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Supporting LGBT Communities: Police ToolKit



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Hermes: Linking Network to Fight Sexual and Gender Stigma.

Daphne III Programme

UCD School of Social Justice, University College Dublin, Ireland

The European Gay Police Association

G-force



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References for Further Readings

- An Garda Síochána. 2009. Diversity Strategy & Implementation Plan. 2009-2012. 'Beyond Legal Compliance'. Dublin: An Garda Síochána.
- Council of Europe. 2002. The European Code of Police Ethics. Strasbourg: Council of Europe Publishing.
- Denyer, S. et al. 2009. Burning Issues: Listening to the Voices of the LGBT Community in Ireland. Dublin: National Lesbian and Gay Federation.
- Equality Authority. 2010. Guidelines for Second Level Schools on Embedding Equality in School Development Planning. Dublin: Equality Authority and School Development.
- European Union Agency for Fundamental Rights (FRA). 2010. Homophobia, Transphobia and Discrimination on grounds of Sexual Orientation and Gender Identity. Luxembourg: FRA.
- Gannon, M. and Ruane-Kelly, M. 2012. Equality and Diversity: Building a Culture of Equality in our Society. Dublin: Equality Authority.
- Gay and Lesbian Equality Network. 2010. Lesbian, Gay & Bisexual Diversity in the Workplace. Dublin: GLEN.
- Gloucestershire Constabulary. 2011. Public Sex Environment Policy. Gloucester: Gloucestershire Constabulary.
- Kristiansen, A. et al. 2011. Hate Crime Tool Kit: A Guide for Police. Copenhagen: The Danish Institute for Human Rights (DIHR).
- LGBT Youth Scotland and the Equality Network. 2010. Out of Sight, Out of Mind? Transgender People's Experiences of Domestic Abuse. Edinburgh: LGBT Youth Scotland/ Equality Network.
- Mayock P. et al. 2009. Supporting LGBT Lives: A Study of the Mental Health and Well-Being of Lesbian, Gay, Bisexual and Transgender People. Dublin: GLEN.
- O'Brien, G. (ed.). 2003. Coming Out: Irish Gay Experiences. Dublin: Currah Press.
- Queensland Police Service (QPS). 2011. Queensland Police Service Good Practice Guide for Interaction with Transgender Clients. Queensland: QPS.
- Sheridan, V. and Duffy, M. 2012. Cultures of Diversity. Sexual Orientation in An Garda Síochána. Dublin: Dublin City University.
- Transgender Equality Network Ireland (TENI). 2009. Transphobia in Ireland. Dublin: TENI.
- US Department of Justice. 2009. Building Trust between the Police and the Citizens they Serve. Washington: Office of Community Oriented Policing Services.



Supporting LGBT Communities:

Police ToolKit

Introduction

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- Scenario 1:** Building Trust with LGBT Victims of Crime
- Scenario 2:** Gender Identification
- Scenario 3:** Domestic Violence
- Scenario 4:** Queer Bashing
- Scenario 5:** Police Officers 'Coming Out'
- Scenario 6:** Public Sex Environment (PSE)
- Scenario 7:** Pride March

Welcome to the '**Supporting LGBT Communities: Police ToolKit**'. This toolkit aims to provide police forces with practical educational tools, which can be used as part of a comprehensive LGBT strategy centred on diversity and non-discrimination.

These materials are based on lessons learned through real life policing experiences with LGBT persons. Every scenario outlined in this package happened to real people. The package has been developed to help police officers assist real people in real life situations.

The toolkit employs a practical, scenario-based, problem-solving approach. Scenarios are presented and police officers are then asked to find the solutions through group discussion. The stories used in these training materials are selected to be indicative of real life scenarios that could be found in a wide variety of European policing contexts. This training package is designed to be used by police forces in European countries with various levels of experience in diversity awareness. It is intended to be broadly culturally appropriate for all European police forces. It is recognised, however, that every country will have different practical and cultural approaches to policing. The scenarios may be edited to change locations/names/policing language, to make them more appropriate for the police force concerned.

It is envisaged that police officer training with this toolkit will be conducted in conjunction with LGBT NGO's and/or police LGBT employee networks. The strategic diversity framework of any police force needs to be developed in partnership with organisations such as LGBT NGOs, LGBT Police Networks, Equality Bodies, Local councils/government agencies and the LGBT communities directly, if effective long-term solutions are to be developed. The Toolkit is divided into several sections where police awareness of LGBT issues has been identified as important.

The toolkit aims to

- Provide police forces throughout Europe with the knowledge and understanding necessary for improving the quality of service provision to LGBT communities.
- To assist police officers approach every day occurrences from a police perspective.
- Build and maintain the trust and confidence of the LGBT communities, by policing in a professional manner.
- Assist police officers reflect on possible stereotypes and prejudices towards LGBT persons and within the relevant police force.
- Contribute to the heightening of awareness of how the police can construct an environment free of prejudice when interacting with LGBT people.
- Develop and sustain a problem-solving approach to LGBT community policing issues.
- Improve the work environment for LGBT police officers.
- Create and maintain an ethical work environment.

Suggested Introductory dynamic: The Roulette of Identities¹

This dynamic can be used to introduce police officers to issues of diversity, equality and non-discrimination in the workplace. A common mistake when trying to raise awareness about diversity issues is to assume that information is enough for attitudinal change. The Roulette of Identities compels participants to embrace diverse identities and to experience the impact of issues such as homophobia, transphobia or racism in the lives of vulnerable populations. Participants experience “in their own lives” the impact of discrimination that some groups in society experience in their real lives. This experiential workshop is straightforward to organise, and can be adapted to any of the grounds of discrimination (e.g. gender, sexual orientation, age, race/ethnicity, HIV status, etc.), including multiple forms of discrimination. It introduces police officers, from a positive starting point, to discussions of the seven scenarios with a view to understanding the lives and experiences of LGBT individuals.

1. Materials: Self-adhesive labels; Containers; Blank paper; Pens

2. Suggested labels:

- Age (e.g. young, older)
- Race/ethnicity/nationality (e.g. White, Black, Latino, Asian, Traveller/Roma)
- Social class (e.g. Rich, middle class, upper class)
- Gender (e.g. male, female, trans MTF and trans FTM)
- Sexual orientation (e.g. gay/lesbian, heterosexual, bisexual)

3. Preparation The facilitator prepares in advance, self-adhesive labels with identities for each ground of discrimination that will be considered during the workshop. These labels are placed in containers (one container for each ground of discrimination). For instance, the container for gender will have “male” “female” and “transgender” labels; the container of sexual orientation will have the labels “gay/lesbian”, “bisexual”, “heterosexual”, and so on.

