



Dublin Lesbian Line



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Submission from the Dublin Lesbian Line to the Department of Justice and Equality on the Review of the Prohibition of Incitement to Hatred Act 1989 – Consultation on Hate Speech

12/12/2019

The Dublin Lesbian Line (DLL) is making a submission as stakeholders to this consultation process. DLL is a confidential support helpline operated by highly trained volunteers, all of whom identify as female and somewhere along the LGBTQIA+ (lesbian, gay, bisexual, transgender, queer, intersex, asexual) spectrum. Established in 1979 DLL is now 40 years old. DLL was Ireland's first LGBT female helpline and is the third oldest LGBT helpline in the world. DLL is dedicated to providing a supportive, confidential, non-judgmental helpline to all members of the LGBTQIA+ community across Ireland, both over the phone and online. DLL also offers wellness workshops to those in need of peer support, connection and acceptance. DLL is a registered charity in Ireland (CHY12256).

The submission below is informed by the issues and experiences of the LGBTQIA+ people who contact us. The recommendations outlined below are deeply rooted in the knowledge and experience of our volunteers working to support LGBTQIA+ people across the country.

Q1) Are there other groups in society with shared identity characteristics, for example disability, gender identity, or others, who are vulnerable to having hatred stirred up against them and should be included in the list of protected characteristics?

People with disabilities and people of different gender expressions (non-binary, transgender, intersex, queer individuals) should be included in the protected characteristics as both these two groups are extremely vulnerable to hate speech and hate crimes. It is important to note that many people who identify as transgender, non-binary and/or queer also may identify as gay, lesbian, bisexual etc. Therefore both gender identity and sexual identity are important parts of a person's identity and can impact how they are treated by society. We also know that there are many LGBTQIA+ people with disabilities and of different ethnicities who experience intersecting harassment and 'hatred'. What we have learned from our callers is that their intersecting identities and how they express themselves in public can put them in danger and at risk of harassment, sexual harassment and violence.

From listening to those who contact DLL we know that homophobia and transphobia are still prevalent despite the legalisation of same sex marriage in 2015 and the passing of the Gender Recognition Act. For example, there has been a growing rhetoric in the U.K. against transgender people¹, through the establishment of groups like LGB Alliance² which, through the influence of social media has begun to trickle into Irish society³.

In 2017, the Transgender Equality Network Ireland published their STAD⁴ (Stop Transphobia and Discrimination) report which detailed 62 hate crimes against trans people in both the Republic and Northern Ireland between 2014-2016. These ranged from assault causing harm and threats to kill, to sexual harassment.

In June 2019 DLL carried out a research project entitled Empowering Change⁵ on the sexual harassment of LGBTQIA+ women*⁶. 267 people completed the survey. Of those who participated:

- 77% of those who had experienced unwanted sexual attention and/or sexual harassment unsafe or uncomfortable.
- 71.5% said “I felt uncomfortable or unsafe holding hands with an LGBTQIA+ partner because of the reactions we get.”
- 47% said “I felt uncomfortable or unsafe dressing a certain way to express my gender identity.”
- 37.5% said “I felt uncomfortable or unsafe because of the reactions I get from being an identifiably queer or butch woman*”

A large amount of respondents reported modifying their behaviour to avoid harassment. Others talked about how they have purposefully not come out or expressed their identities publicly because they are afraid, having seen how other LGBTQIA+ Women* are spoken to/about and treated. These modifying behaviours include:

- Not holding hands or expressing affection with a partner in public
- Not disclosing to taxi drivers if they have been in an LGBTQIA+ space
- Not coming out in work
- Changing how they dress or present their identities
- Avoiding certain places because of previous experiences of harassment relating to LGBTQIA+ identity.

When asked for solutions to LGBTQIA+ harassment participants stated the following:

- 79% suggested “Specific Hate Crime legislation and education for the Gardai on specific issues LGBTQIA+ Women* face”

¹ Marsh, S. Mohdin, A. McIntyre, N (2019) *Homophobic and transphobic hate crimes surge in England and Wales* [Online] [link removed]

² Kenny, O (2019) *New LGB Alliance slammed for being anti-trans* [Online] [link removed]

³ Milton, J (2019) *Teen interrupts Transgender Day of Remembrance vigil with vile transphobia and violent threats* [link removed]

⁴ TENI (2014) *STAD: Stop Transphobia and Discrimination Report*. Available at: [link removed]

⁵ Dublin Lesbian Line (2019) *Empowering Change: Recognising and Challenging Sexual Harassment of LGBTQIA+ Women**. Available at: [link removed]

⁶ LGBTQIA+ Women* refers to all LGBTQIA+ (lesbian, gay, bisexual, transgender, queer, intersex, asexual) people who identify as female, or people who align with female spaces and identities. DLL carried out 3 focus groups from which a survey was developed. The survey was designed to gather the experiences of LGBTQIA+ Women*, and was inclusive of non-binary, female-aligned people, and those who do not necessarily identify as female but who have been perceived as female and received sexual harassment as a result of this.

- 83% said “More visibility of LGBTQIA+ identities so that our experiences becomes normalised rather than sexualised.”
- 65% said “Consent awareness that show the diversity of people's experiences and identities for non-LGBTQIA+ people.”

