

17 September 2021

Consultation on the LGBTQ+ Action Plan: **NSS** response

Submitted by email: LGBTQ+ActionPlan@gov.wales

Introduction and concerns regarding the consultation document

This submission is made by the National Secular Society (NSS). The NSS is a not-for-profit, non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual human rights, which should never be overridden on the grounds of religion, tradition or culture.

As prominent advocates for equality for LGBT+ people, we welcome the opportunity to respond to the Welsh Government's consultation on the LGBTQ+ Action Plan. We campaign for the law and the administration of justice to be based on equality, respect for human rights, and on objective evidence. In a secular democracy everyone is equal before the law, regardless of religion, belief or non-belief, sexual orientation, or gender identity. We seek to ensure that human rights do not lose out to religious demands, and challenge inappropriate or discriminatory exemptions to equality law for religious groups.

Our vision for a secular democracy is underpinned by the fundamental human right to free speech. Without this, democracy cannot exist. Being offended from time to time is the price we all pay for living in a free society. Rather than trying to silence those we disagree with, we believe the answer to speech we don't like is more speech. We therefore campaign to protect and preserve freedom of expression, including offensive, critical and shocking speech.

We were therefore extremely concerned by the initial inclusion of the following line in the response form for the consultation:

"We will not tolerate hateful comments about a person's sexual orientation, gender identity, race, religion or disability and any responses that contain hate speech will be passed to the authorities."

"Hate speech" is a vague term which has no specific legal definition. It is generally understood to mean speech that expresses hateful or bigoted views about certain groups that historically have been subject to discrimination. However, what constitutes "bigoted" is often subjective and open to interpretation. Furthermore, accusations of "hate speech" and "bigotry" are often used to stifle reasonable criticism and debate.

In such a context, we fear the threat to pass “responses that contain hate speech to the authorities” is deeply anti-democratic in that it risks deterring people from engaging in the consultation process and freely expressing their views.

Maximising engagement with interested parties improves the quality of policy-making by bringing together a broad range of perspectives and identifying unintended effects and practical problems.

We were glad to see that the government altered this wording after we expressed our concerns. However, we think the inclusion of the sentence “Please ensure that any response you make to the consultation is lawful” is still unnecessarily heavy-handed and may cause those who are anxious about expressing certain views to self-censor.

We therefore urge you to refrain from directly or indirectly threatening to report respondents to the authorities in all future consultations, to avoid any possible chilling of free speech around potentially contentious areas of public policy.

Question 1: Do you think the Action Plan will increase equality for LGBTQ+ people and what do you think the priorities should be?

Question 2: Do you agree with the overarching aims? What would you add or take away in relation the overarching aims?

Question 3: Do you agree with the proposed actions? What would you add or take away in relation the actions?

We would like to answer all three of the above questions together by commenting on the action points under each of the headings in the Action Plan.

Comments on ‘Overarching Aims’

We have some concerns about the following action point:

“We will help to challenge heteronormative and cisnormative assumptions and will require public bodies to appropriately identify and record LGBTQ+ identities at the point of access.”

We are concerned that, if not implemented with sensitivity and discretion, this may put pressure on people to disclose their sexual orientation or gender identity, even if they wish this to remain private to them or if they are still unsure about their orientation or identity. No-one should feel pressured or coerced into revealing their sexual orientation or gender identity unless absolutely necessary.

Comments on ‘Human Rights and Recognition’

We welcome the Welsh Government’s commitment to tackle so-called ‘conversion therapy’. We note that all reputable medical and psychological experts agree that ‘conversion therapy’ is ineffective, inherently homophobic, harmful and unethical. All societies throughout the world should work towards ending the practice.

We recognise that what is considered ‘conversion therapy’ can be broad and often difficult to define. The LGBTQ+ Action Plan does not set out a definition of the practice.

We make the following recommendations to end conversion therapy:

#1 Formulate a working definition of ‘conversion therapy’: The Welsh Government should not draft legislation on conversion therapy without agreeing upon a clear definition. We recognise that what is considered ‘conversion therapy’ can be broad and often difficult to define. The LGBTQ+ Action Plan does not set out a definition of the practice.

