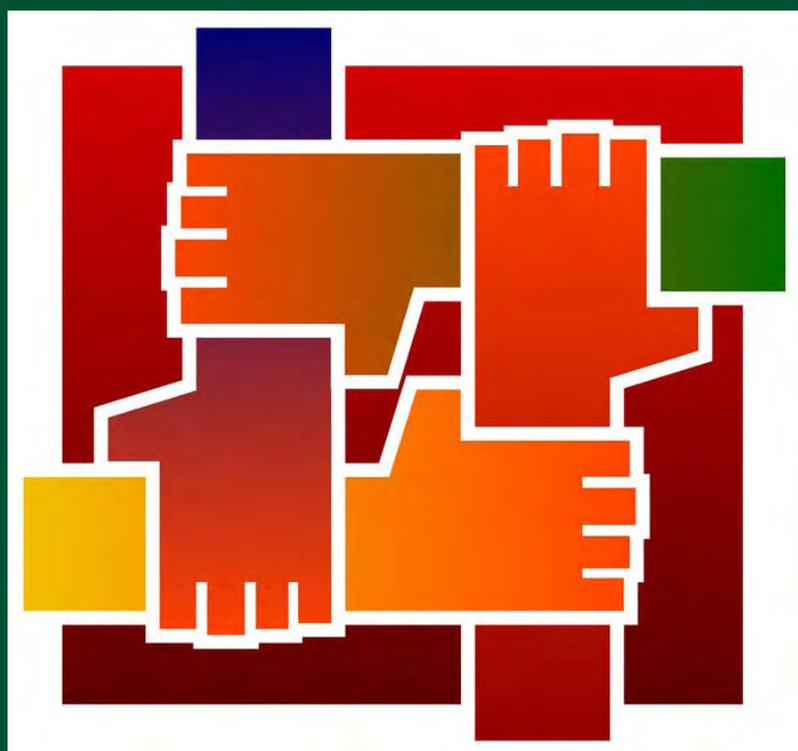


Sanctuary, Safety *and* Solidarity

**Lesbian, Gay, Bisexual, Transgender
Asylum Seekers and Refugees
in Scotland**



A report by
**Equality Network
BEMIS and
GRAMNet**

March 2011

Tim Cowen
Francesca Stella
Kirsty Magahy
Kendra Strauss
James Morton

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Everyone IN is a joint project between Equality Network and Black and Ethnic Minorities Infrastructure in Scotland (BEMIS).

A separate summary version of this report will be available later in 2011.



foreword

There has been major progress on LGBT equality in Scotland in recent years. But we know that the situation for LGBT people in some other parts of the world is appalling, and we should be ready to help those who face homophobic and transphobic persecution. This report shows we need to ensure much better treatment for those who ask for our help to escape that persecution. *Tim Hopkins, Equality Network*

Black and Ethnic Minorities Infrastructure in Scotland (BEMIS) have always strived to support innovative work across equality strands and to work with groups who have been marginalised. The Everyone IN project has been a successful partnership which we helped set up with Equality Network to achieve greater recognition of the complex needs of Scotland's ethnic minority LGBT population. In addition to effecting a cultural shift in understanding and addressing the needs of such disadvantaged community group, this joint research has greatly improved our understanding of the unmet needs of Scotland's LGBT asylum seekers. No doubt, this research will stand as a tremendous resource for all people and stakeholders working towards achieving equality for this client group.

Rami Ousta, Chief Executive BEMIS

Twelve years ago, when I was providing legal representation for asylum seekers in London, I helped for many months a young lesbian from Kenya. Even after all these years her story has stayed with me – both the rape and torture she faced in Kenya and the discrimination and stigma she encountered in London. Scotland has many LGBT asylum seekers, but to date their stories have not been told. *Tim Cowen, Everyone IN*

A key inspiration in establishing GRAMNet was the enormous potential for academics, activists, service providers and policy makers to work together around issues of asylum and migration in order to make a positive difference to how some of the most vulnerable people are treated in our societies. This report, and the work which went into bringing it about, represents an excellent example of this potential in practice. *Rebecca Kay, Co-Convener, Glasgow Refugee Asylum Migrant Network (GRAMNet)*

LGBT people across the globe are being imprisoned, tortured, raped and killed, but their stories are rarely told. LGBT asylum seekers need you speak out and make it easier for people from ethnic minorities to beat the taboo that is LGBT. I am really worried how cuts in legal aid will make it more difficult for us to get justice and so it's more important than ever that we all do what we can to help.

Maxwell T., Everyone IN Community Champion

acknowledgements

We'd like to thank Tim Hopkins and Sam Rankin from the Equality Network and Rami Ousta and Tanveer Parnez from BEMIS for their comments, guidance and support throughout the whole process of writing this report. We are also grateful for the helpful comments made by James Morton of Scottish Transgender Alliance and his contribution towards a section of our report on transgender asylum seekers.

We'd also like to thank Alison Phipps, Rebecca Kay, Francesca Stella, Kendra Strauss, Liam Coutts and Lauren Currie from GRAMNet for their input, enthusiasm and, ideas; and for collaborating so successfully on our community consultation event.

Particular thanks go to Kirsty Magahy for her help in us reviewing both the law and policy documents and for being a sounding board for ideas; Francesca Stella from GRAMNet for getting the report started by writing up her analysis of international research and Kendra Strauss from GRAMNet for stepping in late in the day to write a chapter on creating safe spaces. A huge thank you also goes to Maxwell T. who has volunteered with us as a community champion. His advice and comments added greatly to our understanding of the issues faced by LGBT asylum seekers and helped us prioritise areas for our research.

We wish to acknowledge the many organisations and individuals who contributed through taking part in stakeholder interviews, attending training or workshops, as well as those people who braved the snow and ice to make it to our community consultation event.

We are also grateful to our funder, the Equality and Human Rights Commission (EHRC) for their ongoing support which made this work possible.

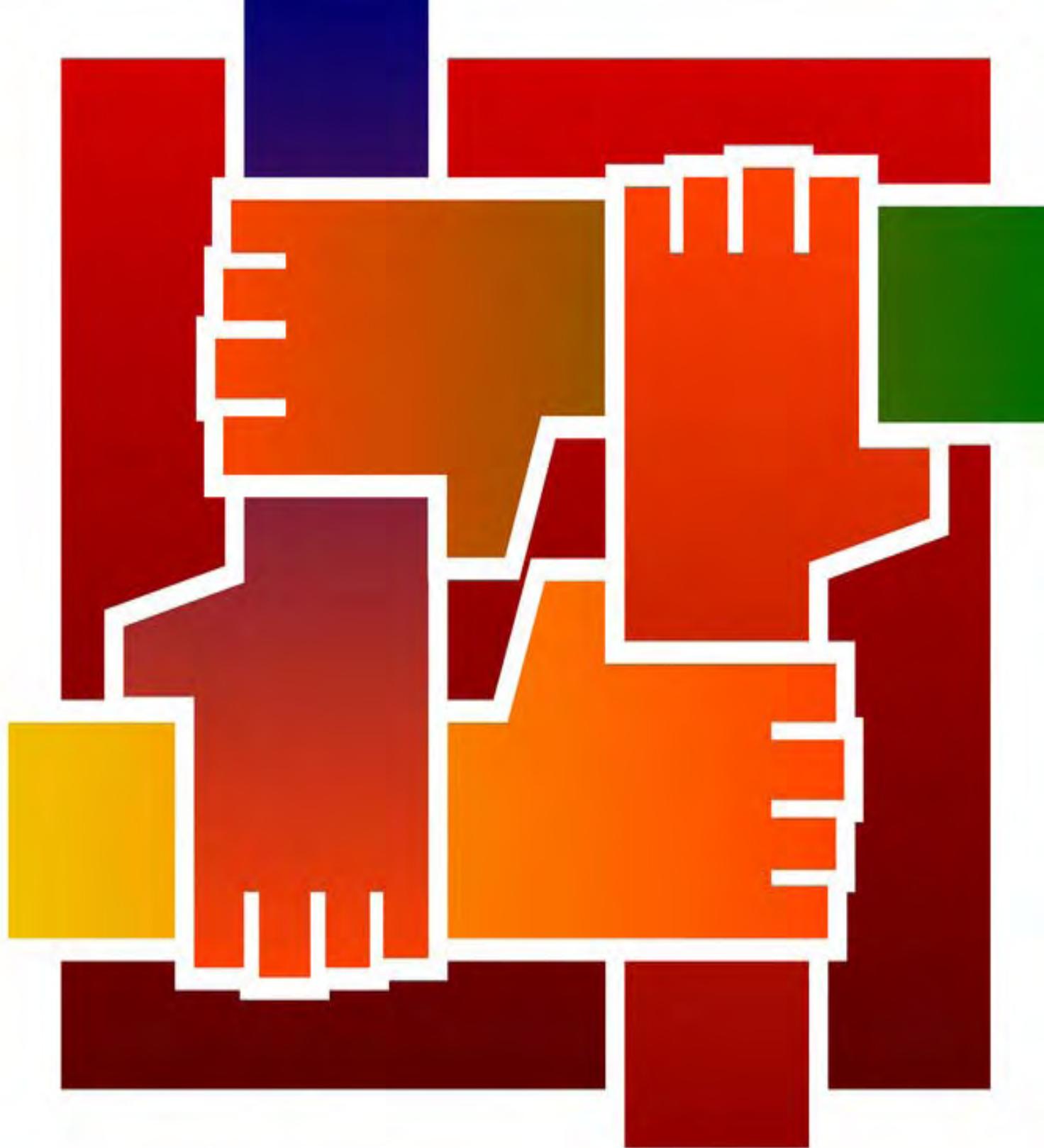
Photographs at the start of Chapters 1,2, 7 and 8 are credited to photoecosse.net

Tim Cowen, Everyone IN, March 2011

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Executive Summary

This report has documented the significant barriers LGBT asylum seekers fleeing persecution face in seeking sanctuary in Scotland ... we conclude that the current asylum system remains deeply flawed.



EXECUTIVE SUMMARY

Methodology

Our research was carried out between June 2010 and March 2011. It consisted of three main elements:

- a review of both international and UK literature
- stakeholder interviews with 17 organisations, 11 in Scotland and 6 in London
- a community consultation event attended by 25 people

In addition to the more formal interviews, conversations were had with a range of individuals from organisations both in Scotland and other parts of the UK, including at events attended or facilitated to promote awareness of our work. Everyone IN has started to receive a number of calls for help or advice from organisations who have clients who are LGBT asylum seekers. Although not part of our formal work programme, staff and volunteers have already provided informal support in these cases, and their experiences have also helped to inform the content of this report.

LGBT Asylum in Scotland

There are many myths about asylum and often public misconceptions about the real life situation for asylum seekers in the UK. This is in part fuelled by media reporting of asylum issues which can often present a one-dimensional focus on the numbers of asylum seekers ‘flooding’ into the UK. Similarly media stories around sexual orientation and gender identity can be subject to sensationalism or stereotyping. When LGBT and asylum issues are combined the potential for misrepresentation or misunderstanding grows.

State-sponsored homophobia and transphobia remain prevalent in many parts of the globe. At least 80 countries around the world criminalise sexual contact between consenting adults of the same sex, and in some of them, for example Iran, Mauritania, Saudi Arabia, Sudan and Yemen, as well as parts of Nigeria and Somalia – homosexual conduct is punishable with the death penalty.

There is a lack of data available in Scotland about the number of LGBT asylum seekers and refugees, the issues and experiences they face and how their experiences are similar or different to LGBT asylum seekers or refugees in other parts of the UK. Two-thirds of organisations we met with in Scotland could not recall any instances of knowingly helping LGBT asylum cases. Three main reasons were given to explain an absence of recognising such clients: a lack of monitoring, a lack of openness from clients, and the organisation not needing to find out the reasons behind a person's claim for asylum.

There was also no clear pattern when we asked what countries LGBT asylum seekers had come from. It was clear from all interviewees that clients were presenting as individuals; they were not obviously linked to a group of LGBT refugees. In other words, even those organisations that had knowingly seen more than a handful of cases, saw these clients separately, at different periods in time, and each case was isolated from those which came before it.

LGBT Asylum Law and Policy

Chapter 3 of our report describes the legal framework for LGBT asylum seekers and refugees. It explains the

- legal definition of a refugee
- concept of 'social group'
- implications of a recent ruling from the Supreme Court
- tests that a person fleeing persecution on the grounds of sexual orientation or gender identity must satisfy in order to qualify as refugee
- potential significance of the Equality Act 2010

Despite the issuing by the UK Border Agency (UKBA) of new Asylum Policy Instructions and a positive Supreme Court ruling, a person fleeing persecution because of their sexual orientation or gender identity still faces many obstacles before they can qualify for protection.





Sanctuary

In Chapter 4 we examine both UK and international literature that examines LGBT asylum seekers' experiences of seeking sanctuary.

We look in detail at:

- how sexual orientation and gender identity are recognised as valid eligibility criteria for claiming asylum
- the need to prove the claimants' sexual orientation or gender identity and the difficulties people have in satisfying adjudicators of the fact that they are gay, lesbian, bisexual or transgender
- the need to prove that the claimant's fear of being persecuted in their country of origin because of their sexual orientation or gender identity is well-founded

Our review of international literature shows many similarities between the UK and other jurisdictions for LGBT asylum seekers. There were, for example, shared concerns about the quality and availability of country of origin information and the reliance on 'safe internal relocation' as a justification for refusing cases. However, there is also evidence that the UK asylum process remains more restrictive in its approach to LGBT asylum cases than some other jurisdictions.

Despite recent progress made by the UKBA, a number of major concerns remain undiminished. These include:

- a lack of sensitivity to the difficulties that people fleeing persecution may face in being open about their sexual orientation or gender identity at the outset of their asylum claim; so as a result people's accounts of being lesbian, gay or bisexual are routinely dismissed as not credible
- that when making decisions on LGBT asylum cases there is a tendency to assess the evidence using stereotyped and highly simplistic western benchmarks as to what constitutes 'typical' LGBT behaviour which fail to acknowledge the true complex diversity of LGBT people

- insufficient attention being given to how interpreters may act as a barrier for LGBT asylum seekers in being open about their sexual orientation or gender identity.

Our research interviews mirrored the findings from our literature review and also raised serious concerns about the fairness of the asylum process (as documented in chapter 5).

Key amongst these concerns was the continuing use of detention and fast-track decision making, as well as major shortcomings in the country of origin evidence used by UKBA.

Our interviewees were heavily critical of the quality of decisions made by UKBA on LGBT asylum claims. The most vocal criticisms often related to UKBA's regular refusal to believe that someone was, as claimed, gay or lesbian.

From our interviews, we have also identified several key areas where further work in Scotland is urgently required. These include:

- examining the particular experiences of LGBT asylum seekers at Dungavel Detention Centre
- identifying and then advertising who in Scotland is able to provide expert immigration advice on sexual orientation and gender identity asylum claims
- increasing knowledge and understanding of LGBT asylum seekers' needs within both LGBT organisations and asylum support organisations

There is a real need to enable clearer routes into specialist advice for LGBT asylum seekers.

We conclude that without improved access to specialist advice, dramatic changes to the quality of decision making on cases, and a reduction in the use of both fast-track and detention, many LGBT asylum seekers in Scotland will continue to be unable to find a place of sanctuary.





Exploring Identities

Previous research studies into issues faced by LGB or LGBT asylum seekers have focused mainly on problems within the asylum process. They have not fully explored whether the experiences of gay men, lesbians, bisexual people and transgender people are in any way different. Chapter 6 of our report examines both the differences and similarities in the experiences of asylum seekers who are lesbian, gay, bisexual or transgender. We show that there is a complex intersection between issues relating to gender, gender identity and sexual orientation.

Many problems for LGBT asylum seekers stem from how societies construct what is normal or accepted behaviour, particularly as it relates to gender. LGBT asylum seekers may be persecuted because of their 'difference' or failure to conform to expected norms, as well as for their actual or perceived sexual orientation or gender identity.

We were surprised by a relative lack of literature that considered the specific experiences of gay men who had claimed asylum. There was however evidence which has highlighted their vulnerability to sexual violence, both in their country of origin and here in the UK. We also remain very concerned about the abuse and violence that gay men asylum seekers are exposed to within detention centres.

There was a range of evidence which suggested that lesbian asylum seekers find it extremely difficult to succeed in their asylum claims. As well as shortcomings in the use of country evidence and criticisms of the use of 'safe internal relocation', our research suggests that UKBA is failing to fully understand the pressures that women come under to conform to their expected gender role and often unfairly refuse to accept women's accounts of being a lesbian as credible.

There is less evidence available about the experiences of bisexual asylum seekers. However, our international literature review has highlighted how ignorant and prejudiced views about bisexuality can adversely affect a case's chance of succeeding. UKBA's Asylum Policy Instructions fail to offer sufficient guidance on dealing with bisexual claims and this is an area where we would like to see more work done.



There is an extreme lack of evidence available about the particular experiences of transgender asylum seekers. The complex terminology, legal arguments and practical support issues which can be involved in transgender asylum claims create particular difficulties which need to be better understood. Strong concerns were raised during our research about transgender asylum seekers being particularly vulnerable to physical, sexual and emotional abuse within asylum detention centres and community-based single sex shared accommodation. Our research identified difficulties relating to changing name and gender on personal documents. They are likely to be at high risk of self harm or suicide, yet accessing healthcare, especially gender reassignment healthcare, is likely to be particularly difficult for transgender asylum seekers. There is an urgent need for research work to evidence the specific support needs and asylum process experiences of transgender asylum seekers.

Finally within this chapter we highlight a real gap in knowledge about the particular experiences of young LGBT people who are asylum seekers or refugees. This group of asylum seekers face particular vulnerability not just because of their age, but from potential ongoing family pressures to keep their gender identity or sexual orientation hidden. This is also an area where further work is urgently needed.

Safety and Solidarity

Chapter 7 of our report considers evidence from our interviews and community consultations about the difficulties LGBT asylum seekers in Scotland face in finding places of safety and solidarity. We found that there was a consensus that LGBT asylum seekers and refugees are likely to have complex needs, but also that these needs are currently largely going unmet.

There are many barriers for LGBT asylum seekers and refugees in accessing services. Not least of these is the language barrier, which is made more complicated for people who are often fearful of others from their own community finding out about their sexual orientation or gender identity. Our research identified a real need for more training, ranging from transgender awareness, to confidence and skills training as well as legal training for immigration lawyers and training for UKBA judges and tribunal adjudicators.



We found that a lack of support from within people's own communities exacerbated LGBT asylum seekers' social isolation and adversely impacted on their mental well-being. As well as concerns about the lack of work being done to promote the mental well-being of LGBT asylum seekers and refugees, we have highlighted real problems around housing, poverty, destitution and the risk of sexual exploitation.

Despite these problems, there remains a relative lack of campaigning or awareness raising activity within Scotland. There is an urgent need to forge links between LGBT activists, refugee organisations and lawyers working on asylum cases. During the course of this research, we have been encouraged at how such links are beginning to be made.

Creating Safe Spaces through Research

Chapter 8 of our report is based around discussions held at our community consultation event and the recognition that there remain gaps in knowledge about LGBT asylum seekers/refugees. It sets out some of the ethical and practical considerations that should inform future research work directly undertaken with individual LGBT asylum seekers/refugees. It also offers guidance as to what is actually meant by safe space and explains how this could be best achieved through adopting a highly participatory and collaborative approach.

Participants in the discussions about conducting research with LGBT asylum seekers and refugees identified some clear priorities: the establishment of a set of ethical principles to ground the research including a core collaborative, participatory ethos; the use of an intersectional approach to understand how different aspects of identities interact; and the prioritisation of safe spaces both as part of the research design, and a desired outcome.

During the next phase of Everyone IN's work we will be acting on these findings and seeking to bring together a range of partners with whom we can collaborate both to fill in gaps in knowledge and to help in facilitating the creation of safe spaces.

Priorities and Recommendations

It is clear from our research that much work needs to be done to improve the lives of LGBT asylum seekers and refugees in Scotland. LGBT asylum has until very recently been absent from discussions about how Scotland is meeting the needs of its asylum and refugee population. There remain huge gaps in knowledge and understanding and many challenges to overcome to reach out to a vulnerable group within a vulnerable group. These challenges are undoubtedly exacerbated by the current economic climate and the pressures that services across Scotland will be facing over the year(s) ahead.

Within chapter 9 we summarise the key findings from our research, dividing these into three categories:

- **Sanctuary:** changes needed within the process of claiming asylum
- **Safety:** changes needed in the way LGBT asylum seekers are supported and made to feel safe
- **Solidarity:** changes needed to raise awareness of the issues faced by LGBT asylum seekers and to improve the way people work together to bring about lasting improvements

Rather than making individual policy recommendations we set out three guiding principles which we believe should act as the basis for future work on LGBT asylum in Scotland. These principles and the values captured within them should underpin a new approach to the way LGBT asylum seekers are offered sanctuary, safety and solidarity.





Sanctuary

We wish to see a radically different asylum process for LGBT asylum seekers, one which

- **is fair, informed and without prejudice**
- **places respect for human rights at the cornerstone of all its decision making**
- **allows sufficient time for LGBT asylum seekers to safely tell their stories**
- **ensures sufficient access to specialist legal advice and representation throughout**
- **celebrates the importance of offering protection to those fleeing persecution**
- **does not routinely rely on the use of detention and fast-track decision making**

Safety

We wish to see a reduction in the social isolation and mental health suffering experienced by LGBT asylum seekers/refugees, including by

- **restoring the right to work for asylum seekers**
- **having an asylum support system in which no one is left in poverty and all have a sufficient income to lead a dignified life**
- **ensuring access to suitable housing throughout the whole asylum process**
- **encouraging the provision of safe spaces for LGBT asylum seekers to access support within community settings**
- **enabling services to be sensitive to the individual needs of lesbian, gay bisexual and transgender asylum seekers/refugees, including children and young adults**

- 
- **giving a voice to LGBT asylum seekers/refugees to have their stories heard and to influence service development**

Solidarity

We wish to forge new and innovative partnerships in order to bring about lasting change for people fleeing persecution because of their sexual orientation or gender identity, including by:

- **enhancing links between LGBT organisations, refugee community groups, immigration lawyers, academics and activists**
- **facilitating the development of a network of organisations in Scotland which by pooling resources and knowledge will act as a co-ordinating hub, source of expert help and a catalyst for change**
- **celebrating diversity and creating unity through the use of arts and cultural activity**
- **developing a range of information and educational tools that improve awareness of the human rights abuses suffered by LGBT people across the globe**
- **creating pathways for joint work between Scottish LGBT and human rights organisations and international NGOs working in countries where LGBT people face persecution**



Conclusion

For LGBT asylum seekers in Scotland there continue to be great challenges in just surviving. We are determined to find ways to change this and to allow people who are currently suffering greatly, to flourish rather than just survive.

This can only be achieved by having an asylum system which operates fundamentally differently from how it currently does. Most importantly, we need a system that actively celebrates providing sanctuary to those fleeing persecution and has a support system in place built around concepts of fairness, dignity and respect. This can only be achieved by bringing more people together to support LGBT asylum seekers/refugees and to create links between organisations, lawyers, academics and activists already working in the fields of equality and human rights.

Equally important is the need for LGBT and human rights organisations within Scotland and the UK to be outward thinking, and to focus more on how they can act in solidarity with struggles to bring about justice and change in the countries from which LGBT asylum seekers have fled.

By all of us doing this together, we will also enable the individual stories of LGBT asylum seekers in Scotland to be told and understood; and only then may LGBT asylum seekers in Scotland feel that they have found a place of **sanctuary, safety** and **solidarity**.



chapter 1

Introduction

Scotland, and in particular Glasgow, hosts one of the largest asylum and refugee populations outside of London but the voices of Lesbian, Gay, Bisexual or Transgender (LGBT) asylum seekers and refugees have until now rarely been heard.



1. INTRODUCTION

1.1 Research Aims

In January 2011, a prominent gay rights activist David Kato was murdered in Uganda, less than three months after his photograph appeared in a Ugandan newspaper with the heading 'hang them'. That same weekend, in the UK a lesbian asylum seeker from Uganda was hours away from being deported, before a public campaign helped halt her deportation.¹

Both these stories received considerable press attention, though for most people fleeing persecution because of their sexual orientation or gender identity their stories remain untold. Lives remain characterised by fear, hiding and isolation, not only in countries such as Uganda, Nigeria, Iran, Iraq, Pakistan, Jamaica and Congo but here in the UK.

Scotland, and in particular, Glasgow hosts one of the largest asylum and refugee populations outside of London but the voices of Lesbian, Gay, Bisexual or Transgender (LGBT) asylum seekers and refugees have until now rarely been heard. There has been an absence of open discussion or research, and a lack of awareness of the issues encountered by Scotland's LGBT asylum seekers and refugees.

This report aims to fill in some of the knowledge gaps. It provides a platform to enable both services and policy makers to reflect on what is missing and what needs to be done to reduce the fear and isolation experienced by LGBT asylum seekers in Scotland.

Our research set out to:

- Explore the current legal and policy framework for LGBT asylum seekers and refugees
- Review both UK and international literature to identify common issues and trends
- Identify the level and type of needs of LGBT asylum seekers and refugees in Scotland

¹ see for example <http://www.bbc.co.uk/news/world-africa-12295718> and <http://www.bbc.co.uk/news/uk-12311319>, last accessed on 11.03.11

- Find out how well services in Scotland are responding to these needs
- Identify key priority areas of concern and make recommendations as to how to address these
- Develop an ethical research protocol which could be used in future research work with individual LGBT asylum seekers and refugees

1.2 Methodology

Our research builds on our previous research report published in 2009 which looked at issues faced by Minority Ethnic people who are LGBT. That report highlighted LGBT asylum as a priority area for more research.

This research was carried out between June 2010 and February 2011. It consisted of three main elements:

- Literature Review
- Stakeholder Interviews
- Community Consultation Event

The principal researcher was Tim Cowen from Everyone IN. He was supported during the research by a volunteer, Kirsty Magahy, who had previously worked with LGBT asylum seekers and refugees for the UK Lesbian and Gay Immigration Group in London. In June 2010, Glasgow Refugee Asylum Migrant Network (GRAMnet)² were contracted to assist with the literature review and community consultation event. Throughout the research we also regularly consulted with Maxwell T, an LGBT refugee from Congo who was volunteering as one of Everyone IN's community champions.

Literature Review

A review of both international and UK literature was carried out. This included academic and voluntary sector research, key policy documents and guidance from the UK Border Agency (UKBA) and

² see <http://www.gla.ac.uk/departments/gramnet/> for more details about GRAMNet





a review of recent legal developments. This report focuses primarily on literature from the UK, but in order to identify common issues and examples of best practice, we also explore the experience, policies and legal practices of other countries that recognise sexual orientation and gender identity as grounds for asylum.

The review of international research focussed in particular on the experiences of Australia, Canada, New Zealand and the US. In part, this reflects the fact that most of the literature available in English focuses on these countries, and that literature on English-speaking countries was much easier for the authors to access and analyse. Limited resources and language skills meant that policy reports and literature on the experience of other countries, such as Belgium and the Netherlands, could not be covered to the same extent.

However, as Millbank points out, Australia, Canada, New Zealand and the US also share with the UK ‘similar common law and human rights traditions’, as well as utilising ‘informal inquisitorial tribunal decision-making bodies at an early level in the refugee determination process’ (Millbank 2009a:3). The similar features of these countries’ legal systems and human rights traditions makes them more suitable for a comparison with UK legislation, policy and practice on refugee claims based on sexual orientation and gender identity.

Stakeholder Interviews

Between September and November 2010 interviews were carried out with 17 organisations, 11 in Scotland and 6 in London. The organisations working in Scotland were chosen either because they worked with or on behalf of asylum seekers or LGBT people. Those we met in London were chosen because they had direct experience and expertise relating to LGBT asylum issues.

In addition to the more formal interviews, conversations were had with a range of individuals from organisations both in Scotland and other parts of the UK, including at events attended or facilitated to promote awareness of our work. For example, workshops were held in June 2010 at a two day ‘Double Jeopardy’ conference on LGBTI asylum at Greenwich University; participatory workshops were delivered at Equality Network’s and Scottish Refugee Council’s annual

conferences (October 2010) and two half day training courses were piloted in Glasgow (November 2010).

Following on from our awareness raising activities, Everyone IN has started to receive a number of calls for help or advice from organisations who have clients who are LGBT asylum seekers. Although not part of our formal work programme, staff and volunteers have already provided informal support in these cases, and their experiences have helped to inform the content of this report.

A full list of organisations we have met with is included at Appendix 1.

Community Consultation Event

Held on 9th December 2010 at Glasgow University, this event was attended by 25 people from 14 different organisations³. The morning session consisted of a presentation of the initial research findings, followed by small group discussions on the best way to support LGBT asylum seekers in Scotland. These discussions were enlivened by the use of KETSO, a community consultation tool designed to encourage full and active participation.

The afternoon session consisted of a presentation on participatory, ethical and restorative research methods and small group discussions on how best we could safely undertake direct research work with LGBT asylum seekers in any future work.

The programme for the community consultation event is included at Appendix 2.

1.3 Report Structure

Chapter 1 Introduction contains a summary of our research aims and methodology as well as a guide to some of the language and terminology used within this report.

The report continues by setting the context for our research findings. *Chapter 2 LGBT Asylum in Scotland* sets our work in an international context, seeks to demystify some of the common misconceptions

³ 41 people had booked, but due to travel disruption caused by snow and ice, not everyone was able to attend





about asylum seekers and refugees before looking to see what data is available on the numbers of LGBT asylum seekers in Scotland.

Chapter 3, LGBT Asylum Law and Policy provides us with a basic guide to the legal framework, offering an explanation of key legal terms, explaining the significance of a recent Supreme Court judgment on LGBT asylum and commenting on what influence the new Equality Act 2010 may have in this area of law.

The next two chapters focus on the process of claiming asylum. *Chapter 4, Sanctuary: Findings from our Literature Review* explores both international and UK literature that relates directly to the asylum process for people fleeing persecution on the basis of gender identity or sexual orientation. It considers how shortcomings within the asylum process are making it more difficult for LGBT asylum seekers to be granted protection. *Chapter 5, Sanctuary: Findings from our Interviews* is based on findings from our research interviews rather than literature. This chapter provides analysis based on what is happening on the ground and also concludes that the asylum process is deeply flawed.

Previous research reports published in the UK have not explored in full the different experiences of asylum seekers who are Lesbian, Gay, Bisexual or Transgender. In *Chapter 6 Exploring Identities* we seek to correct this imbalance. We examine evidence from both our literature review and research interviews on issues that may be of concern to asylum seekers who are Lesbian, Gay, Bisexual and Transgender; as well as a fifth category that other research has neglected: young LGBT asylum seekers.

Chapter 7 Safety and Solidarity focuses directly on the situation in Scotland, exposing problems relating to poverty, social isolation, mental ill-health and the risk of sexual exploitation. It highlights the vulnerability and isolation of LGBT asylum seekers in Scotland and the need for greater awareness raising and campaigning.

Chapter 8 Creating Safe Spaces through Research builds on the previous chapter and is based around discussions held at our community consultation event and the recognition that there remain gaps in knowledge about LGBT asylum seekers/refugees. This chapter

sets out some of the ethical and practical considerations that should inform future research work directly undertaken with individual LGBT asylum seekers/refugees. It also offers guidance as to what is actually meant by safe space and explains how this could be best achieved through adopting a highly participatory and collaborative approach.

Chapter 9 Priorities and Recommendations highlights key areas where action is needed to bring about improvements in the lives of Scotland's LGBT asylum seekers and refugees. These are categorised according to:

Sanctuary: changes needed within the process of claiming asylum

Safety: changes needed in the way LGBT asylum seekers are supported and made to feel safe

Solidarity: changes needed to raise awareness of the issues faced by LGBT asylum seekers and to improve the way people work together to bring about lasting change.

We also set out the guiding principles which we believe should underpin future work in these areas.

Our final chapter, *Chapter 10 Conclusion* provides a short summary of the key lessons learnt from our research.

The report is completed by the inclusion of a Bibliography and Glossary as well as Appendices which provide more information on our stakeholder interviews, community consultation event and a list of useful websites.

1.4 Language and Identity

We all identify ourselves and are identified by others in a myriad of different ways. While many of the descriptors used correspond to the equality strands recognised in anti-discrimination law and policy; that is race, sex/gender, gender identity, sexual orientation, disability, age and religion and belief, there are a wide range of other markers such as relationship status, cultural identities and appearance and body image. Other factors, such as socio-economic background, place of birth and of residence and educational history, can act both as a basis for social identity and an influence on how we develop and articulate





our self-identity more generally.

Given this complexity it is not surprising that there have been long standing and vigorous debates around the validity of these descriptors, the nature and processes of identity formation and what language is most appropriate to use. These are not simply debates of terminology and taxonomy but go to the heart of how people want to be perceived and treated in the social sphere, and are integral to our sense of self and right to self expression.

