

# LGBTQI+ Strategy Expert Advisory Panel – Themes and Recommendations

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# Executive Summary

## **Theme 1. LGBTQI+: Rationale for the Strategy Name**

The Panel agreed that the title of the Strategy should be the ‘LGBTQI+ Strategy’ - Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex + - encompassing the diversity of the LGBTQI+ community beyond simply the issue of sexual orientation. Some people argue that sexual orientation and gender identity issues should be kept separate as the experiences of these communities can be incomparable. It was the view of the Panel that these issues are inseparable for a number of reasons.

- Many of the issues experienced across our communities are similar or connected.
- Many trans people are gay, lesbian, bisexual or another minority sexual orientation.
- Trans people have always been present in the LGB+ community.

## **Theme 2. Funding for the Delivery of the Strategy**

**Aim:** We will establish an LGBTQI+ implementation fund to deliver this action plan.

This report highlights a variety of areas where improvements could be made to support LGBTQI+ people. Some of these improvements can only be made by government; others could be achieved through partnership working with organisations that specialise in work with LGBTQI+ people. The scale of the challenge set out in this Strategy is considerable and requires resources to have effective implementation. A coordinated approach across the public, private, community and voluntary sectors is instrumental.

LGBTQI+ organisations and charities must be supported financially to continue to deliver vital services that LGBTQI+ people rely on and that are best placed to meet some of their needs. The results of the National LGBT Survey conducted by the UK Government Equalities Office in 2017 highlighted that respondents found LGBT-specific charities particularly helpful when seeking support. LGBT organisations and charities were viewed as the most helpful when handling the most serious incidents experienced by respondents in a number of areas.

The expertise in the design and delivery of government’s work must be utilised, and there must be a commitment to ensure the LGBTQI+ charities sector is put on a sustainable footing.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- A SMART time bound and resourced action plan has been developed and implemented.
  - Key indicators and actions from the LGBTQI+ Strategy have been included in the Programme for Government and Departmental business and/or delivery plans.
  - The LGBTQI+ Strategy is funded and the commitments set out in this plan are achieved through investment from an LGBTQI+ implementation fund.
  - LGBTQI+ organisations are sustainable.
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### **Theme 3. Healthcare**

**Aim:** We will ensure that the health inequalities experienced by LGBTQI+ people are understood and targeted responses to these needs are developed.

Locally, nationally and internationally, there has been a lack of focus on the health inequalities faced by LGB women, GB men and trans, non-binary and intersex people. There has been nowhere near enough research into their health needs. Health needs and inequalities of health of LGBTQI+ people have tended to remain invisible or not high on the health agenda. This has resulted in a lack of research and evidence which would link into policy health initiatives. There has not been a dedicated focus on the wider health needs of LGBTQI+ people due to issues of invisibility, marginalisation and often this issue may be of low precedence. There is a definite need for meaningful engagement directly with organisations that support LGBTQI+ people and constituent parts of that community i.e. men, women, trans and non-binary people and intersex people. This engagement will need to have a robust partnership approach that should also include The Executive Office and related departments, along with a range of health organisations/agencies.

Transgender individuals often need access to healthcare services to transition in the way they need or wish, and at present these services in Northern Ireland are oversubscribed, inaccessible and inappropriate for the needs of many trans and questioning individuals today. Based in care models many decades old, these services treat trans identity as a potential mental health condition and require high levels of assessment prior to treatment, disproportionate to the risks involved and to other services in the health service. International best practice has moved beyond where Northern Ireland's services remain, and global diagnostic categories and standards of care now impel regional services here to adopt modern care pathways which respect bodily autonomy and human rights. It is not possible to make the current services sustainable with increasing demand without adopting modern practices for assessment and care.

#### **Recommendations for LGBTQI+ Strategy Outcomes:**

- LGBTQI+ people have improved health and wellbeing outcomes.
- Gender-affirming healthcare services for all ages are established in meaningful collaboration with trans communities in each of the five trust areas, based on modern standards of care and respect for human rights.
- Gender-affirming healthcare services are available in a timely manner in line with waiting time targets.
- The regulation, policy and practice of gender-affirming healthcare services are accessible for disabled people and do not discriminate based on disability or coexisting health conditions, including for individuals with mental health conditions or learning disabilities.
- All transgender, gender diverse and questioning people are provided with timely and accessible health information, support and care to transition in the way they wish.
- There are zero new HIV diagnosis by 2030.

- LGBTQI+ people enjoy good mental and emotional health and wellbeing and their specific needs are met by mental health services.
- Sexual orientation and gender identity are monitored in healthcare services.
- Blood donation deferral periods for men who have sex with men are in line with the best available evidence (in line with SaBTO: the Advisory Committee on the Safety of Blood, Tissue and Organs).
- The intersectionality of health inequalities is understood for LGBTQI+ people living with disabilities.
- Conversion therapy has ended in Northern Ireland.
- Intersex genital mutilation has ended in Northern Ireland.
- Fertility services are accessible for all LGBTQI+ people without discrimination based on gender, gender identity and/or sexual orientation.
- LGBTQI+ people have equal access to apply to adopt or foster.

#### **Theme 4. Education**

**Aim:** All LGBTQI+ people should feel welcome, safe and valued at school, college and university so that they can reach their full potential.

Most LGBTQI+ young people will first self-identify their sexual orientation when they start going through puberty and begin to experience sexual attraction. In terms of gender identity this can be much younger and is not linked to puberty or sexual attraction. Most young people will therefore self-identify a minority sexual orientation and/or gender identity while they are in full time education.

These years in particularly secondary education are therefore formative for LGBTQI+ young people in building their understanding of their identity and allow them to develop a sense of self and self-esteem in regards to their minority identity. This requires an understanding of and visibility of LGBTQI+ people, history and experiences to normalise this minority identity. There has been an historic invisibility of LGBTQI+ people in Northern Ireland, including within education. This invisibility impacts not only on LGBTQI+ young people but also on those who are seeking to educate them and the environment in which they are taught. Teachers cannot be experts on LGBTQI+ people or experiences without receiving this training or education themselves, and having likely attended school and teacher training in Northern Ireland this is not currently part of their education.

#### **Recommendations for LGBTQI+ Strategy Outcomes:**

- Schools, EOTAS (education other than at school) and facilities provided by the Education Authority's Youth Services are safe for LGBTQI+ young people and that mechanisms are in place to address any experiences of bullying or harassment.
  - There is a zero tolerance approach to hate crimes and online harassment within schools or learning environments.
  - Trans and gender-questioning young people have the support they need to express themselves and be fully included at school and in EOTAS.
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- All young people have access to age appropriate relationship and sexuality education inclusive of LGBTQI+ which is universal and not dependent on school ethos.
- The statutory curriculum is inclusive of the diversity of society and visibly includes minority communities such as LGBTQI+ people.
- Access to sports, activities, uniforms and facilities are accessible inclusive of all genders and gender identities.
- LGBTQI+ teachers can be themselves at work and teacher training is inclusion of diversity and human rights.

## **Theme 5. Safety and Security**

**Aim:** All LGBTQI+ people should feel safe and secure in their own homes, in their communities and online to ensure they are free from fear, harassment and other forms of harm.

Gender stereotypes assign a set of so-called ‘natural’ characteristics to men and women, and set up strict gender binaries that do not reflect the fluidity and complexity of gender and sexuality. These stereotypes are damaging because they define and limit how people are expected to live their lives. The gender hierarchies and norms they reproduce mean that those who do not conform face daily challenges and risks in relation to their own personal safety. Homophobia, biphobia and transphobia can lead to anti-LGBTQI+ harassment and violence that puts gender and sexual minorities at heightened risk of physical and psychological harm.

Abuse and violence can begin during childhood. Those who do not conform to gender stereotypes face bullying and violence in schools, in the home leading to homelessness, and in sporting arenas. They can also experience relentless abuse in social media environments. These experiences have a serious effect on their well-being and prevents openness about their personal identity. While it is often in the school playground that abuse and blows are first experienced, harassment, violence and insecurities can often continue into adulthood and throughout an LGBTQI+ person’s life.

Where a person lives, works and socialises can become hostile and threatening environments. Simple pleasures such as holding hands with a romantic partner or going to a restaurant can open the person up to abuse and violence. Hate crimes against LGBTQI+ people are on the rise, as is homelessness, and research more broadly indicates several arenas of life wherein LGBTQI+ people continue to experience insecurity despite progress in legal protections.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- LGBTQI+ people are protected from hate crime and victims of hate crime are provided with appropriate forms of support.
  - LGBTQI+ people have access to safe and secure housing.
  - LGBTQI+ criminal or civil detainees are not subjected to physical and psychological harms.
  - The PSNI protect LGBTQI+ people’s human right to equal protection under the law in ways that are responsive to their circumstances and needs.
  - LGBTQI+ people are effectively protected against domestic violence and sexual violence.
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## **Theme 6. Rights and the Law**

**Aim:** LGBTQI+ people’s rights and equality should be legally protected

This chapter explores the legal protection of LGBTQI+ people’s rights in NI. LGBTQI+ people need legal protection across key areas of life. Due to the historical and irrational debasement of their lives and identities, LGBTQI+ people also need laws that protect their right to express their identities. While cultural shifts, equality campaigns and legislative change have meant that the legal protection of LGBTQI+ people’s rights in NI has evolved in recent years, homophobia, biphobia and transphobia continue to impact on people’s everyday lives. Even with the introduction of various protections, specific areas of the law need to be strengthened in order to create meaningful protections, and some additional legal protections are required. Other areas of the law and rights require radical revision to protect the rights of LGBTQI+ people.

The current legislative framework in NI is a mix of pieces of legislation that refer to the whole of the UK and legislation that emerged from the NI Assembly. UK-wide legislation has been influenced by European Union Directives. International standards such as United Nations (UN) conventions may apply but the extent to which UN conventions are enforceable is debatable. In general, International Human Rights Law relies on moral arguments to encourage compliance, but it remains an important point of reference for human rights protections. Comparatively, NI has been slower to enact international standards in terms of LGBTQI+ rights, even though the 1998 peace agreement remains one of only 5 international peace agreements to include LGBTQI+ rights. Section 75 of the Northern Ireland Act (1998) identifies sexual orientation and gender as protected categories. The Act obliges public authority decision-makers to have ‘due regard’ and ‘regard’ to the need to promote equality of opportunity.

There is clear evidence that the current legal framework in NI is not effectively protecting LGBTQI+ people in a range of areas of life. Moreover, issues remain in terms of the legal protections that sexual and gender minorities require to live autonomous, free and secure lives. International and regional comparisons illustrate how legislation can be improved and how new forms of legislation can be brought forward to address continuing societal and institutional prejudices towards LGBTQI+ people.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- Gaps and weaknesses in the legal protection of LGBTQI+ people’s rights and their damaging effects are addressed.
- Gender Recognition legislation is fit for purpose and recognises and is reflective of the diversity of genders in Northern Ireland.
- Conversion therapy has ended in Northern Ireland.
- Quantitative and qualitative data sets monitor the effectiveness of legal protections for LGBTQI+ people, and are effective in addressing inequalities.
- Specific funding is built into spending plans to support LGBTQI+ people dealing with discrimination and the harmful effects of specific laws.

## **Theme 7. Data and Monitoring**

**Aim:** Government and public bodies monitor for sexual orientation and gender identity in a consistent, respectful and proportionate way.

As evidenced throughout this report, being LGBTQI+ can impact on experiences and needs in healthcare, increased likelihood of being a victim of crime, negative experiences in education and many other aspects of daily life. To design effective public services to meet the needs of our communities, data is key. However, since services and data gathering exercises do not regularly monitor for sexual orientation or gender identity, it is not possible to measure the impact, positive or negative, services have or are likely to have on people who are LGBTQI+.

Monitoring for sexual orientation and gender identity will help public service providers to better understand the needs and experiences of LGBTQI+ people, and to address any potential barriers to accessing services. LGBTQI+ people, their families and their needs have been invisible to public service providers where monitoring for sexual orientation and gender identity is not common practice and therefore services may not be fit to meet the needs of this client group.

For example, the UK National LGBT Survey asked some questions about whether respondents had disclosed their sexual orientation in healthcare. More than half (50.87%) of respondents had never disclosed this.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- The Northern Ireland Civil Service sets the standard as an exemplar employer for collecting data on sexual orientation and gender identity.
- Sexual orientation and gender identity are monitored alongside other Section 75 monitoring i.e. community background, sex, race, religion, ability etc. and S75 obligations are met.
- Gender identity questions are included in the Census.
- Guidance is in place to protect private data concerning the characteristics and history of transgender people.
- Departmental systems are updated to ensure monitoring of sexual orientation and gender identity in all cases, unless a business case has been developed to justify its exclusion.

## **Theme 8. Representation and Public Life**

**Aim:** All LGBTQI+ people should feel confident, encouraged and supported to be fully included in all aspects of public life

This chapter will look at LGBTQI+ people in public life. Public life will encompass political positions, public appointments, behaviour in everyday life and what the barriers are to participation in public life. When an LGBTQI+ person is considering taking up a public position, quite often they experience anxiety and fear. These feelings can be related to actual or perceived homophobia, biphobia or transphobia. For some LGBTQI+ people, there is a fear of their sexual orientation or gender identity being disclosed in a public situation when they are not comfortable with that.

Though improving, there is still a significant underrepresentation of LGBTQI+ people in public life who can be a positive role model or can directly challenge discrimination and negative stereotypes. It can be affirming and empowering for people to see those similar to them holding public positions, and the societal changes this gradually enables helps others in future to both find LGBTQI+ communities and seek similar goals. There needs to be increased visibility of LGBTQI+ people in all areas of life, particularly visible political, civic and community leadership in order to promote positive change and tackle negative stereotypes.

The lack of reliable and comprehensive data is a definite obstacle to enabling the development of policy and the measurement of policy impact. In order to empower individuals and organisations this information is needed to measure progress.

LGBTQI+ people should feel comfortable, safe and at ease in public when holding their partners hand, be confident to apply and accept public appointments or be 'out' in a public position and be proud of who they are.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- Society values LGBTQI+ people and their families.
- LGBTQI+ people visibly participate in all aspects of public life.
- Barriers to LGBTQI+ involvement in public life are removed and the extent of involvement is known.

## **Theme 9. Arrangements for Review of the Strategy**

**Aim:** We commit to review, refresh and continue to build our commitment to meeting the needs of LGBTQI+ people through the delivery of this plan and the development of a stage 2 plan in 5 years' time.

We recognise that the needs of LGBTQI+ people cannot be addressed in the five-year period of this plan. For this reason, we commit to carrying out a review at year 4 of the delivery of this plan to develop another 5 year Strategy to be introduced at the end of this project. To measure the success of this Strategy and to identify the needs of the LGBTQI+ community, we commit to delivering a Northern Ireland wide research project covering the issues dealt with in this report and with specific focus on areas not dealt with in this Strategy, including but not limited to:

- physical health;
- further education;
- rural development;

and the intersection with LGBTQI+ communities and;

- ageing populations;
- BAME communities;
- travellers; and
- asylum seekers and refugees.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- The 2021 Strategy is reviewed annually and will identify differential impacts for minority populations within the LGBTQI+ community.
- Further research has been completed to ensure that stage 2 of this Strategy is reflective of the current identified needs of LGBTQI+ communities and people.

# Theme 1. LGBTQI+: Rationale for the Strategy Name

The Panel agreed that the title of the Strategy should be the ‘LGBTQI+ Strategy’ - Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex + - encompassing the diversity of the LGBTQI+ community beyond simply the issue of sexual orientation. Some people argue that sexual orientation and gender identity issues should be kept separate as the experiences of these communities can be incomparable. It was the view of the Panel that these issues are inseparable for a number of reasons.

## **i) Many of the issues experienced across our communities are similar or connected.**

The barriers and problems LGB and trans people experience can appear as distinct or unconnected but upon examination are deeply linked, and benefit from discussing and approaching them together rather than in isolation. For example, the hate speech an LGB person experiences and the hate speech a trans person experiences may be motivated by the same underlying hatred for noncompliance with society’s gender stereotypes. Similarly, an employer may discriminate against an LGB person for the same reason as they do a trans person if they see both groups as essentially the same or as variations of each other. Since law, societal attitudes and our culture have never been highly understanding of LGBTQI+ communities, the way our communities have been treated have never reflected a clear line between sexual orientation and gender identity.

## **ii) Many trans people are gay, lesbian, bisexual or another minority sexual orientation.**

Trans people are likely to have previous attraction to people of the same sex as they were assigned at birth, or have relationships with people whose gender identity is the same as their own. Trans people are likely to have previous links with the LGB community due to limited spaces, venues and the history of the LGBTQI+ community. This is not always the case but is very common. Those with a non-binary gender identity who engage in romantic or sexual relationships are unlikely to identify as heterosexual, in fact the idea of heterosexuality may seem nonsensical, due to there being no ‘opposite’ gender to their identities.

**iii) Trans people have always been present in the LGB+ community.**

LGB communities have long held connections with transgender people, pre-dating the decriminalisation of homosexuality and the development of gender recognition legislation. Gender and gender roles have always been challenged within LGB+ spaces and many LGB+ people consider themselves to be gender non-conforming or gender-non-normative. Historically, at the beginning of the ‘Gay Rights Movement’, there was little to no understanding of trans identities and no distinction was drawn between gay people and trans people. Consequently, trans people were subjected to the same injustices as LGB people and were included in the community and movement at this time.

## Theme 2. Funding for the Delivery of the Strategy

**Aim:** We will establish an LGBTQI+ implementation fund to deliver this action plan.

This report highlights a variety of areas where improvements could be made to support LGBTQI+ people. Some of these improvements can only be made by government; others could be achieved through partnership working with organisations that specialise in work with LGBTQI+ people. The scale of the challenge set out in this Strategy is considerable and requires resources to have effective implementation. A coordinated approach across the public, private, community and voluntary sectors is instrumental.

LGBTQI+ organisations and charities must be supported financially to continue to deliver vital services that LGBTQI+ people rely on and that are best placed to meet some of their needs. The results of the National LGBT Survey conducted by the UK Government Equalities Office in 2017 highlighted that respondents found LGBT-specific charities particularly helpful when seeking support. LGBT organisations and charities were viewed as the most helpful when handling the most serious incidents experienced by respondents in a number of areas. For example, 77% of those who reported an incident in education to an LGBT organisation or charity said that they had found them very or somewhat helpful'.<sup>1</sup>

The expertise in the design and delivery of government's work must be utilised, and there must be a commitment to ensure the LGBTQI+ charities sector is put on a sustainable footing.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- A SMART time bound and resourced action plan has been developed and implemented.
- Key indicators and actions from the LGBTQI+ Strategy have been included in the Programme for Government and Departmental business and/or delivery plans.
- The LGBTQI+ Strategy is funded and the commitments set out in this plan are achieved through investment from an LGBTQI+ implementation fund.
- LGBTQI+ organisations are sustainable.

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721367/GEO-LGBT-Action-Plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721367/GEO-LGBT-Action-Plan.pdf)

## Theme 3. Healthcare

**Aim:** We will ensure that the health inequalities experienced by LGBTQI+ people are understood and targeted responses to these needs are developed.

Locally, nationally and internationally, there has been a lack of focus on the health inequalities that LGB women, GB men and trans, non-binary and intersex people face. There has been nowhere near enough research into their health needs. Health needs and inequalities of health of LGBTQI+ people have tended to remain invisible or not high on the health agenda. This has resulted in a lack of research and evidence which would link into policy health initiatives. There has not been a dedicated focus on the wider health needs of LGBTQI+ people due to issues of invisibility, marginalisation and often this issue may be of low precedence. There is a definite need for meaningful engagement directly with organisations that support LGBTQI+ people and constituent parts of that community i.e. men, women, trans and non-binary people and intersex people. This engagement will need to have a robust partnership approach that should also include The Executive Office and related departments, along with a range of health organisations/agencies.

Transgender individuals often need access to healthcare services to transition in the way they need or wish, and at present these services in Northern Ireland are oversubscribed, inaccessible and inappropriate for the needs of many trans and questioning individuals today. Based in care models many decades old, these services treat trans identity as a potential mental health condition and require high levels of assessment prior to treatment, disproportionate to the risks involved and to other services in the health service. International best practice has moved beyond where Northern Ireland's services remain, and global diagnostic categories and standards of care now impel regional services here to adopt modern care pathways which respect bodily autonomy and human rights. It is not possible to make the current services sustainable with increasing demand without adopting modern practices for assessment and care.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

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  - Gender-affirming healthcare services for all ages are established in meaningful collaboration with trans communities in each of the five trust areas, based on modern standards of care and respect for human rights.
  - Gender-affirming healthcare services are available in a timely manner in line with waiting time targets.
  - The regulation, policy and practice of gender-affirming healthcare services are accessible for disabled people and do not discriminate based on disability or coexisting health conditions, including for individuals with mental health conditions or learning disabilities.
  - All transgender, gender diverse and questioning people are provided with timely and accessible health information, support and care to transition in the way they wish.
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- There are zero new HIV diagnosis by 2030.
- LGBTQI+ people enjoy good mental and emotional health and wellbeing and their specific needs are met by mental health services.
- Sexual orientation and gender identity are monitored in healthcare services.
- Blood donation deferral periods for men who have sex with men are in line with the best available evidence (in line with SaBTO: the Advisory Committee on the Safety of Blood, Tissue and Organs).
- The intersectionality of health inequalities is understood for LGBTQI+ people living with disabilities.
- Conversion therapy has ended in Northern Ireland.
- Intersex genital mutilation has ended in Northern Ireland.
- Fertility services are accessible for all LGBTQI+ people without discrimination based on gender, gender identity and/or sexual orientation.
- LGBTQI+ people have equal access to apply to adopt or foster.

## **Introduction**

This chapter explores the issues impacting on LGBTQI+ people related to health and wellbeing. This is a large and very broad area of need, with some needs being shared by the LGBTQI+ people and others impacting primarily on one or more constituent group. This chapter has been broken down into 4 key areas, namely: Gender affirming care; sexual and reproductive health; emotional health and well-being; and conversion therapy.

### **3.1 Gender-affirming care**

The health and social care needs of transgender people may include accessing support to medically transition to align their physiology and body to their gender identity. This is known as gender-affirming care. In Northern Ireland, this has been provided for those over the age of eighteen for decades, and for children and adolescents since the 2010s.

At present, two services provide gender-affirming care to those in Northern Ireland, both based in the Belfast Health and Social Care Trust (BHSC). The Brackenburn Clinic is the regional psychosexual and gender identity service, which provides care to trans and questioning adults. However, the service is only commissioned to provide psychosexual care so currently all gender-affirming assessment and treatment is provided outside of formal commissioning – meaning the service is not specifically funded and does not have a policy framework in place to monitor outcomes for clients and measure effectiveness. This is being reviewed currently by the Health and Social Care Board (HSCB). The Knowing Our Identity (KOI) service provides assessment and treatment for children and adolescents across the region and is formally commissioned to do so.

In 2018, the World Health Organisation (WHO) announced the 11th version of the International Classification of Diseases and Disorders (ICD-11), which removed the previous diagnoses of “Transsexualism” and “Gender identity disorder in childhood”, which were contained within the chapter on mental and behavioural disorders. Instead, ICD-11 brought new diagnoses of “Gender incongruence” and its childhood equivalent, part of the new chapter on sexual health.<sup>2</sup>

This reflects a broader move to depathologise trans identities and individuals, meaning that being trans or transitioning is no longer considered a mental or behavioural pathology. This is similar to how lesbian, gay and bisexual identities were previously depathologised by the WHO.

The forms of care that trans people may need through gender-affirming services include endocrine (hormonal) care, speech and language therapy, dermatology for hair removal treatment, fertility care, sexual health care, mental health care and access to surgery.

### **3.2 Legal Context**

Although the Belfast Health and Social Care Trust has targets for waiting times for patients, there is no legal obligation which specifically sets a requirement for the time period Trusts must provide care by. Northern Ireland is alone in the UK as the only jurisdiction not to have RTT (referral to treatment) times reflected in law.<sup>3</sup>

Section 75 of the Northern Ireland Act 1998 obliges public bodies including Health and Social Care Trusts to carry out their functions with due regard to the need to promote equality of opportunity and good relations in respect to a number of protected characteristics, including gender and sexual orientation.

The Gender Recognition Act 2004 applies across the whole of the UK and entitles some trans people to amend their birth certificates to reflect their identity. As of November 2020, this requires detailed documentation from health providers. As the Brackenburn Clinic is the sole provider of gender-affirming care to adults in Northern Ireland, barriers to accessing this care also represent a barrier to legal gender recognition.

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<sup>2</sup> ICD-11 explorer, WHO. <https://icd.who.int/browse11/l-m/en#/http%3a%2f%2fid.who.int%2fid%2fentity%2f90875286>

<sup>3</sup> Dr Janice Thompson and Keara McKay, ‘Waiting Lists and Waiting Times for Elective Care in Northern Ireland: Taking Stock’, NIA ref NIAR 783-13. <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2020/health/0220.pdf>

In the context of international human rights law and policy, the following are relevant:

### **Universal Declaration on Human Rights**

- Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 7 All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
- Article 25 (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

### **Convention on the Elimination of All Forms of Discrimination Against Women**

General Comment 28 (18) clarifies that states must recognise that the Conventions oblige them to reflect the intersectional nature of discrimination against women, and to reflect sexual orientation and gender identity in this.

### **Convention on the Rights of Persons with Disabilities**

- Article 5 Equality and non-discrimination
- Article 9 Accessibility
- Article 12 Equal recognition before the law
- Article 22 Privacy
- Article 25 Health

### **European Convention on Human Rights**

- Article 3 Prohibition of torture
- Article 8 Right to respect of private and family life
- Article 10 Freedom of expression

### 3.3 Problems Experienced in Gender-Affirming Care in Northern Ireland

The Brackenburn Clinic has been operating over capacity for several years now, and as of the first quarter of 2018 has frozen the waiting list to new patients.<sup>4</sup> As a result, as of December 2018, there were already 282 individuals on the waiting list for a first appointment, with the projected waiting time to be between 24–36 months. This number has since grown to around 400 individuals.<sup>5</sup>

The Brackenburn Clinic has seen further reduction in service as a result of the COVID-19 pandemic, and waiting times are now understood to be indefinite.

Both gender-affirming care services form part of Northern Ireland’s mental health services, and are commissioned under the mental health frameworks within the health and social care system. As such, they employ psychiatric and psychosexual assessment, diagnostic and treatment approaches to their trans and questioning patients, a process which is considered out of step with best practice internationally, expensive and potentially harmful.<sup>6</sup> Many other jurisdictions have abandoned this model of assessment and treatment many years ago, with moves towards depathologised and person-centred care which is now the trend globally.

At present, trans individuals who are accepted into the Clinic go through a lengthy assessment process which covers childhood, adolescence and adult experiences, including family life, sexual identity, experiences and pathology, behaviour, gender stereotypes and mental health. If an individual is considered suitable for treatment, they may be provided with access to hormone replacement therapy and other interventions outlined above, and later to surgical interventions. Endocrine care is usually provided through a GP via advice from the Clinic, or for younger or at-risk individuals via the Regional Centre for Endocrinology and Diabetes in the Royal Victoria Hospital in Belfast. Generally, access to hormone prescriptions relies on the consent of the Brackenburn Clinic unless an individual pays for private care elsewhere.

As a result of growing waiting lists and lack of alternate care pathways, trans community organisations in Northern Ireland have seen a substantial and steady increase in the number of requests related to private gender-affirming care and to self-medication, where a trans individual sources hormone replacement therapy online or through friends with no or very limited medical oversight or monitoring.

As a result, a growing number of trans individuals in Northern Ireland access gender-affirming care through private providers in England, Scotland and Wales or elsewhere in Europe, and pay for both assessment and prescriptions as a result. As these prescriptions are made without the blessing of the Brackenburn Clinic, it is often difficult for these individuals to transfer to their GP for prescriptions, or to get endocrine monitoring through the health services.

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<sup>4</sup> FOI request response, BHSCT, February 2019, FOI/19534

<sup>5</sup> Awaiting confirmation via FOI by BHSCT

<sup>6</sup> Kara, Sheherezade, GATE, ‘Gender is not an illness. How pathologizing trans people violates international human rights law.’, 2017.

