

Our Ref: [REDACTED]
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Date: 1 June 2021

Ms Deirdre Hargey MLA
Department for Communities
Causeway Exchange
1-7 Bedford Street
BELFAST
BT2 7EG

Dear Minister

Re: Proposed "Conversion Therapy" ban

We act on behalf of The Christian Institute in Northern Ireland ("The CI").

The CI is a registered charity, established in 1991 for the advancement of the Christian faith. It has 10,762 supporters throughout Northern Ireland, including 950 churches and/or church ministers from across the Christian denominations. The CI and its supporters hold to traditional, mainstream Christian beliefs about marriage, gender and sexual ethics.

The CI has a particular interest in human rights litigation to protect freedom of speech and freedom of thought, conscience and religion. It has secured several significant legal victories involving the right to manifest mainstream religious views about sexual ethics, and the right to privacyⁱ.

We note from *inter alia* a press release published on 20 April 2021ⁱⁱ that your Department has:

"Commenced policy work to inform the drafting of legislation alongside the work we are doing in the LGBTQI+ Strategy. We need to be clear on what it is we are going to ban and also look at what is already in place".

Our client is concerned that the Department's plan to introduce a ban on conversion therapy ("CT") might criminalise the everyday activities of churches and Christians. As such, it has taken advice from leading Counsel, Jason Coppel QC, whose Opinion is enclosed. Counsel was asked to consider several definitions of CT as applied to certain church activities. His conclusions can be found at paragraph 6 of the Opinion. Significantly, he concludes that:

- Articles 8, 9, 10 and 11 ECHR protect: The beliefs of the CI and its supporters regarding sexual ethics and gender identity; the freedom to preach those beliefs and require conformity to them within churches; and the ability of parents to teach those beliefs to their children.
- The definitions of CT enacted in Victoria, Australia, proposed in Canada, or advanced by UK campaigners, *would prohibit* the legitimate expression, teaching and application of these beliefs in a range of common place situations *which do not* involve improper pressure or coercion, or abuse of power, or incitement to hatred.
- If the Department were to use any of these definitions as the basis for the prohibition of CT in Northern Ireland it would be likely to violate the Convention rights of Christians.

In this regard, it is notable that you have indicated that: “*We can provide a rights based approach framed within an International Human Rights framework*”. This is welcomed by our client. Of course, as you will be aware, section 6(1) of the Northern Ireland Act 1998 (“the 1998 Act”) provides that: “*A provision of an Act is not law if it is outside the legislative competence of the Assembly*”. Section 6(2)(c) of the 1998 Act provides that a provision is outside that competence if “*it is incompatible with any of the Convention rights*”. As such, any legislation brought forward by the Department using any of the definitions identified above would be deemed ‘not law’.

In summary, the enclosed legal Opinion demonstrates how a badly drafted CT ban could inadvertently criminalise those in churches and other faith communities who adhere to traditional beliefs about marriage and gender identity and be open to legal challenge.

Should any proposals from the Department infringe upon the everyday church activities outlined within the enclosed Opinion our client will not hesitate, where appropriate, to seek a judicial review.

We therefore seek your assurance that the enclosed advice will be fully taken into account in the drawing up of any legislation. We further request that our client is given advance sight (in confidence) of any draft so that advice can be taken as to whether it is fully ECHR compliant.

We look forward to receiving your reply.

Yours faithfully



Graeme Hamilton
Hewitt & Gilpin Solicitors

CC: Naomi Long, Justice Minister
Robin Swann, Health Minister
Paula Bradley, Chair of the Communities Committee
Paul Givan, Chair of the Justice Committee
Colm Gildernew, Chair of the Health Committee

Enc: Counsel’s Opinion

ⁱ For example, *Christian Institute and Ors, re Judicial Review* [2007] NIQB 66 (11 September 2007); *Smith v Trafford Housing Trust* [2012] EWCH 3221 (CH) (16 November 2012); *The Christian Institute and Ors v The Lord Advocate (Scotland)* [2016] UKSC 51 (28 July 2016); *Lee v Ashers Baking Company Ltd and Ors (Northern Ireland)* (Rev 1) [2018] UKSC 49 (10 October 2018).

ⁱⁱ <https://www.communities-ni.gov.uk/news/conversion-therapy-must-end-hargey>