



**UKLGIG submission to the
Independent Chief Inspector of Borders and Immigration inspection of
the Home Office's Presenting Officer function
Jan 2020**

1. The UK Lesbian and Gay Immigration Group (UKLGIG) supports lesbian, gay, bisexual, trans, queer and intersex + (LGBTQI+) people through the asylum and immigration system. We provide one-to-one psychosocial and emotional support and offer immigration advice and information to LGBTQI+ people.
2. We are pleased to send this submission on the Home Office's Presenting Officer function. We would like to thank First Wednesdays, Islington Mind (Outcome) and SOGICA for their input into this submission. Please see annex for information on these contributors.
3. **We recommend that:**
 - a. Presenting Officers should receive ongoing training, including on claims based on sexual orientation or gender identity.
 - b. It is made clear to Presenting Officers that they are expected to act in line with Home Office asylum policy instructions and other guidance.
 - c. The Home Office asylum appeals team should consider conceding cases that are indefensible in court. We are aware that appeals senior caseworkers can give authority to withdraw appeals and we believe that more cases should be withdrawn.
 - d. The Home Office should ensure Presenting Officers do not include new reasons for refusing asylum during the hearing that have not been mentioned in reasons for refusal letters and are not justified on the basis of new evidence.

Home Office engagement with stakeholders in relation to Presenting Officers

4. We are pleased to have had a constructive meeting with an Assistant Director from the Appeals, Litigation and Subject Access Requests Directorate. The Assistant Director was receptive to concerns raised by UKLGIG and invited us to send examples of the problems we have encountered so that patterns of poor behaviour could be identified and addressed.

5. The Assistant Director was concerned it was difficult for Presenting Officers to remember their foundation training years after they had completed it.

6. **We recommend that Presenting Officers receive ongoing training, including on claims based on sexual orientation or gender identity.**

Presenting Officers' knowledge and understanding of relevant case law and Home Office guidance

7. We are concerned that Presenting Officers frequently do not act in line with Home Office policies and guidance and/or believe that they are not bound by them.

8. Presenting Officers have been known to contradict the Asylum Policy Instruction (API) on Sexual Orientation by expecting extrinsic supporting evidence when it is not required (p.23). For example, they have asked appellants why they have not used dating apps or taken pictures at gay clubs. Furthermore, such questioning is indicative of stereotyping LGB people.

9. Even when extrinsic evidence is provided by appellants, Presenting Officers have sometimes asserted that photographs at gay clubs or Pride events were taken only so the individual could pretend they were LGB. Such submissions ignore the API on Sexual Orientation which provides that, 'lack of engagement with other members of the LGB community in the UK may be explained by economic factors, geographic location, language and/or cultural barriers, lack of such opportunities or a fear of exposure. It may also be through personal choice (p.23)'.

10. Presenting Officers have also questioned LGB appellants about religion and drawn conclusions on that basis in breach of Home Office guidance, which states that, 'a claimant's religion is not a basis for rejecting their claim'. For example, detailed questions about theological underpinning of acceptance of one's sexuality are often asked despite the API explaining that, 'a person does not have to subscribe to every belief of a religion or views of a political group in order to be a member of it' (p.35).

11. In other cases, Presenting Officers have contravened the API's guidance that, 'questions about claimants' sexual practices must not be asked and there are no circumstances in which it will be appropriate for the interviewer to instigate questions of a sexually explicit nature'. In some instances, the contravention has been direct, for example asking an appellant when and where he first had sexual intercourse. In other cases, the questioning has been to invite sexually explicit disclosure. For example, in one hearing, in reference to a detailed written statement from a witness about his relationship with the appellant, which included information on outings and activities, the Presenting Officer said that the letter lacked details of 'what they did together'. In other words, the Presenting Officer tried to discredit the statement by saying that there was a lack sexual content.

