**Response to Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

**Trans Learning Partnership & Gendered Intelligence**

The balancing of freedom of religion or belief with the need to protect those of marginalised genders and sexualities from violence and discrimination is often treated as a difficult balance to get right. It is important that individuals and groups are not politically censored for their beliefs. However, the right for all people to live free of violence and discrimination is of the utmost importance. We believe that within this balance, priority must be given to the protection against violence and discrimination: any less is allowing the continuation of the violence and discrimination that has been committed against LGBT+ people for centuries, particularly (but not exclusively) from some larger, powerful religious groups. In civil society, people are free to believe anything they wish, but the *expression* of belief can impinge on other’s right to live free of violence or discrimination. Therefore, we argue that there is a legal and moral imperative to limit the expression of beliefs (religious or otherwise) when they are violent or discriminatory.

Within the UK context, it is important to clarify what we mean by ‘religion or belief’, as the Equality Act 2010 reifies the protected characteristic of ‘religion or belief’ as a specific legal concept. These beliefs do not have to be religious in nature: of relevance and importance is the 2021 ruling Forstater v Centre for Global Development, in which the court ruled that ‘Gender Critical’ beliefs are a protected belief under UK law. ‘Gender Critical’ beliefs are the ideological position that biological sex is an immutable, determinist category, and that gender does not exist. As a result, subscribers to the ‘Gender Critical’ belief refuse to acknowledge a trans individual’s pronouns, names, or gender.[[1]](#footnote-1) This is an inherently disrespectful position that denies individuals their dignity and is a form of oppressive violence. ‘Gender Critical’ beliefs are acted on as anti-trans campaigning. As this belief is protected under UK law, the Trans Learning Partnership and Gendered Intelligence’s response will make reference to this as one of the many streams of ‘religion or belief’ that is relevant to this discussion, and one of the most pressing areas of tension between these two areas in the UK currently.

1. **What are the actual or perceived points of tension (if any) between the right to manifest one’s freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity? Are there any areas in which they are mutually exclusive?**

The most common point of tension are contexts where religion or belief are used to defend enacting harm on LGBT+ people. We see this manifesting in a range of ways: for example, a range of religious and other groups continue to enact conversion practices on LGBT+ individuals; LGBT+ individuals are excluded from home, family, and social lives due to others’ beliefs; and ‘Gender Critical’ beliefs are used to remove the rights of trans people (indeed, the Lemkin Institute for Genocide Prevention has stated that the expression of Gender Critical beliefs can be genocidal in nature[[2]](#footnote-2)).

However, these rights are not *inherently* mutually exclusive, but they *can* be depending on the belief: they only become mutually exclusive when the interpretation of the religion or belief includes harming LGBT+ people. As such, we encourage the Independent Expert to consider how a fair balance could be possible in the context of human rights where one side of this balance aims to deny dignity, humanity, and safety to those on the other side of the balance, who simply want to exist free of violence and discrimination. We would argue that expressing harmful beliefs, and the act of translating such beliefs to action, does not have a place in society, and therefore is not worthy of protection: such protection allows for violence against LGBT+ people, and therefore this vulnerable group would not be protected.

1. **Are there any ways in which the right to freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity are mutually reinforcing?**

Both of these freedoms allow for an individual to be honest about and true to oneself. This is a vital part of the human experience, and the crux upon which a robust human rights framework rests.

1. **Are there examples where gender and sexual diversity has been used in religious, traditional, or indigenous narratives or values in a manner which promotes the acceptance of LGBT+ individuals, or protects LGBT+ individuals from violence and discrimination? Has this informed any legal interventions or public policies?**

There are long, rich histories of LGBT+ inclusive and celebratory religious expression globally, many of which have been suppressed, denied, whitewashed and rewritten, particularly in the context of Western colonialism. For example, there is a long history of the hijra community in India, who are closely linked with Hindu beliefs and practices;[[3]](#footnote-3) and the two-spirit people of various Native American cultures, who are often thought to have strong spiritual connections.[[4]](#footnote-4)

