

BMA response to the Alliance Party's private member bill to ban conversion practices in Northern Ireland

Background

* 1. Are you responding as an individual or on behalf of an organisation?

~~Individual~~

Organisation

If you are responding on behalf of an organisation, what is the name and the address of your organisation?

British Medical Association
Eagle Star House
5-7 Upper Queen St
Belfast BT1 6FB

* 2. Do you consent to your comments being attributed to you/your organisation?

I am content for this response to be published and attributed to me or my organisation

~~I would like this response to be published anonymously~~

~~I would like this response to be considered, but not published ("not for publication")~~

Defining Conversion Practices

The LGBTQI+ Strategy Expert Advisory Panel defined conversion practices as 'techniques intended to change or suppress someone's sexual orientation or gender identity', recognising that this includes attempts to stop someone expressing their sexual orientation or gender identity. It is proposed that the Bill will adopt a similar definition.

* 3. Do you agree or disagree that legislation is necessary to ban conversion practices?

Agree

~~Disagree~~

~~Not sure~~

Please state the reason for your answer (optional)

The BMA agrees the Government should intervene. The BMA believes conversion practices to be harmful and unethical and supports banning the practices. Arguments about cultural sensitivity are superseded by the inherently damaging and unethical nature of conversion practices; the scientific



evidence points overwhelmingly to its ineffectiveness and potential for causing harm.¹ Many acts of conversion practices amount to torture or inhuman or degrading treatment or punishment, a violation of international and UK law.

*** 4. Do you support an approach to defining conversion practices which covers 'techniques intended to change or suppress a person's sexual orientation or gender identity'?**

Yes

No

Don't know

Other (please specify)

The BMA welcomes the definition used in the bill, as it enables for the range of conversion practices currently being used to be captured within the definition. However, to avoid any potential unintended consequences, we would recommend the definition clarifies that conversion practices are specifically applied to LGBTQ+ individuals. This is because what is integral to these practices are the beliefs that LGBTQ+ identities are invented, harmful, sinful, or the result of a 'medical dysfunction'.^{2, 3}

The Government's 2018 National LGBT Survey Research Report highlighted that trans respondents were almost twice as likely to undergo or to be offered conversion practices compared to cisgender respondents.⁴ It is therefore imperative that gender identity is included in the ban, in all further iterations of the bill and in subsequent legislation.

Offence of Engaging in Conversion Practice

The proposed Bill would create a new offence of engaging in conversion practices whereby all of the following elements apply:

- **Intent:** *the individual accused of engaging in conversion practices did so with the intention that the sexual orientation or gender identity of the victim would be suppressed or changed.*
- **Acts:** *that either the provision of a service or a course of coercive behaviour took place.*
- **Victim:** *that the service or course of behaviour pertains to a specific, identified individual.*
- **Harm:** *that the act has caused the individual physical or psychological harm.*
- **Defence:** *the accused person has a defence if their conduct was reasonable in the circumstances.*

¹ <https://whatweknow.inequality.cornell.edu/wp-content/uploads/2018/04/PDF-Conversion-therapy.pdf>

² <https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/ConversionTherapyReport.pdf>

³ <https://www.rainbow-project.org/wp-content/uploads/2024/05/Conversion-Practices-Research-Report.pdf>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721704/LGBT-survey-research-report.pdf

*** 5. Do you agree or disagree with an approach that creates a new criminal offence of engaging in conversion practice?**

Agree

Disagree

Not sure

Other (please specify)

The BMA is supportive of addressing gaps in existing legislation which enable any conversion practice to be conducted and asks for such gaps to be appropriately addressed.

*** 6. Do you agree or disagree with the proposal that the offence will cover provision of a service intended to suppress or change an individual's sexual orientation or gender identity?**

This will address situations whereby a conversion practice is undertaken by a person who claims to have particular knowledge, skill or expertise and where the act is purported to be delivered as a method to effect a change or suppression. For example, counselling, talking therapy, coaching or instructing, or a purported treatment.

Agree

Disagree

Not sure

Please state the reason for your answer.

