www.LGBTdisregard.ie



Disregard and Redress

Restorative Justice for people
impacted by Ireland's anti-gay laws

November 2022

Cover Photo: Protest outside Pearse St. Garda Station on treatment of gay men in Garda investigation of Charles Self murder *© Clodagh Boyd 1982.*

This Page: Dublin AIDS Alliance at Pride 1993.
National Library of Ireland

This publication has been produced by the LGBT Restorative Justice Campaign who can be contacted at LGBTdisregard@gmail.com or through www.LGBTdisregard.ie.

The Rowan Trust

Thanks to The Rowan Trust, who fight for social justice with communities pushed to the margins.

Irish Council for Civil Liberties

This information material is produced with support from the Irish Council for Civil Liberties.

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A Note on the Text

The laws being considered for the Disregard scheme criminalised men who had sexual relationships with other men, whether they identified as gay, bisexual, men who had relationships with men, queer, or didn't identify in this way at all. Those laws, while they didn't directly criminalise sex between women, did have a huge impact on lesbian and bisexual women and women who had relationships with women. These laws and other laws - such as vagrancy and public order laws - extended to criminalising other ordinary aspects of same-sex relationships - holding hands, kissing, displays of affection etc. - and they impacted on people who were trans. Much further research is needed into how trans people were policed and under what legislation.

Collectively, these laws created a hostile environment for people who might now identify as LGBTIQA+. Throughout this booklet the term LGBT+ is used to refer to all people who were directly and indirectly impacted, and to the communities to which they belong.

1

The Memory of Criminalisation

In June 1993, the Irish Government repealed laws which had criminalised consensual same-sex activity. This decision followed on from a European Court of Human Rights judgement in a case taken by Senator David Norris, and an intensive and sustained advocacy campaign by LGBT+ community groups. The laws, which had existed since the 19th century, were finally repealed in 1993 on the basis of equality, including an equal age of consent for both same and opposite sex relationships.

Twenty-five years later, on Tuesday 19th June, 2018, Dáil Eireann and Seanad Eireann unanimously agreed a Motion of Apology to those convicted under the repealed legislation and recognised the hurt and harm caused to all those who were deterred by the laws from being open about their identity and deprived of the opportunity to be fully engaged citizens in Ireland. The Apology started a process that sought to exonerate those who were convicted under the criminal laws.

The Department of Justice are now seeking the input of stakeholders – including those impacted by the laws and LGBT+ people and communities – in the development of a Disregard Scheme, which would effectively erase the convictions under the criminal laws.

This publication outlines some of the background, experiences and impact of the criminal laws on LGBT+ people and communities. Further information on the public consultation, which ends on 9th December 2022, for the proposed Disregard Scheme can be found on the Department of Justice website www.justice.ie and on the community website www.LGBTDisregard.ie.

As part of this process, there is an opportunity to commemorate and memorialise those who were persecuted under the criminal laws and those whose lives were impacted. Many people lost employment, family, friends, a sense of security, and more.

There are countless stories of LGBT+ people who had to leave Ireland in the hopes of finding a safer life abroad in the UK, America, Canada, or a European city. Ireland under criminalisation was antagonistic, mired by shame, silence, and fear.

To those who passed away before they saw justice, may you rest in power. And to those alive today, may you continue to thrive and may your voices be heard as part of the consultation process informing the disregard scheme.

The following are just some of the stories recorded of life under criminalisation – there are many, many more.

In 1927 a Kildare businessman was convicted of "attempting to procure an act of gross indecency", according to Ferriter's book Occasions of Sin: Sex and Society in Modern Ireland.

A detective claimed to notice the businessman staring at him in a public toilet. The investigator arranged to meet him the following week, where he revealed his identity and arrested the man who was sentenced to 12 months' hard labour.

During the 1970s in Rathmines, two men were arrested, charged with gross indecency, and brought before the District Court. Mr. Justice Garret Sheehan, who was then the go-to solicitor for men when sex between them was a crime, vividly recalls the case.

He recounted in an article in the Independent.ie that his clients were convicted "based on evidence of a sergeant from Rathmines going into the front garden of a house that was in apartments, peering through the window and maintaining that he had seen sexual activity between two adult men."

"On that basis, these two men were prosecuted, convicted and sent to prison. It is something that always sticks in my mind. It was very troubling."

In a midlands town, in the late 1960s, 20 men were prosecuted and convicted for gross indecency. In the end, just one person was jailed, but this case effectively ruined the lives of many of the men involved.

An amateur researcher unearthed documents surrounding the case, which had seemed to become a sort of folklore in the town. He said, "My take on it was that a zealous guard saw two lads going down a lane and his curiosity was aroused. He probably found them in a compromising situation. With the embarrassment of the situation they said, 'well, we're not the only ones at it'. And they started blurting out names."



Pride picnic, Merrion Square Dublin, 1980
Daniel (Don) Wood Collection



Pride 1993, outside the Central Bank.
Christopher Robson Collection,
National Library of Ireland

John Roche

On 8th September 1982 in Cork city, night porter John Roche, aged 29, was murdered by Michael O'Connor, aged 26.The assailant claimed that he "had to kill Roche because Roche wanted him to become a gay".

During a four day trial, O'Connor's case was built around the 'homosexual panic' defence. In an appeal to the jury, Seamus Egan SC said that the assailant did not really intend to kill Roche, rather "his real intention was to rid himself of the shame and degradation he had got involved in. He was striking out at the debauchery he had got ensnared inside him and trying to rid himself of it."

Martin Kennedy SC, for the State, further reminded the jury of a portion of O'Connor's statement in which he said, "Stay away from the gays of Ireland or your life will be finished."

O'Connor was convicted of manslaughter and jailed for five years.

Charles Self

On January 20th 1982, RTÉ set designer Charles Self was stabbed to death at his home in Monkstown, Co Dublin. At the time, a team of 30 detectives conducted an investigation into the killing, with their initial focus on two young sex workers as suspects.

As the investigation got under way, the gardai's hunt for queer men as witnesses or suspects reached a boiling point. By Saturday March 20th, 1982, harassment was being reported from members of the LGBT+ community to the Irish Council for Civil Liberties (ICCL). The Irish Times reported at the time, "Homosexuals complain that gardaí have been demanding they agree to be fingerprinted, photographed and give statements."

"They claim that detectives have repeatedly called to their homes and places of work, causing them considerable embarrassment. Some also claim that family anguish has been caused when they were forced to reveal details of their sex lives to their parents because of the Gardaí," the Irish Times article continues.

The detectives' investigation into Self's death left a wake of destruction in their path. LGBT+ community activist Ciaran McKinney said the gardaí showed "no sensitivity, no sense of confidentiality about people's lives. A bunch of my friends were outed through that process. I know for a fact that a number of people left the country because of that experience."

The case remains unsolved. The details and interview records are still held by the Gardai. Journalist Shamim Malekamin in an investigation into the handling of the case in the Dublin Inquirer in July 2022 says "Gay activists now and at the time said the Gardaí interviewed, photographed and fingerprinted 1,500 gay men, while the guards say the case involved "over 1,500 jobs" which included interviews."

NATIONAL GAY FEDERATION

Charles Self Murder Investigation

The Administrative Council of NGF has from the beginning adopted a policy of full cooperation with the Garda Authorities investigating the circumstances of Mr. Self's recent tragic death, while at the same time respecting the confidentiality of names and addresses on our Membership Register.

(The Membership Register has not been made available to the Gardai and access to it has not been requested despite some newspaper reports).

We have in addition asked NGF members to cooperate fully on an individual basis and particularly to come forward voluntarily with any information they might possess that may be of assistance to the Garda inquiry.

Any such information can be passed on through the Garda Confidential Telephone number Dublin (01) 804495.

A number of disquieting reports have reached the NGF National Office to the effect that a small number of individual Garda detectives are employing investigative methods which are not in line with normal Garda procedures.

While we urge members of the gay community to assist the investigation, if possible, we feel that the individual's rights in dealing with the Gardai should be made clear.

Remember!

* You must, if requested, give your name and address to a garda.
* You are not obliged to answer any other questions.
* You are not obliged to accompany the gardai, or to go yourself, to a Garda Station unless you are being arrested.
* If you decide to go voluntarily to a Garda Station it is best to make an appointment a couple of days ahead and be accompanied by a friend when you go. If you wish, a NGF Council member will accompany you.
* When you arrive at the Garda Station ask the Station Sergeant to note your presence and time of arrival in the Station log book.
* Ask and note the names of the garda officers questioning you.
* You are not obliged to answer any questions or sign statements.
* As a rule it is best not to volunteer any information concerning your sexual behaviour as it may incriminate you – **REMEMBER IF YOUR SEX LIFE IS GAY, IT'S ILLEGAL.**
* You are not obliged to give your fingerprints.
* You are not obliged to allow your photograph to be taken.
* If you go to a Garda Station voluntarily you may LEAVE AT ANY TIME.
* If you are being arrested you must be informed of the reason for your arrest. IMMEDIATELY contact a solicitor
* or the NGF Legal Subcommittee by phoning DUBLIN (01) 710939. Do not answer any questions (except your name and address), give fingerprints or allow your photograph to be taken until your solicitor arrives.
* Do not necessarily accept Gardai advice regarding the choice of a solicitor.

