



Orientation aid

Richard Roberts explains the specific issues faced by clients from the lesbian and gay community, and offers practitioners some advice on how to look after the unique needs of this particular group



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With the introduction of the Marriage (Same Sex Couples) Act 2013, lawyers may feel that the battle for gay equality has been won. In reality, nothing could be further from the truth. On the eve of London Gay Pride 2013, Lucy Scott-Moncrieff, then president of the Law Society, said: "Gay inequality is closer to home than most people think. It's not a foreign phenomenon. Our neighbours, our friends, and our children are being discriminated against and treated adversely. Despite legal protections in place, gay inequality remains rife in the UK. A tendency to discriminate against LGBT people is present in everyday areas of life – in the workplace, in the playground, at the sports arena. This is unacceptable, embarrassing and shocking."

As private client solicitors, we are used to being sensitive to the individual circumstances of our clients, so we can provide them with the best advice for them as individuals. But the profession is still not as educated as it could – and should – be on the specific issues of concern for LGBT clients, which I use here to mean those who effectively do not identify with the mainstream heterosexual orientation. In my experience, active discrimination against LGBT clients is rare among legal professionals. But there can be an unintentional lack of understanding and empathy towards the LGBT client's perspective on life, or a knowledge gap regarding the individual concerns that LGBT clients have about certain legal topics – especially capacity and end-of-life issues. All this can cause practitioners to offer advice which can fall short of what the LGBT client needs. While the basic law for LGBT clients is no different from that to which all of society is subject, what can be different is the way in which that law has to be interpreted in terms of the LGBT client's expectations, circumstances or concerns. In this article, I explore some current issues to which many practitioners may not have given much thought – and offer my own LGBT perspective.

TODAY'S LGBT CLIENTS

At some stage in their lives, every LGBT client is likely to have had a battle accepting their sexuality. This struggle may have been even greater for those clients aged 55 and older, who were brought up in a legal framework where homosexuality was illegal. Indeed, it is estimated that there are still some 110,000 men with pre-1967 convictions for homosexual crimes. (Conversely, today's teenagers are redefining attitudes to homophobia by regarding LGBT issues as non-issues.)

Many LGBT people have compensated to some extent by being over-achievers in some way, or by shrinking into anonymity. The absence of children will have placed more emphasis on career progression, with the greater disposable income that results. The 'Pink Pound' is not imaginary marketing hype – recent research shows that the LGBT community in the UK has a spending power of £6bn per annum; and studies have shown that up to 90% of the LGBT community support gay businesses or overtly gay-friendly businesses. This financial self-

identification has been embraced by gay hotels, gay travel companies, nightclubs, bars and restaurants. This has led to a growth in the number of high net worth individuals from the community.

But while the public profile, and the acceptance, of the LGBT community is growing, there also remains a significant amount of prejudice. Many LGBT people still face taunts, ridicule and other forms of discrimination. Those advising them need to remember that, and not make life harder for the LGBT client by trivialising their concerns, or worse still, overlooking or dismissing them. I, therefore, would encourage practitioners to think differently not only about the advice they give, but also about the language in which it is expressed.

It will not, of course, always be necessary to immediately ascertain your client's sexuality or legal gender. But, in order to understand the client and gain their trust, it



can be important for the client to be able to talk freely about their sexual orientation; this, in turn, may have an impact on the content of your advice. Developing this trust and understanding is particularly important in relation to the sick or elderly LGBT client, or indeed an LGBT couple where one individual may not be of UK origin (and who may come from a less tolerant culture).

ELDERLY LGBT CLIENTS

When advising the elderly single person, one should not assume that just because they have never married or appear not to have had an intimate relationship, they must be LGBT. There are, for instance, many single ladies born in the 1920s who never had the opportunity to marry because of the shortage of eligible men after World War II, and instead drifted into a companionable relationship with another woman that was entirely non-sexual.

If you are advising an elderly same sex couple who you think may be gay, you could use language like: 'You obviously mean a lot to each other; have you lived together for a long time?' Questions such as this do not compel someone to admit their sexuality, but do allow you scope to talk more freely together if they wish to do so. Remember that your first reactions will be very important – if you express surprise or embarrassment, this may curtail the discussion and mean that you are unable to give more holistic advice. Be gentle, be compassionate, and use non-judgmental

language. Remember, too, that elderly LGBT clients may not want to use the modern terms 'lesbian', 'gay' or 'bisexual' – they may simply say 'confirmed bachelor', or, 'she never found the right man'.

Always try to act sensitively, because what may not be an issue to you or your staff may still be an issue in the mind of the elderly LGBT client, because of their upbringing and attitude to sexual orientation.

Should you yourself confirm your own LGBT orientation to a client in such a circumstance? This is very much situation-specific. For instance, in some communities and areas of work, you may already be known as LGBT, and so such a conversation may be appropriate, and might assure the client that you can offer empathy and support at a difficult time.

MENTAL CAPACITY

Practitioners may not have a real understanding of the effects of dementia on some members of the LGBT community – specifically those who are either HIV-positive, or who have Hepatitis C. In both cases, the virus itself or the treatment of it can cause mild to moderate dementia, even at an early age. Medical research shows that up to 25 % of HIV-positive people who are aged under 40 and on treatment have some form of mild dementia. As the HIV-positive population ages, the proportion increases – as does the intensity of the dementia – and this brings a very practical problem in terms of the management of their affairs and their health treatment.

