The fight against discrimination, and combating underlying prejudices, are central to the human rights framework and are a core part of Amnesty International's (AI) work. At a European level, AI's Fight Discrimination campaign aims to ensure that all individuals in Europe enjoy effective protection against discrimination (www.fightdiscrimination.eu).

¶

AI has been campaigning for the realisation of the right to the highest attainable standard of mental health in Ireland since 2003. This briefing paper shines a light on the perceived unfair treatment of people with mental health problems. The results, in conjunction with existing data on negative public attitudes and inequality, tell a compelling story for the need to challenge mental health prejudice and discrimination.

“I can’t get a job, I’ve tried and tried…
They’ll say well where have you been?
And I’ll say well I was in a psychiatric
hospital and you can see the look and
it’s all downhill afterward and you never
hear from them again.-”

Preface

¶

We are delighted to have been invited to steer, advise and be a part of Amnesty International Ireland's current campaign which views mental health as a human rights issue. We have a vision of a society that respects differences and where people can be proud to be themselves.

¶

We think everyone should be treated with dignity and respect. We are not asking for anything more than for the human rights of people experiencing mental health problems to be respected. We want a system of government that supports everyone's right to housing, employment and education without discrimination – all essential to recovery and well-being. We want society's prejudice to end.

¶

Experts by experience advisory group

¶

Liz Brosnan, Stephen Garbhaoui, Eamon Kavanaugh, Paddy McGowan, Caroline McGuigan, Colette Nolan, Maeve O'Sullivan, John Redican, Diarmuid Ring, Jim Walsh, Mike Watts.

Foreword

¶

Unlike the more familiar forms of discrimination, like racism, sexism and ageism, there is no '-ism' to describe discrimination on the grounds of mental health. Yet throughout the world, people with mental health problems face continual and widespread inequality and discrimination. It remains the hidden, permissible '-ism', but it cannot be allowed any longer.

¶

In Ireland, however, there is little research about the nature, extent and impact of discrimination that people with mental health problems face, especially from the perspective of that group itself.

¶

Amnesty International Ireland commissioned Dublin City University's School of Nursing to explore the lived experience of people with mental health problems and examine this under-reported area. More than 300 people generously gave up their time to discuss their experience of unfair treatment.

¶

There have been many reports about society's attitudes towards mental health problems. The sobering statistics are widely available - we have heard that nearly half of us don't think people with mental health problems should have the same rights as the rest of us, and that four in ten don't think they should have children.

¶

In this research we asked people with mental health problems directly about their own experience. It is time to listen. Large numbers reported unfair treatment in relation to fundamental human rights, like finding and keeping jobs, accessing education, housing and social welfare.

¶

Shockingly as well, it is the day-to-day experience that can cause the greatest anguish – prejudicial treatment by friends, family, neighbours and colleagues that feeds into the larger process of social exclusion. And it denies people with mental health problems their right to live a full life in their communities. It also denies us as a society the vast and rich contributions people have to offer.

The heart of this report is not the statistics or the analysis - it is the direct quotes and people's voices. For example, when you hear someone talking about the job that was theirs until the mention of a mental health problem made the offer disappear. Or someone else explaining how their opinion, once respected, was suddenly disregarded once a mental health problem was mentioned. And another outlining so simply, yet so powerfully, the dramatic effect a mental health problem had on their social life. "No telephone calls, no visiting, no invitations to visit."

¶

In Ireland there is no clear evidence of overt direct discrimination by the state in its laws, policies or practices. The real issue however is the hidden, indirect discrimination and inequality people face. Direct discrimination by private individuals is likely in Ireland today. In this report the voices of people directly affected reveal this hidden '-ism' of mental health prejudice and discrimination. As individuals we must respond. Our Government must act to address direct and indirect discrimination and achieve full equality for people with mental health problems.

¶

We can all be the difference. You can challenge prejudice and end discrimination. Do it today.

¶

Colm O'Gorman
Executive Director
Amnesty International Ireland

A. Introduction

¶

Throughout the world, people with mental health problems[1] are among the groups that face persistent and pervasive discrimination, resulting in the denial of their human rights, and profound social and economic exclusion.[2] In Ireland, however, there is little research about the nature, extent and impact of discrimination that people with mental health problems face, especially from the perspective of that group itself. Discourse has focused on mental health related stigma or prejudice – the attitudes of society. Further, there is little examination of discrimination as a human rights infringement, and of the state's related responsibilities.

¶

As part of its work on discrimination against people with mental health problems, Amnesty International Ireland (AI) commissioned the School of Nursing, Dublin City University (DCU) to interview more than 300 people with mental health problems. DCU asked interviewees about their experiences of unfair treatment in many areas of life – education, employment, housing, for example.The results of DCU's interviews complement existing data on prejudice and unequal outcomes. The interviews provide a unique and important insight into how fairly people with mental health problems feel they have been treated across many areas of their lives. It is time to listen to their voices.[3]

¶

This briefing places some of the findings of these interviews in a wider context. Here, AI sets out some of the existing national and international evidence of the discrimination and socio-economic exclusion experienced by people with mental health problems. We profile existing research showing negative public attitudes towards people with mental health problems. When we combine this information with the voices of the 300 people in the DCU study, it tells a powerful story. AI believes the Irish Government should listen to this story. It must ensure it is meeting its obligations to identify indirect discrimination specifically facing this group, and take measures to redress inequalities. In this briefing AI makes recommendations to the Government and more specifically to the

1 AI Ireland uses the term 'mental health problems' as this is the term preferred by its Experts by Experience Advisory Group. It is synonymous with terms used by other bodies such as mental illness, mental health conditions or mental health disability. Unlike the term 'mental disorders', it does not include intellectual disability.

2 For an overview of the forms of exclusion experienced by people with mental health problems throughout the world, see World Health Organisation, Mental health and development: targeting people with mental health conditions as a vulnerable group, 2010. See also: Thornicroft, G, Shunned: discrimination against people with mental illness, Oxford University Press, 2006; Sayce, L, From psychiatric patient to citizen: overcoming discrimination and social exclusion, McMillan Press, 2000; Kelly, BD, "The power gap: Freedom, power and mental illness", Social Science and Medicine, 63, 2006, pp. 2118-2128.

Department of Health and Children and the Equality Authority. Recommendations are also outlined for civil society and individuals.

¶

Participation is a core human rights principle - individuals themselves should be central in identifying the changes they see as necessary in their lives. In 2008, AI Ireland established its Experts by Experience Advisory Group, a group of people with experience of mental health problems that have advised on and informed all aspects of AI's work on mental health. This group identified prejudice and discrimination as one the primary barriers to the enjoyment of their human rights.

3 Mac Gabhann, L, Lakeman, R, McGowan, P, Parkinson, M, Redmond, M, Sibitz, I, Stevenson, C, Walsh, J, School of Nursing, Dublin City University, *Hear my voice: The experience of discrimination by people with mental health problems*, 2010. Anyone over the age of 18 years who had experienced and/or was currently experiencing mental health problems was eligible to participate in this study. For full details of the methodology employed, see the report of that study. (available at www.amnesty.ie/mentalhealth)

B. Human Rights and Discrimination

> "All human beings are born free and equal in dignity and rights."
>
> Article 1, Universal Declaration of Human Rights

Stigma or discrimination?

Most research related to discrimination against people with mental health problems has focused on the concept of stigma. Many different approaches and perspectives have been taken. 'Stigma' is a wide concept that encompasses multiple processes, among them discrimination. One approach is to consider stigma as an overarching term that covers three domains: problems of ignorance (leading to myths and stereotypes); problems of attitudes (leading to prejudice); and problems of behaviour (leading to discrimination).[4] Of these three areas AI's focus is on discrimination. AI is also concerned with prejudice where this perpetuates discrimination.

Discrimination can take many forms. It can include actions of individuals (for instance, insults, harassment, or assault) – and the outcomes of legislation, and state policies or practices (such as the denial of basic services and other rights). Millions of people throughout the world are still subjected to exclusion, poverty, ill-treatment, even violence, and are denied rights such as health, housing, work and education simply because of who they are, or what they are presumed to be. Discrimination flows from, and further reinforces, prejudice. Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of all human rights.

Article 2 of the Universal Declaration of Human Rights (1948) provides: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national

4 See Thornicroft, G, Shunned: discrimination against people with mental illness, Oxford University Press, 2006. Here, Thornicroft views stigma as an overarching term that covers three domains: problems of ignorance (leading to myths and stereotypes); problems of attitudes (leading to prejudice); and problems of behaviour (leading to discrimination). He surveys the existing stigma literature from this perspective, notes the dearth of research on discrimination, and concludes that it is on discrimination that research should now focus.

or social origin, property, birth or other status." This principle – that everyone is entitled to rights without discrimination – is a feature of all the major human rights conventions adopted in the intervening period. Further, a number of treaties provide specific groups with additional protection from discrimination. These include the Convention on the Rights of Persons with Disabilities (CRPD) which was adopted to address the widespread discrimination experienced by people with disabilities. Article 1 of the Convention defines persons with disabilities as including "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". Although many people with a mental health problem would not consider themselves 'disabled' many would clearly be protected from discrimination under the CRPD. Further, many were involved in lobbying for the CRPD and this approach to disability which takes into account societal barriers to participation. The CRPD was adopted to reaffirm "the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination".[5] Ireland has signed but not yet ratified the CRPD.

Article 2 of the CRPD defines discrimination based on disability as:

> "…any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."

Under international law, discrimination has three distinct elements. There must be unfavourable treatment; the treatment must be based on a prohibited ground, and must lack reasonable and objective justification.

5 CRPD Preamble.

The **unfavourable treatment** must affect the enjoyment of a right by an individual or group of individuals. In practice unfavourable treatment can occur in a variety of different ways including by making a distinction between certain groups, by excluding or restricting certain groups, by giving preference to certain groups or by segregation.