Within equality discourse there has been considerable and increasing questioning whether the ‘silo approach’ to equality, where social identities based upon such factors as race and gender are treated as distinctive and coherent ‘categories’ or ‘labels’, is able to capture the fluidity, complexity and contingency of any individual’s sense of self. There are also debates around LGBT terminology. In Scotland, as in a number of other European countries, there has been a formal linkage between work addressing sexual orientation equality and rights for lesbian, gay and bisexual people with that addressing gender identity equality and rights for transgender people. The resulting LGBT acronym is therefore the term most commonly used nationally to reflect the particular remits of the major organisations and their history of joint sexual orientation and gender identity equality and rights activism. However, in other parts of the UK and Europe there has been a different history with less coordination between work on these two equality areas and separate organisations working on either sexual orientation on the one hand or gender identity on the other.

Similarly, in European and UK equality law there is an absolute distinction made between discrimination based upon sexual orientation and that based upon gender identity (including gender reassignment). In this report we will therefore usually refer to LGBT to reflect the Scottish policy and organisational context, but distinctively use the terms LGB and sexual orientation or the terms transgender and gender identity (including gender reassignment) where that was the terminology originally used. This is particularly relevant when discussing a number of recent English research reports which examined the experiences of lesbian, gay (and some instances) bisexual asylum seekers, but did not make reference to transgender people.

For the purposes of this report we use the term ‘gender identity’, as it is used within the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity⁴. That is we use the term gender identity to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. It includes the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

We use the term ‘transgender’, as it is commonly used in Scottish equality discourse, to be an umbrella term inclusive of a wide range of people who find their gender identity does not fully correspond with the sex they were assigned at birth. Therefore the term transgender can include people who occasionally cross-dress or are perceived as having mannerisms which do not correspond to other people’s expectations for their birth sex, as well as people who seek to undergo any part of a process of gender reassignment in order to live permanently in a different gender, and also people who may have particularly complex non-binary gender identities.

For the purposes of this report, the reader need not be very well versed in the details of transgender discourse. In terms of equality legislation in Scotland and Europe, gender identity (including gender reassignment) is a separate equality strand from sexual orientation. Gender identity is about how we view our own sex/gender and does not predict anything about the sex/gender of those to whom we may or may not be attracted.

However, it remains common in many countries for social expectations about gender role conformity to include expectations about sexual attraction and sexual behaviour and therefore, although gender identity is a separate equality strand from sexual orientation, the two often end up being intertwined in a complex manner. There remain many countries around the world where some identity terminology cannot be easily separated into either sexual orientation or gender

⁴ see <http://www.yogyakartaprinciples.org>



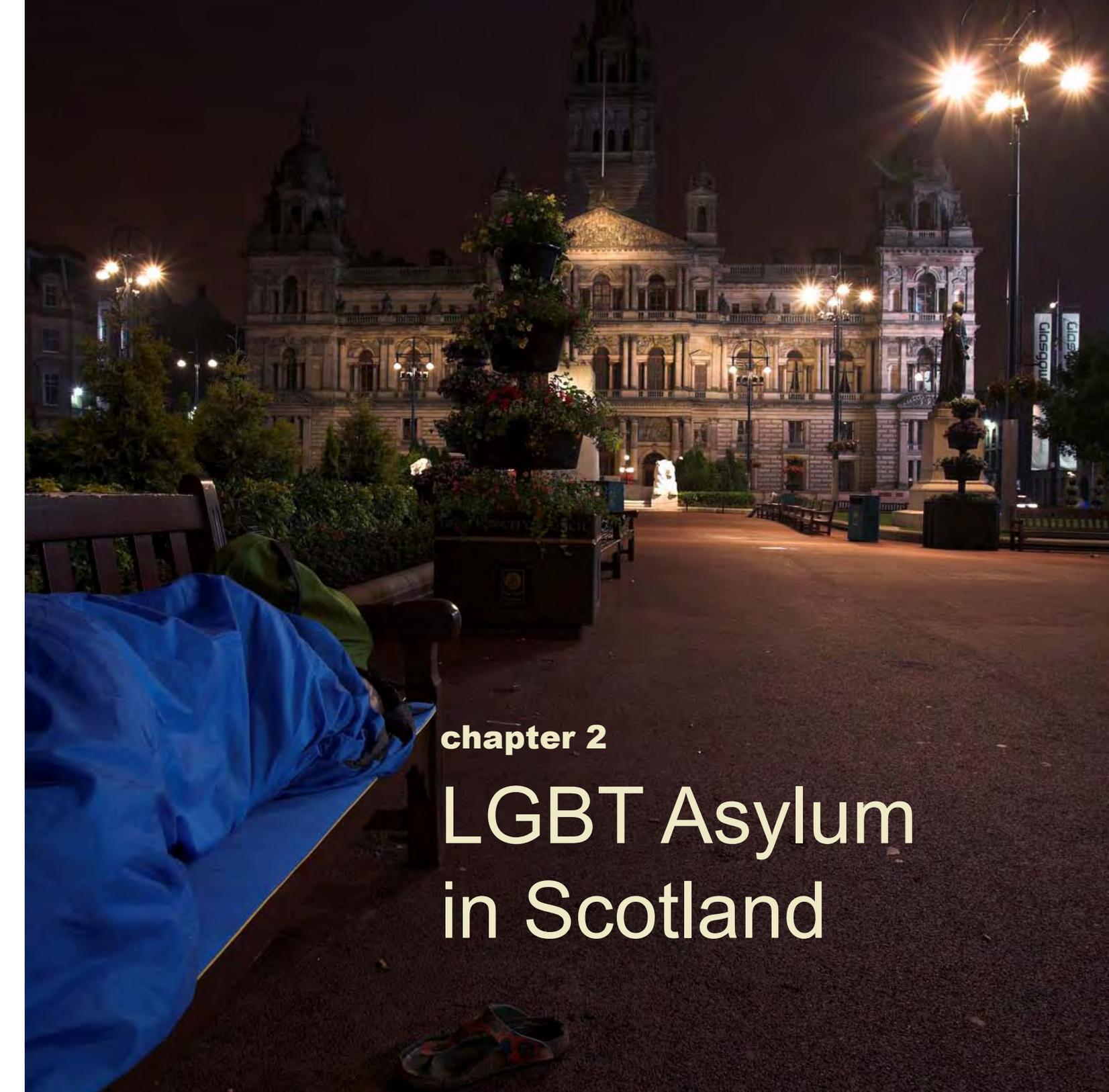


identity related terms but instead relates simultaneously to both concepts. There is also variation around the world in terms of the extent to which intersex people, who are born with aspects of their physical bodies that are not clearly male or female, are considered in gender identity equality and rights work. Some organisations use the term LGBTI rather than just LGBT to highlight that they specifically include intersex people.

The reader needs to be aware that there remains ongoing debate about the extent to which the language of lesbian, gay, bisexual and transgender (LGBT) as currently used in UK equality discourse can be appropriately applied to minority ethnic communities. There are concerns that using this LGBT conceptual framework as the dominant discourse risks imposing a western cultural framework to the detriment of other cultural frameworks for understanding diverse sexual behaviours and gender expressions. Due to terminology and underlying concepts of identity and expected behaviour around gender and sexuality being highly culturally dependent, there are concerns that the diversity of experiences within different communities may not be able to be successfully translated into the simplified identity categories of lesbian, gay, bisexual and transgender.

It is beyond the scope of this report to explore these debates in great detail, but we shall where appropriate flag up some of the practical difficulties that may arise for asylum seekers when complex issues of sexual orientation and gender identity language and identity concepts compete within the confines of what we shall show to be a deeply flawed asylum system.

Readers wishing to find out more on issues around identity and language are referred in particular to the discussions within *Chapter 6 Exploring Identities* and to the extensive list of references contained within our Bibliography. Our Glossary of terms contained within the appendices should be of assistance to people unfamiliar with either commonly used LGBT or asylum related terminology.



chapter 2

LGBT Asylum in Scotland

There is a clear lack of data available in Scotland about the number of LGBT asylum seekers and refugees; the issues and experiences they face and how their experiences are similar or different to LGBT asylum seekers or refugees in other parts of the UK.



2. LGBT Asylum in Scotland

‘LGBT communities face discriminatory treatment and persecution on the basis of their sexual orientation or gender identity around the world. They are subject to violence – including rape, torture and murder – both by private citizens and agents of the government. Their marginalisation is often characterised by barriers to health care, housing, education and employment.’ (ORAM 2009: 5)

2.1 Introduction

There are many myths about asylum and often public misconceptions about the real life situations for asylum seekers in the UK. This is in part fuelled by media reporting of asylum issues which can often present a one-dimensional focus on the numbers of asylum seekers ‘flooding’ into the UK. Similarly media stories around sexual orientation and gender identity can be subject to sensationalism or stereotyping. When LGBT and asylum issues are combined the potential for misrepresentation or misunderstanding grows.¹

This was demonstrated by some of the newspaper reports that occurred after the recent Supreme Court ruling which changed the way sexual orientation asylum cases in the UK are dealt with. By taking the comments made by one Supreme Court judge out of context, what ought to have been heralded as a victory for rights and fairness was greeted instead with dire warnings that gay asylum seekers were being given the right to stay in the UK so that they could ‘enjoy going to Kylie Minogue concerts and drinking exotically coloured cocktails’.²

¹ See for example a study by Stonewall in 2003 which found that there were four minority groups about whom respondents most frequently expressed prejudice : refugees and asylum seekers, people from minority ethnic backgrounds, gay or lesbian people and travellers and Roma (Stonewall, 2003), and the 2006 Scottish Social Attitudes Survey which found more negative social attitudes towards transgender people than towards other minority groups (Scottish Centre for Social Research, 2007)

² See for example <http://www.dailymail.co.uk/news/article-1292715/Gay-asylum-seekers-win-legal-battle-stay-Britain.html>

We shall return to the implications of the Supreme Court ruling in the next chapter. Before that, we start by placing our findings in an international context and looking at what statistical data there is about LGBT asylum in Scotland; what we know and what we can guess. Such an exploration will also enable future chapters to consider whether any unexpected patterns, trends or gaps have emerged from our research.

2.2 International Context

'K. was tortured, beaten and disfigured, and finally hung on the street. One of the tortures they used on him was a very strong glue to close his anus, after which he was given a laxative causing diarrhoea that killed him' (Human Rights Watch 2009: 20-21)

In October 2010 the United Nations High Commissioner for Refugees (UNHCR) organised a Roundtable on 'Asylum-Seekers and Refugees Seeking Protection on Account of Their Sexual Orientation and Gender Identity'. The roundtable was organised to identify and address protection gaps in the treatment of LGBTI asylum-seekers and refugees. Participants included 29 experts from sixteen countries drawn from governments, NGOs, academia, the judiciary and international organisations, as well as a number of UNHCR staff. The roundtable discussed operational protection challenges particular to lesbian, gay, bisexual, transgender and intersex asylum seekers and refugees as separate groups, and heard from several States and NGOs about good practice and current initiatives.

A survey held in advance of the roundtable 'concluded that at every stage of the displacement cycle these vulnerable groups face danger, difficulty and discrimination. UNHCR believes these risks are significant and should not be ignored...' and that 'people from these groups are more prone to sexual- and gender-related violence during detention, both in their home countries and countries of asylum. It also found that they face a heightened risk of discrimination in urban settings and refugee camps'.³

³ As quoted on LGBT asylum news <http://madikazemi.blogspot.com/2010/10/un-discussing-lgbt-refugees-today-more.html>





Two years earlier, on 18 December 2008, a Statement supporting the rights of LGBTI people across the globe, initiated by the French government and signed by 66 countries, was presented at the UN General Assembly. The Statement 'reaffirms that the principle of non-discrimination applies to all human beings regardless of sexual orientation or gender identity, condemns human rights violation of LGBTI people and urges all states to decriminalise consensual adult relations between persons of the same sex' (ILGA 2009:8).

On this occasion, the UN High Commissioner for Human Rights emphasised that sexual orientation and gender identity are fundamental human rights and should be protected the world over, even if international law and human rights covenants do not make specific mention of them:

'There are those who argue that because sexual orientation and gender identity are not explicitly mentioned in any of the conventions and covenants, there would be no protection. My response is that such a position is untenable in legal terms, which is confirmed by the evolving jurisprudence. The principle of universality admits no exception. Human rights truly are the birthright of all human beings.' (ILGA 2009: 4).

In spite of these positive developments, state-sponsored homophobia and transphobia remain prevalent in many parts of the globe. According to a recent report, 80 countries around the world criminalise sexual contact between consenting adults of the same sex, and in some of them – Iran, Mauritania, Saudi Arabia, Sudan and Yemen, as well as parts of Nigeria and Somalia – homosexual conduct is punishable with the death penalty (ILGA Europe 2009: 5). It is important to remember that homophobic laws criminalising same sex relations are also used to criminalise transgender people's sexual relations, even where the transgender person and their sexual partner do not self-define their relationship as same-sex.

In other countries, where same-sex relations or cross-dressing are not explicitly prohibited, general laws on morality are often used to persecute LGBT individuals. Even in the absence of such laws, restrictions on the freedom of expression and association of LGBT

people are sadly the norm in many countries. Social stigma and prejudice against LGBT individuals, often endorsed by institutionalised discriminatory practices, legitimise violence against and abuse of LGBT individuals.

LGBT people are often victims of hate crimes, with the tacit endorsement or the complicity of the state, as law enforcement agencies turn a blind eye to these crimes and offer no protection to those suffering from homophobic violence (Swink 2006:251-252). Fleeing to another country is a last resort; however, for many LGBT people who have been victims of violence, or who live in constant fear of persecution, seeking safety and protection through the asylum system may be the only choice they have.

The scale and severity of the continued human rights violations against LGBT people have in recent years attracted increasing attention from mainstream human rights organisations, such as Human Rights Watch and Amnesty International, as well as from international LGBT organisations such as ILGA Europe. Heightened awareness of the problem prompted some governments to extend asylum and refugee protection to individuals fleeing their home country because they fear persecution on the basis of their sexual orientation and gender identity. In the last 20 years, refugee status has been granted on this basis in countries such as the UK, the US, Canada, New Zealand, Australia, Finland, Belgium and the Netherlands (LaViolette 2009a:438).

The extension of asylum protection to LGBT individuals should be framed within the broader advance of LGBT rights in receiving countries. Indeed, since the 1990s, the rights of LGBT citizens have gained prominence in the political agenda of many states, particularly in Europe, North America and Australasia. Demands for LGBT equality and rights have focussed on issues such as:

- decriminalisation of homosexual conduct and the introduction of an equal age of consent for same-sex relations (McGhee 2004b; Waites 2005)
- the introduction and implementation of anti-discrimination and hate crime legislation on grounds of gender identity and sexual orientation (FRA 2010)





- legal recognition of gender identity and change of name (Hammarberg 2009)
- legal recognition for same-sex partnerships (Kollman 2009)
- parenting, adoption and access to reproductive technologies
- access to healthcare services, especially hormonal and surgical procedures to assist the process of gender reassignment (Hammarberg 2009)
- immigration rights, including asylum on the basis of sexual orientation and gender identity, as well as other immigration policies that permit LGBT individuals who migrate to be reunited with their partner/spouse (Naples 2006).

The introduction of progressive legislation affirming the worth of LGBT citizens is a very positive development. Countries where such legislation has been introduced have witnessed very deep changes in the social status and perception of LGBT individuals, and many of them have also extended state protection of LGBT individuals to asylum seekers, recognising sexual orientation and gender identity as grounds to claim asylum. However, changes in legislation and policy do not always translate into shifts in societal attitudes towards LGBT people. Transphobic and homophobic prejudice and ignorance of LGBT issues persist in receiving countries, both among members of the general public and in institutional settings. As this report will show, they often negatively affect the outcome of asylum claims based on sexual orientation and gender identity (see especially chapters 5-7).

2.3 Data on Asylum Seekers and Refugees

Between 2000 and 2004, a total of 318,835 asylum applications were lodged in the UK: an average of over 63,000 asylum applications per year. Since 2005, the number of asylum claimers has been consistently lower. Between 2005 and 2009, an average of just 24,633 people claimed asylum each year.⁴ In 2009 ICAR (2009: 16) showed that

⁴ Home Office Statistical Bulletin, Control of Immigration Statistics 2009. See <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1510.pdf>

the UK ranked just 15th in Europe in terms of numbers of asylum seekers per size of population.

In 2009 24,485 asylum applications were lodged in the UK. This figure does not include children and spouses, so when dependants are added in the number of actual asylum seekers increases to 30,675.

In 2009 roughly two thirds of principal applicants were men (16,405 male, 8045 female).⁵ However there are variations across countries, for example 60% of asylum seekers from Zimbabwe were women, but less than 3% of claims from Afghanistan were made by women. Figures also indicate that around 75% of asylum applicants who claimed support were single (11,675) and a quarter were families (3655).

Scotland takes in around 10% of UK's asylum seekers. Glasgow is currently the only local authority in Scotland to have a contract with the UK Border Agency (UKBA) to house asylum seekers. According to UKBA figures, during 2009 2470 asylum seekers were dispersed to Scotland and were receiving both support and housing. A further 50 asylum seekers were dispersed to Scotland but getting support only, i.e. they only had financial support and found their own accommodation. Twenty five of this group were living outside of Glasgow.

Scottish Refugee Council, (2010) provide more analysis on both numbers of asylum seekers and where they live. They highlight that there are now fewer families and a higher number of individual asylum seekers in Scotland. They found that at the end of December 2009 there were 2033 asylum seeker households made up of 3494 individuals in Glasgow.

Figures for asylum seekers arriving in Glasgow each year are now less than half what they were in the period 2005-7.

A small number of refugees are accommodated in Lanarkshire through

⁵ See Supplementary Table 2c which gives a breakdown by country of origin, age and sex. <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1510supptabs.xls#'2c'!A1>

⁶ See <http://www.icar.org.uk/?lid=9982#refstatglasgow> for more details





the Gateway Protection Programme. This is operated by the UK Border Agency in partnership with the United Nations High Commissioner for Refugees (UNHCR). The programme offers a legal route for up to 750 refugees to settle in the United Kingdom each year, and is completely separate from the standard procedure for claiming asylum, with applications for resettlement being made to the UNHCR.

During 2009, the top ten countries of origin were:

Zimbabwe	5540	China (incl. Taiwan)	1045
Afghanistan	3170	Sri Lanka	1000
Iran	1500	Iraq	800
Pakistan	1195	Somalia	710
Eritrea	1185	Nigeria	615

ICAR (2009) have analysed trends in asylum statistics from 2004-8 and the countries represented in the top 10 in 2009 are very similar to those in previous years.

Unlike asylum seekers, it is difficult to have accurate figures on the number of refugees in Scotland. Once a person is granted leave they are free to move about the UK and with dependants and family members also coming and going, it is difficult to provide anything other than estimates.

Previously, COSLA's Strategic Migration Partnership highlighted that 'there is a lack of robust information about the number of refugees living in Scotland'. In 2005 they estimated that the total figure for refugees living in Glasgow was in the region of 3000 – 4000.⁷

A Scottish Refugee Council report published in October 2010 went some of the way to fill this gap. They reported that at the end of 2009 there were 1290 refugee households housed by Glasgow Housing Association, made up of 2820 individuals, but acknowledge that these figures would not include all refugees in the city. Their report also concluded that it was likely that 'significantly more of those with Leave to Remain are settling in the city than in the early years of dispersal.' (Scottish Refugee Council 2010: 25)

⁷ See <http://www.asylumscotland.org.uk/asylumstatistics.php>



None of the reports which look at Scotland's refugee and asylum population include any data relating to sexual orientation or gender identity. In a review of literature relating to asylum seekers and refugees in Scotland, Mulvey (2009a: 47) acknowledges that there remain important gaps in the research carried out, and highlights that 'there has been little analysis of the importance of age, gender, disability and sexuality in research'.

2.4 Estimating the Number of LGBT Asylum Seekers and Refugees

'There are many difficulties involved in estimating the numbers of asylum seekers who are LGBT. The UKBA does not collect or collate data on the sexual orientation of asylum applicants and data collected on gender does not reflect transgender issues'. (Bell and Hansen 2009: 11).

There are no totally reliable figures on the size of LGB or transgender populations in the UK. No data relating to sexual orientation or gender identity is collected by the Census; despite various campaigns the 2011 Census will not collect any information on this.

A commonly used figure is that LGB people make up approximately 5% of the population. This is based on the definition that L&G people are people who are primarily sexually or emotionally attracted to people of the same sex - a bigger set of people than the people who currently would define themselves to a stranger as LGB. The UK Government's Women & Equality Unit estimated the LGB population to be around 6%, in their cost analysis of the civil partnership legislation in 2003 (quoted in Aspinall 2009:52).⁸

Estimates vary, in part because they depend on how you categorise. In terms of sexual orientation, categorisation issues often centre upon whether you count only people who define themselves as LGB, or, for example, people who have had same-sex sexual experiences or people who have been attracted to someone of the same sex (the last two categories both include more people than the people who define as LGB).

⁸ A helpful analysis of the difficulties in estimating the size of LGB populations is provided in a recent Equality Human Rights Commission (EHRC) research paper (Aspinall, 2009).



In terms of gender identity, categorisation issues often centre upon whether you count only people who have started to undergo some form of gender reassignment to live permanently in a different gender, or, for example, people who more widely find some aspect of their gender identity does not fully correspond with the sex they were assigned at birth whether or not they ultimately seek to undergo any form of gender reassignment.

The number of transgender people in the UK has been very roughly estimated as approximately 10,000 people who are currently undergoing or who have previously undergone gender reassignment (so approximately 1000 in Scotland), and at least 100,000 people in the UK (so at least 10,000 in Scotland) who more widely find their gender identity does not fully correspond with the sex they were assigned at birth and may seek future gender reassignment or may instead occasionally cross-dress or have a non-binary gender identity.⁹

From our literature review, only Bell and Hansen (2009: 11-12) have provided an estimate of the number of LGB asylum seekers there may be in the UK. To arrive at a 'crude estimate' they used government estimates that 5% to 7% of the general population are lesbian gay or bisexual and applied this percentage to the total number of asylum seekers arriving in the UK.¹⁰

The authors admit that 'the lack of quantitative data means that no accurate statistical analysis about the size and profile of LGBT refugees and asylum seekers populations can be made' (ibid.).

Using a similar methodology we can arrive at a ballpark figure for the number of LGBT asylum seekers in Scotland. This would suggest that of the 2520 asylum seekers dispersed to Scotland in 2009, there might be between 126 and 176 LGB asylum seekers and approximately 5-7 transgender asylum seekers.¹¹

⁹ Figures quoted to us from Scottish Transgender Alliance based on GIRES 2009 report.

¹⁰ In 2008 this would indicate approximately 1284 to 1797 lesbian, gay and bisexual asylum seekers.

¹¹ Based on 5-7% of population being L,G or B and 0.2% being trans

This is a far from satisfactory method of arriving at an estimate. It is based on a presumption that the proportion of people claiming asylum who are LGBT is consistent with the rest of UK population and takes no account of complex issues over identity, language and terminology which we explore throughout this report.

However from anecdotal evidence gathered during this research, it is suspected that these figures are too low. This suspicion may be supported by recent evidence (Scottish Refugee Council 2010) that indicates that there is now a higher proportion of single asylum seekers in Scotland.

During 2010 the UKBA publicly pledged to start monitoring the number of LGBT asylum cases.¹² Such figures are not yet available and the timescales for implementing this remain unclear. Until then we have no way of accurately knowing the numbers of asylum seekers who claim on basis of sexual orientation or gender identity.

2.5 LGBT Asylum in Scotland: Evidence Base

At all our stakeholder interviews we asked about the number of LGBT asylum seekers or refugees organisations had seen over the last two-three years. The organisations we visited ranged in size, and most but not all were front-line providers. In some cases staff could only talk about their personal experiences and not about the organisation as a whole. The data collected gives us an important insight into what is happening in Scotland.

Two-thirds of organisations we met with could not recall any instances of LGBT asylum cases they had helped. Three main reasons were given to explain an absence of seeing such clients: a lack of monitoring, a lack of openness from clients, and the organisation not needing to find out the reasons behind a person's claim for asylum.

‘We’ve not currently got a firm evidence base, due in part to difficulties in people being open around LGBT and it is also not directly monitored.’ *Stakeholder interview, Scotland*

¹² For example at Scottish Refugee Council Annual Conference 29.10.10 in Glasgow





‘Our service doesn’t currently deliver immigration advice, so we wouldn’t necessarily know the basis of client’s asylum claim. If a person had claimed asylum because they were LGBT we wouldn’t necessary know.’ *Stakeholder interview, Scotland*

Those not monitoring either gender identity or sexual orientation commented that the main reason it wasn’t monitored was that it was not required by their funders.

‘We do not monitor sexual orientation or gender identity - it’s not required by UKBA and there is no reference to LGBT in our contract with the UKBA.’ *Stakeholder interview, Scotland*

It was also acknowledged by some that their failure to collect data was something that they would like to rectify:

‘In terms of monitoring we include age, gender and disability but not sexual orientation or gender identity. We are aware that this is a gap and are keen to do more in the future.’ *Stakeholder interview, Scotland*

One interviewee highlighted that ‘there are two types of LGBT asylum cases I’m aware of. The first where someone reveals that they are gay at the outset and will be persecuted if sent back to their country. The second is where they have not revealed their sexuality, but this comes out later in the case.’ *Stakeholder interview, Scotland*

Overall, four interviewees had helped gay men asylum seekers, two had helped lesbians and only one had helped bisexual or transgender clients. Seven organisations could not recall seeing any LGBT asylum seekers or refugees. By contrast one immigration solicitor advised us he currently had an active case-load of around 20 gay asylum cases, all of which were men.

The table below summarises the findings from the 11 Scottish organisations we visited:



Number of LGBT asylum cases seen	Number of organisations
0	7
1-5	1
6-10	1
10+	2

Type of Cases seen	Number of organisations
L + G + B + T	2
L + G	2

There was also no clear pattern when we asked what countries LGBT asylum seekers had come from. Countries mentioned by interviewees included Burundi, Algeria, Ukraine, Malaysia, Iran, India, Congo, Pakistan, Iran, Zimbabwe, plus ‘a range of other African countries’. One interviewee singled out Pakistan and Iran as being the most common countries of origin they had come across.

It was clear from all interviewees that clients were presenting as individuals; they were not obviously linked to a group of LGBT refugees. In other words, even those organisations that had seen more than a handful of cases, saw these clients separately, at different periods in time, and each case was isolated from those which came before it.

‘We have had a broad spread of LGBT asylum cases and different nationalities. However cases aren’t linked, so clients do not know each other. There is no peer support, just individual discrete cases.’ *Stakeholder interview, Scotland*

In 2010 two important research reports documented the lives of lesbian, gay and bisexual asylum seekers in the UK (UKLIG 2010, Stonewall 2010). The previous year, an earlier research report (Bell and Hansen 2009) also included reference to transgender asylum seekers as well as asylum seekers who were LGB.

Two of these reports deal with problems within the asylum process, and the third on housing and homelessness issues. Although the findings are very relevant to Scotland, there is little analysis in the reports that compares experiences of LGBT asylum seekers in Scotland to other parts of the UK.



UK Lesbian & Gay Immigration Group (UKLGIG) 2010, 'Failing the Grade' examined refusal letters issued by the Home Office from 2005 to 2009 to 50 asylum seekers from 19 different countries. These were primarily from asylum seekers in London and dealt with asylum seekers who were gay or lesbian, but made no reference to people who were bisexual or transgender.

Stonewall 2010 'No going back: Lesbian and gay people and the asylum system' included interviews with 12 L&G asylum seekers, (7 men and 5 women) and 18 UKBA staff. The UKBA interviews included staff from Scotland.¹³

Neither the Stonewall nor UKLGIG reports make any reference to issues experienced by transgender asylum seekers.

The report which includes most comment on issues outside of London is Bell and Hansen 'Over not Out' (2009). This report examined housing and homelessness issues for LGBT asylum seekers and refugees and was based in part on interviews with 40 LGBT asylum seekers. Although the majority (70%) of these were conducted in London, five interviews were conducted in Scotland. The 40 interviews included two with asylum seekers who identified as being transgender.

The report draws out some important findings relating to LGBT asylum seekers and refugees outside of London.

It highlights that 'a significant number of interviewees had been dispersed outside London but 50% of those moved back to London to counter isolation and to be closer to friends. The absence of LGBT community resources in many places was cited as a key reason for this drift back to London. Manchester was seen as an alternative city that offered a range of LGBT resources accessible to asylum seekers.' (Bell and Hansen 2009: 69)

The report concludes 'for many LGBT asylum seekers London

¹³ There were separate interviews carried out with a small number of asylum seekers in Scotland, but plans to publish these in a separate annex in Scotland have at the time of writing, not yet materialised.

and Manchester appear to be the only viable localities offering the services and networks that are crucial to their survival. By integrating themselves within LGBT social networks many LGBT asylum seekers are able to cope with their legal and financial insecurity and buffer themselves from homophobic and transphobic discrimination.’ (Bell and Hansen 2009:27).

However the report makes just two passing references to Scotland. One relates to negative experiences of a Nigerian lesbian at Dungavel detention centre, and the second to an Iraqi gay man helped by Scottish Refugee Council to move to alternative accommodation so he could be with his partner.

2.6 Conclusion

‘It is still very much a hidden issue and not as visible an issue as we would like it to be. LGBT asylum seekers are very much a vulnerable group within an already vulnerable group.’ *Stakeholder interview, Scotland*

There is a clear lack of data available in Scotland about the number of LGBT asylum seekers and refugees; the issues and experiences they face and how their experiences are similar or different to LGBT asylum seekers or refugees in other parts of the UK. The asylum process, in terms of who is or is not allowed to stay in the UK, is a reserved matter, and entitlement to financial support is also reserved. However, community support, health, housing, legal aid and advice are all devolved matters. Glasgow has one of the largest asylum and refugee populations outside of London; many service providers in Scotland have been recognised and praised for the way that asylum seekers and refugees have been welcomed and integrated as new citizens of Scotland.

Why then has LGBT asylum received so little attention in Scotland? What lessons can we learn from other parts of the UK, and from research carried out elsewhere? What issues are the most important to address, and how can we best enable LGBT asylum seekers in Scotland to feel safe and be supported?

This report sets out to answer these and many more questions.







chapter 3

LGBT Asylum Law and Policy

Despite the issuing of new Asylum Policy Instructions and a positive Supreme Court ruling, a person fleeing persecution because of their sexual orientation or gender identity still faces many obstacles before they can qualify for protection.



3. LGBT ASYLUM LAW AND POLICY

3.1 Introduction

In order to understand the problems and issues faced by LGBT asylum seekers and refugees, it is helpful to first understand something of the process which all asylum seekers go through and then examine how that may differently impact on people seeking asylum because of their sexual orientation or gender identity.

Asylum law is complex and fast changing. It is beyond the remit of this report to provide a full guide to the law or to detail all factors which may impact on the likelihood of someone's asylum claim succeeding.

However in order that our analysis in later chapters is grounded in a legal context, we first need to explain some of the basic definitions in asylum law and to describe some recent developments which have had a huge bearing on the way LGBT asylum cases may be dealt with in the future.

This chapter

- sets out the legal definition of a refugee
- discusses the concept of 'social group'
- examines the implications of a recent ruling from the Supreme Court
- highlights the tests that a person fleeing persecution on the grounds of sexual orientation or gender identity must satisfy in order to qualify as refugee
- examines the potential significance of the Equality Act 2010

Since our research started in April 2010, there have been a number of significant research, legal and policy developments. The timeline below sets out how much has happened in the past nine months:

April 2010 UK Lesbian & Gay Immigration Group (UKLGIG) publish a report 'Failing the Grade', showing evidence of a higher refusal rate for lesbian and gay asylum cases than for other asylum claimants (98-99% of lesbian and gay men's claims refused at initial stages, compared to 73% for other claims). Many claims were being refused

on the grounds that a person could go back to their country of origin and 'be discreet' about their sexual orientation (often referred to as the discretion test).

May 2010 The UK Government's full coalition agreement included the following commitment: '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.'

June 2010 Stonewall publish a report 'No Going Back' which highlights how many lesbian, gay or bisexual asylum seekers 'are not granted protection because of fundamental errors of judgement and presumptions made by UK Border Agency staff and judges about sexual orientation'. (Stonewall 2010: 3)

July 2010: The Supreme Court rules that the way UKBA had been applying the discretion test is unlawful. *HJ (Iran) & HT (Cameroon) v SSHD* [2010] UKSC 31.

October 2010: UKBA issue for the first time Asylum Policy Instructions giving guidance to their staff on how to handle asylum claims made on the basis of gender identity or sexual orientation.

October 2010: A training course is piloted for UKBA case-workers in London on how to deal with sexual orientation asylum cases, with the expectation of rolling out this training to all parts of the UK by the end of March 2011.

