

# Introduction of a Code of Social Conduct in the Armed Forces

This case study describes the introduction by the Ministry of Defence of a Code of Social Conduct.



## What was achieved

The introduction of the code underpinned a change of policy on service by homosexual men and women in the Armed Forces. By establishing the boundaries of acceptable behaviour for all service personnel it provided a context within which the bar to service could be lifted.

## What was learnt from abroad

The example of the Australian Defence Force, which had successfully adopted a similar non-discriminatory approach, was closely examined before the Code was formulated.

## Lessons for using international comparisons

*The principal lessons to be learnt from this case include:*

- international comparators can be useful not just as a source of new ideas but as confirmation that a proposed solution is feasible;
- existing networks of contacts abroad (such as the defence attaché network) can provide a valuable means of rapidly gathering information about international practice;
- considering the experience of more than one country may provide additional insights into the nature of the evidence, and reassurance about its validity.

### Background

In recent years the Ministry of Defence has become increasingly seized of the issues relating to the application of social, employment and health and safety legislation to service personnel, and the perceived impact of these provisions on the operational effectiveness of the Armed Forces. Issues that have been addressed include the minimum wage, the treatment of pregnant service women, parental leave, and the provisions regarding age and disability in the Council Directive (2000/78/EC) on equal treatment in employment and occupation. Handling these issues has meant that MOD policy-makers have established good links not only with other UK government departments that have been in the lead in EU negotiations, but also with other member states' defence forces and ministries. The latter might be expected to share a similar concern with balancing the rights of the individual and the need to maintain combat effectiveness. In practice, the military establishments of many other countries have tended to assume wrongly that they would not be affected by this legislation, and have been surprised to learn of the potential impact.

Against this background of increasing awareness of the enforceable rights of service personnel as employees, and an increasing exposure to EU and other supranational obligations, the Ministry re-examined its long-standing policy of barring homosexual men and women from service in the Armed Forces. By early 1999 it was clear that this policy - which had no basis in UK primary or secondary legislation - could not legally be sustained, and consideration was being given internally to how it might be changed to reflect the circumstances of a modern regular force. Then on 27 September 1999 the European Court of Human Rights in Strasbourg delivered

its judgements in the cases brought by four ex-service personnel who had been discharged because of their homosexuality. The Court found that in each case there had been a violation of the right to respect for private and family life accorded by Article 8 of the European Convention on Human Rights. In response the then Secretary of State asked the Chief of the Defence Staff to set in hand an urgent review of policy in this area, and on 12 January 2000 his successor announced the outcome in the House of Commons.

### The introduction of a Code of Social Conduct in the Armed Forces

The solution that was adopted was the introduction across all three services of a Code of Social Conduct, which was issued by the Chiefs of Staff to all Commanding Officers. The aim of the Code was to establish a framework governing the attitude and approach to personal relationships of members of the Armed Forces, regardless of rank, gender or sexual orientation, and to set out the principles according to which the acceptability of individuals' social conduct should be judged. Rather than attempt to list every possible type of misconduct, the Code required Commanding Officers to consider each case against the "Service Test":

*“Have the actions or behaviour of an individual adversely impacted or are they likely to impact on the efficiency or operational effectiveness of the Service?”*

This approach enabled the unique conditions in which service personnel often have to live and work to be acknowledged, whilst not imposing restrictions on their private lives which would not be acceptable in law. It was founded on the recognition that combat effectiveness requires group cohesion and discipline, which are in turn underpinned by mutual trust and respect, and a need to avoid conduct which offends others. At the same time, it made clear that personnel had no right to object to serving with others whatever their known or suspected sexual orientation, provided their actual conduct was acceptable.

By establishing the boundaries of acceptable behaviour for all personnel it removed many of the objections that had been raised in the past to the presence of known homosexuals in the Armed Forces, and enabled the bar to service for people of this orientation to be removed immediately. It also equally addressed issues of acceptable conduct between men and women serving in the same units.

The operation of the Code was reviewed after a year, and was found to be satisfactory. Other countries, such as France, Canada and the US, are now keen to learn from the UK experience.

### What was learnt from other countries

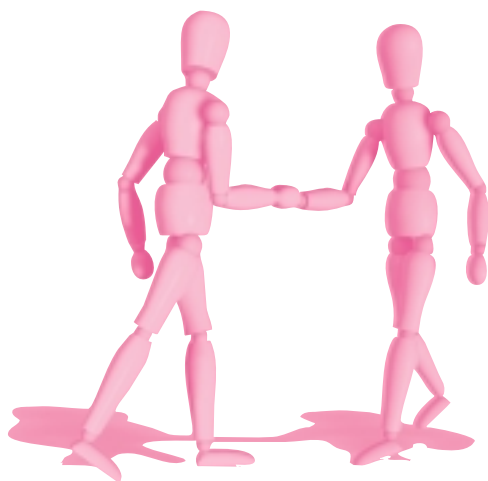
Informal soundings, taken at an early stage of the re-examination of the MOD's policy stance on homosexuals in the Armed Forces, suggested that internationally there was a wide range of experience on which to draw. European comparisons did not, with few exceptions, offer much help. Despite the common application of EU legislation, widely differing social attitudes to homosexuality and the fact that many

member states still had conscript forces (which stand in a different relation to social norms than wholly volunteer regular forces), made meaningful comparisons of policy difficult. On the other hand, MOD has a well-established tradition of benchmarking UK practice and performance against the USA, Canada, Australia and New Zealand. In addition to sharing a common language, these countries resemble the UK in having modern, professional, volunteer Armed Forces. In this instance, Australia turned out to offer a useful lesson.

