

Free Speech Union briefing

Why Lloyd Russell-Moyle's Conversion Therapy Bill is an Assault on Free Speech

The Free Speech Union

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As an organisation, we have concerns about the introduction of any new criminal offences to prohibit behaviour that human beings engage in voluntarily. However, Lloyd Russell-Moyle's bill is a particularly egregious example of the ever growing demand to ban this or that. If passed into law, it would seriously harm free speech.

Many of the examples of harmful conversion therapy referred to by the proponents of a ban— the majority of which are historic – are horrendous. But in each case, they could be prosecuted under the existing criminal law.

Insofar as there is a case for new legislation, the Russell-Moyle Bill is a good example of how not to create a new offence.

We would draw colleagues' attention to 12 problems with the proposed Bill:

1. Examples of genuinely harmful practices identified by the campaigners for this legislation are already unlawful under existing criminal offences.
2. The Bill's provisions introduce two new criminal offence accompanied by inadequate statutory defences. It would have the unintended effect of criminalising perfectly legitimate forms of conduct, including a gay man seeking to 'turn' a straight man to whom he is attracted. The narrow scope of available defences would almost certainly lead to miscarriages of justice.
3. The Bill does not comply with protections for the rights to freedom of speech and religion set out in the European Convention on Human Rights and enshrined in the Human Rights Act 1998 and would not survive a legal challenge for being non-compliant.
4. The evidence base that widespread conversion therapy is taking place in contemporary Britain is threadbare, exaggerated and over-reliant on campaigners' own, unverified claims.
5. Free speech requires that bad ideas be tested rather than prohibited – sunlight is the best disinfectant.
6. The Bill's proposal to criminalise 'gender conversion practices' risks criminalising parents who try to dissuade their confused, adolescent

children from having irreversible medical treatment that can cause lasting harm, including lifelong sterility.

7. In addition, the inclusion of 'gender conversion practices' risks criminalising health professionals who recommend a 'watchful waiting' approach rather than simply affirm the self-diagnosis of children and send them down an irreversible medical pathway.
8. By proscribing some forms of treatment which doctors may believe are in the best interests of their gender distressed patients – particularly children – the Bill would force them to break their Hippocratic Oath ('First, do no harm'). While the offence ostensibly excludes doctors so long as they are not motivated by a belief that one gender or sexuality is "inherently preferable" to another, that phrase is undefined, vague and potentially loaded. Doctors genuinely acting in patients' best interests could be caught by the new criminal offences created by this Bill.
9. The Bill would, in certain circumstances, criminalise the expression of some orthodox religious beliefs held by people of faith – Muslims and Christians for instance – which is an unacceptable interference in religious freedom. For instance, a religious leader urging a member of his or her community to practice abstinence rather than act on their sexual attraction to a member of the same sex would be liable for prosecution.
10. The Bill contains no exemption for individuals that voluntarily want to undergo some form of conversion therapy – impinging on their freedoms, too.
11. Speech offences should always – in the FSU's view – require a foreseeable risk of harm to identifiable individuals. The 'harm' the Bill is seeking to prohibit is poorly defined and therefore difficult to foresee.
12. Other, less heavy-handed forms of regulation – including professional standards for counsellors, psychiatrists and other health professionals – offer a better vehicle to prevent any potential harm.

Colleagues wishing to raise any of the above objections may find some of the points below helpful. The FSU would be very happy to help draft

more detailed speaking notes or speeches for any colleague.

1. Existing Criminal Law

- Examples of conversion therapy cited by campaigners include accounts of 'corrective rape', electroshock therapy, physical abuse, profound isolation, and other types of abuse. In certain cases, the victims are said to be children.
- All of these practices are already against the law, so there's no need to create new criminal offences to prohibit them. Further, those offences would be aggravated under existing law if motivated by hostility to the victims based on the belief that one sexuality or gender identity is inherently preferable to another.
- In cases involving children, perpetrators of abusive conversion therapy could be prosecuted for child cruelty offences. Children could also be removed from their parents by the courts if there is evidence of abuse.
- One concerning element of the public debate surrounding these matters is that the groups campaigning for the Bill, and which claim to care deeply about the victims of this kind of abuse, do not appear to have offered the victims it has taken evidence from any assistance in helping these crimes to be investigated.

