



**Protecting Rainbow Refugees: Progress and Challenges in LGBTI Asylum
Law and Practice**

UKLGIG Rainbow Refugees Seminar

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“My freedom has been taken away from me, my partner can’t visit because she doesn’t have a passport, I am suffering from depression. I can’t sleep because I have nightmares. I was imprisoned in my country because I am a lesbian. I am in prison in the UK because I seek safety.”

LN – Uganda

“I will rape and fuck you to death and make sure I kill you if they ever allow you to stay a night in my cell”.

Verbal threat made to gay asylum seeker in immigration detention

“The whole place was vile. It was so homophobic. One of the guards called me a poof and there were Jamaicans who kept hurling abuse at some Iranian guys – calling them batty men. I was terrified thinking oh my God, I hope they don’t know I’m one of them. There were always fights – they would provoke them and the guys would try to fight back. Eventually the gay guys had to be taken out. So it was very scary. It was awful. You can’t risk being open about being gay there.”

Johnson – Uganda

UK Lesbian and Gay Immigration Group (UKLGIG)

1. The UK Lesbian and Gay Immigration Group (UKLGIG) is the only national charity dedicated to supporting, and advocating for the rights of, lesbian, gay, bisexual, trans and intersex (LGBTI) people seeking asylum in the UK. UKLGIG supports in excess of 1,000 LGBTI people every year, many of which experience immigration detention.
2. We support our clients by providing a range of services tailored to respond to the multifaceted problems they experience, including by facilitating access to specialist legal advice as well as mental and emotional support. We advocate for improvements in law and practice to ensure LGBTI people are treated with dignity and respect. We are the only LGBTI organisation represented in the Home Office National Asylum Stakeholder Forum.
3. UKLGIG has serious concerns as to the standard of asylum decision making in respect of LGBTI claims, particularly regarding those claims processed via the Detained Fast Track (DFT) system. Furthermore, we are seriously concerned about the increased detention of LGBTI people and the bullying, abuse and harassment experienced by LGBTI people in immigration detention centres in the UK.

Context - LGBTI Asylum Seekers and Refugees

4. LGBTI people around the world experience discrimination and violence on a daily basis. In at least 78 countries homosexuality and same-sex acts are illegal and in a number the death penalty is enforced¹. In June 2015, the UN High Commissioner for Human Rights, Prince Zeid, published a landmark report on discrimination and violence against individuals based on their sexual orientation and gender identity, in which he observed² –

‘76. The present study is the second on violence and discrimination based on sexual orientation and gender identity requested by the Human

¹ ILGA, ‘State-Sponsored Homophobia: A world survey of laws: Criminalisation, protection and recognition of same-sex love’ (2014) – Page 9 http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf

² Report of the Office of the United Nations High Commissioner for Human Rights, ‘Discrimination and violence against individuals based on their sexual orientation and gender identity’ (4 May 2015)

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_23_en.doc

Rights Council. While some progress has been made since the first study in 2011, the overall picture remains one of continuing, pervasive, violent abuse, harassment and discrimination affecting LGBT and intersex persons in all regions. These constitute serious human rights violations, often perpetrated with impunity, indicating that current arrangements to protect the human rights of LGBT and intersex persons are inadequate. There is as yet no dedicated human rights mechanism at the international level that has a systematic and comprehensive approach to the human rights situation of LGBT and intersex persons.'

5. It is not known how many LGBTI people seek asylum in the UK every year as the Home Office does not publish such statistics nor do we know how many are detained for the purposes of their asylum claim being considered. In 2009, research estimated 1,200-1,800 LGB people come to the UK as asylum seekers each year³. In 2014, Women for Refugee Women estimated at least 340 lesbian women find themselves in immigration detention every year, half in Detained Fast Track (DFT)⁴.
6. Sexual and gender identity claims are inherently complex and LGBTI people face specific difficulties not experienced by other asylum seekers – shame and secrecy about who they are, lack of knowledge that their identity is a ground for asylum, lack of support from either their home community or LGBTI communities, lack of independent evidence about their identity and about what happens to LGBTI people in their home country and abuse in detention and accommodation provided by the authorities⁵. As the then UN High Commissioner for Human Rights, Navi Pillay, observed⁶ –

'Even in countries that recognize these grounds for asylum, practices and procedures often fall short of international standards. Review of applications is sometimes arbitrary and inconsistent. Officials may have little knowledge about or sensitivity towards conditions facing LGBT people. Refugees are sometimes subjected to violence and discrimination while in detention facilities and, when resettled, may be housed within communities where they experience additional sexuality and gender-related risks. Refoulement of asylum-seekers fleeing such persecution places them at risk of violence, discrimination and criminalization. In some cases, they are returned with instructions to "be discreet", an approach criticized by UNHCR.'