4. Introduction and distribution of the labels The facilitator introduces the dynamic to participants. As in roulette, participants pick randomly one self-adhesive label from each container, so each person will have multiple identities, both “dominant” and/or “marginalised” (e.g. female-young-lesbian-black-poor). Participants stick the labels on their chest with their identities visible to all.

5. “Writing my story” Participants write “their portrait” in the first person on a flip chart sheet and stick it on the wall. Everybody can now read and familiarise themselves with the others’ identities.

6. Sharing my story Each participant presents “their portrait” to the others (always remaining in the first person).

7. Social interactions The facilitator asks all participants to make groups based on the chosen labels. For instance:

- a) Gender: all “women”, all “men” and all “trans” will be in separate groups
- b) Race/ethnicity: all “blacks”, all “Roma”, all “white”, all “Asian”, etc in separate groups
- c) Social class: all “rich”, all “poor”, all “middle class” in separate groups
- d) Sexual orientation: all “gay/lesbian”, all “bisexuals”, all “heterosexuals” in separate groups
- e) Age: all “young”, all “adult”, all “older” in separate groups

The facilitator asks participants to look at each other’s identities, who has more privileges, who is in a subordinate positions, etc. Participants should be aware about differences and hierarchies within their group.

8. Closing remarks Closing the workshop is a key moment. This is the time when the facilitator a) encourages participants to talk about their feelings while embracing “their new identities”, their experiences living the “lives of others”; and b) introduces relevant topics for discussion: Suggested topics for discussion: The country’s legislation on non-discrimination, grounds of discrimination, stigma, the impact of stereotypes and discrimination in the lives of vulnerable populations, multiple forms of discrimination, etc.

¹ Workshop Winner of the University College Dublin competition “Challenging Stereotypes Creative Competition 2009”. Created by Dr. Ernesto Vasquez del Aguila (2000). This workshop was replicated by the HERMES-DAPHNE III Programme in Naples, Madrid and Dublin.

Key definitions

LGBT is an acronym that stands for lesbian, gay, bisexual and transgender persons. The term includes both sexual orientation and gender identity. While lesbian, gay and bisexual individuals face discrimination based on their sexual orientation, transgender people suffer discrimination because of their gender identity. Transgender people are not necessarily gay or lesbians.

Homophobia, the term covers a wide range of different attitudes and perceptions towards LGB individuals. Homophobia refers to hostility or fear of LGB people. Homophobia can be expressed as part of a continuum from supposedly “innocent” and “harmless” jokes about LGB people, to the extreme of hate crimes, physical attacks, isolation and discrimination in the workplace. There is also “institutionalized” homophobia when States and institutions such as the media, religion, political parties, etc., reinforce or produce stereotypes and discrimination against non-heterosexual people.

Transphobia is the fear, dislike or hatred of people who are trans or are perceived to challenge conventional gender categories or “norms” of male or female. Transphobia can result in individual and institutional discrimination, prejudice and violence against trans or gender variant people. Transphobia differs from homophobia in the sense that constitutes irrational fears of transgender people. In other words, transphobia is not only about sexual orientation, but also about gender roles and gender identities.

Hate crimes refer to a crime motivated by racism, homophobia and transphobia. A hate crime against LGBT persons refer to any criminal offence, including offences against persons or property, where the victim, premises of target of the offence are selected because of their real or perceived connection, attachment, affiliation, support of membership of a LGBT group.

Bullying involves a repeated irrational abuse of power or position expressed in the forms of physical, verbal or non-verbal forms, in person or through channels such as telephone or the Internet. Perpetrators usually undermine, patronize, humiliate, intimidate, demean, and assault the victim. Homophobic bullying is a particular type of bullying against individuals considered to be not fulfilling gender and sexual roles. In other words, it is not only directed towards LGBT individuals, but heterosexual men and women can suffer homophobic bullying if they don't perform “masculine” or “feminine” behavior.

Harassment, there are many types of harassment, from stalking, sexual harassment to bullying. Harassment covered by the equality legislation is defined as any form of unwanted conduct related to any of the discriminatory grounds, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. This unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Stalking is a form of harassment that involves pestering a person either in person or in writing, telephone, Internet, etc. It can also involve following or spying on the victim causing them distress and may involve violence.

Sexual orientation harassment is unwanted behaviour based on known or presumed sexual orientation of the victim. This type of harassment includes name-calling, assault, verbal abuse, blackmailing or threatening of disclosure the sexual orientation, derogatory comments, exclusion and discrimination.



Supporting LGBT Communities: Police ToolKit



Scenario 1

Building Trust with LGBT Victims of Crime

Managing privacy matters around civilians' disclosure of sexual orientation is a major issue between police officers and LGBT victims of crime. Increasing legislation on non-discrimination across Europe, has gone some way to helping LGBT people feel they can disclose information to the police identifying their non-heterosexual status. Research, however, continues to show underreporting of homophobic and LGBT related crime by the LGBT community. In some cases LGBT people fear a homophobic reaction upon reporting a crime either as victims or witnesses.

Research in several countries shows that many lesbian, gay and transgender individuals have experienced hate crime or incidents because of their sexual orientation and gender identities. In many cases, a high percentage of these victims of crime did not report the incidents to the police due to lack of trust. Additionally, to prove that the sexual orientation or gender identity of the victim have constituted a motive for the perpetrator is not an easy or straightforward task for the victims.

The Garda's relationship with LGBT people has dramatically changed since the decriminalisation of homosexuality in Ireland in 1993, and the introduction of an extensive framework of equality legislation, which the Gardaí have a key role in implementing. However, police officers continue to face the challenge of build trust with LGBT people.

Case 1

John is a primary school teacher based in Clonmel. He is not 'out' as a gay man to his family or colleagues and works for a school run by a religious institution. His family are elderly and he has decided he will not "come out" as a gay man until after they have passed away as he feels they would never understand. He has concerns regarding his temporary position in the school if his employers found out that he is gay. John uses a gay social networking site to meet other gay men. One evening he invites an online contact 'Alfred' to his house. Alfred stays the night but leaves early the next morning. On his way out he takes John's work laptop and wallet. John has to report the loss of the school laptop to Gardaí.

Case 2

Susan is a lesbian but has never come out. She married Peter 16 years ago and they have a 14 year old child. She has a distant relationship with her husband, but wants to remain married in the interest of her son. Susan is a senior civil servant in a Government Department. A colleague discovered she is a lesbian and threatens disclosing her sexual orientation to her husband and her managers unless Susan gives her a substantial amount of money. Susan wants to tell the police about the blackmailing but fears that they may not be understanding of her situation. She also fears the Police will disclose her situation to her husband.