¶

In order for such unfavourable treatment to constitute discrimination it must be based on a **prohibited ground**. These grounds are elaborated in various human rights instruments, in case law and in authoritative interpretations of the law and are widely accepted to include: ethnicity, religion, national or social origin, language, physical appearance, descent, gender, gender identity, sexual orientation, age, disability, (including disability arising from mental health problems), political beliefs, health and social or economic status. The Committee on Economic, Social and Cultural Rights, which is the body responsible for monitoring implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), has confirmed that grounds of discrimination include mental health status.[6]

¶

In practice, many people experience what is known as 'multiple discrimination', that is discrimination on more than one prohibited ground. So, for example, a member of the Traveller community who has a mental health problem may experience discrimination both because he or she has mental health problems and because he or she is a member of the Traveller community.

¶

The unfavourable treatment must also **lack an objective and reasonable justification**. Such justifications may be associated with public policy in, for example, immigration, employment, education, or other areas.[7] It can be a complex matter to assess whether or not a particular justification is objective and reasonable, requiring a detailed examination of the particular circumstances of a case, taking account of the legal and factual context in the state in question. Further, even where there is an objective and reasonable justification for unfavourable treatment, such treatment may be discriminatory if there is not a reasonable level of proportionality between it and the aim pursued. The European Court of Human Rights has been particularly insistent that unfavourable treatment based on prohibited grounds will require particularly weighty justifications to be compatible with the non-discrimination principle.

¶

Discrimination can be **direct** or **indirect**. **Direct discrimination** is unfavourable treatment, lacking an objective and reasonable justification, that is, on its face, based on a prohibited ground. **Indirect discrimination** occurs where a law, policy or practice appears neutral but results in a negative impact on the exercise of rights by a particular group.

¶

As well as making clear that all individuals are entitled to rights without discrimination human rights law prohibits **discrimination in law**, even if such discrimination does not impair the enjoyment of any of the rights enshrined in human rights conventions. Article 26 of the International Covenant on Civil and Political Rights (ICCPR) contains this "free-standing" prohibition of discrimination.[8] Article 5(1) of the CRPD restates this provision: "States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law." The Convention also places an obligation on State Parties to "prohibit all discrimination on the basis of disability" (Article 5(2)).

6 UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, 2 July 2009.

7 The European Court of Human Rights has found, for example, that in certain circumstances public policy on immigration and the protection of the labour market may provide an objective and reasonable justification (Abdulaziz, Cabales and Balkandali v United Kingdom, (1985) 7 EHRR 471). It has also found that public policy on provision of education in local languages which, though amounting to treating certain groups differently, can be in the public interest and can provide an objective and reasonable justification for such different treatment (Belgian Linguistics Case (No. 2) (1968), 1 EHRR 252).

8 "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."

State's obligations

International human rights conventions are legally binding agreements between states and place clear legal obligations on states in regard to the rights of individuals. The nature of states' obligations under the right to be free from discrimination can be categorised into three areas:[9]

1. The **obligation to respect** the right to non-discrimination. This means that the State must not discriminate, and must ensure that its agents carry out their functions in a non-discriminatory manner;
2. The **obligation to protect** the right to non-discrimination. This means that the State must protect individuals from acts of discrimination by private individuals and organisations, and ensure access to appropriate and effective remedies for persons who are discriminated against; and
3. The **obligation to fulfil** the right to non-discrimination. This means that the State must take proactive measures to ensure the full realisation of the right to non-discrimination. These include measures to identify widespread discrimination, combat underlying causes and prevent future occurrences.

People with mental health problems must have their rights to non-discrimination and equality respected and protected in both law and fact. Treating people equally, and without discrimination, however, does not always mean treating people the same. In some contexts different treatment of individuals – taking into account relevant differences – may be justified, and in others it may in fact be required. This may be the case where a history of discrimination has resulted in inequalities that need to be redressed; or where relevant differences generate particular needs such as ramps to enable wheelchair users to access public buildings. Article 5(4) of the CRPD provides: "Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention."

9 For a more comprehensive explanation of states' obligations on non-discrimination under international human rights law see Amnesty International, Dealing with Difference: A Framework to Combat Discrimination in Europe, 2009 (Index: EUR 01/003/2009).

Article 5(3) of the CRPD provides that in some cases '**reasonable accommodation**' is necessary to ensure that all people are in a position to exercise and enjoy their human rights on an equal basis. The CRPD defines reasonable accommodation as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".

Reasonable accommodation requires steps to be taken to remove obstacles which make it difficult for people with disabilities to access their rights - to work, to education, etc. - on an equal basis with others. This requires the State to ensure that its legislation requires public and private bodies to make reasonable accommodation. It must require employers do all that is reasonably necessary to accommodate the needs of people with mental health problems so that they can enjoy their right to work on an equal basis with everyone else, unless such measures would entail a disproportionate or undue burden on the employer.

The human rights requirement of **active participation** is linked closely with equality. The Office of the UN High Commissioner for Human Rights has observed: "Persons with disabilities and their representative organisations played an integral role in the formulation and negotiation of the [CRPD] under the slogan 'Nothing about us without us!'"[10] Ensuring participation is also an obligation set out in the CRPD, Article 4(3) of which states: "In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations."

10 Office of the High Commissioner for Human Rights, Monitoring the Convention on the Rights of Persons with disability: Guidance for HR Monitors, Professional training series No. 17, 2010.

C. Discrimination in Ireland

¶

Introduction

In Ireland, there is no clear evidence of overt direct discrimination by the state against people with mental health problems in national laws, policies or practices.[11] Of equal concern, however, is hidden, indirect discrimination, whereby apparently neutral laws and practices disproportionately affect and prejudice people with mental health problems – even if not intentionally. The findings from the DCU research when placed in context with negative attitudes and social exclusion indicate the need for the state to determine if indirect discrimination is occurring. In order to do this the state is obliged to measure and identify inequalities arising from its laws, policies or practices. Where such indirect discrimination is found it must be addressed by the state. However direct discrimination by private individuals for instance employers is likely to be occurring in Ireland. At the level of individual action discrimination happens as a consequence of prejudice and the state is responsible for combating such prejudice including through awareness raising measures.

Of concern is the degree to which Ireland's equality legislation is effectively being implemented to prevent discrimination. The DCU study's findings cover a wide range of areas of perceived unfair treatment. This briefing, however, focuses on where the findings of the study overlap with human rights concerns. In addition, while discrimination can be a cause of mental health problems, this analysis is confined to discrimination that flows from mental health status.

¶

> In the DCU study, participants were asked to report 'unfair treatment' they felt they experienced in 21 areas of their lives as a result of their mental health problem. The results are summarised below. In all, 95 per cent of participants reported some level of unfair treatment. On average, participants reported unfair treatment in 41 per cent of the 21 areas. When asked whether unfair treatment caused them distress, the vast majority of respondents (86 per cent) indicated they experienced some level of distress. More than half the participants (53 per cent) reported experiencing 'a lot' of distress as a result of perceived unfair treatment.

¶

The findings of perceived unfair treatment from the DCU study do not, in themselves, constitute evidence of discrimination in Ireland today. The DCU research defined discrimination as 'unfair treatment'. This term was as an intuitive and 'plain language' concept. While this definition is broader than the human rights definition, it allows an exploration of both discrimination in human rights terms and other types of unfair treatment that may occur in areas of people's lives. Crucially, these 300 people provide insight into the lived experience of people with mental health problems. Their voices should be listened to in the wider context of the high levels of socio-economic exclusion facing people with mental health problems. Exclusion in areas including housing, education, employment, social welfare and justice was acknowledged in the 2006 national mental health policy, *A Vision for Change*.[12] Social exclusion is the subject of one-fifth of that policy's recommendations. It was also highlighted by the National Economic and Social Forum (NESF) in its 2007 report on mental health and social inclusion, finding "a consistent relationship between mental ill-health and indicators of social exclusion such as low income, poor education, unemployment and low social status".[13]

¶

The Government has not investigated the degree to which inequalities can be attributed to discrimination by the state, or to the state's failure to identify and adopt measures to remedy inequality.

¶

The DCU study found high levels of perceived unfair treatment by family, in parenting, friends and the community. These perceptions may be difficult and challenging for family and friends, but must be taken seriously. Individuals, family and friends have a key role to play in challenging attitudes and behaviour. However as explained below, this is an area in which the state has a role to play.

11 For example, a 2010 World Health Organisation report states: "An analysis of election laws in 63 democracies revealed that only four countries – Canada, Ireland, Italy, and Sweden – do not restrict in any way the right of people with mental health conditions to vote." (World Health Organisation, Mental health and development: targeting people with mental health conditions as a vulnerable group, 2010, citing Blais, A, Massicotte, L, and Yoshinaka, A., "Deciding who has the right to vote: a comparative analysis of election laws", Electoral Studies, 20, 2001, pp.41–62).

12 Department of Health and Children, 2006.

13 National Economic and Social Forum, Mental Health and Social Inclusion, 2007.

Employment

The right to work, and the right to "just and favourable conditions of work", are recognised in Articles 6 and 7 of the ICESCR and Article 27 of the CRPD. The UN Committee on Economic, Social and Cultural Rights notes that the right to work requires states to have specialised services to assist and support individuals in order to enable them to identify and find available work.[14] It also notes Article 2 of the International Labour Organisation Convention No. 111, according to which State Parties must "pursue a national policy designed to promote…equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof".[15] State Parties to ICESCR must take steps to achieve full realisation of the right to work, including "technical and vocational guidance and training programmes, policies and techniques to achieve…full and productive employment" (Article 6(2)). Even in times of severe resource constraints, notes the Committee, "disadvantaged and marginalised individuals and groups must be protected by the adoption of relatively low-cost targeted programmes".