7. Many of those with whom we work have experienced human rights abuses and have been discriminated against, harassed, beaten and tortured because of their sexual and/or gender identity. Many of our clients, both male and female, are survivors of rape. Due to multiple layers of discrimination, LGBTI asylum seekers are invariably highly marginalised in society and isolated from their communities and families. Many experience feelings of profound shame and/or internalised homophobia, which impacts on their ability to present their asylum claims⁷. The United Nations High Commissioner for Refugees (UNHCR) states⁸ –

³ Metropolitan Support Trust, 'Over Not Out: The housing and homelessness issues specific to lesbian, gay, bisexual and transgender asylum seekers' (2009) – Page 11 <http://www.metropolitan.org.uk/images/Over-Not-Out.pdf>

⁴ Women for Refugee Women, 'Detained: Women asylum seekers locked up in the UK' (2014) – Pages 16-17 <http://refugeewomen.com/wp-content/uploads/2014/01/WRWDetained.pdf>

⁵ UKLGIG, 'Missing the Mark' (2013) <http://uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>

⁶ United Nations High Commissioner for Human Rights, 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (2011)' – Page 13

⁷ UNHCR, 'Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees' (2012) – Referred to as UNHCR SOGI Guidelines below – See paragraph 3 <http://www.refworld.org/pdfid/50348afc2.pdf>

'Intersecting factors that may contribute to and compound the effects of violence and discrimination include sex, age, nationality, ethnicity/race, social or economic status and HIV status. Due to these multiple layers of discrimination, LGBTI individuals are often highly marginalized in society and isolated from their communities and families. It is also not uncommon for some individuals to harbour feelings of shame and/or internalized homophobia.'

8. Stonewall reports⁹ –

'Lesbian and gay asylum-seekers feel a deep sense of shame and stigma about being gay and have rarely, if ever, spoken openly about it for fear of persecution. They also have a profound fear of authority figures because of the persecution they face in their home countries.'

Decision-Making

9. In 2010, the Coalition Government committed as follows¹⁰ –

'We will stop the deportation of asylum seekers who have had to leave particular countries because their sexual orientation or gender identification puts them at proven risk of imprisonment, torture or execution.'

10. Despite this, the standard of decision-making in LGBTI claims has been poor and LGBTI applicants continue to experience a range of obstacles in navigating the complex, and frequently unsympathetic, asylum system in the UK. In September 2013, our *'Missing the Mark'* research report identified particular issues of concern including inappropriate and humiliating questioning, decision makers reliance on unhelpful stereotypes and barriers in 'proving' sexual identity due to an artificially high standard of proof¹¹. Furthermore, decision makers frequently failed to appreciate the interrelation between gender and sexuality to the detriment for female asylum applicants.
11. Since the Supreme Court's landmark judgment in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31¹², the major obstacle applicants experience is in establishing their credibility, particularly in 'proving' their sexual or gender identity to the satisfaction of decision makers. In 2013, the Home Affairs Select Committee stated the assessment of LGBTI asylum claims is judged to be 'particularly poor'¹³. The Law Society stated that LGBTI applicants face 'extraordinary obstacles' to establishing their claims¹⁴.
12. In May 2014, following an expose in the Observer newspaper, the Home Secretary, Theresa May MP, commissioned the Independent Chief Inspector of Borders and Immigration, John

⁸ UNHCR, *'Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees'* (2012) – See paragraph 3 <http://www.refworld.org/pdfid/50348afc2.pdf>

⁹ Stonewall, *'No Going Back'* (2010) – See page 3

http://www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp

¹⁰ HM Government: *'The Coalition: our programme for government'* (May 2010)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

¹¹ UKLGIG, *'Missing the Mark'* (2013)

¹² *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010 <http://www.refworld.org/docid/4c3456752.html>

¹³ For instance, see Home Affairs Select Committee report, *'Asylum'* (2013) – See paragraph 58 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71.pdf>

¹⁴ As above - Ev 142, para 33 & Q268

Vine, to conduct an investigation into the Home Office's handling of LGB asylum applications; a decision welcomed by UKLGIG¹⁵.

13. The Chief Inspector found a fifth of asylum interviews contained stereotyping and a tenth contained inappropriate questions likely to elicit a sexual response¹⁶. The Chief Inspector expressed specific concerns about the quality of decision-making in Detained Fast Track (DFT) where he found a 28% appeal overturn rate in LGB claims compared to a general appeal overturn rate of 11%, demonstrating that civil servants had frequently failed to reach the correct decision at first instance. The failure to reach the correct decision at first instance results in increased costs to the taxpayer due to inefficient and ineffective decision-making, unnecessary appeals to the immigration courts and stress and anxiety of the part of applicants.
14. The Chief Inspector made a series of recommendations aimed at improving the handling of such claims, all of which were accepted by the Home Office¹⁷. In February 2015, and after consulting with civil society actors including UKLGIG, the Home Office issued a new Asylum Policy Instruction on sexual identity claims¹⁸. UKLGIG welcomed the API as a 'positive framework' in which claims can be determined but called on the Home Office to ensure effective implementation by all Home Office representatives¹⁹.
15. Two weeks after the publication of the new guidance, the case of Aderonke Apata, a self-identifying Nigerian lesbian asylum seeker, attracted mass media attention following claims made by a barrister acting on behalf of the Home Office that she cannot be a lesbian as she has a child²⁰.
16. Following the publication of the Chief Inspector's report, the Home Office proposed an 'Action Plan' on LGBTI claims in order to ensure effective reform to which civil society partners contributed in December 2014. At a meeting with civil society actors on 16 March 2015, the Home Office apologised and confirmed no action had been taken in respect of the Action Plan in the time that has elapsed.
17. UKLGIG continues to have serious concerns as to the quality of asylum decision-making in the UK, particularly in respect of cases processed via the Detained Fast Track (DFT). The assessment of credibility in LGBTI cases needs to be undertaken in an individualised and sensitive manner and in accordance with UNHCR Guidelines²¹, which reflect the most comprehensive statement of appropriate approach. The Chief Inspector's report must act as a