Without a clear definition of what the Welsh Government considers ‘conversion therapy’ for the purposes of legislation, it will be extremely difficult to formulate clear, effective and balanced law. We encourage the Welsh Government to work closely with experts in the field of psychology and psychotherapy, as well as legal experts in relevant fields, to develop such a definition.

#2 Legislate against forced conversion therapy: Any attempts to coerce a person into activities that meet the Government’s definition of ‘conversion therapy’ should be prohibited by law. This should be extended to a complete ban on ‘conversion therapy’ on individuals under 18, even if those individuals profess to be participating voluntarily, in recognition of the particular vulnerabilities of minors to manipulation by adults. This would be similar to laws passed in other countries, including Germany and Canada.

#3 Enable those harmed by conversion therapy to seek proper redress: Victims who can demonstrate they suffered physical or psychological harm by attempts to change their sexuality should be able to seek compensation. There should be no religious exemptions.

#4 Make it a criminal offence for any healthcare professional to practise, promote or make a referral for conversion therapy: We are disturbed by findings published in 2009 in BMC Psychiatry that over 200 accredited mental health professionals had offered some form of conversion therapy, with 35 per cent of patients referred to them for treatment by GPs and 40 per cent treated inside an NHS practice.¹

Such referrals and “treatment” by medical professionals, even more so if within the NHS, are likely to be accepted by the individuals as being in their best interests and the young and/or vulnerable may feel powerless to resist it. There also needs to be a formal investigation into this, regulations made to prohibit it, enforcement mechanisms introduced, and appropriate disciplinary action taken against those involved both professionally and, where appropriate, in the NHS. Those practitioners acting in this way are likely to be highly motivated, often by their faith, and prevention measures need to be robust.

The vast majority of medical professionals agree that conversion therapy is pseudoscience – and harmful pseudoscience at that. Like any other pseudoscience it has no place in medicine. Therefore, the law should protect individuals from being harmed by techniques practiced or promoted by an accredited ‘professional’, or someone else who claims the technique is grounded in science and medicine. Any accredited professional who practices, promotes or refers an individual for conversion therapy should lose that accreditation.

#5 Improve education among health professionals about conversion therapy: BMC Psychiatry’s survey revealed considerable ignorance about sexual orientation and confused medical ethics

¹ <https://link.springer.com/content/pdf/10.1186/1471-244X-9-11.pdf>

among mental health care professionals who had offered conversion therapy. Some believed same-sex sexual activity was inherently wrong or posed greater risks to health than opposite-sex sexual activity. Others thought that clients' views of shame or distress caused by same-sex attraction should be addressed by attempting to 'cure' the same-sex attraction, rather than reassuring the client that same-sex attraction should not be a source of shame or distress. Others expressed the view that clients who came from religious or cultural backgrounds where homosexuality is taboo should be assisted in 'curing' feelings of same-sex attraction in order to fit the ideals and norms of that religion or culture.

All of these views are misguided and go against modern-day ideas of mental health ethics. Greater education and awareness-building may be necessary throughout the field of mental health to ensure no practitioners bring such views into their work.

#6 Prevent any organisation that promotes conversion therapy from becoming a registered charity and remove the charitable status of any organisation that promotes conversion therapy: We are extremely concerned that many of the organisations that have promoted, or are currently promoting, forms of 'conversion therapy' are registered charities. We note that Mountain of Fire and Miracles (MFM) and Winners Chapel, two religious organisations that have practiced conversion therapy², have branches registered as charities by the Charity Commission for England & Wales. MFM has a Cardiff branch, and Winners Chapel's website suggests it may be considering establishing a branch in Cardiff in the future.

We think no organisation promoting these harmful practices should be eligible for charity status, with all the tax exemptions, gift aid and other benefits charitable status entails, because charities are supposed to benefit the public and not cause harm. Charities that do promote conversion therapy should lose their charitable status and be removed from the charities register. This is similar to legislation in the Netherlands, where organisations offering conversion therapy are not eligible for subsidies.

