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## UK context analysis

### Introduction: Words and their Meanings

**Homophobia** is seen as the *irrational* hatred or fear of homosexuals and the usefulness of the term is that it clearly places responsibility for anti-LGB ideas or sentiments on the perpetrator rather than the victim. Anyone who associates homosexuality with paedophilia, for example, or claims that homosexuality is unnatural, or a lifestyle choice, will be labelled homophobic and this could lead to isolation from a group or even dismissal from work. For this reason the term is often criticised by people who claim to have good reason to challenge LGB people from a religious or moral position. The plethora of LGB and LGBT activist organisations in the UK has grown media savvy and there is no doubt that to be perceived as homophobic is anathema socially. Homophobic language is against the law as it forms part of the umbrella concept "hate crime". We'll say more about that later.

**Transphobia** is a newer term (as yet unrecognised by Microsoft Word's spell-check; thus the red squiggle underneath the word) and focuses on people who have an irrational fear or hatred of people who make up the generic group "trans". Trans people feel it important to establish that theirs is an issue of gender identity rather than one of sexual orientation.

Consequently the nature of anti-T ideas and sentiments will be somewhat different from anti-LGB ones. An example of this was evident in the December 23<sup>rd</sup> 2010 Speech by the Pope, in which he commented that changing gender was as big an affront to nature as global warming.

Although the current Pope is also known for his homophobic sentiments, this sentiment was clearly aimed at transsexuals in particular. Transphobia is often assumed to be a part of homophobia, however, and campaigners for equal rights generally oppose this.

**Heteronormativity** is a useful term because it takes us further than heterosexism (the assumption that people are straight and that this is the norm). The concept of heteronormativity is that in western society one is assumed to be male, Christian (or from a Christian background), middle-class, heterosexual, cisgender, able-bodied and, of course white. That is, if you like, the default position. Anyone who is not one of those things – including women, who currently form 52% of the population – is 'other', and has to be treated differently. The good thing about heteronormativity is that it takes people out of their comfort zone and forces them to confront the homophobia, transphobia (racism, disablism, Islamophobia etc.) that comes about in a society's everyday discourse (look at all these red squiggles!).

Homosexuality as a word is problematic in the English speaking countries of the west because of its historical 'baggage'. I am aware that most languages are older than English and words tend to have a more neutral value and tend not to change meaning and nuance over time. We've only been speaking what we now perceive as English for 500 years or so and it's still work in progress as far as language development goes. As a result we have far too many words for everything and some are 'boo' words and some are 'hooray' words. 'Handicapped' is a boo word because of its connotations with being disadvantaged in a sporting event, so we use disabled. 'Coloured' is a boo word because it has historical



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connotations with the racially determined caste system used in apartheid South Africa, so we use Black or BME. 'Homosexuality' was perceived as a crime (for males) and a sickness throughout most of the twentieth century in Britain, so we prefer to identify – and be identified – as lesbian, gay or bisexual (LGB for short).

Gender identity poses a range of linguistic, semantic and political questions. **'Transsexual'** traditionally means undergoing, undergone or about to undergo gender affirmation surgery (although under the Equality Act Public Sector Duty, introduced on April 5<sup>th</sup> 2011, it has been extended to include young people who identify in the opposite gender but cannot transition because they are less than 18 years of age). **'Transgender'** has been used by some to define people who live in their preferred gender but do not intend to undergo gender affirmation surgery. **Transvestite** means cross-dressing and can take place in public or in private. **'Cisgender'** is a new term adopted to describe non-trans people. It is to gender identity what heterosexual is to sexual orientation. Be aware, however, that cisgender is a new word and is as yet unknown to many people. Then there is 'intersex' and 'genderqueer' (a term used by generally young people who reject the constraints of the binary gender model). Since all of these terms are specific we have adopted the generic trans person/trans people to include all groups who do not identify as cisgender. Thus the T on the end of LGBT (although some people now prefer to say 'LGB and T') stands for trans person or trans people.

The term 'queer' is preferred by some younger LGBT people; meaning strange, odd or curious, queer was a derogatory term for LGB and T people and was particularly common in the latter half of the twentieth century. By the 1980s, someone who was physically attacked for their perceived sexual orientation or trans status was said to have been 'queer bashed'; the semantics being that our apparent differentness meant we were implicitly inviting an attack.

Soon, however, a lot of young and angry LGBT activists reclaimed the word 'queer' and adopted it as an affirmation. "We're here and we're queer!" was a challenge often shouted by Pride marchers in the streets; the implication being 'What are you going to do about it?' Today queer is a preferred term for a lot of LGBT people, but there are those who still find it particularly offensive. Older people who were on the receiving end of homophobic and transphobic abuse would be familiar with the term 'queer' being used against them and their discomfort with the word should be respected.

The longest abbreviation I have come across – LGBTQQIIL - was in a Canadian publication. It stands for Lesbian, gay, bisexual, trans, queer, questioning, intersex and interested. Most equalities activists in the UK are comfortable with LGBT as a generic term. The importance of all this is that English words which appear to translate easily into non-English languages and, more importantly, words which are adopted unchanged in non-English languages may have a different nuance in the nation that adopts the word from that which prevails in the 'host' nation. In particular, when a British person describes me as a 'homosexual' I will prepare myself for a negative statement, since the word is rarely used in anything other than a negative context. Of course, the use of the word 'gay' to mean generally dysfunctional is unfortunately common to the UK, Ireland, the USA, Canada, Australia and New Zealand.



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There is disagreement over the origin of this use of the word gay, but many trace it back to teenage slang in 1990s Australia. It was certainly made ubiquitous through its casual use in the controversial US teen cartoon series *South Park*.

Paradoxically we are both liberated and constrained by language. We can ditch words and create words and make as many as we like to identify ourselves, but there will always be someone who doesn't have a word that identifies them. There are, for example, many people who have had relationships with people of different sexes, but would refute the term bisexual. There are men who have sex with men but refuse to identify as gay. There are lesbians who refuse to identify as gay and vice-versa. I have never felt that I am a woman or that I'm intersex, so I don't identify as a trans person. But I do have characteristics and traits that are perceived as feminine, so can I or should I identify as cisgender? Words are great when they help us explain who we are but they are limiting when they put us into pigeon-holes or even dictate our behaviours.