¹⁵ UKLGIG Public Statement dated 31 March 2014 http://uklgig.org.uk/?page_id=869

¹⁶ Independent Chief Inspector of Borders and Immigration: *An Investigation into the Home Office's Handling of Asylum Claims Made on the Grounds of Sexual Orientation* (October 2014)

<http://icinspector.independent.gov.uk/wp-content/uploads/2014/10/Investigation-into-the-Handling-of-Asylum-Claims-Final-Web.pdf>

¹⁷ UK Visas and Immigration and James Brokenshire MP: *Response to report on asylum claims on the basis of sexual orientation* (October 2014) <https://www.gov.uk/government/publications/response-to-report-on-asylum-claims-on-the-basis-of-sexual-orientation>

¹⁸ Home Office: Asylum Policy Instruction *'Sexual identity issues in the asylum claims'* (February 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404372/EXT_Asylum_Instruction_Sexual_Identity_Issues_in_the_Asylum_claim_v5_20150211.pdf

¹⁹ PinkNews: *'Charity welcomes new Home Office guidance for gay asylum cases'* (17.02.2015) <http://www.pinknews.co.uk/2015/02/17/charity-welcomes-new-home-office-guidance-for-gay-asylum-cases/>

²⁰ Independent, *'Home Office says Nigerian asylum-seeker can't be a lesbian as she's got children'* (03.03.2015) <http://www.independent.co.uk/news/uk/home-news/home-office-says-nigerian-asylumseeker-cant-be-a-lesbian-as-shes-got-children-10083385.html>

²¹ UN High Commissioner for Refugees (UNHCR), *'Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees'* (23 October 2012)

catalyst for reform and we continue to urge the Home Office to take practical steps to improve the quality of asylum decision-making in LGBTI claims.

Detention

18. Around the world, serious concerns have been expressed as to the experiences of LGBTI people in immigration detention. LGBTI detainees frequently experience social isolation, physical and sexual violence and harassment by both facility staff and other detainees. Trans detainees are regarded to be particularly at risk. In some countries, LGBTI detainees are often placed in segregation in response to threats and violence or as a precautionary measure, which can exacerbate or lead to severe mental health effects. LGBTI detainees frequently self-isolate so as to avoid stigmatisation from other detainees²².

19. In 2010, the then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, reported²³ –

'Within detention facilities, there is usually a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and trans-gender persons, suffer double or triple discrimination.'

20. In September 2014, the Guardian reported a number of gay Iranian asylum seekers detained by Australia on Manus Island reported suicidal thoughts and experiences of sexual assault²⁴. Echoing the experiences of LGBTI people detained in UK immigration detention centres, one individual wrote –

"Life in the camp became harder because after that incident everyone stopped talking to me, I am completely alone, they are bullying and humiliating me at all time."

21. In September 2014, ILGA-Europe observed²⁵ –

'The situation for LGBTI asylum seekers in reception facilities (including detention centres) is often problematic: in most cases they fled alone, and they have neither the support of family members nor a network of fellow expatriates. In reception centres they face homo- or transphobia, discrimination, bullying, and violence, in many cases from their countrymen. It is not unusual that upon arriving in the country where they hoped to feel safe, they feel compelled to hide in the closet again.'

22. In May 2015, former Secretary of State, Hilary Clinton, signaled she would review policies that allow transgender women to be locked up in men's immigration detention centers in the USA. It was reported²⁶ -

"I think we have to do more to provide safe environments for vulnerable populations," Clinton said in response to a question about transgender immigrants being detained in

²² Tabak, S and Levitan, R 'LGBTI migrants in immigration detention'; Forced Migration Review, 'Sexual orientation and gender identity and the protection of forced migrants' (Issue 42 / April 2013) – Page 47 <http://www.fmreview.org/soqi>

²³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention' (2010) – Page 62 http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf

²⁴ Guardian, 'Gay asylum seekers on Manus Island write of fear of persecution in PNG' (24 September 2014) <http://www.theguardian.com/world/2014/sep/24/gay-asylum-seekers-manus-island-fear-persecution-png>

²⁵ ILGA Europe, 'Good practices related to LGBTI asylum applicants in Europe' (2014) – Page 47 http://www.ilga-europe.org/home/news/latest/asylum_publications_launch_2014

²⁶ Fusion, 'Hilary Clinton makes transgender immigrations a campaign issue' (06.05.2015) <http://fusion.net/story/131166/hillary-clinton-makes-transgender-immigrants-a-campaign-issue/>

institutions that don't correspond with their self-identified gender.

