Copy of BACP response to Banning conversion therapy

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# **Views on banning conversion therapy**

**Q: Do you agree or disagree that the Government should intervene to end conversion therapy in principle?**

A: Strongly agree

**Q: Why do you think this? Please explain the reasons for your answer:**

A: The British Association for Counselling and Psychotherapy (BACP) is the leading professional body for counselling and psychotherapy in the UK. We currently have over 61,000 members, working with people of all ages, in all communities and provide services across a wide range of sectors – including the NHS, education, in private practice and in the third sector.

BACP is committed to improving equality, diversity and inclusion (EDI) by creating ‘a profession for the future’, addressing systemic barriers within the profession to improve access to psychological therapies for all who need them.

BACP welcome any attempt to eradicate the practice of conversion therapy and we fully agree that the Government should intervene to ban conversion therapy through a legislative ban – which is backed up by evidence from its own research. A ban is a means to fulfil our duty to protect all people at risk from harm and provide justice and support for victims and survivors of conversion therapy.

BACP’s *Ethical Framework for the Counselling Professions* is clear that we are utterly opposed to any misuse of counselling or psychotherapy in an attempt to change a person’s sexual orientation or gender identification.

BACP believes that to do so would be ineffective, potentially harmful and in total contradiction with the ethics and principles of evidence-based, client-centred therapeutic practice. No sexual orientation or gender identity is inherently superior to or more healthy or natural than any other.

BACP supports the updated memorandum of understanding (MoU2) against conversion therapy launched in October 2017, which makes it clear that conversion therapy in relation to gender identity and sexual orientation (including asexuality) is unethical, potentially harmful and is not supported by evidence.

Sexual orientations and gender identities are not mental health disorders, although exclusion, stigma and prejudice may precipitate mental health issues for any person subjected to these abuses. Anyone accessing therapeutic help should be able to do so without fear of judgement or the threat of being pressured to change a fundamental aspect of who they are.

**Defining conversion therapy**

A poorly worded definition of conversion therapy in the legislation will fail to properly protect everyone who is at risk of conversion therapy. The definition used for conversion therapy needs careful drafting to ensure that it does not capture ethical forms of therapy which work with clients to explore and be supported to take the journey towards self-knowledge and self-exploration about their sexual orientation or gender identity.

We would like to see a ban that gives clear definitions of what the practice is and is not, with clear guidelines for practitioners. This is to ensure there are no detrimental consequences of such a ban for clients. We would also want to ensure that safeguards are in place to ensure that bona fide therapists can talk freely and openly with their clients about sexuality and gender, without fear of recriminations.

BACP is a signatory of the MoU on Conversion Therapy in the UK and we recommend that the Government should adopt the MoU on Conversion Therapy definition of conversion therapy.

The MoU defines conversion therapy as: “an umbrella term for a therapeutic approach, or any model or individual viewpoint that demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other, and which attempts to bring about a change of sexual orientation or gender identity or seeks to suppress an individual’s expression of sexual orientation or gender identity on that basis”.

**Evidence for a ban**

Evidence for the need for a ban is supported by the Government’s own research. The Government’s 2018 LGBT action plan including a survey of 108,000 respondents – the largest of its kind in the world showed that 2% of respondents had undergone conversion therapy in an attempt to ‘cure’ them of being LGBT, and a further 5% had been offered it.

Furthermore, those subjected to conversion therapy are at greater risk of developing mental health problems, often severe, and sometimes with lifelong effects. There have been multiple studies which point towards multiple harms from conversion therapy, including depression and anxiety, suicide ideation and attempts, social isolation, and worsened family relationships among others.

A ban must be properly and fully implemented to prevent further harm to anyone at risk of conversion therapy.

Existing evidence also shows that health and mental health outcomes are generally worse for LGBT people than the rest of the population, and that LGBT people feel that their specific needs are not taken into account in their care.

The national LGBT survey asked questions about people’s experiences of public healthcare in the 12 months preceding the survey and whether they had disclosed their sexual orientation or gender identity to healthcare staff, and how they felt this affected their care.

