



# **An Investigation into the Home Office's Handling of Asylum Claims Made on the Grounds of Sexual Orientation**

March-June 2014



**John Vine CBE QPM**

**Independent Chief Inspector of Borders and Immigration**





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## **Our Purpose**

**We provide independent scrutiny of the UK's border and immigration functions, to improve their efficiency and effectiveness.**

## **Our Vision**

**To drive improvement within the UK's border and immigration functions, to ensure they deliver fair, consistent and respectful services.**



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# OVERALL FINDINGS AND CONCLUSIONS

In February 2014 the Observer newspaper published an article which included an extract from an asylum interview during which an applicant had been asked inappropriate and sexually explicit questions by a Home Office caseworker. As a result of this, I was asked by the Home Secretary to investigate the Department's handling of asylum claims made on the basis of sexual orientation (specifically claims based on grounds of being lesbian, gay or bisexual).

Following changes to case law in 2010, the Home Office had worked effectively with stakeholders to produce specific guidance and training on the handling of sexual orientation claims. More recently, it had reviewed its guidance on both interviewing and the handling of sexual orientation claims, again working with relevant stakeholders.

I found the guidance concise and clear, addressing difficult areas with sensitivity and, in particular, emphasising that sexually explicit questions of the type highlighted in the Observer are never acceptable. Nevertheless, there are still some areas for improvement.

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New asylum caseworkers have an intensive five-week Foundation Training Programme (FTP). I was satisfied with the quality of training materials and the delivery of training on sexual orientation matters. I was also pleased that refresher training had recently been provided to more experienced staff. However, I was concerned that staff in the Detained Fast Track (DFT) had, until recently, not routinely attended the FTP but, instead, had their own abridged course. I therefore welcome the recent decision by senior managers that all new caseworkers will attend the same central training.

On the ground, I found inconsistent application of guidance and training. I was particularly concerned to find that the approach towards sexually explicit material submitted by claimants differed between the DFT and teams dealing with non-detained cases. While neither area requested explicit material, DFT senior caseworkers advised their own staff to receive it and view it. The Home Office should not be sending mixed signals to claimants, and claimants should not feel that they need to submit such material to 'prove' that they qualify for asylum. The Home Office must find a consistent approach to this situation.

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*The approach towards sexually explicit material submitted by claimants differed between the DFT and teams dealing with non-detained cases.*

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In assessing whether staff were following guidance, I sampled screening and substantive asylum interviews in cases where decisions had been made in 2013. I was concerned to find that over half of screening interviews probed the substance of applicants' asylum claims, contrary to Home Office guidance. This is particularly disappointing given the concerns that I raised on this issue in a report last year.<sup>1</sup>

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*Over half of screening interviews probed the substance of applicants' asylum claims, contrary to Home Office guidance.*

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<sup>1</sup> <http://icinspector.independent.gov.uk/wp-content/uploads/2013/10/An-Inspection-into-the-Handling-of-Asylum-Applications-Made-by-Unaccompanied-Children-FINAL.pdf>

The substantive asylum interview is for establishing facts and assessing the credibility of the application. Training and guidance emphasise the need for open questions to allow an applicant to set out the basis of the claim. Most of the interviews that I reviewed complied with guidance. I did not find any questions of the type highlighted in the Observer article, but over a tenth of interviews did contain questions of an unsatisfactory nature. These were more than twice as common in DFT interviews, and included questions likely to elicit sexually explicit responses or querying the validity of same-sex relationships. Such questions are not acceptable and the Home Office must work to eradicate them

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*Over a tenth of interviews did contain questions of an unsatisfactory nature.*

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Worryingly, I found some stereotyping of applicants in about a fifth of substantive interviews. Caseworkers must avoid stereotypical expectations in questioning and decision documents.

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I did not, however, identify any direct correlation between unsatisfactory lines of questioning and the likelihood of a claim being refused. Indeed, a third of the cases in which I judged some interview questions to be unsatisfactory resulted in a grant of asylum. Nor did I find that applicants' previous heterosexual relationships or the fact that they had children were routinely used to refuse their claims.

Stakeholders and applicants suggested that gay, lesbian and bisexual applicants had difficulty in disclosing their sexual orientation to the Home Office and that late disclosure was being used against them in the asylum process. In my sample, I found that nearly all applicants had, in fact, disclosed their sexual orientation before or at their screening interviews.

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Over a third of applicants, however, claimed asylum months or years after arrival in the UK, often following a refusal of leave on other grounds. The majority of these were rejected, with decisions upheld on appeal.

I was concerned to find that the allowed appeal rate for DFT sexual orientation decisions was over double the rate for DFT asylum claims as a whole. The Home Office should analyse the reasons for this difference.

Management information on sexual orientation claims was inadequate. I discovered that only around a third of sexual orientation cases had been properly recorded on the Home Office database. While managers have since taken action to improve compliance, the Home Office must ensure that it is able to provide accurate information on these cases to Parliament, stakeholders and the public.

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# SUMMARY OF RECOMMENDATIONS

## **We recommend that the Home Office:**

1. Improves training so that stereotyping and stereotypical expectations of LGB activity and lifestyle do not appear in interview questions.
2. Ensures that caseworkers do not ask sexually explicit questions, and equips them with the interviewing skills to cope professionally when sexually explicit responses are received.
3. Ensures a consistent approach towards the handling of explicit material presented to support an asylum claim.
4. Ensures that all asylum claims made on grounds of sexual orientation are accurately recorded as such.
5. Ensures that staff who conduct screening interviews comply fully with Home Office guidance, so that applicants are not questioned on the substance of their asylum claims.
6. Clarifies its policy and guidance on use of DFT medical induction material for case considerations.
7. Provides more detail about the DSSH model in its training for caseworkers so that it can contribute to the quality of interviewing.
8. Ensures that future thematic examination of asylum claims made on the grounds of sexual orientation makes use of a wide evidence base.