"I don't think we should, you know, put children and vulnerable people into big detention facilities because I think they are at risk. I think their physical and mental health are at risk," Clinton said in response to another question about trans asylum seekers. She also noted that she would be in favor of changing some detention processes.'

23. Concerns about LGBTI people in detention have been expressed for many years in the UK. In 2008, the Independent Asylum Commission called for an assessment of the risks to LGBT asylum seekers in detention.²⁷ Despite this, little progress has been made and the scale of detention has increased. UKLGIG continues to have serious concerns about bullying, abuse and harassment of LGBTI people in immigration detention.

24. In 2010, Stonewall recommended as follows²⁸ -

- *Lesbian and gay people should not be fast-tracked because many countries currently deemed to be 'safe' are not necessarily safe for lesbians and gay men.*
- *The UKBA acknowledges that detention is not appropriate for complex cases and recognises that it is difficult to protect lesbians and gay men in detention. Lesbian and gay asylum-seekers should not be placed in detention.*
- *Homophobia from staff and other detainees should not be tolerated and the UKBA should develop robust policies to ensure that it is the perpetrators of homophobic bullying and violence rather than the victims that are punished and isolated.*

25. In 2013, researchers published the following testimony from an LGBT asylum seeker who experienced immigration detention²⁹ –

'My first screening interview lasted the whole day. I was shouted down at by the staff of the UKBA. It was hard enough that I was being interrogated on very personal matters, but at the same time I was in an open hall with over 50 people all listening and staring at what is happening.

I was told at the interview that I will be detained. I was transferred from the interview site to the detention centre. Irrespective that I had a long day during the interview, the transportation and checking in process lasted from 22:00 that unfaithful day to 5:00am the following morning. I was devastated. It would have been better if I was a criminal.

Despite the fact that I had fled my country to avoid persecution from my country men, I was being exposed to the same people and other more homophobic individuals in detention. I was so scared and kept to my cell so much so that I avoided meals at the common dining area and my bath in the common bathroom. I only ventured out when it was very necessary like when I had friends or legal visit.

I was still gay bashed and bullied even though I was always accompanied by a detention officer. I was so afraid and did not know who to talk to or what punishment I would get if I did make a complaint. I was re-living all the terrible experiences I had

²⁷ Independent Asylum Commission, 'Deserving Dignity' (2008) - Page 50
<http://www.citizensforsanctuary.org.uk/pages/reports/DeservingDignity.pdf>

²⁸ Stonewall, 'No Going Back' (2010)

²⁹ MBARC, 'Double Jeopardy Project: A final report on the Trust for London funded Double Jeopardy Project' (2013)

been through in my country and would have committed suicide in that brief period if I had the means and the strength to do that.

I was requesting a room change looking for a more favourable cell. On one occasion I was threatened by a cell mate. After calling me all manner of derogatory names, in his words 'I will rape and fuck you to death and make sure I kill you if they ever allow you to stay a night in my cell'. It all happened in front of a prison official.

I was afraid of hurting myself. I knew what I was going through and made a request to see a doctor on the second day of my detention, but I did not see one throughout my 12 days stay. I was told I was not the only one needing medical services and hence there will be a queue until it gets to my turn. I made some other requests which were never put through at all.

My main interview came on the 10th day. The interview started at 9:30 and ended at 18:30 with a 30minute break in between. I was truly even more depressed and exhausted at the end of it all.'

26. As Johnson, a UKLGIG client from Uganda, described -

"The whole place was vile. It was so homophobic. One of the guards called me a poof and there were Jamaicans who kept hurling abuse at some Iranian guys – calling them batty men. I was terrified thinking oh my God, I hope they don't know I'm one of them. There were always fights – they would provoke them and the guys would try to fight back. Eventually the gay guys had to be taken out. So it was very scary. It was awful. You can't risk being open about being gay there."

27. Tahir, a gay man from Pakistan, was detained for three weeks before being granted refugee status. He described Harmondsworth immigration detention centre as "totally unsafe" for LGBTI asylum seekers³⁰. Once inside, he was subjected to verbal abuse and sexual harassment. On one occasion, he says that he was pulled into another detainee's room and sexually assaulted.

28. Tahir says he reported the incident to a staff member, but no action was taken. Instead, staff members told him that he was "very visible," and advised him to "keep yourself down." "I always just keep quiet," Tahir said. "I always focus on my stuff. And the officer, instead of taking any action, he's saying to me you have to keep down. For what? What did I do? Did I take off my shirt? Have I invited anyone in my room? Did I ever provoke anyone to do anything to me?"

29. LGBTI detainees frequently express concerns and fears about being detained with people from their own country of origin. As Femi, a Nigerian asylum seeker, told Stonewall³¹ –

"I told them I'd prefer to be in a room with a person that isn't Nigerian because I don't want to keep going through the curses and swearing. But they put me in a room with a Nigerian who speaks the same language. From my point of view, that was torturing me mentally – I felt they were playing cat and mouse."