We note that many of the charities promoting conversion therapy, including all those named in this response, are registered under the charitable purpose of "the advancement of religion". We suspect this helps them to register with less scrutiny. We think removing "the advancement of religion" as a charitable purpose would help ensure harmful religious organisations cannot attain registered charity status; religious organisations that do provide a genuine public benefit can easily register under a different charitable purpose. More information about this can be found in our 2019 report on religious charities: <https://www.secularism.org.uk/charities/charity-report.html>

#7 Work to end demand for conversion therapy: We think the best way to end conversion therapy is to end the demand, by working towards a society that treats LGBT+ people as equals and challenging those institutions, including religious institutions, that espouse homophobic views. This should include preventing any organisations that actively promote homophobia from becoming registered charities, and gaining both the tax benefits and veneer of respectability that this status entails (see our comments on 'Home and Communities'). It should also include ensuring all schools, regardless of any religious ethos they may have, provide an LGBT+ inclusive education (see our comments on 'Education').

² More details: <https://www.secularism.org.uk/opinion/2020/05/how-charity-law-props-up-gay-conversion-therapy>

Comments on 'Ensuring LGBTQ+ People's Safety'

We welcome the Welsh Government's proposals to work with Police and Crime Commissioners and Chief Constables to ensure LGBT+ people's safety. However, the following action point caused us some concern:

15. Work with the tech companies and media platforms to tackle hate crime and misinformation.

An over-zealous approach to tackling online hate could potentially lead to over-censorship. A careful balance must be struck between protecting LGBT+ people from real danger, such as direct incitement to violence, and protecting the right to free expression.

Comments on 'Home and Communities'

We particularly welcome the action points concerned with making it easier for people facing persecution on the grounds of being LGBT+ to claim asylum in Wales.

We would also like to comment on the following action point:

27. Examine how we can provide support to faith groups to create open and accessible environments for LGBTQ+ people, and to promote inter-community dialogue.

We think faith groups facing harassment for being LGBT+ inclusive or for challenging orthodox religious views about LGBT+ should be supported, to ensure their members can exercise their right to freedom of religion. We also agree that promoting inter-community dialogue can be helpful for fostering greater tolerance, understanding and cohesion between all groups in society.

However, this point appears to miss the essential issue that the privileging of religious ideology in public life is a key cause of anti-LGBT+ discrimination and hostility. Achieving true equality for LGBT+ people in Wales will not be possible without tackling this issue.

We therefore recommend preventing any organisations that actively promote anti-LGBT+ ideology from becoming registered charities, and remove the charitable status of any organisations that promote anti-LGBT+ ideology. Charities are meant to provide a public benefit which is not outweighed by any harm caused. We believe that charities promoting intolerance and stigmatisation of LGBT+ people are doing the opposite – they are harming, not helping, the public.

To give some examples of charities in Wales:

- Al-Manar Centre Trust, a charity registered in Cardiff, has a video on its YouTube channel about how to 'prevent sodomy' through observing Islamic modesty codes. It says it is a "major sin" to wear clothing of the opposite sex, and that any sense of shame from acting on certain impulses, i.e. same-sex attraction, "is there for a reason":
https://www.youtube.com/watch?v=0Gu_tIR-l1Q
- Highfields Church, also registered in Cardiff, has a Sunday School resource on its website that says: "Sex is a good gift from God that he made for a man and woman who are married."

Anything that's not that [sic] isn't God's good plan and should be 'put to death':
<https://www.highfieldschurch.org.uk/cathays/sunday/2020/jun/14/colossians-edge-on-sunday>

There are many other charities promoting anti-LGBT+ ideology registered in England that also operate in Wales.

The vast majority of charities promoting anti-LGBT+ propaganda, including those named above, are registered under the charitable purpose of "the advancement of religion". Indeed, this is exactly what they are doing – the homophobia they advance happens to be based on religious ideology. This is why such charities seem to 'get away with' making homophobic statements that would not be tolerated from non-religious charities. And this is why the charitable purpose of "the advancement of religion" needs reviewing – what many religions teach is not conducive to the public benefit and is harmful to LGBT+ people.

We think removing "the advancement of religion" as a charitable purpose would help ensure religious organisations that promote homophobia cannot attain registered charity status; religious organisations that do provide a genuine public benefit can easily register under a different charitable purpose. More information about this can be found in our 2019 report on religious charities: <https://www.secularism.org.uk/charities/charity-report.html>

Finally, we are concerned that some religious organisations that promote anti-LGBT+ ideology may partner with local authorities to deliver public services, such as youth outreach. We think this is inappropriate and that local authorities should only partner with organisations that agree to treat LGBT+ with dignity and respect.