Case 3

Martin works in Garda HQ. He is gay but not out to his colleagues. He goes jogging every day in the Phoenix Park. One of his many jogging routes runs through a part of the park that is an area known for male prostitutes and cruising. One Tuesday he runs through this area. That evening he hears on the news that there was a gay man seriously injured in a suspected homophobic assault in the area concerned. Gardaí have issues an appeal for witnesses. Martin did see a number of suspicious youths hanging around the area. He would like to go forward as a witness but fears that he will be accused of cruising if he reports the matter to Gardaí, he is concerned about what his colleagues would think and how it may impact his promotion prospects.

Discussion Points

Case 1

- Is the injured party likely to tell the facts of the case to the Gardaí?
- What do the Gardaí need to know to effectively deal with the case?
- What is the desired outcome for the injured party?
- What is the desired outcome for the Gardaí?
- What would assist the injured party to trust the Gardaí?
- Can the Gardaí bring the matter to a conclusion without 'outing' the injured party?
- In every criminal case the Gardaí investigate, is the desired outcome a successful criminal prosecution?
- How should the Gardaí act to prevent the injured party hiding or changing facts because of their fear of being outed as gay or lesbian?

Case 2

- Are LGBT people who are closeted more likely to be the victims of blackmail?
- Why is this?
- What are the implications for Susan if she is outed?
- Are people who are being blackmailed likely to report it to the police?
- What should the police do to encourage people to come forward to them if being blackmailed?
- What responsibility does the police have to protect Susan's privacy?

Case 3

- Are witnesses likely to come forward to give evidence if they are not out and where the circumstances of the incident would indicate their sexual orientation (e.g. an assault in a gay bar)?
- How can the Gardaí affectively deal with Martin as a witness to a crime while respecting his privacy?
- How can the Gardaí build trust among LGBT witnesses?
- Is it possible for Gardaí to guarantee Martin discretion and privacy?
- What responsibilities has Martin in this case?

Policy Law

Relevant Legislation

Criminal Justice (Theft and Fraud) Offences Act 2001

The duty of the Garda Síochána is investigation of crime. It is a matter for the Director of Public Prosecutions to decide on the whether the matter goes to court. Note should be taken of the Adult Caution Scheme which, in certain circumstances, can be utilised and its use circumvents the need to go to court.

The An Garda Síochána (Irish Police) launched in 2009 its "Diversity Strategy & Implementation Plan for 2009-2012". This initiative conceives diversity not only in terms of nationality or ethnic background, but also addresses the need for "recognising,

acknowledging, and respecting difference” on all grounds covered by Irish Equality Legislation, including sexual orientation . The stated aim of this strategy and action plan is to constitute a legal and practical framework to combat homophobia and discrimination, and protect the LGBT community in Ireland (including transgender individuals).

If the matter goes to court it is likely, given its public forum and the need for the injured party to give evidence to prove the case, that questions could be put to the victim by the defence which would identify his sexual orientation.

There are different levels in which European countries include criminal law provisions on ‘incitement to hatred’ explicitly covering sexual orientation. In Ireland, homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.

Key Learning Points

- Many closeted LGBT people, have such a fear of being found out by family/peers /colleagues that they will do almost anything to maintain the secrecy of their sexual orientation or gender identity.
- LGBT people are at high risk of becoming victims of various types of crime due to the likelihood that they will not report the offence as it may ‘out’ them (Robbery, assault, thefts etc.).
- Closeted LGBT people are regularly blackmailed. The threat of ‘outing’ them is used as leverage to abuse them/extort money from them/ensure their silence.
- The desired outcome of Garda intervention may not be the same for every LGBT person. Many will not wish to go to court as a witness, they may just wish to have the blackmailing/abuse stop or have stolen property recovered. For some they just may wish to make the Gardaí aware that certain types of crimes are happening in certain places targeting gay people.
- Managing cases discretely and respecting the privacy of victims and witnesses is vital to ensure that LGBT will have faith in a police service.
- Every member of An Garda Síochána should be capable of investigating a LGBT related incident professionally and with sensitivity. If the investigating member, however, feels that it would be beneficial to engage the use of the LGBT Liaison officer or LGBT staff member, this should be considered.



Supporting LGBT Communities: Police ToolKit



Scenario 2

Gender Identification

Providing a professional service to the Transgender community is part of the police services. Many police officers will not have been exposed to Transgender issues or to transgendered people prior to their joining police forces. It is important that the police know how to respectfully deal with a person's gender identity when they meet a transgendered person in the course of their duty. In some occasions, the physical appearance of a transgender person might indicate to police officers a gender identity issue, in other cases it may not be possible to determine that someone is a transgender person from their appearance. Police officers may have to interact with transgendered persons, record their correct personal details for police recording purposes or (body?) search transgendered persons.

The term transgender is used as a broad umbrella to define a person whose gender identity and/or gender expression differs from the sex assigned to them at birth. There are variety of terms that transgender people use to describe their gender. Trans men are those who have previously transitioned or are in the process from female to men (FTM) and therefore living as men. Trans women are those who have previously transitioned from men to female (MTF) and are living as women.

The Employment Equality Acts 1998–2011 and the Equal Status Acts 2000–2012 constitute the Irish legal framework that prohibits discrimination on nine grounds: age; civil status; disability; family status; gender; race/ethnic group/nationality; religious belief; sexual orientation; and membership of the Traveller community. This equality legislation prohibits both direct and indirect discrimination in both the private and public sectors. It applies to work and employment and to the provision of goods, of services, of education, and of accommodation. Although the Acts do not explicitly name gender identity as a ground, European Union case law means that protection for trans people comes within the scope of the gender ground. (Irish case law has also found that discrimination against a transgender person can come within the scope of the disability ground.)

Studies across Europe show strong discrimination against transgender individuals while seeking health care and in the workplace. Additionally, transgendered people are victims of hate crimes and hate speech. Transgendered individuals experience multiple forms of discrimination not only based on sexual orientation but also because of their gender identities (“transphobia”). There is a lack of legislation protecting this population, as well as a comprehensive health treatment plan, which reinforces transgender people's vulnerability. This lack of legislation as well as stigma and transphobia explain why cases of against transgender individuals remain unknown in most countries. Additionally, transgender victims of crime do not present these cases because of lack of trust in Equality bodies and police officers.

Case 1

Gardaí are called to the scene of a car crash just outside Tralee. While taking details the Garda observes that the female driver has male physical features. She gives a female name to the Garda, but the Garda believes that the person is physically a male. The Garda needs to record the details of the incident, including the details of the driver of the car on PULSE.

