

## **4** How could OECD countries better include LGBTI people, beyond passing LGBTI-inclusive laws?

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This chapter presents the broader policy measures that should accompany the LGBTI-inclusive laws defined and analysed in Chapters 2 and 3 in order to strengthen the inclusion of LGBTI people. Based on a detailed analysis of ongoing national action plans, this chapter identifies the following four key policies – and illustrates how to implement them through a wide range of best practice examples: (i) collecting information on sexual orientation, gender identity and sex characteristics; (ii) enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people; (iii) fostering a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields; and (iv) creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

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Passing the set of LGBTI-inclusive laws defined and analysed in Chapters 2 and 3 should come along significant efforts to make LGBTI individuals and the penalties they face visible in national statistics (OECD, 2019<sup>[1]</sup>). Absent thoughtful data collection on sexual orientation, gender identity and sex characteristics, policy makers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. Although they still constitute a minority, an increasing number of OECD countries are introducing questions in their nationally representative surveys to identify sexual and gender minorities. They constitute helpful precedents in order to disseminate good practices on how to best implement this data collection (Box 4.1).

#### **Box 4.1. Good practices about collecting representative data on sexual orientation, gender identity or sex characteristics**

Collecting information on sexual orientation, gender identity and sex characteristics in censuses as well as national labour force, health and victimisation surveys is critical to improve awareness on the penalty that LGBTI individuals face and, hence, guide policy makers.

No census in OECD countries has ever asked questions on sexual orientation and/or gender identity to identify LGB and transgender people, and representative data on individuals' intersex status are absent. Yet, as of 2018, some countries have included a question allowing respondents to self-define their sexual orientation<sup>1</sup> and gender identity<sup>2</sup> (15 and 3, respectively), in at least one of their nationally representative surveys conducted by national statistical offices or other public institutions (OECD, 2019<sup>[1]</sup>). Moreover, improving data collection to identify trends and patterns of stigmatisation, discrimination and violence against LGBTI individuals is a key objective of 10 of the 13 ongoing nationwide action plans devoted to creating an inclusive environment for sexual and gender minorities in OECD countries. In particular, subject to Parliamentary approval, Great Britain (England, Scotland and Wales) should become the first OECD region in 2021 to include both a question on sexual orientation and a question on gender identity in its censuses.

Collecting data on LGBTI persons typically necessitates complying with strict regulation. For instance, according to Article 9 of the General Data Protection Regulation (EU) 2016/679 (GDPR) the processing of personal data revealing characteristics such as sexual orientation is prohibited unless the data subject has given explicit consent to the processing of those personal data (European Commission, 2018<sup>[2]</sup>).<sup>3</sup> Even when explicit consent is not required as it is the case in the United States, the respondent is always entitled to refuse to answer questions perceived as sensitive, as are questions on sexual orientation, gender identity and sex characteristics.

The main challenge therefore consists in ensuring the representativeness of the data collected, which necessitates not only that individuals accept to disclose their characteristics but also that they provide accurate information when they do (OHCHR, 2018<sup>[3]</sup>; UNHRC, 2019<sup>[4]</sup>).

In preparation of the 2021 census in the United Kingdom, the Office for National Statistics ran in 2019 a census rehearsal that provides enlightening guidance to increase public acceptability of questions on sexual orientation and gender identity (Office for National Statistics, 2019<sup>[5]</sup>):

- The 2021 census will be a “digital-first” census<sup>4</sup> which means that people will be encouraged to fill the census online and on their own: this approach is conducive to accurate disclosure of sexual orientation and gender identity. Indeed, underreporting of these characteristics is lower when the survey is completed by the respondent in the framework of a self-administered module than when it is completed by the interviewer, for instance in a face-to-face or telephone interview (OECD, 2019<sup>[1]</sup>).
- In previous tests of the 2021 census (Office for National Statistics, 2018<sup>[6]</sup>), some members of the public did not answer the question on sexual orientation and/or gender identity because they did not understand why the information was needed. The guidance associated to each of these

questions was therefore revised in the 2019 census rehearsal to better explain the reasons for asking these questions. For instance, the justification given for the sexual orientation question reads as follows: “Why we ask this question: Your answers help your local community by allowing charities, organisations, and local and central government to understand what services people might need. This information is used to monitor equality between groups of people of different sexual orientations. Equality monitoring helps make sure that everyone is treated fairly.”

- Previous tests of the 2021 census also emphasised the need to reiterate messages about the confidentiality of interviewees’ responses. The 2019 census rehearsal therefore addresses worries about privacy, including within households. In this latter case, concern arises because the census form is typically completed by the head of household, which means that LGBT teenagers or young adults still living at home, for instance, would have to be ‘out’ to their parents in order to be counted as such. For people who would prefer to keep their answers private from other people in their household, the 2019 census rehearsal provides them with the option to ask for a personal form.

Useful guidance can also be found from census experience of ethnic and racial minorities (Balestra and Fleischer, 2018<sup>[7]</sup>). When advocacy groups succeeded in getting the US census to count the Hispanic population starting in 1980, community leaders subsequently worked with the Census Bureau to inform people about the importance of being counted as Hispanic and to build trust in the census process. As and when questions on sexual orientation and gender identity are added to censuses, statistical agencies need to continue to engage with organisations representing LGBT people to ensure that privacy concerns are fully addressed, and that solutions to these privacy issues are properly communicated to LGBT communities, who can then have greater confidence in being counted (Cooley, 2019<sup>[8]</sup>).

<sup>1</sup> These countries are Australia, Canada, Chile, Denmark, France, Germany, Iceland, Ireland, Italy, Mexico, New Zealand, Norway, Sweden, the United Kingdom and the United States.

<sup>2</sup> These countries are Chile, Denmark and the United States.

<sup>3</sup> This restriction explains that the mention “This question is voluntary, so you can leave it blank if you prefer” often precedes the sexual orientation question in nationally representative surveys.

<sup>4</sup> See <https://census.gov.uk/about-the-census/about-census-2021/>.

OECD countries can take several additional actions to achieve progress and exhibit leadership in the realm of LGBTI inclusion. As of 30 June 2019, one third of OECD countries (13) had adopted a nationwide action plan devoted to creating an inclusive environment for sexual and gender minorities. An analysis of these plans reported in Annex 4.A reveals three essential sets of policy measures complementing LGBTI-inclusive laws in order to strengthen the integration of LGBTI people, including those of indigenous and ethnic minority background (Box 4.2).

For each of these key action areas, Chapter 4 presents a wide range of good practices implemented in OECD countries and/or promoted by international, regional and national human rights stakeholders. Section 4.1 focuses on enforcement mechanisms to make LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws truly effective, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people. Section 4.2 concentrates on policies that aim to foster a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields (e.g. through developing standards to showcase employers’ implementation of LGBTI-inclusive workplace equality policies). Section 4.3 highlights complementary measures in order to create and maintain popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

#### **Box 4.2. Taking LGBTI people of indigenous and ethnic minority background on board: the case of Norway national action plans**

Several national LGBTI action plans seek to enhance outreach to LGBTI persons of indigenous and ethnic minority background who are subject to multi-faceted drivers of discrimination. The risk of letting these populations behind if no specific action is taken is indeed high given that these people typically face geographic, linguistic and/or cultural barriers that hinder their access to mainstream policies.

For instance, numerous actions by the Norwegian Government aim to improve outcomes for LGBT persons in the Sami population, an indigenous people recognised as a national minority in Norway. The government's 2009-12 action plan included measures to conduct a survey on the circumstances of life and living conditions of LGBT persons in the Sami population to be culminated in proposals to improve the socio-economic situation and prevent discrimination of these groups (The Norwegian Government's action plan, 2009<sup>[9]</sup>). Moreover, the government's 2017-20 LGBT action plan commits (i) that any documents and tools developed as a result of the plan are available in Sami language and (ii) that authorities initiate a collaboration with the Sami Parliament and Sami institutions for the purpose of continuing and developing actions to assist LGBTI persons of Sami background (The Norwegian Government's action plan, 2017<sup>[10]</sup>).

The Norwegian Directorate of Integration and Diversity is also involved in addressing the special challenges faced by LGBTI refugees during resettlement, notably due to the hostility that some of their countrymen/women may express against them. In particular, the Directorate plans to include more information on LGBTI inclusion into the introductory programme that refugees and their families who have been granted a residence permit in Norway have to complete.

### **4.1. Enforcing LGBTI-inclusive anti-discrimination, hate crime/hate speech and asylum laws**

Prohibiting discrimination on the grounds of actual or perceived sexual orientation, gender identity, and sex characteristics is an essential protection to ensure the human rights of LGBTI persons, as is the passage of LGBTI-inclusive hate crime/hate speech and asylum laws. However, true effectiveness can only be achieved through sound enforcement mechanisms.

#### **4.1.1. Enforcing LGBTI-inclusive anti-discrimination laws**

Passing antidiscrimination laws based on sexual orientation, gender identity or sex characteristics is not sufficient to protect sexual and gender minorities against discrimination. One must also ensure that the threat of sanction entrenched in these laws is credible. This objective entails that individuals report the discrimination they undergo, i.e. that they file a discrimination claim if possible well-documented enough to trigger reparation from their discriminator, either through a settlement agreement or following a court case.

Yet, non-reporting is the default response of people facing discrimination, irrespective of the protected ground considered (Equinet, 2012<sup>[11]</sup>). For instance, while more than one third (38%)<sup>1</sup> of LGBT individuals in the EU affirmed in 2012 having personally felt discriminated against because of being L, G, B or T in the 12 months prior to the survey, only 10% declared that they (or anyone else) reported this incident of discrimination (European Union Agency for Fundamental Rights, 2014<sup>[12]</sup>). Unfortunately, the situation is not improving: the share of LGBTI individuals in the EU who stress having been discriminated against because of their sexual orientation, gender identity or sex characteristics in the past 12 months reaches

41%<sup>2</sup> in 2019, while the proportion who reported this incident (11%) has remained virtually unchanged compared to 2012 (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>).

Making LGBTI-inclusive antidiscrimination laws truly effective therefore entails combating under-reporting of discrimination. This objective requires that the mandate of the national equality body, ombudsman or human rights commission not only explicitly covers equal treatment of LGBTI people but that the national human rights institution also actively engages in a specific set of actions to encourage LGBTI people to report the discrimination they face (Equinet, 2012<sup>[11]</sup>; 2013<sup>[14]</sup>; UNDP, 2016<sup>[15]</sup>; ECRI and Council of Europe, 2017<sup>[16]</sup>).

### *Reasons behind under-reporting of discrimination*

When asked why they did not report the last incident of discrimination that occurred to them, EU-based LGBTI respondents provide reasons that largely echo the broad justifications for under-reporting given by other populations at risk of discrimination (Equinet, 2012<sup>[11]</sup>). These reasons can be grouped into three categories (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>): (i) lack of information that the law prohibits discrimination based on sexual orientation, gender identity and/or sex characteristics, and that a national human rights institution is in charge of implementing this equal treatment legislation – such knowledge gap makes people feel their case “would not have been taken seriously” had they reported it, a reason for remaining silent given by 22% of LGBTI respondents across the EU; (ii) lack of information on how to file a discrimination claim well-documented enough to trigger reparation – such knowledge gap makes people feel “nothing would happen or change” if they report their case, a reason for remaining silent given by 41% of LGBTI respondents; (iii) reluctance to personally file complaints of discrimination due to several causes: because it would reveal one’s sexual orientation, gender identity or sex characteristics to people dealing with the complaints (22% of LGBTI respondents), because this is time consuming (33%), or because of fear of intimidation by perpetrators (9%).

### *Guidance on combating under-reporting of discrimination*

National human rights institutions have an important role to play to overcome each of the barriers to reporting discrimination incidents, by maintaining well-designed interactive websites allowing users to actively engage with their content (Box 4.3). First, these websites should deliver clear information about the grounds and fields that are protected by antidiscrimination laws.

Second, these websites should provide users (people who believe they have been discriminated against as well as their advisors such as staff representatives, trade unions or lawyers) with concrete guidance on how to compile the discrimination case, based on real examples taken from previous successful discrimination complaints, i.e. complaints that allowed the complainant to obtain reparation. It is important that such guidance and examples be specific to the ground and field considered by the user since the evidence needed to prove discrimination varies by type of discrimination. For instance, it is more difficult to prove hiring than wage discrimination simply because collecting information on similar others and comparing oneself to them is more feasible when these others are colleagues rather than competing job candidates. National human rights institutions should therefore equip individuals to address these hard cases based on a comprehensive review of successful legal precedents that could be conveyed through online learning modules. This empowerment will not only benefit the complainant, but also reduce the risk that laws prohibiting discrimination in employment be counterproductive. Indeed, these laws raise the costs of terminating protected workers because they create an incentive to claim dismissal is unfair (even if it is not) in order to get compensation. If this rise occurs without a parallel increase in the risk of retaliation against employers who discriminate at the recruitment stage, then antidiscrimination laws in employment could unintentionally reduce hiring of protected groups (Bloch, 1994<sup>[17]</sup>).<sup>3</sup> Of course, the guidance provided by the national human rights institution’s website should be complemented by the possibility for users to, in a free and confidential way: (i) ask for advice either by phone or through an online form; (ii) submit a discrimination complaint that

the national human rights institution will provide assistance to if it is substantiated enough, for instance by representing the complainant before institutions, adjudicatory bodies, and the courts.

Third, individuals who are reluctant to personally sue their discriminators (because they do not want to disclose their sexual orientation, gender identity or sex characteristics, because it is time consuming, or because of fear of intimidation by perpetrators, etc.) should nevertheless be strongly encouraged to submit a discrimination claim. This submission should not necessitate sharing any personal information but still allow the national human rights institution to contact the complainant (for instance through an anonymous email address) to permit certifying the authenticity of the complaint and therefore avoid dealing with fake reporting. If the discrimination claim is substantiated enough, it will allow the national human rights institution to conduct on-site inquiries and obtain complementary evidence and information in order to establish that discrimination against people sharing similar characteristics with the complainant has occurred and bring the case of discrimination in its own name, without revealing the complainant's identity. But this outcome could be reached even in instances where the claim does not provide strong evidence that an act of unlawful discrimination may have been committed as alleged, provided this individual claim echoes similar claims submitted by complainants accusing the same institution of the same kind of discriminatory practice. In this situation, the national human rights institution could again investigate and bring the case in its own name, or convince the complainants to engage in a class action lawsuit, assuming they will be more inclined to disclose their identity in this collective setting.

### **Box 4.3. Overcoming under-reporting of discrimination: good practice examples from the Equality Commission for Northern Ireland**

The Equality Commission for Northern Ireland is a non-departmental public body in Northern Ireland established under the *Northern Ireland Act 1998*. It is notably responsible for implementing the legislation on discrimination. Its interactive website provides a wide range of resources that aim to reduce under-reporting of discrimination.

#### **Informing individuals of their rights**

The website clearly mentions the grounds that are protected by the legislation on discrimination. It also clearly states the fields in which discrimination is prohibited (employment, access to goods and services, etc.). Finally, the website provides links to current equality and anti-discrimination laws for each ground covered by the equality body, alongside an invitation to users to contact the equality body's services if they need clarification or guidance on what the law means.

#### **Informing individuals of how to compile their discrimination case**

The website provides access to decisions and settlements (in cases where the complainant was assisted by the Equality Commission for Northern Ireland) that can be sorted by ground (e.g. sexual orientation), field (e.g. employment) and subfield (e.g. recruitment) of discrimination. The website also displays a layperson's guide to taking a case of discrimination to Tribunal. Finally, the website includes a specific section that: (i) provides resources to individuals or organisations who advise people believing they have been discriminated against, such as staff representatives, trade unions or lawyers; (ii) proposes training sessions free of charge.

#### **Allowing users to submit a discrimination complaint in an anonymous but accountable way**

The website offers the possibility to make a discrimination complaint in view of obtaining legal assistance from the Equality Commission. Complainants are not requested to provide personal data but they must nevertheless indicate a way for the Equality Commission to contact them and talk through their complaint further.

### *Informing the general public about resources to combat discrimination*

These resources to combat under-reporting of discrimination should be accompanied by efforts to consistently remind people of their existence, accessibility and effectiveness (Equinet, 2015<sup>[18]</sup>; 2017<sup>[19]</sup>). Specific attention is needed to get the message through to groups at risk of discrimination. Yet, these groups may view national human rights institutions as part of ‘the system’ or a distant authority not to be trusted or out of touch with their lives and needs. The national human rights institution should therefore build and maintain collaborative relationships with “connectors” that are trusted as messengers by these groups, including LGBTI organisations and networks.<sup>4</sup> Regularly showcasing the national human rights institution’s commitment to promote equal treatment of LGBTI people also constitutes an essential ingredient to building a trust relationship with sexual and gender minorities. This objective can be achieved in several ways, including attendance to pride events – as it is the case in Greece where the Ombudsman has been participating in the Athens Pride every year since 2007 – or through awareness-raising activities aiming to combat LGBTI-phobia – such as the nationwide campaigns “Dislike bullying homofóbico” or “Trans e Intersexo #DireitoASer” (Trans and intersex #TheRightToBe) run in 2013 and 2018 respectively by the Commission for Citizenship and Gender Equality in Portugal (Equinet, 2015<sup>[18]</sup>). But the communication strategy should not only target people whose reporting behaviour needs to be changed, i.e. victims and groups at risk/potential victims. It is also critical that it be directed at a secondary target audience consisting of people who will get the message to the primary target audience and/or facilitate the process of changing behaviour, such as staff representatives, trade unions or lawyers.

#### **Box 4.4. The “12 things you didn’t know about gender discrimination” initiative in Germany**

In Germany, the Federal Anti-Discrimination Agency asked people (from the street and celebrities) attending their “Day of action against gender discrimination” to draw a paper from a hat, read it aloud and comment on it. The facts covered a diverse set of issues such as equal pay and trans rights. From this, they created a short film called “12 things you didn’t know about gender discrimination”. The variety of facts kept the audience interested and led to a vital discussion. The film reached an audience of more than 280 000 people and was covered as a “viral hit” in newspapers. The average viewing time was much longer than with other films published by the national human rights institution and also allowed to raise the attention of people that it is usually hard to reach.

