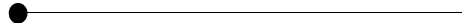




AHEAD NEWSLETTER

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DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION NEW POWERS COMING SOON.

Welcome to the 4th edition of the AHEAD newsletter. This edition includes a round of successful cases. These cases are either fully or partly based on the Sexual Orientation Regulations.

The Equality Act 2006 received Royal Assent on 16th February. The Act establishes the Commission for Equality and Human Rights. The Act also outlaws discrimination on the grounds of religion or belief and sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises, and the exercise of public functions. Originally when this law was first conceived it was only going to include Religion and Belief which given the hostility between faith groups and LGBT groups could have had damaging con-

sequences. Congratulations to Stonewall for their efforts. The Government is currently asking for views on how these new powers should work. Its important for LGBT groups to voice their opinions. The consultation paper can be accessed on the women and equality units' website www.womenandequality.gov.uk (see back page)

GAY MAN is AWARDED over 12K for being verbally abused

Norris & Robertson Vs Mr & Mrs Lambert t/a Black Bull Inn, Lowick (250444/05) is a nasty tale of withheld wages, harassment

and assault. Both of the claimants are gay. Robertson was employed as a chef at the Black Bull Inn for about a year. Mr & Mrs Lambert are the proprietors of the Black Bull. They did not know that Robertson was a lesbian so for the first 6 months of her service the relationship between her and the Lamberts was OK. Then the owners of the pub found out that Robertson was in a relationship with another woman and the employers' attitude changed. Mrs Lambert would make jokes about Robertson being unfeminine and treated her differently to the other female staff. Mr and Mrs Lambert started calling Robertson a "lemon". There was also an argument

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Work Out

Training Package
£99 individuals
£150.00 orgs
(see back page)

Robinson's award was over £4K; Norris was nearly £15K

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about holidays. Robertson had been in sole charge of the kitchen while the Lamberts were on holiday. She had not taken any leave and wanted to take some dates in February. Mrs Lambert refused to let her do so.

On 20th February Robertson went in to collect her wages. Mrs Lambert was very abusive to her and said she had **"left her in the f***ing shit"**. Mrs Lambert gave Wendy a pay packet that was not for the correct amount. Robertson lost her temper and told her to **"stick your job up your f***ing arse"**.

Then, according to Robertson, Mrs Lambert jumped on her back trying to retrieve the wage packet that she had just given her.

Robertson then escaped to the passageway where Mr Lambert is reported to have said **"get out, of here we all know what you are a dirty f***king lesbian"**.

Robertson and Norris later went to the Police who interviewed Mrs Lambert and gave her a caution.

Norris worked for the Lamberts from May 04 to February 05.

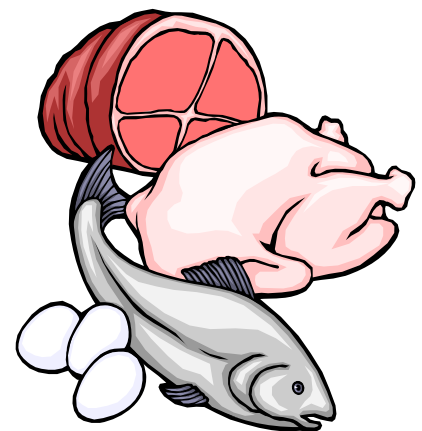
He was a waiter. Throughout his employment he had been the butt of several jokes about his sexual orientation including being called "Danielle" being called a "poof", being made to wear a Christmas hat with pig-tails, being called "tiger" (although the Lamberts said they were calling the cat), being referred to as "the only gay in the village" and the sign "GAY" being put up in the pub which Norris objected to. (This was related to a draw with local football teams.)

"On the day that Robertson was assaulted by Mrs Lambert, Norris protested. He was then grabbed by Mr Lambert pushed out of the building and told not to come back.

The facts of this case are disputed and Mr and Mrs Lambert gave a different version of events. The Lamberts also produced a range of witnesses to support them including some employees and customers of the pub. The tribunal did not appear to be very impressed with the majority of the witnesses. The tribunal found "... that Mr and Mrs Lambert's evidence was inconsistent in regard to both the written statements and oral evidence and between each other. The way they gave evidence was defensive, and on occasions, aggressive."

Wendy Robertson was awarded £4,560.61 of which £1,200 was for injury to feelings. The rest of the compensa-

tion contained amounts relating to the fact that her employers had constructively dismissed her and not issued her with a written statement of particulars (i.e. contract) outstanding holiday pay, unpaid wages as there were inconsistencies between the amounts Robertson



received and the P11 deduction sheet.