In the Anglosphere, the majority of religious-based attacks on LGBT+ people weaponise Christianity. It is notable that despite this, there are also many Christian groups that argue for a theological justification for the celebration and inclusion of LGBT+ people. Within the UK, LGBT+ inclusive churches and organisations include One Body One Faith, Affirm, Diverse Church, Quest, Open Table, and Two23.[[5]](#footnote-5) The Church of England recently appointed its first non-binary priest, Bingo Allison, who has spoken openly about believing that they were brought to self-acceptance by their God.[[6]](#footnote-6)

Within Jewish traditions and literature, there are at least six genders: alongside man and woman, there is also *androgynos*, *tumtum*, *aylonit*, and *saris*.[[7]](#footnote-7) There are a number of LGBT+ inclusive Jewish groups in the UK, such as Keshet UK and Marsorti Judaism.

In the UK there are also a number of groups that support and celebrate LGBT+ Muslims, with two of the larger groups being Imaan and Hidayah.[[8]](#footnote-8)

1. **What are the key trends or significant instances of discriminatory or abusive practices by individual providers of goods or services in the public sphere against LGBT+ and gender-diverse persons that rely on religious narratives?**

Some of the key cases in the UK over the last few years have specifically related to individuals refusing to respect a trans person’s name or pronouns, instead misgendering and deadnaming them, citing either religious or ‘Gender Critical’ beliefs as the reason.

One such example is the case of Dr David Mackereth,[[9]](#footnote-9) who refused to abide by the policies of the Government Department for Work and Pensions in his role as benefits assessor. He told his employers that he would not use trans patients’ correct pronouns due to his Christian beliefs and ‘a lack of belief in transgenderism [sic].’ Dr Mackereth was dismissed from his position, and his following claim for discrimination on the grounds of religion or belief (as protected in the Equality Act 2010) was not upheld as his beliefs were determined by the court to be ‘incompatible with human dignity.’

Similar cases have been reported in schools, with a number of cases ongoing in which teachers have lost their jobs for misgendering and deadnaming trans pupils, almost always with the reasoning of a religious or other belief, such as ‘Gender Critical.’ Many of the teachers involved in these cases are supported by Christian organisations in their discrimination claims.[[10]](#footnote-10)

1. **Has the State adopted, in public policy, legislation or jurisprudence, norms purportedly based on protecting freedom of religion or belief that promote, enable and/or condone violence and discrimination against individuals based on sexual orientation or gender identity? If so, please give examples, with commentary as needed to explain context, scope, and application.**

In 2021, an employment tribunal found in favour of Maya Forstater in her case against the Centre for Global Development, in which she claimed discrimination on the grounds of her ‘Gender Critical’ beliefs. The ruling found that such beliefs are protected under the Equality Act 2010 under the protected characteristic of religion or belief, with the caveat that these views cannot be expressed in a way that discriminates against trans people. However, this ruling has allowed for a continuation of further discrimination and violence against trans individuals to foment, and can allow for such discriminatory or violent behaviour to be reasoned as extensions of this belief (regardless of whether or not a court would uphold this).

This ruling enshrined in law that essentially individuals can hold anti-trans views, that include the desire to remove trans people’s rights and protections from violence and discrimination.

1. **Has there been any legal challenge to these policies/provisions under any domestic, regional, or international human rights provisions? If so, state the outcome and rationale of the case. If not, provide your opinions as to why such a challenge has not yet been brought.**

There has not been any challenge to this or similar cases from the trans community. This is due to the lack of support, funds, and assets our community overwhelmingly has. Legal cases such as Forstater v Centre for Global Development, the apparent aim of which is around removing or negating protections from trans people on the basis of ‘Gender Critical’ beliefs, have been launched by a number of individuals who have crowdfunded their legal fees online, with large anonymous donations. It is speculated that these funds can be linked to the religious right in the UK and US, with a wider end goal of removing protections for trans people wholesale also founded in their beliefs.

In contrast to these groups, and the general population, trans people lack economic resources, meaning that raising fees for challenging or raising court cases is near impossible. Due to high rates of homelessness, family estrangement, and the failure of NHS gender services, any fundraising that takes place in the community is necessarily prioritised for healthcare and housing.