Source: Equinet (2017<sup>[19]</sup>), “Communicating Equality Through Social Media”.

Given the comprehensiveness of the resources that a national human rights institution can provide to counter under-reporting, a communication strategy of the “did you know?” type could be particularly suitable. The one implemented in Germany to raise awareness around gender discrimination turned out being a success (Box 4.4). Finally, it is important that the national human rights institution evaluates on a regular basis the efficiency of its communication strategy and perception of its work among key stakeholders, as it is done by the Office of the Ombudsman for Equality in Finland (Box 4.5).

#### **Box 4.5. Evaluating the public profile of the national human rights institution : good practice examples from the Office of the Ombudsman for Equality in Finland**

In 2008 and 2013, the Office of the Ombudsman for Equality in Finland commissioned an evaluation of its public profile among a wide range of key stakeholders including complainants, groups at risk of discrimination and NGOs promoting their equal treatment, and trade unions.



The survey aimed to assess:

- Stakeholders' knowledge about the Office of the Ombudsman for Equality (lack of knowledge, right and wrong knowledge)
- Stakeholders' perception of the work of the equality body, based on:
  - Qualitative data: respondents' first impressions, report of experiences in cooperating with the Office of the Ombudsman for Equality, as well as hopes and expectations for the equality body;
  - Quantitative data: relying on the Osgood Semantic Differential Scale,<sup>1</sup> the respondents were asked to evaluate the equality body based on five dimensions: (i) authoritative; (ii) respected; (iii) reliable; (iv) serving; (v) effective.

The survey revealed the strengths and weaknesses of the Office of the Ombudsman for Equality's public profile and, hence, the actions to be taken to correct and enhance its image among different stakeholder groups.

<sup>1</sup> The Osgood Semantic Differential Scale is a rating scale designed to measure the connotative meaning of objects, events, and concepts. The connotations are then used to derive the attitude towards the given object, event or concept. More precisely, the respondent is asked in this type of survey to choose where his or her position lies, on a scale between two polar adjectives (for example: "Adequate-Inadequate", "Good-Evil" or "Valuable-Worthless").

Source: Equinet (2015<sub>[18]</sub>), "The Public Profile of Equality Bodies", [www.equineteurope.org](http://www.equineteurope.org).

#### **4.1.2. Enforcing LGBTI-inclusive hate crime and hate speech laws**

Governments must take action to legally recognise sexual orientation, gender identity and sex characteristics as grounds for hate crime and hate speech. But successful implementation of LGBTI-inclusive hate crime and hate speech laws is critical. Achieving this objective entails (i) training police officers on adequately dealing with hate crime incidents and (ii) effectively combating hate speech online.

##### *Enforcing LGBTI-inclusive hate crime laws*

Failure to appropriately prosecute crimes motivated by hatred against the LGBTI population creates a sense of impunity among perpetrators and can result in increasing levels of violence against sexual and gender minorities. Training police officers to properly handle hate crime incidents can help prevent this troubling cycle from emerging. The police are at the frontline of the criminal justice system and the first point of contact for many victims. A fair application of national hate crime laws is out of reach if they are not equipped with the skills to take a detailed victim statement and to identify when a criminal offence is a hate crime (ILGA Europe, 2008<sub>[20]</sub>; OSCE, 2009<sub>[21]</sub>; 2014<sub>[22]</sub>; CoE, 2017<sub>[23]</sub>; European Commission, 2017<sub>[24]</sub>; European Union Agency for Fundamental Rights, 2018<sub>[25]</sub>). Training police officers is all the more important since their presumed reluctance and/or incapacity to deal with violence targeted at LGBTI people is the main reason why LGBTI people refuse to report abuse. Across the EU, 5% of LGBTI respondents in 2019 declare experiences of physical or sexual attacks and 38% declare experiences of harassment due to being LGBTI, in the 12 months prior to the survey. When thinking about the last incident of hate-motivated physical or sexual attack they underwent, only 14% decided to report it to the police, mainly due to mistrust in the system: 24% explicitly state that they do not trust the police, 40% stress that they do not think the police would or could do anything, and 26% that they feared homophobic and/or transphobic reaction from the police (European Union Agency for Fundamental Rights, 2020<sub>[13]</sub>).

The victim statement is often the point where key evidence can be provided. Depending on how it is conducted, this statement can make or break a criminal case. The police must therefore be trained on creating a welcoming environment conducive to gathering the best evidence (Box 4.6).



#### Box 4.6. Enforcing hate crime laws: Taking a detailed victim statement

To create an environment conducive to gathering the best evidence, the police must know how to balance the need to press for as much detailed information as possible with the needs of the victim, including the need for privacy. This entails:

- ensuring the interview room is quiet and that no one will disturb the statement;
- providing breaks when required;
- never using judgemental language or giving one's opinion on the victim's individual circumstances;
- using a reassuring tone;
- being careful with one's body language and keeping as neutral an expression as possible;
- being respectful at all times, acknowledging pain/upset;
- being patient with the victim if they go into great detail about the incident beyond what is required for a statement;
- never criticising the victim's behaviour;
- allowing sufficient time and not rushing the process;
- never belittling the seriousness of the crime.

Posters stressing the police's commitment to a fair implementation of national hate crime laws are also a key ingredient to LGBTI victim's comfort once at the police station. Such were the posters used in London boroughs in the early 2010s. Those read: "Being black or white, lesbian, gay or transgender, having a disability or belonging to a particular faith group is not a crime. Abuse, assault, threats, offensive material or damage towards someone because of their race, faith, disability or sexuality is a crime." (Burston, 2012<sup>[26]</sup>).

Source: CoE (2017<sup>[23]</sup>), "Policing Hate Crime against LGBTI persons: Training for a Professional Police Response".

Additionally, police officers should be trained on identifying when a criminal offence is a hate crime in order to be able to record this information in an electronic database that will then be used by the investigation and prosecution service. An incident can be designated a hate crime if: (i) a criminal offence has occurred and (ii) the offender had a bias motive. To determine whether the perpetrator chose the target of the crime based on their actual or perceived sexual orientation, gender identity or sex characteristics, police officers must be given the means to use "bias indicators", that is, "objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the offender's actions were motivated in whole or in part by bias, prejudice or hostility" (OSCE, 2014<sup>[27]</sup>). These indicators should cover a number of different factors. Indeed, given the subjective nature of motivations, and the fact that some indicators are stronger than others, police officers should be encouraged to build a case using a multifactorial combination of bias indicators (see Annex 4.B for further details).

The training of police officers on properly dealing with hate crime targeting LGBTI individuals is still not generalised across OECD countries. For instance, as of 2018, more than one third of the 23 OECD countries that are also member of the EU did not provide any guidance on hate crime recording for police officers (European Union Agency for Fundamental Rights, 2018<sup>[25]</sup>). Yet, encouragingly, initiatives to remedy this situation are gaining momentum. Such is the work of the European LGBT Police Association, an umbrella organisation bringing together police LGBT organisations from across Europe that is notably engaged in peer-to-peer training on better assisting LGBT victims of hate crime.<sup>5</sup>

To further improve the reporting of hate crimes by LGBTI people, this training should be complemented by creating close partnerships between the police and civil society organisations (Box 4.7). Civil society organisations are often the first entities contacted by victims of hate crime, because they provide them with essential emotional, practical, legal and, sometimes, medical support. They can therefore become invaluable intermediaries between the police and victims by increasing the chances of victims cooperating with the investigation and remaining engaged in the criminal justice process.

#### **Box 4.7. Collaborative initiatives between police and civil society organisations: good practice examples from the United Kingdom**

Public authorities and civil society organisations in the United Kingdom have taken significant steps to address hate crimes against LGBT persons in a collaborative way. For instance, the Metropolitan Police Service<sup>1</sup> and the London-based LGBT organisation Galop<sup>2</sup> have set up a partnership to develop an “assisted reporting” scheme that allows individuals to report through Galop’s website or its Shoutline, a helpline and casework service that provides advice, resources and support for victims of homophobic and transphobic crimes (ILGA Europe, 2010<sub>[28]</sub>). In addition to collecting information on the incident, the victim and perpetrator, the scheme offers victims the possibility to connect with the police or, if they prefer, with one of the 155 police LGBT liaison officers appointed by the Metropolitan Police Service to facilitate communication with the LGBT population.

<sup>1</sup> The Metropolitan Police Service is responsible for law enforcement in the Metropolitan Police District which consists of the 32 London boroughs.

<sup>2</sup> See <http://www.galop.org.uk/>.

#### *Enforcing LGBTI-inclusive hate speech laws*

To fully deter hate crime, governments should also prohibit particularly severe forms of hate speech, while ensuring that hate speech legislation is not used to justify inappropriate restrictions on the right to freedom of expression.<sup>6</sup> Passing LGBTI-inclusive hate speech laws is a critical first step in that direction. But this step should be complemented by strategies to tackle those forms of hate speech that are the most challenging. Such is online hate speech due to the (i) immediacy and viral nature of its content, (ii) anonymity of internet users and (iii) ability of authors to respond to prohibitions by easily moving to other platforms (UNESCO, 2015<sub>[29]</sub>). There is indeed no reason that hate speech that would not be tolerated on a bus, in a café, in school – basically, in ‘real life’ – should be tolerated online.

One option is for international and/or regional stakeholders to set up standards with social media companies. For instance, in 2016, the European Union entered into a Code of Conduct agreement on countering illegal hate speech online with Facebook, Microsoft, Twitter, YouTube, and later Dailymotion, Google+, Instagram, jeuxvideo.com and Snapchat (European Commission, 2016<sub>[30]</sub>). Under the Code, the companies are required to:

- Define Terms and Conditions or Terms of Service and Community Guidelines that define what content is acceptable on the platform;
- Provide regular training to their staff to equip them with the skills to draw the line between freedom of expression and hate speech (Chapter 2);
- Review content that is reported to them by general users as well as “trusted flaggers” within 24 hours and remove or disable access to this content if it qualifies as “hate speech”. The trusted flaggers are NGOs across Europe with which social media companies partner to improve their understanding of what constitutes hate speech depending on national contexts, and collaborate on campaigns for tolerance and pluralism.

To raise awareness the Commission simultaneously launched the hashtag campaign #noplac4hate and regularly publishes monitoring exercises. The latest round of evaluation that took place in 2019 reveals that social media companies assessed 89% of flagged content within 24 hours (up from 40% in 2016) and that they removed 72% of the content notified to them. Hate speech on the combined grounds of sexual orientation and gender identity comprised 19.3% of the reports in total – 15.6% for the ground of sexual orientation and 3.7% for the ground of gender identity. Variation of removal rates depending on the severity of hateful content suggests that the reviewers assess the content scrupulously and with full regard to protected speech. On average, 85.5% of content calling for murder or violence against specific groups was removed, while content using defamatory words or pictures to name certain groups was removed in 58.5% of the cases (European Commission, 2019<sup>[31]</sup>)

To push social media companies to regulate content more forcefully and to crack down on hate speech more quickly, some countries have passed (Germany) or are considering passing (Australia, France, or New Zealand) laws that impose obligations on private companies to regulate hate speech online and provide high fines for non-compliance. These initiatives are not without shortcomings, however. Notably, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression conveyed that although businesses have a responsibility to respect human rights, the state should not delegate censorship measures to private entities or require them to take steps that unnecessarily or disproportionately interfere with freedom of expression, through laws, policies or extra-legal means (OHCHR, 2017<sup>[32]</sup>). Similar concerns have been voiced by other human rights organisations which assert that placing decisions on hate speech cases in the hands of private actors has led to pre-emptive censoring, over-blocking and censoring of legitimate speech, satire and political speech absent any remedy for such restrictions (Article 19, 2018<sup>[33]</sup>). With the obvious risk of government regulation exceeding its aim and drifting into censorship, a more decentralised approach is worth being considered. It consists in fostering the creation of organised counter-speech groups. Such groups can attract large numbers of members that coordinate their efforts to respond to hateful comments online (e.g. by providing new piece of information to debunk hateful comment). Their action has proven to help dissuade internet users from engaging into hate speech (Box 4.8).

#### **Box 4.8. Combating hate speech online via organised counter-speech groups: evidence from Germany**

A recent study found a substantial moderating impact of online counter-speech intervention by the German group #ichbinhier (#iamhere) that was founded in late 2016 and attracted more than 35 000 members within a few months. More specifically, the study found that internet users exposed to a counter-speech intervention are 5.3 percentage points less likely to write or condone a xenophobic comment in a given week compared to similar internet users not exposed to this intervention (although this effect is transitory with individuals reverting back to their initial hate-fuelled behaviour after two weeks). The intervention is most effective in altering behaviour among individuals that only occasionally spread hate speech.

Source: Sonntag (2019<sup>[34]</sup>), “Social Norms and Xenophobia: Evidence from Facebook”.

### **4.1.3. Enforcing LGBTI-inclusive asylum laws**

LGBTI persons living in one of the 68 countries where same-sex conduct is still criminalised may consider seeking asylum abroad. Governments have a responsibility under international law to explicitly recognise persecution (or a well-founded fear of persecution) based on sexual orientation, gender identity or sex

characteristics, as a valid ground for granting asylum. Yet, processing LGBTI asylum claims remains a challenge.

Over the years, stakeholders have issued thorough guidelines on how countries can uphold this human rights responsibility in a way that promotes professionalism, sensitivity and respect of LGBTI asylum applicants. Milestone documents emphasise the need for countries (i) to help asylum officials (e.g. interviewers, interpreters or adjudicators) determine refugee status in an informed and non-judgmental manner and (ii) to ensure the safety of LGBTI people in asylum detention and reception facilities. To increase their effectiveness, these actions could be complemented by resettlement policies directed at LGBTI individuals who were granted refugee status so that they successfully integrate in their host society, as it is the case in Canada (Box 4.9) or Norway (Box 4.2).

#### **Box 4.9. The Rainbow Refugee Assistance Partnership in Canada**

In 2011, the Canadian government entered into partnership with the civil society organisation “Rainbow Refugee Society” to direct a programme called the Rainbow Refugee Assistance Partnership to support LGBTI refugees who have been identified overseas by the United Nations High Commissioner for Refugees, and approved by the Canadian government. This programme relies on both public and private funds:

- The Canadian government covers start-up costs and provides 3 months of financial assistance to each refugee after their arrival in Canada;
- Community groups formed by the Rainbow Refugee Society ensure financial support for the remaining 9 months. These groups are in charge of sponsoring LGBTI refugees, by notably helping them adjust to life in Canada, teaching them about rights and responsibilities of permanent residents in Canada, and assisting them in learning an official language as well as seeking and finding employment.

In 2020, the Rainbow Refugee Assistant Partnership was scaled up, with the number of privately sponsored LGBTI refugees rising from 15 to 50 per year.

Source: <https://www.canada.ca/en/immigration-refugees-citizenship/news/2019/06/canada-announces-new-initiative-to-support-lgbtq2-refugees.htm>.

#### *Helping asylum officials determine refugee status*

Empowering asylum officials to assess the credibility of LGBTI asylum applicants first implies that they easily access precise, up-to-date and reliable information on the status of LGBTI persons in the country of origin. Insights on this status can be derived from reports of human rights organisations, the United Nations and local LGBTI organisations (COC Nederland, 2011<sup>[35]</sup>). In this process, asylum authorities should be reminded that applicants are entitled to live as who they are, including in their country of origin and, hence, that the “discretion” argument does not apply: they should not reject the applications of LGBTI asylum seekers on the basis that they could avoid persecution by concealing their non-conforming sexual orientation, gender identity or sex characteristics upon return to their country of origin, as ruled in 2013 by the Court of Justice of the European Union (CJEU) in the case of *Minister voor Immigratie en Asiel v. X and Y and Z v. Minister voor Immigratie en Asiel* (Chapter 2). Additionally, adequate ascertainment of an applicant’s LGBTI identity and background entails that asylum officials be trained on fostering asylum seekers’ confidence in narrating their experience, by giving them the opportunity to describe how their sexual orientation or gender identity has developed, including responses of the environment; exposure to problems, harassment, violence; and feelings and perceptions of difference, stigma, fear and shame. To

ensure that applicants testify as openly as possible about these sensitive issues, their requests in relation to the characteristics of interviewers or interpreters should be considered favourably. For instance, if the interpreter is from the same country, religion or cultural background, this may heighten the applicant's sense of shame and hinder him or her from fully presenting all the relevant aspects of the claim (UNHCR, 2012<sup>[36]</sup>). More generally, international human rights stakeholders and NGOs call for creating awareness on the following facts to avoid prejudiced and stereotypical assumptions and/or practices during the determination process (UNHCR, 2010<sup>[37]</sup>; 2011<sup>[38]</sup>; 2012<sup>[36]</sup>; 2015<sup>[39]</sup>; COC Nederland, 2011<sup>[35]</sup>; ILGA Europe, 2014<sup>[40]</sup>):

- Medical, psychological or psychiatric expert opinions are an inadequate and inappropriate method for establishing an applicant's LGBTI status, and medical "testing" such as "phallometric testing"<sup>7</sup> is an infringement of the applicant's basic human rights – see CJEU's ruling in *A and Others v. Staatssecretaris van Veiligheid en Justitie* (2014) and in *F. v. Bevándorlási és Állampolgársági Hivatal* (2018) emphasised in Chapter 2;
- An applicant's lack of familiarity with LGBTI organisations, venues or culture cannot in itself be considered as an indication that the applicant's purported fear of being persecuted on account of sexual orientation, gender identity or sex characteristics is not credible;
- Not all gay men are feminine, and not all lesbians are masculine;
- The fact that an applicant is or has been married or cohabiting in a heterosexual relationship, possibly with children of that relationship, should not rule out the fact that she or he may be LGBTI;
- A negative credibility finding should not be based solely on the late disclosure of the applicant's sexual orientation, gender identity or intersex status in the screening phase or early stages of interview. Rather, reasons for belated disclosure should be carefully considered: many applicants are reluctant to reveal their sexual orientation, gender identity or sex characteristics early in the asylum process because they fear consequences and repercussions of persons in their communities, families or within the reception facility or accommodation learning about their LGBTI status.