The tribunal awarded Daniel Norris £14985.50 of which £12,000 is for injury to feelings. Norris's awarded for injury to feelings was much higher as the harassment that he experienced had been ongoing and covered the whole period of his service at the Black Bull. This case is an excellent example of bad employment practice. At one point Robertson had an argument with Mrs Lambert because she refused to serve food that had been contaminated with blood and to cook a chicken that had not completely defrosted.

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Meanwhile in another country pub...

Request for Sponsorship

I'm looking for an organisation to sponsor me to do an analysis of the employment tribunal cases that have been heard using the sexual orientation regulations. Can you help? If so contact me directly on 020 8555 3709 or anne.hayfield@lineone.net

In Hubble Vs Brooks (1600381/05) we meet the owner of a pub in Wales who did not want his pub run by a gay couple. Mr Hubble applied for a vacancy at a pub in West Wales by ringing up its owner or controller Mr Brooks. Brooks asked Hubble if he had a partner and Hubble said yes. Brooks then asked whether the partner was a girlfriend or wife to which Hubble replied its another male. Brooks then went onto say

"...I am looking for a male and a female couple to run my pubs. I have invested a lot of money into the pub and I cannot afford to see the business fail with having two men in there".

The Job Centre that investigated the claim of sexual orientation discrimination endorses Hubble's version of events. Presumably this must have been because Hubble was claiming benefit. According to written evidence from the Job Centre Brooks is reported to have stated that "...I have nothing against gay couples, I come from a big city but the job is to work in a pub in a small Welsh village and it wouldn't

work." Brooks did not attend the tribunal in person. The tribunal found in Hubble's favour. In assessing compensation the tribunal gave consideration to the fact that Hubble and his partner had run two pubs before and would have had adequate experience to do the job.

Hubble was awarded £3,500 for injury to feelings.



If you know of someone who might want this n/I tell them to send me a blank email & their phone number (in case the email bounces)

Discrimination still exists in large employers

This next case shows us that discrimination still exists in large, well-resourced employers. The Claimant is a gay man who is HIV+ and has experienced AIDS related conditions. There are no reporting restrictions on the case but with this in mind I'll just call him "X".

In X's tribunal case he successfully argued that he had been constructively dismissed and discriminated on the grounds of disability. The part of the claim that dealt with discrimination on the grounds of sexual orientation failed because while X thought his treatment by his employers was motivated by homophobia he was not able to substantiate that part of the claim.

X worked for the Inland Revenue for about 2 years. His employer always knew about his condition. He took out a grievance against his line manager that was unsuccessful but because of that action X was transferred to a different team so that he would not have to work under that particular manager. About 6 months later there was a reorganisation at his office but X was not allowed to transfer with his team. Instead a month later X was given a transfer where he was unhappy. He had several meetings with his managers where he protested against this move. Shortly after X started to get ill suffering from conditions such as "viral Infections", "migraine" and "gastroenteritis" and also stress and depression. These were recognised by his employer as being related to his HIV status and therefore

recognised as disability.

After a few months his employer called in a company of Occupational Health Consultants who were of the opinion that X was fit to return to work but if required to work with certain colleagues he would be likely to relapse into ill-health. X also got a letter from a hospital consultant saying that a transfer was important for his continued health.

The tribunal made much of the fact that the employer had appointed these consultants and then wilfully misinterpreted their findings. The employer judged that "X is fit to return to work" and ignored the rest of the sentence.

X then applied for a Compassionate Transfer – these are for "people whose circumstances are so severe that they outweigh the needs of the business and were not to be made for reasons of inconvenience or personal preference". His current line manager supported this move.

X was refused this transfer. The tribunal commented that the refusal letter indicated that X was thought of as a nuisance employee.

In awarding compensation of £15,277.25 including £5,000 for injury to feelings and £2,500 for aggravated damages the tribunal took into account that X had found new employment that made use of his previous work experience with the Inland Revenue.

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**I told him ...
it created a
homophobic
atmosphere in
the
office ...
he replied it
was such fun**



is guidance and cannot be taken as a full statement of the law

Nasty incidents of harassment

This next case also deals with some nasty incidents of harassment. Mann Vs B H Publishing Ltd & Tim Henderson (2203272/2004) Michael Mann worked for B H Publishing Ltd for no longer than 10 days. The tribunal hearing itself took up five days.

