

NO GOING BACK

LESBIAN AND GAY
PEOPLE AND THE
ASYLUM SYSTEM

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LESBIAN AND GAY PEOPLE AND THE ASYLUM SYSTEM

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FOREWORD

Most people in modern Britain agree that we should provide asylum to the persecuted, but also that the control of such a system should be both measured and fair. This report provides stark evidence that the treatment of one group of asylum-seekers is materially less fair than that of others simply on the grounds of their sexual orientation.

We're indebted not just to the asylum-seekers who bravely agreed to talk to us but also to the professionals involved in the asylum process, most particularly staff of the UK Border Agency. They spoke with great candour, detailing a number of profound disadvantages faced by lesbian and gay asylum-seekers, something that is traumatising to many.

Lesbian, gay and bisexual asylum-seekers come from jurisdictions where gay people are still executed, tortured, raped and persecuted just because of who they are. In many cases they are sent back to countries where the fear of persecution is constant and once there they are expected to live a lie. Too

many have – perhaps understandably – killed themselves rather than be returned.

At Stonewall we know that being gay is about who you are, not what you do – too often our asylum system and those who implement it take the opposite approach. There is a systemic ignorance of the many barriers that gay people who've suffered persecution face in talking about their experiences. As a result vulnerable people in grave need of our protection are being regularly turned away.

Failure to rectify this situation raises deeply uncomfortable questions about our own society and proud national culture. That's why this report concludes with a series of recommendations. Britain has a history of compassion to those in grievous and genuine need who seek shelter on our shores. In future we hope that compassion will be extended to all.

Ben Summerskill Chief Executive Stonewall

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SUMMARY

Consensual acts between same-sex adults are criminalised in 80 member states of the United Nations and homosexuality results in the death penalty in six of these countries. Lesbian, gay and bisexual people face execution, torture, rape and murder from people in their own community or from their government. People who face the threat of this type of persecution can seek sanctuary in the UK but many are not granted protection because of fundamental errors of judgement and presumptions made by UK Border Agency (UKBA) staff and judges about sexual orientation. Consequently, lesbian and gay people seeking asylum experience significant and specific disadvantages as a direct consequence of their sexual orientation.

- Lesbian and gay asylum-seekers feel a deep sense of shame and stigma about being gay and have rarely, if ever, spoken openly about it for fear of persecution. They also have a profound fear of authority figures because of the persecution they face in their home countries.
- UKBA staff are trained to look for inconsistencies in the stories of claimants. This approach disproportionately affects lesbian and gay people who struggle to talk about the persecution that they see as being 'caused' by their sexual orientation. The trauma they have experienced affects the way that they remember and recount details of what has happened to them.
- The UKBA penalises gay people if they are not immediately open about their sexual orientation. If a case reaches the appeal court, judges are also reluctant to accept that individuals have found it difficult to disclose at the first opportunity why they are seeking asylum.
- UKBA staff and judges often assume that a person can only be lesbian or gay if they have engaged consistently and exclusively in same-sex sexual activity. Questions focus on sexual activity and asylum-seekers are expected to share explicit sexual experiences.
- Officials ignore the fact that many lesbian and gay people are persecuted because they are perceived to be 'different', not because they have engaged openly in explicit homosexual activity. They lack confidence and knowledge on issues relating to sexual orientation and so fail to enable lesbian and gay

people to talk about their experiences.

- UKBA staff and judges often conclude that gay people can return to their home country and no longer be at risk if they are 'discreet' about their sexual activity or identity. This approach has been condemned by the United Nations High Commissioner for Refugees (UNHCR).
- Gay applicants are often refused asylum because UKBA policy and guidance and case law are incorrectly applied. This leads to legitimate applications failing.
- UKBA staff rely on guidance and reports which are factually incorrect. A lack of information about what it is like to be gay in some countries is erroneously taken as evidence that gay people do not face persecution in those countries.
- UKBA staff do not have access to information on the experiences of lesbians. Issues concerning forced marriage, honour killings and marital rape are not acknowledged to be relevant to lesbians.
- Many gay asylum-seekers are 'fast-tracked', meaning that they are detained and their case determined quickly. Often they are incarcerated in hostile and homophobic environments, significantly increasing the barriers they already face in talking about their experiences.
- UKBA staff are under great pressure to meet demanding targets and heavy caseloads and this disproportionately impacts on complex gay cases. Shorter timescales for a case make it less likely that gay people will be able to talk openly, leading to incorrect decisions being made.

THE STUDY In November 2009, Stonewall interviewed lesbian, gay and bisexual asylum-seekers, legal professionals, asylum support workers and UK Border Agency (UKBA) staff. We wanted to find out how lesbian, gay and bisexual people seek asylum in the UK and how UKBA staff respond to their applications. The interviews covered all aspects of the asylum process and considered how lesbian, gay and bisexual people move through the asylum system and how decisions are made and communicated. The results of those interviews are presented in this report.



When I was really young I had an affair with a friend. Because he was a chief's son, the whole thing went up and the police started looking for me, the chief said he's going to kill me. My pictures were everywhere, I was wanted. I went underground but a group of guys grabbed me. They took me to an old house, tie me on the chair. They want me to admit I'm gay. If you say you're gay they can kill you. You just have to keep lying, no I'm not, no I'm not, no I'm not, because if you say you are they can kill you. I was beaten, I was tortured. It was terrible, it was really horrible. Eventually they left me for dead because I was really beaten, with wires and stuff - four or five guys beating one person. I was really scared. They were whipping me with wire and they melted plastic on my legs and hand. That's the worst thing. I don't know how I left, but I was able to untie myself and jump through the fence. I ran away. I was in hiding; I don't come out during the day ever. I only come out at night. **Adebayo**, *Nigerian asylum-seeker*

INTRODUCTION

Article 1 of the United Nations Convention Relating to the Status of Refugees 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 or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Since 1999 'particular social group' has included lesbian, gay and bisexual people.

The UK Border Agency states:

||| The UK has a proud tradition of providing a place of safety for genuine refugees. However, we are determined to refuse protection to those who do not need it, and will take steps to remove those who are found to have made false claims.

Asylum is protection given by a country to someone who is fleeing persecution in their own country. It is given under the 1951 United Nations Convention Relating to the Status of Refugees. To be recognised as a refugee, you must have left your country and be unable to go back because you have a well-founded fear of persecution.

The UK also adheres to the European Convention on Human Rights, which prevents us sending someone to a country where there is a real risk they will be exposed to torture, or inhuman or degrading treatment or punishment.

For a lesbian, gay or bisexual refugee, they must fear a real risk of serious harm (eg. torture, rape etc) on the basis of their sexual identity without effective protection from their home country. The risk can be from the state (ie. the police) or from people in their community, referred to as 'non-state agents' or 'the mob'.

1 TOMORROW YOU MIGHT DIE THE EXPERIENCES OF LESBIAN, GAY AND BISEXUAL PEOPLE

Consensual acts between same-sex adults are criminalised in 80 member states of the United Nations. In six countries homosexuality results in the death penalty. In many countries lesbian, gay and bisexual people face persecution, rape and murder from 'the mob' – a group of people from the community – or from the government. Torture is commonplace, whether by the mob or the state.