# 1. THE INVESTIGATION

## The Home Secretary's commission

- 1.1. The UK Borders Act 2007<sup>2</sup> gives the Secretary of State for the Home Department the power to request the Chief Inspector to report in writing to her on specified matters. On 26 March 2014, the Secretary of State exercised this power and requested the Chief Inspector to:

*'Review how the Home Office handles asylum claims from those who are seeking asylum on the grounds that their sexual orientation gives them a well-founded fear of persecution if they return to their country of origin.'*<sup>3</sup>

- 1.2. The Home Secretary commissioned the investigation because of her concern that the Home Office had not followed its guidance on the handling of such claims in at least one case where inappropriately explicit questions had been asked. She emphasised that the Home Office was committed to treating all asylum claimants with dignity and respect, and wanted to continue to improve its practices.
- 1.3. The case to which the Home Secretary referred was one that was highlighted in the Observer on 9 February 2014 in an article entitled *'They wouldn't believe I was gay: how do you prove it to the Home Office?'*<sup>4</sup> The newspaper had interviewed a number of people about their experiences of claiming asylum on the basis of their sexual orientation. It also cited a report by the UK Lesbian and Gay Immigration Group (UKLGIG), which identified questions of a prurient nature, and quoted its conclusion that some Home Office caseworkers were *'fixated on sexual practice rather than on sexual identity'*.<sup>5</sup>
- 1.4. Six questions from the transcript of a Home Office asylum interview, as released in the normal way to the applicant and legal representative, were included in the print version of the article (but not in the online version). The newspaper reported that the interviewer had asked a gay male applicant a series of very direct and explicit questions about a particular episode of sexual activity. The wider interview context of those questions was not published.

## Terms of reference

- 1.5. The terms of reference for the investigation were set by the Home Secretary. She asked that the Chief Inspector review and make recommendations on the Home Office's handling of asylum claims made on grounds of the claimant's sexual orientation, with particular reference to the following areas:
- *The adequacy of guidance for staff and claimants.*
  - *Staff training.*
  - *Whether the Home Office was following its own guidance and training.*
  - *How well the Home Office was working with stakeholders to make improvements to processes.*

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2007/30/section/50>

<sup>3</sup> Letter dated 26 March 2014 from the Home Secretary to the Independent Chief Inspector.

<sup>4</sup> <http://www.theguardian.com/uk-news/2014/feb/08/home-office-gay-asylum-seekers-questioning>

<sup>5</sup> <http://www.uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>, page 19.

1.6. While this investigation comments on aspects of the decision-making process, such as interviews and decision letters, it does not go wider to assess the quality of individual decision-making in these cases, as this did not form part of the Home Secretary's commission to the Chief Inspector. Applications for asylum on gender identity grounds have separate guidance and were not included.

## Methodology

1.7. In undertaking this investigation, we:

- analysed information which we had requested from the Home Office, including management information, policy and guidance;
- met with nine stakeholders,<sup>6</sup> including senior members of the immigration judiciary. We also consulted documents written by stakeholders, as well as the conclusions of, and evidence submitted to, the Parliamentary Home Affairs Select Committee, in its 2013 enquiry into the handling of asylum claims;
- met 16 people in London and Manchester who had claimed asylum on the basis of sexual orientation, at meetings organised by UKLGIG and the Lesbian Immigration Support Group (LISG);
- spoke to the chair and a regional representative of Spectrum, the network for Lesbian, Gay, Bisexual and Transgender (LGBT) Home Office staff members;
- reviewed files of 117 asylum cases which had been 'flagged'<sup>7</sup> as being based on sexual orientation and where a first asylum decision had been made in 2013. We requested 120 in the distribution set out below (but the Home Office could provide only 117):
  - > 48 decisions made in the Detained Fast Track (DFT);<sup>8</sup>
  - > 24 decisions made in the London region;
  - > 24 decisions made in the North-East region; and
  - > 24 decisions made in the remaining regions.<sup>9</sup>

1.8. This distribution reflected the fact that the largest number of these decisions was made in the DFT, followed by London and then the North-East. A quarter of the cases in the DFT sample had been granted asylum and three-quarters had been refused. The non-detained sample was split evenly between grants and refusals. These reflected the broad split between grants and refusals in those decision-making areas. Within each cohort, we selected cases randomly. While we did not formally include gender as a parameter, the sample included representative numbers of female and male claims. There were only three cases relating to bisexual applicants in the sample.

1.9. In reviewing the files we:

- listened to the recordings of asylum interviews for seven of those 117 cases – these were cases which had been recorded and where the Home Office, in accordance with its policies, still had the recordings available;

<sup>6</sup> Either organisations, or individuals, with expertise in this area.

<sup>7</sup> Full explanation of 'flagged' is at paragraph 6.15.

<sup>8</sup> Applicants in DFT are detained in an immigration removal centre if there is a power to detain them and it appears that a quick decision can be made on their case and none of the exclusion criteria (such as evidence of their having been tortured) applies. Those not in DFT have their claims considered while they are living in the community.

<sup>9</sup> Owing to incorrect Home Office records, two requested cases said to have been from a non-DFT location were actually from DFT, so 50 DFT cases were in fact requested. 49 were sampled, as the Home Office was unable to provide a DFT grant case. Of the 70 non-DFT cases requested, 68 could be sampled, as the Home Office was unable to provide one London grant and one London refusal.

- separately, sampled 18 randomly-selected cases where a first asylum decision had been taken in the last quarter of 2013, the claims were based on sexual orientation and the case had not been ‘flagged’ as such. This included six grants and 12 refusals;
- interviewed Home Office Asylum Casework Directorate (ACD) screening staff, caseworkers, technical specialists, senior caseworkers and managers, and Appeals and Litigation Directorate presenting officers and senior caseworkers in:
  - > DFT, at Harmondsworth (where male applicants are detained) and Yarl’s Wood (where female applicants are detained);
  - > asylum (non-detained) regional operations in London and the North-East (Croydon and Leeds); and
  - > the Central London Appeals Presenting Officers Unit;
- spoke with staff involved in policy, quality assurance and training, and senior managers.

1.10. A breakdown of the 77 Home Office staff and managers interviewed is set out in Figure 1.

<b>Figure 1: Home Office staff interviewed during the investigation</b>	
<b>Grade</b>	<b>Number</b>
Executive Officer (EO)	20
Immigration Officer (IO)	5
Higher Executive Officer (HEO)	27
Senior Executive Officer (SEO)	15
Grade 7	6
Grade 6	3
Senior Civil Service	1
<b>Total</b>	<b>77</b>

1.11. We were able to observe three live interviews when applicants were scheduled to be seen during our site visits. These, together with the seven tapes, enabled us to sample the spoken tone of ten interviews. We also observed a non-sexual orientation interview, which enabled us to observe the approach to interviewing on another ground for asylum.

1.12. This investigation identified eight recommendations for improvement. It was submitted to the Home Secretary on **31 July 2014**.