Work is also a major determinant for good mental health and for recovery from mental health problems, and is thus inextricably linked with the human right to the highest attainable standard of mental health. Unemployment not only creates economic disadvantage but also decreases self-esteem and increases isolation and marginalisation.[16] Article 27 of the CRPD sets out a wide range of areas for government action to protect and fulfil the right of persons with disabilities to work, on an equal basis with others.

In Ireland, figures from Irish census data show the participation rate in employment for people with mental health related disabilities at 27 per cent, compared with 63 per cent for the general population.[17] This corresponds with the DCU study sample: just 11 per cent were in full-time employment, and 13 per cent were in part-time employment.[18] *A Vision for Change* itself notes the high level of unemployment among people with mental health problems (and the

14 General Comment No.18: The right to work, 24 November 2005.
15 ILO Convention No. 111, Discrimination (Employment and Occupation) Convention, 1958.
16 Stuart, H, "Mental illness and employment discrimination", Current Opinion in Psychiatry, 19, 2006, pp. 522-526.
17 Statistics taken from Central Statistics Office, Census 2006 Volume 7 – Principle Economic Status and Industries, Table 4, and Census 2006, Volume 11 – Disability, Carers and Voluntary Activity, Table 11, both available at http://www.cso.ie/census/Census2006Results.htm
18 In the DCU study's sample, only 15 per cent described themselves as unemployed. However, it is important to recognise that while many people simply cannot work, others are willing and able to do so.

enormous contribution that gainful employment makes to a person's mental health).

Discrimination by employers in access to or conditions of employment is expressly prohibited in Ireland by the Employment Equality Acts 1998-2008. Employers also have a duty under that legislation to make reasonable accommodation for employees with mental health problems. However, on average four out of 10 participants in the DCU study reported unfair treatment in relation to employment (36 per cent finding a job; 43 per cent keeping a job). One participant gave this example: "I did an interview which went very well and I got the job, I was asked what was the nature of my disability and when I told her it was schizophrenia she never got in touch with me after that." Another said:

> "I can't get a job, I've tried and tried and tried. And you can get interviews, you fill in the application form, you send it away and you get to an interview and everything is going grand in the interview and there might be a gap in your employment record or whatever. They'll say well where have you been? And I'll say well I was in a psychiatric hospital and you can see the look and it's all downhill afterwards and you never hear from them again."

The NESF 2007 report *Mental Health and Social Inclusion* found that, while most employers thought that people with mental health problems had valuable skills and experience and that employers should make efforts to accommodate them in the work place, just over half (56 per cent) agreed that they would actually hire someone with a history of mental health problems. A similar number (54 per cent) thought hiring someone with a mental health problem was a significant risk for an organisation.

Maintaining employment without encountering discrimination or a failure by the employer to ensure reasonable accommodation can also be difficult. There is little Irish research in this area. However, international evidence points to potential areas of difficulty.

Reviews of the subject have found evidence of demotion or lack of promotion, increased stress and anxiety, work place bullying, loss of confidence, lack of understanding by employers, and difficulty returning to work after a period of mental health-related absence.[19] People with mental health problems in employment face the difficult question of whether or not to disclose their mental health problem in seeking reasonable accommodation (for instance flexible work hours or time off to see a counsellor). While some respondents in the DCU study stated that they received understanding and compassion from work colleagues, many also described being shunned, avoided or bullied by others in the work place. Some participants who were in employment but had faced difficulties and disclosed them to colleagues, managers or human resource personnel, sometimes received unhelpful responses or were the victims of pranks because of their mental health problems. One participant said: "I know the head of [human resources] just did not know where to start dealing with me. He was kind of 'Oh you have mental health problems and how do we know that you're fixed and how do we know you're not going to break again?' And questions like that … if I had broken my leg I wouldn't have been asked."

¶

The NESF report found that over half of employees questioned feared that disclosing a mental health problem would have a negative impact on their career. If also found that 62 per cent of employers said they would reduce the level of responsibility they gave an employee who disclosed a problem.

19 Stuart, H, "Mental illness and employment discrimination", Current Opinion in Psychiatry, 19, 2006, pp. 522-526; Thornicroft, G, Shunned: discrimination against people with mental illness, Oxford University Press, 2006.

20 UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The right to adequate housing, 13 December 1991.

21 A 2002 UK study found that, compared with the general population, people with mental health problems are one and a half times more likely to live in rented housing with higher uncertainty about how long they can remain in their current home. It also found that people with mental health problems are twice as likely to say they were very dissatisfied with their accommodation or that the state of repair is poor; and are four times more likely to say that their health has been made worse by their housing. (Meltzer, H, Singleton, N, Lee, A, Bebbington, P, Brugha, T and Jenkins, R, The Social and Economic Circumstances of Adults with Mental Disorders, (The Stationery Office London, 2002). This study was cited by the UK Social Exclusion Unit in its report, Mental health and social exclusion: Social exclusion unit report (Office of the Deputy Prime Minister, 2004).

"It was soul destroying, soul destroying. You don't exist you know."

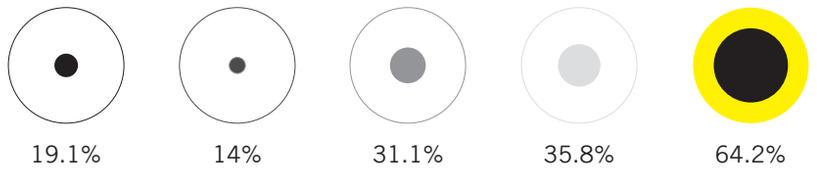
Unfair treatment

Key to graph

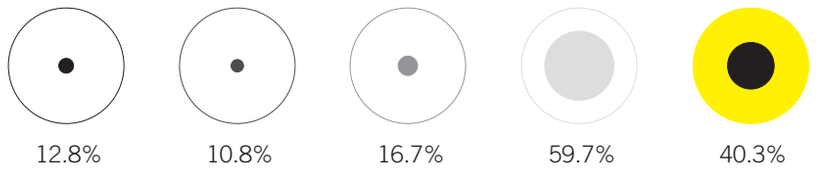
N= number of respondents

Have you been treated unfairly because of mental health problems:

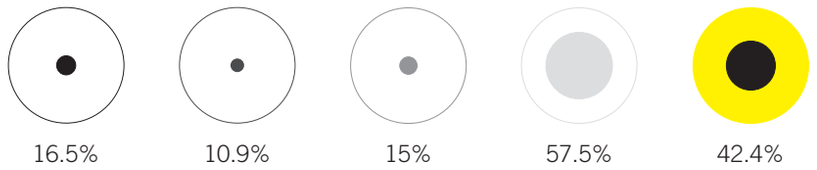
in making or keeping friends? N= 299



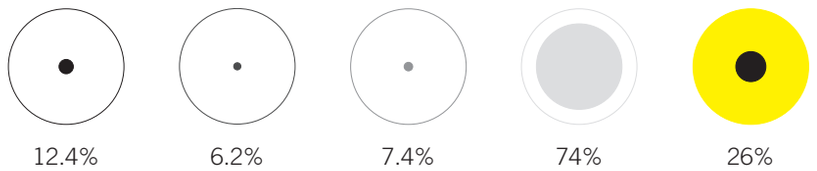
by the people in your neighbourhood? N= 288



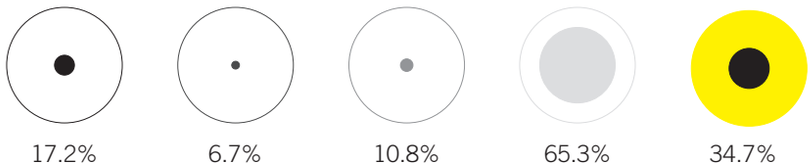
in dating or intimate relationships? N= 266



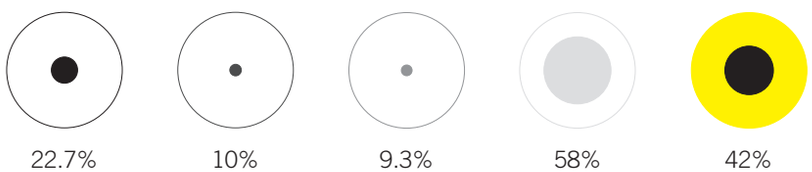
in housing? N= 242



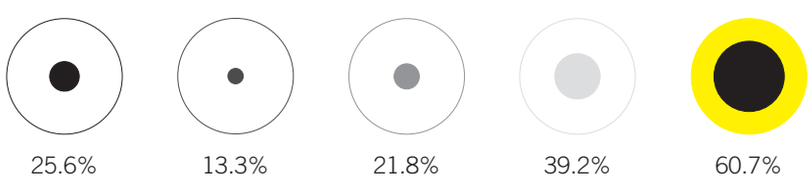
N= 268 in your education?



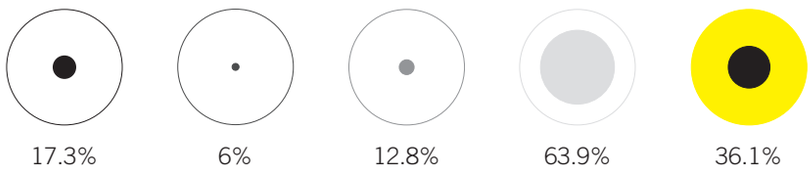
N= 150 in marriage or divorce?



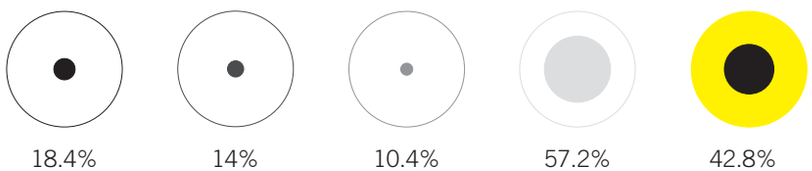
N= 293 by your family?