1. **Are there any examples of State restrictions based on preventing violence and/or discrimination against LGBT+ persons that prohibit or limit practices undertaken in the name of the religion or spirituality, such as public accommodation non-discrimination protections? If so, have they been legally challenged on the basis of freedom of religion or belief? If yes, explain the outcome and rationale of the case(s).**

We do not believe there are.

1. **What role (if any) has the concept of conscientious objection played in limiting the full enjoyment of the right to freedom from violence and discrimination on the basis of sexual orientation and gender identity?**

While not always termed explicitly as conscientious objection, we have seen cases, as mentioned above, where individuals in public bodies have refused to respect a trans person’s name and pronouns on the grounds of their religion, with the implication that they consider it to be a conscientious objection.

1. **Has the scope and application of conscientious objection been sufficiently defined, limited, and/or regulated so as to strike a fair balance between manifestation of one’s freedom of religion or belief, and freedom from violence and discrimination based on SOGI? Where the doctrine is invoked to permit the withholding of goods and services to members of the LGBT+ community (such as in the context of sexual and reproductive healthcare, provision of marriage licences, access to consumer goods, etc.), do State laws provide alternative access to goods or services?**

Within medical settings, conscientious objection is only a statutory right in the context of abortions and fertility care.[[11]](#footnote-11) However, the British Medical Association (BMA) supports doctors in expressing their right to conscientious objection outside of these settings, giving examples of contraception, non-therapeutic male infant circumcision, and withdrawing life-sustaining treatment. The BMA also makes it clear that they do not support this where this would extend into direct or indirect discrimination against an individual.

There are limitations legally defined around conscientious objection, primarily through case law, and in specific relation to abortion care. These limitations are set out in Janaway v Salford Area Health Authority (1988) UKHL 17, and Greater Glasgow v Doogan and Another (2014) UKSC 68. Furthermore, the BMA clarifies that in an emergency, health professionals must provide appropriate care regardless of conscientious objection.

The BMA further states that conscientious objection must not be used to intentionally block a patient’s access to care, and that it is the responsibility of the doctor to ensure the patient knows they have the right to be treated by a different doctor, provide them with all the appropriate information, and make arrangements with another doctor if this is not practical for the patient to do themselves.[[12]](#footnote-12)

Under UK law, the only other area where conscientious objection is a protected right is regarding military service.[[13]](#footnote-13)

UK law, on the whole, appears to strike a fair balance regarding freedom of religion and belief and explicit protection from violence and discrimination for people of marginalised genders and sexualities, although the medical instances in which conscientious objection can arise can and will still affect SOGI individuals: this may be particularly likely to arise within fertility settings, for example.

1. **Where State legislation or policy requires the reasonable accommodation of religious beliefs, practices, and/or institutions, are there instances where such laws or policies limit freedom from violence and discrimination against LGBT+ and gender-diverse persons? These may include but are not limited to exemptions from non-discrimination legislation, and/or accommodations within the workplace, educational institutions, healthcare-settings, the justice system, etc. Are there reports of violence, spiritual abuse, and/or other forms of discrimination against LGBT+ and gender-diverse persons because of these practices?**

Conversion practices are currently still legal in the UK. The Ban Conversion Therapy campaign has done excellent work to further the discussion of legislation being brought forth to prevent these practices, but the UK Government has continued to delay this legislation for the previous years. As part of the conversations surrounding this legislation is the debate as to whether there should be religious exemptions: the collective approach from the LGBT+ sector is that these exemptions should not exist as they will allow for these harmful practices to continue. If this legislation is eventually brought forth, there is a risk that these exemptions will be included.

Religious groups that disagree with same-sex marriage do not have to perform them: while it is right that religion and beliefs are protected, this creates an allowable act of discrimination against LGBT+ couples, written into law.