### **The Pathologisation of Homosexuality: The Medical and the Social Model**

From the late nineteenth century until the late twentieth, male homosexuality in the UK was labelled a criminal act by the legislature and all homosexuality was pathologised as a sickness by the scientific profession; particularly psychiatry. Since then we have moved from a medical model to describe and deal with diversity to a social model. In other words, instead of seeing the individual who is different as the problem and the thing that needs to be changed, we see society's inability to deal with the individual as the problem and society as the thing that needs to be changed. This conceptual change has been the key to the politics of social change and the development of the equal opportunities agenda throughout the last two decades.

### **Homosexuality and the Law**

Up to this point the law in the UK had been uniquely resistant to change. Male homosexuality was partially decriminalised in 1967 following the recommendations of the Wolfenden Report some ten years earlier, setting the age of consent for men and men at 21 and for men and women at 16. Women and women had no age of consent. This was part of an act that made it clear that if a relationship between two men took place and one was over 21 and the other under 21, it was a sexual assault. The elder was the assailant and the younger the victim, irrespective of any other circumstances. However both were criminalised and their convictions could affect their employment opportunities in the future. Moreover, the act could only take place between two people and the location had to be private. In other words, a male homosexual act that took place in the bedroom of a house where other people resided could be construed as illegal because other people were present *in the house*. These extraordinary add-ons were designed by the engineers of the Act to ensure that it would pass through Parliament, including the unelected second chamber. They 'sold' the act on the basis that male homosexuals were perverse and what they did was disgusting, but as long as they did it in private and they both consented it was not within our remit to



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stop them. It was passed but it wrote homophobia into the legislature and led to an actual increase in arrests for “indecent” offences, thanks to the activities of police who specifically were out to entrap unwitting or careless homosexual men. It decriminalised rather than legalised and it left us in no doubt of our low status in society.

### LGBT Activism: Section 28

Whilst this law remained in place however, LGBT activists such as the Campaign for Homosexual Equality (CHE) and the Gay Liberation Front (GLF) campaigned to move things forward. Schools OUT, a national organisation formed in 1974 to support lesbian and gay teachers, had influence over the Inner London Education Authority (ILEA) a local council body that oversaw London's schools. Ken Livingstone became leader of the Greater London Council (GLC) in 1981 and immediately went to war with the right-wing Thatcher government that was voted into power throughout the UK in 1979. Schools OUT lobbied the ILEA and under Livingstone the authority embraced equal opportunities and encouraged schools to ‘normalise’ same sex relationships. One book from Denmark, translated as *Jenny Lives with Eric and Martin*, portrayed the everyday life of a little girl with two gay dads. The right wing press was outraged and it was all associated with Livingstone's support for minorities, which was considered unacceptable. The 1986 election was one of the most racist and homophobic elections ever held, with stories in the right wing press challenging “political correctness”<sup>1</sup> gone mad; for example in Lambeth, a London borough where there was a large African Caribbean population, they (allegedly) don't sing Bah Bah Black Sheep<sup>2</sup> or use black refuse bags. This was completely untrue. In Haringey, another London borough where pioneering work had taken place and a brochure written about LGBT and homophobia in school<sup>3</sup>, the Conservative Party put up posters locally that said ‘My name is Betty Sheridan and I will vote Tory, for if Labour get in they will turn my kids gay’.

At the Conservative Party Conference in October 1987, Prime Minister Margaret Thatcher directly attacked “positive images” during her keynote speech;

“Children... are being taught that they have an inalienable right to be gay”.

Her Education Secretary, Kenneth Baker, issued a circular to all state schools, forbidding teachers from “advocating homosexual behaviour”. The rise of AIDS and the ignorance that surrounded it gave the political right moral authority and many gay activists were devastated and unsure of what to do. Margaret Thatcher's Conservative government used the furore to take drastic action. She closed down the ILEA, the GLC and all other metropolitan councils and created Section 28. This clause in the Local Authorities Act said that local authorities:

“shall 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”

This affront to our status led to a redefining of the parameters of the struggle and to the forming of Stonewall as an action group committed to lobbying the media with the specific intention of eliminating this offensive legislation. It also made the LGB cause popular with the political left, who embraced it with vigour.



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Section 28 was passed in Great Britain (but not Northern Ireland) and remained on the legislature until 2003 in England and Wales. It was repealed in 2000 by a devolved progressive government in Scotland. The clause was never used and nobody was ever prosecuted. It was never applied to individual schools or their staff but its effects were twofold.

First, most staff in schools believed it was illegal to talk about gays and lesbians in the classroom. Second, it was explicit that homosexuality was *inferior* to heterosexuality and a family could not be formed on the basis of a homosexual relationship. The effect of these myths was enormous and we still have to cope with the legacy today. Whilst society moved on in leaps and bounds and an LGBT culture developed, our education system remained in a stasis and LGBT people were rendered invisible.

### The Age of Consent

Thatcher resigned in 1990, on Cabinet advice following revolts over very unpopular changes in the local taxation system; the so-called poll-tax riots. There followed a more moderate Conservative administration led by John Major. Although the left had helped champion LGBT political activism, gays and lesbians were now gaining the support of the political right. There were three main reasons for this. First, the answer to the recessions that had beleaguered the development of the British economy from the 1970s was believed to lie in consumerist capitalism. The conservatives reasoned that without spouse and children to look after, lesbians and gays earning a serviceable wage or salary had far more disposable income than their heterosexual counterparts. The in-phrase 'the pink pound' became *de-rigueur* and gay enterprise shot up during the 1990s. Second, many lesbians and gays were wealthy and the Conservative party seemed to be their natural allies, so they assimilated – and subsequently influenced – the Tory government. The traditional working class and the trade union movement were generally hostile towards LGBT people until well into the 1980s and the Soviet Union was overtly hostile, so this should come as no surprise. It's an unwritten secret that the Liberal Party housed a lot of gay men throughout the twentieth century: politically; socially and in some cases sexually. But now we had some legal rights we could emerge from the Liberal closet<sup>4</sup>. Third, there is a libertarian wing of right wing politics that celebrates diversity and rejects conformity. One such was a member of the Conservative cabinet – Edwina Currie – and she tried to reduce the age of consent to 16 for everyone in 1994. An amendment was introduced to reduce it to 18 for homosexual men. Frightened that the unelected second chamber - the House of Lords – would reject it totally, most voted for 18, so the UK still had an unequal age of consent.