We're beaten every day, chopped up, mugged, persecuted, verbally abused, physically abused. As long as you're noticed, as long as you're recognised, you're victimised. Every day you have to hide. Every day in fear. Tomorrow you might die.
Harrison, Jamaican asylum-seeker

Gay people get beaten, they get stabbed, they get killed. They light them on fire, put tyres on their head, burn them. They can kidnap you - just take you away somewhere. I can't go to the police. The police will arrest me because it's illegal to be gay.
Adebayo, Nigerian asylum-seeker

They treated us like a piece of meat – like in the boxing room where they have something hanging from the ceiling and they're punching it. I got ninety lashes so I couldn't sleep for a month on my back.
Mahmood, Iranian asylum-seeker

Many lesbian, gay and bisexual people in these countries try to keep their sexual orientation secret, leading a double life and living in perpetual fear of discovery.

Back home you live in a box, you're locked away. You learn to be invisible. You have to deny who you are and what you want. It's like you're leading a double life, it's Jekyll and Hyde.
Marisha, Jamaican asylum-seeker

In many cultures there are no words to describe being lesbian or gay. Those that appear different or struggle to pass as heterosexual endure constant speculation and questioning about their sexual orientation. Many go to extreme lengths to

present an image of heterosexuality to the outside world, trying desperately to suppress their sexual orientation. Many more are either too terrified to act on their feelings towards members of the same sex or have simply never had an opportunity to do so.

There's no word for gay in Nigeria, apart from they're evil, they're demons. If you're gay that means you're possessed.

Adebayo, Nigerian asylum-seeker

Gay people – both men and women – are vulnerable to exploitation by those that discover or suspect their sexual orientation. Often this persecution is of a sexual nature. Both men and women suffer rape and sexual violence.

They take you to as many witches as they can. They took me for spiritual cleansing, where people held me and pushed raw ground pepper into my vagina. If you're unfortunate like me you get raped as well. But when men force themselves on you, you can't tell anyone because you'll bring more shame to the family.
Femi, Nigerian asylum-seeker

I got raped by my religious teacher for about a year where I had to keep my mouth shut and just keep going without question or complaint.
Mahmood, Iranian asylum-seeker

The shame and stigma is so strong that it cuts across family ties. If found out, gay people are likely to be rejected by their families and these family members will often lead the persecution against their own sons, daughters and siblings.

My mother said I wish you die of AIDS. Homosexuals die of AIDS. I wish you never came back to me. It was a mistake I had you as a child.
Johnson, Ugandan asylum-seeker

My mum would go to all my workplaces. She'd befriend somebody and say, listen, Marisha is a lesbian – exposing me, knowing full well the society's not tolerant of anybody who's lesbian or



I was known for being gay and as soon as you're known you don't have any protection, they can pick you up and accuse you with anything. Once they picked me up for drinking and I received ninety lashes and then they took me to another room where they told me who I am, what I'd done before; you did this, you've been with this boyfriend, you have to be executed soon. Next time you come here you don't have any other chances – you're not going to get out. The next time I got caught my boyfriend ran but because of my record they accused me of having a relationship with the guy who ran away and they kept me detained for three days. They planned to sentence me for execution. If I'd been sent to court I wouldn't be here now. I was one of the luckiest ones – my dad who beat me nearly to death paid for a powerful neighbour to get me out of jail. But it was his rule that I had to leave my country because he didn't want any more trouble. He didn't have any money to pay and there weren't any more chances for me if I got caught.

Mahmood, *Iranian asylum-seeker*

gay. They urinated on my vehicle, they punctured the car tyres, they tell me I can't stay in the new ward. Marisha, *Jamaican asylum-seeker*

Lesbian, gay and bisexual people are under great pressure to conform to traditional social norms of marriage and starting a family. For men, not having a girlfriend or wife leads to constant questions and speculation, while for women the pressure will begin at an even earlier age.

When you're 20, they expect you to introduce a man to the family. My auntie said we don't want people to talk about you, people will say you're of no use and men are not attracted to you. They kept on pressurising. Agnes, *Ugandan asylum-seeker*

The stigma is pervasive, forcing people to regularly uproot just to avoid the suspicion and inevitable persecution that follows. Gay people consequently tend to remain dependant on the sympathy of others as they lurch between one crisis of rejection and the next.

As soon as you're discovered you have to leave. If you don't they'll come to your house and burn you down. Adebayo, *Nigerian asylum-seeker*

When my mum found out she threw me out. So from the age of 15 I went to live with a friend. All the girls I'd been with had been beaten up, and I was beaten up three times. Rochelle, *Jamaican asylum-seeker*

Where I used to live it's not nice, it's like a ghetto. So everybody know your business. I went to see a friend and when I come back the house was on fire, the fire brigade was there but after the police left they started to shout homophobic words, 'batty boy for dead, you walk like woman, you do this like woman, if you're dead boy, that's why your house burned down'. I looked in the house to save something but there was nothing to save. Nobody tried to save something from the fire for me. No-one. All I had was the clothes on my back. I was crying. I was crying because I had nobody. The mob were waiting til I was alone so they can attack me. They used sticks and they were flinging stones and they use bottles. I get this cut on my nose, blood all over my body. I was devastated. Two guys I remember because one got me here [scar on face] and the other busted my head with the bottle and the board. There were other people beating me but those two I will never forget because of the marks I have. Every time I cut my hair I see those scars and I remember them and I grow my beard to hide this scar. There are a lot of cuts in my head. I've so many cuts on my body.


Clarence, *Jamaican asylum-seeker*



My girlfriend cannot leave anything discreet.

I was getting into a taxi. She's like come on baby, give me your hand. I was giving her a hug, she was kissing me and people are shouting, shouting, pulling our clothes. They thought we are prostitutes. They thought we wanted attention. They're shouting and throwing stones at us. You stupid people, you're immoral ones. During that commotion police came and then my girlfriend started going at one, giving them back words. So the policeman said okay, we can finish this at the station. They took us to the police station. They say, okay, you're going to sleep here and then we release you in the morning. They put us into a room, they told us to remove our clothes. These two men came in and beat up my girlfriend because she was talking too much. They really beat her up. They were using a belt. They brought some electric cords, big cords because blood was flowing down. After beating her up – oh, God – these guys come to rape me. You know, two guys raping us both – it was really horrible. **Agnes**, *Ugandan asylum-seeker*

2 JUST LOOKING FOR HELP THE ASYLUM SCREENING UNIT




When I came here
I was just looking for help.
I know nothing about asylum.
There was no help.

Clarence, *Jamaican asylum-seeker*

People seeking asylum in the UK can claim at their port of entry or at the asylum screening unit in Croydon, South London. This is a busy and hectic public environment that some applicants find intimidating and lacking in privacy. They are expected to produce their passport or travel document and fingerprints and photographs are taken. The process usually takes a full day.


The asylum-seeker is interviewed at the asylum screening unit. UKBA states that the purpose of this initial 'screening interview' is to ask basic questions about their application. The focus is on establishing their identity and where they've come from. Staff make it clear that the screening interview is not the full asylum interview and is not an opportunity for the asylum-seeker to explain their reasons for claiming asylum. However the final question of the screening process asks the applicant briefly why they are claiming asylum in the UK.

A lesbian, gay or bisexual applicant's failure to mention at screening that their sexual orientation is a factor in their claim can negatively affect the assessment of their credibility later in the process. A poor credibility rating is often a significant factor in the decision to refuse asylum. If a claimant's credibility is found to be questionable it is often assumed that they are not telling the truth about their reasons for seeking asylum.




If it had not arisen through the screening or the asylum interview, I'd be exceptionally concerned that this was not a credible claim.

