



**WRITTEN SUBMISSION TO THE PARLIAMENTARY INQUIRY INTO THE USE OF
IMMIGRATION DETENTION IN THE UK, HOSTED BY THE APPG ON REFUGEES AND
THE APPG ON MIGRATION**

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“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, UKLGIG client from Uganda¹

About UKLGIG

1. 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 asylum seekers every year, many of whom 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 providing 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. During this submission we will focus our attention on the experiences of LGBTI people in immigration detention in the UK, particularly those seeking asylum. UKLGIG provides advice, information and support to people detained in immigration detention centres and we regularly visit Yarl’s Wood, Harmondsworth and Colnbrook.

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 enforced².
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 2013, 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 orientation 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 Navi Pillay observed⁶ –

¹ Quote from UKLGIG client in Stonewall, ‘No going back: Lesbian and gay people and the asylum system’ (2010) – Page 13 http://www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp

² 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

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>

'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 beaten, tortured, prosecuted and imprisoned because of their sexual orientation 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 marginalized in society and isolated from their communities and families. Many experience feelings of profound shame and/or internalized homophobia which impacts on their ability to present their asylum claims⁷.
8. LGBTI applicants 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 decreasing access to good quality legal advice, inappropriate and humiliating questioning, decision makers reliance on unhelpful stereotypes and barriers in 'proving' sexual orientation due to an artificially high standard of proof⁸. Furthermore, decision makers frequently failed to appreciate the interrelation between gender and sexuality to the detriment for female asylum applicants.
9. Since the Supreme Court's landmark judgment in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31⁹, the major obstacle applicants experience is in establishing their credibility, particularly in 'proving' their sexual orientation and/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'¹⁰. The Law Society stated that LGBTI applicants face "extraordinary obstacles" to establishing their claims¹¹.
10. In May 2014, following an expose in the Observer newspaper, the Home Secretary, Theresa May, commissioned the Independent Chief Inspector of Borders and Immigration, John Vine, to conduct an investigation into the Home Office's handling of LGB asylum applications; a decision welcomed by UKLGIG¹².
11. UKLGIG has continuing concerns as to the quality of asylum decision making in the UK, this is particularly the case for those in detention. The assessment of credibility in LGBTI cases needs to be undertaken in an individualized and sensitive way. We specifically highlight and

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

⁹ *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>

¹⁰ 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>

¹¹ As above - Ev 142, para 33 & Q268

¹² UKLGIG Public Statement dated 31 March 2014 http://uklgig.org.uk/?page_id=869

endorse the approach advocated by UNHCR Guidelines¹³, which reflect the most comprehensive statement of appropriate approach.

Detention of LGBTI Asylum Seekers and Refugees

12. In recent times the use of, and conditions in, immigration detention has attracted consideration attention and a large quantity of reports are produced each year by academics, NGOs and governmental agencies around the world¹⁴. Despite this, there is a dearth of research concerning the experiences and needs of LGBTI detainees, particularly asylum applicants¹⁵.
13. Serious concerns have been expressed as to the experiences of LGBTI people in immigration detention. Around the world, 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. Some LGBTI detainees self-isolate so as to avoid stigmatisation from other detainees¹⁶.
14. In 2010, the former UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, reported¹⁷ –

'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.'

15. 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 assault¹⁸. 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."

16. In September 2014, ILGA-Europe observed¹⁹ –

¹³ 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)

¹⁴ Bosworth, M 'Inside Immigration Detention' (2014) ISBN 978-0-19-872257-1- Page 6

¹⁵ See ICAR, 'Detention of asylum seekers in the UK' (2007) – Page 16

http://www.icar.org.uk/Detention_of_asylum_seekers_in_the_UK_June_2007.pdf / Vrije Universiteit Amsterdam, 'Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe' (2011) – Page 77 <http://www.refworld.org/docid/4ebba7852.html> / Equality Network, 'Sanctuary, Safety and Solidarity: Lesbian, Gay, Bisexual, Transgender Asylum Seekers and Refugees in Scotland' (2011) – Page 9 http://www.gla.ac.uk/media/media_202481_en.pdf

¹⁶ 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>

¹⁷ 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

¹⁸ 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>

¹⁹ 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

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.