December 2010: Everyone IN's community consultation event discusses our initial research findings – the first full day event in Scotland ever to be dedicated to issues around LGBT asylum.

Over the past year the issue of LGBT asylum has moved up the agenda and the pace of developments suggests that there is a real momentum for change. In subsequent chapters we will examine what has actually changed in practice and consider what work still needs to be done before LGBT asylum seekers in Scotland may consider themselves to be safe and supported. Before we do this we will look at the current legal framework in which LGBT asylum cases are decided, starting with some basic definitions.





3.2 Definitions

Refugee The rights and status of refugees are codified in the 1951 UN Convention on the Status of Refugees, and in the 1967 Protocol relating to the Status of Refugees. States that are signatories to the Convention and its Protocol accept the obligation to host individuals fleeing persecution in their home country, and whose lives or fundamental freedoms may be threatened if returned to their country of origin (LaViolette 2009b). The UK is one of the 145 signatories to the Convention, and is therefore obliged to consider all applications for refugee status made within the country (Oxfam 2007: 10-11).

Article 1 of the Refugee Convention defines a refugee as a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country...' (Quoted in Swink 2006:254)

Persons seeking refugee status must satisfy certain legal criteria:

- They must be outside of their country of origin
- They must demonstrate that they fled their country of origin because of fear of persecution
- They must demonstrate that their fear of persecution is well-founded
- They must substantiate that they fear persecution on account of one of the five categories included in the definition of refugee, i.e. 'race, religion, nationality, membership of a particular social group, or political opinion'
- They must successfully prove that that their country of origin or habitual residence is unable or unwilling to offer protection (LaViolette 2009b; Oxfam 2007: 10-11)

A person granted refugee status is normally given permission to stay in the UK for five years. At the end of this period they can apply for indefinite leave to remain in the UK.

The UK also adheres to the European Convention on Human Rights, which prevents the UKBA from sending anyone to a country where there is a real risk that they will be exposed to torture, or inhuman or degrading treatment or punishment. If a person does not qualify for recognition as a refugee they may be granted either Humanitarian Protection or Discretionary Leave.

Since 2005, Humanitarian Protection is normally also granted for a period of five years, whilst Discretionary Leave is granted for a shorter period, typically between 1 and 3 years.

Social Group Claims relating to sexual orientation or gender identity will often be argued under the heading of 'Particular Social Group'. In October 2010 the UKBA issued Asylum Policy Instructions on 'Sexual orientation and Gender Identity in the asylum claim'. This was the first time UKBA has issued guidance on this topic.

The guidance on social group states

'A group shall be considered to form a particular social group where, in particular:

- i) Members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- ii) That group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.'

The Policy Instructions continue:

'The Regulation sets out an approach to identifying the existence of a social group which is similar to the one taken by the UK courts, most significantly in the House of Lords judgment in the case of *Shah and Islam* [1999] UKHL 20. In *Shah and Islam* it was found that women in Pakistan constituted a particular social group. When discussing this case, Lord Steyn drew an analogy with homosexuals by saying: 'I regard it as established that





depending on the evidence, homosexuals may in some countries qualify as members of a particular social group.'

It is interesting to note that although comments made in Shah and Islam related to 'homosexuals', the recent Policy Instructions make no distinction between lesbian, gay, bisexual asylum seekers and transgender asylum seekers and state that 'most claims relating to sexual orientation or gender identity will fall under 'Particular Social Group'.

A UNHCR guidance note from 2008, on refugee claims relating to sexual orientation and gender orientation, offers us more guidance on social group:

'Claims relating to sexual orientation have most often been considered within the 'membership of a particular social group' ground. Many jurisdictions have recognised that homosexuals (gays and lesbians) may constitute a particular social group. While claims relating to bisexuals and transgender people have been less common, such groups may also constitute a particular social group. It has furthermore been well established that sexual orientation can be viewed as either an innate and unchangeable characteristic, or as a characteristic that is so fundamental to human dignity that the person should not be compelled to forsake it. Requiring a person to conceal his or her sexual orientation and thereby to give up those characteristics, contradicts the very notion of 'particular social group' as one of the protected grounds in the 1951 Convention.' (UNHCR 2008: 15)

ORAM (2009: 6-7) considered the experiences of LGBT asylum seekers and refugees in Turkey but their report also contains a useful analysis of the wider global context. They consider the definition of a social group and make a useful distinction between claims made on the basis of sexual orientation and those made on the basis of gender identity:

'Transgender claims, unlike those of gays and lesbians, are based on gender identity rather than sexual orientation. Transgender applicants generally base their claims on membership in a social

group of ‘individuals born with one anatomical sex who believe this anatomical sex does not match their gender.’ This gender identity, rather than the claimant’s male or female anatomical characteristics, is viewed as immutable and fundamental to the person’s identity.

‘Transgender individuals may also affiliate closely with one another, are recognised as a segment of the population, and are often singled out for different treatment. Transgender claims may, in addition, be based on imputed membership in a particular social group of lesbians or gay men.’

A report published by the European Agency for Fundamental Rights (FRA 2010) provides further analysis. It discusses the role of the 2004 Council Directive 2004/83/EC (Qualification Directive), which elaborates on the 1951 definition of a refugee. It is beyond the scope of this report to provide detailed consideration of EU refugee law, but it is interesting to note their conclusion:

‘The protection thus offered to gays and lesbians under the Qualification Directive should logically extend to transsexual and transgender people as well, since they too form a distinctive ‘social group’ whose members share a common characteristic and have a distinct identity due to perceptions in the society of origin. However, this interpretation is not uniformly recognised. The current version of Article 10(1)(d) of the Qualification Directive stipulates that ‘gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article’. This provision is very vague in its meaning and about the possibility of accepting transsexual and transgender refugees, a vagueness exacerbated in some language versions.’ (FRA 2010: 56)

It must also be remembered that an asylum seeker who is LGBT may have other reasons why they fled their country, for example their politics, religion or ethnicity. It cannot be assumed that a person’s sexual orientation or gender identity will always form the main basis of their grounds for seeking protection.





3.3 UK Supreme Court Ruling

In July 2010, the principal author was attending a two day conference on LGBTI Asylum Seeker and Refugee Rights at Greenwich University. It was the first conference of its kind in the UK. On the second day of the conference, entirely by coincidence, the UK Supreme Court issued a judgment which was to have a huge bearing on the way LGBT asylum seekers' asylum claims in the UK are dealt with. There was at the conference an air of breakthrough and a feeling that this was a defining moment for LGBT asylum seekers.

Prior to this ruling, a significant proportion of claims from LGB asylum seekers were refused, because the UKBA found that they would not be in danger if, when they went back to their country of origin, they hid the fact they were lesbian or gay. Put simply, people were told to go back and 'be discreet'. This practice had been heavily criticised by amongst others Stonewall (2010) and UKLGIG (2010).

Not only did the Supreme Court rule that previous UKBA practice had been unlawful, the pre-amble to the judgment made a quite remarkable statement on the significance of this type of case:

'The fact is that a huge gulf has opened up in attitudes to and understanding of gay persons between societies on either side of the divide. It is one of the most demanding social issues of our time. Our own government has pledged to do what it can to resolve the problem, but it seems likely to grow and to remain with us for many years. In the meantime more and more gays and lesbians are likely to have to seek protection here, as protection is being denied to them by the state in their home countries. It is crucially important that they are provided with the protection that they are entitled to under the Convention – no more, if I may be permitted to coin a well known phrase, but certainly no less.'
(Lord Hope, Supreme Court 2010: 2)

The Supreme Court ruling was also of significance as it made a clear distinction between a narrow understanding of being gay (which focused on sexual behaviour), and a more progressive understanding that brought in wider issues of identity and behaviour other than just sexual behaviour. Lord Walker was critical of the narrowness of

approach previously adopted by UKBA:

‘the consequences of sexual identity has wrongly been confined to participation in sexual acts rather than that range of behaviour and activities of life which may be informed or affected by sexual identity.’ (Supreme Court 2010: 45)

We shall return to discuss these issues in more detail in following chapters.

The Supreme Court’s ruling clearly sets out a new approach which should be adopted by the UKBA. The key test is described by Lord Rodger at paragraph 82 of the judgment.

For ease of reference we have reproduced this text in full:

‘When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.

‘If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant’s country of nationality.

‘If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.

‘If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living ‘discreetly’.

‘If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so.

‘If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e g, not wanting to distress his parents or embarrass his friends, then his application should





be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.

‘If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution.

‘To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.’

Since the Supreme Court ruling, we are aware of some LGBT asylum seekers whose claims were originally refused on the basis of having to go back and be discreet, now being granted protection.

However the UKBA have publicly stated that they had no plans to proactively review all such cases; a process that would be made difficult by their lack of monitoring of who had claimed asylum on grounds of sexual orientation/gender identity.

UKBA have seemingly drawn a distinction between cases still in the system, which could be reviewed under these new guidelines (when for example they came to appeal); and cases at the end of the line (appeals rights exhausted), which they have no plans to review. There remains a real need to raise awareness of the implications of the Supreme Court ruling for LGBT asylum seekers who may have gone to ground after their claims were refused. It is important that such

people seek legal advice, in order to establish if anything further could now be done on their case.

3.4 Equality Act 2010

Our research has coincided with a significant flurry of policy and research developments in relation to LGBT asylum. The previous section examined the impact of the Supreme Court ruling of July 2010. This year also sees significant changes in the legal framework around equalities, with the implementation of the Equality Act 2010. Within this section we consider what bearing this may have on LGBT asylum cases.

Under the Equality Act, direct and indirect discrimination and harassment are unlawful in the provision of goods, facilities and services on grounds of ‘protected characteristics’ including gender reassignment and sexual orientation. The Act also introduces a broader ‘public sector equality duty’ – a positive duty to promote equality, applying to all public bodies.

This duty requires public bodies to have due regard to the need to:

- Eliminate discrimination and harassment;
- Advance equality of opportunity; and
- Foster good relations between different communities.

The duty applies across the protected characteristics in the Act, including gender reassignment and sexual orientation.

The duty to advance equality of opportunity includes in particular:

- Removing or minimising disadvantages people face connected to a protected characteristic;
- Taking steps to meet the specific needs of people who share a protected characteristic; and
- Encouraging the participation of people who share a protected characteristic in public life and other activities where they are under-represented.





The duty to foster good relations includes in particular tackling prejudice and promoting understanding.

The public sector equality duty applies to UKBA as well as to local authorities and other public service providers, and is effective from 6th April 2011. As a result, UKBA and other bodies must pay due regard to the need to counter the disadvantages facing LGBT asylum seekers, compared to other asylum seekers, and to meet their specific needs connected to their sexual orientation and gender reassignment, as well as the need to foster good relations between LGBT asylum seekers and others.

The duty does not however apply to judicial functions.

Secondary legislation sets out 'specific duties' which must be complied with in implementing the public sector equality duty. The specific duties applying to UKBA will include a requirement to publish annually information to demonstrate their compliance with the equality duty, including information relating to people affected by their policies and practices who share a protected characteristic. This includes LGB people and transsexual people.

The specific duties applying to Scottish public bodies including local councils have (at the time of writing) not yet been agreed by the Scottish Parliament. They are likely to include duties to engage with equality organisations, to assess policies and practices for impact on people sharing a protected characteristic, and to publish information on how the equality duty is being taken into account.

All these requirements apply to the protected characteristics of gender reassignment and sexual orientation. One would hope therefore that these duties, and the transparency they require through regular publication of information, will prompt UKBA and other public bodies to pay more attention to reducing the particular difficulties faced by LGBT asylum seekers.

The specific duties also include a requirement for each public body to set and publish their own equality objectives / outcomes. There is no requirement for the chosen equality objectives to cover all the protected

characteristics. So it is not yet clear whether sexual orientation and gender reassignment will feature in many public bodies' chosen equality objectives / outcomes.

So although it is clear that those concerned with improving the well-being of LGBT asylum seekers should keep a close eye on how the Equality Act is implemented, it remains too early to know what changes in practice on the ground will occur as a result of its introduction.

3.5 Conclusion

Despite the issuing of new Asylum Policy Instructions and a positive Supreme Court ruling, a person fleeing persecution because of their sexual orientation or gender identity still faces many obstacles before they can qualify for protection.

Although many of these obstacles apply in the same way as they do for other groups of asylum seekers, we shall explain throughout the rest of this report, how LGBT asylum seekers may often be denied 'sanctuary' and how the particular challenges they have in obtaining protection are largely undiminished.

Our next two chapters examine in detail the challenges faced by LGBT asylum seekers in seeking 'sanctuary'. Chapter 4 will look at evidence from our literature review, whilst Chapter 5 is based around the findings from our stakeholder interviews.

In particular we will go on to examine:

- whether a 'culture of disbelief' exists within the UK asylum process
- how LGBT asylum seekers' accounts of their sexual orientation or gender identity are often not accepted as either credible or plausible
- the difficulties caused by shortages in available country of origin information
- the impact of detention and fast-track decision making on LGBT asylum seekers





We will conclude that, despite the positive developments described within this chapter, the current UK asylum process remains deeply flawed.

chapter 4

Sanctuary: findings from Literature Review

The Oxford English dictionary defines sanctuary as ‘refuge or safety from pursuit, persecution, or other danger.’¹





4. SANCTUARY: FINDINGS FROM LITERATURE REVIEW

4.1. Introduction

In this chapter we examine both UK and international literature that is based around LGBT asylum seekers' experiences of seeking sanctuary. We will look in detail at:

- how sexual orientation and gender identity are recognised as valid eligibility criteria for claiming asylum
- the need to prove the claimants' sexual orientation or gender identity and the difficulties people have in satisfying adjudicators of the fact that they are gay, lesbian, bisexual or transgender
- the need to prove that the claimant's fear of being persecuted in their country of origin because of their sexual orientation or gender identity is well-founded.

The chapter explores the process of adjudication of asylum claims based on sexual orientation or gender identity in the international context, identifying common issues and examples of good practice that the UK could implement.

We will show how, for many LGBT people who have fled persecution, the UK asylum system falls well short of providing a place of sanctuary. Despite the recent advances noted in the previous chapter, there remains evidence that the UK asylum system is more hostile and restrictive than other jurisdictions. For LGBT asylum seekers, their struggle to find a place of safety does not end when they arrive in the UK.

4.2 Seeking Sanctuary: an International Perspective

The UK accepted eligibility for asylum status on the ground of sexual orientation in 1999; however, Millbank notes that Britain has lagged behind other receiving nations such as Germany, the US, Canada, New Zealand and Australia, who extended eligibility to LGBT claimants in the late 1980s and early 1990s, a practice that was formally endorsed by the United Nations High Commissioner for Refugees (UNHCR) in 1995 (Millbank 2005:116).

¹ (on previous page) see http://oxforddictionaries.com/view/entry/m_en_gb0731840#m_en_gb0731840



Since 1999, Britain's approach to asylum claims based on sexual orientation and gender identity has been much more hostile than that of other receiving countries. As Millbank shows, decisions on such cases have often been based on the assumption that claimants should avoid persecution in the home countries by being discreet, and several claimants have been refused asylum on the grounds that they can live safely in their country of origin as long as they hide their sexual orientation or gender identity. This approach reflects the notion, deeply rooted in British culture, that the state should not interfere in its citizens' intimate lives, but that certain behaviours (such as being LGBT) should be confined to the private sphere. This highlights how heterosexuality and gender conformity is still implicitly considered the expected norm. Being LGBT is constructed as a 'deviance' from the norm, and the public visibility of sexual orientation or gender identity diversity is seen as potentially 'corrupting' and polluting for wider society (Millbank 2005; McGhee 2004a).

It is telling that success rates for LGBT asylum seekers in the UK compare negatively to those of other receiving countries. The UK Lesbian and Gay Immigration Group (UKLGIG) estimates that, between 2005 and 2009, over 98% of asylum cases brought to its attention were unsuccessful at the initial stage of adjudication. This is much higher than the UK average rate of refusal for all asylum applicants of 76.5% (ICAR, December 2009, quoted in Stonewall 2010: 18). By contrast, Rehaag (2008: 71) estimates that, in 2004, in Canada the grant rate for sexual orientation-based claims was 49%, roughly the same as the average for all refugee claims examined in Canada that year, which averaged 45%.

There are obvious differences in the way receiving nations implement the 1951 UN Convention through national legislation and domestic determination procedures. However, a review of the academic literature on LGBT asylum reveals common issues and important similarities.

LaViolette (2009a: 440-41) identifies three key legal issues emerging from a review of asylum claims advanced in Canada since 1991 on the basis of the claimant's sexual orientation or gender identity. She shows that most of the claims revolved around one or more of the following:



The recognition of sexual orientation and gender identity as valid eligibility criteria for claiming asylum. This point concerns an ongoing debate among adjudicators as to whether gay men, lesbian women, bisexual people and transgender people fit any of the grounds set out in the UN Convention on the Status of Refugees.

The need to prove the claimants' sexual orientation or gender identity. Claimants have to satisfy adjudicators of the fact that they are gay, lesbian, bisexual or transgender.

The need to prove that the claimant's fear of being persecuted in their country of origin because of their sexual orientation or gender identity is well-founded. Adjudicators have to be satisfied that the claimant's narrative is consistent with evidence that LGBT individuals face real risk of potential persecution in their country of origin. A particular problem in this process has been the absence or disputed reliability of independent evidence on human rights violations against LGBT individuals in the claimant's country of origin.

The importance of these issues in asylum claims based on sexual orientation and gender identity, not only in the Canadian context but in other countries as well, is explained in more detail in the sections that follow.

The debate among adjudicators as to whether gay men, lesbian women and people who are bisexual or transgender fit any of the grounds set out in the UN Convention on the Status of Refugees has so far mainly focused on whether sexual orientation or gender identity constitute 'membership of a specific social group'. In several states, including the UK, legal precedents have established sexual orientation as grounds for membership in a social group, and it has since become common for LGB refugees to claim that their fear of persecution is grounded in the membership of a particular social group. In Canada, this was established by the Supreme Court's decision on the case *Ward v Canada*, in 1993. The decision determined three different types of 'particular social groups' for the purpose of refugee definition:

- (1) groups defined by an innate or unchangeable characteristic;

- 
- (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and,
 - (3) groups associated by a former voluntary status, unalterable due to its historical permanence.’ (quoted in Rehaag 2009: 418).

The Supreme Court’s decision on *Ward v Canada* concluded that ‘sexual minorities facing persecution qualify for refugee protection as ‘particular social group’ because, according to Justice La Forest, sexual orientation is an ‘innate or unchangeable personal characteristic’ (Rehaag 2009: 418).

This decision has proved very influential: it has been approvingly referred to by courts in other jurisdictions around the world, and it has been cited in the UNHCR Guidelines on Social Group Claims (Rehaag 2009:418). While this principle (sexual orientation as established ground for membership in a social group) seems to offer potential protection to LGBT claimants, prevailing interpretations are sometimes problematic, particularly for bisexual and transgender claimants.

We shall return to consider this in more detail in Chapter 6.

4.3 A Culture of Disbelief

‘Self-identification as LGBT should be taken as an indication of the individual’s sexual orientation...[or gender identity]. It is....essential that assessments of claims based on sexual orientation and/or gender identity be conducted in a sensitive and appropriate manner by decision-makers specifically trained on these issues. Given the difficulties of providing proof in sexual orientation [or gender identity] claims, the assessment of such claims often rests on the credibility of the applicant. In these circumstances, decision-makers must lean towards giving the applicant the benefit of the doubt.’ (UNHCR 2008: 16-18)

The European Union Agency for Fundamental Rights has been critical of UK courts for presuming that someone who had a previous heterosexual relationship or had children was unlikely to be credible in claiming a lesbian or gay identity. They highlight how many lesbians and gay men marry in ‘an attempt to conform to heterosexual norms’



and to 'avoid severe ostracism'. (FRA 2010: 59)

Credibility: assessing claimants' sexual orientation or gender identity

Individuals claiming asylum for fear of persecution based on their sexual orientation or gender identity have to satisfy adjudicators of the fact that they are LGBT and that their fear of persecution is well-founded.

According to Millbank (2009a), credibility assessment played an increasingly major role in determining negative outcomes in claims involving LGBT asylum seekers internationally. In the UK and in Australia, sexual orientation claims have repeatedly been described as 'easy to make and impossible to disprove', and therefore addressed with suspicion (Millbank 2009a:4). Actual group membership is often regarded as the key issue to explore in credibility assessments concerning LGBT claimants, and disbelief of the claimant's sexual orientation or gender identity 'will almost always doom the claim to failure' (ibid.). The issue of credibility is crucial because, particularly in cases involving LGBT individuals, the claim to group membership often rests entirely on the applicant's testimony, rather than on external proof.

For cases involving gender identity, ignorance about the diversity of transgender people can result in the claim to group membership becoming over focused on evidence of physical gender reassignment. While a tendency to over focus on evidence of physical gender reassignment can assist the claim of group membership for those transgender people who have been able to access hormones or surgical procedures, such focus can unfairly undermine the credibility of transgender people who for various reasons have not undergone any physical gender reassignment.

Millbank (2009a: 6) argues that 'consistency, plausibility and demeanour' are the key criteria used to assess credibility in asylum cases. These criteria will be explored in the following subsections, which will highlight their limits and biases, as well as detailing recommendations to improve credibility assessments.

Demeanour

The Canadian guidelines on credibility make a distinction between 'subjective' impressions, based for example on physical appearances,

which should not influence the outcome of adjudications, and 'objective' demeanour, such as the frankness and openness of the claimant when giving evidence (Millbank 2009a:7). Even if appearances should not matter, it is not uncommon for adjudicators to comment on claimant's looks and demeanour; for example, Morgan quotes the case of Mohammad, a gay man from Iran seeking asylum in the US, who was asked by the immigration officer how she was supposed to believe him, as he did not look 'feminine in any way' (quoted in Morgan 2006:146). This comment reflects the stereotype, deeply rooted in American, and more generally Western culture, that 'gayness' is outwardly reflected by femininity in men and masculinity in women.

Millbank (2009a) cautions against relying on 'objective' demeanour to assess the claimant's truthfulness, and highlights the importance of being mindful of asylum seekers' circumstances, and of the difficulties of cross cultural communication. LGBT claimants are routinely questioned and probed about their sexual experiences and intimate feelings, both during initial interviews with immigration officers and during court hearings. Hesitation, vague answers or lack of detail are often interpreted by decision-makers as indications of falsehood.

However, there may be a variety of very valid reasons why claimants may not be forthcoming in providing information about their sexual orientation or gender expression. Asylum seekers are often unprepared and embarrassed to talk about their sexuality or gender identity because of the stigma associated with them in their country of origin, where sex more generally may be a taboo subject. They may have gone through very traumatic experiences because of their sexual orientation or gender identity, and some may be very ambivalent about their feelings, having internalised the homophobia and transphobia encountered in their country of origin. The shame and trauma experienced may trigger depression and memory loss, and produce narratives deemed incoherent by decision-makers (Millbank 2009a; 6-11; Berg and Millbank 2009, Gendered Intelligence 2009:22-23).

Intrusive questions, such as asking claimants to relate details of an intimate sexual relationship, are not uncommon during interviews and court hearings (Berg and Millbank 2009). For example, in a 2004 Canadian court case, a 45 year old Ukrainian gay man was





repeatedly questioned about how he and his partner became lovers, and 'how the situation developed from an invitation to tea to that of sexual intimacy'; he was later found to be 'vague and hesitant in his testimony with respect to his experiences as a homosexual person' (Berg and Millbank 2009:9). Embarrassment and reluctance to talk was automatically taken as evidence of untruthfulness, rather than being read as a consequence of insensitive questioning. Lack of awareness of sexual orientation and gender identity issues among adjudicators create further barriers in interactions with LGBT claimants, and are hardly likely to elicit open and frank narratives from them.

Consistency

Another key criterion in the adjudication of asylum cases is that the applicant's narrative should be internally consistent, i.e. that the 'series of statements made by the applicant through the process – to border guards or at an initial interview, in the written statement that forms the basis of the claim and in oral statements during the hearing – sit comfortably with each other without contradiction' (Millbank 2009a:11).

Evidence shows that stress and trauma, typically experienced by asylum seekers, have a negative effect on the ability to recall events. However, inconsistencies and discrepancies, even if peripheral to the claimant's narrative, are often taken as evidence of untruthfulness.

Claimants' disclosure of their sexual orientation or gender identity

Millbank (2009a: 13) argues that a widespread assumption of decision makers is that 'claimants in genuine fear of persecution will make their claim at the earliest possible opportunity and as fulsomely as possible'; failure to do so may be regarded as an inconsistency. In reality, delay in claiming asylum is commonplace, and is due to a variety of reasons: the claimant may not be aware that sexual orientation or gender identity are accepted bases for an asylum claim, or they may be initially afraid to disclose their sexual orientation or gender identity to immigration authorities, particularly if coming from a country where law enforcement agencies are actively involved in LGBT human rights violations. In some cases, claimants may attempt to tell authorities about the transphobia or homophobia they faced but such information is either edited out by interpreters or mistranslated due to terminology

difficulties. In other cases, prejudice by interpreters may dissuade claimants from mentioning these issues at all.

According to Millbank (2009a), delay in making a claim based on sexual orientation or gender identity rarely prejudiced its outcome, and decision-makers were usually prepared to consider the reasons for late claims involving LGBT individuals in receiving countries. However, this is not the case in the UK, where the prevailing practice is to regard late claims as negatively affecting the credibility of the claimant (Stonewall 2010:14). If claimants do not raise sexual orientation or gender identity as the basis of their asylum claim at the screening interview, this may be regarded as an inconsistency and prejudice the final outcome of the case. The responsibility to volunteer information is put squarely on the applicant:

‘We won’t know if somebody is gay unless they tell us at the screening interview. Unless they’ve told us it’s not a subject that we would broach as part of the asylum interview.’ (Helen, UKBA case owner, quoted in Stonewall 2010:15).

However, the screening interview can hardly be considered a safe space where claimants are likely to raise such sensitive and intimate information. Claimants are questioned by staff who have received no specific training in how to interview LGBT applicants, and who, owing to time pressures, have little opportunity to spend time and build rapport with the applicant prior to the interview (Stonewall 2010:14-15). In Stonewall’s research, UK Border Agency workers interviewed often admitted being unprepared to talk about sexual orientation:

‘Colleagues have said they don’t know what questions to ask; we feel rude, prying and embarrassed about asking these questions.’ (Sarah, UKBA case owner, quoted in Stonewall 2010:15).

Organisations working with transgender asylum seekers in London have identified, amongst other issues, that UKBA case workers are not adequately trained to recognise or be sensitive to transgender safety issues and that some asylum seekers may never have heard any UK transgender terminology before, and therefore may not know how to even begin to describe themselves to the UK Border Agency (Gendered Intelligence 2009: 24).





More generally, Heller (2009) points out that the asylum process forces LGBT applicants to prove their authenticity by ‘acting gay’ and emphasising certain traits which are likely to be perceived by adjudicators as evidence of being LGBT.

This is problematic on at least three accounts: firstly, LGBT claimants are expected to be suddenly very public about their intimate lives, even though in their country of origin they may have actively hidden the fact they were gay, lesbian or bisexual or transgender due to a well-founded fear of violence and persecution. Secondly, emphasising their sexual orientation or gender identity may put them at risk in the receiving country too. For example, in the UK it is common practice to hold asylum seekers from certain countries in detention centres, where they have been known to be targeted with homophobic abuse by inmates and prison guards (Stonewall 2010: 11-12). Thirdly, the concept of ‘acting gay’ is based upon gross western stereotypes about how young, white, urban, middle-class gay men might behave and completely fails to address the vastly diverse and complex realities and experiences of the vast majority of LGBT asylum seekers.

Consistent expression of homosexuality

The applicant’s self-proclaimed sexual orientation is routinely challenged by Immigration authorities or in court. According to Millbank (2009b: 399), in Australia disbelief of the applicant’s self-proclaimed sexual orientation has increasingly been used as the major ground for negative determination: whereas prior to 2004 the applicant’s gay, lesbian or bisexual identity was doubted in 16% of available cases, this percentage rose to 38% of cases in the period 2004 to 2007. While it is not clear whether the same trend can be detected in other countries, it is undoubted that disbelief of the applicant’s identity has routinely been used as grounds for refusal by other states, including the UK (see O’Leary 2008).

This is clearly problematic, because an individual’s sexual orientation may be difficult to prove: unlike membership of a persecuted political party, one’s sexual orientation cannot be proved by showing a membership card. Moreover, claimants’ narratives are measured on stereotypical notions about what living as a lesbian, gay, bisexual or transgender person means; decision-makers’ assumptions are

usually based on LGBT life in the receiving country, rather than on the claimants' country of origin. Immigration officials typically expect that an individual's sexual identity can be straightforwardly assessed on the basis of their sexual behaviour; for example, the documentation submitted by a UK Senior Presenting Officer in a case involving a Mongolian lesbian read:

'The appellant cannot be a lesbian, as she had a relationship with a man and had a child with him.' (Quoted in O'Leary 2008:89).

FRA (2010: 59) highlights how at least one EU member state (Czech Republic) has been reported to use 'phallometric testing' during the asylum procedure. Phallometric testing examines the physical reaction to heterosexual pornography shown to gay men who were claiming asylum on the basis of their sexual orientation. Their report (ibid.) cites a case in Germany, of an Iranian gay man whose transfer to the Czech Republic was challenged; a challenge which raised fears that such testing could breach Article 3 of European Convention on Human Rights which prohibits torture and inhuman or degrading treatment.

Phallometric testing has thankfully not been used in the UK, but arguably some of the thinking behind it – that proving homosexuality is something which should focus primarily on sexual activity, has had a role to play in shaping the way LGBT asylum cases are dealt with here. This is illustrated by Stonewall's recent report, in which the chapter 'Can you prove you are a homosexual' is critical of UKBA:

'this focus on sexual activity is symptomatic of a misunderstanding that gay people's persecution stems from just their conduct rather than their identity' (Stonewall 2010: 16)

Yet sexual orientation and sexual conduct are not one and the same thing, and there may be a variety of reasons why claimants may not have engaged exclusively in same-sex relations, or may have abstained from them altogether. Immigration officials are often ignorant of, or reluctant to acknowledge how claimant's freedom to choose a sexual partner may be severely constrained in the oppressive conditions they face in their country of origin.

A recent case dealt with by UKLGIG involved a woman from Sierra





Leone who, when found out to be a lesbian, was forced to marry and raped by her husband, and was pregnant by the time she managed to flee to the UK. Yet the immigration judge refused to believe she was a lesbian because she had a child (O’Leary 2008:89). Rehaag shows that, when claimants display shifting sexual behaviour, for example a history of cross-sex sexual relations or of long-term heterosexual relations in the country of origin, this is often interpreted as a deliberate attempt of misrepresentation or fraud, and refugee status is refused (Rehaag 2008: 53). According to Millbank (2009b:15) the view that engagement in heterosexual relations was inconsistent with a gay or lesbian identity was most common in refugee decisions taken in Australia and the UK, and least common in Canada and New Zealand.

The stigma attached to same-sex relations is often so strong that, before fleeing their country of origin, LGBT asylum seekers are secretive about their same-sex relationships, live ‘double lives’, trying to conform to expectations of heterosexuality by e.g. getting married and having children, or refrain from engaging in sexual relations with persons of the same sex altogether. Moreover, immigration officials often ignore the fact that there are often very stark differences in the experiences of men and women: the latter often have to contend not only with prevailing homophobia in their country of origin, but also with oppressive patriarchal structures that severely limit their ability to choose a partner.

For example, in Zimbabwe a woman’s marriage is sealed by the transfer of a bridewealth payment (known as lobola) from the groom to the bride’s male guardian (father, uncle or brother). A woman’s desire to live with a female partner would prejudice her ability to gain lobola; it would impact on family wealth and on the resources available to male relatives to arrange marriages with the women they desire (Phillips 2009:349). Pressures to conform to the accepted norm (heterosexuality and motherhood) are often impossible to resist, and attempts to do so are severely punished by family and community members as well as by state institutions.

The expectation that claimants should be able to prove a consistent expression of homosexual behaviour is most obviously problematic for bisexual applicants (see section 6.4).

Plausibility

Claimants' narratives are assessed by immigration officials according to criteria of consistency and plausibility. Plausibility judgments, however, often rely on assumptions, speculative reasoning and inference (Millbank 2009a:16-17). As Morgan (2006: 137) points out, this means that 'immigration officials and judges often make decisions based on racialised sexual stereotypes and culturally specific notions of homosexuality, thus discriminating against those who do not conform'. She shows that immigration officials are more likely to assess whether an applicant fits into expected constructions of sexuality and gender, rooted in their own culture, rather than considering the merits of individual applications (Morgan 2006: 153). Applicants who are more likely to fit these criteria are those who can prove that they have lived openly as gay, lesbian, bisexual or transgender, and that they have been threatened because of their sexual orientation or gender identity.