Nicholas, *UKBA senior caseworker*




It's held against you, not disclosing at the earliest opportunity: Come on, you're in a safe country, why didn't you disclose it as soon as you came into contact? **Jody**, *UKBA presenting officer*

However, for many lesbian, gay and bisexual applicants disclosing their sexual orientation to a uniformed authority figure in this context may be difficult.




Where I come from, it's something you don't tell anybody. I found it very hard because I feel like you wouldn't understand and you always take it the wrong way. **Adebayo**, *Nigerian asylum-seeker*


The UKBA's broader culture is geared towards establishing credibility and revealing inconsistencies in an applicant's claim. However this general approach does not make any allowance for the shame and stigma which makes gay asylum-seekers reluctant to disclose their sexual orientation.





It's very important for us to have an account at that first point. Because one of the only ways to decide whether someone's telling a truthful account is to look at how much that account varies through the process. So we place a lot of weight on the screening interview and we make a big issue of failure to mention something at that stage.

Jonathan, *UKBA senior caseworker*

 I went to Croydon, queued up and got a ticket. That was the most daunting thing. This place has no privacy. I was called to a window. The guy next door could hear what I was saying and so could the guys behind me. You're talking behind Perspex. The thing I found so difficult was, as a gay man coming from a country where you don't talk about sex, the first contact I had, the interviewer was an elderly Asian lady, someone I'd put in a place like my mum. She asked why are you seeking asylum? It was the hardest thing to tell her. I kept saying because I like men. What do you mean? It was very tough to explain that I'm gay. It's like she didn't understand – like she thought what I was talking about is vile and horrible. It was so uncomfortable. She asked why have you taken five months before coming. I said I didn't know this existed. Then she told me, wait there. In a few minutes some guys came and said can you come with us. They searched me and kept me for six hours in this small room. People kept coming in crying. That's when my world started changing. **Johnson**, *Ugandan asylum-seeker*


 **If they've come to the UK because they felt it was a safe country to claim asylum, then they should be confident enough to tell the authorities why they don't wish to be sent back. It's very difficult to see why they would choose not to give the reasons, particularly in relation to being gay.**
Duncan, UKBA senior caseworker

 **Our attitude is if you're a genuine asylum-seeker, you claim asylum when you first arrive in the country.** *Oliver, UKBA caseworker*

 **I arrived at the airport at 8:30. I claimed asylum at 9:30 and they said I have a bad history. They said instead of asking for asylum immediately I had waited.** *Agnes, Ugandan asylum-seeker*

Credibility can also be negatively affected if the asylum-seeker does not seek asylum at the first available opportunity after arriving in the country. But for gay people fleeing persecution their first thought upon arrival in the UK may not be to make contact with the authorities – especially if the authorities in their own country were responsible for persecuting them. Many are not aware that asylum even exists, and even those that are may not realise that the persecution they've received because of their sexual orientation could be grounds for a claim.

Solicitors representing gay asylum-seekers point out that people who've had serious sexual and physical violence inflicted against them are vulnerable and afraid of authority. They are unlikely to approach UK authorities because they've escaped the authorities in their own country and believe they may be detained.

 **The person might be fleeing genuine danger but think that the country he's in, like the UK, wouldn't actually protect him from that danger.** *Edwin, Solicitor*

3 THIS IS A PRISON BEING DETAINED

After the screening process certain categories of asylum-seeker will be detained at an immigration removal centre or detention centre. It is standard practice to detain single adults from countries such as Jamaica and Uganda and single men from Nigeria because these countries are considered 'safe' and so asylum-seekers from these countries are felt by UKBA to be easy to process. However, owing to their persecution of gay people, these countries all generate large numbers of lesbian, gay and bisexual applicants.

Being locked up with people from their own culture and from other cultures that are similarly homophobic can be very difficult for gay people.

■ ■ **Three people try to commit suicide in Yarl's Wood when I was there. When that happened the entire place was so tense. People were so scared. I couldn't sleep that entire night. Everybody's gone through it though.** Marisha, *Jamaican asylum-seeker*

■ ■ **They told me I'm going to Yarl's Wood. I said why are you taking me there – I've told you my problems and I thought you could do something for me. When we got to the detention centre I said I can't stay here, this is a prison.** Agnes, *Ugandan asylum-seeker*

■ ■ **I told them I'd prefer to be in a room with a person that isn't Nigerian because I don't want to keep going through the curses and swearing. But they put me in a room with a Nigerian who speaks the same language. From my point of view, that was torturing me mentally – I felt they were playing cat and mouse.** Femi, *Nigerian asylum-seeker*

■ ■ **I've never committed any crime; never gone near a jail. To end up in such a thing in a country where you come to get help – you're just worse off than before.** Johnson, *Ugandan asylum-seeker*




The whole place was vile.
It was so homophobic.
One of the guards called me a poof
and there were Jamaicans who kept
hurling abuse at some Iranian guys
– calling them batty men. I was
terrified thinking oh my God, I hope
they don't know I'm one of them.
There were always fights – they
would provoke them and the guys
would try to fight back. Eventually
the gay guys had to be taken out.
So it was very scary. It was awful.
You can't risk being open about
being gay there. **Johnson**, *Ugandan asylum-seeker*

4 CAN YOU PROVE YOU ARE HOMOSEXUAL? THE FULL ASYLUM INTERVIEW

The full asylum interview is the chance for asylum-seekers to tell the Home Office why they fear returning to their country. To be granted refugee status an applicant must convince their 'case owner', the UKBA official who oversees their claim, that they have a well-founded fear of persecution if returned to their country.


For applicants the first challenge is to ensure that their sexual orientation is the basis of their asylum claim. The responsibility for raising this is in many cases left to them and if they have not raised it at the screening interview, this will be held against them.

 **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

For all asylum-seekers, but particularly for lesbian, gay and bisexual applicants, it is important to create a safe space where they feel able to discuss the experiences which led them to seek asylum. Most gay cases are not straightforward and require time to be spent drawing out the applicant's often complex experiences of persecution.

The New Asylum Model, introduced in 2006, was designed to manage asylum claims more effectively and, importantly for gay

asylum-seekers, included a plan for case owners to have more contact with applicants. The idea was to build rapport and trust before a formal interview. However, pressure to clear cases means that this rarely happens in practice and in most regions the asylum interview remains the first time that a case owner meets an applicant.

 **If you don't have the ability to build rapport then you're going to struggle with getting the applicants to be open and honest. If you meet them for the first time at the interview there's not a great deal of time to build that relationship.**

Robert, UKBA senior caseworker

UKBA staff admit that they receive no specific training or guidance on how to interview gay applicants and often lack confidence when approaching claims where sexual orientation is a key element. There is no accepted UKBA approach and this leads individual interviewing officers to pursue a wide range of strategies and lines of questioning that vary considerably in quality and effectiveness.

Interviewers will often attempt to probe an applicant's sexual orientation through detailed questioning of the specific sexual experiences that they've had. This type of questioning is generally not effective and simply creates barriers between the applicant and case owner.

Typical questions asked at interview:

- Can you prove you are a homosexual?
- Why do you choose to be homosexual when you know that it is illegal in your country?
- Why do you think you are a homosexual, you have been married and have children?
- Can't you be discreet about your sexuality and thereby avoid being noticed as a gay person?