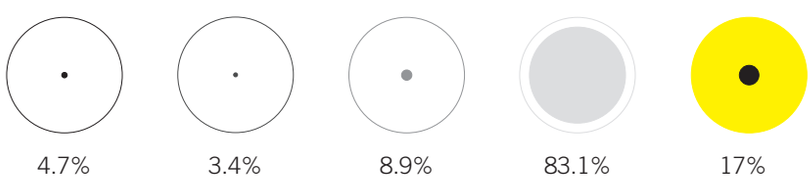
N= 266 in finding a job?



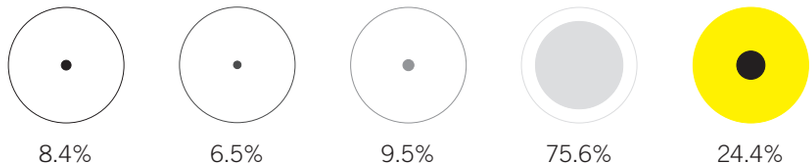
N= 250 in keeping a job?



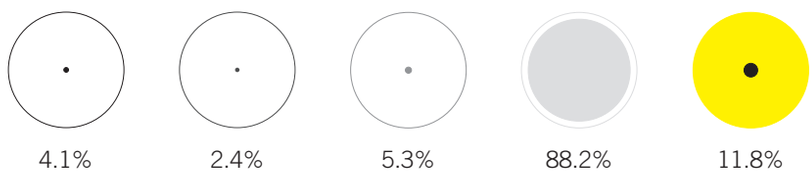
N= 236 when using public transport?



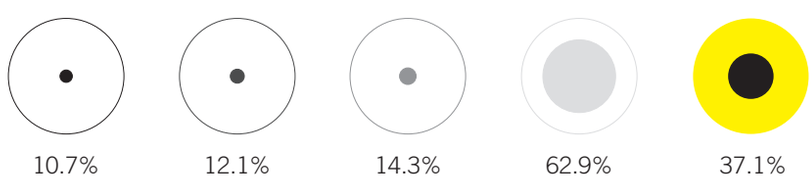
in getting welfare benefits or disability pensions? N= 262



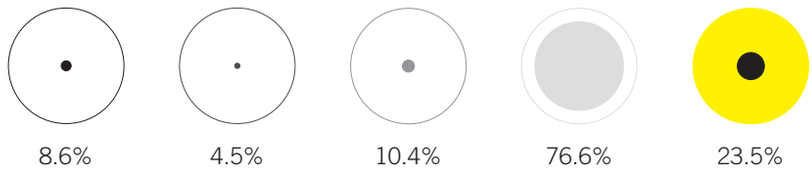
in your religious practices? N= 245



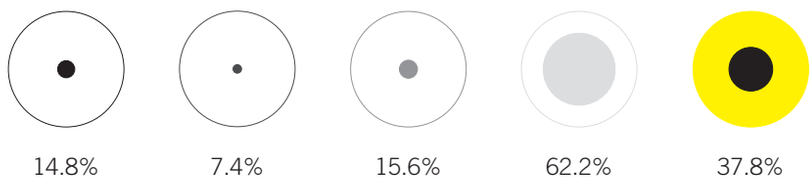
in your social life? N= 280



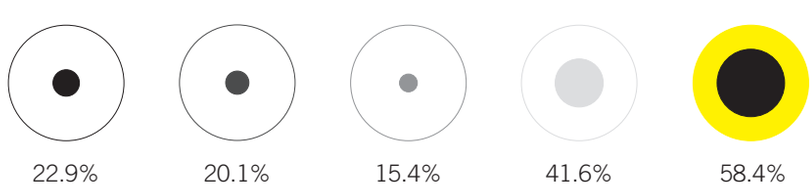
by the police? N= 222



when getting help for physical health problems? N= 270

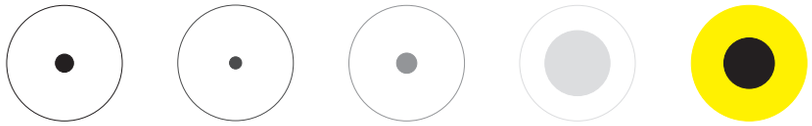


mental health staff? N= 279



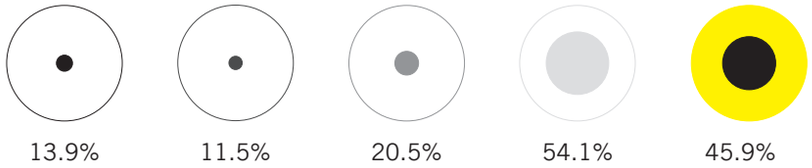
N= 275 in your levels of privacy?

N= 286 in your personal safety and security?

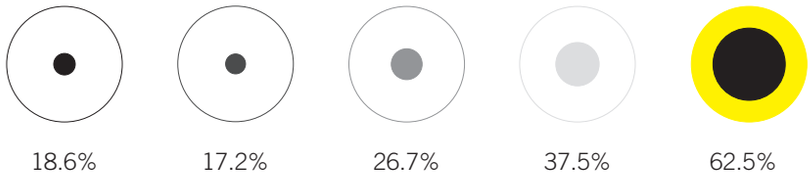


N= 176 in starting a family or having children?

N= 184 in your role as a parent to your children?



N= 285 avoided or shunned by people who know that you have a mental health problem?



Housing

The human right to adequate housing is set out in Article 11 of the ICESCR and Article 28 of the CRPD. It is of central importance in the enjoyment of all socio-economic rights, including the right to mental health. It is the right to live somewhere in security, peace and dignity. This right to housing has a number of important aspects including security of tenure, affordability, habitability and accessibility. An adequate dwelling must contain basic facilities and must be in a location that allows access to employment options, healthcare services, schools, childcare centres and other social facilities.[20]

There is little Irish research in this area, but international evidence shows that people with mental health problems are particularly likely to live in insecure housing arrangements and to report that their housing is of poor quality.[21] Poor housing can also increase the risks of a mental health problem. Several research studies have demonstrated that living in poor quality or inappropriate housing increases risks of deterioration in functioning, reduced quality of life and readmission to hospital.[22] People with mental health problems are also more likely to experience homelessness than those who do not have such problems.[23]

Article 28 of the CRPD requires states to "ensure access by persons with disabilities to public housing programmes". The UN Committee on Economic, Social and Cultural Rights has stated that disadvantaged groups, including persons with mental health problems, should be ensured "some degree of priority consideration in the housing sphere" in order to ensure that they can enjoy their right to housing.[24] Accordingly, both housing law and policy should take the special housing needs of this group fully into account. For those who require state-provided housing, under the Housing Act 1988 there is no duty on local authorities to provide priority housing to people with mental health problems. In addition, according to *A Vision for Change*, "housing benefits are often not structured in a way that is sympathetic to individuals with recurring mental health problems (for example, if repeated or prolonged inpatient stays are required)".

22 Fakhoury, WKH, Murray, A, Shepherd, G and Priebe, S, "Research in supported housing", Social Psychiatry and Psychiatric Epidemiology, 37, 2002, pp. 301-315; MIND, "Housing and Mental Health" Fact-sheet, 2010 (available at www.mind.org.uk/help/social_factors/housing_and_mental_health#mentalhealth).

23 In a recent survey of people using Simon Community homeless services in Cork, 58 per cent had a diagnosed mental health problem. Cork Simon Community, Sick and Tired of Homelessness: A Health Profile of People using Cork Simon, 2009.

24 General Comment No. 4: The right to adequate housing.

A quarter (26 per cent) of respondents in the DCU research reported having been treated unfairly in housing, but due to the limitations of that study, it was not possible to identify the nature and source of this perceived unfair treatment. In order to measure possible inequalities in the right to housing for people with mental health problems, the state should conduct research in this area. Where the state is providing housing under the Housing Act, measures should be adopted to ensure the specific needs of people with mental health problems are taken into account. If implemented, the mental health recommendations contained in the Government's draft housing strategy for people with disabilities would be one set of measures that could improve access to housing for people with a mental health problem.[25] It includes a number of proposed actions, such as a protocol to improve communication between community mental health team and local authority staff, as well as actions for local authorities to treat applications from people with a mental health disability fairly, plan effectively for their housing needs, raise awareness among people with a mental health disability about housing supports and improve joint working between statutory, voluntary and private agencies when providing housing supports to people with a mental health disability.

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Social security

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The right to social security is found in Article 9 of the ICESCR. According to the UN Committee on Economic, Social and Cultural Rights it encompasses "the right to access and maintain benefits … without discrimination in order to secure protection, inter alia, from … lack of work-related income caused by sickness, disability … unemployment … unaffordable access to healthcare … (and) insufficient family support, particularly for children and adult dependents".[26] In the case of persons with disabilities (including mental health problems) income support must be "provided in a dignified manner and (must) reflect the special needs for assistance and other expenses associated with disability". The CRPD recognises a right to social protection and to the enjoyment of the right without discrimination on the basis of disability (Article 28(2)).

25 The draft housing strategy for people with disabilities is being led by the Department of Environment, Heritage and Local Government and has not been agreed yet by Government. It contains a chapter on people with a mental health disability.
26 General Comment No. 19: The right to social security, 4 February 2008.

Almost a quarter (24 per cent) of respondents in the DCU study reported having been treated unfairly in accessing welfare benefits or disability pensions. Many respondents felt their assessments for such entitlements were conducted in a manner not respectful of their dignity. One participant explained: "I had to appeal disability, the medical was horrendous, I was treated like a fraud, that I was guilty. They were unsympathetic, it was a very degrading and humiliating experience." Again, there is a lack of data and research in this area in Ireland.

