Law In The Darkroom: Legal Interpretation and Negotiation of London's Queer Sex-On-Premises Sites

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Abstract:

Are gay saunas, cruising clubs, and queer fetish parties legal in London? In this thesis I explore the unclear legal status of queer sex-on-premises sites (QSOPS) and how local authorities can exploit the ambiguity of the Sexual Entertainment Venue (SEV) licensing regime to marginalise these spaces. Based on borough data and stakeholder interviews, the research reveals widespread confusion about whether SEV regulations apply to QSOPS, with the answer hinging on whether public sex is a "performance" per its legal definition. I also suggest that local authorities' attempts to render QSOPS as licensable conduct reflects moral and political agendas aimed at controlling non-normative sexual practices. Finally, I discuss innovative extra-legal strategies that QSOPS sites have created to resist these regulatory challenges and ensure the wellbeing of their communities. This research, although not dispositive regarding local authorities' motivations, reveals a tense and oppressive legal positionality that manifests societal taboos towards transgressive sexuality.

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Chapter 1: Introduction

In July of 2022, hundreds of kinksters clad in leather, latex, and lingerie protested outside the Tower Hamlets City Council. At the lead were staff and patrons of Klub Verboten, one of England's largest queer fetish party organisers. Klub Verboten's events feature techno music, a dancefloor, and a "playroom" where partygoers can openly partake in kinky sex. Holding posters reading "Save Kink Spaces" and "In Rubber We Trust," they were protesting the borough council's attempt to shutter Klub Verboten by invoking the venue's licensing conditions prohibiting nudity. This protest, outside of the hearing for Klub Verboten's venue licensing, was the result of months of organising and mobilisation against the borough's action. Inside, barristers representing Klub Verboten's venue and the borough of Tower Hamlets sparred over definitions, clauses, and interpretations of the licensing regime. The energy of the crowd was palpable —they set up a television to livestream the hearing happening a few dozen metres away, and the roar of their cheering could be heard from inside when Klub Verboten's advocate made his closing statement.

I discovered events like Klub Verboten's when I studied abroad in England as an undergraduate student. I had never seen anything like a queer sex rave before, and I could hardly comprehend it. Not yet comfortable in my own skin as a gay transgender man, the idea of one disgusted, enthralled, and terrified me. Yet, I found myself making the pilgrimage from Oxford to Hackney Wick on a Sunday in April. There, I entered a site of radiant queer joy, freedom, and worldmaking. More than just a party or an orgy room, it was a sanctuary where queer identities and desires were celebrated, reshaping my understanding of community and self-acceptance. I became a regular at this bi-weekly event for the remainder of my study abroad. To me, this space was transformative. It changed my sense of self, my politics, and my ability to express myself joyfully and authentically. It also gifted me a community of beautiful and resilient queer people to share it with. Amongst their decor, this event had a larger-than-life poster emblazoned with the phrase "WE BELIEVE IN QUEER UTOPIA." Because of them, I believed in it too.

When I was back in America watching Klub Verboten's legal battle from afar, it prickled in my brain relentlessly. It was exciting to see a sex party take on the government, especially one chock full of sadomasochistic queer people. I was also confused about why licensing regulations had become the battleground upon which Klub Verboten's future was fought. The dispute raised questions about the relationship between the state, the law, and sexual morality as it concerned so-called deviant sexual practices. I was eager to know why Tower Hamlets had taken this step, if Klub Verboten (and similar events) were actually illegal, and if so, what that revealed about the boundaries of queerness and sexual transgression in London.

It is time to talk about sex in public. London houses numerous sites of public and semi-public sexual activity where consenting adults of LGBTQ+ experience embark on sexual trysts. From establishments designed for sex in steam rooms and jacuzzis, to gay bars with darkrooms for spontaneous and anonymous hookups, these queer sex-on-premises sites have been hiding in plain sight across the London boroughs for decades. What has long been a taboo and secretive sexual subculture is now more visible than ever before. Historically, gay people seeking anonymous sexual encounters in public spaces, known as "cruising", did so under threat of criminal punishment, dodging police officers surveilling public restrooms or patrolling gay establishments for deviant sexual activity. In an era where homosexuality was criminalised, public cruising spots provided opportunities for sexual expression in ephemeral sanctuaries of anonymity that existed wholly outside the law.

While such spaces still exist, a new generation has stepped out of the shadows. Queer sex-on-premises sites are LGBTQ+ oriented establishments and events that offer patrons space for sex in public. Some of these sites have designated areas for sexual activity within a larger venue, such as a bar with a darkroom, play room, or sex dungeon in the back. Others are fully dedicated to facilitating sexual encounters, like gay saunas and sex clubs. No longer a secret, they sell tickets and memberships online, advertise with pictures of nude people in suggestive poses on their windows and websites, run social media accounts to showcase their events, collaborate with the Metropolitan police, and occasionally mobilise for political interests. However, this newfound visibility means these sites can now be subjected

to layers of municipal regulation and increased scrutiny from local authorities, as exemplified by the story of Klub Verboten.

This research explores a legal phenomenon queer sex-on-premises sites face where they are rendered invisible by law yet have regulations imposed on them by local authorities. Sex, when it's between consenting adults and unpaid, is neither licensed nor criminalised. There is no statute expressing a licence requirement for establishments which provide space on their premises for sexual encounters. Yet, these sites face pressure to obtain some sort of licence. Local authorities ask, even insist, that these sites get a Sexual Entertainment Venue (SEV) licence, which encompasses strip clubs, lap dance clubs, and other entertainment for the purpose of sexual arousal. Although sexual entertainment venues and queer sex-on-premises sites are both nightlife establishments of a sexual nature, it is unclear whether semi-public sex constitutes a "performance" as defined by the SEV licensing regulations. But obtaining a SEV licence does not guarantee protection. In fact, a site's SEV licence can easily be twisted into a weapon to control or shut down a queer sex-on-premises site because of conditions prohibiting nudity and physical contact.

This places queer sex-on-premises sites in a double bind: They may be penalised by local authorities for not having a licence, or they may be penalised for failing to meet the conditions of a licence that was never meant to include them. The whole time, they have zero certainty if they are making safe and legally-sound decisions. The absence of a specific licensing category for queer sex-on-premises sites and the ambiguity of the existing legislation triggers perpetual uncertainty and fear from the sites as they attempt to navigate it, and the grey area has created an opening for local authorities to regulate them more strictly for moralistic or political reasons. This means queer sex-on-premises sites are caught between council pressure and the lack of appropriate regulatory frameworks.

In this thesis I set out to answer three key questions: How can we use existing literature to understand the situation faced by Klub Verboten in 2022 and the ongoing circumstances affecting queer sex-on-premises sites? What does the law actually say about queer sex-on-premises sites, and how is it reflected in the public record? Finally, how do the owners and operators of queer sex-on-premises sites

respond to this legal predicament? During my research, I found myself chasing phantoms. I began looking at the literature and discerned gaps which make it difficult to see these sites reflected in existing scholarship. I realised that better answers would have to come from empirical review. When I searched for relevant legal statutes and borough policies, nothing seemed quite right. Understanding the laws affecting queer sex-on-premises establishments is like piecing together a bureaucratic and legislative puzzle. Or rather, it felt like gazing at a planet through a telescope and trying to identify its moons as I looked for other regulations in queer sex-on-premises sites' orbit. The discovery became the *lack* of discovery; there is hardly any legal recognition that such sites exist, and they are mostly absent from the public record. I then performed eight exploratory interviews with relevant stakeholders who all expressed uncertainty and doubt about the positionality of queer sex-on-premises sites under the law. The confusion I had attributed to my singular ignorance bloomed into a portrait of reality. That is to say: I could confidently determine that I was feeling confused because the state of things was, in actuality, very confusing. In this thesis, I attempt to render this confusion legible, providing answers where I can and amplifying where I cannot.

Method

To answer these research questions, I utilised a mixed-methods approach. I began with a literature review of existing scholarship on sexual morality and the law, sexual geography, and queer and feminist thought. Moving to empirical work on the relationship between borough licensing regulations and queer sex-on-premises sites, the data incorporates collection and analysis of online policies, analysis of Hansard debates, Freedom Of Information Act (FOIA) requests, and interviews with owners and operators of queer sex-on-premises sites.

A. Analysis of Hansard Debates

To understand the legislative intent behind the sexual entertainment venue licensing category, I was able to locate seven parliamentary debates where there was discussion of creating the category under the sex establishment licensing umbrella, and I discuss these in Chapter 3. I read each debate end-to-end

and recorded quotes where MPs expressed opinions on the category and tracked when motions passed and when the bill was sent between chambers.

B. Policy related to Sex Establishments and Sexual Entertainment Venues

This stage of data collection aimed to gather and analyse all of the statutory and borough guidance on sex establishments licensing. I started with the relevant legislation from Parliament concerning licensing of nightlife, the Licensing Act 2003, and licensing of sex establishments, Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 (referred to hereafter as Schedule 3). It was quickly apparent that the Licensing Act 2003 held little to no relevance to the question of sexual conduct. I read through Schedule 3 and detected multiple instances of ambiguous language and terms left up for interpretation. I recorded these and noted the definitions for the subtypes of sex establishments.

I did not have the capacity in a one-year thesis to analyse all English and Welsh boroughs, so I focused on the 12 inner London boroughs, which I believe are representative of queer nightlife in the city of London. I looked on borough websites for their published guidance on Sex Establishment licence applications, which were usually found on the "licensing" page of the website. Kensington and Chelsea was the only borough that did not provide this information online, and I used the contact form on their website to ask for their guidance. Some boroughs had a separate document specifically for sexual entertainment venues licensing, a subtype of sex establishments, which I also read. When reading the guidance, I looked for what subtypes of sex establishments they recognised on their application, if they set a maximum number for sex establishments in the borough, how they geographically defined a "locality" and determined the "character" of a locality. I also noted if the guidance expressed a stance on the presence of sex establishments in the borough, positive or negative. This information became Table 2 (appearing in Chapter 4).

C. Freedom of Information Act Requests

Given how little information was available on borough websites and public records, I submitted Freedom of Information Act (FOIA) requests for the relevant information. I began my search for the licences of queer sex-on-premises sites by looking up sites I knew on their borough's online licence

registry. This had limited usefulness, since many of them do not have a sex establishment licence and/or are play parties without a permanent venue. The few I found ended up being useful later when planning interviews. I then tried to look at licence applications for all sex establishments in a given borough but found the registries challenging because of confusing user interfaces, inconsistent labelling of documents, broken links, and seemingly inaccurate information. For example, a search of all sex establishment licence applications in the Westminster registry with no start or end date turned up 25 new and renewal licence applications, but Westminster reported receiving 129 new and renewal licence applications in the last five years in response to a FOIA request. Additionally, many registries did not include rejected applications, and I thought seeing the rejections was important to understanding how boroughs were dealing with applications from sex establishments. To get current information on sex establishments in each borough, I submitted a FOIA request to each borough council using the website 'What Do They Know?' posing these questions:

> How many sex establishments are licensed in the borough as of 2023?
>
> Can you provide a list of these establishments with their addresses and when they started operating?
>
> How many sex establishment licence applications did you receive in the last five years?
>
> How many were received each year?
>
> Of these, how many were rejected and how many were approved?
>
> Could you please send copies of all sex establishment applications in the last five years?

All boroughs responded to the requests within the legally-mandated period of 20 days except for Lambeth, Hackney, and Westminster who took over two months. I compiled the responses into a spreadsheet, and sent follow up requests to Westminster, Lambeth, and Tower Hamlets regarding specific locations in their borough. I also had to make additional requests to Westminster, Tower Hamlets, and Hackney to clarify their answer to "How many sex establishment licence applications did you receive in the last five years?" because they did not separate new applications from renewal applications in the total number. Westminster and Hackney sent their response via password-protected link, and Westminster's

expired after seven days and Hackney's expired after an unspecified amount of time. I sent both boroughs a message asking them to reinstate access after expiry. I recorded all boroughs' responses in a spreadsheet which became tables 2-5 (appearing in Chapter 4). When they included copies of licences and/or licence applications in their response, I tracked how many of them were queer sex-on-premises sites.

D. Interviews with Owners and Operators

I conducted eight exploratory interviews to better understand how the licensing regulations were being interpreted and applied by site owners/operators, barristers, Metropolitan police, and local authorities. I believe my status as an insider played a crucial role in accessing participants, especially site owners/operators. As an insider to the community being studied, I connected with my first interviewees through friends and then I asked interviewees to refer me to other potential interviewees (i.e. snowball sampling) which was necessary because this group would otherwise have been difficult to reach. Since I made my first contacts through mutual friends, I received enthusiastic responses because they could see that I was a member of the community. Additionally, when making initial contact with site owners/operators I explained that I am a queer/transgender man and that I attend and appreciate queer sex-on-premises sites in my own time, which I feel made them more willing to engage with me. Before each interview I explained my experience with queer sex-on-premises sites to establish trust and rapport so that they felt comfortable giving open and candid responses. My knowledge of these communities enhanced my ability to ask meaningful questions and interpret answers. After positive interview experiences with site owners/operators, they connected me with police officers, barristers, and councillors with whom they had working relationships. Interviews were semi-structured and ranged from 10 to 50 minutes. All but one were conducted in-person.

E. Observation

I visited queer sex-on-premises sites and observed how findings from data analysis and interviews were materialising in practice. I engaged casually with partygoers, promoters, and staff to inform my observations and none of these casual conversations were formally recorded or used in this thesis. I also attended the launch party for the S+ Association, a trade association for sex positive nightlife events that

includes many queer sex-on-premises sites. This event was open to the public, and I use observations from that night without identifying other attendees.

F. Ethics

A key ethical consideration was whether I would make queer sex-on-premises sites vulnerable to increased scrutiny by highlighting them in this research. To avoid bringing about adverse impacts on the community, I adhered to rigorous ethical standards to protect the privacy and well-being of interview participants. Participation was entirely voluntary and all individuals were provided with detailed information about the study's purpose, potential risks, and benefits, before participation to ensure informed consent. After an interview was transcribed, the recording was deleted and participants were de-identified in the transcript by assigning pseudonyms. I do not share any detailed personal information to prevent identification of participants. Ethical approval was obtained from the Central University Research Ethics Committee at the University of Oxford. The study was conducted in accordance with the ethical guidelines set forth by the Socio-Legal Studies Association.

What is a Queer Sex-on-premises Site?

This thesis explores "queer sex-on-premises sites," a term which I have created to capture an understudied phenomenon in London's sexual culture. To define what a queer sex-on-premises site is, I start by defining its components:

I use the term "public sex" to describe sexual acts between two or more people in location visible and/or accessible to non-participating others. I define "sex" expansively, including penetrative anal and vaginal intercourse, or stimulation of genitalia with mouths, hands, or toys. I define "public" as in a space that can be accessed by the public; space which is not private space, domestic space or commercial space. Commercial space which has been appropriated for sex, such as the dressing room of a clothing store or the locker room of a gym, counts as public.[1]

[1] David Bell, 'Representations of Public Sex in Crime, Media, and Popular Culture', *Oxford Research Encyclopedia of Criminology and Criminal Justice* (Oxford University Press). 5.

The subjects of this paper are sites which straddle both sides of the public/private binary. They are not fully public (such as the woods, a public restroom, etc), but neither are they private (in a home, an invitation-only event, etc.) They are liminal locations. They are public in the sense that anyone who has entered the space can see, hear, and participate in sex. But they are also facilitated spaces established and monitored by commercial entities, often with a barrier to entry like a cover charge or ticket. An oblivious member of the general public cannot stumble upon the sexual activity as they go about their daily routine, but the sex is unconcealed to anyone who makes the effort to enter these spaces. I use the term "semi-public" to capture this in-betweenness.

I use the term "queer" as an umbrella term for marginalised sexual orientations and gender identities, and the communities of people who identify with them. This includes (but is not limited to) gay men and lesbians, bisexual and pansexual people, transgender binary and non-binary people, and gender non-conforming people. Queer is a contested term. Historically it has been used to describe an oddity or abnormality, then a slur against people perceived as homosexual, and then a substitute for the fluctuating LGBTQIA+ acronym.[2] Using "queer" instead of the acronym is partially a matter of convenience. However, I embrace another usage of queer as a flexible descriptor of positionality. David Halperin offers us such a definition when he writes: "Queer is by definition whatever is at odds with the normal, the legitimate, the dominant."[3] In this way, queer encompasses a nebula of people and identities, and the borders are intentionally fuzzy. This also makes it particularly appropriate for discussing a subculture which embraces transgression through their identities and sexual worldbuilding.

Having covered its components, what is a queer sex-on-premises site? I define it as such: A queer sex-on-premises site is a business, social setting, or organised event aimed at a queer audience and/or self-declaring as queer-inclusive which provides a designated space for semi-public sexual activity on its

[2] C.B. Daring and others, 'Queer Meet Anarchism, Anarchism Meet Queer', *Queering Anarchism* <https://theanarchistlibrary.org/library/c-b-daring-j-rogue-deric-shannon-and-abbey-volcano-queering-anarchism> accessed 28 December 2023.
[3]David M Halperin, *Saint Foucault: Towards a Gay Hagiography* (Oxford University Press 1995). 62.

grounds. I have found through my personal investigation and fieldwork that queer sex-on-premises sites can generally be categorised into one of three types:

The first of these is gay saunas, including saunas, bathhouses, and public baths where gay men can cruise for sex. Gay saunas may have some combination of typical sauna and spa facilities like steam rooms and jacuzzis alongside specialty rooms with sex slings, private cubicles, darkrooms, glory holes, and other erotic features. It is unusual to remain fully or even partially clothed, and patrons are provided a towel or go fully nude. Often there will be a lounge or a bar for patrons to socialise. Entry is purchased at the front of the establishment, from which patrons progress to a locker room to undress and then into the sauna. These are typically "men's clubs" with varying tolerances of transgender and gender non-conforming patrons.

The second category is clubs and bars with designated cruising areas for gay men. For example, cruising clubs may consist of a main room with a bar and dancefloor similar to other non-sex establishments, and a separate darkroom or playroom for sexual activity connected to the main room through a small door, hallway, or staircase, or behind curtains. In some cases, the main room might be kept "vanilla" and all sexual activity contained to the darkroom, while in others sexual activity is permitted anywhere in the venue. Darkrooms at cruising clubs are differently embellished depending on the establishment. Some are plain, unfurnished rooms with dim lighting for shrouded and anonymous contact. Others may have sex slings, padded surfaces, chairs, or spanking benches to be freely used.

The third category is episodic events that feature sexual "play" as a main attraction and transform an otherwise vanilla space, known as play parties. These parties might be weekly, monthly or yearly and operate on a regular schedule. They take place in venues that may not normally promote sex on their premises or rotate between a few venues. Play parties are so varied in their design that it is difficult to generalise them as a category, but, as their name suggests, they are part-party and part-sexual play space. Tickets for these events can be purchased online through mainstream ticket-selling platforms or on the event's website. Unlike the other two types, many play parties do some vetting of ticket holders at the door to enforce a safe, positive, and inclusive atmosphere, which I discuss in Chapter 5. These play

parties often encourage the attendance of non-men and non-cisgender people through targeted advertising to those communities or the provision of a separate women and trans playroom. Some parties are aimed at subgroups like women/femme people, transgender people, or people of colour. I use the terms 'play party,' 'club night,' and 'kink/fetish night' interchangeably for this type in accordance with how the event self-describes.

Mapping the Thesis

I begin in Chapter 1 by defining the term "queer sex-on-premises site" and describing my research method. In Chapter 2 I draw upon queer and feminist theory and legal history to explore social and legal attitudes of "good" and "bad" sex as frameworks for understanding how queer sex-on-premises sites are regulated. In Chapter 3 I examine the question of how queer sex-on-premises sites fit into the existing licensing regime, starting with an overview of the Sexual Entertainment Venue licensing statutes, and then showing the lack of consensus on their relevance to queer sex-on-premises sites expressed by interviewees. In Chapter 4 I perform an empirical review of how the Sexual Establishment licensing scheme is deployed across London, revealing a disconnect between boroughs' written policies and their application. Next, I illustrate the failure of the public record to provide clarity by detailing the absence of queer sex-on-premises sites from borough meeting records. Then, building from the interviews, I propose two explanations for the conditions faced by queer sex-on-premises sites: 1) That the lack of clarity and inconsistent licensing standards for queer sex-on-premises sites comes local authorities' unwillingness to engage with topics and people they find politically unpalatable, 2) The targeting of queer sex-on-premises sites, such as what happened with Klub Verboten, stems from moral and political agendas to eliminate deviant and transgressive sexual communities in their neighbourhoods, or at least minimise their visibility. In Chapter 5 I describe three innovative extra-legal solutions that queer sex-on-premises sites have created to avoid or overcome the legal uncertainty: venue-hopping, self-policing, and police partnerships. I conclude by summarising the findings, revisiting the scholarship, and proposing a way forward.

As businesses and commercial projects, queer sex-on-premises sites have allowed themselves to be regulated to obtain legal legitimacy. This legitimacy comes with several advantages such as ownership of a physical premises, ability to hire staff, opportunity to purchase insurance, and opening bank accounts for the lawful exchange of money from customer to establishment. It also (mostly) eliminates the threat of police raids and ratifies the safety of patrons and staff. Relieved of these legal dangers, they can grow and become more visible within the queer community. Yet, it necessitates inviting the state in to police their grounds and activity, asking the state for permission to exist, and adhering to the state's conditions for existence. Neither is comfortable getting in bed with the other. For the state, this means tolerating deviant sexuality and potentially escalating the perceived moral degradation of their neighbourhoods. For the queer sex-on-premises sites, it means coming to terms with the state is leaving its fingerprints on the transgressive ethos of queer sexual liberation, and, at worst, its hands at their throats. London's queer sex-on-premises sites are newly invigorated, but now the government is in the darkroom.

In this thesis, I argue that there is significant confusion over whether queer sex-on-premises sites need to be licensed in the first place. The incoherent sex establishment licensing category combined with the unclear applicability of that category to queer sex-on-premises sites has created uncertain terrain, and local authorities are exploiting this ambiguity to exert control over and marginalise queer sex-on-premises sites. Furthermore, I find that the communities themselves would be in favour of better regulations and increased cooperation with local authorities and the police, and in the meantime have developed innovative extra-legal solutions to work around the licensing ambiguity.

Chapter 2: Social and Legal Attitudes Towards "Good" Sex

Introduction

This chapter considers existing scholarship to situate queer sex-on-premises sites within theories on sexuality and the law, and contextualise queer sex-on-premises sites in queer histories of cruising and public sex. In doing so, I seek to answer the first research question, 'How can we use existing literature to understand the situation faced by Klub Verboten in 2022 and the ongoing circumstances affecting queer sex-on-premises sites?' First, I will explore social and legal constructions of "good" versus "bad" sexual expression and how the law has been instrumentalised to uphold and enforce these constructs. I begin with Gayle Rubin's theory of the *Charmed Circle*, which illustrates the hierarchical valuation of sexual practices of those deemed socially acceptable and those marginalised as deviant. This framework will help to understand how queer sex-on-premises sites, which are deviant in multiple ways, are regulated and stigmatised. I will pair Rubin's theory with theories on compulsory heterosexuality, compulsory monogamy, and compulsory matrimony to demonstrate that there is a multi-dimensional construction of sexual morality that prioritises a narrow set of relationship models, and that this construct is enforced through social norms and legal intervention. Next, I will describe the legal history of prosecutorial and criminal regulations against deviant sexuality. I then move to understanding queer sex-on-premises sites through sexual geography, which recognises that a city creates sexual subjects of its citizens through control of public space and that Lauren Berlant and Michael Warner's concept of the 'queer counterpublic" explains how queer sex-on-premises sites disrupt that control.

By examining these theoretical and historical perspectives, the chapter aims to show how fears around the moral peril of deviant sexuality shape the legal mechanisms used to regulate queer public sex. This discussion is essential for understanding the broader context in which queer sex-on-premises sites

are marginalised or targeted, and it lays the foundation for the more detailed legal analysis presented in subsequent chapters.