## 2. BACKGROUND TO THE INVESTIGATION

### What is asylum?

- 2.1. Asylum is protection given by a country to someone who is fleeing persecution in their own country. The 1951 United Nations Convention relating to the Status of Refugees,<sup>10</sup> to which the UK is a signatory, requires an individual seeking asylum to show that they have a well-founded fear of persecution owing to their race, religion, nationality, political opinion or membership of a particular social group. They must also show that the authorities in their country are unable to provide protection or that they are, owing to their fear, unwilling to avail themselves of the protection of that country.<sup>11</sup> The UK is party to the Asylum Qualification Directive<sup>12</sup> which seeks to establish minimum standards and common criteria for all European Union Member States.
- 2.2. An application for asylum is made under paragraphs 328-333B of the Immigration Rules<sup>13</sup> and may be made on or after arrival in the UK. Once a claim is submitted and a decision is pending, an applicant may remain in the community or, if the claim meets the Home Office criteria, they can be placed into the Detained Fast Track (DFT) and held in a designated immigration facility until their claim for asylum has been determined.<sup>14</sup>

### Asylum claims on the basis of sexual orientation

- 2.3. The UK recognises asylum claims based on sexual orientation – lesbian, gay or bisexual (LGB). It has done so since the House of Lords judgement in the case of *Shah and Islam [1999] UKHL 20*<sup>15</sup> (which was actually about treatment of women in Pakistan). This established a wider interpretation of ‘particular social group’ for the purposes of asylum – ‘we interpret the phrase “persecution on account of membership in a particular social group” to mean persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic’. In line with this, claims on the basis of sexual orientation are usually, but not exclusively, brought on the basis of belonging to a particular social group.
- 2.4. Figure 2 below sets out the number of main asylum decisions (that is, excluding dependants) made by the Home Office within our 2013 file sample period. Based on this, those decisions which had been flagged by staff as being on sexual orientation grounds formed 1.4% of all asylum cases. Chapter 6 discusses inconsistency of flagging and why the real percentage is likely to be higher. The countries with the most numerous claims flagged as based on sexual orientation were Nigeria, Pakistan and Uganda for claims made by men and Cameroon, Gambia, Pakistan and Uganda for those made by women.

10 <http://www.unhcr.org/au/pdfs/convention.pdf>

11 The proof requirement for asylum claims is to ‘a reasonable degree of likelihood’.

12 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>

13 <https://www.gov.uk/government/collections/immigration-rules>

14 See footnote 8

15 <http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990325/islam01.htm>

**Figure 2: Asylum claims with decisions made between 1 January 2013 and 31 December 2013<sup>16</sup>**

Asylum claims on all grounds	20,071
Asylum claims on the grounds of sexual orientation	283 (1.4%)

### Discretion test

- 2.5. Until 2010, the Home Office applied a ‘discretion test’ to such claims. Even if an asylum applicant’s sexual orientation was accepted, their claim could still be rejected if it was considered that they would be able to avoid persecution in their country of origin by concealing their sexual identity. The Supreme Court ruling in the case of *HJ (Iran) & HT (Cameroon) v SSHD [2010] UKSC 31*<sup>17</sup> largely ended the discretion test, ruling that it was contrary to the Refugee Convention and therefore ‘to pretend that [a person’s sexual orientation or sexuality] does not exist, or that the behaviour by which it manifests itself can be suppressed, is to deny the members of this group their fundamental right to be what they are.’<sup>18</sup>
- 2.6. This judgement now forms the basis of how the Home Office assesses claims on the grounds of sexual orientation. Based on the *HJ (Iran) and HT (Cameroon)* ruling, Home Office guidance<sup>19</sup> asks decision makers to consider the following:
- a Is the applicant gay, or someone who would be treated as gay by potential persecutors in the country of origin?
  - b If yes, would gay people who live openly be liable to persecution in that country of origin?
  - c How would the applicant behave on return? If the applicant, when living openly, would be exposed to a real risk of persecution, he has a well-founded fear of persecution, even if he could avoid the risk by living discreetly.
  - d If the applicant were to live discreetly, why would he do so? If the applicant were to live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.
- 2.7. Decision-makers must also apply paragraph 339O of the Immigration Rules to sexual orientation claims. This states that, if there is a part of the country of origin to which the applicant can relocate where they would not have a well-founded fear of persecution or real risk of suffering serious harm, and where it is reasonable to expect them to stay, the application should be rejected. However, further consideration still has to be given to the *HJ (Iran)* and *HT (Cameroon)* judgement, in particular paragraph 21 which stated -

*‘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.’*

<sup>16</sup> This table contains management information provided by the Home Office for this investigation. It has not been quality assured to the level of published national statistics.

<sup>17</sup> <http://www.bailii.org/uk/cases/UKSC/2010/31.html>

<sup>18</sup> As footnote 17, paragraph 11.

<sup>19</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257397/sexual-orientation-gender-ident.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257397/sexual-orientation-gender-ident.pdf), page 13.

## Changes following HJ (Iran) and HT (Cameroon)

- 2.8. Prior to 2010, the Home Office did not have a separate policy for claims made on sexual orientation grounds. The change in case law coincided with growing pressure from stakeholders, in particular Stonewall<sup>20</sup> and UKLGIG<sup>21</sup>, who strongly criticised the Home Office's handling of sexual orientation claims. This was furthered by the Coalition Government's statement that it *'would 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'*.<sup>22</sup>
- 2.9. In response, the Home Office worked alongside the United Nations High Commission for Refugees (UNHCR), UKLGIG, Stonewall, and Pride London to develop specific sexual orientation asylum policy, guidance and training. It aimed to equip caseworkers with the skills to ask appropriate and sensitive questions to elicit information while still being able to test an applicant's credibility. This was rolled out to all caseworkers during 2010-11.

## Events prior to this investigation

- 2.10. In 2013 stakeholders raised concerns that some Home Office staff were still applying the same approach as prior to the 2010 change in case law. UKLGIG published a report entitled *'Missing the Mark'*<sup>23</sup> in September 2013, which concluded that *'old problems are creeping back'*. The Parliamentary Home Affairs Committee Asylum report of October 2013<sup>24</sup> also highlighted areas of concern.
- 2.11. Following this, the Home Office commissioned an internal thematic report examining how claims made on the grounds of sexual orientation were considered, along with a programme of refresher training. Before this could be completed, the handling of such claims entered the public domain as a result of the Observer article, which highlighted inappropriate questions asked in a particular asylum interview.