2. Extreme Breadth

- The Bill does not require the defendant to intend to cause harm (or for there to have been a foreseeable risk of harm) for an act to be criminal. The proscribed therapy need not, for instance, cause harassment, alarm or distress, nor would a person acting in good faith necessarily have a defence.
- Parents or religious leaders who pray out loud for celibacy or for their children to be relieved of their confusion surrounding their gender could be prosecuted if this Bill becomes law. This is a well-established risk in other jurisdictions that have passed bills banning conversion therapy. For instance, the Australian State of Victoria has published guidelines setting out what constitutes 'acceptable' and 'unacceptable' prayer according to its ban.
- Unintended consequences of the Bill's provisions include the criminalisation of sexual attraction or flirtation.

- Take the hypothetical situation in which a homosexual man develops feelings for a straight friend or acquaintance. He may honestly believe that his straight friend harbours homosexual or bisexual tendencies which he has repressed. If he seeks to flirt with or pursue his straight friend – even in the most anodyne of circumstances – the gay man will have committed the offence of ‘conversion therapy’. In fact, the offence is likely to be aggravated by the sexual motive.
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3. Human Rights

- In an opinion for the Christian Institute, human rights barrister Jason Coppel, KC, has said that the law would be “very likely to be held to breach the ECHR” under Articles 8, 9, 10, and 11, depending on the circumstances of the case.¹
- These human rights breaches are a consequence of the extremely broad way in which the new offences have been defined and the absence of defences for those charged with an offence.
- Many colleagues will feel Parliament should not pass Bills that are unlikely to survive a human rights challenge. Indeed, some colleagues may be surprised to see a Labour MP championing a Bill that – in the opinion of a leading human rights KC – expressly contravenes the ECHR.
- At the very least, the fact that a senior barrister has expressed his belief that the Bill breaches human rights ought to give colleagues pause when considering whether this measure is a proportionate response to the problem, as its proponents claim.

¹ <https://www.christian.org.uk/wp-content/uploads/Christian-Institute-Conversion-Therapy-Lloyd-Russell-Moyle-Private-Members-Bill-and-Elliot-Colburn-Amendment-Advice.pdf>

4. Limited Evidence

- There is a complete absence of verifiable, quantitative evidence demonstrating that harmful conversion practices are widespread or occurring frequently. What evidence there is consists largely of first-hand accounts by campaigners for the Bill.
- The most prominent ‘survey’ was conducted by the Ozanne Foundation, an organisation that has been campaigning for a conversion therapy ban. It contained a self-selecting sample in which 99.9% of respondents skipped basic questions such as how long ago they experienced the ‘conversion therapy’ they were describing. We therefore have no way of knowing whether the incidents they reported, if indeed they occurred, were recent or in the distant past.²
- Other surveys, including the National LGBT survey, suffer from a series of deficiencies including not defining terms, using self-selecting samples and allowing campaign groups to engineer responses.
- Other cases provided on the Ban Conversion Therapy website include incidents people have heard about from friends or friends of friends that, in some cases, took place as long ago as the 1950s, as well as an incident that took place overseas.³
- The FSU has been unable to identify a single example of violent conversion therapy taking place in the UK in the last five years.
- The independent study on conversion therapy conducted by the Government shows that the overwhelming majority of gay people have never been offered ‘conversion therapy’ and far fewer have experienced it.⁴ The fact that the examples in the evidence base assembled by the Bill’s proponents include historic cases suggests there isn’t sufficient evidence of conversion therapy being widespread in contemporary Britain to support the passing of this Bill.