In an Australian case, a gay man from Iran was tested on his knowledge of 'gay culture', including the works of Oscar Wilde, Freud and an Egyptian gay novelist (Millbank 2009a). Typically, Western gay culture is presumed to be universally known to LGBT individuals, even though evidence shows that 'globalised' gay culture only reaches the main urban centres and the most affluent members of the LGBT community in non-Western countries (Binnie 2004, Manalansan 2002).

Adjudicators are known to test the veracity of claimants' narratives by asking them questions about the gay scene in their country of origin, or in the receiving country. This expectation is problematic, because it is based on the assumption that all LGBT people frequent the gay scene, while in actual fact there are many individuals who don't, and for whom their sexual orientation or gender orientation may be based exclusively on personal identity (desires, sexual behaviour and expressions of gender) rather than group-based identity (socialising with other LGBT people) (Berg and Millbank 2009).

Moreover, there is an expectation that LGBT individuals coming from countries where homosexuality is stigmatised and repressed must actively seek out the gay scene in the receiving country, and find engaging with the scene liberating (Millbank 2009a: 18-19). However,





expense, as well as cultural and language barriers and racism within the gay scene, may make access to the scene very difficult for LGBT asylum seekers (Millbank 2009a: 18-19; Keogh 2004:23).

4.4 A Well-founded Fear

While claimants' narratives need to be deemed credible and consistent, they are also cross-checked with information about their country of origin to ascertain their truthfulness, i.e. they have to be externally credible (Millbank 2009a). It is therefore paramount to the success of their claim that LGBT asylum seekers are able to buttress their testimony about their fear of persecution on the basis of their sexual orientation or gender identity with evidence that human rights violations against LGBT individuals are widespread in their country of origin.

'Independent country information' is evidence about a claimant's country of origin, drawn from a variety of sources, most typically mainstream media reports, human rights organisations' reports, reports compiled by national LGBT organisations, country profiles such as those produced by the US State Department, and academic papers (Dauvergne and Millbank 2003: 309).

Availability and quality of evidence for Independent Country Information

Gathering reliable independent country information remains a challenge. As LaViolette notes (2009a), in recent years, information on LGBT human rights violations has become more readily available, as important international human rights organisations, such as Amnesty International and Human Rights Watch, have been more proactive in gathering evidence, often in collaboration with local LGBT organisations. Nonetheless, the availability and quality of independent country information remains a major problem in the assessment of asylum claims.

Last year a UNHCR roundtable of experts on LGBTI asylum concluded that 'many claimants are not able to corroborate their fear of persecution due to lack of LGBTI-specific country information. Collecting reliable data for each of the LGBTI groups poses, however, a major challenge. States, experienced NGOs, human rights agencies and other sources can work together more effectively to provide relevant country of origin information.' (UNHCR 2010: 4)

Country reports from human rights organisations such as Human Rights Watch, that are exclusively focused on violations of LGBT human rights, are infrequently released. Local LGBT and human rights organisations are often better placed to collect systematically information on human rights abuses; however, their work is constrained by lack of resources and the fact that they operate in hostile environments (LaViolette 2009a:447). Academic research on discrimination and homophobic or transphobic violence in claimants' countries of origin is also sparse, particularly in the case of war-torn or authoritarian states.

A review of refugee cases based on sexual orientation in Australia and Canada, reveals that independent information from human rights organisations was used in only 29% of cases, and documentation from LGBT organisations in only 14% of cases (Dauvergne and Millbank 2003:309). In the UK, decision-makers largely rely on Country of Origin Information reports produced by the Home Office; these, however, are often not up to date with the rapidly evolving situation in these countries. The recent report from Stonewall (2010) reveals that UKBA officials often interpret lack of information about LGB human rights abuses as evidence that LGB individuals are not at risk.

Asylum Aid (2004) have highlighted how country of origin evidence can often be too narrowly focused on whether or not there is legislation which explicitly criminalises same sex relationships. However, a narrow focus on the legal position of homosexuality ignores how the persecution of LGBT individuals depends on 'complex interaction between legal, political, social, religious and familial spheres' (LaViolette 2009a:453). It also fails to acknowledge that LGBT individuals suffer discrimination and persecution not only at the hands of the state, but also at the hands of members of the public. In most countries where legislation outlaws male homosexuality, there is no specific prohibition of same-sex relations among women. This does not mean, however, that women are not persecuted; indeed, women can often be more exposed to violence, coercion and oppression from family members. Citing Jamaica as an example, Asylum Aid have highlighted how this approach can make it more difficult for lesbians to be granted protection (Asylum Aid 2001: 14). Stonewall (2010: 35) concurred and concluded that 'lesbians remain largely invisible in many Country of





Origin Reports.’ They, and UKLGIG (2010: 11), have both called for improvements in Country of Origin Reports.

Within their new Asylum Policy Instructions, UKBA have tacitly acknowledged that there are shortcomings within the current evidence. Page 8 of the API states: ‘where LGBT issues are a significant feature of claims made by particular nationalities, guidance will be provided in the relevant Operational Guidance Note. However, **an absence of information on LGBT issues in an Operational Guidance Note or Country of Origin Information should not necessarily be taken to mean that there are no issues for the LGBT people in that country.**’ (our emphasis)

These Asylum Policy Instructions (UKBA2010: 12) also remind decision makers that ‘there may be very little evidence on the ill-treatment of lesbians in the country of origin. It may be the case that if gay men are found to face persecution, then lesbians, as a corresponding group which does not conform to an established gender role may also be at risk.’

In a posting on their website, UKBA have also confirmed that ‘furthermore, our Country of Origin Information Service (COIS) has met with Stonewall and UKLGIG to discuss opportunities for further improving the quantity and quality of available usable country of origin information.’²

Collier (2007: 11) has also highlighted the difficulties in researching evidence for women’s cases and in particular how data or reports on the incidence of sexual violence may not be available due to under-reporting. She also cites guidance from UNHCR which encourages the use of ‘alternative forms of information’ including testimonies from other women, independent research and reports from NGOs.³ Similar

² <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/dec/29-refugee-action-response>, accessed on 21.02.11. It should also be noted that the UKBA have not confirmed whether they have similarly met any transgender equality organisations to investigate improving the quantity and quality of available usable country of origin information in regard to gender identity.

³ ‘Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 ...

difficulties exist in researching evidence for transgender cases and in regard to sexual violence against transgender people. (UNHCR 2010:6)

Proof of persecution and internal relocation

The notion of persecution lies at the heart of the definition of refugee in the 1951 UN Convention on Refugees. Although ‘persecution’ is poorly defined, decision-makers have to determine whether the claimant faces persecution, rather than discrimination. Increasingly, decision-makers are asked to evaluate evidence as to whether an LGB or T individual would face serious harm amounting to persecution if returned to their country of origin (LaViolette 2009a; Stonewall 2010: 20). The distinction between persecution and discrimination has become increasingly relevant, as in some countries of origin the legal status of LGBT individuals has been changing for the better in recent years, with the repeal of legislation criminalising homosexuality and an apparent commitment to the protection of minority rights.

Claimants are expected to seek protection from their own state, before obtaining protection as a refugee elsewhere. This reflects the perception that, as formerly authoritarian regimes undergo profound political, legal and social transformations, mechanisms to protect the human rights of LGBT citizens may become available in the claimant’s country of origin. It is the claimant’s responsibility to produce evidence of state inability or failure to protect LGBT citizens. This is a serious obstacle, as available documentation on LGBT human rights violations is often inadequate or unavailable (LaViolette 2009a: 456-59).

Adjudicators often emphasise information about progress in the fields of LGBT rights in the country of origin, rather than evidence suggesting problems with state protection. For example the presence of a gay scene in bigger cities, or evidence of a rise in LGBT activism may be interpreted as proof that claimants do not have a well-founded fear of persecution because attitudes on sexual orientation are changing, and because some forms of state protection are in place (Swink 2006:257-58; LaViolette 2009a:456-59). Generalisations made on the basis of limited documentary evidence hinder the effective assessment of claimants’ individual circumstances and local contexts.

⁴ Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002. Point 36 x., Procedural Issues.





For example, in a case involving a gay man from Mexico applying for asylum in Canada, the adjudicator found that there was no sufficient evidence of potential harm to the applicant, since the position of LGB people in Mexico had improved over the years, and stated that:

'In a country such as Mexico, with a population currently approaching one hundred million people, reports of some abuses of some homosexuals in some particular locations does not mean that any male homosexual therefore has 'serious possibility' of persecution because of his sexual orientation.' (Swink 2006:257)

Even in the presence of legislation criminalising same-sex relations, proof that the law is actually enforced is required to demonstrate the state's inability to provide protection (LaViolette 2009a:456). A Nigerian man was refused asylum in the UK on the basis that:

'Homosexuality is illegal according to Nigerian common law in the south but few cases have been tried in the courts and there is usually very little attention in the press and among the public regarding these cases.' (UKLGIG 2010:7).

The use of public decency laws to persecute LGBT individuals was not even contemplated, even though this practice is common in Nigeria and elsewhere (ibid.).

Private violence, rather than violence perpetrated by the state, appears to be the most common source of (feared or actual) persecution for LGBT claimants (LaViolette 2009a:455). Even in the absence of legislation criminalising homosexuality, or of blatantly discriminatory legislation, state institutions may be unwilling or unable to protect victims of homophobic violence, as there may be significant discrepancy between the letter of the law and attitudes to homosexuality prevalent among state officials and law enforcement agencies. There is an expectation that claimants should have exhausted all possibilities to secure state protection in their country of origin before applying for asylum elsewhere. However, it may be unfeasible for LGBT individuals to seek police protection, as reporting homophobic crime means coming out in a hostile social context, and claimants may fear being victimised rather than helped (LaViolette 2009a:459-461).



It has become common practice in the UK and elsewhere to consider whether internal relocation within the country of origin can be considered as an alternative to asylum (Bennett 2007; LaViolette 2009a:459-461). In other words, 'asylum seekers are not usually entitled to international protection if it is considered that they can relocate to a different area to where they experienced persecution' (Bennett 2007:19). However, the absence of sufficiently detailed independent country information means that poor assessments of individual cases are made.

Use of internal relocation seems to have become fairly widespread in international refugee law and in UK case-law since the 1980s. Although there are no statistics available to show how many cases are refused on the grounds of internal flight alternative, there has been widespread concern amongst legal representatives about how 'internal relocation was being used increasingly and arguably unfairly as the grounds for refusing women refugee status' (Bennett 2007: 36). Bennett's report reveals a number of 'worrying trends' behind this increasing use of internal relocation. Amongst these was the increased politicisation of discourse around asylum and significant movement away from how UNHCR guidelines originally envisaged the test of internal relocation should be used (ibid.: 80-81).

For LGBT asylum seekers, the possibility of internal relocation is often argued on the basis that, if claimants move to another region within the country of origin where their sexual orientation or gender identity is not known, they can be assumed to be safe from persecution. For example, the Asylum Aid report details the story of Rose, a lesbian asylum seeker from Uganda, a country where both male and female homosexual relations are illegal. Rose was reported to the police by her own family, tortured by police officers and, upon release, her family made plans to kill her. Her case was judged to be credible, but she was refused refugee status on the grounds that she could move to another area of Uganda, far from her tormentors:

'It is considered reasonable to conclude that as a young fit person....you would be able to relocate to another area of Uganda and support yourself in these circumstances and this would not be unduly harsh to expect you to do so. It is also considered that if you relocated to another area of Uganda and did not inform your



family, they would have no way of .. knowing this fact ... Therefore, it is considered that irrespective of the merits of your claim, you do not qualify for recognition as a refugee ... you could internally relocate to escape the localised threat from your family and the local police officers.’(Bennett 2007:59-60).

A recent report by UKLGIG reviewed 50 Home Office Reason for Refusal letters, and found that arguments about discretion and relocation are often combined in letters of refusal of LGBT claimants. In 65% of the letters reviewed denial was linked to the ability to relocate, and in 38% to both the ability to relocate and be discreet about their sexuality or gender identity in the claimants’ new surroundings (UKLGIG 2010:5-6).

UKBA has recently issued guidelines on how to deal with cases involving LGBT claimants, which quote the recent Supreme Court ruling, stating that internal relocation should not always be considered as an option:

‘There is no place, in countries such as Iran and Cameroon, to which a gay applicant could safely relocate without making fundamental changes to his behaviour which he cannot make simply because he is gay.’ (Supreme Court on HJ (Iran) quoted in UKBA 2010:7).

Moreover, the guidelines state that, even when available country information indicates that internal relocation is possible, adjudicators should take into consideration individuals’ personal circumstances, acknowledging that:

‘In certain countries, financial, logistical, social, cultural and other factors may mean that a LGBT person may face particular difficulties. This may be particularly the case for lesbians who are unmarried, or single/lone parents, especially in countries where women are expected to have male protection. Women may also face a particular form of discrimination in the place of relocation and thus be unable to work so that they cannot survive in the place of relocation.’ (UKBA 2010:7).

While these developments are encouraging, practices should be monitored to ensure that these instructions are implemented. Moreover,

a fundamental problem with the quality and availability of independent country information also needs to be addressed. LaViolette stresses the importance of providing training for adjudicators to make them aware of issues related to availability of information, and of how this may impact LGBT applicants. She also advocates that human rights organisations improve the quality of their reports on LGBT human rights violations, keeping in mind the uses that are made of them in refugee hearings (LaViolette 2009a:462).

Improving procedures

There are a number of ways in which procedures to assess claimants' credibility could be improved and made more receptive to the specific needs of LGBT asylum seekers.

An effective way to control discretion is through the adoption and implementation of administrative guidelines, outlining standards of good practice and pointing out examples of improper evidentiary practice. Currently, Canadian administrative guidelines on the assessment of credibility are regarded as the most comprehensive and detailed, while UK and Australian guidelines are much less extensive. Specific guidelines on sexual orientation would also be useful to construct appropriate questioning and avoid intrusiveness (Millbank 2009a:24-25).

Improving the calibre of decision-makers is also essential, particularly as in some receiving countries like the UK, Australia and New Zealand, low-level civil servants are used 'as the first instance decision-maker, and a specialist tribunal is only called upon to make a decision if an applicant has already failed at an earlier stage' (Millbank 2009a:27).

The 'culture of disbelief' that characterises the way certain countries, most notably the UK, approach asylum claims, has been criticised by many observers. In particular, it has been noted that in the UK decision-makers were quick to point out inconsistencies in claimants' narratives, but 'did not always take time within the hearing to explore with the applicants inconsistencies that were later held to be significant' (Millbank 2009a:16). Millbank (ibid.) recommends giving more careful consideration to the reasons behind perceived or real inconsistencies, in line with the UNCHR Procedural Standards, which stipulate that applicants should be given the opportunity to explain inconsistencies





before a negative credibility finding is finalised.

4.5 Conclusion

This chapter has explored the multiple barriers and challenges that LGBT asylum seekers must overcome in seeking ‘sanctuary’.

Our review of international literature has shown many similarities between the UK and other jurisdictions for LGBT asylum seekers. This is the case for example with concerns about the quality and availability of country of origin information and the reliance on ‘safe internal relocation’ as a justification for refusing cases.

However, there is also evidence that the UK asylum process remains more restrictive in its approach to LGB asylum cases than some other jurisdictions. Despite recent progress made by the UKBA, a number of major concerns remain undiminished. These include:

- a lack of sensitivity to the difficulties that people fleeing persecution may face in being open about their sexual orientation or gender identity at the outset of their asylum claim; so as a result people’s accounts of for example being lesbian or gay are routinely dismissed as not credible.
- that when making decisions on gay and lesbian asylum cases there is a tendency to assess the evidence using western benchmarks as to what constitutes ‘normal’ or ‘typical’ gay behaviour.
- insufficient attention being given to how interpreters may act as a barrier for LGBT asylum seekers in being open about their sexual orientation or gender identity.

There remains a lack of literature that examines the particular experiences of transgender asylum seekers. In Chapter 6 Exploring Identities, we shall explore the issues facing transgender asylum seekers in more detail, as well as looking in turn at the particular experiences of gay men, lesbian women and bisexual people.

First though, we wish to place the findings from our Literature Review in a more Scottish context. Chapter 5 examines findings from our Stakeholder Interviews that relate directly to the process of claiming asylum.

chapter 5

Sanctuary: findings from interviews

**‘I feel angry at the failings of the Home Office
and the inhumanity of the asylum process.’
Stakeholder interview, Scotland**





5. SANCTUARY: FINDINGS FROM INTERVIEWS

5.1 Introduction

The previous chapter analysed both UK and international literature that relates to the experiences of LGBT asylum seekers seeking ‘sanctuary’. This chapter continues our analysis of the asylum process, but is based in the main on the findings from our research interviews.

Between August and November 2010 interviews took place with staff from 11 Scottish organisations.¹ These included:

- asylum and refugee organisations
- LGBT organisations
- immigration solicitors
- advice agencies
- a housing provider

As explained in Chapter 2, not all our Scottish interviewees had directly or knowingly encountered LGBT asylum seekers. As we knew that very few organisations in Scotland had done work with LGBT asylum seekers, our Scottish interviews were complemented by six meetings with London based organisations. These included talking to all three of the organisations which had recently published major research about LGB or LGBT asylum seekers and refugees.²

Within this chapter we focus on three key areas of concern that were highlighted during our interviews:

- the quality of decision making
- access to legal advice
- the impact of detention and fast-track decision making.

¹ See Appendix 1 for full list of interviewees

² Stonewall 2010, UKLGIG 2010, Bell and Hansen 2010; see bibliography for full report references

5.2 Quality of Decision Making

‘Two cases I dealt with both were refused after appeal. I lost touch with the clients and suspect they absconded. It’s difficult to stop people ‘disappearing’ as they lose faith in the asylum process. It’s hard having to reassure people that they are not the only ones who UKBA treat like that; that they should stick with it. For individuals to keep on standing up for their rights takes bravery and not everyone has the strength just to keep on battling through.’ *Stakeholder interview, Scotland*

Our interviewees raised a number of concerns about the quality of decisions made by UKBA in connection with LGBT asylum cases. Concerns mirrored those found during our literature review.

There were strong criticisms made about the quality of country origin information on which UKBA relied. The evidence was described by one Scottish interviewee as ‘very poor... and often wrong’. A second interviewee highlighted how:

‘UKBA objective evidence can be wrong and this really works against [LGBT asylum] claims.’ *Stakeholder interview, Scotland*

A third interviewee highlighted how there were particular gaps in knowledge or evidence about the persecution experienced by transgender asylum seekers.

The absence of accurate or comprehensive country of origin evidence was seen as having a particularly detrimental affect on LGBT asylum claimants who cases were refused on the grounds that they could ‘safely’ relocate³ to another part of their country. Again our interviewees reinforced the findings from our literature review; highlighting for example how UKBA wrongly drew broad conclusions about a country being safe from only a narrow evidence base:

‘Internal relocation will be used: there was a gay pride march here or a gay club in this city so you’ll be safe.’ *Stakeholder interview, Scotland*

³ We shall return to examine issues over internal relocation again in Chapter 6, particularly as it is applied to lesbian asylum seekers.





At the same time concerns were expressed at the unreasonable burdens being placed on LGBT asylum seekers to find evidence to corroborate their claims. This is neatly summarised by one interviewee who was directly involved in representing asylum seekers on their asylum claims:

‘The success of cases is largely dependent on evidence available to support claims. I don’t see UKBA as having a blanket policy for all LGBT asylum cases, but the threshold for success can be set unreasonably high.’ *Stakeholder interview, Scotland*

Interviewees in Scotland and London voiced concerns about cases being refused because UKBA did not believe asylum seekers’ accounts of being lesbian or gay. As with our literature review, our interviewees commented on how difficult it could be for a person to be open about their sexual orientation or gender identity at the outset of their asylum claim. Yet any delays in being open were felt likely to be punished by UKBA, who would then no longer accept their account as being credible.

For some, this was seen as being part of a wider problem of asylum seekers’ stories not being believed:

‘A culture of disbelief persists. LGB asylum seekers find it difficult to tell their stories, can’t retell all the details. UKBA often find accounts not credible and refuse cases as people didn’t say things straight away. If someone from Jamaica says that they are gay, then they are presumed to be lying almost automatically. These problems are not just limited to LGB cases.’ *Stakeholder interview, London*

Two interviewees from LGBT organisations in Scotland voiced their anger at the reasons given by UKBA in justifying their refusal to grant asylum. One commented on how ‘circular arguments’ were used by the UKBA, so that if for example a person could not recall precise dates or times on one aspect of their claim, the UKBA would use this to make a general finding of their entire case not being credible. A second went even further in their criticism:

‘I have seen some of the decision letters. I find it horrific that despite documenting of persecution, people’s claims for asylum are refused and that no protection is being given to individuals who need it.’ *Stakeholder interview, Scotland*

5.3 The Importance of Legal Advice

Access to good quality legal advice was seen as vital for LGBT asylum seekers in order for their asylum claims to have a chance of succeeding. It was also seen as crucial that such advice was made available right from the start of the asylum process:

‘The really important thing is early access to legal advice.’
Stakeholder interview, Scotland

Within Scotland it was felt that many immigration and asylum lawyers worked to high standards and were committed to doing a good job for their clients. Concerns however were expressed about variation in standards across different firms.

Critically there was a lack of easily identifiable experts in LGBT asylum work and a real shortage of information to enable organisations to know who to best refer LGBT asylum seekers on to for legal advice.

‘There aren’t any solicitors in Scotland who stand out as being prominent experts on LGBT asylum.’ *Stakeholder interview, Scotland*

‘Solicitors in Scotland can have variable level of knowledge and expertise. Around 80 - 90 firms are doing asylum or immigration work, but there is a small cohort of around 15 who we tend to refer to. I would like to see more solicitors with specialist knowledge and skills on issues relating to LGBT asylum.’ *Stakeholder interview, Scotland*

Another interviewee raised particular concerns about a lack of lawyers who would be able to deal with transgender asylum cases:

‘I am not sure about where I would refer trans asylum seekers for advice in Scotland. I wouldn’t just make a blind referral, but I would need to ensure that the service was safe and knowledgeable.’
Stakeholder interview, Scotland

In London, interviewees also raised worries about the mixed standard of advice in LGBT asylum cases. As one person put it:

‘There are a lot of not very good lawyers and people can suffer from crap legal advice.’ *Stakeholder interview, London*





Our London interviewees also commented on the difficulties caused by LGBT asylum seekers being transferred to or from Scotland, part way through their asylum claims. In this circumstance, we were told that LGBT asylum seekers often decided to keep their lawyers in London, who they had confidence in as being LGBT friendly, rather than trying to find a new lawyer in Scotland.

Scotland has a different legal aid system to other parts of the UK and also a different court structure. One interviewee from Scotland highlighted their frustration at the lack of understanding about Scottish legal structures from both English lawyers and the UKBA, which made it more difficult when cases were transferred:

‘There are big differences between England and Scotland, not just in our legal aid system. Scotland is often forgotten about in official guidance and many English solicitors don’t understand the relationship between different courts and the standing of the Court of Session.’ *Stakeholder interview, Scotland*

Further difficulties in ensuring continuity of advice were caused when people were transferred at short notice from England to Dungavel Detention Centre in Scotland; and similarly when Scotland based asylum seekers were sent to detention centres in England.

5.4 Detention and Fast-Track

‘I feel horrified by the contrast between public attitudes surveys which were showing the UK becoming more liberal to people who are gay and the way UKBA is treating asylum seekers fleeing persecution because of their sexual orientation.’ *Stakeholder interview, London*

Concerns over the detention of LGBT asylum seekers were raised during a number of our London interviews, but surprisingly not commented on by many interviewees from Scotland. Comments made related almost entirely to detention centres outside of Scotland, and not to the specific experiences of LGBT asylum seekers at Scotland’s Dungavel Detention Centre. There remains a gap in knowledge about whether the experiences of LGBT asylum seekers at Dungavel differ to those within England based detention centres. This is a priority area for further research.

Findings from our interviews were consistent with those found within Stonewall's 'No Going Back' report (Stonewall 2010:12-13). Particular fears raised by interviewees included:

- the high levels of homophobic and transphobic bullying and violence within detention centres
- major difficulties in accessing expert legal advice; especially in England where a recently introduced legal aid 'duty rota' system made it more difficult for people to choose their own lawyer
- the terrible impact of detention on LGBT asylum seekers' mental health

Additionally one Scottish interviewee highlighted the particular risks faced by transgender asylum seekers:

'Transgender asylum seekers in detention risk being subjected to transphobic sexual and physical assault; demeaning inappropriate intimate searches and medical examinations by curious staff, and also suffer psychological distress due to their gender identity not being shown any respect'. *Stakeholder interview, Scotland*⁴

Many LGBT asylum seekers are in detention as a result of being processed in a quicker than usual asylum process, known as 'fast-track'. This is often used in cases where UKBA feel that there is less chance of a person qualifying for asylum as they come from a country which is generally perceived as being 'safe'.

For those not familiar with the fast-track asylum process, a short definition is provided by the Refugee Council on their website:

'The fast track procedure is used to determine asylum applications from people who the UKBA assesses to be 'suitable'. Applicants in the detained fast track are held at an Immigration Removal Centre and the initial decision on their case and any appeals happen at a faster pace than in the community. A case is considered suitable

⁴ For more information see Gendered Intelligence 2009: 19-29 and Whittle, 2002: 217 - 237





for the fast track process where it appears to the UKBA that the asylum claim can be decided ‘quickly’.⁵

As helpful as this is, the above definition does not really explain how fast-track works in practice. To do this, we can bring in additional evidence from our literature review. Although not specifically related to LGBT asylum, Bail for Immigration Detainees’ recent report ‘Out of sight, out of mind’ is particularly instructive as it hears directly from asylum seekers whose claims were made through the fast-track process. This is illustrated by one woman they interviewed:

‘My case was closed within a month, everything was done, the appeal everything, it was done in such a short time and it was a nightmare. It was the fast track. One thing leads to another, so really there is no time. I didn’t have good access to talk to my lawyer, sit down and discuss and know more since I don’t know much about law, I don’t know much about it, they tell you things they just go through your head. I didn’t have enough time and enough reason. If I knew about the law I could see which parts could help me, because I had no chance to that, and no access to that, I had no other advice. So if I could go to someone else for advice, that would be really good, but I don’t have that chance.’ (BID 2009: 19)

Problems with fast-track are not just confined to asylum seekers. Lawyers representing cases through fast-track face an almost impossible task. BID’s report also interviews lawyers providing advice within detention centres. The following quote vividly illustrates the scale of their problems:

‘You are always flying by the seat of your pants. You are working against the clock. Outside the fast track you have time to go away and come back, which is better. You don’t have to overload the client with information and then start taking instructions on a potentially traumatic history. In fast track you have to do this all at once. Any longer than three hours [allocated for the meeting], you or the client are not thinking straight. I wouldn’t advocate this system. It has huge problems. It would be better to have time to

⁵ See <http://www.refugeecouncil.org.uk/glossary> , accessed on 12.03.11

go away and clarify and have time to come back and take further instructions.’ (ibid.)

There was strong criticism of the use of the fast-track asylum process, both from interviewees in Scotland and London. The following comment was typical:

‘I have major concerns about the way UKBA handle cases, especially the fast track process. For people who are traumatised this makes it very difficult for them to open up.’ *Stakeholder interview, Scotland*

In January 2011 the Immigration Minister Damian Green was asked to clarify the use of the detained fast-track procedure in LGBT asylum cases. He made it clear that unlike some other vulnerable groups, LGBT asylum seekers would not be excluded from being placed in the fast-track procedure. For ease of reference we quote this exchange in full:

Simon Kirby: To ask the Secretary of State for the Home Department what consideration she has given to the participation of (a) women and (b) lesbian, gay, bisexual and transgender persons in the detained fast-track procedure.

Damian Green: Entry to the detained fast-track procedure is determined by reference to published policy available on the UK Border Agency website. The policy lays out categories of claimant who, for reasons of particular vulnerability such as late pregnancy, children or serious disability, are excluded from entry to the process. For all other claimants, the key factor determining entry to the process is whether a quick, fair and sustainable decision can be taken on the case.

We do not intend to specifically add to an exclusion list all applicants on the basis of claimed or accepted gender, gender identity or sexuality. However, if on a case by case basis, any claimants from these groups are identified as having a claim of particular complexity, the general consideration referred to previously regarding amenability to a quick, fair and sustainable decision will apply.⁶

⁶ See <http://www.publications.parliament.uk/pa/cm201011/cm-hansrd/cm110124/text/110124w0002.htm#11012427000017>





Evidence from our interviews, together with that from our literature review, strongly suggest that Mr Green is mistaken in his view that ‘fair and sustainable’ decisions can be made on LGBT asylum claims in such a fast process.

5.5 Conclusion

‘I am not sure if the Supreme Court decision will change anything. The UKBA tends not to implement its own policies and a massive culture of disbelief remains.’ *Stakeholder interview, Scotland*

This chapter has highlighted a number of major worries people have about the fairness of the current asylum process for LGBT asylum seekers. Key amongst these is the continuing use of detention and fast-track and the major shortcomings in the country of origin evidence used by UKBA. These two concerns are in fact linked, for a presumption that countries may in the main be ‘safe’ will increase the chances of a person from there being subject to the fast-track process.

Our interviews also heavily criticised the quality of decisions made by UKBA on LGBT asylum claims. The most vocal criticisms often related to UKBA’s regular refusal to believe that someone was, as claimed, gay or lesbian.

From our interviews, we have also identified several key areas where further work is urgently required. These include:

- examining the particular experiences of LGBT asylum seekers at Dungavel Detention Centre
- identifying and then advertising who in Scotland is able provide expert immigration advice to LGBT asylum seekers

Not only is there is a real need to enable clearer routes into specialist advice for asylum seekers who are lesbian, gay and bisexual, more work has to be done to identify which lawyers (if any) are knowledgeable on transgender issues.

Without improved access to specialist advice, dramatic changes to the quality of decision making on cases, and a reduction in the use of both fast-track and detention, many LGBT asylum seekers in Scotland will continue to be unable to find a place of sanctuary.

chapter 6

Exploring Identities

‘People need to understand that issues for LGBT asylum seekers often stem around difference, how people feel. When clients come to us, we ask questions about when did you first feel different, how did you perceive it, what happened, how did you develop your sense of who you are, what changed – open questions, not just things you can give straightforward yes/no answers to.’

– Stakeholder interview, London





6. EXPLORING IDENTITIES

6.1 Introduction

‘People need to understand that issues for LGBT asylum seekers often stem around difference, how people feel. When clients come to us, we ask questions about when did you first feel different, how did you perceive it, what happened, how did you develop your sense of who you are, what changed – open questions, not just things you can give straightforward/yes/no answers to.’
Stakeholder interview, London

Asylum seekers are far from a homogeneous group. In 2009 24,485 people from over 50 different countries claimed asylum in the UK.¹ Each of these people’s experiences will vary enormously. Similarly, people who are lesbian, gay, bisexual or transgender do not constitute a uniform or necessarily a self-contained group. A lesbian from Kenya, a gay man from Iraq, a transgender person from Nigeria will have as many differences in their life stories, as they will have similarities.

Recent research studies into issues faced by LGB or LGBT asylum seekers have focused mainly on problems within the asylum process. They have not fully explored whether the experiences of gay men, lesbians, bisexual people and transgender people are in any way different. It is arguable that the acronym ‘LGBT’ has been used in some instances inappropriately; as a catch-all phrase within which the subtleties and different experiences of people who are Lesbian, Gay, Bisexual or Transgender are not adequately expressed. Transgender is sometimes incorrectly treated as though it is a type of sexual orientation rather than correctly addressed as a separate gender identity equality strand in its own right.

At a recent international roundtable event, the UNHCR highlighted how ‘lesbians, gays, bisexuals, transgender and intersex persons all experience persecution and discrimination in distinct ways. An understanding of the unique vulnerabilities of each group is important, including in the context of refugee status determination.’ (UNHCR 2010: 6)

¹ Figures exclude dependants. Available at <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1510supptabs.xls#'2a'!A1>



Within this chapter we explore some of these issues further. We will examine literature that has commented on issues for asylum seekers who are gay men, lesbians, bisexual or transgender people. We shall also add in comments made during our stakeholder interviews. The chapter concludes by highlighting a group of people who were both invisible in the literature we looked at, and did not emerge as a visible group during our interviews – namely young LGBT asylum seekers.

6.2 Gay Men

We were surprised by a relative lack of literature that considered the specific experiences of gay men who had claimed asylum. Within the UK, research on issues for gay men from minority ethnic backgrounds has often been skewed around issues connected to HIV and sexual health. This was something Everyone IN commented on in our previous research report (Everyone IN 2009: 85).

In their recent roundtable discussion on LGBT asylum, the UNHCR concluded that gay men tend to live more public lives in countries of origin and are therefore more often exposed to harm by people acting on behalf of the state. They highlighted sexual and physical violence in detention as being a particular concern for gay men (UNHCR 2010: 6).