Comments on 'Improving Health Outcomes'

We particularly welcome the following action point:

42. Support the moves to tele-medicine for sexual health appointments and postal testing where possible and desired by the patient.

We fully support the implementation of tele-medicine where desired by the patient and medically appropriate for sexual health services. This includes the use of tele-medicine for the provision of early medical abortions at home.

Comments on 'Education'

We especially welcome the following action points:

47. Provide strategic, comprehensive investment in professional learning and training on designing a fully LGBTQ+ inclusive curriculum. This should include delivering LGBTQ+ inclusive RSE for all.

48. Ensure that training must also act to empower professionals to adequately support LGBTQ+ young people and tackle homophobic, biphobic and transphobic bullying, by embedding a rights based approach.

Age-appropriate education about relationships is the right of every child. We think LGBT-inclusive RSE should be taught in all state-funded schools, including faith schools.

In 2018 our research found that all 12 of the secondary state faith schools in Wales which had an RSE policy were teaching the subject within the tenets of Catholicism or the Church in Wales³. Neither religions are particularly LGBT-inclusive, as both regard same-sex relationships as sinful:

- St John Baptist Church in Wales High School in Aberdare said: “Section 28 of the Local Government Act 1988 prohibits Local Education Authorities from promoting homosexuality or 'promoting the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship'.” This wording is from Section 28 of the Local Government Act 1988, which banned the 'promotion' of homosexuality. The law was passed 30 years ago and repealed in 2003.
- St Joseph's Roman Catholic High School in Newport said it “does not accept homosexuality in practice”.

These ideas clearly stigmatise LGBT+ people, and are likely to instill feelings of shame and fear in LGBT+ pupils. They may even contribute to mental health problems in children and fuel homophobic, biphobic and transphobic bullying.

Most regretfully, the recently-passed Curriculum and Assessment (Wales) Bill allows faith schools to continue to teach RSE from a faith-based perspective. This means children will continue to be inculcated with the idea that same-sex relationships are wrong – if, indeed, they are taught about them at all.

We therefore strongly recommend that the Welsh Government revisit education legislation in Wales to ensure no school, whatever its religious ethos, can implement a curriculum that omits or stigmatises LGBT+ people.

Similarly, some schools in the UK have been pressured by external religious groups to censor teachings about same-sex relationships. All schools should be supported by the government to ensure they can teach about LGBT+ issues in an age-appropriate manner without fear of intimidation.

Comments on ‘Workplace’

While we welcome strategies to tackle anti-LGBT+ discrimination in the workplace, we are concerned that loopholes in the Equality Act 2010 make it easy for some employers to discriminate against LGBT+ candidates in recruitment.

Schedule 9 of the EA allows for limited forms of discrimination in employment under certain circumstances, i.e.:

- The requirement is an occupational requirement, i.e. it is genuinely necessary to do the particular job.
- The employer must have a good reason or a legitimate aim for applying the requirement.

³ <https://www.secularism.org.uk/news/2018/05/welsh-faith-schools-will-keep-distorting-sex-education-nss-warns>

- It is proportionate to apply the requirement in this particular case – i.e. having the requirement is the best way to achieve the employer’s aim.
- The employee (or candidate) doesn’t meet the requirement or the employer has reasonable grounds for believing they don’t meet the requirement.

Where employment is for the purposes of an organised religion, employers can discriminate not only on the basis of religion or belief, but also on the basis of sex, gender reassignment, marriage/civil partnership, and sexual orientation in order to comply with the doctrines of the religion.

According to the EA explanatory notes, the Schedule is intended to cover only a “very narrow range of employment” including ministers of religion and “a small number of lay posts, including those that exist to promote and represent religion”.

The explanatory notes also say: “This exception is unlikely to permit a requirement that a church youth worker who primarily organises sporting activities is celibate if he is gay, but it may apply if the youth worker mainly teaches Bible classes.”