12. In another example, in a hearing where one of the grounds of appeal was based on inappropriate questioning in relation to sexual conduct, a Senior Presenting Officer stated that the questions about sexual behaviour were not inappropriate in the evidential context where they arose and in any event that the API on Sexual Orientation was not binding on Presenting Officers.

13. The API is also clear that, 'the term 'homosexual', due to its clinical etymology, may be offensive to some. The term 'gay' is one which is more globally used and recognised as

being more neutral as a descriptor. In all instances, caseworkers should establish the terminology preferred by the claimant' (p.7). However, Presenting Officers have used terminology that has been unacceptable to the appellant. For example, in one hearing, the Presenter insisted on referring to the appellant's sexuality as 'homosexual' despite the appellant's barrister making clear that the appellant preferred the word 'gay'. In another case, the Presenting Officer referred to a transgender man as 'she'.

14. Presenting Officers have also misapplied key case law in LGB asylum claims: *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31.¹

15. For example, in one case, the Presenting Officer submitted that even if an appellant was gay, he would be 'discreet' on return and wouldn't need protection. This overlooks a key consideration, as summarised in the API that, 'where it is found that the individual will in fact conceal aspects of their sexual identify if returned, a consideration must be made as to why they will do so' (p.37).

16. When it comes to assessing risk on return to the country of origin, the API states that, 'how the individual has acted until now in their country of origin or in the UK is immaterial' (p.38). However, this has been overlooked by Presenting Officers in many cases. For example, in one instance the Presenting Officer submitted that the appellant would 'conduct herself discreetly' based on the fact that she had not attended gay clubs in the UK. In another case, the Presenting Officer directly contradicted the API by stating that how the appellant had acted in the UK was relevant in assessing risk on return to the country of origin.

17. We recommend that it is made clear to Presenting Officers that they are expected to act in line with Home Office asylum policy instructions and other guidance.

General performance and capabilities of Presenting Officers

18. UKLGIG has a number of concerns regarding the performance and capabilities of Presenting Officer beyond failing to follow case law and asylum policy instructions.

19. We contend that Presenting Officers too frequently seek to defend refusal decisions which are inherently flawed and which should be withdrawn and reconsidered. On the other hand, in a number of cases where they are presented with overwhelming evidence of a person's sexual orientation or gender identity, the Presenting Officers either pursue a completely hopeless and outlandish case, or present no challenge to the Appellant's witnesses. The result of this failure to reconsider decisions at an early stage and in a timely fashion means that appellants are needlessly brought to court. This causes unnecessary stress for appellants and delays in rebuilding their lives. It also generates unnecessary costs, particularly for appellants who are privately funding their legal representation.

20. We recommend that the Home Office appeals and litigation team should concede cases that are indefensible in court. We are aware that appeals senior caseworkers can give authority to withdraw appeals and we believe that more cases should be withdrawn.

¹ For more information, see UKLGIG's briefing paper *Applying HJ (Iran) and HT (Cameroon) to asylum claims based on sexual orientation*.

21. There have been several cases in which Presenting Officers have given new reasons for refusing asylum claims that were not stated as part of the original 'reasons for refusal' letters. For example, Presenting Officers have raised 'discretion for reasons other than persecution' (see above on misapplying *HJ (Iran)*) inside the court room when this was not included in the Home Office's reasons-for-refusal letter and did not appear to be justifiable on the basis of new evidence.

22. We recommend that the Home Office should ensure Presenting Officers do not include new reasons for refusing asylum during the hearing that have not been mentioned in reasons for refusal letters and are not justified on the basis of new evidence.

23. There have been incidents in which the appellant has attended the tribunal only to be informed by the Presenting Officer that they had lost the file, which has resulted in the hearing being adjourned. In one case, this happened again to the same individual at the rescheduled hearing date; the appellant's hearing only went ahead on the third date.

24. There have been hearings for which Presenting Officers have not read key documents beforehand, including appellants' statements and chronologies of events, even when these have been served promptly in line with Tribunal directions. This has led to unnecessary and repetitive questions in cross-examination, or even closing submissions that were inaccurate and potentially misleading.

