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By Email: Scottish.ministers@gov.scot

14 February 2022

Dear Cabinet Secretary,

Proposed 'Conversion Therapy' Ban The Christian Institute

We have been instructed by The Christian Institute in relation to the Scottish Ministers stated intention to bring forward legislation to ban 'conversion therapy'.

The Christian Institute and its supporters hold to orthodox Christian beliefs about marriage, gender and sexual ethics. The Christian Institute has an 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 including, of course, the decision in *The Christian Institute and Ors. v The Lord Advocate* [2016] UKSC 51.

The proposed 'conversion therapy' ban is the subject of consultation through Westminster, albeit the Scottish Government has been clear that it intends to introduce its own legislation by the end of 2023 which will end conversion practices as comprehensively as possible within devolved powers. You have also stated that the Scottish Government will explore how legislation can best protect those who need it, while ensuring that freedoms – including freedoms of speech, religion, and belief – are safeguarded.

Our Client's Concerns

'Conversion therapy' is an oft-quoted expression which is given many meanings. Our client's concern is to ensure that when legislation is framed the eventual definition and any application of that definition does not criminalise the everyday activities of churches and Christians. To this end our client has taken advice from Counsel, Jason Coppel QC and Rupert Paines and that legal opinion accompanies this letter. Counsel was asked to consider several definitions of 'conversion therapy' as applied to certain church activities. Their conclusions can be found at paragraph 6 of the opinion. Significantly, they consider that:

1. articles 8, 9, 10 and 11 of the ECHR protect the manifestation of the beliefs of church organisations, including our client and its supporters, regarding sexual ethics and gender identity; the freedom to preach those beliefs and call for conformity to them within churches and the ability of parents to teach those beliefs to their children;
2. the definitions of 'conversion therapy' enacted in Victoria, Australia and as set out in the opinion as proposed in Canada would prohibit the legitimate expression, teaching and application of Christian beliefs in a range of common place situations which do not involve improper pressure or coercion, or abuse of power, or incitement to hatred; and
3. if future legislation was to use any of these definitions as the basis for the prohibition of 'conversion therapy' then that would likely violate the Convention rights of Christians.

Given these conclusions of Counsel, our client is alarmed that the Equality Human Rights and Civil Justice Committee have called for the Scottish Government to follow the State of Victoria model of banning conversion therapy. We note that the First Minister told Parliament on 10 February that the Government will work with the Committee to introduce legislation.

Legislative Competence

You will be aware that under Section 29(2) on the Scotland Act 1998 a legislative provision is deemed to be outside the competence of the Scottish Parliament if it is incompatible with any of the Convention rights.

This matter has already been the subject of considerable debate and that debate is sure to continue. Interest groups will seek to express their views and to influence the shape of the legislation. That of course is part of the democratic process and it is to be encouraged – indeed our client will also be so engaged. That process should not however be regarded as a 'free for all'. It is our client's conviction that from the outset it is the Scottish Government's responsibility to ensure that careful consideration is given to how 'conversion therapy' is to be defined in any future legislation for the definition will need to be weighed against existing protected rights. As mentioned at paragraphs 21 and 22 of the Opinion the Courts have consistently regarded Christian belief and its manifestation as protected by Article 9 and restrictions will generally violate Articles 8, 10 and 11 as well. Convention rights form part of the Scottish constitution and any purported legislation that infringes those rights will be unlawful.

Summary

The legal opinion which accompanies this letter demonstrates how a poorly drafted 'conversion therapy' ban 'law' could criminalise those in churches and other faith communities who adhere to traditional beliefs about marriage and gender identity and would be open to legal challenge.

Our client seeks an assurance that the legal advice we have shared will be carefully considered as the Scottish Government look to bring forward its proposed legislation. Our client would also be grateful for an opportunity to discuss the details of their concerns with officials.

Yours faithfully

A handwritten signature in black ink, appearing to read "S. W. Reynolds". The signature is written in a cursive style with a large initial "S" and "R".

For and on behalf of Lindsays LLP