Discussion Points

- How does the Garda record the details of the person on PULSE?
- Should the Garda ask for the person's birth name and record the persons assigned gender at birth?
- What are the appropriate questions for the Garda to ask the person in this case?

Case 2

Gardaí are policing at a football match in the Aviva stadium. Attendees are being searched on entry as intelligence indicates a risk of violence between rival team supporters. A man arrives at the gate of the football ground, but the Gardaí believes that the person is physically a woman.

Discussion Points

- When searching this football fan what gender should the searching officer be?
- In which situations is necessary to know or clarify whether to deal with a person as a man or as a woman?
- How do Gardaí should clarify these cases in an appropriate and sensitive way?

Case 3

Gardaí arrest a drunk woman outside a bar in Waterford. On arrival at the station, the prisoner gives a female name, but Gardaí believe that the prisoner is physically a male. The prisoner has to be searched by someone of the same biological sex in accordance with Treatment of Persons in Custody Regulations. The prisoner wishes to be searched by a female police officer.

Discussion Points

- What is the prisoner's legal name?
- What is the prisoner's legal gender?
- When searching the prisoner what gender should the searching officer be?
- Is it possible for a transgender person to request who searches him/her?

Policy Law

The rights of transgender people are gradually being recognised in Irish law, for example, the Passports Act 2008 saw the first statutory recognition of transgender people in providing for a person's right to apply to have a passport issued in their new gender. However, there is no provision for transgender populations in Irish legislation that officially recognizes the gender identity with which these individuals identify.

The Irish High Court issued in October 2007 the first declaration of the incompatibility between Irish law and the European Convention on Human Rights (ECHR) due to its failure to provide legal recognition for transgender people. Dr. Lydia Foy was born male and had gender reassignment surgery in 1992, but her request to amend the sex on her birth certificate was refused in 1993. The High Court formalised declarations that sections of the Civil Registration Act 2004 violated the right of Dr. Foy to respect for her private life under the ECHR, when the Irish State failed to "provide for meaningful recognition of her female identity". The Irish Government responded by establishing a Gender Recognition Advisory Group in May 2010. However, Dr. Foy issued fresh legal proceedings against the State in 2013 because there has been no progress on the issue since the publication of the Advisory Group report in July 2011. In the case of *Foy v An t-Ard Chláraitheoir* [2007] IEHC 470 the applicant was a post-operative male to female transsexual, who requested the Register General to reissue her with a birth certificate which would record her gender as female rather than male and her name as Lydia Annice. The Register General refused based on provisions of the Civil Registrar Act 2004 which only allowed rectifications of birth certificates where there were clerical errors or errors of fact. The applicant contended, inter alia, that the Register General was in breach of Section 3 of the ECHR Act 2003 because he failed to perform his functions under the Civil Registration Act 2004. The court issued a declaration that the Civil Registration Act was incompatible with the ECHR. This has, however, not amended the legislation.

It should be noted that Foy had a driving licence and passport in her new female name as a result of a change by deed poll. In addition, Section 11 of the Passport Act 2008 specifically provides for those who have undergone or are undergoing "treatment or procedures or both to alter their sexual characteristics and physical appearance to those of the opposite sex" to apply to the Minister for a passport in their new name. In the given case obtaining the name from identification would be appropriate, i.e. car registration, driving licence etc. If the Garda is not satisfied as to identification there is a power of arrest under the RTA. This legislation provides that persons in custody should be searched by a person of the same sex. Specifically, Regulation 17 (2) provides that a person in custody shall not be searched by a person of the opposite sex (other than a doctor). Regulation 17 (3) provides that the search of a person in custody which involves the removal of clothing, other than headgear or a coat, jacket, glove or similar article of clothing, no person of the opposite sex will be present.

The notes to the Regulation, issued by the Commissioner, provide at paragraph 3 that “where the member in charge has concerns relating to a prisoner’s claim of sexual identity or gender the member in charge should request the attendance of a doctor for the purpose of having the person searched, in addition when the removal of underwear is necessary this must be done by a doctor”. These Regulations should be used as guidance for the searching of Transgendered persons.

Case 1

Relevant Legislation

- Road Traffic Act 1961-2011
- Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Stations) Regulations 1987

Case 2

Relevant Legislation/Policy

- Criminal Justice Act 1984 (Treatment of persons in custody in Garda Stations) Regulations 1987
- Guide on Practical hints for Searching
- Chapter 5 - Garda Crime Investigation Techniques Manual - Searches

Case 3

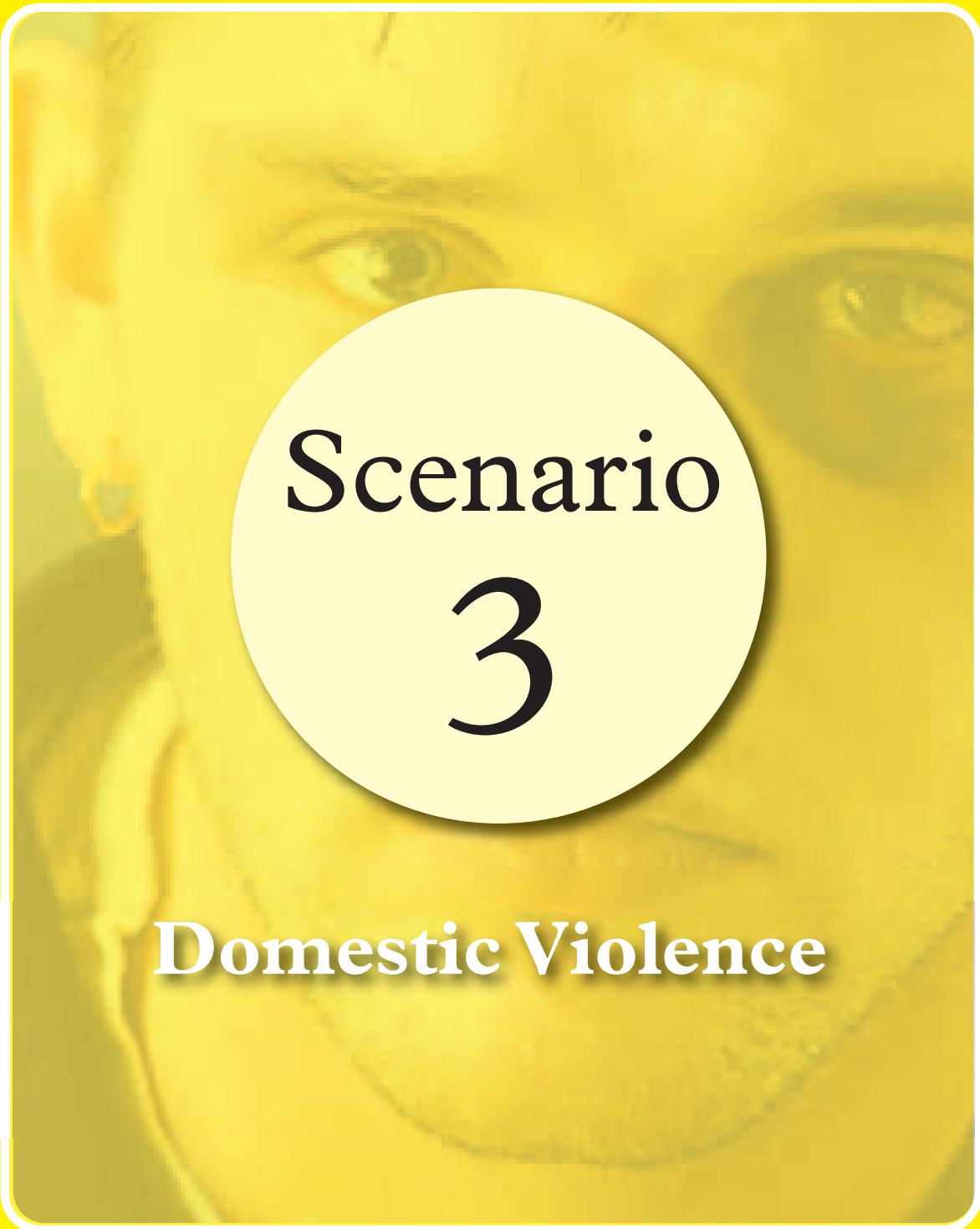
The legal name has been addressed in Case 1 and the gender remains in limbo.
The search of the person is as detailed in Case 2 and if an issue arises get a doctor.

