

# Rainbow Migration's submission to the Independent Chief Inspector of Borders and Immigration's Inspection of Asylum Casework

1 June 2023

Rainbow Migration supports lesbian, gay, bisexual, trans, queer and intersex (LGBTQI+) people through the asylum and immigration system. We provide practical and emotional support to improve self-esteem and confidence, reduce isolation, and help access health services and housing. We also give specialist legal information and advice to LGBTQI+ people who are seeking asylum. We carry out campaigning and policy work to improve the asylum and immigration system.

Below, we respond to the Independent Chief Inspector's call for evidence on asylum casework, along with recommendations where we believe that improvements can be made.

## The efficiency and timeliness of asylum decision making

1. Delays continue to be a common theme in asylum casework, with people waiting years for interviews and/or decisions. In one case the person had her screening interview in June 2019, the substantive interview was scheduled for March 2020 but was postponed so that a medico-legal report could be obtained. Her solicitors chased for a new substantive interview date on four occasions in the first half of 2021. Only one of the emails was responded to, and all that was said was that they could not confirm a date and Covid was cited as the reason to the delay. The solicitors chased again in September 2021 and again the following month. The interview was eventually booked for December 2021. This person

has been diagnosed with post traumatic stress disorder and is a victim of sexual and gender based violence. The Home Office is aware of this and Rainbow Migration have also referred her to the Home Office safeguarding as the delay is having a significant impact on her mental well-being, but she is still without a decision.

2. Another person initially contacted Rainbow Migration as she was given an appointment for her asylum screening 16 weeks after she had called the Home Office to tell them that she wanted to claim asylum, in April 2022. After instructing a solicitor to challenge the delay, she was given a screening interview in May. She also raised that she was trafficked at the screening interview, on the advice of her solicitor who had helped her with the delay and identified that there were trafficking indicators. She was not referred to the National Referral Mechanism at screening and Rainbow Migration had to refer her to another first responder as a potential victim of trafficking. She is still waiting for her substantive interview. In the meantime it has been accepted that she is likely to have been trafficked (positive reasonable grounds decision) but she is still awaiting her conclusive grounds decision. She was subjected to serious sexual and gender based violence and rape both in her country of origin and the UK.
3. In another example, the person made their initial claim for asylum in November 2018, and contacted Rainbow Migration for assistance as she has yet to be invited for her substantive interview. Prior to contacting us, she had asked her MP to chase up the interview, and this was done in June 2020, and she also chased this herself in November 2022. She is still awaiting her interview.
4. Another person claimed asylum in February 2022. In March 2022 she sent in her Preliminary Information Questionnaire. She has chased for her substantive interview in November 2022. She has not had a reply from the Home Office, and she still does not have a date for her substantive interview.

5. Rainbow Migration is still seeing waits of over a year for initial decisions following the substantive interview. We have also noticed that cases are passed from office to office without explanation, for example subject access request records for one person indicate that their case has been passed back and forth between Belfast, Mersey, Manchester, Glasgow and Cardiff.

*Recommendation 1: people should be given updates about the progress of their case, and a realistic and firm timescale of when a decision will be made.*

*Recommendation 2: Cases should be retained within the same team, this should assist in reducing delays and in ability for the Home Office to respond to queries. Where cases are moved, people should be notified of the reasons for this, and be provided with updated contact details for their caseworking team.*

### The Home Office's responsiveness to queries and challenges

6. Home Office responses to queries continue to be generic and unhelpful for the most part, where provided at all, as can be seen in many of the examples provided above. In one case, where the Home Office was notified that a person was particularly vulnerable due to mental health issues, this was noted on the internal records as a case suitable for expedition, however the generic response was sent to the person's lawyers stating that a timescale could not be provided, and despite the internal note, expedition of the decision did not take place.

### The quality of asylum screening interviews, substantive asylum interviews and initial asylum decisions, including for asylum seekers who have protected characteristics

7. Rainbow Migration has noticed an increase in screening interviews taking place over the telephone. This causes problems as people struggle to answer

questions where both the interpreter and the Home Office interviewer are on the other side of the phone.

