



## **UKLGIG submission to Home Affairs Committee inquiry into Immigration Detention April 2018**

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 peer support groups. We also offer legal information and advice to LGBTQI+ asylum seekers. Our support workers and legal officer regularly visit LGBTQI+ asylum seekers who are held in immigration detention centres.

### **1) Recommendations**

1. The government should end the detention of all LGBTQI+ people, and in particular LGBTQI+ asylum seekers.
2. The government should implement a limit of 28 days on all immigration detention.
3. The Home Office should make greater use of alternatives to detention.

### **2) The Home Office understanding of vulnerability and risk**

The Home Office does not recognise that LGB people are vulnerable in detention centres. Only trans and intersex people are included in the Adults at Risk policy expressly. Nevertheless, we are aware that trans and intersex people are still being detained.

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.

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.

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.

### **3) UKLGIG and Stonewall research into the vulnerability of LGBTQI+ people in detention centres**

In 2016, UKLGIG and Stonewall published research on the experiences of LGBT asylum seekers in detention, called *No Safe Refuge*. We recommend that the Home Affairs Committee read the report in conjunction with this submission.

The report highlights the systemic discrimination, abuse and harassment that LGBT asylum seekers have faced from both staff and fellow detainees in detention centres. The homophobic, biphobic and transphobic abuse and harassment is both verbal and physical. The report contains examples of acts committed by fellow detainees and staff, and incidents where staff have failed to protect individuals.

Many LGBTQI+ asylum seekers have described how being in detention reminded them of the persecution they were trying to escape. For example:

*“He was in the gallery and he called: ‘Hey! Mr Gay, I love you! I want to fuck you.’ I was so scared. I just went in my room. Here in detention it is the same as where I came from. I was so scared”* - Bilal, Pakistani asylum seeker.

*“I got flashbacks of everything I’ve been through in Africa. I’ve been free for two or three years and then here I am back in a cell”* - Gasha, Cameroonian asylum seeker.

The report further highlights the long-term repercussions of detention on the mental health of LGBTQI+ asylum seekers, such as nightmares, flashbacks, hearing voices, self-harming and attempted suicide.

### **4) International recognition of the vulnerability of LGBTQI+ people in detention centres**

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 detention<sup>1</sup>.

The ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2016) raised similar concerns:

*“Violence against lesbian, gay, bisexual, transgender and intersex persons is exacerbated in situations of deprivation of liberty... Both the Special Rapporteur*

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<sup>1</sup> [http://www.un.org/apps/news/story.asp?NewsID=54309#.Wi5HKlVI\\_IU](http://www.un.org/apps/news/story.asp?NewsID=54309#.Wi5HKlVI_IU)

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]

In November 2017, the *Yogyakarta Principles plus 10*<sup>2</sup> relating 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:

- *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.* [emphasis added]

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 2016<sup>3</sup>, 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]

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<sup>2</sup> <http://www.yogyakartaprinciples.org/principles-en/yp10/>

<sup>3</sup> <http://www.asylumlawdatabase.eu/en/content/ecthr-om-v-hungary-no-991215-article-5-echr-5-july-2016>

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 the instant case through the conditions of detention.

## **5) The treatment of vulnerable persons in immigration detention**

LGBTQI+ detainees have told UKLGIG that they are afraid to mention their sexuality to welfare staff. For example, in one case, a Bangladeshi detainee said 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.

LGBT officers (a voluntary role on top of the existing role) in detention centres are not generally known to detainees and are often illusive to UKLGIG.

Detainees speaking to us by telephone are frequently fearful of being overheard discussing their sexual orientation or gender identity. Other than when they meet their legal representatives, there are very few occasions when they may have a confidential conversation with someone providing support.

LGBTQI+ asylum seekers are often reluctant to use complaints mechanisms. Furthermore, their existence appears to only have a limited deterrent effect on unacceptable behaviour. Whilst robust policies and complaints systems are essential, they do not appear to be working to make LGBTQI+ asylum seekers feel safe in detention.