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

I would look at how they've explored their sexuality in a cultural context – reading Oscar Wilde perhaps, films and music. Nicholas, UKBA senior caseworker

This focus on sexual activity is symptomatic of a misunderstanding that gay people's persecution stems from just their conduct rather than their identity. In many countries simply being perceived as different is enough to result in persecution, but UKBA practice tends to focus instead on sexual conduct because this is what anti-gay laws in these countries stipulate.

The shame and stigma felt by asylum-seekers along with a fear of talking about being gay in their home countries means they are completely unprepared to talk about their sexuality to UKBA officials.

I learned to keep it secret from 16 years old. I find myself in a situation with a strange person having to tell him about my private business. It is more than hard. Ahmad, Syrian asylum-seeker

You would expect that if somebody has been sexually active in their home country they should be willing to discuss those subjects.
Nicholas, UKBA senior caseworker

Many gay applicants have been victims of torture, rape and sexual violence, and are likely to have repressed their memories of these experiences.

You want to forget about your past but then you have to try and think of everything again to explain what you've been through. They ask you, what are your reasons? Tell them the date, the time, everything – but it's buried. If you don't quite remember they say you're telling lies but that's not what you're doing. Chantal, Jamaican asylum-seeker

It is well documented that people take a long time before being able to talk openly about these types of experiences. However this is not generally acknowledged by UKBA staff.

If somebody's suffered a bad experience in their country based upon their sexual orientation then they will state that when it comes to what are the reasons you're claiming asylum.
Nicholas, UKBA senior caseworker

A common way for interviewing officers to assess a sexual orientation claim is by asking questions about the relationships that applicants have had in their home country.

This causes problems because interviewing officers tend to measure applicants' descriptions of their relationships against what they know of same-sex relationships in the UK. But gay relationships in repressive and homophobic societies are completely different and meetings are often brief, furtive and secretive. This mismatch can affect a case owner's assessment of an applicant's credibility. People too terrified to explore their sexual orientation in their home country are also excluded by this type of questioning.

Despite these problems UKBA staff often feel they have no other approach open to them.

I focus on the relationships, because that's the only evidence that we can go on. Indira, UKBA case owner

This focus on relationships is also applied to applicants' behaviour once in the UK, despite the fact that people who have fled persecution, torture, sexual violence and rape are unlikely to feel able to have relationships for some time. Some feel under great pressure to have relationships in order to prove their sexuality.

You have to ask, what is his behaviour in the UK? If you were a gay man and you had been repressed or ostracised in your home country, then presumably coming to London would give you the chance to go to Soho or Heaven and enjoy the kind of lifestyle and bars and opportunities that that presents.
Nicholas, UKBA senior caseworker

A person cannot be gay in a country for five years and not go out to a gay pub or have a gay relationship or have some kind of background to support their sexuality. Oliver, UKBA caseworker

I feel the Home Office is forcing people to have sex when they're not ready. I was just sixteen but I had to force myself to prove and to save myself. I had no choice. The pressure was too much.
Adebayo, Nigerian asylum-seeker

An applicant's reticence to speak about their experiences or provide sufficient evidence that they are gay will often simply be interpreted as proof that they are lying, which leads to the conclusion that they are lying about all aspects of their claim.

He was refused because he lied. If he had lied about one thing then he could have lied about another. His story about being gay and being found out was very weak. He wouldn't go into too much detail.
Duncan, UKBA senior caseworker

▮▮ They asked about who you have sex with, how many people you have sex with and how many times. I still feel scared to talk about it. When you come from a country where you've never told anyone and now you have five people asking you questions about this – I found it difficult to talk about.

Adebayo, *Nigerian asylum-seeker*

5 INCLINED TO REFUSE MAKING THE DECISION

Within a few weeks of the substantial interview an applicant for asylum should receive a letter telling them whether they have been successful. The letter explains the case owner's reasons for granting or refusing asylum.

Some lesbian, gay and bisexual people are granted asylum but the vast majority are refused. In claims brought to the attention of the UK Lesbian and Gay Immigration Group (UKLIG) between 2005-2009 over 98 per cent were refused at this initial stage. Between 2005 and 2008 the percentage of all asylum applicants refused at this initial stage was 76.5% (ICAR, December 2009).

Interviewing officers agree that lesbian and gay cases are some of the most challenging to evaluate. There is no way to know for sure whether someone really is gay, and because of a belief that people will try to abuse the system, those claiming to be gay are often automatically disbelieved.

It's probably the hardest, or certainly among the hardest material facts to make a fully reasoned finding on because it's difficult to test and to assess.
Stewart, UKBA case reviewer

A very common reason for refusal is that an applicant has been found to have a 'negative credibility rating' – the person assessing the claim doesn't believe the applicant has told the truth – and their claim is therefore refused. This may be because of internal inconsistencies in their story or because of their behaviour once in the UK – for example failing to contact the authorities at the earliest opportunity.

UKBA policy does not acknowledge that gay applicants may have genuine reasons for failing to disclose why they are seeking asylum. Some UKBA staff are concerned that gay asylum-seekers are frequently falling foul of an unsatisfactory system for assessing credibility.

We have training on how to interview and make decisions on specific groups such as young people's claims because we can't look at credibility like we would with an adult. Similarly with a gay person's claim they might feel less able to talk about their experiences. We can't be making decisions solely based on their account. We need to look a lot more

at the objective information about gay and lesbian people in those countries.

Jonathan, UKBA senior caseworker

Credibility should always be decided in the context of their home country. I don't think generally it is. Instead they deal with credibility first by starting with the applicant's story and looking for internal inconsistencies and then they tack on the country stuff afterwards. *Christopher, Solicitor*

UKBA staff are encouraged to examine country information when they assess an application. This additional information should go some way to corroborating the explanation given by the applicant. There is however very little information available on the experiences of lesbian and gay people in many countries and the persecution they face on a daily basis is rarely reported on.

Decision-makers rely in large part on the Home Office's own Country of Origin Information (COI) reports but these reports do not always keep up to date with rapidly changing situations in countries. Decision-makers often take an absence of information about the situation for gay people as evidence that they are not at risk.

I can't see that there would be any circumstances where persecution of gay people would not be reported. There are plenty of international gay organisations that would pick up on that. So you have to ask, if there's no evidence that can be found anywhere, whether it actually exists at all.
Duncan, UKBA senior caseworker

Many COI reports lack information about the experiences of lesbians. Decision-makers also have little cultural understanding of the reality of life for gay women in many countries.

We have to go on the objective evidence, and if there's not enough to say that lesbians are persecuted in that country, then we have to refuse on the basis that there's not enough evidence.
Indira, UKBA case owner



If you get someone who's claiming they're gay and they come from Jamaica, it's just automatically disbelieved by people. They just say oh I've got another gay Jamaican.

Indira, UKBA case owner

The COI reports are used alongside an Operational Guidance Note (OGN) which helps interpret the information in the COI. Although UKBA consult with external asylum organisations on the content of COI reports, they do not consult on the content of the OGN. In some cases the OGN appears to reinterpret or contradict information held within the COI report to suggest that lesbian, gay and bisexual people are not actually at risk.

I've seen occasions where the policy doesn't fully reflect what the objective information says. Like lesbians in Jamaica. It will say there have been instances of these problems, but then the guidance which tells you how to use that information will probably be saying yeah there are some instances but every case is different. It might say it's unlikely that they'd be able to establish a claim.