### *Ensuring safety of LGBTI people in asylum detention and reception facilities*

Ensuring safety of LGBTI people in asylum detention and reception facilities equally constitutes a major challenge. Although international human rights bodies insist that placing migrants and asylum seekers in detention should be seen as a last resort to be used only in strictly limited circumstances, the use of detention of migrants remains a worldwide practice which has grown steadily over recent years (UN Working Group on Arbitrary Detention, 2018<sup>[41]</sup>). In these settings, LGBTI persons face unique risks and challenges in these settings that distinguish them from other segments of the general population: they typically occupy the bottom of the informal hierarchy that characterises places of incarceration and are therefore disproportionately exposed to violence (UNHCR, 2012<sup>[42]</sup>). Studies report that non-heterosexual inmates are 10 times more likely than heterosexual inmates to be sexually assaulted by other inmates, while the likelihood of a transgender person being sexually assaulted by a fellow inmate is 13 times higher than for cisgender inmates (UN Committee against Torture, 2016<sup>[43]</sup>). Similarly, reception centres are all too often characterised by significant hostility against LGBTI residents, mainly coming from their countrymen/-women (ILGA Europe, 2014<sup>[40]</sup>).

To protect LGBTI persons in asylum detention and reception facilities, special consideration should be devoted to their place of accommodation as well as to their health. LGBTI asylum seekers typically fled alone and they have neither the support of family members nor a network of fellow expatriates (ILGA Europe, 2014<sup>[40]</sup>). To ensure their safety, it is important to create spaces where they can live without fearing retaliation from other asylum seekers while ensuring that this solution does not amount to placing them in a form of solitary confinement. A good practice in this regard consists of transferring LGBTI asylum seekers to smaller reception facilities, and/or to centres with fewer countrymen/-women (ILGA Europe, 2014<sup>[40]</sup>).

Moreover, if placement is gender-specific, it should not occur solely on the basis of the genitalia or sex assigned at birth of transgender persons but also take their self-identified gender into consideration to avoid that they be allocated to facilities where they can be highly vulnerable to abuse and violence (APT, 2018<sub>[44]</sub>). In Austria for instance, female transgender asylum seekers are mostly placed in facilities devoted to unaccompanied women to which men cannot access. Finally, there should be clear guidelines on the provision of specific health care to LGBTI persons. These guidelines should notably avoid the harmful interruption of hormonal treatment for transgender and intersex people if this treatment already started in their countries of origin (European Union Agency for Fundamental Rights, 2017<sub>[45]</sub>).

## 4.2. Fostering a culture of equal treatment in education, employment and health care

It is unlikely that reducing under-reporting of discrimination in a context where discrimination is illegal will be enough to eliminate anti-LGBTI discrimination. To effectively combat this discrimination, it is essential to concomitantly create a culture of equal treatment by educating people to counter and control their bias against LGBTI individuals (OECD, 2019<sub>[1]</sub>). Indeed, consciously or not, people tend to be biased *in favour* of their in-group (the social group with which they identify as being a member) and/or to be biased *against* their out-group (the social group with which they do not identify) (Kahneman, 2013<sub>[46]</sub>). This bias leads them to judge positively, even before they get to know them, people who are similar to them, and to “prejudge” negatively the others. This bias also largely accounts for stereotypes’ inaccuracy. Individuals tend to overestimate the weaknesses of dissimilar others and to underestimate their strengths, while they are prone to the opposite in face of similar others. Overall, in-group and out-group bias contributes to minority groups, LGBTI people included, being discriminated against by the majority.

Bias against LGBTI people is widespread. Implicit measures of this bias reveal that most people prefer straight people to gay people (Box 4.10). Although explicit measures lead to underestimating in-group and out-group bias, given that respondents tend to provide socially desirable answers and can only report the bias they are conscious of, cross-country surveys also by and large reveal negative attitudes towards LGBTI people. OECD countries are no exception, as shown in Chapter 3. Despite a shift towards greater acceptance, discomfort with homosexuals is pervasive: OECD countries are only halfway to full social acceptance of homosexuality, scoring five on a 1-to-10 acceptance scale (OECD, 2019<sub>[1]</sub>). Moreover, only a minority of respondents in OECD countries covered by the 2016 ILGA survey would: (i) accept a transgender child (44%); (ii) oppose medically unnecessary sex-normalising surgery on intersex babies (40%) (ILGA, 2016<sub>[47]</sub>).

Well-designed awareness-raising activities like the ones described in the next section (Section 4.3) are key to educate people in countering their bias against sexual and gender minorities. But they should be complemented by specific actions in the fields of education, employment and health care. Although these fields are viewed by the International Bill of Human Rights as critical for individuals to flourish<sup>8</sup>, they are fraught with discrimination against LGBTI people.



#### **Box 4.10. Implicit measure of bias against LGBTI people: the Implicit Association Test (IAT) on Sexuality developed by Harvard University**

The IAT on Sexuality measures the strength of associations between concepts (e.g. Gay people and Straight people) and evaluations (e.g. good and bad).

More precisely, when doing an IAT, participants are asked to quickly sort words and pictures into categories that are on the left and right hand side of the computer screen by pressing the “e” key if the word (or picture) belongs to the category on the left and the “i” key if the word (or picture) belongs to the category on the right.

The main idea is that making a response is easier when items that are perceived as closely related share the same response key. In this setting, someone who is faster to categorise words and pictures when Straight People and Good share a response key relative to when Gay People and Good share a response key will be considered as having an automatic preference for Straight people relative to Gay people.

Between 2004 and 2015, approximately 1.5 million people across the world took the IAT on Sexuality. Their scores reveal that most of them (nearly two thirds) prefer Straight people to Gay people, i.e. they are faster sorting when good words and straight images go with the same key:

- 25% show a strong automatic preference for Straight people;
- 24% show a moderate automatic preference for Straight people;
- 15% show a slight automatic preference for Straight people.

Only 15% show little to no automatic preference for Straight people (the remaining 21% show an automatic preference for Gay people).

Comparing these implicit measures with self-reported attitudes towards Straight and Gay people confirms that explicit measures underestimate anti-gay bias: half of the participants to the IAT self-report no preference between Straight and Gay people in the survey, while the IAT reveals this is the case for only 15%.

Source: <https://implicit.harvard.edu/implicit/takeatest.html>.

#### **4.2.1. Promoting LGBTI equality in education**

Among other key documents, the Convention on the Rights of the Child enshrines every child's right to be free from discrimination (Article 1) and to access an education that respects their dignity and rights (Article 28), develops their personality, talents and abilities, while encouraging their respect for human rights (Article 29). Yet, LGBTI-phobic bullying at school is a worldwide problem (UNESCO, 2016<sup>[48]</sup>). For instance, across the EU, nearly 60% of LGBTI respondents declare in 2019 they have hidden being LGBTI at school, and 4 in 10 report having always or often experienced negative comments or conduct in the school setting because of being L, G, B, T or I (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>). The victimisation of LGBT students ranges from the interference of homophobic and transphobic discourse in everyday interactions (e.g. the use of “dyke”, “faggot” or “tranny” as generalised derogatory comments among teenagers) to verbal harassment, physical violence or cyberbullying – noting that these wrongdoings are not only committed by peers, but can also involve the school staff. In the United States, 70.1% of LGBT students experienced verbal harassment (e.g. called names or threatened) at school in the year preceding the 2017 National School Climate survey conducted among students between the ages of 13 and 21, 28.9% were physically harassed (e.g. pushed or shoved), 12.4% were physically assaulted



(e.g. punched, kicked, injured with a weapon), and 48.7% experienced electronic harassment, via text messages or postings on social media (GLSEN, 2018<sup>[49]</sup>).

These numbers underestimate the actual prevalence of LGBTI-phobic bullying. Indeed, evidence shows that pupils do not necessarily have to be lesbian, gay, bisexual, transgender or intersex to be bullied: not fitting in with the gender expectations of their peers – boys judged as being not masculine enough, girls judged as being not feminine enough – is often sufficient for them to experience rejection.

Hostile school settings are detrimental to the mental and physical health of LGBTI children and youth and negatively affect educational attainment including lower participation in class or school activities, poorer academic performance and lower rates of attendance, or dropping out of school entirely (OECD, 2019<sup>[1]</sup>; Sansone, 2019<sup>[50]</sup>). Ultimately, school environments where children and youth are subject to LGBTI-phobic behaviour are factors that contribute to high rates of social exclusion and lack of higher education and employment prospects, adversely impacting LGBTI persons and society at large.

Governments have a responsibility to prevent and tackle all types of bullying, including bullying on account of sexual orientation, gender identity and sex characteristics. There are three key policy options to achieve this objective: introducing a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject; guiding school staff on implementing an LGBTI-inclusive curriculum; adopting a whole-school approach to deal with LGBTI-phobic language and behaviour every time they occur (UNESCO, 2012<sup>[51]</sup>; 2016<sup>[48]</sup>; GLSEN, 2016<sup>[52]</sup>; CoE, 2018<sup>[53]</sup>; IGLYO, 2018<sup>[54]</sup>; ILGA Europe and OII Europe, 2019<sup>[55]</sup>).

While implementing these policies, it is critical that parents understand why the school is preventing and tackling LGBTI-phobic bullying, to avoid backlash. Schools should clarify that their efforts aim to look after the welfare and safety of all young people in the school, not to talk about sex or try to turn children gay – two pervasive worries among parents. It is also important to keep parents informed about what the school is doing, including lesson plans, and provide them with the option to discuss their concerns with senior leadership – a way to reassure parents that their concerns are taken seriously, but also to send a strong message that the commitment to prevent and tackle LGBTI-phobic bullying extends across the school (Stonewall, 2015<sup>[56]</sup>).

### *Introducing a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject*

Introducing a school subject that promotes the inclusion of LGBTI identities, among other groups at risk of discrimination, constitutes a crucial front in the battle for LGBTI equality. Early years settings and primary schools should be given special attention while ensuring of course that the subject's content is age-appropriate: values and attitudes are formed early and are likely to be highly resistant to change in later life. To deeply anchor a culture of equal treatment, this LGBTI-inclusive subject should be mandatory. It should also be grounded in a set of clear objectives so that school staff understand expectations. Finally, actual implementation of this curriculum should be closely monitored by school inspectors to ensure enforcement.

Yet, these conditions are rarely fulfilled in OECD countries (IGLYO, 2018<sup>[54]</sup>). The United Kingdom is an exception though. Between 1988 and the early 2000s, now repealed Section 28<sup>9</sup> of *the Local Government Act* prohibited in England, Scotland and Wales “the intentional promotion of homosexuality” by any local authority and “the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship”. But the United Kingdom has been proceeding on a radically different path since 2014 when the government Equalities Office launched a series of ambitious programmes to prevent and tackle LGBT-phobic bullying in schools (Government Equalities Office, 2018<sup>[57]</sup>). UK's strong commitment to promote LGBTI equality in education is also reflected in the decision in England to make school subjects required to encompass LGBTI-inclusive content statutory in primary and secondary schools, starting from September 2020 (Box 4.11).<sup>10</sup> A similar historic move is expected in Scotland, following acceptance by the Scottish government of the 33 recommendations delivered in 2018 by the LGBTI Inclusive Education Working Group (LGBTI Inclusive Education Working Group, 2018<sup>[58]</sup>).<sup>11</sup>

### Box 4.11. Mandatory, objective-oriented and enforceable LGBTI-inclusive school subjects: the case of England

In May 2019, the House of Commons and the House of Lords voted to make “Relationships Education” in primary schools and “Relationships and Sex Education” in secondary schools compulsory. Both subjects are required to encompass LGBTI-inclusive content, based on clearly defined objectives. While implementing this curriculum, schools are however given flexibility to decide how and when they cover content in order to ensure it is age appropriate and that the background and beliefs of pupils are properly taken into account.

#### Relationships Education in primary schools

The focus of Relationships Education in primary school is on teaching the fundamental building blocks and characteristics of positive relationships, with reference to family relationships, friendships, and relationships with other children and with adults. LGBTI inclusion is addressed while discussing (UK Department for Education, 2019<sup>[59]</sup>):

- The diversity of families: children are taught respect for all types of families to the extent that they are all characterised by love and care (families include single parent families, LGBT parents, families headed by grandparents, adoptive parents, foster parents, etc.);
- Relationships with other children and with adults (the importance of respecting others, the different types of bullying and their impact, what a stereotype is, etc.).

#### Relationships and Sex Education in secondary schools

Relationships and Sex Education (RSE) in secondary schools aims to continue to develop knowledge on topics specified for primary education. For instance, when discussing stereotypes, the grounds of sexual orientation and gender identity (gender reassignment) are distinguished, and pupils are taught the facts and the law about these dimensions (UK Department for Education, 2019<sup>[59]</sup>).

In a context where discrimination based on sexual orientation and gender reassignment is prohibited in a broad range of fields in the United Kingdom, including education (Chapter 3), the Office for Standards in Education, Children’s Services and Skills (Ofsted) – the body in charge of inspecting services providing education and skills for learners of all ages – directs inspectors to look at a school’s efforts to prevent and tackle LGBTI-phobic bullying. In 2019, Ofsted launched its new Education Inspection Framework. The capacity of the school staff to “create a safe, calm, orderly and positive environment (...) in which pupils feel safe, and in which bullying, discrimination and peer-on-peer abuse – online or offline – are not accepted and are dealt with quickly, consistently and effectively whenever they occur” is presented as a key evaluation criterion. To help inspectors make their judgement, schools have an obligation to provide evidence of their commitment to prevent and tackle “bullying, discriminatory and prejudiced behaviour (...) including racist, sexist, disability and homophobic/biphobic/transphobic bullying, use of derogatory language and racist incidents.” (Ofsted, 2019<sup>[60]</sup>).<sup>1</sup>

<sup>1</sup> See <https://www.gov.uk/government/publications/school-inspection-handbook-eif>.

#### *Guiding school staff on implementing an LGBTI-inclusive curriculum*

To reap the full benefits of a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject, it is critical to provide school staff with guidance on how to teach this subject, especially at early stages. This ambition implies giving teachers access to detailed lesson plans, as it is done by the “No Outsiders” project in the United Kingdom directed at primary schools (Box 4.12).

#### Box 4.12. Assisting school staff in teaching LGBTI-inclusive school subjects: the “No Outsiders” project directed at primary schools in the United Kingdom

The “No Outsiders” project was first developed in the mid-2000s by Andrew Moffat, a Personal Social Health Education (PSHE) teacher and assistant head teacher in a Birmingham primary school. This project aimed to explore ways in which primary schools could work to combat all kinds of bullying, including homophobic bullying.

Initially, the resources prepared by Andrew Moffat were targeting the last year of preschool (age 4) and the first two years of primary school (age 5 and age 6). Each plan uses a children’s book as a focus for the lesson. The teacher reads the story, there are notes for discussion and then a role play to tease out the issues and develop thinking. A plenary concludes the lesson (Moffat, 2007<sup>[61]</sup>).

Nowadays, the “No Outsiders” project proposes comprehensive resources for all years of primary school. These resources aim to teach children about the following grounds of discrimination that are legally protected in the United Kingdom: gender and gender reassignment, religion, sexual orientation, disability and age (Moffat, 2015<sup>[62]</sup>; 2020<sup>[63]</sup>). The project is expanding as a charity providing assistance and guidance to educational providers in the United Kingdom and beyond, in view of preventing children being drawn into terrorism and activities that cause detriment to community cohesion, such as far right activity.<sup>1</sup>

<sup>1</sup> See [no-outsiders.com](http://no-outsiders.com).

Teachers should also be given insights on how to embed LGBTI families, people and themes throughout the curriculum, beyond teaching the mandatory LGBTI-inclusive subject. Confining the mention of LGBTI issues to a specific area of the curriculum indeed entails a risk that children view being LGBTI as something marginal or even something to hide or be ashamed of. As a recipient of the government Equalities Office’s Anti-Homophobic, Biphobic and Transphobic Programme and with the support of Pearson (the British multinational publishing and education company), the UK-based LGBT rights charity Stonewall has recently published two landmark guides giving primary and secondary schools as well as education publishers insightful ideas to include LGBTI identities in all areas of the curriculum (Stonewall, 2017<sup>[64]</sup>; 2019<sup>[65]</sup>) – see Annex 4.C for further details.

Finally, teachers should be given assistance in managing parental concerns about the teaching of LGBTI content, especially in primary schools.<sup>12</sup> Indeed, this teaching can induce sharp critics, as shown in 2014 and in 2018/2019 by protests involving parents against the “No Outsiders” project (Box 4.12).<sup>13</sup> Setting up partnerships with organisations for LGBT people of faith and faith schools having already shown best practice in combating LGBTI-phobic bullying also constitutes a promising approach to connect with faith communities at large. In the United Kingdom, such partnerships<sup>14</sup> led several prominent faith groups to develop guidelines emphasising the need for faith schools and religious parents to support LGBTI rights *because* of their faith, not in spite of it. Specifically, in 2019 the Church of England Education Office published the second edition<sup>15</sup> of “Valuing All God’s Children. Guidance for Church of England schools on challenging homophobic, biphobic and transphobic bullying” (Church of England, 2019<sup>[66]</sup>); in 2018 the Catholic Education Service in partnership with St Mary’s University published “Made in God’s Image: Challenging homophobic and biphobic bullying in our Catholic schools” (Catholic Education Service, 2018<sup>[67]</sup>); in 2018 Keshet UK published the “Wellbeing of LGBT+ Pupils: A Guide for Orthodox Jewish Schools” (Keshet UK, 2018<sup>[68]</sup>).