17. 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.²⁰ Despite this, little progress has been made and the scale of detention has increased.
18. The DFT process is increasingly used as an administrative convenience and yet it is costly, dysfunctional and unfair²¹. Furthermore, the impact on those seeking asylum, particularly on their mental and physical health, is particularly worrying²². In July 2014, Mr Justice Ouseley found that the DFT as it then operated carried an "unacceptable risk of unfairness"²³. The Home Office states it has taken steps to respond to the judgment. Further litigation is pending.
19. UKLGIG believes the detention of asylum-seekers should be avoided and only used as a measure of last resort²⁴. Furthermore, and like UNHCR, UKLGIG believes that due to their complex nature, claims based on sexual orientation and/or gender identity are generally unsuited to accelerated processing or the application of 'safe country or origin' concepts²⁵.
20. In our experience, the majority of our clients who seek asylum on the basis of their sexual orientation and/or gender identity will 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 considered²⁶. 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 found²⁷ -

'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.'

²⁰ Independent Asylum Commission, 'Deserving Dignity' (2008) - Page 50
<http://www.citizensforsanctuary.org.uk/pages/reports/DeservingDignity.pdf>

²¹ 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>

²² See above

²³ [2014] EWHC 2245 (Admin) – Paragraph <http://detentionaction.org.uk/wordpress/wp-content/uploads/2014/07/Detention-Action-DFT-Full-Judgement.pdf>

²⁴ 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>

²⁵ UNHCR SOGI Guidelines – Paragraph 59

²⁶ UKLGIG, 'Missing the Mark' (2013) – Page 28

²⁷ [2013] EWCA Civ 666 – Paragraph 29

21. 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.²⁸ 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.
22. Furthermore, UKLGIG is seriously concerned about homophobic and transphobic incidents in detention centres. Our clients regularly report bullying, verbal abuse and threats of physical violence. 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 detainee staff to receive training in this area. Consideration must be given to best practice including in other countries²⁹.
23. LGBTI detainees are extremely 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.
24. UKLGIG has raised serious concerns with the Immigration Minister and senior civil servants as to the continued and increasing use of DFT in sexual orientation and gender claims as well as the conditions in detention. In August 2014, the Home Office stated³⁰ –

'We do not accept that LGB cases are inherently complex and we therefore have no plans to exclude them from the Detained Fast Track as a category. However, entry to DFT is based on consideration of an individual's particular suitability for the process, and in line with our published policy, we will only enter a case to the Detained Fast Track (or maintain a case in the process) if we consider that a quick and fair decision can be made.'

Conclusion

25. UKLGIG is seriously concerned at the experiences of LGBTI people seeking asylum in the UK, particularly in regards to the increasing use of detention. UKLGIG calls for an end to the dysfunctional and unfair DFT process for all people seeking asylum. Many LGBTI people are vulnerable as a result of their experiences of persecution and their claims should not be processed in DFT. Furthermore, asylum claims on the grounds of sexual orientation and/or gender identity are inherently complex and not suitable for accelerated procedures. LGBTI people regularly complain about bullying, verbal abuse and threats of violence in detention. The experiences and needs of LGBTI people in immigration detention require urgent and serious consideration.

Recommendations

- The Home Office should publish statistics relating to sexual and gender identity asylum claims including the number of people detained and the outcome of such claims.
- Asylum seekers should not be detained except in the most exceptional circumstances. The Detained Fast Track process should be abolished in all other circumstances.

²⁸ UNHCR SOGI Guidelines – Paragraph 58

²⁹ 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

³⁰ Home Office response to Stonewall circulated to NASF members (August 2014)

- A 28 day time limit on immigration detention should be introduced in line with best practice in the EU.
- 'Safe Country or Origin' concepts and mechanisms are not suitable for LGBTI asylum claims.
- 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.
- 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 give particular consideration to the needs of LGBTI detainees. Robust mechanisms must be implemented to respond to complaints concerning homophobia and transphobia.
- The Government should develop and utilize alternatives to detention based on engagement with migrants and NGO stakeholders taking into account good practice.