25. In one hearing at which a UKLGIG staff member was a witness, the Presenting Officer demanded proof that our colleague did work at UKLGIG. A matter like this should have been raised in advance.

26. We are also concerned that in some cases Presenting Officers appear to treat UKLGIG witnesses without real understanding that they are giving evidence in the course of their work which requires a basic degree of courtesy and professionalism in questioning. There had been examples where UKLGIG staff were subjected to aggressive questioning suggestive of dishonesty and where submissions about their evidence included unfounded allegations of bias.

27. Other examples of poor behaviour by Presenting Officers at tribunal hearings include:

- a. Asking convoluted questions in cross-examination, muddling up incidents to try and draw out inconsistencies, and repeating the same questions in order to confuse appellants.
- b. Misdirected questioning. For example, in one hearing the Presenting Officer focused on the appellant's sexuality with questions including 'Have you been in a relationship since you've been in the UK', 'And do you go to gay clubs with him' and 'When was the last time you went to a gay club with him'. However, the appellant individual had a letter from NHS saying he was a gay man and acquired HIV from sex with another gay man; The issue raised in the refusal was not whether he was gay (which was accepted) but whether on return to his country of origin he would be at risk and have reasonable access to the medical treatment he needed.
- c. Asking insensitive questions, making inappropriate comments, stereotyping and displaying personal prejudice, such as:

- i. Saying that an appellant could not be a lesbian because she had a son.
 - ii. Insensitive questioning about an appellant's partner that had died and accusing the appellant of using the death for his claim.
 - iii. Saying, with no evidential basis, of people who worked or volunteered for an LGBT support group that "their minds are not alert to people potentially latching themselves onto the organisation for immigration purposes," and as evidence for this assertion saying, "the black African dark skinned person blushed".
 - iv. Criticising an appellant for not speaking fluent English even though the individual had been a student in the UK and the hearing had gone ahead without an interpreter present.
- d. Shouting, requiring the judge to ask the Presenting Officer to calm down.
- e. Being rude to witnesses, such as:
 - i. Telling a UKLGIG staff member that they were unqualified, untrained, inexperienced and with heavy bias, and that their letters lacked any substance.
 - ii. Accusing witnesses of being vague and difficult to get information from with no evidential basis.
- f. Misrepresenting statements, such as asking a UKLGIG staff member if they had a particular qualification, to which they responded in the negative. The HOPO then submitted that the individual had no qualifications or training whatsoever.

Annex: contributors to this submission

First Wednesdays

'First Wednesday' is a support and social group for lesbian, gay, bisexual and transgender (LGBT) people in the Greater Manchester area who are in the asylum process. We take our name from our pattern of meeting in the afternoon of the first Wednesday of each month. At our meetings we discuss topics of interest to LGBT people seeking asylum, share information and experiences, signpost people to resources, and try to create a supportive atmosphere where everyone can be themselves.

Islington Mind (Outcome)

Islington Mind's project – Freedom from Fear to Love – offers LGBTQ+ people seeking asylum an individual support package based on a personalised needs assessment, offering support with the challenges of settling in the UK, including companion support to critical appointments, such as home office interviews, hearings and health related appointments. For those who win their cases, they also offer support in the transition from seeking asylum to becoming a refugee, such as support with benefits and employment activities.

SOGICA

SOGICA (Sexual Orientation and Gender Identity Claims of Asylum – A European Human Rights Challenge) is a four-year European Research Council project based at the University of Sussex analysing the social and legal experiences of asylum seekers across Europe claiming international protection on the basis of their sexual orientation or gender identity. In common with the other signatories to this letter, SOGICA have a special interest in the conduct of tribunal hearings. The SOGICA research fellow observed 11 First and Upper Tribunal hearings in Birmingham, London and Manchester between February 2018 and April 2019 in addition to holding interviews with appellants, legal representatives and tribunal judges.