



**SUBMISSION TO WOMEN AND EQUALITIES COMMITTEE INQUIRY INTO TRANS EQUALITY:
NEEDS AND EXPERIENCES OF TRANS ASYLUM SEEKERS**

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“My fear is that there are trans men and women in the UK who are at risk but do not know they can claim asylum or that help is available. Without friends to turn to, they may find themselves in positions of danger or exploitation. The Home Office needs to understand we are not criminals. We are escaping violence and our lives are in danger.” - Sahhara, Nigeria

“I was refused asylum three times. At first I didn’t even have a lawyer. When I was interviewed the Home Office’s interpreter told the official, “This is one of the strangest interviews I’ve ever done.” The Home Office refused to believe that I am trans, they treated me like a liar. They continuously referred to me as a woman. I felt like they were attacking me.” - Adam, Egypt

“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.” - Farah, Iran

UK Lesbian and Gay Immigration Group (UKLGIG)

1. UK Lesbian and Gay Immigration Group (UKLGIG) is the only national organisation dedicated to supporting, and advocating for the rights of, lesbian, gay, bisexual and trans¹ (LGBT) people seeking asylum in the UK.
2. UKLGIG was founded in 1993 to campaign for equality in immigration law for same-sex couples seeking to reside in the UK. In 2003, our focus shifted to supporting LGBT asylum seekers. UKLGIG supports in excess of 1,000 people every year.
3. 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 and are members of the Home Office’s National Asylum Stakeholder Forum.

Executive Summary

- LGBT asylum issues have attracted significant attention in recent years. Despite this, the specific needs and experiences of trans asylum seekers are often neglected.
- Trans asylum seekers face significant obstacles in navigating the complex and frequently unsympathetic asylum system. Many are initially refused asylum as the Home Office asserts they have failed to ‘prove’ their gender identity. The Home Office frequently fails to respect the self-described identity of trans asylum seekers including in official documentation and asylum decisions.
- Trans asylum seekers are often highly marginalised and vulnerable to physical, sexual and emotional abuse within immigration detention centres and community-based accommodation. Their ability to access financial support, accommodation and healthcare is often limited.
- The Home Office is failing to take adequate steps to ensure the needs of trans asylum seekers are sufficiently addressed. It is imperative that trans people are treated with dignity and respect during the asylum process and are able to access refugee protection if they are at real risk of persecution.

¹ During the course of this submission we will use the term ‘trans’. We support trans people from a variety of countries, many of whom are not familiar with the terms ‘trans’ and ‘transgender’ which frequently do not exist in their own languages.

Context - LGBT Asylum Seekers and Refugees

4. LGBT people around the world experience discrimination and violence on a daily basis. 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 –

'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. Transphobia is prevalent in many parts of the world. In 2009, Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, reported³:

'Gender identity is one of the most fundamental aspects of life. The human rights situation of transgender persons has long been ignored and neglected, although the problems they face are serious and often specific to this group alone. Transgender people experience a high degree of discrimination, intolerance and outright violence. Their basic human rights are violated, including the right to life, the right to physical integrity and the right to health.'

6. The experiences of LGBT asylum seekers have attracted significant attention in recent years. Despite this, the discourse invariably focuses on the needs of gay men and lesbian women as these claims are greater in number. As a result, the needs and experiences of trans asylum seekers are often neglected and available information and research is limited.
7. It is not known how many LGBT people seek asylum in the UK every year as the Home Office does not publish such statistics. There are no reliable statistics regarding the number of trans asylum seekers. In response to a recent Freedom of Information request, the Home Office stated that as of 27 March 2015 there were 5 trans people detained in immigration removal centres⁴. A further 21 trans people were recorded as having been detained in the previous three years. The Home Office provided the following breakdown:

- Campsfiled House, nr Oxford – 2
- Dover – 1
- Heathrow – 7
- Morton Hall, Lincolnshire – 1
- Tinsley House, nr Gatwick – 6
- Yarl's Wood, Bedfordshire – 9

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

³ Council of Europe, 'Human Rights and Gender Identity Issue Paper' (2009)

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1476365>

⁴ Action for Trans Health, 'Trans people in immigration detention centres' (04.04.2015)

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

8. UKLGIG believes these statistics are unlikely to be accurate due to the Home Office's failure to gather regular statistical information concerning LGBT asylum claims. We note numerous instances where the Home Office have refused to recognise an individual's stated gender identity, which indicates such figures cannot be comprehensive. Furthermore, the statistics provided contain no data concerning Harmondsworth or Colnbrook immigration detention centres, two of the largest in the country, where UKLGIG is aware trans people have been detained in recent years. UKLGIG continues to urge the Home Office to gather and publish accurate statistical data concerning (i) number of LGBT claims, (ii) gender, (iii) nationality, (iv) instances of detention and (v) refusal/grant rates.
9. Sexual and gender identity claims are inherently complex and LGBT 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 LGBT communities, lack of independent evidence about their identity and about what happens to LGBT 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.'