Others access hormone replacement therapy through self-medication, acquiring prescriptions or medications online with no or very little oversight, or via the surplus supply of a trans friend or acquaintance. These individuals have much less access to endocrine monitoring and safety testing, and generally are unable to access safer forms of care due to costs, accessibility or medical/psychiatric contraindications which would prevent their access.

In 2015, the Royal College of General Practitioners published guidelines for the care of trans patients in primary care, which set out basic care pathways for GPs, and provided information on referral and treatment.<sup>7</sup> The guidelines recommended the provision of “bridging prescriptions” for patients who are self-medicating or at risk of doing so and who meet other criteria, as a safer stop-gap solution while they wait for formal assessment and treatment through the Brackenburn Clinic or other services. At time of writing, this has been provided in an extremely small number of cases to service users of trans organisations in the region. In other cases, most GPs cited lack of knowledge or need of expert guidance for their refusal to provide.

There is a sparse body of research on gender-affirming care in Northern Ireland, and little which addresses the waiting list issues of the late 2010s and 2020. In a 2013 report conducted by the Institute for Conflict Research (ICR) and funded by the Office of the First Minister and deputy First Minister, Ruari-Santiago McBride set out a number of issues facing trans and questioning young people, including transfer between child and adolescent services, assessment and diagnosis, and access to subsequent care. At time of writing, none of the recommendations of the report with respect to health and social care have been implemented.<sup>8</sup>

Broader problems were identified in an earlier report titled ‘Healthcare Issues for Transgender People Living in Northern Ireland’, which outlined issues of discriminatory and prejudicial treatment towards transgender people by health service staff, and the provision of accessible information for transgender people seeking care. It also highlighted in 2011 the growing issues of service capacity and recommended increasing the funding for the service in line with growing patient demand.<sup>9</sup>

The collapse of adult gender-affirming care in Northern Ireland as a result of the growth of demand without meaningful changes to the care pathway highlights an urgent need to reform these services profoundly.

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<sup>7</sup> RCGP NI, ‘Guidelines for the Care of Trans\* Patients in Primary Care’, Nov 2015. [https://gendergp.com/wp-content/uploads/2016/03/RCGPNI-Guidance-for-the-care-of-Trans-people-in-primary-care-2015-web4.ashx\\_.pdf](https://gendergp.com/wp-content/uploads/2016/03/RCGPNI-Guidance-for-the-care-of-Trans-people-in-primary-care-2015-web4.ashx_.pdf)

<sup>8</sup> Ruari-Santiago McBride, Institute for Conflict Research, ‘Grasping the Nettle: the experiences of gender variant children and transgender youth living in Northern Ireland’, 18 February 2013. <https://www.executiveoffice-ni.gov.uk/publications/grasping-nettle-experiences-gender-variant-children-and-transgender-youth-living>

<sup>9</sup> Ruari-Santiago McBride, Institute for Conflict Research, ‘Healthcare Issues for Transgender People Living in Northern Ireland’, July 2011. <http://conflictresearch.org.uk/reports/equality-diversity/Healthcare-issues-for-transgender-individuals.pdf>

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### 3.4 Informed consent

In line with legislation and human rights law and standards, healthcare interventions in general must be done on the basis of the informed consent of the individual concerned or their parents or guardians in the case of a young child.

Intersex infants and children are at risk of having their genitals changed surgically at very young ages for cosmetic or false medical reasons. If a child has genitalia seen as “atypical”, in both the UK and Northern Ireland they may have their body modified without their consent or even their parents’ or guardians’ informed consent without medical benefit and with potential serious medical harms later in life.<sup>10</sup>

Intersex genital mutilation has been recognised as a serious violation of physical integrity by medical providers by the Parliamentary Assembly of the Council of Europe,<sup>11</sup> and in 2019 the European Parliament “strongly condemn[ed] sex-normalising treatments and surgery” and encouraged “Member States to adopt similar legislation as soon as possible”.<sup>12</sup>

The OII Europe “Protecting Intersex People in Europe” document is recommended for further reading and context to intersex people’s rights in healthcare.<sup>13</sup>

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<sup>10</sup> European Union Agency for Fundamental Rights: FRA Focus Paper. The Fundamental Rights Situation of Intersex People. Vienna 2015, p. 1 <http://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>

<sup>11</sup> Parliamentary Assembly of the Council of Europe (PACE) (2017): Resolution 2191 (2017). Promoting the human rights of and eliminating discrimination against intersex people. Article 2 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?-fileid=24232&lang=en>

<sup>12</sup> 6 European Parliament: Resolution 2018/2878(RSP). The rights of intersex people, Article 2 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2019-0128+0+DOC+XML+V0//EN&language=EN>

<sup>13</sup> Protecting Intersex People in Europe, OII Europe. <https://oiieurope.org/protecting-intersex-people-in-europe-a-toolkit-for-law-and-policy-makers/>

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### 3.5 Sexual and Reproductive Health

Sexual health is an important part of our overall health and wellbeing and some sexually transmitted infections can have a lifelong impact on the health and wellbeing of LGBTQI+ people, including but not limited to HIV. In this section the focus will be on gay and bisexual men and men who have sex with men (MSM). This is primarily due to the fact that new infections among same sex attracted women and transgender people is not recorded and therefore no information is available. As noted in this chapter, MSM are at higher risk of some STIs including HIV due to the type of sex they may choose to have, with unprotected anal sex being among the high-risk activities related to STI transmission.

Less than half of all lesbian and bisexual women have ever been tested for an STI. Reasons given were that the LB women surveyed didn't feel at risk of STIs, were too scared to get tested or had been told by a healthcare worker that they didn't need tested<sup>14</sup>.

No data on the sexual health of lesbian, gay and bisexual women has been collated in Northern Ireland, and it is difficult to gauge what risk factors exist for LGB women. "Women have reported being asked questions that are only relevant to straight women, like being asked what form of contraceptive you use"<sup>15</sup>. Careful history taking without making heteronormative assumptions may help clinicians to avoid misunderstandings and offer appropriate sexual health advice to LGB women.

It is assumed that same sex attracted women are at lower risk of most of the more serious STIs (particularly blood borne infections) due to the type of sex they are choosing to have, however as with MSM this is not universal. This thinking results in many LGBTQI+ women believing that they are not at risk of sexually transmitted infections and other health related issues born from STIs such as certain cancers. This is not true and depending on behaviour and number of partners LGBTQI+ women including transgender and non-binary people should access regular testing reflective of their sexual behaviours and levels of risk.

LGB women are not classed as priority group by the PHA. However, this does not mean they should be ignored or do not have specific needs. Many LGB women don't feel they are at risk of sexual ill health because they are not having sex with men. This has often been reaffirmed by medical professionals who believe that because a LGB woman fits into this low risk category she herself is also low risk.

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<sup>14</sup> Hunt R, Fish J. Prescription for change: Lesbian and bisexual women's health check. Stonewall, 2008.

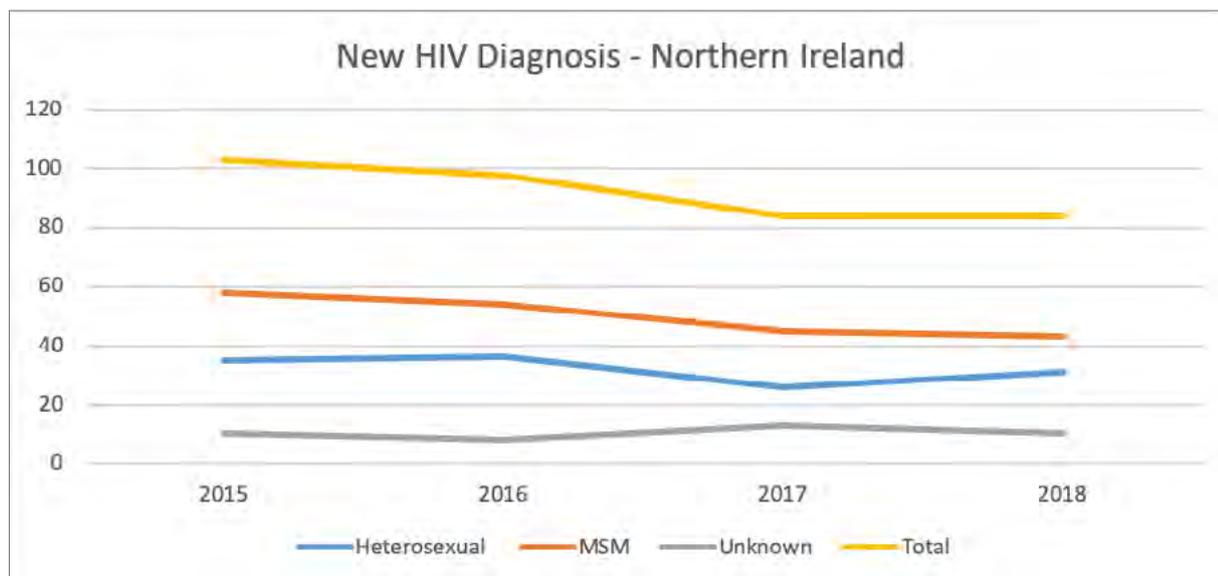
<sup>15</sup> The lesbian guide to cervical screening, HERe NI.

### 3.6 HIV

Since the 1980's 55.9-100 million people have become infected with HIV with 24.8-42.2 million dying with HIV and AIDS-related illnesses, worldwide.

#### New HIV Diagnosis 2015-2018

Since 2015 the rate of new HIV diagnosis in Northern Ireland has steadily been decreasing. In 2015 103 new HIV cases were diagnosed compared to 84 in 2018. The table below sets out the new HIV diagnosis in Northern Ireland over this period. Men who have sex with men (MSM) are disproportionately affected by HIV. If we assume that 10% of the population are LGBTQI+ and that MSM make up half of that population we can assume that MSM make up 5% of the Northern Ireland population. In Northern Ireland the same population have accounted for more than 50% of all new HIV diagnosis 2015-2018.



New HIV Diagnosis 2015-2018, Public Health Agency HIV Surveillance Report

It is important to understand that being a gay or bisexual man or MSM does not in itself make a person more susceptible to HIV, rather it is the type of sex that people choose to have that is the biggest indicator of risk. In terms of sexual activity, unprotected anal sex is a high-risk activity with regards to contracted sexually transmitted infections (STIs), including HIV. Unprotected anal sex is more common among MSM than heterosexual couples and accounts for the disproportionate impact on this community.

### **HIV Prevention in Northern Ireland**

The Public Health Agency reports in its 2019 HIV Surveillance in Northern Ireland report that in 2018 there were 1,130 people diagnosed as living with HIV in Northern Ireland. The understanding of HIV, including how to treat and prevent infection, has changed substantially since the start of the global pandemic in the 1980s. How we care for and treat people living with HIV has also changed through monitoring those living with HIV, the use of Post Exposure Prophylaxis (PEP) in emergency circumstances where someone has been exposed to HIV, and Pre-Exposure Prophylaxis (PrEP) for those at highest risk of contracting HIV.

PEP and PrEP refer to the use of antiretroviral drugs to protect individuals from contracting HIV. PEP is taken after exposure to HIV for example following sex with a person living with HIV or after a needlestick injury. PrEP is taken in advance of exposure and is prescribed as either a daily dosing or event-based regime. Both methods have been shown to be very effective at preventing HIV acquisition with studies in MSM estimating a reduction in the risk of acquisition by as much as 86%.

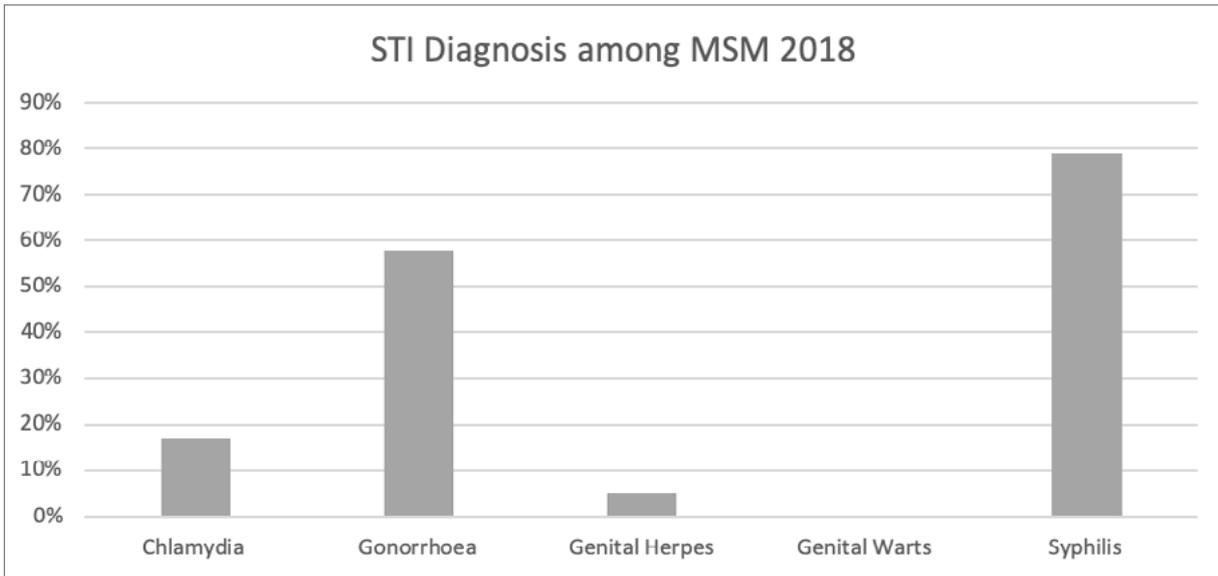
PrEP has been available in Northern Ireland through a Risk Reduction Clinic (RRC) service since July 2018. During a six-month operation in 2018 275 individuals were seen at the RRC. No further information is currently available.

It may be assumed that someone who has been diagnosed as living with HIV presents the highest risk to others in terms of contracting infection. However, someone who has been diagnosed as living with HIV is likely to either be on HIV medication to reduce their viral load (the level of HIV in their blood) or not be on medication because of a low or undetectable viral load. Someone living with HIV that has been diagnosed is able to monitor their viral load and manage their behaviour and sexual contact to reduce the risk of HIV being transmitted to another person.

A person who is living with HIV that is not diagnosed is unlikely to know that they are living with HIV, and therefore will not be accessing care or treatment and will have no awareness of their viral load or their capacity to transmit HIV to another person. The only way to know if a person is living with HIV is to test them. In Northern Ireland there have been slight increases in the numbers of HIV tests being carried out each year with 62,238 tests in 2015 compared to 67,634 in 2018.

### **3.7 Other Sexually Transmitted Infections**

The table below sets out the percentage of STI diagnosis in 2018 which were among men who have sex with men. Syphilis as blood borne pathogen has a much higher diagnosis among MSM than any other group, similar to other blood borne pathogens such as HIV. As noted above, this is due to sexual behaviour and chosen types of sex. There has been a steady increase in the rate of gonorrhoea diagnosis among men since 2010 with men accounting for more than double the total of female diagnosis of gonorrhoea over the same period. More than 50% of these infections were diagnosed among MSM.

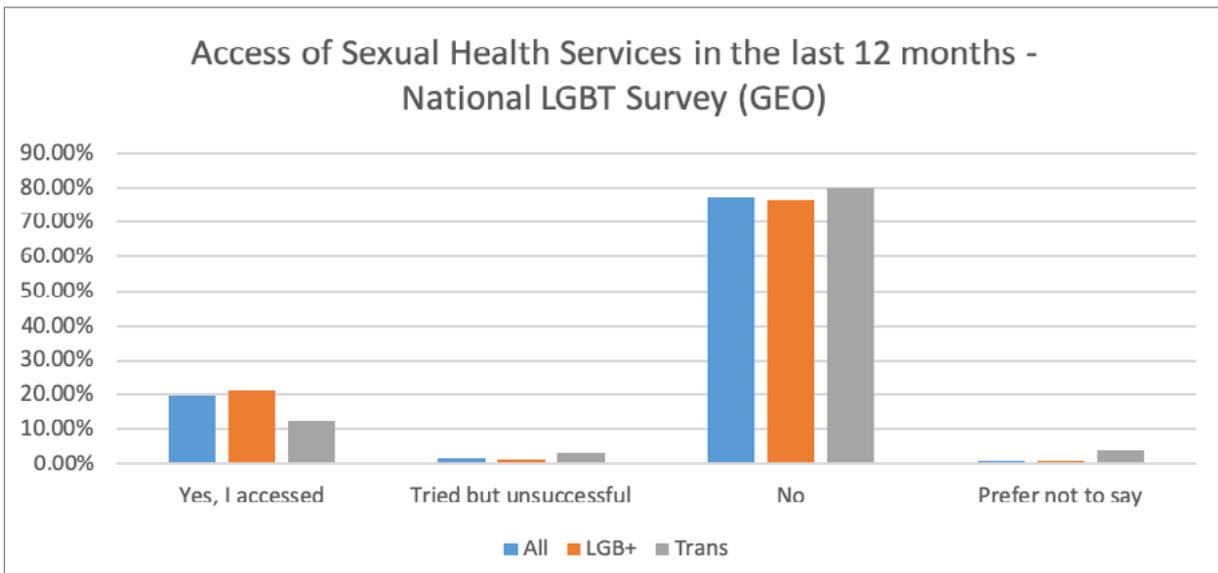


STI Diagnosis among MSM 2018: Sexually Transmitted Infection Surveillance in Northern Ireland, Public Health Agency 2019

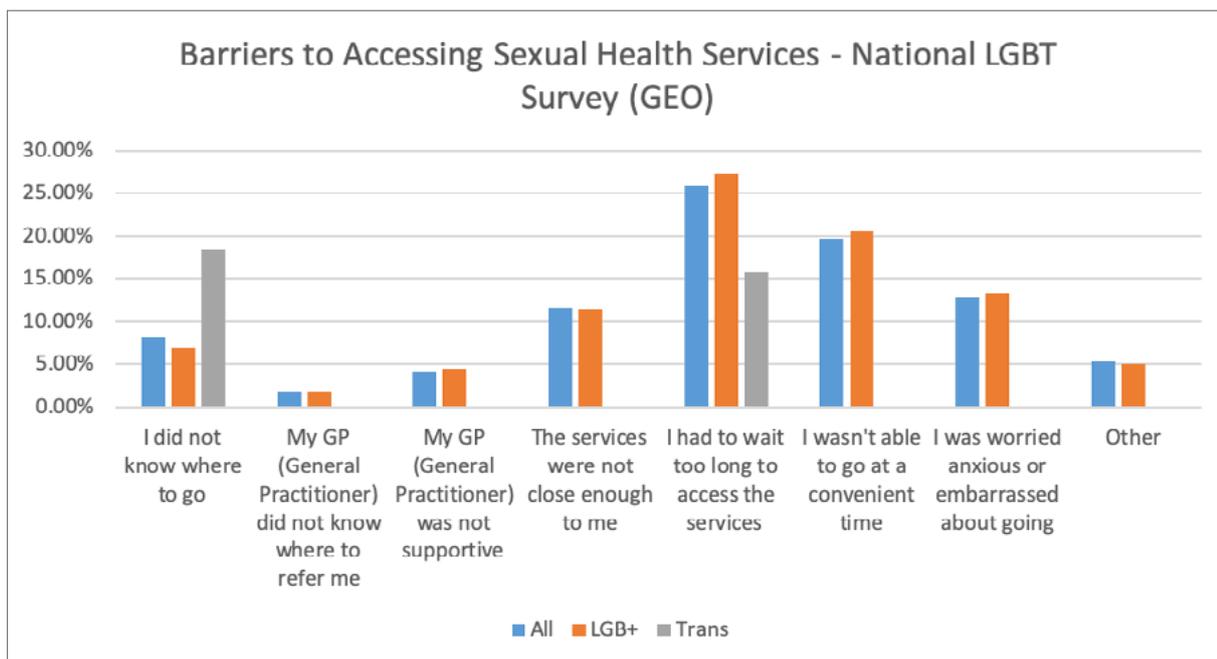
### 3.8 Sexual Health Services accessibility

The National LGBT Survey carried out by the UK Government Equalities Office asked a range of questions in relation to respondents accessing sexual health services. The Northern Ireland responses to this research are outlined below:

Respondents were asked if they accessed, or tried to access, any sexual health service in the previous 12 months. One in five (19.7%) of respondents stated that they had accessed sexual health services while a small number (1.75%) stated that they attempted to access sexual health services but were unsuccessful. LGB+ respondents were more likely to seek to and to access sexual health services than trans, non-binary and intersex respondents.



Those who had attempted to access sexual health services in the previous year but were unsuccessful were asked why it was difficult. One in four (25.92%) respondents stated that the length of waiting times was the main barrier to them accessing services while one in five (19.72%) stated they were not able to go at a convenient time. Knowing where to access services appears to be a specific barrier to trans, non-binary and/or intersex respondents. No further data was provided here however, it may be assumed that this is due to the gender binary approach to sexual health services in Northern Ireland – i.e. male and female separate clinics.



For those respondents who did access sexual health services they were asked about how easy it was for them to access sexual health services in the previous 12 months where 5=very easy and 1=not at all easy. The average score for all respondents was 3.5. Unfortunately, due to the low number of trans, non-binary and intersex responses it is not possible to identify a trans specific score. Respondents were further asked to score their experience of sexual health services in the previous 12 months. More than half of respondents stated that their experience was positive (77.3%) compared to 8.28% who reported a negative experience.

### 3.9 Cervical Smears

LGB women are less likely to have had a cervical smear than women in general (Public Health Agency and DHSPSS, 2012). HPV - human papilloma virus - is sexually transmitted and HPV is a large causative factor in cell dyskariosis and in the development of cervical cancer<sup>16</sup>. LGB women may be having penetrative sex with a man or have done so in the past. Other LGB women may never have had sex with a man, but they can transmit HPV and STIs to their partner from their sexual practice e.g. oral sex or sharing sex toys without use of a condom<sup>17</sup>. The Northern Ireland Cervical screening programme offers screening by cervical smear tests to all women aged 25–64. The programme is inclusive of LGB women.

### 3.10 Reproductive Healthcare

Reproductive rights are primarily an issue for LGB women due in the large part to their ability to actually get pregnant and give birth. However, when planning to start a family there are limited options open to same sex couples. The proportion of LGB women who wish to be parents is approximately 50%<sup>18</sup>. This figure may have increased in recent years with an increase in options to become a parent, legislative advances and changes in societal attitudes towards same sex families. International research indicates that access to fertility treatment is often deeply problematic, subject to restrictive legal frameworks, regulatory limitations, patchy service provision and ability to pay<sup>19</sup>. Access to fertility treatment in Northern Ireland for lesbian and bisexual women is often confusing and difficult to understand.

Being an LGB woman or same sex couple does not have to mean going through life without having children. There are many options for LGB women wanting to become parents. Although adoption or fostering may be an option for some people, many have a desire to have their own biological child. Today many LGB women choose to have children. However, they face numerous dilemmas in doing so. Some LGB women choose self-insemination to conceive. It is important that a full medical history is obtained from the donor, and that full health checks are carried out on both donor and mother to be. Added to the health implications of this method there are also many legal implications.

Another option for conception is a private fertility clinic. These clinics provide services such as IUI and IVF along with a range of specific tests. This method can be very costly. In the UK, all children conceived through a registered fertility clinic (either through the NHS or a private clinic) have a right to receive details about the sperm donor when they turn 18.

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<sup>16</sup> Cervical Screening: it's best to take the test. Public Health Agency and DHSPSS, 2012.

<sup>17</sup> Hunt R, Fish J. Prescription for change: Lesbian and bisexual women's health check. Stonewall, 2008.

<sup>18</sup> Amato, P. & Jacob, M.C., (2004). Providing fertility services to lesbian couples: the lesbian baby boom. *Sexuality, Reproduction and Menopause*, 2(2), pp.83-88.

<sup>19</sup> Corbett, S.L., Frecker, H.M., Shapiro, H.M. & Yudin, M.H., (2013). Access to fertility services for lesbian women in Canada. *Fertility and sterility*, 100(4), pp.1077-1080;

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A further option is publicly funded treatment. The NHS can help with donor insemination or IVF, but only if there have been diagnosed fertility issues. While this is not now the case for donor insemination, there remain serious issues around funding and capacity. To be eligible, you need to have been trying to get pregnant without medical help for at least two years and it must be proven that you have a medical condition that makes conception difficult. Many LGB women find this option particularly difficult to access. Many LGB women are not aware if they have a fertility issue or not, as accessing this option is often their first step on the journey to parenthood. The majority of literature and information on this option assumes heterosexuality, as reference is consistently made to heterosexual couples. Many LGB women do not even opt for NHS treatment as it is not made explicitly clear that they may be entitled to this option. Once again, reference to LGB women or same sex couples is non-existent in many cases with heteronormative assumptions often made.

Before embarking on the journey to motherhood it is vitally important to research all the options available, the potential costs involved, and the legal implications.

LGB women are more likely to experience sexual violence than their heterosexual counterparts, and consequently a pregnancy as a result of a sexual crime. The Guttmacher Institute found<sup>20</sup> in a 2018 US study of people who had had an abortion, 15% of lesbians said their pregnancy was because of forced sex compared to 1% of heterosexuals and 3% of bisexuals. Bisexuals (9%, 7%) and lesbians (33%, 35%) were also more likely to report that the man who impregnated them had physically or sexually abused them, compared to 4%/ 2% of heterosexuals. It is likely that there are similar trends to those consistently identified in international research in the UK, as ONS<sup>21</sup> research highlights that bisexual women in particular experience proportionately higher levels of domestic abuse.

A systematic worldwide study<sup>22</sup>, including reports from the UK, found that there was a statistically significant higher rate of pregnancy in adolescent LGB women. This was particularly found in bisexual adolescents where the rate was twice that found in the heterosexual adolescent cohorts. One study, included in the systematic review, on bisexual adolescents reported higher rates of unwanted pregnancy and termination. It is currently unclear as to why there is a higher rate of pregnancies in teenage LGB women than their heterosexual peers and the reasons need to be established. Higher rates of pregnancy in LGB adolescents might follow their being more adventurous or sexually active in general, more forced or unplanned sex without contraception, or if they experiment with heterosexuality to persuade themselves that they are heterosexual.

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<sup>20</sup> Jones, R. K., Jerman, J, and Charlton, B. M. (2018) Sexual Orientation and Exposure to Violence Among U.S. Patients Undergoing Abortion <https://doi.org/10.1097/AOG.0000000000002732>

<sup>21</sup> Women most at risk of experiencing partner abuse in England and Wales: years ending March 2015 to 2017 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/womenmostatriskofexperiencingpartnerabuseinenglandandwales/yearsendingmarch2015to2017#characteristics-of-women-who-are-most-at-risk-of-experiencing-partner-abuse>

<sup>22</sup> Hodson, K. Meads, C and Bewlet, S (2017) Lesbian and bisexual women's likelihood of becoming pregnant: a systematic review and meta-analysis <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5299536/>

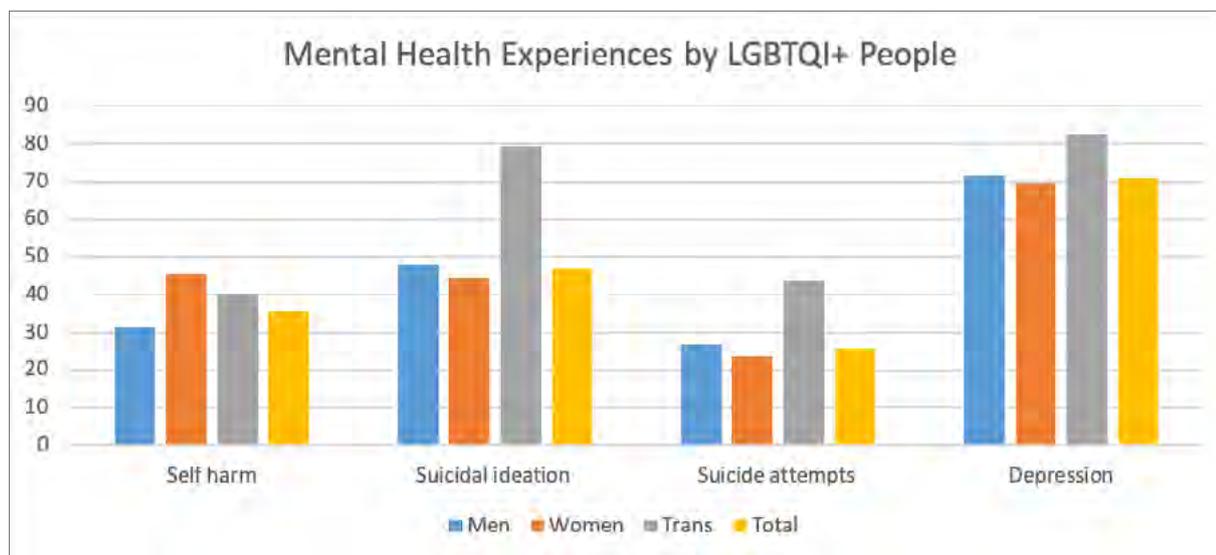
LGB teenagers are more likely to experience an unplanned pregnancy. This higher rate of LGB teen pregnancy also highlights the need for more comprehensive Relationships and Sex Education.