Queer Public Sex as Socially Dangerous

Law is a social and textual practice that seeks to impose a particular and exclusive meaning on the world, and its impositions encompass sexuality and sexual activity.[4] Modern scholarship on sexuality deploys a constructivist approach to understanding how sexuality must be viewed as a product of its cultural moment.[5] Western cultures, bolstered by Christian tradition, view sex as inherently dangerous and sinful. Sex is imbued with social meaning, and constructs of a "moral" and "correct" way to have sex versus "immoral" and "unnatural" ways control the social imaginary. Feminist scholar Gayle Rubin's piece "Thinking Sex" has been particularly influential in this field, and she presents a framework called the *Charmed Circle* to understand this hierarchy of valuation of sex practices as illustrated by Figure 1:

[4] Leslie J Moran, *The Homosexual(Ity) of Law* (Routledge 1996) 8.
[5] Gayle S Rubin, 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality' in Henry Abelove (ed), *The Lesbian and Gay Studies Reader* (Routledge 1993) 10.

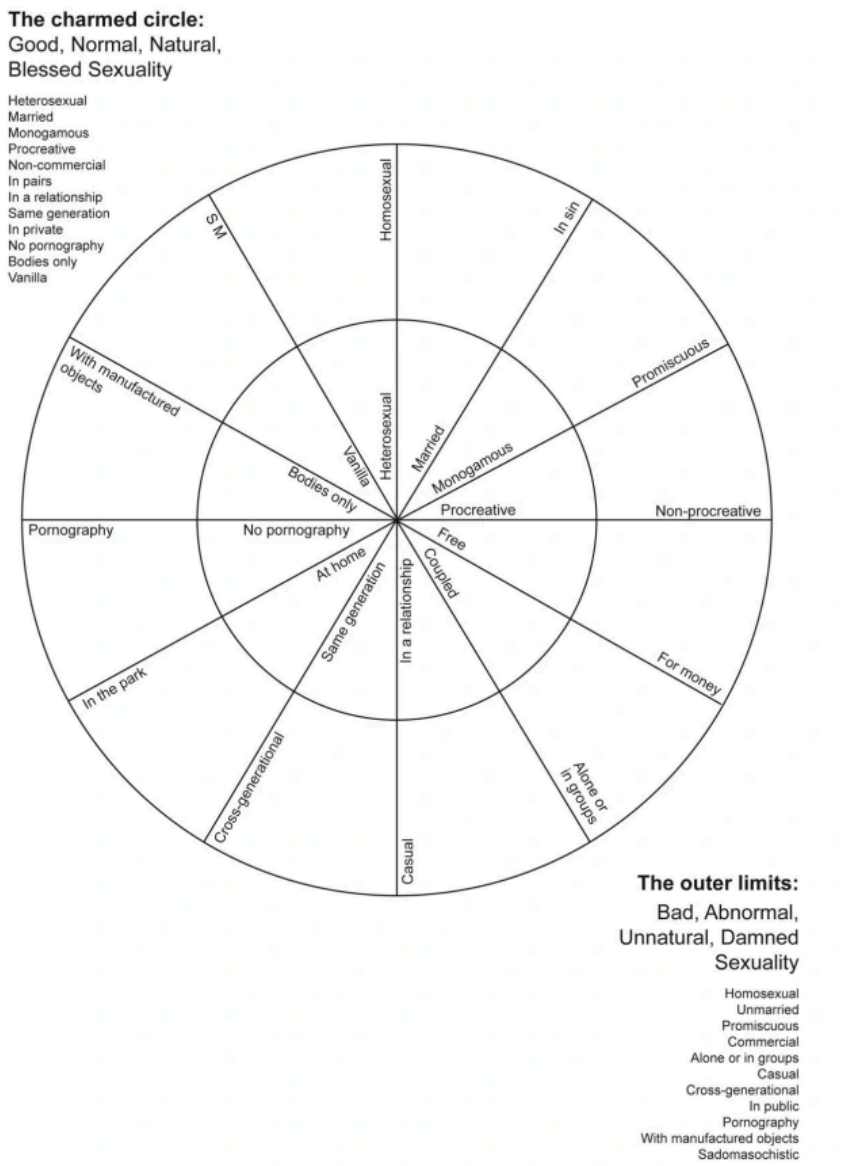

Figure 1: Rubin's Charmed Circle

Rubin's Charmed Circle visualises the divide between "good" and "bad" sex, where the inner circle represents socially acceptable sexual practices and the outer circle lists transgressive and intolerable acts.[6] She explains that the hierarchy draws a clear line between good and bad sex, the erosion of which is feared to bring unspeakable chaos and moral collapse.[7] At the top of the hierarchy is sex between two

[6] Rubin, 13.
[7] Ibid 11, 14.

heterosexual people of similar ages in a monogamous marriage privately in their home for the purposes of procreation. Any deviation from this single ideal sexuality constitutes a violation of social rules that threaten the societal order. Thus, "the state routinely intervenes in sexual behaviour at a level that would not be tolerated in other areas of life" through laws which regulate consensual sexual activity.[8]

The state's moral condemnation of deviant sexuality such as fetishism, prostitution, pornography, masturbation, voyeurism and sado-masochism further illustrates the way in which heterosexuality and patriarchy connect to create sexual non-citizens.[9] Positioning heterosexuality at the top of the hierarchy, Rubin expresses a similar argument to Adrienne Rich's term "compulsory heterosexuality" which describes how heterosexual relationships are presented as the romantic and spiritual ideal and propagandised as economically, socially, and legally obligatory for survival.[10] "Compulsory" in this case refers to cultural coercion through social norms and conditioning, not literal legal compulsion. Under this framework, heterosexuality is the assumed "default" we are conditioned to accept through implicit and explicit social messaging, which limits our ability to imagine other forms of fulfilling relationships. This gets inscribed by courts and lawmakers "spreading the design of a society in which only one form of sex—vaginal intercourse—is non-deviant."[11] Ruthann Robson, following Rich, offers "compulsory matrimony" to describe how the institution of marriage privileges those who perform a single state-sanctioned type of relationship.[12] Also useful is Elizabeth Emen's concept of "compulsory monogamy" to describe cultural and legal privileging of having one partner at a time, as well as the moral condemnation of promiscuity and polyamory.[13] Reading these three together creates a framework for

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[8] Ibid 18.
[9] Phil Hubbard, 'Sex Zones: Intimacy, Citizenship and Public Space' (2001) 4 Sexualities 51. 57.
[10] Adrienne Rich, 'Compulsory Heterosexuality and Lesbian Existence' in Henry Abelove (ed), The Lesbian and Gay Studies Reader (Routledge 1993). 243: "Women have married because it was necessary, in order to survive economically, in order to have children who would not suffer economic deprivation or social ostracism, in order to remain respectable, in order to do what was expected of women because coming out of "abnormal" childhoods they wanted to feel "normal," and because heterosexual romance has been represented as the great female adventure, duty, and fulfillment."
[11] M Blake Huffman, 'North Carolina Courts: Legislating Compulsory Heterosexuality by Creating New Crimes under the Crime against Nature Statute Post-Lawrence v. Texas' (2011) 20 Law & Sexuality: A Review of Lesbian, Gay, Bisexual and Transgender Legal Issues 1. 5.
[12] Ruthann Robson, 'Compulsory Matrimony', Feminist and Queer Legal Theory (Routledge 2010).
[13] Elizabeth F Emens, 'Compulsory Monogamy and Polyamorous Existence', Feminist and Queer Legal Theory (Routledge 2010).

examining how the dominance of a singular relationship type—heterosexual, married/marriage-seeking, and monogamous—is assumed to be natural while being "something that has had to be imposed, managed, organised, propagandised, and maintained by force."[14] I find it also offers a useful lens for studying how law embodies social norms, particularly when a narrow set of relationship types are privileged while alternative forms of relationships are denied legal recognition and its benefits, and looked down on as aberrant or illegitimate. Furthermore, it is helpful to understand how those who may historically have been excluded from this framework, such as gay and transgender individuals, are brought within the protective scope of law if they imitate these traditional "good/natural" models.[15]

Queer sex-on-premises sites face overlapping social and legal regulations as sites of transgressive sexual activity. As sites of public sex and queer sex, queer sex-on-premises sites are doubly transgressive—triply if they incorporate kink/fetish. Since Rubin wrote Thinking Sex in 1984, the inner and outer circles have shifted. Homosexual sex is no longer relegated to the margins, at least legally. However, while Britain has moved away from Rich's compulsory heterosexuality, Eleanor Wilkinson argues that it has doubled-down on compulsory monogamy and only accepted homosexuality in the shape of couples in committed marriages.[16] Thus, this has not alleviated the marginalisation of queer-sex-on-premises sites.

Criminalisation of Bad Sex

David Bell writes about the figure of the citizen-pervert, who is neither exclusively public nor private, and whose sexual pleasure is rendered a public, and therefore a political, issue.[17] The citizen-pervert engages in sexual deviance, and is subjected to regulation to promote public morals. The sphere of sexual deviancy has fluctuated as the state evolves its conception of intolerable sex. The state of

[14] Rich, 238-239.
[15] Alison Diduck, 'A Family by Any Other Name... or Starbucks Comes to England' (2001) 28 Journal of Law and Society 290. 294.
[16] Eleanor Wilkinson, 'Learning to Love Again: "Broken Families", Citizenship and the State Promotion of Coupledom' (2013) 49 Geoforum 206. 3-4.
[17] David Bell, 'Pleasure and Danger: The Paradoxical Spaces of Sexual Citizenship' (1995) 14 Political Geography 139. 147.

England flexes their regulatory muscles in a variety of ways to uphold and enforce sexual correctness and police sexual morality, especially around queer sexual expression. Les Moran argues that when lawmakers have conceptualised sexual encounters using a binary of public-private, where ‘public’ is a realm of law’s full presence and ‘private’ is outside of the law’s power, the homosexual body has been treated as a public body, an embodied space vulnerable to the full presence of the law.[18] Much work has already been done to trace the historical lineage of laws and court rulings seeking to control sexual activity, homosexual or otherwise deviant.[19] Table 1 shows relevant legislation that has been used to regulate sexual morality in Britain.

1533	An Acte for the punysshement of the vice of Buggerie	Criminalising sodomy with the punishment of death
1751	Disorderly Houses Act	Criminalising brothels
1824	An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of Great Britain called England	Criminalising prostitution
1855	Criminal Law Amendment Act	Criminalising "gross indecency between males"; further criminalising brothels
1982	Local Government (Miscellaneous Provisions) Act	Defining Sex Establishment and the subtypes of Sex Shop, Sex Cinema; Prescribing conditions for obtaining and maintaining a licence
1988	Local Government Act	Notable for Section 28 prohibiting the "promotion of homosexuality" by local authorities
1967	Sexual Offences Act	Decriminalising homosexual acts between two consenting

[18] Leslie J Moran, The Homosexual(Ity) of Law (Routledge 1996). 56-57.
[19] Martin Ingram, Carnal Knowledge: Regulating Sex in England, 1470-1600 (University Press 2017); Paul Johnson, ‘Buggery and Parliament, 1533–2017’ (2019) 38 Parliamentary History 325; Leslie J Moran, The Homosexual(Ity) of Law (Routledge 1996)

		men over the age of twenty-one
2003	Sexual Offences Act	Adjusting and adding definitions of sexual offences. As one addition, outlaws cottaging.
2004	Civil Partnership Act	Enabled same-sex couples to obtain legal recognition of their relationship by forming a civil partnership with similar rights and duties to marriage.
2009	Policing and Crime Act	Criminalising the act of paying for certain adult sexual services; defining Sexual Entertainment Venue as a subtype of Sex Establishment, and listing its licensing requirements.
2013	Marriage (Same Sex Couples) Act	Introducing civil marriage for same-sex couples

Table 1: Sexual morality legislation

Laws criminalising "buggery" have been on the books in England and Wales for centuries, as early as 1533.[20] Punishment for those found guilty of the "detestable and abominable vice" was execution (including tortuous deaths like being buried alive or burned).[21] In making sodomy a criminal offence, Parliament asserted themselves as the regulators of something which had previously been in the domain of ecclesiastical courts.[22] Sir Edward Coke's 1628 text, *The Institutes of the Laws of England*, contains an extensive chapter on buggery and sodomy in Common Law which characterises buggery as an act of violence against the body proximate to death, a violation of the carnal order, an act inherently incompatible with English national identity, and a blow to the nation and King's peace.[23] Members of the Wolfenden Committee, which reconsidered the laws on homosexuality and prostitution in the 1950's, worried that buggery weakened the moral fibre of those who indulge in it and threatened the moral order

[20] Paul Johnson, 'Buggery and Parliament, 1533–2017' (2019) 38 Parliamentary History 325. 326.
[21] Johnson, 326-327 fn12
[22] Johnson, 326-327.
[23] Leslie J Moran, The Homosexual(Ity) of Law (Routledge 1996). 70.

of society as a whole, and that heterosexual people who indulged in it would find it preferable to normal intercourse.[24] The legal preoccupation with sex between men has persisted to the 21st century and beyond when the passage of the Sexual Offences Act 2003 introduced a new statutory offence of 'sexual activity in a public lavatory' (Section 71). Enacted based on concerns about male sexual activity in public lavatories (known as "cottaging"), it has almost exclusively been used against men despite the statute's gender neutral language.[25]

The commercialisation of sex has also long been a subject of legal regulation. The government has sought to control prostitution and sex work as far back as medieval times, and "labeling and shaming the sexually deviant woman and banishing her from town were constants in the legislation of medieval London."[26] In London, prostitutes were prohibited from living in the city walls as early as 1277, and In 1393 the city segregated prostitutes to one part of the city, Cock's Lane.[27] Regulations on brothels were "in part an effort to keep female sexuality under the control of men" and "brothels were recognized as seedbeds of sin and disorder."[28] Parliament passed the Disorderly Houses Act in 1751, which criminalised brothels and common bawdy-houses, with Sir Edward Coke characterising disorderly houses as intolerable "not only in respect of its endangering the public peace by drawing together dissolute and debauched persons; but also in respect of its apparent tendency to corrupt the manners of both sexes."[29] The act "functioned as a zoning law, preventing houses of prostitution from contaminating the more desirable residential districts."[30]

While past legal conceptualizations of prostitution framed it as a public morality issue, recently England has pivoted to regulating under "neo-abolitionist" framework which positions female sex

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[24] Leslie J Moran, The Homosexual(Ity) of Law (Routledge 1996). 24.
[25] Paul Johnson, 'Ordinary Folk and Cottaging: Law, Morality, and Public Sex' (2007) 34 Journal of Law and Society 520. 521.
[26] Ruth Mazo Karras, *Common Women: Prostitution and Sexuality in Medieval England* (Oxford University Press, Incorporated 1996) 17.
[27] Ruth Mazo Karras, 'The Regulation of Brothels in Later Medieval England' (1989) 14 Signs 399. 408.
[28] Karras, 425.
[29] Vern L Bullough, 'Prostitution and Reform in Eighteenth-Century England' in Robert Purks Maccubbin (ed), *'Tis Nature's Fault* (1st edn, Cambridge University Press 1988) 66.
[30] Ibid 67.

workers as victims needing rescue by legal intervention.[31] This modern approach reduces sex work "to heterosexual prostitution, which is considered to be inherently abusive"[32] and increases the stigmatisation and pathologization of sex buyers by "collaps[ing] harm, disease and anti-social behaviour with the activity of purchasing sex."[33] This approach further ingrains prostitution as deviant sexual activity that holds both the buyer and seller legally culpable.

To enforce heterosexuality as correct and homosexuality as deviant, the United Kingdom has used the law as an instrument to deter social acceptance of LGBTQ+ people. A recent example is the passage of Section 28 of the 1988 Local Government Act saying that local education authorities could not "intentionally promote homosexuality or publish material with the intention of promoting homosexuality" or "promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship."[34] The debate in the House of Lords made it clear that their position was to condemn homosexuality, with one PM overtly declaring that "homosexual genital acts and behaviour are intrinsically immoral", and legal enforcement of that condemnation was appropriate.[35]

English courts have also come down strongly on promiscuous sadomasochism as morally deviant and socially intolerable, and applied this condemnation to all involved. A court upheld the dismissal of an employee for their sadomasochist activities outside of work as recently as 2004.[36] The most famous example of a legal crackdown on BDSM comes from *R v. Brown* in 1990, where the UK government put a group of gay men on trial for participating in hardcore sadistic and masochistic kink and found them guilty of assault. The dominators were convicted of committing assault and the submissives were convicted of aiding and abetting the harm done to themselves.[37] In delivering the ruling of the initial trial at the Old Bailey, Judge Rant issued a moral judgement upon the mens' sexual proclivities and positioned

[31] Jane Scoular and Anna Carline, 'A Critical Account of a "Creeping Neo-Abolitionism": Regulating Prostitution in England and Wales' (2014) 14 Criminology & Criminal Justice 608. 201.
[32] Ibid 613.
[33] Ibid 614-615
[34] 1988 Local Government Act
[35]Paul Baker, Outrageous! : The Story of Section 28 and Britain's Battle for LGBT Education (Reaktion Books 2022) 128
[36] Pay v Lancashire Probation Service [2004] IRLR 129
[37] Chris White, 'The Spanner Trials and the Changing Law on Sadomasochism in the UK' (2006) 50 Journal of Homosexuality 167. 169.

them as incompatible with a good and civilised society, stating: ". . . much has been said about individual liberty and the rights people have to do what they want with their own bodies, but the courts must draw the line between what is acceptable in a civilised society and what is not. In this case, the practices clearly lie on the wrong side of that line."[38] The Court of Appeal affirmed this, asserting that it was not "in the public interest" to allow people to engage in sadomasochistic sex.[39]

In a subsequent appeal to the House Of Lords, the Law Lords framed sadomasochism as socially dangerous and morally injurious, declaring that "Sado-masochistic homosexual activity cannot be regarded as conducive to the enhancement or enjoyment of family life or conducive to the welfare of society."[40] The courts distinguished sadomasochism from other activities where pain was inflicted on a willing participant, such as sport and religion. Furthermore, the queer dimension of this case cannot be ignored; in 1996 an English court of appeal said it was permissible for a husband to brand his initials on the buttocks of his wife with her consent, declaring that "consensual activity in the privacy of the matrimonial home was not a matter for criminal prosecution."[41] As Les Moran explains, the courts read both sadomasochism and homosexuality as representations of perverse sexualized bodies and desires.[42] Thus, the 'sado-masochistic homosexual' was rendered a doubly unruly body, monstrous in its capacity for violence and its desire for same-sex sexual pleasure.[43]

Queer History and Public Sex

A growing body of scholarship on gay cruising has viewed public cruising spaces as crucial sites of queer community and identity formation that exceed the boundaries of reified sexual identities.[44] As

[38] David Young, *Leaders of vicious and perverted sex gang jailed; Pornography ring.* (The Times, December 20 1990.) As cited in White [n 46] 174.
[39] Chris White, 'The Spanner Trials and the Changing Law on Sadomasochism in the UK' (2006) 50 Journal of Homosexuality 167. 170.
[40] R v Brown, 1993, 2 WLR 556. As cited in White 176.
[41] Times Law Report, 1996, 2 Cr App R 241. As cited in White. 181.
[42] Leslie J Moran, The Homosexual(Ity) of Law (Routledge 1996). 190.
[43] Moran, 184-186
[44] Gavin Brown, 'Ceramics, Clothing and Other Bodies: Affective Geographies of Homoerotic Cruising Encounters' (2008) 9 Social & Cultural Geography 915; William Leap, Public Sex/Gay Space (Columbia University Press 1999); Rictor Norton, Mother Clap's Molly House: The Gay Subculture in England 1700-1830 (Rev 2nd ed, Chalford Place

Chris Ashford explains, certain areas of public space become subject to transient ownership, redesignated as queer spaces by a subculture of public sexing and the practice of cruising for sex.[45] Cruising offers "highly embodied, erotically visceral sites of encounter" that opposes constructs of heterosexual romanticism and coupledom as the ideal sexual encounter, like Rubin's Charmed Circle.[46] These sites have been studied as facilitating self-conceptualization at a communal level pre-Stonewall, providing both a meeting ground for same-sex attracted people to socialise across class and leading to the development of common practices, aesthetics, and language over which to bond.[47] Many queer sex-on-premises sites provide spaces for cruising, sometimes openly advertising this on websites and social media.[48] However, for reasons I will explain later, gay saunas and cruising clubs appear less in the data set than play parties, and play parties can be designed in ways incompatible with cruising. Still, it is reasonable to expect that the act of cruising holds significance to queer sex-on-premises sites more generally.

But what is cruising? I use the term "cruising" to refer generally to the act of going to a public setting and signalling sexual interest in others through established non-verbal signals, which may lead to a sexual encounter at that location when willing participants are found.[49] It was surprisingly difficult to locate an academic definition of cruising, even in articles and books which examine it directly. I found one in a footnote of a 1977 paper titled *Cruising the Truckers*, which defines cruising as "any activity

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2006); Ira Tattelman, 'Speaking to the Gay Bathhouse' in William Leap (ed), Public sex/gay space (Columbia University Press 1999).

[45] Chris Ashford, 'Sexuality, Public Space and the Criminal Law: The Cottaging Phenomenon' (2007) 71 Journal of criminal law (Hertford) 506. 506.

[46] Grant Anderson, '"Why Can't They Meet in Bars and Clubs like Normal People?": The Protective State and Bioregulating Gay Public Sex Spaces' (2018) 19 Social & Cultural Geography 699. 700.

[47] Ross Higgins, 'Public Sex and Gay Community in Pre-Stonewall Montreal' in William Leap (ed), *Public sex/gay space* (Columbia University Press 1999).

[48] For example, Vault 139 has the phrase "Welcome to London's Sexiest Cruise Bar" emblazoned on the landing page of their website. An January 2024 email flyer (in author''s possession) for SCREW, a monthly fetish party for gay men, reads: "Whether you're into cruising in your otherworldly gear or dare to expose your raw identity, the 4th Friday of the month with [event organiser] is your gateway to the forbidden."

[49] The definition of cruising used in this paper draws most from: Allan Bérubé, 'The History of Gay Bathhouses' (2003) 44 Journal of Homosexuality 33; Jody Ahlm, 'Respectable Promiscuity: Digital Cruising in an Era of Queer Liberalism' (2017) 20 Sexualities 364; Samuel R Delany, Times Square Red, Times Square Blue 20th Anniversary Edition (New York University Press 2019); Alex Espinoza, Cruising: An Intimate History of a Radical Pastime (First edition, The Unnamed Press 2019); Richard Tewksbury, 'Bathhouse Intercourse: Structural and Behavioral Aspects of an Erotic Oasis' (2002) 23 Deviant Behavior 75.

undertaken to find a sex partner."[50] I discarded this definition as vague and imprecise. The vast majority of papers I read related to cruising deploy the term without introduction or explanation. Meanwhile, definitions for adjacent concepts such as "cottaging" are easily locatable. For example, Chris Ashford's piece "Sexuality, Public Space and the Criminal Law" uses both cruising and cottaging, sometimes in the same sentence, yet only offers a definition for cottaging.[51] David Bell's entry in the Oxford Research Encyclopaedia of Criminology and Criminal Justice defines "public sex" and "cottaging" but uses "cruising" over a dozen times with no definition.[52] I ponder if this can be reconciled by the fact that the concept of cottaging has appeared in British statutes, which produced a stable definition.[53] Cruising is not overtly addressed in these laws and may remain proximate to slang. Perhaps the term cruising shares traits with that which it is meant to describe, by being fleeting, shifting, elusive, and circumscribed by its temporal and spatial moment.

Despite my efforts to use "queer" as an inclusive term, many sources this paper draws on centres the cisgender homosexual male. Scholarship on queer public sex suffers from a severe absence of bisexual/lesbian women and transgender people. While this may be partly the fault of scholars erasing and overlooking women and transgender people, it is true that the gay male community has often excluded women and transgender people and been hostile to their participation in gay spaces, and many commercial queer cruising sites in London are meant solely for cisgender men. Scholars have offered a few explanations for why women are absent from cruising sites and the surrounding scholarship. Some lesbian feminists have adamantly argued that lesbians do not cruise, such as Sue Katz who wrote that lesbianism involved rejecting "sexuality" for "sensuality."[54] John Hollister suggests that cruising is rooted

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[50] Jay Corzine and Richard Kirby, 'Cruising the Truckers: Sexual Encounters in a Highway Rest Area' (1977) 6 Journal of contemporary ethnography 171. n5.
[51] I also find it amusing that Ashford spends time defining "twink" but not "cruising." Chris Ashford, 'Sexuality, Public Space and the Criminal Law: The Cottaging Phenomenon' (2007) 71 Journal of criminal law (Hertford) 506.
[52] David Bell, 'Representations of Public Sex in Crime, Media, and Popular Culture', *Oxford Research Encyclopedia of Criminology and Criminal Justice* (Oxford University Press).
[53] Sexual Offences Act 2003, Section 71
[54] Alice Echols and Ellen Willis, 'The Eruption of Difference', Daring to Be Bad (University of Minnesota Press 2019). 217-218

in male domination and "the gendering of adventure and of rape" which makes it too scary for women.[55] The former can be criticised for its brazen rejection of lesbian sexual pleasure and the latter for its dangerous generalisation of gay men and homosexual desire. I am more persuaded by the following: Sarah Lamble posits that lesbian sexuality poses less threat to heterosexual norms than gay male sexuality and so lesbians may fall below the radar of state surveillance.[56] One of the ways that cruising has been located in history is through press coverage of arrests and prosecutions.[57] Since lesbian sex has never been criminalised in England, it would follow that the absence of punitive legal action would entail an absence of such press coverage, and therefore lesbians are missing from the historical records that scholars have used to study their male counterparts. Finally, Denise Bullock contends that lesbians do cruise, but their cruising style is distinctive from men because it is influenced by gendered social scripts and occurs in different settings with dissimilar rituals, and therefore goes unrecognised as cruising.[58] I was unable to find an explanation pertaining to transgender people. Further research should seek to address this gap.

