

## **Stonewall—written evidence (FE00053)**

### **House of Lords Communications and Digital Committee inquiry into Freedom of Expression Online**

1. Stonewall is Europe’s largest organisation campaigning for LGBT+ equality. We commission high-quality independent research into the experiences of LGBT+ people, including their experiences of online harms. Through our Diversity Champions<sup>1</sup> programme, we work with over 850 employers, including central Government Departments, police forces and online platforms, to support them to create LGBT+ inclusive environments.
2. Freedom of expression is a fundamental human right which is crucial in the functioning of a democratic society. Online spaces are increasingly occupying a central role in our lives, especially since the advent of the Covid-19 pandemic. Online platforms have enabled marginalised communities, including LGBT+ people, to speak up for their rights. However, these groups also experience significant harms online – including homophobic, biphobic and transphobic abuse, bullying and harassment. Stonewall welcomes the opportunity to respond to this inquiry and shine light on LGBT+ people’s exercise of freedom of expression in online spaces.

#### **Question 1. Is freedom of expression under threat online? If so, how does this impact individuals differently, and why? Are there differences between exercising the freedom of expression online versus offline?**

3. Freedom of expression is crucial in any democracy and includes ‘the right to seek, receive and impart information and ideas of all kinds’ (Amnesty International, 2020).<sup>2</sup> Freedom of expression is also considered essential in enabling individuals in society to meaningfully exercise personal autonomy and pursue self-fulfilment (Schauer, 1982).<sup>3</sup> However, it comes with the responsibility to protect marginalised groups from hate speech and violence.
4. In recent years, some mainstream discussions have created a false opposition between freedom of expression and initiatives tackling harm. However, it is crucial to note that for many marginalised groups, including LGBT+ people, creating safe online spaces is necessary for meaningful access to freedom of expression.
5. Many LGBT+ people experience significant levels of harm in online spaces. Stonewall’s research with YouGov into the experiences of 5,375 LGBT adults across Britain, LGBT in Britain: Hate Crime and Discrimination (2017),<sup>4</sup> found that:

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<sup>1</sup> <https://www.stonewall.org.uk/diversity-champions-programme>

<sup>2</sup> <https://www.amnesty.org.uk/free-speech-freedom-expression-human-right>

<sup>3</sup> <https://academic.oup.com/ajj/article-abstract/29/1/223/158002?redirectedFrom=fulltext>

<sup>4</sup> [https://www.stonewall.org.uk/system/files/lgbt\\_in\\_britain\\_hate\\_crime.pdf](https://www.stonewall.org.uk/system/files/lgbt_in_britain_hate_crime.pdf)

- **One in ten** LGBT+ people (10 per cent) – including **26 per cent** of trans people and **20 per cent** of LGBT+ people who are Black and of colour – had experienced homophobic, biphobic or transphobic abuse online directed towards them personally in the month preceding the survey.
  - In the month preceding the survey, almost half of LGBT people (45 per cent) had witnessed homophobic, biphobic and transphobic abuse or behaviour online.
6. LGBT+ children and young people are at particular risk. While the internet can act as a lifeline to many LGBT+ children and young people, many of whom are not able to be open about their LGBT+ identity at home or school, **two in five** - including 58 per cent of trans young people – have been the target of homophobic, biphobic or transphobic online abuse, while **nearly all** (97 per cent) have witnessed it (School Report, 2017).<sup>5</sup>
  7. Many LGBT+ people do not report the harm they experience online, often because they fear they will not be taken seriously. Galop’s Online Hate Crime Report (2020)<sup>6</sup> found that **less than half** of LGBT+ victims of online abuse (44 per cent) reported their experiences to social media platforms, and **less than one in ten** (seven per cent) reported to the police. Similarly, **65 per cent** of LGBT+ young people believe that online platforms are unlikely to do anything when it comes to tackling homophobic, biphobic and transphobic content or incidents reported to them (School Report, 2017).<sup>7</sup>
  8. This abuse can cause profound harms to LGBT+ communities, including negatively impacting their mental health and creating fears over their safety. Crucially, this also impacts LGBT+ individuals’ rights to freedom of expression (Article 10 HRA/ECHR) by deterring them from expressing themselves freely online (particularly about LGBT+ matters) and moving through online spaces. This is evidenced in Galop’s Online Hate Crime Report (2020):<sup>8</sup>
    - As a result of online abuse, **two in five** LGBT+ victims of online abuse (38 per cent) used their online accounts less, while **one in five** (22 per cent) removed LGBT+ information from their profiles or left social media sites altogether.
    - Several participants reported being frequently targeted for posting about LGBT+ matters and for correcting misinformation they witnessed. Many felt negative comments and abuse they received was an attempt to silence them and restrict their freedom to talk about LGBT+ matters.