30. In addition, UKLGIG clients – male and female – have offered the following testimony:

- *"I have not committed a crime, I have been truthful about my life, why I am fleeing my country. Why I am I bring imprisoned? I don't understand."* BA – Pakistan

³⁰ VICE News, 'LGBT asylum seekers say they face homophobic abuse in UK detention centres' (29.10.2014) <https://news.vice.com/article/lgbt-asylum-seekers-say-they-face-homophobic-abuse-in-uk-detention-centers>

³¹ Stonewall, 'No Going Back' (2010) http://www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp

- *“I’m sharing my room with a guy from Jamaican. He just said that my clothes are too tight and he hopes that I’m not gay. I have feel threatened and frightened. I never thought I would experience this in London.”* KO – Nigerian
- *“I don’t want to talk to the LGBT liaison officer here, if people from my country see me talking to him then they will know I am gay.”* AH – Pakistan
- *“My freedom has been taken away from me, my partner can’t visit because she doesn’t have a passport, I am suffering from depression. I can’t sleep because I have nightmares. I was imprisoned in my country because I am a lesbian. I am in prison in the UK because I seek safety.”* LN – Uganda
- *“I spend 20 hours a day in my room. I can’t come out, when I do they laugh at me. They point and laugh because I am trans.”* HM – Iran

31. In March 2015, a cross-party group of MPs and peers, which included a former Cabinet Minister, a former Chief Inspector of Prisons and a former Law Lord, demanded a fundamental change in the way that immigration detention is used in the UK and called for a 28 day time limit on the length of time anyone can be held in immigration detention³².

32. Relying on evidence from UKLGIG, the Detention Inquiry also criticised the treatment of LGBTI people in immigration detention. The report states:

‘We were extremely concerned to hear that LGBTI detainees face bullying, harassment and abuse inside detention centres. This is not acceptable. There is a lack of information available about the extent to which LGBTI individuals face detention and the Enforcement Instructions and Guidance make no mention of assessments of the risks to detaining LGBTI individuals. We recommend that the Home Office works with the Home Office National Asylum Stakeholder Forum to properly assess what risks there are and to ensure that those LGBTI individuals who do face detention do not also face harassment.’

33. Increasing numbers of LGBTI people have been detained for the purposes of their asylum claims being processed. This is despite UNHCR’s position, shared by UKLGIG, that such claims are complex and unsuitable for accelerated procedures³³. The DFT process is increasingly used as an administrative convenience and yet it is costly, dysfunctional and unfair³⁴. Furthermore, the impact on those seeking asylum, particularly on their mental and physical health, is particularly worrying³⁵. In July 2014, Mr Justice Ouseley found that the DFT as it then operated carried an “unacceptable risk of unfairness”³⁶.

34. UKLGIG believes the detention of asylum-seekers should be avoided and only used as a measure of last resort³⁷. In common with UNHCR, UKLGIG believes that due to their complex

³² All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, ‘*The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*’ (March 2015)

<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

³³ See UNHCR SOGI Guidelines

³⁴ See Detention Action, ‘*Fast Track to Despair: The unnecessary detention of asylum-seekers*’ (2011)

<http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/FastTracktoDespair-printed-version.pdf>

³⁵ See above

³⁶ [2014] EWHC 2245 (Admin) – Paragraph <http://detentionaction.org.uk/wordpress/wp-content/uploads/2014/07/Detention-Action-DFT-Full-Judgement.pdf>

³⁷ UN High Commissioner for Refugees (UNHCR), ‘*Detention Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*’ (2012) – Paragraph 2 <http://www.unhcr.org/505b10ee9.html>

nature, claims based on sexual or gender identity are generally unsuited to accelerated processing³⁸.

35. In our experience, increasing numbers of our clients who seek asylum on the basis of their sexual or gender identity find themselves detained in DFT for an unspecified period of time following the Screening Interview. Assessments of suitability are invariably perfunctory and the individual circumstances of LGBTI asylum seekers do not seem to be considered³⁹. This is especially clear in light of the Court of Appeal decision in *R (on the application of JB(Jamaica) v. The Secretary of State for the Home Department [2013] EWCA Civ 666*. This case concerned the detention of a man from Jamaica who had claimed asylum on the basis of his sexual identity. Although eventually granted asylum upon appeal he commenced judicial review proceedings arguing inter alia, that his claim for asylum, as a gay man, was not capable of being determined quickly. Lord Justice Moore-Bick found⁴⁰ -

'29. Given the nature of the appellant's claim, I find it difficult to see how it could. Homosexuality is a characteristic that cannot be reliably established without evidence from sources external to the claimant himself. On the face of it, therefore, the appellant did need additional evidence to support his claim and since some of that evidence was likely to be available only in Jamaica or elsewhere abroad, it was likely that he would need additional time in order to obtain it. A failure to allow him that time was likely to lead (as in the event it did) to a decision that was neither fair nor sustainable.'