### 3.11 Mental and Emotional Health and Wellbeing

It has been widely recognised that LGBTQI+ people have poorer mental and emotional health and wellbeing outcomes when compared to the wider society. The Northern Ireland Protect Life Strategy has recognised LGBTQI+ communities as a priority in each version of the Strategy. It is broadly accepted that the poorer mental and emotional health and wellbeing outcomes experienced by LGBTQI+ people are caused by the experiences of marginalisation, discrimination and isolation experienced by this community, rather than the fact they are an LGBTQI+ person.

#### Self-Harm and Suicide among the LGBTQI+ community

The National Institute for Clinical Excellence (NICE) has adopted the definition of self-harm as ‘self-poisoning or self-injury, irrespective of the apparent purpose of the act’. Self-harm can take many different forms and acts of self-harm may be an expression of personal distress where the person directly intends to injure themselves. In Northern Ireland a Deliberate Self-Harm Registry has been established. Data taken from this registry helps to better inform the understanding of self-harm, however data related to sexual orientation or gender identity is not currently collated therefore it is impossible to identify the number of LGBTQI+ people who presented with self-harming. In 2017/2018 there were 9,127 presentation of self-harming in Northern Ireland.<sup>23</sup>



Malachai O'Hara (2013) Through Our Minds: Exploring the emotional health and wellbeing of lesbian, gay, bisexual and transgender people in Northern Ireland, Northern Ireland: The Rainbow Project.

<sup>23</sup> Brendan Bonner (2019) Northern Ireland Registry of Self-Harm - Annual Report 17/18, Northern Ireland: Department of Health.

Research<sup>24</sup> carried out by The Rainbow Project found that 35.3% of LGBTQI+ people had self-harmed. The figure was highest among LGBTQI+ women with 45.4% having self-harmed at least once in their lifetime, followed by trans people at 40%. The figure for LGBTQI+ men was lower at 31.1%. Incidents of self-harm are among the most powerful predictors of subsequent suicide. The Rainbow Project further reported that among those who had self-harmed the most common method of self-harming was cutting (72.3%), followed by other forms of self-injury (40.4%) and self-poisoning (28.9%). They found that a significant percentage (40.5%) had self-harmed within the previous year. The research also found poor levels of help seeking behaviour with 54.8% of respondents who had self-harmed not seeking help.

Suicidal ideation is the medical term for thoughts about or an unusual preoccupation with suicide. The range of suicidal ideation varies greatly from fleeting to detailed planning, role playing, and unsuccessful attempts which may be deliberately constructed to fail, or be discovered or may be fully intended to result in death. Although most people who experience suicidal ideation do not go on to make suicide attempts, a significant proportion do. Suicidal ideation is generally associated with depression; however, it seems to have association with many other psychiatric disorders, life events, all of which may increase the risk of suicidal ideation.

Research<sup>25</sup> carried out by The Rainbow Project found that almost half of LGBTQI+ people have or are currently experiencing suicidal ideation. It is difficult to assess the incidence of suicidal ideation amongst the wider Northern Ireland population, with a wide variation in demographics within comparable data. Some reports suggest the incidence may be as high as 17% amongst those aged 16 to 44 years of age. These figures suggest there is a huge disparity in the occurrence of suicidal ideation amongst LGBTQI+ people comparative to their heterosexual and cisgender peers. 63.7% of those reporting suicidal ideation to The Rainbow Project stated that they had not sought any help in response to their experience of suicidal ideation.

Every year, almost one million people die from suicide; a 'global' mortality rate of 16 per 100,000 or one death every forty seconds. Suicide worldwide was estimated to represent 1.8% of the total global burden of disease in 1998<sup>26</sup>. Suicide is complex with psychological, social, biological, cultural and environmental factors involved. Mental disorders (particularly depression and alcohol use disorders) are a major risk factor for suicide. The Public Health Agency reports<sup>27</sup> that in 2017 307 deaths caused by suicide and self-inflicted injury were recorded in Northern Ireland. 228 of these were among men, 79 were among women. There is no monitoring for sexual orientation or gender identity in relation to deaths by suicide in Northern Ireland.

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<sup>24</sup> Malachai O'Hara (2013) Through Our Minds: Exploring the emotional health and wellbeing of lesbian, gay, bisexual and transgender people in Northern Ireland, Northern Ireland : The Rainbow Project .

<sup>25</sup> Ibid

<sup>26</sup> World health organisation [http://www.who.int/mental\\_health/prevention/suicide/suicideprevent/en/](http://www.who.int/mental_health/prevention/suicide/suicideprevent/en/)

<sup>27</sup> <https://www.publichealth.hscni.net/sites/default/files/2020-02/Core%20Tables%202018%20-%20final%20-%20Dec%202019.pdf>

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The Rainbow Project found that just over a quarter of LGBTQI+ people (25.7%) had at least one attempt at suicide and that attempts at suicide were most common among trans people (43.5%) followed by men (26.6%). The average age for the first attempt was 20.88 years old and that of those who had attempted suicide, 24% did so in the previous year. 40.3% of those LGBTQI+ people who had attempted suicide were concerned that they may experience a suicide attempt again.

### **Mental Health Services**

The National LGBT Survey asked a range of questions in relation to mental health services with over 1600 responses. It found that over the previous 12 months 23.5% of LGBTQI+ people had accessed mental health services such as talking therapies, with 7% seeking these services but being unable to do so. The most common reason for being unable to access services was waiting times (48.62%). Trans people were most likely to access mental health services at 38.33% compared to LGB+ people at 20.96%.

Respondents were also asked to score how easy it was to access services with 5 = Very easy and 1= Not easy at all. The average score for Northern Ireland was 2/5. More than half of respondents stated that overall, they would rate the mental health service that they accessed as positive (58.35%).

### **3.12 Conversion Therapy**

There is currently no internationally accepted definition of ‘conversion’ or ‘reparative’ therapies, but they can broadly be defined as ‘techniques intended to change someone’s sexual orientation or gender identity’. They may also seek to stop a person expressing their sexual orientation or gender identity (for example, by persuading individuals to deny their sexual orientation and be celibate, or to stop dressing in their affirmed gender). Conversion therapy (CT) can take many forms, ranging from pseudo-psychological treatments, aversion therapies as well as practices that are religiously based (such as ‘healing prayer’ or deliverance ministry). At its most extreme, there is evidence that this can also involve so-called ‘corrective’ rape.

The term ‘conversion therapy’ encompasses all medical, psychiatric, psychological, religious, cultural or any other interventions that seek to erase, repress or change the sexual orientation and/or gender identity of a person, including aversive therapies or any other procedure that involves an attempt to convert, cancel or suppress sexual orientation, gender identity and/or gender expression. In its ‘therapeutic’ forms it is a scientifically discredited, unprofessional and dangerous practice.

Conversion therapy does not include practices that:

- assist a person who is undergoing a gender transition;
- assists a person who is considering undergoing a gender transition;
- assist a person to express their gender identity;
- provide acceptance, support and understanding of a person; or
- facilitate a person’s coping skills, social support and identity exploration and development.

The UK Government’s National LGBT Survey which surveyed 108,000 LGBTQI+ people across the United Kingdom, found that 7% of respondents had undergone or been offered conversion therapy. 13% of trans respondents had undergone or been offered conversion therapy to stop them from being trans. 51% of respondents who had undergone conversion therapy said it had been conducted by faith groups, and 19% said it had been conducted by healthcare providers or medical professionals.

In June 2020, the UN General Assembly stated that ‘actions to subject lesbian, gay, bisexual, trans or gender diverse persons to practices of ‘conversion therapy’ are by their very nature degrading, inhuman and cruel and create a significant risk of torture, and called for a global ban on conversion therapy.

In 2015, a Memorandum of Understanding was signed by 17 national organisations, including NHS England, the Royal College of General Practitioners, the UK Council for Psychotherapy and the British Association for Counselling and Psychotherapy. This stated that conversion therapy on the basis of sexual orientation is unethical and potentially harmful. The organisations committed to making the risks of conversion therapy known to professionals and the public, and to ensuring that new and existing psychological therapists are appropriately trained to avoid these harmful practices. In 2017 the Memorandum was updated to include the harmful impact of gender identity conversion therapy on trans people.

The World Health Organisation<sup>28</sup>, the World Bank<sup>29</sup> and the UN<sup>30</sup> have condemned CT and numerous countries across the world have banned its use and promotion. The Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have issued explicit reproaches against treatments that are forced, involuntary or otherwise coercive or abusive,<sup>31</sup> and the Committee on the Rights of the Child has connected those practices with violations of the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.<sup>32</sup> CT creates psychological wounds that are not easily repaired.

To date six countries have implemented national legal bans on conversion therapy, including Germany, Malta, Ecuador, Brazil and Taiwan. Several states in the United States and Australia have also done so.

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<sup>28</sup> WHO, “Improving the Health and Well-Being of Lesbian, Gay, Bisexual and Transgender Persons” (Geneva: World Health Organization, 2013), [http://www.ghwatch.org/sites/www.ghwatch.org/files/B133-6\\_LGBT.pdf](http://www.ghwatch.org/sites/www.ghwatch.org/files/B133-6_LGBT.pdf).

<sup>29</sup> [org/curated/en/196241478752872781/pdf/110035-WP-InvestinginaResearchRevolutionforLGBTInclusion-PUBLIC-ABSTRACT-SENT.pdf](https://www.ghwatch.org/sites/www.ghwatch.org/files/B133-6_LGBT.pdf)

<sup>30</sup> Human Rights Council Forty-fourth session 15 June–3 July 2020 [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/44/53](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/44/53)

<sup>31</sup> Ibid

<sup>32</sup> Committee on the Rights of the Child, general comment No. 20 (2016) on the implementation of the rights of the child during adolescence

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In light of the findings of their National LGBT Survey, the UK Government committed to ending conversion therapy. They have since commissioned further research to improve their understanding of the evidence and effects of the practice, which they intend to publish imminently.

Practices of CT target a specific group on the exclusive basis of sexual orientation and gender identity, with the specific aim of interfering with a person’s autonomy. In that sense, such practices are intrinsically discriminatory. As CT is an unscientific practice and based on prejudicial ideas that the person is sick, diseased, and abnormal, research confirms that its effects include feelings of powerless and extreme humiliation, feelings of shame, guilt, self-disgust, and worthlessness, suicidal ideation, suicide attempts, and PTSD. Minors are particularly vulnerable to CT and research has shown that it amplifies the shame and stigma so many LGBTQ+ young people already experience. The state has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by CT. As it creates long-term harm to the individual, it increases the costs of health care as resources must be spent on repairing its psychological and physical effects. In terms of possible actions for LGBTQI+ Strategy, the research suggests that the following should be illegal.

- Any practice (medical, therapeutic or otherwise) aimed at changing or suppressing a person’s sexual orientation or gender identity.
- Attempts to rebrand or reshape CT practices in order to subvert legal prohibitions.
- Causing a person to undergo CT against their will.
- Causing a minor to undergo CT.
- Profiting from providing CT.
- Advertising an offer to provide CT.

In addition, a robust system for investigating claims of CT practice is required.

The Department of Health should ensure the following:

- The Department does not commission or provide funding for practices that seek to change a person’s sexuality or self-defined gender identity to a normatively ‘preferred’ model.
  - Practitioners offering counselling or therapeutic services to LGBTQI+ clients or patients have adequate knowledge and understanding of gender and sexual diversity and are free from any agenda that favours one gender identity or sexual orientation as preferable over other gender and sexual diversities.
  - Organisations with practice members will ensure through training and/or published guidelines that the relevant principles in their statements of ethical practice are applied when working with LGBTQI+ clients, as pertaining to standards of professional competent and non-discriminatory practice.
  - Licence to practise is suspended pending investigation of a complaint and may be withdrawn if CT is offered or practised.
  - Free access to appropriate medical services for those who continue to experience the harmful psychological and physical effects of CT.
-

## Theme 4. Education

**Aim:** All LGBTQI+ people should feel welcome, safe and valued at school, college and university so that they can reach their full potential.

Most LGBTQI+ young people will first self-identify their sexual orientation when they start going through puberty and begin to experience sexual attraction. In terms of gender identity this can be much younger and is not linked to puberty or sexual attraction. Most young people will therefore self-identify a minority sexual orientation and/or gender identity while they are in full time education.

These years in particularly secondary education are therefore formative for LGBTQI+ young people in building their understanding of their identity and allow them to develop a sense of self and self-esteem in regards to their minority identity. This requires an understanding of and visibility of LGBTQI+ people, history and experiences to normalise this minority identity. There has been an historic invisibility of LGBTQI+ people in Northern Ireland, including within education. This invisibility impacts not only on LGBTQI+ young people but also on those who are seeking to educate them and the environment in which they are taught. Teachers cannot be experts on LGBTQI+ people or experiences without receiving this training or education themselves, and having likely attended school and teacher training in Northern Ireland this is not currently part of their education.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- Schools, EOTAS (education other than at school) and facilities provided by the Education Authority's Youth Services are safe for LGBTQI+ young people and that mechanisms are in place to address any experiences of bullying or harassment.
- There is a zero tolerance approach to hate crimes and online harassment within schools or learning environments.
- Trans and gender-questioning young people have the support they need to express themselves and be fully included at school and in EOTAS.
- All young people have access to age appropriate relationship and sexuality education inclusive of LGBTQI+ which is universal and not dependent on school ethos.
- The statutory curriculum is inclusive of the diversity of society and visibly includes minority communities such as LGBTQI+ people.
- Access to sports, activities, uniforms and facilities are accessible inclusive of all genders and gender identities.
- LGBTQI+ teachers can be themselves at work and teacher training is inclusion of diversity and human rights.

## **Introduction**

All young people are required by law to attend school or other education until 16 years of age. It is therefore incumbent on those with responsibility for our schools to ensure that schools are safe for all young people – and to the best of their ability ensure that they are free from harassment and violence.

## **4.0 Legislative context**

This section sets out the current legislative context in terms of quality and LGBTQI+ inclusion within education in Northern Ireland.

### **Section 75 of the Northern Ireland Act 1998 and Education**

Section 75 of the Northern Ireland Act 1998 requires designated public authorities to carry out all of their functions:

- with due regard to the need to promote equality of opportunity in respect of religious belief, political opinion, gender, race, disability, age, marital status, dependents and sexual orientation; and
- to have regard to the desirability of promoting good relations.

The education public authorities subject to the section 75 obligations include the Department of Education, the Education Authority, the Council for Catholic Maintained Schools, the Education and Training Inspectorate, the Council for Curriculum, Examination and Assessment, Northern Ireland Council for Integrated Education and the Council for Controlled Education. While these obligations exist for these authorities, section 75 of the Northern Ireland Act does not put any obligations on individual schools.

Based on these obligations it is therefore the responsibility of the Department of Education to [legislate or issue statutory and non-statutory guidance] to ensure equality of opportunity for all children and young people in education. To date, the only such legislation specific to schools is the Addressing Bullying in Schools Act (Northern Ireland) 2016.

### **4.1 Addressing Bullying in Schools Act (Northern Ireland) 2016**

The Addressing Bullying in Schools Act (Northern Ireland) 2016 sets out statutory guidance for school Principals and Boards of Governors. The Act is in four main parts and includes a legal definition of bullying.

1. A standard definition of bullying for use in all schools.
  2. A duty on Boards of Governors to secure measures to prevent bullying.
  3. Requirement on schools to develop Anti-Bullying Policy, in consultation with pupils and parents, and to review this policy at least every four years.
  4. A requirement on schools to record all incidents of bullying behaviour and alleged bullying behaviour.
-

### Definition of Bullying:

1. In this Act “bullying” includes (but is not limited to) the repeated use of
  - a. any verbal, written or electronic communication,
  - b. any other act, or
  - c. any combination of those,

by a pupil or a group of pupils against another pupil or group of pupils, with the intention of causing physical or emotional harm to that pupil or group of pupils.

### **European Convention on Human Rights: Legislation**

#### Article 10 Freedom of expression

*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*

#### Article 14 Prohibition of discrimination

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, religion, language, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

### **United Nations Convention on the Rights of the Child**

Article 2: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.

All rights apply to children without exception. It is the State’s obligation to protect children from any form of discrimination and to take positive action to promote rights.

*\* Although the convention has not been made part of UK domestic law, as international law it is to be followed and should be referred to by courts, tribunals and other processes when making decisions that affect children.*

### **Education and Libraries (Northern Ireland) Order 2003**

Places duties on Boards of Governors to safeguard and promote the welfare of pupils at all times when on the premises of the school or in the lawful control or in charge of a member of staff of the school.

### **Education (Northern Ireland) Order 1998**

Places responsibilities on Boards of Governors and Principals for discipline: to “ensure that policies designed to promote good behaviour and discipline on the part of its pupils and perused at the school.” The scheme of management shall require the Board of Governors “to make, and from time to time review, a written statement on general principles (regarding discipline) and to “consider any guidance given by the Department, the board for the area in which the school is situated and (in the case of Catholic Maintained School) the Council for Catholic Maintained Schools”. The scheme of management for every grant-aided school shall provide for it to be the duty of the Principal to determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to-

- i) promoting among pupils, self-discipline and proper regard for authority;
- ii) encouraging good behaviour and respect for others on the part of pupils;
- iii) securing that the standard of behaviour of pupils is acceptable; and
- iv) otherwise regulating the conduct of pupils.

## **4.2 Education Authority Guidance and Information for Transgender Pupils**

The Education Authority has published guidance for schools who are supporting or are expecting to support a transgender or questioning young person.<sup>33</sup> Although this guidance does not have statutory authority – it is not legal advice and is optional for schools – it adapts schools’ obligations to act in the best interests of pupils and to support pupils in their development to the specific needs and experiences of transgender young people.

The guidance covers an introduction to terminology, the background to transgender young people’s experiences, the legal context for inclusion in schools, inclusion of gender identity in the curriculum, transgender young people’s experiences in Northern Ireland schools, health and social care needs, and the specific barriers transgender young people may experience in schools and their potential resolutions.

The guidance has three central principles that supporting transgender and gender-questioning young people should always

- centre on their best interests;
- act towards improving equality and inclusion in schools; and
- act in an individual approach to each young person.

There is limited evidence to inform understanding of the effect of this guidance since its introduction.

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<sup>33</sup> EA Guidance and Information for Transgender Pupils, Equality Service, Education Authority.

### 4.3 Experiences of LGBTQI+ people of Education in Northern Ireland

This section outlines a range of experiences of LGBTQI+ people in education in relation to a number of key areas including bullying, relationship and sexuality education, curriculum, coming out and trans specific issues/concerns.

#### Research

Research commissioned by the Department of Education entitled Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender<sup>34</sup> reported on a survey carried out with 532 young people aged 16-21 on their experiences in education in Northern Ireland.

The following table outlines the responses to questions asked in the Survey.

<b>Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender</b>	
<b>Knowledge of anti-bullying policy</b>	92% (n=487/531)
<b>Experiences of bullying due to sexual orientation or gender identity</b>	48% (n=257/531)
<b>Frequency of bullying:</b>	
Several times a week	32% (n=80)
Once a week	14% (n=36)
2-3 times monthly	11% (n=29)
On and off over a period of time	30% (n=76)
1 or 2 isolated times	13% (n=32)
<b>Forms of bullying:</b>	
Called names relating to my sexual orientation or gender identity	89.9% (n=231)
Other pupils told lies or spread false rumours	70% (n=180)
Left out of things on purpose by other pupils or ignored	56.4% (n=145)
Hit, kicked, pushed or shoved around	28% (n=72)
<b>Methods of bullying:</b>	
Face to face	95.3% (n=245)
Social Media	44.4% (n=114)
Text or email	16% (n=41)
People talking behind their back	3.9% (n=10)
<b>Was the bullying reported? (yes)</b>	38.8% (n=99)

<sup>34</sup> Public and Corporate Economic Consultants (PACCEC) (2017) Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender, Northern Ireland: Department of Education.

<b>Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender</b>	
<b>Staff response to bullying:</b>	
Very supported	9.2% (n=9)
Supported	14.3% (n=14)
Neither supported nor unsupported	22.4% (n=22)
Unsupported	24.5% (n=24)
<b>Very unsupported</b>	<b>29.6% (n=29)</b>
<b>School has taken steps to prevent/ stop bullying</b>	<b>28.3% (n=28)</b>
Teacher addressing individuals involved	(n=20)
Teacher addressing class or year group	(n=7)
An external organisation addressing a class or year group	(n=<5)
<b>Additional support offered to LGB&amp;T students</b>	<b>(n=8)</b>
In school counselling	(n=5)
Pastoral care	(n=<5)
Details of external organisations	(n=<5)
<b>Overall experience of how school dealt with bullying</b>	
Very well	5.1% (n=5)
Well	18.2% (n=18)
Not well	33.3% (n=33)
<b>Badly</b>	<b>43.4% (n=43)</b>
<b>Schools' activities to deal with LGB&amp;T bullying:</b>	
Talks by external orgs	20.2% (n=20)
Including topics in classes	21.2% (n=21)
Specific talks by teachers	25.3% (n=25)
<b>Nothing</b>	<b>56.6% (n=56)</b>

Public and Corporate Economic Consultants (PACCEC) (2017) Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender, Northern Ireland: Department of Education

In preparation for the development of the Government Equalities Office 'LGBT Action Plan' in July 2018, a UK wide survey was carried out to explore the experiences of LGBTQI+ people across the United Kingdom. A range of questions were asked in terms of bullying. The responses from Northern Ireland are set out below.

<b>National LGBT Survey 2017</b>	
<b>Experiences in the last academic year (700 responses)</b>	
Verbal harassment	19.14%
Physical harassment or violence	1.86%
Sexual harassment or violence	1.71%
Threat of physical or sexual harassment or violence	3.86%
Exclusion from events or activities	7.43%
Someone disclosing that you are LGBT to others without your permission	20.86%
Any other inappropriate comments or conduct not listed above	12.86%
None of the above	67.86%
Prefer not to say	4.71%
<b>Most serious issue in the last academic year</b>	
Physical harassment or violence	5.21%
Threat of physical or sexual harassment or violence	8.33%
Verbal harassment	50.00%
Disclosure of LGBT status	17.71%
Other	7.81%
Prefer not to say	4.69%
<b>Did anyone report the most serious incident?</b>	
Yes, I did	7.81%
No	87.50%
<b>Why did you not report the most serious incident?</b>	
It did not occur to me	8.93%
I didn't know how or where to report it	20.83%
I dealt with it myself or with help from family or friends	20.83%
I was too upset to report it	16.67%
I was ashamed, embarrassed or didn't want anyone to know	30.95%
I didn't want to reveal my sexual orientation or gender identity	40.48%
I was afraid of intimidation or retaliation by the perpetrator(s)	21.43%
I didn't want the perpetrator(s) to get into trouble	9.52%
I felt it wasn't worth it or nothing would happen or change	60.71%
I thought it was too minor, not serious enough or 'happens all the time'	55.95%
I thought I wouldn't be believed	10.71%
I thought it wouldn't be taken seriously enough	45.24%
I had a bad experience reporting an incident in the past	11.90%

<b>National LGBT Survey 2017</b>	
<b>After reporting did the behaviour stop?</b>	
Yes, but not completely	39.13%
No, not at all	52.17%
<b>How helpful or unhelpful was your teacher, lecturer, tutor or other teaching staff in handling this most serious incident?</b>	
Not very helpful	31.58%
<b>Perpetrators of this most serious incident</b>	
Classmate(s) or other student(s)	89.58%
Teacher(s), tutor(s), lecturer(s) or other teaching staff	9.90%
Non-teaching staff	3.65%
Prefer not to say	6.25%

## Experiences of bullying

The Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender<sup>35</sup> report outlines a range of issues impacting on the equality of opportunity for LGBTQI+ young people within education in Northern Ireland. For example, almost half (48%) of young LGBTQI+ people have reported experiencing bullying due to their sexual orientation or gender identity and of these almost one third (32%) have experienced bullying several times a week and almost half (46%) reported experiencing bullying at least every week. The GEO National LGBT Survey reported that in the last year 27.43% of LGBTQI+ young people had experienced some form of bullying behaviour the most common of these being disclosing of the person sexual orientation (20.86%) and verbal harassment (19.14%).

Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender reported that more than a quarter (28%) of young people experiencing bullying in school experienced physical violence by the perpetrators of the bullying.

## Methods of bullying

While in 2020 cyberbullying is often viewed as being the biggest issue, this report outlines that although cyberbullying remains an important issue to address, face to face bullying remains the most common form of bullying being present in 95.3% of cases of bullying according to the ‘Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender’ report.

<sup>35</sup> Public and Corporate Economic Consultants (PACCEC) (2017) Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender, Northern Ireland: Department of Education.

### **Reporting of bullying and school responses**

Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender reports very high levels of under-reporting of experiences of bullying by LGBTQI+ young people with more than half (61.2%) of young people experiencing bullying not reporting it. This report also highlights the need for schools to do more to support victims of bullying. It outlines that more than half (54.1%) of those experiencing bullying felt very unsupported or unsupported by staff following the reporting of bullying. The report also notes that in more than half (56.6%) of cases where bullying was reported to the school there was no response by the school in terms of activities to deal with LGBTQI+ bullying.

The GEO National LGBT Survey reports that 87.5% of the most serious incidents over the last academic year were not reported to anyone, and the most common reasons for not reporting were:

- I felt it wasn't worth it or nothing would happen or change (60.71%);
- I thought it was too minor, not serious enough or 'happens all the time' (55.95%);
- I thought it wouldn't be taken seriously enough (45.24%); and
- I didn't want to reveal my sexual orientation or gender identity (40.48%).

More than half (52.17%) of respondents who did report their experiences stated that the behaviour had not stopped at all. The most common perpetrators of these incidents were classmates or other students (89.58%) however 9.9% were reportedly perpetrated by teaching staff.

### **School actions to prevent bullying**

The Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender report notes that 71.7% of LGBTQI+ young people reported that their school had not taken any steps to prevent/ stop bullying. In those cases where the school had acted these mostly involved speaking directly to those young people responsible for the bullying and their friends, rather than any school wide approach to addressing bullying and its root causes.

### **Response by statutory authorities to bullying within school**

The Department of Education has reported that the Addressing Bullying in Schools Act (NI) 2016 has not been implemented yet, but when it is, schools will have to record incidents, the motivation and their responses. It further notes that this information will not be collated system wide.

## **4.4 Relationships and Sexuality Education (RSE)**

The Department of Education requires all grant aided schools to develop their own policy on how they will address Relationships and Sexuality Education (RSE) within the curriculum. They state that "a school's policy should reflect the school's ethos and should be subject to consultation with parents and pupils and endorsed by the Board of Governors".

While it is a requirement on schools to deliver RSE there are no specific curriculum requirements for individual schools on what topics should be covered or how these should be covered. Realistically this would suggest that there are as many different approaches to RSE as there are schools in Northern Ireland.