Facing social injury and criminal penalties for pursuing same-sex encounters, queer people turned to outdoor spaces like parks, under docks, in the woods, on the beach, and inside public restrooms to find sexual partners. Knowledge of these clandestine meeting spots travelled through word-of-mouth and remained not commonly acknowledged by the general public.[59] Cruising has gradually moved indoors to gay bars, clubs, and bathhouses, which I would call queer sex-on-premises sites. These semi-public sexual spaces have been interpreted as sexual sanctuaries or safe-havens for gay sexual expression.[60] As safer and more discreet alternatives to outdoor sex, and an alternative to one's own home where a closeted person might be living with family, these spaces offer a unique opportunity for fleeting moments of

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[55] John Hollister, 'A Highway Rest Area as a Socially Reproducible Site' in William Leap (ed), *Public sex/gay space* (Columbia University Press 1999). 65.
[56] Sarah Lamble, 'Unknowable Bodies, Unthinkable Sexualities: Lesbian and Transgender Legal Invisibility in the Toronto Women's Bathhouse Raid' (2009) 18 Social & legal studies 111. 112.
[57] Mark W Turner, *Backward Glances: Cruising the Queer Streets of New York and London* (Reaktion Books 2003). 11.
[58] Denise Bullock, 'Lesbian Cruising: An Examination of the Concept and Methods' (2004) 47 Journal of Homosexuality 1. 3-4.
[59] Alex Espinoza, Cruising: An Intimate History of a Radical Pastime (First edition, Unnamed Press 2019). 22.
[60] Catherine Jean Nash and Alison Bain, '"Reclaiming Raunch"? Spatializing Queer Identities at Toronto Women's Bathhouse Events' (2007) 8 Social & Cultural Geography 47. 48.

intimacy and sexual encounters.[61] They also provided previously unattainable opportunities for queer people to socialise and are believed to be the first recorded scenes of queerness as a shared identity and community.[62]

Public sex, including the semi-public sex at queer sex-on-premises sites, inhabits a unique position in queer history. Indeed, for many gay liberation meant liberating sexual expression and developing communal erotic environments for sexual encounters.[63] This is not to say that heterosexual people never have public, anonymous, promiscuous, or transgressive sex. Rather I identify public sex as a communal practice engrained in the queer community's struggle under sexual marginalisation. Queer sex-on-premises sites represent an evolution of this practice where public sex spaces are created, maintained, and advertised for leisure and community formation.

Sex and the City

As Frank Mort and Lynda Mead explain in their introduction to the *Sexual Geographies* edition of the journal *New Formations*, a city is not merely "a relatively passive backdrop" for social and cultural processes to play out, but rather it is "a constitutive part of the cultural and social formation of metropolitan life," where sexual subjects are distributed and regulated.[64] Much of the scholarship in this field investigates the regulation of acceptable sexuality through national legislation, policing, and criminal prosecution as described above, but another key form of regulation comes from municipal regulations on businesses and urban geography.[65] Notably, municipal laws tend to be enacted and enforced by planners,

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[61] Allan Bérubé, 'The History of Gay Bathhouses' (2003) 44 Journal of Homosexuality 33. 37.
[62] Rictor Norton suggests that the *discovery* of a gay subculture is often confused with its *birth*. He argues that "the widespread appearance of gay subcultures across Europe around the year 1700 is almost certainly linked not to the rise of 'capitalism' or 'modernity', but to the rise of surveillance." Referring to British Molly Houses in the 1700s, he explains that the so-called birth of Molly Houses coincides with the formation of the Societies for the Reformation of Manners, which aimed to surveil and expose sodomites. Little is known about England's gay subculture and gay men before the Societies' creation in 1691, but this certainly does not mean they did not exist. Rictor Norton, Mother Clap's Molly House: The Gay Subculture in England 1700-1830 (Rev 2nd ed, Chalford Place 2006). 106-107
[63] Ira Tattelman, 'Speaking to the Gay Bathhouse' in William Leap (ed), Public sex/gay space (Columbia University Press 1999). 73.
[64] Frank Mort and Lynda Nead, 'Introduction' (1999) 37 Sexual Geographies, New Formations. 6.
[65] Baptiste Coulmont and Phil Hubbard, 'Consuming Sex: Socio-Legal Shifts in the Space and Place of Sex Shops' (2010) 37 Journal of Law and Society 189. 208

licensing officers and councillors rather than the police, and they seldom act in a coordinated mode in relation to sexual activity.[66] Nonetheless, they can exercise significant influence over sexuality and sexual morality by determining what activities are permissible in a particular location.[67] By controlling the geography of sexual citizenship, cities can sequester sexual deviants to confined spaces.[68] Furthermore, as Lauren Berlant and Michael Warner explain, "the law aims to restrict any counterpublic sexual culture by regulating its economic conditions."[69] Excellent studies have explored the impact of municipal regulations on suppressing so-called deviant sexual culture in the United States, such as Samuel R. Delany's *Time Square Red, Times Square Blue* about New York City zoning laws and pornography theatres/cruising sites, and Michael Frisch's analyses of the role of zoning in displacing lesbian and gay venues from specific neighbourhoods in *Planning as a Heterosexist Project*. These modes of regulations are understudied in London. This thesis begins to fill that gap by examining the business licensing regime as a tool for regulating a deviant sexual subculture. As I explain in later chapters, the law around sex establishments is vague and unstandardised to the point that the discretion of a local authority is effectively total.[70] This means local authorities can effectively zone, prevent, or shut down sex establishments without clear or consistent explanations, making licensing a powerful tool for shaping sexual conduct and controlling the citizenry's sexual morality.[71]

In a United States context, Berlant and Warner term places, communities, and public-facing intimacy practices which disrupt *heteronormativity*–the tacit cultural construction that heterosexuality is correct and natural, including the entrenchment of heterosexual sex practices, the prototypical family unit, and symbolic femininity and masculinity[72]–and contribute to queer "world-making" as *queer*

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[66] Jason Prior and Phil Hubbard, 'Time, Space, and the Authorisation of Sex Premises in London and Sydney' (2017) 54 Urban Studies 633. 3.
[67] Philip Hubbard, 'Law, Sex and the City: Regulating Sexual Entertainment Venues in England and Wales' (2015) 7 International Journal of Law in the Built Environment 5.
[68] Hubbard, 60.
[69] Berlant and Warner, 562.
[70] Philip Hubbard, 'Law, Sex and the City: Regulating Sexual Entertainment Venues in England and Wales' (2015) 7 International Journal of Law in the Built Environment 5. 13.
[71] Ibid, 14
[72]Lauren Berlant and Michael Warner, 'Sex in Public' (1998) 24 Critical Inquiry. 548n2.

counterpublics.[73] Drag shows, balls, and parades embody "radical aspirations of queer culture building: not just a safe zone for queer sex but the changed possibilities of identity, intelligibility, publics, culture, and sex that appear when the heterosexual couple is no longer the referent or the privileged example of sexual culture."[74] Queer sex-on-premises sites are queer counterpublics, offering a temporary excursion into a world ungoverned by heteronormativity and liberated from sexual shame. Paired with the previous discussion of sexual geography, it is reasonable to infer that cities can deploy municipal regulations to control queer counterpublics that are perceived to be disruptive or damaging to the social fabric of the city. In the following chapters I argue that the perception of queer sex-on-premises sites as harmful to residents is why local authorities in London are using the licensing regime to regulate queer sex-on-premises sites.

Conclusion

This chapter has shown that the regulation of queer sex-on-premises sites must be understood as deeply intertwined with socio-cultural attitudes towards sexuality. Using Rubin's theory of the Charmed Circle and complementary theories of compulsory heterosexuality, matrimony, and monogamy, we can see how deviant sexuality is portrayed as a societal danger that requires intervention by the law. England's history of criminalising and prosecuting deviant sexuality proves these theories that the state enacts legal interventions on "bad sex" in the name of public welfare. Just as the law has been used to regulate sodomy, cottaging, and sex work, it follows that the law would also be turned against queer sex-on-premises sites as a modern iteration of visible, non-normative, queer sexual practices. This is where sexual geography assists in understanding that municipal regulations are powerful tools for controlling a city's sexual citizenry. These frameworks discussed in this chapter informed my research questions and helped me interpret the data and results.

[73] Ibid 558.
[74] Ibid 548.

Chapter 3: The Licensing Question

Introduction

This chapter will explore the confusion surrounding the licensing requirements for queer sex-on-premises sites, focusing on the ambiguous and inconsistent interpretations of Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982. The chapter will begin with an overview of the Act and analysis of the parliamentary debates over the design of the sexual entertainment venue licensing category to understand the legislative intent behind key terms and conditions. Next, I will outline the difficulties with applying these existing licensing categories to queer sex-on-premises sites, and how its applicability depends on whether public sex should be considered a "performance" or not. Drawing on my interviews with queer sex-on-premises sites owners and operators, licensing barristers, police, and local authorities, I will compare competing interpretations of this question. I also name this licensing ambiguity as a "phantom licence" to describe how queer sex-on-premises sites are compelled to obtain licences that do not explicitly exist or apply to them.

The purpose of this chapter is to illustrate the legal uncertainty surrounding the licensing requirements for queer sex-on-premises sites. I will show how this uncertainty can lead to inconsistent enforcement, leaving promoters unsure of how to comply with the law, and local authorities with significant discretion in their regulatory actions. These findings will help answer the second and third research questions by illustrating the legal predicament and showing how queer sex-on-premises sites are responding to it.

Licensing Confusion

Do queer sex-on-premises sites need to obtain a licence in order to operate legally? There is no clarity or consensus on the matter. As one interviewee put it, 'You find four lawyers and ask them the question, 'Do you require a particular licence to operate a darkroom?' and you'll get six different

responses. The law is completely grey."[75] No court has ruled on it, and no legislation explicitly addresses if providing space for people to have sex is licensable conduct. The answer depends on if one interprets the definition of a sex establishment as including queer sex-on-premises sites, which is uncertain.

The relevant licensing regulations are found in The Local Government (Miscellaneous Provisions) Act 1982, which empowers local authorities to make provision for the control of sex establishments. "Sex establishment" was originally defined as a sex cinema or a sex shop. The Act bestows a great deal of discretionary authority on local authorities in refusing applications and creating standard conditions for sex establishments.[76] Paragraph 12 of Schedule 3 allows local authorities to refuse sex establishment licence applications on the grounds that:

"(c) that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;

(d) that the grant or renewal of the licence would be inappropriate, having regard—

(i) to the character of the relevant locality; or

(ii) to the use to which any premises in the vicinity are put; or

(iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made."

The paragraph also specifies that "Nil may be an appropriate number" if the local authority finds it so. Paragraph 13 gives local authorities the power to create the conditions and restrictions under which sex establishment licences in their locality are to be granted, renewed or transferred. This includes the business's opening and closing hours, displays and advertisements, and visibility of the interior to passersby. Failure to comply with the conditions in their licence will lead to the licence being revoked and

[75] Interview with Elliot (video call, 20 June 2024)
[76] Home Office Guidance, "Sexual Entertainment Venues - Guidance for England and Wales", 2010. 5.

the licence-holder shall be convicted of an offence and subject to a fine. This discretion allows local authorities to shape the sexual geography of their jurisdictions by restricting sex establishments to a few businesses in a delineated area, or prohibiting them entirely.

The sex establishment category was expanded to include lap-dance clubs in 2009.[77] The purpose of this change was to "allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area."[78] Prior to the reclassification, they had been licensed under the Licensing Act 2003, the same as cafés and karaoke bars. During debates in the House of Commons concerning the Policing and Crime Bill, members Dr. Roberta Blackman-Woods and Lynda Waltho began expressing their discontent with lap-dance clubs opening in their localities. Over the next several months of debate[79] they advocated for amending the Local Government (Miscellaneous Provisions) Act 1982 to create a third type of sex establishment, a "sex encounter establishment", to be regulated in the same manner as sex cinemas and sex shops. They argued that this reclassification was necessary for lap-dancing clubs to be properly controlled, with Dr. Blackman-Woods asserting: "The fundamental nature of the transaction is that a man pays a woman to take her clothes off and place her sexual organs near his face. The notion that this is not part of the commercial sex industry is not seriously sustainable."[80] Concurring, Dr. Andy Slaughter shared an example to argue that local authorities needed to consider the effect a lap-dance club would have on the neighbourhood, a power they did not have in the current licensing scheme:

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[77] Home Office Guidance, "Sexual Entertainment Venues - Guidance for England and Wales"
[78] Ibid. 5
[79] These are all of the debates which discuss increasing regulations on lap-dance clubs, culminating in the creation of the Sexual Entertainment Venue licencing subcategory through Policing and Crime 2009:
HC Deb 19 March 2008, vol 473 (Discussion of regulating lap-dance clubs more strongly under the Licensing Act 2003)
HC Deb 19 January 2009, vol 486 (this debate onwards concerns Policing and Crime Bill 2009)
HC Deb 19 May 2009, vol 492
HL Deb 3 June 2009, vol 711
HL Deb 6 July 2009, vol 712
HL Deb 5 November 2009, vol 714
HC Deb 12 November 2009, vol 499
[80] HC Deb 19 January 2009, vol 486, col 554

> "[A] notorious establishment called the Fox tavern was bought by a company rather luridly called Passion Nights…It sought to open it as a lap-dancing club for up to 600 people with a large number of private booths and other insalubrious trappings that go along with such institutions. …It was to be located in a densely populated residential area, with all that one expects to go with it in the way of schools, community facilities and so forth. It does not take much imagination to realise that that club would entirely change the character of that area."[81]

Dr. Slaughter's statement, characterising a sex establishment as "notorious" and "insalubrious," exemplifies the sentiments put forth in Rubin's Charmed Circle where non-normative sexuality is perceived as dangerous to the welfare of the area. A sex establishment's impact on an area's character, proponents argued, meant that local authorities should design regulations for sex establishments in their jurisdictions.

Debate in the House of Lords revealed concerns that the term "sexual encounter" was misleading, since, as Earl Ferrers noted, "if you are told that you are going to a sex encounter place, it is pretty obvious that you expect to encounter sex."[82] Some worried that the term stigmatised lap-dancers by equating them to sex workers, hindering them if they tried to leave lap-dancing and "break into a more socially respectable" line of work.[83] The name was amended to "sexual entertainment venues," which was intended to be less offensive and avoid implying that sex is for sale at these establishments.[84] Through the bill's passage on November 12, 2009, the subcategory of sexual entertainment venues was incorporated into Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 (hereafter referred to as simply Schedule 3) under this definition:

[81] HC Deb 19 January 2009, vol 486, col 568
[82] HL Deb 6 July 2009, vol 712, col 504
[83] HL Deb 6 July 2009, vol 712, col 502
[84] HL Deb 5 November 2009, vol 714, col 451

2A Meaning of "sexual entertainment venue"

In this Schedule "sexual entertainment venue" means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

In this paragraph "relevant entertainment" means—

any live performance; or

any live display of nudity; which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

Much is left unclear and unstandardized according to these provisions, which was intentional. Members of Parliament believed that local authorities should have the power to construct their own regulations specific to the character and nature of their areas, and that they possessed the right "to determine that certain areas are entirely inappropriate for the location of sex establishments."[85] Schedule 3 does not dictate what factors make a sex establishment appropriate or inappropriate for an area. It also does not explain how the character and nature of a locality is determined. Furthermore, the statute is silent on what constitutes a sex establishment's "vicinity" or "locality." Boroughs across England and Wales have defined the boundaries of a sex establishment's "locality" in various ways from 'one-quarter of a mile' to 'one-third of a mile', and courts have suggested a locality must be determined case-by-case, being "highly dependent on local knowledge."[86] In debating the new provisions, Baroness Miller of Chilthorne Domer probed for clarity, observing that "it is very important to define locality, but the Bill leaves it very loose."[87] Yet, an actionable definition is absent from the Schedule 3.

[85] HL Deb 6 July 2009, vol 712, col 518
[86] 4 Wins Leisure Ltd v. Blackpool Council (2007) EWHC 2213, para. 8 as cited in Baptiste Coulmont and Phil Hubbard, 'Consuming Sex: Socio-Legal Shifts in the Space and Place of Sex Shops' (2010) 37 Journal of Law and Society 189. 202.
[87] HL Deb 6 July 2009, vol 712, col 517

Local authorities are also responsible for sorting establishments into categories under this licensing scheme, and therefore have the power to establish boundaries beyond the definitions provided in Schedule 3. For example, when considering sex shop licences, there are no standards on what makeup of inventory constitutes a sex shop versus a store with a negligible number of sexual articles for sale.[88] In deliberating on sex shop licences, the local authority can make these determinations themselves.

Additionally, the criteria of what qualifies as a 'sexual entertainment venue' are inexact. Home Office guidance for sexual entertainment venues following the passage of Schedule 3 attempts to define the types of establishments within legislation's scope, but leaves it open-ended. It reads: "While local authorities should judge each case on its merits, we would expect that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood: Lap dancing, Pole dancing, Table dancing, Strip shows, Peep shows, Live sex shows." It also states that "the above list is not exhaustive" and decisions regarding licensing "shall depend on the content of the entertainment provided."[89]

This raises the crucial question of whether this existing legislation encompasses queer sex-on-premises sites. Schedule 3 defines a 'sexual entertainment venue' as a premise with a live display of nudity for the purpose of sexually stimulating an audience.[90] As discussed above, the legislative intent behind the creation of this category was to regulate stripclubs and lap dance clubs where performers entertain a clothed, non-participatory audience. However, interpreting and applying that definition need not be constrained by what the legislators had in mind. The terms "display," "purpose," and "audience" might be straightforward for lap dance and strip club venues, but their application to queer sex-on-premises sites is ripe with ambiguity. Who is a performer and a customer in an orgy? Is a nude man cruising in a gay sauna providing a live display of nudity for the purpose of sexually stimulating an audience? What about a couple having sex in a playroom within a few metres of another couple? When attendees at a queer rave are dressed in lingerie, dominatrix-style latex, jock straps, see-through thongs,

[88] Coulmont and Hubbard, 204.
[89] Home Office Guidance, "Sexual Entertainment Venues - Guidance for England and Wales", 2010. 7.
[90] The Local Government (Miscellaneous Provisions) Act 1982 , Schedule 3, Paragraph 2(2A)

crop-tops with "do i make you horny?" splashed across the front, leather and chain harnesses, or other outfits showing off their bodies, does that count as live displays of partial nudity that can sexually stimulate their fellow ravers? Is everyone a performer *and* an audience member in a darkroom?

My analysis suggests that sex, when it is consensual and there is no exchange of money, is not a licensable activity. Providing a space to have such sexual activity is not licensable either. Thus, to answer the question "Does a queer sex-on-premises site need a licence?" one must be able to answer: "Does a queer sex-on-premises site fall under Schedule 3's definition of 'sexual entertainment?'" which hinges on the tertiary question, "Is public sex a performance?" If public sex does not qualify as a performance, then the sexually-orientated activities of a queer sex-on-premises site are not licensable conduct under Schedule 3, and they do not need to pursue a licence. This chapter aims to illustrate the vast disagreement and conflict over this question amongst industry actors, barristers, law enforcement, and local authorities.

In the industry, the weight of this question is palpable, as is the confusion, fear, and tension it provokes. I attended the inaugural meeting of the S+ Association in London on June 12, 2024—a new trade association for sex positive events in London which includes multiple promoters of queer kink, fetish, and sex-play club nights on its founding board.[91] During a Q&A panel with the association's founding members, an audience member who organises play parties for queer FLINTA[92] individuals expressed confusion about if licensing affects which venues were legally allowed to host their events, saying, "We don't know what licence we need or should be asking [potential venues] about." The panellists responded that "there's no licence we need to get" and cited the absence of applicable conditions from the Licencing Act of 2003, and then encouraged the audience to help with "mythbusting" the notion that events with sex on the premises need licences. A few minutes later they were confronted by an audience member who identified himself as a licensing barrister. He challenged their claim that they need not worry about licensing, remarking that their advice was "misleading and unhelpful," and that he

[91]"About Us" http://splusassociation.org.uk. Accessed September 10, 2024.
[92] Abbreviation for 'Female, Lesbian, Intersex, Non-binary, Transgender, Agender'
Kahl A, 'FLINTA*: What Does the Queer, Feminist Acronym Mean?' (GAY TIMES, 20 February 2024) <https://www.gaytimes.com/culture/what-does-flinta-mean/> accessed 17 June 2024

was “concerned by [their] certainty.” While he did not refute their argument, he was clearly sceptical of their conclusion and asked them to justify their reasoning. The panellists, taken aback, repeated that nothing in the Licensing Act 2003 applied to their events and added that they were not purporting to give legal advice. The barrister replied pointedly, “you have this evening stated that the licensing act does not apply,” then he noted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, and again asked them to justify that claim. To this, they replied that “we are not talking about sexual entertainment,” and said, now addressing the whole audience, that while they admitted “there’s a lot of confusion in what legislation applies” they believe “there is nothing in the licensing act that keeps you from doing what you want to do.” They also asserted that “we are all experts in how our events are run” and could thus make a meaningful attempt at interpreting the legislation. The barrister attempted to reply, but the moderator moved on to another question.

This exchange highlights pervasive uncertainty and ambiguity surrounding the legal requirements for hosting sex-positive events, including queer sex-on-premises sites. This interaction epitomises the stark confusion, as even experienced event organisers and legal professionals grapple with differing interpretations of the law, leading to public squabbles over how to make these events legally compliant. The panellists' confidence in their operational expertise contrasted sharply with the barrister's conflicting legal perspective, revealing a significant gap in understanding and interpretation. The rest of this chapter provides an overview of this debate from the perspectives of queer sex-on-premises site promoters, law enforcement, local authorities, licensing barristers, and a borough councillor to explore conflicting interpretations of the licensing question.

While the research overall explores queer sex-on-premises sites as a tripartite category (gay saunas, cruising clubs, play parties), the interviews have a narrower focus on queer kink and fetish play parties due to interviewee willingness and availability. The interviewees are listed in Box 1:

Box 1: Characteristics of Interviewees

Felix is a promoter who founded a queer fetish night in London that has run for nearly a decade.

Jaxon is a promoter who founded a club night that has run for over a year, and worked for a different club night before that.

Dylan is a promoter who organises cruising nights for gay men that occur a few times a year.

Morgan is a founding board member of the S+ Association, a trade association for sex-positive nightlife events and venues including many queer sex-on-premises sites.

Tom and Elliot are licensing barristers, both of whom have worked on cases concerning queer sex-on-premises sites.

Laura and Douglas are licensing officers with the Metropolitan Police.