Jonathan, UKBA senior caseworker

Although the persecution gay people face is often from the mob rather than from the state, decision-makers frequently focus instead on the legal position on homosexuality in a country. In some countries there are no laws against same-sex relationships

between women, for example, but this does not mean they are not persecuted. However many decision-makers interpret this as evidence that lesbians are not at risk of persecution and therefore will refuse their applications for asylum.

I think in general terms – especially with lesbians – people just say; well there's no law against you.

Sarah, UKBA case owner

UKBA staff often misunderstand how lesbians and gay men would come to experience persecution. Decision-makers tend to focus on gay applicants' conduct and whether they have broken strict laws without understanding that it is actually their identity or simply their 'difference' from the norm that usually leads to their persecution.

In some countries there are different penalties for what you're caught doing. In Iran for example you can get a wrist slapping for being caught naked under a blanket but if you're caught actually performing penetrative sex the punishment is much more severe.

Robert, UKBA senior caseworker

With Iran you need to have four clerics who can state they have seen them having sex. That is the criteria by which you can be convicted by the Islamic penal code. *Nicholas, UKBA senior caseworker*

In some countries if you haven't actually had penetrative sex then it doesn't count for the law. So you do need to find out. *Aysha, UKBA case owner*

Some UKBA staff believe that lesbian and gay people would only experience persecution if they were caught doing something that was unlawful. On these grounds they believe it is therefore possible for lesbians and gay men to avoid detection – that is, to be discreet about their sexual orientation. Gay asylum-seekers are therefore often turned down on the basis that they can safely return to their home country if they live 'discreetly'.

Many UKBA staff are uncomfortable with this approach. They feel that the 'living discreetly' argument is uniquely designed to target gay applicants and is therefore discriminatory.

If somebody's got a particular political opinion, we wouldn't send them back and say well if you keep a lid on it nobody will hurt you. So why does the law say that we can do that with gays and lesbians? *Amelia, UKBA senior caseworker*

I think it is institutionalised homophobia, not just necessarily in the UK Border Agency but in the laws that we use. *Sarah, UKBA case owner*

It's different for gay cases where the question is what can they change about their life to avoid persecution, as opposed to what has actually happened to them that could happen again, which is what you'd have to prove if you were from a particular clan in Somalia or if you supported a particular political party in Zimbabwe. It appears to raise the standard of proof for that person above the level that other asylum-

seekers have to reach. *Craig, UKBA presenting officer*

The discretion issue just shows a complete lack of understanding of what it's like to live that way. I don't understand how it can be anything other than inhuman and degrading to expect someone to not be able to admit who they are. That's the part I find hardest really. *Jody, UKBA presenting officer*

I think what they're talking about; living discreetly, is get a woman, marry, have kids and secretly be sleeping with men. They're telling you to live a lie. *Johnson, Ugandan asylum-seeker*

Decision-makers are also confused and unclear about the specific circumstances in which they are expected to consider 'living discreetly' or discretion as a reason for refusing asylum.

How are you meant to assess whether somebody can tolerate being discreet? It's a vague statement with no real steer on how to apply it and there is no definition of what living discreetly means. Are you living discreetly hiding who you are and getting married to a man? Is living discreetly living on your own and never having a partner? *Amelia, UKBA senior caseworker*

Whether somebody can be expected to return to a country and would it be unreasonable for them to be expected to live their life there depends how important sexuality is as a component of your character. *Nicholas, UKBA senior caseworker*

For some decision-makers the discretion argument is attractive because it allows them to sidestep the need for considering complex questions that are difficult to reach a decision on such as whether or not someone is gay and whether or not they will face persecution if returned.

They don't have to decide is this man gay, is this woman a lesbian? They don't have to decide is that country safe or unsafe? They can give the benefit of the doubt on those things because they're still going to say no. So they don't have to go into great detail. *Erin, UK lesbian and gay immigration group*

▀▀ You would never say
to somebody go back
and practise your religion
quietly, or go back and
stop being a political
activist. **Jonathan**, *UKBA senior caseworker*

6 THEY HAVEN'T GOT A CHANCE MEETING THE TARGETS

The pressures of a heavy caseload, combined with the fact that gay cases are often complex and difficult to reach a fully reasoned finding on, mean that some case owners will simply automatically refuse lesbian, gay and bisexual applicants so that the case is passed to the appeal stage where a judge will decide.

If you're thinking well this could go either way, the temptation is to refuse and let an immigration judge decide. They'll have longer to look at the papers and weigh up the evidence. Sarah, UKBA case owner

A lot of gay cases are refused just so you can have a judge decide. You're not sure what to do so you leave it in the hands of someone better placed to make that decision. Indira, UKBA case owner

The pressures of heavy workloads also mean that in some cases there are no checks and balances in place to prevent poor decisions. There is a great deal of pressure on UKBA to meet very challenging targets on the numbers of decisions made and cases concluded. This can have an effect on the way that UKBA staff treat individual cases.

If you haven't got correct information you could be sending someone back to be killed, which is something I don't think people think about. They just want to make a decision, hit a target, we've got a removal. They're not thinking about the actual person involved. Sarah, UKBA case owner

UKBA staff feel that these demanding targets in some cases lead to insufficient time being spent exploring the applicant's experiences and ultimately to poorer quality decisions being made. These pressures further exacerbate the barriers to disclosure that gay applicants already face.

Because of the sheer volume of work case owners are getting more and more removed from applicants. We don't actually have that much contact with them any more. Robert, UKBA senior caseworker

Lesbian and gay people are even less likely to disclose their sexual orientation or receive a detailed assessment if they are 'fast-tracked' – this is a system used for cases deemed to be simple and easy to assess. Fast-tracked applicants are detained and UKBA aim to process their case from interview to decision and appeal in two weeks, after which UKBA will begin processes for their removal. In this hostile and time-pressured environment it is very difficult for a gay applicant to build rapport with their case owner so they are even less likely to disclose their sexual orientation. Even those that manage to do this are still likely to fall into the familiar credibility trap.

In fast-track there's pretty much an expectation that almost every one will be refused. We don't put any old case into fast-track. We put ones which are removable and don't appear to have an asylum claim. Jonathan, UKBA senior caseworker

Professionals who work with asylum-seekers argue that lesbian and gay applicants should not be fast-tracked. This is due to the complex nature of their cases and because it takes time to produce evidence about a reason for claiming that is secret and that there is no public evidence for.

Despite this many gay applicants are routinely put into the fast-track system. This is because they often come from countries such as Nigeria, Jamaica and Uganda, which although thought to be safe may not be safe for gay people.

Gay people can be trapped by that because they're from a country that doesn't generate many asylum-seekers but it's a country that happens to persecute gay people. Christopher, Solicitor

▮▮ If a gay person
gets caught in
fast-track they haven't
got a chance. **Jody**, UKBA presenting officer

7 SOME JUDGES ARE OLD FASHIONED APPEALING THE DECISION

If refused asylum by the Home Office an asylum-seeker can appeal the decision. The appeal takes place before a judge in the First Tier Tribunal (Immigration and Asylum Chamber). The Home Office is usually represented by a UKBA presenting officer.

In order to reach a finding on an applicant's sexual orientation, both the presenting officer and judges will often focus their questions on the specific details of sexual activities and experiences that the applicant has had.

The feelings of shame, stigma and self-hatred that many gay asylum-seekers feel about their sexual orientation make it very difficult for them to answer these questions. Sexually explicit questions being asked by a figure of authority are even more difficult to answer. Applicants' responses may therefore be vague or even evasive and these responses tend to be interpreted by judges as evidence that an applicant is lying and therefore may be used to dismiss an appeal.