*Adopting a whole-school approach to deal with LGBTI-phobic language and behaviour every time they occur*

But empowering school staff to properly implement LGBTI-inclusive curricula is not enough to prevent and tackle LGBTI-phobic bullying. A whole-school approach is also needed to deal with LGBTI-phobic language and behaviour every time they occur. Such language is widespread but often goes unchallenged by school staff, firstly because they lack the confidence to do but also because they consider this language to just be harmless banter – thereby reflecting that expressions like “faggot,” “dyke,” “no homo,” and “so gay” are indeed<sup>16</sup> used casually in everyday interactions (Stonewall, 2017<sup>[69]</sup>).

#### **Box 4.13. Key transgender- and intersex-inclusive policies at school**

The following guidelines and recommendations are viewed as critical to affirm the rights of transgender and intersex students in the school setting (UNESCO, 2012<sup>[51]</sup>; 2016<sup>[48]</sup>; GLSEN, 2016<sup>[52]</sup>; CoE, 2018<sup>[53]</sup>; IGLYO, 2018<sup>[54]</sup>; ILGA Europe and OII Europe, 2019<sup>[55]</sup>):

- Respect learner’s choice to identify as their desired gender by using their chosen name, pronouns and gender on all official and administrative documents such as certificates, diplomas and student identification cards, and obligating all school staff to use the name and pronoun chosen by the student regardless of whether they have been changed in official documents;
- Respect students’ right to dress in accordance with their gender identity regarding school clothing and uniform policies;
- Enable learners to access restrooms and lock rooms that correspond to their gender identity. Schools are encouraged to designate one or more restroom to be gender neutral or single-user facilities accessible to learners of all genders and to incorporate such designs into new construction or renovations;
- Allow students to participate in physical education classes and sports activities in a manner consistent with their gender identity;
- Protect learner’s right to privacy and confidentiality in relation to their gender status and ensure that all information for transgender and intersex learners are kept confidential in accordance with applicable state, local and federal privacy laws.

Creating a zero-tolerance school policy that clearly states LGBTI-phobic language and behaviour are wrong and will not be tolerated from any member of the school community – students, staff or parents and carers – is often viewed as the best way to start addressing the problem. The rules should be that words that individuals use or would use to describe themselves (e.g. gay, lesbian, bisexual, girl, black) are acceptable, but that words or phrases that wrongly imply an individual’s membership of a group and/or refer to that particular group in a derogatory way are wrong (e.g. faggot, that’s so gay, you’re so gay) (Stonewall, 2015<sup>[56]</sup>). The rules should leave no one behind and, hence, be an opportunity for the school to also explicitly commit to implement key transgender- and intersex-inclusive policies (Box 4.13). This school policy should be communicated on multiple platforms to all learners, teachers and school staff, as well as families and the broader community.

Alongside adopting a sound school policy, it is important to train school staff on why and how LGBTI-phobic language should be challenged – even when they consider the bully did not mean to be LGBTI-phobic. To the best of our knowledge, no OECD country has yet made this training compulsory, although Scotland plans to do so in a near future in the framework of both Initial Teacher Education and Career Long Professional Learning (LGBTI Inclusive Education Working Group, 2018<sup>[58]</sup>). In the meantime, the United Kingdom is again providing good practice examples. As a recipient of the government Equalities Office’s Anti-Homophobic, Biphobic and Transphobic Programme, the PSHE association – the national

body in charge of implementing Personal, Social, Health and Economic education<sup>17</sup> – has set up partnerships with six different organisations and consortia to help over 1 200 primary and secondary schools in England foster a school culture more inclusive of LGBTI individuals, in particular through school staff training.<sup>18</sup> The training typically consists in providing the school staff with facts and figures as well as personal accounts about the level of LGBTI-phobic bullying and its harmful effects, an information viewed by participants as instrumental to convince them of the importance of being on board (NatCen, 2016<sup>[70]</sup>). The training then guides the school staff in challenging LGBTI-phobic language whenever it is used, which implies: (i) referring back to the school's anti-bullying policy; (ii) reminding pupils that when they use for instance the word 'gay' in a negative way to mean rubbish, they make gay people and people with gay family or friends feel bad about themselves – talking about equivalent racist or sexist remarks often helps pupils understand why LGBTI-phobic language is wrong; (iii) explaining pupils what the sanctions will be for repeat offences – e.g. setting the pupil a remedial activity, referring to them to a member of the senior leadership team for further sanctions, inviting parents in to discuss the pupil's behaviour (Stonewall, 2015<sup>[56]</sup>). By exemplifying the zero-tolerance school policy, the school staff will offer a fertile ground to the emergence of ally and ambassador groups among students willing to self-police in their use of LGBTI-phobic language, which will in turn increase the chances that such language be challenged both in and outside the school gates.

An alternative to school staff training to combat LGBTI-phobic bullying and behaviour is for schools to partner with LGBTI NGOs that directly intervene among pupils to discuss about their representations of sexual and gender minorities and counter those that are prejudiced and stereotypical. In France for instance, the Ministry of Education has accredited several civil society organisations (e.g. SOS homophobie). These organisations are entrusted with complementing public education via school-based interventions that notably aim to create awareness about the harmful consequences of LGBTI-phobic bullying and activate empathy. However, none of these interventions has been subject to rigorous impact evaluation. One therefore ignores whether these interventions are effective and, hence, whether they should be scaled up, noting that, for the time being, they are restricted to a few voluntary schools or regions/cities.

#### **4.2.2. Promoting LGBTI equality in employment**

Survey and experimental data demonstrate the pervasiveness of discrimination against LGBTI job seekers and employees. Across the EU, more than one fourth of LGBTI respondents in 2019 declare they hide being LGBTI at work, and more than one fifth report having personally felt discriminated against in the labour market in the 12 months prior to the survey because of being L, G, B, T or I (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>). Comparison of labour market outcomes of LGBT and non-LGBT adults based on representative survey data provides a consistent picture. They reveal that LGBT people are 7% less likely to be employed than non-LGBT people and their labour earnings are 4% lower (OECD, 2019<sup>[1]</sup>).<sup>19</sup> Labour market discrimination can also be measured by comparing the rate at which two fictitious candidates are invited to a job interview: one that employers perceive as LGBT and one that employers perceive as non-LGBT. Such experiments indicate that homosexual applicants are, on average, 1.5 times less likely to be invited to a job interview than their heterosexual counterparts when their sexual orientation is conveyed through their volunteer engagement or work experience in a gay and lesbian organisation. Experimental data also reveal significant discrimination against transgender job applicants (OECD, 2019<sup>[1]</sup>) – discrimination against intersex job applicants has not been tested yet.

Creating a culture of equal treatment in employment implies that private and public employers adopt a comprehensive workplace equality policy with an explicit LGBTI-specific component. A first step is to publicise employers' commitment to recruit staff and extend to each individual the same benefits, salaries, opportunities for training or promotion regardless of sexual orientation, gender identity or sex characteristics (Box 4.14). A second – more ambitious – step, is to *actually* undertake a critical set of actions to ensure non-discrimination, chief of which staff training, human resource management strategies

that deny conscious and unconscious bias the chance to operate, and an advanced benefit and leave policy (ILO/UNAIDS/UNDP, 2015<sup>[71]</sup>; European Commission, 2016<sup>[72]</sup>; OHCHR, 2017<sup>[73]</sup>; TGEU, 2017<sup>[74]</sup>; ILGA Europe and OII Europe, 2019<sup>[55]</sup>). To deeply anchor LGBTI-inclusive policies in the organisation's culture, support by the executive leadership, including LGBTI role models, should be regularly demonstrated in the framework of internal as well as external events such as pride festivals. Additionally, these policies should be widely communicated to new hires, for instance during induction programs: on top of informing new staff of the standards of conduct they are expected to comply with, this strategy allows those who are lesbian, gay, bisexual, transgender or intersex to feel welcome and valued.

However, if LGBTI-inclusive workplace equality policies generate significant benefits for employers, they also entail costs. In this context, governments can contribute to incentivise employers to embrace these policies, through standards and benchmarks.

#### **Box 4.14. Publicly demonstrating commitment to equality for LGBTI employees**

There are two LGBTI business principles that employers can sign to publicly demonstrate their commitment to equality for LGBTI employees.

##### **The Declaration of Amsterdam (Workplace Pride)**

Workplace Pride is a not-for-profit organisation dedicated to improving the lives of LGBTI people in workplaces all over the world. Based in Amsterdam, Workplace Pride created the Declaration of Amsterdam in 2011. The Declaration consists in ten steps aiming to address unfair treatment of LGBT people in the workplace.

##### **The “Charter of LGBT Commitment” (L’Autre Cercle)**

Founded in 1998, L’Autre Cercle is a French not-for-profit organisation. In 2012, L’Autre Cercle created with Accenture a “Charter of LGBT Commitment”. Companies signing up to the Charter notably commit to: (i) create an inclusive workplace for LGBT staff; (ii) ensure equal rights and treatment for all staff irrespective of their sexual orientation or gender identity; (iii) support any staff members who are victims of discriminatory words or acts; (iv) measure progress and share best practices to advance the general workplace environment.

#### *Adopting a comprehensive workplace equality policy with an explicit LGBTI-specific component*

This objective entails undertaking a set of critical actions to ensure non-discrimination against LGBTI persons, chief of which staff training, human resources management strategies that deny conscious and unconscious bias the chance to operate, and an advanced benefit and leave policy.

#### **Staff training**

Following the good practice implemented by several large companies, training staff on being open and supportive of LGBT inclusion within the workplace can rely on a two-staged approach. A starting point is disseminating and promoting a guide among the whole staff. For instance, in 2012, Sodexo, a food services and facilities management multinational, created a resource to help employees be inclusive of LGBT colleagues. Called the “LGBT Conversation Guide”, this resource’s objective was threefold (Sodexo, 2012<sup>[75]</sup>): (i) familiarising staff with what being LGBT means; (ii) explaining why combating discrimination against LGBT job candidates and employees is a priority (an essential step to involve the whole staff and avoid backlash against the organisation’s policy<sup>20</sup>); (iii) educating staff in supporting LGBT inclusion in everyday interactions within the workplace, based on enlightening real-life scenarios that speak to all

employees. The guide also provided links to video clips featuring personal narratives from Sodexo employees (both LGBT and allies) to help staff better understand how to become open leaders (see Annex 4.D for further details).

This guide can then be complemented by an advanced training aimed at giving employees, chief of which managers and people in charge of human resources, more skills to counter their conscious and unconscious bias against specific groups.<sup>21</sup> Rigorous impact evaluation suggests that this advanced training should include the following three steps in order to durably de-bias participants (Devine et al., 2012<sup>[76]</sup>):

- Informing participants about conscious and unconscious bias that underlies prejudice and stereotyping and how this bias can result in discrimination if uncontrolled;
- Making participants aware of their bias by means of implicit association tests like the IAT on Sexuality described in Box 4.10;
- Providing them with “techniques” to make such bias less pronounced, which includes (Carcillo and Valfort, 2018<sup>[77]</sup>):
  - Counter-stereotypic imaging: this approach consists of thinking of members both of one’s group and of the outgroup who do not conform to the prejudice and stereotypes attached to those groups, in order to have participants realise that counterexamples of this type are in fact not unusual, thus casting doubt on the validity of systematic positive perceptions about the ingroup and systematic negative perceptions about the outgroup (Dasgupta and Greenwald, 2001<sup>[78]</sup>);
  - Individuation: this approach entails thinking of people of the outgroup individually rather than as members of their group (Lebrecht et al., 2009<sup>[79]</sup>);
  - Perspective-taking: this approach involves putting oneself in the shoes of a member of the outgroup (Todd et al., 2011<sup>[80]</sup>). Inducing empathy has proven to be successful at countering bias against LGBTI people, based on the unique randomised field experiment on the topic (Box 4.15).

#### **Box 4.15. Countering bias against LGBTI people: evidence from the unique randomised field experiment on the topic**

This experiment was carried out in the context of a door-to-door operation in Florida in 2014, after a local authority passed an ordinance protecting transgender people from discrimination in housing, employment, and public accommodations. Fearing that this decision be submitted to citizens’ vote and repealed, LGBT associations went door to door to have conversations with voters. These conversations largely sought to induce empathy. In particular, voters were invited to talk about an instance in their lives when they were rejected because of their difference and to think about the possible similarities between that personal experience and the discrimination suffered by transgender people. This intervention turned out being very effective, despite its brevity. The results show that it made the participants much more tolerant of transgender people, and also more supportive of the decision prohibiting discrimination against them. The effects were still present three months after the intervention.

Source: Broockman and Kalla (2016<sup>[81]</sup>), “Durably reducing transphobia: A field experiment on door-to-door canvassing”. <https://doi.org/10.1126/science.aad9713>.



### Human resource management strategies that deny bias the chance to operate

To further deny conscious and unconscious bias the chance to operate, firms could also invest in objective human resources management strategies (Carcillo and Valfort, 2018<sup>[77]</sup>). Special attention should be devoted to the interview stage since this stage provides recruiters with the opportunity to infer the sexual orientation, gender identity and/or sex characteristics of job candidates, notably based on their physical appearance. Evidence indeed suggests that individuals who self-identify as homosexual are significantly more likely to be viewed as homosexual by external observers not informed of their sexual orientation (Rule and Ambady, 2008<sup>[82]</sup>). Similarly, a transgender identity may be detectable at the interview stage, even if it is not verbally disclosed. In the EU, in 2019, more than two thirds of transgender people report rarely or never avoiding expressing their preferred gender through their physical appearance and clothing (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>). Moreover, the legal and preferred first names of transgender people often conflict with each other, unless transgender people have gone through a legal process to change their gender marker. This conflict is typically unveiled during the first job interview, when recruiters ask for applicants' identity documents and/or diplomas.

To help objectivise the interview process, its structure, questions, interviewers should be the same from one candidate to another, with the sole purpose of determining whether candidates have the required skills. Without a consistent protocol, recruiters tend to let their prejudice and stereotypes become self-fulfilling: when their bias is positive, recruiters are more likely to begin the interview with the candidates' strengths, which increases candidates' chances of excelling, and *vice versa*. A number of studies confirm that a consistent interview protocol ensures skills-based recruitment (Bohnet, 2016<sup>[83]</sup>). For example, students' performance in the United States at the end of their first year of university is not correlated with their entry ranking when this ranking is based on an oral admissions procedure which varies from one panel to another. More specifically, the results show that a non-standardised interview is no more effective than a selection procedure based on random selection of eligible students (DeVaul et al., 1987<sup>[84]</sup>).

### An advanced benefit and leave policy

For the workplace equality policy to be fully LGBTI-inclusive, companies should not only extend the same benefits to partners, spouses, children or other dependents of staff members, regardless of sexual orientation, gender identity or sex characteristics. The leave policy should also be amended for a better inclusion of both employees who become parents in the framework of a same-sex partnership and transgender employees (AWEI, 2020<sup>[85]</sup>).

More precisely, many parental leave policies are still directed at "birth mothers". These policies should be revised to include those who have children via surrogacy, adoption and foster arrangements regardless of employee gender. Moreover, in most instances, transgender employees who wish to undergo gender-reassignment surgery use sick and annual leave to do so. Yet, they may still get sick (nothing to do with the transitioning process) and require sick leave as much as every other employee, while annual leave is designed for people to take time out of work and refresh – a necessary step for ongoing mental health and work life balance. Employers should therefore be encouraged to accommodate paid leave options for transgender people who transition to avoid that they utilise all their sick or holiday leave.

#### *Incentivising employers to embrace LGBTI-inclusive workplace equality policies through standards and benchmarks*

Employers have an economic interest in creating the conditions for their workplace to be inclusive of LGBTI individuals. On top of the cost that it inflicts on the economy as a whole (Chapter 3), anti-LGBTI discrimination indeed erodes firms' performance<sup>22</sup> via two mechanisms (OHCHR, 2017<sup>[73]</sup>):

- First, anti-LGBTI discrimination undermines productivity through at least four channels:

- Worse-quality hires: when employers pass over talented individuals in the recruitment process based on characteristics with no bearing or relevance for the job, such as their sexual orientation, gender identity and sex characteristics, businesses are left with a sub-optimal workforce. Experimental data confirm that, with the same CV, fictitious applicants perceived as LGBT receive about 50% fewer callbacks than fictitious applicants perceived as non-LGBT (OECD, 2019<sup>[11]</sup>);
- Weaker employee engagement: not allowing LGBTI employees to bring their whole selves to work (because they fear being discriminated against if they are out) is detrimental to their productivity. It makes them spend energy on hiding who they are instead of fulfilling their potential, it undermines their mental health and ultimately fuels absenteeism (OECD, 2019<sup>[11]</sup>). In the United States, 27% of LGBT employees who are not out said in a study that hiding their identity at work had held them back from speaking up or sharing an idea (OHCHR, 2017<sup>[73]</sup>);
- Lower employee retention: anti-LGBTI discrimination forces otherwise qualified LGBTI employees to quit their jobs, creating unnecessary turnover-related costs and loss of talent. In the United States, closeted LGBT employees who feel isolated at work are 73% more likely than “out” employees to leave their job (Hewlett and Sumberg, 2011<sup>[86]</sup>);
- Lost diversity dividend: anti-LGBTI discrimination undermines team diversity while a growing body of research reveals that enriching the employee pool with representatives of different genders/gender identities, races, nationalities, ages, sexual orientations, etc. is key for boosting the company’s intellectual potential. Provided the organisation has inclusive practices so that everyone feels respected and valued, diverse teams indeed challenge individuals to overcome their stale ways of thinking and, hence, sharpen their performance (Sommers, 2006<sup>[87]</sup>; Phillips, Liljenquist and Neale, 2008<sup>[88]</sup>; Hoogendoorn, Oosterbeek and van Praag, 2013<sup>[89]</sup>; Levine et al., 2014<sup>[90]</sup>; Rock and Grant, 2016<sup>[91]</sup>; Hoogendoorn, Oosterbeek and Van Praag, 2018<sup>[92]</sup>).
- Second, anti-LGBTI discrimination leads to market share losses: in 2018, the global spending power of the LGBT consumer segment was estimated at USD 3.6 trillion per annum, excluding the purchasing power of friends and families of LGBT individuals that make up the ally community.<sup>23</sup> The same year, a national survey of US LGBT adults revealed that 78% tend to be loyal to brands that market to and support the LGBT community (Community Marketing & Insights, 2018<sup>[93]</sup>). More generally, a workforce that does not reflect the make-up of society will have difficulties appealing to a broad range of potential customers (European Commission, 2016<sup>[72]</sup>).

