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**Public consultation to inform the final recommendations of the Working Group
to Examine the Disregard of Convictions for Certain Qualifying Offences
Related to Consensual Sexual Activity Between Men**

Der Minister,

I am writing in relation to the above Consultation and on behalf of Gay Health Network.

Who We Are:

GHN comprises a network of organisations across the island of Ireland providing resources and expertise in relation to the support, prevention and awareness of HIV and STIs, information on sexual health, mental health and wellbeing for gay and bisexual men, men who have sex with men (gbMSM)¹ and trans people (our communities²). We do this by working closely with our state, community and network partners, creating content and resources, undertaking research, telling stories and promoting positive sexual health and wellbeing ethos. Our Network partners and members currently are: Belong To LGBTQ+ Youth Ireland, Gay Project, Dublin Pride, Gay Men's Health Service, GOSHH (Gender Orientation and Sexual Health and HIV), HIV Ireland, LGBT Ireland, Outhouse, Positive Now, Sexual Health Centre, Sexual Health West, and Switchboard.

¹ (gbMSM) indicates gay, bisexual and men who have sex with men.

² Our Communities, indicates gbMSM and trans people

What We Do:

- Development and creation of content and resources across various channels and platforms encouraging positive health choices relating to health and wellbeing for our community.
- Promotion of sexual health awareness and HIV prevention through specific programmes and campaigns.
- Ongoing development of Man2Man.ie the dedicated sexual health and HIV website for our community.
- Creation and dissemination of stories with and about members of our community.
- Publication of information to increase sector-wide communications on the issues.
- Publication of key research reports on relevant issues.
- Publication of sexual health leaflets, cards and booklets.
- Engagement in lobbying activities with governmental agencies and others to further our mission.

Our Vision:

The Vision of the Gay Health Network is an Ireland

- that becomes a world leader in gender and sexuality rights;
- where everyone is comfortable in their sexuality, sexual orientation and gender identity; where sexual health is seen as intrinsic to our overall health;
- where communities are supported to have the knowledge, skills and resources needed to make choices about our lives, free from exploitation, discrimination, stigma and fear.

Our Mission:

The mission of GHN is to work with our community, including those most at risk, to eliminate health and social inequalities by promoting sexual and mental health and well-being.

GHN adopts the World Health Organisation (WHO) definition of sexual health as “a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.” (WHO, 2006a).

GHN recognises that discrimination occurs within our communities on the basis of race; ethnicity (including Travellers); religion; gender identity and assigned sex; disability

and occupation. This list is not exhaustive, and GHN endeavours to highlight and challenge such discrimination where it arises.

Our Values:

Sex Positive Philosophy: GHN promotes the recognition of sexuality (in the countless forms of expression) as a natural and healthy part of the human experience, recognising that all consensual sexual activities are fundamentally healthy and pleasurable.

Human Rights and Freedom from Discrimination and Stigma: GHN recognises that all people are entitled to the same rights and respect; regardless of sexuality, sexual orientation, gender identity, HIV status, sexual health and mental health.

Inclusion and Promotion of Diversity: GHN will continue to ensure the inclusion of all members of our community in our work.

Social Justice and Solidarity: GHN recognises the intersectionality within our community and supports other campaigns to achieve equality in Ireland.

Consensus Building and a Collaborative Approach: GHN as a membership-led network will continue to build shared analysis and ways of working as a collective.

Informed by the Lived Experience: GHN will remain responsive to the emerging needs of our community as identified by research as well as lived experience and continue to adapt our ways of working in an ever-changing Ireland.

Integrity and Transparency: GHN promotes a culture of open, honest communication between the board, staff and members and between key stakeholders.

Consultation Questions

Personal Information

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Organisation: Gay Health Network

Disregard Process

Gay Health Network welcomes this consultation process to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity Between Men. We are primarily concerned with the promotion of health and well-being for gay, bisexual, transmen and men who have sex with men. Despite the advances of

LGBTQI+ rights in recent years we continue to operate in an environment of stigma and discrimination. Part of our remit is to challenge such discrimination and stigma where it is identified in Irish society. We therefore support the aim of instituting a disregard process of the convictions for certain qualifying offences related to consensual sexual activities between men.

Historical convictions continue to stigmatise LGBTQI+ people and particularly gay, bi and trans men and other men who have sex with men (gbtMSM). It does so on the basis of the direct effect on the individuals convicted, their families, and the wider LGBTQI+ community. We share the aim to remove all components of stigma and discrimination faced by our communities with our colleagues in other LGBTQI+ agencies. We are acutely aware of the role of homophobia in negatively affecting the health choices for gay men. Some of us on the Board of Gay Health Network were founder members of Gay Health Action – the first organisation in Ireland to address HIV. At the time our efforts at education of the community about the risks and development of advice to reduce the spread of HIV were hampered by the then illegal status of gay male sexual activities; social and religious prohibitions and stigma. Criminalising same-sex affection and desire was a gross human rights abuse and had destructive consequences on those directly impacted and on the wider LGBTQI+ community. The criminal legislation contributed very significantly to a culture of homophobia that was endemic in government and public institutions and services. Such homophobia persists in some form to this day. The fact that homophobia and stigma persists is evident in the increasing incidence of hate crimes against LGBTQI+ people in Ireland. There is a need to continue to challenge such attitudes both historically and contemporaneously.

Further work is needed to address the legacy of decades of criminalisation and a restorative justice approach is needed to research, document and address the consequences.

