

## Research paper

# Legal outcomes: reflections on the implications of LGBT legal reforms in the UK for health and social care providers

Dr Bob Cant MA PhD Cert MVNPE

Senior Research Fellow, Institute of Primary Care and Public Health, Faculty of Health and Social Care, London South Bank University, London, UK

### What is known on this subject

- Many laws which discriminated against lesbian, gay, bisexual and transgendered (LGBT) people in the UK have been repealed since 1997.
- Laws that seek to provide a measure of equality for LGBT people, particularly in relation to employment, access to goods and services, and personal relationships, have been introduced.
- Within both popular culture and sections of institutionalised religion, there are expressions of hostility to LGBT people.

### What this paper adds

- The paper explores a number of the narratives used to understand the everyday lives of LGBT people, including sexual activity, community building and social networks.
- The paper uses the framework of 'homoscepticism' to argue that many health and social care organisations do not engage with the social networks in the lives of LGBT people.
- The paper calls for monitoring of LGBT people's relationships with health and social care organisations as a starting point for engaging with their everyday lives and their needs.

## ABSTRACT

Many barriers to legal equality for lesbian, gay, bisexual and transgendered people in the UK have been removed in the years since 1997. This article argues that a major shift in the aspirations of the LGBT populations has taken place so that 'Pride' is seen as a priority, rather than 'privacy.' Cultural expressions of Pride occur in all parts of the world, and indicate ambitious sets of personal and political aspirations among LGBT people. Although most mainstream political parties and civil society are accepting of the legal changes, there is evidence of resistance to them both in popular culture and in the authoritarian sections of some religious institutions. The changes in the law as well as this shift in aspirations pose particular challenges for health and social care providers in terms of the way that they view these populations and engage with them. This article explores three of the narratives that are most

widely used to relate to the LGBT populations, namely sexual activity, community building and social networks. Research has identified that 'homoscepticism', or lack of awareness of such networks, is widespread in health and social care organisations. This article argues that the most inclusive of these narratives is that which relates to social networks, and it proposes that health and social care organisations should seek, through monitoring and other measures, to engage with the social networks of LGBT people. This will assist organisations in coming to know these populations better and thus being able to meet their needs more effectively.

**Keywords:** bisexual population, gay population, homoscepticism, lesbian population, Pride, transgender population

## Introduction

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Far-reaching legal reforms have engaged with the lives of the lesbian, gay, bisexual and transgendered (LGBT) populations in the UK since 1997. While the introduction of civil partnerships (in 2004) has been the object of considerable media attention, other reforms have also had the potential to improve the quality of the everyday lives of LGBT people and those closest to them. These include the liberalisation of immigration rules for same-sex couples (in 1997), the removal of the bar on serving in the Armed Forces (in 2000), the equalisation of the homosexual male age of consent (in 2000), the equalisation of legislation affecting fostering and adoption (in 2002), the repeal of Section 28 of the 1988 Local Government Act (in 2003), the introduction of anti-discriminatory regulations in the workplace (in 2003), the removal of discriminatory laws in relation to sexual offences (in 2003), the right of transsexuals to alter the gender on their birth certificates (in 2004), the removal of the right to discriminate in the provision of goods and services (in 2007), and the removal of the right to discriminate against and harass transgendered people in relation to the provision of goods and services (in 2008). These reforms have transformed the terrain on which LGBT people conduct their daily lives, and they have also had a major impact upon the relationships between LGBT people and their fellow citizens. As one longstanding activist put it to me, 'We fought for years for homosexual equality and I never thought for one moment that I would live to see it. ... The biggest shock is that after thirty-five years of campaigning we've won' (Woolaston, 2008).

In this paper, however, I argue that the scale of these legal achievements should be understood as an opportunity for further social and cultural engagement, rather than as the end of the story. I begin by discussing the concept of 'privacy' as interpreted by many legal reformers, and I argue that the time has come for that concept to lose its priority as the key defining concept in these debates. The worldwide organisations of events to celebrate LGBT Pride suggest that pride may be a more useful indicator of the contemporary priorities of LGBT populations than privacy. Pride events make space for visible celebrations by a wide range of LGBT networks. While stigmatisation and homophobic violence continue, however, to damage the everyday lives of LGBT people, much of the political leadership of the opposition to Pride events and to the moves towards equality for LGBT people now comes from within some institutional religious organisations. Given that there is still considerable contestation about the lives and the human rights of LGBT people, there is a place for debate about how providers of health and social care might engage with this

population group. I then discuss three of the main narratives that address the LGBT populations – in terms of their sexual activity, their community formations and their social networks. I shall posit the argument that social networks generate the narratives that provide most inclusive insight into the everyday lives of LGBT people. Now that barriers have been removed by the legal reforms cited earlier, health and social care providers have an opportunity to make their services more inclusive of LGBT people, and I shall recommend a strategy for action.