Guidelines for Dealing with the Gardai

When dealing with the Gardai you should be polite but firm regarding your rights.

If you go voluntarily to a Garda Station you should decide which questions you wish to answer or whether you wish to give fingerprints or have your photograph taken.

If you feel it is not in your own interest or in the interest of your friends to answer any particular question, to have your fingerprints or photograph taken be firm but politely refuse to comply with the request.

If you feel you are being harassed or threatened by any individual Garda Officer you should object, have your objections noted by the Station Sergeant and leave the station.

You may make a formal complaint to the Garda Authorities with NGF's support if you wish.

Being in a Garda Station can be frightening, being accompanied by a friend, knowing your rights, and being polite at all times will help you to cope with this situation.

Issued by the National Gay Federation.

February 1982.

National Gay Federation community notice on Charles Self murder investigation, 1982
Irish Queer Archive



March to Fairview Park to protest against the outcomes of the court case on the Declan Flynn murder. 1983
© Clodagh Boyd



President Mary Robinson with LGBT+ activists, 1992 - the year before decriminalisation.
Unknown.

Declan Flynn

In the early hours of September 9, 1982, 31-year-old Declan Flynn was violently attacked by a group of young men in Dublin's Fairview Park. According to his attackers' statements, they were there to "rid the area of queers."

Another of his attackers' statements went on to detail, "A few of us had been queer-bashing for about six weeks and had battered 20 steamers."
Despite the five teenagers pleading guilty, they received suspended sentences from Justice Seán Gannon. This moment is seen by many as a major catalyst for reigniting the Irish LGBTQ+ rights movement.

In the face of a social and political landscape which still branded them criminals, the LGBT+ community organised and held a march against the sentence. They marched from Liberty Hall to Fairview Park on Saturday 19th March 1983. It was attended by over five hundred people – from queer groups to feminist groups to trade union groups.

On the anniversary of Declan's death in 2022, his brother Paul said, "He was a quiet man. He loved pop music, and family celebrations. He was particularly loving to his parents and to his younger brother Greg who had down syndrome. He loved giving presents and he was in his element at Christmas when he would rarely arrive home without colourful decorations and gifts for his family."

"His gentle nature was in stark contrast to the brutality that abruptly ended his life," Paul went on to share.

In the Irish Times, Tonie Walsh, a founder of Irish Queer Archive, recalled the night a panicked friend, who was out in Dublin, called him during 1986. He said, "He came to me because I was an activist and because I was a friend. He was looking for legal advice. I went out and met him and told him the situation. I think I gave him the name of a solicitor."

The friend decided to take another man back to a hotel. However, the receptionist was suspicious and after booking them into a room, alerted the gardaí, who arrived and caught them together.

2

Ireland's History of Criminalising Homosexuality

2.1 Prosecutions by the State

The Irish Free State's criminalisation of homosexuality was a holdover from Sections 61, 62 and 63 of the Offences Against the Person Act 1861 and Section 11 of the Criminal Law Amendment Act 1885. These laws made the charge of 'gross indecency' a crime across the British Empire, not only criminalising men based on their actions but also their desire to engage in a relationship with another man, including criminalising holding hands, kissing and displays of affection.

Even a glance could be read as a criminal act. Other Acts were used to prosecute people engaged in consensual same-sex relationships including the Vagrancy Act and Local Authority Bye-Laws.

After achieving independence in 1922, the Irish Free State continued to uphold and enforce British laws criminalising sexual relationships between men. "The anxieties of the "pure" independent Irish state played out on the bodies of women, and its hopes were meted out on the young men," writes historian of sexuality and modern Ireland Dr Averill Earls.

The Irish Free State's enforcement of criminalisation was seen as justified because the political and social landscape portrayed men who had sex with men to be threatening the respectability of this new nation.

In a paper titled 'Irish Gay Men and Neo-colonial Nation', academic Katherine O'Donnell writes, "Through the enactment of legal processes of police surveillance, the public gaze of media, through gossip and medical, religious, and other expert discussion, and by the pronouncement of a court sentence these men were rendered objectionable. Their bodies were understood as the property of the state, and they were deemed guilty of assaulting this property due to their gay desire."

Research indicates that there were increased prosecutions immediately after independence. According to Dr Earls, an estimated 18 men were arrested in Dublin under British rule between 1900 and 1920. However, following Ireland's declaration of independence, this number "skyrocketed" to 390 from 1924 to 1962.

The full extent of the numbers of people arrested, charged, prosecuted, convicted or imprisoned for consensual same-sex activities by the Irish State is not yet known, on which there needs to be further research.

An analysis of Garda Reports on Crime from 1950 to 1993 conducted by the Oireachtas Library and Research Services in 2022, shows that 1,690 criminal prosecutions cases were commenced, and 941 men convicted under the 1861 and 1885 Acts. However, this data was recognised as being 'recorded and reported imprecisely',

Speaking in the Dail in June 2018 on the Motion to apologise for criminalization, then Taoiseach Leo Varadkar TD said that between 1940 and 1978 an average of 13 men were jailed every year, and between 1962 and 1972 there were 455 convictions for homosexual "offences".

There are no figures as yet for those

arrested, charged, prosecuted, convicted or imprisoned under Vagrancy Acts, under Defence Forces Acts or Local Authority bye-laws.

The cases were often prosecuted in a way that compounded the impact. Senator David Norris who supported many people before the courts in Dublin, quoted in *Lesbian and Gay Visions of Ireland (1995)* edited by Eoin Collins and Ide O'Carroll said "I do remember very clearly the humiliation caused to those accused even when we secured their acquittal. I recall one occasion where... the judge amused himself by making comic remarks about this particular

"They are men and women of all ages who tried to live and love and be themselves in a society where their identity was feared and despised."

- Taoiseach Leo Varadkar TD

form of [sexual] practice, to the huge enjoyment of those in the body of the court and to the understandable human distress of the accused".

Further demonstrating the ways in which criminalisation was enshrined within Ireland's legal system, the Chief Justice declared during the 1983 Supreme Court judgement of the Norris Case challenging the laws, "On the ground of the Christian nature of our State and on the grounds that the deliberate practice of homosexuality is morally wrong, that it is damaging to the health both of individuals and the public and, finally, that it is potentially harmful to the institution of marriage, I can find no inconsistency with the Constitution in the laws which make such conduct criminal."

Solicitor, later Judge, Garret Sheehan who defended many of the men prosecuted under the laws in the 1970's said in an interview in the Irish Independent in 2018, "I do remember people being sent to prison. I do remember being consulted by a number of people at that time who were deeply traumatised as a result of being stopped by the police and threatened with prosecution. It was for a number of people a very, very difficult time. Particularly when it became known that the police were going to prosecute people".

2.2 Criminalisation's legacy of harm and loss

The threat of prosecution and a criminal record was a very real and present danger for very many gay and bisexual men. The threat of prosecution and a criminal record was a very real and present danger for many men. It made them vulnerable to being public shamed and cast out, devastating their familial relations and friendships. It blighted the personal development of very many men, and by extension the whole LGBT+ community and community services.

"You were a sexual outlaw at the time. People were conditioned into a state of fear by the existence of the laws. It's impossible to quantify how many were affected and how many left the country because of it," activist, journalist, a founder of the Irish Queer Archive, and DJ Tonie Walsh recalls in an Irish Times article.

The general environment was antagonistic, full of shame, isolation and exclusion. There are linkages to the 'architecture of containment' which sought to contain those who did not conform to narrow codes of sexual morality. The laws created a context where it was difficult to meet with other LGBT+ people, to form relationships, to find love and live together. The prevailing atmosphere drove many gay and bisexual men, and by extension, many lesbian and bisexual women and trans people, to emigration.

Community relationships with the Gardai were very difficult; violence against LGBT+ people was not reported and harassment, blackmail and violence were constant issues. Media coverage was often hostile; the criminal laws reinforced and buttressed political and religious anti-gay rhetoric; families were fearful and unsupportive of LGBT+ members; LGBT+ people lost jobs and livelihoods; LGBT+ community services were severely under-developed, under-resourced and unsupported; newspapers refused advertisements for LGBT+ helplines and support services. The beginnings of LGBT+ community organising from the 1970s on were severely curtailed by the criminal laws and how they were interpreted and used against LGBT+ people.