However, establishing a workplace equality policy also entails costs. In this context, it is important to provide employers with additional incentives to embrace LGBTI inclusion by allowing them to showcase their achievements and, hence, improve their reputation and attractiveness among job candidates, employees, customers and suppliers.

To date, several not-for-profit organisations have developed standards to rate employers’ implementation of LGBTI-inclusive workplace equality policies (see Box 4.16 for further details):

- The Australian Workplace Equality Index (AWEI) by Pride in Diversity (for employers based in Australia);
- The Hong Kong LGBT+ Inclusion Index by Community Business (for employers based in Hong Kong);
- The Global Benchmark by Workplace Pride (for multinationals);
- The South African Workplace Equality Index (SAWEI) by LGBT+ Management Forum (for employers based in South Africa);
- The UK Workplace Equality Index (for employers based in the United Kingdom) and the Global Workplace Equality Index (for multinationals) by Stonewall;

- The Corporate Equality Index by the Human Rights Campaign (for employers based in the United States and in a few other countries in the Americas, as well as multinationals).

These indices do not only value all the good practices emphasised above, they are also attractive to employers. First, except for the Hong Kong LGBT+ Inclusion Index and the Global Benchmark, these indices are based on a free certification process: employers simply have to opt in by forwarding evidence of their good practices. Second, apart from the Corporate Equality Index, publication of these indices relies on a “name and praise” rather than “name and shame” approach. While the public is informed of whether employers belong to the top-performing employers (e.g. whether they are part of the top 100, or of the gold, silver or bronze tiers, etc.), employers’ detailed index score and ranking is notified to employers in private and kept confidential. Moreover, organisations that wish to assess their work but lack confidence about their performance are typically allowed to participate in the index on an anonymous basis, or to be publicly acknowledged only if they achieve an outstanding performance. Third, employers are given the possibility to improve their achievements through customised reports containing in-depth analysis of their score, recommendations and best practice examples.

There are ways for governments to improve the outreach and take-up of workplace equality standards among national employers.<sup>24</sup> First, they could sponsor the creation of standards at the national level in countries where these standards haven’t emerged yet, and publicly support these standards in countries where they already exist. Moreover, governments could exemplify and generate peer pressure by encouraging the public sector to participate in the benchmarking process, as it is the case in Australia (AWEI, 2019<sup>[94]</sup>) and the United Kingdom.<sup>25</sup>

#### **Box 4.16. Standards to assess LGBTI-inclusive policies in the workplace**

Six not-for-profit organisations have created comprehensive standards and invested in promotion procedures to celebrate organisations that implement LGBTI-inclusive policies in their workplace.

##### **Pride in Diversity (for employers based in Australia)**

Pride in Diversity<sup>1</sup> is Australia’s national not-for-profit employer support programme for all aspects of LGBTI workplace inclusion. In 2010, Pride in Diversity created the Australian Workplace Equality Index (AWEI) that sets a comparative benchmark for Australian employers wishing to demonstrate their commitment to LGBTI equality. The benchmark is published on a yearly basis, in the framework of the AWEI report (AWEI, 2019<sup>[94]</sup>). Based on the AWEI, Pride in Diversity also maintains a website that allows job seekers and employees to identify employers, by industry and location, “that are committed to creating and sustaining a culture in which sexual and gender diversity is not only accepted, but is affirmed and celebrated.”<sup>2</sup>

##### **Community Business (for employers based in Hong Kong)**

Founded in 2003, Community Business<sup>3</sup> is an Asian organisation headquartered in Hong Kong whose mission is “to lead, inspire and support businesses to have a positive impact on people and communities” in the following key markets: China, Hong Kong, India, Japan, Philippines and Singapore. In 2015, Community Business created the Hong Kong LGBT+ Inclusion Index that provides organisations in Hong Kong with a tool to assess and promote their efforts towards LGBT inclusion. The benchmark is published on a yearly basis, in the framework of the LGBT+ Index Report (Community Business, 2019<sup>[95]</sup>).

##### **Workplace Pride (for multinationals)**

Workplace Pride is an Amsterdam-based organisation dedicated to improving the lives of LGBTI people in workplaces all over the world. In 2014, Workplace Pride created the Global Benchmark, a standards

designed to measure the LGBT policies and practices for internationally active employers. The benchmark is published on a yearly basis, in the framework of the Global Benchmark Report (Workplace Pride, 2019<sup>[96]</sup>).

#### **LGBT+ Management Forum (for employers based in South Africa)**

The LGBT+ Management Forum<sup>4</sup> is an umbrella organisation based in South Africa for LGBT employee network groups seeking to create safe and equitable workplaces. In 2018, the LGBT+ Management Forum created the South African Workplace Equality Index (SAWEI) which seeks to benchmark the levels of LGBT equality in the South Africa workplace. The benchmark is published on a yearly basis, in the framework of the SAWEI Full Results Report (SAWEI, 2019<sup>[97]</sup>).

#### **Stonewall (for employers based in the United Kingdom and multinationals)**

Stonewall<sup>5</sup> is a UK-based LGBT rights charity named after the 1969 Stonewall riots<sup>6</sup> in New York City's Greenwich Village and formed in 1989 by political activists opposing Section 28<sup>7</sup> of the Local Government Act. In 2005, Stonewall created the UK Workplace Equality Index that showcases the best UK-based employers for LGBT employees. In 2011, the UK Workplace Equality Index was complemented by the Global Workplace Equality Index which is directed at multinationals. On top of assessing whether organisations practice LGBTI inclusion, the Workplace Equality Index relies on an Employee Feedback Survey that organisations are requested to send to all their employees. This survey, whose responses are collected and analysed by Stonewall, examines whether LGBT and non-LGBT employees are treated on an equal footing at work, based on their self-reported experience. Results of the benchmarking are published on a yearly basis, in the framework of the Top 100 Employers Report (UK Workplace Equality Index) and of the Top Global Employers Report (Global Workplace Equality Index).

#### **Human Rights Campaign (for employers based in the United States and in a few other countries in the Americas, as well as multinationals)**

Founded in 1980, the Human Rights Campaign<sup>8</sup> is the largest LGBT advocacy group in the United States. In 2002, the Human Rights Campaign created the Corporate Equality Index as a tool to rate American businesses on their treatment of LGBT employees. In 2016, the Corporate Equality Index criteria were expanded to require that multinationals do not restrict their LGBTI-inclusive policies to operations performed in the United States, but extend these policies across all countries where they are active. The benchmark is published on a yearly basis, in the framework of the Corporate Equality Index Report (HRC, 2020<sup>[98]</sup>). This report notably contains the list of the best places to work for LGBT individuals, by industry.<sup>9</sup> The Human Rights Campaign is also developing indices similar to the Corporate Equality Index for national employers outside the United States. Such is the HRC Equidad MX that evaluates LGBT workplace inclusion within major businesses in Mexico (HRC EQUIDAD MX, 2020<sup>[99]</sup>).

<sup>1</sup> See <http://prideinclusionprograms.com.au/>.

<sup>2</sup> See <http://www.inclusiveemployers.com.au/>.

<sup>3</sup> See <https://www.communitybusiness.org/>.

<sup>4</sup> See <http://lgbtforum.org/>.

<sup>5</sup> See <https://www.stonewall.org.uk/>.

<sup>6</sup> The Stonewall riots were a series of spontaneous, violent demonstrations by members of the LGBT community against a police raid that began in the early morning hours of 28 June 1969, at the Stonewall Inn in the Greenwich Village neighborhood of Manhattan, New York City. They are widely considered to constitute the most important event leading to the LGBT liberation movement.

<sup>7</sup> See Section 4.2.1 for more information on Section 28.

<sup>8</sup> See <https://www.hrc.org/>.

<sup>9</sup> See <https://www.hrc.org/resources/best-places-to-work-2020>.

### 4.2.3. Promoting LGBTI equality in health care

Legally prohibiting discrimination on the grounds of sexual orientation, gender identity and sex characteristics in health care, barring conversion therapies on LGBTI minors, banning medical mandates for legal gender recognition, postponing medically unnecessary sex-normalising treatment or surgery on intersex babies, are all actions that contribute to ingraining a culture of equal treatment in health care settings. Additionally, it is important that governments examine the possibility that the public health system provides adequate health care to transgender people who wish to transition or, at least, that the costs are covered or reimbursable under private and public health insurance schemes (Health4LGBTI, 2017<sup>[100]</sup>). Similarly, intersex people should get coverage or reimbursement for treatments needed as a result of surgical and/or other interventions on their sex characteristics (e.g. life-long hormone substitution therapy). In case surgery occurred at an early stage of their life without their consent, they should also be entitled to reparative treatments on the same coverage terms as those provided for survivors of female genital mutilation (ILGA Europe and OII Europe, 2019<sup>[55]</sup>).

But more can be done. LGBTI people indeed face specific health needs and risks that must be properly addressed by health practitioners and professionals (HPPs). However, focus groups conducted among LGBTI participants across the EU reveal that LGBTI people identify a lack of knowledge on the part of HPPs around their needs. This situation is compounded by the fact that a large share of LGBTI people do not disclose their sexual orientation, gender identity and/or sex characteristics in health care settings for fear of discrimination (Health4LGBTI, 2017<sup>[101]</sup>): 42% of EU LGBT respondents in 2012 declare they have hidden being LGBT in the health care system, and 10% report having personally felt discriminated against because of being L, G, B or T by health care personnel, e.g. a receptionist, nurse or doctor, in the 12 months prior to the survey (European Union Agency for Fundamental Rights, 2014<sup>[12]</sup>). Moreover, nearly one third (31%) of LGBTI respondents in 2019 report having experienced difficulties when using or trying to access health care services due to being LGBTI. Notably, 14% reported inappropriate curiosity or comments, 7% that some of their specific needs were ignored and 5% that they had to change general practitioners or other specialists due to their negative reaction (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>).

To remove these barriers, state authorities could include compulsory modules in the initial education and career-long learning of HPPs, that will teach them (i) about the specific health needs of LGBTI people; (ii) how to approach LGBTI people in an inclusive way (Gay and Lesbian Medical Association, 2006<sup>[105]</sup>; 2010<sup>[106]</sup>; Health4LGBTI, 2018<sup>[102]</sup>). Such training has proven to be successful in an EU-funded impact evaluation conducted in six EU countries: Belgium, Bulgaria, Italy, Lithuania, Poland and the United Kingdom (Box 4.17).<sup>26</sup>

#### Box 4.17. LGBTI-inclusive training curricula for health practitioners and professionals: good practice examples from EU-funded Health4LGBTI

Health4LGBTI is an EU-funded Pilot Project aimed at reducing health inequalities experienced by LGBTI people. This programme relies on a training course named “Reducing health inequalities experienced by LGBTI people: what is your role as a health professional?”. This course is organised around the following four modules of two hours each (Health4LGBTI, 2018<sup>[102]</sup>):

- Module 1: Improving knowledge on terms and concepts related to LGBTI topics;
- Modules 2 and 4: Improving knowledge on the health needs of LGBTI people, with a special focus on transgender and intersex people in Module 4;
- Module 3: Improving knowledge on how to approach LGBTI people in an inclusive way.



A total of 110 health care practitioners and professionals (HPPs) participated in this pilot training in six EU countries: Belgium, Bulgaria, Italy, Lithuania, Poland and the United Kingdom. Nearly all attended the training due to personal interest (half self-identified as LGBTI) and reported inclusive attitudes towards LGBTI people already before the training. Despite this limited room for progress, the pre- and post-training tests revealed a significant increase in participant's knowledge on all the topics covered by the training. Moreover, in a follow-up questionnaire administered two months after the end of the training, participants mentioned being able to apply what they learned in their practice. Additionally, more than 90% reported having discussed the content of the training with their colleagues at least once (Health4LGBTI, 2018<sub>[103]</sub>; Donisi et al., 2019<sub>[104]</sub>).

Source: Health4LGBTI's webpage, [https://ec.europa.eu/health/social\\_determinants/projects/ep\\_funded\\_projects\\_en#fragment2](https://ec.europa.eu/health/social_determinants/projects/ep_funded_projects_en#fragment2).

### *Increasing knowledge on LGBTI people's health needs*

LGBTI people are at greater risk of mental health disorders (Chapter 3). The general tendency of health systems not to prioritise mental health disproportionately affects the LGBTI population. It is critical that health practitioners and professionals (HPPs) be informed of this reality to better address LGBTI people's health needs.

But lower mental health is only one of the many health inequalities faced by LGBTI individuals (Health4LGBTI, 2017<sub>[100]</sub>), which include the fact that:

- Lesbian and bisexual women are less likely to attend cervical screening due to the wrong perception among HPPs that they do not need such screening, thereby placing them at a higher risk of developing cancer;
- Gay and bisexual men have a higher anal cancer rate and are at greater risk of contracting a sexually transmitted infections such as syphilis and human immunodeficiency virus (HIV): globally, the risk of acquiring HIV is 22 times higher among men who have sex with men in 2019 (UNAIDS, 2019<sub>[107]</sub>);
- Transgender people are also at greater risk of sexually transmitted infections, in a context where stigma both within and outside the family compels some to engage in sex work. In Italy for instance, past experiences of discrimination are strongly correlated with transgender people's decision to become sex workers (D'Ippoliti and Botti, 2016<sub>[108]</sub>). Consistent with this finding, transgender people are overrepresented among prostitutes (Valfort, 2017<sub>[109]</sub>);
- Intersex people who were subject to unconsented sex normalising surgery or treatment in their early life are at greater risk of long term conditions, although more research is needed on the long-run impact of surgical interventions and hormone treatment.

Finally, HPPs working in facilities providing health care to transgender people should be trained on providing individualised treatment, one that assists transgender people in finding a gender expression that is the best suited for them. It is important to make HPPs aware that hormones and surgery are just two of many options available to help transgender people achieve comfort with their self (World Professional Association for Transgender Health, 2012<sub>[110]</sub>).

### *Increasing knowledge on how to approach LGBTI people in an inclusive way*

To encourage LGBTI people to access health care and be open to disclose their identity in health care settings where appropriate, it is essential that health practitioners and professionals (HPPs) be trained on providing them with a welcoming environment. When entering health care facilities, many LGBTI people report looking for clues that signal whether it is an LGBTI-inclusive setting. To meet expectations, HPPs could consider implementing key good practices such as (Health4LGBTI, 2017<sub>[100]</sub>):

- Visibly posting a non-discrimination statement for equal care to all patients, regardless of sexual orientation, gender identity, gender expression, sex characteristics and other characteristics such as age, race, ethnicity, physical ability or attributes and religion;
- Clearly displaying LGBTI-specific media such as magazines and newsletters for LGBTI individuals;
- Exhibiting posters with racially and ethnically diverse same-sex couples, LGBTI families, transgender and intersex people, as well as posters from LGBT or HIV/AIDS organisations, etc.

HPPs should also be trained on communicating with LGBTI patients in an inclusive way. According to LGBTI patients, language used in health care settings causes discomfort and offense because it assumes all patients are heterosexual, cisgender and non-intersex, and is at times judgmental (Health4LGBTI, 2018<sub>[102]</sub>). HPPs should be encouraged to adopt a communication that reflects a sensitivity to creating space for plurality and diversity. This approach entails:

- Avoiding assuming the gender of patients' partners by asking if a male patient has a girlfriend or wife or if a female patient has a boyfriend or husband. HPPs should instead ask open-ended questions such as "Do you have a partner?";
- Using gender pronouns only if HPPs are certain of the patient's gender identity. If unsure, HPPs should politely ask the patient's preferred name or pronoun: "What name and pronouns should I use?" or "I would like to be respectful – how would you like to be addressed?";
- Building respect and trust by carefully listening to patients to learn how they self-describe their own sexual orientation, gender identity, sex characteristics, partner(s) and relationship(s).

Compliance with these guidelines is especially important when HPPs interact with elderly LGBTI people. This group has greater needs for health care and is much less likely to be out than the younger generation, having spent lives marked by histories of greater marginalisation, discrimination and even persecution. In the United States for instance, only 1.4% of people born before 1945 self-identified as being LGBT in 2017, as opposed to 8.2% among millennials – born between 1980 and 1999 (OECD, 2019<sub>[11]</sub>). In this context, the priority could be put on training staff working with seniors, such as long-term care facilities. This strategy is all the more critical since older LGBTI people are more likely to reside in these settings: they are less often provided home care by a partner and/or children since their probability to be single and childless is higher (MAP and SAGE, 2017<sub>[111]</sub>).

#### **Box 4.18. LGBTI-inclusive housing for seniors: good practice examples from France, Germany and Spain**

Created in 2017 in France, the Rainbold Society was founded with the aim of designing and developing the "Home of Diversity".<sup>1</sup> This project represents a solidarity-focused and intergenerational response to the social isolation faced by LGBTI elders, organised around the following criteria: participative and inclusive environment of over 20 rental housing units free of LGBTI-phobia; care and personal assistance services; openness to non-retired persons; activities and services that strengthen the social bond and are accessible to residents and neighbourhood associations; "hetero-friendliness". The "Home of Diversity" will be 80% comprised of LGBTI seniors (autonomous or weakly dependent and over the age of 60), as well as 20% comprised of people under 60 and/or heterosexual. The project also involves the creation of "Les Audacieux" association which provides a programme of weekly activities and meetings to the older LGBTI community with the aim of providing benevolent and warm exchanges without taboos related to age, sexuality or gender.