## **6) Provision of health services**

Our joint report with Stonewall, *No Safe Refuge*, documents examples of health needs not being met.

*“Interviewees described a culture of disbelief when talking to health staff about their physical and mental health issues. Such problems are often dismissed as a means of trying to get out of detention even if the detainee demonstrates an apparent suicide risk. For LGBT asylum seekers who are particularly vulnerable to mental health issues, failure to provide appropriate care can lead to severe deterioration...”*

*“Interviewees also reported problems with medication. All medicine is taken away from asylum seekers upon arrival at the detention centre. It can take weeks to receive a replacement. A lengthy wait for essential medication such as anti-depressants and HIV medication that require a precise and regular intake can have serious consequences for the patient...”*

*“Confiscating medication can have additional consequences for trans people. Some trans asylum seekers have started their transition in secrecy in their country of origin, where they have had no other option than to self-medicate. Taking away their medication without offering alternative treatment can lead to physical disruption and severe mental distress”.*

## **7) The unnecessary use of detention**

UKLGIG experience is that significant numbers of LGB asylum seekers are still detained purely for administrative purposes without the possibility of an alternative to detention being considered.

The support group First Wednesdays, based in Manchester, has given us three examples of lesbian and gay asylum seekers who had fresh claims appointments booked and pending (for the earliest available date that the Home Office would offer) when they were detained<sup>4</sup>.

Detention is being used unnecessarily and when removal is not imminent. In those circumstances the vulnerability of the LGB asylum seeker must outweigh the administrative convenience of detention.

## **8) Access to legal advice and representation**

For LGBTQI+ people trying to claim asylum, detention has a direct impact on the prospects of success of their application or appeal. Examples can be found in *No Safe Refuge*.

### **Problems evidencing LGBTQI+ asylum claims while in detention**

In order to convince the Home Office or Tribunal that they are LGBTQI+ as claimed, an asylum seeker must be in a situation of trust and security in which to consider and discuss their sexual orientation or gender identity and to be able to articulate their experiences and emotions. This is extremely difficult if you come from a country where persecution has meant you have never spoken about your sexual orientation or gender identity, or you have experienced trauma. To try to do so whilst in detention, where fear of discrimination or harassment requires you to conceal your identity as much as possible, it can be an impossible task.

Added to that is the difficulty of amassing the kind of corroborating evidence expected routinely by decision makers whilst in detention, especially if the person is trying to avoid being outed to staff and other detainees. Home Office caseworkers and decision makers frequently expect LGBTQI+ asylum seekers to:

- offer witnesses (including ex-lovers) who will attest to their knowledge that the asylum seeker is LGBTQI+ as claimed
- provide evidence of attending LGB events, organisations or venues, or online dating
- demonstrate that they would wish to live openly and not conceal their sexual identity

all whilst hiding their sexual orientation or gender identity because of the adverse circumstances of detention and without access to social media or smart phones while they are detained.

### **Problems with legal advice in detention**

The availability of free legal advice (through the surgeries) in detention is intended as an essential safeguard of the rights of detainees and to ensure access to advice on both their continued detention and their asylum claims. UKLGIG experience is that the safeguard is undermined by the (1) the poor quality of much of the advice given, (2) the little time available for each appointment (inadequate to cover instructions and advice competently

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<sup>4</sup> <https://www.change.org/p/urgent-action-we-stopped-the-imminent-deportation-of-a-gay-asylum-seeking-to-uganda>

<https://www.change.org/p/stop-the-removal-of-lydia-nabukenya-a-lesbian-woman-back-to-uganda>

<https://www.change.org/p/amber-rudd-mp-urgent-end-the-detention-of-patricia-simeon>

on any matter), (3) the reluctance of the legal aid contractors to take on detainees' substantive cases – very few are accepted either because they are assessed to not pass the merits test or the means test for legal aid.