All practitioners with clients who are HIV-positive or who have Hepatitis C should of course be recommending the creation of lasting powers of attorney (LPA) (of both types). However, for LGBT clients in this position, there may be a stark choice between the 'biological' option and the 'logical' option; in other words, an attorney who is a blood family member who may not be LGBT, or a partner or friend who is LGBT. The Mental Capacity Act 2005, and the terms of any lasting power, require the attorney to make decisions in the best interests of the donor. I would argue that in many cases, this would support the appointment of the 'logical' attorney over the 'biological' one.

It is also of paramount importance that a health and welfare LPA attorney for an HIV-positive or Hepatitis C patient should be able





to understand the numerous complex issues that arise during treatment, and especially at the terminal stages of illness.

RESIDENTIAL CARE

The elderly LGBT client with dementia may have problems with the kind of support that is offered in residential care homes; their memories, especially their longer-term ones, will have been affected by their experiences as an LGBT person, but they may still be unable to truly express what they feel. There are support networks for elderly LGBT people, and the LGBT dementia sufferer might feel that talking to someone from such a group, or to other LGBT people of any age, would be helpful. The key trap here is to assume that sexuality is a private matter and nobody else’s business. The Alzheimer’s Society website (<http://www.alzheimers.org.uk>) contains some excellent and very useful advice and assistance on these issues.

Remember, too, that elderly LGBT patients have as much right to sexual expression as heterosexual couples – and Patricia Wass’ excellent article in the May 2013 edition of *PS* examines how to deal with those issues. But for the LGBT patient who may have been subject to substantial homophobic abuse as a child and young adult, even the very act of hugging a same-sex person may be anathema. If you are involved in advising clients on the choice of residential care, or have to attend case conferences dealing with the residential care of elderly LGBT clients, you should be aware of these issues and not be afraid to raise them.

CHARITABLE GIVING

For generations, many LGBT donors have been dedicated to philanthropy – from the dandy gentlemen of Regency England to the Elton John Aids Foundation. For the LGBT client – as for any other – leaving money to charity may be a paramount object, or just a beneficiary of last resort. As well as giving outright to charities, I am seeing the increasing use of the private charitable trust or foundation as a way – especially for the childless LGBT testator – to perpetuate their memory, and, of course, take advantage of valuable tax benefits. Such foundations need to have a reasonably significant endowment, but with the increase in wealth of much of the population, especially in London and the south east, even the sale of a modest house can generate enough capital to make the scheme worthwhile.

The creation of a private charitable foundation – either during the LGBT client’s lifetime or by will – generates considerable tax-saving benefits. Gift Aid can be claimed on donations into an *inter vivos* charity, and there are significant capital gains tax advantages. On death, the entire gift to the foundation passes free of inheritance tax (IHT). I urge estate planners dealing with LGBT clients to ‘think outside the box’, and look at the charitable trust as a real tool in the weaponry of estate planning for these clients.

IMMIGRATION ISSUES

As we see the anti-gay movement rising in Russia, we are reminded that, for many foreign LGBT people, the UK has become a safe liberal refuge and home. Even in rural areas, the prevalence of young LGBT people from Eastern Europe, Africa and the Far East is now commonplace.

This can bring a host of issues, especially for the elderly LGBT client who may fall into buying companionship with people from those cultures, for whom they feel sympathy. As more elderly LGBT people access the internet, the opportunities for them to form relationships with other LGBT people worldwide increase, and become easier to

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access. Eventually, the online relationship may lead to a physical meeting, and even the entering of a civil partnership or marriage. Aside from the obvious problems – including the IHT issues which such mixed domicile relationships can bring – these relationships may also contain elements of financial inequality.

Many elderly clients can be said to be vulnerable, but the elderly LGBT client can be even more vulnerable to abuse. Their inherent shame at being ‘outed’ may be a barrier to really uncovering the truth, and considerable care needs to be taken when faced with such issues.

There can also be significant immigration issues, and specialist help is often needed from LGBT immigration specialist lawyers to overcome the often intrusive Border Agency questions. Back in 2010, the *Daily Mail* said the UK was “becoming a leading destination for asylum seekers who are claiming to be gay”. Elderly LGBT clients may find themselves unwittingly involved in immigration battles, or even worse, ‘arranged’ civil partnerships. These situations are not as uncommon as one might think, and practitioners should exercise compassion and understanding when faced with them.

TRAINING

This article highlights just some of the key matters for private client practitioners working with LGBT clients. However, to be able to provide the best possible service to these clients, effective and appropriate advice must be underpinned by sympathetic, well-planned and regular training on working with LGBT individuals.

There are three key areas on which training needs to focus:

- ensuring that LGBT staff feel comfortable in the workplace with work colleagues and clients;
- ensuring that LGBT clients are welcomed into a non-threatening environment, where their concerns can be discussed openly and without judgment; and
- ensuring that families with LGBT relatives can talk freely, in a non-judgmental atmosphere.

Staff members who themselves identify as LGBT can play a useful role in diversity training within the office, and can be encouraged to take a lead in developing staff members to overcome the conscious and unconscious bias and prejudice which, sadly, still often prevails. The use of anecdotes and everyday examples of how subtle comments can reinforce prejudices or stifle self-expression of sexual orientation should play a part in diversity training and LGBT awareness. I also urge all firms to engage in proper diversity training and to sign up to the Law Society’s Diversity Charter.

If you want to know more...

- follow best practice in supporting LGBT clients and staff, sign up to our Diversity Charter, which helps practices turn their commitment to diversity and inclusion into positive, practical action for their businesses, staff and clients.

www.lawsociety.org.uk/diversitycharter