France is not unique in this best housing practice for older LGBTI persons. The Rainbold Society was inspired by the "Lebensort Vielfalt" ("Diverse Living Space") house of Schwulen Beratung in Berlin.<sup>2</sup> Similarly, "Fundacion 26 de Diciembre" in Madrid promotes the construction of residential



centres specialising in the care of LGBT seniors with comprehensive social, health and psychological care programs.<sup>3</sup> In addition to LGBT residences that host regular dinners, movie-viewings, and workshops, the organisation offers peer support groups for LGBT persons over 50 living with HIV.

<sup>1</sup> See <https://rainbold.fr>.

<sup>2</sup> See <http://www.schwulenberatungberlin.de/post.php?permalink=lebensort-vielfalt#seitenanfang>.

<sup>3</sup> See <http://www.fundacion26d.org/mision/>.

Yet, training HPPs working with seniors might not be enough. Large percentages of individuals worldwide report they are not comfortable socialising with sexual and gender minorities and this discomfort is higher among older generations, meaning that LGBTI elders in long-term care facilities face anti-social behaviours from other residents that lead many to stay in or retreat back to the closet (SAGE, 2018<sub>[112]</sub>). An alternative strategy could consist in supporting the development of co-housing inclusive of LGBTI seniors, as it is done for instance in France, Germany and Spain (Box 4.18).

### 4.3. Creating and maintaining popular support for LGBTI inclusion

As recalled in Section 4.2, social acceptance of LGBTI people remains limited in OECD countries. Yet, popular support for LGBTI inclusion is critical for countries to pass the legal provisions defined and analysed in Chapters 2 and 3 and avoid backlash against those already in force. Creating and maintaining this support first entails implementing well-designed awareness-raising activities among the general public so as to cultivate greater understanding of LGBTI persons and their rights (Section 4.3.1). It is also important that government and public officials behave, collectively and individually, in a way that fosters equal treatment of LGBTI individuals (Section 4.3.2).

#### 4.3.1. Implementing well-designed awareness-raising activities among the general public

Effectively communicating human rights is challenging. Comprehensive guidelines published by key stakeholders identify four main conditions to ensure that campaigns promoting LGBTI equality resonate with the general public and, hence, positively impact individual attitudes and behaviours (Equinet and PIRC, 2017<sub>[113]</sub>; ILGA-Europe and PIRC, 2017<sub>[114]</sub>; European Union Agency for Fundamental Rights, 2018<sub>[115]</sub>).

##### *Telling a human story*

To promote LGBTI equality, any communication strategy should seek to humanise LGBTI individuals. Research into “psychic numbing” indeed provides empirical support to the famous saying according to which “One man’s death is a tragedy, a million deaths is a statistic”: individuals’ empathy and willingness to help decreases as the number of victims increases (Slovic, 2010<sub>[116]</sub>; Västfjäll et al., 2014<sub>[117]</sub>). In this setting, rather than statistics on the pervasiveness of stigmatisation, discrimination and violence endured by LGBTI individuals, advocacy and awareness-raising campaigns should rely on personal testimonials and anecdotes that provide a human face to the problem. This strategy was notably implemented by the European Union’s “We all share the same dreams” initiative that was launched in 2016 to increase awareness and acceptance of LGBTI persons (Box 4.19).

#### Box 4.19. The European Union’s “We all share the same dreams” campaign

“We all share the same dreams” is the theme of the European Commission campaign aiming to raise awareness and increase the social acceptance of LGBTI people (European Commission, 2016<sup>[118]</sup>). A critical component of the campaign is the #EU4LGBTI video testimonies<sup>1</sup> which feature LGBTI and straight people sharing the same dreams of equality for all. The videos offer personal profiles and insight into the everyday lives of LGBTI people, as well as social stigmas and individual challenges they encounter when coming out. In addition to introducing individualised narratives of persons from all across the LGBTI spectrum, the videos also include testimony from family members and partners on how they learned more about the obstacles faced by LGBTI persons and their growing acceptance and love of the LGBTI person in their lives.

The videos raise awareness in a non-condescending, interpersonal and relatable manner that humanises LGBTI persons through personal testaments and shows how people that were initially ignorant or unsympathetic to the experience of LGBTI persons evolved into allies and advocates for inclusion and diversity. The approach thereby creates common ground with members of the public viewing the content who perhaps feel uninformed but are open-minded and want to learn more about how to better support LGBTI persons. Importantly, the European Commission has provided a social media toolkit to support awareness-raising, promote positive messaging and increase the number of non-LGBTI allies (European Commission, 2016<sup>[119]</sup>). The resource includes suggested Tweets and Facebook posts to achieve these aims.

<sup>1</sup> See [https://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=605456#Awarenessraising](https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=605456#Awarenessraising).

#### *Identifying issues of broader interest to the general public*

It is critical that the campaign does not focus on topics viewed as too specific to sexual and gender minorities but concentrate instead on issues of broader interest to the general public. A successful communication strategy should go beyond appealing only to people’s compassion for minorities. This objective entails identifying the values underlying LGBTI rights that matter for non-LGBTI people, that they hold dear in their everyday life and are willing to fight for, in order to connect them with the campaign. These are the lessons that were learned “the hard way” by the Freedom to Marry<sup>27</sup> campaign in the United States where numerous popular votes on marriage equality were lost until the organisation began to use “values based campaigning” in 2010 (Box 4.20).

#### Box 4.20. Overhauling the US-based Freedom to Marry campaign to win at the ballot

By 2009, the Freedom to Marry campaign had lost every one of the 30 state-wide up-or-down votes of the public on a ballot measure related to marriage equality. Beginning in 2010, Freedom to Marry developed a plan to win at the ballot. The organisation conducted research among the “moveable middle”, i.e. the 40% of Americans who, based on polls, were neither strongly supportive of nor strongly opposed to marriage equality.

This investigation made Freedom to Marry aware that the campaign’s heavy focus on the entitlements and benefits lost by same-sex couples in absence of marriage equality was turning off these reachable-but-no-yet-reached individuals. It did so by spreading the misconception that same-sex couples wanted to marry for reasons different from those motivating different-sex couples: while the moveable middle held that different-sex couples married primarily for “love and commitment”, they considered that same-

sex couples married primarily for “rights and benefits”. The research made clear that what was needed was an emphasis on love and commitment that same-sex couples share so that the moveable middle feels connected with them and, hence, willing to adhere to basic moral values – like treating others the way you would like to be treated – leading them to support same-sex marriage.

The campaign therefore began to feature same-sex couples, their parents, and their children discussing why marriage was so important (because of love, commitment and family). This values-based approach allowed the Freedom to Marry campaign to turn the corner on years of ballot losses (Freedom to Marry, 2016<sub>[120]</sub>).

### *Taking the public on a journey*

A well-designed campaign to promote LGBTI equality should take the public on a journey by showing them how other people’s thinking evolved. One famous case was President Barack Obama who spoke of how his daughters helped him to embrace marriage equality in the United States. It is important to include among messengers individuals to whom the public can relate. People telling stories should not always be role models, experts, activists and survivors of abuses, but everyday people just like the public who have gone on a journey that the audience can also take. Finding “unlikely” messengers, such as faith leaders, is also critical because these messengers are viewed as “permission givers” by the undecided. This capacity to build alliances with a broad range of messengers to take the public on a journey was one key ingredient of the successful “Yes Equality” campaign in Ireland (Box 4.21).

#### **Box 4.21. Proposing a wide range of journeys to the public: the “Yes Equality” campaign in Ireland**

In 2015, Ireland held a referendum to amend the constitution to permit marriage equality for same-sex couples, becoming the first country in the world to secure this landmark achievement by popular vote. In a country where over 75% of the population identified as Catholic in 2016 and the Catholic Church opposed the measure, persuading the general public to vote in support of LGBTI rights was a difficult task. The “Yes Equality” campaign was only able to address this challenge by building alliance with a broad range of messengers who did not tell the electorate how to vote but why they would vote yes, thereby modelling a journey that the public could also take. These messengers included:

- Role models, i.e. people that are admired and trusted by the audience. These included Irish actor Colin Farrell and country singer Daniel O’Donnell, each of whom helped the campaign reach out a pocket of voters that would be influenced by these celebrities saying why they thought a Yes vote was a good thing (“For fairness, for equality and for a kind and inclusive future for Ireland”). But one of the most influential role model in the Irish campaign was well known Catholic and former President of Ireland, Mary McAleese. She spoke out for marriage equality, saying how it was a way to ensure equality for all children and would help end homophobic bullying of young people. She told the surprised nation about her love for her own gay son. Her voice as a Catholic, a mother and a former President was seismic and strongly influenced the voting public, just days out from the referendum vote. This experience showed how identifying leaders and holding them back until the right time for campaign purposes is key for a campaign’s success.
- Permission givers. The “Yes Equality” campaign very early on supported the formation of a faith based advocacy group ‘Faith in Marriage Equality’. This group of Church of Ireland, Catholic, Jewish and Presbyterians spoke to other faith holders and church spokespersons about why

they, as people of faith were voting Yes. Prominent Catholic public figures came out in support of the referendum such as:

- Sister Stanislaus Kennedy, known for her work among homeless Irish, who said: “I have thought a lot about this... I am going to vote Yes. I have a big commitment to equality for all members of society. It’s what my life has been about. We have discriminated against members of the gay and lesbian community for too long. This is a way of embracing them as full members of society”;
- Fr. Gabriel Daly, an influential theologian who insisted that Catholics could vote for marriage equality “with good conscience” since marriage equality was about providing same-sex couples with access to civil, not religious marriage;
- Fr. Martin Dolan, a long-time priest in Dublin who came out during Mass saying “I’m gay myself” as he called upon parishioners to support same-sex marriage in the Irish referendum – an initiative praised by the audience who applauded him.

Although the Catholic hierarchy was more divided around marriage equality than priests and sisters, some archbishops took a clear stance in favour of same-sex civil marriage such as Diarmuid Martin (Dublin) who said: “Anybody who doesn’t show love towards gay and lesbian people is insulting God. They are not just homophobic if they do that – they are actually Godophobic because God loves every one of those people.”

- Everyday people. The Yes Equality campaign used a lot of personal stories from people the public could easily relate to, which included:
  - Long-time married straight couples speaking about how important marriage was to them and how they supported the rights of other loving couples to get married;
  - Parents with LGBT children speaking about how they wanted equal rights for all children;
  - Older people with strong religious faith speaking of how marriage was about love and love must be supported by giving everyone access to the right to marry, etc.

Source: Council of Europe (2017<sub>[121]</sub>), “Good Practice Guide on Values Based Campaigning for Legal Recognition of Same-Sex Partnerships” and Parker (2017<sub>[122]</sub>), “The Path to Marriage Equality In Ireland: A Case Study”.

### *Giving people hope without being naive*

An overarching element of successful campaigns fostering LGBTI equality consists in leading the debate with positive messages to inspire positive associations in the public imagination. Campaigners should refuse to be drawn into ugly debates with the opposition and avoid attacks. Instead of negative emotions like anger and fear, successful campaigns trigger empathy and hope. However, it is important not to be naïve and, hence, refute misinformation spread by opponents when it risks persuading the undecided.

This stance is particularly critical when gathering support for passing transgender-inclusive laws such as those prohibiting discrimination based on gender identity in public accommodations – these laws notably allow transgender individuals to access restrooms in accordance with their gender identity rather than sex at birth. Transgender people are disproportionately exposed to discrimination and abuses in public accommodations (National Center for Transgender Equality, 2016<sub>[123]</sub>), but laws to provide such access to restrooms have faced strong opposition from conservatives and “gender critical” feminists<sup>28</sup> who disseminate myths to discredit these laws. A common tactic deployed by these groups entails citing fear of safety and privacy and claim that predatory males will exploit such laws by falsely declaring themselves as female to invade women-only spaces such as restrooms, incarceration institutions and domestic violence shelters in order to commit abuses, thereby putting cis-women in harm’s way. Yet, these assertions are not empirically grounded (GLAAD, 2017<sub>[124]</sub>; TGEU, 2017<sub>[125]</sub>). For instance, a study

comparing Massachusetts localities with and without inclusive public accommodation ordinances found that public accommodations antidiscrimination laws do not affect the number or frequency of criminal incidents in restrooms, locker rooms or changing rooms (Hasenbush, Flores and Herman, 2018<sub>[126]</sub>).

Not anticipating and countering these backlash narratives raises substantial barriers to advancing transgender rights, as recently shown in the United Kingdom where the government launched in 2018 a public consultation to make the legal gender recognition less bureaucratic and intrusive, i.e. based on self-determination (Government Equalities Office, 2018<sub>[127]</sub>). This project to amend the Gender Recognition Act 2004 has stalled since the conclusion of the consultation due to fierce and unforeseen opposition. Although countries that have adopted legal gender recognition based on self-determination have seen no evidence of people amending their gender with fraudulent intent, adversaries to the reform won public opinion by claiming self-determination would make it easier for predatory men to pass as women (Stonewall, 2018<sub>[128]</sub>). The successful “Yes on 3” ballot referendum campaign that took place in 2018 in Massachusetts exemplifies good practices to avoid this type of deadlock (Box 4.22).

#### **Box 4.22. Fighting myths and misconceptions: the “Yes on 3” ballot referendum campaign in Massachusetts**

In 2016 the Massachusetts Legislature passed public accommodation protections for trans persons in places such as restaurants, parks, public transportations and restrooms. Opponents of the law waged a campaign to include a ballot question on reversing the law’s protections, prompting Massachusetts to host in 2018 the first-ever state-wide popular vote on whether to continue to prohibit discrimination on the ground of gender identity in places of public accommodation.<sup>1</sup>

The campaign embraced several critical awareness raising tactics. It included a variety of videos that humanise the issue by sharing stories of trans youth and their parents. The videos use the language of common values, conveying the desire for trans persons (particularly youth) to live free from abuse and for families with trans children to thrive, thereby making the issue real and relatable. The campaign also appealed to shared identity and emotions of parents across the states: parents of trans youth convey to parents viewing the advertisements that they are united in their commitment to do anything to protect their children, want for their children to be treated just like any other and the need for their children to have the same rights as others. The videos also feature testimony from law enforcement and government officials, social workers, as well as sexual assault, domestic violence and women’s organisations that speak to safety and privacy concerns launched as part of fear-mongering campaigns by opponents. These voices represent only a few from a wide coalition that also includes business and industry stakeholders; faith leaders; higher education and educational associations; non-profits; labour unions and every championship professional sports team from Massachusetts.

Critically given the myths and misconceptions spread by opponent to transgender rights, the website of the campaign includes a detailed myth-buster that notably debunks the following three common myths:

- Myth: “Non-discrimination protections could be used as cover for misconduct in restrooms and locker rooms.” Fact: “The language of the law prohibits its abuse, criminal laws remain in force, and real-life experience tells a different story”:
  - The law explicitly prohibits people from asserting gender identity for any “improper purpose.”
  - Nothing in this law weakens existing laws against illegal behaviour. Assault and harassment remain illegal.
  - The 18 states and more than 200 municipalities with laws protecting transgender people from discrimination have reported no problems.

- Myth: “Transgender people who use restrooms and locker rooms will make others uncomfortable.” Fact: “Transgender men and transgender women use restrooms and locker rooms for the same reasons everyone does. And when they do, they value safety, privacy, and modesty just like everyone else. Transgender people are part of our workplaces and our neighbourhoods, and they need to be able to use the restroom just like everyone else.”
- Myth: “Discrimination against transgender people is not a problem in Massachusetts.” Fact: “A 2014 survey revealed that 65 percent of transgender people in Massachusetts faced discrimination in a public place in the previous 12 months.”

<sup>1</sup> Voting “yes” on ballot question 3 indicated support for upholding the protections in the existing 2016 law, hence the name of the campaign. Source: <https://www.freedommassachusetts.org>.

### **4.3.2. Setting an example through government and public authorities**

Building and sustaining popular support for LGBTI inclusion also requires that government and public authorities lead through exemplary official and individual conduct. Yet, the United Nations continues to express concern over rhetoric used by political and community leaders that incites anti-LGBTI hatred and violence, promotes negative stereotypes, prompts prejudice and contributes to further stigmatisation (OHCHR, 2015<sub>[129]</sub>). The 2012 survey conducted by the European Union Agency for Fundamental Rights confirms that bias against sexual and gender minorities among government and public officials is viewed as pervasive: almost half of all LGBT respondents agreed offensive language about LGBT people by politicians is ‘very widespread’ or ‘fairly widespread’ (European Union Agency for Fundamental Rights, 2014<sub>[12]</sub>).

#### *Exemplifying through official conduct*

Government and public officials can take official steps to affirm LGBTI persons and their rights, at both the domestic and international level.

#### **Official conduct showing the way to LGBTI inclusion at the domestic level**

International human rights law provides firm legal basis for a right to remedy and reparation.<sup>29</sup> The Office of the United Nations High Commissioner for Human Rights has made clear that state obligation to redress applies not only vis-à-vis other states, but also to injured persons and groups within the jurisdiction of the state itself (UN General Assembly, 2005<sub>[130]</sub>; OHCHR, 2008<sub>[131]</sub>)

Reparation is an important tool that government and public authorities can collectively use to acknowledge past state-sponsored discrimination, oppression and violence against LGBTI people. This official strategy is conducive to beginning a healing process, while also familiarising and sensitising the public about historical injustices suffered by LGBTI persons at the hands of the state, to avoid repetition of those acts.