The Equality Act 2010 provides some religious exemptions. For example, religious organisations can exclude individuals from participation in their activities, restrict membership, and restrict the use of its premises due to their sexuality or gender, if they can demonstrate it is necessary for their religious aims, or to avoid offending people of that religious belief.[[14]](#footnote-14)

1. **A. Provide any examples of good practice - at the international, national, or local level - where State and non-State actors (including faith leaders, groups and organisations, international organisations, civil society organisations, and the UN human rights system) have taken effective measures to protect and promote freedom of religion or belief of LGBT+ and gender-diverse persons, and made efforts to prevent, mitigate and respond to any violence and/or discrimination justified in the name of religion.**

We are unaware of any examples.

**11. B. Provide any examples of measures by State or non-State actors to ensure effective participation of people with diverse gender identities and sexual orientations in religious, cultural, social, and public life. Please provide relevant examples where LGBT+ people have asserted their individual or collective rights to access (or establish) religious or spiritual frameworks and institutions.**

As mentioned in the response to question 3, there is a strong range of religious groups in the UK that are actively LGBT+ inclusive or celebratory across a range of religions and beliefs. These include:

* One Body One Faith (network and advocacy for LGBT+ Christians)[[15]](#footnote-15)
* Affirm (a network of Baptist Christians working for LGBT+ inclusion)[[16]](#footnote-16)
* Diverse Church (provides LGBT+ inclusive Christian spaces)
* Quest (pastoral support for LGBT+ Catholics)[[17]](#footnote-17)
* Open Table (network of LGBT+ Christians)[[18]](#footnote-18)
* Two23 (a network of Christians connected by LGBT+ issues)[[19]](#footnote-19)
* Imaan (support for LGBT+ Muslims)[[20]](#footnote-20)
* Hidayah (support and community for LGBT+ Muslims)[[21]](#footnote-21)
* Keshet UK (an education and training charity ensuring LGBT+ people and their families are included in Jewish life)[[22]](#footnote-22)
* The Jewish LGBT+ Group (broadly Progressive/Reform Judaism LGBT+ social group)[[23]](#footnote-23)
* JPride (a Jewish LGBT+ group for Yorkshire and Leeds)[[24]](#footnote-24)
* Rainbow Jews (celebrating LGBT+ Jewish history and heritage in the UK)[[25]](#footnote-25)
* Marsorti Judaism (a Tradition Judaism group with explicit LGBT+ inclusion programmes)[[26]](#footnote-26)
* Sarbat LGBT+ Sikhs (a group tackling forms of queerphobia within Sikh communities)[[27]](#footnote-27)
* Rainbow Sangha Network (connecting LGBT+ Buddhists with one another)[[28]](#footnote-28)
* Brighton Buddhist Centre (a general Buddhist centre with specific spaces for LGBT+ people)[[29]](#footnote-29)
* Triratna Gender Diverse Buddhists (a space for Buddhists who are trans or gender diverse to connect)[[30]](#footnote-30)

This is not an exhaustive list, but instead demonstrates the range of LGBT+ inclusive religious communities in the UK, and the ease with which religion and marginalised genders and sexualities sit with each other.