51% of survey respondents who accessed or tried to access mental health services said they had to wait too long, 27% were worried, anxious or embarrassed about going and 16% said their GP was not supportive.

Poor mental health outcomes amongst LGBTQIA+ people highlight the importance that any attempt by the Government to ban conversion therapy must also protect safe and ethical therapy, provided by trained and qualified therapists working within an appropriate regulatory-framework, for people wishing to explore issues of sexuality and gender identity in a non-directive and non-judgemental space. This must also be kept in mind when putting in place the framework to measure the impact and progress of the legislative ban and support package, so that we know the difference this makes.

**Education, training and awareness**

Existence of a ban will also enable additional important measures such as education, training and awareness around conversion therapy, and enable efforts to promote the importance of the public only accessing trained and qualified professionals around issues of sexuality and gender identity. This will complement a legislative ban and go even further to entirely eradicating conversion therapy and provide effective and comprehensive protection for all.

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# **Targeting physical conversion therapy**

**Q: To what extent do you support, or not support, the Government's proposal for addressing physical acts of conversion therapy?**

A: Strongly support

**Q: Why do you think this? Please explain the reasons for your answer:**

A: Article 3 of the European Convention in Human Rights (‘ECHR’), places a duty on Government to provide protection to individuals from serious harm amounting to torture, or inhuman or degrading treatment. Conversion therapy amounts to a clear violation of Article 3 ECHR, and as this is an absolute right (i.e. non-derogable), there is no balancing of other human rights, for example Article 9 ECHR (freedom of religion), or Article 10 ECHR (freedom of expression) to enable Conversion Therapy practices to be exempted from prohibition.

The physical harm connected to conversion therapy directly leads to psychological harm and mental health issues, and therefore it is vital that the introduction of any legislative ban includes provisions for fully-funded support services for victims and survivors, including counselling and psychotherapy from appropriately trained practitioners.

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# **Targeting talking conversion therapy**

The Government considers that delivering talking therapy with the intention of changing a person’s sexual orientation or changing them from being transgender or to being transgender either to someone who is under 18, or to someone who is 18 or over and who has not consented or lacks the capacity to do so should be considered a criminal offence.

**Q: The consultation document describes proposals to introduce new criminal law that will capture this. How far do you agree or disagree with this?**

A; Somewhat agree

**Q: How far do you agree or disagree with the penalties being proposed?**

A: Neither agree or disagree

**Q: Do you think that these proposals miss anything?**

A: Yes

**Q: If yes, can you tell us what you think we have missed? Please explain the reasons for your answer:**

A: Whilst BACP welcome the Government’s efforts to ban conversion therapy, these proposals fall short in protecting all individuals shown by research to be at clear risk of harm from conversion therapy. The Government’s own LGBT Action Plan describes conversion therapy as abhorrent, wrong and that they are not willing to let them continue, yet these proposals will allow conversion therapy to continue in some forms and will ultimately mean the Government’s intention will fail.

Alongside all signatories and supporters of the MoU, BACP agree that the practice of conversion therapy, whether in relation to sexual orientation or gender identity, is unethical and potentially harmful, however it is offered. The proposals within the consultation fall short of protecting everyone at risk of conversion therapy, primarily because the Government’s own research showed that adult victims can be manipulated into giving consent. To deliver a truly effective ban on conversion therapy, the proposals must be changed to:

* Provide a full ban on conversion therapy for all adults as well as under-18s.
* Clearly include bisexual, asexual, intersex and non-binary people within the proposals. The current proposals and terminology do not appear to protect everyone from the LGBTQIA community who may be at risk of conversion therapy.
* In line with the MoU definition of conversion therapy, and BACP’s *Ethical Framework for the Counselling Professions*, the ban must include attempts to suppress as well as change a person’s sexual orientation or gender identity. Without including ‘suppress’ within its definition of conversion therapy and proposals, there remains the ability for conversion therapy to continue under the suggestion that what is being done is attempting to prevent a person acting on, rather than changing their sexual orientation or gender identity.