### **Statutory Guidance in RSE**

There is a range of guidance provided to schools by a range of agencies to support the delivery of RSE including:

- Council for the Curriculum, Examinations and Assessments.
- Primary School guidance (last updated October 2019).
- Secondary School guidance.
- Specific information on consent, contraception; domestic and sexual violence; health, positive sexual expression and relationships; internet safety; LGBTQI+ matters; and social media and its effects on relationships and self-esteem.
- Department of Education.
- A circular to school authorities about revised relationship and sexuality guidance produced by CCEA on behalf of the Department of Education (August 2015).

### **Research**

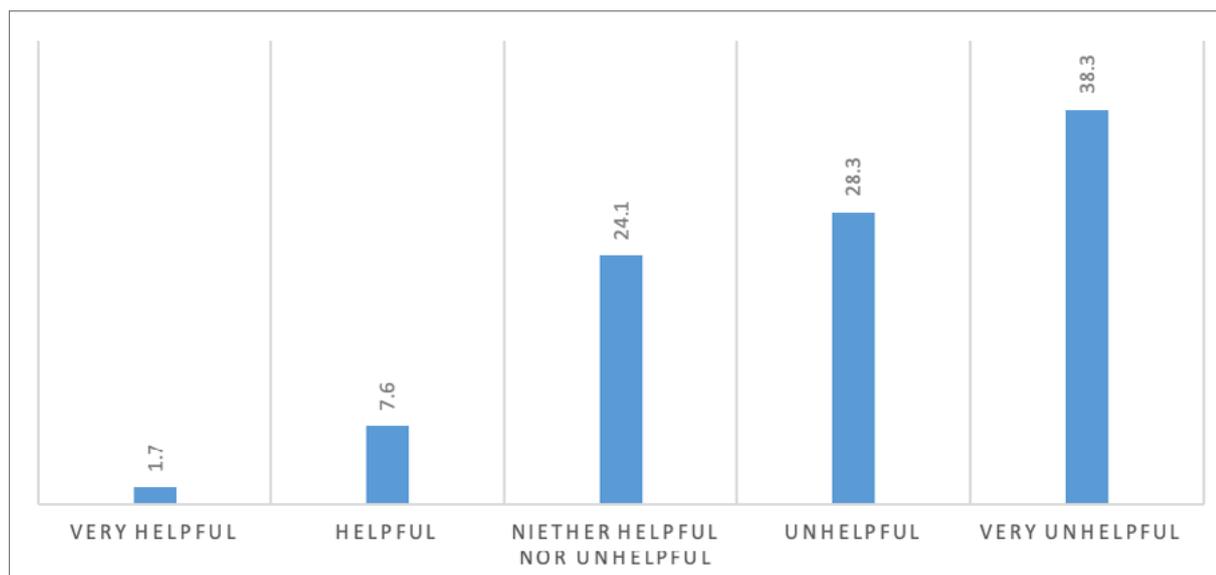
Research commissioned by the Department of Education entitled Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender<sup>36</sup> reported on a survey carried out with 532 young people aged 16-21 on their experiences in education in Northern Ireland.

Respondents were asked if LGB&T relationships had been discussed as part of Sexual Health Education. Nearly all respondents (90.4%) indicated that LGB&T relationships had not been discussed; 9.6% of respondents indicated that these had been discussed as part of the Sexual Health Education. Furthermore, all respondents were asked how helpful they found Sexual Health Education. Responses are displayed in the table below.

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<sup>36</sup> Public and Corporate Economic Consultants (PACEC) (2017) Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender, Northern Ireland: Department of Education

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Two thirds of respondents (66.6%) stated that the Sexual Health Education they received was either unhelpful or very unhelpful.

The Education and Training Inspectorate (ETI) published its Report of an Evaluation of Relationship and Sexuality Education in Post-Primary Schools<sup>37</sup> in January 2011. As part of this research a survey was sent to all post-primary schools in Northern Ireland to which 107 schools responded. In addition to the online survey the ETI visited a sample of 25 post-primary schools in April 2010. The report states:

“The online survey, and the discussions with staff during the visits, identified a clear need to build capacity, both during initial teaching training and continuous professional development to enable teachers to deal more effectively with the challenges of teaching sensitive issues. The two main areas where the need for further support or guidance are needed are: the teaching of issues associated with Sexual Orientation (78.2%); and coping strategies to deal with challenging scenarios including domestic violence and child abuse (72.3%).”

### **Response by statutory authorities to Relationships and Sexuality Education in schools**

As noted above, a range of guidance and circulars have been published and sent to schools in relation to RSE. While each school is due to have an RSE policy in place, these are not reviewed by the Department of Education. Policies are due to be reviewed by the Education Training Inspectorate during inspections, however the Department of Education reported that due to ‘Action Short of Strike’ (ASOS) that this had not been possible in recent years and the number of policies reviewed is not quantifiable for the same reason.

<sup>37</sup> (2011) Report of an Evaluation of Relationship and Sexuality Education in Post-Primary Schools, Northern Ireland : The Education and Training Inspectorate.

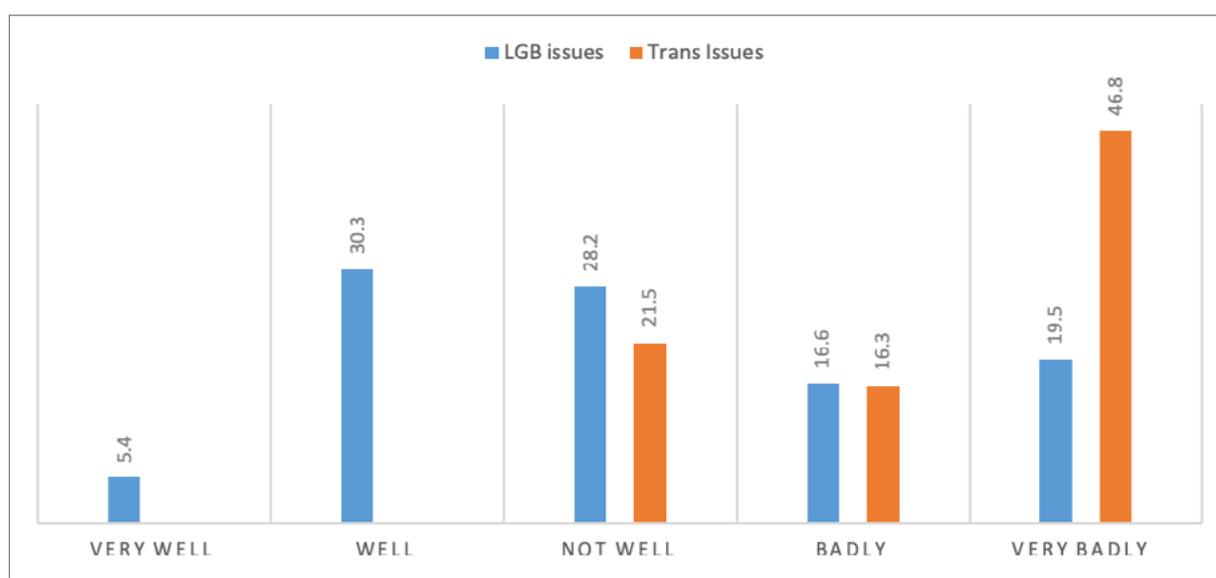
## 4.5 Wider Curriculum

The Northern Ireland Statutory Curriculum does not make any direct reference to LGBTQI+ issues or people – and therefore any inclusion of LGBTQI+ related learning relies on individual schools or teachers to ensure its inclusion, whether this is in relation to RSE education or the wider curriculum.

### Research

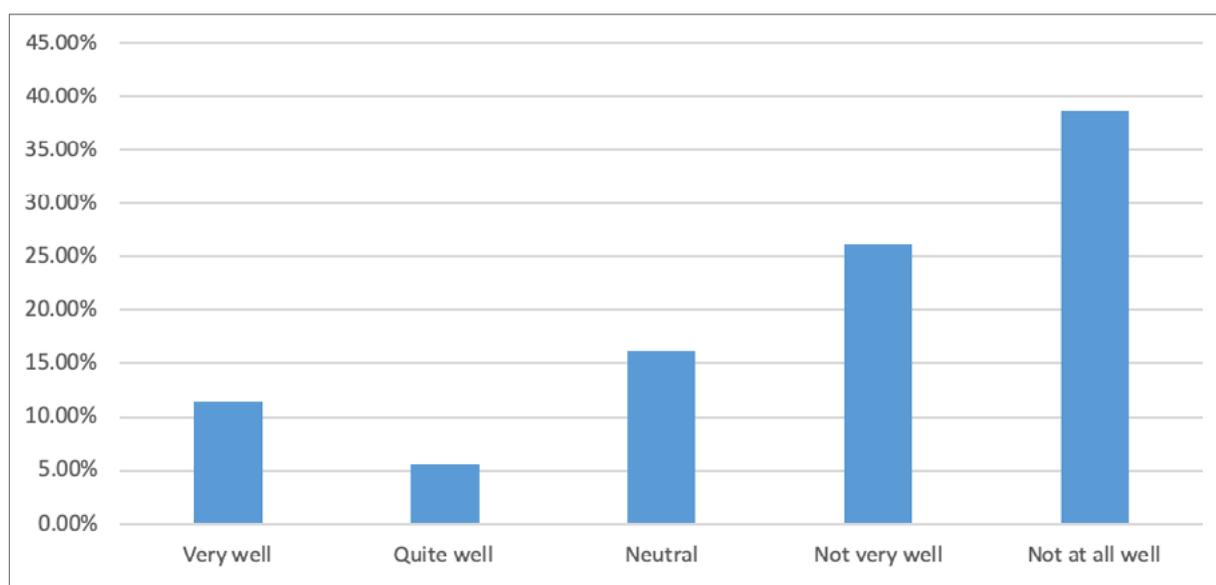
‘Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender<sup>38</sup>’ reported on the results of a survey carried out with 532 young people aged 16-21 on their experiences in education in Northern Ireland.

Respondents were asked if sexual orientation or gender identity issues had been covered in any classes and in which classes this occurred. The most common response was that “LGB&T issues never came up in my classes” with more than half (55%) of respondents stating this was the case. In the classes where LGB&T issues had been covered the most common subject was Religious Education (71.4%), followed by Learning for life and work (40.2%), Sexual Health Education (24.1%), English Literature (17.8%), Sciences (14.9%) and Social Sciences (9.1%). Respondents were further asked their opinion about the approach to LGB&T issues by teachers. The graph below outlines the responses:



<sup>38</sup> Public and Corporate Economic Consultants (PACCEC) (2017) Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender, Northern Ireland: Department of Education

The GEO National LGBT Survey reported that 2.48% of respondents had had lessons, assemblies or other classes where both sexual orientation and gender identity had been covered, 10.27% where just sexual orientation had been covered and 85.2% where neither issue had been discussed. Respondents were further asked their opinion about the approach to LGB&T issues by teachers. The graph below outlines the responses:



## 4.6 Coming Out

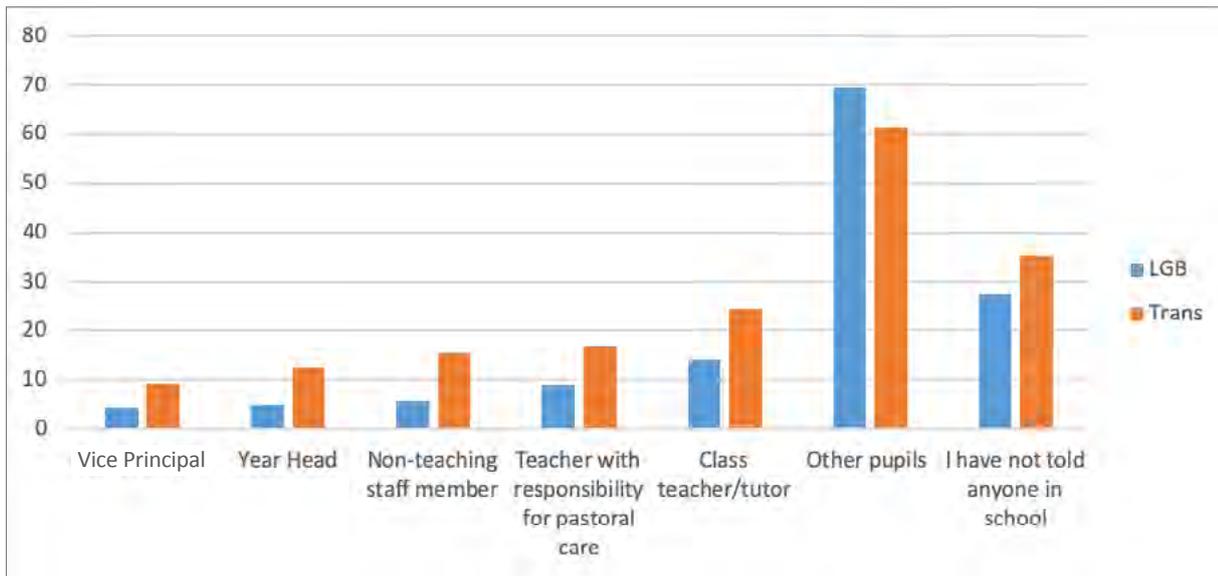
Most LGBTQI+ young people will first self-identify their sexual orientation when they start going through puberty and start to experience sexual attraction. In terms of gender identity this can be much younger and is not linked to puberty or sexual attraction. Most young people will therefore self-identify a minority sexual orientation and/or gender identity while they are in full time education.

### Research

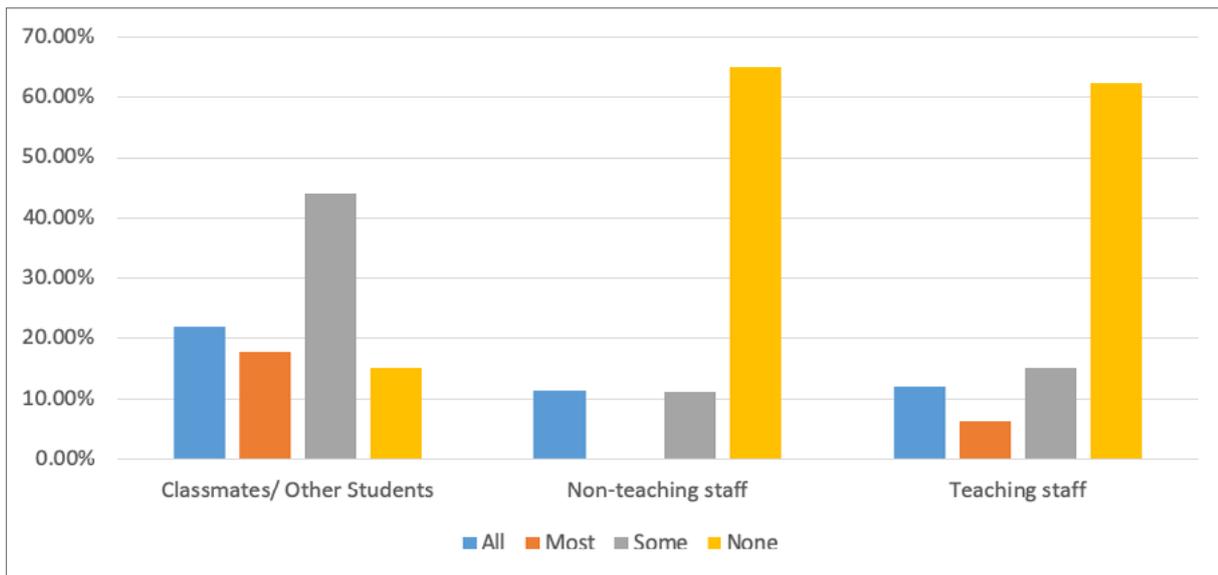
Research commissioned by the Department of Education entitled ‘Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender<sup>39</sup>’ reported on a survey carried out with 532 young people aged 16-21 on their experiences in education in Northern Ireland.

Respondents were asked who they had spoken to within school about their sexual orientation or gender identity. The graph below outlines who both trans and LGB students had spoken to:

<sup>39</sup> Public and Corporate Economic Consultants (PACCEC) (2017) Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender, Northern Ireland: Department of Education.



The GEO National LGBT Survey asked a similar question in terms of who respondents were open about their sexual orientation or gender identity with. The graph below outlines the responses.



Both reports highlight that LGBTQI+ young people are most likely to be out to other students than teaching and non-teaching staff.

## 4.7 Transgender specific concerns/ challenges

While often grouped together as LGBTQI+, there are specific issues which impact on transgender people which do not necessarily, or at least to the same degree, impact LGBTQI+. These often relate to difficulties faced trying to navigate a gender binary world where decisions on what to wear, what sports to play, what facilities to use, etc are based on the sex assigned to someone at birth. When taken into a school environment this becomes less about societal pressure and more about the structures, mechanisms and rules that exist around these gendered structures such as uniforms.

### Wearing of school uniform

The vast majority of post-primary schools in Northern Ireland continue to operate under a uniform policy which sets out different uniform requirements for male and female students – these include requirements for girls to wear skirts and boys to wear trousers. This can present specific issues for trans and non-binary young people within post-primary schools. ‘Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender’ asked young people about concerns or challenges they face within post-primary education to which 64.6% (n=42) trans respondents stated ‘Wearing of School uniform’ was an issue for them.

### Names and participation in gender-specific sport, school activities and use of toilets/ changing facilities

There are a number of issues which impact directly on trans and non-binary young people in Post-primary schools. ‘Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender’ report noted some of these which are set out below. These primarily relate to names and gendered structures around school activities and facilities.

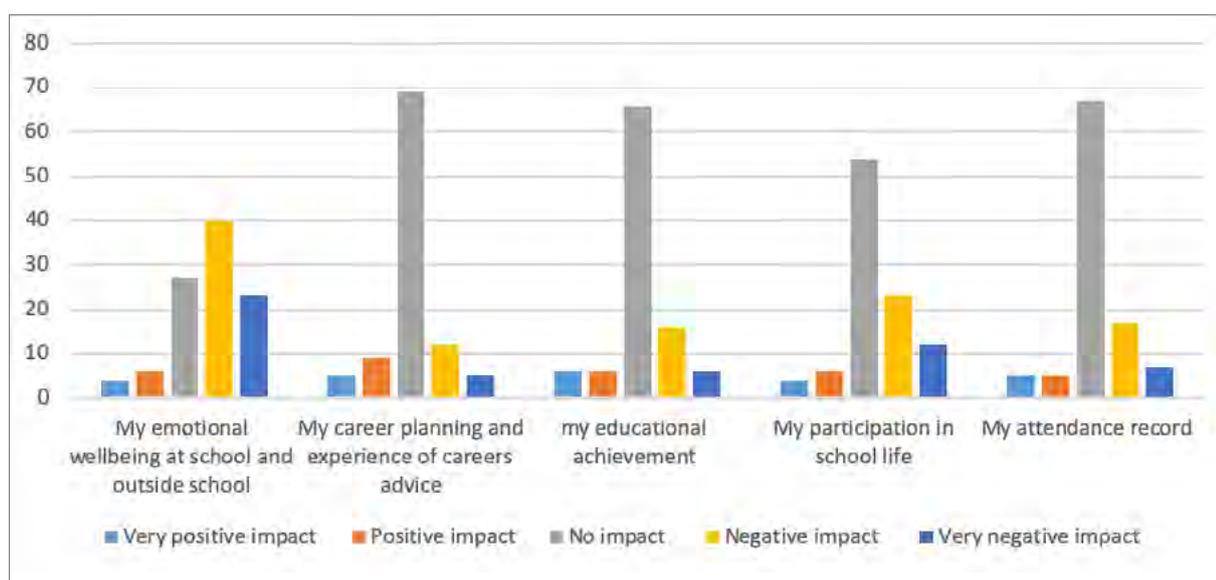
Inconsiderate use of forename amongst teaching staff	40% (n=26)
Inconsiderate use of my forename amongst pupils	35.4% (23)
Inconsiderate use of my forename amongst non-teaching staff	32.3% (n=21)
Participation in gender-specific sport or other activity	62.2% (n=43)
School activities that group pupils by gender	63.1% (n=41)
Use of toilet	61.5% (n=40)
Changing facilities	55.4% (n=36)

## 4.8 Overall impact of Experiences in Education

This section explores the overall impact of being an LGBTQI+ person in formal education in Northern Ireland. These include any impact of emotional wellbeing, achievement, participation and perceptions of safety and value.

### Research

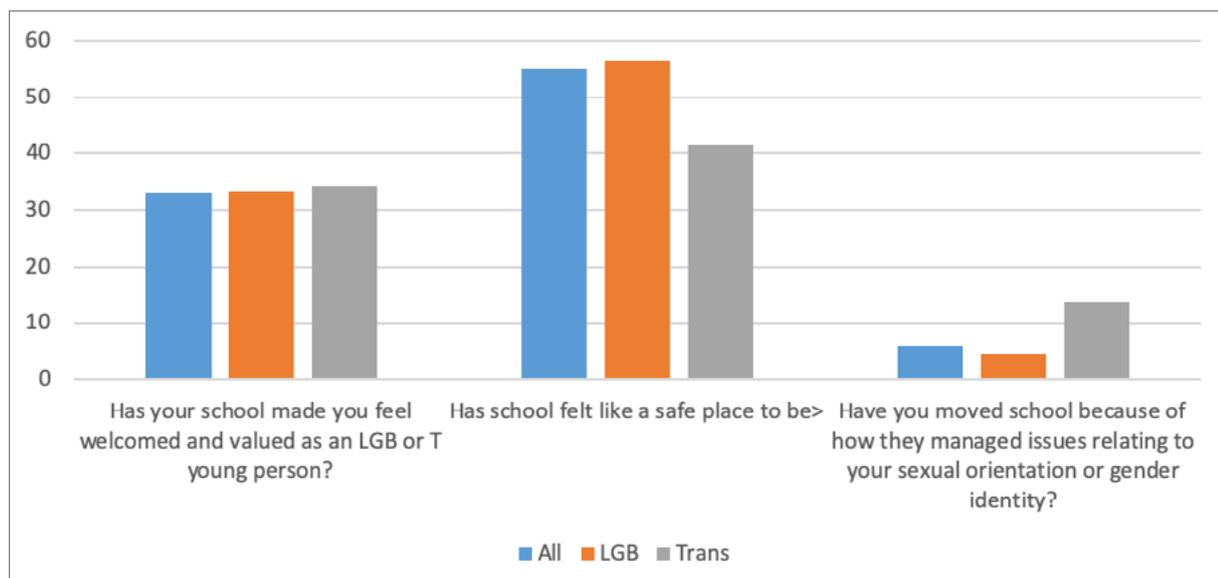
‘Post-primary school experiences of 16-21-year-old people who are lesbian, gay, bisexual and/or transgender’ reported on the impact experiences as an LGBTQI+ student had had on respondents. The graph below outlines the responses:



In the majority of cases the experiences of being an LGBTQI+ person in education had no impact on a respondent’s career planning, educational achievement or attendance. However, 62.8% (n=333) of respondents noted that their experiences of being LGBTQI+ in school had a negative impact on their emotional wellbeing. This was higher among trans young people where 73.8% (n=28) reported their experiences as being a trans person in school had negatively impacted on their emotional wellbeing.

In other areas a quarter or less of respondents had been negatively impacted from their experiences as an LGBTQI+ person in education. Specifically, 24.4% (n=129) negatively impacted on their participation in school; 24.3% (129) negatively impacted on their attendance; 21.8% (115) negatively impacted on their educational achievement; and 17.5% (n=93) negatively impacted on their career planning and experience of advice.

Respondents were asked additional questions in relation to their perception of the school environment. These responses are set out in the graph below:



More than half (56.4%) of LGB+ respondents stated that school felt like a safe place to be, this number was less than half for trans young people (41.5%). One third (33%) of respondents felt welcomed and valued as an LGBTQI+ person, this number was very similar for LGB (33.3%) and trans (34.4%) young people. A small number of respondents (6%) had moved school due to how their school had dealt with issues related to their sexual or gender identity, however the number was much higher among trans respondents (13.8%) than LGB respondents (4.7%).

Respondents were further asked of the activities they would like to see in post-primary schools to promote LGBTQI+ needs and concerns. The table below outlines the responses from respondents.

More inclusion of LGB&T issues and concerns in the curriculum	86.7% (n=461)
More inclusion of equality and human rights issues in the curriculum	78.6% (n=418)
External organisations being invited in to raise the profile	72.4% (n=385)
“one off” events and talks to classes and years by teachers	59.8% (n=318)
Better sexual education including coverage of LGB&T education	3.4% (n=18)
Setting up of LGB&T groups in post-primary schools	1.5% (n=8)
Educate teachers in LGB&T issues	0.9% (n=5)

### **Complementary research**

Further research was carried out by Cara-Friend and Youth Action entitled ‘Still Shouting – The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)’ which was published in 2017. The research found that 68% of respondents had been bullied, 36% had received lower results, 25% had engaged in truancy, 12% had dropped out of school and 11% had changed schools as a result of their sexual orientation or gender identity. The report further highlighted 84% of respondents had not received any support or information at school regarding sexual orientation or gender identity<sup>40</sup>. This research includes views from young people in NI aged under 16, unlike the research conducted by the Department of Education (restricted to age range from 16-24 years) and the GEO National LGBT Survey (minimum age 16).

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<sup>40</sup> Gail Neil and Declan Meehan (2017) Still Shouting – the needs and experiences of young people who identify as lesbian, gay, bisexual and/or transgender, Northern Ireland: Cara Friend and Youth Action NI

## Theme 5. Safety and Security

**Aim:** All LGBTQI+ people should feel safe and secure in their own homes, in their communities and online to ensure they are free from fear, harassment and other forms of harm.

Gender stereotypes assign a set of so-called ‘natural’ characteristics to men and women, and set up strict gender binaries that do not reflect the fluidity and complexity of gender and sexuality. These stereotypes are damaging because they define and limit how people are expected to live their lives. The gender hierarchies and norms they reproduce mean that those who do not conform face daily challenges and risks in relation to their own personal safety. Homophobia, biphobia and transphobia can lead to anti-LGBTQI+ harassment and violence that puts gender and sexual minorities at heightened risk of physical and psychological harm.

Abuse and violence can begin during childhood. Those who do not conform to gender stereotypes face bullying and violence in schools, in the home leading to homelessness, and in sporting arenas. They can also experience relentless abuse in social media environments. These experiences have a serious effect on their well-being and prevents openness about their personal identity. While it is often in the school playground that abuse and blows are first experienced, harassment, violence and insecurities can often continue into adulthood and throughout an LGBTQI+ person’s life.

Where a person lives, works and socialises can become hostile and threatening environments. Simple pleasures such as holding hands with a romantic partner or going to a restaurant can open the person up to abuse and violence. Hate crimes against LGBTQI+ people are on the rise, as is homelessness, and research more broadly indicates several arenas of life wherein LGBTQI+ people continue to experience insecurity despite progress in legal protections.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- LGBTQI+ people are protected from hate crime and victims of hate crime are provided with appropriate forms of support.
- LGBTQI+ people have access to safe and secure housing.
- LGBTQI+ criminal or civil detainees are not subjected to physical and psychological harms.
- The PSNI protect LGBTQI+ people’s human right to equal protection under the law in ways that are responsive to their circumstances and needs.
- LGBTQI+ people are effectively protected against domestic violence and sexual violence.

## **Introduction**

The sections below expose the levels of abuse and violence experienced by LGBTQI+ people and identify how the criminal justice system can increase their safety, security and well-being while protecting their fundamental human rights.

## **Human Rights frameworks**

This section sets out the key international frameworks that pertain to LGBTQI+ people's safety. NI's legislative frameworks are noted in relation to specific arenas of safety and security below.

### **Universal Declaration of Human Rights articles potentially engaged include:**

- Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Article 3: Everyone has the right to life, liberty and security of person.
- Article 7: All are equal before the law.
- Article 12: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

### **European Convention on Human Rights Articles engaged include:**

- Article 2: The right to life.
- Article 3: The prohibition of inhuman or degrading treatment.
- Article 5: The right to liberty and security.
- Article 8: The right to respect for private and family life.
- Article 10: The right to freedom of expression.
- Article 14: The prohibition of discrimination.