## Home Office actions since publication of the Observer article

- 2.12. Following the publication of the Observer article, in addition to the Home Secretary's commissioning of the Chief Inspector to undertake an investigation into the Department's handling of asylum claims based on sexual orientation, the Home Office has also taken a number of internal steps to improve its handling of these cases:
- additional quality assurance checks of all decisions in these cases;
  - undertaking an internal review of decisions made in sexual orientation cases prior to the publication of the Observer article in February 2014;
  - roll out of a half-day of refresher training; and
  - investigation of the staff identified as involved in the Observer article case.
- 2.13. We comment further on these issues later in this report.

20 [http://www.stonewall.org.uk/what\\_we\\_do/2583.asp](http://www.stonewall.org.uk/what_we_do/2583.asp)

21 <http://uklgig.org.uk/wp-content/uploads/2014/04/Failing-the-Grade.pdf>

22 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/78977/coalition\\_programme\\_for\\_government.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf), page 18.

23 See footnote 5.

24 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/7102.htm>

# 3. INVESTIGATION FINDINGS – ADEQUACY OF GUIDANCE AND TRAINING

## CHIEF INSPECTOR'S OVERALL ASSESSMENT

- The Home Office worked effectively with stakeholders on new guidance and training after case law changes in 2010 and it continues to work with them.
- There has been a continuing focus on these cases, as changes were made to the general guidance on interviewing to include, for the first time, material specific to sexual orientation claims, before the Observer article was published.
- The specific guidance is generally concise and clear and it addresses difficult issues with sensitivity, but there are some areas for improvement.
- The intensive five-week Foundation Training Programme (FTP) for new asylum caseworkers has a full day on sexual orientation. I was satisfied with the content and quality of that training.
- I found inconsistency of training practice between DFT and the non-detained areas; I am reassured by the recent decision to send all new recruits on the central FTP.
- The Home Office should provide more detail in training about the DSSH model (which explores Difference, Stigma, Shame and Harm) to contribute to the quality of interviewing.

### Guidance

- 3.1. Following the *HJ (Iran) and HT (Cameroon)* ruling, some brief guidance was issued by email to Home Office staff. This was succeeded by an 18-page document – *Sexual Orientation Issues in the Asylum Claim*,<sup>25</sup> which not only explained how the new case law affected the consideration of these cases, but generally set out how such claims should be handled.
- 3.2. The guidance is concise, clear and addresses difficult issues with sensitivity. It pays close attention to UNHCR's guidance note on the handling of asylum claims based on sexual orientation.<sup>26</sup> In line with good practice, the Home Office worked closely with stakeholders, such as UNHCR and UKLGIG, in developing the guidance. Most stakeholders appeared broadly content with the quality of the guidance, as were most Home Office staff to whom we spoke.
- 
- The guidance is concise, clear and addresses difficult issues with sensitivity.*
- 
- 3.3. There are, however, some gaps in the guidance which the Home Office should address. For example, it does not specifically address the importance of recording that the basis of a claim is sexual orientation, nor does it provide advice on how Home Office staff should respond when claimants or their representatives submit explicit sexual material in support of applications.
- 3.4. Before the Observer article, the Home Office drafted changes to its general guidance on interviews. It included, for the first time, material which was specific to sexual orientation claims. For example, it

<sup>25</sup> As footnote 19.

<sup>26</sup> UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 2008 at <http://www.refworld.org/docid/48abd5660.html>

is stated that *prurient questions about sexual preferences or physical attractiveness*<sup>27</sup> should not be asked and that applicants should not be encouraged to submit explicit audio-visual material. That new interview guidance was published in March 2014.

3.5. Following the Observer article, the Home Office also worked to revise the specific sexual orientation guidance. It did so in consultation with stakeholders and its own senior caseworkers. At the time of submitting this report to the Home Secretary the revised version had not yet been finalised. We were told that the Home Office planned to follow its publication with further training. We welcome this approach, as guidance will be applied by staff only if they are made aware of it and if it is embedded in daily practice.

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*Guidance will be applied by staff only if they are made aware of it and if it is embedded in daily practice.*

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3.6. We consider that the version of the draft revised guidance provided to us improves on the original in that it:

- refers to sexual identity rather than sexual orientation, helpfully bringing this guidance into line with guidance on gender identity claims;
- is more logically structured and more comprehensive, directing readers to the most important material via ‘Key considerations’ boxes;
- states that sexually explicit questions are never acceptable. It also makes clear that, if an applicant volunteers such material, the interviewer should neither ask questions about it nor prevent the applicant from saying what they want to say. Staff are provided with a form of words for this purpose (see also Chapter 4);
- includes more material on interviewing; and
- states that the interview focus should be on allowing applicants to provide a narrative on the development of their sexual identity. Applicants may choose to describe how they felt ‘different’<sup>28</sup> although interviewers should not otherwise focus on feelings of difference.

3.7. Much of this is welcome, although we note that the new version replicates omissions in the previous guidance. For example, while it tells staff not to encourage the submission of explicit audio-visual material, it does not tell them what to do if it is submitted.

### **Caseworker Training**

3.8. LGB training was originally formulated as a one-day course for delivery after the 2010 change to case law.<sup>29</sup> It has since been incorporated into the training for new caseworkers joining the Asylum Casework Directorate as Day 18 of the Foundation Training Programme (FTP). It is augmented by an e-learning programme about unconscious bias.

3.9. As a result of organisational changes to asylum casework, on which we have commented in a number of previous reports,<sup>30</sup> the Home Office had recruited a large number of new caseworkers at the Executive Officer (EO) grade. As a result, there had been a considerable focus on training new staff, including how to deal with sexual orientation claims.

3.10. The FTP is 25 days of continuous trainer-led interaction and case studies. The Home Office hosts LGB stakeholder observers for the sexual orientation training and, when we sat in on Day 18, a representative of UKLGIG was also observing. This day builds on previous days’ focus on gender-

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27 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/298853/Asylum\\_interview\\_policy\\_guidance\\_v\\_5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298853/Asylum_interview_policy_guidance_v_5.pdf) pages 18-19.

28 Difference is one of the four exploration areas in the DSSH model, see paragraph 3.18.

29 See footnote 17.

30 <http://icinspector.independent.gov.uk/wp-content/uploads/2014/07/Cardiff-Report-FINAL-WEB.pdf>

related and gender-specific persecution and ensures that new caseworkers understand the comparative lack of international information about persecution of lesbians.