But roles in religious organisations are not always so clear-cut. They might well mix promoting religious teachings together with a more secular role. In 2018, the National Secular Society conducted research on jobs posted on three online job sites for religious organisations to see what sort of faith-based occupational requirements were being applied. It found many examples of job adverts in the faith sector specifying or implying that candidates must be of a particular faith, even if it wasn’t clear why this was a genuine occupational requirement. These included positions such as ‘Video & Digital Producer’, ‘Web Specialist and Creative’, and ‘Safeguarding Advisor’.

Organisations that require employees to be Christian may, by extension, automatically discriminate against LGBT+ people because many Christian institutions do not believe it is possible to live according to Christian values while having same-sex relationships.

For this reason, the NSS believes the conditions under which faith-based organisations can discriminate on the grounds of religion or belief in employment need to be tightened and enforced more rigorously. Our evidence suggests some organisations might be using Schedule 9 incorrectly to build a religiously-homogenous workforce, which by extension may also translate to an exclusively heterosexual workforce.

For more information on this issue, please see our 2020 report *Faith-shaped holes: How religious privilege is undermining equality law*: <https://www.secularism.org.uk/defend-equality-laws/faith-shaped-holes-how-religious.html>

Question 4: What are the key challenges that could stop the aims and actions being achieved?

We think resistance from religious organisations is likely to obstruct many proposals designed to affirm LGBT+ equality. This is especially true in education, where the Church in Wales and the Catholic Church have a particularly privileged position and are able to wield considerable influence to ensure their schools can be exempted from requirements to implement genuinely LGBT+ inclusive curricula.

The Government must ensure that any claims by the Church in Wales, the Catholic Church or any other religious group running schools in Wales that their curricula are ‘respectful’ of LGBT+ people

are not taken solely at face value. A faith school may boast having an ‘LGBT anti-bullying policy’, but this sadly means very little if the same school has a policy that says same-sex relationships are sinful or otherwise not as valid as opposite-sex relationships. Requirements that schools be genuinely LGBT-inclusive must apply to *all* schools – including those with a faith ethos.

Question 6: Do you feel the LGBTQ+ Action Plan adequately covers the intersection of LGBTQ+ with other protected characteristics, such as race, religion or belief, disability, age, sex, and marriage and civil partnership? If not, how can we improve this?

There is no reference in the Action Plan to the specific experiences of LGBT+ people within orthodox religious communities, despite the fact that these individuals are more likely to be target with ‘conversion therapy’ and more likely to be exposed to anti-LGBT+ ideology. The Action Plan needs to have a greater focus on the role of religion in anti-LGBT+ hate and discrimination, and the role of religion considered in the fields of charities and education.

Question 9: This plan has been developed in co-construction, and discussions around language and identity have shown that the acronym LGBTQ+ should be used. This stands for lesbian, gay, bisexual, transgender and queer/questioning people, with the + representing other sexual identities. As a result we refer to LGBTQ+ people in the Plan.

What are your views on this term and is there an alternative you would prefer? Welsh speakers may wish to consider suitable terminology in both languages.

It may be worth noting that many people, both LGBT+ and heterosexual, are uncomfortable with the word ‘queer’ as until relatively recently it was used almost exclusively as a slur.

Question 10: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

We would like to summarise the main action points we have made in this consultation:

- 1. Formulate a working definition of ‘conversion therapy’.**
- 2. Legislate against forced conversion therapy and enable those harmed by conversion therapy to seek proper redress.**
- 3. Make it a criminal offence for any healthcare professional to practise, promote or make a referral for conversion therapy, and improve education among health professionals about conversion therapy.**

- 4. Prevent any organisations that actively promote homophobic ideology and/or conversion therapy from becoming registered charities, and remove the charitable status of any organisations that promote homophobic ideology and/or conversion therapy.**
- 5. Ensure all schools, including faith schools, teach a genuinely LGBT+ inclusive education.**
- 6. When a local authority partners with a faith group to deliver public services, the local authority must ensure the faith group does not discriminate against LGBT+ people or promote anti-LGBT+ ideology in the delivery of those services.**
- 7. Re-examine the 'genuine occupational requirement' provision in the Equality Act 2010 to ensure LGBT+ people do not face unjust discrimination in employment.**

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