10. 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 or gender identity. Many of our clients, both male and female, are survivors of rape. Due to multiple layers of discrimination, LGBT 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.
11. Trans people continue to be at risk even after reaching a country where they can seek asylum. Trans individuals are often highly marginalised and their claims may reveal experiences of severe physical, psychological and/or sexual violence⁸. Trans people are regarded to be "particularly vulnerable to physical, sexual and emotional abuse within asylum detention centres and community-based single sex shared accommodation" and thus "at a high risk of self-harm or suicide" during the asylum process⁹.

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>

⁸ Ibid

⁹ Cowen T, Stella F, Magahy K, Strauss K and Morton J, 'Sanctuary, Safety and Solidarity Lesbian, Gay, Bisexual, Transgender Asylum Seekers and Refugees in Scotland' (2011)

http://www.gla.ac.uk/media/media_195792_en.pdf

Decision-Making

12. 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.'

13. Despite this, the standard of decision-making in LGBT claims has been poor and LGBT applicants continue to experience a range of obstacles in navigating the complex, and frequently unsympathetic, asylum system in the UK.

14. Since the Supreme Court's landmark judgment in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31¹¹, 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 LGBT asylum claims is judged to be 'particularly poor'¹². The Law Society stated that LGBT applicants face 'extraordinary obstacles' to establishing their claims¹³.

15. In May 2014, the Home Secretary, Theresa May MP, commissioned the Independent Chief Inspector of Borders and Immigration, John Vine, to conduct an investigation into the Home Office's handling of LGB asylum applications¹⁴. The Chief Inspector found a fifth of asylum interviews contained stereotyping and a tenth contained inappropriate questions likely to elicit a sexual response¹⁵. The Chief Inspector expressed specific concerns about the quality of decision-making in Detained Fast Track (DFT).

16. The Chief Inspector made a series of recommendations aimed at improving the handling of such claims, all of which were accepted by the Home Office¹⁶. It is important to note that the Chief Inspector's investigation did not address or critique the Home Office's treatment of trans people or the handling of gender identity asylum claims.

17. Following the publication of the Chief Inspector's report, the Home Office proposed an 'Action Plan' on sexuality claims. UKLGIG has repeatedly urged the Home Office to include gender identity claims in order to ensure the treatment, experiences and needs of trans asylum seekers are not neglected.

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 *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>

¹² 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>

¹³ As above - Ev 142, para 33 & Q268

¹⁴ UKLGIG Public Statement dated 31 March 2014 http://uklgig.org.uk/?page_id=869

¹⁵ 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>

¹⁶ 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. In February 2015, the Home Office issued a new Asylum Policy Instruction on sexual identity claims¹⁷. 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 representatives¹⁸. However, the Home Office has not reviewed the Asylum Policy Instruction on gender identity claims¹⁹, issued in 2011, which has been described as ‘vague, open to misinterpretation, and, often based on normative assumptions²⁰.’ One commentator reported²¹:

‘While the GII [Gender Identity Issues] guidance document goes some way towards attempting to capture the complex and varying nature of gender identity issues, these efforts are negated by a conflicting notion that trans status is something that can be tested and proven. This misapprehension is the cause of most of the hardships which the UKBA subjects trans applicants to – from expectations of immediate, coherent evidence of persecution to reliance on incomplete COI and the burden of proving an internal feature of identity.’

19. The standard of asylum decision-making in trans cases is a matter of concern. UKLGIG has documented numerous instances of the Home Office ignoring or rejecting an individual’s self-described identity and gender in Home Office identity documents and in asylum decisions. As Sahara, a trans women from Nigeria, reported:

“They issued me with a Home Office identify card. They didn’t use my correct name and they put my gender as male. That was very hurtful.”