## Questions of privacy

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While the term 'privacy' remains a key feature in debates about LGBT people in society, the way in which the term is used and perceived has undergone major changes over the last half century. The right to privacy for those who have homosexual desires and participate in homosexual activities has been at the heart of law reform campaigns in the UK since the publication of the Wolfenden Report, which recommended decriminalisation of homosexual activity (Committee on Homosexual Offences and Prostitution, 1957). Peter Wildeblood, a campaigner who spent time in prison for having had sexual relationships with other men, expressed the need for privacy and freedom from legal intervention into the lives of homosexual people in this way: 'I am no more proud of my condition than I would be of having a glass eye or a harelip. ... It is a personal problem which only becomes a matter of public concern when the law makes it so' (Wildeblood, 1957, p. 8). The personal problem approach was to be a central feature of the law reform campaigns. Many years later, Leo Abse, one of the strongest advocates of law reform in the House of Commons, expressed regret about the ways in which gay men had behaved after the decriminalisation measures of 1967: 'Those of us putting the bill through thought by ending criminality we'd get the gays to integrate. But I was disconcerted and frightened at first because they were coming out and turning themselves into a self-created ghetto' (Bedell, 2007). The perception of homosexuality as a personal problem has now been overtaken by less defensive politics. It is abundantly clear that the individual openness, political and cultural self-organisation, and migration into urban areas where they could be sure of finding a critical mass of like-minded people are all very different phenomena from anything that had been foreseen by the advocates of privacy (Weeks, 2007).

Although support for the right to privacy was a progressive, emancipatory cause in the 1960s, 50 years later it is rather less clearly so. For example, Melanie Phillips, a UK journalist, uses the privacy argument to

justify her perception of the gay rights movement as 'distinctly totalitarian.' She has been particularly assertive in her opposition to the gay rights movement's demand for same-sex civil partnerships and marriage. She argues that 'I believe deeply in tolerance, and in the liberal separation of public and private which means that someone's sexual orientation should be their own private affair and never the cause of prejudice against that person' (Phillips, 2003). She is manifestly angered by the fact that homosexual people in the UK (as in a growing number of countries throughout the world), far from being content with their legally backed rights of privacy, are organising themselves collectively to achieve a measure of legal equality with that enjoyed by their heterosexual friends and fellow citizens. Such collective expressions of homosexual aspirations alarm her and her peers because they challenge what they perceive to be both normal and normative. Her support for privacy feels like a call for a return to the pre-reform conditions of isolation, fear and hypocrisy that were collectively known as 'the closet.'

## Pride rather than privacy

Events to celebrate LGBT Pride have been organised in major conurbations in the industrial and post-industrial world since 1970. These now occur, with varying degrees of difficulty, in every continent, and whatever their local aims are, it is evident that Pride, not privacy, is the common concern among their participants. They universally encourage people to celebrate their sexuality, to come out of the closet and to live their lives as openly and honestly as is possible in their local circumstances.

In some cases these Pride events are largely cultural events. Three million people turned out for the Pride event in Sao Paulo in Brazil in May 2007 (International Herald Tribune 2007), 150 000 went to Brighton Pride in 2008 (Brighton Argus, 2008), 20 000 attended Pride in Taipei in Taiwan (China Daily News, 2008), 5000 attended Pride in Edinburgh in 2007 (Roberts, 2007). In other places, such as the Baltic States, the numbers are much smaller and face well-organised opposition (UK Gay News, 2008), and although the Pride events there are still cultural celebrations, they also seek to act as an expression of political resistance to institutional and social bigotry. Participants in Pride events are, one can imagine, interested in expressing their sexual desires as they choose, and possibly interested in reaping the benefits of legal reforms where they live. However, Pride events are primarily celebrations of the existence of an identifiable social population and its friends.