Sarah is a former Councillor of a borough with multiple queer sex-on-premises sites and worked with them directly.[93]

The interviews revealed multiple competing interpretations of how the sexual entertainment venue licensing regime does, or ought to, interact with sex-on-premises sites. Elliot and Tom, two licensing barristers with extensive experience working on licensing issues for kink and fetish nights, hold opposite views on the usefulness of the current licensing regime and its application. Elliot expressed contempt for the sexual entertainment venue licence, especially as it pertained to sex-on-premises sites:

> "Speaking generally, the law is entirely hopeless and ill-fitted to dealing with kink clubs, sex clubs, of any particular variety. We are still working with 40-year-old legislation dealing with sex entertainment venues, which have still got archaic definitions such as nudity, or semi-nudity, which might attract a certain type of licence that's needed. What on earth is semi-nudity? I've been doing this for 30 years, I don't know what semi-nudity is. Nudity is defined as showing certain body parts depending on whether you're a man or a woman. If you're gender fluid or you're trans, then the law is simply 40 years behind, so it can't deal with it."[94]

[93] Sarah's interview was the shortest interview, lasting 10 minutes due to scheduling constraints. As a result, we were only able to cover a few topics.
[94] Interview with Elliot (video call, 20 June 2024)

Elliot also argued that it was inappropriate for lawmakers and courts to regulate consensual sexual adult conduct, and that conduct in sex-on-premises sites should only be regulated with a "light touch" for health and safety objectives. He shared an example from a past case that he believed was a baffling misuse of legal inquiry:

> "One of the cases I was involved in, it involved this extraordinary argument, and it was whether a man in the middle of a nightclub floor who was anally fisting himself—whether he was doing it for his own pleasure or for the pleasure of the audience. And depending on the answer to that question depended whether they needed a sex entertainment venue licence or not. Whenever the law has to be decided on such absurdities, it says something very wrong with the law."[95]

This case did not make it to court, but Elliot said that if he were representing the venue in such a hearing, he would argue that sex acts in a darkroom are "primarily for the entertainment and stimulation of the individual participants in that sex act. And [a darkroom] will simply give them a room for them to do it. And therefore it's not caught by the sex licensing regime."[96]

Tom articulated an opposing approach, saying that the answer to whether conduct in a darkroom fell under the definition of sexual entertainment was "probably, yes." His reasoning drew on specific provocative gestures and erotic sensory stimulation deployed in a darkroom to seduce others:

> "I think that if you look at the Act, it's so widely defined that if a member of the public is naked [then] they satisfy the definition. If they are there, and they are inviting people to watch them and look at them and be sexually stimulated by that, then absolutely. In a darkroom context, because the purpose is for sexual stimulation, the reality is that men or women will quite often be in a

[95] Ibid
[96] Ibid

> sexually provocative pose. They'll be in a state of arousal. They will be encouraging people to watch that. There's a good chance that there'll be an interaction with a second or third person. Other people will be standing around and watching. You've got nudity. You've got a performance, albeit a non-programmed amateur performance, which people are looking at and are finding sexually arousing because they themselves are getting off on it."[97]

He acknowledged that the definition of sexual entertainment in Schedule 3 was intended to describe lap dance clubs, but believed that "the definition is far wider. And we just haven't explored how wide that definition is." He claims it is wide enough that *any* nudity satisfies the definition, regardless of what one does while nude. Tom stated that "the 1982 act is not fit for purpose because it's just quite outdated" (the same position as Elliot) and argued that sexual entertainment should be a licensable activity under the Licensing Act 2003.[98]

When Sarah, the former borough councillor, was asked if public sex fits the Schedule 3 definition of a performance, she replied confidently, "Of course it does!" and pointed out that a man walking around nude in a gay sauna does so for the purpose of "titillating" the male onlookers.[99] Her reasoning was similar to Tom's; that individuals intentionally acting in a sexual manner in a semi-public setting qualified as sexual entertainment because they are displaying nudity for the purpose of arousing others, and therefore these venues needed a sexual entertainment licence. However, she was supportive of these places and affirmed their right to exist in London neighbourhoods—provided they got the appropriate licence. She also expressed her support for a workaround to the SEV licence, which will be discussed in Chapter 5.

Other interviewees had far less confidence in their interpretations. The police officers, Douglas and Laura, displayed confusion and admitted that they do not know if darkrooms count as sexual

[97] Interview with Tom, (London, 12 June 2024)
[98] Ibid
[99] Interview with Sarah, (London, 12 June 2024)

entertainment and said “there’s not a clear answer.”[100] Douglas contrasted sex-on-premises sites from traditional sexual entertainment venues:

> “I think also there's quite a difference between, let’s say, a strip club, for example, where people are going on and paying to just to see what's going on, to the events we're talking about here, which is people essentially having sex in the premises, not for people to pay and come and sit and watch. It's a whole different thing, isn't it?”[101]

They both were humble in admitting their confusion, and talked about wanting to work with the kink community to resolve the confusion.

At the start of the interview, promoter Dylan said plainly that he sought sexual entertainment venue licences for his events to make sure they were legally sound. However, he soon second-guessed himself, and showed signs of uncertainty when trying to explain the licensing requirements:

> “I think there are clearly some places now, which seem to understand that—if I'm maybe understanding it right—that the licence, as you know, the sex on premise is more down to an entertainment licence, which I think is the SEV, I think that's what it's called. And my understanding of that is around, you know, there being some kind of live performance. And I'm guessing the crux of it is the interpretation of ‘what is live performance?’ Whether it's just something on stage, or, as I've also come to understand, this could also be down to, you know, two people having a go at it in front of a bar, and if someone's watching, that could be considered a performance. And I think this is also where the law gets really grey or really ambiguous, and I guess venues themselves then really don't know how far they can go or cannot go.”[102]

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[100] Joint interview with Laura and Douglas, (London, 12 June 2024)
[101] Ibid
[102] Interview with Dylan (London, 24 May 2024)

His language of self-doubt like “I’m guessing” and “if I’m understanding it right” signalled an unstable conception of the licence requirements for his events. He also seemed unsure of how to interpret the conduct at his events under definition of sexual entertainment. Rather than use a legal framework, he turned to his background as a performer to explain what a performance is in lay terms:

> “As someone who comes from a dance background, yes and no, because a performance for me is something that basically happens on stage, that you have not just one or two people watching, but like an audience, a whole, you know, group of people, they're seated or standing, but something's on stage. It's definitely promoted or advertised as a show, which is something very different to people standing in a corner or on the side of the room, getting in or, even if you have a dedicated space, which is a play space.”[103]

To Dylan, these qualities of a performance—a stage, an audience of more than two, and advertising it as a show—do not describe the conduct in a darkroom and therefore disqualify it from being sexual entertainment. This sharply differs from Tom’s approach, whose highly literal interpretation of the legislation renders semi-public sex as “a non-programmed amateur performance.” Dylan’s comment about audience size also conflicts with the legal definition provided in Schedule 3, which defines an audience as including an audience of one.[104]

Morgan of the S+ Association drew a similar distinction between sexual entertainment and “recreation,” saying, “People that are attending an event for recreation or having sexual contact with each other, they're not providing entertainment.”[105] Here, it is the intentions of the people having sex, not the reaction of persons who may be watching, that matter. Morgan explained:

[103] Interview with Dylan (London, 24 May 2024)
[104] The Local Government (Miscellaneous Provisions) Act 1982 , Schedule 3, Paragraph 2(2A)14
[105] Interview with Morgan (London, 3 July 2024)

> "It could be argued that if I'm a voyeur and I've purchased a ticket, I'm saying that there is a space where people might be having sex and I feel entertained by that. I may have purchased the ticket with a view to receiving that entertainment. However, that could be countered by the statement that, well, the event has not procured the services of those individuals for the purposes of entertaining other guests."[106]

Morgan believes that since events have not "procured" the sex-havers as entertainment, and the sex-havers would not consider themselves performers in that moment, having sex in a darkroom is recreation rather than entertainment and therefore exempt from licensing.

When asked the same question, Jaxon answered that their club night is not sexual entertainment because their event has multiple activities and purposes other than the darkroom. They explained, "I don't think that we are sexual entertainment because that's not the sole purpose of our party. I think that our party is very much a community space and a lot of people come just to dance or just to meet people."[107] Their understanding of sexual entertainment was events that had "people who are buying sex on the premises and who have come specifically for that purpose."[108] Having non-sexual objectives for their event like community building, and the opportunity for partygoers to completely avoid the sexual parts if they wanted, meant that they were not a sexual entertainment event. This formulation is at odds with the definition provided in Schedule 3 of a sexual entertainment venue, which does not use language of "primary purpose" or similar qualifiers. A plain reading of the statute suggests that the existence of sexual entertainment anywhere on the premises, even if limited to a demarcated, avoidable part of the venue, means the venue needs a licence (unless exempt according to another section of the legislation).

These responses revealed two competing conceptual frameworks for what constitutes a performance. Dylan, Jaxon, and Morgan relied on common-sense understandings of a performance as a combination of production elements such as hired performers, a designated stage area, a delineated

[106] Ibid
[107] Interview with Jaxon (London, 24 May 2024)
[108] Ibid

duration of time for the performance, sale or provision of tickets, advertising, and various systems of organising and conducting entertainment. Meanwhile, Tom and Sarah deployed a far-reaching definition that relies on the performativity of erotic conduct. Because acts such as disrobing or posing suggestively are deliberate and expressive behaviours meant to communicate messages to onlookers, these meet the definition of a performance under this framework. This framework also de-centres the "performer" and centres the "audience," erasing the "performer's" agency by making the sole criteria their effect on others. If a man walks nude around a gay sauna, it does not matter if he intends to pursue sex or if he desires to arouse others. Perhaps he just enjoys being nude and socialising platonically with other gay men. If someone sees his body and feels aroused, that reaction triggers the reconstituting of his conduct as a performance. Therefore, if a sauna, bar, or club night offers spaces for that occurrence, this framework positions them as providers of sexual "performances" that fall under the licensing regime. When venues are pressured to obtain a licence based on this expansive interpretation of what constitutes a performance despite the absence of a clear legal requirement, this creates a scenario where the requirement for a licence exists in theory but lacks a solid foundation in the law, perpetuating uncertainty and marginalisation.

This situation creates a sort of "phantom licence" where the regulations exist in the form of top-down pressure and insistence, yet lack concrete substance in terms of applicable statutes, policies, and regulations. Here, I am drawn to the evocative metaphor of the spectral. The "phantom" licence is emblematic of the nebulousness encountered by these sites. It is a licence—or the expectation of one—not commanded by law but rather willed into being, which appears real at first glance but dissipates into legal ambiguity upon further probing. Queer sex-on-premises sites, therefore, are attempting to navigate a legal landscape haunted by phantoms. These uncertainties loom over queer sex-on-premises sites as they try to understand and comply with regulations that may not clearly apply to them, or may even be non-existent, yet still exert pressure on their operations.

These conflicting interpretations and phantom licence requirements left many interviewees unsure about the appropriate course of action and longing for clarity. However, Felix candidly explained that he

no longer cares about trying to understand the licensing regime, which he described as "grey" and "impossible" to navigate due to political and moralistic agendas influencing enforcement by local authorities.[109] He explained that after running his event for so many years with no clear answer, he ignores the licensing question altogether:

> "So to my understanding, it hasn't been tested in high court, whether such events would need a licence or not. Which we're kind of thriving off at the moment. To me that's been a question I disregard…So over the years we went from worrying how to make this legal to just bulldozing that question and ignoring it entirely because there's only so many decades you can talk about this you know?"[110]

While the other promoters expressed dissatisfaction about the legal ambiguity they encountered, Felix saw it as having a positive effect because his event can operate without enumerated legal constraints, and felt his event was "thriving" off it. He believed the partygoers at his events are not performers, but that the question itself was useless because the enforcement of the licensing regime was not in good faith. This will be discussed further in Chapter 4. He expressed that his years of experience have made him brave, and that he no longer worries about licensing for his event because "we don't feel we're doing something wrong… I haven't broken any law in that sense, so I don't feel I have to hide anymore."[111] His certainty in the moral rightness of his event and his lack of faith in the local authorities means he perceives the licensing regime as illegitimate, and finds the debate over statutory definitions futile.

However, not every promoter feels emboldened in the face of ambiguity. At the end of Jaxon's interview, they made this confession:

[109] Interview with Felix (London, 26 April 2024)
[110] Ibid
[111] Ibid

> "I'd say this conversation has made me feel afraid…Yeah, because I have realised, um, just how little I do know about the framework. And even though I've been working with [other promoters] for the past year and, um, and, uh, also just what I think really about if we do shed more light on this and we bring, you know, the people who are actually legislating for this kind of get their hands on it, it makes me very afraid. Um, and it kind of, like, explains why is it a darkroom, you know? Why no one talks about it?"[112]

Jaxon's fear provides a glimpse into the uncertainty and vulnerability that many promoters feel when attempting to navigate this legal uncertainty. Their apprehension underscores the precarious nature of these spaces, where fears of attracting unwanted attention from authorities further perpetuates the regulatory silence surrounding queer sex-on-premises sites, invoking the metaphorical and literal darkness in which they operate.

Conclusion

In this chapter I have shown that there is pervasive confusion and ambiguity surrounding the licensing requirements for queer sex-on-premises sites. I have named this a "phantom licence" since queer sex-on-premises sites face pressure to obtain a licence despite its applicability being unsettled. As evidenced by parliamentary debates, the sexual entertainment venue licence category was created to give local authorities discretion in regulating strip clubs and lap dance clubs. Its applicability to queer sex-on-premises sites is uncertain, and interviews revealed that the answer depends on if one's interpretation of the word "performance" is expansive enough to include semi-public sex. If yes, then the activities of queer sex-on-premises sites would be considered licensable activities. If not, then a sexual entertainment venue licence is unnecessary.

Interviewees' articulated two competing frameworks around the performativity of public sex. Some believed that public sex is not a performance because it is not programmed, does not involve hired

[112] Interview with Jaxon (London, 24 May 2024)

performers, and lacks other traditional qualities of performances like a stage or advertising. Instead, they consider public sex to be recreation because it serves primarily to give pleasure to the sex-havers rather than onlookers. Others argued that public sex is a performance because being visibly erotic in a semi-public setting is akin to "performing" for others. This latter framework shifts focus from the "performer" to the "audience," emphasising the impact of "performers" on others regardless of if they intend to arouse or engage with onlookers. With no clear answer, some promoters believe the licensing scheme is illegitimate and feel emboldened to disregard the SEV licence, while others feel exposed and vulnerable to potential legal consequences.

Chapter 4: Lack of Transparency

Introduction

In this chapter I will show that data collection and testimony from interviewees reveals major inconsistencies in how the 12 inner London boroughs treat sex establishments and queer sex-on-premises sites. I will argue that at best, it demonstrates a lack of coherent and transparent licensing standards, which makes navigating the licensing regime as an applicant challenging. At worst, it suggests an illiberal instrumentalisation of the licensing regime to suppress a class of activities that local authorities find morally offensive or politically damaging. This chapter proceeds by first discussing the information about sex establishments published by local authorities, and highlighting variation across boroughs, gaps in the public record, and instances where empirical evidence conflicts with written policies. I will explain how boroughs have issued guidance which explicitly characterises sex establishments as dangerous to public welfare and anti-social, and that many boroughs have official policies that limit the number of sex establishments to a low number or to nil. I will also show through data from Freedom of Information Act requests that many boroughs are not following their own policies and guidance, raising questions about fairness and usefulness of the licensing regime.

Using two case studies, I will analyse the absence of queer sex-on-premises sites from the public record which further illustrates the confusion around their regulatory requirements. I will then turn to the interviews and propose two explanations for these conditions: Firstly, the ambiguity persists because local authorities are hesitant to engage with a topic they find politically controversial and fear that openly supporting queer sex-on-premises sites will draw ire from constituents. Secondly, the ambiguity presents ample room to oppose and suppress queer sex-on-premises sites, and therefore serves the aim of preventing deviant sexual communities from taking root in their neighbourhoods.

The data and findings in this chapter will help answer the second research question by exploring the incoherency of the sexual entertainment venue licensing category as it is applied in London boroughs,

absence of queer sex-on-premises sites from the public record, and treatment of queer sex-on-premises sites by local authorities.

Inconsistent Sex Establishment Licencing Across London

Examining the current landscape of sex establishment policies in London boroughs reveals a patchwork of inconsistent regulations. This inconsistency materialises in two ways: First, there are differing expectations and rules between boroughs. Second, the current conditions for sex establishments in a given borough may be inconsistent with the policies as listed in their official guidance. How each borough interprets, applies, and elaborates on Schedule 3 varies widely. This is especially noticeable for the parts of Schedule 3 that Parliament purposefully left unclarified. Following the passage of Schedule 3, most boroughs have released their own policies, guidance, or website pages dedicated to explaining their sex establishment regulations. By examining these documents, I was able to assemble an overview (shown in Table 2) of the 12 boroughs and how they are regulating sex establishments under Schedule 3 through their licensing scheme. This includes which types of sex establishments they recognise, if they stated a maximum number considered appropriate for the borough or locality, and what factors they consider for determining the character of a locality.

Borough	**Sex establishment types recognized**	**Appropriate no. of sex establishments**	**Considerations when determining the character of the relevant locality**
Camden	Sex store, sex cinema, sexual entertainment venue	Nil	If the property is within 250m of residential accommodation, schools, premises used by children, cultural facilities, facilities frequented primarily by women, places of worship, community/public buildings, places used by vulnerable persons, transport hubs, hospitals and medical facilities, tourist areas/iconic sites, or preexisting sex establishments.
Greenwich	Sex store, sex cinema, sexual	No limit	Proximity to residential accommodation, schools, places of worship, community/public buildings,

	entertainment venue		or “our diverse cultural communities.”
Hackney	Sex store, sex cinema, sexual entertainment venue	Nil	If the property is within 50m of residences, schools, premises used by children, places of worship, community/public buildings, sheltered housing and accommodation for vulnerable persons, or shopping centres.
Hammersmith & Fulham	Sex store, sex cinema, sexual entertainment venue	0 allowed in all wards except for one, in which 1 is the appropriate number	Proximity to residential accommodation, schools, premises used by children, places of worship, community/public buildings, routes to any of the aforementioned, and areas with highest levels of recorded crime.
Islington	Sex store, sex cinema, sexual entertainment venue	Nil	Proximity to residential accommodation, schools, premises used by children, places of worship, community/public buildings, or places used by vulnerable persons.
Kensington & Chelsea	Sex store, sex cinema, sexual entertainment venue, sexual encounter establishment	No information found	
Lambeth	Sex store, sex cinema, sexual entertainment venue	Not specified	Proximity to existing sex establishments, residential accommodation, educational establishments, places of worship, shopping centres, community facilities in the locality, access routes to any of the above, proximity to any substance misuse facilities, and “the cumulative impact of licensed premises in general in the locality.”
Lewisham	Sex store, sex cinema, sexual entertainment venue	No information found	Proximity to residential accommodation, schools, premises used by children, community/public buildings, places of worship, parks and leisure areas, or transport hubs.
Southwark	Sex store, sex cinema, sexual entertainment venue	Nil	Proximity to residential accommodation, schools, premises used by children, places of worship, community/public buildings, parks and leisure facilities, transport hubs, or preexisting sex establishments.
Tower Hamlets	Sex store, sex cinema, sexual entertainment venue	Nil	Proximity to residential accommodation, schools, premises used by children, community and leisure centres, places of worship, routes to the aforementioned, or preexisting sex

			establishments.
Wandsworth	Sex store, sex cinema	Nil	No information found
Westminster	Sex store, sex cinema, sexual encounter establishment, hostess bar	Soho: 16 St. James: 1 Victoria: 1 All other localities: 0	Proximity to premises where children are likely to be present (including residences and schools), places of worship, places used by vulnerable persons, places of historic importance or iconic in nature, places of family entertainment and leisure, or preexisting sex establishments.

Table 2: Sex Establishment Regulations in London Boroughs

As is displayed in Table 2, all boroughs recognise sex stores and sex cinemas, 10 recognise sexual entertainment venues, and two (Kensington & Chelsea, Westminster) make references to sexual encounter establishments. Westminster is the only one to list a fourth type: hostess bars.[113] All but one borough has set a limit on the number of sex establishments allowed, reflecting Rubin's theory that the law is being used to control or reduce the perceived impact of "bad" or immoral sexuality that these establishments represent. Six boroughs have stated that the appropriate number of sex establishments in the borough is nil, but all six still have a sex establishment licence application available.

Some boroughs have written their policies in ways which render this discrepancy visible, such as the guidance released by Southwark, which reads, "Whilst each application will be considered on its own merits, applicants should be aware that following a public consultation no locations in Southwark were identified as suitable for a sex establishment of any kind."[114] Similarly, Tower Hamlets declares on the first page, "The policy of the Council is to refuse applications for sexual entertainment venues," followed shortly by: "When the decision making powers of the Council are engaged each application will be dealt with on its own merits but this policy gives prospective applicants an early indication of whether their application is likely to be granted or not."[115] Three boroughs (Greenwich, Hammersmith & Fulham,

[113] Sex Establishment Guidance and Procedure, Borough of Westminster, General Licensing Team, Premises Management, 27th December 2009. 3.
[114] THE SOUTHWARK SEX ESTABLISHMENT POLICY 2011, 20.
[115] Tower Hamlets Council Sex Establishment Licensing Policy, 1.

Westminster) do not have a policy of nil. Hammersmith & Fulham and Westminster have made allowances in one or more wards, while Greenwich states that there is no maximum number of sex establishments.

However, just because a policy sets out a maximum, this does not mean the number of sex establishments in the borough adheres to that limit. Through FOIA requests, it was revealed that multiple boroughs have more licenced sex establishments than their policy purports. Camden, Islington, Tower Hamlets, and Westminster all have more sex establishments than their policies deem as appropriate. Table 3 lists boroughs' policy on the appropriate number of licenced sex establishments, and then the number of licenced sex establishments in 2023 as reported in FOIA responses. Boroughs where the number of licenced establishments exceeds the maximum are highlighted in red.

Borough	**Appropriate no. of sex establishments**	**No. of licenced sex establishments in 2023**
Camden	Nil	3
Greenwich	No limit	0
Hackney	Nil	2
Hammersmith & Fulham	0 allowed in all wards except for one, in which 1 is the appropriate number	1
Islington	Nil	3
Kensington & Chelsea[116]	No information found	1
Lambeth	Not specified	4
Lewisham	No information found	0
Southwark	Nil	0

[116] While no information is available on their website, a member of the Licensing team replied to my email inquiry, saying: "The Council has not set an appropriate limit on the number of sex establishments in any area in the borough. Currently we have no licensed sex establishments in Kensington and Chelsea, if an application is received the Council will make a determination at that time as to whether it is appropriate to grant a licence having regard to the character of the locality and any objections received during the consultation period." This was later contradicted by a Freedom of Information Act request, which revealed one licenced sex establishment in the borough.

Tower Hamlets	Nil	3
Wandsworth	Nil	0
Westminster	Soho: 16 St. James: 1 Victoria: 1 All other localities: 0	22

Table 3: Sex establishment maximums versus no. of licenced establishments

Premises with a sex establishment licence must renew their licence annually, which gives the borough the opportunity to reconsider if the establishment is meeting the conditions set out by legislation and council policies. Despite policies of nil, or having already exceeded their policy's limit, boroughs with sex establishments tend to approve renewals. Five boroughs that have received renewal applications have not rejected any in recent years. Three boroughs have also received and approved applications for new sex establishments. Two of these three have policies of nil. Table 4 lists boroughs' policy on the appropriate number of licenced sex establishments, and then the number of sex establishment applications received from 2019-2023 as reported in FOIA responses. Boroughs where the number of applications over five years exceeds the appropriate number of establishments multiplied by five are highlighted in red.

Borough	**Appropriate no. of sex establishments**	**Applications received 2019-2023**			
		New	**Renewal**	**Total**	**Refused**
Camden	Nil	1	24	25	0
Greenwich	No limit	0	0	0	-
Hackney	Nil	0	14	14	1
Hammersmith & Fulham	0 allowed in all wards except for one, in which 1 is the appropriate	0	9	9	0

	number				
Islington	Nil	0	15	15	0
Kensington & Chelsea	No information found	0	5	5	0
Lambeth	Not specified	2	10	12	0
Lewisham	No information found	0	0	0	-
Southwark	Nil	0	0	0	-
Tower Hamlets	Nil	1	24	25	5
Wandsworth	Nil	0	0	0	-
Westminster	Soho: 16 St. James: 1 Victoria: 1 All other localities: 0	*	*	129	2

* I sent Westminster two requests for this data. Both times, they responded over a month after the deadline required by law. The first time they delivered the information in a form incompatible with this table, and the second time they only sent data on sex shops instead of the whole sex establishment category like I had requested. Regrettably, there was not time for a third FOIA before the submission of this thesis.

Table 4: Sex establishment maximums versus licence applications received from 2019-2023

Camden and Tower Hamlets report approving a new sex establishment application in the last five years despite having policies that says the appropriate number of sex establishments in the borough ought to be zero. Only three boroughs—Hackney, Tower Hamlets, and Westminster—report rejecting any new or renewal applications. However, the number of sex establishments in some boroughs has noticeably declined over this time period. Meanwhile, the number in Lambeth has increased. Table 5 shows a year-by-year recount of received licence applications, rejections, and approvals from boroughs with sex establishments as listed in the FOIA responses.