20. UKLGIG clients have experienced significant obstacles in ‘proving’ their gender identity to the Home Office’s satisfaction. Adam, a trans man refugee from Egypt, commented:

“I was refused asylum three times. At first I didn’t even have a lawyer. When I was interviewed the Home Office’s interpreter told the official, “This is one of the strangest interviews I’ve ever done.” The Home Office refused to believe that I am trans, they treated me like a liar. They continuously referred to me as a woman. I felt like they were attacking me.”

21. LGBT asylum seekers frequently experienced difficulties in accessing good-quality legal advice and representation as a result of increasing pressure arising from cuts to legal aid. Lawyers with expertise in relation to LGBT cases, and knowledge in relation to trans issues, are limited.

22. Mainstream human rights, refugee and LGBT organisations frequently do not have specific information, skills or knowledge concerning the needs of trans asylum seekers. Many trans asylum seekers describe feeling highly marginalised and isolated. Adam reported:

“I lived alone and had no friends. I was very isolated and had severe depression. I met someone who had been in the asylum system for eight years, I thought I would be

¹⁷ 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

¹⁸ 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/>

¹⁹ Home Office: Asylum Policy Instruction ‘Gender identity issues in the asylum claims’ (2011) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257387/genderissueintheasylum.pdf

²⁰ Bach J, ‘Assessing transgender asylum claims’; Forced Migration Review, ‘Sexual orientation and gender identity and the protection of forced migrants’ (Issue 42 / April 2013) – Page 33-36 <http://www.fmreview.org/sogi>

²¹ Ibid

treated the same or be sent back to Egypt. The Home Office refused to allow me to work. I wanted to transition but they wouldn't let me. I asked local LGBT organisations for help and support but most didn't know much about trans issues let alone how to help trans asylum seekers."

Detention

23. Around the world, serious concerns have been expressed as to the experiences of LGBT people in immigration detention. LGBT 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, LGBT 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. LGBT detainees frequently self-isolate so as to avoid stigmatisation from other detainees²².

24. 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.'

25. In September 2014, ILGA-Europe observed²⁴ –

'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.'

26. Concerns about LGBT people in immigration 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.²⁵ 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 LGBT people in immigration detention.

27. Tahir, a gay man from Pakistan who wears make up and women's clothing, was detained for three weeks before being granted refugee status. He described Harmondsworth immigration detention centre as "totally unsafe" for LGBT asylum seekers²⁶. Once inside, he was subjected

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/sogi>

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 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

²⁵ Independent Asylum Commission, '*Deserving Dignity*' (2008) - Page 50 <http://www.citizensforsanctuary.org.uk/pages/reports/DeservingDignity.pdf>

²⁶ 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>

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. In March 2015, a cross-party group of MPs and peers 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 detention²⁷. Relying on evidence from UKLGIG, the Detention Inquiry also criticised the treatment of LGBT 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.'

30. Increasing numbers of LGBT people have been detained for the purposes of their asylum claims being processed and assessments of suitability are invariably perfunctory²⁸. This is despite UNHCR's position, shared by UKLGIG, that the detention of asylum-seekers should be avoided and only used as a measure of last resort. Furthermore, LGBT claims are complex and unsuitable for accelerated procedures²⁹.
31. The DFT process is increasingly used as an administrative convenience and yet it is costly, dysfunctional and unfair³⁰. In July 2014, Mr Justice Ouseley found that the DFT as it then operated carried an "unacceptable risk of unfairness"³¹. On 26 June 2015, the Court of Appeal brought to a halt the Detained Fast Track appeals process for asylum seekers in detention³². 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]."

²⁷ 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>

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

²⁹ See UNHCR SOGI Guidelines

³⁰ 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>

³¹ [2014] EWHC 2245 (Admin) – Paragraph <http://detentionaction.org.uk/wordpress/wp-content/uploads/2014/07/Detention-Action-DFT-Full-Judgement.pdf>

³² UKLGIG, 'Court of Appeal ends Fast Track asylum appeals' (26 June 2015) <http://uklgig.org.uk/?p=1914>

