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**Monitoring LGBT Workers**  
**A TUC guide for trade unions**

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#### **Introduction**

Since December 2003, workers have been protected against discrimination in employment and training on grounds of their sexual orientation. The law - the Employment Equality (sexual orientation) regulations 2003 - made for a fundamental change in the position of lesbian, gay and bisexual workers. No longer could someone legally be sacked because she was a lesbian or harassed because he was gay. Transgender workers have a different legal position. The Sex Discrimination Act prohibits discrimination on grounds of gender identity, while the Gender Recognition Act 2004 created full legal recognition for a trans person in their new gender. But trans workers face many of the same issues as LGB workers including on the question of whether, or how, to monitor.

Before the 2003 law came in, the TUC advised that workers should not be monitored for their sexual orientation. But now, unions have begun to reconsider this. After all, monitoring is a very important way to confirm whether an organisation's policies on race or gender equality are working. Should the same now apply for lesbian, gay, bisexual or transgender workers? This guide advises this is still a very sensitive area. The TUC advice is that the position is different, and monitoring should be undertaken if, and only if, the basic principles proposed in this guide have been established first. Similar principles will apply if a union wants to monitor its own membership on these grounds.

#### **The Starting Point**

Having laws to protect lesbian, gay, bisexual and trans workers doesn't mean that the discrimination has disappeared. On the contrary. One of the commonest problems faced by LGB or T workers is harassment and abuse. This continues to be

the situation in all too many workplaces. Because of this culture, many people still conceal their sexuality or gender identity. Most LGB workers are not “out” at work: maybe homophobic “jokes” are commonplace, maybe they fear what would happen at home if their own families find out. Trans workers can face similar kinds of abusive behaviour. Invisibility is the most important difference from race and gender discrimination and it has very important consequences for deciding whether to extend monitoring to cover sexual orientation or gender identity.

The law does not make it obligatory to monitor sexual orientation or gender identity. There is no requirement to do so. Very few employers currently do. Whether one should, or not, continues to be the subject of debate. A basic rule is, it should only be done if it is going to be useful.

The advice of the TUC is: look carefully at the basics, outlined in the next section, and decide to proceed only if you can answer all the questions with a clear “yes”.

## Principles

If discussing the monitoring of LGBT employees with an employer, unions should insist on the following principles before it is put into practice.

- There must be a full LGBT equality policy already in place, and action to implement it;
- Everyone should be clear why monitoring for sexual orientation and gender identity is being carried out, and what will be done with the results;
- There should have been a process of consultation on, and explanation of, the first two principles, prior to completion of the plan and implementation;
- There needs to be an absolute guarantee of confidentiality of the information collected.

This is not an academic exercise. Rather, the success or failure of the whole exercise may depend on proper attention to these points. Unless complete confidence exists that the basic principles have been adopted and understood, many people will refuse to answer monitoring questions, or will not answer them honestly, quite reasonably rejecting the idea that their employer should know their most personal characteristics. This will undermine the whole purpose.

In short, unless there is a high level of confidence that the employer understands and is committed to LGBT equality, that the monitoring is part of a plan to bring about positive, real improvements, and that the data will be strictly confidential, then the advice of the TUC is that there should be no monitoring for sexual orientation or gender identity.

Recognising the considerable overlaps between these fundamentals, let us now look in more detail at each of the elements.

### **An equality action plan**

One of the main reasons for monitoring is to check whether the organisation's equality plan is working. That means one must have the plan in place first. Does the organisation know if there is discrimination against LGB and T people? If there doesn't seem to be a problem on the surface, or if there don't seem to be many LGB and T people across the organisation: then it would be fair to say that actually there may be a big problem, because LGBT people don't feel safe about being open about their sexuality or gender identity. So the employer needs to do the work to find out what the issues are for LGBT workers through (for example) surveys of staff attitudes, through exit interviews, and by consultation with the unions.