### **The Yogyakarta Principles engaged include:**

- Principle 5 'Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group'.<sup>41</sup>

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<sup>41</sup> The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. <http://yogyakartaprinciples.org/>. The Yogyakarta Principles suggest that human rights law implies that States shall: a) Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity; b) Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family; c) Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence; d) Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation; e) Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity

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## 5.1 Hate Crime

An incident must be recorded and investigated by the Police Service of Northern Ireland as a homophobic or transphobic hate incident or crime if the victim or anyone else believes it was motivated by hostility or prejudice based on sexual orientation or transgender identity. This is often referred to as the perception test. In societies with a history of discriminatory practices, laws and policies against LGBTQI+ people, robust legal protections are required to ensure that perpetrators understand that they cannot harm these groups with impunity.

### Legislative frameworks

International Human Rights Organisations have issued specific advice and guidance on states' obligations in relation to hate crimes motivated by homophobia and transphobia.

- The U.N. High Commissioner for Human Rights Office recommends that all states enact hate crimes laws; conduct prompt thorough investigations; collect and publish data on hate crime; and provide sensitivity training to law enforcement.<sup>42</sup>
- The Council of Europe Standards sets out the requirements for member states in relation to hate crime. States must act in a manner compatible with the human rights enshrined in the ECHR.<sup>43</sup>
- ECHR case law reinforces the importance of 'unmasking' homophobic and transphobic motivations behind crimes and warns of the consequences of failing to do so: 'prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes.'<sup>44</sup>

### Domestic Law

There is no single offence of 'hate crime' in NI: it is an umbrella term used to describe a range of hate offences as well as any other offence which has been 'aggravated by hostility'. An offence is 'aggravated by hostility' where: 'the offender demonstrates hostility based on the victim's membership or presumed membership of a racial group, a religious group or a sexual orientation group, or his<sup>45</sup> disability or presumed disability; or the offence is motivated by hostility towards any of those groups'.<sup>46</sup> It can be noted that this definition does not include transgender, gender, gender-fluid or intersex people.

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<sup>42</sup> Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General (2015) Discrimination and violence against individuals based on their sexual orientation and gender identity Report of the Office of the United Nations High Commissioner for Human Rights. Update of report A/HRC/19/41 - OHCHRwww.ohchr.org › Documents › A\_HRC\_29\_23\_en

<sup>43</sup> Council of Europe committee of Ministers Recommendation No. r (97) 20 of the Committee of Ministers to Member States on 'hate speech'. <https://rm.coe.int/1680505d5b>

<sup>44</sup> Perry, J. and Franey, P. (2017) Policing Hate Crime against LGBTI persons: Training for a Professional Police Response. <https://rm.coe.int/prems-030717-gbr-2575-hate-crimes-against-lgbti-web-a4/1680723b1d>

<sup>45</sup> Panel's emphasis

<sup>46</sup> DOJ (2019) [https://consultations.nidirect.gov.uk/doj-corporate-secretariat/sentencing-review-northern-ireland/user\\_uploads/chapter-7-----hate-crime-22.10.19.pdf](https://consultations.nidirect.gov.uk/doj-corporate-secretariat/sentencing-review-northern-ireland/user_uploads/chapter-7-----hate-crime-22.10.19.pdf)

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The Criminal Justice (No. 2) (Northern Ireland) Order 2004, permits a sentence to be increased where it is proven that the basic offence for which a person is convicted was motivated against one of the currently protected characteristics, in the form of race, religion, sexual orientation or disability, or where the offender demonstrated hostility against one of these characteristics either at the time of committing the offence or immediately before or after it.

The definition of hate crime used by the PSNI is ‘any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic. PSNI also use the principles of this definition to record non-crime hate incidents. Within PSNI there are six strands of hate motivation that are monitored; race, homophobia, sectarianism, faith/religion (non-sectarian), disability and transphobia.<sup>47</sup>

## Research

### The experiences of LGBTQI+ people

Hate crimes can happen in schools, the street, at home and at work. People who experience hate crime face serious emotional impacts. Victims can feel isolated, unsafe in their own homes, afraid to go out or of staying at home, withdrawn and suspicious of strangers. Their mental and physical health may be affected. It makes communities feel fearful and unable to live openly. Hate crime limits the ability of people to live open and fulfilled lives.<sup>48</sup> Both the experience and fear of homophobic hate crimes and incidents have a dramatic impact on the quality of life of LGBTQI+ people. Victims report that they felt shock, anger, confusion and isolation because of their experiences. These feelings were often long term. Some people described how ‘they changed how they lived their lives after an attack, because of fear’.<sup>49</sup>

### Extent

Review of the law and survey data combine to create a picture of the extent of hate crime experienced by LGBTQI+ people and the level of under-reporting of these crimes. The National LGBT Survey 2017 found that:

- 40% of LGBT+ people had experienced a hate crime in the last 12 months.
- Over a third of respondents said they avoided holding hands in public for fear of a negative reaction.
- 70% said they had avoided being open about their sexual orientation for fear of a negative reaction; this was higher for cisgender respondents who were asexual (89%), queer (86%), and bisexual (80%).

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<sup>47</sup> Hate Crime Definitions (n/d). <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/documents/hate-motivations-definitions.pdf>

<sup>48</sup> O’Doherty, J., (2009) Through Our Eyes: Perceptions and Experiences of Lesbian, Gay, Bi-sexual People towards Homophobic Hate Crime. [https://www.nipoliceboard.org.uk/sites/nipb/files/media-files/through-our-eyes\\_0.pdf](https://www.nipoliceboard.org.uk/sites/nipb/files/media-files/through-our-eyes_0.pdf)

<sup>49</sup> HMICFRS (2018) Hate crime: what do victims tell us? <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/hate-crime-what-do-victims-tell-us.pdf>

## Transgender people

- In addition, most transgender people (67%) avoid being open about their gender identity in order to lower the risk of experiencing transphobic abuse.
- Transgender people were significantly more likely to have experienced at least one incident (53%).

## Underreporting

During 2018/19 there were 281 incidents recorded in NI where there was a homophobic motivation including 201 homophobic crimes in total. At least three in every five crimes with a homophobic motivation falls within violence against the person. Between 38% and 51% of victims of homophobic crime are between the ages of 18 and 29. During 2018/19 there were 33 incidents recorded where there was a transphobic motivation.<sup>50</sup> In 12 months from 1st July 2019 to 30th June 2020 homophobic hate crimes increased. However the transphobic incidents and crimes ‘saw the largest increases across all hate motivation strands with 29 more incidents and 26 more crimes’.<sup>51</sup> Research collected by the Marrinan Review estimates that of those who make a complaint in relation to hate crime (80 % do not), only 4 % of cases which are deemed as crimes end up with a result that is satisfactory from the point of view of the victim.<sup>52</sup>

There is also substantial under-reporting. The reasons for under-reporting of hate crime in NI have been identified by the Public Prosecution Service for Northern Ireland. They include:

- previous experience of or lack of confidence in police or the criminal justice system;
- perception that police and criminal justice agencies are not interested and will not act, language difficulties and personal circumstances;
- fear of breach of privacy and becoming exposed to further incidents; and
- lack of knowledge of reporting systems; perception about how the police and criminal justice agencies will respond; perception that it is acceptable to treat members of the affected groups in this way.<sup>53</sup>

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<sup>50</sup> PSNI (2019) Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2018/19 PSNI Hate crime statistics (Dec 2019), <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/2018-19/hate-motivated-incidents-and-crimes-in-northern-ireland-2004-05-to-2018-19.pdf>

<sup>51</sup> PSNI (2020) Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland Update to 30 June 2020. [https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/2020-21/q1/hate-motivation-bulletin-jun\\_-20.pdf](https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/2020-21/q1/hate-motivation-bulletin-jun_-20.pdf).

<sup>52</sup> Whelan, D. (2020) Hate crime legislation review, Agenda NI. <https://www.agendani.com/hate-crime-legislation-review/>

<sup>53</sup> Public Prosecution Service for Northern Ireland (2010) Hate Crime Policy, p.13. <https://www.ppsni.gov.uk/sites/ppsnifiles/publications/PPS%20Hate%20Crime%20Policy.pdf>

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## Legal issues

Despite rising levels of reported hate crime<sup>54</sup> statistical data for the years 2015 and 2018, compiled by the Public Prosecution Service for NI shows a downward trend in the number of cases where the prosecution considered offences aggravated by hostility to have occurred.<sup>55</sup> Judge Desmond Marrinan has stated that: ‘There can be no doubt that the current law is not working, and our role is to establish how we can make it better. We have an advantage in assessing the impact of reforms which have already been implemented in other parts of the UK.’<sup>56</sup>

A 2017 report on hate crime on behalf of the Chief Criminal Justice Inspector noted the disparity in the legislative approach to hate crime across the UK and recommended the Department review the existing legislative response to hate crime, including consideration of the statutory aggravated offences model already in existence in England and Wales.<sup>57</sup>

Moreover, the Equality Commission NI noted in its response to the hate crime law review that standalone ‘aggravated’ offences law similar to the Scottish model that attract higher maximum sentences as sending out a symbolic message such offences are not acceptable or to be tolerated. Moreover, it ‘has the potential to act as a deterrent to offending, increase public awareness of hate crime, and to encourage reporting of hate crime and public confidence in the criminal justice system’s ability to tackle hate crime’.<sup>58</sup>

Implications of Research – possible actions for LGBTQI+ Strategy:

- The Marrinan-led review’s recommendations<sup>59</sup> provide a solid foundation for improving the approach to hate crime in NI.
- The Department of Justice should recognise the uniquely damaging impact of hate crime against LGBTQI+ persons. It should take action to improve investigation, conviction rates and support to victims. There may also be a need for more joined up thinking in relation to government departments.
- Action should also be taken to increase the reporting levels of homophobic and transphobic hate crimes which will require the strengthening of existing initiatives and the development of robust methods of engaging with the issue including third party reporting. Such action should include extending initiatives/resources to inform LGBTQI+ people about their rights in relation to hate crime. Additionally, the PSNI must train all police and civilian staff to identify and record hate crimes.

<sup>54</sup> Hate crime legislation, Independent Review, Consultation Paper (2020), para 6.3.

<sup>55</sup> DOJ (2019) [https://consultations.nidirect.gov.uk/doj-corporate-secretariat/sentencing-review-northern-ireland/user\\_uploads/chapter-7-----hate-crime-22.10.19.pdf](https://consultations.nidirect.gov.uk/doj-corporate-secretariat/sentencing-review-northern-ireland/user_uploads/chapter-7-----hate-crime-22.10.19.pdf)

<sup>56</sup> Whelan, D. (2020) Hate Crime Legislation Review, Agenda NI. <https://www.agendani.com/hate-crime-legislation-review/>

<sup>57</sup> Criminal Justice Inspectorate (2017) Hate Crime an Inspection of the Criminal Justice System’s Response to Hate Crime in Northern Ireland. <http://www.cjini.org/getattachment/a48b8a89-f32f-4b02-bd3c-8f77989630eb/picture.aspx>.

<sup>58</sup> Equality Commission for Northern Ireland (2020) Response to consultation: Hate Crime Legislation in Northern Ireland, Independent Review. <https://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2020/DoJ-HateCrimeLawReview.pdf?ext=.pdf>

<sup>59</sup> <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/hate-crime-review.pdf>

- The Department of Justice should ensure the adequate and appropriate collection and publication of detailed data on hate crime and the under-reporting of hate crime, comparable with other parts of the UK.
- NGOs are critical partners for the police in their efforts to understand and effectively respond to hate crimes against LGBTQI+ people. They act as a support service for victims, a training partner for the police, and a critical source of data and information about the prevalence and impact of hate crime. Adequate funding is essential. This work should be funded and NGOs' role as stakeholders in this area should be deepened.

## 5.2 Online Hate Speech

The UN defines online hate speech as 'any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor'.<sup>60</sup> The internet is now a medium for the targeting of LGBTQI+ people with hateful and injurious forms of speech.

### Legislative framework

The European Court has recognised that certain forms of harmful expression must necessarily be restricted to uphold the objectives of the Convention as a whole.<sup>61</sup> International law has stressed that states must operate in relation to the principles of proportionality and necessity in relation to online hate crime and abusive speech. The challenge for policymakers is to balance the rights of free speech enshrined in Article 10 of the European Convention on Human Rights with the rights of minorities to protection captured in restrictions for the protection of the reputation or rights of others as set out in that article. Article 19 of the Universal Declaration of Human Rights is similar in content. Consequently, International Law has stressed the importance of addressing the factors that create online hate crime including the attitudes that drive it.

### Domestic Law

The legislation in Northern Ireland does not define the term 'online hate' and the term is not clarified through the common law. While the Public Order (NI) Order 1987 includes a definition of publication, it does not explicitly address online platforms. Moreover, gender and/or gender identity are not protected in the Public Order (NI) Order 1987. The Malicious Communications (Northern Ireland) Order 1988 does not include reference to online behaviour.

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<sup>60</sup> United Nations Strategy and Plan of Action on Hate Speech (2019), p2. <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

<sup>61</sup> In *Erbakan v. Turkey*, the European Court stated: "As a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued" (emphasis added); Application No. 59405/00 (2006), para. 56.

## Research

### The experiences of LGBTQI+ people

‘Online hate speech and hate crime is aimed at people’s core Identities’.<sup>62</sup> The damage ‘caused by denying, degrading, threatening or “making fun of” people’s identity and expression is deeply traumatic for victims’.<sup>63</sup>

### Extent

Galop’s<sup>64</sup> most recent survey found that:

- 8 in 10 respondents had experienced anti-LGBT+ hate crime and hate speech online in the last 5 years.
- 5 in 10 respondents had experienced online abuse 10 or more times.
- 1 in 5 respondents had experienced online abuse more than 100 times.
- Transgender people are more likely to receive online abuse compared to cisgender people.
- Anti-LGBT+ online abuse has a wider impact beyond the immediate victim to include those who witness such abuse.
- Online anti-LGBT+ hate crime often involves more than one perpetrator, and commonly involves groups of people.
- 1 in 10 reported to the police.

### Transgender People’s Experiences

Survey data indicates that online abuse is significantly higher for transgender people:

- 24% experiencing online abuse more than 100 times.<sup>65</sup>
- Transgender people receive higher numbers of abusive comments over the course of an incident, with 70% receiving more than 20 comments, and 35% more than 100.<sup>66</sup>
- Characteristics such as race, ethnicity, faith, disability, and socio-economic status intersect with transgender (and LGBTQ+) identity to create distinct experiences of online hate speech/crime.<sup>67</sup>
- The 2019 Brandwatch Report, analysed 10 million social media and online posts in the U.S. and U.K. over three and a half years found 1.5 million transphobic posts.<sup>68</sup>

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<sup>62</sup> Galop (2017) Online Hate Crime Report 2017 Challenging online homophobia, biphobia and transphobia: <http://www.galop.org.uk/wp-content/uploads/2017/08/Online-hate-report.pdf>

<sup>63</sup> Ibid.

<sup>64</sup> Galop (2020) Online Hate Crime Report. <http://www.galop.org.uk/online-hate-crime-report-2020/>

<sup>65</sup> Galop (2017) Online Hate Crime Report 2017 Challenging online homophobia, biphobia and transphobia: <http://www.galop.org.uk/wp-content/uploads/2017/08/Online-hate-report.pdf>

<sup>66</sup> Ibid

<sup>67</sup> Galop (n/d) Online Harms Consultation Response Evidence submitted by Galop, the LGBT anti-violence charity

<sup>68</sup> Exposed: The Scale of Transphobia Online (2019) <https://www.brandwatch.com/reports/transphobia/>

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- In the UK abuse was found to be politically driven. For example, people with anti-transgender sentiment used #Brexit to illustrate their frustration with ‘the current state of affairs’.<sup>69</sup>
- The Brandwatch data shows clear and significant spikes during periods when political leaders propose restrictions to transgender rights.<sup>70</sup>

### **The Effects of Online Hate Crime**

Galop found that the effects of online hate crime mirrored those experienced by victims of hate crime more generally. Respondents also identified the following effects:

- Victims experienced a range of negative emotional responses to their online victimisation, including fear, anxiety, self-blame, and suicidal thoughts.
- Transgender victims were more likely to suffer emotionally as a result of their victimisation.
- Victims feared for their physical safety following online victimisation.
- Some victims changed their behaviour to avoid further victimisation online, such as reducing their use of social media, whilst others increased their online activity<sup>71</sup>.

### **Under-reporting**

Research has uncovered significant under-reporting of online hate crime and abuse. For example, Galop<sup>72</sup> found:

- Over 1 in 4 victims did not report their online abuse to anybody.
- Under half of respondents reported it to social media companies.
- Less than 1 in 10 reported their abuse to the police.
- 3 in 4 respondents were left dissatisfied with the response of police and social media companies.
- Experiences of reporting to online platforms were poor.

Implications of Research - possible actions for LGBTQI+ Strategy:

- Consider the adequacy of legal protections/regulations.
- Focus regulation on illegal content.
- Monitor levels of online hate crime/abuse and collect data on the effects of online abuse/hate crime on LGBTQI+.
- Ensure adequate support and follow-up services for victims.
- Open/extend third-party reporting mechanisms.
- Strengthen relationships between NGOs and criminal justice agencies.
- Monitor on-going international/national initiatives with social media companies.
- Recognise that hate crime/abuse is driven by broader prejudicial attitudes to LGBTQI+ people and is an expression of the depth of those prejudices.

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Galop (2020) Online Hate Crime Report. <http://www.galop.org.uk/online-hate-crime-report-2020/>

<sup>72</sup> Ibid

## 5.3 Prisons

Prisons have traumatic effects on straight and cis-gendered people. For LGBTQI+ people who do not fit gender and sexual stereotypes, prisons can be frightening and dangerous places. It is important that the issues faced by LGBTQI+ people in prison are recognised and addressed. The gender hierarchies in prisons and the problems surrounding the Gender Recognition Act 2004 (GRA) create unique forms of psychological and physical harms for gender and sexual minorities. As the sections below demonstrate, in terms of local research and policy, LGBTQI+ people are virtually invisible which prevents the development of adequate protections grounded in the region's human rights obligations.

### The legislative framework

The state's obligations emerge from several human rights frameworks:

- Universal Declaration of Human Rights.
- United Nations Standard Minimum Rules for the Treatment of Prisoners.
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice.
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly Resolution 43/173.
- European Convention for the Protection of Human Rights and Fundamental Freedoms.
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

In addition:

- In 2010, the Council of Europe Committee of Ministers issued a recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Recommendation 4 states that Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.<sup>73</sup>
- The Yogyakarta Principles assert that states should provide for effective oversight of detention facilities, both with regard to public and private custodial care, with a view to ensuring the safety and security of all persons, and addressing the specific vulnerabilities associated with sexual orientation, gender identity, gender expression and sex characteristics.<sup>74</sup>

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<sup>73</sup> Council of Europe (2010) Recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies). <https://www.refworld.org/pdfid/4bc32b292.pdf>

<sup>74</sup> The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. <http://yogyakartaprinciples.org/>

## Domestic Law

Prison and Young Offenders Centre Rules (Northern Ireland) 1995 set out the regulations for the detention of prisoners in Northern Ireland.<sup>75</sup> No reference is made to sexual orientation or sexual identity. However, the term ‘and others’ in particular sections of the rules that cover protected characteristics may include LGBTQI+ people. In 2014, the Attorney General (NI) issued additional human rights guidance, and again there was no reference to gender identity or sexual orientation. Both documents set out rules and guidance relating to women detainees that apply to LGB women and by law should apply to transgender women in possession of a Gender Recognition Certificate (GRC)

## Research

There is a dearth of research on LGBTQI+ prisoners in NI. Moreover, the Northern Ireland Prison Service does not record information on the sexual orientation of prisoners.<sup>76</sup> The Safety of Prisoners Held by the Northern Ireland Prison Service joint inspection by the Criminal Justice Inspection NI and the Regulation and Quality Improvement Authority does not mention sexual orientation or gender identity in its assessment of prisoner safety. Again, invisibility prevents the development of policy. International research however identifies several themes.

## The experiences of LGBTQI+ people

Prisons are often single-sex environments. Such environments can reinforce strict gender binaries and hierarchies. It is easy for a hyper-masculine culture to develop creating homophobic prison environments in both adult and juvenile facilities.<sup>77</sup> Any divergence from traditional models of masculinity can be viewed as a weakness raising risks for LGBTQI+. If there are overlapping vulnerabilities, then risk may be even higher. International research has exposed the experiences of LGBTQI+ prisoners. International research and studies conducted in the Republic of Ireland suggest that LGBTQ people are overrepresented in prisons<sup>78</sup>. A Criminal Justice Inspectorate Survey of Ash House found 15% of detainees identified as gay/lesbian/homosexual/ bisexual and 1% as transgender<sup>79</sup>. The Office for National Statistics (ONS) have indicated that some 1.2% of the household population in Northern Ireland identify as LGB;<sup>80</sup> a figure that highlights the much higher percentage of LGB women in Northern Ireland prisons in line with international findings.

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<sup>75</sup> Guidance by the Attorney General for Northern Ireland pursuant to Section 8 of the Justice (Northern Ireland) Act 2004 issued 2014.

<sup>76</sup> FOI request 26 Case No. 20:36 Rh.Storer. <https://www.whatdotheyknow.com/request/646222/response/1535214/attach/html/2/FOI%20Case%20No.2036%20Rh%20Storer%20final%20reply.docx.html>

<sup>77</sup> Murray, C., (2018) Do Your Whack?: Investigating the needs and experiences of young men imprisoned in Northern Ireland through the lens of critical masculinities studies, Ulster University, Unpublished PhD thesis.

<sup>78</sup> National Center for Transgender Equality (2018) LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights. Available at: <https://transequality.org/transpeoplebehindbars>. Peter Dunn, ‘Slipping off the equalities agenda? Work with LGBT prisoners’ 2013 Prison Service Journal 206, 3.

<sup>79</sup> Criminal Justice Inspectorate (2020) Report on An Unannounced Inspection of Ash House Women’s Prison Hydebank Wood.

<sup>80</sup> <https://www.communities-ni.gov.uk/articles/sexual-orientation#:~:text=The%20Office%20for%20National%20Statistics,Northern%20Ireland%20identify%20as%20LGB.>

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### **International research has exposed that:**

- LGBTQI+ people can experience significant levels of bullying and violence, including sexual violence, by other prisoners.<sup>81</sup>
- Staff—who often are responsible for perpetuating abuse themselves—may blame LGBTQ+ prisoners for their own victimization, believing they are “flaunting themselves”.<sup>82</sup>
- The response to victimisation by prison authorities can be isolation from other prisoners. Prolonged periods of solitary confinement, that severely restrict activity and human contact can cause serious psychological harm, and which, as medical and human rights experts have found, can amount to torture.<sup>83</sup>
- Body searches are difficult practices that create stress and feelings of humiliation for inmates. Additional forms of stress and humiliation may emerge when they are performed on LGBTQI+ people whose identities do not conform to gender norms.<sup>84</sup>

### **The experiences of transgender people**

- Transgender prisoners experience a range of harms in the prison environment. It is more difficult for transgender prisoners to conceal their identity placing them at increased risks, periods of isolation and difficulties accessing appropriate health care. Transgender women who are housed in men’s prisons are at especially high risk of sexual abuse. One international study found that when transgender women were automatically placed in a men’s prison, they were 13 times more likely to be sexually assaulted than male prisoners in the same facilities.<sup>85</sup> In the UK contexts the placement of transgender women in male prisons has led to suicide.<sup>86</sup>
- Additional forms of privacy are not always provided.
- The discontinuing of treatment and/or prevention of living in the gender means that prisoners are effectively prevented from meeting the criteria for the GRC<sup>87</sup> which has significant implications in terms of their psychological well-being.

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<sup>81</sup> National Center for Transgender Equality. (2018). LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights. Available at: <https://transequality.org/transpeoplebehindbars>

<sup>82</sup> Ibid

<sup>83</sup> In 2011, the United Nations Special Rapporteur of the Human Rights Council published a report finding that in many cases solitary confinement amounted to torture. See A/66/268 - E - A/66/268 -Desktop (undocs.org)

<sup>84</sup> Penal Reform International Detention Monitoring Tool (2015) <https://cdn.penalreform.org/wp-content/uploads/2016/01/factsheet-4-searches-2nd-v5.pdf>

<sup>85</sup> Jenness, V., Maxson, C. L., Matsuda, K. N., & Sumner, J. M. (2009). Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault, p. 3. Irvine, CA: Center for Evidence-Based Corrections.

<sup>86</sup> Transgender woman found dead in cell at Doncaster (2017) Guardian. prison <https://www.theguardian.com/society/2017/jan/05/transgender-woman-jenny-swift-found-dead-at-doncaster-prison>

<sup>87</sup> SRobyn Emerton (2018) Transgender prisoners: law, prison administration, and the emerging tension between human rights and risk. Available at <https://core.ac.uk/download/pdf/160155491.pdf>

### **Implications of Research – possible actions for LGBTQI+ Strategy:**

- Primary research to better understand the experiences as well as health and service needs of LGBTQI+ prisoners.
- The NI Prison and Probation Services should develop a comprehensive LGBTQI+ policy. The policy should be based on appropriate data sets. It should include the promotion of safe sex.
- Guidance on the allocation of LGBTQI+ people to shared cells and the allocation of transgender/intersex detainees should reflect human rights law.
- The placing of transgender people in female or male prison housing should proceed on a case-by-case basis with full consideration of the person’s psychological identity and safety, and not simply their anatomy or whether they have a Gender Recognition Certificate.
- Risk assessment and identification of medical needs should be undertaken as early as possible after incarceration. Assessment should include establishing medication needs and history of medication.
- Address any discrimination in accessing services and benefits.
- Provide appropriate opportunities to continue or to start the gender reassignment process, for example, clothes, wigs or makeup, and medical treatments

## **5.4 Policing**

The historical relationship between the police force and LGBTQI+ people has been strained globally. Dwyer & Hotten research describes LGBTQI+ people’s perceptions of police forces as ‘distant, mistrustful, discriminatory, and unsafe’.<sup>88</sup> In Northern Ireland, additional factors have impacted on LGBTQI+ people’s perceptions of the police. Decriminalisation occurred years later in NI compared to GB. Therefore, there are historical and painful memories of police targeting of sexual and gender minorities. During that time the entire social and political environment was hostile to transgender people.

The NI conflict also impacted relationships with the police force not only because of perceptions of police partiality but because the security situation exposed LGBTQI+ people to further scrutiny through forms of police surveillance, searches, checkpoints and the ‘need’ to recruit informants.<sup>89</sup> The conflict also meant that the RUC acted as a ‘counter-insurgency’ force which was male dominated. Both aspects are more likely to promote a culture that prizes stereotypical male traits and attitudes. It is important to remember that the harms inflicted on LGBTQI+ individuals and the harassment they faced were legitimised and permitted by legislative frameworks and political attitudes to difference.

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<sup>88</sup> Dwyer, A., & Hotten, J. (2009) “There is no relationship”: Service provider staff on how LGBT young people experience policing. Paper presented at the TASA Conference, Australian National University, Canberra. <http://eprints.qut.edu.au/29223/2/29223.pdf>

<sup>89</sup> Ashe, F. (2018) Reimagining Inclusive Security in Peace Processes: LGB&T Perspectives, Political Settlements Research Project. [https://www.politicalsettlements.org/wp-content/uploads/2018/12/2018\\_PSRP\\_Gender-Report.pdf](https://www.politicalsettlements.org/wp-content/uploads/2018/12/2018_PSRP_Gender-Report.pdf)

The approach to policing must be set within both a human rights framework and within a framework that recognises the legacies of the conflict and the criminalisation of identities. Changes in the law and attitudinal changes have meant that the PSNI has increasingly fostered partnerships with LGBTQI+ people to make policing practices and the constitution of the force more human rights focused and reflective of a diverse society. Due to a lack of quantitative data it is impossible to determine the effects of recent initiatives on confidence in policing, however some continuing trends and problems can be identified.

### **Legislative Framework**

International law implies that equality, inclusion and diversity should be core values of the police force.

- The PSNI is required to uphold the rights and freedoms enshrined in the European Convention on Human Rights. The Convention rights require the police to provide an equal service to all communities, treating all victims with dignity and respect regardless of their background.
- Currently, the Human Rights Act 1998, requires the PSNI as a public authority, to discharge its duties without discrimination.