36. The judge recognised the difficulty of proving claims on the basis of sexual identity and highlights that the claimant needed time to obtain evidence. LGBTI individuals require a supportive environment throughout the asylum process.⁴¹ As such, we do not believe that LGBTI asylum seekers should be detained especially when they have not sought advice from a legal representative or when they have not had the opportunity to gather evidence.
37. On 26 June 2015, the Court of Appeal brought to a halt the Detained Fast Track appeals process for asylum seekers in detention⁴². The Court of Appeal lifted with immediate effect the stay on the High Court judgment of 12 July 2015 ruling that the Fast Track appeals process is unlawful. As a consequence, asylum seekers can no longer be detained throughout the entire asylum process. In his recent judgment, Mr Justice Nicol said:

"What seems to me to make the fast track rules structurally unfair is the serious procedural disadvantage which comes from the abbreviated timetable and curtailed case management powers, together with the imposition of this disadvantage on the [asylum seeker]."

38. On 2 July 2015, the Immigration Minister, James Brokenshire MP, announced the suspension of the Detained Fast Track asylum system⁴³. The Immigration Minister said:

"Recently the system has come under significant legal challenge, including on the appeals stage of the process. Risks surrounding the safeguards within the system for particularly vulnerable applicants have also been identified to the extent that we cannot be certain of the level of risk of unfairness to certain vulnerable applicants who may enter DFT."

³⁸ UNHCR SOGI Guidelines – Paragraph 59

³⁹ UKLGIG, 'Missing the Mark' (2013) – Page 28

⁴⁰ [2013] EWCA Civ 666 – Paragraph 29

⁴¹ UNHCR SOGI Guidelines – Paragraph 58

⁴² UKLGIG, 'Court of Appeal ends Fast Track asylum appeals' (26 June 2015) <http://uklgig.org.uk/?p=1914>

⁴³ UKLGIG, 'UKLGIG welcomes suspension of Detained Fast Track asylum system' (2 July 2015)

<http://uklgig.org.uk/?p=1935>

“In light of these issues, I have decided to temporarily suspend the operation of the detained fast track policy. I hope this pause to be short in duration, perhaps only a matter of weeks, but I will only resume operation of this policy when I am sure the right structures are in place to minimise any risk of unfairness.”

39. In our experience, some staff members are sensitive to the needs of LGBTI detainees and are proactive in facilitating access to our services. This is not established practice across the country and there is clear need for detention staff to receive training in this area. Consideration must be given to best practice including in other countries⁴⁴.
40. LGBTI detainees are invariably reluctant to formally challenge homophobic or transphobic incidents, including by making complaints. Our clients invariably believe such complaints will negatively impact on their asylum claim, fellow detainees will be informed thus placing them in further danger or such a complaint will not be dealt with robustly.
41. UKLGIG has particular concerns about the experiences and treatment of transgender detainees. We are concerned that the policy intended to ‘care and manage transsexual detainees’ is flawed and was issued without consulting relevant stakeholders⁴⁵. The Home Office assured UKLGIG it would be consulted during the policy’s review; that was not the case.
42. Transgender cases are statistically few but transgender asylum seekers are widely regarded to be a particularly vulnerable group. UKLGIG was extremely concerned to be informed by a detention guard at Colnbrook that transgender woman had previously been placed in segregation as a means of ‘protecting’ them from other detainees. This is an entirely unacceptable.
43. In April 2015, Action for Trans Health reported that according to the Home Office, as of 27 March there were 5 inmates in detention centres who the Home Office recognised as being transgender. Over the last 3 years, there have been 21 inmates recorded as being transgender. Like UKLGIG, Action for Trans Health expresses serious concerns about the Home Office policy on the case of transgender detainees and offered the following commentary⁴⁶.
44. In recent months, UKLGIG has raised serious concerns about the bullying, harassment and abuse of LGBTI people in immigration detention centres with the Immigration Minister, James Brokenshire MP, the Home Office Permanent Secretary, Mark Sedwill, the Director-General of UK Visas and Immigration, Sarah Rapson, and other senior civil servants. The Home Office has yet to propose steps to tackle this issue.
45. We note that in 2014, and concerning EU law principles on the conditions in reception facilities, ILGA-Europe commented⁴⁷ –

The Reception Conditions Directive (RCD) includes some provisions that can be

⁴⁴ As above – Pages 48-50 and UN High Commissioner for Refugees (UNHCR), ‘Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention’ (2012) - Guidelines 9.7

⁴⁵ Home Office, ‘Detention Service Order 11/2012 - Care and management of transsexual detainees’ (February 2015)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401526/Care_and_Management_of_transsexual_detainees_v2_0.pdf

⁴⁶ Action for Trans Health, ‘Trans people in immigration detention centres’ (April 2015)

<http://actionfortranshealth.org.uk/2015/04/04/trans-people-in-immigration-detention-centres/>

⁴⁷ ILGA-Europe: ‘Good practices related to LGBTI asylum applicants in Europe’ (September 2014)

http://www.ilga-europe.org/home/publications/reports_and_other_materials

helpful in tackling the problems of LGBTI asylum seekers in reception centres.

Art. 18(3) RCD: "Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres"

Art. 18(4) RCD: "Member states shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres"

Art. 21 RCD: "Member States shall take into account the specific situation of vulnerable persons such as (...), and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence (...) in the national law implementing this Directive."

