

**LGB Alliance response to the Call for Evidence of the Joint pre-legislative
scrutiny Committee on the Draft Online Safety Bill
16 Sep 2021**

LGB Alliance welcomes the opportunity to respond to the Committee's call for evidence on the Draft Online Safety Bill and hope this submission is of interest. If you have any questions regarding our response, please contact kate.harris@lgballiance.org.uk

LGB Alliance is a group that represents the interests of a rapidly growing number of lesbian, gay and bisexual people. We represent thousands of LGB people who have grave concerns about the loss of our rights, specifically in relation to moves to replace, in law and elsewhere, the category of 'sex' with 'gender identity', 'gender expression' or 'sex characteristics'.

We are long-time gay and lesbian activists who fought for the rights of people with a same-sex sexual orientation. These hard-won rights are now under serious threat.

Summary of our main concerns

Our main areas of interest are the human rights of LGB people, fact-based education of children and young people and the creation of a positive environment for all "gender non-conforming" people in the UK. LGB Alliance believes that "gender identity theory" reinforces outdated and regressive stereotypes. We would like to see a world where any boy or girl, man or woman, can dress and be whoever they would like to be as long as they respect the rights of others. Specifically, this includes challenging the notion that everyone has a gender identity, which must take precedence over biological sex.

Detailed comments

We provide below a number of comments in response to some of the specific questions set out in the Committee's call for evidence.

Objectives

Will the proposed legislation effectively deliver the policy aim of making the UK the safest place to be online?

No, we believe that the proposed legislation has several fundamental flaws. Too much power is put in the hands of the service providers to define the thresholds for what is considered 'harmful'. Based on our experience of how some of these organisations police legal content today, we believe the bill as drafted would lead to even more stringent limits on content and a further stifling of debate.

In the area in which our charity operates, definitions of 'harm' are unclear and often applied in a way that is not consistent with the legal understanding of terms. For example, terms like "transphobia" are used to shut down debate around legitimate concern stemming from gender ideology. Without clear definitions an open debate of proposed legislation on these topics cannot take place online. This leads to opportunities being missed to raise issues, for example around safeguarding – as demonstrated by the recent employment tribunal case involving the Tavistock & Portland Trust – [Gender identity clinic whistleblower wins damages for 'vilification' | News | The Sunday Times \(thetimes.co.uk\)](https://www.thetimes.co.uk/article/gender-identity-clinic-whistleblower-wins-damages-for-vilification).

Will the proposed legislation help to deliver the policy aim of using digital technologies and services to support the UK's economic growth? Will it support a more inclusive, competitive, and innovative future digital economy?

We see serious risks to inclusivity in general from the potential for the legislation to lead to service providers excluding users based on a definition of 'harmful' that is incompatible with UK equality legislation. We would imagine that this would translate into similar exclusions from the "future digital economy" for those affected.

UK social and political discourse is increasingly conducted on large foreign-owned social media platforms such as Facebook and Twitter. These online platforms now act, effectively, as the public square where political ideas are discussed, individuals' views are aired and potential unintended consequences of proposed changes in the law are raised and examined. As more Government departments, public bodies, political parties, politicians and journalists use these platforms to communicate, it becomes ever more important that everyone has access to join the debate. The mainly non-UK owned providers of these platforms have significant power to shape and direct discussions that form part of our democratic processes.

This is already an issue currently – we have seen countless examples of their algorithmic processes banning users for expressing views that are perfectly legal to express. A case in point is the discussion on proposed changes to the Gender Recognition Act and their potential implications and related court cases that are in the news. This discussion is part of the basic democratic process. Unacceptably, through the actions of the Twitter corporation, women (and disproportionately lesbians) are already today being excluded from this process having lost access to the digital public square where these potential future changes in laws affecting their rights are being discussed. The recent Maya Forstater case ([No further appeal on the Forstater judgment | Feature | Law Gazette](#)) established that the absence of belief in gender ideology is protected under the UK Equality Act (2010). It is therefore unacceptable for UK users of Twitter and Facebook to be thrown off the digital public square through the implementation of guidelines and enforcement policies designed in California by gender ideology supporting technology giants. We fear that this would only get worse under the proposed 'duty of care' requirements on service providers under the draft bill.

Are children effectively protected from harmful activity and content under the measures proposed in the draft Bill?