### **A monitoring plan**

Some monitoring is carried out without any clear idea as to what it's for. Information is collected, stored, and perhaps reported, but little changes as a result. This approach is certain to lead to a great reluctance by many LGBT people to declare their identities on a monitoring form, or indeed to any staff being willing to answer such personal questions. Furthermore, no one knows how many LGB or trans people there are, so it is not possible to compare percentages to check that the workforce is representative, numerically. It will be far more useful to measure how many people feel able to be open about their sexual orientation or gender identity. It may be that there are lots of LGBT workers, but this does not necessarily mean that there is no discrimination, if most of them feel unable to be "out". The survey, therefore, needs to identify both how many are LGBT, and how many are "out".

There can be monitoring of many things:

- Most commonly, of the profile of the workforce, including distribution of people through grades; this can be used to check whether the workforce is representative of the community, and to identify whether there are obstacles to the career development of particular groups that should lead to remedial action by the employer. Remember, as stated above, that with LGBT workers one can only compare with previous surveys, not against a national count of how many workers would be representative;
- The attitudes of staff or clients;
- The take up of employee benefits;
- Internal grievance and disciplinary cases, to check whether there is fair treatment of all groups in the system, or if there is a greater proportion of cases of a particular kind (for example, harassment on grounds of sexuality, and whether and how it is being dealt with). Beware that the absence of data here might conceal a serious problem. An absence of cases does not necessarily mean an absence of discrimination, it could mean that LGBT workers don't feel confident to complain about problems.

Monitoring can be carried out:

- By questionnaires attached to application forms, during recruitment. With this, remember to separate the monitoring form and make it anonymous;
- By surveys of all staff, included with other questions;
- By surveys of all staff, but only on specific questions, such as the areas of equality newly covered by employment law (sexual orientation and religion or belief); or
- By exit interviews.

Options two and three, which would be major operations for a large employer, then call for a decision on the frequency of the exercise. It will be important that the plan, if it is to convince employees of the employer's seriousness, includes the commitment to repeat the exercise at specified intervals (for example, two years) so as to compare results and draw conclusions over the effectiveness of the plan. The third option is probably not practical: beware of monitoring fatigue!

Sometimes monitoring may be carried out by an external body on behalf of the employer. This may be helpful in addressing concerns about confidentiality (see below) and therefore increasing the response rate.

How will the information will be collated, analysed, reported and used? This raises issues both about confidentiality (see below) and about the employer's commitment to act on the outcomes. This is the most important part of the plan, and if all parties are convinced that the organisation, led by its management, is committed to using the monitoring as the basis for undertaking the changes that are necessary to create a more diverse and less unequal organisation, it is more likely that staff will have the confidence in the process needed to generate usable data in the first place. Unions will naturally want to have access as well to the monitoring reports, in order to be in a stronger position to negotiate around any discriminatory practices that have been revealed by the exercise.

Many employers already carry out some form of monitoring. If the extension of an existing monitoring policy to cover LGBT workers is proposed by an employer, look behind this and ask for a detailed explanation. Several misconceptions might lead an employer to monitoring for wrong reasons: such as the mistaken view that the new laws require sexual orientation monitoring, or a vague statement about it demonstrating their commitment to equality. Such statements on their own betray a failure to think through the real issues. If the employer is taking the step because of a genuine commitment to improving equality in their organisation, then they need to be persuaded to start with the key principles already outlined. If the employer already has, and uses, monitoring of their employees as a way of challenging discriminatory practices, this is a sound starting point. But, because of the differences between LGBT and other groups, it will not be sufficient simply to extend existing practices. Merely to add sexual orientation or gender identity to an existing monitoring form, for example, will very likely by itself lead to significant under-counting.

The most important element of a monitoring plan is that the organisation is clear about the objectives and the means of achieving them. The plan will need to reflect all the principles in this section: *and if it can't, then don't try it.*

### **Proper consultation and preparation**

If questions on sexual orientation and gender identity are to be added to existing monitoring, there must first be genuine consultation. Unions may need to organise their own consultation with members, at which to explain why the employer wants to ask people about their sexuality or gender identity, and to be clear what the purpose is and how it will be used as a platform for improvements. This is essential if members are to be persuaded that they should answer honestly the new questions. Such consultations may raise concerns that the union had not previously thought about, but which would need to be fed back into discussions with the employer. There may well be hostile reactions from members and unless these are successfully dealt with, the monitoring should not go ahead: they may reveal some of the problems that need tackling first.