5. Test Bad Ideas

- It may be that religious conceptions of sexuality (and indeed gender identity) leave something to be desired. The FSU’s view is that – if

² <https://ozanne.foundation/project/faith-sexuality-survey-2018/>

³ <https://www.banconversiontherapy.com/stories>

⁴ <https://assets.publishing.service.gov.uk/media/5b3cb6b6ed915d39fd5f14df/GEO-LGBT-Survey-Report.pdf>

you believe that – free and open debate is the best way to expose the weakness in your opponent’s argument, rather than trying to silence them by criminalising certain religious points of view.

- There is good evidence that open debate of issues relating to same sex attraction has helped to change minds. In 1983, 50% of the public considered that same sex relations are “always wrong”, according to the British Social Attitudes Survey. Today, just 9% of people say that.⁵ This shift in attitudes took place as a result of a lively public debate about this issue, suggesting there’s no need for campaigners to bludgeon their opponents into silence by creating new criminal offences.
- Indeed, there is evidence that prohibiting certain points of view increases rather than reduces their prevalence. For instance, a concerted effort was made to ban anti- vaxxers from large social media platforms in 2022, yet vaccine hesitancy has grown since, with a 30-fold increase in measles cases across Europe in 2023, according to the World Health Organisation.⁶

6. Gender Identity

- As the Employment Appeals Tribunal concluded in the *Forstater* case, the belief that sex is immutable and binary is a legitimate opinion that’s “worthy of respect in a democratic society”. This Bill – however – risks reversing that position, turning that particular belief into a thought or speech crime.
- In his opinion on the Bill, Jason Coppel, KC, makes clear that expressions of certain gender critical beliefs could in certain contexts constitute a criminal offence if this Bill is passed. This would have the effect of not only reversing *Forstater*, but criminalising a view held by the vast majority of the British public. Apart from anything else, if everyone who holds this view is liable for prosecution, the courts would quickly be overwhelmed.

⁵ <https://natcen.ac.uk/news/britains-attitudes-towards-moral-issues-have-become-much-more-liberal>

⁶ <https://www.who.int/europe/news/item/14-12-2023-a-30-fold-rise-of-measles-cases-in-2023-in-the-who-european-region-warrants-urgent-action>

7. Clinical Conversations

- How to treat children who present with gender dysphoria is highly contentious.
- As the *Cass Review* concluded, clinicians should question and explore a gender distressed child's feelings before affirming their self-diagnosis. It is worth noting that gender reassignment involves invasive and risky medical and surgical interventions, which is not something that should be undertaken or facilitated without a careful consideration of all the circumstances of each case, including the possibility that the patient may come to regret such a course of action.
- In spite of the provided defence, the new offence proposed by the Bill could criminalise health professionals who engage in the conversations that the independent *Cass Review* recommended they have before sending children down irreversible medical pathways.
- The requirement that clinicians do not have a "predetermined" outcome in mind when treating patients presenting with gender dysphoria risks the authorities mounting investigations into the state of mind of clinicians who provide challenge or reassurance to such patients.
 - Take the example of a child who presents with gender dysphoria to a clinician where there is evidence on the child's file that undermines the diagnosis (a clinical diagnosis of autism, a large number of people in the child's friendship group presenting with gender dysphoria, etc.). Were that child to see a clinician who had previously published research indicating they held gender critical beliefs or if they had publicly recommended a watchful, waiting approach when treating gender distressed adolescents, the clinician would be at risk of prosecution if her or she did anything other than affirm the diagnosis of the child.
 - Equally, in circumstances where a child is resistant to a diagnosis of gender dysphoria and they see a clinician who encourages them to think they might in fact be dysphoric, that clinician, if he or she had expressed the opposite views to the clinician in the previous example, would be at risk of prosecution.
- The risks here are twofold:
 - Firstly, because clinicians will be at risk of criminal prosecution

every time they see a gender distressed patient they will be much less likely to see such patients.

