

Response to Government Equalities Office consultation on banning conversion therapy

December 2021

1. Introduction

1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk

1.2 As part of our work we:

- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
- Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
- Conduct research and advise the four UK governments on improvements in regulation
- Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

2.1 We welcome the opportunity to respond to the Government Equalities Office consultation on banning conversion therapy. In responding to this consultation we have restricted our responses to those areas that fall within the scope of our legislative remit and expertise. We have therefore primarily focused on the question relating to talking conversion therapy, and the impact this may have on the health and care professional regulators and Accredited Registers we oversee.

3. View on banning conversion therapy

Do you agree or disagree that the government should intervene to end conversion therapy in principle?

3.1 We do not support conversion therapy and do not believe that it can be deemed to constitute good clinical practice in any context or setting. Conversion therapy is at odds with the Codes of the health and care professionals that we oversee and therefore should not be practised by any

regulated professional. This includes all practitioners on registers within our Accredited Register programme; we have an explicit policy not to accredit any register that allows conversion therapy to be practised.

- 3.2 Our decision not to accredit any register that allows conversion therapy is rooted in our obligations under the Public Sector Equality Duty¹. This requires us to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- 3.3 We believe that conversion therapy is discriminatory and not consistent with the above duties. Further, since July 2021 acceptance onto our Accredited Register programme has been subject to a new 'public interest test' which now forms part of our Standards². This checks whether the benefits of activities undertaken by registrants outweigh the risk of harm, and requires transparency around the evidence base for treatments. As there is evidence to suggest that conversion therapy is both ineffective at achieving its stated aims and harmful to those subject to it³, it is highly likely that any register which allows registrants to practise conversion therapy would fail our public interest test.

4. Consultation questions

Question 1. To what extent do you support, or not support, the government's proposal for addressing physical acts of conversion therapy? Why do you think this?

- 4.1 We note that no act of physical violence done in the name of conversion therapy is currently legal, and therefore that the proposal put forward in the consultation document is to ensure that when existing violent offences are motivated by conversion therapy, this is considered as a potential aggravating factor by the judge in sentencing. Whilst we support action to prevent physical conversion therapy, it is not within our remit or expertise to comment on the appropriateness of specific legal remedies in this area.

¹ Public Sector Equality Duty: <https://www.gov.uk/government/publications/public-sector-equality-duty>

² Professional Standards Authority Standards for Accredited Registers: <https://www.professionalstandards.org.uk/what-we-do/accredited-registers/about-accredited-registers/our-standards>

³ An assessment of the evidence on conversion therapy for sexual orientation and gender identity, Government Equalities Office, October 2021: <https://www.gov.uk/government/publications/an-assessment-of-the-evidence-on-conversion-therapy-for-sexual-orientation-and-gender-identity/an-assessment-of-the-evidence-on-conversion-therapy-for-sexual-orientation-and-gender-identity>

Question 2. The government considers that delivering talking conversion therapy with the intention of changing a person's sexual orientation or changing them from being transgender or to being transgender either to someone who is under 18, or to someone who is 18 or over and who has not consented or lacks the capacity to do so should be considered a criminal offence. The consultation document describes proposals to introduce new criminal law that will capture this. How far do you agree or disagree with this?

- 4.2 As outlined above, we do not support conversion therapy and do not believe that it can form part of ethical practice. No health or care practitioner overseen by the Professional Standards Authority is permitted to offer or practise conversion therapy, whether delivered as a 'talking therapy' or in any other form.

Banning talking conversion therapy for under 18s

- 4.3 In terms of the specific proposal to ban talking conversion therapy for under 18s, we believe that clear and precise drafting will be key to effective implementation. We are aware that some of the regulators and Accredited Registers we oversee have concerns about possible unintended consequences that could arise as a result of the proposed ban. For example, the Association of Child Psychotherapists (ACP) have expressed concerns that the proposals could impact on their members' ability to practice safely and without fear of false accusation. They point to the fact that their members work with vulnerable children and young people, many of whom have complex histories of abuse, neglect, bereavement, and neurodevelopmental vulnerabilities. Working with these young people may involve exploring these complex histories in a way which could be misinterpreted or misconstrued.
- 4.4 Similarly, the Nursing and Midwifery Council (NMC) have indicated that they believe that any future legislation must be very clear about what does, and what does not, constitute conversion therapy, and that the ban must not interfere with legitimate support for those questioning whether they are LGBT.
- 4.5 In our publication '*Right-touch regulation*'⁴, which forms the basis of our thinking on regulatory practice and builds on the principles of good regulation identified by the Better Regulation Executive, we outline the need to check for unintended consequences when developing regulations.
- 4.6 Whilst no regulated health and care professional should be engaging in conversion therapy, there is a fear amongst some professionals that their legitimate practice may be called into question or that they may be subject to false or misconstrued accusations. The Government must be mindful to avoid any unintended consequences that may arise either as a result of these fears,

⁴ Right-touch regulation, 2015, Professional Standards Authority:
https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20_20

or through legislative drafting that is not sufficiently tight and robust. If fear of accusation were to discourage counsellors and psychotherapists from working with LGBT young people, the result could be to restrict access to vital services for a vulnerable group.