"It's very difficult to describe to anybody who wasn't around at that time just how totally, profoundly invisible we were. The criminalisation of homosexuality didn't apply to lesbians, but at the same time there was a stigma that was even more profound than any law could ever have been for women, and particularly for women who had children. When the fight for decriminalisation started, of course men and women recognised that this would be important for all of us," activist Ailbhe Smyth told GCN.

Criminalisation was also grounded in class divides as most of the men arrested were unemployed or working class according to Dr. Averill Earls. Drag artist and activist Rory O'Neill further illustrates this legislations' impact on employment in a GCN article, "Because homosexuality was illegal, there was no protection in law for your working rights. So, if somebody at work fired you because you were 'a fucking queer', there was nothing you could do about it. It just added to the secrecy.".

Public services used the criminal laws as a way of actively ignoring the issues facing LGBT+ communities, not least in the provision of safer sex information and HIV prevention at the height of the AIDS crisis of the 1980s.

Gay Health Action (GHA) emerged amid the AIDS epidemic in 1985 as a primary source of information and education for queer sexual health and awareness. However, despite the growing demand for public support from the LGBT+ community, the group was continuously denied substantial funding. In a letter to the Irish Times on November 30, 1988, Christopher Robson for GHA claimed

"You were a sexual outlaw at the time. People were conditioned into a state of fear by the existence of the laws."

- Tonie Walsh

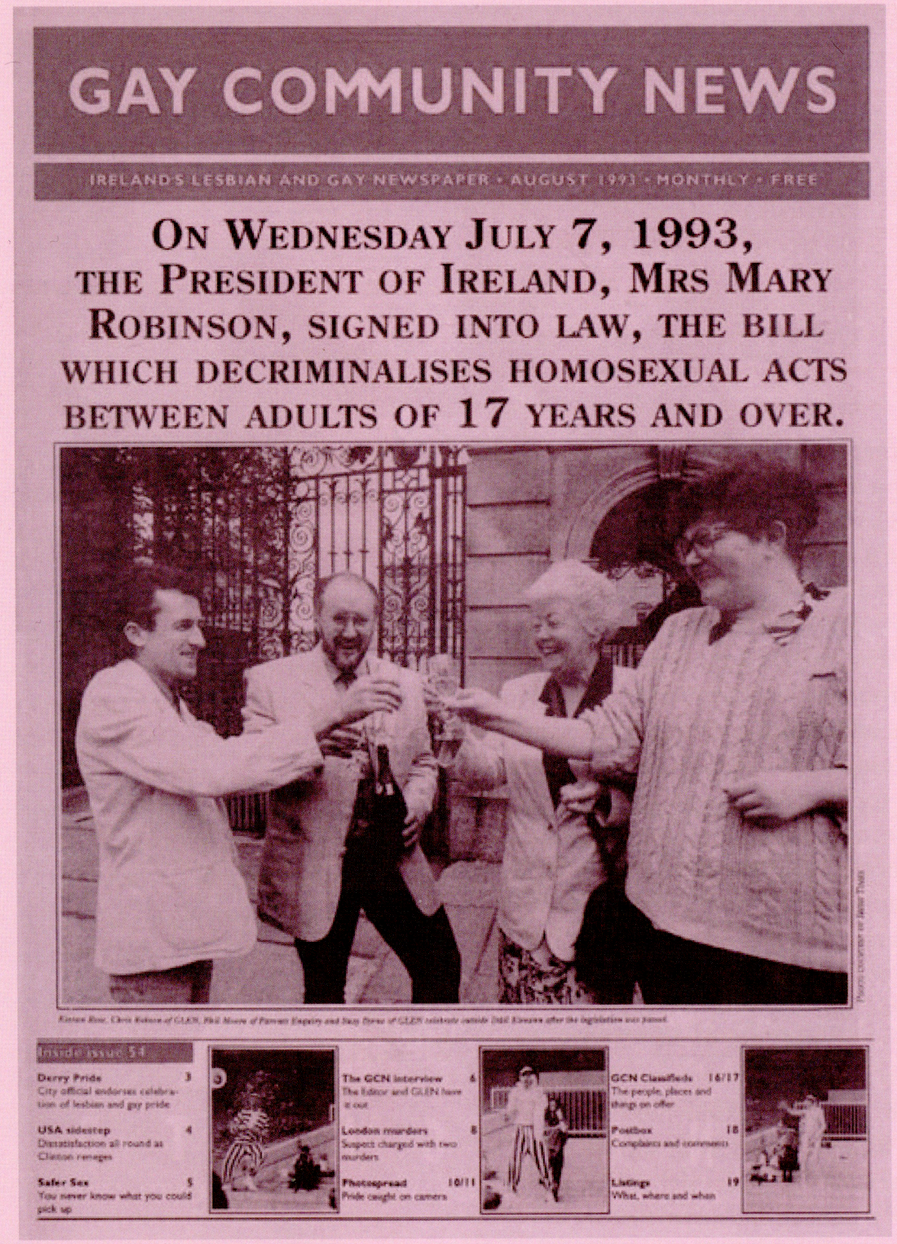
that the legal opinion received by the Department of Health suggested the government could be sued for condoning criminal behaviour if State funds were extended to GHA for the purposes of producing educational materials describing safer sex practices. The denial by the Department of Health of funding to GHA to carry out safer-sex education work on basis that it was contrary to public policy because of criminalisation undoubtedly put gay men's lives at greater risk.

At the same time, in an incredibly cynical attitude towards gay and bisexual men, the Department of Foreign Affairs in 1986 "sought Government approval to use AIDS as an argument to retain Ireland's [anti gay] laws" in their defence of criminalization at the European Court of Human Rights in the David Norris appeal, according to Ruadhan Mac Cormaic in *The Supreme Court*.

Public perception was an instrumental component in upholding the laws. Professor Diarmaid Ferriter in a 2018 Irish Examiner article says, "I was born in 1979, and in the three years before that, there were 44 prosecutions in this country. It is not all that long ago, and it is very much in living memory. Homosexuality was seen as a perversion and trials were sometimes a cruel form of entertainment for the media and the public."

In a 2017 Journal.ie article, Joni Crone spoke about her experience of being of of the first people to speak out about LGBT+ rights on the Late Late Show. "He [Gay Byrne] mirrored the ignorance and prejudice that existed at the time. I felt subjected to a public interrogation and tried to hold my head up while I endured a kind of mental torture."

Despite this 'state of fear' there was significant resistance and resilience. Many LGBT+ people still lived full lives in the face of fear and rejection. They formed communities, led protests, partied, hooked up, fell in love, created families and so much more. LGBT+ community organisations were established, forming vital support networks such as the switchboards, befriending and social groups across the country and community centres in Dublin, Cork and latterly Dundalk and Galway. Gay Community News (GCN) has been a vital source of connection and



GAY COMMUNITY NEWS

IRELAND'S LESBIAN AND GAY NEWSPAPER • AUGUST 1993 • MONTHLY • FREE

ON WEDNESDAY JULY 7, 1993, THE PRESIDENT OF IRELAND, MRS MARY ROBINSON, SIGNED INTO LAW, THE BILL WHICH DECRIMINALISES HOMOSEXUAL ACTS BETWEEN ADULTS OF 17 YEARS AND OVER.