## Barriers to equality

Although the law has acted as a barrier to equality for people whose sexual activities and identities are different from the norm, it has never been the only barrier. Despite the fact that there has never been anti-lesbian legislation in the UK, there has been considerable prejudice against them. The decriminalisation of homosexual activities in many countries has not brought an end to prejudice, and expressions of that prejudice have been given a lead by some authoritarian religious bodies. The possibility of legalising same-sex marriage has become a major battleground in relation to the changing legal status of LGBT people.

While homosexual activity between men had occasionally been the object of attention of church and criminal law in all parts of the UK before the Victorian period, the criminalisation of such activity was consolidated for nearly a century in 1885. The Criminal Law Amendment Act of 1885 criminalised homosexual activities of any sort between men. It was a law which left its mark not just in the UK but also in those countries which were at the time colonies within the British Empire. There are currently debates under way in both India and Jamaica, partly as a result of concerns about preventing the spread of HIV, about the repeal of this colonial legislation. The fact that this legislation related only to homosexual activity between men did not mean that the life experiences of lesbian women were in any sense more advantaged than those of gay men. Lesbianism was at least as taboo as male homosexuality. When the publishers of *The Well of Loneliness*, a novel about lesbians, were convicted of obscenity in 1928, the courts ordered that all copies of the book should be destroyed (Hall, 1928; Jennings, 2007). The lack of legal reference to lesbianism had not provided them with any protection in a climate which was generally intolerant of sexual relationships between people of the same sex. The dominant narrative about homosexuality for much of the twentieth century was one which stigmatised, and the impact of such a narrative cannot be erased overnight.

Legal changes do not in themselves guarantee social acceptability, and a time lag between the passing of egalitarian laws and the acceptance of the thrust of the laws into popular culture is to be expected (Weeks, 2007). A recent study, conducted in the UK by YouGov for the Stonewall lobbying group, found that two-thirds of the lesbians and gay men under the age of 19 years had been bullied at school, compared with half of those between the ages of 35 and 44 years (Stonewall, 2008a). Rivers (2000) also showed that 72% of LGB adults reported a regular history of absenteeism from school due to homophobic harassment, and 50% of

those who had been harassed had considered self-harm or suicide. The route to poorer job opportunities, low income and poverty on the part of people who do not achieve well in school is well documented (Marmot and Wilkinson, 1999; Graham, 2002). In a recent study in Spain, where there have been many legal reforms, including the introduction of same-sex marriage, 25% of male youths between the ages of 11 and 19 years said that they would feel revulsion if they saw two men expressing affection in public (De Benito, 2008). Such studies suggest that homophobia continues to be a significant element in popular culture, particularly youth culture, even after the introduction of emancipatory legislation. The longer-term impact of such homophobia has yet to be evaluated.

Several religious organisations have taken on a leadership role in the opposition to the advancement of legal equality and human rights for LGBT people, as well as their rights to free assembly. In countries where the right to organise Pride celebrations is contested, religious organisations have often protested against them in ways that seem intended to intimidate rather than to simply present an alternative point of view. Russian Orthodox, Muslim and Jewish leaders, in an interesting display of ecumenical homophobia, opposed the organisation of Gay Pride events in Moscow (Shoffman, 2006), and some of their followers are reported to have participated in attacks on the march in 2006 (Ireland, 2006). Free Presbyterians in Belfast in 2008 denounced sodomy (their shorthand term for homosexuality) as an abomination in the eyes of God (Corrigan, 2008).

During the last 10 years, the legalisation of same-sex relationships has become a particular focus for authoritarian religious leaders who wish to preserve the second-class status of LGBT people. In relation to same-sex marriages, the late Pope John Paul II said that 'the approval or legislation of evil is something far different from the toleration of evil' (Guardian, 2003). In the UK, within the last three years, prominent leaders of Anglicanism (Mapalala, 2007), Islam (Bari, 2007), Judaism (Cohen, 2005) and Roman Catholicism (BBC News, 2006) have all indicated their opposition, on religious grounds, to the legalisation of marriage between two people of the same sex. Although such religious leaders are willing to oppose the idea of people of the same sex publicly endorsing their love for each other, there is considerable reluctance on their part to condemn homophobic attacks in the way that the late Cardinal Hume did in 1999, after a murderous homophobic attack on the Admiral Duncan pub (BBC News, 1999). An increasing number of secular politicians, perhaps mindful of the fact that LGBT people have votes, express support for their human rights. However, religious leaders, who lack any democratically accountable constituency, have been so vociferous about laws benefiting LGBT people that homosexuality