Reparation policies are gaining ground in countries at the forefront of the battle for LGBTI inclusion such as Canada, Germany the Netherlands or the United Kingdom where redress revolves around the following key set of measures:

- Issuing a formal national apology on behalf of the government and law enforcement entities that engaged in or were complicit in human rights violations against LGBTI persons – such is the national public apology uttered in 2017 by Prime Minister Trudeau in front of members of the LGBTQ2<sup>30</sup> community who suffered from being banned from the military and civil service from the 1950s to the early 1990s;



- Expungement and destruction of criminal records for those convicted for same-sex crimes or under public morality and decency laws (Box 4.23);
- Financial compensation for loss of income and state benefits such as pensions due to labour market discrimination and confinement (Box 4.23);
- Erection of memorials such as the Memorial to Homosexuals persecuted under Nazism that was established in Berlin in 2008 with the intention of honouring the victims, keeping alive the memory of the injustice and creating a lasting symbol of opposition to enmity, intolerance and the exclusion of gay men and lesbians;<sup>31</sup>
- Issuing publications that provide official documentation and public reporting on the degree and order of magnitude of wrongdoings – such is the “Pink Life Stories” project initiated in 2012 by the International Homo/Lesbian Information centre and Archive (IHLIA) based in Amsterdam whereby volunteers draw up the personal story of an homosexual senior in a book form to create awareness on the individual and social struggle carried out by older generations to advance LGBTI rights.<sup>32</sup>

### Box 4.23. Expungement and compensation: good practice examples from Canada, Germany and the United Kingdom

#### Canada

Following Prime Minister Justin Trudeau’s national public apology, the *Expungement of Historically Convictions Act* of 2018 establishes a process for expunging historically unjust convictions for consensual sexual activity between same-sex persons under gross indecency, buggery and anal intercourse offenses. The legislation also provides for the destruction or removal of the judicial records for those convictions from federal repositories and systems. These actions were further complemented by a settlement class action that provides USD 15 million broad based reconciliation and memorialisation measures funded by the Canadian government; individual reconciliation and recognition measures including the creation of the Canada Pride Citation and personal letter of apology; individual compensation between USD 5 000 and USD 50 000 for those directly affected by the government’s official policies including investigation, sanction, discharge or termination.<sup>1</sup>

#### Germany

In 1935, the Nazi regime revised Paragraph 175 of the German criminal code to expand and strengthen provisions that criminalised “lewd and lascivious” homosexual acts between men. Violations resulted in penalties that included imprisonment, in some cases castration, and the loss of civil rights. Over the course of the Nazi regime, an estimated 100 000 men were arrested with approximately 50 000 convicted and sentenced to regular prisons and an estimated 5 000 to 15 000 interned in concentration camps and forced to don pink triangles.

Although Paragraph 175 was eased in 1969, it was not rescinded until 1994 and even then, convictions of offenses persecuted under the provision remained on the men’s criminal records. In 2016, the German Federal Anti-Discrimination Agency launched the #NotGuilty campaign which featured posters and videos of men imprisoned for their sexuality under Paragraph 175 and now in their old age with criminal records of those offenses (Federal Anti-Discrimination Agency, 2016<sub>[132]</sub>). The campaign was particularly effective because the audience saw and heard directly from those who experienced discrimination and prosecutions because of their sexual orientation as they told personal stories about their lives including what had led to their arrest, the trial and sentencing. Following this campaign, the German Parliament unanimously voted in 2017 to void the convictions of approximately 50 000 men that were prosecuted for same-sex sexual acts under Paragraph 175 since World War II. The



government also approved compensation of EUR 3 000 for each individual with an additional EUR 1 500 for each year spent in prison for the conviction.

### United Kingdom

In 2012, the United Kingdom passed the *Protection of Freedom Act* that allows men with historical convictions for consensual same-sex acts to apply free of charge to have their convictions deleted, or where not possible, annotated and pardoned. In 2017, the United Kingdom went a step further by passing the *Policing and Crimes Act*, a section of which offers reparation in the form of an amnesty law that posthumously pardons deceased individuals convicted under now repealed homophobic discriminatory laws, such as “buggery” and “gross indecency” laws and equivalent military services offenses.

<sup>1</sup> Plus up to USD 50 000 for exceptional harm not arising from physical or sexual assault, and up to USD 100 000 for exceptional harm resulting from physical or sexual assault.

## Official conduct showing the way to LGBTI inclusion at the international level

Government and public officials representing countries that have made strides to protect and promote the inclusion of LGBTI rights in their home countries are in a position to positively advocate for the expansion of those rights in other countries through international relations and foreign diplomacy. Human rights stakeholders encourage these countries to engage in two types of actions (European Union, 2010<sup>[133]</sup>; Parliamentarians for Global Action and UNDP, 2017<sup>[134]</sup>).

First, these countries are invited to participate in and contribute to resources for global and regional action by promoting and facilitating the discussion of LGBTI human rights, as well as sharing best practices, innovative initiatives, challenges and lessons learned about LGBTI rights. For instance, a majority (29) of OECD countries are members of the Equal Rights Coalition.<sup>33</sup> Launched in 2016 under the leadership of Uruguay and the Netherlands, this initiative advances the human rights of LGBTI persons and promotes inclusive development in both member and non-member countries through close work with civil society, multilateral partners and UN agencies, and through groups focused on the following four priority areas: (i) international and regional diplomacy; (ii) LGBTI inclusion in the 2030 Agenda for Sustainable Development; (iii) coordination of donor funding; and (iv) national laws, policies and practices. Moreover, some former colonial powers are involved in helping their former colonies counter the anti-LGBTI legislation that emerged during colonial times in case it is still in force. In 2018 for instance, during the Commonwealth Heads of Government Meeting, the UK Prime Minister Theresa May took the historic step in expressing deep regret over the legacy of violence, and even death, which outdated discriminatory legislation often put in place by the United Kingdom continues to inflict on women, girls and LGBT people across the Commonwealth. This speech was backed up by a major programme of GBP 5.6 million (USD 7.7 million or EUR 6.3 million) in partnership with civil society groups to support countries wishing to work towards legislative reform.

Second, countries who made strides to ensure LGBTI equality are encouraged to incorporate LGBTI concerns in statements and in questions during interactive dialogues at the UN and other regional or multilateral events, reflecting the fact that the country is worried by violations of human rights and fundamental freedoms based on sexual orientation, gender identity and sex characteristics (Box 4.24). In the same vein, these countries are expected to invite state visiting missions, diplomats and other public officials abroad to raise issues of human rights violations and abuses towards LGBTI people, and to condemn in particular the use of the death penalty, extrajudicial, summary or arbitrary executions, the practice of torture and other cruel, inhuman and degrading treatment or punishment, arbitrary arrest or detention, and deprivation of economic, social and cultural rights (Box 4.24).

#### Box 4.24. The US global campaign to decriminalise homosexuality

In September 2019, President Trump included in his speech before the United Nations General Assembly his administration's global initiative launched in February of the same year to decriminalise homosexuality in the more than 60 countries where it remains illegal. This speech marks the first time a U.S. president explicitly brings up the decriminalisation of homosexuality in remarks before the United Nations General Assembly.

It is not the first time however that a US president brings up LGBT rights before the United Nations. That distinction belongs to President Obama, who included gays and lesbians in a speech addressing the General Assembly in 2011. "No country should deny people their rights to freedom of speech and freedom of religion, but also no country should deny people their rights because of who they love, which is why we must stand up for the rights of gays and lesbians everywhere," Obama said. Of significance was also the entire speech before United Nations delegates in Geneva that Hillary Clinton devoted in 2011 to US solidarity with LGBT people across the globe. A notable line in the speech was Clinton saying "Gay rights are human rights, and human rights are gay rights."

Consistent with Trump administration's global initiative to decriminalise homosexuality, US diplomatic officials have shown commitment to denounce human rights violations based on sexual orientation. Notably, Daniel L. Foote, the US Ambassador to Zambia, officially condemned in November 2019 a Zambian high court ruling sentencing two men to 15 years in prison for homosexuality (U.S. Embassy in Zambia, 2019<sup>[135]</sup>).

Source: <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-74th-session-united-nations-general-assembly/>.

#### *Exemplifying through individual conduct*

In addition to advocating for legal advancements, members of parliament play a crucial role in fostering inclusion, acceptance and support for LGBTI person through their individual conduct, as illustrated by the newly created Global LGBT+ Caucus (Box 4.25). Effectively intervening and demonstrating leadership to condemn discrimination and promote the human rights of LGBTI persons within parliaments and constituencies can serve to deter some from engaging in negative conduct against LGBTI persons, while emboldening others to positively defend their rights (European Union Agency for Fundamental Rights, 2016<sup>[136]</sup>).

The United Nations Development Programme and the international network Parliamentarians for Global Action identify five key practice areas where parliamentarians can take action in support of LGBTI people (Parliamentarians for Global Action and UNDP, 2017<sup>[134]</sup>):<sup>34</sup>

- Representation role: parliamentarians are invited to guarantee that LGBTI constituents accessing services do not face additional barriers but receive equal treatment as all other constituents;
- Oversight role: parliamentarians are encouraged to monitor the implementation of government policies and plans that advance equality and non-discrimination for all individuals and be sure they specifically address the needs of LGBTI people;
- Work with parliament: parliamentarians are urged to challenge other parliamentarians who advocate for discriminatory and exclusionary language or actions and take concrete steps to counter these actions;
- Work with political parties: parliamentarians are encouraged to influence the platform of their political party to ensure that LGBTI people are: (i) regularly consulted and take part in the design,

implementation and monitoring of laws, policies and programmes that affect them; (ii) encouraged to join the party, run as candidates and vie for leadership positions within the party;

- Reaching out to civil society: parliamentarians are pushed to bring together and build broad-based civil society coalitions to promote dialogue and partnerships between parliaments and civil society to help break down taboos and challenge stigma and discrimination against LGBTI people.

#### **Box 4.25. The Global LGBT+ Caucus**

In 2019, the Global Equality Caucus formed as an international network of parliamentarians and elected representatives aiming to tackle discrimination against LGBT+ people. Membership is open to legislators across the world, regardless of sexual orientation, gender identity or sex characteristics. The organisation is the first dedicated global network focused on convening and building international coalitions of elected officials to promote LGBT+ rights. The Caucus partners with NGOs, businesses and governments and supports collective action campaigns to positively influence policy debates and legislation. The Caucus' key priorities include supporting decriminalisation and the end of violence against LGBT+ people; equal rights and non-discrimination against LGBT+ people; equal access to health care, including HIV treatment and adequate services for trans persons; effective data collections to ensure accountability; and funding for NGOs that work for LGBT+ people.

Source: <https://equalitycaucus.org/about-the-caucus>.

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## Annex 4.A. Ongoing nationwide action plans devoted to improving LGBTI inclusion in OECD countries

**Annex Table 4.A.1. One third of OECD countries host a nationwide action plan devoted to improving LGBTI inclusion**

Overview of the measures featured by ongoing nationwide action plans (NAPs) according to key topic areas in OECD countries as of 30 June 2019

Country	Name of the NAP	Period covered by the NAP	Enforcing LGBTI-inclusive:			Fostering LGBTI equality in:			Creating and maintaining popular support for LGBTI inclusion	
			Anti-discrimination laws	Hate crime/hate speech laws	Asylum laws	Education	Employment	Healthcare	Well-designed awareness-raising activities	Setting an example through government and public authorities
Belgium	Interfederal Action Plan Against anti-LGBTI Discrimination & Violence	2018-19	✓	✓	✓	✓	✓	✓	✓	✓
Denmark	Action Plan to Promote Security, Well-being and Equal Opportunities for LGBTI People	2018-21	✓	✓	✓	✓	✓	✓	✓	✓
Finland	National Action Plan on Fundamental and Human Rights	2018-19	✓							✓
France	Mobilisation Plan against Hate and Anti-LGBT Discrimination	2017-19	✓	✓	✓	✓	✓	✓	✓	✓
Germany	National Action Plan Against Racism	2017-20	✓	✓	✓	✓	✓	✓	✓	✓
Ireland	LGBTI+ National Youth Strategy	2018-20	✓	✓	✓	✓	✓	✓	✓	

Country	Name of the NAP	Period covered by the NAP	Enforcing LGBTI-inclusive:			Fostering LGBTI equality in:			Creating and maintaining popular support for LGBTI inclusion	
			Anti-discrimination laws	Hate crime/hate speech laws	Asylum laws	Education	Employment	Healthcare	Well-designed awareness-raising activities	Setting an example through government and public authorities
Korea	National Action Plan for the Promotion and Protection of Human Rights	2017-21				✓		✓		
Lithuania	Action Plan for Promoting Non-discrimination	2017-19		✓						✓
Luxembourg	National Action Plan for the Promotion of Human Rights of Lesbian, Gay, Transgender and Intersex Persons	2018-21	✓	✓	✓	✓	✓	✓	✓	✓
Netherlands	Gender & LGBTI Equality Police Plan	2018-21	✓	✓		✓	✓	✓	✓	
Norway	Government's action plan against discrimination based on sexual orientation, gender identity and gender expression	2017-20	✓	✓	✓	✓	✓	✓		✓
Portugal	National Strategy for Equality and Non-Discrimination	2018-30	✓	✓		✓	✓		✓	✓
United Kingdom	LGBT Action Plan Improving the Lives of Lesbian, Gay, Bisexual and Transgender People	2018-20	✓	✓	✓	✓	✓	✓	✓	✓

Note: This table provides a checklist that indicates which ongoing LGBTI-inclusive nationwide action plans in OECD countries feature measures according to key topic areas as of 30 June 2019. The National Strategy for Equality and Non-Discrimination 2018-30 in Portugal includes an action plan “to combat discrimination based on sexual orientation, gender identity and expression and sexual characteristics”.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

## Annex 4.B. Identifying bias indicators for hate crimes against LGBTI persons

It is critical to identify bias indicators for crimes against LGBTI persons, as this will help the relevant authorities to decide whether the case in question should be prosecuted as a possible hate crime.

Several factors can be used to identify bias motivation which can be categorised under the following headings (CoE, 2017<sup>[23]</sup>):

### Victim or witness perception

- Did the victim or witness perceive that the criminal act that occurred was motivated by anti-LGBTI bias? (Note that the victim may not realise they have been the victim of a bias-motivated crime. They may also wish to deny that it was a bias-motivated crime, as they may be denying the LGBTI part of themselves.)
- Was the victim with a same-sex partner at the time of the event? Were they holding hands or kissing? Were they wearing pride or other LGBTI badges/ribbons/clothing?
- Was the victim engaged in activities promoting LGBTI rights/services/issues at the time of the incident?
- Was the victim visibly identifiable as LGB, T or I due to dress, behaviour or presentation?
- Is the victim a public figure who is known as being LGBTI or for advocating LGBTI rights (the victim may be openly heterosexual but support LGBTI causes and thus become a victim of a LGBTI bias crime)?

### Comments, written statements and gestures

- Did the perpetrator use homophobic/transphobic/intersexphobic language or terminology when committing the crime?
- Did the perpetrator refer to the perceived sexual orientation, gender identity or sex characteristics of the victim?
- Did the perpetrator write homophobic/transphobic/intersexphobic statements or refer to the perceived sexual orientation/gender identity/sex characteristics in writing (possibly in an email/letter/on a social networking site)?
- Did the perpetrator use hand gestures that would indicate perceived sexual orientation?
- Were homophobic/transphobic/intersexphobic graffiti left at the scene?

### Involvement of organised hate groups or their members

- Did the perpetrator identify as part of an organised hate group?
- Did the perpetrator display through their clothing or tattoos any indication of belonging to an organised hate group?
- Does the perpetrator identify with any hate groups online, on social media, etc.?

- Is the offender known for making hate speeches or homophobic/transphobic/intersexphobic speeches or comments (in writing or orally)?
- Did a hate group take responsibility for the assault?

### Location and timing

- Did the attack happen during a major LGBTI event (e.g. Pride festival)?
- Did the attack happen at a time of political significance for LGBTI persons in the area (marriage equality laws being passed, opening of a new LGBTI bar for the first time in a city, or first gay pride event being held)?
- Did the offence happen near to LGBTI premises/bar/centre?
- Did the incident happen near a location used by extremist/hate groups?
- Was the location historically an LGBTI meeting place, even if it is not now?

### Patterns or frequency of previous crimes or incidents

- Did the offence happen in a location where previous events have occurred or at similar times?
- Is there a pattern in the type of offence/graffiti/violence towards minority group members?
- Does the perpetrator have a history of committing this type of offence?

### Nature of violence

- Was there an unusual level of violence/brutality or sexual violence associated with the attack that would appear inappropriate given the facts of the case?
- Did the violence concentrate on genitals or sexual organs?

### Lack of other motives

- Did the attacker fail to display any financial or other motive when committing the offence (e.g. no theft during an assault or house burglary)?

## Annex 4.C. Embedding LGBTI families, people and themes throughout the curriculum: Stonewall’s proposal for secondary schools

There are a lot of ways to easily and naturally integrate LGBTI issues throughout the curriculum, as shown by the following tips, prompts and lesson ideas devoted to Literature and Math in secondary schools (Stonewall, 2017<sup>[64]</sup>):

### Literature

- Introduce LGBTI authors and themes: Study works of fiction by LGBTI authors. Discuss how their LGBTI identity and the culture they lived in might have influenced their writing, and include LGBTI themes in discussions about representation in literature;
- Set up speeches, discussions and writing activities on LGBTI topics: Support pupils to discuss topics such as same-sex marriage, or why it's important to challenge gender stereotypes. Set persuasive writing tasks relating to LGBTI topics – for example a letter to the local council arguing against the closure of local LGBTI services;
- Include LGBTI topics in teaching on grammar and language: For example, when discussing pronouns, highlight their importance and what they tell us about a person’s gender, linking to respecting people’s choice of pronouns (including gender-neutral pronouns such as they/them). Explore how the English language has changed over time by planning a lesson on word etymology, using the word ‘gay’ as one example.