3.11. The handouts usefully contain quotes from the 2010 reports of Stonewall and UKLGIG, and from previous asylum claimants and caseworkers, to ensure that new starters have an understanding of the past context. The day also provides suggestions for appropriate questions for interviews – the trainer warned everyone to avoid sexually explicit questions ‘*at all costs*’. The new caseworkers also worked through a complex sexual orientation case study which followed.

3.12. We noted that the training clearly set out the crucial difference between sexual conduct and sexual orientation. We saw some commendable interactive content – for instance, an exercise to help caseworkers understand how difficult it might be for someone to disclose their sexual orientation (as one senior manager put it, ‘*one of the most personal things in our human existence*’). They had to imagine an embarrassing medical problem and having to tell their GP about it. Then they had to identify the attributes they would wish to encounter in the GP – effectively helping them to model how they should interact with those having to talk openly about their sexuality.

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*The training clearly set out the crucial difference between sexual conduct and sexual orientation.*

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3.13. Training should, however, ensure that caseworkers understand that ‘homosexual’ (if stated by an applicant as their chosen term for describing their sexuality) should only ever be used as an adjective. It would be unacceptable to say ‘a homosexual’, which we saw in a number of decision documents<sup>31</sup> in our sample, as that objectifies the applicant.

3.14. Onsite, we were surprised to find that DFT had been running its own abridged training which did not directly reflect the five-week FTP. Its two-and-a-half-week training was taken from the FTP, but omitted the aspects outside DFT tasks, for example the processing of asylum applications from unaccompanied children. We considered that this inconsistency raised some risks to wider skills development, to the flexibility to move caseworkers to other sites to cover staff illness and also to consistency of practice. We were later told that all new recruits will, in future, be undertaking the five-week FTP to build consistency and resilience. We welcome the change to a consistent training regime for all new caseworkers.

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*We welcome the change to a consistent training regime for all new caseworkers.*

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3.15. Managers believe that the amount of post-training mentoring that they have in place is a key development tool. Recruits do not come off the mentoring regime until senior caseworkers feel that they are ready. We agree that this is a real strength, but the mentoring period must contain sufficient live observation of a recruit’s interviewing skills and should include at least one sexual orientation interview.

3.16. We consider that the Home Office should give new recruits a short period at their office before starting formal training, providing them with the opportunity to observe experienced interviewers in live situations. Including observation of real asylum interviews before the foundation course would also help to offset the fact that new recruits can only interview each other for the training course case studies.

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*The Home Office should give new recruits a short period at their office before starting formal training, providing them with the opportunity to observe experienced interviewers in live situations.*

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3.17. We encountered a number of staff, managers and trainers in favour of this and seeking to make it happen. Some caseworkers described how, due to their starting dates, they had benefited from

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<sup>31</sup> We use this term in the report to encompass both grant minutes (internal notes recording why someone has been granted asylum) and reasons for refusal letters (sent to applicants to explain the rejection of their claim).

such office familiarisation and how it had helped them to grasp the training more quickly. We acknowledge that there could be occasional constraints, such as waiting for security clearance to be confirmed or course availability.

## DSSH

- 3.18. We spoke to a barrister, a specialist in sexual orientation asylum cases who, as part of his work, has developed a framework for exploring sexual orientation known as DSSH (Difference, Stigma, Shame and Harm).<sup>32</sup> Very broadly, *Difference* includes self-recognition or identification by others of someone not living ‘a heterosexual narrative’ while *Stigma* explores feelings of isolation and the impact of being different. *Shame* covers the impact of stigma, while *Harm* includes state harm and criminalisation with fear of arrest, detention and torture. It also includes non-state agent aspects, such as mob violence, and family aspects, such as ‘honour killing’.
- 3.19. While not all LGB claimants will be fully covered within its parameters, the DSSH model does provide a framework for interview questioning that moves the focus away from previous and current sexual activity. Some recently recruited caseworkers told us that they felt unsupported in undertaking sexual orientation interviews and formulating questions. They perceived the emphasis being on what they should not ask. Using a framework like DSSH could help caseworkers in both DFT and non-detained teams to focus interviews on the claimed sexual orientation of applicants and the stated risks of return, rather than on their sexual experiences.
- 3.20. As a result of stakeholder discussions, the Home Office has already agreed to bring DSSH into its training. However, we saw that Day 18 of the FTP introduced it only as a framework of four headings, as trainers felt that the investigative areas had already been mentioned within the FTP. We do not agree that this is clear enough for new caseworkers. Furthermore, considering that less experienced caseworkers expressed a desire for more guidance in formulating acceptable questions, the Home Office’s current approach to DSSH seems to us to be a ‘half-way house’ and rather confusing.

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*The Home Office’s current approach to DSSH seems to us to be a ‘half-way house’ and rather confusing.*

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### **We recommend that the Home Office:**

Provides more detail about the DSSH model in its training for caseworkers so that it can contribute to the quality of interviewing.

## **Presenting Officer Training**

- 3.21. When a decision is refused, the applicant may in most cases appeal to the Immigration and Asylum Chamber of the First-tier Tribunal. At the hearing, they may be represented by a legal representative and they are usually cross-examined by a Home Office Presenting Officer (PO), who is in court to represent the Department at the hearing. When an applicant is detained, the court is on site and the staff who conduct interviews and write decisions also act as POs, albeit not necessarily in their own cases. When applicants are not detained, separate staff act as POs.
- 3.22. In 2011, all POs did a stand-alone training course on sexual orientation issues. From 2013, this was incorporated into more general training. As there was no PO recruitment in 2012, the Home Office considers that all POs have been trained, and those to whom we spoke certainly had been. The stand-alone training material was comprehensive, covering key issues while also considering the particular requirements of presenting staff. However, the incorporated material is only a third of the original length and, while it covers the most important points, and is certainly adequate, we think it regrettable that the full material, having been developed, is no longer used.

<sup>32</sup> [http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008\\_HC71\\_01\\_VIRT\\_HomeAffairs\\_ASY-35.htm](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-35.htm) paragraph 16.