Borough	Applications received															No. of Sex Establishments in 2024 (+/- from 2019)
	2019			2020			2021			2022			2023			
	Total	Granted	Refused	Total	Granted	Refused	Total	Granted	Refused	Total	Granted	Refused	Total	Granted	Refused	
Camden	7	7	0	6	5	0*	5	4	0*	4	4	0*	3	3	0	3 (-5)
Hackney	4	4	0	4	3	1	2	2	0	2	0	2	2	0	2	2 (-2)
H&F	2	2	0	2	2	0	2	2	0	2	2	0	1	1	0	1 (-1)
Islington	5	5	0	5	5	0	5	5	0	5	5	0	5	5	0	5
K&C	1	1	0	1	1	0	1	1	0	1	1	0	1	1	0	1
Lambeth	2	2	0	4	4	0	4	4	0	4	4	0	4	4	0	4 (+2)
Tower Hamlets	5	4	1	5	4	1	5	4	1	6†	4	1	4	3	1	3 (-1)
Westminster✣																22

* Indicates a licence/application that was submitted and surrendered.

† I presume this total number must be an error on the part of Tower Hamlets.

✣ I sent Westminster two requests for this data. Both times, they responded over a month after the deadline required by law and delivered unsatisfactory information that was incompatible with this table. Regrettably, there was not time for a third FOIA before the submission of this thesis.

Table 5: Applications received, granted, and refused from 2019-2023

Camden, Hackney, Hammersmith and Fulham, and Tower Hamlets have all seen declining numbers of applications, most by more than 50%. Lambeth has doubled the number of applications.

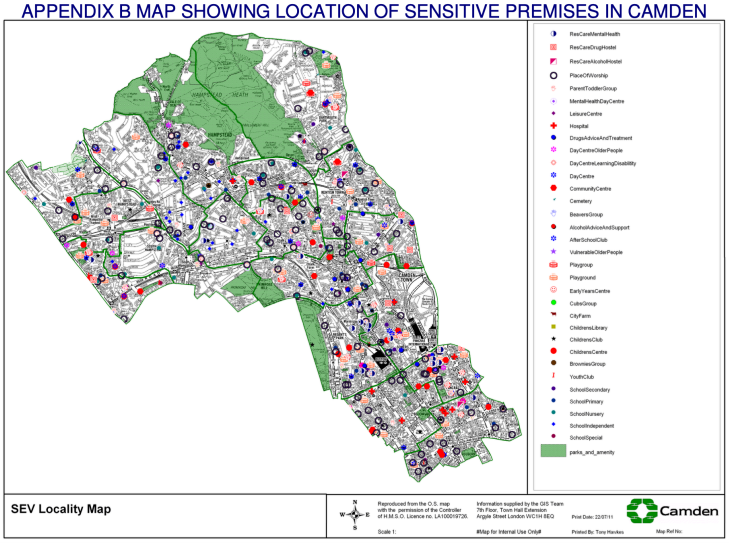
Although this intra-borough inconsistency seems to favour sex establishments, it only compounds the confusion of trying to understand how the licensing regime applies to these places. On paper, many of these sex establishments should not have been granted licences. When the number of licensed sex establishments in boroughs exceeds the maximum according to the guidance, particularly boroughs with policies of nil, it suggests that existing guidance does not represent the true practices of borough licensing officials. Since borough guidance is published with the intent of informing the public and assisting potential licence applicants, this discrepancy raises questions about the reliability of that guidance and usefulness of the licensing regime. For example, a potential applicant might be dissuaded from applying for a licence in a borough after reading their policy of nil even though that borough has approved new sex establishments in recent years. Or, there is the possibility that one application is approved while another is denied even though they are equal under the published guidance. Navigating the licensing regime becomes even more complicated if borough guidance cannot be relied upon for transparent and accurate information.

Returning to Table 2, ten boroughs define what factors they consider when determining the character of a locality, and these considerations for a location's appropriateness differ greatly. Rubin's theory is again relevant, since these lists indicate where local authorities perceive non-normative sexuality as an "inappropriate" presence. All ten boroughs consider residential accommodations, schools and premises used by children, places of worship, and facilities related to community or public use. Some boroughs have also pointed to more offbeat considerations, like facilities frequented primarily by women, hospitals, transport hubs, and "our diverse cultural communities." Tower Hamlets, Lambeth, and Hammersmith & Fulham also consider routes to these places as equally inappropriate for sex establishments. Lambeth includes a sweeping gesture to "the cumulative impact of licensed premises in general in the locality" without further explanation.[117] Some boroughs then use these factors to legitimise

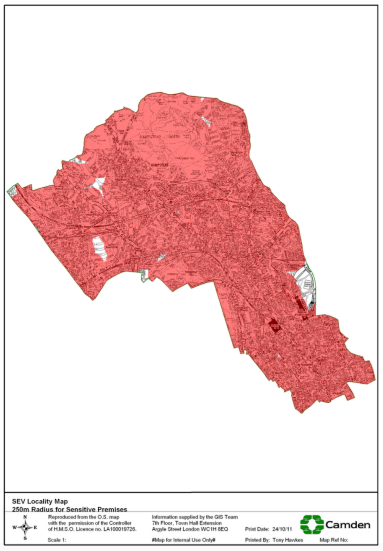
[117] LONDON BOROUGH OF LAMBETH SEX ESTABLISHMENT POLICY, 3-4

their policy of nil. Camden, which lists over a dozen types of places it considers when determining if a sex establishment would be inappropriate for the location, concludes, "mapping of these areas and a 250m radius around them showed there were no locations in the borough of Camden where it was appropriate for a sex establishment to be located." Camden presents maps of its "sensitive premises" and shows the 250 metre radius around them, saturating the borough in red.[118]

APPENDIX B MAP SHOWING LOCATION OF SENSITIVE PREMISES IN CAMDEN



APPENDIX C MAP SHOWING 250M RADIUS AROUND SENSITIVE PREMISES IN CAMDEN



Some boroughs explain or editorialise why sex establishments pose a threat to the social and moral wellbeing of their neighbourhoods in ways which resemble Rubin's theories on the social devaluation of "bad" sex, where sexual practices deemed unnatural and immoral are perceived as a threat to the community in non-sexual ways. Hackney explains that their "nil per ward policy" addresses the council's concern that allowing sex establishments will "contradict and undermine its stated aims and exacerbate the challenges it faces in bringing about positive, genuinely sustainable characterful and thriving neighbourhoods which support the need and principle of upskilling its population and closing the education gap across its communities."[119] Hackney further links sex establishments with youth crime, implying that they are connected to pressures on youth to partake in drugs, sex, crime, and gang

[118] London Borough of Camden Sex Establishments Policy, Appendices B and C
[119] London Borough of Hackney – Sex Establishment Licensing Policy 2011, 11.

activity.[120] Lewisham also refers to the safety of children, and their policy explains that their licensing objective of protecting children from harm extends to "the protection of children from moral, psychological and physical harm" which includes "exposure to strong language and sexual expletives."[121] Westminster justifies the imperative to regulate sex establishments by noting the "history of criminal activities associated with these types of establishments" including the history of criminal activities associated with these types of establishments" and lists prostitution, drugs, exploitation and blackmail of members of the public, and unlicensed sex shops selling unclassified pornographic DVDs.[122] They go on to acknowledge that "the Soho area has a long established reputation within the sex industry" and the Council "seeks to legitimise this business and protect local residents, businesses, vulnerable people and visitors to this popular area."[123] Hammersmith & Fulham published a report of their sex establishment licencing policy consultation which includes quotes from residents such as "i am apalled that such a venue exists in this neighbourhood which is primarily residential. it brings the tone of the area right down" and "i frankly think they lead to sexual frusration and hate of women becos the men feel teased. sexual attacks will increase…they will endanger women in the borough."[124] Southwark too asserts that sex establishments have a negative impact overall on the community's sense of safety, particularly for women.[125]

While Schedule 3 addresses nudity in sex establishments, some boroughs have added their own regulations. For example, Southwark's sex establishment policy states that "Striptease performers are to re-dress at the conclusion of a performance and are to remain fully clothed whilst acting in the capacity of host or hostess."[126] Lambeth diverges slightly, saying that "Striptease performers are to re-dress at the conclusion of a performance and are to remain fully clothed whilst acting in the capacity of host or

[120] Hackney Sex Establishment Licensing Policy, 10.
[121] Borough of Lewisham Statement of Licensing Policy 2020-25, 23-24.
[122] Sex Establishment Guidance and Procedure, Borough of Westminster, 3.
[123] Ibid.
[124] London Borough of Hammersmith & Fulham 'Sex Entertainment Venues and Sex Establishment Licensing Policy Consultation'. Appendix A. https://democracy.lbhf.gov.uk/documents/s5692/Appendix%204.pdf
[125] THE SOUTHWARK SEX ESTABLISHMENT POLICY 2011, 4.
[126] THE SOUTHWARK SEX ESTABLISHMENT POLICY 2011, 23.

hostess, but may work solely behind the bar topless."[127] Hammersmith and Fulham's policy specifies that "Nudity shall only be permitted by performers and not by customers."[128] The dichotomy of 'performers' and 'audience' is reiterated in conditions prohibiting performers and customers from physical contact. Islington and Southwark state that during a performance there shall be no full-bodied physical contact between the customer and the dancer other than the transfer of money or token at the beginning, during and conclusion of the dance.[129] Tower Hamlets has a similar condition and further explains that "at the conclusion of a performance there shall be no intentional physical contact between a performer and the customer, save for a handshake. For the avoidance of doubt kissing is not permitted."[130] Hammersmith and Fulham permits the placing of money in a garter worn by a female[131] performer or in the performer's hand at the conclusion of a performance, and brief handshake and a kiss by the performer on the customer's cheek after the performer has replaced her clothing at the end of a performance. Hammersmith and Fulham's policy assumes all performers are female and refers to performers generally with she/her pronouns, evocative of Rich's theory of compulsory heterosexuality since they inscribe a singular form of entertainment where a woman is an object of sexual arousal for a man. Meanwhile, Lambeth requires a minimum 1 metre separation between performers and audience.[132]

Many boroughs expressly limit performers from touching other performers. Camden's policy states that "Dancers may not intentionally touch the genitals, anus or breasts of another dancer, nor knowingly permit another dancer to touch their genitals, anus or breasts."[133] Islington and Tower Hamlets prohibit "full bodied" physical contact between performers.[134] Westminster and Lambeth bars any

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[127] London Borough of Lambeth Sex Establishment Policy
[128] London Borough of Hammersmith and Fulham Sex Establishment Policy 2011, 24.
[129] London Borough of Islington, Standard licence conditions for sexual entertainment venues, *6. Performers*
THE SOUTHWARK SEX ESTABLISHMENT POLICY 2011, 23.
[130] London Borough of Tower Hamlets, STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES, 7.
[131] Hammersmith and Fulham's policy assumes all performers are female and refers to performers generally with she/her pronouns.
[132] London Borough of Lambeth Sex Establishment Policy
[133] London Borough of Camden Sex Establishments Policy, 31 57(e)
[134]London Borough of Islington, Standard licence conditions for sexual entertainment venues, 6. *Performers*
London Borough of Tower Hamlets, STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES, 7.

physical contact between performers.[135] Tower Hamlets clarifies that one performer touching another's breasts or genitalia with an object is also prohibited.[136]

Some boroughs have placed restrictions on the sexual explicitness of the performances. Camden bans "any act which simulates masturbation, oral sex or sexual intercourse, including the insertion of any object, including their own finger, in to the anus or vagina."[137] Camden further forbids performers from touching parts of their own body during their act, stating, "Dancers may not touch their own breasts, anus or genitals with their fingers, lips or tongue."[138] Tower Hamlets asserts that "any performance shall be restricted to dancing and the removal of clothes" and "there must not be any other form of sexual activity, including but not limited to acts or the simulation of acts of personal stimulation."[139] Hammersmith and Fulham blocks "performances or demonstrations of simulated sex or related activities."[140]

The above is not an exhaustive list of the conditions imposed by boroughs on sexual entertainment venues concerning nudity, physical contact, and performances of sex or simulated sex. Rather, it is meant to represent the variety of regulations that boroughs have created to regulate sexual and/or erotic conduct in these establishments. For venues serving the LGBTQ+ community, these conditions have an extra layer of complication because the legal constructions of nudity affix different standards to binary sex and gender categories. Schedule 3 defines nudity as "(a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and (b) in the case of a man, exposure of his pubic area, genitals or anus."[141] Sites which embrace an expansive conception of gender fluidity, non-conformity, and transgender inclusion cannot enforce this without forcing their attendees into the sex binary they may emphatically seek to reject.

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[135] Sex Establishment Guidance and Procedure, Borough of Westminster.
[136] London Borough of Tower Hamlets, STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES, 7.
[137] London Borough of Camden Sex Establishments Policy, 31 57(h)
[138] London Borough of Camden Sex Establishments Policy, 31 57(i)
[139] London Borough of Tower Hamlets, STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES, 7.
[140] London Borough of Hammersmith and Fulham Sex Establishment Policy 2011, 24.
[141] The Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, Paragraph 14

Queer Sex-On-Premises Sites and the Public Record

If the licensing regime cannot help us understand how local authorities apply the law to queer sex-on-premises sites, can we turn to public records? Finding queer sex-on-premises sites in the public record is a difficult task. Many of them do not apply for a licence in order to avoid council scrutiny or because they believe they do not need one, as discussed in Chapter 2. This means they are often absent from licence registries. Or, they may have a premises licence to serve alcohol under the Licensing Act 2003, but nothing in this licence would indicate sex on the premises. Some sites may have had hearings before their council, but, as will be explored in this chapter, they may not mention the nature of their establishment and activities and thus are not locatable in meeting minute records. If a current queer sex-on-premises site tried to look at these records to answer their questions about licensing, they would struggle to find anything useful. Even making Freedom of Information Act (FOIA) requests about these topics fails to unearth relevant information, as queer sex-on-premises sites are incognito at best and absent at worst.

I made FOIA requests for lists of currently operating sex establishments in the boroughs and copies of their licence applications. I looked through each licence application to see what type of sex establishment they were, and if any were recognisable as queer sex-on-premises sites. In responses from the eight boroughs with sex establishments, only Lambeth has licences for premises that I recognised as queer sex-on-premises sites. Table 6 shows the number of sex establishments by type in the boroughs.

Borough	**Licensed sex establishments by subtype in 2023**[142]		
	SEV	**Sex shop**	**QSOPS**
Camden	2	1	0
Hackney	2	1	0

[142] As reported in FOIA responses

Hammersmith & Fulham	1	0	0
Islington	3	0	0
Kensington & Chelsea	0	1	0
Lambeth	0	2	2
Tower Hamlets	4	0	0
Westminster	13	9	0

Table 6: Sex establishments by subtype

I asked for copies of all sex establishment licence applications from the last five years, including renewals and new applications, and a list of all sex establishments in the borough. I intentionally asked for applications, since they often ask the venue to describe their activities and it would be in these answers that I thought I might glean information about sex on the premises. Of the eight boroughs, only three responded with copies of the licence applications. Two boroughs responded with copies of the licence itself rather than the application, and two provided a link to their online licence registries. I then looked at all of the boroughs' online licence registries to see if they provide access to sex establishment licence applications. I was able to see applications for sex establishment licences on two borough registries. The rest either do not list applications at all or do not incorporate sex establishment licences into their registry because the primary purpose of the registry is to list premises licences. Table 7 shows each boroughs' response to the FOIA request and if the applications could be found in the registry.

Borough	**Response to FOIA licence applications request**	**Copies available in the online registry?**
Camden	Gave a link to the online registry	Yes
Hackney	Applications attached as PDFs	Online registry has premises licences only

Hammersmith & Fulham	Denied due to containing a large amount of personal information	No
Islington	Licences provided, not applications.	No
Kensington & Chelsea	Applications attached as PDFs	Online registry has premises licences only
Lambeth	Licences provided, not applications.	No
Tower Hamlets	Applications attached as PDFs	Online registry has premises licences only
Westminster	Gave a link to the online registry	Yes

Table 7: Borough responses and online availability of licences

When a queer sex-on-premises site can be found in the public record, the amount of accompanying information varies significantly. Two examples—a handful sites from Lambeth and Klub Verboten in Tower Hamlets—demonstrate how these sites may be inscribed into the public record, if they are at all, and what these records show about the larger landscape of licensing queer sex-on-premises sites.

Example: Lambeth

The two queer sex-on-premises sites in Lambeth as of 2023, Fire and Union Club, are not identifiable as sites with sex on the premises from their licences, both of which are sexual entertainment venue licences. I recognised them from my own knowledge of the scene in London.[143] Copies of the sex establishment licence applications for these sites are not available on the borough's public registry. Since

[143] They have also been openly advertised as venues for kink and fetish club nights for at least a decade. For example, they appear in guides to London's gay fetish scene as early as 2012: (ex: https://www.qxmen.com/pdf/qxmen43A.pdf, https://www.qxmen.com/pdf/qxmen118.pdf.) While it may not be clear in the meeting minutes, I would argue that neither venue keeps their association with sex-on-premises events secret within the larger LGBTQ+ and nightlife spheres. Many interviewees mentioned these venues by name, suggesting that they are well known in the community.

the FOIA response included a list of business names and the date they were licenced, I went through the meeting minutes of all of the Lambeth licensing sub-committee meetings in the years the sites were licenced to find the committee's discussion of them. Since the 'Agenda and minutes' database lacks a search function, this required going one-by-one through each meeting and using control-f searches with keywords "sex" and the venue names. I was able to find the meeting minutes relevant to each site, and the applications were included in the appendices.

Fire, a club which has hosted a number of gay/queer fetish nights over the years, had its hearing in December of 2012 along with five similar clubs and one gay sauna: Area, Covert, Barcode, The Hoist, Eagle, and Pleasuredrome.[144] However, nowhere in the meeting minutes or appendices are any identified as queer sex-on-premises sites, nor is there any mention of sex on the premises or similar conduct at these venues. They are described as "popular venues with the lesbian, gay, bisexual and transgender (LGBT) community," and it is only because of my familiarity with the scene that I was able to recognise Barcode, The Hoist, Eagle, and Pleasuredome as queer sex-on-premises sites.[145] All of them were seeking new sexual entertainment venue licences (although Pleasuredrome, the gay sauna, withdrew its application). A legal representative for Area, Fire, and Covert negotiated amendments to 30 of the licensing conditions, arguing "that a strict interpretation of the standard conditions would impinge on the venues' operation as clubs when relevant entertainment was not being provided."[146] The minutes do not indicate the committee members' response to these amendments individually, but the minutes note that the three sites had their applications approved with amended versions of the conditions. Legal representatives for Barcode, The Hoist, and Eagle are noted as saying they were happy to agree to the amended conditions applied to Area, Fire and Covert, and their applications were approved with the same amendments. Very little discussion of the activities of these sites is included in the minutes, and sexual activity on the premises is never

[144] Special meeting, Licensing Sub-Committee - Thursday 6 December 2012 10.00 am https://moderngov.lambeth.gov.uk/ieListDocuments.aspx?CId=116&MId=8440&Ver=4
[145] I confirmed this by checking websites and magazines LGBTQ+ people use to find cruising sites:
Barcode (Fitladz): https://www.qxmagazine.com/2015/05/bye-bye-barcode/
The Hoist, Eagle, Pleasuredrome: https://www.qxmen.com/pdf/qxmen118.pdf
[146] Ibid, Item 4b.

mentioned. It is also not explained why all six of these places chose to apply at this time, and at the same time as each other. According to the Lambeth licence registry, as of June 2024 Fire still operates with a SEV licence and Pleasuredrome is open without one. Area, Covert, Barcode, The Hoist, and Eagle have closed.

The hearing for the other site, Union Club, was in June of 2013. It lasted under 20 minutes and the meeting minutes do not go into detail about what was discussed.[147] Similar to the 2012 hearing, nothing identifies Union as a site that hosts events with sex on the premises and I was able to recognise them from my own knowledge. However, signs in the meeting minutes suggest Union is not a typical sex establishment. The representative for Union is recorded as saying that Union is not a lap dancing club, and that "the licence was being sought more to cover the behaviour of customers." In the application submitted by Union included in the appendix, Union distances themselves from sexual entertainment venues and expresses their confusion about the applicability of the category. In the "Any Further Information" textbox Union wrote the following:

> "Although we are not certain we require a SEV licence to avoid this uncertainty we wish to apply for a licence. Similar licences were granted to 5 other similar venues and we seek nothing more or less than the same as has been granted to them. We have a concern that the majority of the councils standard SEV conditions do not apply as they are aimed at lapdancing clubs + therefore propose that an additional condition that states that the SEV conditions only apply when SEV type activities are taking place."[148]

While it is recorded that Union stated what type of establishment they are *not*, nothing suggests Union explained what they *are*. The application was granted with "minor amendments to the standard conditions [that] had been agreed with other venues in Vauxhall which operated as sex establishments," although it is not clear which amendments. Nothing resembling Union's proposed condition appears in

[147] Agenda item- Union, Arch 66 Goding Street SE11 5AW (Prince's ward) Meeting of Licensing Sub-Committee, Tuesday 4 June 2013 7.00 pm (Item 4a)
https://moderngov.lambeth.gov.uk/mgAi.aspx?ID=22847
[148] Ibid, item 4a

their licence. If there was deliberation over the applicability of the licence to Union, it is not captured in the meeting minutes.

Example: Klub Verboten

The examples from Lambeth demonstrate that appearances of queer sex-on-premises sites in the public records can lack detail, including any record of local authorities considering the licensing category question. It also suggests that the sites may have avoided the matter by not revealing themselves as a venue with sex on the premises. However, I now return to where I began: The story of Klub Verboten, a queer fetish party who undertook a public legal battle with the Tower Hamlets borough council after the licensing authority invoked the licensing regime in an attempt to shut them down. Klub Verboten has challenged local authorities on licensing issues multiple times in recent years, which, to the best of my knowledge, gives them the largest public records footprint of any currently operating queer sex-on-premises site. They have had two hearings before the Tower Hamlets borough council, which provides ample records of how local authorities tried to interpret and apply licensing categories to Klub Verboten. It also exhibits how the operators of Klub Verboten articulated a contrary interpretation, and then how this conflict was negotiated through the council's ruling.

Unlike the hearings of the Lambeth queer sex-on-premises sites mentioned above where the occurrence of sex on the clubs' premises appears to not have been mentioned, Klub Verboten shared the full extent of their activities with the council. Furthermore, their story resonates with Rubin's theory of the Charmed Circle, as there were multiple signs that the opposition was based (at least partly) on social, political, and moral opposition to "bad" and "immoral" sexual practices occurring at Klub Verboten and the effect it may have on the moral fabric of the neighbourhood. This section is derived from the Tower Hamlets borough council records including meetings minutes and video recordings of a hearing, news coverage of Klub Verboten, and information from Klub Verboten's social media.