A Labour government, led by Tony Blair, was returned to power in 1997 with a manifesto commitment to level the age of consent at 16 and to repeal Section 28. Following rejections by the House of Lords the age of consent was made 16 for all in 2000, with a caveat that people who worked with young people had a duty of care and would face prosecution if they had sexual relations with one of their minor charges. Some, including LGBT rights campaigner Peter Tatchell, believe the age of consent should be reduced to 14.



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## The Stephen Lawrence Inquiry

A crucial driver for change is the concept of *Institutional homophobia*, which resulted from the Stephen Lawrence inquiry of 1999. To give a brief chronology, Stephen Lawrence was a black teenager waiting for a bus with his friend Duwayne Brookes in a suburb of South London. In a sudden attack carried out by a group of young men armed with knives, he was stabbed to death. The subsequent police investigation was minimal. A number of violent, racist youths who were known locally and had been seen by witnesses were arrested and subsequently released through lack of evidence. The Daily Mail, paradoxically a newspaper well-known for its right wing stance on most issues, published the pictures and names of the suspects on its front page in a notorious exposé of the injustice. Stephen's parents were persistent in their refusal to accept this injustice and funds were raised for a private prosecution, which ultimately collapsed. The rule of double jeopardy, which was specific to England and Wales and stated that nobody could be tried twice for the same offence, meant that they were free in spite of any subsequent evidence that might convict them. The case became very famous and there was a play about Stephen Lawrence that toured London.

The ensuing pressure from public and the media led to an inquiry, conducted by Sir William MacPherson, which produced its findings in 1999. The inquiry found that the Metropolitan Police had made fundamental errors from the outset; including failing to give Lawrence first aid when they found him alive at the scene. Most significantly, the law of double jeopardy was dropped and the concept of institutional racism was introduced. Seventy proposals were made for change throughout the public services, including health and education. But the impact was two-fold. First, racism could be embedded into the structure of our institutions. It wasn't simply a case of one person or some people being racist; there could be a culture of racism that people who worked within the institution were either unaware of or unable to resist.

A second, and profoundly important, ruling by the MacPherson inquiry was that an incident was racist if *someone who was there perceived it to be*. In other words, the onus to claim racism was not just on the victim, but on anyone involved. It also introduced the concept of perception giving the witness to the incident/crime the right to name the crime. Before this the authorities would decline to take action or believe people who claimed racism or other prejudice. Now, however, if a person says it is homophobia (or racism, disablism etc.) it legally is and must be investigated as such - this is unique in Europe.

Now obviously, if racism is endemic in an institution, then sexism, homophobia, transphobia etc. may well exist too. Furthermore, if any bystander might perceive an incident as racist, then he or she might consider an incident homophobic too. Thus the concept of institutional homophobia entered the vocabulary of the public sector in the UK.



## The Admiral Duncan Bombing

On April the 17<sup>th</sup>, 1999 a nail bomb in a bag exploded in London's Electric Avenue in the heart of Brixton, injuring 39. It was feared that a far-right terrorist had targeted the local community, who were mainly of West Indian and Caribbean origin. Their fears were confirmed when a nail bomb in a car exploded in London's Brick Lane, a suburb predominantly associated with the Bangladeshi community, on the 24<sup>th</sup>, injuring several more. On the 30<sup>th</sup> of April, a beautiful spring Friday evening at 6.30, Londoners were flocking to Old Compton Street, heart of London's gay scene, when a nail bomb went off in the Admiral Duncan, a well-frequented gay bar. Three people were killed, including a newly-wed couple, the woman pregnant, who had been taken there by a gay friend. Over 50 were injured.

Unlike the other two bombs, this one was left inside the building, maximising damage. Being a nail bomb, it rapidly fired sharp nails in all directions, tearing flesh and causing particularly horrific injuries. The bomber, David Copeland, had also urinated and defecated on the nails before packing them into the device. He was quickly found. He had been in the far-right British National Party but was thought to be acting alone. He is now in prison for a minimum of 50 years.

In spite of their appalling effects, Copeland's atrocities woke everyone up to the consequences of allowing prejudice to rein unchecked. Together with the outcomes of the Stephen Lawrence report, the events of April 1999 provided a compelling case for hate crime legislation.

## LGBT and Criminal Law

In 2002 the Crown Prosecution Service (CPS) published its policy and guidance for prosecutors on prosecuting homophobic offences. This led to the legal changes outlined below.

Section 146 of the Criminal Justice Act 2003 empowered courts to impose tougher sentences for offences motivated or aggravated by the victim's sexual orientation (and disability) in England and Wales. When Jody Dubrowski was beaten and kicked to death in London in 2005, his murderers were quickly found and given life sentences, with a minimum of 28 years each, because their crime was motivated by homophobia. This was a landmark case in a nation that introduced the 'panic defence' and exported it across the Empire. Section 146 was the opposite of 'panic defence'.

Further to this, homophobia, like racism, is now a hate crime. Any incident that is reported as a hate crime needs to be investigated as such. This means that if the perpetrators are found guilty, their penalties will fall under hate crime recommendations and generally be more severe than they would be if the crime were motiveless. It also means that the case cannot be closed until it is solved or the investigating officers have proven it not to be a hate crime. Since hate crime figures are monitored and subject to close scrutiny, police also know that hate crime allegations need to be taken seriously.

The number of reported crimes with a homophobic element has risen massively.