8. Rainbow Migration has also noticed Home Office interviewing officers making assumptions about a person's gender identity, instead of asking them, and this has resulted in gender identity being recorded incorrectly during the screening interview.
9. Home Office assessment of the credibility of LGBTQI+ people seeking asylum continues to be an issue, as identified in our 2018 report, [Still Falling Short](#). The report provides several case studies and recommended the following: *"Decision-makers, when assessing claimants' sexuality, should not rely on a pre-determined notion of sexual self-realisation that relies on claimants having experienced or being able to articulate a particular type of emotional development or identifiable milestones in the recognition of their identity. The API should be clarified to better enable case-specific decision-making and include the experiences of women."*
10. The problems identified in that report remain highly pertinent, and are a very common feature of both interviews and refusals. Recently a person contacted Rainbow Migration after their interview, stating: *"I've been asked unfair questions and even when they rephrased them it still remained unfair like "what does it mean to you to be gay?" they would never ask a straight person that question because it's ridiculous and frustrating it felt like she asked me why were you born gay? Like I had a choice!!!"*
11. A refusal letter seen recently stated: *"You were lacking in specificity and sufficient detail concerning your journey to your sexuality. Although you have given a narrative of the physical aspects of learning your sexuality, you have not provided an emotional journey of the realisation you were gay at the age of 10 years old. This has therefore shown ambiguity within your account."*

12. Another refusal letter stated: *"You were asked what it was about this man you liked, and you stated "it's difficult to explain as I had this inner feeling". You were asked what this inner feeling was and you stated "I feel love". It is not considered credible that a person – when coming to the internal realisation that he was bisexual – would simply state he had a feeling of love but was unable to expand on this, with otherwise no feelings of conflict or foreboding regarding the ability to express himself within that society. Furthermore, your account of your realisation of your claimed sexual orientation is considered extremely vague and lacking in any emotional depth. It is acknowledged that everyone's experience is different however it is considered reasonable to expect you to demonstrate in interview your own personal experience and knowledge of your own identity development, allowing for any underlying factors. It is considered that your answers in interview were vague in nature and do not constitute a credible account of your realisation of your sexual orientation as you failed to provide detailed or specific details or explore any specific feelings in relation to your sexuality."*

13. Women for Refugee Women and Rainbow Sisters have published a report '[See Us, Believe Us, Stand With Us: The experiences of lesbian and bisexual women seeking asylum in the UK](#)' on the experiences of lesbian and bisexual women seeking asylum peer researched by members of the Rainbow Sisters group. The report contains the following experience of a person's asylum interview:

*"My interviewer was insensitive and brought up a lot of memories that I had tried to bury. It also felt like he was trying to catch me out. He asked me in several ways why I couldn't move to another part of Nigeria, even though abuse against LGBTQ+ people happens across the country. If I went back, I would be forced to live a life in hiding and I would never be safe. I got through the interview but it took a huge toll on me. I am someone who struggles with post-traumatic stress disorder, anxiety and depression, and the intrusive questions*

*they asked me really messed with my head. There was no mental health support available to me which made it even harder.*

*The Home Office refused my asylum claim in 2018, saying that they didn't believe my sexuality. I went to court several times, even with my then girlfriend. I don't know what else they wanted from me".<sup>1</sup>*

14. The report also states that: *"16 [survey respondents] said they disclosed their sexual orientation in their initial application. Of those 16 women, 11 gave further details ... All 11 stated that they were refused asylum. In nine cases the Home Office did not believe the women were lesbian or bisexual.*

*In many cases, the only evidence an LB woman will have is her own testimony. ... several respondents were deemed not credible because their claim 'lacked' evidence, despite being from countries where homophobic persecution against women is widely reported. One respondent, 'Mary', shared: 'The Home Office told me the evidence [I presented] was insufficient and the fact that I'm not in a relationship didn't make me credible'.<sup>2</sup>*

15. The expectation of an "emotional journey" is a known issue with credibility determinations in cases based on sexual orientation and gender identity, to the extent that UNHCR has expressly recommended a move away from these practices<sup>3</sup>. There is no requirement or mention of an "emotional journey" within the Asylum Policy Instruction on sexual orientation<sup>4</sup> and so the origins of this are unclear, however this practice needs to end.

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<sup>1</sup> <https://www.refugeewomen.co.uk/see-us-believe-us-stand-with-us/> page 14

<sup>2</sup> <https://www.refugeewomen.co.uk/see-us-believe-us-stand-with-us/> page 15

<sup>3</sup> <https://www.unhcr.org/media/39410>, page 32

<sup>4</sup> <https://www.gov.uk/government/publications/sexual-identity-issues-in-the-asylum-claim>

*Recommendation 3: Screening interviews should take place in person where possible, and particularly where an interpreter is required.*

*Recommendation 4: Interviewing officers should be reminded to ask people all questions on the screening interview, and not to complete this based on their own assumptions.*

*Recommendation 5: Rainbow Migration continues to recommend that the API on sexual orientation is updated in line with the recommendations in Still Falling Short, and that decision makers are made aware that it is inappropriate to expect an “emotional journey” from LGBTQI+ people seeking asylum.*

## The impact of the Nationality and Borders Act 2022 on the efficiency and effectiveness of asylum decision making

16. Rainbow Migration is concerned that the various penalties for not claiming asylum without delay, as set out in the Nationality and Borders Act 2022 (“NABA”), are likely to disproportionately impact LGBTQI+ people, who often do not claim on arrival for a variety of reasons, including they are unaware that it is even possible to be recognised as a refugee on the basis of their sexual orientation or gender identity.

