate staff who are of other religions or who do not have a religion. The

employee subsequently resigns and makes a complaint of discrimination. Would you have a case of indirect discrimination to answer? Could you have done anything as an employer to alleviate possible conflicts among your employees based on religion and belief, or to accommodate the wishes of the employee?

Vignette 4 – Conflict between Respect for Sexual Orientation and Religious Beliefs

A number of employees complained to you as the Human Resources manager of a large charity that a colleague was distributing material condemning homosexuality or telling them that they will personally go to hell if they live a gay or lesbian lifestyle. Following an investigation it was found that these reports were true and the employee was dismissed for breaching the organisation's equal opportunities and diversity policy. The employee subsequently took a case of religious discrimination to an employment tribunal arguing that the dismissal did not allow him to behave in a way in line with this religious conscience. Is there a case of religious discrimination to answer?

START RECORDING

(3) Group feedback and discussion using the vignettes and discussion points (a) and (b) below

(50 minutes, 11.25-12.15, to be recorded and transcribed)

This part of the session will use the vignettes to stimulate discussion of SO and RB issues in general and to map out key (a) experiences of SO and RB issues; (b) the handling of such issues; and (c) sources of advice and information.

Where possible emphasis should be placed on actual experiences BUT the vignettes can be used to stimulate discussion where participants have limited experience to draw on. We suggest that you spend 20-25 minutes on the vignettes AND section (a) 20 minutes on section (b) and 5 minutes on section (c)

(a) Understanding, Experiences and Knowledge of SO and RB Issues

- **Experiences and issues (similarity/ difference of vignettes from issues in participants' workplaces)**
 - Recruitment processes
 - Training opportunities and promotions
 - Harassment and bullying
 - Terms and conditions
 - Do not disadvantage people of specific RBs
 - Same benefits for civil partners, LGB partners and families
 - Religious observances
 - Observance/ prayer days or times
 - Festivals and holidays
 - Clothing, dress requirements, religious symbols
 - Dietary requirements
 - Changing and washing facilities
- **Key challenges/ conflicts arising in relation to SO and RB issues**
 - Challenging SO and RB discrimination in the workforce
 - Mistaken understandings

- Balancing needs of religious and non-religious employees
- Conflicts between the SO and RB regulations
- Genuine occupational requirements (exemptions for the purpose of an organised religion under the SO regulations, attempts to exclude LGBs, non-religious people and people of a different RB under the GOR provisions of the RB regulations)
- Other conflicts
- **Level of understanding and knowledge of SO and RB issues**
 - Views on understanding of SO and RB issues among:
 - Managers, inc. at different levels and in different roles (e.g. Executives, senior or middle management, HR, diversity managers)
 - Staff
 - Consistency across the organisation
 - Respect for fellow employees on the basis of SO and RB
 - Organisational/ managerial culture
 - Attitudes of employees
 - Relative to other diversity issues such as race, disability, etc.

(b) Management Handling: Challenges, Problems and Conflicts (11.50 to start this section)

- **Key management handling issues – mapping the terrain**
 - Managing managers, ensuring understanding of equality and diversity issues
 - Communicating legal requirements and company policies on equality
 - Creating equal opportunities policies
 - Dealing with prejudice, harassment and bullying
 - Handling of complaints and grievances
- **Key barriers to good management handling**
(facilitators discussed in afternoon session)

Organisational culture

- Extent of leadership
- Extent of 'buy in' from managers at all levels
- Cascading information through the organisation
- Consistency across the organisation
- Management of changing expectations

Training issues

- Poor training for managers on SO and RB issues/ awareness
- Lack of understanding why respect relating to SO and RB is important, prejudiced handling of complaints

Diversity and respect

- Failure to challenge cultures of SO and RB discrimination
- Failure to establish or implement equal opportunities policies
- Failure to protect employees from bullying and harassment
- Absence of skills to manage changing attitudes to SO and R&B in the workplace