In the context of our response to the previous question, the BMA generally agrees with this proposal, as any person providing services or conducting acts within the umbrella of conversion practices in doing so is directly violating human rights laws. However, as the bill correctly identifies, intent can be very difficult to prove in this context, as the majority of conversion practices in Northern Ireland use more clandestine methods.⁵ It would therefore be important for intent to capture all covert mechanisms and language individuals providing such harmful services and practices use.

*** 7. Do you agree or disagree that an 'avoidance of doubt' clause should be included in the proposed legislation?**

The Bill is not intended to interfere with legitimate psychological or medical healthcare provision, conducted ethically and in accordance with professional guidelines. Whilst we do not believe such care would fall under the requirements of the offence, it is proposed that an 'avoidance of doubt' clause is included in the Bill to place this beyond doubt.

Agree

⁵ <https://www.rainbow-project.org/wp-content/uploads/2024/05/Conversion-Practices-Research-Report.pdf>

Disagree**Not sure****~~Please state the reason for your answer.~~**

The BMA believes that legitimate psychological and mental health support should be offered to patients who wish to access it, and this clause would provide additional reassurance to clinicians providing legitimate support. We would also recommend the extension of the avoidance of doubt clause to health services providing gender-affirming care for trans patients (e.g., gender identity services).

*** 8. Do you agree or disagree with the proposal that the offence will cover a coercive course of behaviour intended to suppress or change an individual's sexual orientation or gender identity?**

Drawing on the approach taken to domestic abuse, it is proposed that a coercive course of behaviour in the context of conversion practices would be defined as:

- a) behaviour directed at the victim that is violent;*
- b) behaviour directed at the victim that is threatening;*
- c) controlling, regulating or monitoring the victim's day-to-day activities;*
- d) depriving the victim of, or restricting the victim's, freedom of action; or*
- e) making the victim feel frightened, humiliated, degraded, punished or intimidated*

Agree**Disagree****Not sure****~~Please state the reason for your answer.~~**

The BMA generally agrees with this proposal, as no person should ever be coerced into taking part in, or otherwise be subject to, harmful conversion practices. The bill quotes the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 as the basis for its definition of coercive behaviour. We recommend that the bill ensures that all coercive and controlling behaviours set out in the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, including financial abuse are explicitly included in its definition.

Additionally, as highlighted earlier in the response to question 6, the bill correctly identifies that intent can be very difficult to prove in this context. It would therefore be important for intent to capture the full range of covert behaviours and language individuals may use.

*** 9. Do you agree or disagree that the conduct of the perpetrator must have caused the victim to suffer physical or psychological harm (including fear, alarm or substantial distress) in order for it to be an offence?**

Agree**Disagree**

~~Not sure~~

Please state the reason for your answer.

We believe that all conversion practices regardless of proven impact on the victim must be outlawed. Additionally, victims of conversion practices may not be aware of the harms they have endured until much later. This in turn would delay justice for victims and would enable conversion practices to be carried out for longer.

*** 10. Do you agree or disagree with the inclusion of a defence of reasonableness?**

It is proposed that it is a defence for the accused to show that the course of behaviour was, in the particular circumstances, reasonable. A similar defence is offered in offences dealing with domestic abuse, stalking and harassment.

Agree

Disagree

~~Not sure~~

Please state the reason for your answer.

We are concerned that this defence could be misused and there is a lack of clarity about what would constitute an objective reasonable justification in the context of conversion practices, which are harmful and have no benefits, and it is therefore difficult to envision how reasonableness can be established. If there is a strong legal reason to include a defence of reasonableness, the bill would need to clearly outline what would be deemed reasonable in this context.

*** 11. The proposal does not include a defence of consent for conversion practices. Do you agree or disagree with this approach?**

The proposal does not include a defence that the victim consented to conversion practice. Individuals will often consent due to external pressure or imbalanced power dynamics. Often, consent is given in the absence of full knowledge that the change in question is not, in fact, possible; or of the harm that can be caused. There may also be instances whereby the victim is subject to an act which they do not initially realise to be conversion practice.