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GCN Cover, 1993
Irish Queer Archive

information since 1988, and community sexual health organisations were crucial and often the only responses to HIV. Advocacy organisations including GLEN,

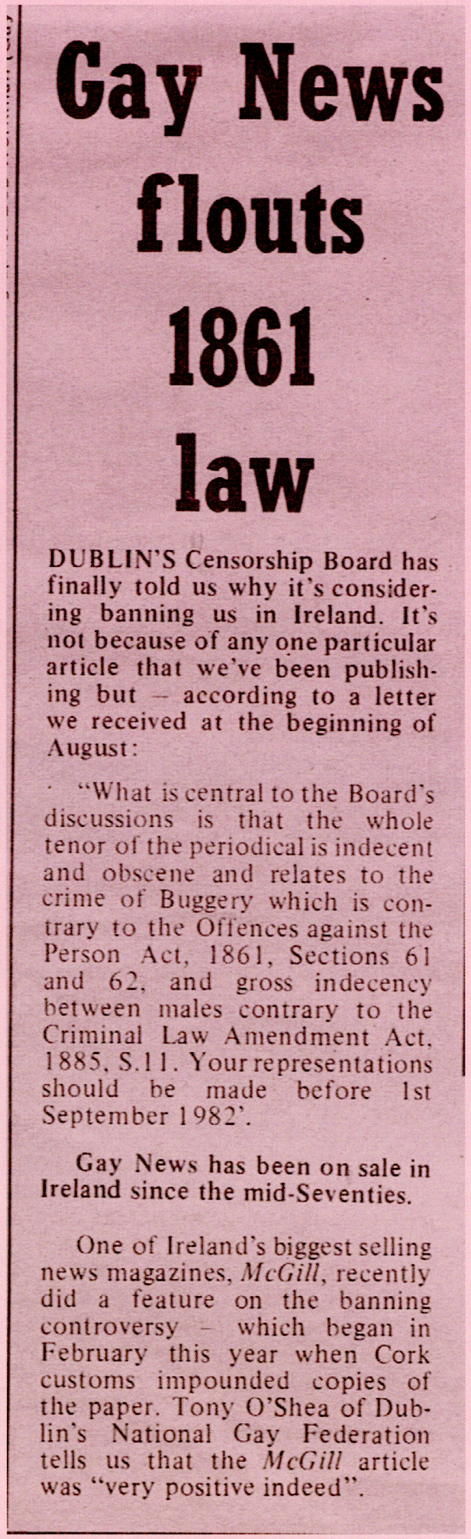
"It's very difficult to describe to anybody who wasn't around at the time just how totally, profoundly invisible we were."

- Ailbhe Smyth

LOT and NLGF along with key allies such as the Irish Council for Civil Liberties (ICCL), the Trade Unions and others were pivotal in driving social, policy, political and legislative change.

However, the personal and community trauma of criminalisation, despite huge legal and social progress, continues both at a collective sense and in particular way for all those individuals who came to a realisation of their sexual orientation or gender identity during the times of criminalisation and its aftermath. These laws resulted in a collective trauma that still has not been fully explored or addressed.

In the Irish Times article, Tonie Walsh went on to state, "Criminalisation cast a heavy shadow of shame over generations of queer people, denying them a right to their own history, language, and safety. It ensured lesbian and gay people never raised their head and became visible. The consequences of that are still felt by some people today who never got the chance to be who they were."



Gay News flouts 1861 law

DUBLIN'S Censorship Board has finally told us why it's considering banning us in Ireland. It's not because of any one particular article that we've been publishing but — according to a letter we received at the beginning of August:

"What is central to the Board's discussions is that the whole tenor of the periodical is indecent and obscene and relates to the crime of Buggery which is contrary to the Offences against the Person Act, 1861, Sections 61 and 62, and gross indecency between males contrary to the Criminal Law Amendment Act, 1885, S.11. Your representations should be made before 1st September 1982'.

Gay News has been on sale in Ireland since the mid-Seventies.

One of Ireland's biggest selling news magazines, *McGill*, recently did a feature on the banning controversy — which began in February this year when Cork customs impounded copies of the paper. Tony O'Shea of Dublin's National Gay Federation tells us that the *McGill* article was "very positive indeed".

UK publication Gay News was banned in Ireland in the 1970s because of the criminal laws.
Irish Queer Archive

2.3 The Fight for Decriminalisation

In 1993, homosexuality, in both the old British laws and in Common Law, was decriminalised in Ireland on the basis of equality, including an equal age of consent for same and opposite sex couples. This major achievement came after a European Court of Human Rights judgement in 1988 in a case taken by Senator David Norris against Ireland, and a long campaign by the Gay and Lesbian Equality Network (GLEN) and others to persuade the Government to comply with the judgement.

Minister for Justice at the time Máire Geoghegan-Quinn, who strongly advocated for decriminalisation and brought forward the legislation, said the move would allow gay people to "express themselves in personal relationships without the fear of being branded [...] as criminals."

Speaking with RTÉ in 2019, Geoghegan-Quinn stated, "You can never put a limit when you're dealing with human rights, you can't put a limit on what is enough and what is not enough. Because as long as the population and the world develops and people evolve, there will always be human rights issues that have to be dealt with. You can never say, 'Thus far and no further'."

In 1977, Senator Norris, who at the time was a lecturer in English at Trinity College Dublin, took a High Court challenge against the laws which criminalised homosexuality in Ireland. Speaking with GCN, he detailed this process, "I thought at first we'd persuade one of the people who was being charged under the criminal law to take a constitutional defence. But of course they wouldn't because the last thing they wanted was any more publicity. They wanted it all to go away. So we built a case around myself."

Senator Norris's case was lost in the High Court in 1980. In the judgement Mr. Justice McWilliam set out that "one of the effects of criminal sanctions against homosexual acts is to reinforce the misapprehension and general prejudice of the public and increase the anxiety and guilt feelings of homosexuals leading, on occasions, to depression and the serious consequences which can follow from" as he termed it "that unfortunate disease." Senator Norris appealed to the the Irish Supreme Court who ruled against him in 1983. He then proceeded, with the Campaign for Homosexual Law Reform (CHLR), to take the case to the European Court of Human Rights, with later President Mary Robinson as his counsel. In 1988, they secured a monumental victory when the court ruled that Irish laws, specifically those criminalizing homosexual relationships, contradicted the European Convention on Human Rights.

"The law reform has had a powerful liberating effect on our sense of ourselves. It's like a great burden being lifted from our shoulders."

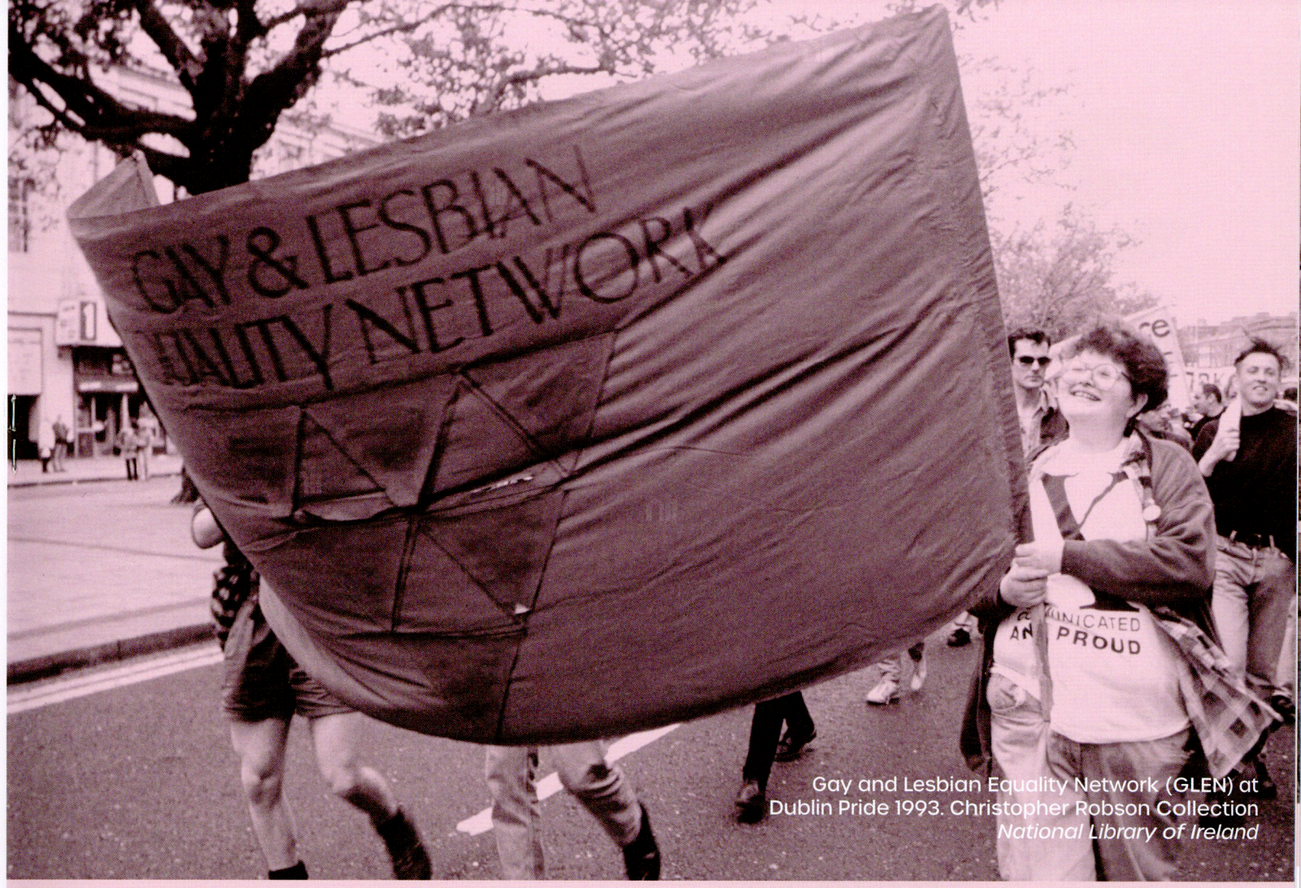
- Kieran Rose

Five years later, following a long campaign by GLEN, the ICCL and

others, the Fianna Fáil-Labour coalition Government overturned laws criminalising sexual relationships between men.