The employer may also provide briefings to staff, allowing questions on the concerns of individual employees to be aired. In any but the smallest organisations, it will be essential that departmental or line managers are fully committed to the plan and able to explain it. The consultation phase, therefore, may often need to be preceded by briefing or training for managers. Unions may need to press this step on employers, and to assist with identifying sources of training or consultancy.

If monitoring is being done for the first time, and includes LGBT, it will be possible to base the plan on a comprehensive explanation to everyone of the realities of discrimination, the value of diversity and the usefulness of monitoring to measure progress or uncover hidden problem areas. Beware though that traditionally, equality policies have focussed on gender and race, leaving out other areas. A plan, to make consultation effective, will have to include explicit explanation of why LGBT are included, and what issues the organisation is hoping to deal with. Management commitment and understanding will be essential. Unions will need to be careful in these circumstances that LGBT issues are allowed their rightful place within the overall package. All too often, sexual orientation and gender identity are added to a list, but left there without further explanation: this method won't deliver.

The most common form of discrimination faced by LGBT workers is harassment. Unions may wish to use the consultation on the equality and monitoring plans to identify if there are departments where homophobic and transphobic harassment is common, or that some managers who might tackle some forms of discriminatory

behaviour, and will be responsible for the organisation's equality policy, are themselves responsible for (or fail to act on) homophobic or transphobic "jokes". It is essential that such problems are tackled *before* any monitoring is attempted. Failure to do so in the expectation that the new monitoring will lead to action may be to ruin the plan before it even starts by completely destroying any confidence by workers in the organisation's commitment or understanding.

From all this, it should be clear that the role of unions will be essential, and monitoring may provide an opportunity for unions to demonstrate the value of working with the workforce to achieve progressive change. Remember though that the union too may have to tackle hostility among its own members. If this cannot be turned round by explanation, then, again, starting LGBT monitoring will be premature and the results ineffective.

Proper preparation, briefing and training following consultation with unions and members, and taking steps to identify and deal with workplace culture where harassment has been unchallenged, are preconditions for being able to monitor effectively.

### **Confidentiality**

There may be workers who are open about their sexuality or gender identity, and are happy to be so. But this is not a reason for assuming that everyone who is LGBT is "out". Be very careful, too, not to make assumptions based on popular stereotypes of lesbian, gay, bisexual and trans people. Just like anyone else, your LGB and T colleagues have NO common features except their sexuality or gender identity! Make sure that assumptions based on stereotypes are not allowed to interfere in the establishment of every appropriate safeguard for confidentiality.

It is essential:

- That the form spells out clearly that answering the questions on sexual orientation or gender identity is optional.
- That the questionnaire itself reassures people that it will be stored in such a way that casual access is impossible, and that the information will be used only for the stated purpose for which it was collected.

- To ensure that the data is anonymous. This may be much easier to do in a larger than a smaller workforce, where other safeguards may need to be devised. But even in larger organisations, there can be a problem that people can be individually identified by cross-checking all the monitoring information about them.

The *Data Protection Act (DPA)* will not apply where the survey is anonymous and the data cannot be identified with individuals. However, if the information is not anonymous, the DPA regards it as “sensitive personal data” and it can only be stored if the individual gives their permission. This can be done by providing a box on the form to be ticked if permission is granted, providing the individual is also reminded of their right to refuse to answer.

Other questions to answer include: who will have access to the raw data; how will the findings be reported? These raise further potential concerns about confidentiality. For example, if a report published the figures of how many lesbians there were in a particular grade, it may be particularly difficult for anyone in that group who did not wish to be “out” about their sexuality to remain anonymous.

Commissioning an external body to carry out the survey may deal with some concerns about confidentiality and therefore increase participation in the survey. But it will still be necessary to explain to workers how the data will be reported back to the employer, and how action on the findings will be carried out while maintaining the maximum possible confidentiality.