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In Ireland, almost a quarter of the 77,665 people in receipt of illness benefit in 2009 cited mental health issues as the reason they were unfit for work.[27] Nearly a third (31 per cent) of respondents in the DCU study were on illness benefit. The recent commitment by the Department of Social Protection to consider the introduction of a partial capacity benefit scheme, and to consult with the community and voluntary sector on the regulations for such a scheme, is welcome. In view of the importance of work – as a human right and as an aid to recovery from mental health problems and to social inclusion – it is particularly important that such a scheme respect the right of people with mental health problems and partial work capacity to be facilitated in returning to work.

27 Central Statistics Office, National Disability Survey 2006 – Volume 2, 2009.

Education

The right to education (Article 13 ICESCR and Article 24 CRPD) is both a human right in itself and an indispensable means of realising other human rights. Article 24 of the CRPD clarifies some of the steps states must take to ensure that persons with disabilities can enjoy the right to education on an equal basis with others. States must ensure that:

- persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities where they live;
- reasonable accommodation of the individual's requirements is provided;
- persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion; and
- States Parties must also ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination.

Research persistently shows lower educational attainment among people with mental health problems. In the DCU study, only 21 per cent had at best a Junior Certificate education, compared with 47 per cent of people with mental health problems who contributed to the *A Vision for Change* consultation.[28] In 2006, more than half (53 per cent) of people whose mental health disability arose before completing their full-time education stopped education due to their disability, significantly higher than any other disability.[29] There is little Irish research on barriers for people with mental health problems to entering, maintaining and completing education. However international research identifies some likely sources and forms of discrimination. For instance, in a UK Social Exclusion Unit study,

28 Irish Advocacy Network, What we Heard, Expert Group on Mental Health Policy, Department of Health and Children, 2004.
29 Central Statistics Office, National Disability Survey 2006: Volume 2, 2009, p.75.

accessing education and training opportunities was identified as a problem by one third of respondents, and barriers identified included:

- low expectations, and the assumption that potential learners cannot or do not want to access mainstream education and will not want to undertake accredited courses;
- inflexible courses that do not take account of fluctuating health; complicated enrolment procedures;
- low confidence, or earlier negative experiences at school; and
- financial concerns, such as tuition fees, transport, and text books.[30]

More than a third (35 per cent) of participants in the DCU study reported having been treated unfairly in their education. In view of the limitations of this study, it was not possible to ascertain more precisely in what areas of education, and from whom, discrimination was reportedly experienced. Participants gave some useful examples of perceived unfair treatment. One said: "Vocational training. Other people were put in for exams and I wasn't. I thought that I should at least have been given the opportunity to fail. I should have been asked." Another noted the: "Failure of college tutors to acknowledge or understand the impact SSRI[31] medication was having on my writing and concentration." This area would warrant further research in the Irish context by the Department of Education and Skills.

Although the DCU study interviewed adults with mental health problems, education is also a key context for addressing children's mental health. Discrimination in early educational opportunities for children with mental health problems has effects on social exclusion throughout the life-cycle.[32] The Children's Mental Health Coalition has documented shortcomings in how the Irish education system accommodates the needs of children with, or at risk of mental health problems, and made several recommendations for action.[33]

30 Mental health and social exclusion: Social exclusion unit report (Office of the Deputy Prime Minister, 2004).
31 Selective Serotonin Reuptake Inhibitors are a type of anti-depressant medication commonly prescribed for treating depression or anxiety.
32 *A Vision for Change* notes that "[e]nsuring that children and adolescents remain engaged in the educational system is a crucial first step that can be taken to break the cycle of social exclusion", and advises: " Liaison and work between schools and mental health services is essential in this regard."(p. 37)
33 The Coalition calls on the Government to take steps to ensure schools and early years settings engage in mental health promotion and provide early supportive intervention by: 1. extending the existing Social Personal Health Education (SPHE) Support Service; 2. ensuring that SPHE has a dedicated and mainstreamed focus on mental health and well-being for students in every school year; 3. developing guidelines for schools on mental health; and 4. using the National Educational Psychological Service more effectively. (see www.childrensmentalhealth.ie).

Policing and criminal justice

Discrimination in policing can have serious consequences for people with mental health problems, denying them equality before and under the law, and equal protection and equal benefit of the law, in violation of Article 5(1) of the CRPD. Failure within police forces to tackle issues such as prejudice and hostility towards people with mental health problems can create a climate in which such behaviour can proliferate. There is evidence from other jurisdictions that due to the movement of treatment of people with mental health problems from institutional settings together with the slow development of appropriate community services, interaction between police and people with mental health problems is increasing as police are called upon more frequently to fill in service gaps.[34]

In Ireland, people with mental health problems are also over-represented in prison populations.[35] In recent studies the prevalence rate of severe and enduring mental health problems among remand prisoners was found to be twice the rate in other countries.[36] The reasons for the high prevalence of mental health problems among remand prisoners were highlighted by Dr Conor O'Neill:

> "Almost eight per cent of male remand prisoners in Ireland have current or recent psychotic symptoms, 10 times the community rate. Most of those with major mental illness remanded to custody are charged with non-violent, often relatively trivial, public order offences, which would ordinarily qualify for bail. People with mental illness face greater obstacles to receiving bail, such as inability to provide an address (due to homelessness), pay a bail bond (due to poverty), have a family member to vouch for them (due to social disconnection) or failure to give a coherent account of their actions (due to symptoms such as thought disorder)."[37]

A Vision for Change made a number of recommendations to address this situation, including that people with serious mental health problems coming into contact with the forensic system should be accorded mental health care in the general, non-forensic mental health services unless there are cogent and legal reasons why this should not be done. It also recommended: "Forensic mental health services … should be expanded and reconfigured so as to provide court diversion services and legislation should be devised to allow this to take place." While some advances have been made (in particular, the establishment of a diversion service from Cloverhill Prison operated by staff of the Central Mental Hospital), the bulk of these recommendations have not been implemented.

In this context, it is significant that nearly a quarter (23 per cent) of respondents in the DCU study reported having been treated unfairly by the police. This appears to relate strongly to respondents' having been detained involuntarily under the Mental Health Act 2001. Forty four per cent of respondents who had been detained involuntarily reported that they had been treated unfairly by the police compared to 16 per cent of those who had not. This may be explained by the role that the Gardaí play in the process of involuntary detention in Ireland and the coercive nature of this role. One participant reported: "When I was being sectioned [involuntarily detained in hospital] I was handcuffed which wasn't necessary because I wasn't violent. I was just scared and frightened." However qualitative responses ranged across other areas such as perceived unfair arrests due to the effects of a mental health problem, and not being taken seriously in making complaints to the Gardaí. One participant said: "Because of the stigma they don't believe what I say. They look at the illness and the fact I was in the services for years. I tried to get a barring order [against a family member], got it, it was broken but the guards didn't come."

In response to the question on their personal safety and security in the wider community, 44 per cent of respondents in the DCU study reported having been treated unfairly by people in their neighbourhood, ranging from discourtesy to violent behaviour. This is supported by research elsewhere which finds that people with mental health problems are more likely to be victims of violence, and further, much more likely to be victims than perpetrators.[38] Also relevant is the high rate of reported unfair treatment by people within their neighbourhoods (40

34 Lamb, RH, Weinberger, LE, and DeCuir, WJ, "The police and mental health", Psychiatric Services, 53, 2002, pp.1266-1271; Fry, AJ, and O' Riordan, DP, "Social control agents or front line carers for people with mental health problems: police and mental health services in Sydney Australia", Health and Social Care in the Community, 10, 2002, pp.277-286; Adelman, J, "Study in Blue and Grey", Police Interventions with People with Mental Illness: A Review of Challenges and Responses, Canadian Mental Health Association BC Division, 2003.

35 This is a feature of prison populations in other countries. For instance, see the UK Department of Health study, Psychiatric morbidity among prisoners in England and Wales, 2008 (available at: www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsStatistics/DH_4007132).

36 Kennedy, HG, "The future of forensic mental health services in Ireland", Irish Journal of Psychiatric Medicine, 23(2), 2006, pp. 45-46, citing Lenihan, SA, Duffy, DM, Wright, B, Curtin, K, Monks, S, and Kennedy, HG, "Psychiatric morbidity in a cross-sectional sample of make remand prisoners", Irish Journal of Psychiatric Medicine, 22(4), 2005, pp. 128-132 and Fazel, S, and Danesh, J, "Serious mental disorder in 23,000 prisoners: a systematic review of 62 surveys", Lancet, 359, 2002, pp. 545-550.

37 "Courts explore alternatives to jail for mentally ill offenders", The Irish Times, 16 November 2009. See also "'Criminal justice system fails men with mental illness", The Examiner, 21 December 2009.

38 Hiday, VA, Swartz, MS, Swanson, JW, et al, "Criminal victimization of persons with severe mental illness", Psychiatric Services, 50, 1999, pp. 62-68.

per cent). In this light, having a fair and effective police service to which to make complaints and from which to seek protection is of immense importance. Any unjustified differential application of police powers and responsibilities would not only be a violation of the right to equality before the law, but could also lead to discrimination against individuals in their enjoyment of rights such as the right to liberty, to bodily integrity, to housing with security, peace and dignity, and to mental health.

¶

Members of An Garda Síochána are exempt from the provisions of the Equal Status Act when performing 'controlling functions'; therefore individuals who feel they have been discriminated against cannot challenge this before the Equality Tribunal.[39] Ireland has not addressed this gap as recommended by the UN Committee on the Elimination of Racial Discrimination.[40]

¶

In Ireland, an independent human rights audit was undertaken by An Garda Síochána and published in 2004.[41] It surveyed police attitudes to community policing, and the perceptions of community groups in general of how fairly they were treated by the Gardaí.[42] A similar study regarding police attitudes and behaviour towards people with mental health problems would be a useful tool for understanding and combatting discrimination.[43] The Report of the Working Group on Police and Mental Health Services, which included members of An Garda Síochána and the Mental Health Commission was published in 2009. It notes the burden placed on the police service due to gaps in mental health and social services: "An Garda Síochána are the only agency immediately available day or night to respond to crises in the community and are often unfairly and inappropriately left to deal with mental illness and associated social crises with very limited support." It emphasised the importance of an expanded training for An Garda Síochána on community and social services, together with mental illness in crisis.[44] It also recommended the development of Crisis Intervention Teams composed of police officers who have advanced training in mental health issues and have detailed knowledge of local mental health and social services. However it cautioned that the effectiveness of these models depends on the availability of mental health services in the community that can be easily accessed on a 24-hour, seven days a week basis.

