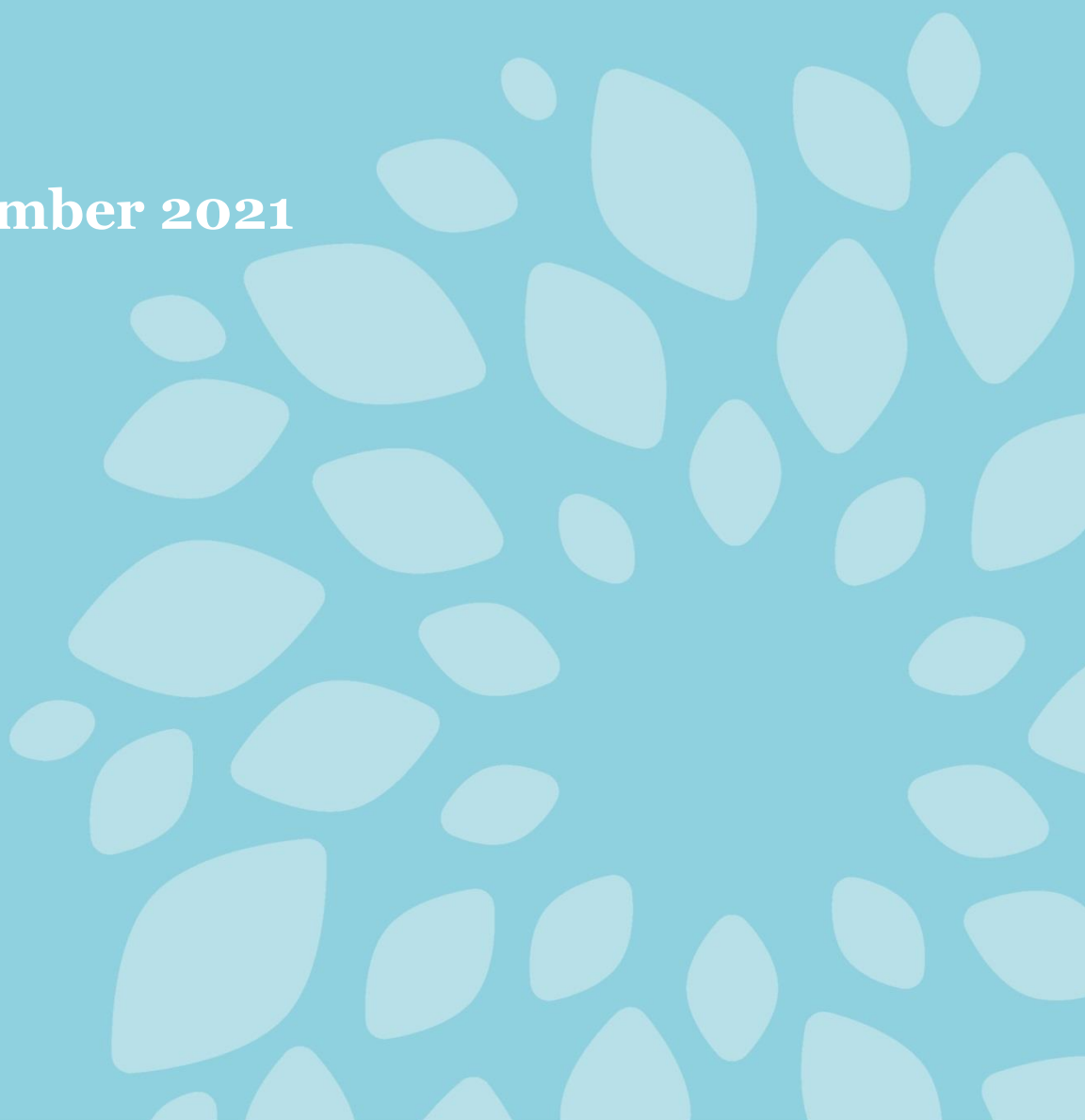




# Submission to the Department of Children, Equality, Disability, Integration and Youth on the Review of the Equality Acts

**December 2021**





St Patrick's Mental Health Services (SPMHS) is Ireland's largest independent, not-for-profit mental health service provider. St Patrick's Mental Health Services' vision is a society where all citizens are empowered to live mentally healthy lives. SPMHS works to provide the highest quality mental healthcare, to promote mental wellbeing and mental health awareness, and to advocate for the rights of those experiencing mental health difficulties. SPMHS achieves this through a human rights-based approach, through the enhancement of evidence-based knowledge, and by striving to be at the cutting edge of new initiatives and advances in the field. SPMHS is committed to furthering the development of the competencies of those choosing to work in mental health and of the organisations providing mental health care services, and to enhancing partnership with service users. Our strategic plan for 2018-2022 – [‘Changing Minds. Changing Lives’](#), is firmly rooted in these principles and commitments.

SPMHS welcomes the opportunity to contribute to this consultation on the review of the Equality Acts, and the following submission focuses on issues pertinent to the area of mental health and disability.

