



Research insight

Employers' experiences in addressing sexual orientation, religion and belief at work

Contents

- Foreword 3
- Introduction 4
- Legal background 5
- The business case for diversity 6
- 1 Employer awareness about SORB issues in the workplace 9
- 2 Challenges facing managers and how to overcome them 10
- 3 Managing change in to create an open culture of acceptance about SORB 13
- 4 What sources of information are available? 18
- References 20
- Appendix 1 21

Foreword

Recent laws banning unfair discrimination on the basis of sexual orientation, religion and belief have challenged employers to review working practices to make sure they do not compromise individual rights to fair access to jobs and training. (When passed, the Equality Bill published in 2009 will stretch these responsibilities to embrace access to goods and services as well.) But how easy have employers found it to handle the employment-related issues in connection with these newly protected diversity identities and what major differences have they noticed?

Curious to learn about the practical experiences, the Chartered Institute of Personnel and Development (CIPD) worked jointly with the Advisory, Conciliation and Arbitration Service (Acas) during 2008 to explore the challenges. To do this, the Qualitative Research Unit at the National Centre for Social Research (NatCen) was commissioned to carry out a qualitative study using deliberative research techniques.

Findings from this research suggest that unfair discrimination relating to religion and belief are more likely to have indirect rather than direct causes and involve making appropriate changes to unnecessarily rigid and restrictive working policies, practices and procedures. On the other hand, it is prejudice about sexuality that causes problems regarding managing sexual orientation and requires challenging attitudes. Those who took part in the NatCen qualitative research hold the view that line managers and trainers tend to be less comfortable about dealing with issues related to sexual orientation because of underlying controversial views about sexuality.

These observed differences in the root causes of problems related to the management of sexual orientation, religion and belief reflect the findings of other Acas research, which shows that tribunal cases related to religion and/or belief are more typically related to failure to respond appropriately to requests for flexible working arrangements while harassment and intimidation are more likely to be the reasons for unfair discrimination regarding sexual orientation.

In the absence of case law, it appears that employers struggle to feel confident about taking practical steps to defeat unfair discrimination on the basis of sexual orientation, religion and belief. This fuels the need for clearly signposted practical guidance and the need to facilitate information-sharing to build expertise so faster progress can be made towards more inclusive workplace practices and behaviours.

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Introduction

In March 2008, the CIPD and Acas commissioned the Qualitative Research Unit at NatCen to carry out a deliberative research study to find out how organisations respond to issues relating to sexual orientation (SO) and religion and/or belief (RB), jointly referred to as SORB, in the workplace.

The aim was to find out what practical challenges arise from the introduction of new discrimination laws in 2003 (the Employment Equality (Sexual Orientation) Regulations and the Employment Equality (Religion and Belief) Regulations) and identify solutions to inform and promote good practice guidance.

HR practitioners experienced in driving the diversity agenda drawn from the CIPD's membership database were invited to take part in a specially structured one-day research event held at the end of June 2008 in central London, along with people suggested by Acas and the Trades Union Congress (TUC). The purposive sample included participants from diverse management levels and backgrounds and organisations of all sizes across the public, private and voluntary sectors.

The event featured speakers from Acas and the Equality and Human Rights Commission (EHRC) as well as from the TUC and the CIPD. The 48 voluntary participants contributed to plenary and eight in-depth group discussions, which were designed to facilitate both discussion and reflection. Deliberative research techniques were used to provide a discursive and dynamic context to explore the main issues and challenges and generate solutions.

A CIPD forum event held in November 2008 featured the first findings of the joint Acas/CIPD research, published in 2009 as an Acas research paper – *Management Handling of Sexual Orientation, Religion and Belief in the Workplace* – and freely available on the CIPD and Acas websites at www.cipd.co.uk/research and www.acas.org.uk/researchpapers. This event provided a further opportunity to explore the issues and practical challenges and feature organisational case studies. (The Forum event programme is in Appendix 1.)

This CIPD Research Insight report draws from the joint Acas/CIPD report, the CIPD forum event and interviews with the quoted organisations.

It focuses on:

- management experiences of handling SORB at work, including positive and negative issues
- strategies and policies
- conflict resolution strategies, including the use of grievance and disciplinary processes, the role of third parties, and mediation
- employers' advice and information needs, including awareness of legal obligations, guidance and support
- examples of good practice solutions.

Legal background

Employers' duties regarding unfair discrimination related to sexual orientation, religion and/or belief in the workplace are covered in the Employment Equality (Sexual Orientation) and the Employment Equality (Religion or Belief) Regulations, which came into force in December 2003.

The business case for diversity

There are good business reasons for employers to be smart at managing all forms of diversity in the workplace. These are well evidenced in CIPD published research (Ozbilgin et al 2008).