- a) The legal aid system has been run down so that quality may be very poor (with notable exceptions) but capacity is almost universally low (other than for the very lowest quality providers). For LGBTQI+ asylum seekers not in detention we cannot find enough quality, reputable, specialist representatives with sufficient understanding of how to present asylum claims based on sexual orientation or gender identity to meet the need. For detainees, they are restricted to the detention contractors but the quality of representation is variable and much of it very poor. The chances that these representatives know how to present LGBTQI+ claims is very slim.
- b) Detainees are limited to the specific contractors so they cannot seek other better legal aid lawyers (although at present there is no prospect any other legal aid provider would be likely to be interested in taking on these cases).
- c) The 30 minute session is inadequate to make any competent professional assessment other than that further assessment is needed. But many are told at the end of that time that they have no merits.
- d) Many LGBTQI+ asylum seeker detainees find it impossible to evidence their financial eligibility. UKLGIG experience has seen many LGBTQI+ people who have spent a lengthy period in the UK before seeking asylum, whether lawfully (eg as students) or unlawfully (eg arriving as visitors and overstaying as they either do not know they can claim or do not believe they will succeed in their claim for asylum). If they have worked, they may have no proof of their past income. If they have had a "relationship" in the UK, they may find it impossible to provide evidence of their means to satisfy the Legal Aid Agency (LAA) even though they are clearly not earning at that stage.  
"Relationships" are a particular issue for LGBTQI+ asylum seekers. They have to mention even casual relationships in their asylum claims. They may then find the LAA asserting that the relationship makes them "a couple" and the means of the other person must be assessed. However, that decision from the LAA comes only at the end of the case, at which point the legal representative is informed that they will not be paid for any of the work they have done. Hence legal aid providers refuse cases where they are less than certain that the LAA will agree their financial assessment. We come across many detainees who have been refused legal aid assistance on that basis. An immediate improvement could be achieved by the LAA accepting self-declaration of detainees' income and capital where that is consistent with their ongoing detention.
- e) Many LGBTQI+ detainees have a "private lawyer" instead even though they have no funds to pay for that. As a result the representation they receive is negligible. For example:
  - One detainee was found a lawyer by his cousin. The lawyer had advised the detainee by telephone only and told him that there was no need for them to see the detainee before they had their interview. We know that inadequate preparation for the interview is one of the biggest factors not only in the application being refused but in any subsequent appeal failing.

- Two detainees were to be served with refusal of their applications for permission to appeal to the Upper Tribunal. Each had a private solicitor “representing them” who had taken money from relatives or friends but who had so far done nothing and given no advice other than for the detainee to “find some new evidence”.
- f) Immigration legal aid provision to asylum seekers in prison is even more sparse. We receive letters from LGBTQI+ prisoners saying that they have claimed asylum and are getting close to the end of their sentences and have no advice and no representation. There is nothing that we are able to do to assist them in securing legal representation other than to provide details of the most local legal aid contractors from an internet search, tell them they will have access to the surgery if they are moved to an IRC and that we will send them some printed information if they confirm that it is safe for them to have documents about LGBTQI+ asylum claims whilst detained.

In conclusion, legal aid provision is not operating as an adequate safeguard of rights and welfare and should be largely disregarded in assessing whether the rights and welfare of LGBTQI+ asylum seekers are being adequately protected.

Legal aid provision needs systemic change for any significant amelioration of the situation but improvements in the arrangements for financial means assessments could make it easier for many detainees to access legal advice.

## **9) The need for a time limit on immigration detention**

There should be a limit of 28 days on all immigration detention, as recommended by the joint inquiry by the APPGs on Refugees & Migration into the use of immigration detention and Detention Forum.

## **10) Alternatives to detention**

Radical reduction in the use of detention 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, according to global research conducted by the International Detention Coalition. Similarly, the APPG inquiry found that other countries use alternatives to detention that ‘not only achieve high compliance rates, but they are also considerably cheaper than our current system.’

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.