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<sup>5</sup> <https://www.stonewall.org.uk/school-report-2017>

<sup>6</sup> <http://www.galop.org.uk/online-hate-crime-report-2020/>

<sup>7</sup> <https://www.stonewall.org.uk/school-report-2017>

<sup>8</sup> <http://www.galop.org.uk/online-hate-crime-report-2020/>

*'I stopped posting in the hope that people would lose interest in sending me abuse.'*

*Respondent – Online Hate Crime Report (2020)*

*'I don't have any social media because it is a place where hate can be freely expressed and not be controlled and I am scared to use it. People think they can do and say anything online.'*

*Joseph, 13, secondary school (South West) - Stonewall School Report (2017)*

9. While the right to freedom of expression is universal, LGBT+ people and other marginalised communities do not necessarily have equal access to this right, as many cannot freely and meaningfully express themselves online.
10. This submission focusses on harms and freedom of expression online as the primary issue of this inquiry. However, we welcomed the Law Commission's Hate Crime Review<sup>9</sup> of legislation in England and Wales. This must result in greater parity in how the law treats hate crime against different protected characteristics, including sexual orientation and transgender identity. This includes equalising legal thresholds for 'stirring up' hatred, as well as extending stirring up legislation to include transgender identity to combat the pervasive levels of discrimination that trans people face in everyday life. We are happy to share our full response to this consultation with the Committee if desirable.
11. **Stonewall recommends that the Committee consider the fact that addressing online harms does not necessarily conflict with enhancing freedom of expression.** We echo the point raised by Professor Jeffrey Howard in an oral evidence session<sup>10</sup> for this inquiry that "part of the point of restricting harmful content is to empower the speech of others by eliminating an atmosphere of abuse or violence. When we try to create an atmosphere without intimidation and threats of violence, we support free speech; we do not undermine it". Appropriate action must be taken to ensure that online abuse does not have a chilling effect on the ability of marginalised groups, including LGBT+ people, to meaningfully exercise their freedom of expression rights.

**Question 3. Is user-generated content covered adequately by existing law and, if so, is the law adequately enforced? Should 'lawful but harmful' online content also be regulated?**

12. Stonewall understands concerns around the Government's Online Harm proposals<sup>11</sup> that will require some companies to take action to combat activity on their services which is 'lawful but harmful'. Concerns include content moderators being asked to decipher the boundary between content

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<sup>9</sup> <https://www.lawcom.gov.uk/project/hate-crime/>

<sup>10</sup> <https://committees.parliament.uk/oralevidence/1299/pdf/>

<sup>11</sup> <https://www.gov.uk/government/consultations/online-harms-white-paper/outcome/online-harms-white-paper-full-government-response>

that is 'lawful' and 'harmful' and fears that platforms will 'over-delete' beyond this threshold in a cautious attempt to meet their duties (Oral Evidence Session).<sup>12</sup> Stonewall believes that content moderators should receive targeted and comprehensive training to improve confidence on what should and should not be deleted.

13. The online harms regime states that Ofcom will regulate platforms to ensure they enforce their own Terms of Service. We believe that, if this is done well, it will enable platforms to be alive to the nuances and context-specific ways in which marginalised communities experience harm online without impinging upon freedom of expression. A Terms of Service based approach can also be flexible and responsive to a platform's duty of care to its users, and evolve in light of a changing external context around 'lawful but harmful' content.
14. A regulatory approach on 'lawful but harmful' content must also be alive to the hostility that many trans people face online simply for being themselves – including pervasive abuse and misinformation. This is demonstrated in Galop's Online Hate Crime Report (2020)<sup>13</sup> in which a respondent stated: "there are just pages and pages of anti-trans comments on trans related articles saying we should be killed, have mental illnesses, and are paedophiles". Transphobic abuse and misinformation – including instances that meet the criminality threshold as well as those that are 'lawful but harmful'- have the chilling effect of pushing trans people out of online platforms and public discourse. We were encouraged to see that as of this year Ofcom have expanded<sup>14</sup> their definition of hate speech to include transphobia in recognition of the discrimination that many trans people in our society face.
15. The Committee must take note that 'lawful but harmful' activity could include online advertising for 'conversion therapies'. According to the U.N Independent Expert<sup>15</sup> on the protection against violence and discrimination based on sexual orientation and gender identity, conversion therapies "describe interventions of a wide-ranging nature, all of which have in common the belief that a person's sexual orientation or gender identity can and should be changed". Such practices can take many forms - ranging from pseudo-psychological treatments to practices that are religiously based. Despite being deemed by the U.N.<sup>16</sup> 'by their very nature degrading, inhuman and cruel and creat[ing] a significant risk of torture', there is currently no U.K. legislation banning the practice. The Government's National LGBT Survey (2018),<sup>17</sup> which surveyed over 108,000 LGBT people across Britain, found that **seven per cent** of respondents had undergone or been offered conversion therapy, rising to **13 per cent** for trans respondents. Advertisements for conversion practices are present on social