Handling grievances

- o Non-response/ delays in dealing grievances
- o Trivialising complaints, covering them up, keeping them informal when it is no longer appropriate to do so
- o Lack of confidentiality
- o Poor record keeping of complaints and grievances
- o Disciplinary for poor performance where SO and RB issues arise

Understanding and awareness

- o Understanding of the benefits of equality and diversity
- o Management views of the benefits

Other issues

(c) Advice and Information (12.05-12.10 to start this section)

- **Sources of advice and information**
 - o Internal sources
 - o External sources
 - o Sourcing and delivering training
 - o Ongoing support
 - o Sources at different levels of management
- **Helpfulness of existing advice and information (e.g. Acas, CIPD, others)**

(4) Individual thinking in relation to the discussion so far

(5 minutes, 12.15-12.20, not be recorded or transcribed)

Participants have been provided with a sheet to help consolidate their thoughts following the discussion so far. The points they raise will be fed back as a group and will be used as the basis for the afternoon session. Ask them to quickly note down their thoughts in relation to the following questions:

Think sheet 1
What do you think are the key issues relating to SO and RB in the workplace?
What are main challenges facing managers in relation to these issues? Are the challenges different for different managers?

What are your main knowledge gaps in relation to these issues, if any?

Are there any other issues you would like to see addressed?

(5) Group feedback and summary of issues to take forward to the afternoon session

(20 minutes, 12.20-12.40, to be recorded, written on flip chart and transcribed)

While the participants are completing their think sheets, organise the summary with the headings below on the flip chart

Referring participants to their think sheets, ask them what they think in relation to the questions above. Identify whether there is general agreement in the group and ask them to draw out priorities for discussion in the afternoon session.

Ask a member of the group to act as a scribe to note down key points and highlight priorities (where necessary).

Headings to be put on the flip chart

Key issues:

**SO
RB**

Main challenges

Knowledge gaps

Other issues

(6) Explanation of reconvening after lunch

(5 minutes, 12.40-12.45, not to be recorded or transcribed)

- *Thank participants for input so far*
- *Explain that the summary above will form part of the solutions-based discussion in the afternoon session*
- *Explain that they will be in the same group and the same place*
- *Direct participants to the buffet lunch*
- *Ask them to return as promptly at 1.45 pm as possible*

Facilitators should pin the flip charts from the last session around the room in preparation for the afternoon session.

LUNCH (12.45-1.45 pm)

Management handling of sexual orientation and religion and belief in the workplace (P6204)

Topic Guide – Afternoon Session

Focus of afternoon session (1.45 pm – 3.30 pm)

- Identifying solutions to problems identified in the morning session
- Identifying examples of good practice and policies, for example, in relation to the handling of complaints, grievances and conflicts in the workplace relating to SO and RB, what works, where and for whom?
- Facilitators to positive handling of SO and RB issues and to achieving harmonious workplaces and fair treatment
- Remaining advice and information needs

N.B. participants will be allocated to groups depending on the size of their organisation and issues should also be addressed in relation to how large, medium and small organisations might have different needs and generate different solutions.

(1) Organisation of the session

(10 minutes, 1.45-1.55)

- *Allow participants to return and settle down*
- *Explain the aim is to share experiences of good practice, identify outstanding issues and generate solutions*
- *Reiterate recording of the session (digital sound recording and flip charts), anonymity of responses*
- *Explain that there will be small-group deliberation and opportunities for group discussion*

START RECORDING

(2) Group reflection on issues arising from the morning session AND identification of good practice to date

(a) Key Issues and Challenges

(10 minutes, 1.55-2.05, to be recorded and transcribed)

Ask participants to briefly reflect on the summary of the morning session in relation to the key issues and challenges they identified. Is there anything they would like to change or add on further reflection? Once the group is agreed, move on to ask about examples of good practice.