Kieran Rose, co-chair of GLEN said in *Diverse Communities – The Evolution of Lesbian and Gay Politics*, published in 1994, that "for many lesbians and gay men, the law reform has had a powerful liberating effect on our sense of ourselves. It is like a great burden being lifted from our shoulders, a burden we had grown up with and had hardly realised existed." He also quoted Mary Holland who wrote in her Irish Times column the week after decriminalisation, which happened on the eve of Dublin Pride, that "One would need a heart of stone not to have been moved by the great waves of happiness that surged through the centre of Dublin last Saturday afternoon as Irish lesbians and gays took to the streets, walked hand in hand and chanted 'We're here, we're queer, we're legal'".

The removal of the criminal laws enabled the development of successive progressive legislation that created protections for LGBT+ people. Campaigns by GLEN, the Campaign for Equality and others led to the enactment of the Employment Equality Act in 1998 and the Equal Status Act in 2000, which included sexual orientation in the nine grounds of protection against discrimination in the provision of goods and services and in employment. These equality provisions laid the foundation for major policy progress and for further legislative progress including with the Civil Partnerships Act in 2010, Children and Family Relationships Act in 2015, the extraordinary Marriage referendum in 2015, and the Gender Recognition Act of 2015.



Gay and Lesbian Equality Network (GLEN) at Dublin Pride 1993. Christopher Robson Collection *National Library of Ireland*



Lesbians and gay men involved in the Quay Co-op Cork and the lesbian and gay Collectives 1983. *Kieran Rose Collection, Queer Culture Ireland*

3

State Apology

3 Apology and Disregard

In June 1993, following on from the European Court of Human Rights judgement in 1988 in the case taken by Senator David Norris, and an intensive and sustained advocacy campaign by GLEN and others, the then Government repealed the British laws carried forward into the Irish State that criminalised consensual same-sex activity. The laws were repealed on the basis of equality, including an equal age of consent for both same and opposite sex relationships.

Twenty-five years later, on Tuesday 19th June, 2018, Dáil Eireann and Seanad Eireann unanimously agreed a motion of apology to those convicted under the repealed legislation.

The Dáil and Seanad Motion of Apology read:

That Dáil Éireann/That Seanad Eireann:

acknowledges that the laws repealed in the Criminal Law (Sexual Offences) Act 1993 that criminalised consensual sexual activity between men:

- *were improperly discriminatory, contrary to human dignity and an infringement of personal privacy and autonomy;*
- *caused multiple harms to those directly and indirectly affected, namely men who engaged in consensual same-sex activities and their families and friends;*

and

- *had a significant chilling effect on progress towards equality for the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBT+) community, acknowledging in particular the legacy of HIV/AIDS within the context of criminalisation;*

further acknowledges the hurt and the harm caused to those who were deterred by those laws from being open and honest about their identity with their family and in society and that this prevented citizens from engaging in civil and political life and deprived society of their full contribution;

offers a sincere apology to individuals convicted of same-sex sexual activity which is now legal;

welcomes the positive progressive measures introduced by successive Governments over the last thirty years and in particular in the 25 years since decriminalisation was introduced by the Criminal Law (Sexual Offences) Act 1993, including inter alia:

- *the Prohibition of Incitement to Hatred Act 1989;*
- *the Equal Status Acts 2000-2016;*
- *the Employment Equality Acts 1998-2016;*
- *the Civil Partnership & Certain Rights and Obligations of Cohabitants Act 2010;*
- *the Marriage Equality Referendum and the Marriage Act 2015;*
- *the Children and Family Relationships Act 2015; and*
- *the Gender Recognition Act 2015;*

further welcomes the Government's commitment to introduce an LGBT+ Youth Strategy, followed by an LGBT+ Strategy; and reaffirms its commitment to ensuring that:

- *the law fully recognises and protects sexual and gender minorities on an open and inclusive basis;*
- *Ireland is a country where LGBT+ individuals are free to fully express their identities without fear of discrimination;*
- *all citizens can live in freedom and equality, and participate fully in the social, economic and cultural life of the nation, regardless of sexual orientation or gender identity; and*
- *our foreign policy promotes and protects human rights globally, including the rights of LGBT+ individuals, who continue to suffer disproportionate levels of violence and face systemic discrimination in many countries.*

Speaking in the Dáil debate on the Motion of Apology, Taoiseach Leo Varadkar TD said: "Today, the people I want to pay a special tribute to, on behalf of the Government, are the unknown heroes, the thousands of people whose names we do not know, who were criminalised by our forebears. They are men and women of all ages who tried to live and love and be themselves in a society where their identity was feared and despised and who were aliens in their own country for their entire lives because they felt that love that dare not speak its name. We cannot erase the wrong that was done to them, but we can say that we have learned as a society from their suffering. Their stories have helped to change us, as a country, for the better. They have made us more tolerant, understanding and human."

Leader of Fianna Fáil, Micheál Martin TD , welcoming the Motion for Apology, acknowledged the 'endemic homophobia' which stemmed from the criminal laws. "By any measure, the vote 25 years ago to decriminalise homosexuality is a turning point in modern Irish history. It did not end discrimination, and we have not ended discrimination, but it set off a chain of actions which have changed our country unquestionably for the better. The decriminalisation legislation was first and foremost a victory for a generation of exceptional campaigners. They worked with extraordinary passion and no small amount of bravery to say loudly and proudly that Irish society must end the appalling stigma of criminality which gave force to an almost endemic homophobia."

"We cannot erase the wrong that was done to them, but we can say that we have learned as a society from their suffering."

- Taoiseach Leo Varadkar TD

Sinn Féin's Senator Fintan Warfield, speaking in the Seanad debate on the Motion of Apology raised some of the impacts of the climate which the criminal laws created: "In 1993 I was 15 months old when homosexuality was decriminalised. I cannot give personal expression to the impact of criminalisation on the LGBTQI community, but I can understand the taboo it created. It created an unwillingness on the part of establishment politicians to deal with the likes of the Hirschfeld



LGBT+ community members, young and old, at the Oireachtas to hear the State Apology for the laws which criminalised homosexuality. 2018. *Karl Hayden Collection*

Centre in Dublin city's cultural and social space for lesbian and gay men. One thinks of issues such as giving a real and a genuine response to the HIV crisis, homophobia and public beatings of gay men... How many people have we lost to Ireland because of criminalisation? Can anyone tell me how many lesbians and gay men left the State because of that air of criminality?"

There was widespread support across all Parties and independents for the Motion for Apology.

Brendan Howlin of Labour said "We have moved within a generation from a time when gay men and women were an alien and shunned phenomenon...The ultimate goal must be complete acceptance, inclusion and normality and nothing less."

Bríd Smith of People Before Profit recognised the struggle, saying "The political elite and the establishment often stood in the teeth of opposition to prevent progress for LGBT+ people. They showed apathy, indifference and sometimes derision and hostility in the face of demands for homosexual law reform."

Roisín Shortall of the Social Democrats focused on work that remained to be done: "Decriminalisation, marriage equality and discrimination protections are the bare bones of what LGBTQ people needed in terms of ending legal discrimination. If the Government is serious about protecting and empowering this community, it needs to focus on concrete and tangible issues and service provision... I want to remind everyone in this House that we have a

responsibility because of our position to rectify the wrongs that were done to this community in the recent past.... The legacy of this maltreatment resonates today. Stigma remains and rears its ugly head in many ways. Verbal and physical intimidation of LGBTQ people continues. Homophobic, biphobic and transphobic bullying is rife in our schools. Outmoded sex and relationship education that is of little use to LGBTQ people is still the norm in our schools and must be addressed urgently. Most tragically, the

"Law reform "did not end discrimination and we have not ended discrimination, but it set off a chain of actions which have changed our country unquestionably for the better."

- Micheál Martin TD

rates of self harm and suicide in this community remain alarmingly high. The number of transgender individuals who have engaged in self-harm in particular is stark, with one report suggesting that upwards of 80% of members of this community have experienced suicidal ideation."

4

The Call To Disregard

4.1 The Development of an Exoneration Process

There is now a proposed Disregard scheme which would consider individual cases to determine whether the convictions would be eligible for exoneration. This could potentially mean that those targeted under criminalisation laws for engaging in consensual same-sex relationships will be cleared of their prior convictions.