I've been involved with cases where there's a presumption that gay men only have certain types of sex and can only take on a certain 'sex role'. In an Iranian asylum-seeker's case, less than five years ago, the presenting officer asked for medical evidence on the basis that as my gay male client was 'passive' she felt there should have been submitted evidence to show the type of sex he was having and therefore 'prove' that he was gay. The judge ruled the point admissible. I found the point completely grotesque and I was sickened to the base of my stomach. Chelvan, *Barrister*

I've heard in court somebody ask 'were you top or bottom?' The applicant was like, 'what do you mean?' and he's gesturing with his hands and fingers to say, 'which were you?' Peter, *UKBA senior caseworker*

I had two gay Iranian clients who were caught having sex and arrested. They gave evidence independently and the presenting officer asked them both which one was 'passive'. They gave opposite answers and the judge relied on that to disbelieve them. Christopher, *Solicitor*

UKBA staff feel that some judges are biased towards the Home

Office and also have biased attitudes towards lesbian, gay and bisexual people.

The demographics of the judiciary haven't changed. It's still white, middle class males of a certain age and I'm not sure they fully grasp the concepts of identity issues. Robert, *UKBA senior caseworker*

Judges really bring their own prejudices to court and these affect their decisions seriously. Some will also bend over backwards to make sure the Home Office wins the case. Jody, *UKBA presenting officer*

Some judges are a bit old fashioned and they prefer the term homosexual. Craig, *UKBA presenting officer*


I've got scars on my dick from when I was tortured, but the judge said they think the scars are just from having gay sex. Adebayo, *Nigerian asylum-seeker*

The language used by some judges supports these concerns. In a judgement on the case of a gay Iranian in 2005, Senior Immigration Judge John Freeman made repeated references to the applicant having engaged in 'buggery'. Judge Freeman also described the applicant's friends as a 'côterie' and their sexual orientation as a 'predilection' and a desire to 'go in for that sort of thing'. He also referred to their 'unseemly activity' and 'homosexual liaisons'.

The appeal is generally an adversarial process whereby the applicant may be cajoled and emotionally undermined. This can lead to them making mistakes or remembering details differently, which is likely to result in a negative credibility finding and the dismissal of their appeal.

Lesbian and gay applicants already face a wide range of barriers to talking openly about their experiences and this type of adversarial approach disproportionately affects gay applicants because they are likely to have suppressed their memories of traumatic experiences, so will struggle to articulate them. Often their response to aggressive questioning will be simply to shut down and say nothing.

The presenting officer was doing the same thing that they did to me at the substantive interview. They were mixing up different very close stories and

 The presenting officer was an African woman, asking me all sorts of horrible questions. Being a lady, and she was black, I felt she questioned me like 'this is unacceptable, it is un-African'. She was asking me what do you do as a homosexual man? Sexual questions prompting me to talk about what I do as a gay man which was so hard to explain to a woman. I wasn't comfortable. I just felt knocked down again so hard. I just gave up because I thought I can't win here with anything. **Johnson**, *Ugandan asylum-seeker*



If you're an emotionally damaged, traumatised asylum-seeker with no money, then it's difficult to go out of the house and start interacting with the wider world. **Edwin**, *Solicitor*

then expecting you to answer. They were trying to make you confused. Mahmood, *Iranian asylum-seeker*

think you'd be looking as well as you are now.' Sarah, *Refugee Council*

To help support their case gay applicants are under a great deal of pressure to find corroborative evidence to prove to the judge that they are gay. Relationships are one way to do this but these opportunities are limited when you have no money and you know no-one. This pressure to find relationships also leaves gay asylum-seekers very vulnerable to exploitation.

Serious cultural misunderstandings are commonplace and lawyers argue that judges tend to rely instead on what they know of gay people's lives in the UK, setting a very dangerous precedent.

Many judges, like Home Office decision-makers, struggle because they have no reference points to help them understand the reality of gay peoples' lives in the UK and in other countries. This can sometimes lead them to make incorrect assumptions when attempting to assess gay applicants' risk of persecution.

I had a Pakistani client who was 17 when he came to the UK. He was found kissing his boyfriend, caught by the police and beaten over the head. In the UK he came out to his uncle who threatened him, told him to leave the house and said he'd inform his family in Pakistan that he was gay who would kill him if he ever returned. All these facts were accepted by the Home Office or the fast-track tribunal. However when the question was posed, on relocation outside his home area, what does he say when somebody asks him 'Why aren't you married?' the judge said, well all he needs to say is, 'I'm not the marrying kind'. That client is now in Pakistan hiding because he was sent back. Chelvan, *Barrister*

A lot of it comes down to the knowledge of the judges. You get judges who say well a parent would never report their own kids to the authorities for being gay, which shows a complete lack of understanding. They will beat them; they will kill them. Jody, *UKBA presenting officer*

There's a lack of understanding, particularly for women, of the pressure to have a relationship, to get married, to have children. That can be used against them, particularly with old fashioned judges. They don't believe you're a lesbian because you've had relationships with men. Jody, *UKBA presenting officer*

One thing common with most of our clients is that part of the torture is always some kind of sexual violence. And it's not just against lesbians, it's against gay men as well but in a lot of determinations judges simply refuse to believe that in a country that's so homophobic, a straight person would rape a gay man as a form of punishment. It's a taboo subject. Jill, *UK Lesbian and Gay Immigration Group*

This tendency to misread or misunderstand the cultural context of gay people's lives in many countries also affects how judges interpret and apply case law relating to living discreetly. The discretion test is applied to almost all lesbian, gay and bisexual

I heard a judge say to a woman; 'well if you'd experienced that rape the way you describe I don't



In court they said if your family want to kill you, you can report them to the police. I didn't think they understood where I was coming from, which country I was coming from.

Johnson, *Ugandan asylum-seeker*



Discretion is a silver bullet that the hostile decision-maker has developed particularly for gays. **Edwin, Solicitor**

cases with judges often refusing cases on the basis that the applicants can safely return to their home country by keeping their sexuality secret.

Again judges' frames of reference appear to come from gay people in the UK who have been able to remain discreet about their sexual orientation and live what the judge considers a 'reasonably tolerable' life.

This whole idea of discretion must be with reference to judges' personal experience of gay people that they know are gay but who don't force the issue, who don't tell anybody, just sort of get on with it and are quiet. Edwin, Solicitor

However this comparator bears no resemblance to the reality of gay life in many countries. For most applicants conforming to the cultural or social norm of their society will mean being married and having a family at a young age and living in constant fear of discovery and persecution. Anyone attempting to live their life differently is likely to fall under intense speculation and pressure, which will ultimately lead to their discovery and subsequent persecution.

The problem has at its heart confusion between identity and conduct. Judgements that apply discretion often speak of the applicant keeping their sexual activity discreet, but this approach fails to appreciate that it is not conduct but rather their identity as someone who is different that results in lesbian, gay and bisexual people's persecution.

We have to spell out what discretion would mean for that person, and quite often with lesbians, it means having to marry, and would be subjecting them to rape every day of their life.

Jill, UK Lesbian and Gay Immigration Group

Due to their fear of harm, individuals are returning to their countries of origin and having to lie for the rest of their lives. It's about going from the privacy of the bedroom, out of the front door of the home,

and into the outside world and having to lie to every person you meet. Chelvan, Barrister

Some UKBA staff believe that applicants' appearances play a key role in influencing a judge's decision.