In addition, Recital 17 of the EU Directive on the Rights of Victims defines gender-based violence as "violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately".¹⁶⁷

ILGA-Europe is of the opinion that many LGBTI applicants should be considered as vulnerable, due to the nature of the acts of persecution suffered, mentioned in article 21 of the Reception Directive: torture, rape or other serious forms of psychological, physical or sexual violence. In addition, LGBTI asylum seekers could be vulnerable and accordingly have special reception needs, due to a high level of discrimination and taboos in reception centres.

46. In March 2015, Lord Bates, Home Office Minister, acknowledged LGBTI people in immigration detention may be considered vulnerable and require extra support. Responding to a question from Lord Scriven relating to the assessment of risks of LGBTI people in immigration detention, Lord Bates responded⁴⁸ -

'When a decision has been taken to detain someone who has no right to be in the UK, the Home Office has specific procedures in place in detention centres to identify those who may be vulnerable and require extra support, which could include lesbian, gay, bisexual, transgender and intersex people. Additionally the Home Secretary recently announced an independent review of welfare in detention led by Stephen Shaw CBE. This review, which is expected to report within 6 months, will focus on vulnerable detainees. Once the review has made its recommendations the Home Office will consider what changes to guidance are required.'

47. The interrelation between the standard of decision in DFT and detention conditions in an important feature. In a recent report, HM Chief Inspector of Prisons observed⁴⁹ -

'The Home Office contact team did not always maintain effective communication with decision-making teams elsewhere in the Home Office. One Pakistani detainee was described by local Home Office and G4S staff as 'openly gay' and his sexuality was evident from Home Office and G4S records.

⁴⁸ *Detention Centres: LGBT People: Written question - HL5404'* (3.03.2015)

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-03-03/HL5404/>

⁴⁹ HM Chief Inspector of Prisons, *'Report on an unannounced inspection of Tinsley House Immigration Removal Centre - 1 – 12 December 2014'* <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/05/Tinsley-House-web-2014.pdf>

At one point the detainee was given a personal protection plan after he told staff he was being bullied by other detainees because of his sexuality. None of this was communicated directly to the team dealing with his asylum claim. He had been refused asylum because the decision maker did not believe he was gay. He was removed to Pakistan shortly before the inspection. We reported on a similar case in our inspection report of Haslar IRC9.'

48. As a result of the conditions in detention, LGBTI detainees regularly raise concerns as to the follows –
- Discussing their cases, or the natures of their claims, with detention staff in open spaces in case other detainees overhear and discover their sexual or gender identity;
 - Asking for a legal representative with specific experience of LGBTI claims in case their request is overheard or becomes known to fellow detainees;
 - Speaking on the telephone about their claims in case their conversations are overheard by fellow detainees;
 - A fear of congregating with other LGBTI detainees;
 - Accessing LGBTI-themed books, magazines or websites in the detention library;
 - Carrying or storing materials related to their cases in case other detainees discover them.
49. UKLGIG believes that many LGBTI applicants should be considered as vulnerable due (i) to the nature of the acts of persecution frequently experienced, (ii) due to the poor standard of asylum decision and existing obstacles in the asylum process, which mitigate against them accessing refugee protection, and (iii) due to the increasing use of immigration detention and the bullying, abuse and harassment that LGBTI people frequently experience in immigration detention centres.

Conclusion

UKLGIG is seriously concerned at the experiences of LGBTI people seeking asylum in the UK, particularly in regards to the standard of asylum decision making and the conditions LGBTI experience in immigration detention centres. UKLGIG calls for an end to the dysfunctional and unfair Detained Fast Track (DFT) process for all persons seeking asylum. LGBTI claims should not be processed in DFT. Claims on the grounds of sexual or gender identity are inherently complex and not suitable for accelerated procedures.

Many LGBTI applicants should be considered as vulnerable due (i) to the nature of the acts of persecution frequently experienced, (ii) due to the poor standard of asylum decision and existing obstacles in the asylum process, which mitigate against them accessing refugee protection, and (iii) due to the increasing use of immigration detention and the bullying, abuse and harassment that LGBTI people frequently experience in immigration detention centres.

LGBTI people regularly experience bullying, abuse and harassment in immigration detention. The experiences and needs of LGBTI people in immigration detention require urgent and serious consideration.