# 4. INVESTIGATION FINDINGS – CONDUCT OF INTERVIEWS

## CHIEF INSPECTOR'S OVERALL ASSESSMENT

- I was concerned to find that over half of the screening interviews I sampled wrongly contained questioning that went beyond the basics of the asylum claim.
- There were no questions of the type quoted in the Observer article in either the screening interviews or the subsequent substantive interviews.
- Most of the 112 sampled interviews included questions about non-sexual aspects of LGB life, giving applicants opportunities to evidence their sexual orientation rather than their sexual behaviour.
- I am satisfied that it is sometimes necessary to explore the circumstances around an episode of stated sexual activity in order to test credibility. However, I also saw some unnecessarily intrusive questions about sexual activity (which went against guidance and training).
- 11% of interviews contained one or more unsatisfactory questions. However, I found no direct correlation between unsatisfactory questioning and the likelihood of refusal.
- The Home Office must ensure that interviews focus on establishing applicants' credibility and whether they qualify for asylum. Staff should avoid questions based on stereotypes of LGB applicants and on their sexual behaviour.
- I found unacceptable inconsistency of practice between Detained Fast Track and non-detained areas in relation to receiving and/or viewing explicit evidence provided by applicants. The Home Office must ensure that there is a consistent approach to such evidence.

## SCREENING

- 4.1. The screening interview should not explore the nature and substance of the asylum claim. It is for establishing matters such as identity, mode of arrival in the UK and the broad basis of the claim. In our 2013 report about asylum applications from unaccompanied children,<sup>33</sup> we identified a tendency for some screening interviewers to exceed this and to probe into the nature of the claim.
- 4.2. For all categories of asylum claim, screening officers must ask applicants to state *'briefly'* why they cannot return to their country of origin, and should not ask for further details. We examined the screening interviews in our sampled files, to see whether screening officers had asked applicants additional questions about their stated sexual orientation and/or the persecution which they stated that they had suffered as a result of it. Figure 3 sets out the results.

<sup>33</sup> See footnote 1, paragraphs 5.33-5.44.

**Figure 3: Screening interviews where applicants were asked additional questions about sexual orientation and/or resulting persecution<sup>34</sup>**

Screening location	Number of cases where additional questions were asked	Number of cases where additional questions were not asked	Total
Asylum Screening Unit (ASU), Croydon <sup>35</sup>	55 (66%)	28 (34%)	83
Other locations <sup>36</sup>	4 (21%)	15 (79%)	19
All locations	59 (58%)	43 (42%)	102

4.3. Cases in the second column included specific extra questions about the nature of the claim, not simply clarification of responses to the basic questions. We found a range of scenarios, from one additional question to several. We did not find any explicit questions like those highlighted in the Observer article, nor a trend of questions that would have been unsatisfactory in a substantive interview. Nonetheless, the screening interview is not the right place to seek further detail. Figure 3 shows the instances to be primarily at the ASU in Croydon, which is where the majority of screening interviews take place. Figure 4 provides an example of the type of additional questions that were asked there.

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*The screening interview is not the right place to seek further detail.*

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<sup>34</sup> The sample did not include cases where the screening interview was not on file, where the applicant had made no mention of sexual orientation before or at the screening interview and where, as this analysis was done later than the main file sampling, files had had to be returned to the Home Office for its business needs. Percentages sum across rows, not down columns.

<sup>35</sup> The principal point in the UK for screening asylum claims.

<sup>36</sup> Usually ports or enforcement locations, such as immigration removal centres

#### Figure 4: Case study of the screening process exceeding its remit

##### The applicant (a Ugandan male):

- claimed asylum and had a screening interview at ASU;
- in response to the standard request for a brief explanation of why he could not return to his home country, said ‘Because of my sexuality and I fear that they may kill me because I am gay.’

##### The Home Office screening officer:

- followed up that response with these questions:
  - Q. When had you become aware of your sexuality?
  - Q. Are your family aware of your sexuality?
  - Q. When did they find out and how?
  - Q. How was he arrested and you were not?
  - Q. Did you live together?
  - Q. Who told the authorities?
  - Q. Have you had any relationships with females?

##### Chief Inspector’s comments:

This was typical of many of the screening interviews that we sampled. These areas of questioning would be acceptable in a substantive asylum interview but it is not the role of the screening officer to ask additional questions. The information elicited is not required for the purposes of screening.

- 4.4. These results were disappointing. Interviews with caseworkers, stakeholders and asylum applicants indicated that it was relatively common for screening interviews in these cases to touch on the substance of the claim. However, onsite at ASU, staff told us that they would not ask applicants about the substance of their claims and emphasised that every screening record was referred to a manager (with individual feedback, if necessary). These claims were contradicted by our sample findings. Inconsistency of approach must be avoided, from the point of view of fair treatment for applicants and clarity of the screening stage. We therefore make the following recommendation.

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*Inconsistency of approach must be avoided, from the point of view of fair treatment for applicants and clarity of the screening stage.*

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#### We recommend that the Home Office:

Ensures that staff who conduct screening interviews comply fully with Home Office guidance, so that applicants are not questioned on the substance of their asylum claims.

#### Gender of interviewer

- 4.5. The screening stage offers applicants an opportunity to express a preference for the gender of their interviewer for the substantive asylum interview. The Home Office is not required to meet this preference. Not all applicants express a preference. Our file sample showed that a preference was met in 25 of the 30 cases (83%) where one was expressed and we were able to identify the interviewer’s gender.

- 4.6. Onsite, caseworkers told us that they often exchanged cases to accommodate preferences, even if raised at a late stage. This shows sensitivity to claimants' stated preferences. We accept that the Home Office cannot match the preference on every occasion, due to constraints such as the gender balance within individual asylum teams.

## Interpreters

- 4.7. There is no specific question on the screening form about interpreter gender but guidance<sup>37</sup> states *'it should normally be possible to comply with a request for a male or female interviewer or interpreter that is made in advance of an interview. Requests made on the day . . . . . should be met as far as is operationally possible'*. Staff told us that efforts were made to meet a stated preference, although availability would always be a constraint. For the avoidance of doubt, we believe that the screening form should also ask about interpreter gender. It may be a particular issue for cultural reasons (see below) or for vulnerable applicants, for example, victims of gender-specific violence.
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- For the avoidance of doubt, we believe that the screening form should also ask about interpreter gender.*
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- 4.8. Stakeholders spoke about applicants' potential apprehension if an interpreter came from the same culture and, particularly, the same region. Interpreters are covered by a code of conduct and we consider that interviewers should monitor the interaction between applicant and interpreter to pick up any applicant uneasiness about the interpreting.
- 4.9. Stakeholders also referred to the potential adverse impact on applicants where languages have no neutral words for the concept of being lesbian, gay or bisexual. We found no specific evidence in our sample. What we did note in one of the live interviews was the interpreter and applicant agreeing to bring a word such as 'gay' into use from English. This appears to be a logical way to deal with any vocabulary difficulties.