39 In a 2001 case, the Office of the Director of Equality Investigations decided that "the investigation and prosecution of crime by the Gardaí are not services which are available to the public within the meaning defined in section 2(1)" of the Equal Status Act 2000 (Preliminary Decision No: DEC - S2001-011, Donovan v Donnellan). In an independent human rights audit published by An Garda Síochána in 2004, it was recommended "that the Department [of Justice, Equality and Law Reform] considers proposing to the Irish Parliament an amendment to the Equal Status Act 2000 so that discrimination in provision of policing services … is included" (Ionann Management Consultants Limited, Human Rights Audit, An Garda Síochána, 2004).

40 Concluding observations on Ireland's initial and second periodic reports (CERD/C/IRL/CO/2), 14 April 2005. The Committee stated: "The Committee is concerned that the non-discrimination requirement stipulated in the 2000 Equal Status Act only covers Government functions falling within the definition of a "service" as defined by the Act itself (art. 5 (f))." It recommended: "In order to ensure comprehensive protection against discrimination by public authorities, the Committee urges the State party to consider expanding the scope of the Equal Status Act so as to cover the whole range of Government functions and activities, including controlling duties."

The right to health

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The right to the highest attainable standard of physical and mental health is set out in Article 12 of ICESCR. It requires that health services, goods and facilities, including the underlying determinants of mental health, be available, accessible, acceptable and of good quality.[45] They must be accessible without discrimination on any prohibited grounds, and states must take affirmative action to ensure equality of access for all individuals and groups, such as children.

¶

The UN Special Rapporteur on the Right to Health focused his annual report for 2005 on mental disability and the right to health. Here he explained how the inequitable provision of mental health services can extend beyond a lack of compliance with the Article 12 requirements of availability, accessibility, acceptability and good quality, and amount also to discrimination against people with mental health problems in their enjoyment of the right to health:

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> "Under international human rights law, states not only have an obligation to prohibit discrimination, they also have a positive obligation to ensure equality of opportunity for the enjoyment of the right to health by persons with mental disabilities. For example, as well as being entitled to the same healthcare services as other members of society, the right to health gives rise to an entitlement of persons with mental disabilities to have access to, and to benefit from, those medical and social services which promote their independence and autonomy, prevent further disabilities and support their social integration."[46]

¶

The Irish Government has conceded that mental health services are widely deficient, with very few complete multi-disciplinary mental health teams, and limited access to community care or the full range of psychosocial supports that should be part of a modern service.[47] Consequently there is little treatment available for many people beyond medication and/or hospitalisation. In relation to the requirement of non-discrimination, the Special Rapporteur also

41 Ionann Management Consultants Limited, Human Rights Audit, An Garda Síochána, 2004.

42 Approximately 80 community groups were contacted by the consultancy, and two community group meetings were held in Dublin.

43 Focus groups were held with mental health service user representative groups and representatives from An Garda Síochána in compiling the Report of the Working Group on Police and Mental Health Services.

44 The current training curriculum for Garda trainees consists of a module on social studies which includes a general broad-based overview on mental health problems, including mental health legislation. Training is also conducted for new recruits by voluntary organisations.

45 UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health.

46 Report of the Special Rapporteur on the right to the highest attainable standard of health to the Commission on Human Rights at its 61st Session (E/CN.4/2005/51), 11 February 2005.

47 See successive annual progress reports published by the Independent Monitoring Group established to monitor implementation of *A Vision for Change*, available at www.dohc.ie/publications. The most recent report is available at www.dohc.ie/publications/vision_for_change_4th_report.html. See also successive annual reports of the Mental Health Commission, at www.mhcirl.ie.

pointed out: “This may demand special measures for particular groups. For example, states should ensure that adolescents with mental disabilities or psychosocial problems have access to necessary services that are sensitive to their needs.” In Ireland, specialist mental health services for groups such as children or people with intellectual disability are even less available. A total of 200 children were admitted to adult psychiatric wards in 2009 due to the lack of child-appropriate services,[48] a practice described by the Inspector of Mental Health Services as “inexcusable, counter-therapeutic and almost purely custodial in that clinical supervision is provided by teams unqualified in child and adolescent psychiatry”.[49]

¶

The obligation to fulfil the right to health in a non-discriminatory manner requires States Parties to give sufficient recognition to the right to mental health in the national political and legal systems, and adopt appropriate legislative, administrative and budgetary measures to this end. The Special Rapporteur has advised: “Inappropriate resource allocation can lead to inadvertent discrimination. Crucially, the small budgetary allocations that most countries accord to mental health is a significant barrier to persons with mental disabilities enjoying their right to health on the basis of equality of opportunity.” In Ireland, the annual proportion of total healthcare expenditure allocated for mental health services continues to decrease – from 12 per cent in 1984 to just 5.3 per cent in 2009.

¶

In addition, the Special Rapporteur observed: “Decisions to isolate or segregate persons with mental disabilities, including through unnecessary institutionalisation, are inherently discriminatory and contrary to the right of community integration enshrined in international standards.” In Ireland, there is an over-reliance on in-patient care. The environment, living conditions and quality of life in many inpatient settings are not compliant with international human rights standards. The annual reports of the Inspector of Mental Health Services repeatedly point to mental health facilities that are unacceptable for care and treatment, with particular concern at the unacceptable conditions in bleak institutional environments in some ‘long-stay’ wards. Of more than 4,000 people living in long-

48 National Psychiatric In-Patient Reporting System (NPIRS) Preliminary National Bulletin Ireland 2008 (Health Research Board 2009) at 2.
49 Annual Report 2008: Book One Part One, Mental Health Commission, 2009, at 29.

stay residential mental health care in 2007, one quarter were in accommodation that did not suit their needs.[50] The closure of the old psychiatric hospitals has been repeatedly promised and not delivered upon, and people continue to be admitted to these facilities. A 2009 review of government spending on mental health services found that there continues to be an imbalance between the level of resources allocated to inpatient services as against that spent on community-based services.[51] In the most recent Annual Report of the Mental Health Commission the Inspector for Mental Health Services stated “[u]nfortunately and ironically, when [budget] cuts are made, it is the progressive community services which are culled, thus causing reversion to a more custodial form of mental health service”.[52]

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Thus, there is evidence to suggest that Ireland’s provision of mental health care could in itself be considered discriminatory – perhaps not intentionally but indirectly.

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In the DCU study, persistent links were drawn between hospitalisation and/or being prescribed medication with higher levels of reports of unfair treatment in other domains of life. Therefore, in government efforts to combat prejudice and discrimination, it is important that the right to least restrictive or intrusive treatment be respected through the avoidance of unnecessary hospitalisation and medication.[53]

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In addition, the majority of respondents in the DCU study (58 per cent) felt unfairly treated by mental health staff. One participant said: “You're degraded in hospital, you're not a human. You're not given any responsibility for your recovery. Told take this and do that. Can’t question any diagnosis or tablet. Eat at this time, get up now.” Another gave this example: “Being given injections against my will, taking my mobile phone off me, removing clothes and expecting me to walk around in pyjamas for two to three weeks.” In addition, many of those responding to the question on privacy reported unfair treatment by mental health staff in that regard. The degree to which this is an issue within Irish mental health services has not been researched, however.[54] Given that this study does not distinguish

50 Health Service Executive, The Efficiency and Effectiveness of Long-Stay Residential Care for Adults within the Mental Health Services, 2008, available at www.dohc.ie.
51 Indecon International Economic Consultants, Review of Government Spending on Mental Health and Assessment of Progress on Implementation of *A Vision for Change* Report, submitted to Amnesty International Ireland on 1 September 2009.
52 Report of the Inspector of Mental Health Services, Mental Health Commission Annual Report 2009, 2010.
53 The right to the least restrictive or intrusive treatment, and to treatment in the least restrictive environment, are set out in the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by the United Nations General Assembly in 1991 (Resolution 46/119). On the other hand, negative public attitudes towards people on the basis of the location and form of mental health treatment should be combated.
54 See, however, Dunne, J, *The Views of Adults Users of the Public Sector Mental Health Services*, Mental Health Commission, 2006.

between historic and recent complaints, this area would warrant further research. While the qualitative findings in this study give some indication of the type of treatment reportedly experienced, the degree to which staff were merely adhering to procedures or legal frameworks – the Mental Health Act, codes of practice, etc. – which themselves may conflict with the requirements of non-discrimination were not explored. These findings need to be viewed in the wider context in which mental health services are provided in Ireland, i.e. the poor availability and quality of mental health services within which mental health staff must work. It must nevertheless be recognised that individuals have reported that they feel they have been treated unfairly. However, one third of respondents in this study said they would approach mental health staff for support and help when they encountered discrimination – in any context . It is clear therefore that mental health professionals have the potential to contribute to combatting discrimination – potentially in areas outside their professional practice.

Civil society and prejudice

> "Discrimination is frequently encountered in families, workplaces, and other sectors of society. For example, actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation, while some families may refuse to send girl children to school. States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds."
>
> UN Committee on Economic, Social and Cultural Rights, General Comment No. 20

> "Discrimination may occur in both the private and the public sphere. Typically, it is a pervasive phenomenon that permeates society's structures, institutions, social relations and attitudes. As a result, victims of discrimination are often

"I went into a pub and immediately was told that I couldn't be served. The bar man laughed at me. I felt humiliated, the bar was full."

trapped in a cycle of exclusion, disadvantage, prejudice and further discrimination."

