

Equality bulletin number 22 –
Eliminating Sexual Orientation
Discrimination in Northern Ireland -
Housing

July 2009

Introduction

The Equality Commission has released a new housing Guide on 'Eliminating Sexual Orientation Discrimination in Northern Ireland'.

This bulletin provides a summary of the key points in the Guide but it is recommended that staff download a copy of the from -

<http://www.equalityni.org/archive/pdf/SOHousingguide.pdf> or request a hard copy from the Equality Unit (contact details at the end).

Legislation introduced in Northern Ireland in January 2007, 'The Equality Act (Sexual Orientation) Regulations (NI) 2006' (the Regulations) made it unlawful for service providers to discriminate against people because of their sexual orientation in the provision of goods, facilities and services, the management and disposal of premises (including land), the provision of education and the exercise of public functions. The Regulations also covered housing, advertisements and private members clubs.

Discrimination on grounds of sexual orientation was already unlawful for employers and others (including institutions of further and higher education) in the areas of employment and vocational training under the Employment Equality (Sexual Orientation) Regulations (NI) 2003.

Background

Lesbian, gay, and bisexual people often face unacceptable prejudice in their everyday life. Research has identified that lesbian and gay people face a number of issues in relation to housing and accommodation including; eviction, unrecognised co-habitation, succession rights, discrimination from neighbours and landlords and ill treatment.

Being lesbian, gay or bisexual does not itself represent a housing need. However other people's reaction to the sexual orientation of individuals can play a role in precipitating a housing need and potentially a housing crisis.

The legislation makes it unlawful for service providers to provide goods, facilities and services on less favourable terms on grounds of sexual orientation.

What is sexual orientation discrimination?

Sexual orientation discrimination is where people are treated less favourably because of sexual orientation. This includes people who are:

- homosexual (gay, lesbian)
- bisexual
- heterosexual.

It also covers:

- perceived sexual orientation, even if incorrect assumptions are made about a person's sexual orientation;
- people who are associated with others of a particular sexual orientation.

Discrimination and civil partners

The Civil Partnership Act 2004 enabled same-sex couples to obtain legal recognition of their relationship by forming civil partnerships. This includes tenancy rights.

Civil partners are able to bring a sexual orientation discrimination claim against providers of goods, facilities and services who deny them access to a service or benefit, or if the service is being offered to married persons in similar situations.

Who does the legislation apply to?

The legislation covers any person involved in the areas of housing and accommodation.

This includes:

- NI Housing Executive,
- housing associations,
- hostels,
- private landlords,
- estate agents,
- property developers,
- managing agents, and
- owner occupiers.

The main points of the legislation and their impact on the Housing Executive are detailed in the new Guide.

Key Issues for the Housing Executive

Disposal of premises

When disposing of any premises (including selling or letting land) it is unlawful to discriminate against individuals on grounds of sexual orientation:

- in the terms on which the disposal of (selling/letting) those premises is offered;
- by refusing an application (to buy/rent) for those premises; or
- in the treatment of those on a list requiring housing, such as deliberately overlooking them or giving priority to people of a certain sexual orientation.

Disposal covers both the sale and lease (rent) of premises (including land) and any other form of legal disposal, for example, by licence. It includes the grant of a right to occupy the premises. Where the premises are part of, or subject of, a tenancy, they include assigning the tenancy (or assignation of), or sub-letting the premises or any

part of them, or parting with possession of the premises or any part of them.

What is meant by 'premises' and 'tenancy' under the Regulations?

The legislation includes land of any description e.g. houses, flats, bed-sits, and sites are covered by these provisions.

A tenancy includes a tenancy created by a lease or sub-lease, or by an agreement for a lease or sub-lease, or by a tenancy agreement, or in pursuance of any statutory provision. Tenancies do not have to be in writing to be covered.

Management of premises

It is unlawful for a person managing any premises to discriminate on grounds of sexual orientation (actual or perceived) against those occupying premises, such as tenants, other occupiers, or someone who is associated with them in:

Access to benefits and facilities e.g. laundry facilities, access to a garden, or parking facilities.

Eviction - It is unlawful to evict a person occupying premises on grounds of sexual orientation. This prohibition does not prevent the eviction of lesbian, gay, bisexual or heterosexual tenants where the law allows it, for example, where they are in rent arrears or they have breached other terms of the tenancy, or where the reason for eviction is not related to sexual orientation. It should be noted that any differential treatment in the eviction process could lead to a breach of the Regulations.

This covers all aspects of the duties towards a tenant, or other occupier, or someone associated with them.

Are there any exceptions to the Regulations?

The Regulations do not apply to every disposal of premises. There are certain exceptions relating to disposal and management of premises.

Owner occupiers - for example, where a person is giving or selling a house privately to someone they know and not using the services of an estate agent or advertising the sale, the Regulations do not apply.

Small dwellings - only applies to houses and other residential property and is in place to preserve an individual's right to privacy in their own home, however this is conditional.

Employer liability

A housing provider (selling, letting or managing premises) may also be an employer. An employer may be liable for any act of discrimination carried out by employees in the course of their employment whether the act was done with or without the employer's knowledge or approval.

Examples of sexual orientation discrimination

The Guide provides the some examples of where sexual orientation discrimination may occur in housing:

Tenancy agreement/eviction

On the death of her same-sex partner, a female tenant is given four weeks notice to quit, although she is not in arrears of rent or otherwise in breach of the tenancy. However, on the death of a partner, heterosexual tenants in the house, whether married or not, are allowed to continue to live in the house and the tenancy agreement is changed to the surviving individual's name.

The gay tenant is being treated less favourably on grounds of sexual orientation and this is likely to be unlawful under the Regulations. If the tenant was in arrears of rent, or has broken the terms of the tenancy, then the landlord may be within his/her rights to evict.

Instructions

A farmer is selling land and instructs the local estate agent not to accept any offers or viewings from 'gay people'. This is likely to amount to discrimination under the Regulations. If the estate agent acts on these instructions, then the agent's actions are also likely to be unlawful under the Regulations.

Licence or consent

A tenant of a house occupies the premises under a tenancy agreement with a right to sub-let the house with the prior consent of the landlord-owner. The tenant is being posted to work abroad for a year and wishes to sub-let the house to a same-sex couple. The owner of the house refuses consent to the sub-letting. This is likely to be unlawful under the Regulations.

If you would like a copy of the Guide or any further information or advice please contact:

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