### **Domestic law**

- The Policing (Northern Ireland) Act 2000 section 3 sets out similar requirements to the Human Rights Act 1998 in terms of discrimination.
- The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.
- The Sex Discrimination Act Order 1976 as amended by the Sex Discrimination (Gender Reassignment) Northern Ireland 1999 prohibits discrimination of LGB women and transgender women.
- The Gender Recognition Act (2004) provides legal protection in terms of the provision of services.
- Section 75 requires public authorities to monitor their workforce across the protected characteristics of gender and sexual orientation.

### **Research**

The forms and level of violence and abuse experienced by LGBTQI+ people are highlighted above. It is essential that crimes against LGBTQI+ people are made visible, quantified through victims' surveys and are understood in terms of motivations and effects. Moreover, victims must have confidence in the police. Statistical data on attitudes to policing needs to be updated, but more recent qualitative research published in 2018<sup>90</sup> indicates that the problems below continue to impact on LGBTQI+ safety and, in particular, a lack of confidence in reporting crime for the reasons identified below.

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<sup>90</sup> Ashe, F. (2018) Reimagining Inclusive Security in Peace Processes: LGB&T Perspectives, Political Settlements Research Project. [https://www.politicalsettlements.org/wp-content/uploads/2018/12/2018\\_PSRP\\_Gender-Report.pdf](https://www.politicalsettlements.org/wp-content/uploads/2018/12/2018_PSRP_Gender-Report.pdf)

## **The experiences of LGBTQI+ people**

Research by The Rainbow Project in 2009 found that:

- 53% of LGBTQI+ people who had experienced crime did not report crimes of any nature to the police.
- 21% had experience problems with the police including rudeness by officers.
- 64% did not report homophobic incidents.

### **Reasons for non-reporting included:**

- Nothing would be done.
- Complaint would not be taken seriously.
- Fear of being subjected to prejudicial forms of behaviour.

In addition:

- International research has suggested that the organisational culture of most police departments may value traditional expressions of masculinity and can perpetuate forms of hypermasculinity. Officers who fail to live up to hypermasculine ideals and qualities 'are viewed as potentially so ineffectual as to pose a threat to the proper functioning of the organization and the safety of fellow officers.'<sup>91</sup> Gender ideologies can impact on the policing of minority groups creating perceptions of prejudice.
- Research has exposed how these ideologies have resulted in LGBTQI+ officers being subjected to discrimination and harassment across the world.<sup>92</sup>
- Forming meaningful partnerships with NGOs and engagement with communities have been found to produce positive improvements in relationships as has increasing LGBTQI+ recruitment.<sup>93</sup>

### **Implications of Research - possible actions for LGBTQI+ Strategy:**

The history of policing in Northern Ireland means that despite the recent progress made by the PSNI in relation to LGBTQI+ safety and inclusion, confidence in the police remains 'fragile'.

Research findings suggest there is a need to:

- effectively address the response to and recording of LGBTQI+ hate crime (see above) and ensure that investigating officers have robust and up-to-date training on tools and techniques;
- continue to build an inclusive police force that values the diversity of its workforce and that highlights the important role that diversity plays in effective policing;

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<sup>91</sup> Lisa M. Dario, Henry F. Fradella, Megan Verhagen & Megan M. Parry (2020) Assessing LGBT People's Perceptions of Police Legitimacy, *Journal of Homosexuality*, 67:7, 885-915,

<sup>92</sup> Colvin, R. A. (2012). *Gay and Lesbian Cops: Diversity and effective policing*. Colorado: Lynne Rienner Publishers; Buhrke, R. A. (1996). *A Matter of Justice: Lesbians and gay men in law enforcement*. New York: Routledge.

<sup>93</sup> Berman, A. and Robinson, S. (2010). *Speaking Out: Stopping homophobic and transphobic abuse in Queensland*. Bowen Hills, Queensland: Australian Academic Press.

- encourage senior officers to continue to champion staff networks and attend their events and ensure that carefully crafted equality initiatives filter down to everyday policing practices;
- develop on-going training and dedicated policies to encourage individual police officers and support staff to treat LGBTQI+ people, including their co-workers, with respect and dignity including the appropriate use of pronouns;
- promote policies, training and practices that encourage individual police officers to treat people fairly and with neutrality and objectivity;
- deepen the ethos of respect for all citizens' rights through practical measures to ensure that LGBTQI+ people receive equal treatment;
- engage with historically neglected areas of criminality including, sexual violence, domestic and intimate partner violence against LGBTQI+ people;
- engage effectively with the insecurities that negative social attitudes to transgender people engender and continue to deepen the understanding of the specific safety needs of transgender people;
- adequately assess LGBTQI+ vulnerability to secondary and repeat victimisation, to intimidation and to retaliation;
- take appropriate measures to ensure LGBTQI+ people are protected in such scenarios and are given information on additional sources of support; and
- implement body search activity protocols that recognise the vulnerabilities that can arise when performed on transgender and intersex prisoners.

Human rights law stresses the intrinsic dignity of each person regardless of social identity and respect for difference. Moreover, it recognises that achieving those aspirations means adapting practices across identity groups. It is in these areas that action can denote a meaningful engagement confidence.

## **5.5 Sexual Violence and Abuse**

There is evidence that LGBTQI+ people experience high levels of sexual violence and abuse. Much of this abuse is hidden due to fear of outing and homophobia. Moreover, LGBTQI+ people, as detailed above, often have low levels of confidence in the police.

### **Legislative Framework**

Universal Declaration of Human Rights:

- Article 3: Everyone has the right to life, liberty and the security of person.
- Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The Yogyakarta Principles<sup>94</sup> outline that states should:

- ensure that laws against rape, sexual assault and sexual harassment protect all persons regardless of their sexual orientation, gender identity, gender expression and sex characteristics;
- establish support services for victims of rape, sexual assault and harassment, and other forms of violence and harm on grounds of sexual orientation, gender identity, gender expression, and sex characteristics.

International Law on Gender-based Violence:

- In General Recommendation No. 35, the CEDAW Committee recognized that the prohibition of gender-based violence against women has evolved into a principle of customary international law, binding all States.<sup>95</sup>
- The Vienna Declaration and Programme of Action recognized that the elimination of violence against women in public and private life is a human rights obligation.<sup>96</sup>

### **Domestic Law**

The PSNI define sexual violence and abuse as any behaviour perceived to be of a sexual nature which is unwanted and takes place without consent or understanding.<sup>97</sup>

The Department of Justice defines sexual violence and harassment as ‘any behaviour (physical, psychological, verbal, virtual/online) perceived to be of a sexual nature which is controlling, coercive, exploitative, harmful, or unwanted that is inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability).’ The DOJ notes that coercive, exploitative and harmful behaviour includes ‘taking advantage of an individual’s incapacity to give informed consent’.<sup>98</sup>

### **Research**

LGBTQI+ people will face the same difficulties as victims of sexual violence generally in terms of the introduction of sexual history into court proceedings, issues of anonymity and low conviction rates. It is difficult to assess the specific dynamics of sexual violence perpetrated against LGBTQI+ people in Northern Ireland due to a lack of research. Sexual orientation and gender identity are not mentioned in the DOJ’s Stopping Domestic and Sexual Violence and Abuse Strategy Draft Year 4 Action Plan to stop domestic and sexual violence.<sup>99</sup>

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<sup>94</sup> The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, principle 30. [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm).

<sup>95</sup> UN (n/d) <https://digitallibrary.un.org/record/1305057?ln=en>

<sup>96</sup> The Vienna Declaration and Programme of Action (1993). <https://www.refworld.org/docid/3ae6b39ec.html>

<sup>97</sup> PSNI (n/d) The Law on Sex in Northern Ireland. [https://www.psni.police.uk/advice\\_information/the-law-on-sex-in-northern-ireland/](https://www.psni.police.uk/advice_information/the-law-on-sex-in-northern-ireland/)

<sup>98</sup> DOJ (n/d) <https://www.justice-ni.gov.uk/articles/domestic-and-sexual-violence-and-abuse> Domestic and Sexual Violence and Abuse

<sup>99</sup> DOJ (n/d) Stopping Domestic and Sexual Violence and Abuse Strategy Draft Year 4 Action Plan. <https://www.health-ni.gov.uk/sites/default/files/publications/health/dsv-4-plan.pdf>

There is no accessible NI data on the problem, and very little evaluation of current service provision disaggregated by LGBTQI+ identity. There has been some research in the UK context. Most of the data available has been generated in the US which may not be directly translatable to NI but does allow an examination of some general themes and areas of concern.

### **The experiences of LGBTQI+ people**

- A UK 2012 study estimated that 9% of gay and bisexual men had been forced into unwanted sex.<sup>100</sup>
- Research by Stonewall found that lesbian and bisexual women who had experienced domestic abuse from another woman had experienced both emotional and physical abuse. Over half of those who had experienced domestic abuse from a female partner had experienced some form of physical violence. 1 in 14 said they had been forced to have unwanted sex.<sup>101</sup>
- ONS research highlights that bisexual women experience proportionately higher levels of partner abuse.<sup>102</sup>
- A US 2014 study found that 64% of transgender people report sexual violence over their lifetime.<sup>103</sup>
- LGBT 2017 UK survey found that those who had been in a job for the 12 months preceding the survey, had experienced sexual harassment or violence at work. Only a small percentage reported it.

A TUC survey found ‘shocking’ levels of LGBTQI+ sexual harassment in the workplace including:

- 68 % LGBTQI+ and almost 12% of LGBT women reported being seriously sexually assaulted or raped at work. Two thirds of those who were harassed did not reporting it; and one in four of those who did not report the harassment did so because of fear of ‘outing’ themselves at work. More than one fifth (21%) had experienced sexual assault, for example unwanted touching of the breasts, buttocks or genitals, attempts to kiss, compared to one in eight men (12%). One in eight (12%) LGBT women had been seriously sexually assaulted or raped at work, compared to one in fourteen men (7%).<sup>104</sup>

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<sup>100</sup> Guasp, A. and Taylor, J. (2012) Domestic Abuse – Stonewall health Briefing. Available at Domestic Abuse - Stonewall Health Briefing (2012)

<sup>101</sup> Stonewall.org.uk (2008) Prescription for Change. <https://www.stonewall.org.uk/resources/prescription-change-2008>

<sup>102</sup> ONS (2018) Women most at risk of experiencing partner abuse in England and Wales: years ending March 2015 to 2017. Available at Women most at risk of experiencing partner abuse in England and Wales - Office for National Statistics (ons.gov.uk)

<sup>103</sup> Paulk, L. (2014) Sexual Assault in the LGBT Community. Available at: [www.ncrights.org/sexual-assault-in-the-lgbt-community/](http://www.ncrights.org/sexual-assault-in-the-lgbt-community/)

<sup>104</sup> TUC (2019) Sexual harassment of LGBT people in the workplace. [https://www.tuc.org.uk/sites/default/files/LGBT\\_Sexual\\_Harassment\\_Report\\_0.pdf](https://www.tuc.org.uk/sites/default/files/LGBT_Sexual_Harassment_Report_0.pdf)

In addition:

The Crown Prosecution Service<sup>105</sup> notes the following issues in relation to sexual violence and harassment of LGBTQI+ people.

- There are a range of myths and stereotypes surrounding gender and sexual minorities that may impact on how sexual violence against those identities is framed.
- Victims can lack confidence in the police due to historical mistrust.
- Internalised homophobia and transphobia can result in low self-esteem which encourages victims of abuse to blame themselves and/or consider that they do not deserve any better.
- Due to homophobia LGBTQI+ people may try to protect the perpetrator.
- There may be concerns about disclosure of sexual orientation when reporting a crime of sexual violence.
- Sexual and/or physical violence directed at transgender people from friends or family can reflect the culmination of a pattern of coercive and controlling behaviour.
- Transgender people can be isolated, with a very small pool of potential partners. This can increase the risk of sexual violence towards transgender people, who may feel unable to leave abusive relationships.
- Where a transgender person is abused by another transgender person in the same small social group, it can be very difficult to report the abuse.
- Transgender people may refuse a medical examination due to sensitivities surrounding their transition which may impact wrongly on perceptions of credibility.

### **Pregnancy and sexual violence**

LGB women are more likely to experience sexual violence than their heterosexual counterparts, and become pregnant as a result of a sexual crime. A 2018 US study of people who had an abortion found that 15% of lesbians said their pregnancy was because of forced sex compared to 1% of heterosexuals and 3% of bisexuals.<sup>106</sup>

Lesbian and bisexual respondents were more likely than their heterosexual peers to report exposure to physical violence by the man involved in the pregnancy (33.3% and 8.7% vs 3.6%). It is likely that there are similar trends to those consistently identified in international research in the UK.

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<sup>105</sup> Crown Prosecution Service (2020) Same Sex sexual Violence and Sexual Violence involving a Trans complainant or Suspect/Defendant - Toolkit for Prosecutors. <https://www.cps.gov.uk/legal-guidance/same-sex-sexual-violence-and-sexual-violence-involving-trans-complainant-or>

<sup>106</sup> Jones, R. K., Jerman, J, and Charlton, B. M. (2018) Sexual Orientation and Exposure to Violence Among U.S. Patients Undergoing Abortion, <https://doi.org/10.1097/AOG.0000000000002732>

### **Implications of Research – possible actions for LGBTQI+ Strategy:**

- Develop a dedicated research base, including primary research on the dynamics of sexual violence and harassment perpetrated against LGBTQI+ people in NI.
- Government programmes/policies/initiatives should include LGBTQI+ victims of sexual violence and harassment.
- Encourage a policy of zero tolerance approaches to sexual violence and harassment in workplaces combined with appropriate training initiatives.
- Roll out a comprehensive sexuality/gender identity education programmes dealing with sexual boundaries and consent.
- Address risks of revictimisation, and any gaps in access to support services and care.
- Ensure appropriate training and understanding across the criminal justice system and assess effects of training on victims' experiences.
- Develop/expand specialism in the area in the PSNI relating to dealing with LGBTQI+ victims and investigations.
- Appointment of LGBTQI+ Sexual Violence Liaison Police Officers and specialist Independent Sexual Violence Advocates.
- CEDAW highlights the need to provide abortion care where pregnancy is a result of a sexual crime. Given that access to abortion in cases of sexual crime is specially a recommendation of CEDAW, and the LGB women are more likely to need access in this circumstance, it is essential that the Department of Health ensures legislative changes are operationalised.
- Ensure funding streams for NGOs to deal with the effects of sexual violence and harassment.

## **5.6 Domestic Violence**

All LGBTQI+ people need to feel safe, secure and supported to report domestic violence incidents, and be treated with understanding and professionalism. Domestic abuse legislation for Northern Ireland is long overdue, which has been highlighted by the recent Covid-19 prevention measures. These measures have meant people have had to stay with their abuser with little contact with the outside world. LGBTQI+ people have their own specific needs and issues concerning domestic abuse. Many LGBTQI+ people do not realise that they are in a domestic abuse situation. This could be related to a lack of information on domestic violence readily available and visible to those who identify as LGBTQI+. There is a fear that many LGBTQI+ people will be not taken seriously when they report a domestic violence incident.

### **Research**

Research by SafeLives in Britain shows just 2.5% of people accessing support from Insights domestic abuse services identified as LGBTQI+. The GB data shows that in the 12 months to the end of March 2018, only 1.2% of cases discussed at the Multi Agency Risk Assessment Conference (MARAC) were noted to involve LGBTQI+ victims/survivors.<sup>107</sup>

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<sup>107</sup> Safelives (2018). Free to be safe : LGBT+ people experiencing domestic abuse. [online] Available at: <https://safelives.org.uk/sites/default/files/resources/Free%20to%20be%20safe%20web.pdf>

Over a quarter of MARAC cases (26%) recorded no LGBT+ victims/survivors at all during this period.<sup>108</sup> However, we expect that this does not accurately reflect the levels of domestic violence in LGBTQI+ relationships. Research in England has found that underreporting of domestic abuse in the LGBTQI+ community is between 60 and 80%, similar to overall national non-reporting of domestic abuse of 79%.<sup>109</sup> Stonewall reports that ‘One in four of all lesbian and bisexual women have experienced domestic violence in a relationship. Two thirds of those say the perpetrator was a woman and a third a man. One in four of the general population of women has experienced domestic violence’.<sup>110</sup>

In 2017, Greater Manchester Police began recording LGBT+ domestic abuse figures, and in the first year recorded nearly 800 instances. They note this is 2% of all reports they received and that the issue of LGBT+ domestic abuse in particular is still under reported.<sup>111</sup>

International research found that:

*‘According to the Center for Disease Control and Prevention’s latest National Intimate Partner and Sexual Violence Survey (Black et al., 2011), Walters et al., (2013) breaks down domestic violence figures by sexual orientation. This study reveals that 43.8% of lesbians reported to have been physically victimised, stalked, or raped by an intimate partner in their lifetime, compared to 35.0% of heterosexual women, 29.0% of heterosexual men, and 26.0% of gay men. Bisexual women experienced the highest rates with 61.1%’.*<sup>112</sup>

Even when LGBTQI+ people do report domestic violence, there is a lack of adequate recording, often making the LGBTQI+ community a hidden population in this area. We recommend that all section 75 groups should be monitored inclusive of sexual orientation and gender identity. If monitoring sexual orientation and gender identity is standard procedure, this will remove the onus on the individual to ‘come out’ in an environment they are not sure will be welcoming.

There should be LGBTQI+ Domestic Violence Liaison Police Officers and specialist Independent Domestic Violence Advocates. Policies and procedures should be co-designed with representatives of section 75 groups as specialists and experts to ensure there are no oversights – for example, even when recorded, bisexual people are often mis-recorded based on the gender of their current partner. To date there has been very little acknowledgement of LGBTQI+ people who experience domestic violence in policy/legislation. When it does occur, it appears with language that minimises or does not include the needs within the LGBTQI+ community.

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<sup>108</sup> Safelives (2018). Free to be safe : LGBT+ people experiencing domestic abuse. [online] Available at: <https://safelives.org.uk/sites/default/files/resources/Free%20to%20be%20safe%20web.pdf>

<sup>109</sup> KSS CRC. 2020. Research: Domestic Abuse In LGBT Communities - KSS CRC. [online] Available at: <https://www.ksscrc.co.uk/2020/04/30/research-domestic-abuse-in-lgbt-communities/>

<sup>110</sup> Stonewall.org.uk. 2008. Prescription for Change

<sup>111</sup> <https://www.theguardian.com/society/2018/apr/10/manchester-police-record-nearly-800-cases-of-lgbt-domestic-abuse>

<sup>112</sup> Hamel, J. (2014). Gender inclusive treatment of intimate partner abuse: Evidence-based approaches (2nd edn.). New York, NY: Springer Publishing

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Many people from the LGBTQI+ community believe that they are being abused because they are LGBTQI+ which often fuels internalised homophobia, biphobia or transphobia.<sup>113</sup>

While some domestic abuse experience in same sex relationships is similar to experiences in heterosexual relationships, Stonewall research indicates that there are also particular experiences specific to the LGBTQI+ community. Stonewall research indicates that:

*‘Lesbian and bisexual women had experienced domestic abuse from another woman said that the abuse was emotional and physical. One in five of all lesbian and bisexual women said that they had been repeatedly belittled and “made to feel worthless”, and the same number said that they had been stopped from seeing friends and relatives. One in five have also been pushed or slapped by another woman and kicked and bitten. Over half of those who have experienced domestic abuse from a female partner had experienced some form of physical violence. One in fourteen say they had been forced to have unwanted sex’.*<sup>114</sup>

LGBTQI+ victims may also experience unique forms of coercive control targeted at their sexual orientation or gender identity, such as the threat of ‘outing’ members of the LGBTQI+ community around their sexual orientation or gender identity. Further research by Stonewall found that over half (51%) of transgender people who had experienced domestic abuse in the last year reported that their partner had ridiculed their gender identity.<sup>115</sup>

There is already a Domestic Abuse Commissioner in England and Wales who has been able to oversee the implementation of legislation, highlight gaps and make recommendations to address them, as well as raising awareness on domestic abuse. Since there are already several commissioners in Northern Ireland representing various marginalised groups, there is a proven track record of the role of a Commissioner in linking government with service delivery and those impacted. The needs of LGBTQI+ victims and survivors of domestic abuse could be highlighted by a Domestic Abuse Commissioner, along with the needs of other marginalised groups.

It is recognised that the majority of victims of domestic abuse are women. There should be strategies to address specific groups such as violence against women and girls, the LGBTQI+ community, and other marginalised groups. The UK LGBT Action Plan includes provisions for specific support for LGBTQI+ victims of domestic violence.<sup>116</sup>

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<sup>113</sup> LGBTQ+ | Reduce the Risk ([reducingtherisk.org.uk](https://reducingtherisk.org.uk))

<sup>114</sup> Stonewall.org.uk. 2008. Prescription For Change

<sup>115</sup> Safelives (2018). Free to be safe : LGBT+ people experiencing domestic abuse. [online] Available at: <https://safelives.org.uk/sites/default/files/resources/Free%20to%20be%20safe%20web.pdf>

<sup>116</sup> Government Equalities Office LGBT Action Plan: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721367/GEO-LGBT-Action-Plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721367/GEO-LGBT-Action-Plan.pdf)

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There must be mandatory training on best practice such as using gender neutral pronouns and sexual orientation awareness. Gender neutral language should be used in relation to victim and perpetrator. The use of gendered pronouns in describing victims and perpetrators risks alienating LGBTQI+ people and can lead to an assumption that they are not included in services, using terms such as victim and perpetrator avoids this. In addition, specifically identifying LGBTQI+ people in public awareness campaigns means LGBTQI+ people will be more likely to engage with services.<sup>117</sup> The use of gendered pronouns in describing victims and perpetrators by service providers risks alienating LGBTQI+ people and can lead to an assumption that they are not included in services, using terms such as victim and perpetrator avoids this.

While latest advances in Domestic Abuse legislation are to be welcomed, legislation alone is not a remedy to domestic abuse. Along with appropriate training around sexual orientation and gender identity, there should be a public awareness campaign. Often public awareness campaigns focus on a woman victim and man perpetrator in a heterosexual relationship. This is a barrier for LGBTQI+ people not only reporting domestic abuse, but also from even recognising that what they are experiencing is domestic abuse. Public awareness campaigns, legislation, and awareness training for statutory, community and voluntary sector organisations must recognise that there are multiple circumstances domestic abuse occurs in beyond a heterosexual adult relationship.

Specialist LGBTQI+ support removes the fear of experiencing heteronormativity or hostility towards the LGBTQI+ community or individuals accessing support, as well as removing the need to ‘come out’ to an extent. Co cultural (individuals from the LGBTQI+ community) support workers, may have a greater understanding of issues specific to LGBTQI+ individuals and the particular experiences of the community. Refuge notes the importance of culturally specific services, and that ‘all survivors have different needs, some of which may relate to their ethnic background or identity.’<sup>118</sup>

There are two small LGBTQI+ domestic violence refuges in England, both in the London<sup>119</sup> area , outside of this, the refuges that do offer LGBTQI+ inclusive spaces equate to less than 1% of the available refuge spaces.<sup>120</sup> This issue has caused victims of domestic violence to be trapped in their home with their perpetrator as there are no other available options open to them. While LGBTQI+ women may be welcome in existing women’s shelters, they may not feel comfortable accessing this support due to a fear of ‘coming out’ and homophobia. There is limited provision for victims who are men regardless of sexual orientation. The potential for LGBTQI+ should be explored.

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<sup>117</sup> [https://safelives.org.uk/practice\\_blog/making-domestic-abuse-services-accessible-lgbt-people](https://safelives.org.uk/practice_blog/making-domestic-abuse-services-accessible-lgbt-people)

<sup>118</sup> Refuge Charity - Domestic Violence Help. n.d. Culturally Specific Services - Refuge Charity - Domestic Violence Help.

<sup>119</sup> Safelives (2018). Free to be safe : LGBT+ people experiencing domestic abuse. [online] Available at: <https://safelives.org.uk/sites/default/files/resources/Free%20to%20be%20safe%20web.pdf>

<sup>120</sup> Women’s Aid Nowhere to Turn <https://www.womensaid.org.uk/research-and-publications/nowomanturnedaway/>

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One of the common experiences of domestic abuse for LGBTQI+ people is alienation from friends and family orchestrated by the perpetrator. Many LGBTQI+ people also experience alienation from unaccepting family and friends when they come out. This alienation can leave young LGBTQI+ people less likely to have a suitable person to share a home with, which is penalised under the current welfare system. Research with older LGB (lesbian, gay, bisexual) people over 55 found they were more likely to live alone than heterosexual people; 41 per cent live alone compared to 28 per cent of heterosexual people.<sup>121</sup>

Implications of Research - possible actions for LGBTQI+ Strategy:

- The Government will appoint a Domestic Abuse Commissioner to scrutinise the implementation of domestic abuse legislation, as well as a conduit for those disproportionately impacted by domestic abuse to raise their particular needs with Government.
- Government to ensure collation of data on sexual orientation and gender identity when recording domestic abuse incidents reported.
- Appointment of LGBTQI+ Domestic Violence Liaison Police Officers and specialist Independent Domestic Violence Advocates.
- Government will ensure appropriate training for police, judiciary and specialist support services around sexual orientation awareness and gender identity.
- Public awareness campaign to highlight domestic abuse occurs in same sex relationships. This will encourage victims within same sex relationships to seek support.
- Government will ensure specialist support services must be adequately resourced within the LGBTQI+ sector.

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<sup>121</sup> Stonewall.org.uk. 2011. LGB People In Later Life

## Theme 6. Rights and the Law

**Aim:** LGBTQI+ people’s rights and equality should be legally protected

This chapter explores the legal protection of LGBTQI+ people’s rights in NI. LGBTQI+ people need legal protection across key areas of life. Due to the historical and irrational debasement of their lives and identities, LGBTQI+ people also need laws that protect their right to express their identities. While cultural shifts, equality campaigns and legislative change have meant that the legal protection of LGBTQI+ people’s rights in NI has evolved in recent years, homophobia, biphobia and transphobia continue to impact on people’s everyday lives. Even with the introduction of various protections, specific areas of the law need to be strengthened in order to create meaningful protections, and some additional legal protections are required. Other areas of the law and rights require radical revision to protect the rights of LGBTQI+ people.

The current legislative framework in NI is a mix of pieces of legislation that refer to the whole of the UK and legislation that emerged from the NI Assembly. UK-wide legislation has been influenced by European Union Directives. International standards such as United Nations (UN) conventions may apply but the extent to which UN conventions are enforceable is debatable. In general, International Human Rights Law relies on moral arguments to encourage compliance, but it remains an important point of reference for human rights protections. Comparatively, NI has been slower to enact international standards in terms of LGBTQI+ rights, even though the 1998 peace agreement remains one of only 5 international peace agreements to include LGBTQI+ rights. Section 75 of the Northern Ireland Act (1998) identifies sexual orientation and gender as protected categories. The Act obliges public authority decision-makers to have ‘due regard’ and ‘regard’ to the need to promote equality of opportunity.

There is clear evidence that the current legal framework in NI is not effectively protecting LGBTQI+ people in a range of areas of life. Moreover, issues remain in terms of the legal protections that sexual and gender minorities require to live autonomous, free and secure lives. International and regional comparisons illustrate how legislation can be improved and how new forms of legislation can be brought forward to address continuing societal and institutional prejudices towards LGBTQI+ people.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- Gaps and weaknesses in the legal protection of LGBTQI+ people’s rights and their damaging effects are addressed.
- Gender Recognition legislation is fit for purpose and recognises and is reflective of the diversity of genders in Northern Ireland.
- Conversion therapy has ended in Northern Ireland.

- Quantitative and qualitative data sets monitor the effectiveness of legal protections for LGBTQI+ people, and are effective in addressing inequalities.
- Specific funding is built into spending plans to support LGBTQI+ people dealing with discrimination and the harmful effects of specific laws.