Business case drivers relate to organisational objectives and circumstances and focus on talent management, marketplace competitiveness, and corporate brand and reputation.

Organisations that recognise the business case advantages to be gained from managing diversity are more likely to adopt people management policies and practices and ways of working that chime with legal duties not to discriminate unfairly against people because of issues related to their personal identities.

As defined by the CIPD (2005), diversity management is about 'valuing everyone as an individual – valuing people as employees, customers and clients'.

The ability to manage diversity effectively is fundamental to competitiveness and success.

Barkema, Baum and Mannix (2002) position diversity as one of the main challenges facing management in the twenty-first century. Research from the Boston Consultancy Group, *Creating People Advantage: How to Tackle the Major HR Challenges During the Crisis*

and Beyond, shows that diversity is one of the top global issues for management attention.

Other academic research illustrating the business benefits of managing diversity in the workplace includes a study by Cummings (2004) involving 182 work groups in the list of Fortune 500 companies. It shows that the organisational value of knowledge-sharing increases if work groups are structurally diverse and have members with different affiliations, roles and positions.

CIPD survey research (2006, 2007) shows a range of different business benefits from diversity management, including:

- meeting diverse customer demands more effectively
- improving understanding and ability to succeed in complex global markets
- delivery of the 'psychological' contract (the unwritten expectations employees have about the relationship they have with their employer), improved employee relations and employee retention
- improvements in the quality and performance of employees in terms of skills, creativity, problem-solving and flexibility.

Table 1: The business case for diversity – key drivers for diversity in terms of business benefits (respondents ranked their top five on a scale of 1–5, with 1 being the most important)

Drivers	Percentage of respondents					Overall importance
	Most important	Very important	Important	Less important	Least important	
To recruit and retain best talent	13	17	19	8	7	64
Because it makes business sense	17	14	14	7	8	60
To improve business performance	6	10	15	10	7	48
To address recruitment problems	8	11	12	8	7	46
Desire to improve customer relations	5	8	15	8	7	43
To improve products and services	10	9	13	5	7	44
To improve creativity and innovation	6	8	14	8	7	43
Desire to reach diverse markets	6	7	11	7	8	39
To improve corporate branding	5	7	13	7	5	37
To enhance decision-making	3	8	15	5	4	35
To respond to the competition in the market	6	6	10	7	4	33
To respond to the global market	6	3	8	6	7	30

Base: 285 respondents

Source: *Diversity in Business: A focus for progress*. CIPD, 2007

Publicity about workplace problems

Press attention last year focused on controversy regarding SORB issues in the workplace regarding dress codes and workplace behaviour. For example, in November 2008 a British Airways check-in clerk who claimed she was religiously discriminated against for wearing a cross on a necklace lost her appeal case. It is reported that Miss Ewieda is taking the case to the Court of Appeal. In February this year, the courts awarded a gay man £62,525 in compensation after a colleague made offensive comments about his sexuality.

Good practice can help to avoid such bad publicity and the consequential damage to corporate reputation. This CIPD report aims to give important insights into problems that can arise and how to avoid them. It includes some case studies to show what some organisations have done to make progress and lists useful references.

Below is an example of an organisation that adopted a creative and thoughtful approach to accommodate the religious beliefs of its customers when it held a multi-faith exhibition.

British Library

The British Library held a 'Sacred Exhibition' for Judaism, Islam and Christianity in 2007. High levels of visitors of different faiths were anticipated many of whom were likely to be orthodox but there was insufficient resource space in the Library to be able to provide separate prayer or quiet room facilities. The British Library consulted with leaders from a range of religions and beliefs on provisions for prayer and then alternative arrangements were made which included listings of local religious establishments that would be able to accommodate visitors who wanted to go and use their facilities. These were available on the website and in handouts.

The Library also consulted faith leaders with regards to religious dress. The Library has legal obligations for collection security and to sustain the requirements of the formal 'Conditions of Library Use', inclusive of security, dress and conduct codes. A careful balance had to be determined between any accommodations that might need consideration for readers and visitors wearing devout religious dress whilst not compromising security or potentially discriminating against other readers. It was found that the British Library had reasonable justification in the continued application of the 'Conditions of Library Use' as they stood and could apply this without unnecessarily restricting access for people of different religions and beliefs or discriminating against other readers.

Additionally, 355 front line service staff and managers received bespoke religion and belief awareness training to give them confidence and consistency in handling different religion and belief needs. The training encompassed areas such as different beliefs, communication and behavioural styles, definition, legal requirements and duty of care. It prepared the Library not just for the Sacred Exhibition but for the new Religion and Belief regulations effective from April 2007.

