

22ND OCTOBER 2021 BY KATHERINE SOROYA

# How does the Home Office assess sexual identity in asylum claims?

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People claiming asylum based on their sexual orientation, including homosexuality and bisexuality, may form part of a ["particular social group"](#) which qualifies for protection under the Refugee Convention.

In deciding whether to accept an asylum claim, part of the Home Office caseworker's job is to assess the person's overall [credibility](#). This includes the often-difficult determination of whether the applicant is telling the truth about their sexual orientation.

Somebody's sexual orientation is a highly personal and subjective matter which manifests in many varied experiences. This post looks at the criteria used by the Home Office to assess it in the hope of shedding some light on the process.

Different policies and procedures apply to claims based on gender identity, so [trans](#) and intersex claims are not considered in this post.

## "Stigmatisation, shame and secrecy"

Home Office [guidance](#) directs caseworkers to look for evidence that the person was made to feel "ashamed, humiliated or stigmatised" due to their sexual orientation. Examples can include being bullied by peers or teachers at school or harassed by members of their community.

Caseworkers are also told to assess the applicant's narrative to see whether it refers to "strong disapproval from external sources" indicating that the conduct is unacceptable, immoral, or sinful.

They also look for the person having their belief that their sexual orientation is "wrong". This can be problematic, especially with an applicant who has a strong sense that they are in fact doing nothing wrong. A client of mine, for example, repeatedly stated that she was proud of her sexual identity as a lesbian woman and did not feel different; she just felt "herself".

An applicant will have two main opportunities to present evidence capable of demonstrating this: at their substantive asylum interview, and in supporting evidence such as a witness statement.

## **“Painful self-disclosure”**

An asylum caseworker will also look for evidence of what the guidance calls “painful self-disclosure”, which from my experience means how the person has come to realise their sexual identity. Broadly speaking, the Home Office wants to see a “journey” to sexual awareness.

Asylum refusal decisions have been known to state “you did not provide an overly emotional account of your sexuality”. There is often an expectation that someone’s journey will be an emotional and painful story to re-tell. But the nature of having experienced past persecution means that a person may not come across as “overly emotional”. And, of course, some genuine claimants will simply not be the kind of personality given to expressions of strong emotion.

A client of mine was told repeatedly that her sexuality was wrong by her family. This meant she had spent years keeping her sexuality to herself. When questioned at interview she found it very difficult to talk with emotion about what she had experienced, as she had learned to repress her emotions as a safety mechanism. In this case, medical evidence of trauma was required to support the claim.

The guidance says that caseworkers should not stereotype behaviour and that the human dignity of the claimant is respected. But I have listened to and participated in asylum interviews where clients are asked repeatedly about when they first realised they were gay, or when they first were attracted to a member of the same sex. These questions place an undue burden on the applicant to examine and articulate their sexuality, an innate and often nebulous part of who they are.

The guidance does recognise someone may only realise their sexuality relatively late in life, and that this should not count against credibility. It also recognises that LGBTQI+ people may have opposite sex spouses or children, and that this should not count against them either.

## **Country conditions**

When it comes to the asylum interview, caseworkers are asked to explore with the applicant what social, legal, and cultural norms they are believed to be transgressing. For example, is homosexuality illegal in their home country, or considered sinful according to religious doctrine?

This is because the claim is not just assessed on the person’s local experiences, but on the wider context of the country. This can create problems if the applicant is from a sheltered or unrepresentative community – for example, a young woman living on a family compound may have little or no access to news about the situation for LGBTQI+ people elsewhere.

## **Three practical tips**

Focus on the journey: a detailed witness statement can really help in this type of claim. It should include an account of how someone became aware of their sexuality. For lawyers preparing such cases, asking prompting questions about this can be a good way to start preparing the statement.

Consider the context: is there a law against homosexuality in the home country? If not, what is the societal context? For example, Angola decriminalised same sex consensual relations in 2019, but many human rights organisations report that homophobia is still widespread.

Is other evidence needed? Consider medical evidence where a person’s trauma may impact their ability to recount their

experiences.

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Asylum cases should be decided on whether there is “reasonable degree of likelihood” that something is true. Claimants in sexual identity cases may feel that they are held to a higher standard when asked to “prove” their sexual orientation. Bearing in mind the framework used to decide such cases should help, although evidently it cannot neatly account for something as personal as sexual orientation in its every iteration.

## Relevant articles chosen for you

- [Podcast: how do you prove you're a gay refugee?](#)
- [Litigating to end statelessness](#)
- [Claiming humanitarian protection in medical treatment cases](#)
- [Afghanistan country information repository](#)