



**UKLGIG submission to the
Independent Chief Inspector of Borders and Immigration
inspection of 'Adults at Risk' in immigration detention
February 2019**

1. The UK Lesbian and Gay Immigration Group (UKLGIG) supports lesbian, gay, bisexual, trans, queer and intersex + (LGBTQI+) people through the asylum and immigration process. We provide one-to-one psychosocial support and facilitate support groups. We also offer legal information and advice to LGBTQI+ people seeking asylum. Our support workers and legal officer regularly visit LGBTQI+ people seeking asylum who are held in immigration detention centres.
2. We would like to be considered for membership of the Chief Inspector's new 'AaR Forum'.
3. UKLGIG recommends that
 - a. The Home Office should follow developments in international law and recognise that detention of LGBTQI+ people places them in a situation of vulnerability.
 - b. The Home Office should recognise lesbian, gay and bisexual people as vulnerable in immigration detention, alongside existing recognition of the vulnerability of trans and intersex people in detention.
 - c. The Home Office should monitor and regularly report on the number of LGBTQI+ people it detains and the length of time for which they are held.
 - d. The Home Office should extend its existing recognition of the vulnerability of LGBTQI+ people under its safeguarding strategy, asylum casework database and resettlement programmes to immigration detention.
 - e. As it is almost impossible for the safety of LGBTQI+ people to be assured in detention, the Home Office should end the detention of all LGBTQI+ people.
 - f. There should be a limit of 28 days on all immigration detention.
 - g. The Home Office should scale up its work on community-based alternatives to detention.

1) The vulnerability of LGBTQI+ people in detention centres

4. In 2016, UKLGIG and Stonewall published *No Safe Refuge*¹, a research report on the experiences of LGBTQI+ people seeking asylum while in detention. The report highlights the systemic discrimination, abuse and harassment that LGBTQI+ people face from both staff and other people who have been detained. The report contains examples of acts committed by fellow detainees and staff, and incidents where staff have failed to protect individuals.
5. In June 2016, the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – alongside the Chair of the UN Subcommittee on Prevention of Torture; the Chair of the UN Committee against Torture; and the Chairperson of the Board of Trustees of the UN Voluntary Fund for Victims of Torture - called on Member States to redouble their efforts to prevent the ill-treatment and torture faced by LGBTI people in places of detention².
6. The ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2016) raised similar concerns:
 - a. *“Violence against lesbian, gay, bisexual, transgender and intersex persons is exacerbated in situations of deprivation of liberty... Both the Special Rapporteur on torture and the Subcommittee have noted that in detention facilities there is usually a strict hierarchy, and that those at the bottom of the hierarchy, including lesbian, gay, bisexual and transgender persons, typically suffer double or triple discrimination. Complaints of insults, beatings, confinement and targeted forms of violence are not uncommon. ... Abuse may be perpetrated by fellow inmates or by the staff of the place of detention. Some studies have recorded that non-heterosexual inmates are 10 times more likely than heterosexual inmates to be sexually assaulted by other inmates, and 3 times more likely to be sexually assaulted by prison staff. In the case of transgender persons, the likelihood of being sexually assaulted by a fellow inmate was 13 times higher than for cisgender persons.... States must prevent the further marginalization of persons when placing them in detention, and avoid subjecting them to the risk of violence, ill-treatment or torture... In cases of lesbian, gay, bisexual, transgender and intersex persons deprived of liberty in any place of detention, State authorities must recognize specific risks, identify those who are in a vulnerable situation, and protect them in ways that do not leave them isolated...”* [emphasis added]
7. In November 2017, the *Yogyakarta Principles plus 10*³ on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC), were published. The 13 new obligations under Principle 23, Right to Seek Asylum, include:

¹ https://uklgig.org.uk/wp-content/uploads/2017/03/no_safe_refuge.pdf

² http://www.un.org/apps/news/story.asp?NewsID=54309#.Wi5HkIVI_IU

³ <http://www.yogyakartaprinciples.org/principles-en/yp10/>

- *Ensure that the detention of asylum seekers is avoided, and is only used as a measure of last resort and for the shortest possible time;*
- *Ensure that placement in detention, where used, avoids further marginalising persons on the basis of sexual orientation, gender identity, gender expression or sex characteristics or subjecting them to violence, discrimination or other harm.*

8. LGB asylum seekers have also been found to be vulnerable in the European Court of Human Rights in *O.M v Hungary*, Application no. 9912/15, 5 July 2016⁴, in a case concerning an Iranian asylum seeker in detention, who asserted that he was gay:

*53. Lastly, the Court considers that, in the course of placement of asylum seekers who claim to be part of a vulnerable group in the country which they had to leave, the authorities should exercise particular care in order to avoid situations which may reproduce the plight that forced these persons to flee in the first place. In the present case, the authorities failed to do so when they ordered the applicant's detention without considering the extent to which vulnerable individuals – for instance, LGBT people like the applicant – were safe or unsafe in custody among other detained persons, many of whom had come from countries with widespread cultural or religious prejudice against such persons. Again, the decisions of the authorities did not contain any adequate reflection of the individual circumstances of the applicant, member of a vulnerable group by virtue of belonging to a sexual minority in Iran (see, mutatis mutandis, *Alojos Kiss v Hungary*, no. 38832/06, at 42, 20 May 2010).*
[emphasis added]

9. This case highlights that their vulnerability in their country of origin contributes to their vulnerability in the UK and warns about recreating that situation in the UK, in this instance through the conditions of detention.

10. RECOMMENDATION: The Home Office should follow developments in international law and recognise that detention of LGBTQI+ people places them in a situation of vulnerability.