1 Employer awareness about SORB issues in the workplace

From the events referred to above, it is apparent that the extent to which employers feel knowledgeable and confident about handling SORB challenges varies and is dependent on job roles and the amount of time people have. But their experiences point to information being inadequate. There is very little good practice guidance and the lack of case law means the boundaries of the primary legislation have not been tested and remain unclear.

Against the background of some high-profile media cases, this can lead to organisations lacking confidence in paying attention to the unique challenges related to SORB issues and being tempted to wait for employment tribunal evidence before taking action to implement relevant policies and practices.

But those experienced in managing SORB workplace issues point out that religion and/or belief are much more likely than sexual orientation to concern everyday administrative practicalities, such as the application of dress codes, while issues related to sexuality are much more likely to involve challenging prejudice and dealing with harassment and victimisation.

Barriers to good practice regarding SORB

Issues related to sexuality are described as less transparent. Fewer incidents are thought to get reported by employees, who are thought to be more likely to be open about their religions and beliefs. This is partly because of the need to disclose them to get time off work for religious observances. Representatives from some organisations feel that prejudice related to sexual orientation is the main reason for problems occurring and say that this can manifest itself in several forms, ranging from 'hate crime' to undercurrents of harassment and intolerance.

Line managers are described as less confident about dealing with incidents related to sexuality and trainers tend to 'tack the issue onto' the end of diversity training sessions and cover them in less detail than other diversity issues. Personal embarrassment about sexuality and underlying prejudice are regarded to inform not only line

management behaviour but also that of members of employment tribunals.

Lack of familiarity with legal obligations regarding SORB is identified as a barrier to change, especially in smaller companies and among middle managers in larger companies. HR practitioners feel there is a tendency among middle and line managers to abdicate responsibility for managing SORB, by passing it to HR colleagues. This becomes problematic when referrals are made 'late in the day', by which time a dispute or problem can become unnecessarily inflamed.

Overall, it is perceived that there is 'limited' activity in progressing SORB management in the workplace despite pioneering examples of good practice. Several reasons are given for this and are set out below.

Reasons for barriers to good practice regarding SORB issues include:

- lack of interest and limited competence among line managers
- a pecking priority order for diversity issues
- pervasive cultures of harassment and bullying
- limited diversity in employee profiles
- no challenge or issue raised.

Organisations are seen to be inconsistent and incoherent in the ways they approach the management of diversity.

One participant pointed out: 'My organisation is very good at overt demonstrations of tolerance, for example setting up an event such as an LGBT (Lesbian Gay Bisexual Transgender) history week, but their performance as an organisation in relation to equal opportunities monitoring is poor.'

Another participant said: 'My organisation is focused entirely on recruitment in relation to achieving a diverse workforce and neglects ways of integrating people into the entire workforce resulting in the "bottom" 20% of employees being from ethnic minorities and under-represented at higher levels.'

2 Challenges facing managers and how to overcome them

Handling the administration of SORB issues

Taking into account business challenges is seen as paramount in responding to requests about RB issues, but two areas of concern exist in relation to accommodating them.

- 1 Making judgements about prioritising employee requests for time off for religious observances against those made by employees for other reasons, for example meeting social or family obligations.
- 2 Whether it is more important to take into account observances specified by a religion or belief or those interpreted by employees themselves to be part of their religion or belief.

The administration of SORB issues is affected by challenges related to:

- lack of case law causing uncertainty about how to deal with conflicting rights
- uncertainty about making balanced judgements about the 'reasonableness' and relevance of requests
- lack of confidence and knowledge among line managers about SORB issues and a fear of litigation
- concern about unions pressing organisations to roll out specific concessions given to individuals to the wider workforce
- uncertainty about having open discussions with new recruits about their requirements prior to their joining the organisation
- transparency about allocating time off, fairness and backlash
- trying to accommodate religious and other personal needs with operational needs and confidence in the latter not being contestable.

Examples of practical accommodations to enable religious observance include:

- allowing employees to take different public holidays so they can observe their own religious festivals, where these are different from those in the Christian calendar
- adapting existing flexible job rosters
- providing quiet rooms for prayer, contemplation or meditation
- providing dedicated faith rooms.

'At Transport for London (TfL) we have over 15 different faith rooms.'

Dealing with complaints/grievances related to SORB

The research points to the importance of dealing with grievances about SORB issues quickly to prevent them from escalating into more serious problems. Making employees feel confident they can trust their employer to take their grievances seriously is vital to prevent them from 'keeping their heads down and putting up with banter' for fear of a backlash and victimisation.

Some solutions about handling SORB complaints and grievances include:

- clear policies and guidance for line managers
- appropriate training, information and tools
- policies biased towards giving employees 'another chance' in circumstances when there is a counter charge of poor performance emerging from the grievance process
- encouragement for line managers to be objective, fair and quick to treat issues seriously
- easily accessible further advice, guidance and support for line managers to help them deal with more challenging problems appropriately.