32. On 2 July 2015, the Immigration Minister, James Brokenshire MP, announced the temporary suspension of the Detained Fast Track asylum system³³.
33. LGBT 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. In our experience, some staff members are sensitive to the needs of LGBT 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 countries³⁴.
34. UKLGIG was extremely concerned to be recently informed by a long-serving detention guard that trans women had previously been placed in segregation as a means of ‘protecting’ them from other detainees. This is an entirely unacceptable. Administrative segregation, or solitary confinement, solely because a person is LGBT can result in severe psychological harm³⁵.
35. A previous UKLGIG client – a trans man from Pakistan - was detained at Yarl’s Wood immigration detention centre for four months despite protesting that he was not female and should not be detained with women. He was informed he would have to undergo a medical examination. He requested a female doctor but was told none were available. Against his wishes, he was subjected to a medical examination administered by male doctors.
36. The Home Office has published a policy concerning the ‘care’ of trans people in immigration detention³⁶. Like UKLGIG, Action for Trans Health has expressed serious concerns about this policy³⁷. It was developed without consulting civil society actors and it is considered inadequate to ensure the safety and wellbeing of trans people.
37. In recent months, UKLGIG has raised serious concerns about the bullying, harassment and abuse of LGBT people in immigration detention centres and in community accommodation 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.
38. In March 2015, Lord Bates, Home Office Minister, acknowledged LGBT 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 LGBT people in immigration detention, Lord Bates responded³⁸ -

‘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,

³³ UKLGIG, ‘UKLGIG welcomes suspension of Detained Fast Track asylum system’ (2 July 2015) <http://uklgig.org.uk/?p=1935>

³⁴ 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

³⁵ See UNHCR SOGI Guidelines

³⁶ Home Office Detention Service Order (DSO), ‘Care and Management of Transsexual Detainees’ (2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438341/11_2012_-_Care_and_Management_of_transsexual_detainees_v2_1_external.pdf

³⁷ 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/>

³⁸ 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/>

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.'

39. In 2015, the Home Secretary ordered an independent review into the welfare in detention of vulnerable persons to be conducted by Stephen Shaw CBE. UKLGIG believes that many LGBT 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 LGBT people frequently experience in immigration detention centres.

UKLGIG Recommendations

- The specific needs and experiences of trans asylum seekers are often neglected. There is a lack of available information and research. It is imperative that trans people are treated with dignity and respect during the asylum process and are able to access refugee protection if they are at real risk of persecution.
- It must be acknowledged that lesbian, gay, bisexual and trans 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 LGBT people frequently experience in immigration detention centres.
- The quality of asylum decision-making in respect of LGBT claims must improve. 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 review and revise the Asylum Policy Instruction on gender identity asylum claims and take steps to improve the standard of decision-making in asylum cases concerning trans people.
- Existing Home Office training must be updated so that adequate information is provided on the needs and experiences of trans asylum seekers. The Home Office must ensure stereotyping and stereotypical expectations do not appear in interview questions and caseworkers do not ask sexually explicit or humiliating 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. LGBT claims are inherently complex and not suitable for accelerated and/or detained procedures. Trans people are particularly vulnerable to physical, sexual and

emotional abuse within immigration detention centres.

- The Home Office must take steps to tackle the bullying, harassment and abuse of LGBT people in immigration detention centres and community accommodation. The Home Office and private contractors must give particular consideration to the needs of LGBT people. Robust mechanisms must be implemented to respond to complaints concerning homophobia and transphobia

APPENDIX ONE

Case Study 1 – Sahhara, Nigeria

Miss Iris Sahhara , 30, is a trans woman from Nigeria. She claimed asylum in 2006. Her application was initially refused but she was granted refugee status in the UK in 2007.

Sahhara was persecuted in Nigeria because of her gender identity and came to the UK in 2004. A solicitor advised her she would not succeed in an asylum claim. In 2006 she approached the Refugee Legal Centre, a now defunct not-for-profit organisation that provided legal representation to asylum seekers. She was informed she had the right to claim asylum but advised she might be detained during the process.

“So many things happened in Nigeria before I came to the UK. I was beaten up, harassed, called derogatory names and arrested. I tried to change, to act masculine. I tried everything. It didn’t work.”

“I went to the Home Office in Croydon at 6am. I called my mum in Nigeria and told her I was scared. Anything could happen to me. I was always in fear before I claimed asylum. The rhetoric in the media is so negative. I thought they could just send me back and that would be the end of it.”

“The security staff were very rude, one was Nigerian. They questioned me about my passport and the photograph inside. I told them I am a trans woman but they didn’t know what that meant. They told me to wait.”

“The doors opened at 8am and I was there until 11pm. I had given up and I was sure they were going to detain me even though I was asking for help. They asked me lots of questions in different rooms, they wanted to make sure my story corresponded so everywhere I went different people asked me the same questions over and over again. Different Home Office officials kept coming to look at me, passing through in order to see me. They found it weird, they probably had never seen a trans woman from Africa asking for asylum before.”