## **6.1 Legal Gender Recognition**

Legal gender recognition is the process through which a person gains legal recognition of their acquired gender through, for example a gender recognition certificate (GRC) as is the case in the UK. Official documents are changed to reflect the acquired gender identity and the person should be protected under equality law in the same way as those who continue to live in the gender they were assigned at birth. Legal recognition of acquired gender goes beyond the legal validation of identity because it enables people to live lives of dignity and to participate in society in the form of everyday practices such as picking up post or opening a bank account without fear of harassment. However, the system for gaining legal recognition in NI raises a set of human rights issues due to the physical and psychological harms it creates.

### **Human Rights Framework**

The following articles of the Universal Declaration on Human Rights are potentially engaged:

- Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
- Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

United Nations Convention on the Rights of the Child:

- Article 2: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.

The following European Convention on Human Rights articles are potentially engaged:

- Article 3: freedom from torture.
- Article 8: The right to respect for family and private life.
- Article 9: Freedom of thought, conscience and religion.
- Article 14: The right not to be discriminated against in respect of these rights.

The Parliamentary Assembly of the Council of Europe Resolution 2048 sets out guidance on transgender persons' human rights.<sup>122</sup> The Assembly calls upon Member States to respect, protect and fulfil a transgender person's right not to be discriminated against and to facilitate quick, transparent and accessible legal gender recognition based on self-determination. States should:

- adopt quick, transparent and accessible legal gender recognition procedures, based on self-determination, without further limitations based on a person's characteristic;
- abolish sterilisation and other medical requirements such as a mental health diagnosis or a divorce requirement in legal gender recognition;
- make transgender health care accessible and ensure that transgender people and children are not labelled as mentally ill in national or international classifications; and
- develop awareness raising and training, particularly for professional groups.

The Yogyakarta Principles, which identify norms for the application of International Human Rights Law in relation to sexual orientation and gender identity, set out similar guidance.<sup>123</sup>

### **Domestic Law**

European states obligations to provide for legal gender recognition have been unequivocally established by the European Court of Human Rights and the UK was required to comply.<sup>124</sup> The Gender Recognition Act (2004) (GRA) allows people who receive a diagnosis of gender dysphoria to change their legal gender. In its current form, the Act fails to meet human rights standards in relation to the right to privacy, the right to family life, and freedom from degrading treatment. Rather than enabling legal gender recognition through a 'quick transparent and accessible mechanism' based on self-declaration that makes 'available a multiplicity of gender marker options', the UK Act creates barriers for the self-determination of gender identity and its legal gender recognition.<sup>125</sup> The requirement of a medical diagnosis, the submission of evidence to a Gender Recognition Panel, a 2 year 'waiting' period, and a spousal 'veto' mean that transgender, intersex and non-binary people continue to face problems in terms of self-determining their gender identity.

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<sup>122</sup> The Parliamentary Assembly for the European Council Resolution 2048. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>

<sup>123</sup> The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity <http://yogyakartaprinciples.org/>

<sup>124</sup> ECtHR-Factsheet on Gender Identity. [https://www.echr.coe.int/Documents/FS\\_Gender\\_identity\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf)  
ECtHR Case Goodwin and I. v. United Kingdom (2002) (Application no. 28957/95)

<sup>125</sup> Ibid

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## Research

### The Experiences of transgender people<sup>126</sup>

There have been two recent reviews of the law: the UK wide GRA (2004) Consultation (2018) and the Gender Recognition Reform (Scotland) Bill Consultation Exercise (2017/18).<sup>127</sup> Both consultations identify a similar set of problems to those captured in the LGBT UK-wide survey (2017) which are summarised below.

- The medicalised and bureaucratic aspects of the process are intrusive and demeaning creating stress and distress for those seeking to acquire legal gender recognition.
- The process of submitting evidence to a Gender Recognition Panel is equally intrusive, time-consuming and creates difficulties in terms of collecting the required information.
- The two years during which those seeking gender recognition must live in the ‘acquired gender’ mean that gender minorities live in an ‘intermediate zone not quite one gender or the other.’<sup>128</sup> During this period people do not have access to legal protections, such as the right to always be treated as their self-determined gender in the legal system, and for pension calculations and insurance policies.
- Requiring a diagnosis of gender dysphoria in order to apply for a GRC creates a barrier for intersex people if they have no dysphoria, rather they seek a GRC because a medical error was made during sex assignment.
- Non-binary people are not recognised under UK-wide laws. Not having legal recognition means non-binary people cannot legally self-identify their gender and lack standard legal protections.
- The requirement to secure agreement/consent from a spouse for a transgender person to secure legal gender recognition as opposed to a spouse’s legal right to be informed that their partner is seeking gender recognition creates delays and prevents autonomous decision-making by the transitioning person.
- GRCs are only available to adults. Research has suggested that non-recognition of minors’ acquired gender can have a range of negative outcomes.<sup>129</sup>

### Implications of Research - possible actions for LGBTQI+ Strategy:

Due to the difficulties identified above, assessing the effects of GRA (2004) in NI combined with monitoring of the adequacy and outcomes of service provision takes on greater importance.

<sup>126</sup> High quality quantitative research into issues related to the effects of gaps in LGBTQ+ legal protections in NI is limited, and even more limited in terms of gender identity, due to a lack of representative surveys. Nevertheless, for many issues, relating to the law more accurate quantification is not necessary for identification of its general discriminatory effects

<sup>127</sup> Review of the Gender Recognition Act 2004 Analysis of responses to the public consultation exercise <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2018/11/review-gender-recognition-act-2004-analysis-responses-public-consultation-exercise-report/documents/00543297-pdf/00543297-pdf/govscot%3Adocument/00543297.pdf>

<sup>128</sup> Christine Goodwin v. UK (2002) 35 EHRR 447, at para 90

<sup>129</sup> 1 Olson et al.,(2016) ‘Mental Health of Transgender Children Who Are Supported in Their Identities’, 137 (3) Paediatrics, <https://pediatrics.aappublications.org/content/137/3/e20153223> . See also UN Committee on the Rights of the Child, ‘Pathologization – Being Lesbian, Gay, Bisexual and/or Trans Is Not an Illness’ for International Day against Homophobia, Transphobia and Biphobia - Tuesday 17 May 2016, 12 May 2016. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19956>

- There has been little monitoring or dedicated assessment of the current law's effects on NI citizens seeking gender recognition and little assessment of how it affects NI's compliance with international human rights standards. Assessment in this area can utilise comparative analysis of regions that have de-medicalised and streamlined the process of legal gender recognition (e.g. Ireland, Malta, Iceland) to understand the potential application of these systems to NI.
- The consultations and surveys above indicate that the existing gender recognition process contributes to ill-health, and especially to mental ill-health (see Health chapter). Extant and on-going dedicated review of the adequacy of medical and information services and psycho-social systems of support in NI for gender minorities is limited, which impacts on evidence-based policymaking in this area. In order to mediate the harmful effects of the GRA (2004), the issue of adequate service provision should be addressed as a matter of urgency.
- There has been limited review in NI of the effects of the legal status of and rights of gender identities not covered by the Act, which deepens the existing discriminations experienced by these groups. Appropriate action to address discrimination should be taken.
- There has been limited monitoring of the storage and protection of NI citizens' personal data during the process of securing gender recognition.
- There has been limited monitoring of the effects of the requirement for citizens in NI to make a statutory declaration of intention to live in the acquired gender until death (making a false statement is a criminal offence).
- There has been limited review of the extent of the resources required by the LGBTQI+ sector to address the problems created by the GRA (2004). Given the harmful outcomes generated by the current shape of the law, appropriate levels of support for those NGOs dealing with the practical, medical and psychological effects of the GRA (2004) is essential.
- As the age requirement for applying for a GRC is 18, there is a need for dedicated assessment of the legal rights of transgender children.

## **6.2 Conversion or Reparative Therapy (CT)**

Conversion therapy (CT) is any practice designed to change a person's sexual orientation or gender identity. It can be distinguished from other practices designed to provide guidance and support to LGBTQI+ people provided by psychotherapists, counsellors or faith leaders because it operates under the premise that a specific sexual orientation, gender identity, or gender expression is pathological and/or evidence of a mental illness that can be cured. Unlike therapies that facilitate a person's open and autonomous exploration of their sexual and gender futures, these therapies are discriminatory from the outset because CT designates identities into normal and abnormal categories. As such, it is proscriptive because it attempts to modify identity into traditional heterosexual and cis-gendered models. It includes both pseudo-psychological treatments and physical interventions. In its 'therapeutic' forms it is a scientifically discredited, unprofessional and dangerous practice.

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## Human Rights Framework

The United Nations Convention on the Rights of the Child:

Article 2:

- States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.

The following European Convention on Human Rights Articles are potentially engaged:

- Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
- Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The World Health Organisation<sup>130</sup>, the World Bank<sup>131</sup> and the UN<sup>132</sup> have condemned CT and numerous countries across the world have banned its use and promotion. The Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have issued explicit reproaches against treatments that are forced, involuntary or otherwise coercive or abusive,<sup>133</sup> and the Committee on the Rights of the Child has connected those practices with violations of the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.<sup>134</sup> CT creates psychological wounds that are not easily repaired.

## Domestic Law

In 2017, the NHS (Scotland and England) and all the major counselling and psychotherapy bodies in the UK publicly condemned the practice through signing a Memorandum of Understanding.<sup>135</sup> However, CT is not banned in the NI.

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<sup>130</sup> WHO, “Improving the Health and Well-Being of Lesbian, Gay, Bisexual and Transgender Persons” (Geneva: World Health Organization, 2013), [http://www.ghwatch.org/sites/www.ghwatch.org/files/B133-6\\_LGBT.pdf](http://www.ghwatch.org/sites/www.ghwatch.org/files/B133-6_LGBT.pdf).

<sup>131</sup> [org/curated/en/196241478752872781/pdf/110035-WP-InvestinginaResearchRevolutionforLGBTInclusion-PUBLIC-ABSTRACT-SENT.pdf](http://www.ghwatch.org/sites/www.ghwatch.org/files/B133-6_LGBT.pdf)

<sup>132</sup> Human Rights Council Forty-fourth session 15 June–3 July 2020

<sup>133</sup> Human Rights Council Forty-fourth session 15 June–3 July 2020 [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/44/53](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/44/53)

<sup>134</sup> Committee on the Rights of the Child, general comment No. 20 (2016) on the implementation of the rights of the child during adolescence

<sup>135</sup> Available at 201907\_mou2-revision-a\_web.pdf (psychotherapy.org.uk)

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### The Experiences of LGBTQI+ people:

- The LGBT National Survey (2017) found that 5% of respondents had been offered so called ‘conversion’ or ‘reparative’ therapy (but did not take it up) and a further 2% had undergone it. This number rises to 9% of those surveyed aged 18-24, 9% of Black, Asian and minority ethnic LGBT people- and 8% of LGBT disabled people. The figures were higher for transgender respondents (e.g. 9% of transgender men had been offered it and 4% had undergone it).
- As the survey did not define CT these figures may not capture covertly practised forms of CT that operate under the guise of mainstream practice such as pastoral care. Stonewall, as part of a YouGov survey, found that 10% of health and social care workers – who they surveyed to analyse how beliefs may impact patient care – said a colleague had vocalised belief in a ‘gay cure’.<sup>136</sup>
- The UK Survey found that faith organisations were the most likely group to have conducted CT (51% of those who received it had it conducted by faith groups), followed by healthcare professionals (19% of those who received it had it conducted by healthcare professionals).

### Implications of Research – possible actions for LGBTQI+ Strategy:

Practices of CT target a specific group on the exclusive basis of sexual orientation and gender identity, with the specific aim of interfering with a person’s autonomy. In that sense, such practices are intrinsically discriminatory. As CT is an unscientific practice and based on prejudicial ideas that the person is sick, diseased and abnormal, research confirms that its effects include feelings of powerless and extreme humiliation, feelings of shame, guilt, self-disgust, and worthlessness, suicidal ideation, suicide attempts, and PTSD. Minors are particularly vulnerable to CT and research has shown that it amplifies the shame and stigma so many LGBTQ+ young people already experience. The state has a compelling interest in protecting the physical and psychological well-being of minors, including LGBTQI+ minors, and in protecting its minors against exposure to serious harms caused by CT. As it creates long-term harm to the individual, it increases the costs of health care as resources must be spent on repairing its psychological and physical effects. The research above that exposes the effects of CT on LGBTQI+ people suggests that the following should be illegal.

- Any practice (medical, therapeutic or otherwise) aimed at changing or suppressing a person’s sexual orientation or gender identity.
- Attempts to rebrand or reshape CT practices in order to subvert legal prohibitions.
- Causing a person to undergo CT against their will.
- Causing a minor to undergo CT.
- Profiting from providing CT.
- Advertising an offer to provide CT.

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<sup>136</sup> [https://www.stonewall.org.uk/system/files/lgbt\\_in\\_britain\\_health.pdf](https://www.stonewall.org.uk/system/files/lgbt_in_britain_health.pdf)

A robust system for investigating claims of CT practice is required.

The Department of Health should ensure the following.

- The Department does not commission or provide funding for practices that seek to change a person's sexuality or self-defined gender identity to a normatively 'preferred' model.
- Practitioners offering counselling or therapeutic services to LGBTQI+ clients or patients have adequate knowledge and understanding of gender and sexual diversity and to be free from any agenda that favours one gender identity or sexual orientation as preferable over other gender and sexual diversities.
- Organisations with practice members will ensure through training and/or published guidelines that the relevant ethical principles in their statements of ethical practice are applied when working with LGBTQI+ clients, as pertaining to standards of professional competent and non-discriminatory practice.
- Licence to practise is suspended pending investigation of a complaint and may be withdrawn if CT is offered or practised.
- Provide free access to appropriate medical services for those who continue to experience the harmful psychological and physical effects of CT.

### **6.3 Equality Legislation**

There has been a gradual widening over the years between the robustness of equality law and protections for LGBTQI+ people in NI compared to equality law and protections for LGBTQI+ people in England, Scotland and Wales. Robust, consistent and wide-ranging equality law frameworks are more likely to protect LGBTQI+. Moreover, these kinds of frameworks are more easily understood and applied by employers, welfare agencies, the commercial sector and other service providers.

#### **Human Rights Law**

The following Articles of the Universal Declaration on Human Rights are potentially engaged:

- Article 2: Prohibition on discrimination
- Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law
- Article 23: Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment

The following European Convention on human rights articles are potentially engaged:

- Article 14: Freedom from discrimination

## Domestic Law

In England, Scotland and Wales, the Equality Act 2010 brought together and harmonised equality legislation. Northern Ireland equality legislation remains unconsolidated, diverse and uneven in implementation. Common aspects of the legal frameworks in both jurisdictions create barriers to ensuring the law promotes equality outcomes for LGBTQI+ people and differences between the GB and NI legislation expose continuing weaknesses in the equality law in NI.

## Research

### The Experiences of LGBTQI+ people

The data from the LGBT Survey (2017) expose the barriers to equality in the NI workplaces:

- 36.82% of NI respondents had not been open with anyone about their identity in their workplace.
- 43.98% of NI respondents indicated that they had experienced verbal abuse in the previous 12 months.
- 43.48% of NI respondents considered higher management to be ‘not helpful at all’ when they reported the most serious incident of discrimination in the past 12 months.
- 23.21% of NI respondents indicated that the behaviour did not stop after reporting the incident.
- 21.11% of NI respondents indicated that the most serious incident they had experienced in the workplace was perpetrated by a customer/client.
- 21.11 % of NI respondents did not make a workplace complaint because they did not want to reveal their identity.

In addition:

- The laws in GB and NI both rely primarily on individuals taking equality claims. This individualistic approach is too limited to bring transformative changes in equality for LGBTQI+ people who continue to experience forms of discrimination due to the persistence of historical prejudice. The stress, complexity and costs of taking a discrimination case combined with the low levels of compensation mean that people are often reticent to take a case based on equality law.<sup>137</sup> There is no legal aid to fund representation at a tribunal. Taking a case creates further individual costs for LGBTQI+ people because in the absence of an order of anonymity they are required to publicly disclose their identity.

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<sup>137</sup> Response by the Equality Commission for Northern Ireland to the consultation by the Department for Communities: Draft Section 75 Equality Action Plan 2019-2022 (2019). <https://www.google.com/url?client=internal-element-cse&cx=013850830204714881413:cp-w7moqua4m&q=https://www.equalityni.org/ECNI/media/ECNI/Consultation%2520Responses/2019/DfC-S75ActionPlan.pdf%3Fext%3D.pdf&sa=U&ved=2ahUKEwiYmaCQmYztAhVy5OAKHUB3ANcQFJAJegQIBhAC&usg=AOvVaw09PO2DWj4Xc7VXxNwnzSb0>

- More broadly, reliance on the terms ‘due regard’ to the need to promote equality promotes a ‘tick box’ approach rather than promoting more meaningful, robust, concrete and measurable actions to reduce discriminatory practices and outcomes as indicated in EC research.<sup>138</sup>
- The inconsistencies between GB and NI equality law mean that employers and service providers who operate in both jurisdictions have to contend with inconsistencies and differences in equality law. In the past, different legislation relating to equal marriage in the two jurisdictions meant that if staff moved from GB to NI, same sex marriages had no legal status.
- Additionally, employers and service providers must navigate different developments in equality through different rulings in case law, leading to errors.<sup>139</sup>
- In Northern Ireland, the positive or affirmative action provisions are, in many ways, inconsistent between different protected characteristics. The positive action provisions in the Equality Act 2010, which applies to the rest of the UK are more consistent across different protected characteristics.
- In the Equality Act 2010 there is a provision that significantly restricts the scope for employers to ask job applicants disability or health-related questions or issue pre-employment health questionnaires. There is no such provision in Northern Ireland. The lack of legal protection in NI in this regard is particularly problematic for gender minorities.
- The Equality Act 2010 enables individuals to bring cases of dual discrimination (claims of discrimination on two combined grounds). For example, a person could bring a case of indirect discrimination stating that they have been directly discriminated against because they are transgender and disabled. There is no equivalent provision for dual discrimination in Northern Ireland.<sup>140</sup>
- In the Equality Act 2010, the positive action provisions are expanded to create the potential for employers to take account of an underrepresentation in tie-break situations during staff recruitment and promotion. This means that where, for example, two job applicants are equally qualified for a position, an employer may be able to select the person who is a member of an under-represented group. No similar tie-break provisions exist in Northern Ireland.<sup>141</sup>
- Under the Equality Act 2010 employers can be held liable for the harassment of their employees by third parties, such as students.

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<sup>138</sup> Section 75 Screening and Equality Impact Assessment: A Review of Recent Practice. Policy Arc Limited and Kramer Consultancy Services Ltd, June 2016 cited <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75Advice-ScreeningEQIA.pdf>

<sup>139</sup> Response by the Equality Commission for Northern Ireland to the consultation by the Department for Communities: Draft Section 75 Equality Action Plan 2019-2022 (2019). <https://www.google.com/url?client=internal-element-cse&cx=013850830204714881413:cp-w7moqua4m&q=https://www.equalityni.org/ECNI/media/ECNI/Consultation%2520Responses/2019/DfC-S75ActionPlan.pdf%3Fext%3D.pdf&sa=U&ved=2ahUKEwiYmaCQmYztAhVy5OAKHUB3ANcQFJAJegQlBhAC&usg=AOvVaw09PO2DWj4Xc7VXxNwnzSb0>

<sup>140</sup> Ibid.

<sup>141</sup> Ibid, outlines a range of specific differentials between equality legislation in the two jurisdictions

### **Implications of Research - possible actions for LGBTQI+ Strategy:**

- Promote equality of opportunity for LGBTQI+ people and ensure there is effective protection and redress against unlawful discrimination on the grounds of sexual orientation.
- Give stronger protection against sexual orientation discrimination and discrimination based on gender identity including discrimination by third parties. Expand the range of lawful positive action measures that employers, service providers and others can take to protect LGBTQI+ people from discrimination.
- Take forward a strategy to create a single Equality Act that harmonises legislation based on international models, which could include aspects of the GB model, and which would provide bespoke protections for LGBTQI+ people across a range of services (see education below).
- Take forward a strategy to address the weaknesses in both NI and GB equality legislation including the following aspects.
  - The principle of open justice prevents potential claimants from pursuing legal remedies for discrimination. The practice of giving Orders of Anonymity should be extended to protect LGBTQI+ claimants.
  - A reactive approach to advancing equality based in an individual model creates barriers to justice. An anticipatory approach that encourages employers to be proactive rather than procedural in relation to the equality protections can help ease those barriers. For example, the ‘due regard’ duty across all protected categories could be changed to ‘take necessary and proportionate steps for the on-going realisation of equality.’<sup>142</sup> Moreover, the required steps could be specific and measurable in relation to LGBTQI+ discrimination.
  - Similarly, greater support could be given to introducing representative actions and additional power granted to the Equality Commission to investigate complaints in its own name.
  - Additionally, the Equality Commission’s power to issue additional codes of practice and to enforce effectively legislation could be extended.
  - Government could ensure that information on equality law is regularly updated, accurate and accessible for LGBTQI+ people;
  - Government could introduce protection against multiple discrimination.

## **6.4 Education, the Law and Rights**

LGBTQI+ children should have the same rights in education as their peers. The spirit, underpinning logic, and in some instances the text of the broader legislative framework in NI challenges any claim that LGBTQI+ inclusive teaching is some sort of expression of ‘dangerous knowledge’ and/or notions that inclusive environments as outside of the boundaries of the existing legislative provisions. The chapter on Education comprehensively covers the inequalities that affect LGBTQI+ children in education and identifies the damaging effects of those inequalities. The effect of weaknesses in protections for the rights of LGBTQI+ pupils in NI are illuminated further below.

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<sup>142</sup> This was proposed by the Joint Parliamentary Committee on Human Rights, 26th Report Session 2008-9, Para 263 cited <https://www.equalrightstrust.org/ertdocumentbank/bob%20hepple.pdf>

## Human Rights Law

The United Nations Convention on the Rights of the Child:

- Article 2: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.

The following European Convention on Human Rights Articles are potentially engaged:

- Article 10 Freedom of expression.
- Article 14 Prohibition against discrimination.

The NI Assembly is required to realise through the UK's status as a signatory of the United Nations Convention on the Rights of the Child and other relevant human rights instruments with Article 2 outlining the requirement to prevent discrimination: 'States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members'.

## Domestic Law

The Equality Act 2010 provides bespoke protections for LGBTQI+ people in education (Part 6). The Sex Discrimination (NI) Order 1976 (as amended in 2011 and 2012) makes it unlawful for an educator in NI to discriminate on the basis of sex, being married or having a civil partner; also on the grounds of undergoing, having undergone, or intending to undergo gender reassignment (this means someone who changes their sex under medical supervision). This means that in NI, unlike GB, there is no legal protection from discrimination for transgender pupils in education not undergoing gender reassignment under medical supervision. The Equality Act (Sexual Orientation) Regulations (NI) 2006 makes it unlawful for service providers (including education service providers) to discriminate against people because of their sexual orientation. The unsatisfactory situation in the school sector in NI set out under the theme of education in this Panel report prompted the ECNI to remind schools through issuing guidance that the Sexual Orientation Act (2006) places legal responsibilities on schools to protect LGBQ+ pupils from discrimination.<sup>143</sup>

## Research

The experiences of LGBTQI+ people

- Most young people who self-identify a minority sexual orientation and/or gender identity will do so while in full time education.

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<sup>143</sup> [https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Sexual\\_Orientation-Education\\_Guide.pdf](https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Sexual_Orientation-Education_Guide.pdf)

- The Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender<sup>144</sup> report states that almost half (48%) of young LGBTQI+ people have reported experiencing bullying due to their sexual orientation or gender identity and of these almost one third (32%) have experienced bullying several times a week and almost half (46%) reported experiencing bullying at least every week. 71.7% of LGBTQI+ young people reported that their school had not taken any steps to prevent/ stop bullying.
- Although cyberbullying remains an important issue to address, face to face bullying remains the most common form of bullying.
- Hate crimes can happen in schools.
- In Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender, nearly all respondents (90.4%) indicated that LGB&T relationships had not been discussed in Sexual Health Education. Two thirds of respondents (66.6%) stated that the Sexual Health Education they received was either unhelpful or very unhelpful.
- LGBTQI+ related learning relies on individual schools or teachers to ensure its inclusion, whether in relation to RSE or the wider curriculum.
- There are specific issues which impact on transgender people in education that do not necessarily, or at least to the same degree, impact LGBTQI+.

In addition:

- National government guidance on Relationships and Sex Education (RSE) and Health Education (2019)<sup>145</sup> strengthens the provisions in the Equality Act (2010) further. The new legislation will make ‘LGBT-inclusive’ education compulsory in GB. Primary school pupils will be taught the relationship element of RSE, learning about various family models, including same-sex families, while post-primary pupils will also learn about ‘LGBT’ issues.
- In Northern Ireland, grant-aided schools will receive guidance on the new RSE, however they will not be legally required to implement this guidance. Guidance as opposed to statutory guidance will mean that no uniform pattern to the provision of RSE in schools is likely to emerge. Therefore, equal treatment in Northern Ireland relies on guidance that has no legal weight such as: ‘Relationships and Sexuality Education should be inclusive of all differences regardless of race, age, disability, ethnicity, religion, culture, gender and sexual orientation. Schools should also recognise the diversity of family life in today’s society, particularly the fact that some children may have gay, lesbian or bisexual parents or carers, some of whom may be in a civil partnership. All staff must be sensitive and respectful of difference, ensuring that no pupil ever feels or is excluded, or experiences bullying due to their family or home circumstances’.<sup>146</sup>

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<sup>144</sup> Public and Corporate Economic Consultants (PACCEC) (2017) Post-primary school experiences of 16-21 year old people who are lesbian, gay, bisexual and/or transgender, Northern Ireland: Department of Education.

<sup>145</sup> <https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education>

<sup>146</sup> CCEA, (2015) Relationships and Sexuality Education Guidance: An Update for Post-Primary Schools, p6

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- There is no specific law that covers discrimination against transgender pupils in schools which leaves a legal vacuum in terms of issues such as the wearing of a school uniform and sports kits in Northern Ireland. As these kinds of issues are not governed by legislation it falls to schools to determine their policies, albeit, while observing broad generic guidelines.

**Implications of Research - possible actions for LGBTQI+ Strategy:**

- The government should strengthen legal protections for transgender students to remove discriminatory harms in education.
- Government should bring forward bespoke legislation modelled on the Equality Act (2010) to protect young LGBTQI+ people in education.
- While NI has made strides towards LGBTQI+ equality in recent decades and witnessed significant attitudinal change, anti-LGBTQI+ bullying and language remain commonplace in our schools (see Education). Delivering a curriculum that includes LGBTQI+ relationships and promotes LGBTQI+-inclusive teaching will ensure that children and young people identifying as LGBTQI+, and children and young people with LGBTQI+ families and friends, will see themselves reflected in the curriculum. It also encourages all young people to grow up with inclusive attitudes. The NI government should bring forward legislation based on the GB, Relationships and Sex Education (RSE) and Health Education (2019), to ensure that the law operates in a way that is commensurate with protecting LGBTQI+ pupils' equality and rights in education.

# Theme 7. Data and Monitoring

**Aim:** Government and public bodies monitor for sexual orientation and gender identity in a consistent, respectful and proportionate way.

As evidenced throughout this report, being LGBTQI+ can impact on experiences and needs in healthcare, increased likelihood of being a victim of crime, negative experiences in education and many other aspects of daily life. To design effective public services to meet the needs of our communities, data is key. However, since services and data gathering exercises do not regularly monitor for sexual orientation or gender identity, it is not possible to measure the impact, positive or negative, services have or are likely to have on people who are LGBTQI+.

Monitoring for sexual orientation and gender identity will help public service providers to better understand the needs and experiences of LGBTQI+ people, and to address any potential barriers to accessing services. LGBTQI+ people, their families and their needs have been invisible to public service providers where monitoring for sexual orientation and gender identity is not common practice and therefore services may not be fit to meet the needs of this client group.

