

O P I N I O N

1. I am asked to advise the steering committee for the above venture who are concerned about the legal aspects of setting up such a refuge. The idea for the hostel is in essence to provide a sympathetic refuge for some at least of the people who arrive in London in the middle of a crisis of sexual identity, or caused by declaring their sexuality and so forth. I hope I do not confine the categories too far. The main purpose is to deal with personal crisis and not just provide congenial accommodation.

2. The organisers ^eforsee that applicants would be referred to the hostel by agencies already in existence, and they would be vetted by the hostel workers. Stay would be for long enough to allow a calm period, start claiming benefit or get a job, and find more long term accommodation. Three weeks would normally be the extent of stay. It is envisaged that there would be three resident workers, either paid or getting free accommodation etc. The committee envisage house rules, and clearly have it in mind that this institute will have to be very carefully run. They propose to include consultation with the police in their preparations.

3. There is no doubt that difficulties could easily

arise with a refuge like this. Even though there would be no direct publicity, the institution is bound to become known in time. It is easy to imagine unpleasant and cheap publicity in the more prurient newspapers. Such publicity is embarrassing to the police, particularly if it catches them by surprise, and I feel that consulting them, perhaps in a meeting with Instructing Solicitors representative, would be an excellent start. I am sure that the steering committee are not only concerned to avoid conviction but also prosecution, and I take that as my starting point in dealing with the criminal law.

4. I think it will be helpful if I summarise the relevant criminal law. It is most easily broken down by reference to age group, and I will do that shortly. However, it is wise to grasp the legal principles behind any set of offences. I hope the committee will forgive me for quoting a relevant passage displaying the *gravity* majesty of the criminal law on this field. I quote from Lord Reid's speech in the case of R.-v- Kneller (1973) AC 435 CAR 633 at page 641/2.

"I can now turn to the appellants second argument. They say that homosexual acts between adult males in private are now lawful, so it is unreasonable and cannot be the law that either persons are guilty of an offence if they merely put in touch with one another two males who wish to indulge in

such acts. But there is a material difference between merely exempting certain conduct from criminal penalties and making it lawful in the full sense. Prostitution and gaming afford examples of this difference. So we must examine the provisions of the Sexual Offences Act 1967 to see just how far it altered the old law. It enacts, subject to limitation, that a homosexual act in private shall not be an offence, but it goes no farther than that. Section 4 shows that procuring is still a serious offence I find nothing in the Act to indicate that Parliament thought or intended to lay down that indulgence in these practices is not corrupting. I read the Act as saying that, even though it may be corrupting, if people choose to corrupt themselves in this way, that is their affair and the law will not interfere. But no licence is given to others to encourage the practice".

5. That case of Knulier concerned contact advertisements which, it was accepted, were aimed at and attracted men who were already homosexual, and likely to be over 21 years of age. It is beyond dispute that to publish such advertisements is an offence and yet it is done very commonly today. The reason is that the authorities use their discretion not to prosecute because they think they have better things to do with their time. It is the classic example of the two

sometimes distinct considerations:

- (1) Is it technically an offence;
- (2) Will the authorities prosecute?

6. For people over 21, homosexual acts are not criminal if they are done "in private". If someone else is in the room, that is not "in private" even if the third person is asleep. Furthermore the idea of privacy is excluded if a third party is "likely to come upon the scene". I am sure I do not need to explain what constitutes the offences of gross indecency, indecent assault or buggery. If a person wishes such an act to take place and does something to make it happen then he may be guilty of "counselling or procuring" that offence. Or if an institution is abused for the provision of sex, the organisers might face a conspiracy charge. For example those who organise a party with the intention that adults shall have homosexual contact in the same room would be guilty of such a conspiracy. There is a specific offence of procuring in the Sexual Offences Act 1967. Section 4; "(1) a man who procures another man to commit with a third man an act of buggery which by reason of section 1 of this Act is not an offence shall be liable to imprisonment for a term not exceeding two years". Procuring does not mean as much as it sounds; to put two men in the same bedroom, knowing them both to be homosexual (or a man and a woman knowing them both to be heterosexual) might without more to be procure.

7. For men under 21, no homosexual activity is legal. Thus, whether in private or not, such sexual contact as may occur constitutes the relevant offence (indecent assault etc.) To procure such an offence is a ~~crime~~^{which} operates in precisely the same way as the section 4 Offence I have outlined above. By Section 14 of the 1956 Sexual Offences Act it is an offence for a person (male or female) to make an indecent assault on a woman. Section 14(2) enacts "a girl under the age of sixteen cannot in law give any consent which would prevent an act being an assault for the purposes of this Section". In other words any sexual activity, even such as kissing and mutual caressing between two people, one or both of whom is a girl under sixteen, constitutes indecent assault. The ancillary offences of procuring etc., operate in the identical way.