A number of examples of good practice in handling SORB issues emerged from the research, including:

- using a front-line services diversity group to improve customer service
- regular consultation with line managers about the kinds of issues that can arise and how to deal with them
- education and awareness-raising events for everyone about diversity issues
- training for line managers about challenging bullying and harassment
- clear messages from the top team about acceptable and unacceptable workplace behaviour and the consequences of breaking behaviour codes
- 'zero tolerance' messages about standards of behaviour and what is unacceptable backed up by dismissing employees who fail to comply
- clear disciplinary and grievance policies and advice for managers about implementing them successfully
- using staff surveys to explore and benchmark issues.

As well as the above, other ways of guiding line managers about handling conflict are recommended, such as the use of mediation experts. One organisation used a mediation service that operated independently of the HR department. The use of mediation is regarded as a way of helping employees to reach mutual understanding about the issues and see how to work together in a positive way to reach appropriate and workable solutions.

'Defra seeks to create an environment where concerns and issues can usually be resolved in a simple, confidential and timely way without recourse to formal procedures. Staff can refer issues for mediation by trained and independent mediators, while they can also seek confidential support from a number of sources, including Harassment and Bullying Support Advisers and the external Employee Support Service, which provides a 24/7 telephone service and access to counseling services.' Peter Hall, Diversity Specialist, Defra.

The role of training

Employee awareness training about SORB management is seen as vital. But health warnings are flagged up, which include checking that:

- trainers have the knowledge, skill and confidence to cover SORB issues effectively and are briefed to make sure they give no less weight to SORB issues than they do to other diversity issues

- training is designed to make a real difference and not to just 'tick boxes'.

Solutions to good training practices for SORB issues include:

- all employees receiving relevant training and regular updates
- having line manager support and guidance and feedback discussion interviews
- trainers emphasising that the good management of SORB issues makes good business sense.

Research participants gave examples of how they train employees on SORB issues. Approaches vary from offering this as part of general diversity training for everyone, including refresher courses, to offering training related to new discrimination legislation and integrating diversity issues into other training programmes.

Overall there is consensus that: 'Lip service to training on SORB is not a good use of the training budget. Training must make a difference to workplace practices and behaviour in ways that support business goals.'

Suggested solutions to achieve good results from SORB training include:

- using SORB training creatively by integrating issues into other training, such as: employment practice for HR practitioners; handling difficult conversations and tackling grievances and displays of intolerance for line managers; service delivery for customer-facing employees; people management skills for line managers
- complementing specific customised training on SORB issues with generic training on organisational values, diversity policies and legal responsibilities for tackling unfair discrimination
- considering role-play, real case examples and case law to make training practical and build confidence
- backing up SORB training by having employee networks to share good practice in relation to SORB management
- putting information about good practice on the intranet.

The financial services group AXA PPP has an innovative company training exercise on religious discrimination and other employment law issues called 'Project Julie'. This uses a multimedia approach, including: live and recorded drama; the company intranet; and a teasing campaign designed to provoke debate and understanding among employees.

'We have no specific issues around SORB within AXA PPP. Our stance has always been prevention rather than cure and we use a variety of training and communication tools to do this, most notably Project Julie, which deliberately raised the issue and brought it to the fore.' Mark Moorton, Engagement Director, AXA PPP

Raising line manager awareness about SORB issues

Lack of awareness about SORB issues, fear of breaking the law and low confidence in taking appropriate action can stop line managers from tackling conflict situations. For instance, an example was given of a line manager not wanting to pursue an employee's long history of poor performance after she had come out as a lesbian.

Such problems can be avoided by:

- providing information for line managers about their legal responsibilities, personal liabilities and offering mentoring
- embedding responsibilities in personal performance objectives
- making it clear how the organisation expects them to behave
- signposting accessible guidance and support.

'Managers do need greater knowledge and awareness about SORB issues. Unlike disability, gender and race, which have been covered by legislation and best practice for a long time – religion and belief and sexual orientation are relatively new diversity issues and don't have the same profile and history. There is less confidence and expertise within organisations about handling them and in the legal world too – because case law is only just beginning to evolve.' Diane Brown, Diversity Specialist, British Library

It is important to remember that line managers face the challenge of balancing the organisation's business needs and accommodating reasonable requests from employees as well. This is not always easy and suggestions to help them do this include:

- being clear to line managers and employees from the outset about the organisation's ethos in relation to diversity, and what this means in terms of an employee's rights and responsibilities and personal obligations
- encouraging unions and employee networks to ensure that all employees are aware of their role to deal with requests seriously
- emphasising that individuals themselves have personal responsibilities to uphold discrimination law as well as organisations.