This concern is echoed in Stonewall's 'No Going Back' report, and vividly illustrated by the following description by a Ugandan asylum seeker of his time spent in detention:

'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.' (Stonewall 2010: 13)

It is clear from the research we have looked at, that the persecution of men for being gay stems not only from homophobia or a hatred of gays, but also from the way in which societies expect men to behave and as punishment of people who fail to conform to gender norms.



This is illustrated in a recent Human Rights Watch report which documents a wide-reaching campaign of extrajudicial executions, kidnappings, and torture of gay men in Iraq that began in early 2009. The report emphasises the blurred area between persecution because someone is gay and because someone is effeminate. They quote a military officer describing the causes of a recent ‘campaign’ of killings of gay men in Iraq:

‘I have heard other officers talking about what is behind this specific campaign. About a year ago, when the violence was a bit subdued and security was more or less under control, gay men, especially effeminate ones, started going out to cafes in groups and being obviously gay. I heard there was a lot of anger over it, and this is one of the things that sparked the recent campaign.’ (Human Rights Watch 2009: 36-7)

Human Rights Watch also cite a report from the Iraqi magazine Al-Esbuyia which described how ‘a wave of feminisation is sweeping Baghdad neighbourhoods turning young men into women or approximations of women through imitating the opposite sex.’ (ibid.: 34)

Their report also provides us with a useful analysis of the role of language and how western terms for being gay have been used as a form of insult:

‘All the survivors we interviewed told us they first heard ‘gay’ with that purport after the US invasion in 2003. Most said it had come to Iraq through the Internet or Western media, particularly TV and films. Its use cuts across classes: a doctor and a high-school dropout each employed it in talking to us about themselves. The men integrated the English word seamlessly into Arabic speech. The recent deployment in Arabic of *mithli* (plural *mithliyeen*) as a neutral, non-condemnatory equivalent of ‘homosexual’ in English has not taken strong root in Iraq. Most of the men, if they were familiar with it at all, said it was rare.’

This Human Rights Watch report also highlighted how ‘panic and the killing focus as much on how one looks and dresses – whether or not men seem ‘masculine’ enough – as on imputations about what ones does in bed.’ (ibid.: 38)



LaViolette agrees that many gay men have been targeted for violence, sexual abuse and harassment because they 'breach strict social norms that govern the behaviour of women and men' (LaViolette 2007: 195). She also highlights how a large proportion of gay asylum seekers in Canada had reported being victims of sexual assault or rape. She elaborates on the reasons behind this:

'because homosexuals are often perceived as having feminine characteristics and taking on feminine roles, it is not surprising that in the case of homosexuals, as is generally the case with women, sexual assault is a common form of persecution.' (ibid.: 197)

In a thoughtful and well written piece, LaViolette goes on to explain how Canadian gender guidelines are deficient in recognising the link between gendered social roles and sexual orientation. She believes that there is a 'real risk' that the 'gendered aspects of the refugee claims of gay men' will 'continue to be overlooked.' (ibid.: 200)

Although writing about the situation for gay asylum seekers in Canada, evidence from our stakeholder interviews in London also showed that gay men asylum seekers are likely to have experienced sexual violence in their countries of origin. Worryingly there is also evidence to suggest that the risk of experiencing sexual violence does not end when a person arrives in the UK.

Bell and Hansen (2009: 64) have highlighted how young gay men asylum seekers are at risk of sexual exploitation in the UK. Keogh (2004), documented the experiences of migrant gay men in London, echoing such concerns, based on interviews with 18 men, including 3 illegal immigrants and 2 asylum seekers. He highlights clear links between social deprivation, sexual health and HIV morbidity. He concluded that 'the social and economic deprivation associated with migration combined with the commodified nature of the gay scene' had 'a major detrimental effect on sexual health.' (Keogh 2004: 21)

Our stakeholder interviews indicated that within Scotland there are a much larger number of gay men currently accessing support and advice services than there are lesbians. In part this follows the demographics of asylum population which saw for example twice as



many men claiming asylum than women in 2009². However there is, as we shall see in the following section, evidence to suggest that women fleeing persecution because of their sexual orientation may tend to be less visible than gay men, and that it can take longer for services to succeed in enabling such women to come forward for help.

6.3 Lesbian Women

'Violence and human rights abuses are experienced differently by lesbians compared with gay men.... [UKBA] case owners discount.... the fact that lesbians often encounter harm due to the inter-relation of their gender and sexuality, ignoring elements of gender discrimination altogether....there is a dearth of information concerning abuse and harm perpetrated against lesbians in many countries, which case owners incorrectly assume means that no such persecution exists.' (UKLGIG 2010: 6)

A number of reports, both from the UK and abroad, have highlighted the particular vulnerability of lesbian asylum seekers and the failure of asylum systems in different regions to offer sufficient protection. From this literature there emerges a picture of fear, isolation and sexual violence often matched with disbelief, ignorance and prejudice.

Emerging from the literature is a consensus that lesbian asylum seekers can face extreme barriers to being granted protection and that asylum systems both within the UK and abroad are failing to recognise the range of factors that contribute to these women's risk of persecution.

Neilson has highlighted how the number of lesbians applying for asylum and being offered protection in the US was low: 'In spite of the firm establishment of the principle that sexual orientation can be the basis for a grant of asylum, lesbian applicants continue to file fewer asylum applications and receive fewer asylum grants than their gay male counterparts' (Neilson 2005c: 26)

A partial explanation for this is offered by the UNHCR, who have

² See UKBA asylum statistics supplementary Table 2c which gives a breakdown by country of origin, age and sex. <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1510supptabs.xls#2c!A1>



highlighted how lesbians were more likely to suffer harm from non-state agents and this could make it more difficult for them to be granted protection (UNHCR 2010: 6).

The literature is critical of asylum adjudicators for failing to appreciate how lesbian asylum seekers face intersectional discrimination. They can be targeted for rape, sexual violence, honour crimes, domestic violence, forced sterilisation and genital mutilation and the reasons behind this can be both because of their gender and their sexual identity.

The failure of the asylum system to make such connections between sexual identity and gender was highlighted for criticism in UKLGIG's recent research report 'Failing the Grade' (2010: 6-7).

This was a view also shared by Neilson who is also critical of the approach adopted by those making decisions on asylum claims. Writing of the challenges lesbians in America faced in getting protection, she explains how the 'difficulty of proving governmental acquiescence in harm, coupled with an individualised assessment of the facts of each asylum case, functions as a gatekeeper in the asylum adjudication process.' (Neilson 2005c: 27)

Neilson has also commented on the difficulty in satisfying the legal definition of a refugee: 'lesbians, like many women, are more likely to face persecution in the private sphere rather than the public sphere. As a result, they have greater difficulties than gay men in proving eligibility for asylum.' (2005c: 4)

She cites a Chinese lesbian case from Australia which was refused because the applicant had never had an overt relationship with another woman and concludes that 'Ironically the more repressive a country is towards lesbianism, the more difficult it may be for an applicant to prove her claim.' (Neilson, 2005c: 21).

'A woman whose fear of the consequences of beginning a relationship with another woman is so great that she dare not do so might lead a more repressed life than a man. Gay men at least know that venues to meet other men exist and thus face potential police violence when attempting to meet other men.' (Neilson 2005c: 21)



She concludes her article by calling for greater recognition of 'gender based harm' as grounds for asylum and also for greater recognition of harm that takes place in the 'private sphere' (ibid.: 27).

Asylum Aid has written a number of reports highlighting the particular challenges women asylum seekers face within the asylum system. Two of these include prominent reference to the challenges experienced by lesbian asylum seekers.

'Safe for Whom' (Asylum Aid 2004) looked at the experiences of women asylum seekers from what was then known as 'safe list' or 'white list countries'. These were countries for which getting protection was made more difficult due to presumptions made by UKBA (then Home Office) that they were in the main 'safe'. The Asylum Aid report highlights the particular experiences of Jamaican lesbians and highlights real gaps in country of origin information.

'The vast majority of literature in this area pertains to homosexual men and information on the treatment of lesbians is not readily available although there is mounting anecdotal evidence.' (Asylum Aid 2004: 41)

Writing for Asylum Aid, Collier (2007) examined the impact of internal relocation for women asylum seekers. Her report included two lesbian case studies, one from Uganda and another from Jamaica. Both women highlighted the importance of 'social codes' and commented upon the social unacceptability of being an independent woman. Choosing not to have a male protector or a husband was seen to place lesbians, along with divorced, single and separated women 'in a dangerous position' (Collier 2007: 68).

Both Collier and UKLGIG (2010) have highlighted deficiencies in country of origin information relied on by the UKBA. In particular UKLGIG are critical of UKBA for asking lesbian asylum seekers to obtain corroborating evidence which would be impossible for them to obtain (UKLGIG 2010: 7).

The UKBA has made some efforts to respond to these concerns. As well as developing training on sexual orientation asylum claims for staff, their new Asylum Policy Instructions make specific reference to particular challenges faced by lesbians (UKBA 2010).



At page 4 of their guidance they acknowledge how lesbians ‘may be at a higher risk of harm at the hands of non-State actors and may have less access to informal protection systems. Lesbian women and gay men may feel obliged to conform outwardly to family and social expectations by, for example, marrying and having children. This issue may affect all LGBT people but due to women’s weaker position in society, this issue may be even more acute for lesbians.’ (UKBA2010:4)

The UKBA have also acknowledged that for lesbian asylum seekers, there may additional barriers which may prevent them from safely relocating to another part of their country.

‘In certain countries, financial, logistical, social, cultural and other factors may mean that a LGBT person may face particular difficulties. This may be particularly the case for lesbians who are unmarried or single/lone parents, especially in countries where women are expected to have male protection. Women may also face a particular form of discrimination in the place of relocation and thus be unable to work so that they cannot survive in the place of relocation. Decision makers should consider whether the applicant, if unaccompanied, would be able to safely access the proposed relocation area.’ (UKBA 2010: 7)

The Asylum Policy Instructions are also helpful in that they acknowledge that there are likely to be gaps in country of origin information about the types of harm encountered by lesbians.

‘It is important, however, to note that there may be very little evidence on the ill-treatment of lesbians in the country of origin. It may be the case that if gay men are found to face persecution, then lesbians, as a corresponding group which does not conform to an established gender role may also be at risk.’ (UKBA 2010: 12)

UKBA have also stated that their Country of Origin Service has met with UKLGIG, and Stonewall to ‘discuss opportunities for further improving the quantity and quality of available usable country of origin information’. ³

³ See <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/dec/29-refugee-action-response>



It is clear that this, together with the new Asylum Policy Instructions, is a step in the right direction. However what is more important is how far such guidance can go to actually transform practice on the front-line. We are, for example, concerned to hear anecdotally of a growing number of cases, both in Scotland and other parts of the UK where claims are being turned down because the UKBA do not believe that a woman is a lesbian.⁴

In an organisation as large as UKBA, and with asylum remaining a deeply politicised and controversial subject, we do not believe that practice and attitudes can change overnight. As welcome as the new Instructions are, we do not believe that they are sufficient in themselves to transform the asylum process, and ensure protection will always be given when needed.

To back up our view, we look again at what other people have said about the problems within the asylum system as it particularly pertains to lesbian asylum seekers.

The Safra Project is a UK based resource project working on issues relating to lesbian, bisexual and/or transgender women who identify as Muslim religiously and/or culturally (Muslim LBT women).

In their 2003 study they concluded that 'those making decisions on asylum claims often do not believe that an asylum seeker is really LGBT. This is particularly the case when he or she comes out late in the procedure, for example after a first negative decision, authorities may claim that an asylum seeker is 'making it up' to strengthen their case.' Safra also concluded that 'asylum decision-makers may also perceive the fact that someone is/was married; that she is/was otherwise engaged in a heterosexual relationship, or, that she has children as indications of heterosexuality.' (SAFRA 2003: 26-27)

Let us dig a little deeper behind the sentiments exposed by the above quote. Not only do they indicate a failure to take account of the link

⁴ See for example reports on BN, a lesbian from Uganda at <http://www.bbc.co.uk/news/uk-12306975> and at http://madikazemi.blogspot.com/2011/01/uk-preparing-to-put-asylum-seeking.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+SaveMehdiKazemi+%28LGBT+asylum+news%29

between gender and sexual identity, they are also based on a very linear understanding of what it means to be gay, namely that there comes a point when a person suddenly stops being heterosexual and becomes homosexual. They fail to take account of the complexity of people's identity and the forces and pressures within society to make women conform to a prescribed gender role.

LaViolette (2007) is also clear that asylum systems are failing to appreciate the nature of oppression experienced by women.

'The main threat to the safety and survival of many lesbians is not criminal laws or violence perpetrated by agents of the State, but rather social norms based on gender that subordinate women economically and politically, control the sexuality and reproductive freedom of women, and, generally do not give women full and free access to exercise their fundamental rights. In terms of their sexuality, lesbians are viewed as resisting heterosexual imperatives prescribed by all patriarchal societies.' (LaViolette 2007:188)

Both our literature review and stakeholder interviews show a relative invisibility of lesbian asylum seekers compared to gay men.

Commenting in general on the lower number of female asylum seekers, Neilson found that 'approximately 37% of all asylum applicants (in America) are women' and compared that to 80% of worldwide refugees who are women and children. Such a huge discrepancy is caused in part by such women's lack of economic independence and the added difficulty for women to travel to developed countries. (Neilson 2005c:3)

A clear pattern emerged from our stakeholder interviews in Scotland – namely that amongst an already low visibility group that was LGBT asylum seekers, there was even less visibility of lesbian asylum seekers. This was a pattern that was commented on during one of our stakeholder interviews in London:

'Previously we only had a couple of women, but we began to win their confidence. It took a couple of women to be brave and they started bringing more people. Now we have as many women as men. We still have fewer women from the Middle East. For





women, the countries they come from meant they were often even more hidden than gay men. They had not had networks that gay men sometimes had. It's similar when in the UK: less visibility.' *Stakeholder interview, London*

6.4 Bisexual People

Bisexuality as an orientation is not well understood. Because the sexual identity of bisexuals often is considered as fluid or a matter of choice, their asylum claims are frequently dismissed due to lack of credibility and/or reluctance to recognise bisexuality as a protected characteristic under the 1951 Convention. (UNHCR 2010: 6)

Published decisions on applications involving bisexual claimants reveal prejudiced and ignorant views about bisexuality. As Rehaag (2008, 2009) shows, bisexual claimants are disproportionately suspected to be fraudulent, and decisions often reveal the belief that bisexual applicants are 'not gay enough'. In a Canadian case involving a bisexual woman from Hungary, immigration officials maintained that the claimant was not in actual fact bisexual, since she was currently in a heterosexual relationship:

'The claimant came to Canada because allegedly she was persecuted, among other reasons, on account of her sexual orientation. However ...the evidence shows that since last year she has been living with her boyfriend.' (Quoted in Rehaag 2009: 427).

In this instance, the claimant's engagement in a long-term, monogamous relationship with a man is interpreted as proof that she is not in fact bisexual, but heterosexual. This is a common problem for bisexual claimants, whose 'real' sexual identity is often inferred from the gender of their current partner. Thus, bisexuality is considered a 'passing phase' rather than a sexual identity in its own right, which may involve or may in the past have involved shifting between same-sex and opposite-sex relations.

Berg and Millbank (2009: 20), writing about experiences of bisexual asylum seekers in Canada and Australia concluded that 'although it is hard to generalise because of the small numbers of such claims, it appears that applicants who self-categorise as bisexual have a somewhat lower success rate than those identified as homosexual.'



Adjudicators in many countries, including the UK (O'Leary 2008), have also questioned the eligibility of bisexual claimants, sometimes doubting whether bisexuality constitutes a 'sexual orientation'. The most blatant example of this is that of an Australian case involving a bisexual claimant from China, in which the adjudicator rejected the application, accepting that 'homosexuals constitute a particular social group for the purposes of the refugee definition', but noting that:

'by stressing at the hearing that he is bisexual, the Applicant has not satisfied the Tribunal that he is reconciled to homosexual activity, lifestyle or even social association, or that he has any kind of preternatural homosexual identity or tendencies. It seems to the Tribunal that if this case were about political opinion, it would be as if the Applicant were saying that, at heart, he was a little bit disposed towards democracy but also eager to support authoritarianism; if it were about religion, it would be as if the Applicant, at heart, were a little bit Christian and a little bit atheist. There is significant equivocation in the Applicant's evidence and it goes against him'. (Quoted in Rehaag 2009: 426).

According to Rehaag (2008, 2009), the main reason why bisexual claimants are refused is because the notion of sexual orientation as an immutable characteristic, which has become established in legal practice through precedents such as *Ward v Canada*, does not appear to 'fit' bisexuality. This reflects rigid binary notions of sexuality which are deeply rooted in Western culture: the belief that an individual can only be either homosexual or heterosexual, whereas bisexuality is considered a 'passing phase' that some individuals go through in the process of reaching sexual maturity or of 'coming out' as gay or lesbian (Rust 1993, 2000).

Since bisexuality is often seen as a transitional phase, rather than an immutable characteristic of the individual, bisexual claimants are often considered 'not gay enough' to qualify for asylum. Such a binary viewpoint fails to even consider the potential of someone's level of attraction to men and level of attraction to women being two independent immutable characteristics such that an individual could immutably be attracted to both men and women.



Rehaag (2008, 2009) assessed the success rate of bisexual claimants in Canada, the US and Australia, and concluded that 'bisexuals who allege a feared persecution on account of their sexual identity are frequently unable to secure refugee status' (Rehaag 2009: 416). For example, in Canada in 2004 the success rate for bisexual claimants averaged only 25%, much lower than the rate for sexual minority claims (49%) and for refugee claims generally (46%) (Rehaag 2008:71). There are no comparable statistics for the US; however, it is possible to gauge the success rate for bisexual claimants from information obtained from the Asylum Documentation Program (ADP) of the International Gay and Lesbian Human Rights Commission. Success rate for bisexuals was significantly lower than that for gay men and lesbians (5% and 17% respectively). A review of sexual minority claimants' decisions taken by Australian courts from 1994 to 2000 (Millbank and Dauvergne 2003, quoted in Rehaag 2009: 423) identifies similar trends, in spite of the fact that, unusually, a decision by the Australian Federal Court explicitly stated that 'bisexuals can form a particular social group for the purposes of refugee law' (Rehaag 2009:22).

Our stakeholder interviews echoed the findings from our literature review that it is difficult to win protection for people who are bisexual. One London based organisation that had seen a number of asylum seekers who may identify as being bisexual explained that in such cases they try and persuade UKBA to adopt a different approach.

'We try and argue with UKBA that is acceptable to identify as Bi, that what causes a problem is difference, and if perceived as any way different that can be the basis of persecution.' *Stakeholder interview, London*

It is very disappointing that the recently published UKBA Asylum Policy Instructions on dealing with cases relating to sexual orientation or gender identity offer no real insight into how to approach bisexual cases. The term 'bisexual' appears just 6 times in this 14 page document, but each time it is contained within the phrase 'lesbian, gay, bisexual' or 'lesbian, gay, bisexual or transgender'. The most helpful reference is found at page 11:

'Generally speaking, self-identification as lesbian, gay, bisexual

or transgender will be the normal starting point as an indication of a person's sexual orientation or gender identity. However applicants may not always feel able to disclose this straight away and it will need to be explored in greater depth at interview.' (UKBA 2010: 11)

Our interviewees in Scotland concurred that the UKBA struggle to understand the concept of someone being bisexual, and had concerns that in practice UKBA do not readily accept someone self-identifying as bisexual:

'Bisexual cases would never win in terms of tribunal: the perception is if you're married you can't be gay.' *Stakeholder interview, Scotland*

It is interesting therefore to note, that within the recent Supreme Court ruling, Lord Rodger wrote that 'the Convention offers protection to gay and lesbian people – and, I would add, bisexuals and everyone else on a broad spectrum of sexual behaviour – because they are entitled to have the same freedom from fear of persecution as their straight counterparts.'⁵

In order to deal more effectively with cases involving bisexual claimants, Rehaag (2008) recommends two strategies:

- Challenging the widespread perception that bisexuality is a myth or a passing phase by making bisexuality visible, and raising awareness of bisexual issues among immigration officials and case workers.
- Exploring alternative sites within existing jurisprudence that can better accommodate the needs of those individuals who experience their sexuality as fluid. This may include, for example, framing bisexuality as similar to political opinion, religion or gender, rather than as constituting membership in a social group based on immutable shared characteristics. Bisexual claimants may put forward the argument that the persecution they face is based on gender.

⁵ http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2009_0054_Judgment.pdf paragraph 76





Indeed, as LaViolette notes: '[s]ocial, political, and legal disapproval of homosexuality is more often a reaction to the noncompliance to gender and social roles than a simple expression of contempt for the sexual practices of homosexuals. Generally, gender roles are based on a heterosexual orientation. Non-conformance with gender norms by gay men, lesbians, and transgendered persons implies a refusal to behave in ways dictated by their biological sex and social classification'. (Quoted in Rehaag 2008: 96).

6.5 Transgender People

'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.' (Hammarberg 2009:5)

Social group identities formed through gender variance have existed throughout history and across diverse cultures (Feinberg 1996:xi). However, it is only over the last couple of decades that the concept of gender identity has begun to be treated seriously as a specific area worthy of study (Hines 2007:28). Even today, much confusion remains around the distinctions and overlaps between gender identity, sexual orientation and sex/gender. Persecution on these three different bases can converge together because 'acts of discrimination against a wide variety of groups are often pieces of the same quilt, with intolerance of gender nonconformity as its thread' (Flynn 2001:393).

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity understands 'gender identity to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other

expressions of gender, including dress, speech and mannerisms.’ Therefore everyone has a gender identity and transgender people can be defined as those persons who have a gender identity which does not fully correspond with the sex assigned at birth.

‘[Within] patriarchal societies, in which non-conformity to clearly defined gender roles is not tolerated, people who identify as the opposite sex or who habitually wear the clothing or adopt the customs of the opposite sex have reason to fear persecution. ... transgendered persons are directly affected by the disgust society feels towards those who cannot conform to the stereotypical roles for men and women’ (LaViolette 2007:200)

As explained in Chapter 3, gender identity can be used as the basis for an asylum claim as transgender people can comprise a particular persecuted social group. Reviewing developments in transgender asylum case law in the USA, Landau highlights that:

‘These cases demonstrate a developing jurisprudence of transgender asylum protection based on an asylum seeker’s expression of gendered traits, including a person’s hairstyle, clothing, demeanor, use of makeup, and choice of names. In these cases, the court honors such expression as a true and honest depiction of identity and self-determination, extending protection to litigants because the traits they exhibit are integral to their identities.’ (Landau 2005:238)

However, unlike for sexual orientation where clear precedent that being gay or lesbian (although not necessarily being bisexual) constitutes membership of a particular social group has now been firmly established in the asylum case law of the USA, Canada and the UK, legal recognition of transgender people as comprising a particular social group currently remains tenuous (Neilson 2005; LaViolette 2009a). Neilson emphasises that when choosing an effective approach in transgender-based asylum claims, such claims remain very much an uncharted territory but:

‘the debate surrounding the rigidity of gender and sex should not preclude a finding that transgender identity can form the basis of membership in a particular social group. Social group membership





can also be based on past experience among individuals who share a characteristic that is fundamental to identity... Since there is scarcely any characteristic more fundamental to identity than a person's gender, this would be a strong argument.' (Neilson 2005:277)

Although the concept of undergoing gender reassignment indicates that some aspects of sex and gender are not immutable (for example, a person's gendered physical appearance can be modified through the use of clothing, hormones and surgeries), Neilson argues that gender identity itself is immutable and fundamental to a person's identity. (Neilson 2005:278)

However, the difficulty of establishing a clear nexus between being transgender and facing persecution is complicated by the requirement that the particular social group 'has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society' (UKBA 2010). The ways in which aspects of gender variance from stereotypical gender roles are identified and labelled changes across time, cultures and languages: 'Transgender identities are cut through with difference, while the concept of 'difference' itself is contingent upon social, cultural and temporal factors' (Hines 2007:83).

These cultural differences can mean a person who has a gender identity which does not fully correspond with their birth sex may never have heard of the term 'transgender'. The terminology used within their country of origin to mark them out for persecution may not directly translate clearly into a western transgender framework. Indeed, many cultures may not have any equivalent words for transgender or gender identity. Instead a transgender asylum seeker may be fleeing persecution because they were perceived to be a butch lesbian or an effeminate gay man in their country of origin. Therefore, claiming asylum not only on the basis of gender identity but also on the basis of imputed sexual orientation can be important as a legal strategy for transgender cases. (Neilson 2005:288-289)

Even when the asylum seeker sees a clear difference between gender identity and sexual orientation, confusion may easily occur within a court while considering an asylum claim which is accepted to involve a transgender person:



‘For example, a Lebanese claimant testified he was born a female but has dressed and acted like a male since childhood. Furthermore, he has undergone a mastectomy and hormone treatments to change his biological sex. Members of the Board considered him to be transsexual, but they suggested that his case fell under ‘sexual orientation’: ‘I find the claimant’s evidence regarding the claimant’s sexual orientation, as an FTM transsexual who has begun the process of gender reassignment, to be credible’. In fact, it is not the claimant’s sexual orientation that was raised (he considered himself heterosexual)’ (LaViolette 2007:201)

The complexity of terminology, legal arguments and practical support issues which can be involved in transgender asylum claims poses particular difficulties for asylum seekers, interpreters, immigration officials and lawyers when trying to accurately document the specific persecution faced and process the asylum claim appropriately. These difficulties are further compounded by the lack of information and research about transgender specific issues and persecution across the globe.

Some possible reasons suggested in our interviews for this lack of information and research include the small numbers of visible transgender people, researchers traditionally focusing on issues of male and female biological sex rather than diversity in gender identity, and general lack of transgender awareness. Given how little general transgender research exists, we were not surprised that there is extremely limited specific data on transgender asylum seekers as data gaps quickly worsen as soon as attempts to look at intersectional areas are undertaken. The majority of research on sexual orientation asylum claims does not attempt to address issues of gender identity and transgender people. Even research which purports to be about LGBT asylum seekers often includes only very small numbers of transgender cases and struggles to identify and explore transgender specific asylum issues.

Therefore in this section we have had to supplement asylum specific reports with other transgender specific research to draw relevant analogies where appropriate, such as looking at general healthcare inequalities for transgender people in order to extrapolate some of the



healthcare difficulties transgender asylum seekers may face.

Similar issues and gaps in data are prevalent in relation to information about transphobic persecution in Country of Origin reports (Gendered Intelligence 2009: 24-25). The smaller numbers of transgender people relative to LGB people makes collecting information more difficult. Transgender-specific grass-roots human rights organisations are limited in capacity but are the main collectors of information about gender identity persecution. Systematic work to collate and share information relevant to Country of Origin reports has only recently started to receive small amounts of funding, with Transgender Europe's Transrespect Versus Transphobia Worldwide Research Project only beginning in 2010.⁶

While laws that particularly focus on "outlawing" gender variant behaviour are relatively rare, transgender people, in common with LGB people, are prosecuted by states through the use of legislation against same sex relations, public decency and public disorder. That the legislation used in gender identity persecution does not clearly reference transgender people increases the risk that Country of Origin reports may fail to recognise the persecution risks faced by transgender people. If reports detailing prosecutions for same-sex relations fail to recognise that some of those prosecuted may identify as transgender, then Courts may mistakenly think that a country is only homophobic and not also transphobic. For example, there was international uncertainty about the possible identification as gay or as transgender of a person prosecuted for same sex relations in Malawi in 2010.⁷

Another particular Country of Origin report accuracy risk was highlighted during our interviews: the existence of gender reassignment provisions in a country could lead to incorrect assumptions that transgender people are not persecuted there. A surgeon being

⁶ This project collects information on reported murders of transgender people, relevant legislation and transphobic persecution such as hate crimes and extra-judicial killings.

See <http://www.transrespect-transphobia.org/> for more information

⁷ See for example

<http://www.genderdynamix.co.za/content/view/470/142/>

willing to perform particular surgery for payment does not preclude simultaneous transphobic persecution from state actors or other sections of that society.

In terms of specific practical difficulties during the asylum process, the Gendered Intelligence Trans Community Conference 2008 Report explores some of the issues faced by transgender asylum seekers in London. Put together with more general research into transgender experiences, a bleak picture is painted of the specific issues that transgender asylum seekers may face on top of the generic issues faced by all asylum seekers.

Transgender asylum seekers can face a range of difficulties relating to the name and gender on identity documents and personal records. It is common for many transgender people to have different names and genders on different documents as some documents and records are much more difficult to get changed than others. This increases the risk that important documents and information related to their case can get separated and not taken into account in decisions that affect their immigration status, housing and access to benefits or services. They are also at risk of staff calling them by their old name, thereby 'outing' them as transgender to others and putting them at risk of transphobic hate crime (Gendered Intelligence 2009: 24). Should their asylum claim be denied they face the risk of being deported with mismatching name and gender to their original documentation, putting them at increased risk of transphobic harassment and hate crime from authorities in their country of origin.

Transgender asylum seekers are also likely to face the problem of their travel identification documents not matching their current gender identity expression. In many countries there is no legislation available to allow people to change their legal gender on documents such as passports. So for some people, their choices are either to attempt to travel with legal documents that put them at higher risk of transphobic harassment by airport and customs officials or obtaining false documentation. Whatever documents are used to travel there remains a risk that if authorities at the point of departure suspect that someone is transgender they will harass them including subjecting them to additional strip searches and may prevent them from leaving.





Access to the financial resources needed to leave their country of origin can be immensely difficult for transgender people as many are unable to access legal employment in their country of origin due to the inability to change their name or gender on identity documents required for employment. Even in countries where documentation can be changed, transphobic employment discrimination and harassment results in high levels of unemployment (Whittle 2002: 99 -106). The severe marginalisation of transgender people also means that they are at high risk of exploitation particularly sexual violence (UNHCR 2010:6).

Transgender people may not have the social networks in potential host countries to assist them to leave their country of origin. During interviews for our previous research (EveryoneIN 2009) UKLGIG noted the importance of social networks in providing help and advice to people “back home”. UKLGIG noted that they only got significant numbers of women seeking asylum once there were networks of refugee women in London to help their “sisters” over. With the numbers of transgender people being smaller it is more difficult for them to have this kind of support to know that leaving is an option and that asylum can be claimed.

Once in the UK, one of the most complex practical difficulties is the potential detention or housing placement of a transgender asylum seeker:

‘Imprisonment for trans people presents a particular set of problems. If they have not yet undergone genital reconstruction surgery, they will almost certainly be incarcerated in a prison for people from their natal sex grouping. In that environment, it may well be impossible for them to continue or to commence living in their chosen gender role and, if they do, their transsexual or transgender status will always be known by both prison staff and other inmates. That makes them vulnerable to bullying, sexual assault and violence.’ (Whittle 2002:220)

‘Harrasment and abuse from fellow detainees and staff is a frequent occurrence. It has been experienced that detention centre staff (nurses, counsellors etc) impose beliefs on trans

asylum seekers. For example, religion has been used to try to 'cure' trans asylum seekers.

'There is a sense of extreme isolation for trans people being detained. Current protection is given by isolating trans asylum seekers and by advising them 'not to leave their room'.' (Gendered Intelligence 2009: 23-24)

'Detention centres need to have robust transgender specific policies and assessment processes that take into account the particular needs of transgender people and together with them identify the most appropriate way to safely house them and provide access to appropriate clothing and medical treatment. There also needs to be respect for their self-identified name and pronouns, personal privacy and confidentiality.' (Whittle 2002: 221-232).

When housed in the community, in addition to the general difficulties faced by all asylum seekers, transgender asylum seekers face additional challenges in relation to maintaining privacy about their transgender status and transphobic hate crime from members of their own ethnic background. These difficulties are exacerbated by single sex shared housing arrangements (Gendered Intelligence 2009: 23).

As highlighted in EveryoneIN 2009, access to peer support is very important. From our interviews it appears that in Scotland most transgender peer support is provided by a few small transgender specific groups and can involve transgender people travelling across Scotland and paying for food and drinks at meetings in bars and restaurants. For asylum seekers this is particularly problematic as they have no disposable income. Despite this the immigration system puts pressure on transgender asylum seekers (especially those who have no history of accessing hormones or surgery) to 'prove' their transgender status by showing participation in such groups and purchasing transgender specific literature and gendered items such (as clothing, accessories, and magazines). Scottish transgender groups have advised us that specialist transgender items such as binders, prosthetics and outsized ladies shoes are often only available from expensive specialist online retailers, making them particularly difficult for transgender asylum seekers to access.





Without access to supportive peer mentoring, transgender asylum seekers also find it more difficult to access public services, especially gender reassignment medical services and general healthcare services. Without such support, asylum seekers may struggle to find out that they are fully entitled to healthcare (except in cases where appeals have been refused) and that gender reassignment services are available within the NHS (Gendered Intelligence 2009: 23).