Key Learning Points

- Gender identity and sexual orientation are separate and distinct issues. They are, however, often addressed together (such as in police training), as the discrimination faced by both groups is similar. Police officers should recognise the difference between gender identity (e.g. men, woman, trans, trans MTF, trans FTM, etc) and sexual orientation (e.g. heterosexual, bisexual, gay, lesbian, etc.).
- Where unsure of a person’s gender identity, you can ask respectfully. Identification documents may not always match appearance. It is not necessarily someone being deceptive. Disclosing personal details of a transgender person including their birth sex or name without justification, could cause a serious threat to the personal safety or harm to the person.
- Dealing with Gender Identity issues can be personally very challenging for the individuals involved. People at the early stages of transition may be very embarrassed or distressed. Police officers should deal with gender identity issues with discretion and respect people’s privacy.
- Transgender is an umbrella term that can cover a wide spectrum of people with gender based personal situations. It can be used to describe people who may cross dress, engage in hormone therapy or gender reassignment surgery for example.
- Many transgender people feel that they were born in their situation and it has taken remarkable courage to transition. They understand themselves to be the gender they present in. Their documentation may or may not match their new identities. However, respect of the individual should be shown in all cases.



Supporting LGBT Communities:
Police ToolKit



**Scenario
3**

Domestic Violence

Domestic violence is widely recognised as a common and largely underreported crime. The issue of domestic violence among LGBT couples is even more complex and can become “invisible” and unrecognized. Several studies show that victims of domestic violence among LGBT couples face the additional fear and stigma of disclosing this violence because of their sexual orientation and gender identity. Victims often feel that the police will not handle the situation appropriately due to perceived homophobia and transphobia within police forces. Police forces confront the challenge of building sufficient trust within LGBT communities, to encourage people suffering domestic violence to break the silence and feel that they can report it and receive professional support.

Case 1

Gardaí in Tullamore are called to a report of a fight in a flat on Church Street. On arrival the Gardaí meet two men in the flat. One has a bleeding forehead and his face looks bruised. The other is agitated and aggressive towards police officers. Gardaí notice it is a one bedroom flat with only one bed. Both men state they live there. Gardaí separate the parties. The injured man tells the Gardaí he fell and hit his head against a door. He appears embarrassed and says he just wants the Gardaí to go and that everything will be okay.

Discussion Points

- Should the Gardaí ask the parties if they are a couple?
- What does Garda policy dictate when confronted with a domestic incident where arrestable offences have been committed?
- What advice can Gardaí provide same sex couples regarding domestic violence orders?
- Would Gardaí deal with this situation differently if it were a heterosexual couple and a female had been injured?

Case 2

Gardai in Dublin are called to a report of a disturbance in an apartment in Smithfield on a night during Christmas. On arrival the Gardai met a man and a woman in the apartment. The woman’s had a cut to her face and what looked like she had been struck a blow to her left eye, her clothes were torn and she was obviously seriously distressed. Without questioning, the man shouted that “this thing is a man” and demanded that the woman should be locked up for deceit. He explained that the woman had a trans history, had all her documentation changed to her preferred gender, however the man found out about her history due to a recent family visitor, during the Christmas period.

Discussion Points

- Should the Gardai arrest the woman as demanded?
- Should the Gardai arrest the man for domestic abuse?
- What actions should the Gardai take in relation to the victim of this abuse?
- Would the Gardai address this situation differently if it involved a couple where none of the people involved had a trans history?

Relevant Legislation/Policy

- Domestic Violence Act 1996 as amended by the Criminal Law (Miscellaneous Provisions) Act 2011.
- Policy and Domestic Violence

Context / background

People experience domestic violence regardless of their age, social class, gender, etc. Domestic violence among LGBT people is in many cases an “invisible” crime due to homophobia and transphobia. There is a strong connection between societal homophobia and transphobia and the risks of domestic violence. LGBT persons who abuse their partners often use homophobia and transphobia as a weapon of control over their partners in a variety of ways, such as threatening to reveal their partner’s sexuality or gender orientation to friends, family, employers, or the wider community; or arguing that nobody is going to help or believe the story of violence. In many cases, due to the discretion about the relationship that both partners are supposed to uphold; domestic violence therefore functions as a “second closet” for many LGBTs who do not reveal their situation due to the institutionalized homophobia and transphobia present in institutions such as the criminal justice system, support services, and society at large.

Some studies show that gay men are less likely to report domestic violence by their male partner due to male gender roles that equates violence as an expression of “manhood” or “virility”. Male abusive partners justify their violence as something proper for men’s interactions: “this is the way men behave”. Male victims have to challenge gender stereotypes in order to denounce this situation.