Question

Other than the provisions which explicitly criminalised consensual sexual activity between men are there any other provisions which were utilised to police consensual same-sex activity between men in Ireland prior to decriminalisation in 1993, and gave rise to convictions? (Note: Section 61 of the Offences Against The Person Act 1861 & Section 11 of

the Criminal Law Amendment Act 1885 were the primary criminalising laws that were repealed by the Criminal Law (Sexual Offences) Act 1993.)

Suggestion

While most convictions relating to sexual activity between men were undertaken under the above laws, there were other charges brought under a range of other legislation such as those relating to vagrancy or other byelaws. It would be important to include all such convictions in the disregard process. Consultation and research into these convictions will be required in order to help ensure that all such convictions are identified. We understand that considerable garda records may have been lost or destroyed over the years. However, the onus is on the gardai and the state to do their utmost in identifying from their extant records any conviction that would likely meet the criteria for the disregard process.

We believe that it is important to recognise that, in the main, these were ‘victimless crimes’. That is, that they involved consensual behaviour in which no other party was harmed. Facilitating convictions on this basis is a clear breach of human rights and this should be acknowledged. The state apology issued in 2018 was an important step in acknowledging this wrong on the part of the state. However, an apology can only be regarded as sincere if it resolves to avoid a repeat of the same practices. The recent convictions of some gay men for solicitation offences in the public toilets of some major shopping outlets in Dublin and elsewhere is of concern. Such convictions can only be secured on the basis of entrapment. In all the recent cases no other member of the public was involved other than the prosecuting garda and the person charged with the offence. Such cases raise concern that entrapment of gay men in these circumstances continues to this day

Question

How can participation in the scheme be encouraged? *(How can the process be made user friendly and accessible while ensuring that the dignity of applicants is respected and minimising any potential discomfort or re-traumatisation of those affected in the application process)*

The process of gathering information on the lived experiences of those who were convicted under the legislation will be challenging due to the historical nature of them and the loss of

state records relating to the convictions. However we believe that the onus should be on any state agency that holds records of such convictions to identify and release them to the Disregard process. It is imperative that any enquiry of individuals who underwent such conviction be handled sensitively and avoid further traumatising them by any invasive interview process. We believe that LGBTQI+ agencies themselves could be instrumental in identifying some of the cases. We would also suggest that statements and accounts from family members of those convicted should be also accepted in helping to identify cases and their consequences.

Question

Are there any other issues that fall under the remit of the Working Group in developing a disregard scheme that you would like them to consider? *(More general feedback on the proposed scheme is welcomed)*

Suggestions

The Disregard Process

It is clear that the Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity Between Men and to invite Public consultation to inform the final recommendations stemmed from the State apology in 2018. This is a welcome and natural progression. Ideally this process should follow the steps to be taken with a sincere and effective apology. These are:

- ***Expressing Regret.***

This was achieved through the state apology in 2018.

- ***Accepting Responsibility.***

Since the actions taken under the legislation are primarily historic, no agency or agencies have adequately acknowledged ‘wrongdoing’ in relation to convictions under the legislation. It is acknowledged that in the main state agencies, such as the gardai and the courts, were following legislation of the time. However, the manner in which the law was carried out frequently incorporated the dominant homophobic attitudes of the time. It would be important for the relevant agencies and institutions to acknowledge their role in perpetuating stigma and discriminatory practices at the time.

- ***Making Restitution***

The Disregard process will be a significant step in making restitution for the wrong doing. However it is important that the process incorporate the principles of restorative justice in its approach in this regard. LGBTQI+ individuals and agencies have always fought against discrimination. Doing so at times when there were social and legal prohibitions was incredibly difficult. This work continues to be required today. In order to redress the prejudicial and discriminatory history (some of which continues today) it is imperative that adequate resources are given to LGBTQI+ agencies to ensure that restorative justice becomes a reality. In Gay Health Network we are all too aware of the consequences of persistent under-resourcing of the Sexual Health services for LGBTQI+ People. As a consequence we have seen the persistent rise in the numbers of new HIV positive cases in Ireland alongside a significant rise in sexually transmissible infection rates. These patterns can only be curbed with the use of adequate funding and resources.

- ***Genuinely Promising Change***

For the apology and disregard process to be taken seriously we need to see serious endeavours to root out and address the persistence of stigmatising and discriminatory attitudes that continue to exist in state agencies, including the gardai, the legislature and the courts. We can see examples of this in recent history in the cases of Charles Self, John Roche, and Declan Flynn (all murdered in 1982). In the Charles Self case widespread allegations relating to garda harassment in the investigation were made. Over 1,500 gay men were questioned and finger-printed. Questions were allegedly asked of the men about their sexual practices and preferences. In the John Roach case a defence of ‘gay panic’ was allowed. That is, the perpetrator was allowed a reduction in the charge and subsequent sentence on the basis that he thought the victim was approaching him sexually. In the Declan Flynn case all five assailants were given suspended sentences with the Judge stating that ‘this could never be regarded as murder’. These cases highlight the degree to which the LGBTQI+ community were scapegoated and stigmatised by the agencies of the state. There is a legacy of mistrust of the institutions as a result and it would be important that this be addressed.

- ***Requesting Forgiveness.***

Requesting forgiveness is an important part of the process as it ensures that the affected community are consulted in relation to the actions taken to ensure that similar events do not occur again. We need to ensure that hate crimes against LGBTQI+ people will be taken seriously by the agencies of the state so that members of the communities can be confident in seeking justice.

Bill Foley
Secretary
Gay Health Network
9th December 2022