Mann describes himself as having a “gay South African” accent. His boss Tim Henderson was fond of mimicking accents and would put on a Geordie or French accent to entertain. In the first couple of days that Mann worked there Henderson repeatedly called out “Michael Mann. Michael Mann” in an imitation of Mann’s accent. This was done in an open plan office and greeted with laughter. Mann complained about this “I told him that I felt it had created - and its continued use was exacerbating - a homophobic atmosphere in the office which was outrageous and must stop. Tim Henderson replied that it was such fun...”

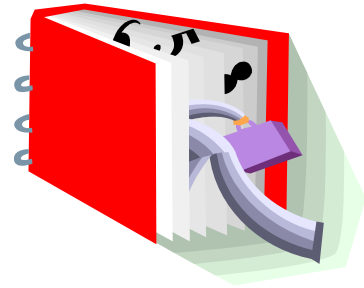
Mann went for a drink with his colleagues during which further harassment took place. One of his work-mates, Talbot, started rubbing his nipples and asked him whether he found it exciting. He also said to Mann he had “a cock the size of a baby’s arm with an or-

ange on the top”. His colleagues were aware that Mann had a partner and asked him whether he was “active”. Other employees made lewd suggestions that are not recorded as part of the tribunal’s decision.

The tribunal found that “even this early in the employment relationship, the co-employees found some humour in the Claimant’s sexual orientation.” He was the only “out” gay person to have worked in that office for a couple of years. It was also claimed by the Respondents that he had sexually harassed other employees. However the tribunal did not accept this as fact. Mann found himself in an uncomfortable position at work his boss continued to taunt him with the “gay, South African” accent and then Mann found a picture of a naked man in his in-tray. Other incidents included a male member of staff putting his hands on Mann’s shoulders in a mocking way and “wrist-flapping”. (I take this to mean making “limp-wristed” gestures.) The tribunal report is a lengthy document with conflicting versions of events. The tribunal was greatly swayed by the combative tone of the correspondence between the Respondents and Mann’s solicitor.

Mann suffered from a depressive illness for which he was seen by a doctor and was hospitalised for a few days.

Rather than investigating Mann’s treatment by his work colleagues the CEO sought the “closest possible investigation of Mann’s background, both financial and psychological”.



The tribunal accepted Mann’s version of events and found that he had been discriminated against on the grounds of his sexual orientation. Regarding the incidents in the pub the tribunal quoted the case of Sidhu [2000] IRLR 602. “In our view, there can be little doubt that the events in the pub were in the course of employment. They immediately followed the end of the working day...It would be highly artificial to regard this in a lay sense as outside of the course of employment and it therefore attracts vicarious liability...” Mann was awarded £20,300 together with £1,455.91 interest. The sums are apportioned as 80% to the First Respondent and 20% to the Second Respondent, Tim Henderson. The compensation includes £7,040 personal injury and £10,560 for injury to feelings.

It is worth noting in this case that it was difficult for both sides to agree how long Mann had worked for the company and how much he earned.

Mann was awarded £20,300

Pretty boys in the bar ?

The Edge, the gay bar in Soho, has had its wrists slapped for sacking a heterosexual woman. In Hegarty Vs The Edge (Soho) Ltd (2200027/05) the woman concerned was employed as bar staff.

Mrs Hegarty was employed for nearly 3 years with an unblemished disciplinary record. In September 2004 she was told by the Edge that she was being made redundant with effect from that day. The only reason they gave her was that the Piano bar was closing. In fact the Piano bar didn't close but was re-launched couple of months later with different staff and a change in music. The Edge replaced Mrs Hegarty with gay male staff. They did not apply any procedure when sacking Mrs Hegarty. In a genuine redundancy situation an employer should consult with its staff, give them the opportunity for representation and offer them alternative work. The Edge did none of this. The discrimination claims were related to the fact that the two workers who staffed the re-launched Piano bar were both gay men. Mrs Hegarty therefore successfully argued that she had been the victim of both sex discrimination and sexual orientation discrimination. The Edge had not given a credible reason for the dismissal and the "Tribunal believed in reality ... was that they

[the Edge] wanted gay male staff serving in the bar. "

The Edge was ordered to pay Mrs Hegarty £3,110.95 of which £3,000 was for the discrimination claims.



Car worker awarded over £23K for homophobic harassment

A car worker successfully argued that he had been unfairly dismissed, suffered harassment and direct discrimination. The compensation awarded was £23,227.40. In *Brooks v Findlay Industries Ltd* (1304323/2004) we meet a car worker who had previously worked for Land Rover. Brooks did not tell his colleagues at Findlay that he was gay; in fact he told them that he had a girlfriend. He was outed by a former colleague at Land Rover who told his manager that Rob was gay. Following this, he started to

get called derogatory names such as "gunter the shunter", "badger baiter" and "chi chi". Colleagues also directed inappropriate body language such as mincing and limp wrist movements. Brooks also claimed that his manager started to treat him differently by criticising his work performance and demoting him from line leader to assembler.