<http://www.thisislondon.co.uk/standard/article-23922083-huge-rise-in-anti-gay-attacks-sparks-call-to-fight-hate-crime.do>

This is partly due to pro-active work on the part of the police and the legal system. But it is still under-reported. We need to remember that gay men were criminalised until 1967 and partially criminalised until 2000. Lesbians and trans people were victims of institutional homophobia and transphobia respectively. Many older LGBT people will remember the police as people who broke up their demonstrations, falsely arrested them, importuned them by dishonest means<sup>5</sup> or even assaulted them. In short, the police were 'the enemy'. Mistrust of the police is still embedded in the collective psyche of many older people within the LGBT community. If the victim of a homophobic/transphobic crime is not 'out' – this is, openly gay/lesbian/trans, their details should not become available to the press, but there is still a fear that they will be 'exposed' and indeed they might be identified by inference and deduction. Younger people who have been subjected to homophobic abuse unchecked at school and in their communities may be in the 'closet' or in denial. They may internalise the homophobia and blame themselves. They may accept it as part of the 'normal' everyday conditions of their existence, since they know of nothing else. These are also barriers to reporting.

It is open to debate whether homophobic and transphobic crime is more reported or is actually on the increase, but there is certainly more reporting of hate crime where the police are especially pro-active and seek out the 'gay community' to encourage trust and promote reporting. The police are much more accountable to the local community through networks and steering groups than they have been before. But the Metropolitan Police reported a 28% increase in the past four years, according to the Evening Standard of February 10<sup>th</sup>, 2011.

Violent, targeted attacks are certainly taking place and the murder of Ian Baynham in Trafalgar Square in 2009 was carried out by teenagers. The murder of Michael Causer, an 18-year-old hairdressing assistant from Liverpool was also carried out by teenagers. He was brutally attacked while asleep in bed, and repeatedly beaten over the head with an encyclopaedia. One of his two assailants, Gavin Alker, claimed that he joined in the attack in self-defence. The court was incredulous when the judge found in his favour and dropped the murder charge against him. He was subsequently acquitted. James O'Connor was convicted of murder and sentenced to life imprisonment. Michael Binstead, who tried to cover up the murder, was given a suspended sentence. The acquittal of one assailant and the leniency of the sentences remain controversial. In his memory the Michael Causer Foundation charity was set up.<sup>6</sup>

### **Equalities and Human Rights Law**

In 1998 the Human Rights Act placed a general duty on public bodies to treat everyone with respect and dignity. In 2000 The Race Relations (Amendment) Act 2000 was passed, placing a general duty on public bodies to promote racial equality. That general duty has now been extended to include sexual orientation and gender re-assignment.



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Also in 2003, Section 28 was finally repealed and employees – including teachers - were given protection from discrimination in the workplace in The Employment Equality (sexual orientation) Amendment to The Employment Act. This was in anticipation of the adoption of the Amsterdam Treaty on December 31<sup>st</sup> 2003. In 2007 this protection was extended to the provision of goods and services.

For trans people the law has been different. By 2000, transsexuals were protected under sex discrimination legislation, while sexual orientation legislation did not yet exist. The Sex Discrimination (Gender Reassignment) Regulations 1999 outlawed discrimination in the workplace, if the discrimination took place because a trans person was 'intending to live, or is living permanently in their new gender role. But trans people were still legally identifiable only by the gender they were assigned at birth. The Gender Recognition Act of 2004 gave transsexuals the right to change their name legally. To do so there were various requirements. One was the requirement to have a psychiatric report diagnosing gender dysphoria. To obtain a gender recognition certificate, applicants must demonstrate that they are indeed transgendered. This involves showing that they can answer yes to at least the first three of the following questions:

- Has a person taken decisive steps to live in the gender in which they believe to be more appropriate?
- Do they intend to live in that gender till they die?
- Have they been diagnosed as having gender dysphoria?
- Have they undergone any medical treatment?

The other was a requirement that married couples obtain a divorce. Since then the rule has been extended to those in a civil partnership and a quick divorce or annulment can be obtained on the basis of gender reassignment. Since marriage is only available for, and applicable to, opposite sex couples, and civil partnership is only available for, and applicable to, same-sex couples, any couple where one partner reassigns gender must annul the marriage/civil partnership if s/he wants to identify legally in the new gender.

Trans people also have protection against 'outing' i.e. having their trans status exposed. When a person has been awarded a gender recognition certificate, under section 22 of the Act they have enhanced privacy protection in relation to their prior medical and status history.

Anyone who learns of a person's trans status within their official capacity must not disclose it further without the express permission of the trans person. If such permission is not provided then disclosure must not take place. Disclosure under these circumstances is a strict liability criminal offence subject to a level 5 conviction with a fine of up to £5000.



In 2010 all equalities legislation, including the Sex Discrimination Act, The Disability Discrimination Act, the Race Relations Act etc. were subsumed into one all-embracing **Equality Act**, which protects everyone under the following social categories (legally defined as protected characteristics):

1. Age
2. Disability
3. Gender reassignment
4. Marriage/civil partnership
5. Pregnancy/maternity
6. Race
7. Religion and belief
8. Sex
9. Sexual orientation

All groups are protected against discrimination and bullying under the Equality Act, both in employment and the provision of goods and services. It also protects children, which is crucial as the Human Rights Act only applies to people over 18 in the UK.

In April 2011, the Public Sector Equality Duty was added to the Act. There is also protection from dual discrimination, i.e. being discriminated against on two different grounds. For a case study:

A disabled lesbian single mother goes to a local mothers' group. When she arrives, she finds the group's meetings take place in an upstairs room which she cannot access. She is also told by the group's leader that it's a 'married' mothers' group and only mothers who are legally married can attend. She can choose two characteristics on which to use the Act to claim discrimination.

The Equality Act 2010 introduces a single equality duty on public bodies which will be extended to include all protected strands – as listed above. This combined equality duty will come into effect in April 2011 and will have three main elements.

In carrying out their functions, public bodies will be required to have due regard to the need to:

- 1) Eliminate conduct that is prohibited by the Act, i.e. discrimination, harassment and victimisation
- 2) Advance equality of opportunity between people who share a protected characteristic and people who do not share it,
- 3) Foster good relations across all characteristics - between people who share a protected characteristic and people who do not share it.

### **Equality Impact Assessments**

These actions were put into the law that was being updated on gender, race and disability and there were various methods that were put in place to ensure that the bodies that were bound by the law - which are any bodies/organisations receiving public money – they were doing the work. There were expectations of reports showing what they had done.



Expectations of producing an equality impact assessment on any new policy or action that could impact on people.