Equipping middle and line managers with the skills and motivation to handle SORB issues in a sensitive and appropriate way is acknowledged to be challenging, but some organisations do this successfully by including positive performance criteria in relation to diversity into line managers' objectives and performance assessments.

Delivering guidance to managers

To help line managers in connection with handling SORB, they need to know:

- what legislation means in practice and how it means they should behave
- how to engage employees in debate about what 'respecting colleagues' means in practice
- how to respond to diversity issues in a professional, non-judgemental way, taking into account business aims and diversity policies maybe using the concept of objective justification and reasonableness in decision-making to instil confidence in defending actions when challenged
- how to deal with day-to-day issues confidently, professionally and reasonably
- how to manage difficult conversations sensitively
- how to make bias-free decisions on the basis of evidence and good diversity practice
- where to go if they need additional support, guidance and advice.

3 Managing change in to create an open culture of acceptance about SORB

Serious harassment or discrimination related to SORB is more likely to occur in organisations where employees feel uncomfortable about being open about their sexuality and religious beliefs. In terms of creating a comfortable, accepting culture, experience stresses the importance of organisations making specific references to SORB in their diversity policies and signalling commitment to follow good practice to respond to issues and overcome barriers.

Barriers to developing an accepting culture of SORB issues include:

- employer and employee fear of raising issues because of prejudice, litigation and 'saying the wrong thing'
- all forms of intimidation and harassment, including covert harassment through social emails and work-related social situations.

Creating a culture of acceptance towards SORB requires:

- integrating SORB into organisational values and employment and operational policies and practices
- open collective discussions about general SORB issues and ways of addressing them
- making the good management of SORB the responsibility of every department
- promoting the business case for valuing and managing diversity

- clarity from top management about what behaviours will not be tolerated and what behaviours will be expected.

Making the management of SORB a mainstream business issue

To create an open culture about SORB, it is essential that everyone and every department is responsible for taking issues seriously in connection with workplace behaviour and the work that is carried out. Resting responsibility with top management and the HR department is not enough.

One approach to 'mainstreaming' is to have strategies in place to ensure that learning about diversity issues is cascaded throughout the organisation.

'In my organisation we have a weekly "cascade mechanism" – to pass information down from the executive team to senior leads, who then pass it on to their teams. This system is used to filter down awareness about new diversity policies.'

Another example of 'cascading' is where management translates the organisation's diversity policy into a number of actionable bullet points for local area managers. Each area manager is given a few specific objectives to achieve the requirements of the policy.

A further example of specific members of staff taking ownership of, and acting as disseminators of, learning around diversity issues is described below.

Anonymous case study regarding mainstreaming

This organisation's approach to 'mainstreaming' involves using a team of managers from each business area to act as champions for equality and diversity issues. When new legislation arises, it's the responsibility of this team to assess the implications, report to senior management and the board and discuss the need for change with all area managers.

Another organisation has introduced an Employment Law newsletter and plans to introduce a diversity newsletter to keep employees well informed.

Mainstreaming is critical to create inclusive ownership for progressing diversity and for supporting diversity champions whose role should be to stimulate continuous attention to the diversity agenda.

Suggestions for mainstreaming SORB include:

- making the organisation's diversity values explicit in all employment stages, including recruitment, development, retention, reward and recognition, redundancy and release
- requiring senior management to actively support the progress of diversity by demonstrating this in what they do as well as what they say – 'walking the walk' as well as 'talking the talk'
- senior management emphasising the business case for diversity, the benefits of having a large talent pool to draw on and avoiding litigation costs
- helping all employees to understand their personal responsibilities in relation to equality and diversity
- diversity training and regular updates
- working with trade union representatives and employee networks to foster engagement with the diversity agenda
- sending clear messages about the importance of valuing diversity and how it fits with core business values
- integrating diversity into all employment policies and practices, profiling its importance and relevance in induction processes, business planning, objective-setting, appraisal processes and teamworking
- making line managers accountable for diversity progress in the same way that they are held accountable for budgets and health and safety.

'A combination of good training and briefing and absolute zero tolerance of poor behaviour exercised from the top down encourages good practice when it comes to handling sexual orientation and religious

belief in the workplace.' Mark Moorton, Engagement Director, AXA PPP

Building a culture of respect and trust

Experience and evidence suggest it is important to create an organisational culture in which individuals feel comfortable about disclosing their sexual identity and religious beliefs.

Examples of how organisations have made progress include holding events to showcase LGBT History Month and different religious festivals, and supported employee networks with endorsement from top teams.

Building employee trust regarding an organisation's commitment to SORB issues is a linchpin in managing the issues well. Without trust, it is felt that employees are unlikely to disclose when they are subjected to discrimination and harassment, keeping SORB issues hidden and preventing problems from being managed out of the organisation.