- 4.7 We welcome the Government's efforts to allay these concerns which is evident in the consultation document, and in particular the assertion that:

*'Banning conversion therapy must not result in interference for professional psychologists, psychiatrists, psychotherapists, counsellors and other clinicians and healthcare staff providing legitimate support for those who may be questioning if they are LGBT. The ban will complement the existing clinical regulatory framework and not override the independence of clinicians to support those who may be questioning their LGBT status, in line with their professional obligations.'*⁵

- 4.8 However, although the Government has made clear that legitimate clinical practice should not be affected, we note that regulated clinicians still fall within the scope of this legislation. The Government therefore needs to reassure health and care professionals that their legitimate practice will not be affected by the ban.

- 4.9 We note that the updated *Memorandum of Understanding on Conversion Therapy in the UK*⁶, outlines that therapists should be supported to provide informed and ethical practice when working with people wishing to explore their sexual orientation or gender identity. It further states that people should not be discouraged from seeking qualified and appropriate help. The Memorandum may form a useful basis for considering how a new law could be drafted and implemented.

Regulation of counsellors and psychotherapists

- 4.10 We welcome the following reference in the consultation document to our Accredited Registers programme:

'Regulation of psychotherapists and counsellors is provided in England and Wales by a number of voluntary registers, which themselves are quality assured by the Professional Standards Authority. The

⁵ Banning conversion therapy, October 2021, Government Equalities Office:
<https://www.gov.uk/government/consultations/banning-conversion-therapy/banning-conversion-therapy>

⁶ Memorandum of Understanding on Conversion Therapy in the UK, 2021:
<https://www.bacp.co.uk/media/13265/memorandum-of-understanding-on-conversion-therapy-in-the-uk-september-2021.pdf>

government considers this voluntary regulation to be an effective means of quality assuring these professions.⁷

- 4.11 However, it is important to be clear with the public and those who may seek counselling or psychotherapy that only those practitioners that have chosen to join an Accredited Register are subject to our Standards. It is important not to convey to the public the false impression that all counsellors and psychotherapists are regulated, subject to oversight, or adhere to ethical standards.

Informed consent for over 18s undertaking conversion therapy

- 4.12 We understand that in permitting conversion therapy to take place for adults who have given informed consent the Government is seeking to balance protection from harm with individual freedom. It is not within the remit of the Authority to make a judgement on the validity of this approach. However, we do have an interest in ensuring that regulation is workable.
- 4.13 We note that the Frequently Asked Questions⁸ published alongside this consultation state that *‘in order to consent to such talking therapies, a person will need to be made aware that evidence suggests these practices do not work and can result in negative mental health outcomes, including in the longer term’*.
- 4.14 In *Right-touch regulation*⁹ we outline that good regulation should be clear and workable. In our view, the requirement for a practitioner to state that their practice is harmful and for the client to consent to this may be difficult to deliver in practice. On the face of it, it seems unlikely that a practitioner of conversion therapy would be candid about the harms involved, or that someone would consent to it if they were.
- 4.15 If the Government does wish to press ahead with this approach, it may be useful to have regard to our Guidance for Accredited Registers¹⁰ which makes clear that registrants must ensure that ‘treatments and services are offered in a way that does not make unproven claims or in any other way mislead the public’.

⁷ Banning conversion therapy, October 2021, Government Equalities Office:

<https://www.gov.uk/government/consultations/banning-conversion-therapy/banning-conversion-therapy>

⁸ Banning conversion therapy: frequently asked questions, November 2021, Government Equalities Office: <https://www.gov.uk/government/consultations/banning-conversion-therapy/banning-conversion-therapy-frequently-asked-questions>

⁹ Right-touch regulation, 2015, Professional Standards Authority: https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20_20

¹⁰ Guidance for Accredited Registers: supplementary guidance – standard one, 2021, Professional Standards Authority: https://www.professionalstandards.org.uk/docs/default-source/accredited-registers/standards-for-accredited-registers/accredited-registers-supplementary-guidance-for-standard-one.pdf?sfvrsn=3e5f4920_6

Question 3. How far do you agree or disagree with the penalties being proposed?