and homophobia have become key battlegrounds between secular and religious elements in society. In the UK, the Employment Equality (Sexual Orientation) (Religion and Belief) (Amendment) Regulations 2007 have made religious organisations legally exempt from some elements of the anti-discriminatory employment legislation of 2003. The struggle for the human rights of LGBT people has become symbolic of struggles in the public domain to define the boundaries between the norms of a confessional, inclusive civil society and those of some authoritarian religious institutions.

## Plurality of narratives

Narrative can provide 'meaning, context and perspective' (Greenhalgh and Hurwitz, 1999, p. 48) in the lives of populations in relation to their health and social care needs. In this new context of decriminalisation, there is an opportunity for providers to reflect upon the plurality of narratives which are employed in relation to LGBT people and their human rights. I shall discuss here three of the narratives that are most widely used to interpret the lives of LGBT people. First, LGBT people have been perceived in popular culture in relation to their particular sexual activity, and some organisations have related to LGBT people on these terms. Secondly, since the 1980s it has become increasingly common for these populations to present themselves as a community, or communities, with shared values and needs. Thirdly, these populations increasingly present themselves as a collection of networks in a variety of contexts, such as Pride celebrations, and although there is evidence of conflict and transience as well as of overlapping aspirations within such networks, they can be read as important indicators of the shifting social realities and affiliations of LGBT populations.

## Narratives relating to sexual activity

The growing awareness of the HIV epidemic in the 1980s focused public perceptions of homosexuality on the sexual activities themselves. However, health promotion research indicates that methods of communicating messages about HIV and safer sex are more likely to be effective when they relate to other aspects of gay men's identities, such as their ethnicity (Cant, 2004), their migrant status (Keogh *et al*, 2004) or their class (Flowers *et al*, 1998). Even in the context of attempts to raise awareness about a life-threatening epidemic, homosexual activity could be best understood in relation to other aspects of the identities of the men concerned. There have also been important campaigns in relation to gay men seeking refuge

status to prevent them from being returned to countries where their lives were likely to be at risk from homophobic attacks, imprisonment, torture and execution. In this context, a definition of homosexuality that pertains, exclusively or primarily, to sexual activity was used as grounds for rejecting such claims to asylum on the basis that the claimant could protect himself from persecution simply by being sexually inactive (McGhee, 2001). More recently, there have been a number of cases where people have won their claim to asylum on the basis that particular regimes were likely to persecute not only particular individuals, but also social groups that included people who were thought to be homosexually active (McGhee, 2001). Narratives that focus upon homosexual activity alone have, in these contexts, limited value as indicators of people's homosexual identity. They can only be understood as partial narratives of the lives of this population group.

### Narratives relating to community building

Since the 1980s, narratives relating to LGBT communities have become increasingly widespread. There are those who hold to an essentialist narrative about non-heterosexual populations. As Norton has argued, 'Queer culture, like an ethnic culture, can be independent of the dominant culture, self-determined rather than socially controlled' (Norton, 1999, paragraph 31). On the other hand, both Hall (1987) and Scott (1993) have argued that identity, whether in relation to 'queer culture' or 'ethnic culture', is not something that is outwith history, but is learned and developed in particular historical circumstances. A number of community activists have, without necessarily espousing essentialism, understood that there are particular benefits to be gained from adopting a position which Spivak (1987) has called 'strategic essentialism.' The appearance of fixity in such debates with regard to the LGBT populations is reminiscent of the theory of imagined communities, as postulated by Anderson (1983) – not only is a community imagined by people who perceive themselves to be part of that group, but also it becomes part of more public debates. A narrative about such an imagined LGBT community has been articulated as a way of establishing a dialogue with fund-holding mainstream organisations that have previously appeared indifferent to the concerns and aspirations of LGBT populations. As a result of changing aspirations among the LGBT populations, and also in response to the HIV epidemic, a number of organisations, in metropolitan centres such as London and Manchester (Cooper and Monro, 2003; Barham *et al*, 2006) and smaller cities such as Leicester (Hancock, 2005) and Dumfries (LGBT Youth Scotland, 2008), have obtained funding