Confidential information about his emergency contact was also inappropriately disclosed.

Brooks went off sick in June 2004 after an argument with his colleagues and refusing to work with the offenders (presumably claiming he was constructively dismissed).



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Durham City Council told off for Poor Employment Practice

In *Gismondi v (1) Council of the City of Durham*; Mr Edmund Tutty
2502956/05 and 2508300/04

Gismondi is a gay theatre worker who suffered months of bullying and harassment at the hands of his manager.

Gismondi started work as a bookings co-ordinator at Durham's Gala Theatre from June 2002. Tutty started work in November of that year as a part-time press officer and after a while he became Gismondi's line manager. Tutty used his managerial position

to behave in an aggressive and bullying fashion. Gismondi was out at work and Tutty continually referred to him as "gay boy". In August 2003 Gismondi made a formal complaint but no action resulted from this. In December 2003, the organisation restructured and Tutty was no longer Gismondi's line manager but he still was hostile towards him and made negative comments about his performance. In February 2004, Gismondi took out a formal grievance making reference to the SOR. It would appear on the face of it that the employer dealt with this poorly and not in accordance with its own procedures; the tribunal rebuked them for this.

Gismondi won his case but the tribunal adjourned for a remedies hearing and before this hearing convened, an out-of-court settlement was made for an undisclosed amount.



Whitehead Vs Brighton Palace Pier

Whitehead (*Whitehead v Brighton Palace Pier* 3102595/04) started work for the Pier in May 2001. Initially he was a restaurant manager and then he was promoted to arcades operations manager. The protagonist of the harassment was Mr Quelch who started work for the company in January 2004. Quelch was a few rungs above Whitehead in management terms. The two had an unfriendly working relationship and Whitehead claimed that Quelch withheld his sick pay and undermined his management position. Towards April 2004, another employee overheard Mr Quelch talking to an unseen person

and calling Whitehead a "fucking chutney ferret". After that, Whitehead knew that the treatment was on the grounds of sexual orientation and he resigned claiming constructive dismissal. Whitehead was awarded £9,215 in compensation.



The number of cases field at the tribunal using SOR
61 for 2003
349 for 2004
285 until end December 05

What will this cover?

This will cover commercial services, for example, a situation where a gay couple is refused a room with a double bed in a bed and breakfast, and also public services such as health, education and local authority services.

Will it apply to public sector situations ?

Yes, for example where a local authority refused to let a local LGBT group hire its premises. The LGBT group would have to exhaust any complaints procedures the authority had and could then request a judicial review.

Is this good news for LGBT communities?

Yes, but note that these provisions do not apply for trans people.

What do LGBT groups need to be aware of?

The Government is consulting to find out the best way to implement this new law. Everyone is being asked for their opinion so it would be good for LGBT groups can write a response , just download the document from the women and equality units website

www.womenandequalityunit.gov.uk

Would gay clubs have to let heterosexual people in?

Yes—if you don't agree with this then now is the time to put your feelings in writing. Gay clubs could no longer be a safe place for lesbians as many straight men are obsessed with having sex with lesbians.

How will discrimination in goods and services be challenged?

It could work in a similar way to the other equalities laws; the gay couple in the B&B example could make a claim at the County Court for compensation for injury to feelings plus any out of pocket expenses associated with having to find somewhere else to stay.

Work Out

This consists of a video plus a CD with written materials. The video was first shown at a conference that celebrated LAGER's 20th anniversary in October 2003. The response to the video was very encouraging and so a training pack was written around it.

The video shows five ex-LAGER clients talking about their cases. It makes powerful and compelling viewing. These cases were picked because they demonstrate typical problems that lesbians, gay men and bisexual people have in the workplace. The materials include three distinct sets of training notes geared towards participants who are (i) advisors (ii) trade union reps and (iii) HR managers. The training pack will enable organisations to develop policies and working practices to deal effectively with this form of discrimination.

The pack includes:

PowerPoint presentation slides
Participants' Handouts
Full & comprehensive trainers notes
Guide to Sexual Orientation Regulations,
LGB & pensions,
Gay men and Sexual Offences,
LGB & Family Friendly Policies,
Judicial review on the religious exemption.

The full cost of this unique resource is £99 to individuals and £150 to organisations. The price includes one update. If you want to buy a copy please contact me directly.

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