In the case of trans people, they can experience domestic violence from a same or opposite sex partner, and can do so regardless of the gender and sexual identity of either person. In some cases, trans people are more vulnerable when the violence occurs during the transition period from one gender to another. Several studies show that although high percentage of transgender people report some form of domestic abuse, only few of them recognise this violence as domestic abuse, mainly because of a lack of safety elsewhere in their lives and the discrimination they face if they seek help.

For LGBT victims of domestic violence, the inability in many cases to discuss such relationships with family and other social peers creates further barriers to reporting and the seeking of help.

Supporting LGBT Communities: Police ToolKit

Scenario 4

Queer Bashing

Verbal abuse, physical assaults and at times extreme violence against LGBT people can occur in society, yet remain unnoticed or unchallenged due to the cultural norms that legitimise homophobia. This type of abuse can also be targeted at heterosexual people who do not display the “masculine” or “feminine” behavioural attitudes expected of them in society. Less powerful heterosexual men and strong “masculine” heterosexual women are often called homophobic terms in a derogatory fashion. LGBT and some heterosexual people become victims of homophobic bullying in places such as schools, workplaces, neighbourhoods and communal spaces. Police officers face the challenge of building trust with these victims, so they feel empowered to report homophobic incidents. This is made more challenging due to these insults regularly being part of “cultural norms” where they are perceived as “jokes” among peers, instead of signs of abuse.

Case 1

Thomas is a 15 year old student in a south Dublin private secondary school. A quiet studious boy he doesn't play any of the “male” school sports such as soccer or rugby. Seen as ‘soft’ by the other boys, Thomas is often called a “queer”, a “faggot” and other derogatory names implying homosexuality and not fitting gender expectations for a “real man”. The students in Thomas's school become aware that Thomas was seen at a gay venue in the city centre. The next day at sports class Thomas is badly beaten in the changing rooms. The boys call him homophobic names as they beat him and his head is placed down the toilet and it is flushed. Thomas leaves the school that day and never comes back.

Discussion Points

- Is this a Garda matter?
- Is it the school management's responsibility to police the behaviour in schools or do the Gardaí have a role?
- What is the impact of using homophobic words as derogatory terms in schools or wider society?

Case 2

Michael is a solicitor working in a Galway law firm. He is out one night in a city centre gay club with his partner Alex. They leave the club at 2am. The club exit is down a laneway. At the end of the laneway a gang of youths have gathered. When Michael and Alex walk past the gang, the group set on the couple and beat them up. The gang call them “faggots” and “paedophiles” as they do so. When they finish beating the couple, the two men go back to the door of the club where security staff administer first aid. Alex wants to call the Gardaí but Michael says “no”. He is afraid of the details of the case becoming public or a court appearance, which might identify him as being gay to colleagues, potential clients or his family. Michael says to Alex: “it's just what happens to queers sometimes, you just have to put up with it”.

Discussion Points

- Should Michael and Alex report the assault to the Gardaí?
- What is the desired outcome for the couple if they do?
- What is the desired outcome for the Gardaí if such a report is received?
- If the couple do not report the assault what is the impact on a) the couple, b) the local LGBT community, c) An Garda Síochána?
- How could the Gardaí encourage people to report such incidents to them?

Case 1

Relevant Legislation

- Non Fatal Offence Against the Person Act 1997 (Section 10)
- Prohibition of Incitement to Hatred Act 1989.
- The Equal Status Acts 2000–2012 (Section 11)
- The Employment Equality Acts 1998- 2011 (Section 14A)

Note: The Equality Authority can provide legal assistance to victims of the type of harassment covered by the equality legislation.

Case 2

The matter of reporting a crime is one for the victim to consider but it is desirable for them to do so in the interests of properly investigating crime. The desired outcome for the Garda Síochána is that the culprits are identified and held accountable.



Key Learning Points

- Abuse and assaults at locations where LGBT people socialise or congregate are common place. They are both under reported and under recorded.
- Homophobic and transphobic incidents should be recorded as such on police computer systems under the MO tab.
- Homophobic bullying is common place in schools and similar environments. LGBT young people or young people suspected of being LGBT are regularly victims of assault. Assaults, which are criminal offences, should be reported to the Gardaí and dealt with through the Youth referral system or as appropriate.
- LGBT people may not come forward as witnesses to incidents where they feel their sexual orientation or gender identity may be exposed. Gardaí need witnesses to secure convictions. Thus they must be in a position to exercise discretion if they wish to obtain support from the LGBT community in investigations.



Key Learning Points

- Legal provisions relating to domestic violence as outlined in the Domestic Violence Act 1996 apply to same sex couples in the same manner as they do to heterosexual couples.
- Domestic violence occurs in every social class and social group. Domestic violence among LGBT persons is, in many cases, an “invisible” crime due to homophobia and transphobia that prevent LGBT victims to report these situations.
- Domestic violence can be perpetrated by partners or ex-partners and can include physical, sexual, and mental and emotional abuse such as homophobic or transphobic abuse and other types of controlling behaviour such as “outing”; the threat of “outing”; or enforced isolation from family and friends due to a person’s sexual orientation or gender identity.
- Many LGBT people experience domestic violence, but they are reluctant to formally acknowledge that the behaviour they experience is abusive, so they may be reluctant to report the situation to the police. Police officers should reassure LGBT persons that confidentiality will be maintained through the whole process.
- LGBT persons may feel concerned about discrimination and lack of sensitivity among police officers. Gardaí should ensure respect and understanding about sexual and gender diversity when dealing with LGBT members of the public.



Supporting LGBT Communities: Police ToolKit

Scenario 5

**Police Officers
coming out**

Despite the increased visibility of LGBT people in Irish society and important changes in equality legislation made in the last decades, disclosing sexual orientation in the workplace is never an easy enterprise. For some LGB police officers, coming out can be a relief, as they can live their sexuality openly and share their everyday lives with their colleagues. However, for many other LGB police officers, disclosing their sexual orientation can be a source of fear and anxiety. They fear the potential rejection by colleagues and/or damage to their career prospects within the police force they work for.

For heterosexual colleagues, they may not know how to communicate with a colleague who has just “come out” in the workplace. Each police officer comes to work with their own cultural and/or religious values and beliefs. They must behave, however, in a manner that is both professional and in compliance with their legal and policy based regulatory framework.

Police officers work largely in teams. Trust and inter colleague relationships are central to the ability of police forces to operate. LGBT police officers should not feel the need to hide a fundamental part of what they are in the workplace. At the same time it is very important to them that they remain part of the team.