In 2016, Labour Senators Ged Nash and Ivana Bacik proposed a Bill to "address the historic wrong by the State" by exonerating people convicted under criminalisation of homosexuality. The Party also called for a formal State apology to those persecuted under these laws. The Bill, the Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016', aimed "to provide for an apology to and exoneration of persons convicted of consensual samesex sexual acts, on the grounds that prosecutions for such offences were improperly discriminatory, contrary to human dignity and in breach of personal privacy and autonomy" according to Nash when introducing the Bill. The Bill progressed in the Seanad with crossparty support, but did not progress further.

"The laws of the time viewed consensual sexual activities between same-sex partners as wrong. I don't believe that ever should have been the case. Ireland has to recognise that and that's why we refer to this process of exoneration and disregard of criminal convictions, rather than referring to them as pardons which suggests that the activity was wrong," Nash told the Journal.ie in 2022.

At an event on 24 June 2018 in Dublin Castle commemorating the 25th anniversary of decriminalisation in 1993, Taoiseach Leo Varadkar announced the Government's plan to bring forward proposals for a scheme to expunge criminal records for those prosecuted under the criminalisation of consensual same-sex relations.

The 2020 Programme for Government, Our Shared Future, carried a commitment from the current Government to "Introduce a scheme for the expunging of criminal records for gay men convicted of historical offences."

"The laws of the time viewed consensual sexual activities between same-sex partners as wrong. I don't believe that should ever have been the case."

- Ged Nash TD

In March 2021, the Minister for Justice, Helen McEntee TD, approved the establishment of A Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men. Led by the Department of Justice and including three representatives of the LGBT+ community and a representative of the Irish Human Rights and Equality Commission (IHREC), the Working Group started to meet from June 2021.

In May 2022, the Minister McEntee TD, while publishing the Group's progress report, said, "The Victorian-era laws which were repealed by the Criminal Law (Sexual Offences) Act 1993 caused immeasurable harm to generations of gay and bisexual men, criminalising and stigmatizing them simply because of their sexual orientation."

"I am strongly committed to bringing to Government and publishing a scheme to disregard convictions for qualifying offences prior to decriminalisation in 1993."

- Helen McEntee TD, Minister for Justice

McEntee further stated, "I am very conscious that nearly 30 years later, the damage that was caused by these laws continues to impact negatively on too many people's lives. While this harm can never be fully undone, I am strongly committed to bringing to Government and publishing a scheme to disregard convictions for qualifying offences prior to decriminalisation in 1993."

"The legacy of this maltreatment resonates today. Stigma remains and rears it's ugly head in many ways."

- Roísín Shortall TD

The Working Group, having considered a wide range of issues and carried out research, are now embarking on a Public Consultation to seek views on a set of questions to help finalise the proposals to Government for a scheme that would provide for convictions under the criminalising legislation to be disregarded.

Further information on the Public Consultation can be found on the Department of Justice website www.justice.ie and also online at www.LGBTDisregard.ie.

4.2 The Role of the Working Group

The Working Group consists of representatives from the Department of Justice, An Garda Síochána, the Irish Human Rights and Equality Commission (IHREC), the Office of the Attorney General and three members of the LGBT+ community with expertise in this area. The Working Group is tasked with the following:

To examine the feasibility of identifying appropriate records which may support a decision to expunge or disregard a record of conviction for consensual same-sex acts between men prior to decriminalisation in 1993. The Working Group will assess the availability and quality of records held by An Garda Síochána which relate to the offences concerned in order to determine the feasibility of putting in place a scheme to disregard the criminal convictions.

To examine issues regarding criminal records relating to consensual same-sex relationships prior to decriminalisation in 1993 (e.g. can the disclosure of historic criminal records be facilitated?).

To consider, define and determine the offences to be included or excluded and to agree standards to meet before the criminal convictions can be expunged or disregarded for qualifying offences.

To examine the need for, and feasibility of, establishing a scheme for expunging or disregarding convictions for qualifying offences relating to consensual sexual acts between adult males.

To examine the possibility of putting in place a legislative scheme similar to that in place in England and Wales, or any other relevant jurisdictions, to address this issue. That would involve a consideration of each individual case, on application by the individual concerned or a representative to determine, for example, whether the acts involved were consensual and whether a person under the current applicable age of consent was involved, with a view to expunging/disregarding convictions for qualifying offences.

To compile an interim report of recommendations for the Minister for Justice no later than the end of Q4, or at the earliest date thereafter.

"I am very conscious that nearly 30 years later, the damage that was caused by these laws continues to impact negatively on too many people's lives."

- Helen McEntee TD, Minister for Justice

To make any other recommendations in relation to the development of any scheme to the Minister for Justice no later than Q3 2022, or at the earliest date thereafter.

In May 2022, the Minister for Justice, Helen McEntee TD, published the Working Group's progress report. The Minister acknowledged the harm done to 'generations of gay and bisexual men' and reiterated her commitment to developing a disregard scheme and encouraging participation in the public consultation.

Labour TD Ged Nash told the Journal. ie that in relation to exonerating men persecuted under criminalisation laws, "it is absolutely intrinsic in terms of a proper reckoning with the past. I hope the working group designs an appropriate system that we could put in place for a series of exonerations for men who were convicted of a broad range of offences that have since been abolished."

The Working Group looked at a range of issues, examined practices in other countries that had similar schemes for pardons, expungement or disregards for equivalent legislation and explored the international human rights and equality principles that should apply to any disregard process.

In the Working Group's progress report, the criteria for a conviction to be eligible for disregard are outlined as:

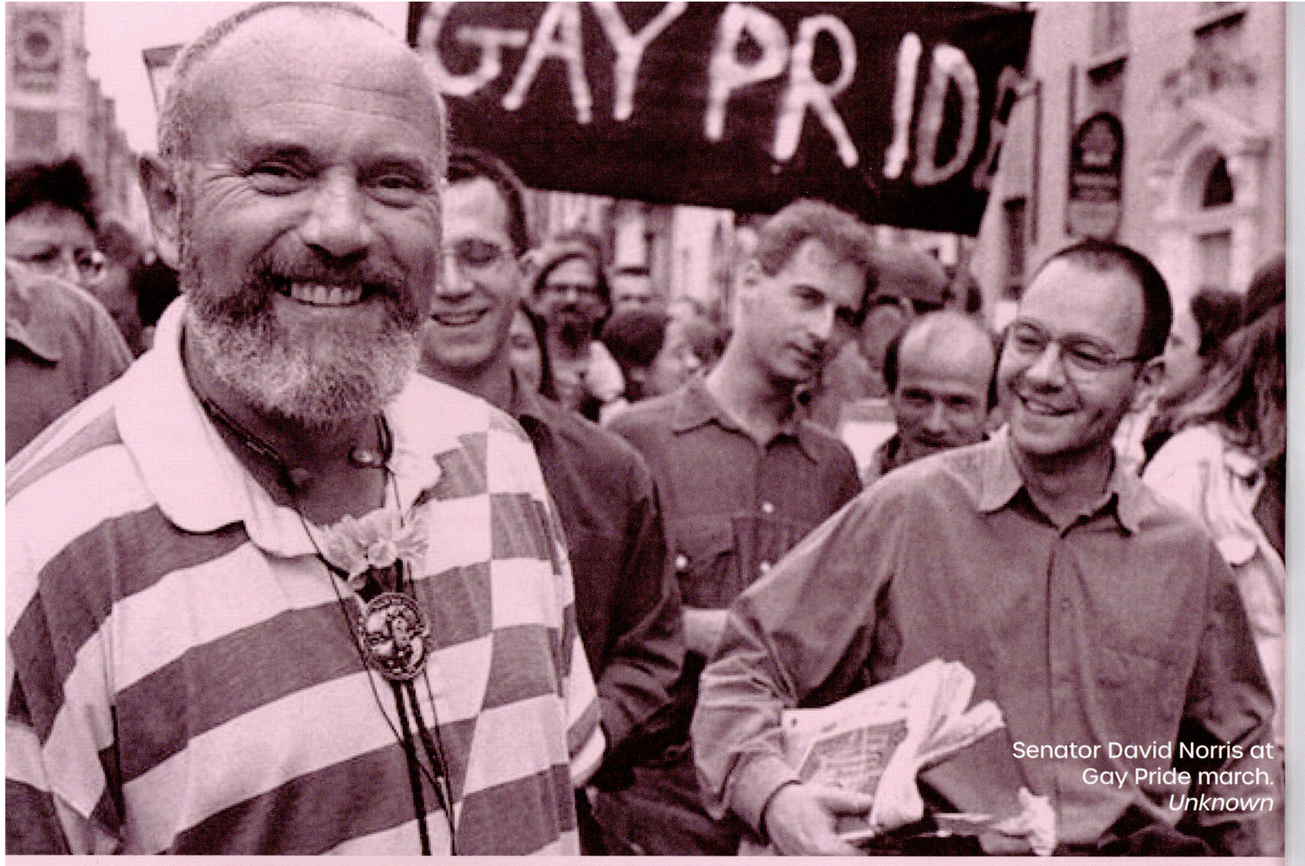
- The act was consensual
- The act did not involve a person under the current relevant age of consent
- That no person engaged in the activity was in a position of authority over another person engaged in the activity

Among interim recommendations in the progress report, the Working Group advised that relevant records should to be disregarded rather than expunged. Disregarding records ensures that evidence of such injustices remains intact, whereas expungement would involve destroying or entirely removing those same records. This can facilitate people, communities, researchers, and historians to explore these cases in the future.