to provide services targeted at their local LGBT populations. These are frequently in relation to some identifiable need, such as healthcare or housing or community development. However, the communities which such organisations seek to develop or support may often be fragmented. The very differences of class or ethnicity or gender that have already been mentioned often make it difficult for LGBT populations to cohere effectively. As Anderson (1983, p. 15) has argued, in relation to community-building processes, the abolition of internal diversities may generate a sense of 'deep horizontal partnership', but it can make it very difficult for marginalised groups to make their voices heard. Furthermore, Hicks and Watson have expressed their concern that the 'idea that lesbians and gay men have a fixed identity can lead to the belief that they have "special needs which differ from those of the population as a whole"' (Hicks and Watson, 2003, paragraph 5.2). The needs which activists and academics have identified are evidence based, but they have decided that, by framing them within a narrative of community building, they have a better chance of obtaining funding for LGBT people with these needs. I would argue that the 'strategically essentialist' narrative which has been widely used by LGBT community activists in their communications and negotiations with funding bodies is a narrative that provides insight into needs, but which does not engage with the entirety of the everyday lives of LGBT populations. For example, the narrative of identifiable needs in relation to HIV or homophobic bullying offers useful insights into the needs of this population group. However, although people may suffer from HIV and/or bullying, the failure to look beyond those needs can lead to the neglect of other aspects of their lives. Just as it can be argued that the narrative relating to homosexual activity is a partial narrative for understanding the LGBT populations, the same can be argued for the narrative of community building.

### Narratives relating to social networks

Narratives relating to social networks have the potential to be more inclusive than those relating to either sexual activity or community building. Networks have been defined as comprising the web of identified social relationships which surround an individual (Seeman and Berkman, 1988). Participation in networks is an important way for individuals to influence their environment, and study of networks can indicate how particular environments influence the everyday life of individuals. They are recognised as a setting where social support can be experienced and exchanged. The Acheson Report (Acheson, 1998) advocated the promotion of social networks as a means of reducing inequalities in health. Networks are not the same as

organisations, although networks may be contingent upon the existence of particular organisations. Scott (2000, p. 3) has explained that networks should be understood as 'the contacts, ties and connections, the group attachments and meetings which relate one agent to another and so cannot be reduced to the properties of the individuals themselves.'

Current government estimates suggest that there may be as many as three million non-heterosexual adults in the UK (Department of Trade and Industry (DTI) Women and Equality Unit, 2003, p. 68). Although much media attention has been focused on the 50 000 people who entered civil partnerships in 2006 and 2007 (UK Statistics Authority, 2008), the majority of the population group can be found in less easily identifiable social settings. Everyone is likely to belong to some kind of social network, and my research has identified LGBT social networks emerging in contexts such as bars, bookshops, community centres, discos, telephone switchboards, swimming clubs, football teams, lesbian mothers groups, public sex venues, theatre groups, local religious organisations, safer sex campaigns, Internet chat rooms, bridge clubs, etc. (Cant, 1999; White and Cant, 2003; Cant, 2004, 2008). The mutual support that is exchanged in these networks might be concerned, for example, with talking over personal worries, with casual sex, with shopping and cooking, with hanging out together, with the strain of political campaigning, with arranging care for dependents, with borrowing money, or with sharing experiences about work. The areas of concern in such networks reflect what Lefebvre (2000) identified as the politics of everyday life. LGBT people do not only belong to LGBT-focused networks, but one of the attractions of such networks is, in the words of a young woman in South London, that 'there is no need to explain' (Cant, 2003). The heteronormativity of many social institutions is absent from LGBT-focused networks, and people do not experience the fear of having to justify or explain their sexuality to an indifferent or hostile audience. Coming out about one's sexuality is a key narrative among LGBT people (Plummer, 1995), and networks provide the opportunity to review the coming out process with like-minded people. Because networks are not membership organisations, they exist only as long as they meet some of the needs of their participants. The narratives that emerge from and surround these networks do not relate primarily to legal factors or to medical authorities or to institutional relationships. Their value lies in the fact that, whatever the context in which they occur, they have the potential to engage with the everyday lives of most LGBT people. They may not be comprehensive narratives but, by their capacity to engage with any aspect of the lives of LGBT people, they are highly inclusive narratives.