Klub Verboten is a monthly queer, kink-positive BDSM and Fetish party held in London and Berlin offering techno music and "a BDSM dungeon and playroom where consenting people may hook up

with and explore sexual connections with other guests."[149] On their website they describe themselves as a "provider of contemporary pro-pervert spaces."[150] Klub Verboten has been celebrated for their modern and more inclusive approaches to kink and fetish clubbing, which prioritise community and safeguarding.[151] Every event is monitored by the KV Safeguarding team, a group of volunteers trained and accredited by a handful of safety-promotion organisations including LGBTQ+ anti-abuse charity Galop, nightlife safety partnership Safer Sounds, and the Women's Night Safety Charter. Klub Verboten is also famous for its scrupulous membership process, which requires prospective members to be vetted in person at a non-sexual social event or fill out an online application asking applicants write answers to questions such as "In your own words: What is consent?" If approved, members are given a digital membership card and granted access to members-only spaces.[152]

Since its founding, Klub Verboten has moved between multiple locations across London. Beginning in Clapton in 2016,[153] it bounced between a few venues before attempting to settle in Tower Hamlets.[154] It was here that Klub Verboten found itself in a licensing limbo. Seeking a permanent space of their own, in 2020 they applied for a premises licence to open a club and community hub for the kink and BDSM community, and had a brush with the borough council. In their application, they described themselves as "a self-regulated Fetish/BDSM facilitator that operates on the basis of verified and vetted membership."[155] The application elaborated that "all members and guests are mutually consenting adults

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[149] Aneesa Ahmed, 'Queer Nightlife Groups Organise Protest to "Save Kink Spaces" in Tower Hamlets' Mixmag (20 July 2022) <https://mixmag.net/read/save-kink-spaces-protest-tower-hamlets-kink-queer-nightlife-klub-verboten-news> accessed 17 May 2024

[150] 'KLUB VERBOTEN' (*KLUB VERBOTEN*) <http://www.klubverboten.com/> accessed 17 May 2024

[151] Emma Garland, 'Why London's Kink Clubs Are under Serious Threat' Dazed Digital (17 March 2022) <https://www.dazeddigital.com/life-culture/article/55704/1/why-londons-kink-clubs-are-under-serious-threat-klub-verboten-crossbreed> accessed 17 May 2024

[152] 'MEMBERSHIP APPLICATION FAQs' (*KLUB VERBOTEN*) <http://www.klubverboten.com/> accessed 17 May 2024

[153] Will Coldwell, 'Inside London's Secret Sex Party Revolution' (*Huck*, 30 October 2018) <https://www.huckmag.com/article/inside-londons-secret-sex-party-revolution> accessed 17 May 2024

[154] Emma Garland, 'Why London's Kink Clubs Are under Serious Threat' *Dazed Digital* (17 March 2022) <https://www.dazeddigital.com/life-culture/article/55704/1/why-londons-kink-clubs-are-under-serious-threat-klub-verboten-crossbreed> accessed 17 May 2024

[155] Appendix 1 of: Agenda Item - Licensing Act 2003 Application for a Premises Licence for (Klub Verboten) 11 West India Dock Road, London E14 8EZ' (23 June 2020) https://democracy.towerhamlets.gov.uk/documents/s218632/WestIndiaDockRd11.RED.Reduced2.pdf

that identify with the Fetish/BDSM lifestyle and may engage in adult play and sexual activity at the play events." They also asserted that "Klub Verboten is not a Sexual Entertainment Venue: Klub Verboten does not support nor promote the crude objectification and exploitation of performers for the narrow satisfaction of a paying audience."[156] In response to the application, the council received letters of opposition from the borough's Environmental Protection Team and the Licensing Authority. Environmental Protection argued that Klub Verboten posed too great a risk of disturbance to nearby residential premises.[157] The Licence Authority echoed concern of the impact on the local community, and further stated that "in view of the nature of the club" it believed "there is not enough detail to come to any conclusion whether it requires an SEV licence," urging that the licence be rejected.[158] The council also received one letter from a citizen opposing the application and 73 letters in support.

The Licencing Subcommittee held a hearing on June 23, 2020. Unfortunately, a video of this hearing is not available on the Tower Hamlets Webcast website, but an abbreviated account can be gleaned from the meeting minutes:[159] Counsel for Klub Verboten addressed the concerns expressed by Environmental Protection and the Licensing Authority, and further contended that granting the licence would be in the 'public good' as it would provide a space for a marginalised community representing different genders, sexualities, and races who were now seeking "a permanent home in the London Borough of Tower Hamlets." Representatives of Environmental Protection and the Licensing Authority reiterated their opposition. The Licensing Officer argued that "the Licensing Authority were not convinced" by the applicant's claim that the space would be used as a community space for lectures and arts shows during the day, and said that "the likelihood of the space be used for vertical drinking and as a club all of the time, was a concern." A local resident speaking against the application argued that this "was essentially a sex club" and "should be considered under the Sexual Entertainment Venue

[156] Ibid
[157] Ibid Appendix 6
[158] Ibid Appendix 7
[159] 'Agenda Item - Licensing Act 2003 Application for a Premises Licence for (Klub Verboten) 11 West India Dock Road, London E14 8EZ' (23 June 2020) <https://democracy.towerhamlets.gov.uk/mgAi.aspx?ID=113667> accessed 17 May 2024

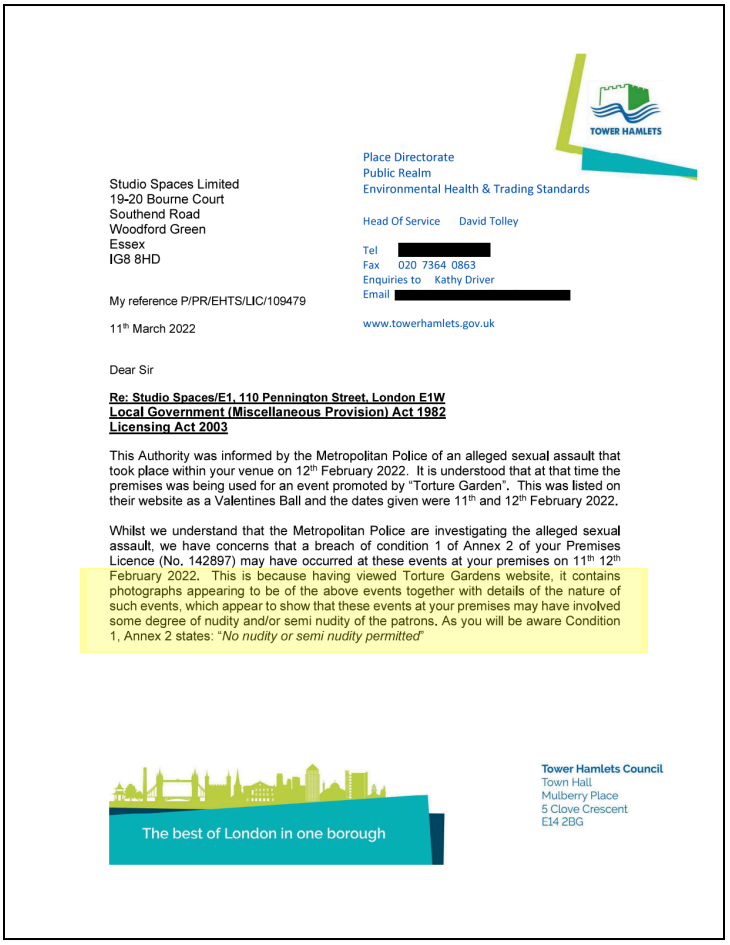
legislation." The resident then "stated 47% of the population of Tower Hamlets was Muslim and whilst not trying to speak on behalf of the Muslim community, the vast majority would not be supportive of welcoming a sex club in the area" and he "asked Sub-Committee members to reject the application and said it was clear from Klub Verboten's website they had been pushed out of other locations, as the club was not morally or socially acceptable to communities which reside in those localities. [Speaker] said it would be better for the club to be based in Soho or on an industrial site."

After hearing from five citizens in support of Klub Verboten, the Counsel for Klub Verboten answered questions. Although the questions themselves are not written in the minutes, the answers suggest many pertained to whether Klub Verboten needed a sexual entertainment venue licence. Counsel gave examples of other venues within Tower Hamlets which allowed for sexual intercourse to take place on their premises that were not classified as sex clubs and said Klub Verboten was no different, and confirmed that sex would take place on the premises. He noted that the premises would be used for adult entertainment, sexual entertainment, sexual contact, fetish, kink and BDSM, arguing that none of these are within the scope of the sexual entertainment venue policy. He distinguished Klub Verboten from a sexual entertainment venue, arguing that the borough's policy mainly concentrated on lap-dancing clubs while the application made clear that Klub Verboten is not a lap-dancing club.

Upon considering the evidence, the Sub-Committee said they were concerned that Klub Verboten had not demonstrated how it would satisfactorily contain the rise of crime, disorder and anti-social behaviour and deemed there to be a significant risk of public nuisance. They also noted that "given that there will be incidents of 'adult play' and confirmation that some people will be engaging in 'sexual intercourse'" they found this "concerning given the type of licence being applied for." They also stated that "the activities taking place in the venue would not be directly beneficial to the majority of the residents residing in the local area and surrounding community, as many of the attendees will be coming from elsewhere to engage in BDSM/Fetish/Sexual activities." They unanimously refused the application.

Having failed to create their permanent hub, Klub Verboten flitted between locations until taking up a long-term residency at a nightclub named E1, which is in Tower Hamlets. E1 has hosted many kink

and sex-oriented events, and does not have a sexual entertainment licence. Klub Verboten's monthly events continued with seemingly no issue, until E1 received a warning letter from the borough in March 2022. The letter, pointing to a condition in the venue's licence prohibiting nudity and semi nudity,[160] warned against hosting Klub Verboten events:



TOWER HAMLETS

Place Directorate
Public Realm
Environmental Health & Trading Standards

Head Of Service David Tolley

Tel [redacted]
Fax 020 7364 0863
Enquiries to Kathy Driver
Email [redacted]

www.towerhamlets.gov.uk

Studio Spaces Limited
19-20 Bourne Court
Southend Road
Woodford Green
Essex
IG8 8HD

My reference P/PR/EHTS/LIC/109479

11th March 2022

Dear Sir

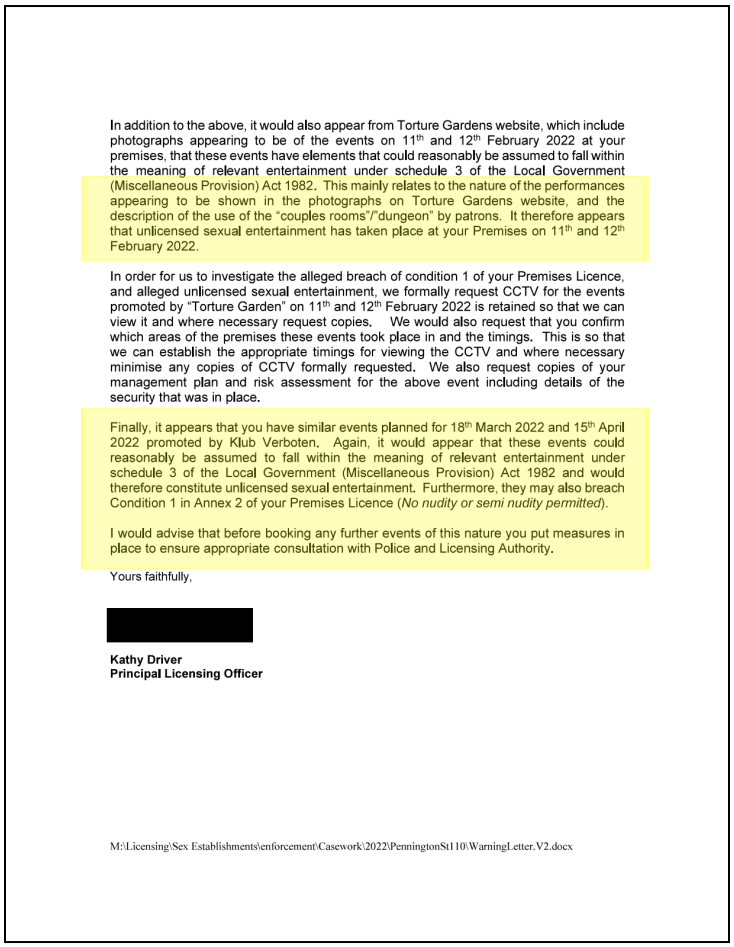
Re: Studio Spaces/E1, 110 Pennington Street, London E1W
Local Government (Miscellaneous Provision) Act 1982
Licensing Act 2003

This Authority was informed by the Metropolitan Police of an alleged sexual assault that took place within your venue on 12th February 2022. It is understood that at that time the premises was being used for an event promoted by "Torture Garden". This was listed on their website as a Valentines Ball and the dates given were 11th and 12th February 2022.

Whilst we understand that the Metropolitan Police are investigating the alleged sexual assault, we have concerns that a breach of condition 1 of Annex 2 of your Premises Licence (No. 142897) may have occurred at these events at your premises on 11th 12th February 2022. This is because having viewed Torture Gardens website, it contains photographs appearing to be of the above events together with details of the nature of such events, which appear to show that these events at your premises may have involved some degree of nudity and/or semi nudity of the patrons. As you will be aware Condition 1, Annex 2 states: "*No nudity or semi nudity permitted*"

The best of London in one borough

Tower Hamlets Council
Town Hall
Mulberry Place
5 Clove Crescent
E14 2BG



In addition to the above, it would also appear from Torture Gardens website, which include photographs appearing to be of the events on 11th and 12th February 2022 at your premises, that these events have elements that could reasonably be assumed to fall within the meaning of relevant entertainment under schedule 3 of the Local Government (Miscellaneous Provision) Act 1982. This mainly relates to the nature of the performances appearing to be shown in the photographs on Torture Gardens website, and the description of the use of the "couples rooms"/"dungeon" by patrons. It therefore appears that unlicensed sexual entertainment has taken place at your Premises on 11th and 12th February 2022.

In order for us to investigate the alleged breach of condition 1 of your Premises Licence, and alleged unlicensed sexual entertainment, we formally request CCTV for the events promoted by "Torture Garden" on 11th and 12th February 2022 is retained so that we can view it and where necessary request copies. We would also request that you confirm which areas of the premises these events took place in and the timings. This is so that we can establish the appropriate timings for viewing the CCTV and where necessary minimise any copies of CCTV formally requested. We also request copies of your management plan and risk assessment for the above event including details of the security that was in place.

Finally, it appears that you have similar events planned for 18th March 2022 and 15th April 2022 promoted by Klub Verboten. Again, it would appear that these events could reasonably be assumed to fall within the meaning of relevant entertainment under schedule 3 of the Local Government (Miscellaneous Provision) Act 1982 and would therefore constitute unlicensed sexual entertainment. Furthermore, they may also breach Condition 1 in Annex 2 of your Premises Licence (*No nudity or semi nudity permitted*).

I would advise that before booking any further events of this nature you put measures in place to ensure appropriate consultation with Police and Licensing Authority.

Yours faithfully,

[redacted]

Kathy Driver
Principal Licensing Officer

M:\Licensing\Sex Establishments\enforcement\Casework\2022\PenningtonSt110\WarningLetter.V2.docx

Figure 2: Warning letter sent to E1 on March 11, 2022[161] (highlights added)

[160] Annex 2(1) of E1's premises licence read: "No nudity or semi nudity permitted."
Appendix 1 of Agenda Item - Licensing Act 2003 Application for a Premises Licence for (Klub Verboten) 11 West India Dock Road, London E14 8EZ' (23 June 2020)
https://democracy.towerhamlets.gov.uk/mgConvert2PDF.aspx?ID=204385

[161] Appendix 1 of Agenda item - Licensing Act 2003 Application for a variation of a Premises Licence for (Studio Spaces Ltd / E1), 110 Pennington Street, London E1W 2BB (26th July, 2022)
https://democracy.towerhamlets.gov.uk/mgAi.aspx?ID=134114

This letter was sent after the police began investigating an alleged sexual assault at a different kink event named Torture Garden that had taken place at E1. Through this, the council became aware that E1 held events that they believed breached the "no nudity or semi nudity" condition in their licence and argued that Torture Garden's "couple's room" and "dungeon" fell within the meaning of "relevant entertainment" under Schedule 3. They ended their letter by singling out Klub Verboten as likely constituting unlicensed sexual entertainment, and advised E1 from booking further events.

The discordance between Klub Verboten and the definition of a sexual entertainment venue was an important element of this dispute. A spokesperson for the Tower Hamlets Council suggested in a statement to Vice News that the venue's lack of a sexual entertainment licence was a key issue: "The venue is in a residential area and has a premises licence which allows for alcohol and entertainment. It does not have a sexual entertainment licence or a licence that would allow for nudity or partial nudity. We understand Klub Verboten is hosted by this venue and therefore what events take place in its premises has to be decided by the venue in line with its licence."[162] Also at play was the ambiguity and arbitrariness of the condition on nudity in the premises licence. In the same article, Klub Verboten told Vice that "the council has failed to provide clarity on what is defined as 'semi-nudity'" and being forced to "inquire about someone's gender before they could take their top off" would be devastating for their queer community.[163] Vice and Dazed Digital reported that Le Boudoir Club, a private commercial swingers club in Tower Hamlets aimed at a heterosexual and gender-conforming crowd, was not contacted by the council.[164]

E1 appealed for a variation of the premises licence that would remove the nudity clause. A hearing was held on July 26, 2022. A recording of the hearing is available online through the Tower

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[162]Doherty S, 'Fetish Clubs Are Under Attack From Council Using "Archaic" Laws' Vice (16 March 2022) <https://www.vice.com/en/article/wxdkgy/klub-verboten-crossbreed-tower-hamlets-council> accessed 18 May 2024

[163] Ibid

[164] Emma Garland, 'Why London's Kink Clubs Are under Serious Threat' *Dazed Digital* (17 March 2022) <https://www.dazeddigital.com/life-culture/article/55704/1/why-londons-kink-clubs-are-under-serious-threat-klub-verboten-crossbreed> accessed 17 May 2024

Doherty S, 'Fetish Clubs Are Under Attack From Council Using "Archaic" Laws' Vice (16 March 2022) <https://www.vice.com/en/article/wxdkgy/klub-verboten-crossbreed-tower-hamlets-council> accessed 18 May 2024

Hamlets website, and quotations in the following paragraphs are direct quotes from speakers at the hearing.[165] Conflicting interpretations of the licensing regime were woven through each side's arguments. In the opening statement given by counsel for E1, he referenced Torture Garden's 30-year lifespan and invoked a long history of kink spaces in Tower Hamlets to challenge why the borough had shifted its stance on such events:

> "[The] statement of licensing policy is only concerned, in so far as adult entertainment is concerned, with lap dancing, which is a particular species of entertainment in which women are on a stage typically performing for men. These types of venues, where consenting adults meet in a controlled environment to engage in entertainment with each other, has always been condoned, supported, and promoted by the London Borough of Tower Hamlets. So there's a significant question now why the licensing authority, outwith any policy, has changed its position."

He also characterised the Licensing Authority's crackdown as an overreach of power, once which burdened the venue with the task of policing their community with standards they ideologically rejected:

> "Can we tell women coming into a nightclub that they do not have the permission of Tower Hamlets to expose their nipples? Whereas men can dance with their tops off? How do we deal with trans people who might be presenting and identifying as variant genders? Who are we to police people's personal choices?"

He further pointed to the term "semi-nudity" as vague and unworkable, arguing that the borough was using untenable standards they expected others to figure out how to enforce: "as a licensing authority, which is proposing to regulate people's conduct, why have they not grappled with this question that the law tells them quite clearly they must and they haven't?"

[165] https://towerhamlets.public-i.tv/core/portal/webcast_interactive/672872/start_time/0

In the opening arguments for the Licensing Authority, counsel accepted that the term 'semi nudity' should be struck from the condition, but urged the council to accept an amended condition that sidestepped the trans inclusion issue raised by E1 by defining references to man or woman as including "persons who self-identify as a man or woman." While trans men and trans women might be included in this new "self-identify" addition, it neglected to address people who identify outside of the gender binary. This modification would make the definition of nudity conform to legislation about sexual entertainment venues, even though this hearing was primarily concerned with the Premises Licence Act 2003, a conflation that E1 would point out later in the hearing. The Licensing Authority counsel asserted that the Authority "takes no view on the morality on the desirability of kink or fetish nights carrying on in this premises," but seeks to ensure that "this premises is properly regulated and complies with the licensing regime." Furthermore, he argued that E1 should have applied for a SEV licence:

> "There is a concern of the licensing authority, an additional and secondary concern, as to the fact that this licence holder has chosen not to apply for a sexual entertainment venue licence under different legislation…Now in choosing not to apply for an SEV licence, it means there is not the sort of conditions on this licence that would be appropriate for a sex entertainment venue. And that causes some welfare concerns for the licensing authority."

Later, a councillor questioned E1's counsel on why E1 had not applied for a SEV licence. He responded by explaining that E1 had no reason to believe that the SEV licence applied to them since it was tailored to lap dancing clubs, and that the Metropolitan Police agreed:

> "When we [E1] risk assess our venues and provide this risk assessment to the police and say 'we are having these parties,' and up until now no one has said 'you need an SEV licence,' why should we? I'd ask [the Licensing Officer] to take me to your statement of licensing policy and explain to me where these types of venues are specifically addressed and told to get a licence. He

> can't, because they're not, because each and every single example in your policy is about lap dancing, each and every single named venue is about lap dancing, all the conditions are about lap dancing, not about regulating consenting adults who openly and freely congregate in an entertainment environment to engage in activity that may include sexual intimacy."

He also explained that the police had previously advised E1 that the nudity clause in the premises licence also was intended for performers and did not apply broadly to patrons at venues like E1. Addressing the licensing regime, he argued that the opposition was improperly conflating two different schemes to justify regulating the conduct of patrons:

> "Firstly, we're concerned with the Licensing Act of 2003. [Licensing Officer] is trying to get you to impose a condition based on a definition of nudity in the Local Government (Miscellaneous Provisions) Act of 1982. So what he's doing is he's confusing his regimes…The 1982 act is concerned about the control of dancers, and the reason it's concerned about that is the power dynamic. There are women, predominantly women, performing onstage to a paying male audience. …There is no scope under the Licensing Act of 2003 for there to be a control in that way….The idea that these adults would be told by you whether they can wear jockstraps, boots, see-through bras, or not, is just entirely untenable…That is why this condition is so wrong and should be struck through."

E1 and Klub Verboten succeeded, and the Council resolved that the application for the variation of the premises licence be granted with the conditions that E1implement, maintain and comply with a wellbeing and safeguarding policy for queer, kink and fetish events, any that queer/kink/fetish events being promoted at the premises shall operate a members-only policy by the promoter. They did not

compel E1 to obtain a SEV licence.[166] On August 2nd, 2022, Klub Verboten posted a picture on Instagram of a protester raising their fist, triumphantly captioned, "WE WON / TOWER HAMLETS STAYS KINKY".[167]

Political and Moral Agendas?

Interviewees reported mixed interactions with licensing authorities. Two themes amongst them were: 1) communication with local authorities is limited, as local authorities have been reluctant to engage with promoters or make any definitive statements on the matter, often citing potential negative reactions from constituents if they were seen as supporting queer sex-on-premises sites; 2) local authorities are perceived as seeking to suppress queer sex-on-premises sites because of personal moral objections or fears of backlash from conservative residents. This section relies on testimony from promoters and licensing barristers, and thus should not be read as a definitive answer to the intentions behind local authorities' regulatory decisions. However, these accounts are still useful in understanding the conditions faced by queer sex-on-premises sites as seen through the eyes of those attempting to navigate them.