Ideas for building trust include:

- auditing employment policies and practices in relation to SORB issues to see what impact they are having and reviewing them to overcome shortcomings
- benchmarking with other organisations to learn about good practice
- making sure top teams communicate messages about 'zero tolerance' of bullying and harassment
- ensuring senior managers are quick to act when complaints are made in a way that is consistent and fair, so that the same levels of tolerance are applied throughout the organisation, irrespective of hierarchy
- encouraging managers to be approachable so it's easy for people to talk to them about problems

Department of Health: Leadership encouraging tolerance of SO issues

For LGBT History Month, the management team at the Department of Health organised an event in the atrium of their biggest building in London. The Secretary of State for Health attended and gave a keynote speech. The Chief Medical Officer also spoke and Chris Smith gave a personal speech about being the first openly gay MP and cabinet minister. The HR manager felt this endorsement by senior figures was critical in signalling that the Department of Health has a culture and policy of tolerance.

Transport for London (TfL): Successful use of staff network groups

TfL has seven employee network groups, including an LGBT group and faith network groups. Although the groups are self-managed, TfL provides specialist advisers 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. The TfL representative stressed that the groups aren't intended to usurp the role of trade unions, 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.

- advocating the advantages of diversity monitoring and employee attitude surveys, assuring confidentiality about personal information and transparency about results
- encouraging leaders to set good standards of personal behaviour to uphold the organisation's diversity values.
- making it clear that individual employees can be taken to court as well as the organisation in connection with unfair discrimination.

Establishing employee networks for different SORB issues is seen as a valuable way to create a culture of respect and tolerance as they enable employees to develop peer group support. However, getting networks started can be challenging. Allocating money from a central budget helps – as does top team support.

Policies and practices

A challenge presented by SORB is how to integrate handling these issues with other diversity issues protected by law.

Problems include:

- lack of case law
- management ignorance of SORB and lack of buy-in
- getting the balance right between accommodating reasonable employee requests and the organisation's business needs and having the confidence to refuse requests that conflict with them.

Solutions include:

- being clear about the organisation's diversity ethos and employees' rights and responsibilities
- ensuring unions and employee networks are aware of their responsibilities in driving diversity progress

Monitoring progress

Views and experiences in monitoring SORB are widely varied. But experienced organisations argue that monitoring is critical to enable diversity progress to be measured and help justify positive action measures.

The main cause for concern about monitoring SORB is perceptions about employee reluctance to disclose information about these personal identity issues on monitoring forms. In this respect, several organisations cite low response rates in their own workplaces. One of the main stumbling blocks is felt to be employees' lack of certainty on joining an organisation about how well such identity issues will be accepted if made public and confidence about the way in which such information will not be used unfairly and inappropriately. Gaining employee trust and confidence is acknowledged to be challenging but important and is seen to demand rigorous employer honesty in upholding confidentiality and fairness.

Barriers to successful SORB monitoring include:

- employer nervousness or opposition to monitoring and/or lack of awareness of the benefits
- reluctance of individuals to provide personal details, resulting in low response rates
- inexperience in using monitoring data and low awareness about its value as a management tool to check for fairness.

Good practice recommendations to help overcome problems include:

- explaining why monitoring data is important, who will see it, how it will be used to support diversity progress – emphasising that data is being collected to promote fairness and inclusion and giving assurances about confidentiality
- having an open, accepting culture built on mutual trust between employees themselves and the employer.

Although it is apparent that encouraging people to provide monitoring information about SORB is not easy, there are some good practice examples of how this can be done.

One organisation's approach to progress diversity using monitoring has resulted in a positive cultural change. It has overcome low response rates on these issues by changing the original monitoring form to explain the purpose and value of having such data.

Another organisation promoted the existence of employee SORB network groups on the monitoring forms themselves and this improved response rates as well as the membership of the employee networks.

Other organisations in the public sector carry out specific equality impact assessments (EIAs) in relation to SORB as well as other diversity issues. This is driven by the public sector legal duties to carry out EIAs.

EIAs have produced concrete information about organisational performance regarding mainstreaming

SORB into employment and operational practices, for example in relation to the career progression of people from different groups.

'What the equality impact assessment process makes us do is give evidence to support the claims that we're making bids for public sector contracts. So if we're saying this service doesn't discriminate against that group, we need to provide the evidence to support that...' Representative of small organisation

The proposals in the Equality Bill to extend the use of EIAs to all protected diversity issues is considered an appropriate way forward to progress diversity in the public sector.

Other suggestions for progress include:

- regarding EIAs for SORB in the same way as 'risk assessment' tools used for health and safety
- anticipating both the negative and positive impacts on SORB regarding projects and policy proposals to help improve both their design and execution
- gathering relevant demographic information about employees and customers and clients to inform EIAs
- profiling the results of EIAs for SORB on intranets and the Internet to share learning about good practice.

