



IPRT response to the Public Consultation on key issues related to the Disregard of Convictions for Certain Qualifying Offences related to Consensual Sexual Activity between Men.

December 2022

Question 1

What body would be the most appropriate 'first' point of contact for applicants to a disregard scheme?

- Department of Justice
- An Garda Síochána
- Irish Human Rights and Equality Commission (IHREC)
- Other:

Applicants should not have to engage directly with the Department or An Garda Síochána that many of them may consider are directly responsible for the criminalisation of consensual sexual activity between men.

Question 2

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The Person Act 1861 & Section 11 of the Criminal Law Amendment Act 1885 were the primary criminalising laws that were repealed by the Criminal Law (Sexual Offences) Act 1993.)

N/A

Question 3

Should formal statements (which could include affidavits, sworn/affirmed statements or statutory declarations) be sought where there isn't any documentation or records available in respect of convictions?

Yes No

The option of making a formal statement should be available but should not be required to participate in the disregard scheme. People should be given the opportunity to consent to make a

statement if they feel this is appropriate and would form part of the restorative process for them. If someone does make a statement, then appropriate therapeutic supports should be made available to them to ensure that they are not retraumatised by their treatment in the past.

Question 4

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*)

A public information campaign should take place. This should include direct consultation with rights-holders and organisations that work directly with the LGBTI+ community to ensure that the content and tone of the campaign instils confidence in it.

Question 5

Should the application of the scheme be limited to convictions for consensual sexual activity between men or were there other actions employed in policing sexual activity or affection between men that should be considered by the Working Group?

Should records of prosecutions which were not successful (i.e. no conviction) also be considered by the Working Group? Yes No

Any records held on a person that was not actually convicted of any crime should be considered under the disregard scheme and we would question why any documents are still held on file.

Question 6

The Working Group is conscious of the harm experienced by affected men, their families, loved ones and the wider LGBTQ+ community and take a trauma informed and non-adversarial approach in their work that seeks to minimise the potential for any re-traumatisation. The work of the Working Group is underpinned by the following human rights and equality principles: the right to equality and non-discrimination, the right to privacy, the right to an effective remedy, the right to redress¹, transparency, fair procedures and accountability, accessibility and participation.

Are there any additional human rights and equality considerations that you would like the Working Group to consider in respect of the development of a disregard scheme and/or the administration of that scheme?²

The principles of restorative justice should apply to ensure that people who were wrongfully convicted for engaging in consensual sexual activity between men are involved in the process and feel that their voices are heard and that the State takes responsibility for this.

¹ The development of a disregard scheme is a form of redress itself

² The remit of the Working Group is limited to the provisions in its Terms of Reference, which is to make recommendations related to the development of a scheme to disregard qualifying offences relating to consensual acts between adult males

IPRT is keenly aware of the long-lasting impact that a conviction can have on all aspects of a person's life and how it can follow them for decades. It means that people carry the stigma and shame of a conviction when applying for employment, housing, insurance or even volunteering. Where that conviction was for an activity that should not have been criminalised in the first place, this can only compound the trauma experienced by the person with a conviction.

The disregard scheme should consider what impacts the conviction had on the lives of these men and ensure it takes the most progressive route possible.