Reluctance to regulate

Many interviewees characterised local authorities as unwilling to engage with them or work towards clarity. Tom described that in his experience working with local authorities, he sensed a "reluctance to regulate" flowing from politically motivated avoidance:

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[166] Agenda item - Licensing Act 2003 Application for a variation of a Premises Licence for (Studio Spaces Ltd / E1), 110 Pennington Street, London E1W 2BB (26th July, 2022) https://democracy.towerhamlets.gov.uk/mgAi.aspx?ID=134114

[167] Klub Verboten (@klubverboten) "WE WON TOWER HAMLETS STAYS K_NKY 🔥It really happened we pr_tested outside the town hall" " (Aug 2 2022) Instagram photo caption. https://www.instagram.com/p/Cgwn4CdIslirWnf0xaTJ13VaD1ooKR66olZ8CU0/?img_index=1

> "There's often a reluctance to regulate, partly because, well, there are no issues, why should we raise it? And if you were to raise it through a policy, through a more proactive licensing regime, which requires consultation, public engagement, publicity in the press, it suddenly becomes very politicised. And so you'll find that local authorities, civil servants and politicians in private are really non-judgmental. They cannot come across any kind of judgmental or bigoted councillors…But there is a fear that once it gets into the public domain, you will get a moral majority which will have an impact on political prospects, and people are afraid to raise it."[168]

He thinks the public visibility needed to change or clarify the licensing regime disincentivises local authorities from engaging, but privately, local authorities have seemed "non-judgemental." Elliot expressed a similar characterisation, that "the law and the authorities would rather not deal with it. So when you have kink clubs, when you have darkrooms...when you speak privately to regulators, most regulators, whether that's police or council officers, most of what they will say is 'providing no one's doing anything without consent, we don't really care what they're doing."[169]

Morgan, who speaks with many promoters in their role at the S+ Association, said that they were not aware of promoters having "useful conversations" with local authorities:

> "I've just never heard of anyone having [conversations]—I assume there have been conversations which have been useful, but given that there is no written guidance coming out of local authorities, that suggests to me that maybe there haven't been so many useful conversations with them, and that perhaps they find it too difficult, they don't understand it, and therefore they just push it away."[170]

[168] Interview with Tom, (London, 12 June 2024)
[169] Interview with Elliot (video call, 20 June 2024)
[170] Interview with Morgan (London, 3 July 2024)

Similarly, Felix said that local authorities have seemed scared to talk about their sex establishment policies with him and have made excuses to avoid conversations with him: "Most authorities when you call them up and you ask them about their policies, they will get scared. 'Oh, I don't know if this is legal—oh, I don't know if I can talk about this.'"[171] He explained that he changed his tactics with local authorities to deemphasize licensing and find other productive ways to work with the borough, which was unsuccessful. Felix described, "[We've been] saying, 'forget the SEV licence, forget this, forget all this. Here's a safeguarding manual and a risk assessment. Now ask me questions.' Most of the time they don't, which is really sad."[172] Felix also reported that sometimes local authorities have refused to talk to promoters if they are not the owners of the event venue, which limits his ability to obtain information and have productive dialogue:

> "[Local authorities] came to us and said 'we don't think you can run your event because you don't have an adequate licence.' And, then I was trying to have this conversation about what an adequate licence is. It was immediately shut down, like, 'Oh, you're not the premises licence holder so we don't talk to you.' I go, 'but I'm responsible for producing the events, so you should talk to me about it.' And we moved from having this conversation over to a five months duration of me calling every week the authorities and going 'hey, me again. We need to talk about this.' I was a real pain in the ass to them."[173]

Here, Felix was explaining how that local authority challenged the legality of his events but refused to engage with him, and he began calling the licensing office weekly to try to force dialogue. However, he told me that his persistence did not result in a conversation. With the threat of legal penalty looming over his event, he mobilised his community to write to the local authorities. After the council was flooded with

[171] Interview with Felix (London, 26 April 2024)
[172] Ibid
[173] Ibid

hundreds of emails, they finally reached out to Felix for a discussion (and implored him to make the emails stop).[174]

Dylan said that local authorities may have been taken by surprise by the growing popularity of sex-on-premises sites, and that their uncertainty might explain their lack of action: "This desire for sexual freedom seems to be, well, it seems to be, it has taken an incredible jump from happening in the shadows to just being out in the open and in the light. And I think the council and the police seem to not be sure how to deal with it or what to do with it. And if they challenge, they might lose."[175] He also suspects that the local authorities are now aware of what happens at events like his, but that "they try to avoid interfering too much."[176] He described the challenge of wanting to work in boroughs where local authorities refuse to cooperate:

> "I think sometimes it gets frustrating when you as a promoter or even somebody else who's looking to take on a venue and get a licence for a venue—you know very well all the things you need to do when it comes to safety and understanding the pain points for licensing and the Met. You have the resources to put these things in place but they just don't hear you, they don't care. They're not willing to entertain a conversation and it's a flat out no."[177]

Dylan explained that many meetings with local authorities "have gone well," and in some "it almost seems like they want to understand, they want to help."[178] He also said that the willingness to engage varied across London, saying, "I think that also depends on the borough that you're in. You know, if you go further east it's a flat out, no. They're not interested, it's not happening, not in this borough."[179] For boroughs that have engaged with him, Dylan described councillors' tendency to deflect responsibility

[174] Ibid
[175] Interview with Dylan (London, 24 May 2024)
[176] Ibid
[177] Ibid
[178] Ibid
[179] Ibid

onto residents. Dylan recounted an interaction where a councillor distinguished her personal beliefs from the opinions of her residents to explain the obstacles Dylan was facing:

> "She knew exactly who we were when I came in. She goes, 'Oh, I've heard of you. I've heard of [your event].' And her response was, 'I know what you boys get up to, and it's not that we necessarily have an issue with this, but the issue basically falls with the neighbours."[180]

Dylan then spoke about one licensing officer in a borough who said they wanted to help Dylan make sure his events were legally compliant so they could defend him if his events came under fire. But Dylan questions their sincerity, saying he knows "they would also have their own interest and their own image to protect."[181] He does not trust that the borough would actually support him if a licensing issue became public and politicised. Jaxon also described a mixed response from a councillor who approached Jaxon after they spoke on a panel about their events:

> "So, she had approached me after I was speaking on this panel and said to me that she did not believe there were any SEV licences within her borough. Although, I will say as well that when she realised it was a queer party she was very excited about that. She was like, 'I've been wanting more queer spots in my borough and I've been wanting more queer establishments.' So she was excited about the party. She was giving me mixed signals because she was concerned that these were happening without her being aware. But she was certainly enthusiastic about what we were doing."[182]

These "mixed signals" of the councillor's concern over the event's sexual nature alongside her enthusiasm that there was a new event for the queer community left Jaxon with uncertainty about their standing with

[180] Ibid
[181] Ibid
[182] Interview with Jaxon (London, 24 May 2024)

the borough. Jaxon went on to say that they feel sex establishment licensing is a "political minefield" for local authorities because on "one hand, they want to protect these spaces and queer communities. On the other hand, they have families who don't want to be living next door to sex club."[183] Jaxon expressed that they have no relationship with local authorities at all. When asked if they knew who in the local authority offices they could go to for help with licensing concerns, they replied fervently, "Absolutely not, no. Definitely not, no, no, no, no."[184]

Like Felix, Jaxon described a disconnect between local authorities and promoters which means both parties speak to the venue rather than each other. Not only does it limit the promoters' ability to navigate challenges, but they fear local authorities have a misunderstanding of what goes on at their events which they cannot rectify unless local authorities give them the opportunity to be heard. Morgan explained that local authorities may be afraid of queer sex-on-premises sites because "if they don't know what's going on there and they don't know what it's for, I do think that ignorance breeds fear."[185] Dylan described a meeting where he had to correct councillor's misconceptions and educate them on the safety measures he has implemented at his events:

> "They have a view in their minds of what these dark, underground, sex kink play spaces were like, let's say 20, 30 years ago: unregulated, running like the wild wild west…[A councillor said], 'You're going to have hundreds of gay men doing god knows what behind these closed doors. And there's no one monitoring and watching and it's going to be crazy and there'll be drugs and mayhem and chaos.'...And this meeting was only a few months ago. And this is what they still think happens in these spaces. And to think that we've progressed and changed so much was a little bit, like, really? That's what you think it is?...One of the questions that came up was, 'well, these types of events don't allow or don't provide any type of safety precautions for people having sex.' Like, what do you mean? We work very closely with some of the sexual health charities. We

[183] Ibid
[184] Ibid
[185] Interview with Morgan (London, 3 July 2024)

> have safe sex kits on hand. We sometimes even have on-site testing and other things happening in events. They're like, 'do you really?' Of course we do! We've had this for years, but they have no idea this is the type of safety precautions that we're adding to our events."[186]

Dylan believed conversations like these help local authorities understand that his events are safe and well-run, and then they are more likely to allow Dylan's events in those boroughs. Felix described that he encountered a councillor who feared Felix would refuse to work with law enforcement if there was a criminal incident at one of his events, and Felix had to assure them that he was willing, even eager, to collaborate with police to hold sexual offenders accountable.[187] However, promoters said that these opportunities for conversation are rare. Morgan explained that the conditions depend on the character and preferences of individual licensing officers in a borough at a given time: "You have one licensing officer with their own personality and the way they see things. And then they will approach the work in their own way. When they leave, someone else might come along that approaches it in a different way."[188] This makes the circumstances variable between boroughs and changeable over the years, posing challenges for promoters trying to maintain positive relationships with local authorities. If a licensing officer who cooperated with queer sex-on-premises sites departs, promoters must start over with a new officer who may be averse to working with them.

Active suppression

Many interviewees described instances where they perceived local authorities were influenced by political and moral biases, and characterised local authorities as consciously working to undermine or eliminate queer sex-on-premises sites in their borough. These incidents signal, as Rubin's Charmed Circle would suggest, that local authorities perceive queer sex-on-premises sites as harmful to the borough's morality, a threat which requires intervention through the licensing regime. Elliot described a past case

[186] Interview with Dylan (London, 24 May 2024)
[187] Interview with Felix (London, 26 April 2024)
[188] Interview with Morgan (London, 3 July 2024)

where he was retained by a borough with conservative and fundamentalist Muslim leadership in a licensing dispute with a sex-on-premises site, and feels very strongly that the case was driven by personal biases:

> "I had the good reason to believe there was heavy political pressure put on by the leader of this particular council, the elected leader, on his licensing officers to do whatever [they] could to shut these kink clubs, because it offended his and his constituents' morality…My impression is that's why I was instructed in there, to try and further and a moralistic, religious, anti-Western-liberal-value agenda."[189]

Felix described multiple instances of ill-treatment by local authorities and politicians. In one case, he said he heard politicians celebrating after he was denied a licence:

> "Low level Labour Party members, which were councillors who had a say in committees, and they would just—over the outcome of us losing our licence application, they would just banter, you know? They would just celebrate it. And they would say things like we don't deserve a licence, or they are lucky we don't get one."[190]

Felix also said that once a borough had threatened him "with up to six months imprisonment if we ever dared to come back into the borough."[191] He moved his event to a new borough shortly after. These incidents (and more) mean Felix's perception of local authorities overall is very negative. He believes they are antagonistic to him and to the communities he is a part of: "A lot of the things they say, they are full of stigma, they are full of intentions, of a misuse of the information for the support of their dialogue. And yeah, that's very sad. It's quite often that it's heavily stigmatised in a way of sexuality, gender, biases

[189] Interview with Elliot (video call, 20 June 2024)
[190] Interview with Felix (London, 26 April 2024)
[191] Ibid

towards sexual preferences and so on."[192] Jaxon also expressed feeling that local authorities generally were opposed to sex-on-premises sites. They said they feel like the way local authorities treat their events "all comes down to moralistic arguments," that "erotiphobia"[193] can be found "across all political spectrums," and "that as further light is shed on these places, I am very concerned that we are going to disappear."[194] Dylan feels that local authorities have intentionally tried to set up roadblocks to stop his events. He described one instance of a borough imposing conditions on his event that they did not impose on non-sexual LGBTQ+ events, and the alterations the borough requested he make to satisfy these conditions would have cost him over £25,000. He tried to propose less expensive ways to meet the conditions, but the borough would not budge and ultimately he was unable to go forward with his event.[195]

After multiple run-ins with borough councils where Felix felt unable to have productive conversations, Felix strongly believes local authorities weaponise the licensing regime against events like his, which is why he no longer tries to apply for licences. After months of trying to work through licensing issues with a borough's licensing officers, he described the moment he lost faith in local authorities and the licensing regime:

> "I got so frustrated in realising there is something else. They just don't want to talk about it. They just want to shut us down. There was a point where they almost tried to puzzle together different acts in order to find a reason for us not to be legal…That was the point where I realised, okay this was not about licences. This was not about wanting to do something good for people and keeping them safe and making sure they have a good experience and be reasonable and sensible operators. This is just about moral views, really. At this point, I just thought that all of this was hilarious. I can't take it seriously anymore. And from now on, you know what? Just sue me."[196]

[192] Ibid
[193] Prejudice and fear towards sexual expression.
[194] Interview with Jaxon (London, 24 May 2024)
[195] Interview with Dylan (London, 24 May 2024)
[196] Interview with Felix (London, 26 April 2024)

I read this moment as a consciousness of the phantom licence. It reflects Felix's realisation that local authorities are not acting based on concrete legislation or law, and instead are inventing regulatory standards by "puzzling together" separate acts. Furthermore, it suggests a broader issue where the supposed regulatory requirements are used to obscure the true motives behind the suppression of queer sex-on-premises sites. So far, Felix has not been sued. He said he feels braver than ever, and he is focused on running his events according to his own high standards of safeguarding rather than applying for a licence.[197] Other promoters have taken similar approaches, which will be discussed in Chapter 5.

All of the promoters and barristers described instances where local authorities claimed to be beholden to their constituents, especially conservative and religious constituents, to offset responsibility. Promoters expressed that local authorities are, as Dylan put it, "held to ransom by the local residents who just don't want these kinds of venues in their neighbourhoods."[198] Dylan says he has heard this from councillors directly. He described conversations where the proximity to residents were used to justify limiting his ability to run his events, even though the explanation seemed irrational to him:

> "I think from other meetings and discussions it's down to, I would say, the demographic of the neighbourhood and this is down to, let's say, the religion of people living in a particular neighbourhood that may be quite conservative and they probably don't want to know a venue or an event like this is happening in their neighbourhood….[Councillors say] 'Well, there are schools next door,' I don't know any schools that are open between 10pm and 6am in the morning, so how this affects school children, I don't know, but this seems to be something that comes up repeatedly."[199]

[197] Ibid
[198] Interview with Dylan (London, 24 May 2024)
[199] Ibid

By invoking schools to rationalise their stance, the councillor in this discussion seems to have suggested that the existence of Dylan's event in the neighbourhood will adversely impact residents even if they never directly interact with it. Since Dylan's event is at night, his event is spatially proximate but temporally distant to school children, who will have left school grounds far before the event's doors open. But to the councillor, the event was still perceived as a dangerous and corrupting force on the neighbourhood's children. Rubin's theory is relevant here, as it highlights how authorities use concerns about moral harm to justify their opposition to sexually transgressive events, framing them as threats to community values and childhood innocence to justify intervention. This perceived harm seems especially pertinent to neighbourhoods with religious residents. Dylan recounted a conversation where local authorities referenced religious minorities to oppose his events:

> "[Councillors say] 'you have to remember the neighbourhood you're in and the people that live in this neighbourhood and that they have conservative religious beliefs.' They don't want to be—ugh, can I say that word?—going to prayer and passing people on the streets or around or knowing that it happens across the street from where they live, where they might be praying or celebrating a particular meal or a particular festival with their families. It just doesn't go with what they believe in."[200]

Here, Dylan described how councillor's believe religious residents will be impacted negatively by merely knowing these events happen in their neighbourhood. This logic of harm posits that queer sex-on-premises sites inflict epistemic injury on residents, which justifies suppressing queer sex-on-premises sites for the good of the community and to protect the councillor from backlash. These fears that religious communities might mobilise to oppose a queer sex-on-premises site are justified. Tom described an incident where a gay sauna applied for a licence in a borough, and the local authority had no objection to it. However, the matter got into the press, and "as a result of that, members of religious

[200] Ibid

communities, mainly Christian and Muslim, decided to complain and raise objections on things like grooming, child safety, all of those classic, knee-jerk reactions for which there was no evidence, given that this venue had been there, with no issue, no blemish." The gay sauna abandoned their licence application and left the borough.[201]

Elliot explained that the legal ambiguity gives local authorities discretionary authority over if they prosecute or pursue civil penalties for venues that have darkrooms without sexual entertainment licences. He said in his experience, "that's a discretion that's often exercised depending on who the political leaders are."[202] He believed "some politicians make moral decisions about whether they want [kink clubs] or whether they want to shut it down for some greater and moral objective they have. Often religious."[203] Jaxon also suspected local authorities may crack down on sex-on-premises sites to "curry favour" with "religious and probably more narrow minded" communities.[204] Dylan feels like he and other promoters are under relentless scrutiny from local authorities, saying "they've now got one eye on everyone, almost waiting for something to go wrong, to go 'licence revoked', 'permit revoked."[205] Felix expressed a similar sentiment, saying that when local authorities have approached him after incidents at his events "it's not with the intention to convict the perpetrator. It comes with the intention to shut down the venue because they don't like it."[206]

Whatever motivations may be driving local authorities' action or inaction towards these sites, promoters report an additional layer of disparate treatment depending on the specific communities and identities their events serve. Promoters observed that among the sex-on-premises sites, "there's also some certain freedoms that others enjoy over others," as Felix put it.[207] Felix noted that his event, which openly advertises itself as a queer fetish night, has faced pressure from the borough council to obtain a licence

[201] Interview with Tom, (London, 12 June 2024)
[202] Interview with Elliot (video call, 20 June 2024)
[203] Ibid
[204] Interview with Jaxon (London, 24 May 2024)
[205] Interview with Dylan (London, 24 May 2024)
[206] Interview with Felix (London, 26 April 2024)
[207] Ibid

while unlicensed non-queer swingers clubs in the same borough have not. He believes that his choice to be open about his event's subversive qualities is a critical factor:

> "So, one would ask, if [straight swingers clubs are] okay, if they're being tolerated without a licence to operate and sell alcohol and be in a residential area 500 metres away from a mosque, why is it a problem that [my event is] operating pretty much on the same road? Three or five driving minutes away? In detail, what I often found, [the councillors] would look at the two websites. And one website shows a straight man in a nice suit and the woman, it could be looking like they're dancing a tango. And then our website, there's a bunch of queers pissing in each other's faces! And it's just suddenly an issue."[208]

Both the swingers clubs and Felix's events are unlicensed, offer opportunities for sex on the premises, and are even located in the same area. Even though swingers clubs have qualities that local authorities have deemed problematic for Felix's events, Felix says he has observed that the "super straight swingers clubs" tend to avoid borough scrutiny. Felix believed the visibility of his event's transgressive ethos, as exemplified by comparing the websites, means the borough is harsher towards him. He added that he thinks being a queer event plays a role, and he claimed that local authorities have "a fear towards an all-inclusive-of-the-gender-spectrum, sex-based event."[209] He named two other kink nights, one aimed at women and one mainly attended by heterosexual kinksters, and questioned, "they've been there for decades and it's just sort of been fine. Makes you wonder, what's the problem with us?"[210]

Felix also hypothesised that his all-gender events face more challenges than those that primarily serve cisgender gay men, describing them as "untouchable," because the long history of gay men cruising has normalised and "liberated" those places.[211] However, Dylan, who runs events for gay men, feels the

[208] Ibid
[209] Ibid
[210] Ibid
[211] Ibid

opposite. He said that local authorities' negative views towards his events can stem from the assumption that "male-identified only events are a lot more debaucherous, taboo and nasty than anything else."[212] Although I do not have the evidence to say conclusively, the claim that certain of types events receive preferential treatment may be true; Killing Kittens, who organises luxurious sex parties in London for their membership network of elite heterosexual and cisgender women, has operated in London since 2005, and they received a £170,000 loan from a Covid-era programme called the Future Fund—set up by then-chancellor Rishi Sunak—in 2022.[213] Loans from the Future Fund converted into equity at the company's next fundraising, meaning that while Tower Hamlets issued notices against events like Torture Garden and Klub Verboten, the UK government had 1.5% share of Killing Kittens as they threw sex parties in central London.[214]

Conclusion

In this chapter I have demonstrated that the sex establishment licensing category, and the sexual entertainment venue subcategory, lack coherent and consistent application across London and within individual boroughs. Data collected from publicly-available borough guidance and Freedom of Information Act requests reveals that boroughs perceive sex establishments as threats to the welfare of their neighbourhoods, and thus needing to be tightly controlled or refused altogether. The factors they consider when determining the appropriate number of sex establishments in a neighbourhood reveals apprehension over allowing sex establishments in the proximity of their constituents, especially those considered to be "vulnerable" like women, children, and religious communities. However, although many boroughs have official policies that limit the number of sex to a low number or nil, all of these boroughs have, without explanation, permitted more sex establishments in their borough than these policies allow.

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[212] Interview with Dylan (London, 24 May 2024)
[213] 'How the Government May End up with a Stake in a Sex-Party Company' (July 18 2020) The Economist <https://www.economist.com/britain/2020/07/18/how-the-government-may-end-up-with-a-stake-in-a-sex-party-company> accessed 16 July 2024
[214] Thomas D, 'UK Treasury Takes a Stake in Sex Party Planner Killing Kittens' (27 June 2022) <https://www.ft.com/content/7186f89a-8953-46ea-85d3-208e9b5cfe8f> accessed 16 July 2024

This suggests that the guidance released by boroughs may not be reliable, and creates more confusion around the category and how it applies to queer sex-on-premises sites.

I have also shown that this confusion cannot be resolved by looking at the public record. Using examples of sexual entertainment venue licence applications from queer sex-on-premises sites in Lambeth in 2012 and 2013, I found evidence that that queer sex-on-premises sites concealed their activities from local authorities to not draw unneeded scrutiny, and applied for the licence as a precaution without being certain it was necessary. I then returned to the story of Klub Verboten to examine how the Tower Hamlets borough council attempted to interpret Klub Verboten within the licensing regime. Tower Hamlet's decision to refuse Klub Verboten's application for a permanent venue displays, as Gayle Rubin's Charmed Circle informs us, a desire to mitigate the presence of deviant sexuality and prevent the perceived negative impact it would have on a neighbourhood. However, after being confronted by the regime's inconsistency and incoherency in the 2022 hearing, namely the semi-nudity clause and the unsettled applicability of the sexual entertainment licence to Klub Verboten, the borough council reversed their warning.

I then proposed two explanations for why the ambiguity persists, building on rich testimony from interviewees. Firstly, local authorities have demonstrated a "reluctance to regulate" due to the controversial nature of queer sex-on-premises sites. Since the sex establishment licensing category lacks coherency, working out clear guidance for queer sex-on-premises sites would require meaningful engagement and goodwill from local authorities. Promoters reported that local authorities have been unwilling to engage, at least partly due to potential political consequences of being seen as supportive of queer sex-on-premises sites. Local authorities' avoidant posture leaves promoters unable to collaborate with licensing officials, nor can they clear up misconceptions about the safety of queer sex-on-premises sites. Secondly, promoters reported instances of local authorities acting to suppress or undermine queer sex-on-premises sites including threatening imprisonment, implementing conditions that are impossible to achieve, and arguing against queer sex-on-premises sites as epistemically harmful to their residents. Interviewees also described disparate treatment based on the specific subcommunities their events serve.

Chapter 5: Alternative Extra-legal Strategies

Introduction

The socio-legal perspective understands law as much broader than the statutes, judicial decisions, and administrative regulations that are the primary focus of traditional legal scholarship.[215] Socio-legal scholars have explored how solutions to legal problems may not necessarily be 'legal', but may be produced by 'extra-legal' norms and practices that supersede or avoid legislation and judge-made law, as well as the unwritten rules of commercial practice.[216] In this chapter I explore how club nights that are queer sex-on-premises sites have created extra-legal solutions to the licensing troubles discussed in Chapters 3 and 4. The legal ambiguity, lack of transparency from regulatory entities, insufficient communication with local authorities', and (in some cases) outright distrust of authorities means promoters have developed their own strategies for navigating this tenuous legal landscape while safeguarding patrons according to the promoter's own standards of safety, consent, and inclusivity. This chapter describes three extra-legal strategies that promoters use to pursue these objectives and manoeuvre around the legal uncertainty, filling the void left by the legislation with regulations of their own design. I have termed them venue-hopping, self-policing, and police partnerships respectively. This chapter will help answer the third research question by detailing how queer sex-on-premises sites are working to overcome the unclear licensing regime.

Venue-hopping

As mentioned in Chapter 3, paragraph 2A(3) of Schedule 3 states that premises are exempt from needing a licence for sexual entertainment if they offer that entertainment on no more than 11 occasions

[215] Edelman L and Galanter M, 'Law: The Socio-Legal Perspective', International Encyclopedia of the Social & Behavioral Sciences (Elsevier 2015) <https://linkinghub.elsevier.com/retrieve/pii/B9780080970868861486> accessed 16 July 2024. 604.
[216] Zweigert, Konrad and Kötz, Hein (1998) Introduction to Comparative Law, 3rd edn, translated by Weir, Tony. Oxford: Clarendon Press. 38.

within a 12 month period and there is at least one month between each occasion.[217] Since club nights are, as Amin Ghaziani puts it, episodic and ephemeral, and able to exist without an institutional home, they are not anchored to a single venue.[218] If promoters develop a network of venues and rotate where they host their event, no individual venue exceeds the legislated limit and the licensing question becomes moot. Tom explained that "the way [club nights] operate is that they move from venue to venue."[219] For example, take a hypothetical club night named Bite.[220] Bite is a club night with a darkroom for sexual encounters that takes place on the third Friday of every month. They alternate their events between two clubs, Lunar Lounge and Flux. This means Lunar Lounge and Flux each host 6 Bite nights a year with more than a month in between, far below the bar for needing a licence. If the venues are in different boroughs, this may further decrease the likelihood of alarming a single borough council. If Bite finds a third venue to host them, Bite could run more events per month and/or keep the same schedule and reduce the number of events per venue. This method ensures that no venue is vulnerable to licensing disputes with local authorities. Sarah, the former borough councillor, expressed fervent support for this tactic as a way to ease the burden on queer sex-on-premises sites.[221]

Promoters described some other benefits of venue-hopping, including reaching people in different parts of the city who might find travelling to a far away venue inconvenient, and keeping the experience fresh and exciting by changing environments. However, venue-hopping poses logistical challenges. Changing locations so often can make it difficult to establish a consistent crowd and build a loyal

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[217] The exact wording reads as follows:
(3)The following are not sexual entertainment venues for the purposes of this Schedule—
(a)sex cinemas and sex shops;
(b)premises at which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being so provided at that time—
(i)there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;
(ii)no such occasion has lasted for more than 24 hours; and
(iii)no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));

[218] Amin Ghaziani, Long Live Queer Nightlife: How the Closing of Gay Bars Sparked a Revolution. (1st ed., University Press 2024) 7, 17.