- 4.16 We do not have the evidence or expertise required to give a view on this question.

Question 4. Do you think that these proposals miss anything? If yes, can you tell us what you think we have missed?

- 4.17 There is a risk that talking conversion therapies may be delivered online by overseas providers who would not be captured by this legislation.

Question 5. The government considers that Ofcom's Broadcasting Code already provides measures against the broadcast and promotion of conversion therapy. How far do you agree or disagree with this? Why do you think this?

- 4.18 We do not have the evidence or expertise required to give a view on this question.

Question 6. Do you know of any examples of broadcasting that you consider to be endorsing or promoting conversion therapy? If yes, can you tell us what these examples are?

- 4.19 No.

Question 7. The government considers that the existing codes set out by the Advertising Standards Authority and the Committee of Advertising Practice already prohibits the advertisement of conversion therapy. How far do you agree or disagree with this?

- 4.20 The UK Code of Nonbroadcast Advertising and Direct and Promotional Marketing (CAP Code) provides specific guidance about some services relevant to health and care providers, such as various complementary and alternative medicines. We would not wish to give a view on whether these are sufficient to prohibit the advertisement of conversion therapy. We make clear in our Guidance for Accredited Registers¹¹ that registrants must comply with relevant advertising guidance. As and when the conversion therapy ban passes into law, voluntary or statutory regulation should appropriately reference any other regulatory frameworks in place.

¹¹ Guidance for Accredited Registers: supplementary guidance – standard one, 2021, Professional Standards Authority: https://www.professionalstandards.org.uk/docs/default-source/accredited-registers/standards-for-accredited-registers/accredited-registers-supplementary-guidance-for-standard-one.pdf?sfvrsn=3e5f4920_6

Question 8. Do you know of any examples of advertisements that you consider to be endorsing or promoting conversion therapy? If yes, can you tell us what these examples are?

4.21 No.

Question 9. The consultation document describes proposals to introduce conversion therapy protection orders to tackle a gap in provision for victims of the practice. To what extent do you agree or disagree that there is a gap in the provision for victims of conversion therapy?

4.22 We do not have the evidence or expertise required to give a view on this question.

Question 10. To what extent do you agree or disagree with our proposals for addressing the gap we have identified? Why do you think this?

4.23 We do not have the evidence or expertise required to give a view on this question.

Question 11. Charity trustees are the people who are responsible for governing a charity and directing how it is managed and run. The consultation document describes proposals whereby anyone found guilty of carrying out conversion therapy will have the case against them for being disqualified from serving as a trustee at any charity strengthened. To what extent do you agree or disagree with this approach? Why do you think this?

4.24 We do not have the evidence or expertise required to give a view on this question.

Question 12. To what extent do you agree or disagree that the following organisations are providing adequate action against people who might already be carrying out conversion therapy? (Police; Crown Prosecution Service; OTHER statutory service)? Why do you think this?

4.25 We do not have the evidence or expertise required to give a view on this question.

Question 13. To what extent do you agree or disagree that the following organisations are providing adequate support for victims of conversion

therapy? (Police; Crown Prosecution Service; OTHER statutory service)? Why do you think this?

- 4.26 We do not have the evidence or expertise required to give a view on this question.

Question 14. Do you think that these services can do more to support victims of conversion therapy? If yes, what more do you think they could do?

- 4.27 We do not have the evidence or expertise required to give a view on this question.

Economic appraisal

Question 15. Do you have any evidence on the economic or financial costs or benefits of any of the proposals set out in the consultation? If yes, please can you provide us with details of this evidence, including where possible, any references to publications?

- 4.28 No.

Equalities impacts appraisal

Question 16. There is a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the Equality Act 2010. Do you have any evidence of the equalities impacts of any proposals set out in the consultation?

- 4.29 As outlined in paragraphs 3.2 and 3.3 above, we believe that sanctioning conversion therapy would represent a dereliction of our responsibilities under the Public Sector Equality Duty.

Questions related to privacy

Question 17. Would you like your response to be treated as confidential?

- 4.30 No.

Question 18. What is your email address? If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

- 4.31 The policy team at the Professionals Standards Authority can be contacted using the following email address: policy@professionalstandards.org.uk

5. Further information

- 5.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

Professional Standards Authority for Health and Social Care
157-197 Buckingham Palace Road
London SW1W 9SP

Email: policy@professionalstandards.org.uk

Website: www.professionalstandards.org.uk

Telephone: 020 7389 8030