## Opportunities for health and social care organisations

Health and social care organisations have a responsibility to communicate with and engage with the whole of the population in their particular constituency. Now that most of the legal barriers affecting the 6% of the population that can be defined as LGBT have been removed, there is an opportunity for health and social care organisations to learn more about the lives of LGBT people. Monitoring the extent to which their services are used and staffed by LGBT individuals could provide useful information. It would provide not only important quantitative information, but also opportunities to reflect upon the extent to which LGBT people feel able to trust particular organisations. It would provide opportunities to challenge the assumptions that the only health problems that are experienced by LGBT people are sexual health problems. Schilder *et al.* (2001) have argued that people seeking healthcare would prefer to be treated holistically rather than as a collection of symptoms. The development of a care package for an LGBT person with a chronic or terminal illness would be more likely to be person-centred if the patient/client was able to share details not only of their sexuality, but also about the social networks that support them. Barry *et al.* (2000, p. 1250) have argued that 'when patients and their needs are more fully present in the consultation, better healthcare can be conducted.' In this context, LGBT people would want to feel that health and social care organisations could be trusted to relate sensitively to their narratives about coming out and other dimensions of their everyday lives.

Monitoring the levels and quality of the experiences of LGBT people would be a step on the way to tailoring a service that could be trusted by LGBT people. I have argued elsewhere (Cant, 1999, p. 47) that some primary care providers manifest signs of *homoscepticism*, a term I defined as 'a lack of awareness of gay social networks and a lack of appreciation of the values, connections and desires that bind these networks together.' Monitoring can provide an opportunity to question and problematise the lack of awareness, rather than problematising the LGBT population. It can also provide opportunities to engage with the complex multiple identities of LGBT people, in terms of their ethnicity, their gender, their class and their local neighbourhood (Brown, 2001; Taylor, 2007; Fish, 2008). If the monitoring organisation is to gather meaningful data, it also needs to engage in development work to enable it to engage with the LGBT populations. It could follow the example of the private sector and the trade union movement and sponsor local Pride events. It could conduct outreach activities in social meeting places

that are frequented primarily by LGBT people. It could consider holding open events targeted at the LGBT populations. It could sponsor oral history projects. It could make it clear that its small grants schemes are available to support projects initiated by LGBT networks. Finally, it could dedicate staff time to engaging in support work with these populations. Such steps would enable it, over time, to show that it had learned to appreciate the value of LGBT social networks. Trust building will be a slow and potentially strife-ridden process, but if commitment is shown over a period of years, experience has shown (Stonewall, 2008b) that more people will feel able to come out and bring the narratives of their networks and their everyday lives more fully into the public domain. Monitoring the experiences of LGBT people with health and social care providers, as well as conducting more research into their networks, will greatly enhance the knowledge base of those providers. The removal of legal barriers offers an important opportunity for health and social care providers to engage more fully with the narratives of the whole of their target population than they have ever done before.

## Conclusions

The abolition of most of the discriminatory legislation that impacted on the lives of LGBT people in the UK is a historic turning point. It has, however, resulted in re-drawing of some of the lines between these populations and their supporters, on the one hand, and elements of homophobic popular culture and some authoritarian religious bodies, on the other hand. Despite such opposition, it represents an opportunity for health and social care organisations to engage more directly with these populations than some of these organisations have previously done. Such proactive activities will be enhanced by monitoring LGBT service users and by small-scale support of LGBT networks as a confidence-building exercise. There can be no assumptions as yet about the finalisation of LGBT equality. Although many discriminatory practices have been decriminalised, that represents only one step in a longer term process of emancipation and civic engagement.

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#### CONFLICTS OF INTEREST

None.

#### ADDRESS FOR CORRESPONDENCE

Dr Bob Cant, Senior Research Fellow, Institute of Primary Care and Public Health, Faculty of Health and Social Care, London South Bank University, 103 Borough Road, London SE1 0AA, UK. Tel: + 44 (0)20 7815 8138; email: [cantr@lsbu.ac.uk](mailto:cantr@lsbu.ac.uk)

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