“It was very hard to tell my story. To remember all the things I went through and explain it to them. Even though my solicitor wrote it all down I still had to explain it over and over again.”

“Thankfully, I was not detained though I know many LGBT people are sent to immigration detention centres. I was lucky. They issued me with a Home Office identify card. They didn’t use my correct name and they put my gender as male. That was very hurtful.”

“I was initially refused asylum but granted refugee status in 2007. Coming to the UK changed my life. I could be my true self. I didn’t need to hide anymore. In a way I have the British Government to thank but it was a very difficult process. Asylum is a dirty word because of the way the media portrays it. I couldn’t even bring myself to say I was a refugee. Now I am speaking up for others who need help. Trans people, all we want is to be treated like any normal human beings and have the freedom to be ourselves.”

“My fear is that there are trans men and women in the UK who are at risk but do not out they can claim asylum or that help is available. Without friends to turn to, they may find themselves in positions of danger or exploitation. The Home Office needs to understand we are not criminals. We are escaping violence and our lives are in danger. Being treated like a criminal is not fair.”

Case Study 2 – Adam, Egypt

Adam, 24, is a trans man from Egypt. He came to the UK in 2010. He was granted refugee status in 2012 and lives in Scotland.

“I think I would be dead if I had stayed in Egypt. I was abused on a daily basis; the threat of torture and rape was very real. People would grab me on the street to see if I was a man or a woman. It was getting worse all the time.”

“I came to the UK in 2010 but I didn’t know much about the concept of seeking asylum. I was desperate, I had no house or money and I knew I couldn’t go back to Egypt. I went to the Home Office to seek asylum but I had no idea what to expect. I was told to wait, no one spoke to me for the rest of the day. At 9pm they took me to a van with no windows and locked me inside. I didn’t understand why they were doing this. I went to the Home Office to ask for help, I didn’t expect to be locked up.”

“I was taken to an immigration detention centre. I told them I am a man but I was detained with other women. They gave me a private room, so I didn’t have to share with anyone else, but I didn’t belong there. The atmosphere was very intimidating. People would stare at me, which made me uncomfortable. I don’t think they understood I was trans but I had short hair and they would ask me if I was a man or woman.”

“There was no privacy in the detention centre. Male guards would come into the rooms anytime they wanted. Most didn’t knock. If you are getting changed, or are even naked, they just don’t give you any chance. They just come inside without warning. This happened a lot, it was disgusting.”

“After a few days the detention centre staff told me I would have to share with another woman but I couldn’t do that. I spoke to them and explained my situation. They didn’t understand it but luckily I was released before a decision was made. I was detained for five days. I consider myself lucky because I have heard horrible stories about people who were detained for months.”

“After I was released I was sent to live in Glasgow. I was made to live with women again, which was very awkward. Afterwards I was sent to live alone. I was refused asylum three times. At first I didn’t even have a lawyer. When I was interviewed the Home Office’s interpreter told the official, “This is one of the strangest interviews I’ve ever done.” The Home Office refused to believe that I am trans, they treated me like a liar. They continuously referred to me as a woman. I felt like they were attacking me.”

“It took two years to secure refugee status. I lived alone and had no friends. I was very isolated and had severe depression. I met someone who had been in the asylum system for eight years, I thought I would be treated the same or be sent back to Egypt. The Home Office refused to allow me to work. I wanted to transition but they wouldn’t let me. I asked local LGBT organisations for help and support but most didn’t know much about trans issues let alone how to help trans asylum seekers. I virtually stopped eating so I could save a little bit of money every week to buy testosterone online. I started injecting myself but I wasn’t doing it right and I started getting very sick.”

“I was so pleased to be granted refugee status. I could finally look for a job and support myself. I spent two whole years on my own, it was hard to get out there and begin to make a life for myself

again. I am still angry at the way the Home Office treated me but I am thankful I was given a chance at a new life.”

APPENDIX TWO

Recommended Materials

- Home Office: Asylum Policy Instruction ‘*Gender identity issues in the asylum claims*’ (2011)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257387/genderissuesintheasylum.pdf
- 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>
- 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>
- ILGA-Europe: ‘*Good practices related to LGBTI asylum applicants in Europe*’ (2014)
http://www.ilga-europe.org/home/publications/reports_and_other_materials
- 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>
- 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
- 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>
- Home Office Detention Service Order (DSO), ‘*Care and Management of Transsexual Detainees*’ (2015)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438341/11_2012_-_Care_and_Management_of_transsexual_detainees_v2_1_external.pdf