A further interim recommendation was that there should be a public consultation "to provide an opportunity for affected stakeholders to engage on some key questions related to the development of any scheme." The Public Consultation phase, on a set of questions outlined by the Working Group, is now underway.



Dublin Pride week, 1984, Irish Queer Archive
© Clodagh Boyd



Senator David Norris at Gay Pride march.
Unknown



Gay Pride March, 1983, outside the GPO.
Daniel (Dan) Wood Collection

4.3 How to Get Involved - The Public Consultation

The Public Consultation is to ensure that those affected, whether directly or indirectly, their family and friends, as well as the wider LGBT+ community and organisations can shape the disregard scheme based on their lived experiences.

"The work currently being undertaken by the Working Group is of clear public interest and the issues it is considering must be considered with great sensitivity and respect to the harmful impact that criminalisation and resulting convictions had on the men affected, as well as their friends and family and the wider LGBTQI community," the Working Group notes in their Progress Report.

Speaking about the consultation process, Gay and Lesbian Equality Network co-founder Kieran Rose further outlined in an Independent.ie article what would be involved, "A lot of the men who were prosecuted, the last thing they wanted to do was stay in Ireland so many emigrated. There will have to be a very good publicity campaign to find the men who were convicted, or their surviving family or loved ones. There will also have to be emotional support offered. People can be retraumatised by revisiting these matters."

As part of the public consultation, there is a set list of questions addressing key issues relating to the development of a disregard scheme set out by the Working Group. These address a range of topics such as whether an established public body or an independent body should be a person's first point of contact if they wish to avail of the disregard procedure, how can participation in the scheme be encouraged, and any other issues that the Working Group should consider.

Under the Freedom of Information Act, submissions cannot be confidential, however personal information can be omitted or redacted by the Department of Justice. After this public consultation as well as review of records, the Working Group will further consider any outstanding issues and make their recommendations in a final report. Following that report, the Government will make a decision about Disregard legislation to be developed and brought before the Oireachtas. Having passed through the Dáil and Seanad, the application process for a Disregard should become available.

Contributions to the Public Consultation are encouraged from all stakeholders – including LGBT+ community organizations, civil and human rights groups, Trades Unions and other groups; and from LGBT+ people, whether they were directly impacted by the criminal legislation or not. Issues such as restorative justice can also be raised as part of a submission.

Information on how to engage with the public consultation is available on www.justice.ie and on the community website www.LGBTDisregard.ie.

5

The Disregard Scheme's Wider Social and Political Impact

5.1 Support for the LGBT+ Community

Exonerating those convicted of consensual same-sex relations would be a key step in the State's recognition of and reparation for the extensive damage criminalisation inflicted upon LGBT+ people and communities, what was in effect, state sponsored homophobia.

While a Disregard scheme cannot undo years of shame, silence, and aggressive policing, it has the potential to support people in creating new means of addressing the grave injustices they experienced. It might possibly mark the beginning for much needed healing action as those affected by criminalisation are encouraged to speak out about the trauma inflicted upon them by the State.

As Ged Nash told NewsTalk in 2017, "Nothing we do or say now will ever truly make up for the hurt and marginalisation which official Ireland imposed on gay citizens for decades, and which caused so many people to live with a crushing and enduring fear of being 'found out'. But in apologising for what we did in the past, and acknowledging that it was wrong, we might ease some of that pain."

"Nothing we can do or say now will ever truly make up for the hurt and marginalisation which official Ireland imposed on gay citizens for decades...but we might ease some of that pain."

- Ged Nash TD

5.2 Inform Future Campaigns for Social Justice

There are only six other countries (Australia, Canada, Spain, UK, New Zealand, Germany) that have introduced disregard legislation so far. Through the Working Group's research, the public consultation, and final report, Ireland could provide a model for other countries to campaign against similar injustices.

This process shines a light on generations of people whose stories were silenced and kept out of the public. It addresses human rights violations carried out by the State, the need for wider redress to comply with international human rights principles, and how issues of policing same-sex desire relate to wider Irish history.

Currently, there is no EU, Council of Europe or UN policy and guidance on issues of disregarding criminalisation of LGBT+ people. As more countries explore different approaches and exonerate these convictions, lessons from the Irish process, and deeper understanding of the impacts of criminalisation and victimisation, it would assist the UN Human Rights Commission, the EU Fundamental Rights Agency and the Council of Europe Human Rights Commission in developing a robust model.

The 2005 UN Resolution on a right to remedy and reparation for victims of gross violations of human rights law creates obligations on States to address the consequences of such violations. These obligations include ensuring that a person is not re-traumatised in the course of legal or administrative

procedures that administer justice and reparation, that there should be effective access to justice and adequate reparation for harm suffered. A restorative justice approach would acknowledge the direct impact of the laws on those affected and also the wider impact of the harms of the legislation on LGBT+ people and communities. Such an approach would, if followed by the State, promptly address issues such as outstanding legislation to protect LGBT+ people from harm; seriously tackle major gaps in policy and practices that continue to have an impact on LGBT+ people and communities; and would address the underdevelopment of LGBT+ community infrastructure and supports throughout the country.

5.3 Potential for New Queer Histories in Ireland

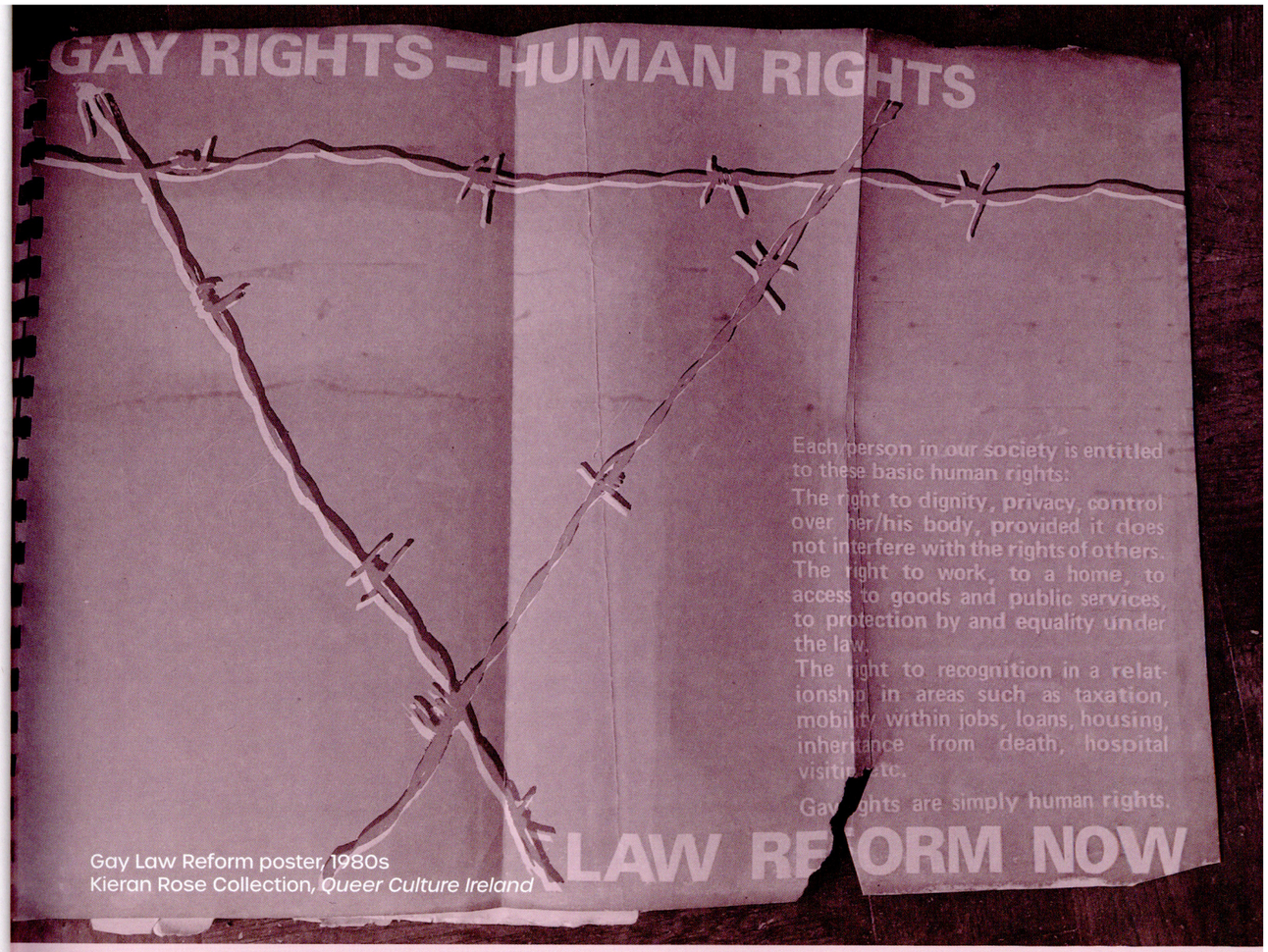
While there has been a considerable amount of research done around criminalisation, creating an accessible, user friendly, summary format would ensure more people could explore this vital piece of Ireland's LGBT+ history. As Dr. Earls has noted, reading of people's lives through court cases and public service documents can be murky, with only fleeting moments of humanity shining through.