UKLGIG Recommendations

- It must be acknowledged that LGBTI asylum seekers are frequently vulnerable due (i) to the nature of the acts of persecution commonly experienced, (ii) due to the poor standard of asylum decision and existing obstacles in the asylum process, which mitigate against them accessing refugee protection, and (iii) due to the increasing use of immigration detention and the bullying, abuse and harassment that LGBTI people frequently experience in immigration detention centres.
- The quality of asylum decision-making in respect of LGBTI claims must improve, particularly in respect of those case processed via Detained Fast Track (DFT). The Home Office must continue to monitor the quality of decisions and ensure effective feedback and learning from those decisions subsequently overturned on appeal.
- The Home Office must take steps to ensure that all Home Office representatives implement the recently published Asylum Policy Instruction on sexual identity asylum claims.
- Existing Home Office training must be updated so that stereotyping and stereotypical expectations do not appear in interview questions and caseworkers do not ask sexually explicit questions.
- The Home Office must publish statistics relating to sexual and gender identity asylum claims including the number of people detained and the outcome of such claims.
- A fundamental change in the use of immigration detention in the UK is required. A 28 day time limit on immigration detention should be introduced in line with best practice in the EU.
- The Government should develop and utilise alternatives to detention based on engagement with migrants and NGO stakeholders taking into account good practice.
- The Government must take steps to ensure vulnerable people, including victims of torture, trafficking and other acts of gender-based violence, and those with complex claims are not detained. LGBTI claims are inherently complex and not suitable for accelerated and/or detained procedures.
- The Home Office must take steps to tackle the bullying, harassment and abuse of LGBTI people in immigration detention centres.
- Detention centre staff must receive training on the needs of LGBTI people. The Home Office and private contractors must promote equality and diversity within the detention centres and gives particular consideration to the needs of LGBTI detainees. Robust mechanisms must be implemented to respond to complaints concerning homophobia and transphobia

Recommended Materials

- UN High Commissioner for Refugees (UNHCR): '*Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*' (2012)

<http://www.refworld.org/docid/50348afc2.html>

- Home Office: Asylum Policy Instruction '*Sexual identity issues in the asylum claims*' (2015)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404372/EXT_Asylum_Instruction_Sexual_Identity_Issues_in_the_Asylum_claim_v5_20150211.pdf

- Home Office: Asylum Policy Instruction '*Gender identity issues in the asylum claims*' (2015)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257387/gender_issue_in_the_asylum.pdf

- Hungarian Helsinki Committee, '*Credibility Assessment in Asylum Procedures – A Multidisciplinary Training Manual – Volume 2*' (2015)

<http://helsinki.hu/wp-content/uploads/CREDO-training-manual-2nd-volume-online-final.pdf>

- Independent Chief Inspector of Borders and Immigration, '*An Investigation into the Home Office's Handling of Asylum Claims Made on the Grounds of Sexual Orientation*' (2014)

<http://icinspector.independent.gov.uk/wp-content/uploads/2014/10/Investigation-into-the-Handling-of-Asylum-Claims-Final-Web.pdf>

- All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration: '*The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*' (2015)

<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

- United Nations High Commissioner for Human Rights, '*Discrimination and violence against individuals based on their sexual orientation and gender identity*' (2015)

<http://t.co/UQBVE5YSmj>

- ILGA-Europe: '*Good practices related to LGBTI asylum applicants in Europe*' (2014)

http://www.ilga-europe.org/home/publications/reports_and_other_materials

- UKLGIG: '*Missing the Mark – Decision Making on Lesbian, Gay (Bisexual, Trans and Intersex) Asylum Claims*' (2013)

<http://www.uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>

CREDIBILITY ASSESSMENT IN ASYLUM CASES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY		
SUMMARY	CHECKLIST	
FUNDAMENTAL PRINCIPLES	BEING LESBIAN, GAY, BISEXUAL, TRANS OR INTERSEX IS...	NOT A DISEASE
		NOT A CHOICE
		NOT A LIFESTYLE
		CURRENT IDENTITY
		A HUMAN RIGHT
PRACTICES PROHIBITED UNDER EU LAW	NO ASSESSMENT BASED ON STEREOTYPES	
	NO QUESTIONING ON SEXUAL PRACTICES	
	NO ADMISSION OF EVIDENCE SHOWING SEXUAL ACTIVITIES	
	NO "TESTS" (MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL, TEMPLATE)	
	NO REJECTION OF CREDIBILITY JUST BECAUSE OF LATE DISCLOSURE	
STANDARDS FOR PROPER CREDIBILITY ASSESSMENT	THE <u>DSSH MODEL</u> – HELPS YOU EXPLORE THE APPLICANT'S PAINFUL "JOURNEY"	DIFFERENCE
		STIGMA
		SHAME
		HARM
	CREATE A <u>SAFE SPACE</u>	TRUST, SECURITY, CONFIDENTIALITY
		TIME
		AWARENESS OF THE POSSIBILITY OF PROTECTION
	FIND THE <u>RIGHT WORDS</u>	INTERCULTURAL COMPETENCE
		CHOOSING THE RIGHT INTERPRETER
	FOCUS ON <u>MATERIAL FACTS</u>	THE DSSH MODEL CAN SHOW YOU WHICH ELEMENTS ARE MATERIAL
	USE CREDIBILITY INDICATORS WITH GREAT <u>CAUTION</u>	AWARE OF ALL LIMITATIONS AND DIFFICULTIES TYPICAL FOR GENDER-RELATED CASES
		AWARE OF THE IMPACT OF STIGMA AND SHAME ON THE ABILITY TO TALK
		AWARE OF THE DIFFICULTY OF SELF-IDENTIFICATION IN CERTAIN CASES
AWARE OF THE LIMITS OF COUNTRY INFORMATION		
BE AWARE OF AND WORK ON YOUR OWN <u>STEREOTYPES AND LIMITS</u>		

Source: HHC, 'Credibility Assessment in Asylum Procedures – A Multidisciplinary Training Manual – Volume 2'