[219] Interview with Tom, (London, 12 June 2024)

[220] These names are fictional for the purposes of illustration.

[221] Interview with Sarah, (London, 12 June 2024)

following at a single venue. Additionally, if a play party provides a dungeon-style playroom with furniture and equipment, they cannot rely on a venue for storage. They must store their furnishings offsite, deliver them to and from the venue, and set it up and take it down each time. This adds costs and hours of labour to each event. Furthermore, building relationships with multiple venues can be difficult, especially since there are very few venues in London willing to host parties with sex on the premises, and can be a major barrier to creating new events.

Self-policing

The purpose of the licensing regime, as described by interviewees, ought to be creating standardised practices and rules to ensure the health and safety of customers. Interviewees all agreed that some form of regulations are necessary to provide a safe and enjoyable experience. In lieu of licensing or guidance from the local authorities, promoters have created their own "safeguarding" practices which function as non-legal systems of governance, regulations, and norms. Many interviewees claimed the rates of sexual violence and crime are far lower at queer sex-on-premises sites than the nightlife industry at large, which is a result of robust safeguarding. Sarah, the former borough councillor, asserted that the queer sex-on-premises sites she worked with during her tenure were more safe, cooperative, and well-behaved than many non-sexual nightlife venues.[222] While events may differ in their safeguarding practices, there are some practices that are widely employed across events in London. The following is a list of common safeguarding practices as detailed by interviewees, explained in safeguarding manuals created by promoters,[223] and observed during site visits.

Security: Attendees are searched before entry by security personnel for illegal substances, weapons, and other prohibited items. Promoters educate security and venue staff on safety precautions unique to kink events like BDSM safety equipment, poppers, and conducting respectful body searches of attendees in fetishwear.

[222] Interview with Sarah, (London, 12 June 2024)
[223] Since these are not published online, I cannot cite the safeguarding manuals or training materials for any particular club night without risking the privacy of interviewees.

Changing areas: Attendees are given space to change from street clothes to attire which adheres to the event's dress code. Since attendees are encouraged (and often required) to wear sexy, expressive clothing suitable for a queer kink party, travelling to/from the venue in those outfits puts them at risk of harassment. Or, the outfit may be ill-suited for the weather. A changing area with a coat-check ensures attendees can travel to the venue safely without forgoing their desired party attire.

Rules: Events have rules for attendees to follow to ensure the safety of all attendees and curate an inclusive atmosphere. Breaking these rules may result in expulsion from the event. These rules typically consist of policies around consent, respecting others' boundaries, adhering to dress codes, limiting or prohibiting photography, and uplifting marginalised identities. No two parties have exactly the same rules. For example, some allow "solo-wanking" (solitary masturbation in the darkroom) while others prohibit it. Some parties also ban cruising, believing its non-verbal and spontaneous qualities make it invasive, off-putting, and even nonconsensual. Dress codes also vary, as does tolerance of photography in non-play spaces, and limits on what types of play are allowed in the darkroom. Some parties, following an expansive logic of consent, even restrict attendees from saying certain types of comments or questions to each other. Other events have very few rules which cover the essentials, like consent, but largely leaves darkroom conduct open to cruising and spontaneity. Rules are usually posted online and displayed on signage at the venue.

Door policy: Many events have a vetting process for attendees which must be passed to be allowed entry. This may include being questioned at the door on the rules, signing an affirmative consent policy, and checking if outfits subscribe to the event's dress code. Buying a ticket does not guarantee entry. Promoters reserve the ability to turn anyone away who they believe is not fit to be in the space for any reason. There may be a second vetting process at the entrance to the darkroom with more questions related to sexual play, perhaps about affirmative consent and respecting boundaries. Events may have tiered membership that can be obtained through in-person vetting by event staff. In some cases, those with membership can bypass vetting at the door or have access to members-only spaces within the event.

Monitors: Events employ a team of safeguarding and welfare staff to enforce the rules, support attendees, and manage the event. Monitors handle vetting at the door and are posted around the venue's dance floors, social areas, and darkrooms. These monitors are trained to respond to concerns raised by attendees, and proactively intervene if they witness unruly behaviour or rule violations. Many monitors I met during site visits attend sex-on-premises events in their own time. Events may intentionally assemble their monitoring team to prioritise representing marginalised identities. Jaxon explained that all of their event monitors are "femmes[224] or non-binary people and people of colour," which they believe contributes to a comfortable and positive atmosphere for all attendees. Monitors can be identified from a highly visible accessory, such as a coloured LED armband, so attendees can find them even in dark areas of the venue.

Ban lists: Events keep lists of people they have prohibited from attending their events due to rule violations, allegations of assault or harassment, or other undesirable conduct that affects event-goers. The General Data Protection Regulation prevents sharing ban lists between promoters, so every event has their own.

Sexual health: Events provide free condoms and lube in the darkrooms, and supplies for attendees to clean the surfaces and furniture they touch. Some events may offer pamphlets or flyers about getting tested for sexually-transmitted diseases, obtaining birth control, procuring a PrEP prescription, and more.

Promoters compile these practices into safeguarding manuals and materials for training event staff. Promoters also share them with local authorities and the police to demonstrate the safety precautions at their events and dispel the presumption that their events are, as Dylan put it, "running like the wild wild west." In this way, the safeguarding manuals are an advocacy tool.

Promoters hope that addressing the regulatory gap themselves can build trust and cooperation with local authorities and the police. Dylan described how a preemptive discussion with local authorities about safeguarding led a councillor to "acknowledge that we were doing everything we possibly needed

[224] A femme: A person of any gender identity whose self-expression and presentation consists of attributes we have traditionally labelled as feminine.
https://www.them.us/story/what-does-it-mean-to-be-femme

to do that satisfied them," a saving grace when the council later received complaints about his event. Tom, speaking about a successful club night in London, said that thorough safeguarding practices have made "all the difference to the local authority because they knew that there was rigorous risk assessment and safeguarding," and can stave off legal crackdowns. Promoters like Felix believe that this approach, not licensing reform, is the way forward for sex-on-premises sites. Instead of entrusting the government with regulations, he wants promoters to unite around universal safeguarding standards: "We need to draft and supply a common, understood, and acknowledged safeguarding manual to this and go from there. And then, kink culture has a real chance in the UK. If that happens."[225]

Police Partnerships

Those who know about the vicious history of police violence against queer people, especially in London, might be surprised to hear that promoters of queer sex-on-premises sites report far stronger and more amicable relationships with the London Metropolitan Police than with their local authorities. Indeed, promoters described that Met officers have been open-minded and engaged, and have been more eager to defer to promoters than prosecute them. Felix described his first meeting with the police, where an officer put aside their personal biases to cultivate a positive relationship:

> "The police, I have to say, which doesn't get much credit in this country for obvious reasons, I have to say they were one of the first too—in our first initial meeting they walked in and said straight away, 'I looked into this, I get it, nightlife culture's changing, we just have to acknowledge it and work with it.' And I thought 'wow, great!'"[226]

The officer's cordiality surprised Felix, and created an opportunity for trust that had previously been unfathomable. He has since worked with the police frequently over many years. He recognises that this

[225] Interview with Felix (London, 26 April 2024)
[226] Ibid

experience is a departure from the histories of police antagonism that still inspires anger and fear in the queer community to this day. But their willingness to work with promoters over the years has led Felix to view them as allies and partners. Similarly, Morgan described how officers were eager to defer to the expertise of promoters and the S+ Association: "You know, I've had conversations with some of the officers that work in licensing, and they seem to be very supportive of our events, and what they're telling me is that all they want from us is a code of conduct, because they want us, the experts, to tell them, 'Look, this is how we do things."[227]

Laura and Douglas, Met officers involved with licensing, expressed the same collaborative sentiments. Furthermore, they acknowledged the promoters' expertise and readily admitted that regulating consensual sexual behaviour was beyond their role as law enforcement provided that there were reasonable safety measures in place. Laura and Douglas have both attended workshops put on by promoters to learn their perspectives on regulatory challenges.[228] Laura said that it's important to engage with promoters to educate herself and correct misconceptions about sex-on-premises sites, and her objective is to promote public safety without overstepping:

> "I think it's more about accepting, acknowledging that it is happening and, you know, that there isn't, there's been a lot of a sort of, what's the word? Taboo is the word I would use. And what we're trying to do is just say, 'you know, it's absolutely fine, but we just need to understand it.' And then we can work together to make sure that they're safe events"[229]

Laura described an outlook which rejects the "taboo" and normalises sex-on-premises sites as a reality in London nightlife, and even endorses it as "absolutely fine" from a public safety perspective. Douglas articulated a similar approach, and drew a distinction between politics and public safety:

[227] Interview with Morgan (London, 3 July 2024)
[228] Joint interview with Laura and Douglas, (London, 12 June 2024)
[229] Ibid

> "I think initially from us, public safety is the main driver around this. We need to make sure that the people, the right checks and balances are in place, that the people that are participating in these events are safe. That no one is being sexually assaulted or raped or anything like that. Once you've got that element of it, so that is the public safety side of it, then we can then look at the legislative side, if that needs looking at it at all, I don't know."[230]

Here, Douglas's concept of 'safety' is apolitical, value-neutral, and focused solely on the material conditions of the events. It centres quantifiable risks such as incidents of harassment and assault, and is detached from local authority's legislative endeavours. Laura and Douglas are aware of the safeguarding that takes place at many events, but admitted they "need to understand it more" and are working with promoters to increase their knowledge because, as Laura said, "once you know the knowledge, you can then advise colleagues."[231] Laura explained how they are trying to "work together with the kink community in making sure that there is a sort of code of conduct" with safeguarding practices that everyone uses. She described her approach as "asking the kink community what it is that they see as being a safe environment. And then we build on it." Douglas is likewise deferential, and believes that the creation of an extra-legal strategy is more productive than legislative reform:

> "It [sex-on-premises sites] does happen. And because it does happen, how do we make it safer? So it's far easier for the industry, along with the authorities, to come up with an agreement, if possible, rather than trying to legislate for it through government or something like that, which takes years and years and years. And ultimately, it's the industry and the people running these events that know best."[232]

[230] Ibid
[231] Ibid
[232] Ibid

Rather than wrestling with the licensing regime or slogging through years of legislative reform, Douglas wants a collaboratively-created code of conduct (likely resembling the safeguarding manuals discussed above) to serve as an "agreement" between promoters and law enforcement to implement proper safety measures. He believes the promoters "know best" and should be at the forefront of determining what these measures are.[233] This plan for a universal code of conduct to govern sex-on-premises sites would be a fascinating example of community-generated and community-enforced regulations, ones which not only supersede the licensing regime but do so with the support of law enforcement officials.

Pursuing this strategy is an implicit recognition of the licensing regime's ineffectiveness as it concerns sex-on-premises sites, since the officers have decided to facilitate the creation of something entirely new rather than seek solutions within existing licensing regulations. Douglas suggested as much elsewhere in the interview. When asked what role licensing should have in the mission to promote public safety for sex-on-premises sites, he responded, "I don't know. It may not. It may have a... We don't know."[234] Circumventing licensing also highlights local authorities' disengagement with sex-on-premises sites—Douglas said that he has never discussed sex-on-premises sites with local authorities—and his worries about "years and years" of legislative reform may signal a lack of faith in local authorities' ability to efficiently govern them.[235] Instead, both Douglas and Laura indicated a desire to rely on promoters' expertise as the industry professionals and community agents. Further research is warranted on this unique relationship between police and sex-on-premises sites.

Conclusion

This chapter has highlighted extra-legal strategies that queer sex-on-premises sites have created to circumvent the unanswered question of licensing requirements. Venue-hopping keeps queer sex-on-premises sites out of the regulatory radar, but poses logistical challenges. The safeguarding manuals provide thorough standards and guidelines for promoters to ensure the safety of attendees, filling

[233] Ibid
[234] Ibid
[235] Ibid

in the gap left by the licensing regime. Finally, their unique relationship with the Metropolitan Police reveals that both promoters and police have placed their faith in community-created safeguarding practices instead of the licensing regime. The officers' willingness to defer to promoters' expertise presents a fascinating departure from Rubin's Charmed Circle, since it would predict that the police would disapprove of deviant sexual communities and not seek to protect them, much less defer to them. This collaborative approach between promoters and police suggests a nuanced dynamic that challenges the traditional power structures posited by Rubin, Ruth, Robson, and Emen.

Chapter 6: Conclusion and Reflections

In this thesis I have shown that queer sex-on-premises sites in London face ambiguous and shifting legal conditions caused by conflicting interpretations of the licensing regime's applicability to sex in semi-public settings. When local authorities insist that queer sex-on-premises sites obtain a licence, this "phantom licence" can never fully be realised since the interpretation of public sex as a performance requires reconstituting all attendees as performers and audience simultaneously and cannot be reconciled with existing regulations on sexual entertainment venues. The public record fails to provide clarity since queer sex-on-premises sites are largely absent from the records and the existing data on sex establishments reveals inconsistent applications of the licensing regime between boroughs and within individual boroughs. These legal grey areas create opportunities for local authorities to pursue action against these sites based on political opposition and fears of immoral influences on the neighbourhood. Avoidant or hostile attitudes from local authorities have forced these sites to the margins, where promoters' ever-present fears of borough crackdowns are coupled with opportunities to innovate community-oriented extralegal solutions.

In Chapter 1 I introduced the research questions, defined the term "queer sex-on-premises site" and explained the methods utilised in this research. In Chapter 2 I contextualised queer sex-on-premises sites in queer/feminist theories on socio-cultural frameworks of "good" and "bad" sexual expression and

situated them in larger histories of cruising, sexual geography, and legal regulations of sexual morality. In Chapter 3 I explored the conflicting interpretations of Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 as applied to queer sex-on-premises sites by analysing parliamentary debates about the creation of the sexual entertainment venue category and then examining how interviewees interpreted the regulations, expressed confusion, and succeeded or failed to apply them to queer sex-on-premises sites. This revealed how key stakeholders—promoters, barristers, police, and local authorities—approach the issue with different understandings of the law. I found that the question at the heart of that matter was "is public sex a performance?" to which interviewees' varied responses can be grouped into two types of answers: 1) Public sex is not a performance because it lacks the traditional qualities of performances (programmed, advertised, hired performers and non-participating audience) and it is primarily for the enjoyment of the sex-havers rather than onlookers, or 2) Public sex is a performance because it is comprised of performative acts and gestures in the nude which can arouse onlookers, even if the sex-havers do not intend to. Those whose reasoning subscribes to the former believe queer sex-on-premises sites do not need to obtain a licence, while those who think the latter believe they fall under the sexual entertainment venue licensing category. There is no definitive answer or guidance from the government, courts, or elsewhere, and it will be difficult to reach clarity until these competing frameworks are resolved.

In Chapter 4 I analysed policies and guidance on sex establishments issued by London's 12 inner boroughs and examined data obtained by Freedom of Information Acts on the number of sex establishment licence applications received and granted in each borough. I found that borough guidance often characterised sex establishments as dangerous and anti-social, and that many boroughs have official policies that limit the number of sex establishments to a low number or to nil. However, I also found that these boroughs have allowed more sex establishments to open and operate in their jurisdiction than their policies purport, exposing a discrepancy between written regulations and reality, and I suggest that the inconsistency calls into question the licensing regime's usefulness.

Next, I explored the inability of the public record to provide answers. Using examples from queer sex-on-premises sites in Lambeth from 2012 and 2013, I showed the absence of queer sex-on-premises sites from the public record, which suggests that local authorities have not engaged with the legality of queer sex-on-premises sites and/or that queer sex-on-premises sites have chosen to avoid engaging the local authorities out of caution or simply not believing it was necessary. I then used Klub Verboten's 2022 hearing with the Tower Hamlets council to illustrate the incoherency of the licensing regime as it applies to queer sex-on-premises sites, and how that incoherency was not fully resolved when local authorities were confronted by the question. Finally, drawing from the interviews, I proposed two explanations for the conditions faced by queer sex-on-premises sites: 1) That the ambiguity and inconsistency flows from local authorities' "reluctance to regulate" and engage with queer sex-on-premises sites since they are politically controversial, 2) Targeting and suppressing queer sex-on-premises sites stems from moral and political intolerance of deviant sexual practices and opposition to having events serving these communities in their neighbourhoods.

In Chapter 5 I described how queer sex-on-premises sites have devised innovative extra-legal solutions to create the conditions of their survival. This includes moving between venues, creating their own safeguarding standards in lieu of reliable licensing regulations, and forming partnerships with the Metropolitan police. Looking to the future, I found that promoters and the police believe establishing a universal code of conduct for queer sex-on-premises sites can ensure that they are safe and well-managed without legislative reform. I also discovered that the police are keen to defer to promoters as experts. This suggests that the police, as an extension of the state, do not see themselves as fit to impose regulations on a legally-marginalised sexual subculture. This has implications for the existing scholarship and theory on sexual morality and the law, since this unique relationship defies previous histories of law enforcement as agents of state-enforced violence against queer and sexually deviant communities, and breaks from the paradigms described by Rubin, Rich, Robson, and Emen in which the state withholds protection, dignity, and legitimacy from those who partake in sexually transgressive practices.

This thesis should not be read as a conclusive account of local authorities' motivations behind their actions against queer-sex-on-premises sites. Given the lack of current councillors and borough licensing officers from the interview set, my findings rely on how others have described interactions with local authorities. Still interviewee testimony was so rich and consistent that, combined with the case studies and borough specific data, I feel capable of putting forward the theories in Chapter 4 to elucidate how promoters, barristers, and the police officers are experiencing and interpreting borough activity. Furthermore, these perspectives offer a critical lens through which to understand the nuanced power dynamics at play and contribute to the broader discourse by highlighting recurring patterns and offering interpretative frameworks.

One important takeaway from this research is that many promoters are acting responsibly and effectively, creating their own safety standards and community-imposed regulations. Their safeguarding manuals are robust, their events are tightly run, and the Metropolitan Police's deference to promoters is an endorsement of the high level at which these queer sex-on-premises sites are operating. As mentioned in Chapter 5, multiple interviewees (including a former borough councillor) stated that the rates of sexual violence and crime at queer sex-on-premises sites are far lower than London's nightlife industry as a whole. Unfortunately, the data to verify this does not exist. But even anecdotally, this is a significant claim. One can imagine that the opportunities for misconduct are plentiful at a queer sex-on-premises site—Put dozens of mostly-naked people in a dimly lit room with alcohol for a sex party and there is no limit to what could go wrong. So if this claim about safety is true, if the rates of crime and harm are indeed lower than their non-sexy counterparts, it speaks to the effectiveness of queer sex-on-premises sites' self-policing.

This also calls into question the current licensing regime, which is failing to address a growing portion of the nightlife industry and is subpar in accomplishing public safety objectives compared to what non-governmental actors have built on their own. As discussed earlier, Sarah, the former borough councillor, supports venue-hopping, and the police are collaborating in using extra-legal strategies. If both councillors and police are encouraging queer sex-on-premises sites to bypass the licensing regime, this

indicates a widespread perception of its illegitimacy. Furthermore, it is worth remembering that this innovative self-policing has flourished despite local authorities' attempts to suppress queer sex-on-premises sites. If queer sex-on-premises sites are safer, they should be recognised as industry leaders and their safeguarding practices should be celebrated as a new standard for nightlife and inspiration for new legislation. Instead, they are ignored or targeted.

This disparity between safeguarding success and borough treatment points to something else: The suppression of queer sex-on-premises sites does not come from valid concerns over public safety. Rather, the findings suggest it stems from animus towards transgressive sexual identities and practices. The conditions that queer sex-on-premises sites face aligns with the Charmed Circle theory put forward by Rubin, that the very existence of queer sex-on-premises sites challenges normative structures of morality, sexuality, and social order. Promiscuity, homosexuality, gender variance, fetish, sadomasochism, and other likely activities of queer sex-on-premises sites are deemed unnatural, dangerous, and morally catastrophic to the general public. Interviewees reported statements from local authorities where they described queer sex-on-premises sites as offensive to them and their constituents' morality. Using the licensing regime as an instrument, local authorities have attempted to limit or prevent queer sex-on-premises sites in their neighbourhoods. Alternatively, they fear retribution from constituents who oppose queer sex-on-premises sites and refuse to engage.

Queer sex-on-premises sites are doubly disadvantaged by being sites of semi-public sex and for centreing queer identities, as both factors attract challenges. Licensing regulations around sexual entertainment venues were designed with a single type of entertainment in mind, one where scantily clad cisgender females dance for a crowd of cisgender heterosexual males. This exemplifies how compulsory heterosexuality is baked into legal regulations, since other variants of erotic entertainment did not make it into the legislative imagination. Furthermore, the law defines nudity in accordance to binary-gendered standards in which a male may legally show more of his body than a female, which is contrary to queer expressions of embodied gender.

When local authorities insist that queer sex-on-premises sites fall under the category of sexual entertainment venues, their implicit claim that semi-public sex is a performance, a claim which revokes the sex-havers' agency and reconstitutes them as objects of pleasure for anyone in proximity. One way to counter this is to reframe semi-public sex as primarily for the sex-haver's pleasure, making the impact on others irrelevant. This is how interviewees articulated a potential legal strategy. But why should it only be legal if we pretend no one nearby enjoys it? People choose to be in spaces with semi-public sex for a reason, afterall. Why must the counterargument reject the idea that semi-public sex does, in fact, provide sexual pleasure to others by contributing to an erotic atmosphere in which others can sexually express themselves? Perhaps this is because of the societal disapproval articulated in Robson's compulsory monogamy and Emen's compulsory matrimony, which prescribes that good and moral sex only happens between two monogamous partners in a married/marriage-bound relationship. Through this lens, promiscuity is anti-social and immoral because it confers sexual pleasure on persons outside of that relationship, and having sex near others who can receive pleasure from witnessing the act bears the same demerit. Labelling semi-public sex as a performance enables the state to intervene via the licensing regime. This also means that currently the most viable argument for queer sex-on-premises sites' legality is the one which conforms most to doctrines of anti-promiscuity and compulsory monogamy/matrimony.

Whether or not the semi-public sex at queer sex-on-premises sites is literally a performance is pedantic. The state has appointed itself the arbiter of sexual pleasure, and the 'performance' designation is a phantom; a mechanism for enacting regulations to uphold a narrow band of tolerable sexual practices. The incoherent licensing conditions for queer sex-on-premises sites is a symptom of larger societal and political discomfort with queerness, promiscuity, and transgressive sexual expression. However, London's treatment of queer sex-on-premises sites is not monolithic. As noted throughout the thesis, there are pockets of goodwill around the city including the Metropolitan Police and some well-intentioned licensing officers and councillors. Even in boroughs with hostile local authorities, there are queer sex-on-premises sites. As I have shown, queer sex-on-premises sites in London are not simply passive victims of regulatory frameworks; they are active agents shaping their own destinies within the

constraints imposed upon them. By developing extralegal safeguarding practices and fostering positive relationships with the police, these sites have carved out spaces of safety, autonomy, and resistance.

I end on a much larger question: Should licensing be a tool for regulating sexual expression, and to what extent should the state involve itself in the intimate lives of its citizens? The current licensing regime seems ill-equipped to further public safety objectives when faced with the complexities of queer sexual expression, particularly in spaces that defy traditional categories and norms of sexual morality. Looking forward, this research suggests that there is potential for reform in how queer sex-on-premises sites are understood and regulated. Rather than relying on outdated and restrictive definitions of sexual entertainment, or deploying anti-promiscuity logics to rationalise their legality, local authorities should consider creating new categories of licensing based on the safeguarding practices developed by promoters or, more radically, rethinking the need for such licensing altogether. If there is to be law in the darkroom, it ought to adhere to the principles of the darkroom: mutual respect, dignity, and consent, ensuring that regulation empowers rather than suppresses diverse expressions of sexuality and community autonomy.