The disregard scheme creates a significant moment and opportunity to break through the stigma and shame which silencing people from sharing their stories. As such, it would build knowledge and understanding around these time periods grounded in lived experience.

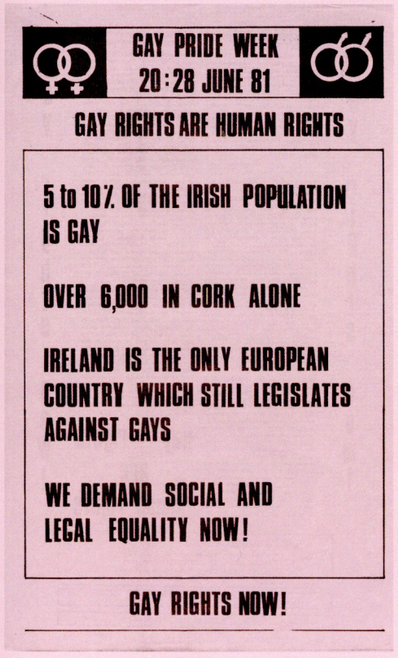
"It is worth knowing that there have been people that were like us in the past, even if their own experience of sexuality and gender was shaped by the specific times in which they lived. As a gay man, better understanding these 'queer ancestors' makes me feel more connected to the city in which I live, and more determined to improve the lives of LGBT+ people today," Queens University Belfast lecturer Dr Tom Hulme said in a recent GCN article.

Within that same GCN article, Dr Patrick McDonagh further echoed these sentiments, saying, "It shows where we come from and where we don't want to go back to. [...] There's much broader stories about how an oppressed community came together and supported each other when the establishment refused to do so."

A full restorative justice approach would commemorate and memorialize those whose lives were deeply impacted by being arrested, charged, prosecuted or convicted under the criminal laws. It will also develop understanding of lives impacted by the existence of the legislation, and, through the stories of their lives, build a deeper understanding of how the state treatment of LGBT+ people is in a parallel to that of other people who were marginalised in the new State.



Gay Law Reform poster, 1980s
Kieran Rose Collection, *Queer Culture Ireland*



Cork Gay Pride leaflet, 1981
Cork LGBT Archive



IGRM helpline ad, 1970s
Irish Queer Archive

6

Support and Further Information

6.1 Community Services

LGBT Ireland
www.lgbt.ie
(01) 6859280
info@lgbt.ie

Outhouse
www.outhouse.ie
(01) 873 4999
info@outhouse.ie

LINC
www.linc.ie
021 480 8600
info@linc.ie

Gay Project Cork
www.gayproject.ie
021 430 0430
Info@gayproject.ie

Dundalk Outcomers
www.outcomers.org
042 932 9816
info@outcomers.org

GOSHH Limerick
www.goshh.ie
061 314354
info@goshh.ie

Teach Solas, Galway
www.amachlgbt.com
089 497 5162
info@amachlgbt.com

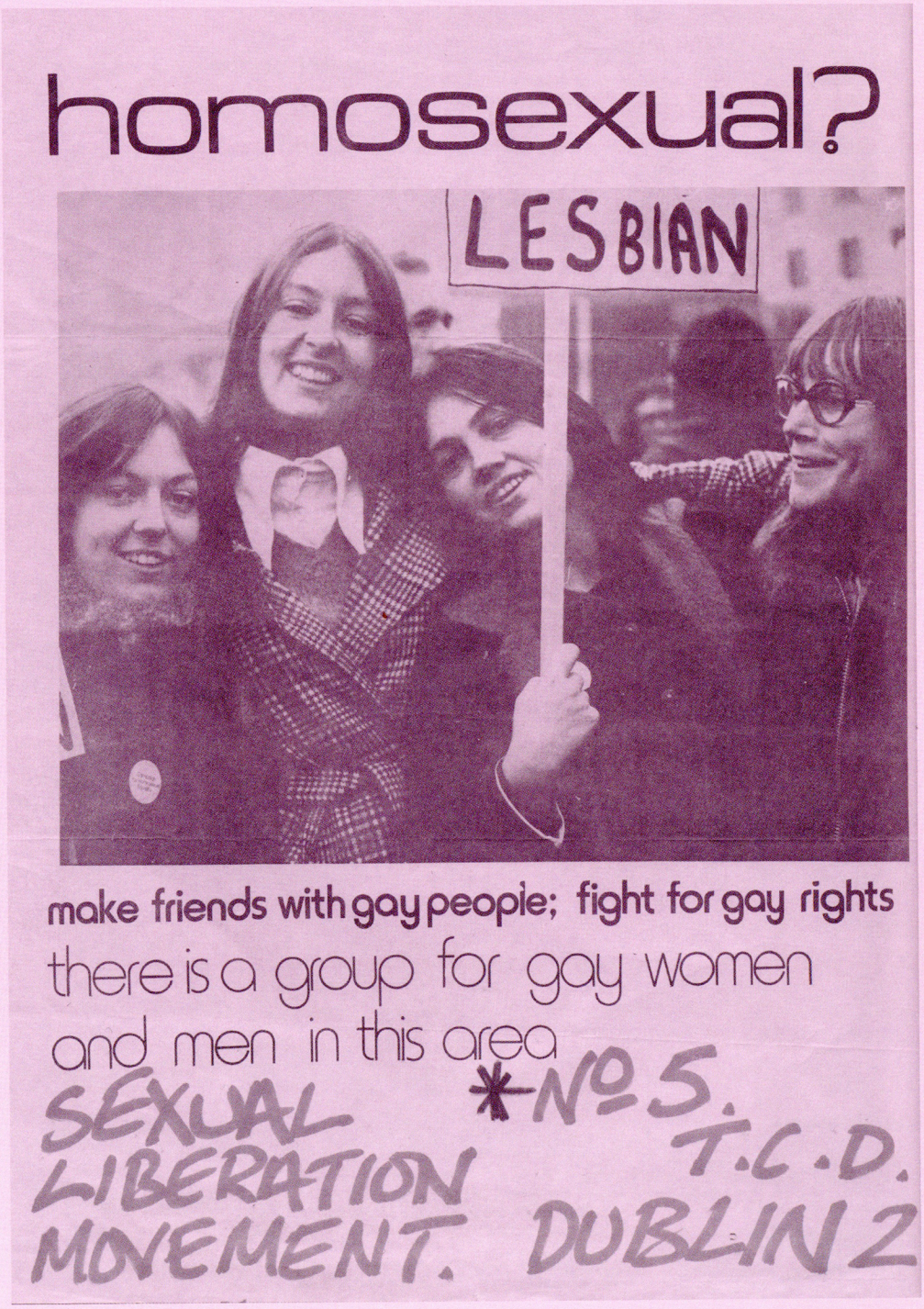
GCN – Gay Community News
www.gcn.ie
info@gcn.ie

6.2 Helplines

National LGBT Helpline
www.lgbt.ie
1800 929 539

The Switchboard
www.theswitchboard.ie
(01) 8721055
ask@theswitchboard.ie

The Samaritans
www.samaritans.org
Freephone 116-123
jo@samaritans.ie



Poster for one of the first LGBT+ rights meetings, 1974
Irish Queer Archive


HASSLE
THE
MURDERER
NOT
THE