Amnesty International, Dealing with Difference[55]

¶

Breaches of international human rights law by states are violations of their internationally binding legal obligations. Actions by private individuals and organisations (that is, non-state actors), on the other hand, are not a matter of directly applicable international law in the same way as those of states. But, from the standpoint of individuals subjected to discrimination, such actions by non-state actors can amount to violations of the rights protected by international human rights law. According to the World Health Organisation, the problems of stigma and associated prejudice and discrimination towards people with mental health problems is one of the most important issues to overcome in mental health policy.[56] It is can impair the enjoyment of the right to the highest attainable standard of mental health. Under Article 8 of the CRPD state parties "undertake to adopt immediate, effective and appropriate measures:

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a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
c. To promote awareness of the capabilities and contributions of persons with disabilities."

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The treaty lists measures to this end as including:

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a. Initiating and maintaining effective public awareness campaigns designed:
   i. To nurture receptiveness to the rights of persons with disabilities;
   ii. To promote positive perceptions and greater social awareness towards persons with disabilities;
   iii. To promote recognition of the skills, merits and abilities of

55 *Dealing with Difference: A Framework to Combat Discrimination in Europe*, 2009 (Index: EUR 01/003/2009).
56 World Health Organisation, *World health report 2001: mental health: new understanding, new hope*, Geneva, 2001.

persons with disabilities, and of their contributions to the workplace and the labour market;

b. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
c. Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
d. Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

¶

The UN Committee on Economic, Social and Cultural Rights has specifically said that "States parties should also adopt measures to address widespread stigmatisation of persons on the basis of their health status, such as mental illness…which often undermines the ability of individuals to enjoy fully their Covenant rights".[57]

¶

Where there is prejudice, it can lead to discriminatory behaviour, whether that is within the family, in the community or in the workplace. Attitudinal surveys in Ireland consistently reveal high levels of prejudice towards people with mental health problems[58] People with a mental health disability avoid doing things because of how others react at a rate higher than any other disability, with just under half (45 per cent) of adults whose main disability was emotional, psychological and mental health avoiding doing things because of how others react.[59]

¶

Everyone has the right to freedom of opinion and expression.[60] However, where the expression of prejudiced views is one of the factors leading to discrimination, international human rights treaties law and standards place obligations on states to adopt measures that proactively combat stereotypes and prejudices. The DCU study found high levels of perceived unfair treatment across family, friends and community. As mentioned above, descriptions ranged from discourtesy to, in some instances, aggression. One participant said: "On a few occasions I was verbally threatened and physically attacked by neighbours. [This was] intimidation." Four in 10 (42

57 UN Committee on Economic, Social and Cultural Rights, General Comment 20: Non-discrimination in economic, social and cultural Rights.
58 See Change, Public Attitudes Towards Mental Illness: A Benchmark Study for See Change, available at www.seechange.ie; Health Service Executive, Mental Health in Ireland: Awareness and Attitudes, 2007, available at www.nosp.ie/ufiles/news0003/mental-health-in-ireland--awareness-and-attitudes.pdf; National Disability Authority, Public attitudes to disability in Ireland, Disability Research Series 8, 2007, available at www.nda.ie.
59 CSO, National Disability Survey 2006: Volume 2, 2009, p.40.
60 As stated by the European Court of Human Rights, the right to freedom of expression extends "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness, without which there is no 'democratic society'." (ECHR, *Handyside v. The United Kingdom*, 7 December 1976).

per cent) reported having been treated unfairly in dating or intimate relationships, and 37 per cent in their social life. The areas where the highest percentage of the participants in the study felt that they had been unfairly treated were in making or keeping friends (64 per cent) and by their family (61 per cent). These perceptions may be difficult and challenging for family and friends, but must be taken seriously. The experience of rejection or being shunned was a common account in the study. Participants reported the following examples:

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> "In childcare swap arrangements where by other party found out about my diagnosis, arrangements were then stopped."

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> "People don't know how to respond to me if my hands/legs are shaking because of medication, they are afraid of it, don't understand."

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Participants also described being socially isolated: "…it can isolate you, it can stigmatise you, you don't feel part of the community, you're on the outside. [People are] afraid of the person who has the mental illness… that they will attack them, but that's the fear and people with mental illness are… afraid that others are going to attack them." Participants also identified a process some of them called 'self-discrimination', where they internalised societal understandings of mental health and reported feeling that their self-confidence and self-esteem were undermined, causing them to withdraw or limit themselves in social settings and in striving for life opportunities:

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> "…I suppose in some sense it continues that sort of lifestyle where you're on the margins, where you don't feel accepted, where you actually… feel inhibited… taking part in social intercourse… because you don't think you'll be accepted… you begin to actually believe that you're different as well… it also makes you feel not very good about yourself, your self-esteem, hope for the future."

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The DCU findings do, however, show that despite the extent of reported unfair treatment by family and friends, these were the

groups that participants turned to most frequently for support when they needed it.

¶

The Government will need to develop measures to fulfil Article 8 in order that it can comply with the CRPD. While awareness-raising measures targeted at the general population are required, specialised anti-discrimination programmes are also required for specific state agencies. The NESF in 2007, for instance, recommended training for teachers, Gardaí and medical personnel to combat misconceptions of mental health problems and change attitudes.[61] To date, while there have been sporadic efforts at stigma reduction campaigns, the Government should develop a long-term strategy for addressing mental health related prejudice and discrimination.

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Civil society too should play its part. Communities and organisations have the potential to challenge stigma and stereotypes about mental health and contribute to an environment in which human rights are effectively enjoyed by all people equally.

61 Mental Health and Social Inclusion, 2007.

Conclusion

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The DCU study has given an important insight into where people with mental health problems feel they have been unfairly treated in various areas of their lives. Their voices tell a story that we must all listen to.

¶

In Ireland there is no clear evidence of overt direct discrimination by the State against people with mental health problems in national laws, policies or practices. The real issue however, is the hidden, indirect discrimination that people with mental health problems face where they experience inequality in education, housing, work and other areas on a daily basis. It is the Government's responsibility to measure and identify these inequalities, this is the only way this hidden discrimination can be tackled.

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However direct discrimination by private individuals for instance employers, is likely to be occurring in Ireland. It is the Government's responsibility to ensure that private actors are not discriminating against people with mental health problems and that Ireland's domestic legislation prohibiting discrimination is effectively implemented. It is also the Government's responsibility to combat prejudice, a root cause of discrimination. Individuals also have a role in challenging mental health prejudice and discrimination.

D. What can be done

Role of the Government

The right to be free from discrimination is set forth in Article 14 of the European Convention on Human Rights (ECHR) which Ireland has incorporated into domestic law under the European Convention on Human Rights Act 2003. The ECHR provides a range of mainly civil and political rights and freedoms, and Article 14 provides that these rights and freedoms "shall be secured without discrimination on any ground". Protocol No. 12 to the ECHR was adopted in November 2000 and adds a general prohibition of discrimination. Its prohibition on discrimination is not limited to the enjoyment of the rights and freedoms set out provided in the ECHR, but extends to "all rights set forth by law". The term 'law' covers not just national law but also international law. Ratification of this Protocol by Ireland would provide added protection and redress for all individuals who are subjected to discrimination, given that Ireland's equality legislation is limited to nine grounds.

Recommendation: **Ireland should ratify and implement Protocol 12 to the European Convention on Human Rights, on the general prohibition of discrimination.**

It is now three and a half years since Ireland signed the CRPD, as the Government has decided that the enactment of legal capacity legislation is required before it can be ratified. The Office of the UN High Commissioner for Human Rights has recently highlighted that states must put in place mechanisms to ensure that people with disabilities, are given the opportunity to participate in the development, implementation and monitoring of measures designed to tackle discrimination, and in monitoring states' compliance with the CRPD.[62]

Recommendation: **Ireland should ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol without further delay. It should establish mechanisms to ensure**

62 Office of the High Commissioner for Human Rights, Monitoring the Convention on the Rights of Persons with disability: Guidance for HR Monitors, Professional training series No. 17, 2010.

that people with disabilities, including mental health problems, have the opportunity to participate in developing, implementing and monitoring anti-discrimination measures and monitoring Ireland's compliance with its obligations under the treaty.

Article 31 of the CRPD requires States Parties to "collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention". It requires states to ensure that this information is "disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights". In Section C we indicate a number of areas where action is required by various government departments to identify and address policies and practices within their remit that may potentially indirectly discriminate against people with mental health problems. It is the effect of such policies and practices, which does not necessarily require intention, that matters in determining whether indirect discrimination has occurred. In Section C, we also point to the lack of data and research on unequal outcomes for people with mental health problems resulting from official policy and practice across areas such as employment, education and housing. In these areas, the various studies mentioned, including the DCU study, raise questions about the extent to which people with mental health problems are able to enjoy their human rights free from discrimination. The government has the obligation to ensure people with mental health problems enjoy all human rights without discrimination so must identify any areas in which people with mental health problems are not able to realise their rights, the reasons why this is the case and take action to address the problem.

An Independent Monitoring Group was established by the Department of Health and Children to oversee the implementation of *A Vision for Change*. In its annual reports, it has been critical of the lack of implementation by a number of government departments of the recommendations on social and economic inclusion set out in that policy. AI has earlier made a number of its own recommendations to these departments on first steps they should take towards implementing this policy in its 2010 report, *The Missing Link*.[63]

63 Amnesty International Ireland, The Missing Link: coordinated Government action on mental health, 2010.

Recommendation: **Government departments should:**

- Set out specific commitments and develop plans of action to implement the social inclusion recommendations in *A Vision for Change* which are relevant to their work;
- Identify indirect discrimination against people with mental health problems that may be occurring as a consequence of the application of laws and policies that fall within their responsibility to undertake measures to redress this, and monitor the impact of these measures; and
- Develop and implement specialised education programmes targeted at key state agencies under their authority to improve attitudes and conduct of officials.