Hence an equality impact assessment involves assessing the likely or actual effects of policies or services on people in respect of disability, gender and racial equality. It helps us to make sure the needs of people are taken into account when we develop and implement a new policy or service or when we make a change to a current policy or service.

### **Stage 1 – deciding if you need to do an equality impact assessment**

Stage 1 of the equality impact assessment process is a short exercise that involves looking at the overall policy or service and deciding if it is relevant to equality.

### **Stage 2 – carrying out an equality impact assessment**

Stage 2 examines in detail the proposal to find out what kind of equality impact there might be and which groups of people it will affect most. There are 8 steps in the process:

- Step 1 – identify the purpose of your policy or service.
- Step 2 – assess the impact using information and evidence.
- Step 3 – remove or reduce a negative impact.
- Step 4 – make sure the policy or service promotes equality.
- Step 5 – arrange to monitor and evaluate the policy or service.
- Step 6 – sign off the equality impact assessment.
- Step 7 – arrange to publish the equality impact assessment.
- Step 8 – review the policy or service and update the equality impact assessment.

One can see this is a labour intensive process. However, if done well it can certainly eradicate institutional prejudice based on race, gender or disability. In the latest round of cuts in 2011 some cuts have been challenged successfully when it was proved that an EIA had not been done.

Unfortunately the Conservative/Liberal Democrat coalition government have now watered down the requirements. Instead of equality impact assessments, bodies are required to do equality analysis and produce reports on outcomes, reports that do not have to be on all of what is now known as the protected characteristics. The Department of Education advises on the analysis.<sup>8</sup>

The act also gave all the employers the right to use positive discrimination - should they wish to do so - when recruiting to employ a member of a protected characteristic, if they are of equal merit to another applicant and if that characteristic is under represented in the organisation.

## **Policing the Public sector Equalities Duty**

The organisations that monitor the public sector in its pro-activity are the Office for Standards in Education (OFSTED) and the Equalities and Human Rights Commission (EHRC). OFSTED is the government's schools inspectorate by any other name. Heads and teachers fear it because a bad inspection report can ruin a school's reputation and cause a fall in rolls and funding. However it is in itself reactive rather than pro-active, in that it can comment on what it sees in a school but it is not within its remit to give advice or make suggestions. The EHRC is a recently formed commission with a statutory remit "to promote and monitor



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human rights; and to protect, enforce and promote equality across the nine "protected" grounds - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment". So it plays the advisory role.

### **The Future for Equalities Legislation**

There is no room for complacency in the current political and economic climate. The Equality Act was largely put together by the previous Labour administration and it may seem prescriptive and bureaucratic to a Conservative led coalition that prides itself on freeing business from interference. Plans to include social deprivation in the Act were abandoned by the Home Secretary before the Bill was enacted (though caste is included). The Government has an anti-bureaucratic website called Red Tape Watch which invites people to comment on the Equality Act, among other pieces of legislation, and asks them to consider whether it should be "scrapped altogether".

<http://www.redtapechallenge.cabinetoffice.gov.uk/equalities/>

Whilst it is unlikely that the Government would destroy its own legislation, having only just released it, the parts of the Act that require institutions to be pro-active are in danger.

The Prime Minister David Cameron has made clear his distaste for the Human Rights Act on a number of occasions and before the election he threatened to scrap it, making the UK the only country in Europe that would have no human rights legislation. He is unlikely to carry out that threat as long as the Conservatives need the Liberal Democrats to maintain a government. However, the right wing media produce scare stories about criminals having their convictions quashed and prisoners having too many rights because of the Human Rights Act on regular occasions, together with stories about asylum seekers who we cannot deport and so on. Cameron recently said that European Human Rights legislation that would give convicted prisoners the right to vote made him "physically sick". This constant drip drip of negativity around human rights legislation means it is continually under threat.

### **Previous Convictions removed**

Since February of this year, men charged with having gay sex with a person over 16 when the act was deemed illegal, i.e. between 1956 and 2000, will have their convictions cleared.

The new legislation will remove their records, meaning gay men will be free to apply for charity roles and jobs with children and in hospitals without having to disclose the conviction during Criminal Records Bureau checks.

Thousands of men have been prosecuted over four decades for having sex with a partner aged 16 or over before the age of consent was equalised. Many teachers had their career choices limited because they had to declare their convictions every time they sought a job.



## Belief and faith

The nine protected characteristics include faith and belief and there is an ongoing conflict between some religious institutions around sexual orientation. The Catholic Church has fought for its right to refer same sex couples who wish to adopt to non-catholic agencies rather than deal with them itself. The Christian Institute funded an appeal by the proprietors of a bed and breakfast who refused a gay couple a double room even though they had a civil partnership. Lillian Ladele, a civic registrar who refused to carry out civil partnerships because of her Christian views and was sacked by Islington Council as a result, finally lost her appeal after nearly six years of legal action.

These are cases that hit the front pages, but less well reported is this conflict as it is played out in our faith schools. The Equality Act Public Sector Duty places a duty on all public bodies to promote equal opportunities and the General Teaching Council (GTC) places the same duty on teachers as part of their professional code. However faith based schools can use their ethos to alter what is taught in Religious Education and Personal, Social and Health Education and a teacher who believes that it is a sin to practise homosexuality in a school that has an ethos that supports that view can express this view to the pupils. We believe that this is exclusive and wrong. The Stonewall School Report (see below) found that 75% of LGB pupils in faith schools experiences homophobic abuse compared to 65% in non-faith schools, so faith schools are clearly wanting in carrying out their duty of care.

As a footnote it is important to recognise that the UK is not a secular nation and that all state schools are expected to carry out Christian acts of worship. A faith school is different in that it is substantially funded by a religious denomination and can select pupils on the basis of their parents or guardians' support for and involvement in that religious denomination.

## Coming Out Earlier

Stonewall found in 2010 that there was a marked correlation between LGB people's ages and their ages when they came out. The average coming out age for the older group surveyed was 37. The average for LGB people in their 30s was 21. For the 18-24 group it was 17, and for under 18s it's 15<sup>a</sup>. Although there is the obvious statistical blip in that you have to be 'out' in order to tell people when you came out, more LGB people are coming out at school. Trans people are coming out at school too, with many trans teenagers presenting at school in the opposite sex to that which was assigned to them at birth. Support groups for young trans people such as The Green Door Project and Gendered Intelligence have developed to meet their needs.