- Secondly, the need by clinicians to minimise any evidence that they may have had a “predetermined outcome” in mind when treating a gender distressed patient will have a chilling effect on the emerging clinical research debate about this topic. Both ‘sceptical’ and ‘affirmative’ clinicians would know that any research they published could be cited in a criminal case against them following their treatment of a gender distressed patient.

8. Chilling Effect

- As outlined above, we believe it would be difficult for many religious groups to honestly comply with this Bill, given how broad the definition of ‘conversion practices’ is. Indeed, a fear of vexatious allegations being made and investigations being launched would pressure religious groups to go far beyond what the new law requires and avoid lawful conversations with members of their communities wanting to talk about their attraction to someone of the same sex or their gender confusion.
- It is likely that this could lead to a shying away by faith leaders from preaching core tenets of their religious doctrine, even where no congregant could possibly see it as a ‘conversion practice’. The Victorian State Government in Australia has produced official guidance discouraging churches from preaching about ‘sin’ or ‘fallen men’ in order to comply with its conversion therapy ban.
- Health professionals are also likely to be too anxious to express their views on this subject. In the state of Victoria, parents report that clinicians simply will not see gender distressed patients for fear of being prosecuted under the conversion therapy ban and new gender identity services are having trouble recruiting staff.

9. Core Religious Tenets

- The Bill’s proponents claim it doesn’t prohibit the mere expression of certain beliefs, but the proposed ban on so-called ‘suppression’ activities would prohibit conduct that goes far beyond what is commonly understood by the phrase ‘conversion therapy’. The

traditional precept that sex outside the confines of marriage (which, in the eyes of many established churches, excludes same sex marriage) leads some religious leaders to preach abstinence. The preaching of this tenet might constitute an offence under the Bill.

- It could also be an offence to read aloud from the Book of Leviticus, or Paul's Letter to the Romans in a public setting, given those texts' condemnation of homosexuality. What of similar texts in other major world religions including Islam and Hinduism?
- The banning of readings from core religious texts (or publishing them) is a potential consequence of this law's enactment. Of course, the courts would be asked not to prosecute on human rights grounds. But this would place them in an invidious position in which they were being asked to balance Parliament's hastily expressed view with fundamental human rights. This cannot be the proper way to legislate in such a sensitive area.

10. Consent

- Many will find the idea of someone seeking help to change their sexuality (or their gender identity) a little odd. However, there is evidence that some people do seek such help. At the very least, some want help to suppress their feelings of same sex attraction.
- Surely, it is right that those who do wish to seek such support are free to do so? What business is it of the state to intervene in such circumstances and prohibit them from seeking such help?

11. Foreseeable Harm

- As a general principle, the FSU does not support the criminalisation of speech without the prosecution having to prove that the harmful effect of the speech was serious and 'intended', or at the very least 'foreseeable'.
- In this case, not only is there no requirement for the prosecution to prove that harm was intended or foreseeable, there's no requirement to prove that any actual harm occurred. So, someone could be prosecuted for engaging in behaviour that could conceivably cause *potential* harm, even though no actual harm was caused, they had not intended to cause any harm and they had not foreseen the possibility of harm being caused.

- This must be wrong. If campaigners for a law believe that every instance of a 'conversion practice' is harmful, then including a provision in the Bill that harm must be shown for the offence to be made out would be no obstacle to prosecution. Its omission betrays the campaigners' true motive – they want to capture 'non-harmful' practices, such as expressing gender critical beliefs, within the scope of the Bill's new offences.

12. Professional Regulation

- It is a valid concern for those overseeing regulated medical professions to establish appropriate boundaries on the expression of religious beliefs in a clinical setting, e.g. a Catholic psychiatrist telling a gay patient that they think being gay is wrong according to their religious beliefs. But such conduct is already prohibited by medical regulators.
- Insofar as there is evidence of inappropriate advice being given by health professionals in clinical settings – and some campaigners allege this – regulators are empowered to withdraw their licenses to practice.
- Similar prohibitions exist within some established churches. The Church of England, for instance, has already banned the expression of any disapproval of same sex attraction by religious leaders.