While we know very little about the particulars of healthcare issues for transgender asylum seekers, research on general transgender healthcare issues highlights a vast multiple of complex health inequalities including denial of access to hormones and surgery (Whittle et al 2008: 52–54) and transphobic discrimination from healthcare professionals (Whittle et al 2008: 59).

Transgender people as a general group are at high risk of self harm and suicide (Whittle et al 2007: 78). Inability to continue ongoing access to hormone treatment has the potential to increase the risk of developing osteoporosis (GIRES 2008: 67-68). Where transgender people have undergone genital surgery, there can be an ongoing risk of complications occurring which could need additional specialist surgical operations (WPATH 2001: 20-22).

The combination of language barriers, racism, transphobia and a lack of awareness about the rights and needs of asylum seekers, refugees and transgender people may make it exceptionally difficult for transgender asylum seekers and refugees to navigate much needed health services. Research is needed in this area to better understand the extent and the impacts of these issues in order for them to be properly addressed.

6.6 Young LGBT Asylum Seekers

'We haven't had any family members, for example children of settled refugees coming to us for help and agree that this is an important gap.' Stakeholder interview, Scotland

Little is known or has been written about the particular experiences of young LGBT people who are asylum seekers or refugees.



Many refugee families have been in Glasgow for upward of ten years and have children who were dependants on asylum claims who would now be teenagers or independent young adults. Other asylum seeking families could have waited a long time for a decision on their asylum claim and would also have dependants who are now teenagers or young adults.

It is inevitable that a proportion of these young asylum seekers and refugees may either identify as being lesbian, gay, bisexual or transgender or may be questioning or exploring their sexual orientation or gender identity.

As well as children who are dependants of either asylum seekers or refugee families there is also within Glasgow a small number of unaccompanied minors who have claimed asylum independently.

Scottish Refugee Council (2010:7) have estimated that there is an absolute minimum of 6300 asylum seekers and refugees living in Glasgow – made up of around 2800 refugees and 3500 asylum seekers. Although they were able to identify that during 2009 around a quarter of newly arrived asylum seekers were families rather than individuals, they concluded that there were gaps in data about the overall composition of refugee families across the city (ibid.: 62).

They also estimated that since 2006 approximately 1500 households in Glasgow had benefited from the ‘Legacy Review’. This was an exercise carried out by UKBA outwith the normal asylum process to clear a backlog of some 450,000 undecided asylum cases across the UK. (ibid.: 26)

During our stakeholder interviews in Scotland we asked if any organisation had seen or had enquiries from young asylum seekers or refugees who were dependants of the asylum claim of their parent or parents. None of our interviewees had seen any such clients. We were also surprised at the lack of literature which had looked at these issues in any depth.

For their report, Bell and Hansen interviewed five people aged between 18 and 24 for their research. They highlighted how ‘Young men appeared to be particularly vulnerable to sexual exploitation from



casual friends and with some engaging in sex work as a means of survival.’ (2009: 64)

However the authors were not able to identify interviewees who were unaccompanied minors or young people leaving care. They concluded that ‘there are almost certainly LGBT young people in these communities who are at greater risk of exclusion or exploitation. This group is subject to a recommendation for further research.’ (Bell and Hansen 2009: 64) ⁸

We very much concur with their concerns and believe greater attention should be given to the specific and complex needs of young LGBT asylum seekers, refugees and dependants. Not least because there may be cases where a young person who has hidden their sexual orientation or gender identity from their parents, may in the process have precluded themselves from opening up a possible route to gaining protection or claiming asylum separately in their own right.

6.7 Conclusion

‘To avoid social ostracism, violence and sometimes execution, LGBT individuals are often forced into socially-acceptable gender identities and heterosexual relationships by their families and communities. This, in turn, causes severe emotional damage. LGBT individuals are also more likely to be targets of sexual violence, used as a punishment for transgressing gender norms.’ (ORAM 2009: 5)

Within this chapter we have explored both the differences and similarities in the experiences of asylum seekers who are lesbian, gay, bisexual or transgender. We have shown that there is a complex intersection between issues relating to gender, gender identity and sexual orientation.

⁸ See also a recent news item on LGBT asylum news concerning a young Egyptian lesbian who was battling against removal from the UK. <http://madikazemi.blogspot.com/2011/02/in-uk-young-lesbian-egyptian-battles.html#more>

Many problems for LGBT asylum seekers stem from how societies construct what is normal or accepted behaviour, particularly as it relates to gender. LGBT asylum seekers may be persecuted because of their 'difference' or failure to conform to expected norms, as well as for their actual or perceived sexual orientation or gender identity.

We were surprised by a relative lack of literature that considered the specific experiences of gay men who had claimed asylum. There was however evidence which has highlighted their vulnerability to sexual violence, both in their country of origin and here in the UK. We also remain very concerned about the abuse and violence that gay men asylum seekers are exposed to within detention centres.

There was a range of evidence which suggested that lesbian asylum seekers find it extremely difficult to succeed in their asylum claims. As well as shortcomings in the use of country evidence and criticisms of the use of 'safe internal relocation', our research suggests that UKBA is failing to fully understand the pressures that women come under to conform to their expected gender role and often unfairly refuse to accept women's accounts of being a lesbian as credible.

There is less evidence available about the experiences of bisexual asylum seekers. However, our international literature review has highlighted how ignorant and prejudiced views about bisexuality can adversely affect a cases chance of succeeding. UKBA's Asylum Policy Instructions fail to offer sufficient guidance on dealing with bisexual claims and this is an area where we would like to see more work done.

There is an extreme lack of evidence available about the particular experiences of transgender asylum seekers. The complex terminology, legal arguments and practical support issues which can be involved in transgender asylum claims create particular difficulties which need to be better understood. Strong concerns were raised during our research about transgender asylum seekers being particularly vulnerable to physical, sexual and emotional abuse within asylum detention centres and community-based single sex shared accommodation. Our research identified difficulties relating to changing name and gender on personal documents. They are likely to be at high risk of self harm





or suicide, yet accessing healthcare, especially gender reassignment healthcare, is likely to be particularly difficult for transgender asylum seekers. There is an urgent need for research work to evidence the specific support needs and asylum process experiences of transgender asylum seekers.

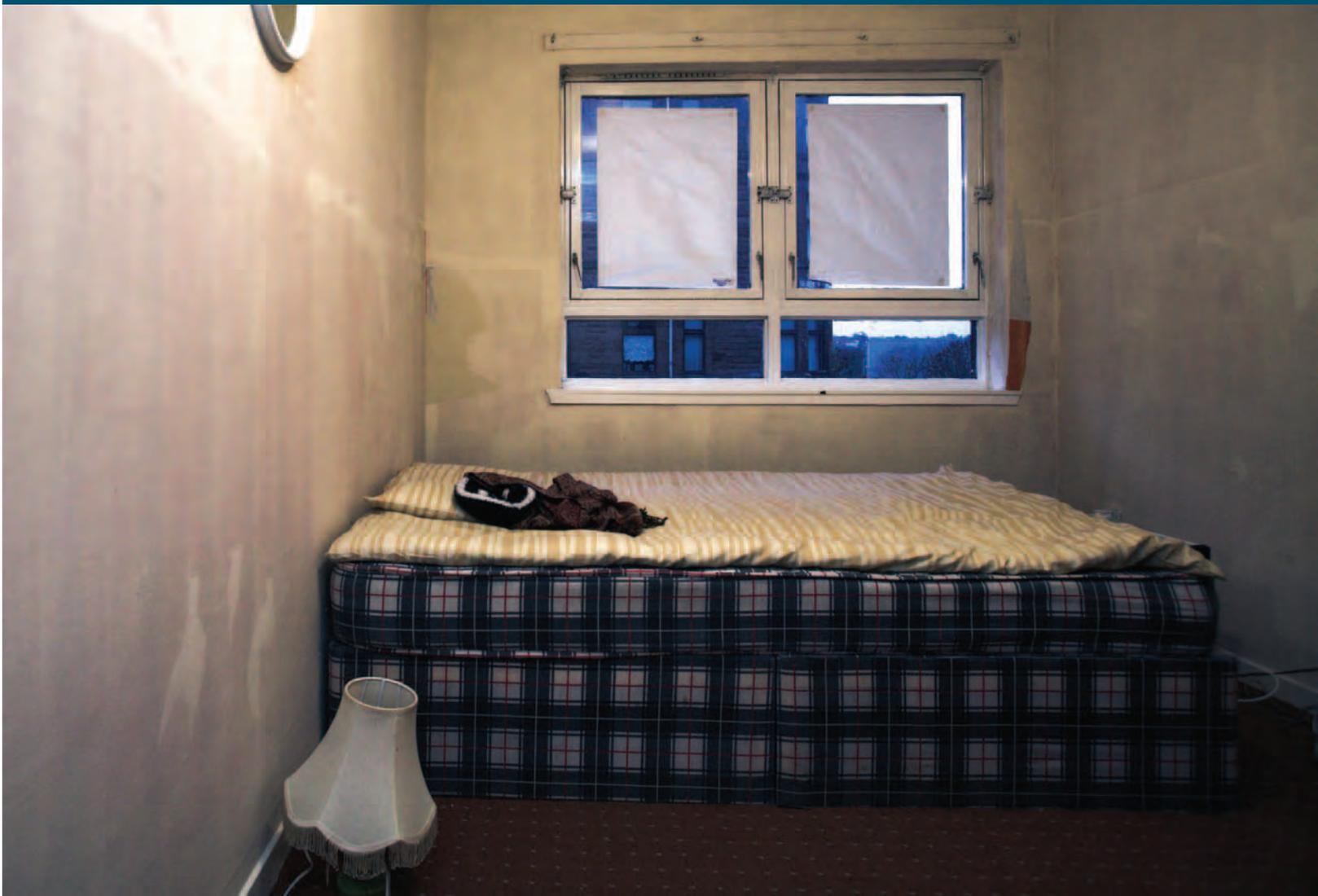
Finally within this chapter we highlighted a real gap in knowledge about the particular experiences of young LGBT people who are asylum seekers or refugees. This group of asylum seekers faces particular vulnerability not just because of their age, but from potential ongoing family pressures to keep their gender identity or sexual orientation hidden. This is also an area where further work is urgently needed.

chapter 7

Safety and Solidarity

‘I am angry at failings of the Home Office and the inhumanity of the asylum process. Basic needs are not being met by the support system. People are vulnerable to exploitation and come under pressure to prove that they are gay. They can be more likely to win their cases if they have evidence of being out in the UK. This puts pressure on them to take more risky behaviour.’

– Stakeholder interview, Scotland



7. SAFETY AND SOLIDARITY

7.1 Introduction

Previous chapters have focussed principally on the way in which LGBT asylum claims are dealt with. In this chapter we look more closely at the issues raised during our stakeholder interviews and community consultation event which relate to other aspects of the treatment of LGBT asylum seekers in Scotland. These explored areas such as:

- evidence of need
- barriers to accessing services
- gaps in services
- partnership work across sectors
- organisational support and training needs
- priorities for action both locally and nationally.

Our findings are also informed by the discussions held at two training courses we piloted in Glasgow, plus workshops held at both the Equality Network and Scottish Refugee Council's Annual Conferences.

A summary of the people we spoke to is given in the table below:

event(s)	date	number of people	different organisations represented
stakeholder interviews	Aug-Dec 2010	21	17
community consultation event	Dec 2010	25	14
training courses	Oct 2010	13	13
conference workshops	Oct 2010	26	15

Although we are not a front-line client service, since November 2010 Everyone IN has received calls for advice on around 10 individual LGBT asylum cases. The majority of these requests for help came from organisations, but some came directly from either the individual or friend of the individual. In the main we have sought to limit our intervention on these cases to signposting and referrals, though the issues raised by our involvement in even a small number of cases have also helped shape our thinking.

7.2 Complexity of Need

There was a clear consensus amongst all our interviewees that the needs of LGBT asylum seekers and refugees are likely to be complex. They were seen as being a ‘vulnerable group within a vulnerable group’.

For those organisations who had already worked with LGBT asylum seekers, there was a clear recognition of how their needs may differ from other service users.

This is summarised neatly by one LGBT service provider:

‘The issues faced by LGBT asylum seekers can be different than for other young LGBT people. Issues around social support, bullying, more normal areas of our work, tend to be secondary importance for asylum seekers. Their primary concerns are more fundamental: they are about safety and the right to stay.’
Stakeholder interview, Scotland

The same organisation also highlighted how the urgency and complexity of issues meant that it was difficult for them to offer the level of support needed. It was outside of their core area of expertise.

‘Issues over asylum claims can be dominant so without a dedicated project to support people it can make it more difficult for people to come forward for help. The help they may need – legal help, help with appeal, accommodation, food and shelter – are not our core areas.’ *Stakeholder interview, Scotland*

Another interviewee also acknowledged how time-consuming it could be to support individual LGBT asylum seekers.





‘Difficulties are also caused by the in-depth support they often need, it can be labour intensive and we do not have any dedicated resources to help.’ *Stakeholder interview, Scotland*

Our own experiences of responding to requests for help on individual cases echo this view. It is clear that even for organisations where numbers of individuals helped may be low; the resource implications may still be great.

In the following sections, we explore this in more detail – looking at some of the reasons why needs may be complex, including issues such as vulnerability to mental ill-health, isolation from the community and fears of being identified as being LGBT. We also explore how such problems can be compounded by an asylum support system that leaves LGBT asylum seekers at risk of exploitation and destitution.

7.3 Access to Services

Fewer than half of the Scotland based organisations we interviewed during our stakeholder interviews had knowingly directly encountered LGBT asylum seekers and refugees. Only a tiny minority of over 30 organisations represented at our training course or conference workshops had knowingly directly encountered LGBT asylum individuals.

At the same time, conversations we have had with other organisations have suggested an increase in numbers of clients presenting for help.

Primary amongst these is the Unity Centre in Glasgow, a volunteer run collective who ‘offer friendly, practical solidarity and mutual aid to all asylum seekers, refugees and sans papiers’¹. In December 2009 Unity launched an LGBT asylum seeker helpline after their centre saw an increase in queries. Unity realised that their cramped and busy small office did not provide a quiet, confidential or safe space and that this was likely to be a barrier to LGBT asylum seekers being open or coming forward for help. They recognised that they were not fulfilling the needs of all their clients and a helpline was the way they responded.

Unity are alone, in that no other service provider in Scotland currently offers a dedicated service specifically targeted at LGBT asylum

¹ See <http://unitycentreglasgow.org> for more information

seekers. But how essential is it that separate or dedicated services for LGBT asylum seekers exist? Would a better approach be to improve access to existing services?

At this point, we can bring in research evidence from outside of Scotland. In 2001 GALOP published a study of the needs of Black Gay, Lesbian and Bisexual people in London and specifically asked about the type of service they would prefer to access. It was a report we highlighted in our previous Everyone IN research, and although now 10 years old, its findings remain very pertinent.

The report found that although people highly valued the role that peer support can play, it was also equally important that all services were inclusive:

‘I would like to use any and every service available comfortably.’
(GALOP 2001: 33)

‘It is useful to share thoughts with other like-minded individuals. The Asian community not only has the social phobia associated with being gay but I also have to deal with peer pressure, which in most cases is harder to deal with. Some other communities may not understand what kind of pressure it is.’ (ibid.: 32)

Most of our interviewees and participants at our consultation event recognised that for LGBT asylum seekers there were additional barriers to being open and that these could affect their ability to access services. It was also widely acknowledged that existing services could do more to increase their openness and inclusivity.

It is interesting to also note the conclusions of a major study looking at ways of tackling multiple discrimination across Europe. Carried out by the Danish Institute for Human Rights in 2007, this highlighted:

‘The reasons why members of multiple identity groups are increasingly establishing their own movements, communities and NGOs are worth noting. Respondents cited single ground NGOs’ difficulties and sometimes failure, in being inclusive and representative of all members as well as the need of intersectional groups to identify, ‘speak up’ and articulate their own interests as the main motivation for starting their own initiatives.’ (Danish Institute for Human Rights 2007:35)





Some organisations in Scotland were already taking steps to make themselves more accessible, but there was also recognition that such changes could require both time and resources.

‘Our staff are conscious of the barriers for LGBT asylum seekers being open. To overcome these barriers we need to make sure we keep giving out clear messages. We have for example added equality messages to our client leaflets and literature. There is a need for visible images to help make people feel more confident. We need to be careful to make sure that images and literature mean something to people - that they translate culturally rather than make people feel more nervous about being open.’ *Stakeholder interview, Scotland*

It was also seen as important that services were able to provide tailored support and it was acknowledged by some that the way they dealt with LGBT asylum cases would have to differ from other less vulnerable clients:

‘We are currently developing a key worker system to ensure continuity of the client seeing the same worker, though this tended to happen anyway with asylum clients.’ *Stakeholder interview, Scotland*

One interviewee highlighted how there was a need for staff to be proactive in asking questions about whether a client was LGBT. The barrier for clients in accessing services could result from a lack of confidence amongst staff to talk sensitively or openly about issues relating to sexual orientation or gender identity.

‘The key is about building trust with individuals. Staff need to spot signs, for example if a client is repeatedly coming in for the same problem, is this masking something else. Staff must have the confidence to ask more openly about things.’ *Stakeholder interview, Scotland*

Language was seen as a huge barrier and concerns were frequently expressed about difficulties in accessing good quality interpreting services.

Interpreting for LGBT asylum cases can be made more difficult by: the challenges interpreters face in finding directly the right words to translate western sexual orientation or gender identity terminology; the need for great sensitivity and cultural awareness in the way questions are asked; and by LGBT asylum seekers' fears of talking openly about their sexual orientation or gender identity in front of people who may come from the same region as them.

Yet many organisations we met lacked a dedicated budget for even basic interpreting. For organisations whose primary role was not asylum or immigration there were particular difficulties in supporting clients who did not have English as a first language.

It is common in many situations for asylum seekers to rely on family, friends or community members to act as interpreters. In the case of LGBT asylum seekers such a route was unlikely to be available, with for example fears over how community or family members would react to them being gay, outweighing the need for language support.

One LGBT organisation in Scotland highlighted how barriers over language made it more important that their staff intervened:

'We recognise that this client group may lack confidence or language skills to be able to bring about desired outcomes, therefore support from our staff is more important.' *Stakeholder interview, Scotland*

Concerns were also expressed about the neutrality of interpreters and fears raised about how discriminatory attitudes from interpreters could act as an additional barrier for LGBT asylum seekers being open. One immigration adviser highlighted particular fears about women not being open in front of an interpreter.

These concerns are not confined to Scotland. In London, the UK Lesbian and Gay Immigration Group relies in the main on a small group of trusted service users to act as interpreters. LGBT asylum seekers and refugees act as both interpreter and provide peer support.

One of our London interviewees (PRAXIS) had done considerable work relating to developing good practice in interpreting. They highlighted the complex issues that cases may raise, and told us how:





‘There is an important distinction between interpreting and advocacy. Advocates need to know rights, but not necessarily language. It is also important to examine power relationships in interview settings. Interpreting should always be done in first person, direct speech so there is no room for personal interpretation. Communication should be direct. With LGBT work there are additional sensitivities, but a good interpreter should be able to work successfully with LGBT asylum seekers if they stick to good practice. The cultural background of the interpreter may mean they have a particular perspective, which can be reflected in interviews.’

PRAXIS has developed excellent systems for recruiting, training and monitoring interpreters and the importance of doing this was also highlighted during our Scottish interviews.

‘It is important that any negative feedback on interpreters is acted on and systems are in place to allow clients to flag up when there is a problem. It is also important that organisations allow some choice e.g. either phone or face to face.’ *Stakeholder interview, Scotland*

However at a time of cuts in services and with organisations across all sectors under pressure to reduce costs, we remain unconvinced that sufficient attention has been given to ensure that interpreting services and language support services are sensitive to the complex needs of LGBT asylum seekers and refugees. This undoubtedly will be a priority area for future work.

7.4 Support from the Community

‘Glasgow does well in terms of networks and support, but LGBT has been until now excluded.’ *Stakeholder interview, Scotland*

It is very sad that for people who have fled persecution their fear does not end when they arrive in the UK. Instead, what has emerged from our research is that a similar type of fear persists: a fear of being able to express themselves freely; a fear of people within their home communities finding out that they are LGBT; a fear of being ostracised from the informal refugee networks and support systems that exist in their new host city.

Last year, organisers of a major LGBTI asylum conference held at Greenwich University neatly described this as ‘double jeopardy’.

For asylum seekers, being open about their sexual orientation or gender identity amongst people from their own community often seems too dangerous. Not only can it be difficult to adjust from a life that may have been led clandestinely, to new surroundings where some attitudes can be more liberal, prejudice can still be rife.

Until Unity opened their LGBT asylum helpline in December 2010, there were no dedicated or visible sources of support from within community settings for LGBT asylum seekers. In Glasgow, which has rightly been praised for many of the pioneering projects that support and integrate asylum seekers and refugees, LGBT issues have until now not featured prominently in any of the activities or plans of refugee agencies or integration networks.

Several interviewees highlighted how the situation was made more complex by the close links between faith organisations and refugee community activity. This stems in part from the active role churches played in welcoming asylum seekers when they were first dispersed to Glasgow.

‘The lack of support in community settings is a problem for LGBT asylum seekers; they wouldn’t be able to raise these issues at our integration network drop-ins. The church plays a big role in drop-ins and issues with both Christian and Muslim faith groups would make it difficult for someone to be open about being gay.’
Stakeholder interview, Scotland

‘The projects we manage are small and they are often hosted by churches. They address particular needs of sections of community, but haven’t to date engaged on LGBT issues. I am not sure how someone who is LGBT would feel in accessing one of our other groups. Would like to feel that they would be made welcome, but am aware that there are many complex and sensitive issues and that people may feel uncomfortable being open about their sexual orientation.’ *Stakeholder interview, Scotland*





Our previous research (Everyone IN 2009) explored many of these issues in more detail, explaining how racism or cultural insensitivity from the LGBT sector can also have a negative impact on the ability of a person from minority backgrounds to access support from the community.

However during this research we were struck by the openness and willingness of our Scottish interviewees to engage on LGBT asylum issues, which for many they had not previously thought about. There was a welcome level of candour from some that more needed to be done.

Within the constraints of our research we were not able to succeed in fully reaching out to all community groups, particularly to smaller refugee community groups. Our research interviews in London emphasised that refugee community groups, and those who are funding or supporting them, need to do more to become inclusive of LGBT asylum seekers and refugees. Parallels were drawn to the situation with refugee community groups in London which previously failed to include women in their activities, until funders and key refugee organisations intervened to ensure they had to think again about the way groups were being run. One London interviewee went as far as saying:

‘Refugee community organisations that refuse to work with people who are LGBT should have their funding stopped. It should be made a condition of their funding, it wouldn’t be tolerated with other equality strands’ *Stakeholder interview, London*

Our own view is that what is needed is both a carrot and a stick. Groups need support, training and investment as well as needing to be challenged when practices are discriminatory. It is undoubtedly the case that more work needs to be done in Scotland to reach out to community groups, to test the water and to gauge how real or extensive prejudices may be and identify the best ways of countering any negative attitudes.

It is also the case that such a process will be made more difficult by the current economic climate and cuts to many community based services. There are very few established refugee community groups in



Scotland and those which exist rely heavily on volunteers and support from intermediary organisations. At the time of writing the Scottish Refugee Council is facing cuts of 62% to some of their services and controversial proposals to merge 8 local integration networks into 3 are dominating the thinking of many people involved in front-line delivery of refugee community services.

It is a difficult time to get organisations, both big and small, to engage with what for many is seen as new or complex work. However, what is needed is not just a change in the way that services are delivered, but a change in mindset. LGBT asylum needs to be seen as a core part of organisations' work, not an added burden.

7.4 Housing

Our stakeholder interviews included a meeting with one of the main providers for accommodating asylum seekers in Scotland. Several other interviewees provided housing advice or advocacy or were involved in work to tackle the problem of destitution. We were perhaps surprised that housing did not feature more prominently in the issues raised during our interviews or at our community consultation event.

There is a lack of evidence as to the level of problems encountered by LGBT asylum seekers and refugees in current housing provision. We understand that at the time of our interviews, there was no reference to LGBT within contracts or service level agreements issued by UKBA to housing providers. There were no established systems for tracking or monitoring problems which may arise due to, for example, homophobic or transphobic bullying.

‘There are a couple of cases where tenants have been moved due to ‘incompatible lifestyles’, after intervention of advice organisations, but sexual orientation or gender identity issues are not specifically highlighted. People do not feel comfortable talking about this and are worried about putting something in writing, in case people do not react well, so for example on our daily handover sheets we wouldn’t write that someone was gay, as we can’t be confident the people who will see this will react sensitively.’ *Stakeholder interview, Scotland*



'I am not aware of any instances of homophobic bullying. We do have via our UKBA agreement a 'complaints resolution service', but nothing is mentioned in this in relation to sexual orientation (it mentions racial harassment but not homophobia, transphobia or even religious harassment).' *Stakeholder interview, Scotland*

As a direct result of our community consultation event, Everyone IN was invited to attend a meeting examining ways of tackling hate crime within asylum and refugee housing:

'Thanks for organising the event at Glasgow University a couple of weeks ago, it was very interesting. After attending the event I read the report that you highlighted about the housing and homelessness issues faced by LGBT asylum seekers. One issue which particularly struck me was that many of the participants in the research had experienced discriminatory harassment but were unlikely to have reported it to the police or to their housing provider. I thought it might be useful for you to come along to the meeting and discuss issues faced by LGBT asylum seekers and refugees and how we can ensure that their needs are met by third party reporting centres and housing providers.' (extract from email)

The process of conducting this research has started to get people thinking and again we are encouraged at organisations' willingness to recognise that more needs to be done.

It is clear however that the ultimate responsibility for housing of asylum seekers rests with the UKBA, who determine levels of funding and accommodation standards.

'The main challenge that may present to LGBT asylum seekers is that our accommodation is mainly either family units or shared 2 or 3 bed properties. We follow guidelines on gender, male and female, but there is nothing in our contract or guidance from UKBA re LGBT cases. We are obliged to work to what our contract says.' *Stakeholder interview, Scotland*

The standard practice of shared asylum seeker accommodation in Scotland being arranged according to male and female, suggests that UKBA and accommodation providers have not fully considered the

possible challenges and risks that this may provide to LGBT asylum seekers.

We were encouraged to learn from one stakeholder that UKBA in Glasgow had been sympathetic in agreeing to change accommodation for an LGBT asylum seeker when advised it was inappropriate. However we remain concerned that for most LGBT asylum seekers it will be very difficult to raise any concerns they have about the suitability of their accommodation, particularly if, as at present, staff of the housing providers have not had sufficient training or lack information on how best to handle such cases.

In Glasgow there is current uncertainty about who will provide accommodation to asylum seekers, and proposals under a new contract are currently being negotiated. A high profile campaign in December 2010 led to hundreds of people joining a protest and letters threatening to move asylum seekers out of council managed accommodation at short notice were ceremoniously burnt.²

The direction of travel is not encouraging, with a desire to cut costs likely to restrict the ability of whoever is providing accommodation to match existing levels of support.

Everyone IN staff have already spoken in detail to one LGBT asylum seeker who explained the crucial role that their housing support worker played in ensuring their safety and well-being during a very uncertain time. We would be concerned that a new housing contract based around less support than is currently provided, would make it even more difficult for individual LGBT asylum seekers to feel safe enough to raise any concerns they had about their housing.

Housing also plays an important role in determining whether someone stays in Glasgow after they are granted status. Sim (2009) examined refugees' experiences of settling in Glasgow and explored factors which influenced refugees' decision to leave Glasgow:

'the research project was developed, to interview refugees with status and to ask them about their experience of getting permission

² See for example <http://www.heraldscotland.com/news/politics/archbishop-s-anger-over-asylum-seeker-evictions-1.1069713>





to stay, of obtaining housing, employment and welfare benefits, their use of services, and about how they were going about setting up home in the UK – this time on a permanent basis. A secondary aim was to identify why new refugees decided to stay on in Glasgow and what could be done locally to encourage this' (Sim 2009: 3)

The report concluded:

'One aim of the research was to explore why some families had left Glasgow and if there were actions which might be taken to persuade families to stay. Some people had encountered racism in Glasgow but this was not something that was peculiar to Glasgow and so not a significant factor in deciding to move. In fact, better housing and job opportunities were seen as key to persuading potential movers to stay in Glasgow. Refugees continually stressed their desire for self-reliance, self-respect and independence and believed that these would only come with paid employment. Some other locations, such as the south of England, were seen as possibly offering better opportunities, especially in employment.'

The report makes no reference to LGBT issues. However we can also turn to research carried out beyond Glasgow, to find evidence of some additional problems likely to be encountered by LGBT asylum seekers. Out of 40 people interviewed by Bell and Hansen (2009: 25) they found that '7 respondents had refused UKBA accommodation and a further 9 had left UKBA accommodation in dispersal sites to return to London'. During our interview with Refugee Action in London, we were advised of a similar smaller scale study carried out by Refugee Action in Leeds, which found similar evidence that LGB asylum seekers were not open about their sexual orientation and often dropped out of accommodation.

The lack of data about LGBT asylum seekers in Glasgow experiencing housing problems due to their sexual orientation or gender identity is worrying. Our real fear would be that people are simply abandoning properties or placing themselves at risk of being made destitute rather than confronting issues such as homophobia, transphobia and unsuitable accommodation. Undoubtedly these housing problems, and the drift down to London (and also anecdotally to Manchester)

are exacerbated by the lack of support currently available to LGBT asylum seekers within the community.

Sim (2009) also found that ‘three fifths of our interviewees had become involved with community groups and a similar number with faith groups or places of worship. There was a growing indication that refugees were making friends and building networks of support.’ (Sim 2009: 66) As much as the incidence of homophobic or transphobic abuse, it is the absence of networks of support, the lack of involvement with community groups and difficulties in finding safe places of worship which are factors in determining whether LGBT asylum seekers will feel able to stay in their accommodation.

7.5 Poverty and exploitation

‘I am angry at failings of the Home Office and the inhumanity of the asylum process. Basic needs are not being met by the support system. People are vulnerable to exploitation and come under pressure to prove that they are gay. They can be more likely to win their cases if they have evidence of being out in the UK. This puts pressure on them to take more risky behaviour.’
Stakeholder interview, Scotland

It is not possible to fully understand LGBT asylum seekers’ vulnerability and risk of exploitation, without first understanding the financial situation that all asylum seekers find them in.

Apart from a few limited exceptions, asylum seekers are not allowed to work whilst waiting for a decision on their asylum claim. Such a decision can take months, if not years to be made. During this time they are unable to claim normal social security benefits. Instead asylum seekers rely on a separate system of support from the UKBA. To qualify for this they would first need to show that they are destitute and have no other means of supporting themselves.

In October 2009 levels of support were cut by around 20% for many asylum seekers. Since then the rates of support are (per week):

- Qualifying couple (married or in a civil partnership): £70.34
- Lone parent aged 18 or over: £42.62



- 
- Single person aged 18 or over, excluding lone parent: £35.52
 - Person aged at least 16, but under 18 (except a member of a qualifying couple): £38.60
 - Person aged under 16: £51.37

Levels of support paid are considerably less than that received on social security benefits. UKBA have justified this on the basis that ‘the level of cash support we provide takes into account the fact that asylum applicants have access to fully furnished and rent free accommodation with utilities (such as electricity, gas and water) included.’³

This assertion fails to take account of additional benefits denied to asylum seekers including Social Fund (often used to buy furniture), Housing Benefit (used to pay rent) and their ineligibility to claim benefits such as Disability Living Allowance or qualify for additional premiums, to recompense for additional costs of disability. Some vulnerable asylum seekers may be living on around a quarter of the income they would have if eligible for mainstream social security benefits.

Yet those asylum seekers in receipt of normal UKBA support are not the most vulnerable. In Scotland there have been a number of research reports highlighting problems of destitution (see for example Green, 2006 and Refugee Survival Trust and British Red Cross 2009 & 2011). Most recently, concerns have also been raised at the suffering caused by asylum seekers surviving for long periods on a cashless system of support commonly referred to as Section 4 payments. (See Reynolds, 2010 and Mulvey 2009b)

At the same time, LGB asylum seekers have, as discussed above, come under increasing pressure to prove that they are gay. Only one of our stakeholder interviewees in Scotland specifically raised fears about LGB asylum seekers being at risk of sexual exploitation, but this was raised during our London interviews:

‘I am concerned over the vulnerability of asylum seekers to sexual exploitation. They are put under pressure to prove they are gay, and this places them at risk. Destitution and not being able to

³ See <http://www.ukba.homeoffice.gov.uk/asylum/support/cashsupport/currentsupportamounts/>

work makes them more vulnerable to exploitation.’ *Stakeholder interview, London*

We feel this is an area of real concern and one which needs further investigation.