## Sexualisation of girls

In 2010 David Cameron spoke out against the commercial sexualisation of our schoolchildren and, although no laws have been introduced to prevent it, it's a topical issue at the moment. This came with information released by the Freedom of Information Act that revealed some children were becoming pregnant at the age of ten<sup>b</sup>. Evidence suggests that girls are being



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commercially sexualised at 5<sup>c</sup>. This is a commercial response to the effect of gender stereotyping which begins at primary school level, where girls learn that they have to make themselves attractive to men and are considered 'misfits' if they fail to do so. Thus PSHE and Sex and Relationships education is now taught in primary schools. This is a marked shift in emphasis. The prevailing logic until about ten years ago was that young children are 'innocent' (wonderfully ambiguous word) and shouldn't be corrupted with too much information at such an early age, but now it is widely recognised that peer group pressure leads girls to make themselves look feminine and attractive at an alarmingly early age and that this has to be challenged. Boys are under pressure too, but they have an 'escape route' in that they can be macho and prefer male pursuits such as football to girls. Pink Stinks is an organisation that was set up to challenge the prevailing culture around girls<sup>d</sup>.

### The No Outsiders project

'No Outsiders' was a 28-month research project (end date: March 2009) based in primary schools and funded by The Economic and Social Research Council. The project was led by Elizabeth Atkinson and Renée DePalma at the University of Sunderland, in collaboration with researchers at the University of Exeter and the Institute of Education (University of London) and a team of research assistants.

During the course of the project, teachers from three areas of the UK developed strategies and resources to address lesbian, gay, bisexual and transgender equality in their own primary education settings. The teachers have been awarded the 2008 British Educational Research Association/Sage Publishers award for practitioner research, and their work has been highly acclaimed by Local Authorities around the country.

No Outsiders has been included in *The Human Rights Education in the School Systems of Europe, Central Asia and North America: A Compendium of Good Practice* (see pp. 231-232), a joint publication of The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR), the Council of Europe, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The project was supported by the National Union of Teachers, the General Teaching Council, Stonewall and Schools Out, and worked closely with a wide range of organisations to create school environments and communities where no-one is marginalised because of their sexual orientation or gender expression.

While the project is now completed, this work continues in primary schools throughout the country. Books such as *And Tango Makes Three*, *King and King* and *Spacegirl Pukes* are incorporated into classroom libraries and are read at carpet time in primary schools, so that children learn from an early age that same sex relationships and families formed around same sex relationships are a part of everyday society. The London based Out for Our Children, a lesbian parents' campaign and pressure group has worked to get such books into schools as well. Their perspective is that the books in schools need to reflect their children's homelife and domestic arrangements. Since same sex adoption and IVF have made same sex parenting increasingly common, these books are essential. Moreover, we



now know that children learn a lot about sexuality at primary school and it is better to learn from professionals who know than from peers who generally don't. Otherwise they turn up at secondary full of stereotypes and prejudices.

Unfortunately, not everyone agrees. In Bristol the No Outsiders Project was curtailed and the books withdrawn in two primary schools when parents groups – fuelled by media hype - descended on the schools in large groups to register their protest. The local authority acted on health and safety grounds. Although it was intended to restart the project 'after the dust settled' in reality this never happened.<sup>e</sup> A row over parents at a Leytonstone School withdrawing their children from lessons during LGBT week and an alleged threat to prosecute them created a media frenzy. The effect of this was to deter other schools from taking the perceived risk of doing pro-active equalities work in schools and the official launch of No Outsiders was deferred indefinitely.<sup>f</sup>

### Homophobia in Schools

Homophobia is rife and endemic in many secondary schools. Here are some of the findings of the Stonewall School Report 2006

- 65 % of young lesbian, gay and bisexual pupils have experienced direct bullying. Seventy five per cent of young gay people attending faith schools have experienced homophobic bullying.
- 98% of young LGB people hear the phrases "that's so gay" or "you're so gay" in school, and over four fifths hear such comments often or frequently.
- 97% of pupils hear other insulting homophobic remarks, such as "poof", "dyke", "rug-muncher", "queer" and "bender". Over seven in ten gay pupils hear those phrases used often or frequently.
- 23% of young LGB people have been told that homophobic bullying is wrong in their school. In schools that have said homophobic bullying is wrong, gay young people are 60 per cent more likely not to have been bullied.
- Over half of LGB pupils don't feel able to be themselves at school. 35% of LGB pupils do not feel safe or accepted at school.<sup>9</sup>

Here are some of the findings of the Teacher Support Network (TSN) Survey carried out in February (LGBT History Month) 2007

- 66% of LGBT teachers and lecturers have experienced harassment and discrimination at work because of their sexual orientation
- 67% of lesbian, gay, bisexual or transgender teachers and lecturers who responded to a survey by Teacher Support Network have experienced harassment or discrimination at work because of their sexual orientation or gender identity.
- 83% of these say they have experienced homophobic harassment or discrimination, including offensive 'jokes' or language, name calling, rumour spreading and abusive behaviour.
- The survey, which marked February's LGBT History Month, also revealed that 71 per cent of respondents experienced discrimination or harassment by their pupils, 46 per



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cent by colleagues, 37 per cent experienced it from their managers and 16 per cent from pupils' parents.<sup>h</sup>

The National Union of Teachers/Schools OUT Prevalence of Homophobia surveys have been carried out in several locations in schools since 2008 and are an ongoing process. The surveys can be found on the Schools OUT website, but the latest, carried out in Luton in February 2011, found the following results:

- Question 1 Climate of homophobic abuse in or schools**
- 54% Of teachers had overheard/observed homophobic abuse in their schools on a daily/weekly basis
- 94.5% Of teachers had overheard/observed homophobic abuse in their schools on at least a termly basis
- Question 2 Prevalence of homophobic abuse/discrimination/bullying of pupils by pupils**
- 39.5% Of teachers had overheard/observed specific pupils being subjected to homophobic abuse/discrimination/bullying on a daily/weekly basis
- 85.5% Of teachers had overheard/observed specific pupils being subjected to homophobic abuse/discrimination/bullying on at least a termly basis
- Question 3 Homophobic abuse/discrimination/bullying of staff by pupils**
- 6% Of teachers themselves have been subjected to homophobic abuse on a daily/weekly basis
- 26% Of teachers themselves have been subjected to homophobic abuse at least once in the school year

