

# The issue today... The issue today...



## *Is it justified to ask job applicants questions about their sexuality?*

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For many, sexual orientation monitoring is a relatively new concept. Increasingly, job applicants are being asked about their sexual preferences — that is, choose from one of the following: bisexual, gay man, gay woman/lesbian, heterosexual/straight, other, prefer not to say. Some may find the questions intrusive and ask, why is this relevant to my joining an organisation?

The Employment Equality (Sexual Orientation) Regulations 2003 do not oblige employers to monitor the sexual orientation of staff. However, employers must tackle sexual orientation discrimination in order to comply with the law. As a result, monitoring has become an effective

way of identifying potential and actual incidents of discrimination and is actively supported by organisations, like Stonewall, the campaign and lobby group, who produce a best practice workplace guide\* for employers. Over 600 companies in the UK have signed up to be Stonewall Diversity Champions as they take sexuality monitoring seriously.

Some companies actively encourage diversity and inclusiveness by promoting themselves as diversity employers in the broadest sense. GSK, the pharmaceutical company headquartered in the UK, has a general policy: 'GSK is proud to promote an open culture, encouraging people to be themselves and giving their ideas a chance to flourish. GSK is an equal opportunity employer'. Other companies go a step further. At Goldman Sachs the firm actively identifies a lesbian, gay, bisexual and transgender (LGBT) network in the

firm whose remit is to facilitate 'a work environment that respects, welcomes and supports lesbian, gay, bisexual and transgender professionals and enables them to perform to their fullest potential and contribute to the greater goals of the firm'. The statement is supported by the chairman and CEO of the company. Smaller companies may find this monitoring costly but necessary to comply with legislation.

Companies keep diversity monitoring separate from selection and make this clear to candidates. Companies who practice diversity also use inclusive language in interview situations (eg, 'what does your partner do?' rather than 'does your husband/wife work?'). Stonewall advises candidates that are asked questions in a gender-biased way to answer in the neutral form to prevent any risk of prejudice.

Monitoring is clearly a huge leap

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forward. The use of inclusive language is the next step to ensure candidates feel comfortable about volunteering information about their lifestyle choices.

*\*www.stonewall.org.uk/at\_work/research\_and\_guides/4907.asp*

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Without much doubt, the trickiest area in equal opportunities monitoring is sexual orientation. Many people resent giving such deeply personal information and are concerned about how it will be used. If it's really not part of the selection process, they ask, why do you need to know? In one sense, the new Equality Act provisions on recruitment and promotion do little to clarify this.

Nowadays, we tend to think we're beyond any notion of positive

discrimination, and the Government is unequivocal in insisting that it is illegal, but the April 2011 provisions sanction the use of 'positive action' which looks remarkably similar.

As it now stands, if two candidates are deemed equal in their potential to perform a job, employers can give preference to one on the basis of being from an underrepresented or disadvantaged group. Mike Noon, Professor of HRM at Queen Mary University of London, argues that this is positive discrimination (*TER 1:3; p12*) — accept it and live with it.

It's unlikely this new provision will lead to a major shift in employer behaviour. Many job adverts already 'encourage applications' from women and minority groups. This means little if not that they will be given some kind of preference.

However, in officially sanctioning the 'equal candidate' preference, it could leave equal opportunities monitoring in an awkward place. The rationale for completing an equal opportunities monitoring form rests on confidentiality and it not being used for selection. Already, many of us

can't help a sneaking suspicion, as we put it into the same envelope as a job application, that it will be processed by the same person. How will we trust it now?

More than ever, it is crucial employers are clear and open about their equal opportunities monitoring processes. Stock phrases like — 'We are an equal opportunities employer' — are not enough. Candidates have a right to know how data will be used and whether underrepresented groups are given preference. Monitoring makes a valuable contribution to culture change. We are still combating the social acceptance of sexual orientation discrimination; transparency on the subject can only help.

At the same time, I admire employers who take some responsibility for rectifying imbalances in the make-up of their workforce, and am glad that the Equality Act allows this in a limited way. But I do wonder how we'll balance action with monitoring without getting into a muddle.

*www.talentengagementreview.com/categories*