Such concerns were echoed by Bell and Hansen: ‘in the absence of other support, stakeholders felt that LGBT asylum seekers would continue to be dependent upon the support from casual friends and acquaintances. Young gay men and transgender people were considered to be more at risk of sexual exploitation than lesbians. Of the very small number of LGBT asylum seekers involved in sex work there was evidence that financial desperation forced them to participate in unsafe sex which commanded a higher price.’ (Bell and Hansen 2009: 57)

In 2006 Refugee Action published a report based on 125 interviews with destitute asylum seekers. None of the interviews took place in Scotland. Although there are no specific references to LGBT asylum seekers, they found:

‘A small number of respondents (less than 5 per cent) described making money by selling sex. Proportionately more men admitted doing this than women among those we interviewed. They talked about working as a prostitute with a mixture of acceptance, shame and anger. What was common was a sense of disempowerment and of being abused by having no choice.’ (Refugee Action 2006: 81)

‘I’ve been living as a prostitute for the last year. I charge £5 a time for someone to fuck me and some clients argue about even paying me that because they know how desperate I am’ 24-year-old man from the DRC (Refugee Action, 2006: 82)

In February 2011 Oxfam published a detailed study into the survival strategies adopted by destitute asylum seekers across the UK. They found evidence that suggested ‘transactional sexual relations and commercial sex work are survival strategies for some destitute asylum seekers.’ (Oxfam 2011:50) They found evidence of both men and women involved in commercial sex work, with many of those who





pursue this strategy being physically abused, sexually exploited or manipulated, or forced to stay against their will.

Their report describes how two peer researchers had encountered destitute male asylum seekers being forced into having sex with other men to survive:

'I know about two or three people who, just for money, are gay, but they don't like it like this, they just do it for some money from an old man. [They are] just young people in their twenties, but they sleep with really old people. They just do it for money and shelter.... I know this one place where the bad people go, selling stolen laptops, in a bad pub. That's where they meet these men. It's just a direct exchange. They don't have a relationship or friendship, because this action in my culture is really bad. Men have sex with men mostly for shelter. They go for even older men or women, just so that they can have somewhere to stay.'

Their report also highlights how churches and refugee communities played a central role in providing support to destitute asylum seekers. We would be concerned that LGBT asylum seekers may find it more difficult to access support from some faith based groups or from their community if they were open about their sexual orientation, though this was not actively explored in Oxfam's research.

Also published in February 2011, was an updated research report from Refugee Survival Trust and British Red Cross: 21 Months Later (2011). This highlighted that there was a lack of public sector support structures in Scotland for refused asylum seekers, but made no specific references to issues around sexual orientation or gender identity. Although it noted improvements in some areas of UKBA practice, it commented on how drastic action was still needed to address the problem of destitution amongst asylum seekers. In an accompanying press release, concerns were expressed by Scottish Refugee Council, British Red Cross and Refugee Survival Trust about the potential impact of funding cuts to refugee services and how they may place even more strain on the charities in Scotland supporting destitute asylum seekers. ⁴

⁴ See for example http://www.scottishrefugeecouncil.org.uk/news_and_events/latest_news/922_charities_call_for_end_to_400-mile_trek_for_asylum_seekers



UKLGIG (2010) found that LGB asylum seekers were more likely to have asylum claims refused at initial stages than other asylum claimants. Although their research was published before the recent Supreme Court ruling, the findings from throughout our research strongly suggest that the asylum system will not be made fair overnight for LGBT asylum seekers. Until improvements are seen in the quality of UKBA decision making, it is likely that a disproportionately high number of LGBT asylum seekers may remain at risk of being destitute or at best on a cashless, inflexible system of Section 4 Support. Furthermore, without access to informal networks or community support, their risk of exploitation remains real.

7.6 Mental Health

‘Mental health and psychological issues, including internalised homophobia and feelings of shame, can be a significant impediment to accessing asylum procedures. LGBTI asylum-seekers and refugees often have a higher suicide risk and may have suffered sexualised violence and other trauma. The provision of LGBTI-sensitive mental health services early on in the asylum process may be necessary to help them present their claims.’ (UNHCR 2010: 4)

There is existing evidence that the mental health of LGBT people who are not asylum seekers can be worse than for non-LGBT people.

Published in 2010 and funded by Greater Glasgow and Clyde NHS Board through the Glasgow Anti Stigma Partnership, ‘There’s More to Me’ was a peer research project looking at the beliefs, experiences and attitudes towards mental health of lesbian, gay and bisexual people. SAMH worked with LGB organisations to train peer researchers, who then held nine focus groups around Scotland. The research found that LGB people felt they were more likely than others to experience mental health problems. Crucially this report found that:

‘there was a strong feeling that this is not because there is an intrinsic link between mental health problems and being LGB, but because of the experiences that LGB people have, such as



isolation, homophobia and pressure to disguise their true selves.’
(Glasgow Anti Stigma Partnership 2010:2) ⁵

Lesbian, gay, bisexual and transgender asylum seekers and refugees are, as documented above, likely to experience all of the above factors: isolation, homophobia and/or transphobia, and intense pressure to disguise their true selves. It could therefore be anticipated that an LGBT person who is also an asylum seeker will be at an even greater risk of mental ill-health.

In a study by London School of Hygiene and Tropical Medicine and the Scottish Refugee Council (2009), it was found that for over half (54%) of women interviewed their health was worse in Scotland than it had been in their home country. The reports highlighted particular impacts of exposure to violence on women asylum seekers’ well-being. They found that

- 57% of women were above the cut-off point for Post Traumatic Stress Disorder (PTSD) symptomology, and
- 20% reported suicidal thoughts in the seven days before the interview.

However there is no reference in the study to either sexual orientation or gender identity issues in the asylum claim.

Research on mental health issues has also been carried out by Glasgow Anti Stigma Partnership. Their 2007 report focused on knowledge, beliefs, awareness, perceptions and attitudes towards mental health problems within black and minority ethnic (BME) communities in Glasgow. Ten focus groups were held in community settings and they also carried out a literature review of published evidence around attitudes towards mental health within Pakistani, Indian, Chinese and African/Caribbean communities.

The report makes only one passing reference to issues around sexual orientation:

See also Whittle et al, (2007: 70), whose research showed that the harassment of transgender people could lead to an increase in mental illnesses like depression.

‘Language used for mental health is an important aspect of stigmatising those with mental health problems (as it is in other forms of stigma: i.e. around learning and other disabilities; racism; and sexual orientation).’

It does (ibid.: 76) however provide a helpful summary of what factors members of BME communities see as contributing to the causes of mental health problems: difficulties in relationships, bringing the family and community into disrepute and punishment for wrong doing are all highlighted as being key factors. These are all factors that may be particularly pertinent for LGBT asylum seekers and refugees.

The reports concludes that BME people with mental health problems are likely to suffer from dual stigma but focuses mainly on discrimination on the grounds of race (ibid.: 74). The lack of intersectional analysis in relation to, for example, gender roles and expectations is disappointing.

A second similar study, (Glasgow Anti Stigma Partnership, 2008) had as its aims:

‘To explore patterns of stigma and discrimination in relation to mental health problems with the asylum seeker and refugee population in Glasgow and identify specific interventions to address stigma and discrimination within these communities’.

Research again centred around 10 focus groups, clustered around languages and based on pre-existing groups. Given this chosen methodology, it is perhaps not surprising that LGBT issues are not mentioned at all in the research. The group setting and clustering of people largely with people from the same community may have precluded people talking about issues such as sexual orientation or gender identity. A discussion about the how representative the focus groups were mentions only gender, age, faith and countries of origin.

The authors acknowledge:

‘Soliciting the views of ‘hard to reach’ groups such as single males, would require extensive groundwork and may require tapping into local colleges, youth groups, religious institutions, housing advice officers and other agencies. This should be considered for





future research with asylum seekers and refugees in Glasgow’

The report highlights the impact of uncertainty in the asylum process and isolation on a person’s mental health:

‘Human beings are the same everywhere but different circumstances cause mental health problems. In Somalia, it’s poverty and civil war. But it’s different here – worse – because of the isolation, not being supported by many people and fear of being deported back. In this country, we can’t relax. We can become sick and stressed inside with bad news from the Home Office.’ (ibid.: 25)

It concludes that despite high incidence of mental ill-health, asylum seekers and refugees are often reticent in seeking support:

‘in most groups, people would be reluctant to seek help because they want to hide the problem’. (ibid.: 28)

It can be concluded there are multiple factors that place LGBT asylum seekers at greater risk of encountering mental ill health. These may include: homophobia, transphobia, social isolation, uncertainty over immigration status, poverty, separation from family, sexual violence, feelings of shame and the pressure to conceal their true identity. Together these factors can cause enormous strain on a person’s ability to just survive. Urgent consideration needs to be given to the best way of promoting the mental well-being of LGBT asylum seekers and refugees, so that they can do more than just survive, but feel safe, respected and supported. This is an area of work which has to date received insufficient attention.

7.7 Training and Building Links

During our stakeholder interviews in Scotland we explored what partnerships (if any) existed across sectors and what training (if any) organisations saw as being most needed. Our findings were similar to those within our earlier research report (Everyone IN 2009) that looked more broadly at minority ethnic LGBT people rather than just asylum seekers and refugees.

We found that in Scotland work across equality sectors remains patchy

and that people often lack clear information about what services other organisations are able to provide to their clients. We also found that people are interested in having more networking opportunities across equality strands and that there is a need for both skills and legal training on LGBT asylum issues.

Not surprisingly the type of training required was seen to vary according to the nature of the organisation and what level of contact with LGBT asylum seekers people had already had.

‘We would welcome training. I feel that there is more value to looking at softer skills, how to approach cases, gaining trust, dealing with people, rather than legal research skills which staff are already very confident in. The approach for training should vary according to the background of the organisation and, for some organisations, basic LGBT awareness training is still needed.’ *Stakeholder interview, Scotland*

‘The priority content for training should be ways of making people feel more confident, encouraging a human rights approach, normalising LGBT issues (‘get over it’) as well as increasing confidence over language, terminology and legislation.’ *Stakeholder interview, Scotland*

Although there were some existing training courses available in Scotland that covered general asylum issues, these were seen by some as too expensive. For there to be high take up of training, it was felt necessary to keep the cost of training down, or preferably make it free. Our own experience backs this up. In October 2010 Everyone IN piloted a half day’s training on working with LGBT asylum seekers and refugees. This course was provided free of charge and was quickly oversubscribed so that a repeat session had to be arranged

Some larger service providers indicated that they would be interested in accessing in-house training, with one stakeholder describing how:

‘Training is needed at all levels of service, including management and people who are on the frontline and the first point of contact.’ *Stakeholder interview, Scotland*





A number of interviewees described how they felt particularly unconfident in dealing with transgender issues, and it is clear that if a training programme was to be developed in the future, it should address issues around both gender identity and sexual orientation.

For smaller and more community based organisations, LGBT asylum issues had often failed to even make the radar and people had not yet started to think about what training they would need. Although interviewees expressed an interest in attending training, they were sometimes uncertain how others connected to their organisation may view the importance of this:

‘We have very little information and very little knowledge. This in part due to the nature of the subject, it’s a taboo subject and still not discussed. It has not been discussed at either our residents association or in framework for dialogue meetings. I am sure that it will be raised as an issue and we do not feel confident that we know how to respond to it.’ *Stakeholder interview, Scotland*

One interviewee from London, with experience of delivering training on LGBT asylum issues, advised of the shortcomings of training courses which were too short or superficial:

‘A half day’s training is short and you can’t cover things in much detail. It is important that training also includes basic LGBT awareness and explores issues such as shame, fear of family, differences, and difficulties in being open. It must also tackle homophobia and heterosexism, asking the question for example when did you first tell your parents you were heterosexual.’ *Stakeholder interview, London*

Several interviewees emphasised the importance of training being provided for UK Border Agency staff and felt that training should be extended to more than just asylum case-owners and case-managers. One interviewee commented that:

‘Training should also include Judges and tribunals. They can be very awkward about asking questions on sexual orientation. They don’t get specific training. We need to counter the view that it is not enough to be gay and you must be practising and in a

relationship. They don't take account of the reality of people's situation here.' *Stakeholder interview, Scotland*

Stakeholders in Scotland who worked directly in immigration advice also indicated that they welcome the opportunity for training and networking events that focus on LGBT asylum and the law. However it was emphasised that whoever provides this training needs to be suitably legally qualified and familiar with the Scottish legal system:

'Solicitors could always benefit from training, but legal training must be done by legal practitioners who know about Scotland, not English barristers. It could be good to involve the Scottish Immigration Practitioner group in future plans.' *Stakeholder interview, Scotland*

Our research suggested that there was a particular need to build stronger links between LGBT organisations and immigration lawyers and refugee groups. We found some limited examples of people successfully working across sectors, but also still some confusion as to what the different roles of LGBT organisations were.

'We have not got links with any LGBT organisations and would welcome networking opportunities or information about events at which we could learn more.' *Stakeholder interview, Scotland*

Our interviewees also emphasised how creative methods could be used to bring people together across strands:

'A multicultural event which was delivered jointly between for example a refugee project and an LGBT arts organisation would be cheap and deliverable and would help make connections, bring people together. Arts could be used as a bridge between organisations, which could then develop closer links, for example by sharing clients, sharing training and information.' *Stakeholder interview, Scotland*



7.8 Campaigning and Awareness Raising

‘We want Glasgow to flourish as a modern, multi-cultural, metropolitan city of opportunity, achievement, culture and sporting excellence where citizens and businesses thrive and visitors are always welcomed.’ – Glasgow City Council, Our Vision for Glasgow, <http://www.glasgow.gov.uk/>

Almost all asylum seekers in Scotland live in Glasgow, a city which prides itself on the welcome it extends to its visitors. Over recent years Glasgow and its people have also won praise for the way that asylum seekers have been integrated within many communities. Glasgow has also built itself a reputation as place which campaigns for asylum rights, where Glaswegians have united with its newest citizens in for examples struggles to prevent dawn raids, or to prevent the detention of asylum seeking children.⁶

Yet there have been only isolated instances where campaigns on issues around LGBT asylum have attracted any prominence in Scotland;⁷ and none of note during the 12 months whilst we have been working on this research. Also within Scotland there has been no equivalent of, for example Refugee Action’s Free to Be Me postcard campaign.⁸

The importance of public campaigning is well illustrated by the following quote:

‘One case I helped with was a gay man from Ghana who was living in England. He did not disclose he was gay until his asylum claim was refused. The UKBA didn’t believe his account was credible due to his delay in being open. We helped in organising a public campaign. The day before his flight was the Supreme Court judgment. His deportation was cancelled. A substantive

⁶ See for example http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/5402154.stm

⁷ See for example <http://scotlandonsunday.scotsman.com/latestnews/Death-sentence-gay-Syrian-teenager.3883009.jp>

⁸ See <http://www.refugee-action.org.uk/campaigns/freetobeme/default.aspx>

review was carried out and he was allowed to stay. It's one of our proudest achievements, but without a public campaign he was likely to still have been deported.' *Stakeholder interview, Scotland*

During our stakeholder interviews we also explored factors which may have contributed to this relative lack of campaigning on LGBT asylum issues.

During the time our research was carried out, a potentially landmark ruling on LGBT asylum occurred, as explained in previous chapters. At least one stakeholder we interviewed in Scotland advised us that they had trawled through past LGBT asylum cases in order to encourage LGBT asylum seekers who had previously been refused to come forward for advice. However we were struck at the time by the lack of any wider public information or awareness raising campaigns in Scotland. At this stage, it's worth posing the question: would this have been different for other types of asylum cases?

Undoubtedly the refugee sector in Scotland is facing challenging times; cuts in funding, changes in contracts and uncertainty over the future of many services have hampered the sector's capacity and ability to open itself to what for many would be a new area of work. However, it should also be recognised that often it is grassroots refugee organisations that first drive campaigns, and the lack of grassroots refugee community groups that have so far engaged on LGBT issues may also be a key factor in influencing the relative lack of campaigning.

In October 2010, three months after the Supreme Court ruling, we were really encouraged by how the Scottish Refugee Council's Annual Conference made LGBT asylum one of its key conference themes.⁹ However their potential to build on this is likely to be severely hampered by large cuts in their funding.¹⁰

⁹ The same month the Equality Network's own conference also helped promote awareness of LGBT asylum issues.

¹⁰ See http://www.scottishrefugeecouncil.org.uk/news_and_events/latest_news/911_scottish_refugee_council_faces_funding_cuts





One interviewee commented that Scottish immigration lawyers could have done more to promote awareness about the implications of the Supreme Court ruling:

‘There is a relative absence of campaigning lawyers and they could be much more pro-active and play a bigger role in raising awareness of people’s rights.’ *Stakeholder interview, Scotland*

There were also repeated calls for greater awareness raising of the importance of encouraging LGBT asylum seekers to be open about their sexual orientation or gender identity earlier in the asylum process. This was due to the difficulties in winning protection for people who don’t do this, because the UKBA don’t then find their accounts credible. There is as much a need to change UKBA practice as there is to raise awareness amongst LGBT asylum seekers and those working with them.

It is apparent that for some LGBT asylum seekers, the only person they may have told the real reasons they are claiming asylum is their immigration lawyer. LGBT asylum seekers are often unlikely, for example, to have revealed to friends, neighbours or college tutors that the reason they claimed asylum relates to either their sexual orientation or gender identity. The people closest to them who would be most likely to initiate a grassroots campaign, may at times be the people they feel least safe in telling their stories to.

This is not necessarily uncommon, as many asylum seekers will not have revealed the basis of their asylum claim to people who are close to them. However for LGBT asylum seekers, there is an added burden: the fear of how people will react if they found out who they really are.

This view was echoed by one interviewee, who had spent considerable time working to prevent asylum seekers from being deported. They had, at the time of our interview, received a growing number of requests for help from LGB asylum seekers in England, but no such calls from Scotland. This interview was particularly helpful in making us think about the difficult decisions LGBT asylum seekers face whilst threatened with deportation, as illustrated by the following quote:

‘LGBT asylum seekers are often afraid to launch a public campaign, it’s a gamble. They are worried about the reaction in their community in the UK as well as abroad if their campaign is unsuccessful. It can be a big leap for people to go from being discreet and hiding their sexuality to running a high profile public campaign.’ *Stakeholder interview, Scotland*

7.9 Conclusion

This chapter has considered evidence from our interviews and community consultations about the difficulties LGBT asylum seekers in Scotland face in finding places of safety and solidarity. We found that there was a consensus that LGBT asylum seekers and refugees are likely to have complex needs, but also that these needs are currently largely going unmet.

There are many barriers for LGBT asylum seekers and refugees in accessing services. Not least of these is the language barrier, which is made more complicated because people are often fearful of others from their own community finding out about their sexual orientation or gender identity. Our research identified a real need for more training, ranging from transgender awareness, to confidence and skills training as well as legal training for immigration lawyers and training for UKBA judges and tribunal adjudicators.

We found that a lack of support from within people’s own community exacerbated LGBT asylum seekers’ social isolation and adversely impacted on their mental well-being. As well as concerns about the lack of work being done to promote the mental well-being of LGBT asylum seekers and refugees, we have highlighted real problems around housing, poverty, destitution and the risk of sexual exploitation.

Despite these problems, there remains a relative lack of campaigning or awareness raising activity within Scotland.

Within our Scottish interviews, we also became aware that people were most angry and vocal in their criticism of UKBA policies and practices, which were often seen as the main contributing factor behind many problems faced by LGBT asylum seekers. Even people who had not seen LGBT asylum cases in great numbers, had been greatly moved



by the suffering they had encountered.

There is an urgent need to forge links between LGBT activists, refugee organisations and lawyers working on asylum cases. During the course of this research, we are encouraged at how such links are beginning to be made.

For example in December 2010, the Unity Centre launched a helpline for LGBT asylum seekers in Scotland. Five volunteers from Unity attended our community consultation event, co-facilitated with GRAMNet, itself a network of academics, activists and students. The process of carrying out this research has in itself forged new partnerships, as has Everyone IN's other work around race, faith and LGBT. It is vital that we build on this momentum. Without doing so, Scotland's LGBT asylum seekers will continue to lack safety and solidarity.

chapter 8

Creating Safe Spaces through Research

By working in partnership with a range of organisations, Everyone IN's work will seek to help facilitate the creation of safe spaces in which the full range of LGBT refugee voices can be heard.





8. CREATING SAFE SPACES THROUGH RESEARCH

8.1 Introduction

As indicated in the previous chapters, a significant barrier to further planning, advocacy and service implementation for LGBT asylum seekers and refugees is a lack of empirical evidence on a range of issues related to unmet needs, experiences of existing services, access issues, and the self-identified everyday conditions that allow people to flourish in their communities. With these issues in mind the future work for the Everyone IN project may involve additional research, this time on the experiences of LGBT refugees themselves, aimed at gathering data that can be used to inform political advocacy and campaigning, policy interventions and service planning.

The research design framework for such research carried out by Everyone IN, or indeed any of our partner organisations, needs to be grounded in an approach that seeks to enable voices to be heard through the provision of safe spaces. In other words the research does not aim to ‘give voice’, which is the more traditional way of framing participatory research. LGBT asylum seekers and refugees have voice as well as agency, but may not experience conditions in which those voices can be heard, or in which they are listened to (in the same way that they often experience conditions that curtail and subvert their ability to fully exercise agency).¹

‘As many activities carried out in group setting, or where lots of people are around, it may be difficult for people to be open and it wouldn’t always be relevant for staff to ask about if a person is gay.’ *Stakeholder interview, Scotland*

Moreover, without resorting to a notion of ‘true’ voice, LGBT refugees and asylum seekers may feel impelled to adopt multiple voices in order to survive, or to repress certain aspects of voice as well as certain experiences that those voices might choose to relate. By working in partnership with a range of organisations, Everyone IN’s work will

¹ The concept of ‘agency’ refers to people’s ability to make choices and actively shape their own situations, despite difficult and sometimes exploitative conditions.

seek to help facilitate the creation of safe spaces in which the full range of LGBT refugee voices can be heard.

8.2 Carrying Out Research with LGBT Asylum Seekers and Refugees

LGBT asylum seekers and refugees fall under the traditional rubric of 'hard to reach' groups. What that means is that, for the researcher, the usual modes of recruiting research participants (e.g. through randomised or stratified sampling, snowballing, the use of lists and registers) are not likely to produce a meaningful sample. Indeed, one might argue that the practices, if not the theory, of sampling become irrelevant on the ground when so little is known about the population of interest, and the diversity is so great. This generates problems of small sample sizes and difficulties in generalising to a broader population. Nevertheless, like Anette Brunovskis and Rebecca Surtees (2010: 1) in their research on human trafficking, we suggest there are existing methodological approaches that are useful, valid and which generate rich data; the key is in their design, implementation and the ethical process underpinning them:

'We agree that much of the current research on trafficking is not particularly representative; that the field could benefit from a larger variety of methodological approaches. And we contend that trafficking research is constrained by several methodological limitations, related to both practical considerations and ethical concerns. However, we also believe that the solution is not entirely (or perhaps even primarily) about new methods. Rather, we would argue that it is as much about how we use current methods to greater effect and with careful attention to their limitations and ethical constraints.'

In order to generate discussion on approaches to research with LGBT asylum seekers and refugees and build on the experiences of activists, service providers and those working on immigration issues, a session on 'Research with LGBT refugees and asylum seekers' was held at our community consultation event in December 2010. The session included a presentation on issues and approaches, small group sessions, and a wrap-up discussion on the theme of 'safe spaces'. The rest of this chapter outlines the topics covered, and the issues





raised, in and through the group discussions, as well as how these might be used to guide future research that is carried out directly with LGBT asylum seekers and refugees.

8.3 A Participatory and Collaborative Approach

It was clear from our community consultation event that a collaborative approach is needed if research with individual LGBT asylum seekers and refugees is to be effective. Such a collaborative approach should apply throughout the conceptual and ethical frameworks, research design, and methodologies. The importance of this was reinforced by comments during our stakeholder interviews:

‘It is important that research is carefully planned. Even if a research report can have a positive impact, there is a worry that for clients interviewed it could have felt exploitative. If we’re going to do in depth interviews, we would like to be able to offer financial reward and counselling to be able to repair any damage done through interview. It is important to avoid adding to a person’s burden.’ *Stakeholder interview, London*

‘The support needs of the researchers also need to be considered.’ *Stakeholder interview, London*

These quotes highlight several important points. The first is the view, shared by and discussed among participants that the research should be:

1. Carefully and consciously designed
2. Ethically-grounded and attentive to possibilities for exploitation
3. If possible, restorative ²

² The concept of restorative justice (RJ) refers to an approach to conflict resolution that involves joining victims and perpetrators in the same moral community and thus emphasises positive interdependence. It originates from within the criminal justice arena and is informed by the concept that parties affected by harm jointly decide on reparations. A restorative approach (RA) is a more generalised approach to research that aims to ensure that the process itself addresses the causes and affects of discrimination, violence and suffering.

Our stakeholder interviews drew attention to the multi-faceted ways in which the power dynamics inherent in a range of spaces affect people's own ability to engage with LGBT refugees:

'Being based in school setting, in a busy community centre, has also presented challenges. We have had to make a complaint about homophobic comments made by a worker in the building which is still ongoing.' *Stakeholder interview, Scotland*

'Our activities are based in both school and church buildings, but there is nothing very visible to say that the organisation is LGBT friendly. This is something which needs to be developed sensitively. Sometimes a neutral venue can be helpful, but it's most important how a person is welcomed, how they are treated.' *Stakeholder interview, Scotland*

In this sense, using 'safe spaces' as a conceptual and ethical starting point for thinking through the research resonated with people's own experiences. This starting point highlighted the importance of space and place from a number of different perspectives: where services are sited (for example, the building in which an office or room is located); the importance of neighbourhood and local area; the effects of organisation structures and policies at different levels (e.g. local Council policies on housing, national policy on asylum, international law on the rights of refugees); and the experiences that LGBT asylum seekers bring with them of global migration trajectories.

More concretely, it also allowed us to think about the ideal of safe space: what kinds of spaces can we collaboratively create? From this starting point, we took an accessible approach to thinking about the research design:

Who: target population(s)?
What: is the aim of the research e.g. key questions?
When: what is the timescale for conducting the research?
Where: safe space for research/researching safe spaces?
Why/How: what methods, what mode of analysis, what outcomes?

This structure allowed all participants, regardless of their experiences of designing and/or conducting research, to think about the key





questions that would shape the process. In addition, we drew on two case study articles about research conducted with LGBT people from different backgrounds. The first was on understanding trans experiences in one UK community (Brighton) (Browne and Lim 2010), the second on participatory action research with low-income LGBT people living in New York City (Billies et al. 2009).

Who?

As previous chapters have indicated, gendered identities and gender identification, and the separate but related issue of sexual orientation, are extremely complex, cross-cutting phenomena. They are, in other words, intersectional phenomena. Intersectionality, which is a concept that emerged from feminist and post-colonial academic and activist work on gender, understands identities as fluid and entangled processes by which people are gendered, racialised, and otherwise come to inhabit particular subject positions (which are themselves not static) (Lykke 2010). What is important and useful about intersectionality as both a concept and an analytical approach is that seeks to understand how people become vulnerable to violence, discrimination, and persecution through the interaction of social categories such as gender, race, ethnicity, age and class. Unlike some approaches to social difference, it does not assume that vulnerabilities are additive: it does not focus on discrete variables and then analyse them by simply adding more (e.g. woman + ethnic minority + refugee + lesbian).

Thus, when identifying who the subjects of our research are, the importance of seeking to understand complex intersecting identities relating to gender and gender identification, sexual orientation, ethnicity and race, age, class, and immigration status needs to be integrated into our strategy for participant recruitment. As Billies et al (2009: 376) state, it is vital to ‘think about coming to know people across difference from a perspective of ‘asymmetrical reciprocity’ where life stories and social positions – including gender, race, sexuality, age and culture – are taken into account.’

What?

The question of what future research will seek to address tackled the issue of a core set of concerns, identified by Everyone IN and

stakeholders through a process of collaboration. This broad question also encompassed several additional lines of inquiry:

- What is the process for agreeing these concerns e.g. the research aims?
- How can research participants themselves be involved in formulating the research aims?
- What will the outcomes be – e.g. data, deliverables – and how will they be disseminated?

The participants at the community consultation were asked to reflect on these questions in the small group discussions that followed the presentation. They were asked:

What do you think are some ways we can collaborate on deciding the research aims and methods? Are you/your organisation already doing things that could help with this?

The small group discussions produced four key points:

- It is important to take advantage of existing LGBT organisations, and build on the involvement of stakeholders and attendees (use existing networks).
- Some front-line support and service providers could for example facilitate focus groups, but attention would need to be paid to the creation of safe spaces for research.
- Researchers need to also be conscious of the role of gate-keepers, and find ways to reach people who aren't already in touch with services.
- The research project and process could be a catalyst for knowledge exchange and fostering links between people in attendance to build up longer-term partnerships.

This led onto the issue of methods and a discussion of participatory action research (PAR), or action research. PAR is a form of collaborative research that focuses on, and acknowledges the effects of the researcher and the research process within a community of participants and seeks a positive outcome that is defined by all who





take part. While the use of PAR does not entail a specific methodology, PAR requires that the methods used facilitate PAR principles, in particular reflexivity (the ability of the researcher to reflect on his or her position within the research process), collaborative resource (the contribution of participants as co-researchers), and a plural structure (in which a multiplicity of accounts and voices are given space in and through discussion).

When?

As with all research projects, major factors are the time and resources available to undertake a process of research collaboration. The following issues were raised in relation to any future research we carry out:

- Timescales for the research will in part determine the methods, so there is a need to be realistic from the outset about what can be achieved given the resources available.
- Participatory action research and restorative, visual, and 'non-standard' methods often involve longer lead-in times (to develop collaborative and participatory approaches), more time to conduct the research, and more time to analyse the data collected.
- Thus PAR methods may involve both participatory and more 'standard' methods i.e. questionnaire surveys, semi-structured interviews, given time and resource constraints.

An example upon which to draw is the 'Count Me In Too' project, which involves research on trans people living in Brighton. It is described by Browne and Lim (2010: 620) as 'a community-led participatory action research project that seeks to advance progressive social goals...the research, conducted in 2006, consisted of a large-scale questionnaire with 819 respondents and 20 focus groups...This data was analysed in depth...with the help of an analysis group composed of representatives...of statutory services and voluntary groups.' This is an example of how methods involving the generation of quantitative data can also be made participatory, and can supplement qualitative research where large numbers of interviews and focus groups are not practical.

Where?

The importance of 'safe spaces' in any future research is likely to be twofold. First, by taking the concept seriously, the researcher attempts to ensure the research has benefits for both participant and researcher (i.e. that it follows restorative principles). Second, it acknowledges their importance in terms of the goals of the research and the experiences of the participants (of unsafe spaces).

One example of this working in practice was Asylum Aid's recent study on the impact of internal relocation on women asylum seekers. This report documents the author's consideration of both ethical principles and a range of practical factors:

'Every effort was made to ensure women did not experience unnecessary harm or stress during the research process, especially during the interview. In order to make women feel more relaxed and comfortable, they were asked to nominate a suitable location for the interview and to say whether they wanted additional support (in terms of friends... and/or support worker' (Bennett 2007: 17)

At our consultation event the small groups were asked to think about the question:

What do you understand by the phrase 'safe space' in the context of research on the needs of LGBT asylum seekers/refugees?

Five key issues relating to safe spaces were identified:

- They are about involving people in decisions about what space is.
- They are places where anyone can feel at home or nurtured.
- They are not necessarily a physical space, and not just a location, but a holistic environment (which could include online 'cyberspace').
- Safe spaces need to be mutually agreed; one person's definition of what is safe may not be same as another's definition.





In addition, the small group participants identified the need to use care when choosing interpreters, and to be attentive to the gender of researchers as well as their own attitudes and prejudices.

These ideas flagged important material and practical aspects of the research design, such as the importance of providing travel expenses and childcare. There is a need to develop partnerships with service providers, so that researchers know where to refer people on for support if needed (although there is an acknowledged difficulty in separating out research and advocacy/support in this context).

Why (and How)

Having discussed safe spaces and the importance of collaboratively establishing research aims and key research questions, the issue of why and how the research should be conducted was addressed in the context of the research design, methodology and ethical approach.

In the case studies presented during the seminar, a mix of methods was used including:

- Surveys
- Interviews
- Storytelling
- Collaborative analysis
- Visual methods (participatory video)

The importance of having a 'toolkit' of methods, but being flexible about the mix was discussed in the context of the PAR principles. One of the case study projects utilised a mixed methods approach shaped by the needs, desires and input of the research participants:

'We have crafted a mixed method design for collecting data including participant observation of our meetings, a storytelling/interview component, and a survey...we are video-taping 15 in depth interviews... and triangulating these data with 100 self-report surveys' (Billies et al. 2009: 377).

This idea of a 'toolkit' could also serve as a starting point for collaborating with research participants on the range of methods and their suitability.