The current proposals allow for conversion therapy to be permitted where an adult gives informed consent. We believe informed consent is not possible when it comes to the practice of conversion therapy for the following reasons:

* Conversion therapy is unethical, potentially harmful and not supported by evidence. This lack of evidence of benefit, and given that all psychological therapy professional bodies consider the practice is unethical, makes it impossible for a practitioner to offer and establish informed consent in any way that would be safe or effective. The Government’s own evidence identified adults caught up in conversion therapy, who had lacked capacity to consent.
* Conversion therapy is widely considered to be a violation of article 3 of the European Convention on Human Rights, and therefore incompatible with the duty of Government to provide protection to individuals from serious harm amounting to torture, or inhuman or degrading treatment. This protection must apply to all people in the UK. Article 3 ECHR requires the government to have a pro-active investigatory mechanism to prevent serious harm. Any exemption from a ban would lead to protracted and costly litigation, and lead to a clear erosion of the purpose of the legislation, to act as a deterrent to any individual or organisation contemplating offering conversion therapy.
* Conversion therapy represents an unacceptable risk of serious harm to anyone who is struggling with their sexuality or gender, and who is especially vulnerable at the point of seeking help. Irrespective of their age, therefore, the duty of care that falls to talking therapists prevents them from offering conversion therapy, knowing that someone seeking help in this position is open to being exploited and manipulated against their best interests.

The consultation states that the Government’s assessment is that no form of conversion therapy is consistent with the existing regulatory standards of statutory healthcare professionals. Further clarification is needed on whether this extends to counsellors and psychotherapists on registers accredited by the Professional Standards Authority, such as BACP, where our *Ethical Framework* clearly does not allow for conversion therapy. There is also a lack of clarity about how the Government specifically expects NHS mental services, such as those providing psychological therapies (e.g. IAPT), to be regulated, given that the Care Quality Commission do not at present have any remit to regulate NHS psychological services, unlike all other mental health services.

Government must clarify, therefore, how its proposals will provide consistency for different mental health professionals (statutory and non-statutory regulated), who may be working within the same services, and how the different regulatory bodies will carry out their responsibilities equally, for all professionals who provide talking therapies in the NHS, as well as in a variety of settings including the third sector and private practice.

BACP’s *Ethical Framework for the Counselling Professions* is clear in not allowing for any form of conversion therapy. This is inconsistent with the Government’s proposals and could lead to conflict with our threshold for dealing with complaints of conversion therapy. Any ban must not prevent professional bodies and regulators having their own ethical guidelines and conduct procedures to deal with complaints around conversion therapy, which may fall outside what the legislation considers acceptable. Additional clarity is needed, therefore, on how the existing professional regulatory structures must be able to work in tandem with the prosecuting authorities, so that implementation of the legislation works properly.

We are also concerned that the proposals provide a loophole for conversion therapy to continue under the guise of religious practices. Any kind of talking therapy in a religious setting must come under the same restrictions, as well as the same professional regulatory structures. Further clarity is needed, therefore, on how the government’s proposals will deal with those who seek to continue to carry out conversion therapy who do not subscribe to any UK-based registration for talking therapies? Our view is that all such practices of bona fide talking therapies must be mandated to apply for accredited register status with the PSA. This would then close another potential loophole.

BACP believe there should be a full ban on conversion for all age ranges and that the concept of informed consent is a misnomer. In our view, any practice that would cross the threshold of the two tests set out in the proposals (coercion and intent) must necessarily constitute a violation of article 3 ECHR, as well as being considered to be wholly, grossly and inevitably unethical. We would simply refuse to recognise any such practice that constitutes conversion therapy as a bona fide therapy.

The level of punishment that is appropriate will depend on the severity of the case. This is a question of balance and penalties for conversion therapy must be proportionate to the offence.

The proposals also need to include a duty for statutory services to inform regulators and professional bodies of accusations and charges of conversion therapy, so they can be investigated within their own conduct procedures. We would also envisage a reciprocal duty on professional bodies and regulators to inform the criminal prosecution authorities at the outset in cases where the threshold for physical coercion and intent has clearly been crossed. These systems of policing and dealing with individual cases will need to work in tandem.

As set out in our answer to question six, it is essential that the legislation is workable and would need to be clear that this would not include 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.