Reviewing policies and practices and introducing diversity monitoring

This large organisation decided diversity was a 'buzz word' and that they needed to focus on what they did. As a result of external audits, they realised that there was room for improvement and the management team looked at what changes they could make to give their statement of intent on diversity real substance.

They set up a steering group to explore the challenges and got in touch with other organisations about good diversity practice. As a result of this research, they agreed a new diversity policy with employee and trade union representatives and cascaded it throughout the organisation.

Following this they carried out their first diversity survey asking about SORB. While some staff didn't want to co-operate by providing monitoring information, the organisation collected enough responses to be statistically valid and a consultant was engaged to help them explore the implications for change shown by the data.

The organisation was able to introduce a number of changes following this work and has seen some important improvements:

- The jokes told at work are very different from what they were three years ago.
- Managers now actively challenge HR about what they can and can't do.
- Complaints on the grounds of discrimination have increased, showing that problems are coming out into the open and enabling them to be managed – a development thought to be positive because it's a sign that trust has improved.

4 What sources of information are available?

There is an appetite for more practical guidance about managing SORB. The lack of good practice case studies and limited case law leave employers unsure about what to do.

Currently they rely on their own organisational learning in dealing with emerging issues, employment lawyers and specialist consultancies when designing SORB policies and responding to particular incidents. Special interest or advocacy groups are also used, such as Stonewall in connection with sexuality.

The Department for Business, Enterprise and Regulatory Reform (BERR (now the Department for Business, Innovation and Skills (BIS)), Acas, the CIPD and trade unions are mentioned frequently as sources of authoritative advice.

Many explore the Internet to find out what other organisations are doing and use networks and employers' forums related to their own economic sectors to keep in touch with the practices of their contemporaries.

But the experiences described by the research participants suggest that accessing up-to-date information is a problem. While there may be a variety of information sources, employers both have little knowledge and time to find out about them. What is needed to address this shortcoming is a single information portal that signposts employers to relevant, up-to-date information.

Employers need easily accessible information framed in a way that helps them to see its immediate relevance to day-to-day issues. They would like access to an authoritative and confidential helpline, but confidentiality in accessing advice is regarded as important because organisations fear exposure to legal challenges.

The advice needs of smaller organisations are special as they do not have dedicated HR departments or diversity experts. Suggestions to meet the information needs of smaller organisations include opportunities for networking with other small and larger businesses and a self-diagnostic tool and a website coupled with a helpline.

There should be more advanced warning from government sources about forthcoming legislation to help employers prepare for new legal duties and protect themselves from being exposed to legal claims. Better communication strategies should be adopted to do this and mainstream media needs to be engaged as information brokers as well as commentators on public policy provisions.

The following are the kinds of information that employers say they need to make progress on managing SORB:

- more clarity on what is meant by 'religious belief'
- business case arguments to underpin the law
- explicit information about what the law aims to achieve and legal duties and sanctions
- case study examples of good practice covering the main practical implications
- information about different religions and beliefs and religious observances
- guidance on developing a business case for diversity
- SORB policy guidance
- information about the value of monitoring and how to use monitoring data to guide the implementation of practical changes to working policies and challenges
- guidelines on the value and practicalities of carrying out EIAs
- advice on developing practical tools to train and engage staff about SORB and how to promote open dialogue

- advice on how to give line managers confidence in managing SORB
- facts about the advantages of taking action to address SORB ahead of employment tribunal decisions
- relevant advice for small organisations
- clear signposting to relevant information and the kinds of help and advice available and what it covers.

Key challenges in progressing SORB

To address the needs identified by people experienced in managing these newer diversity issues, it is clear that more practical information, guidance and help than is currently perceived to be available is needed and that this should take into account the challenges identified in this report.

SORB has been found to need different responses and practical solutions than other diversity issues. RB is most likely to involve requests for time off for religious observance, the provision of an appropriate space and concerns everyday administrative practicalities. SO is more likely to involve individual workplace behaviours and the need to challenge prejudice and harassment.

Employers are confused about the legal status of prioritising requests for time off on the basis of the reasons given. Are requests related to RB more important in law, for example, than those related to childcare? And how much attention should be paid to these reasons as opposed to the ability of an organisation to accommodate them without compromising business priorities – for example by making changes to the way work is managed? Employers are uncomfortable about what legal defence they have to act and fear being taken to court.

There is a lack of confidence too about encouraging respect for people's religions and beliefs, banning proselytising at work and how to address hostility towards LGBT people based on religious beliefs.

While training line managers in SORB is regarded as very important, there is a lack of confidence in the ability of trainers to cover the issues effectively.