## THE SUBSTANTIVE ASYLUM INTERVIEW

### Purpose of the substantive interview

- 4.10. We first considered the specific guidance<sup>38</sup> and training materials which contributed to how LGB applicants were treated at the substantive interview.
- 4.11. Home Office guidance stated that the interview was for *'establishing the material facts'* so that the credibility of the claim could be assessed. It also stated that *'interviewing officers should ask open questions'* in order to give the applicant the maximum opportunity to provide a narrative response. Training also emphasised this (as does the DSSH model). The narrative provided could then be tested, as necessary.
- 4.12. It went on to state that questioning should not be sexually explicit or focus on sexual behaviour. We considered that this would require interviewers to be equipped with the skills to cope when a non-explicit question received a sexually explicit response from the applicant. We discuss this later in the chapter.
- 4.13. Guidance also emphasised that the tone of the interviewer should be one which encouraged the applicant to disclose personal information with detail. Guidance clearly referred to testing the *'credibility of an individual's claim and the degree of risk on return'* via *'sensitive enquiry into the applicant's realisation and experience of sexual orientation'*.<sup>39</sup> The guidance then discussed providing *'an open and reassuring environment'* on the basis that many applicants would have kept their sexual orientation secret and might not have talked about it openly before.

37 As footnote 19.

38 As footnote 19.

39 The word is emboldened in the guidance.

4.14. Both guidance and training made clear that there should be no stereotyping of LGB applicants.

### **Substantive Interviews: sample findings**

4.15. 112 (96%) of our 117 sampled files contained a written record of the interview, whereas four (3%) did not.<sup>40</sup> It is not clear why the four were missing, but loss of records should not occur.

### **Open questions and eliciting narrative**

4.16. 58 (52%) of the 112 interview records we reviewed asked fully open questions about how applicants came to realise their sexual orientation, providing room for detailed replies. This is a key marker of a well-conducted interview which follows the training and guidance.

4.17. A further 48 (43%) had some questions of this nature, but we concluded from the transcripts that interviewers placed more emphasis on establishing specifics via closed questions, so there was a more limited amount of open questioning. We were concerned that the remaining six cases (5%) of interview records did not include questions which enabled the applicant to provide a narrative about realisation of their sexuality.

4.18. In Figure 5 below, we set out an example of a well-conducted interview in which the interviewer took into account the applicant's physical and mental situation and gave her space to provide her narrative at her own pace. The interviewer moved into specific questioning only when needing further detail or clarification.

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40 There was no interview in one case.

## Figure 5: Case study of a well-conducted interview leading to a grant of asylum

### The Applicant (a Ugandan female):

- arrived in 2005, overstayed her visit visa and did not claim asylum until 2013 (then on sexual orientation grounds).

### The Home Office interview:

- noted details of the multiple papers and photographs brought to the interview and what the applicant said about them;
- noted the diagnosis of Post Traumatic Stress Disorder (PTSD) and coped sensitively, providing breaks when the applicant wept;
- acknowledged more than once that the applicant might find it difficult to talk about her experiences;
- started with a few very open questions, giving plenty of space for full narrative answers, but then sensitively suspended a long narrative when enough information had been gained and another area needed to be explored;
- kept the interview to four hours overall;
- focused questions on the applicant's narrative;
- asked neutrally about why the applicant did not claim asylum until 2013.

### Chief Inspector's comments:

This interview was carried out sensitively and was well-recorded. Using open questions and giving the applicant plenty of space to tell her story was a very good approach, particularly for a vulnerable applicant suffering from PTSD.

- 4.19. We found that 99 (88%) of our 112 interviews included questions about non-sexual aspects of the person's LGB identity. This meant that those applicants were able to describe their wider life and were not funnelled into discussing sexual activity. Such questions should be included in all interviews, as they give applicants more opportunity to evidence their orientation. The Designated Judge of the First-tier Tribunal to whom we spoke summed up the required focus on sexual orientation rather than sexual behaviour by expressing that all interviews should focus on an *'individual's inner life'*.

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*We found that 99 (88%) of our 112 interviews included questions about non-sexual aspects of the person's LGB identity.*

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- 4.20. Otherwise, where interviewers' closed questioning controls the content of the interview, this can allow stereotyping to creep in and some emphasis on sexual behaviour.

### Interview tone

- 4.21. We also considered the tone of interviews, acknowledging that this can be difficult to gauge from written records. 98 (88%) were satisfactory in tone, with nine cases (8%) showing potential aspects of good practice and five (4%) appearing to fall below the standard for a range of reasons, including specific wording of questions. Figure 6 below sets out a section of an interview where we found both the tone and particular line of questioning to be unsatisfactory.

**Figure 6: Example of question sequence with unsatisfactory tone and line of questioning**

Question	Response
How many sexual partners did you have before the boyfriend in 2011?	I cannot remember
There is no judgement being made – I just need to build up a picture of your life.	I cannot remember
More than 10? Just approximate?	I cannot remember
Less than 100?	I cannot remember
Please speak openly if possible – this is a free country where sexuality of all kinds is accepted as normal – don't be afraid to speak freely.	I said before I cannot remember how many lovers I have had

- 4.22. These questions focused on sexual activity. The interviewer's apparently reassuring '*there is no judgement being made here*' is undermined by the way the further questions are worded (particularly '*less than 100?*' which could be seen as being based on a stereotype of gay male promiscuity).
- 4.23. We were able to listen to seven recordings of interviews and observe three live interviews. We found no unsatisfactory tone in either category.

#### **Questioning around a specific episode of sexual activity**

- 4.24. Sampled files contained a number of cases where applicants from countries with a state prohibition on homosexuality said that they had had sexual relations in family dwellings or areas with public access. Interviewers explored the context of a specific episode of sexual activity in those cases (although not generally the activity itself). From files and staff interviews, we were satisfied that the caseworkers were generally exploring these episodes to assess the credibility of the applicant's behaviour in relation to the risk of discovery and not to focus on the sexual behaviour itself.
- 4.25. Onsite, staff emphasised the need to consider evidence about behaviour leading to a risk of discovery. The Designated Judge also emphasised that this aspect of claims should be explored, noting that in most instances the applicant '*put this issue* [actions risking discovery] *on the table, not anyone else*'. Figure 7 sets out an example of questioning which focused on the risk element and not the sexual activity.

**Figure 7: Case study of credibility questioning arising from evidence of behaviour leading to risk of discovery**

**The Applicant (a Pakistani male):**

- entered the UK on a one-year Tier 4 student visa in 2012 and submitted a claim at ASU on the basis of sexual orientation in 2013;
- stated within his evidence that he engaged in sexual activity in his village at the house of his 'tutor'.

