Mental Health Champion Response to the Alliance Party's Private Member's Bill to Ban Conversion Practices in Northern Ireland

Professor Siobhan O'Neill

I am pleased to support the Bill, and have provided a series of comments, set out under the headings in the consultation document below.

I have focused on:

- The importance of clear differentiation between the delivery of much needed mental health interventions, and unethical conversion therapies;
- The ambiguity that the need to demonstrate psychological harm, and inclusion of the defence of reasonableness, may bring;
- The possibility of unintended consequences such as harmful debate regarding LGBT+ rights, or the potential use of the legislation to impede the delivery of gender affirming care.

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

Organisation
Mental Health Champion

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

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

Agree
I welcome and support the bill to ban conversion practices in Northern Ireland. A person's sexual orientation and/ or Gender identity is not a problem, difficulty or illness that needs to be changed or modified. Attempts to suppress or change a person's gender identity or sexual orientation are inherently harmful and unethical. As highlighted by BACP and NIBPS, the bill needs to be drafted carefully to ensure that psychological therapies and mental health treatments, which can often include an exploration of clients' sexual orientation and/or gender identity to promote self-awareness and fulfilment, are not impacted. It is also vital that the legislation protects everyone who is at risk from conversion practices, includes under 18s, bisexual, asexual, intersex, gender fluid, and non-binary people.

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

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

Agree

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?**

Agree

Again, and as highlighted by BACP, the legislation needs to clearly exclude "non-directive and non-judgemental forms of support, provided by trained professional therapists, to help people explore issues of sexual orientation and gender identity with clients". Guidelines for practitioners should be provided in relation to this.

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

Agree

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?**

Agree
It is extremely important that the offence covers these more subtle, but equally harmful, methods used to change a person's sexual orientation or gender identity. I am aware of examples of these techniques being used in practice.

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?**

Disagree
Psychological harm can be difficult to prove, and informed consent can be difficult to establish because of the power imbalances and complicated relationships between organisations involved in conversion therapy, the individuals affected and their families. My view is that conversion therapy is inherently harmful therefore harm would not need to be demonstrated or evidenced. My expertise relates only to the aspect of the proposed Bill that relate to mental health and there may be legal reasons why evidence of harm should be required.

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

Disagree

Again, there may be legal reasons why this is useful, and particular scenarios whereby an offence of reasonableness might be appropriate. However, my view is that conversion practices are never acceptable and I would be concerned that this inclusion may dilute the power of the Bill. If this is to be included it would be helpful to provide examples where the defence of reasonableness might be applied.

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

Agree
Conversion practices are harmful, and never acceptable. Therefore, informed consent is not relevant. Furthermore, there is evidence of covert, coercive and manipulative techniques being used to persuade people to cooperate with these practices; and of these practices being presented as counselling or psychotherapy. It is therefore really important that a defence of consent is not included.

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.*

Not sure

I am not in a position to comment on the sentencing range as this falls outside of my area of expertise. However, it is important that the sentencing reflects the strong evidence of the harm caused by conversion therapies and is commensurate with the severity of individual cases.

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
The practice of sending people abroad for conversion therapy is particularly abhorrent. Conversation therapy could also be delivered from another region or country, to a person in NI using a telephone or digital platform. In addition to including the clause described above, it is important that the authorities in NI work to highlight and eradicate the practice of conversion therapy in other jurisdictions.

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.*

Not sure

Again, I am not in a position to comment on the sentencing range as this falls outside of my area of expertise. However, it is important that the sentencing reflects the strong evidence of the harm caused by conversion therapies and is commensurate with the severity of individual cases.

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

Significant positive impact

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

No

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

Yes, the proposal has the potential to raise awareness of the harm caused by conversion practices, and the nature of sexual orientation and gender identity as aspects of a person's identity that we should not attempt to change or suppress. However, any debate on the Bill may lead to an increase in hate speech, discrimination and the expression of negative attitudes towards the LGBTQ+ community, which may in turn have an impact on mental health and suicidality.

The legislation should be carefully drafted so as not to (as stated by NIBPS) "prevent psychological and medical professionals who work with transgender and gender questioning clients from carrying out currently required clinical assessments prior to medical intervention". The legislation needs to be applied in such a way that it could not be used to impede the provision of gender affirming health care, including physical health care in NI.

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

I note that in some cases conversion therapies are presented as a form of mental health interventions, or counselling. As the NIBPS states, the practices are sometimes referred by terms such as, 'reparative therapy', 'sexual orientation and gender identity change efforts' or 'gay cure therapy'." They also note "This therapy may sometimes be covertly practised under the appearance of mainstream practice without being named.

It is therefore important that the differentiation is clearly made between therapies for a mental health difficulty or mental illness, and unethical therapies with the goal of changing a person's gender identity or sexual orientation. Mental health interventions, and specialist support needs to be available, and accessible, to people from the LGBT+ community. These individuals have a higher risk of mental illness, and this is often related to their experience of discrimination, homophobia, biphobia, and transphobia. In the case of transgender individuals, the lack of gender affirming healthcare (a particular problem in NI) may have a negative mental health impact. Mental health interventions may well include an exploration

of gender identity and sexual orientation. As the NIBPS highlights: it is important that this legislation does not seek to “deny, discourage or exclude those with uncertain feelings around sexuality or gender identity from seeking qualified and appropriate help”. They explicitly support “healthcare providers to provide appropriately informed and ethical practice when working with clients who wish to explore, experience conflict with, or are in distress regarding their sexual orientation or gender identity.” The purpose of this legislation, to prohibit the use of interventions with the goal of changing a person’s gender identity or sexual orientation, needs to be crystal clear.