No, shutting down of voices challenging the gender transition narrative means that the only voices that children hear are those championing gender ideology. This can lead to appalling outcomes with large numbers of "gender non-conforming" children left with lifelong negative effects from medical interventions. Studies suggest that at least 80% of children desist if left alone (many of these children are LGB). See the linked review of the evidence surrounding the treatment of gender dysphoric children ([Current Evidence - Transgender Trend](#)).

Does the draft Bill make adequate provisions for people who are more likely to experience harm online or who may be more vulnerable to exploitation?

No – the draft Bill does not uphold UK equality law or protect the increasing number of people – disproportionately women / lesbians – who are being banned from Twitter for expressing legitimate views regarding a lack of belief in gender identity theory (as outlined above with reference to the Forstater case). This amounts to potential indirect discrimination which the bill as drafted would only exacerbate. The bill needs to take this into account and put into place measures to ensure that companies do not close down debate or break UK equality law in their attempts to avoid potential

ines. One way to mitigate this would be to set a robust requirement on service providers to operate a quick and effective appeals process to ensure that those whose banning is inconsistent with UK equality law get full access restored.

Is the “duty of care” approach in the draft Bill effective?

The “duty of care” approach is unproven in the context of online safety. We understand that the bill would be the first application of this approach outside the domain of health and safety.

Does the Bill deliver the intention to focus on systems and processes rather than content, and is this an effective approach for moderating content? What role do you see for e.g. safety by design, algorithmic recommendations, minimum standards, default settings?

We believe the draft bill does deliver on the intention to focus on systems and processes, but in doing so fails to provide definitions for key terms (“harm”, etc.). This effectively outsources the definition of legitimate content to the organisations subject to the ‘duty of care’ and does not obviously provide the regulator with the tools to enforce those definitions. This is fraught with difficulty.

We would expect the Government or EHRC to have to be on standby to take legal action against discriminatory algorithmic interventions. Algorithms are subject to the bias of those who develop them and depend on definitions. In many areas terms used (see above) are not legally / clearly defined. The use of such undefined terms in algorithms which determine people’s access to online democracy and whistleblowing could result in the exclusion of groups of people who are best placed to draw attention to unintended consequences and highlight these in the debate on proposed legislation and policy.

How does the draft Bill differ to online safety legislation in other countries (e.g. Australia, Canada, Germany, Ireland, and the EU Digital Services Act) and what lessons can be learnt?

No comment

Does the proposed legislation represent a threat to freedom of expression, or are the protections for freedom of expression provided in the draft Bill sufficient?

Yes, the proposed legislation represents a threat – the provisions in the draft bill are insufficient. Freedom of expression cannot be protected without clear definitions. Likewise, a real danger is posed by the fact that all online speech can be controlled by algorithms developed by people with biases – conscious or unconscious. See answers set out above.

Content in Scope

The draft Bill specifically includes CSEA and terrorism content and activity as priority illegal content. Are there other types of illegal content that could or should be prioritised in the Bill?

There is an urgent need to classify videos and online postings encouraging self-harm as illegal content. This should include medical professionals promoting unnecessary drugs or surgery for young people. There has been an unexplained leap in the number of young people who believe that

they have been born in the wrong body. Two thirds of referrals to the Tavistock Clinic in London are girls who have been encouraged to believe that they are really boys – and that it is helpful to have puberty blocking drugs and double mastectomies. LGB Alliance believes that boys and girls should be allowed to develop, go through normal puberty, and avoid unnecessary elective surgery or hormone treatment. Online content promoting anorexia, or any other harmful practice would be banned. We recommend that this should also apply to optional medical treatments with irreversible consequences. Drug dealing on the internet is already illegal – so any sites selling puberty blockers and hormones should also be banned.

The draft Bill specifically places a duty on providers to protect democratic content, and content of journalistic importance. What is your view of these measures and their likely effectiveness?

Social media is increasingly replacing mainstream media as sources of news. If restrictions are too draconian this will mean that people's primary news sources are strongly influenced by social media companies (often based abroad) which may not be impartial either by design or unconscious bias. Not having a truly free press means that certain perspectives will be off-limits for discussion. A possible consequence of this is voices and viewpoints drawing attention to unintended consequences leading to harms are more likely to be silenced. See the judgement in the Sonia Appleby employment tribunal – [Gender identity clinic whistleblower wins damages for 'vilification' | News | The Sunday Times \(thetimes.co.uk\)](#)

Earlier proposals included content such as misinformation/disinformation that could lead to societal harm in scope of the Bill. These types of content have since been removed. What do you think of this decision?