Case 1

The Anglesea Street Patrol Van is called to a public order incident outside a gay bar on Patrick Street. Two lesbians have been involved in a row and have been separated by security staff. Gardaí Barry and Mary attend the scene. Barry shouts at the women to head off home and after a few minutes the women leave the area and the Gardaí get back into the van. Barry says to Mary ‘Bloody dykes, it’s disgusting. They just need a good ride off a man to sort them out’. Mary is a lesbian but has never told any of her colleagues. She has heard homophobic comments in work throughout her career and is not comfortable coming out in work because of this. She is afraid of a possible negative reaction if she does come out.

Discussion Points

- Are homophobic comments commonplace in the police work environment?
- Are homophobic comments ever made to the public?
- Do they make it more unlikely that a lesbian or gay Garda would come out in the workplace?
- Do you automatically assume your colleagues and members of the public are heterosexual?
- How do homophobic comments like the one above make Mary feel about her job?
- If a LGBT member of the public heard homophobic comments from the police would they feel comfortable going to them to report a crime, which would require them to disclose their sexual orientation?

‘Coming out’ (of the closet)

is a term that defines the disclosure of sexual orientation and/or gender identity for lesbian, gay, bisexual and transgender individuals. Same sex sexual practices are not necessarily labeled as ‘homosexual sex’, and categories such as heterosexual, homosexual and bisexual are not necessarily appropriate for all or even most cultural contexts. Studies have shown that in different cultural contexts men who have sex with men (MSM) hide their homoerotic practices as a survival strategy or “coping mechanism” to confront stigma and homophobia. These men do not associate their sexual behaviour with a gay identity, and despite their homoerotic sexual experiences, these men continue identifying themselves as heterosexuals. In current times, gay or homosexual identities are still feared and rejected due to the potential hostility, violence and stigma.

Embracing an openly gay identity is a very difficult process for many gay and lesbians. “Coming out” as gay or bisexual person at work can be a supportive experience or the source of rejection, isolation or even violence. Some LGBT persons negotiate two identities: a public heterosexual identity with their families and colleagues at work, and a gay identity with a small group of friends, usually gay, with whom they socialize away from their place of work and residence. For those who fully come out to their family and colleagues, the process is usually difficult, and sometimes causes separation and isolation. In some cases, discretion and secrecy act as an implicit agreement among gay and lesbians and their families in order to protect themselves from the stigma of having a gay relative. “Coming out” can bring relief and support; elicit discrimination and violence, as well as rejection and isolation from their families and compatriots, which can jeopardize these men’s and women’s lives.



Relevant Legislation

- Criminal Justice (Public Order) Act 1994
- Diversity Strategy - Implementation Plan 2009-2012
- Garda Policy and Procedure - Harassment, Sexual Harassment and Bullying

Discrimination

Many European countries prohibit discrimination on the ground of sexual orientation. Equality bodies across Europe play a pivotal role regarding the rights of sexual minorities, supporting cases challenging discrimination in employment and service provision. In some countries there are also “quasi-judicial” tribunals, which deal with complaints of discrimination. However, equality legislation does not guarantee national practices regarding discrimination will be mainstreamed. Governments across Europe have introduced austerity measures and cuts in the budget allocated to organisations that work with vulnerable populations, which represents a critical loss in the equality institutional and governance infrastructure. Perceived and reported discrimination are not always the same.

A society can perceive that there is no discrimination against a particular group, while these individuals can report a different picture based on their daily experiences. Many individuals suffer multiple forms of discrimination because they belong to one or more categories (e.g. sexual orientation; race/ethnicity; gender, etc.).

Key Learning Points

- A certain percentage of the population are gay lesbian bisexual or transgendered. This is no different for police officers.
- Most LGB Gardaí report feeling it necessary to hide their sexual orientation in work. They thus hide a significant part of their true self from the teams of people they work with every day. This is draining both mentally and emotionally for the colleague who feels the need to lie about significant parts of their life.
- Homophobic language in the Garda workplace is common. Listening to these comments makes the workplace unwelcoming for LGBT people and reinforces the feeling that closeted employees need to hide their sexual orientation in work.
- Please treat your colleagues with respect.



Supporting LGBT Communities:
Police ToolKit

Scenario
6

**Public Sex Environment
(PSE)**

Sexual activity in public areas is outlawed across Europe. This legislation applies for both heterosexual and same sex couples. Traditionally, Public Sex Environments (PSE) have been considered areas where gay men frequented for “cruising”. However, PSEs have also been used by heterosexual, bisexual, cross-dresser and transgender individuals. Police officers face the challenge of what to do in PSEs which accommodates diverse populations and situations. From the issues of “outing” of individuals, such as married men, who do not identify as gay or bisexual; to “swingers”, who meet for sexual contacts; “exhibitionists”, who seek to be watched while having sex; and “voyeurs”, who observe others from the margins. Additionally, PSE users are vulnerable to criminal activities such as assault, harassment, robbery and blackmail. PSE are also regularly used as a venue for commercial sex.

Case 1 (A)

You are on patrol on Dollymount Strand Beach in North Dublin. It is 23:00hrs and dark out. You come across a car on the beach and there is a young man and a young woman in the back seat of the car. They are both naked from the waist down. The woman is performing oral sex on the man.

Discussion Points

- Have you come across situations like scenario A before?
- How did/would you deal with it?

Case 1 (B)

You are on patrol on Dollymount Strand in patrol car JB1. It is 23:00hrs and dark out. You come across a car on the beach and there are two young men in the back seat of the car. They are both naked from the waist down. One man is performing oral sex on the other.

Discussion Points

- Have you come across situations like scenario B before?
- How did/would you deal with it?
- Would you deal with scenario A and B differently?
- What are the factors that you take into consideration when deciding on a course of action in this scenario.
- If you came across a scenario like A or B above and it transpired one of the persons involved was a sex worker being paid for the sexual encounter; a) what would be an appropriate course of action, and b) what would legislation provide for?

Case 2

Richard works as a middle manager in a large insurance company. He is married with three kids and lives in a small country town in Roscommon. Richard becomes aware of a motorway lay-by where men meet for anonymous encounters. Richard drives to the lay-by and hangs around the wooded area nearby. Richard meets a man and goes into the woods with him for a sexual encounter. After they go into the woods, the man beats Richard unconscious and robs his wallet and phone. Richard is found injured a short time later and is brought by ambulance to the local hospital, where he regains consciousness. The Gardaí have been notified by the hospital and attend to take a report.