### **Discrimination on the basis of mental health difficulties**

Mental health difficulties are considered under the ground of ‘disability’ within the Equality Acts. The Irish Human Rights and Equality Commission identify disability discrimination as the most commonly reported public concern, in relation to both the Employment Equality Acts and Equal Status Acts, within their 2020 annual report.<sup>1</sup> Research would indicate that people with disabilities, including mental health difficulties, continue to experience discrimination in Ireland at unacceptably high levels.<sup>2,3</sup> The 2018 *Disability and Discrimination in Ireland* report noted as a key finding that “when people with disabilities are looking for work, or in the workplace, the odds of experiencing work-related discrimination was twice as high compared to those without disabilities”<sup>4</sup>. The report highlights mental health discrimination in the context of employment as a significant and complex problem, and notes that more generally for people with disabilities “discrimination – or the fear of discrimination – discourages people with disabilities from seeking work or remaining in employment after the onset of disability”.<sup>5</sup> Furthermore, people with disabilities have been found to experience a higher risk of discrimination in dealing with a range of services, with the risk of a resultant serious impact on the person's life 2.8 times higher than others.<sup>6</sup>

Findings from the 2021 Mental Health Attitudes Survey carried out by SPMHS, indicate persistence of mental health stigma and discrimination within both the world of work and the larger community. From a nationally representative sample of 842 adults, 26% had experienced, or knew someone who had



experienced, discrimination on the basis of mental health difficulties in the workplace.<sup>7</sup> Thirty-one percent of respondents had experienced, or knew someone who had experienced discrimination related to mental health difficulties in the community.<sup>8</sup> SPMHS advocate for an end to mental health-related stigma and discrimination, and recognise the importance of meaningful productive roles and community participation to mental health recovery. SPMHS thus supports this review of the Equality Acts and any efforts to strength prevention and protection against discrimination and the promotion of equality.

### **Intersectionality**

The reference to the significance of intersectionality is noted within the consultation information. SPMHS would support attention to this and would highlight that groups who regularly experience discrimination may also experience additional elements of disenfranchisement, particularly in the case of members of the Traveller community, older adults and people with disabilities.<sup>9</sup> SPMHS would also suggest this may be relevant to the additional goal of the review to “examine the degree to which those experiencing discrimination are aware of the legislation and whether there are practical or other obstacles which preclude or deter them from taking an action”.<sup>10</sup> Ensuring accessibility and availability of information regarding the Equality Acts, in addition to considering ways to simplify processes required to make claims under the Acts may also be of significance here and would further align with the principles of the UNCRPD.

### **Definition of disability**

SPMHS welcomes the specific attention to “current definitions, including in relation to disability”, noted as planned within the review process in the consultation information.<sup>11</sup> Within the Equality Acts the current definition of disability is not aligned with that contained within the UN Convention on the Rights of Persons with Disabilities (UNCRPD), ratified by the State in 2018. The importance of shifting to a social model of understanding disability, reflective of the UNCRPD, has been highlighted within the 2019 Supreme Court ruling in *Daly v Nano Nagle*.<sup>12</sup> Notwithstanding this, it is important to acknowledge the breadth of mental health difficulties that have been considered under the disability ground to date, and which reflect the complexities and range of people’s experiences of mental health difficulties. The current definition and its interpretation within case law has been recognised as ‘usefully broad’, and ensures “complainants do not have to satisfy strict conditions in order to come under the protection of the legislation”.<sup>13</sup>

SPMHS would advocate that while this review process affords the opportunity to align national Equality legislation with the principles of the UNCRPD, that it



should also be ensured that any amendments to the definition of the disability ground, do not result in potential unintended narrowing of protections for people experiencing mental health difficulties.<sup>14,15</sup>

### **Reasonable accommodations**

The review of the Equality Acts provides a valuable opportunity to increase awareness of the rights and obligations of employees and employers respectively regarding the importance and nature of reasonable accommodations for people with disabilities, including mental health difficulties. Reasonable accommodations, as set out in Section 16 of the Employment Equality Acts and Section 4 of the Equal Status Acts, afford a vital means of preventing discrimination and promoting equality.

With regard to the Employment Equality Acts, employers need to be aware of an employee's mental health difficulties and related accommodation needs in order to fulfil this obligation. Many reasonable accommodations of relevance to mental health difficulties may be low-cost and or relatively straightforward in nature, including flexible working arrangements, time off to attend ongoing mental healthcare appointments or accessing different forms of support within the workplace. However awareness and understanding amongst employers regarding the relevance of such accommodations can be limited.<sup>16</sup> Furthermore, a fear of disclosing a need for reasonable accommodations due to mental health difficulties and experiencing subsequent discrimination from employers has been identified as a barrier to reaping the benefits of such accommodations.<sup>17</sup> In SPMHS' 2021 Mental Health Attitudes Survey, only 61% of respondents said that they would "be OK explaining to their boss they needed time off due to a mental health difficulty".<sup>18</sup>

### **Awareness-raising**

SPMHS would advocate for greater awareness-raising and guidance for both employers and employees, and service providers, as regards mental health difficulties as they relate to the Equality Acts. Recent research by SeeChange - the National Stigma Reduction Partnership, indicated that 60% of 650 people surveyed were unaware that mental health is covered under Equality legislation and within the nine grounds of discrimination under disability.<sup>19</sup>

Awareness-raising efforts should include focused attention to reasonable accommodations in the workplace as they relate to mental health difficulties. Further, review of the Equality Acts should include consideration of how to strengthen provisions related to reasonable accommodations for people with



disabilities including mental health difficulties, in line with UNCRPD requirements and as reflected in recent case law in this regard.<sup>20</sup>

### **Guidance in applying the Equality Acts**

Though it may be beyond the scope of the review, SPMHS would assert that development of guidance or a code of practice in applying the updated Equality Acts as they relate to mental health difficulties would be of benefit. Recent work by SeeChange - the National Stigma Reduction Partnership, notes challenges for workplaces in supporting people with complex and longer-term mental health difficulties.<sup>21</sup> For example, best practice guidance for employers on the complexities of supporting and protecting the rights of employees with alcohol or substance misuse disorders, may be a valuable resource.

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**Submission Ends**



## References

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