(b) Good Practices to Date

(25 minutes, 2.05-2.30, to be recorded and transcribed)

As a group ask participants if they have any examples of good practice in relation to (a) the key issues and challenges they have identified AND (b) facilitators to good management handling of SO and RB issues and conflict resolution

strategies. Where participants discuss examples of good practice draw out from them what informed their good practice OR how did they learn that good practice? Please ask participants who give examples of good practice their name and which organisation they represent, as we will need their permission to use their examples in our report.

- **Facilitators to good management handling**

- Training issues

- Provision of awareness and equalities training
 - Developing skills to manage changing expectations about SO and R&B in the place
 - Skills to manage SO and RB issues – listening, sensitivity, problem-solving

- Policies

- Auditing existing policies, practices, terms and conditions, etc.
 - Involving staff in creating diversity/ equal opportunities policies
 - Establishing and implementing equal opportunities policies and action plans
 - Clear policies on bullying and harassment
 - Monitoring and recording policies

- Sensitive and flexible arrangements

- Recruitment processes, clear person and job specifications
 - Understanding employers responsibilities under the regulations
 - Obligations in relation to religious observances
 - Legitimate and proportionate policies
 - Flexible working practices
 - Negotiation and compromise
 - Balancing employee and employer expectations – what is 'reasonable'

- Handling harassment complaints

- Countering bullying and harassment
 - Swift response to complaints and grievances
 - Moving from informal, 'quiet word' approach towards formal procedures when needed
 - Dealing with complaints/ grievances in a sensitive and thorough way
 - Advice and conciliation in relation to complaints and grievances

- **Conflict resolution strategies**

- Flexibility in working practices, terms and conditions
 - Involving staff in creating equal opportunities policies
 - Improving awareness and understanding of SO and RB issues
 - Identifying internal resources (e.g. key staff/ managers, networks)
 - Identifying external resources (e.g. Acas)
 - Other strategies

- **Processes involved in learning about good practice**

- Facilitators to change in organisational culture
 - Processes involved in developing good practice

(3) Identification of challenges and priorities for solution generation

(10 minutes, 2.30-2.40, to be recorded, written on the flip chart and transcribed)

Ask the group to return to the key challenges and issues they identified earlier. On the basis of the proceeding discussions, ask them to identify up to three issues that still require solutions or improved information and advice.

(4) Small group work to brainstorm solutions

(15 minutes, 2.40-2.55, not to be recorded or transcribed)

Break the group into 3 small groups of approximately 4-6 people. Give each group a sheet of flip chart paper and pens and ask them to brainstorm solutions to the issues and challenges they have raised AND/ OR to consider the advice and information they would need to resolve the issues.

Participants could join the group that most interests them if there are sufficient people in each group.

(5) Group feedback of solutions/ discussions

(25 minutes, 2.55-3.20 pm, to be recorded and transcribed)

Ask each group to feedback their solutions, then invite the wider group to discuss what they think will work or whether they would have concerns in relation to the solutions. Where there are continuing knowledge gaps, what are these?

(6) Feedback form

(5 minutes, 3.20-3.25 pm, not be recorded and transcribed)

Draw the attention of participants to the feedback forms (which will be in their packs). Ask them to complete the form now or before they leave today answering the questions listed:

Feedback form 2	Group No. <i>(please specify)</i>
What new learning have you gained from the event today, if anything?	
What information would you most like to see in guidance for employers/ managers on handling SO and RB issues?	
Are there any other issues you would like to raise?	

(7) Explanation of reconvening for plenary

(5 minutes, 3.25-3.30 pm, not to be recorded or transcribed)

- *Thank participants for their input*
- *Explain that there is now a half-hour break and direct participants to tea/ coffee in the main room where they can network and relax*
- *Tell them that the plenary session will take place in the main room at 4.00 p.m. prompt*
- *Emphasise that the plenary will provide a summary and discussion by panel members of the day*
- ***Encourage participants to make use of the afternoon networking session and to attend the plenary***