We would like to reiterate again, that a poorly worded definition of conversion therapy in the legislation will fail to properly protect everyone who is at risk of conversion therapy. The definition used for conversion therapy needs careful drafting to ensure that it does not capture ethical forms of therapy which work with clients to explore and be supported to take the journey towards self-knowledge and self-exploration about their sexual orientation or gender identity.

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# **Restricting the promotion of conversion therapy**

**Q: The Government considers that Ofcom’s Broadcasting Code already provides measures against the broadcast and promotion of conversion therapy. How far do you agree or disagree with this?**

A: Neither agree or disagree

**Q: Why do you think this? Please explain the reasons for your answer:**

A: We do not know to what extent the current code provides measures to prevent the broadcast and promotion of conversion therapy. We do believe that additional work will be needed when the ban is in place and prior to introducing new regulations for online platforms and the internet.

**Q: Do you know of any examples of broadcasting that you consider to be endorsing or promoting conversion therapy?**

A: Yes

**Q: If yes, can you tell us what these examples are? Please write in:**

A: We are aware from third parties that material promoting conversion therapy is available online, however we are unable to provide any specific examples.

**Q: The Government considers that the existing codes set out by the Advertising Standards Authority and the Committee of Advertising Practice already prohibits the advertisement of conversion therapy. How far do you agree or disagree with this?**

A: Neither agree or disagree

**Q: Do you know of any examples of advertisements that you consider to be endorsing or promoting conversion therapy?**

A: Yes

**Q: If yes, can you tell us what these examples are? Please write in:**

A: We are unable to provide any specific examples but believe that additional work will need to be done around advertising once a ban is in place and are particularly concerned about the potential for ongoing online advertisement of conversion therapy and the need for significant efforts to prevent promotion online. A well-recognised and promoted mechanism will need to be in place for online advertisements to be reported.

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# **Protecting people from conversion therapy overseas**

**Q: The consultation document describes proposals to introduce conversion therapy protection orders to tackle a gap in provision for victims of the practice. To what extent do you agree or disagree that there is a gap in the provision for victims of conversion therapy?**

A: Strongly agree

**Q: To what extent do you agree or disagree with our proposals for addressing this gap we have identified?**

A: Somewhat disagree

**Q: Why do you think this? Please explain the reasons for your answer:**

A: BACP welcome the introduction of Conversion Therapy Protection Orders to prevent people being sent abroad and subjected to conversion therapy in another country and would like the Government to ensure the final proposals align fully to the legal restrictions provided for FGM and forced marriage.

We would also like to see this protection extended to people of all ages on the basis that consent is inappropriate, as expressed elsewhere in the consultation.

Despite the introduction of CTPOs, people will still be vulnerable to conversion therapy from someone outside of the UK through online platforms, text or the telephone. The Government must consider as part of these proposals how it will protect people in the UK from becoming the victim of conversion therapy in this way.

A 2020 United Nations Report called for nations around the World to work to ban conversion therapy and beyond implementing a ban here, the Government must work internationally to eradicate the practice of conversion therapy globally.

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# **Ensuring charities do not support conversion therapy**

**Q: Charity trustees are the people who are responsible for governing a charity and directing how it is managed and run. The consultation document describes proposals whereby anyone found guilty of carrying out conversion therapy will have the case against them for being disqualified from serving as a trustee at any charity strengthened.** **To what extent do you agree or disagree with this approach?**

A: Strongly agree

**Q: Why do you think this? Please explain the reasons for your answer:**

BACP agree with the Government’s proposals for ensuring charities do not support conversion therapy. We also like the proposals to include a duty to report to regulators and professional bodies accusations or charges of conversion therapy.

We are concerned that there appears to be a potential gap in the current proposals, whereby it is envisaged that different criteria will apply to the charity sector than statutory sector, which may conflict with existing professional codes of ethics and practice for psychological therapy bodies in the UK. Work should be considered to ensure this is applied consistently to all talking therapy provision in the UK, whether provided by statutory regulated professionals or those on a register accredited by the Professional Standards Authority.