17. The Women for Refugee Women and Rainbow Sisters report summarises the issue as follows:

*“The Act allows LB women to be punished for ‘late’ claims, despite the severe challenges to disclosure ... Under these new changes, over 80% of the women who took part in this research could have been treated as second class - ‘Group 2’ - refugees, since they did not claim asylum right away.*

*“As a ‘Group 2’ refugee they would be granted temporary protection status, a form of limited leave, that will compel women to keep their identity hidden, given the very real risk that they could be removed to their country of origin and face further persecution. They will face the repeated trauma of having to re-enter the asylum system every two years, and they will not be granted stability by way of indefinite leave to remain, until they have had temporary leave and lived in limbo for a decade.*

*The Act will force LBT women to present evidence by a fixed date. However, having spent their lives concealing their identities, it could be years before LB women open up about their same-sex partners, attend events such as Pride or post on social media about their identity, all of which could be used as supporting evidence in an asylum claim. Yet the Act encourages decision-makers to treat any failure to provide evidence within the deadline as damaging to credibility, and to give ‘minimal weight’ to such evidence”.<sup>5</sup>*

18. The raising of the standard of proof at section 32 of NABA also creates a disproportionate risk to LGBTQI+ people who now have to meet a higher threshold for proving that they are LGBTQI+, which could lead to more of their cases being refused and their being returned to danger, potentially in breach of Articles 2, 3 and 8 ECHR.
19. Our specific concern regarding the above as it relates to this inspection is that, despite LGBTQI+ people having been identified in the Equality Impact Assessment (“EIA”)<sup>6</sup> for NABA as a group who are particularly at risk of indirect discrimination, and having stated that this risk would be mitigated by monitoring, no such measures have been put in place by the Home Office, despite repeated requests. The lack of data for claims from LGBTQI+ people is acknowledged in the EIA at 17c, so the Home Office has accepted that this is deficient.

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<sup>5</sup> <https://www.refugeewomen.co.uk/see-us-believe-us-stand-with-us/> page 20

<sup>6</sup> <https://www.gov.uk/government/publications/the-nationality-and-borders-bill-equality-impact-assessment>



20. The statistics on asylum claims based on sexual orientation are published on an annual basis only, meaning that the anticipated disproportionate impact from the raised standard of proof, for example will be difficult to ascertain for years, if at all. It is unclear whether there is any intention to disaggregate claims in future data releases, to those made pre and post-28 June 2022, so that those claims decided under NABA can be easily identified. Statistics from the rest of the asylum system are published quarterly, and it will therefore be possible to identify trends relating to the Nationality and Borders Act 2022 much faster than for claims based on sexual orientation.
21. There is also no gender breakdown of claims made based on sexual orientation, and no reporting on gender identity or intersex claims at all. The lack of data on LGBTQI+ people has been identified as a problem by the ICIBI previously in relation to asylum accommodation.<sup>7</sup> We submit that the lack of data significantly increases the risk of indirect discrimination against LGBTQI+ people.
22. If the Home Office is to do what it says in the EIA for NABA, namely *“Beyond these and other measures, it will be important to monitor and evaluate implementation. With adequate mitigation, we anticipate that many potentially adverse impacts will be removed, and that any remaining would be justified and proportionate”*, then vast improvements need to be made to monitoring. The Home Office has consistently failed to engage in substance on this point with NGOs and MPs<sup>8</sup>.
23. Rainbow Migration does wish to commend the Home Office on their consultation regarding the “Assessing credibility and refugee status” guidance for implementation of NABA. We were given four weeks to review and provide

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/757285/ICIBI\\_An\\_inspection\\_of\\_the\\_HO\\_management\\_of\\_asylum\\_accommodation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757285/ICIBI_An_inspection_of_the_HO_management_of_asylum_accommodation.pdf)

<sup>8</sup> <https://questions-statements.parliament.uk/written-questions/detail/2022-11-08/82490>

feedback into the draft guidance, and the majority of our suggestions were accepted and included in the published version. This is an example of best practice, and Rainbow Migration would encourage more of this collaborative approach.

*Recommendation 6: the government should provide an explanation of what changes are being made to the current monitoring and reporting of LGBTQI+ people in the asylum system, so as to monitor the effects of the NABA on LGBTQI+ people, in order to mitigate the acknowledged risk of indirect discrimination.*

### **For further information, contact:**

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