MOD policy-makers had already alighted on the idea of framing a general code of conduct as a means of clarifying expectations about the social behaviour of all service people, and thus facilitating the removal of the bar on homosexuality without having to specify acceptable limits on types of homosexual behaviour (which would itself be in danger of being offensive, discriminatory or both). In Australia they found an existing example of just such a code.

The prohibition on the employment of homosexual men and women in the Australian Defence Force (ADF) had been removed in 1992, and this had been reflected in policies on unacceptable behaviour since 1993. The latest version of the policy was set out in the revised Defence Instruction (General) on Discrimination, Harassment, Sexual Offences, Fraternalism and other Unacceptable Behaviour in the Australian Defence Force, issued by the Chief of the Defence Force in March 1999. Although much more detailed in its provisions than the eventual UK Code, this document similarly hinges on a broad definition of unacceptable behaviour which - regardless of the gender or sexual orientation of the perpetrator - will have a detrimental effect upon operational efficiency or effectiveness. Although no

formal evaluation of the 1992 policy change had been carried out by the ADF, Commanding Officers had been instructed to monitor the situation, and very little trouble had been reported. More recently, ADF surveys have shown that a small but increasing percentage of personnel are openly homosexual, and this growing willingness to disclose sexual orientation is indicative of a shift in culture.



The MOD officials concerned dissected and examined the Australian documents very closely, but then wrote their own Code and associated guidance to reflect UK circumstances. Although the language of the UK and Australian texts is in many respects very similar, one is not a copy of the other. The impact of the Australian comparator lay mainly in the confirmation it offered that the kind of approach favoured within MOD could be introduced successfully. The fact that the Australian experience had been drawn on in the policy-making process was referred to by the Secretary of State in his statement in September 1999.

In addition to the Australian example, which demonstrated the feasibility of formulating a generalised code of social conduct, MOD officials were also aware of some relevant European comparisons. In particular, the Netherlands had abolished their ban on homosexuality in the Armed Forces in 1975, and had thus

had nearly twenty-five years' experience to draw on. The operation of the policy had been evaluated, and no adverse consequences had been reported.

Information about the Australian example was provided by the British defence attaché in Canberra. The defence attaché network is highly regarded and well used within MOD as a means of gathering comparative information about practice in other countries; conversely, UK officials in London are accustomed to being approached by other countries' attachés for information. In consequence there was not felt to be any need for policy-makers to make a study visit to assess the effectiveness of the Australian policy at first hand, for example by examining whether there was any continuing resentment or prejudice amongst service personnel or whether any unforeseen consequences had arisen from the way in which the code had been expressed. Nor was any information acquired about the existence of independent, external evaluations of the policy. Because the MOD policy was "home grown" there was no close dialogue with Australian policy-makers or military personnel about its formulation, and thus no need or opportunity to seek their comments on the detailed UK proposals.

During the previous review of UK policy in 1995-96, the MOD's Homosexual Policy Assessment Team travelled to Australia, visited various areas and spoke to a range of people. Despite being reassured that there had been no significant problems, the Team's report concluded that differences in social attitudes invalidated the comparison, and recommended (on the basis of this and other evidence) that there should be no change in policy. Retention of the ban was carried by a free vote in the House of Commons on 9 May 1996, during the debate on the Armed Forces Bill.

## What can be learnt from this case?

*The principal lessons to emerge from this case are as follows:*

- Even after you have devised a solution to a policy problem, examining international examples can provide valuable reinforcement and confirmation of the feasibility of the idea.
- You will not necessarily find the most useful comparisons in countries that have had to respond to precisely the same external requirements or stimuli for policy change. Other factors - a common cultural and social heritage, or institutional similarities (in this case, having wholly volunteer, regular armed forces) - may be more significant in determining whether the policy solutions developed by a particular administration will prove to be a source of relevant lessons.
- Having a widespread, well-established and trusted network of contacts overseas is an invaluable aid to gathering information rapidly and inexpensively about practices in other countries. It will help you both in scanning international experiences across a wide range of countries, and in obtaining more detailed information once you have identified a country for closer study. The Foreign and Commonwealth Office's diplomatic missions abroad, and staff attached to them, are likely to be particularly effective in gaining access to official information and contacts.
- However, where good networks exist organisations may be reluctant to sanction study visits by policy-makers. It is not always necessary to visit, but if you do not you run an increased risk of overlooking evidence of flaws in the policy, or of unforeseen consequences resulting from its implementation, that might have emerged from discussion at first hand with practitioners.
- It is valuable to have more than one country's experience to consider, particularly if the second comparator has achieved similar outcomes using different methods or over a different time-scale. This provides a degree of "triangulation" which can help to support and reinforce the lessons learnt.
- Evidence from international comparisons will not necessarily be the decisive factor in policy decision-making. The existence and apparent effectiveness of the Australian code did not lead to a change of UK policy in 1996, though it did provide support for the approach taken in 1999, under a different Government and following the judgements of the ECHR.

## FURTHER READING

Ministry of Defence (January 2000), "The Armed Forces Code of Social Conduct: Policy Statement", <http://www.mod.uk/issues/homosexuality/code.htm>

Statement by the Secretary of State for Defence (12 January 2000), "Armed Forces (ECHR)", HC Deb. cols. 287-288

Department of Defence, Canberra (25 March 1999), "Amendments to Defence Instruction (General) PERS 35-3: Discrimination, Harassment, Sexual Offences, Fraternalisation and Other Unacceptable behaviour in the Australian Defence Force", <http://www.defence.gov.au/equity>

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