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# **Recognition by authorities of conversion therapy as a problem**

**Q: To what extent do you agree or disagree that the following organisations are providing adequate action against people who might already be carrying out conversion therapy?**

**Services action against people carrying out CT - Police:**

A: Somewhat disagree

**Q: Services action against people carrying out CT - Crown Prosecution Service:**

A: Somewhat disagree

**Q: Services action against people carrying out CT - OTHER statutory service:**

A: Somewhat disagree

**Q: Why do you think this? Please explain the reasons for your answer:**

A: BACP believe that without any sanctions currently available, statutory services are unable to deal effectively with issues of conversion therapy. There is also a lack of awareness of conversion therapy and harm amongst statutory services and a clear need for specialist expertise and knowledge.

The Government’s LGBT survey showed that of the conversion therapy carried out in the UK, 19% was by a healthcare provider or medical professional, yet there have been no reported complaints. Regulators and professional bodies must ensure that people can make complaints and the procedure is clear and accessible.

The Government should consider the appointment of LGBTQIA+ guardians to consult and advise statutory services on these issues. We also believe that there is the need for engagement and multi-disciplinary work with communities of faith and settings in which young people / LGBTQIA+ people are at risk so as to create a safer climate.

To support statutory services there also needs to be funded research into the most effective measures for prevention and bringing successful prosecutions. Likewise, in order to implement this ban effectively an expert reference group will need to be put in place across each of the devolved administrations led by mental health and equalities. A framework for measuring progress and the difference being made by the ban should be developed by these ERGs.

**Q: To what extent do you agree or disagree that the following organisations are providing adequate support for victims of conversion therapy?**

**Services support for victims of CT - Police:**

A: Somewhat disagree

**Q: Services support for victims of CT - Crown Prosecution Service:**

A: Somewhat disagree

**Q: Services support for victims of CT - OTHER statutory service:**

A: Somewhat disagree

**Q: Why do you think this? Please explain the reasons for your answer:**

A: We believe that there is a lack of awareness from statutory services of conversion therapy and the potential for harm. The Government should consider the appointment of LGBTQIA+ guardians to consult and advise statutory services on these issues. We also believe that there is the need for engagement and multi-disciplinary work with communities of faith and settings in which young people / LGBTQIA+ people are at risk so as to create a safer climate.

There is also a lack of funded support services for victims and survivors of conversion therapy and absence of research on effective measures to bring an end to conversion therapy, which should be addressed by Government. We have addressed this point in more detail below.

**Q: Do you think that these services can do more to support victims of conversion therapy?**

A: Yes

**Q: If yes, what more do you think they could do? Please explain the reasons for your answer:**

A: The implementation of a ban offers an important opportunity to establish statutory support for victims, survivors and those at risk of conversion therapy, and we believe the legislation should make provision for:

* Nationally funded programmes across the devolved administrations, led within mental health, that aim to eliminate harm and eradicate conversion therapy across the whole UK, that are informed by research into the effectiveness of locally delivered services, and overseen by expert reference groups, as well as on lived experience of survivors and victims.

To include:

* Ongoing fully funded support services for victims and survivors and those at risk, provided by the Government, which include access to psychological support. These services should report on outcomes for their users and evaluate their impact on reducing harm from conversion therapy.
* Funding for further research into the local prevalence and harm from conversion therapy for people of all age ranges, and across communities of different faiths and ethnic backgrounds, in particular, where the Government’s published research has suggested greater levels of risk.
* Public awareness and education campaigns about conversion therapy.
* Training across agencies such as regulatory authorities, mental health and psychological therapy professions, whenever working with issues of sexuality and gender, in order to create a safer climate, and better knowledge and understanding to prevent future harm.

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# **Economic appraisal**

**Q: Do you have any evidence on the economic or financial costs or benefits of any of the proposals set out in the consultation?**

A: No

**Q: If yes, please can you provide us with details of this evidence, including where possible, any references to publications? Please write in:**

A: Equalities impacts appraisal

**Q: There is a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the Equality Act 2010. Do you have any evidence of the equalities impacts of any proposals set out in the consultation?**

A: No