### Maths

- Include references to LGBTI people and different family structures in teaching: For example, ‘Mr X & Mr Y want to know how much it will cost to have a holiday in Italy if...’, ‘Lila’s mums are trying to calculate...’;
- Highlight LGBTI mathematicians: Make reference to the contributions of LGBTI mathematicians and LGBTI figures in related disciplines, such as Alan Turing;<sup>35</sup>
- Examine arguments for and against capturing data on sexual orientation, gender identity and sex characteristics: Use documents published by different bodies, including the National Statistics Office (NSO), to discuss: Why doesn’t our census currently capture people’s sexual orientation, gender identity and sex characteristics? What would be the advantages of capturing this information in future censuses? What are some of the potential barriers to collecting this information?



## Annex 4.D. Building an LGBTI-inclusive culture in the workplace: good practices from the LGBT Conversation Guide by Sodexo

Created in 2012, the LGBT Conversation Guide by Sodexo is a best practice example to initiate openness to and support for LGBT inclusion within the workplace. This guide is organised around three objectives:

- Familiarising employees with what being LGBT means: the related section defines sexual orientation and gender identity in concrete terms and presents the words to use and to avoid when having conversations on LGBT issues. This step can be the opportunity to remind that:
  - the words “sexual preference” or “lifestyle” are wrong because they imply that being LGBT is a choice;
  - the words “homosexual” or “transsexual” are outdated clinical terms considered by many LGBT people as restrictive and, hence, potentially derogatory and offensive:
    - the word “homosexual” suggests that being gay or lesbian is all about sexual attraction to individuals of the same sex, with no place for emotions;
    - the word “transsexual” suggests that being transgender is all about obsession of changing sex while the reality is more nuanced.
- Explaining why combating discrimination against LGBT job candidates and employees is a priority: the related section could stress that:
  - Discrimination in the workplace is, by definition, unethical since it consists of treating unequally people who are identical in terms of their employability and performance;
  - Discrimination against LGBT people is illegal, whenever the public or private entity issuing the guide operates in a country where discrimination based on sexual orientation and/or gender identity is indeed legally prohibited;
  - Discrimination against LGBT people ruins the firm’s economic performance through a wide range of channels (see Section 4.2.2 for a presentation of these channels)
- Educating staff in supporting LGBT inclusion in everyday interactions within the workplace: the related section could be based on real-life scenarios that equip:<sup>36</sup>
  - the whole staff with the capacity to react adequately in commonplace situations: for instance, when they hear a joke about LGBT people, staff should be encouraged to explain why this type of joke should not be said again by reminding that (i) it is hurtful for LGBT people as much as a joke about other groups is hurtful for those groups, meaning that unless someone is able to tell a joke about everybody they should probably not tell one at all; (ii) it is contrary to the employer’s ethics and values;
  - managers with the capacity to competently handle challenging conversations, for instance with co-workers or clients opposing LGBTI inclusion (Annex Box 4.D.1): targeting managers is critical since they contribute to set standards and can therefore become agents of change at work.

### Annex Box 4.D.1. Handling challenging conversations with co-workers or clients around LGBTI issues

The section of Sodexo's guide devoted to how to have challenging conversations is particularly valuable. It gives important insights on how to lead by example when co-workers or clients oppose LGBT inclusion, as shown by the excerpts below.

#### A co-worker says they aren't comfortable working with a gay person

**THINK TO YOURSELF:** This person is obviously uncomfortable and I should be glad they shared this with me. I want to honour the person's feelings while letting them know LGBT employees are part of our team and this organisation, and not working with someone is not an option.

**SAY:** "I'm sorry to hear you're feeling uncomfortable. That's never a good thing at work."

**WHY?** It is important not to invalidate how someone is feeling, even if you may disagree with the reasons that they provide. This also helps you frame the next part of the discussion, which is about the importance of everyone feeling comfortable and valued at work.

**YOU MIGHT SAY:** "As you know, we have strong values about people being able to be themselves at work. We encourage people to bring their whole selves to work (...). While we might not understand all of them, or agree with all of them, it is our responsibility to focus on our jobs and behave in a way that is respectful of each person's contributions and abilities. Try getting to know that person a little better. I have found that when people focus on similarities, the differences don't end up making much of a difference anymore."

**WHY?** The truth is that, as people know each other better, the unfamiliar becomes less scary, and we know people for who they are, not just one part of themselves. This also focuses the employee on learning good cooperative behaviour at work, as opposed to isolating themselves from another person.

#### A co-worker says they aren't comfortable working with a transgender person transitioning to the other gender

**SAY:** "I appreciate your honesty in sharing your feelings with me. I understand this change can present some challenges because this may feel new or unfamiliar, and it is critical that we all work together. This person is a valued member of our team."

**ASK:** "What is it that makes you uncomfortable?"

- If the reason provided focuses on someone changing their name and identifying as a different gender

**YOU MIGHT SAY:** "It may take a little while to get used to this person's new name and pronoun. However, it's important to make every effort because using the preferred name/pronoun is a sign of respect. My expectation is that you treat this person with the same level of respect that you show the rest of the team. I expect the two of you to continue working together effectively."

- If the reason provided focuses on sharing a bathroom with someone who has just disclosed that they are transgender and is expressing their gender in a way that is "new" to other people

In this case the manager should ask why the co-worker is concerned with sharing the restroom with this person and bust myths, as it is done in Box 4.22.

- If the reason provided focuses on physical changes that may occur

YOU MIGHT SAY: "(...) I'm sure, with time, you'll begin feeling less uncomfortable. In the meantime, let's remain open and respectful and consider the courage it takes for transgender people to live authentically as themselves."

**A client is unhappy about the firm's LGBTI-inclusive policy**

THINK TO YOURSELF: I need to be sensitive to the client's perspective while also taking a stand for our employees.

SAY: "I understand some clients have different views on valuing different kinds of employees. At Sodexo, we have a strong policy around inclusion of all employees. While this can be challenging for some clients to understand, we have found it's the best way to make sure our clients' needs are met. We include everyone, we value everyone, and in turn, our people perform better for our customers. For us, it's simply the right way to operate our business."

WHY? It is important to frame the discussion in a way that makes this about the big picture of being a good corporate citizen on many fronts, and in many diversity and inclusion dimensions, and this is a good way to have that discussion. It isn't just about LGBT people – it is about all people.

Source: Sodexo (2012<sup>[75]</sup>), "LGBT Conversation Guide".

## Notes

<sup>1</sup> This share represents the percentage of LGBT individuals across the EU who respond “yes” to the following question: “During the last 12 months, have you personally felt discriminated against because of being L, G, B or T in any of the following situations? i) when looking for a job; ii) at work; iii) when looking for a house or apartment to rent or buy (by people working in a public or private housing agency, by a landlord); iv) by health care personnel (e.g. a receptionist, nurse or doctor); v) by social service personnel; vi) by school/university personnel – this could have happened to you as a student or as a parent; vii) at a cafe, restaurant, bar or nightclub; viii) at a shop; ix) in a bank or insurance company (by bank or company personnel); x) at a sport or fitness club; (xi) when showing your ID or any official document that identifies your sex.” This share is computed based on Round I of the cross-country survey among LGBT people that was conducted in 2012 by the European Union Agency for Fundamental Rights. Data were collected through an anonymous online questionnaire, among 93 079 people who self-identify as lesbian, gay, bisexual and/or transgender across the EU. The data explorer is available at the following url: <https://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-fundamental-rights-lesbian-gay-bisexual-and>.

<sup>2</sup> This share represents the percentage of LGBTI individuals across the EU who respond “yes” to the following question: “In the past 12 months have you personally felt discriminated against due to being LGBTI in the following eight areas of life? i) when looking for a job; ii) at work; iii) when looking for housing; iv) by health care or social services personnel; v) by school/university personnel; vi) at a cafe, restaurant, bar or nightclub; vii) at a shop; (viii) when showing your ID or any official document that identifies your sex.” This share is computed based on Round II of the cross-country survey among LGBTI people that was conducted in 2019 by the European Union Agency for Fundamental Rights – compared to Round I, this share does not cover experiences of discrimination in a bank or insurance company, or at a sport or fitness club. Data were collected through an anonymous online questionnaire, among almost 140 000 people who self-identify as lesbian, gay, bisexual, transgender and/or intersex across the EU. The data explorer is available at the following url: <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>.

<sup>3</sup> Evidence on this issue comes from studying the impact of age discrimination protections in the United States. This evidence suggests that economic downturns are conducive to stronger discrimination protections deterring hiring of protected workers through the termination cost channel. More precisely, the literature indicates that, in normal times, antidiscrimination legislation helps the hiring of protected workers (Neumark and Stock, 1999<sup>[139]</sup>; Adams, 2004<sup>[140]</sup>; Neumark and Song, 2013<sup>[141]</sup>; Neumark and Button, 2014<sup>[142]</sup>; Neumark et al., 2019<sup>[143]</sup>). However, during an experience such as the Great Recession, stronger discrimination protections becomes less productive or even counterproductive for protected workers (Lahey, 2008<sup>[144]</sup>; Neumark and Button, 2014<sup>[142]</sup>). An explanation could be that economic crises elevate product and labour demand uncertainty to a level where employers, in contemplating hiring a protected worker, perceive a stronger possibility of wanting to terminate that worker before the worker voluntarily chooses to leave. Several papers have analysed the impact of disability antidiscrimination laws on the hiring of disabled people in the United States (Neumark, Song and Button, 2016<sup>[145]</sup>). However, they do not constitute a clean test of whether antidiscrimination laws generate negative unintended effects since disability discrimination protections in the United States lead to raise the cost not only of terminating disabled workers, but also of hiring them. The law indeed requires employers to offer adequate facilities for disabled people (e.g. by enabling wheelchair access, purchasing special equipment for disabled employees, restructuring jobs to permit disabled employees to work part-time or from home, etc.).

<sup>4</sup> For instance, the resources available on the Equality Commission for Northern Ireland's website (see Box 4.3) were carefully advertised among groups at risk of discrimination, including LGBT people. The campaign directed at sexual and gender minorities was launched in 2013. To maximise outreach, it was designed and developed following analysis of research into the needs of LGBT people as well as focus groups. The campaign was composed of a dedicated website ("So Me" available at [www.some-ni.co.uk](http://www.some-ni.co.uk)) and ramifications on Youtube, Facebook and Twitter. It notably included several videos of persons the Equality Commission had assisted.

<sup>5</sup> See <https://www.lgbtpolice.eu/>.

<sup>6</sup> Indeed, the fact that hate speech ultimately leads to hate actions is increasingly backed by empirical evidence (Sonntag, 2019<sup>[34]</sup>).

<sup>7</sup> In such tests, gay male applicants who claim asylum based on their sexual orientation have their physical reactions to heterosexual pornographic material measured. In 2010, FRA raised alarm over the then-used practice of 'phallographic testing' in the Czech Republic, noting that such tests were in contradiction with the prohibition of torture and inhuman or degrading treatment, as well as the right to private life (CoE Commissioner for Human Rights, 2018<sup>[146]</sup>).

<sup>8</sup> See Articles 23, 25 and 26 of the Universal Declaration of Human Rights and Articles 6, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights.

<sup>9</sup> Section 28 was repealed in 2000 in Scotland (*Ethical Standards in Public Life etc. (Scotland) Act*) and in 2003 in England and Wales (*Local Government Act*).

<sup>10</sup> See <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06103>.

<sup>11</sup> See as well <https://www.gov.scot/news/lgbti-education/>.

<sup>12</sup> In the United Kingdom for instance, see <https://www.gov.uk/government/publications/engaging-parents-with-relationships-education-policy>.

<sup>13</sup> Following these incidents, the UK government published a guide for local authorities to help them manage school disruption over LGBT teaching, notably through engaging constructively with parents (UK Department for Education, 2019<sup>[148]</sup>).

<sup>14</sup> See <https://www.pshe-association.org.uk/stonewall>.

<sup>15</sup> The first edition was published in 2014.

<sup>16</sup> The website NoHomophobes.com looks at the use of homophobic language on Twitter on a daily basis and confirms the prevalence of casual homophobia across the world.

<sup>17</sup> Personal, social, health and economic education (PSHE) aims to give children the knowledge, skills and understanding to lead confident, healthy and independent lives (UK Department for Education, 2020<sup>[147]</sup>).

<sup>18</sup> These organisations and consortia include Stonewall, Barnardo's, the Consortium Anti-Homophobic and Transphobic Bullying Alliance, METRO Charity, Rainbow Flag Award and Learn Equality, Live Equal programme. See <https://www.pshe-association.org.uk/content/government-equalities-office-anti-homophobic>.

<sup>19</sup> These estimates presumably constitute a lower bound of the actual penalty faced by sexual and gender minorities since LGBT people who accept to disclose their sexual orientation and gender identity in surveys tend to be economically advantaged.

<sup>20</sup> When the bank BNP Paribas signed the “Charter of LGBT Commitment” (Box 4.14) in 2015, the bank’s executive committee received some 12 000 external emails protesting this engagement. Facing this backlash, the bank did not retreat. But it committed to strengthen its internal communication policy in order to better involve employees and facilitate understanding of its purpose (OHCHR, 2017<sup>[73]</sup>).

<sup>21</sup> This advanced training could be delivered as a face-to-face workshop or in the framework of an online learning. Recent research indeed shows that even a brief online diversity training intervention creates some value, thereby suggesting it could become effective if repeated: a one-hour stand-alone e-learning module improves attitudes towards minority groups, especially among participants who were relatively less supportive of those groups (Chang et al., 2019<sup>[150]</sup>).

<sup>22</sup> Consistent with this claim, a Credit Suisse study showed that companies that embrace LGBT employees outperform in many dimensions, including profit (Credit Suisse, 2016<sup>[149]</sup>).

<sup>23</sup> See [http://www.lgbt-capital.com/index.php?menu\\_id=2](http://www.lgbt-capital.com/index.php?menu_id=2).

<sup>24</sup> An alternative could consist in obliging employers to implement some of the good practices critical to foster LGBTI inclusion in the workplace, i.e. those typically valued by workplace equality standards. For instance, in France, the 2017 Law “Equality and Citizenship” has made training on avoiding discrimination in recruitment compulsory for human resources staff in firms with 300 employees and above. However, monitoring compliance with this legal obligation is resource demanding.

<sup>25</sup> See <https://www.stonewall.org.uk/2019-list-public-sector>.

<sup>26</sup> Of course, this training could be complemented by an advanced training similar to the one described in Section 4.2.2 in order to help HPPs counter their conscious and unconscious bias against LGBTI people. A study among nearly 20 000 health care providers mainly located in the United States indeed reveals that this bias is real, should one rely on explicit measures (question asking whether the interviewee prefers straight people to gay people) or implicit measures (the Implicit Association Test on Sexuality presented in Box 4.10) (Sabin, Riskind and Nosek, 2015<sup>[151]</sup>).

<sup>27</sup> Freedom to Marry was the national bipartisan organisation dedicated to winning marriage for same-sex couples in the United States. Founded in 2003, the organisation officially closed after the June 2015 victory at the Supreme Court.

<sup>28</sup> Gender-critical feminism argues that anyone born with a vagina is in its own oppressed sex class, while anyone born with a penis is automatically an oppressor. According to this thinking, gender is a system that exists solely to oppress women, which it does through the imposition of femininity on those assigned female at birth. In other words, for gender-critical feminists, trans men are just lesbians attempting to identify out of womanhood. By contrast, gender-critical feminists view trans women as only predators obsessed by assaulting cis women. See [https://www.vox.com/identities/2019/9\\_May\\_20840101/terfs-radical-feminists-gender-critical](https://www.vox.com/identities/2019/9_May_20840101/terfs-radical-feminists-gender-critical).

<sup>29</sup> See the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14) and the Convention on the Rights of the Child (art. 39).



<sup>30</sup> The acronym “LGBTQ2” stands for lesbian, gay, bisexual, transgender, transsexual, queer (or sometimes questioning) and two-spirited. The term “two-spirited” is used by some indigenous North Americans. It describes people who identify as having both a masculine and a feminine spirit.

<sup>31</sup> See <https://www.stiftung-denkmal.de/en/memorials/memorial-to-the-homosexuals-persecuted-under-the-national-socialist-regime/history-of-the-memorial-to-the-homosexuals.html>.

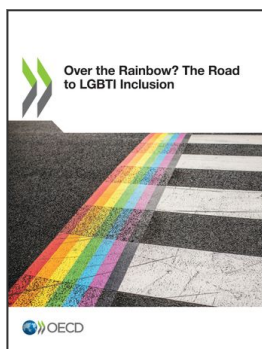
<sup>32</sup> See <https://www.ihlia.nl/collection/pink-life-stories/?lang=en>.

<sup>33</sup> The Equal Rights Coalition comprises 43 member countries: 29 OECD countries (Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States) and 13 non-OECD countries (Albania, Argentina, Cabo Verde, Costa Rica, Cyprus, Ecuador, Honduras, Malta, Montenegro, North Macedonia, Serbia, Ukraine, Uruguay). For more information, see <https://www.gov.uk/government/collections/equal-rights-coalition> for more information.

<sup>34</sup> In order to effectively execute those action means, it is important that parliamentarians be well versed in how to speak about LGBTI persons and rights, depending on the audience they face. Use of the appropriate terminology is a prerequisite to respectfully support LGBTI persons and positively impact social norms among communities and constituencies (GLAAD and MAP, 2012<sup>[137]</sup>; GLAAD, 2016<sup>[138]</sup>).

<sup>35</sup> Alan Turing (1912-1954) is widely considered to be the father of theoretical computer science and artificial intelligence. During WWII he played a pivotal role in cracking intercepted coded messages that enabled the Allies to defeat the Nazis in many crucial engagements, including the Battle of the Atlantic. Turing was prosecuted in 1952 for homosexual acts. He accepted chemical castration treatment as an alternative to prison. He was eventually driven to suicide in 1954 at the age of 41, two years after he was chemically castrated.

<sup>36</sup> On top of providing staff with the right conversation cues, this section could inform them of reporting processes to prevent and address harassment and discrimination in the workplace (while protecting those who report such abuses from retaliation).



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