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<sup>12</sup> <https://committees.parliament.uk/event/3024/formal-meeting-oral-evidence-session/>

<sup>13</sup> [http://www.galop.org.uk/wp-content/uploads/Online-Crime-2020\\_0.pdf](http://www.galop.org.uk/wp-content/uploads/Online-Crime-2020_0.pdf)

<sup>14</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-three-crime-disorder-hatred-abuse>

<sup>15</sup> <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/ReportOnConversiontherapy.aspx>

<sup>16</sup> <https://undocs.org/A/HRC/44/53>

<sup>17</sup> <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report>

media platforms. Stonewall is encouraged to see companies such as TikTok take steps<sup>18</sup> to update their policies to remove content which promotes conversion therapy.

### **Question 6. To what extent should users be allowed anonymity online?**

16. Stonewall understands and appreciates the arguments in favour of a regulatory approach that removes anonymity online. However, we would like to highlight to the Committee that this approach may have the unintended consequence of creating barriers for marginalised people to freely access public platforms – specifically if removing anonymity requires individuals to share their formal identity documents.
17. There are various reasons why marginalised individuals may not use their birth name online or may wish to use a pseudonym, as stated<sup>19</sup> by Minister for Digital and Culture - Caroline Dinenage MP:
18. *"Anonymity is important for many vulnerable individuals who want to protect their identity, such as...a victim of domestic abuse who wants to seek support anonymously, a young person or child who is questioning their sexuality and does not want their parents to know, a whistleblower from a range of potential backgrounds, or a journalist from a country where their life could be in danger for sharing their words".*
19. An LGBT+ person may not be 'out' to their family and friends, and anonymity may provide them with the freedom to explore their identity in a way that is safe and comfortable. For example, the School Report (2017)<sup>20</sup> found that **nine in ten** LGBT+ young people felt they could be themselves online. LGBT+ individuals may also occupy unsupportive or hostile living environments, where being 'out' online can compromise their safety and wellbeing. For example, just **two in five** LGBT+ children and young people have an adult at home that they can talk to about being LGBT+ (School Report, 2017).<sup>21</sup> Lastly, many trans individuals do not use the name given on a birth certificate. As of 2018, less than 5000 trans people across the UK possess a gender recognition certificate out of an estimated 200,000 – 500,000 trans people living in the UK (Government Equalities Office, 2018).<sup>22</sup>
20. Any approach that requires individuals to verify their identity to a third party with a birth certificate, or other forms of personal ID, raises significant privacy and security concerns. Furthermore, many LGBT+ people will not have legal documentation of their lived name and gender, even if they wanted to provide them. And finally, other marginalised communities including survivors of domestic abuse, refugees, asylum seekers and whistle-blowers may be endangered by providing identity documents.

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<sup>18</sup> <https://www.politicshome.com/news/article/tiktok-ban-lgbt-conversion-therapy-ban-uk>

<sup>19</sup> <https://hansard.parliament.uk/commons/2021-01-13/debates/8FE512AB-7F60-492E-B213-5A521F01C4C6/OnlineAnonymity>

<sup>20</sup> <https://www.stonewall.org.uk/school-report-2017>

<sup>21</sup> <https://www.stonewall.org.uk/school-report-2017>

<sup>22</sup> <https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004>

21. For many LGBT+ people, as well as vulnerable people more broadly, anonymity is what enables authentic and honest expression and thus their ability to meaningfully exercise their rights to freedom of expression online. Tackling harassment and abuse does not need to occur at the expense of the safety of those most at risk of harm. Stonewall recommends that any regulatory approach impacting anonymity is developed through meaningful consultation with marginalised groups.

*15 January 2021*