Role of the Equality Authority

> "States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds."
>
> Article 5(2) CRPD

64 OHCHR Thematic Study on Legal measures for the Implementation of the Convention on the Rights of Persons with Disabilities, A/HRC/10/48, 26 January 2009.

The Equality Authority is a statutory body established in 1999 to work towards the elimination of unlawful discrimination, to promote equality of opportunity and to provide information to the public on Ireland's equality legislation. It can, at its discretion, provide legal assistance to people who wish to bring claims to the Equality Tribunal, the complaints mechanisim, under equality legislation. Ireland's equality legislation is very comprehensive. The Employment Equality Acts, 1998-2008 and the Equal Status Acts, 2000-2008 prohibit discrimination in employment, vocational training, the provision of goods and services and other opportunities to which the public generally have access. They contain nine distinct grounds upon which discrimination is prohibited; mental health disability is included within the ground of disability. The UN High Commissioner for Human Rights has cautioned governments that compliance with the CRPD is not served by legislation alone, but that this legislation must be implemented, and it has advised: "With a view to guaranteeing effective equality of persons with disabilities in all areas of life, legislative measures are not sufficient and should be accompanied by judicial, administrative, educational, financial and social measures, amongst others." [64] The Equality Authority can play a key role in addressing discrimination against people with mental health problems in the following two key areas.

1. Lack of data on discrimination

Accurate, disaggregated data is vital to identifying and addressing discrimination. It is particularly important in identifying any indirect discrimination that arises from laws and practices that on the face of it appears neutral. Statistical monitoring is also essential for designing

and monitoring the implementation of policies and measures to combat discrimination and promote full equality. To adequately identify and address the true scale of the problem of discrimination, research and evidence is required.

¶

In Ireland, little research has been undertaken specifically into the discrimination experienced by people with mental health problems. Research on discrimination has tended to focus on the wider prohibited ground of disability as contained in Ireland's equality legislation. The Equality Authority has statutory responsibility for undertaking research and action towards the elimination of discrimination in relation to the areas covered by the Employment Equality Acts 1998 to 2008 and the Equal Status Acts 2000 to 2008. Its research to date has not examined the particular experiences of discrimination encountered by people with a mental health disability.[65] The UN High Commissioner for Human Rights has observed: "It is also important to ensure that efforts to monitor the human rights situation of persons with disabilities do not contribute to further marginalising persons within a particular group. Monitoring the rights of persons with disabilities must have a cross-disability and cross-society focus. That is, monitoring must involve women, men, girls and boys with the full spectrum of types of disabilities - including those with physical, mental, intellectual or sensory impairments - and from all socio-economic and ethnic backgrounds, age groups and walks of life."

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Recommendation: **The Equality Authority should collect, analyse and disseminate information on the prevalence and nature of discrimination against people with mental health problems. It should advise state agencies that all data-gathering and monitoring on discrimination against people with disabilities should be further disaggregated on the basis of mental health status or disability.**

65 For instance, the 2008 report the Equality Authority co-published with the ESRI, Experiences of discrimination in Ireland: Analysis of the QNHS Equality Module, established that having a disability was one of the strongest predictors of the risk of discrimination, with healthcare one of the two domains where discrimination was highest for this group. However, the experiences of people with mental health disability were subsumed within those of people with disabilities generally.

2. Right to a remedy

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States are obliged to ensure that an effective remedy is accessible to all individuals whose right to be free from discrimination is violated. To this end, states should establish accessible and effective judicial and administrative procedures. Anti-discrimination legislation should provide for mechanisms and procedures that enable victims to make practical use of available remedies and enforce their rights effectively.

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No data is available from the Equality Authority on the number of complaints alleging discrimination brought to the Equality Tribunal on mental health grounds, as these are included within the complaints made on the grounds of disability. However, reported Equality Tribunal decisions show that for 2008 and 2009 mental health related claims were rare. Of the 78 reported decisions by the Tribunal under the Equal Status Acts 2000-2008, seven were related to mental health. [66] It should be noted that in some cases the nature of the disability was not specified, and so this number could be higher.

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In contrast to the high level of reports of discrimination in access to employment in the DCU study, it is marked that few cases based on mental health disability come before the Equality Tribunal under the Employment Equality Acts. Out of a total of 31 reported cases taken on the disability ground in 2008 and 2009, only four related to mental health problems (of which just one was successful). This would seem to indicate that people with mental health problems who experience discrimination are not consistently accessing the redress mechanism available to them under employment equality law.

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The reasons for these low numbers of cases may include lack of knowledge. The DCU study found that knowledge of the effective paths for redress in cases of discrimination is low. Few people identified the Equality Authority as a source of information and help if they encountered unfair treatment despite its mandate. Another barrier to using such redress mechanisms could be disclosure. Individuals seeking redress before the Equality Tribunal are required

66 Sourced from The Equality Tribunal online database of decisions at: www.equalitytribunal.ie/index.asp?locID=27&DOC10=-1.

to come forward and state their mental health problem in order to avail themselves of the protection of the law. Yet, as is evidenced in the DCU study in relation to employment, people remain wary about disclosing their mental health problems and in this way the effectiveness of the law may be impeded by the very discrimination it was designed to eliminate. This suggests a need to examine the implementation of Irish anti-discrimination legislation and mechanisms for redress more closely for effectiveness in the case of mental health.

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Recommendation: **The Equality Authority should identify and eliminate the barriers experienced by people with mental health problems in achieving equality and equal opportunity, and exercising their rights under Irish equality legislation to challenge discrimination and seek redress.**

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Recommendation: **The Department of Community, Equality and Gaeltacht Affairs should support and resource the Equality Authority in the implementation of the above recommendations**.

Role of the Department of Health and Children

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The establishment within the Department of Health and Children of the post of Minister for Mental Health and Disability and the Office for Disability and Mental Health has brought a welcome focal point for development and implementation of interdepartmental action on mental health. The Minister and Office are charged by government with the coordination of *A Vision for Change* implementation across departments covering health, employment, education and justice, and the activities of specific state agencies under their control.

¶

As explained in Section C, State Parties to the CRPD are obliged to adopt immediate and effective measures to raise awareness regarding persons with disabilities and to combat stereotypes and prejudices, including through public awareness campaigns, education and training programmes. Many participants in the DCU study pointed to the need for public education on mental health problems. One participant commented: "The main thing we need is education about mental illness especially in our schools and colleges, like people with mental illness just shown in a positive light. There's a lot of people with a mental illness who have done great things, who are doing great work, show the good sides, we always see the bad sides." The recent launch of See Change, the National Mental Health Stigma Reduction Partnership, an anti-stigma and anti-discrimination public education initiative supported by the Department of Health and Children, is positive. Successfully combating prejudice can take decades, and the Government must develop a long-term strategy for its engagement in public education.

¶

People with mental health problems should not be viewed as passive victims of discrimination. Many of the participants in the DCU study reported that even having the chance to speak about their experiences was empowering. Participation is a fundamental principle of human rights and the CRPD. A body of research has shown that direct personal contact with people with mental health problems is an effective way to improve attitudes towards them.[67] People with mental health problems must be actively involved in the design, delivery and monitoring of all measures to identify and combat discrimination.

67 Couture, S, Penn, D, "Interpersonal contact and the stigma of mental illness: A review of the literature", Journal of Mental Health, 12, 2003, pp.291-305.

Recommendation: **The Office for Mental Health and Disability should adopt immediate, effective and appropriate measures to combat prejudice and raise awareness of the impact of discrimination. To this end it should:**

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- Commit to prolonged participation in and funding for the See Change campaign, while also adopting a long-term public education strategy with appropriate resources, targets and indicators for improving attitudes and behaviours;
- In partnership with the Department of Education and Skills, provide education and awareness raising on mental health, including issues of prejudice and discrimination, to young people, including within school settings;
- Ensure that people with mental health problems are involved in the design, delivery and monitoring of anti-discrimination measures; and
- Conduct continual regular research within civil society and state agencies into attitudes towards people with mental health problems. Research cycles should be designed so that attitudinal change over time can be measured and programmes to reduce prejudice and improve attitudes can be evaluated for their effectiveness.

Role of civil society

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All people have a role to play in challenging discrimination and prejudice, and in the promotion and protection of human rights. An Ireland that is inclusive, respectful of difference, offering real equality and the equal enjoyment of all human rights, cannot be achieved while discrimination remains common. Combating it successfully requires the engagement of everyone.

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Recommendation: **AI calls on civil society organisations and groups to help create an environment in which people mental health problems are free from discrimination:**

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- Employers and trades unions should develop policies on mental health that promote positive attitudes and reasonable accommodation and deter discriminatory behaviour, with a particular emphasis on creating positive environments for disclosure of mental health problems and clearly establishing guidelines for, and proactively promoting reasonable accommodation within the work place; and
- Community groups and neighbourhood organisations should seek to promote the inclusion of people with mental health problems in their activities.

¶

AI further believes that **all individuals** have a role to play in bringing an end to discrimination against people with mental health problems by equipping themselves with accurate knowledge and information about mental health and the issues that affect the lives of people with mental health problems; challenging examples of prejudice or discrimination against people with mental health problems where they encounter them in their daily lives, within family settings, social environments or in the workplace; being conscious of the impact that their behaviour can have on people with mental health problems and refraining from acting towards them in ways that undermine their equality, dignity and autonomy and that may threaten the enjoyment of their rights; and supporting AI Ireland's campaign to stop prejudice and discrimination against people with mental health problems.

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"I was totally discouraged into not having children or relationships by my psychiatrist."

"It's horrible, it's awful, it makes you feel like you're the loneliest person in the world, the only person in the world that has a problem or is experiencing some difficulties."


Reception
INFORM
Osteoporosis
WAITING
Weaning