2) Limitations of the Adults at Risk policy

11. The Home Office does not recognise that LGB people are vulnerable in detention centres. Only trans and intersex people are expressly included in the Adults at Risk policy.

12. We are aware that trans and intersex people are still being detained. We recently saw two trans women at Yarl's Wood detention centre. One of them had previously been detained alongside men at Harmondsworth detention centre. It is extremely dangerous for trans women to be detained in centres for men and we are very concerned that this had happened. It is also unsafe to detain trans people in detention centres for women where they are also subject to discrimination and harassment.

⁴ <http://www.asylumlawdatabase.eu/en/content/ecthr-om-v-hungary-no-991215-article-5-echr-5-july-2016>

13. The Home Office and detention centres do not routinely monitor the number of LGBTQI+ people that are detained, so it is not possible to monitor whether the inclusion of trans and intersex people in the Adults at Risk policy is having the effect of reducing the number of trans and intersex people who are detained.
14. The requirement for evidence under the Adults at Risk policy is highly problematic for LGBTQI+ people. It would be asking the impossible to expect somebody to have 'professional evidence' that they are LGBTQI+. Self-declaration of being LGBTQI+ should be sufficient for someone to be recognised as potentially at risk of harm in detention. In the case of persons seeking asylum, it should be recorded on the Home Office's casework database (CID) if sexual orientation or gender identity form a basis of the claim. This same information is used as an indicator of potential vulnerability under the Home Office's safeguarding strategy, so it should be easy to extend that recognition to detention and use the same data source.
15. **RECOMMENDATION: The Home Office should recognise lesbian, gay and bisexual people as vulnerable in immigration detention, alongside existing recognition of the vulnerability of trans and intersex people in detention.**
16. **RECOMMENDATION: The Home Office should monitor and regularly report on the number of LGBTQI+ people it detains and the length of time for which they are held.**

3) Identifying vulnerability at the point where an individual is being considered for detention

17. Being LGBTI is recognised as a potential vulnerability by the Home Office in the following instances. It is inconsistent that this same recognition is not extended to detention, where only trans and intersex people are considered vulnerable.
 - a. UKVI's adult safeguarding strategy states that being LGBTI is an indicator of vulnerability.
 - b. On the database (CID) used by asylum caseworkers, there is a 'special conditions marker' which can be used to indicate vulnerability. One of the 29 indicators is being LGBTI.
 - c. LGBTI people are recognised as vulnerable for the purposes of resettlement. They have been included as criteria for the Vulnerable Persons Resettlement Scheme from the Syria region.
18. LGB asylum seekers are also recognised as vulnerable in detention by the Judicial College in the Equal Treatment Bench Book. It is unclear why this vulnerability is recognised by the judiciary but not by the Home Office.
19. **RECOMMENDATION: The Home Office should extend its existing recognition of the vulnerability of LGBTQI+ people under its safeguarding strategy, asylum casework database and resettlement programmes to immigration detention.**

4) Identifying vulnerability during the time someone is held in detention

20. LGBTQI+ detainees have told UKLGIG that they are afraid to mention their sexual orientation or gender identity to detention centre staff. For example, a Bangladeshi detainee told UKLGIG they did not want to speak to the welfare officer as they were also Bengali and they were concerned that they could respond negatively or 'out' them to others in the Bengali community.
21. Some centres have LGBT officers but this appears to be a voluntary role on top of existing responsibilities. Many people who contact UKLGIG from inside detention centres do not know if there is an LGBT officer.
22. LGBTQI+ people are often reluctant to use complaints mechanisms for fear of reprisals.
23. The result is that LGBTQI+ people may be experience bullying, harassment or abuse from other people held in detention centres but staff are unaware.
24. **RECOMMENDATION: As it is almost impossible for the safety of LGBTQI+ people to be assured in detention, the Home Office should end the detention of all LGBTQI+ people.**

5) The need for a time limit

25. Detention generally has a damaging mental health impact, and after 30 days of incarceration there is a rise in the severity of harm. Setting a time limit under 30 days can protect people – including those who do not fall within the scope of the Adults at Risk policy – from significant harms⁵.
26. The Home Office believes it has capacity to ascertain whether removal or deportation can take place within 28 days⁶.
27. In the public health, counter-terror and criminal justice systems, where individuals face the possibility of detention without charge, 28 days or lower is considered sufficient time for the government to achieve its aims while recognising that there should be limits on its power to deprive individuals of their liberty.
28. **RECOMMENDATION: There should be a limit of 28 days on all immigration detention⁷.**

⁵ Research led by Dr Katy Robjant found that mental health deteriorated after 30 days in immigration detention in the UK. K. Robjant, I. Robbins and V. Senior (2009), 'Psychological distress amongst immigration detainees: A cross-sectional questionnaire study', *British Journal of Clinical Psychology* 48: 275-286, p.282.

⁶ Enforcement Instructions and Guidance, Chapter 55.

⁷ Also recommended by :

Joint Committee on Human Rights, *The Treatment of Asylum Seekers, Tenth Report of Session 2006-07, Volume 1 – Report and formal minutes*, para. 275.

6) Alternatives to detention

29. Radical reduction in the detention of people at risk of harm can be achieved by developing a wider range of community-based alternatives to detention which are more effective, less expensive, improve individual wellbeing and integration and benefit communities.
30. Detention Action's report, *Without Detention*, summarises why the engagement-based approach in a community setting increases individuals' ability to stay connected with immigration procedures, in contrast to detention, which alienates individuals and undermines their ability to work towards resolution of their cases.
31. **RECOMMENDATION: The Home Office should scale up its work on community-based alternatives to detention.**