Certain categories of misinformation/disinformation content should potentially be included in the scope of the bill, e.g. the affirmation approach to children with gender dysphoria. On social media, proponents of this approach use false suicide statistics and constantly omit drawbacks of early treatment and thereby present an incomplete picture to children and young people. We cannot allow a situation where those raising concerns about this pathway are being shut out of the debate and young people continuing to go down this pathway without full knowledge of the irreversible consequences of their decisions and actions and lifelong medical harms.

Are there any types of content omitted from the scope of the Bill that you consider significant e.g. commercial pornography or the promotion of financial scams? How should they be covered if so?

See above regarding the affirmative approach to the treatment of children with gender dysphoria.

What would be a suitable threshold for significant physical or psychological harm, and what would be a suitable way for service providers to determine whether this threshold had been met?

This just highlights the difficulties with this bill!

Without clear definitions – starting with 'harm' and even 'illegal' – and freedom to discuss all aspects of emerging issues, the potential consequences are not able to be raised / discussed and thus thwart the prevention of future harms.

Are the definitions in the draft Bill suitable for service providers to accurately identify and reduce the presence of legal but harmful content, whilst preserving the presence of legitimate content?

No – see all answers above!

Services in Scope

The draft Bill applies to providers of user-to-user services and search services. Will this achieve the Government's policy aims? Should other types of services be included in the scope of the Bill?

No

The draft Bill sets a threshold for services to be designated as 'Category 1' services. What threshold would be suitable for this?

N/a

Are the distinctions between categories of services appropriate, and do they reliably reflect their ability to cause harm?

N/a

Will the regulatory approach in the Bill affect competition between different sizes and types of services?

N/a

Algorithms and user agency

What role do algorithms currently play in influencing the presence of certain types of content online and how it is disseminated? What role might they play in reducing the presence of illegal and/or harmful content?

We suspect that algorithms already play a huge part currently – e.g. Twitter and Facebook are banning users or restricting services to users based on content – it is already happening; algorithms appear to be used, whether these are unconscious biases or conscious due to an inclination of these companies to promote a certain ideology.

As set out in previous answers, the UK is essentially leaving access to parts of our democracy in the hands of foreign-owned technology companies and their algorithms. While this may well reduce the presence of illegal / 'harmful' content, it will only exacerbate the suppression of debate which would lead to blind spots in the consideration of potential online harms and thereby directly counteracting the purpose of the bill.

We have concerns that this is already potentially breaching UK Equality Act – services being denied disproportionately to certain groups with protected characteristics, e.g. women and lesbians, laying online companies open to claims of indirect discrimination.

Are there any foreseeable problems that could arise if service providers increased their use of algorithms to fulfil their safety duties? How might the draft Bill address them?

See above

A robust rapid and easy to use appeal process for those excluded; based on clear legal definitions and adherence to UK equality law, e.g. not allowing indirect discrimination etc. as we are seeing today with women and in particular lesbians being banned from Twitter and Facebook.

Does the draft Bill give sufficient consideration to the role of user agency in promoting online safety?

N/a

The role of Ofcom

Is Ofcom suitable for and capable of undertaking the role proposed for it in the draft Bill?

We have concerns – if a body is to have such a fundamental role in determining, effectively, free speech in this country, it will become a target to be influenced by groups who wish to promote particular ideologies. No organisation is immune from this, e.g. child safeguarding was compromised due to ideology at the Tavistock (see link above) and EHRC recently determined that all staff had to undertake impartiality training to protect against this ([Equality regulator's staff given 'impartiality training' as part of overhaul \(telegraph.co.uk\)](#)). The bill would need to address this and propose enhanced measures, e.g. for the Committee on Standards in Public Life to provide effective scrutiny of the body.

Are Ofcom's powers under the Bill proportionate, whilst remaining sufficient to allow it to carry out its regulatory role? Does Ofcom have sufficient resources to support these powers?

N/a

How will Ofcom interact with the police in relation to illegal content, and do the police have the necessary resources (including knowledge and skills) for enforcement online?

N/a

Are there systems in place to promote, transparency, accountability, and independence of the independent regulator?

N/a

How much influence will a) Parliament and b) The Secretary of State have on Ofcom, and is this appropriate?

N/a

Does the draft Bill make appropriate provisions for the relationship between Ofcom and Parliament? Is the status given to the Codes of Practice and minimum standards required under the draft Bill and are the provisions for scrutiny of these appropriate?

N/a

Are the media literacy duties given to Ofcom in the draft Bill sufficient?

N/a