There is also a lack of buy-in about monitoring SORB. This is influenced by views about monitoring being inappropriate and potentially offensive and intrusive as well as a lack of understanding about how to do it, the value of doing it and how to use monitoring data. Guidance about monitoring and case study examples will help to overcome this resistance.

'Organisations need to monitor sexual orientation. It's the right thing to do. The forthcoming Equality Bill will be a huge legal driver. If you're a good employer and you wish to ensure you have an inclusive culture, then you should start putting in place arrangements to monitor sexual orientation now.' Peter Hall, Diversity Specialist, Defra

Recommendations for SORB progress

- While the Equality Bill will help to remove confusion about individual rights regarding SORB not to be subjected to unfair discrimination and the legal obligations employers have, it will be essential to make easily accessible, practical advice, guidance and help available – preferably through a single portal.
- A case study resource about good practice is needed and, as SORB case law develops, it should be well profiled as an information source to inform good practice.
- More attention should be given to the development of appropriate training materials and training expertise.
- Line managers are identified as pivotal to SORB progress and their needs should be taken into account when designing training.
- The needs of small businesses should be catered for.

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Appendix 1

Managing sexual orientation, religion and belief in the workplace

Special interest forum networking workshop

**Venue: CIPD Offices, 3rd Floor, Manning House,
22 Carlisle Place, London SW1P 1JA**

Friday, 14 November 2008

Employers are increasingly at risk of falling foul of growing employment legislation. Failing to comply with the law can be costly, as we've seen lately in the case of *Fletcher v The Royal Artillery*, where the claimant is demanding £400,000 compensation for sexual harassment. Such claims are also likely to impact the organisation's reputation and its ability to deliver high levels of performance, as employees and customers lose faith in the business.

The Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003 are some of the more recent pieces of legislation that place greater liability on employers to make sure that prejudice and stereotyping on the basis of sexuality or religion and belief doesn't result in unfair decisions about jobs and training.

However, just fulfilling legal requirements and ticking boxes is not enough; addressing issues related to sexuality and religion or belief as part of a coherent diversity strategy is essential. But how can organisations effectively handle challenges surrounding sexual orientation, religion and belief at work? And what HR strategies, policies and practices will help employers embrace diversity in its entirety, which will not only avoid excluding certain groups from the workplace but also help organisations take advantage of the business benefits that can be achieved from building diverse workforces?

This seminar will share with you key messages and themes emerging from recent research on employers' experiences of managing sexual orientation, religion and belief issues in the workplace. It will offer some practical solutions on how good practice organisations are tackling sensitive and difficult scenarios as part of their overall approach to diversity. There will also be time for you to debate and network with our expert speakers and fellow CIPD members.

Programme

09:45	Registration and coffee
10:00	Chair's introduction and welcome Dianah Worman, Diversity Adviser, CIPD
10:10	Managing sexual orientation and religion or belief (SORB) in the workplace: challenges and solutions Speakers: Dr Martin Mitchell, Senior Researcher, National Centre for Social Research, and Gill Dix, Principle Researcher, Acas
10:50	Peak Performance – gay people and productivity This session will explore how sexual orientation has impacted the workplace and what organisations, as part of their approach to diversity, can do to make the work experience of gay people more positive. It will also share with you what some top employers are doing to maximise performance amongst this group of employees. Speaker: Ruth Hunt, Head of Research & Policy, Stonewall
11:20	Q&A session
11:35	Coffee break and networking
11:50	Case study: title to be advised Speaker: Paul Howarth, Gay/Bi men's representative for the LGBT Steering Committee at the MOD
12:20	Q&A session
12:30	Case study 1: What unites and divides people of faith today? How do we address this? <ul style="list-style-type: none">• 'Sacred: Discover What We Share' was the first in a series of exhibitions celebrating the diversity of religious traditions within Britain today. It explored commonalities and differences between Judaism, Christianity and Islam and attracted over 180,000 people from across a broad spectrum of faith and of no faith, making this the library's most-visited exhibition ever.• <i>The Times</i> rated it as No. 1 of the Top 20 London Exhibitions in 2007; and it received glowing reviews from broadsheet newspapers not only in the UK, USA and Australasia, but also in the English-language press in countries such as India, Pakistan, Saudi Arabia, Egypt, Uzbekistan and China. Speaker: Diane Brown, Quality and Diversity Manager, The British Library
13:00	'Project Julie' – a case study in innovation and discrimination Speaker: Mark Moorton, Engagement Director, AXA PPP Healthcare
13:30	Q&A session
13:40	Lunch, networking and close

We explore leading-edge people management and development issues through our research. Our aim is to share knowledge, increase learning and understanding, and help our members make informed decisions about improving practice in their organisations.

We produce many resources on learning and development issues including guides, books, practical tools, surveys and research reports. We also organise a number of conferences, events and training courses. Please visit www.cipd.co.uk to find out more.



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