Someone in a tight white t-shirt with effeminate body language would have a better chance than another young guy who looks just like every other young Iranian you'd meet.

Jody, UKBA presenting officer

However although a gay applicant may not present in a way that might be considered stereotypically gay in the UK, this does not mean that they won't be identifiably 'different' in their home country and therefore come to people's attention, resulting in persecution.

Like case owners, sometimes judges will focus completely on deciding whether an applicant could reasonably tolerate living discreetly, without even attempting to consider any of the other issues of the case.

Immigration judges who want to dismiss an appeal will look for that discreet point as the way out. They will concentrate on that. Christopher, Solicitor

However, as with Home Office decision-makers, a lack of confidence on gay cases among judges in some cases leads to the discretion test being applied incorrectly.

Three years after the case which provided the legal test on whether discretion is 'reasonably tolerable', there are still judges making decisions which don't apply the test, and that's inexcusable. The law says you have to look at the facts of the case on how that individual would live their life on return. If they're not able to live as they would wish to



They tell me I can deny who I am and live a normal life and I'm just saying I cannot. I cannot suppress who I am. There's no way I can live in Jamaica and hide who I am. **Harrison, Jamaican asylum-seeker**

because of the threat of harm, hence the 'voluntary' discretion, then is that existence reasonably tolerable? They must consider the impact discretion will have on how that individual would want to live their life – this relates to the expression of their sexual identity outside the home, like the ability to live openly with a partner on return. Unfortunately there is not enough engagement with the level of analysis the test requires. Often it's applied simply as you will be discreet, that's fine, end of story – you can go back. **Chelvan, Barrister**

Mahmood's case clearly illustrates this misapplication of the discretion test. As someone known to the authorities as a gay man, who narrowly escaped being hanged for his sexual orientation, he clearly could not be expected to live 'discreetly', and yet this is exactly what the judge ruled when dismissing his appeal.

The judge refused me based on, you've been caught, but you've never been in the high court to be accused of homosexuality. He was telling me there is no great danger for you to go back and live discreetly, so we can't grant you asylum status. My answer was if I had been sent to the high court I wouldn't be here. Mahmood, Iranian asylum-seeker

The High Court of Australia in 2003 recognised that discretion, in the majority of cases, is influenced by the threat of serious harm which is part of the persecution a lesbian, gay and bisexual refugee fears. There needs to be further development of the law in the UK to recognise that discretion in these circumstances is, by itself, persecutory. Chelvan, Barrister

Alongside discretion, judgements will often also cite the option of 'internal relocation'. The twin ideas of living discreetly, while also moving to a new area of the country, are regularly cited together by judges when dismissing gay applicants' appeals. However the internal relocation option is extremely problematic for all gay people and especially for lesbians.

When they said relocate, where do you want to relocate to? Even somewhere else, they'll find out

again and then you'll have to move to a different place. It doesn't make sense to me, because the police are the same, the people are the same. Adebayo, Nigerian asylum-seeker

Unlike most other asylum-seekers, lesbian, gay and bisexual applicants receive no support from their ethnic communities in the UK. They may also encounter prejudice and discrimination when seeking support from a wide range of other sources.

Many immigration lawyers are from the ethnic minority of the client base or have been arranged through members of the applicant's extended family so gay applicants that are supported by their community are unlikely to be able to come out to their lawyer.

Quite a few have claimed asylum on political opinion, been refused, and they come and see us and say actually the reason I left was because I was gay but I couldn't tell my lawyer. Christopher, Solicitor

A great deal of preparation is necessary to successfully litigate a complicated asylum claim. To have a chance of success a claimant usually needs a detailed statement that builds a picture of their life story, documenting every incident that led to them fleeing their country. This often includes expert reports on the country alongside medical and psychiatric evidence. This extra evidence can cost thousands of pounds, with funding not covered by the legal aid budgets that pay for lawyers.

The majority of applicants cannot access this type of support. Funding for asylum claims has been eroded and legally aided firms now act under financial constraints which profoundly affect their ability to effectively represent clients.

Most firms are not confident with handling sexual orientation claims. In some cases applicants are unable to find any representation and so must represent themselves.

My lawyer asked whether I could change my case and claim on political grounds instead. She said it's hard to represent me properly with the case of being gay. Johnson, Ugandan asylum-seeker

“ Unless you’ve got an exceptionally able lawyer, you’ve just got no chance. You’re just going to be processed and removed. **Edwin**, *Solicitor*

8 I CAN'T RECOVER BEING SENT BACK

When asked what life would be like if they were returned to their country of origin, most asylum-seekers replied that this would simply never happen because they would commit suicide in the UK before they were returned to face the persecution they had fled.

Many asylum-seekers have chosen to kill themselves rather than be returned and others making applications now say that after the experience they have had of being open about their sexual orientation in the UK, there is simply no way that they can go back to living in secret in their country of origin.

How can I live in Iran? I'm an openly gay person here. How can I be openly gay, then go back to my country and be 'discreet' at age 34. Everybody will ask me about marriage, all those kind of things. It doesn't make sense. Youness, *Iranian asylum-seeker*

What people don't understand, gay lifestyle is not a light bulb switch that you can turn off and turn on. Harrison, *Jamaican asylum-seeker*

For some, the process of seeking asylum in the UK may raise their profile in their home country or make them more suspicious if returned. This makes a secretive life on return even more impossible.

While I'm here, somebody sent me an email from back home in the village. He saw me on the internet. I was panicking for hours because this person knows me, my name and my village. There's nowhere to go

to anymore, even if I left the city to go back to the village. You can't get away anywhere.

Adebayo, *Nigerian asylum-seeker*

For many applicants, uncertainty about the future, the constant fear of return and their vulnerability and frequent exploitation in the UK, combined with the traumatic experiences they have already experienced, lead to mental ill health and depression.

The system is frustrating me, is killing me slowly. I feel I've got no future because you cannot plan for anything. I feel like slavery is still on. I'm a slave until this case is over; that's when I can move on with my life. Adebayo, *Nigerian asylum-seeker*

I can't stop taking antidepressants. My curtains are always closed. I don't want to see anything. I don't want to meet anyone. I don't want to go out. I tried a couple of times since I'm here to kill myself, because of my situation. Youness, *Iranian asylum-seeker*

In detention these issues become even more pronounced. Many also internalise feelings of shame about their status as an asylum-seeker.

I don't really want everybody to know I'm a gay asylum-seeker. I don't mind you knowing I'm gay – but gay asylum-seeker: It's like a stamp on your head. Adebayo, *Nigerian asylum-seeker*

In September 2003, Israfil Shiri, a gay Iranian asylum seeker, died six days after pouring petrol over his body and setting himself alight in the offices of a refugee charity in Manchester. He had fled Iran after the authorities obtained documented evidence of his sexuality.

The Observer, 21 August 2005

A gay asylum-seeker who shot himself between the eyes had 'an obvious motive' to commit suicide, the East Sussex coroner has said. Hussein Nasser, 26, killed himself days after hearing his second appeal against a Home Office decision to refuse him asylum had failed and that he was to be deported. He said he would be executed if he returned to Iran because he was gay.

BBC, 19 April 2005

The Home Office is facing legal action after it forcibly deported a gay Ugandan asylum-seeker when his case was still under review. John Bosco Nyombi is now seeking damages against the Government after British judges ruled that his removal was 'manifestly unlawful' and ordered his return.