For example, the UK National LGBT Survey asked some questions about whether respondents had disclosed their sexual orientation in healthcare. More than half (50.87%) of respondents had never disclosed this.<sup>147</sup>

## **Recommendations for LGBTQI+ Strategy Outcomes:**

- The Northern Ireland Civil Service sets the standard as an exemplar employer for collecting data on sexual orientation and gender identity.
- Sexual orientation and gender identity are monitored alongside other Section 75 monitoring ie community background, sex, race, religion, ability etc. and S75 obligations are met.
- Gender identity questions are included in the Census.
- Guidance is in place to protect private data concerning the characteristics and history of transgender people.
- Departmental systems are updated to ensure monitoring of sexual orientation and gender identity in all cases, unless a business case has been developed to justify its exclusion.

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<sup>147</sup> Government Equalities Office, National LGBT Survey Research Report, 3 July 2018. <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report>

## **Introduction**

We want to ensure that government and public bodies monitor for sexual orientation and gender identity in a consistent, respectful and proportionate way. It may not always be necessary for every government service to ask these questions, however, rather than approaching this considering where they should be asked, the default approach should be to ask these questions as a default unless they are identified as not being required. The option to choose not to answer should always be included as these can be an indicator of how clients view services in terms of safety for LGBTQI+ people.

## **Legislative context**

This section sets out the currently legislative context in terms of quality and LGBTQI+ inclusion within education in Northern Ireland.

### **Section 75 of the Northern Ireland Act 1998**

Section 75 of the Northern Ireland Act 1998 requires designated public authorities to carry out all of their functions:

- With due regard to the need to promote equality of opportunity in respect of religious belief, political opinion, gender, race, disability, age, marital status, dependents and sexual orientation; and
- To have regards to the desirability of promoting good relations.

To measure a public authority's success in promoting equality of opportunity related to sexual orientation, gender and gender identity, it is important that they are monitoring for sexual orientation and gender identity, where necessary, to ensure that the voices of these communities are heard. Additionally, public policy may require an Equality Impact Assessment to identify any possible adverse impacts. However, without access to data reflective of the needs of LGBTQI+ people, an Equality Impact Assessment is unlikely to identify adverse impacts of this community due to the historic invisibility of these communities.

## **7.1 Monitoring for Sexual Orientation and Gender Identity in Northern Ireland – Public Services**

This section outlines a range of experiences of LGBTQI+ people in relation to public service providers and services. It also examines some approaches in terms of public service research and national surveys and their effectiveness in ensuring that the voices of LGBTQI+ people are included.

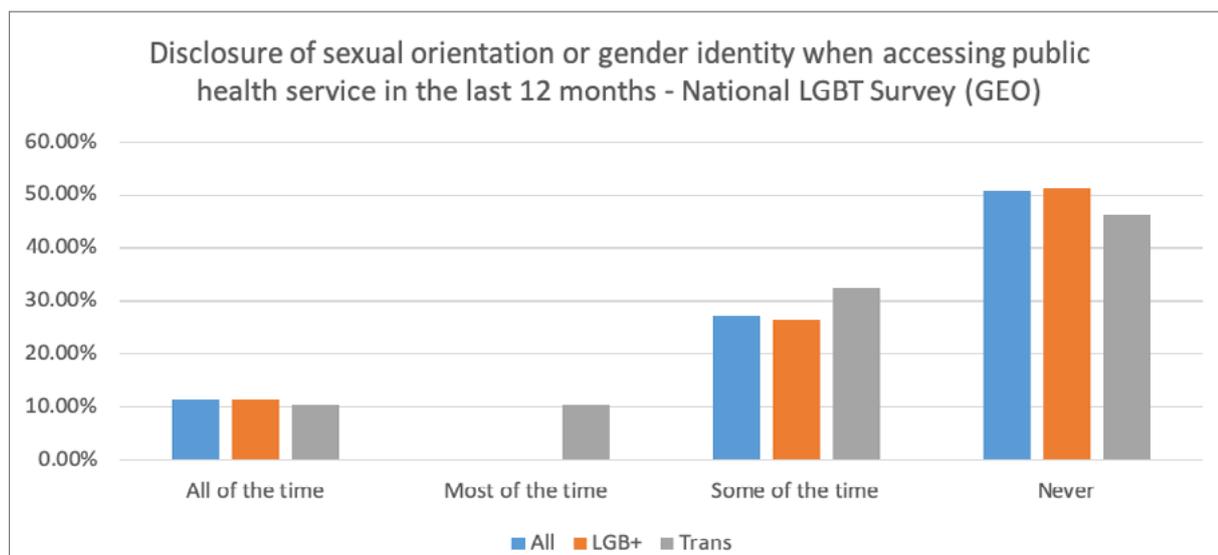
### Public Service Providers and monitoring for Sexual Orientation and Gender Identity

For this exercise, given the time restrictions in place, it was not possible to audit public service providers and their approach to monitoring for sexual orientation and gender identity. The data contained in this report is therefore based on surveys and research with LGBTQI+ people on their experiences of accessing services. Monitoring for sexual orientation and gender identity should be standard practice for public services engaging with individuals and families – in cases where it is deemed inappropriate to ask these questions, these should be identified and confirmed with clear evidence why this is not required. When monitoring for sexual orientation and gender identity it is important to always provide a ‘prefer not to answer’ option for clients who do not wish to disclose this.

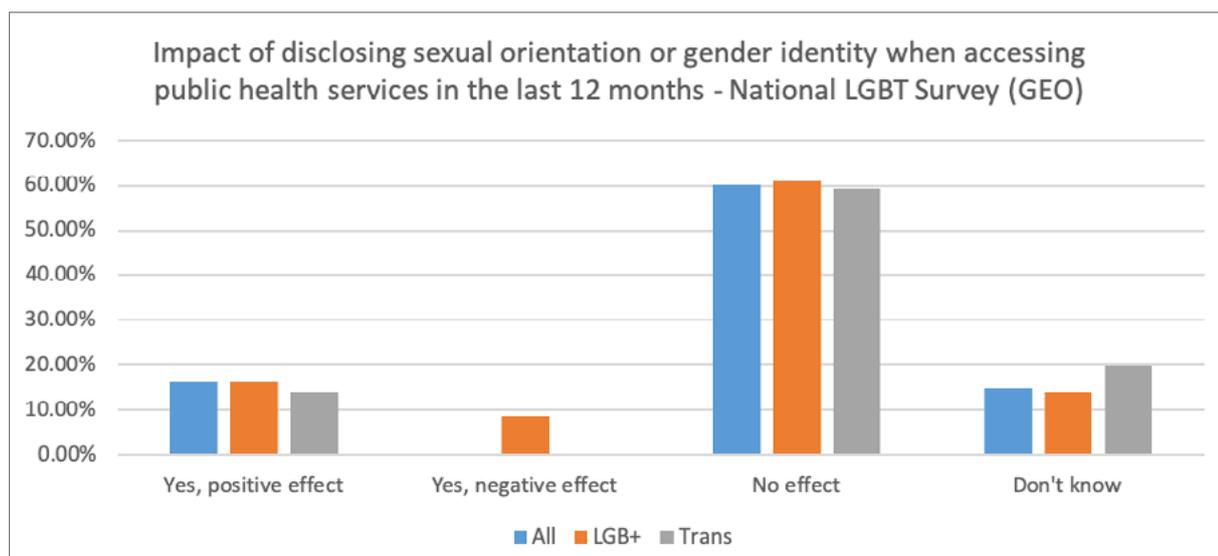
### Research – General Health Services

In preparation for the development of the Government Equalities Office ‘LGBT Action Plan’ in July 2018, a UK wide survey was carried out to explore the experiences of LGBTQI+ people across the United Kingdom. A range of questions were asked in terms of access to healthcare services as outlined below.

The survey found that 74.2% (n=1232) of respondents had accessed, or tried to access, public health services in the last year. Of these 11.45% reported disclosing their sexual orientation or gender identity ‘all of the time’, while 27.3% reported disclosing some of the time. As noted in the graph below, trans, non-binary and intersex respondents were more likely to disclose than LGB+ people. More than half of respondents reported never disclosing their sexual orientation and/or gender identity.



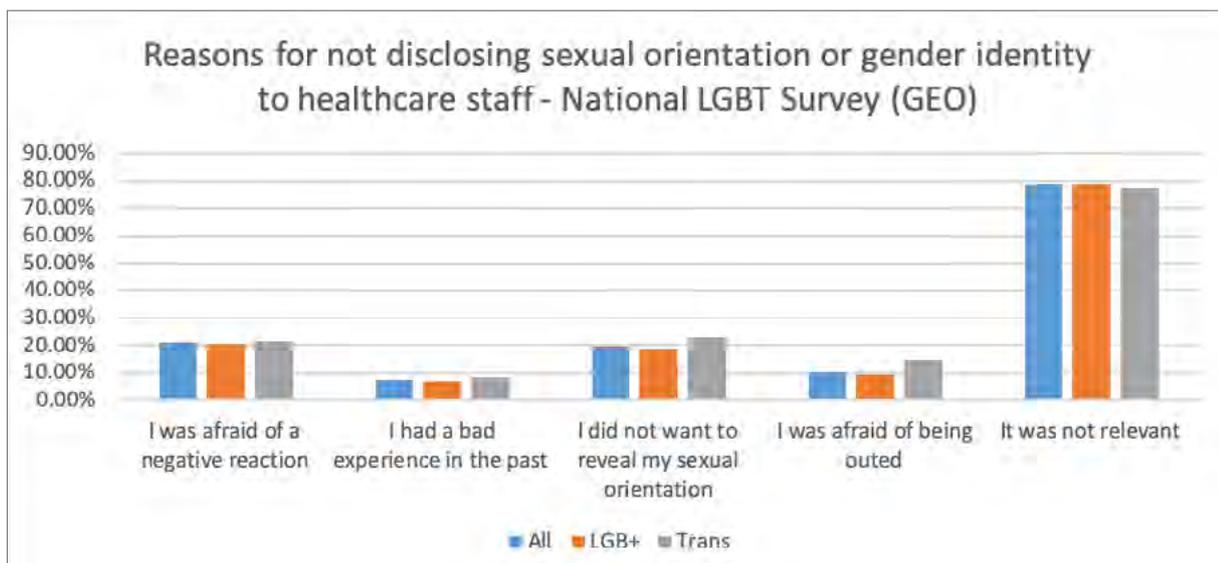
Respondents who had disclosed their sexual orientation or gender identity were asked on the effect this disclosure had on their care. In the majority of cases (60.24%) respondents reported the disclosure having no effect on their care. One in six (16.24%) respondents stated that this had a positive effect on their care however this was higher for LGB+ (16.4%) than for trans, non-binary and intersex respondents (13.95%).



Specific questions were asked of trans, non-binary and intersex respondents around their experiences of healthcare services over the previous 12 months. More than half of respondents did not experience any of the negative experiences outlined in the survey. However, one in five (22.68%) reported that ‘my specific needs were ignored or not taken into account’, and one in five (21.13%) also reported ‘inappropriate curiosity’. One in six (16.49%) reported ‘I avoided treatment or accessing services for fear of discrimination or intolerant reactions’ and one in twenty (5.67%) reported ‘I had to change GP due to negative experiences’. These negative experiences were much more common among trans, non-binary and intersex respondents than among LGB+ respondents, with 81.3% of LGB+ respondents stating they have experienced none of these issues.

Experience of healthcare services in the previous 12 months – LGBT National Survey (GEO)	Trans responses	LGB+ responses
I had to change GP (General Practitioner) due to negative experiences	5.67%	1.16%
I avoided treatment or accessing services for fear of discrimination or intolerant reactions	16.49%	5.72%
My specific needs were ignored or not taken into account	22.68%	5.33%
I was inappropriately referred to specialist services	7.73%	1.55%
Discrimination or intolerant reactions from healthcare staff	10.31%	2.91%
Unwanted pressure or being forced to undergo any medical or psychological test	7.73%	1.84%
Inappropriate curiosity	21.13%	8.24%
None of the above	57.73%	81.30%
Prefer not to say	3.61%	1.65%

Respondents were asked about why they did not disclose their sexual orientation or gender identity with healthcare staff. The most common reason being they did not think it was relevant (78.99%). One in five did not disclose due to fear of a negative reaction (20.73%) or because they did not want to reveal their sexual orientation (19.61%), while one in ten said they were afraid of being outed (10.23%). Responses were very similar across the diversity of LGBTQI+ responses.



## **7.2 Northern Ireland Census and monitoring for Sexual Orientation and Gender Identity**

It is difficult to account for the number of LGBTQI+ people in Northern Ireland, most notably because this data has only recently started to be gathered and has not been included in the Northern Ireland Census. Additionally, the only person who can identify whether or not someone is LGBTQI+ is a LGBTQI+ person themselves. Censuses in Northern Ireland are governed by the Census Act (Northern Ireland) 1969. To date there has been no question asked in relation to sexual orientation or gender identity in the Northern Ireland Census. Under the Census Equality Impact Assessment, it was noted that:

*NISRA have tested survey questions on sexual orientation over a number of years. The Census Topic Consultation for Northern Ireland (2015) proposed sexual orientation as a possible question for the 2021 Census. After an assessment of the responses on sexual orientation, a recommendation was made to include this question on the census questionnaire. It is proposed that the question on sexual orientation is asked only of those people aged 16 years and over and includes a “Prefer not to say” option. In addition, under the Census (Return Particulars and Removal of Penalties) Act 2019, it is proposed that the question on sexual orientation will have no penalty for non-response.<sup>148</sup>*

However, the current proposals for the 2021 survey does not plan to include questions related to gender and/or gender identity and instead are restricted to a gender binary approach of asking respondents their sex limited to ‘male’ or ‘female’ responses. In the years predating the planned 2021 census, a range of questions around monitoring for sexual orientation were tested by NISRA in advance of their inclusion in the Census. The same approach should be taken over the coming years in advance of the next Census with the aim of including a question on gender identity.

## **7.3 National Surveys and Monitoring for Sexual Orientation and Gender Identity**

The Northern Ireland Statistics and Research Agency (NISRA) is the principal source of official statistics and social research on Northern Ireland. NISRA provides services to a wide range of Government Departments and Non-Departmental Public Bodies as well as local government to assist the policy development process and the delivery of their business objectives.

Established in 1996, these statistics and research inform public policy and associated debate in wider society.

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<sup>148</sup> NISRA Equality Impact Assessment: 2021 Census 2021 Census Equality Impact Assessment Screening Template (nisra.gov.uk)

As part of this report a small number of seemingly relevant reports were reviewed to identify if monitoring of sexual orientation and gender identity were completed. One of these was the Personal Wellbeing in Northern Ireland 2019/20 - estimates of life satisfaction, feeling that things done in life are worthwhile, happiness and anxiety in Northern Ireland. The survey developed in this exercise was 5,150 respondents from Northern Ireland, out of a total of 320,000 respondents across the whole of the UK.<sup>149</sup> The questionnaire and report do not include any questions related to sexual orientation and/or gender identity.

There are too many reports and national surveys conducted over the previous 10 years to explore each and every one of these as part of this report. However, it can be concluded that it is not possible to identify the needs and experiences of LGBTQI+ people without monitoring for sexual orientation and gender identity – without asking the questions, there is the risk of making LGBTQI+ people invisible to service providers and Government bodies. It is therefore important to ensure that monitoring questions related to an individual’s sexual orientation and gender identity are included as standard, and only removed where an agreed case has been made for their inclusion rather than the default approach which has been taken in the past not to ask these questions unless they were deemed relevant – which presents a high risk of failing to gather relevant data.

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<sup>149</sup> Personal Wellbeing in Northern Ireland 2019/20 - estimates of life satisfaction, feeling that things done in life are worthwhile, happiness and anxiety in Northern Ireland Personal Wellbeing in Northern Ireland 201920 (nisra.gov.uk)

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# Theme 8. Representation and Public Life

**Aim:** All LGBTQI+ people should feel confident, encouraged and supported to be fully included in all aspects of public life

This chapter will look at LGBTQI+ people in public life. Public life will encompass political positions, public appointments, behaviour in everyday life and what the barriers are to participation in public life. When an LGBTQI+ person is considering taking up a public position, quite often they experience anxiety and fear. These feelings can be related to actual or perceived homophobia, biphobia or transphobia. For some LGBTQI+ people, there is a fear of their sexual orientation or gender identity being disclosed in a public situation when they are not comfortable with that.

Though improving, there is still a significant underrepresentation of LGBTQI+ people in public life who can be a positive role model or can directly challenge discrimination and negative stereotypes. It can be affirming and empowering for people to see those similar to them holding public positions, and the societal changes this gradually enables helps others in future to both find LGBTQI+ communities and seek similar goals.<sup>150</sup> There needs to be increased visibility of LGBTQI+ people in all areas of life, particularly visible political, civic and community leadership in order to promote positive change and tackle negative stereotypes.

The lack of reliable and comprehensive data is a definite obstacle to enabling the development of policy and the measurement of policy impact. In order to empower individuals and organisations this information is needed to measure progress.

LGBTQI+ people should feel comfortable, safe and at ease in public when holding their partners hand, be confident to apply and accept public appointments or be ‘out’ in a public position and be proud of who they are.

## **Recommendations for LGBTQI+ Strategy Outcomes:**

- Society values LGBTQI+ people and their families.
- LGBTQI+ people visibly participate in all aspects of public life.
- Barriers to LGBTQI+ involvement in public life are removed and the extent of involvement is known.

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<sup>150</sup> Magrath, Rory. “‘Progress ... Slowly, but Surely’: The Sports Media Workplace, Gay Sports Journalists, and LGBT Media Representation in Sport.” *Journalism Studies* (London, England), vol. 21, no. 2, 2019, pp. 1–17.

## 8.1 Public Life

There has never been a better time to be LGBTQI+ in Northern Ireland. There have been increased legislative advances to diminish discrimination and progress equality for LGBTQI+ people. There are more LGBTQI+ people who hold influential positions in civil society, an increased number of LGBTQI+ people in the media and more LGBTQI+ people live in our communities.

Current evidence shows acceptance of same-sex relationships are at a high and continue to increase with 64% of the British public saying same-sex relationships were ‘not wrong at all’ in 2016, up from 47% in 2012, and 11% in 1987.<sup>151</sup> Even though this comparison of data is optimistic, the Government Equalities Office found that many LGBTQI+ people do not feel comfortable being themselves in the UK.<sup>152</sup> The major findings from the LGBT survey were that:

- A. 68% of respondents with a minority sexual orientation said they had avoided holding hands with a same-sex partner in public.
- B. 70% of respondents with a minority sexual orientation said they had avoided being open about their sexual orientation for fear of a negative reaction from others.
- C. 67% of trans respondents said they had avoided being open about their gender identity.<sup>153</sup>

LGBTQI+ people not feeling comfortable could range from holding hands with a partner in public, non-disclosure of sexual orientation or gender identity at work, or not feeling able to apply for public positions. LGBTQI+ people do experience marginalisation and social exclusion, and often this impacts negatively on their confidence and self-esteem reducing their visibility and their ability to take leadership roles and advocate on their own behalf. Persistent underrepresentation of women in decision-making/ public positions across all levels of society is common, and there is an even bigger under representation of lesbian and bisexual women.

### **Participation:**

The 1998 Peace Accord recognised the gendered democratic deficit in formal politics but lacked a concrete implementation plan that would be monitored periodically to assess its effectiveness. The establishment of mechanisms, targets and monitoring would have significantly raised the probability of real changes in the gendered distribution of decision-making power in formal political arenas. Examining the effects of those mechanisms in other societies including conflict transformational societies exposes the kind of progress that can be made in terms of gendered parity of esteem in formal decision-making power.<sup>154</sup>

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<sup>151</sup> NatCen Social Research (2017) British Social Attitudes 34

<sup>152</sup> Government Equalities Office (2018) LGBT Action Plan: Improving the lives of lesbian, gay, bisexual and transgender people

<sup>153</sup> Ibid

<sup>154</sup> Ashe, F. (2019) *Gender, Nationalism and Conflict Transformation*, Routledge: London

- Consequently, there are very limited steps taken to facilitate women’s equal and effective access to public positions, for example, lack of affordable childcare and associated policies to encourage women’s participation in public life.
- Some LGBTQI+ people may not have direct family support to enable them to participate in public life.
- Media hostility, particularly growing contemporary hostility towards trans communities, is likely to discourage LGBTQI+ individuals from entering or remaining in public life.

## 8.2 Barriers

To achieve increased participation of LGBTQI+ people in public life, there must be a concentrated effort to highlight opportunities through relevant networks and to address the societal and institutional barriers which keep this community from applying, being recruited and appointed, and being represented in public life. LGBTQI+ people have a range of experiences, worries, barriers and hopes when discussing their participation in public life. There is minimal localised research carried out in the area regarding LGBTQI+ representation and public life to date, and addressing this specifically to Northern Ireland would help demonstrate the institutional changes needed to support both existing and future individuals in public life.

In a review of evidence on sexual orientation commissioned by the Equality and Human Rights Commission (EHRC), Mitchell et al concluded that “LGB people perceive barriers in various forms of democratic participation, but the nature of such barriers requires further exploration”.<sup>155</sup>

There is a real fear of actual or perceived homophobia in NI politics. Although a small number of LGB politicians elected to the Northern Ireland Assembly or to local government have disclosed their sexual orientation, there are currently no openly transgender or intersex political representatives.

Many elected representatives have in the recent past made derogatory remarks against the LGBTQI+ community, often without facing the consequences. Hunt and Dick report that between 50% and 90% of LG people anticipate being discriminated against if they were to run for election as a member of a mainstream political party.<sup>156</sup>

The number of LGBTQI+ people in public positions is low. The Code of Practice for Ministerial Public appointments states:

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<sup>155</sup> Mitchell M, Howarth C, Kotecha M and Creeganet C, National Centre for Social Research (2009) Equality and Human Rights Commission Research Report 34: Sexual orientation research review 2008. Available at Research report 34: Sexual orientation research review 2008 | Equality and Human Rights Commission (equalityhumanrights.com)

<sup>156</sup> Hunt R. and Dick S. (2008). Serves you right: Lesbian and gay people’s expectations of discrimination. London: Stonewall

- “Diversity - The make-up of the Boards of Northern Ireland public bodies does not adequately reflect the make-up of the population. The opportunity to appoint the best people is greatly increased when every potential applicant is attracted and encouraged to apply and when individual attributes and differences are valued. Departments should ensure, as far as possible, that Boards are balanced in terms of skills and experience, and that opportunities to apply for positions on Boards are open to the communities they serve.”
- “Equality - Departments must ensure equality of opportunity and equal treatment of all applicants at every stage of the appointment process. The ‘Important Notice’ at the start of this document highlights the importance of adherence to anti-discrimination law. It is for Ministers and their Departments to ensure that they are fully versed in these matters”.<sup>157</sup>

It seems there are certain areas of participation that may be harder for LGBTQI+ people to engage with. Research by Ellison and Gunstone confirms the type of employment is a key factor that can influence participation. In their sample, 40% of gay men, 32% of lesbians and 12% of bisexual people would not consider pursuing certain careers because of their sexual orientation. Employment in key public services such as the police, armed forces and teaching were amongst the most cited careers respondents would avoid.<sup>158</sup> Participation of LGBTQI+ people in public life may be more common in for example taking part in campaigns, wanting to make a difference or supporting a charity that advocates for change to end discrimination.

As previously noted, any LGBTQI+ people may not take up a public position due to fear. Lack of confidence is also a barrier for LGBTQI+ people taking up employment or public positions. Invisibility, marginalisation and isolation ultimately may lead to fear;

- 33% of LGBT people, including 62% of trans people, feel isolated where they live because they are LGBT.
- reports of isolation are highest in rural areas (47%) compared to urban areas (23%).<sup>159</sup>

Hostility towards transgender communities and on topics around gender identity has become more frequent, intense and damaging in the past few years in the public media in the United Kingdom. As set out in TERF Wars by Pearce et al, this pace has quickened and its impact on trans communities has been substantial.<sup>160</sup> It is likely that this hostility towards trans issues in the public eye will deter trans communities and LGBTQI+ communities in general from entering public life, especially as this hostility has started to broaden to LGBTQI+ communities in general.

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<sup>157</sup> [http://www.publicappointmentsni.org/sites/cpani/files/media-files/CPANI\\_Code\\_of\\_Practice\\_JL2\\_December\\_2016.pdf](http://www.publicappointmentsni.org/sites/cpani/files/media-files/CPANI_Code_of_Practice_JL2_December_2016.pdf)

<sup>158</sup> Ellison G. and Gunstone B. (2009) Sexual orientation explored: A study of identity, attraction, behaviour and attitudes in 2009. Manchester: EHRC

<sup>159</sup> French, T., Magic, J. and Kent, R. (2015). The Scottish LGBT Equality Report: LGBT people’s experience of inequality in Scotland. Equality Network. <https://www.equality-network.org/resources/publications/policy/the-scottish-lgbt-equality-report/>

<sup>160</sup> Vincent, Ben; Erikainen, Sonja and Pearce, Ruth eds. (2020). TERF Wars: Feminism and the fight for transgender futures. The Sociological Review Monograph Series, 68 (4). London: Sage.

LGBTQI+ individuals may be fearful of their sexual orientation or gender identity being disclosed if they hold a public position. Many people have disclosed their sexual orientation to their close family and friends but not in a work scenario. More than a third of LGBT staff (35%) have hidden that they are LGBT at work for fear of discrimination.<sup>161</sup> There is also the worry of being in public life and the impact this may have on family. Added to fear of disclosure of sexual orientation in a public position, is also the fear of discrimination due to sexual orientation. Previous personal experiences of homophobia, biphobia or transphobia and/or the fear of discrimination or reprisal because of sexual orientation or gender identity were the most commonly cited factors affecting the willingness of LGBTQI+ people to participate in public and political life.<sup>162</sup>

LGBTQI+ people in public positions can often inform and educate the general public on issues that are important to LGBTQI+ people. It is crucially important to have LGBTQI+ people represented in all aspects of public life to increase positive role models who may be able to bring LGBTQI+ issues into the public arena in a proactive, affirming way. Positive LGBTQI+ role models are pertinent for young people especially. These positive role models could possibly help them with everyday issues they may face such as coming out or mental health issues.

Identifying as a sexual orientation that deviates from heteronormativity, may lead to violence and emotional abuse. However, if an LGBTQI+ person also identifies within another minority grouping, they may experience even more discrimination. Intersectionality refers to “particular forms of intersecting oppressions, for example, intersections of race and gender, or of sexuality and nation”.<sup>163</sup> Intersectionality for example, helps us to understand the overlapping of many identities such as ethnicity, socio-economic status, sexual orientation or gender to name but a few. These intersectional impacts on public appointments and the communities underrepresented in public life are poorly researched and understood in Northern Ireland and neighbouring jurisdictions, and narrow focuses on improving one minority experience to the neglect of others may result in those most underrepresented seeing the least progress towards representation and participation in public life.

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<sup>161</sup> <https://www.stonewall.org.uk/about-us/media-centre/media-statement/stonewall-reveals-coming-out-work-still-problem> (2018)

<sup>162</sup> OPM (2010) Experiences of and barriers to participation in public and political life for lesbian, gay, bisexual and transgender people

<sup>163</sup> Collins, P. H. (2000). Black feminist thought: Knowledge, consciousness, and the politics of empowerment. New York: Routledge.

## Theme 9. Arrangements for the Review of the Strategy

**Aim:** We commit to review, refresh and continue to build our commitment to meeting the needs of LGBTQI+ people through the delivery of this plan and the development of a stage 2 plan in 5 years' time.

We recognise that the needs of LGBTQI+ people cannot be addressed in the five-year period of this plan. For this reason, we commit to carrying out a review at year 4 of the delivery of this plan to develop another 5 year strategy to be introduced at the end of this project. To measure the success of this Strategy and to identify the needs of the LGBTQI+ community, we commit to delivering a Northern Ireland wide research project covering the issues dealt with in this report and with specific focus on areas not dealt with in this Strategy, including but not limited to:

- physical health;
- further education;
- rural development;

and the intersection between LGBTQI+ communities and;

- ageing populations;
- BAME communities;
- travellers; and
- asylum seekers and refugees.

### **Recommendations for LGBTQI+ Strategy Outcomes:**

- The 2021 Strategy is reviewed annually and will identify differential impacts for minority populations within the LGBTQI+ community.
- Further research has been completed to ensure that stage 2 of this Strategy is reflective of the current identified needs of LGBTQI+ communities and people.



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