### Results Part Two: Responses to Homophobia

- Statement 1 Attitude towards the seriousness of homophobic abuse/discrimination/bullying**
- 80% Of teachers believe homophobia is a serious issue demanding attention
- Statement 2 Is your school vigorously addressing homophobic abuse/discrimination/bullying?**
- 30% Of teachers consider that their school is vigorously addressing homophobia

Members' attitudes towards challenging homophobic abuse and discrimination through training

- Statement 3 Do you feel confident to challenge homophobic abuse/discrimination/bullying in your classroom?**
- 60% Of teachers feel confident about addressing homophobia in their classroom
- Statement 4 Would you welcome specific training to better address homophobic abuse/discrimination in your classroom?**



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- 19% Of teachers would welcome specific training to help them address homophobic abuse/discrimination in their classroom
- Statement 5 **Would you welcome whole school training to better address homophobic abuse/discrimination in your school?**
- 58% Of teachers would welcome whole school training to better address homophobic abuse/discrimination in their school.<sup>i-o</sup>

What is disturbing is the general lack of improvement over the past five years, despite a sea change in the law and equalities legislation. Homophobia exists from the antilocution level identified by Allport up to violence and sexual assault. Homophobia is the most common form of bullying and harassment in school after BMI and disablism.

Homophobia is built into the vocabulary, from the ubiquitous use of the word gay to mean dysfunctional, to sexual stereotyping, e.g. "He walks like a girl!" (which is also sexist and transphobic), to insults based on alleged sexual behaviours e.g. "shit-stabber" "bean flicker". Obviously pupils don't need to be LGBT to be homophobically or transphobically bullied. To look for reasons why someone is being bullied can lead us into the trap of blaming the victim. Even now we see headlines that say "Killed Because He Was Gay", rather than, "Killed because of Homophobia".

N.B. there is no data for the extent of transphobic bullying in our schools, which is evidence that:

A. There is a hierarchy of discrimination

B. Trans people are fewer in number and this contributes to a lack of urgency.

The Department of Children, Schools and Families (DCSF; now known as the Department for Education (DfE)) commissioned Stonewall and EACH to produce a toolkit for tackling homophobia in schools. It was released in 2007 and is entitled *Safe to Learn*.<sup>p</sup> This updated and replaced its previous document *Stand up for us!*<sup>p</sup> At the current time it is anticipated that this will be replaced with new guidance from the DfE designed to eradicate homophobia in schools. This will be simpler than previous documentation for two main reasons. First, academies and free schools are being set up which are semi-independent and relatively autonomous. Their management teams may not be inclined to adopt time consuming policies and practice. Second, the Conservative/Liberal Democrat coalition is ideologically committed to perceiving homophobia as a disciplinary issue which can be dealt with if schools are 'freed up' to manage 'prejudiced based bullying'. We believe this is a narrow approach that fails to recognise the need for pro-active and celebratory preventative work.

There is also Home Office guidance, produced with Gender Identity Research and Education Society (GIRES) to tackle transphobic bullying in schools.<sup>r</sup> Its future is uncertain. Despite the declared intention of the Government Equalities office (GEO) to eliminate homophobic and transphobic bullying in schools, there is no mention of transphobia in the current documentation. Maybe that is coming later. The problem is that few school management teams implement these guidance documents; many seem not even to be aware of their existence (although the previous administration took time to write a letter to each head advising them of the existence of safe to learn and demanding that they use it).



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Schools OUT has a Student Toolkit, designed in 2007, to help students in schools deal with LGBT issues, whether their own or someone else's.<sup>5</sup>

Previously, racist incidents in schools were reported. The reports were recorded and the recorded results were sent to the local education authority for analysis and publication. The same is not the case with homophobic or transphobic incidents, so there is no record of how many incidents take place or whether the trend is changing, save for what has come out of the surveys and research outlined above. Whole school reporting is necessary to give an idea of the problem we are dealing with and to share best practice.

Following the Stephen Lawrence inquiry the Department for Education was charged with a range of recommendations. It did not begin to put those recommendations into place until 2007. More to the point, although every police officer in the land has to do equality and diversity training, there is no such requirement for our teachers. There is post-graduate teacher training, in service training (INSET), life-long learning and continuous professional development (CPD) for teachers, so the infrastructure for equalities and diversity training is there. But it is not statutory and we simply assume that all teachers have the wherewithal to carry out their professional duty to promote equal opportunities (as levelled at them by the Equality Act Public Sector Duty and before that, the General Teaching Council (GTC) guidance) as if they know it all. The statistics demonstrate that they don't.

### LGBT History Month

The Labour government in 2003 were talking about the public duty and that it would be extended to all the strands as the characteristics were then called. It was because of that we at Schools OUT created LGBT History Month, as we were confident that many bodies would not know what to do, since the exciting thing about the public duties is that it takes law a step further and moves from reactive to proactive. As this coincided with the repeal of Section 28, which went largely unnoticed on our schools, the time seemed right.

LGBT History Month takes place every February. It began with a pre-launch in November 2004 with the campaign slogan Claiming our Past, Celebrating our Present, Creating our Future. Its aim is to increase our visibility in schools by allowing us to be in the curriculum and to demonstrate that, although lesbian, gay, bisexual and trans might be twentieth century words, they describe same sex desire and gender identity variance, which have existed in all times and in all places. It also places us in the equalities calendar and gives teachers a rationale for dealing with LGBT people and issues in class: "This month is LGBT History Month and today we are going to..."

We are also committed to challenging heteronormativity by asserting, and reasserting, that LGBT people are black, disabled, Jewish, old, working class, Romany and so forth. The word 'gay' still creates the image of a young white man who lives in a city and we are one of the few groups who use references and images that challenge this lazy exclusionist assumption.