This anti-trans and homophobic rhetoric is also becoming apparent in schools. A recently published report from *BelongTo Youth Service*⁷ on the experiences of LGBT young people found that homophobic and transphobic bullying, and hate speech are widespread in schools stating that:

- 68% of LGBTI+ students hear homophobic remarks from other students, with these comments bothering and distressing over 50% of LGBTI+ students.
- Nearly 50% of LGBTI+ students hear negative remarks about trans people.
- 48% of LGBTI+ students reported hearing a homophobic remark from a teacher or staff member. 55% of LGBTI+ students reported hearing a transphobic remark from a teacher or staff member.
- 77% of LGBTI+ students are verbally harassed (e.g. name calling or being threatened) based on their sexual orientation, gender, gender expression or ethnic origin.
- 38% of LGBTI+ students are physically harassed (e.g. being shoved or pushed), 25% because of their sexual orientation and 18% based on gender expression.
- 11% of LGBTI+ students are physically assaulted (e.g. punched, kicked or injured with a weapon) because of their sexual orientation, 8% because of their gender expression.
- 43% of LGBTI+ students are sexually harassed (e.g. unwanted touching or sexual remarks).
- 39% of LGBTI+ students experience cyberbullying via social media, telephone and email over the past year.

These experiences have left LGBT young people feeling left out, isolated, and victimised, reflecting the experiences of many callers to the DLL helpline. These feelings of isolation and victimisation can lead to mental health difficulties such as anxiety, depression and suicidal ideation. While LGBTQIA+ people are not inherently any more prone to mental health problems than other groups in society, coping with the effects of the prejudice, discrimination and bias can be detrimental to LGBTQIA+ people’s mental health.

Q2) Do you think the term “hatred” is the correct term to use in the Act? If not what should it be replaced with? Would there be implications for freedom of expression?

The term ‘hatred’ in the current Act refers to hatred against a **group** of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation. This is insufficient as we know from our callers and from our research project that many **individuals** who identify as LGBTQIA+ experience ‘hatred’ (threats, intimidation and/or attacks both in person and online) due to prejudice and bias on the basis of being a member of a group with common characteristics. The ‘hatred’ incited against them may not be committed with the aim of inciting or stirring up hatred against a whole group of people, but instead often simply occurs because of biases and prejudices the

⁷BelongTo (2019) *BelongTo Youth Services: The 2019 School Climate Survey*. Available at: [link removed]

perpetrator has against a certain group of people. Therefore the use of the term 'hatred' should be replaced with 'prejudice-motivated'.

Q3) Bearing in mind that the Act is designed only to deal with hate speech which is sufficiently serious to be dealt with as a criminal matter (rather than by other measures), do you think the wording of the Act should be changed to make prosecutions under for incitement to hatred online more effective? What, in your view, should those changes be?

Online hate speech can lead to the discrimination, bias and 'incite hatred' of LGBTQIA+ people. Online harassment of LGBTQIA+ people online is prevalent and can be incredibly damaging. Of those who completed the DLL survey 83% had seen or experienced unwanted sexual attention relating to LGBTQIA+ identities online, with the majorities having witnessed homophobic, transphobic and biphobic comments and posts. Online hate speech has offline consequences and should be treated as such. For example in April 2019, Glitter Hole's *Drag Storytime* event was cancelled⁸ by Dún Laoghaire–Rathdown County Council, initially claiming it was "not age-appropriate", and later claiming it was due to the high level of homophobic abuse on social media.

DLL agrees with the UN Special Rapporteur Special Rapporteur on the promotion and protection of the freedom of opinion and expression who made the following recommendations for States dealing with online hate speech⁹:

"57. State approaches to online hate speech should begin with two premises. First, human rights protections in an offline context must also apply to online speech. There should be no special category of online hate speech for which the penalties are higher than for offline hate speech. Second, Governments should not demand – through legal or extralegal threats – that intermediaries take action that international human rights law would bar States from taking directly. In keeping with these foundations, and with reference to the rules outlined above, States should at a minimum do the following in addressing online hate speech:

(a) Strictly define the terms in their laws that constitute prohibited content under article 20 (2) of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and resist criminalising such speech except in the gravest situations, such as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and adopt the interpretations of human rights law contained in the Rabat Plan of Action;

(b) Review existing laws or develop legislation on hate speech to meet the requirements of legality, necessity and proportionality, and legitimacy, and subject such rule-making to robust public participation;

(c) Actively consider and deploy good governance measures, including those recommended in Human Rights Council resolution 16/18 and the Rabat Plan of Action, to tackle hate speech with the aim of reducing the perceived need for bans on expression;

⁸ McGarry, Patsy (2019). [\[link removed\] The Irish Times.](#)

⁹ UN General Assembly (2019) *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. Available at: [\[link removed\]](#)

(d) Adopt or review intermediary liability rules to adhere strictly to human rights standards and do not demand that companies restrict expression that the States would be unable to do directly, through legislation;

(e) Establish or strengthen independent judicial mechanisms to ensure that individuals may have access to justice and remedies when suffering cognizable harms relating to article 20 (2) of the Covenant or article 4 of the Convention;

(f) Adopt laws that require companies to describe in detail and in public how they define hate speech and enforce their rules against it, and to create databases of actions taken against hate speech by the companies, and to otherwise encourage companies to respect human rights standards in their own rules;

(g) Actively engage in international processes designed as learning forums for addressing hate speech.”

Q4) In your view, does the requirement that an offence must be intended or likely to stir up hatred make the legislation less effective?

Yes, these terms are too vague and not sufficiently accurate and therefore make the legislation less effective.

Q 5) If so, what changes would you suggest to this element of the 1989 Act (without broadening the scope of the Act beyond incitement)?

We suggest that the name of the Act be changed to ‘Prohibition of Incitement to Prejudice-Motivated Crime Act’ and to change this element of the Act to reflect the basis of bias and prejudice in the crimes committed.

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