The 38-year-old originally fled to Britain in 2001, fearing that being gay – which in Uganda can result in life imprisonment or even death – put his life in danger. He had an outstanding application for a judicial review on his case when he was taken by four security men and bundled on to a flight to Kampala on 18 September 2008. When he tried to resist and ask for a lawyer, the British removal officers allegedly dragged him by the handcuffs and struck him in the groin and shoulder.

Just two days earlier, Mr Nyombi's face had been on the front page of a Ugandan national newspaper 'outing' him as a homosexual and reporting on his fight to stay in the UK. Within moments of his arrival in Kampala, he was

abandoned by the British officers who had accompanied him on the flight, leaving him to be interrogated by border police who had seen the article and wanted to arrest him.

He managed to escape a first arrest after paying a bribe [but] then endured six months in hiding, twice getting caught and put into prison where he was violently beaten by both staff and inmates for his sexuality.

On hearing the circumstances of Mr Nyombi's removal from the UK, a deputy High Court judge, Sir George Newman, said the Home Office was guilty of 'a grave and serious breach' of the law. The judge also ruled that Mr Nyombi had been 'deliberately misled' on the day of his removal. He was told that he was being taken from Tinsley House removal centre 'for an interview'. Instead he was taken to Gatwick airport. The guards gave him no opportunity to contact friends or lawyers, even though Home Office rules state he should have 72 hours' notice to allow time for calls.

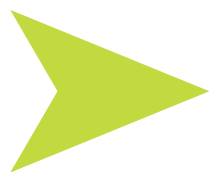
The Independent on Sunday, 31 May 2009

9 RECOMMENDATIONS

1 UKBA POLICY

The UKBA should urgently implement a series of measures to prevent lesbian, gay and bisexual people being treated differently when they seek asylum.

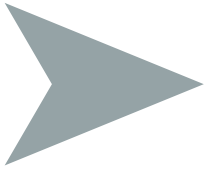
- It should develop specific guidelines to help decision-makers recognise and understand the unique issues facing lesbian and gay asylum-seekers. The guidance should include information about how to reassure gay people, particularly those who have experienced torture, rape or death threats, so that they can be honest about their experiences during interviews.
- It should develop comprehensive guidance to explain how courts have ruled on lesbian and gay asylum cases including details of how they have applied the discretion test.
- The UKBA should consult with relevant organisations to revise and update their Operational Guidance Notes. These are used by staff to make decisions on whether lesbians and gay people will experience persecution in their country of origin and must contain accurate information.
- The UKBA should adopt the lesbian, gay, bisexual and trans guidelines issued by the United Nations High Commissioner for Refugees in November 2008.
- Many asylum-seekers are represented by lawyers who have links to their country of origin or ethnic community. Often gay applicants do



2 UKBA TRAINING

- not have this sort of support. Information on where to find alternative appropriate legal representation should be developed and provided to all gay applicants.
- Lesbian and gay people should not be fast-tracked because many countries currently deemed to be 'safe' are not necessarily safe for lesbians and gay men.
 - The UKBA acknowledges that detention is not appropriate for complex cases and recognises that it is difficult to protect lesbians and gay men in detention.
 - Homophobia from staff and other detainees should not be tolerated and the UKBA should develop robust policies to ensure that it is the perpetrators of homophobic bullying and violence rather than the victims that are punished and isolated.
 - A clear policy should be developed on what asylum-seekers are told at the screening interview. This should make clear to all asylum-seekers that they are in a 'safe space' but will have to talk about why they are claiming asylum. The definition of a refugee should be clearly explained in culturally appropriate language, including each of the five recognised convention reasons, and all categories that constitute membership of a 'particular social group' including sexual identity. A private space should then be offered for the interview.

- All UKBA decision-makers should receive comprehensive training that specifically addresses the unique issues arising in sexual identity-based claims. Sending all 'difficult' cases to appeal simply because decision-makers lack confidence wastes public money.
- Shame, stigma and fear of authorities may prevent gay asylum-seekers from disclosing their sexual orientation at screening. Decision-makers should be trained never to treat an applicant's failure to disclose their sexuality at this stage as grounds to refuse asylum because the claimant lacks credibility.
- Training should make it clear that an absence of laws against lesbians and gay men or lack of evidence that existing laws are enforced should not be taken as an indicator that there is no threat of persecution for gay people in a particular country. Staff must also be made aware that Operational Guidance Notes cannot be viewed as a reliable source of country information and that doing so violates the Home Office's own guidance and may lead to poor decisions being made.
- UKBA staff training should cover the law relating to lesbian and gay claims, their specific cultural context and the barriers to disclosure they are likely to face. It should also cover the effects of trauma and its impact on how people recount their stories at interview.



3 HOME OFFICE COUNTRY OF ORIGIN INFORMATION (COI) SERVICE

4 JUDGES

➤ UKBA staff make a judgement about whether a lesbian or gay asylum-seeker will choose to hide their sexual orientation if returned to their country and therefore lead a 'tolerable' life. The UKBA should ensure that all staff understand the implications of the 'discretion test' and that lesbian, gay and bisexual people can experience persecution because they are identified as 'different' by their community, even if they are too fearful to engage in any same-sex relationships, culture or activity.

- COI reports must be improved to include up-to-date, accurate information about the situation on the ground for lesbians and gay men and to accurately reflect the scale and nature of anti-gay persecution in all overseas jurisdictions.
- The Home Office must support COI Service researchers to investigate the social and cultural norms of countries so as to build a clear picture of the response to lesbian and gay people and how this may result in persecution.
- Lesbians remain largely invisible in many COI reports and particular attention and resources are urgently needed to address this oversight.
- Researchers responsible for the COI Service reports should receive comprehensive training on the issues in sexual identity-based claims.

- All judges should receive comprehensive training on the unique issues in sexual identity-based claims.
- Training should focus on the laws relating to lesbian and gay claims, their specific cultural context and the barriers to disclosure they are likely to face. It should stress that the absence of laws against lesbians and gay men in a country or lack of evidence that existing laws are enforced cannot be taken to mean there is no threat of persecution for gay people.
- Judges should receive training on the effects of trauma and its impact on how people recount their stories at interview and in court.
- The Judicial Appointments Commission should be asked by ministers to take substantive steps to ensure that asylum and immigration judges start more effectively to reflect the communities they serve.

Stonewall would like to thank everyone who helped make this project possible. Thanks to the UKBA staff whose candour has helped illuminate this issue, to the men and women seeking shelter on our shores who've bravely told us about their experiences, to the legal and asylum support professionals who shared their expertise and to all at UKLGIG who do such an important job and have supported this project throughout. Special thanks goes to Claire Bennett, Lisa Doyle at the Refugee Council, S. Chelvan at Mitre House Chambers and Erin and Jill at UKLGIG.



As soon as you're discovered you have to leave or they'll come to your house and burn you down.

Adebayo, asylum-seeker



Someone from Jamaica claiming they're gay will just automatically be disbelieved. *Indira, UKBA case owner*



If a gay person gets caught in fast-track they haven't got a chance. *Jody, UKBA presenting officer*



Unless you've got an exceptionally able lawyer, you're just going to be processed and removed.

Edwin, Solicitor

**NO
GOING
BACK**

LESBIAN AND GAY
PEOPLE AND THE
ASYLUM SYSTEM