Discussion Points

- Richard was engaged in an activity which if witnessed would have created a criminal offence, namely, having sex in a public place. He was also the victim of a serious assault. How do the Gardaí balance these two roles?
- How do the Gardaí act to protect the rights of people of have sex in public, even if it is an offence?
- If Richard does not reveal to Gardaí the details of what happened to him, what are the risks to him and to the public? Are there issues about the perpetrator reoffending?
- Why would perpetrators choose to rob and assault people in these circumstances?
- What issues related to privacy are raised by this case?



Relevant Legislation

Case 1 and 2

- Criminal Justice (Public Order) Act 1994
- Criminal Law Amendment Act 1935 - Section 18
- Criminal Law (Sexual Offences) Act 1993 - Sections 7, 8 & 9

In most countries having sex in public spaces is an offence and for those who unwillingly witness it may result in people feeling intimidated when using public spaces or facilities. Places where such behaviour occurs are described as Public Sex Environments (PSE). PSE are diverse and vary in type, size and activity and their users are diverse too. There are several colloquial names such as:

Lovers' lanes

locations where couples frequent for intimacy. These areas range from parking lots to open busy places. There are also known as "the point"

Dogging sites

usually used by heterosexual individuals to meet previously unknown potential sexual partners. The activity itself may be known as "dogging"

Cruising

locations used by gay men and men who have sex with men (who do not necessary identify as gay) to meet other men for sexual activity. In some cases where public buildings are used, it is referred as "cottaging".

There are also "voyeurs" who want to observe sexual activity from the margins and "exhibitionists" who want to be watched. Commercial sexual activity can be also found in public spaces, which adds another challenge to the police.

Police officers should be aware that some people may be using these spaces as meeting places and then go elsewhere together for sex, which does not constitute a crime. Additionally, users of PSEs may be victims or witnesses of crimes who do not report the incidents due to the fear of being prosecuted or mistreated as criminals rather than as victims or witnesses. Police officers have the challenge of building trust with users of these spaces, so they don't feel that their sexual activity, sexual orientation or lifestyle would be an issue.

Key Learning Points

- Heterosexual, homosexual and bisexual people engage at times in sexual behaviour in public locations. This is something that can create criminal offences and has to be managed carefully by police officers.
- Criminalisation, social stigma and a history of secrecy drove LGBT people to lives of secrecy and anonymous sexual encounters in discrete locations (toilets, wooded areas of parks etc). For many who are still closeted the fear of being found out prevents people from engaging in relationships in a more 'traditional' sense.
- There should be no difference in treatment of LGBT and heterosexual persons found engaged in any criminal activities.



Supporting LGBT Communities: Police ToolKit



Scenario 7

Pride March

LGBT Pride events have different support across European countries. In some places, Pride Parades have the full support of the City and constitute part of the tourist attractions. In other countries, these parades are forbidden or attract the opposition of homophobic groups that organize counter marches to stop the celebration of LGBT communities. Police officers face different challenges while dealing with these parades. This includes protecting LGBT participants from the violence caused by opponents of the Pride to fully participating in the march.

Case 1 : (City with good/reasonable LGBT-police relations)

The national Gay Police Association are participating in this years pride festival in the capital city. Uniformed police officers are to participate in the pride march. This has sparked a debate amongst police officers and managers as to the appropriateness of police officers marching in uniform at these events. Some Police officers are saying that it is not appropriate to wear your uniform at any form of march. Others accuse the gay police officers of flaunting their sexuality. You overhear the debate in the police station.

Discussion Points

- Why would LGBT police officers choose to participate in such an event?
- What are the benefits/ drawbacks from such participation from a community/public relations perspective?
- What are the benefits/ drawbacks from such participation from an employee support/human resources perspective?



Case 2: (City with challenging LGBT-police relations)

On 1st June the national LGBT rights organisation (insert name) will hold a LGBT pride march through the city. There have been threats made to the organisers and a counter demonstration has been organised by an extremist group. Police fear violence will erupt. The police are asked by the city mayor for their views on the event and to prepare plans for policing the event.

Discussion Points

- Should the police force support the holding of the event? Should the police force try and have the event cancelled?
- What group are the police there to protect, the LGBT pride march or the counter demonstration?
- If the pride march is banned what message does that send out to LGBT people?
- If the police fail to protect the participants if they are attacked by extremist groups, how will that effect the community?
- If the police engage in homophobic attacks on the participants how will that effect the relationship between the citizens and the community?



Pride Festivals or Pride Parades are events celebrating diversity and the rights and culture of lesbian, gay, bisexual and transgender (LGBT) individuals. These events are usually held during June to commemorate the Stonewall riots in New York in 1969, when for the first time in US history sexual minorities fought back against a system that criminalised sexual minorities. It became the foundational event of the LGBT rights movement across the world. These Pride festivals constitute a unique opportunity for the LGBT communities to make their demands visible to the mainstream society and also serve as demonstrations for legal rights such as same-sex marriage, HIV/AIDS, transgender rights, anti hate crimes, among others.

These parades have different levels of acceptance across countries. In some countries, they constitute a major celebration and tourist attraction, while in others they are banned, persecuted or limited to the boundaries of the city. Opponents to these events consider public display of celebration of LGBT people and culture is a moral offense. LGBT communities consider that homophobia and transphobia are at the roots of these negative perceptions against an event aimed to celebrate diversity. In 1983, Declan Flynn was murdered in Fairview Park, Dublin. A controversial judgement gave suspended sentences for manslaughter to members of a gang found guilty of the killing. As a reaction to this anti-gay outcome, the first official Pride March was held in Dublin in June 1983.

Relevant Legislation:

- **Criminal Justice (Public Order) Act 1994**
- **Prohibition on Incitement to Hatred Act 1989**

Key Learning Points

- The primary functions of the police at a LGBT Pride march are to; ensure a peaceful event occurs, protect the safety of the public, prevent crime and investigate any crimes that occur.
- Pride Festivals or Pride Parades are events celebrating diversity and the rights and culture of LGBT persons. These events have different levels of acceptance across Europe that ranges from full engagement and celebration to obstruction and hostility by authorities and extremist movements.
- Historically, these parades came about as a response to the occurrence of hate crimes against members of the LGBT community, the decriminalization of homosexuality or key events for the LGBT community. Initially, police authorities across the world have opposed these events. Police officers should acknowledge that the support of these events have improved relations and reinforced the collaboration and trust between LGBT persons and the police.
- LGBT Police Associations across Europe are becoming more visible and participating in these marches to promote visibility of LGBT police officers. For many, the participation of gay police officers in these events is crucial for building strong relations with LGBT individuals.
- In some countries, LGBT police officers are allowed to march in these parades wearing their uniforms. In other countries, police officers continue to be barred from wearing their uniforms while participating in these events.