8.4 An Ethical Framework

While research design and methodology are important, research with hard to reach and vulnerable people perhaps most importantly requires a transparent ethical grounding and set of principles. There are many formal processes for ensuring that research is ethical e.g. University ethics panels, the processes around informed consent. However for research of this nature formal procedures need to be supplemented by a collaborative process of agreeing ethical principles that are a core part of the research design.

In this context, for example, restorative principles might inform the choice of methods. Restorative principles are generally linked to concepts such as restorative justice; while mainstream restorative approaches are often (though not always) linked to a criminal justice setting, a restorative approach is something different. It is more akin to an ethical framework than a programme, and is underpinned by a set of values: Empowerment, Honesty, Engagement, Voluntarism (the idea that research is informed by a proper process of informed consent), Healing, Restoration, Personal Accountability, Inclusiveness, Collaboration and Problem-Solving.

These could be the values, for example, on which an ethical approach and set of guidelines are based.

Our participants elaborated on the above, also identifying principles such as active participation, awareness of researchers' identities and positions, the need for open communication and careful, thoughtful use of terminology and labelling, the recognition that people's identities can be in flux and the recognition of potential conflicts between researchers' needs and the priorities of participants.





8.5 Conclusion

Participants in the discussions about conducting research with LGBT asylum seekers and refugees identified some clear priorities: the establishment of set of ethical principles to ground the research including a core collaborative, participatory ethos; the use of an intersectional approach to understand how identities interact; and the prioritisation of safe spaces both as part of the research design, and a desired outcome.

During the next phase of Everyone IN's work we will be acting on these findings and seeking to bring together a range of partners with whom we can collaborate, both to fill in gaps in knowledge and to help in facilitating the creation of safe spaces. Over the coming year, Everyone IN hope to facilitate the development of information, training and campaigning resources as well as help in developing resources to ensure the stories of Scotland's LGBT asylum seekers and refugees are being told.

We are also conscious of the need not to be researching for the sake of research, but to ensure our work remains focused on improving the lives of Scotland's LGBT asylum seekers and refugees. To accomplish this, future research must have a clear focus, but should not be the only way in which organisations are responding to the unmet needs of LGBT asylum seekers and refugees in Scotland.

In the next chapter we draw together the learning from the various strands of our research to date and identify priority areas in which action is needed.

chapter 9

Priorities and Recommendations

We set out three guiding principles which we believe should act as the basis for future work on LGBT asylum in Scotland. These principles and the values captured within them should underpin a new approach to the way LGBT asylum seekers are offered sanctuary, safety and solidarity.





9. PRIORITIES AND RECOMMENDATIONS

‘There needs to be a complete legal overhaul of the asylum system. The horrors people have been through are often completely ignored. We need a total overhaul in order to restore humanity in the system.’ *Stakeholder interview, Scotland*

9.1 Introduction

It is clear from our research that much work needs to be done to improve the lives of LGBT asylum seekers and refugees in Scotland. LGBT asylum has until very recently been absent from discussions about how Scotland is meeting the needs of its asylum and refugee population. There remain huge gaps in knowledge and understanding and many challenges to overcome to reach out to a vulnerable group within a vulnerable group. These challenges are undoubtedly exacerbated by the current economic climate and the pressures that services across Scotland will be facing over the year(s) ahead.

At both our community consultation event and stakeholder interviews we discussed these challenges and identified possible ways in which they could be overcome. We also discussed areas which were seen as priorities for future action.

Within this chapter we set out the key findings from both these discussions and our literature review. We have divided these into three categories:

Sanctuary: changes needed within the process of claiming asylum

Safety: changes needed in the way LGBT asylum seekers are supported and made to feel safe

Solidarity: changes needed to raise awareness of the issues faced by LGBT asylum seekers and to improve the way people work together to bring about lasting improvements.

9.2 Priorities for Action – Sanctuary

There was widespread recognition of the crucial role that access to legal advice plays in the lives of LGBT asylum seekers. Advice and legal intervention was needed early in the asylum process and there was a need to do more work to encourage LGBT asylum seekers to be open about their sexual orientation or gender identity earlier in the asylum process.

Scotland was seen to have a good pool of excellent immigration lawyers, but there is an absence of obvious specialists in lesbian, gay, bisexual and transgender asylum cases.

Concerns were expressed about the limited capacity of some immigration firms to take on cases and about how variation in the quality of advice still was a problem in Scotland. One stakeholder commented on how expertise is especially lacking around gender identity as a basis for claiming asylum and other transgender issues such as how to reconcile change of name and gender across identification documents. For others, there was also a need for immigration lawyers to be more outspoken in their criticisms of the asylum process and to adopt a more campaigning role:

‘We need stronger human rights advocacy and more powerful advocates for changes in the law’. *Stakeholder interview, Scotland*

The asylum process was seen as deeply flawed, not just for LGBT asylum seekers, but for all asylum seekers. Concerns were expressed at a lack of consistency in UKBA policy and practice. Although training for UKBA staff was seen as important, this was less important than actually ensuring UKBA improved their practices and implemented existing policies and guidance.

Within the UKBA there was a need to change the culture as well as practices. In particular there was a need to tackle what was seen as a culture of disbelief amongst decision makers:

‘We need to change the culture at UKBA so that asylum seekers are not faceless, but people with real stories.’ *Stakeholder interview, Scotland*





UKBA were also criticised for having a very one dimensional understanding of issues of sexual orientation and gender identity, and placing too much attention on sexual behaviour rather than how people identified or perceived themselves:

‘We need to improve UKBA practices so that they are not discriminating against LGBT asylum seekers during asylum interviews and have systems in place to challenge homophobia or transphobia.’ *Stakeholder interview, Scotland*

There was a consensus that both the use of detention and fast-track decision making placed real threats to the well-being of LGBT asylum seekers:

‘LGBT asylum seekers shouldn’t be detained as they cannot be kept safe. Their cases are too complex to be dealt with by the fast track process.’ *Stakeholder interview, Scotland*

More attention was also needed at the start of the asylum process, with improvements urgently needed to the asylum screening process to enable the vulnerability of LGBT asylum seekers to be identified at the outset.

Finally from our stakeholder interviewees and community consultation, there were strong calls for improvements to the standard of country of origin evidence available on LGBT issues. Our community consultation event identified the need to enhance links between law students, immigration solicitors and activists, so that students could assist in researching asylum cases and seek to help LGBT asylum seekers in obtaining corroborating evidence. However the placing of unreasonably high evidential burdens on LGBT asylum seekers was also seen as a huge problem which needs to be confronted.

9.3 Priorities for Action – Safety

Our community consultation event concluded that there was an urgent need to facilitate the development of safe spaces where LGBT asylum seekers/refugees could go for support and to reduce their social isolation. Careful consideration needs to be given as to what would count as a safe space, with venues publicly associated with being LGBT, or with a strong presence of people from refugee communities, potentially making it difficult for people to be open about their sexual

orientation or gender identity.

Our stakeholder interviews also revealed that many organisations would like to do more to make their services accessible to LGBT asylum seekers/refugees and would welcome both training and further networking opportunities across sectors.

It was recognised that language, and difficulties in organisations affording to provide interpreters, was playing an important part in preventing LGBT asylum seekers/refugees from coming forward for help. Even when services had access to interpreters there were worries about how best to ensure quality assurance and doubts were expressed about what systems were in place for challenging discriminatory attitudes from interpreters. At the same time there was recognition that LGBT terminology could sometimes not easily be translatable, and for interpreters without experience of a significant number of cases, it was important not to have unreasonable expectations of what they could do. It was therefore seen as a real priority to look at the development of good quality interpreting services and training for both interpreters and organisations in best practice relating to LGBT issues.

An area that needs much further work is mental health. It was disappointing that of three mental health organisations we contacted, none were able to agree to an interview within the timescales of our research. However from the stakeholder interviews we did, coupled with the LGBT asylum cases we have been contacted for advice on, there is strong anecdotal evidence about the mental ill-health experienced by LGBT asylum seekers and refugees in Scotland.

‘People have experienced real trauma and are in need of more support to safeguard their mental health. It’s so wrong that people’s mental health gets more damaged by the difficulties of the asylum system here.’ *Stakeholder interview, Scotland*

Another real priority would be to look in more detail at how well equipped mental health services are to meet the needs of LGBT asylum seekers/refugees and what action needs to be taken to establish clearer pathways into specialist support for people experiencing trauma, or at risk of self-harm or suicide.





Interviewees from London felt that refugee community groups had been too slow to engage on issues of sexual orientation or gender identity. Within Scotland refugee community groups are very fragile and rely almost entirely on volunteers rather than paid staff and have not yet actively engaged on issues relating to sexual orientation or gender identity.

It is clear that considerably more work needs to be done to engage at a community level with small grassroots refugee community groups. At a time of funding cuts across the refugee sector, it is also likely that more asylum seekers will be relying on informal or unfunded sources of support. We are concerned that LGBT asylum seekers and refugees will continue to find it extremely difficult to access informal community support.

LGBT asylum seekers' well-being is intrinsically linked to the way that they are supported financially and their access to suitable housing. Current housing contracts between UKBA and housing providers in Scotland remain silent on LGBT issues.

'We need to change the law on support. It is impossible to expect people to survive on so little income and it's disgusting that we don't allow asylum seekers to work or claim social security benefits. This affects their whole well being'. *Stakeholder interview, Scotland*

There is strong evidence from our research that insecurity over housing and simply not having enough money to survive, adds enormously to the social isolation and mental ill-health experienced by LGBT asylum seekers. Other research indicates that due to fears over people within the community finding out about their sexual orientation or gender identity, LGBT asylum seekers are at greater risk of becoming destitute, potentially being forced into abandoning accommodation rather than be 'outed' within their own community.

From our interviews and discussions emerged a real anger at the way LGBT asylum seekers were being treated. Two solutions commonly suggested were: restoring both the right to work for all asylum seekers and the right to claim social security benefits.



In relation to housing, there is a need to be informed by examples of good practice in other parts of the UK and to investigate whether having clusters of accommodation for LGBT asylum seekers is either feasible or desirable. There is also an urgent need for housing providers to review their current complaints and harassment procedures and identify gaps in knowledge or skills which could be addressed through training.

9.4 Priorities for Action – Solidarity

During our research we have been impressed by the commitment shown by a number of organisations, individuals and activists who are keen to work together to better protect and support LGBT asylum seekers and refugees. Our final category of priorities relates to the need for solidarity. This was a theme that occurred at all stages of our research, but was voiced most strongly at our community consultation event.

What this event concluded was needed was a uniting of people working in the fields of equality, human rights and asylum, with more grassroots and community based organisations. There was a need to build connections across equality strands and to break down work which had in the past been too strand specific, or as one interviewee put it ‘ghettoised’.

There was seen to be a need to create both formal and informal partnerships and links, which needed to encompass immigration lawyers and academics, as well as voluntary sector organisations and smaller grassroots community groups.

There was also seen to be a need to develop a network of specialists, so that within organisations there could be people who would be trusted. There was a consensus from throughout our research that further training was needed to boost the confidence and capacity of organisations in Scotland to help LGBT asylum seekers and refugees.

‘We need to ensure that the places we refer people to are safe places for people who are LGBT, for example having named specialists in organisations who we can contact.’ *Stakeholder interview, Scotland*



Of particular importance was the need to build greater links between refugee and LGBT organisations and for wider dissemination of information about LGBT groups' activities across the refugee sector.

From our community consultation event there emerged a theme of connectedness. It was seen as vital to build connections, not just in the sense of referrals or links between organisations, but between people. It was important to create links and understanding, so that for example the wider LGBT community could better understand what it is like to be an LGBT asylum seeker, and so that issues of LGBT asylum were seen as being of concern to a greater number of people, rather than a minority topic.

As important as it was to engage with the wider LGBT community in Scotland, our community consultation event also thought it would be beneficial to tap into the energy, ideas and talent of Glasgow's large student population; particularly groups such as STAR (Student Action on Refugees) who already had a track record in campaigning on other refugee issues.

By bringing people together, this would enable resources to be pooled and could facilitate a much needed campaign to raise awareness.

Awareness raising was also a common theme to emerge from our stakeholder interviews:

'We need to get the media to tell people's stories. Some people have been through such horrors, that it is almost beyond belief. We need to get these stories out in the mainstream media so that we can help to change people's attitudes.' *Stakeholder interview, Scotland*

A twin approach to raising awareness was suggested: firstly information about the problems and human rights abuses people are fleeing from; secondly information about the asylum process here in Scotland. With the latter it was felt especially important to develop information resources which could encourage asylum seekers to be open about their sexual orientation or gender identity earlier in the asylum process as well as provide training to enable organisations to feel more confident in dealing with cases relating to both sexual orientation and gender identity.



Our community consultation event saw such an awareness raising campaign as forming part of a longer term role for changing public attitudes and felt that there was a need to create a 'co-ordinating hub' to carry out media work. There was also seen to be a need to take messages out into schools and colleges, so that issues around LGBT asylum were built into wider education initiatives to tackle homophobia and transphobia.

A number of stakeholder interviewees placed a high importance on the potential role arts and social activities could play in breaking down barriers. The arts, and also sport, were seen as ways to bridge gaps between refugee and LGBT groups and to offer a safer route into services for some people. In considering this work, it was also important to think carefully about the choice of venue, which needed to be accessible and safe. Our community consultation event also found that the arts could be a good way to build networks and to bring people together to bring about positive changes.

Most stakeholder interviews focused on the situation for LGBT asylum seekers in Scotland or the UK. This was also the primary focus of our community consultation event. However, it emerged very strongly from one of our interviews in London, that there was an urgent need to look at the causes of people being forced to leave their home countries as well the problems people face when they get to the UK.

'We need to get the government to examine the relationships it has with countries abroad that are guilty of human rights abuses against people who are LGBT. We need to be more outspoken and united in demanding change.' *Stakeholder interview, London*

We would agree that for there to be true solidarity with LGBT asylum seekers and refugees, it is important to do work not just in Scotland and the UK, but to build links internationally and to explore possible ways in which we may be able to support human rights organisations in the countries from which people have fled.



9.5 Recommendations

At our community consultation event we discussed what is the best way to bring about the changes needed for LGBT asylum seekers and refugees: should we be looking at incremental step changes to bring about improvements within the asylum process, or should we be asking for more radical changes and creating a new agenda to identify what values we would like to see placed at the heart of the asylum process.

The problems encountered by LGBT asylum seekers and refugees are not always unique to LGBT asylum seekers and refugees. Destitution, sexual violence, poor mental health, unfair refusal of asylum claims and social isolation are not problems only encountered by asylum seekers who are lesbian, gay, bisexual or transgender. Indeed many research reports which have come before us, (including many referenced throughout this report), have already set out detailed policy recommendations on how to best meet the needs of vulnerable groups of asylum seekers and refugees.

In the last 18 months three research reports: Bell and Hansen (2009), Stonewall (2010) and UKLGIG (2010) have set out detailed recommendations for changes needed specifically for LGBT asylum seekers and refugees.¹ We share and support the conclusions and recommendations reached within these reports and do not wish to just reiterate what has been recommended already.

We are pleased that a number of these recommendations have already been accepted by the UKBA, most notably the introduction of new Asylum Policy Instructions and training for their staff. However as our report clearly shows, the problems inherent within the asylum system cannot easily be solved by a one-off training course or the issuing of new guidance to staff.

A review of research which has gone before us, suggests that with the UKBA there can be a tendency towards one step forward, one step back. Over recent months we have become aware of growing problems of asylum seekers having their asylum claims refused as

¹ Although it should be noted that only Bell and Hansen made reference to transgender asylum seekers.

UKBA do not believe they are gay or lesbian. The suspicion remains strong amongst many people we interviewed, that as thresholds are lowered in one area (the discretion test), the burden of proof is simply then increased in another (for example proving you are gay), in order that the status quo (high refusal rate) can be maintained.

Having spent the last 9 months researching, reading, writing, listening and talking about LGBT asylum, we have come to the conclusion that step changes in themselves will not bring about an asylum system that will guarantee the safety, security and well-being of LGBT asylum seekers. Put simply: the distance still needed to travel is so far, that small steps in themselves will take too long and prove too painful a journey.

Therefore we have adopted a different approach and are not making individual policy recommendations. Instead we set out three guiding principles which we believe should act as the basis for future work on LGBT asylum in Scotland. These principles and the values captured within them should underpin a new approach to the way LGBT asylum seekers are offered **sanctuary, safety** and **solidarity**.





SANCTUARY: We wish to see a radically different asylum process for LGBT asylum seekers, one which

- **is fair, informed and without prejudice**
- **places respect for human rights at the cornerstone of all its decision making**
- **allows sufficient time for LGBT asylum seekers to safely tell their stories in their own words**
- **ensures sufficient access to specialist legal advice and representation throughout**
- **celebrates the importance of offering protection to those fleeing persecution**
- **does not routinely rely on the use of detention and fast-track decision making**

SAFETY: We wish to see a reduction in the social isolation and mental health suffering experienced by LGBT asylum seekers/refugees, including by

- **restoring the right to work for asylum seekers**
- **having an asylum support system in which no one is left in poverty and all have a sufficient income to lead a dignified life**
- **ensuring access to suitable housing throughout the whole asylum process**
- **encouraging the provision of safe spaces for LGBT asylum seekers to access support within community settings**
- **enabling services to be sensitive to the individual needs of lesbian, gay bisexual and transgender asylum seekers/refugees, including young LGBT asylum seekers/refugees**
- **giving voice to LGBT asylum seekers/refugees to have their stories heard and influence service development**

SOLIDARITY: We wish to forge new and innovative partnerships in order to bring about lasting change for people fleeing persecution because of their sexual orientation or gender identity, including by

- **enhancing links between LGBT organisations, refugee community groups, immigration lawyers, academics and activists**
- **facilitating the development of a network of organisations in Scotland which by pooling resources and knowledge will act as a co-ordinating hub, source of expert help and a catalyst for change**
- **celebrating diversity and creating unity through the use of arts and cultural activity**
- **developing a range of information and educational tools that improve awareness of the human rights abuses suffered by LGBT people across the globe**
- **creating pathways for joint work between Scottish LGBT and human rights organisations and international NGOs working in countries where LGBT people face persecution**





chapter 10

Conclusion

Working together, we will enable the individual stories of LGBT asylum seekers to be told and understood; and only then may LGBT asylum seekers in Scotland feel that they have found a place of **sanctuary, safety and solidarity**





10. CONCLUSION

This report has documented the significant barriers LGBT asylum seekers fleeing persecution face in seeking sanctuary in Scotland. Despite recent positive developments such as the Supreme Court ruling, training for UKBA staff and new Asylum Policy Instructions, we conclude that the current asylum system remains deeply flawed.

There is strong evidence that suggests a culture of disbelief exists within UKBA and unreasonable evidential burdens are being placed on individuals, particularly in relation to having to prove their sexual orientation or having their gender identity acknowledged. There is also evidence of a lack of understanding from UKBA about the inter-relation and differences between gender identity persecution and persecution on the basis of sexual orientation. Huge gaps in country of origin information continue to exist, particularly relating to lesbians, bisexual people and transgender people.

Despite the recent positive Supreme Court ruling we remain very concerned that UKBA are not proactively reviewing all LGBT asylum cases previously refused on the grounds that the person could go back and be discreet. This makes it difficult for the Coalition UK Government to honour their pledge not to deport LGBT asylum seekers who face torture or inhumane treatment.

For many LGBT asylum seekers the use of fast-track is preventing both them and their legal representatives from having the time to present a full case. We are concerned that the asylum process has become firm and fast, but has forgotten about being fair.

Our research also showed that many discussions had around LGBT asylum are too narrow and fail to consider the individual experiences encountered by people who are lesbian, gay, bisexual or transgender. There are particularly low levels of understanding on transgender issues and a need for further training to help people better understand the different experiences of people who are lesbian, gay, bisexual and transgender.

There is also a need to raise awareness of the way that culture, faith and social pressures impact on the well-being of LGBT asylum

seekers/refugees, as well as how terminology and concepts we use in the west may or may not be easily translated to people coming from other parts of the globe. We believe the best way of achieving this is to provide support to individual LGBT asylum seekers/refugees to enable their voices to be heard in policy debates and discussions about the future development of services.

We are encouraged by the level of expertise and commitment shown by a number of immigration lawyers working in Scotland. However we are concerned as to whether uncertainty over future funding of legal aid may adversely impact their ability to spend the time they need gaining the trust of LGBT asylum clients and to fully represent them.

We are also keen that there are closer links established between immigration lawyers and LGBT support organisations. There is also a need for clearer routes into specialist advice provision for individual LGBT asylum seekers.

There is a lack of data about the size and demographics of Scotland's LGBT asylum/refugee population and organisations rarely have any systems in place to monitor the type and level of enquiry they have from this client group. There is particular failure from UKBA to ensure contracts with housing providers or funding awarded to larger refugee organisations have any equality requirements in relation to sexual orientation or gender identity.

We found that LGBT asylum seekers and refugees in Scotland are isolated and largely invisible. We were particularly surprised at the lack of visibility of lesbians and of young people who may be dependants of asylum families or settled refugees.

There has until now been an absence of campaigns or information resources to raise awareness of both the needs and rights of LGBT asylum seekers. In particular there is a need to raise awareness of the importance of LGBT asylum seekers being open about their sexual orientation or gender identity early in the asylum process but without access to safe spaces within community settings this may be difficult to achieve. Such work needs to be part of a wider awareness raising campaign that utilises both mainstream media and social networking sites as well as developing training and educational resources.





Many services are lacking in confidence, capacity or expertise to best address the needs of LGBT asylum seekers/refugees. Some voluntary sector organisations working with asylum seekers and refugees in Scotland do not see LGBT asylum as a core part of their work and those organisations already doing work are struggling to cope within existing resources. Little work has been done at a community level to challenge homophobia or transphobia within refugee communities. More work also needs to be done with the many faith based groups who provide the setting for much of the community-based refugee activity in Glasgow.

At the same time, our research has uncovered a willingness amongst organisations to do more and highlighted the importance of people from across refugee, legal and LGBT sectors coming together in support of LGBT asylum seekers and refugees.

The process of our research has in itself had many benefits, not least the successful partnership between GRAMNet and Everyone IN, which has succeeded in bridging the gap between academics, student activists and voluntary sector organisations.

Even before our report has been published, the process of our research has helped raise the profile of LGBT asylum issues in Scotland. We have already started to foster links between organisations from across sectors, which are coming together and thinking about what more they could do to help. However, at a time of huge funding cuts, we recognise that over the coming year many services will be just looking to survive rather than take on what will be for most a new and potentially time consuming type of work.

For LGBT asylum seekers in Scotland there continue to be great challenges in just surviving. We are determined to find ways to change this and to allow people who are currently suffering greatly, to flourish rather than just survive.

This can only be achieved by having an asylum system which operates fundamentally differently from how it currently does. Most importantly, we need a system that actively celebrates providing sanctuary to those fleeing persecution and has a support system in place built

around concepts of fairness, dignity and respect. This can only be achieved by bringing more people together to support LGBT asylum seekers/refugees and to create links between organisations, lawyers, academics and activists already working in the fields of equality and human rights.

Equally important is the need for LGBT and human rights organisations within Scotland and the UK to be outward thinking, and focus more on how they can act in solidarity with struggles to bring about justice and change in the countries from which LGBT asylum seekers have fled.

By all of us doing this together, we will also enable the individual stories of LGBT asylum seekers in Scotland to be told and understood; and only then may LGBT asylum seekers in Scotland feel that they have found a place of **sanctuary, safety** and **solidarity**.



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appendices

- 1 Stakeholder Interviews**
- 2 Community Consultation Event**
- 3 Useful Websites**

Glossary

APPENDIX 1 STAKEHOLDER INTERVIEWS

Organisations interviewed

Drummond Miller Solicitors
Ethnic Minorities Law Centre
Justice for Gay Africans
LGBT Youth Scotland
Maryhill CAB Refugee Project
Michael Bell Research Associates
National Coalition of Anti Deportation Campaigns
North Glasgow Integration Network
PRAXIS
Refugee Action
Scottish Refugee Council
Scottish Transgender Alliance
Stonewall
Stonewall Scotland
UK Lesbian & Gay Immigration Group
Welcoming Project Edinburgh
YMCA Glasgow

Workshops Delivered

Double Jeopardy, LGBTI Asylum Seekers and Refugee Conference, University of Greenwich, London 6.7.10

Equality Network Annual Conference, Glasgow 23.10.10

Scottish Refugee Council Annual Conference, Glasgow 29.10.10

Training Events

Two half day courses piloted in Glasgow, 05.11.10

APPENDIX 2 COMMUNITY CONSULTATION EVENT 9.12.10

Programme

- 09.15 – 09.45 Tea & Coffee - registration
- 09.45 – 10.00 Welcome & Introduction
Rebecca Kay, GRAMNet
Tim Hopkins, Equality Network
- 10.00 – 10.40 Presentation of Initial Research Findings plus Q&A
Tim Cowen, Everyone IN
- 10.40 – 12.15 Small Group Discussions (using KETSO)
Alison Phipps, GRAMNet
Discussion of initial research findings,
Priorities for action
- 12.15 – 13.00 Lunch
- 13.00 – 13.30 Next steps for Everyone IN – setting the scene
Tim Cowen, Everyone IN
- Research with LGBT refugees and asylum
 seekers, participatory, restorative and ethical
 approaches
 Kendra Strauss, GRAMNet
- 13.30 – 14.30 Small Group Discussions
- 14.30 – 15.00 Feedback, Conclusions and Next Steps
Kendra Strauss, GRAMNet
Tim Cowen, Everyone IN
- 15.00 -16.00 Refreshments, mince pies and networking

APPENDIX 2 continued

COMMUNITY CONSULTATION EVENT 9.12.10

Attendance List

Organisations represented on the day:

BEMIS, EHRC, Equality Network, Everyone IN (x2), Glasgow Housing Association, Glasgow University, 4Walls Housing Co-op, GRAMNET (x5), LGBT Youth Scotland, Renfrewshire Council, Scottish Refugee Council, Stonewall Scotland, UMOJA, Unity Centre (x5).

APPENDIX 3

USEFUL WEBSITES

LGBT ASYLUM:

LGBT Asylum News <http://madikazemi.blogspot.com/>

UKLGIG <http://www.uklgig.org.uk/>

UKBA Asylum Policy Instructions <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/sexual-orientation-gender-ident?view=Binary>

Justice for Gay Africans <http://jfga.org.uk/>

Iraqi LGBT <http://iraqilgbt.org.uk/>

Organisation for Refugee Asylum Migration <http://www.oraminternational.org/>

ASYLUM & REFUGEE:

BEMIS <http://www.bemis.org.uk/>

GRAMNet <http://www.gla.ac.uk/departments/gramnet/>

UNITY Centre Glasgow <http://unitycentreglasgow.org/>

Scottish Refugee Council <http://www.scottishrefugeecouncil.org.uk>

Positive Action in Housing <http://www.paih.org/>

ICAR <http://www.icar.org.uk/>

National Coalition of Anti-Deportation Campaigns <http://www.ncadc.org.uk/>

UKBA <http://www.ukba.homeoffice.gov.uk/asylum/>

LGBT:

Equality Network <http://www.equality-network.org/>

Scottish Transgender Alliance <http://www.scottishtrans.org/>

LGBT Youth Scotland <http://www.lgbtyouth.org.uk/>

Stonewall Scotland <http://www.stonewall.org.uk/scotland/>

National LGBT Forum <http://www.scottishlgbt.org/>

ILGA <http://ilga.org/ilga/en/index.html>

glossary of terms

LGBT TERMINOLOGY

LGBT: Acronym for Lesbian, Gay, Bisexual, Transgender.

Androgyne / Polygender People: refers to people who identify their gender as not conforming to the traditional western model of gender as binary. They may identify their non-binary gender as a combination of aspects of men and women or alternatively as being neither men nor women.

Bisexual: refers to someone who is emotionally and sexually attracted to women and men.

Crossdressing / Transvestite People: refers to people who dress, either occasionally or more regularly, in clothes associated with the opposite gender, as defined by socially accepted norms. Cross-dressing people are generally happy with the gender they were labelled at birth and usually do not want to permanently alter the physical characteristics of their bodies or change their legal gender.

Gay: refers to someone who is emotionally and sexually attracted to people of the same gender. Some women prefer to refer to themselves as gay women, but lesbian is the word more often preferred by women, and the word gay is sometimes used just to refer to men.

Intersex People: refers to people born with external genitals, internal reproductive systems or chromosomes that are not considered clearly either male or female. There are lots of different intersex conditions.

Lesbian: refers to a woman who is emotionally and sexually attracted to other women.

Straight: refers to someone who is emotionally and sexually attracted to people of a different gender.

Transgender or Trans People: refers to a whole range of people who find their gender identity or gender expression differs in some way from the gender assumptions made by others about them when they were born. The umbrella terms transgender people and trans people can include: transsexual people, intersex people, crossdressing/transvestite people and androgyne/polygender people.

Transsexual People: refers to people who consistently self-identify as the opposite gender from the gender they were labelled at birth. Depending on the range of options available to them during their lives, most transsexual people try to find a way to transition to live fully as their self-identified gender. Most, but not all, transsexual people will take hormones and some also undergo surgery to make their physical body match their gender identity better.

A female-to-male (FTM) trans man is someone who was labelled female at birth but has a male gender identity and therefore transitions to live permanently as a man.

A male-to-female (MTF) trans woman is someone who was labelled male at birth but has a female gender identity and therefore transitions to live permanently as a woman.

ASYLUM TERMINOLOGY

Asylum Seeker: a person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application.

Refugee: a person who has been granted protection after successfully making a claim for asylum. They satisfy the legal definition of a refugee as set out in the 1951 UN Convention relating to the Status of Refugees: 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.'

Refugees

- have to be outside their country of origin
- the reason for their flight has to be a fear of persecution
- the fear of persecution has to be well-founded
- the persecution has to result from one or more of the 5 grounds listed in the definition, that is race, religion, nationality, membership of a particular social group, or political opinion
- have to be unwilling or unable to seek the protection of their country

Asylum interview: a substantive interview about a person's reasons for claiming asylum in the UK.

Screening interview: meetings between asylum seekers and immigration officers to establish: identity, route to the UK, liability to return to a third country, eligibility for UKBA support, liability to prosecution, liability to detention and suitability for being dealt with under the fast track procedure. During the interview asylum seekers have their photo and fingerprints taken and are issued with an asylum registration card.

Fast track procedure: is used to determine asylum applications from people who the UKBA assesses to be 'suitable'. Applicants in the detained fast track are held at an Immigration Removal Centre and the initial decision on their case and any appeals happen at a faster pace than in the community. A case is considered suitable for the fast track process where it appears to the UKBA that the asylum claim can be decided 'quickly'.

UKBA: The UK Border Agency is responsible for securing the UK border and controlling migration in the UK. They manage border control for the UK, enforcing immigration and customs regulations. They also consider applications for permission to enter or stay in the UK, and for citizenship and asylum.

UKBA support: Asylum seekers who are destitute may be able to receive accommodation and/or subsistence support from the UK Border Agency.

Section 4 support: Section 4 of the Immigration and Asylum Act 1999 gives the UKBA power to grant support to some destitute asylum seekers whose asylum application and appeals have been rejected. Support granted under Section 4 is also known as 'hard case' support.

UNHCR: United Nations High Commissioner for Refugees, the UN agency with a mandate to protect refugees worldwide.

How is the term 'refugee' misused?

The term has slipped into common usage to cover a range of people, including those displaced by natural disaster or environmental change. Refugees are often confused with other migrants. In international law, the term 'refugee' has a specific meaning and is NOT to be confused with 'economic refugee'.

Economic Refugee

This term is not correct. The accurate description of people who leave their country or place of residence because they want to seek a better life is 'economic migrant'.

Economic Migrant

Migrants make a conscious choice to leave their country of origin and can return there without a problem. If things do not work out as they had hoped or if they get homesick, it is safe for them to return home.

Illegal Immigrant

Illegal immigrants are people who enter a country without meeting legal requirements for entry, or residence. On the other hand, refugees often arrive with 'barest necessities' and without personal documents. Refugees may not be able to obtain the necessary documents when trying to escape and may have no choice but to resort to illegal means of escape. Therefore although the only means of escape for some may be illegal entry and/or the use of false documentation, if the person has a well-founded fear of persecution they should be viewed as a refugee and not labelled an 'illegal immigrant'.

for more information

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DISCLAIMER

Every effort has been made to ensure that the contents of this report are accurate. However, asylum law is constantly changing, therefore the sections about law and policy may only remain accurate for a period of time. This report has been written with the intention of informing policy debates and service development, rather than to act as a legal resource. The information contained within this report is not intended to be a substitute for professional advice.

FURTHER ADVICE

During 2011-12, Everyone IN will be developing information and training resources to assist organisations working in Scotland with LGBT asylum seekers and refugees. We may be contacted for assistance signposting clients in Scotland to appropriate organisations, but are not in a position to represent or advise individual LGBT asylum seekers on their cases.