1. Employment Appeal Tribunal, Maya Forstater v Centre for Global Development and Others, 2021, <https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstater_v_CGD_Europe_and_others_UKEAT0105_20_JOJ.pdf>. [↑](#footnote-ref-1)
2. Lemkin Institute for Genocide Prevention, ‘Statement on the Genocidal Nature of the Gender Critical Movement’s Ideology and Practice,’ <https://www.lemkininstitute.com/statements-new-page/statement-on-the-genocidal-nature-of-the-gender-critical-movement%E2%80%99s-ideology-and-practice>. [↑](#footnote-ref-2)
3. Ben Vincent & A. Manzano, ‘History and Cultural Diversity,’ in C. Richards, WP Bouman, & M-J Barker (eds), *Genderqueer and Non-Binary Genders: Critical Approaches in Sexuality, Gender and Identity* (Palgrave Macmillan, London: 2017) <https://eprints.whiterose.ac.uk/126220/3/History%20Culture_Vincent%20Manzano2017.pdf>. [↑](#footnote-ref-3)
4. Vincent & Manzano, ‘History and Cultural Diversity.’ [↑](#footnote-ref-4)
5. <https://www.onebodyonefaith.org.uk/>; <https://www.affirm.org.uk/>; <https://diversechurch.website/>; <https://questlgbti.uk/>; <https://opentable.lgbt/>; <https://www.two23.net/>. [↑](#footnote-ref-5)
6. Samantha Riedel, ‘The Church of England’s First Non-Binary Priest Says Queer People Are a “Blessing to the Church,” them, January 2023, <https://www.them.us/story/church-of-england-first-nonbinary-priest-bingo-allison>. [↑](#footnote-ref-6)
7. Rabbi David J. Meyer, ‘What the Torah Teaches Us About Gender Fluidity and Transgender Justice,’ Religious Action Centre for Reform Judaism, September 2018, <https://rac.org/blog/what-torah-teaches-us-about-gender-fluidity-and-transgender-justice>. [↑](#footnote-ref-7)
8. <https://imaanlondon.wordpress.com/islam-sexuality/>; <https://hidayahlgbt.com/about-us/>. [↑](#footnote-ref-8)
9. Lou Ferreira, ‘Christian doctor who insisted on misgendering trans people loses case,’ OpenDemocracy, July 2022, <https://www.opendemocracy.net/en/5050/david-mackereth-dwp-doctor-christian-trans-people/>. [↑](#footnote-ref-9)
10. Adam Solomons, ‘Schoolteacher “sacked for misgendering trans pupil,”’ LBC, October 2022, <https://www.lbc.co.uk/news/teacher-sacked-for-misgendering-transgender-schoolgirl/>; Adela Whittingham & Alya Zayed, ‘Teacher “misgendered trans pupil” and made “offensive comments about Muslims,”’ My London, January 2023, <https://www.mylondon.news/news/north-london-news/teacher-misgendered-trans-pupil-made-25948196>. [↑](#footnote-ref-10)
11. ‘Conscientious objection and expressing personal beliefs,’ British Medical Association, <https://www.bma.org.uk/advice-and-support/ethics/personal-ethics/conscientious-objection-and-expressing-personal-beliefs>. [↑](#footnote-ref-11)
12. ‘Conscientious objection and expressing personal beliefs,’ British Medical Association, <https://www.bma.org.uk/advice-and-support/ethics/personal-ethics/conscientious-objection-and-expressing-personal-beliefs>. [↑](#footnote-ref-12)
13. Home Office, *Military Service and Conscientious Objection*, July 2022, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1095149/Military_Service_and_Conscientious_Objection.pdf>. [↑](#footnote-ref-13)
14. Equality Act (2010), Schedule 23, 2.3, <https://www.legislation.gov.uk/ukpga/2010/15/schedule/23>. [↑](#footnote-ref-14)
15. <https://www.onebodyonefaith.org.uk/>. [↑](#footnote-ref-15)
16. <https://www.affirm.org.uk/>. [↑](#footnote-ref-16)
17. <https://questlgbti.uk/>. [↑](#footnote-ref-17)
18. <https://opentable.lgbt/>. [↑](#footnote-ref-18)
19. <https://www.two23.net/>. [↑](#footnote-ref-19)
20. <https://imaanlondon.wordpress.com/about/>. [↑](#footnote-ref-20)
21. <https://hidayahlgbt.com/>. [↑](#footnote-ref-21)
22. <https://www.keshetuk.org/>. [↑](#footnote-ref-22)
23. <http://www.jglg.org.uk/>. [↑](#footnote-ref-23)
24. <https://www.keshetuk.org/otherorgs.html>. [↑](#footnote-ref-24)
25. <https://www.rainbowjews.com/>. [↑](#footnote-ref-25)
26. <https://masorti.org.uk/>. [↑](#footnote-ref-26)
27. <https://www.sarbat.net/what-we-do>. [↑](#footnote-ref-27)
28. <https://www.facebook.com/RainbowSanghaNetwork>. [↑](#footnote-ref-28)
29. <https://brightonbuddhistcentre.co.uk/meditation-and-buddhism/meditation-for-the-lgbt-community/>. [↑](#footnote-ref-29)
30. <https://www.facebook.com/groups/282677805189496>. [↑](#footnote-ref-30)