In the beginning we felt somewhat leftfield and a Tory MP described the Month as "achingly politically correct". Now we are mainstream and the BBC has more TV and radio programmes about and for LGBT people in February than at any other time. The press run more LGBT stories and there are regularly over a thousand events to celebrate LGBT people



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every February. This year we had a letter of endorsement from the Tory Prime Minister David Cameron, as well as from the Leader of the Opposition Ed Miliband. Some schools have adopted it with great enthusiasm; some have not shown such an interest; and some faith schools actively proscribe it.

The good thing about the month in schools is that it breaks away from the victimhood agenda (don't be nasty to us because we're bullied and it might make us self-harm or commit suicide and we can have HIV AIDS) and celebrates the fact that many of us have lived long and fruitful lives and have achieved great things.

One school that has worked wonders with it is Stoke Newington School in Hackney, a notoriously poor suburb in the east end of London. Its music teacher Elly Barnes has celebrated LGBT History Month every year with the pupils since 2005.<sup>†</sup> They have a gay week in which the whole curriculum covers LGBT issues. Many pupils have come out, confident that they are in a safe environment, as have the LGB staff (no T's yet). It's essential that LGBT teachers come out, because if they are in the closet – as many are – it reinforces the need to 'hide' our sexuality and keep out of sight.

The school now claims to have eradicated homophobia and transphobia<sup>u</sup> and has opened as a diversity training centre for teachers, with the support of the head Annie Gammon.

Every year LGBT History Month focuses on a particular part of the curriculum. At the moment it is sport, where there is a great deal of equalities work to be done. In 2013 it will be maths and science, following the centenary of the birth of code-breaker and founder of the modern computer Alan Turing.

### Schools OUT Classroom

The Equalities Act demonstrates that the government is placing the responsibility on organisations to challenge the barriers that impede members of the protected characteristics receiving effective services or being treated appropriately when employed.

Due to past legislation and the lateness of legislation that outlawed discrimination of LGBT people, educational institutions have in some cases been slow to tackle the issues.

The high level of homophobic and transphobic bullying in such institutions has been well documented.

The present conservative liberal coalition is keen to tackle such bullying, which is welcomed. Schools OUT sees the production and gathering of these resources in the classroom as a vital tool in that work, for when we teach people about all peoples in clear matter of fact way we do our job of educating, thus dispelling prejudice and dismantling stereotypes. The inclusion of people who have hitherto been marginalised or only been seen in a negative light is essential to effectively challenge bullying.

With a grant from the non-governmental body the Training and Development Agency (TDA), we have produced a one-stop-shop of school lesson plans and resources for teachers who want to teach LGBT issues in their lessons, fitting the National Curriculum orders and meeting the current legislative demands. This site goes live on or just after the 31<sup>st</sup> of May 2011.



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1. Political correctness: pejorative term for using terminology to avoid offence to specific groups of people or encouraging equality of opportunity through policies and practice.
2. Bah Bah Black Sheep is a traditional rhyming song sung in nursery schools.
3. *Mirrors Round the Walls - Respecting Diversity*, first report of curriculum working party Haringey on lesbian and gay issues in education, March 1988.
4. 'Coming out of the closet' is a figurative term for averring your homosexuality or bisexuality publicly.
5. The 'Pink Police' were officers who were sent, dressed in civilian clothes, to entrap men who were looking for sex in public places; particularly public toilets. Teachers who were prosecuted for 'indecent' offences would have to declare their convictions every time they applied for a post, even if they were not teachers at the time. This drastically reduced their job opportunities.
6. <http://michaelcauserfoundation.org.uk/>
7. To this day France remains the only country in Europe that does not regard gender variance as a mental condition. Consequently trans people tend still to be subject to the medical model rather than the social model. Many trans people have negative anecdotes about their treatment in the hands of the medical profession.
8. <http://www.education.gov.uk/b0063656/equality-impact-assessments-archive/> the equalities workbook is the first document on right

- a. [http://www.stonewall.org.uk/media/current\\_releases/4867.asp](http://www.stonewall.org.uk/media/current_releases/4867.asp).
- b. <http://www.telegraph.co.uk/education/educationnews/7186620/Primary-schoolgirls-getting-pregnant-aged-10.html>
- c. <http://www.dailymail.co.uk/news/article-437343/The-little-girls-sexualised-age-five.html>
- d. <http://www.pinkstinks.co.uk/>
- e. <http://www.dailymail.co.uk/news/article-553008/Muslims-fury-forces-schools-shelve-anti-homophobia-storybooks-5-year-olds.html>
- f. <http://www.tes.co.uk/article.aspx?storycode=6003864>
- g. [http://www.stonewall.org.uk/at\\_school/education\\_resources/4121.asp](http://www.stonewall.org.uk/at_school/education_resources/4121.asp)
- h. [http://tsn.custhelp.com/app/answers/detail/a\\_id/1218/~harassment-of-lgbt-teachers%3A-case-studies](http://tsn.custhelp.com/app/answers/detail/a_id/1218/~harassment-of-lgbt-teachers%3A-case-studies)
- i. [Blackburn-with-Darwen 2010 \(primary\)](#)
- j. [Liverpool 2010 \(secondary\)](#)
- k. [Oldham 2010 \(secondary\)](#)
- l. [Salford 2010 \(primary & secondary\)](#)
- m. [Blackpool 2010 \(secondary\)](#)
- n. [Lancashire 2009 \(secondary\)](#)
- o. [Oldham 2008 \(secondary\)](#)
- p. <http://www.education.gov.uk/publications/eOrderingDownload/HOMOPHOBIC%20BULLYING.pdf>
- q. <http://www.education.gov.uk/publications//eOrderingDownload/SUFU%20Final.pdf>



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- r. <http://www.gires.org.uk/transbullying.php>
- s. [http://www.schools-out.org.uk/STK/Student\\_Tool\\_Kit.htm](http://www.schools-out.org.uk/STK/Student_Tool_Kit.htm)
- t. [http://www.lgbthistorymonth.org.uk/schools/documents/LGBT\\_SNS.pdf](http://www.lgbthistorymonth.org.uk/schools/documents/LGBT_SNS.pdf)
- u. <http://www.guardian.co.uk/education/2010/oct/26/lgbt-history-homophobia-schools>

**The bibliographic references are available online at the above addresses**

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