When discussing LGBT monitoring as part of a clear plan, and following effective consultation, remember that the guarantee of complete confidentiality remains fundamental.

### **Language: the questions**

As with all communities, LGBT people of different generations and of different philosophies have their own preferences for the words to describe themselves. People are more likely to respond positively if the question uses language with which they are comfortable, and more likely to refuse to answer if the language is



found to be offensive. So establish this when consulting with LGBT members, if there is a way of doing so. Otherwise, the best option is to adopt as a default for LGB workers the terms used in the new Employment Equality (sexual orientation) regulations: lesbian, gay, bisexual or heterosexual, and ask respondents to indicate which description applies to them.

The TUC also recommends that there is a second question: ask whether the person is “out” at work. This is probably the most useful statistic the organisation can gather, to judge the extent to which people feel safe and confident at work, and how this has changed from one monitoring exercise to the next.

A question about gender identity should be free-standing, not associated with questions about sexual orientation, nor, alternatively, associated with questions about gender, in order to recognise the distinct nature of the identity. The question might then be whether the person identifies as trans.

Some organisations use monitoring also to collect information on issues faced by members, or to ask for suggestions. This combines two distinct functions of a survey, and although this might be useful in some structures, in others it might be that this would be better completed by having the two sets of forms separated for return, given the different character of the information they might contain.

Monitoring questions should be very sensitive in their choice of language and should ask both about someone’s sexuality and, separately, about gender identity, and ask if they are “out” at work.

### **Monitoring union membership**

The same essential principles will apply to unions considering monitoring their membership for sexuality or gender identity. There is a close connection between awareness of the union’s commitment to equal rights for all its members, and to the processes being put in place to advance that cause, and the likely response to a monitoring exercise. Collecting the data could be an expensive operation, where the expected rate of return would have to justify the resources laid out.

Depending on the structure, size and resources of the union, integration of monitoring for sexuality and gender identity into an overall plan to improve equality generally through participation in the equality audit process encouraged by the TUC may be appropriate, subject to the plan taking into account the issues raised in this briefing. Union journals may provide an obvious route for circulating information or surveys, combined with information sent through local representatives to remind members of why the surveys are important and how they relate to the union's overall plans.

As is current practice in some unions, it may be useful to monitor elected officers and paid officials as well, since both groups ought to be reflective of their communities, and will offer a much smaller sample to analyse.

Strong leadership from the top of the union for the monitoring, along with proper support from officers and officials at all levels, will set a good framework, but in many unions, the workplace representative will be a vital part of the process of getting members to complete and return survey forms.

## Conclusion

For the reasons given in this guide, the TUC recommends that monitoring workforces or members for their sexuality or gender identity needs to be treated with particular sensitivity, otherwise it will fail to produce any useful results. Lesbian, gay, bisexual and transgender workers usually *can* conceal this, and, for many reasons including fear of harassment, most still do.

Achieving a welcoming, diverse workplace in which LGBT workers can be open without fear, harassment or discrimination must be the fundamental reason for undertaking monitoring. Achieving LGBT equality in the workplace is not dependant on monitoring procedures, and monitoring on grounds of sexual orientation or gender identity is not required by the law.

However, monitoring *can* be a useful tool providing the principles explained in this guide have been followed.

If you are going to monitor sexual orientation and gender identity, you must first ensure that:

- It is part of a clear plan to advance LGBT equality, based on evidence of the issues that need confronting;
- This has been followed with proper consultation with the workforce (including, critically, through the unions), to explain the purpose; and management is committed to seeing it through;
- There is an absolute guarantee of confidentiality.

Unless these steps have been taken, the advice of the TUC is: don't try to monitor.

### **Further Information**

The TUC regularly publishes advice on all workplace issues including equality issues. Material particularly relevant to the subject of this briefing may be found in:

Transgender Equality: Advice from the TUC on Trans rights in the Workplace, available from the TUC and from the TUC website, [www.tuc.org.uk](http://www.tuc.org.uk);

Online guide to new gay rights at work, at [www.workSMART.org.uk](http://www.workSMART.org.uk);

Published by the Equality & Employment Rights Department, Trades Union Congress, January 2005.