8. The charge of running a disorderly house is sometimes used against managers or organisers of institutions, most recently and publicly against Cynthia Paine. The essence of this offence is affront to the public decency by reason of lewd or indecent displays or activities within the house. It appears to be increasingly employed to deal more easily with *bordellos*. It is so unclear in its content that it is difficult to define but might possibly be considered about any institution which was being scrutinised by the police in regard to sexual behaviour.

Finally a great deal has been heard recently of conspiracy to corrupt public morals, by reason of the P.I.E. trial. That was the charge in Knüller from which I have quoted above. This is the heavy artillery in the field. Any such indictment framed in these circumstances could probably run as follows:

"A B C and D did on divers days conspire together to invite, counsel or procure the commission of (the various specific offences by various people) with intent to corrupt and debauch the morals of the public". Such a charge is appropriate when it is alleged that Defendants had a concerted plan to effect particular sexual offences with a general purpose of "undermining the fabric of society".

9. I hope that that very short summary of the relevant law is sufficient to make it plain that the organisers of such a refuge as is proposed will have to be very careful indeed about the criminal law. It would be naive to suppose that in a place designed for gay people where they arrive at moments of stress and friendlessness, at moments when they are concerned with sexuality more than anything else, that some or all of the substantive offences I have listed will occur. No doubt the trust and concern of the refuge will occasionally be abused. More often, natural human warmth will find sexual expression to whatever degree. If that is within the contemplation of the organisers and they go on and set up the refuge, and

such actual offences occur, then technically the organisers will be guilty. Even more, if a resident worker directs two young men to share a room, the police raid and catch them in flagrante delicto, the worker may very well be technically guilty of procuring.

10. However I do think that with the co-operation of the authorities, and with proper care in management the committee can ensure that they are not prosecuted. The advance consultations with the police is vital. The imprimatur of the relevant social work authorities will help to gain the co-operation of the police. After all, the committee offer a vastly better alternative than a predatory Bishop of Medway, or even lonely and possibly suicidal people enduring anonymous lodgings. The police will be quite aware of all that. The "no-sex" Rule must be a real one, and must be seen to be so by the police. There will no doubt be problems in putting that across without making the refuge unacceptably authoritarian^{an} in tone, but it must be done. It may be that there should be written rules given to any new person coming into the hostel. There should be some way of showing beyond doubt that each person coming in has been told of the rule. Furthermore, the rule should be followed up. If someone is caught breaking the rule, that should be discussed and the discussion noted. There should be regular and formal, minuted meetings which can be used to show the authorities that the committee are in close and regular touch with the residents and workers in the hostel, and I am thinking of

fortnightly or weekly, rather than quarterly. Regular liasons with the local Social Services would also be very useful.

11. In my view, the committee would be very unwise to allow anyone under 17 to stay in the refuge. For better or worse, keeping anyone of 16 years or under in such circumstances will be regarded as wrong and will invite inevitable attack from the authorities. Furthermore it will involve the hostel in all the civil proceedings likely to be mounted ~~on~~^{over} that age group - wardship, care proceedings, and possibly matrimonial custody proceedings will inevitably involve the hostel in endless difficulties. Would it be possible to liase with the local authority once the refuge has been set up, so that people of this age lived in local authority accommodation with support from the Refuge staff and residents, perhaps using the refuge as a day-centre? I am sure there are practical alternatives of which the members of committee have far more knowledge than I. However, I am certain that if the police knew that 14 to 16 year olds were in the refuge having left their families, that would change their approach to the whole idea, very much for the worse.

12. The essence of the matter is this; if the police and the authorities feel that (a) the refuge is well and responsibly run; (b) noone in charge or in authority is abusing their position in any way; (c) the

residents are firmly made aware that sexual activity
may endanger the institution and really is not allowed
and (d) that no one who is not reasonably mature is
admitted to stay, then they will not wish to interfere.
However, I must stress that there will always be a risk of
prosecution. By the very nature^u of this institution it is
open to lurid misinterpretation. It will be unique, as
the only existing, officially homosexual live-in institution
in existence in this country. Public attention will be
inevitable, and may well, for all the efforts of those in
charge, result in the police taking action in response^u to
that political factor. The ground will have to be laid very¹
carefully indeed to succeed.

I hope that this Opinion is sufficiently
informative and covers the necessary ground. I should
be glad to advise further in conference or in writing.



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