Agree

Disagree

~~Not sure~~

Please state the reason for your answer.

The BMA's position is that all LGBTQ+ conversion practices should be banned.

In order for consent to be established, individuals must be informed, meaning 'the person must be given all of the information about what the practice involves, including the short and longer term risks'. An individual would have to be informed that there are no proven benefits of conversion practices and

that engaging in such practices can potentially be highly detrimental. The BMA does not believe consent can be given to an intervention which can have only harmful consequences. With this in mind and given the power imbalance between the individual and ‘therapist,’ genuine consent does not seem possible to achieve.

Additionally, even if it were possible for a patient to ‘freely consent’ to such practices, it would not be ethical for a clinician to provide it.⁶

*** 12. Do you consider that the following sentencing range would be appropriate for this offence?**

- on **summary conviction**: imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.
- on **conviction on indictment**: imprisonment for a term not exceeding 7 years, or a fine, or both.

~~Yes~~

~~No~~

~~Not sure~~

Other

Please state the reason for your answer.

This falls outside of the BMA’s remit to comment on.

Offence of Removing a Person from Northern Ireland for Purposes of Conversion Practice

It is proposed that a new offence is created to make it illegal to cause someone who is habitually resident in Northern Ireland to leave Northern Ireland with the intention that they will undergo conversion practices. Illustrative examples of behaviours which are likely to demonstrate that one person forced another to leave Northern Ireland for the purposes of conversion practice include:

- *Paying travel and accommodation costs;*
- *Making travel arrangements.*

*** 13. Do you agree or disagree that it should be a criminal offence to remove someone who is habitually resident in Northern Ireland from Northern Ireland for the purpose of subjecting them to conversion practice?**

Agree

~~Disagree~~

⁶ <https://www.gmc-uk.org/-/media/documents/gmc-response-to-consultation-on-banning-conversion-therapy---december-2021-88521439.pdf>

Not sure**Please state the reason for your answer.**

The BMA is concerned about individuals being taken abroad for conversion practices, some of which are incredibly extreme, which are legal in other countries. The proposed bill has correctly identified this gap in legislation and the BMA welcomes this proposal. In addition to the gap identified, we recommend that the proponents investigate how to ban conversion practices that are offered virtually by providers outside of Northern Ireland to LGBTQ+ people within Northern Ireland, for example via Skype or similar online platforms.

*** 14. Do you consider that the following sentencing range would be appropriate for this offence?**

- *on **summary conviction**: imprisonment for a term not exceeding 12 months, or a fine, or both.*
- *on **conviction on indictment**: imprisonment for a term not exceeding 3 years, or a fine, or both.*

Agree**Disagree****Not sure****Other****Please state the reason for your answer.**

This falls outside of the BMA's remit to comment on.

Human Rights and Financial implications

15. How, if at all, do you think the proposed legislation will impact on human rights?

Significant positive impact**Slight positive impact****No impact****Slight negative impact****Significant negative impact****Don't know****Please state the reason for your answer.**

The BMA believes this will positively impact human rights as it will strengthen protections for LGBTQ+ people, supporting their rights to live their lives with dignity, and ensuring they receive appropriate healthcare in line with their needs.

The BMA does not believe this will have a meaningful impact on freedom of expression. Freedom of speech and expression have always been qualified rights. Individuals are still able to express their individual opinion, but they cannot abuse LGBTQ+ people under the guise of providing healthcare.

16. Do you have any comments on the likely cost/financial implications of the proposed legislation?

The BMA does not have any comment on the cost or financial implications of the proposed legislation.

Other issues

17. In your view, could the proposal have any unintended consequences? (*positive or negative*)

The BMA does not think the proposal will have any likely unintended consequences. However, we would recommend additional clarification is added in the bill's definition of 'conversion practices', as per our response to question 3, the expansion of the avoidance of doubt clause to legitimate gender affirming care for trans patients, the removal of the need for demonstrated impact on the victim to determine that an offence has taken place and the removal of a defence of reasonableness clause.

18. Do you have any other comments on the proposed legislation?

No