**The Home Office interview:**

- tested the credibility of this statement as shown in the questions and answers below:
  - Q. I apologise for the sensitive nature of the question and do not feel obliged to answer. But when you were intimate, where would this take place?
  - A. In his sitting room where we would sit down and study.
  - Q. Who lived at [name's] house?
  - A. His family..... And as you know, in Pakistan the sitting room door opens towards the street and nobody comes into the sitting room, his family knew that we were studying.
  - Q. Were there ever any occasions when you were almost discovered or disturbed during your intimate moments?
  - A. Yes, sometimes people came to see his brothers or father but obviously we kept the door locked from inside.
  - Q. I just think you were taking a huge risk of choosing to have sex in the sitting room given the potential consequences to you. Please comment?
  - A. Yes, possibly, but we had sex late at night when his family was asleep as people go to bed early in villages.
- refused the asylum claim (and the appeal was dismissed).

**Chief Inspector's Comments**

It was important to test the credibility of the applicant's evidence of what appeared to have been behaviour that risked discovery, knowing the impact in his country of being discovered.

4.26. We also found a number of narratives with similar episodes of interrupted sexual activity where the applicant left the scene hurriedly. We accept that, in such cases, asking probing questions about apparently risking discovery would enable the interviewer to explore the credibility of accounts of public or semi-public sexual activity in countries with a censorious attitude towards same sex relationships.

4.27. Overall, we did not find these lines of contextual questioning to be unsatisfactory. The Home Office must establish whether the claimant's account is credible in order to decide whether the individual qualifies for asylum or a grant of leave on other grounds.

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*The Home Office must establish whether the claimant's account is credible.*

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## Length of interview

- 4.28. The number of questions asked at interview in the 112 files ranged from under 50 to over 500 (across 2 days), but the majority were lengthy. Our conclusion from reading the 112 interviews was that a number contained detailed questions about early LGB encounters and every stated previous sexual partner but, while using suggested questions from the training, they generally did not gather any further key evidence. Applicants we spoke to had very mixed experiences of interview length.
- 4.29. We asked staff if they found it helpful when they received a statement from the applicant ahead of the interview (usually organised for the applicant by their legal representative or a support organisation such as UKLGIG). They told us that they did and it is logical that this would shorten many interviews, as the evidence to be tested has already been provided.
- 4.30. We noted that one of the contributing factors to great length in these interviews was a loss of focus on establishing the credibility of the applicant's claimed sexual orientation and whether that placed them at risk if they returned to their home country. Case law makes clear that it is the applicant's current sexual identity that is relevant.<sup>41</sup> We found that there could be a disproportionate amount of questions on the non-explicit aspects of claimants' sex lives and their level of involvement in the UK's 'gay community'. The Designated Judge also described many interviews as *'far, far too long'*.
- 4.31. Asking irrelevant questions or spending disproportionate time on issues of limited importance to the asylum claim is neither efficient nor effective. It also lengthens unnecessarily an experience that is traumatic for many applicants. The Home Office should address the issue of overly long interviews through improved training and mentoring.

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*Asking irrelevant questions or spending disproportionate time on issues of limited importance to the asylum claim is neither efficient nor effective.*

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## Areas for improvement in questioning

- 4.32. None of the interviews in our sample contained sexually explicit questions of the type highlighted in the Observer article. We did, however, find some questions which, we considered, invited applicants to give sexually explicit responses that were likely to be irrelevant to their asylum claims. Other questions were either not relevant or appeared to be formulated to make claimants feel uncomfortable, for example by implying that their sexual orientation was a deviance from a heterosexual norm. Some examples of the range of unsatisfactory questions and our comments on them are set out below in Figure 8<sup>42</sup> and within the case study at Figure 9.

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*None of the interviews in our sample contained sexually explicit questions of the type highlighted in the Observer article.*

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41 [http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2009/856.html&query=NR+\(Jamaica\)&method=all](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2009/856.html&query=NR+(Jamaica)&method=all)

42 The process for identifying the unsatisfactory questions was for inspectors sampling the files to put them forward to a plenary meeting, which was augmented by an inspectorate staff member not involved in the investigation and with no prior knowledge of the file's contents. The plenary meeting, applying common standards, then agreed which questions were unsatisfactory.

**Figure 8: Examples of questions that we deemed to be unsatisfactory, with reasons why<sup>43</sup>**

Question	Reason
What sexual activities did you do with your girlfriends?	A direct question about sexual activity. Not surprisingly, it produced an explicit response describing sexual activity.
What do you believe a relationship with a man may provide that is absent from a heterosexual partner/partnership?	Setting up heterosexuality as the norm, it appears to imply that the applicant can choose his sexual orientation.
From the surveys I have read on relationships, normally not even heterosexual relationships (men with women) have sex everyday, this could also be said of gay and lesbian couples, why did you feel the need to have sex every day when you were on vacation when you knew at the time it was a taboo in Ghana?	Using heterosexuality as a comparator, this appears to be exploring libido whereas the actual matter to be explored is the risking of discovery.
Do you think you can tell if someone is gay? [asked three times in slightly different ways]	The applicant's response could neither confirm his sexual orientation nor be a credibility factor.
So you just suddenly put on a gay porn DVD, for your friend, who you had no idea if he was gay or not?	A clearly disbelieving tone can shut down disclosure.

4.33. Of our 112 reviewed interviews, we categorised 12 (11%) as containing unsatisfactory questions. We generally saw one question or a short sequence, but including even one or two such questions in an interview is inappropriate.

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*Of our 112 reviewed interviews, we categorised 12 (11%) as containing unsatisfactory questions.*

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4.34. This category included questions purely about sexual activity which were either unnecessary or intrusive in a way which did not elicit a detailed narrative from the applicant. In our sample, these types of questions occurred more in DFT interviews (seven cases – 16% of those detained) compared to non-detained cases (five cases – 7% of those not detained), so this should be something for the Home Office to continue to monitor. Figure 9 below is an example of a number of unsatisfactory questions, but where the caseworker nonetheless went on to grant asylum.

<sup>43</sup> Questions are reproduced in the left column as recorded on the interview form.

## Figure 9: Case Study of an interview which led to a grant of asylum but included some unsatisfactory questions

### The Applicant (a Ghanaian female):

- submitted a claim at ASU in 2013 on the basis of sexual orientation, stating that she had arrived in the UK on a visit visa which expired in 2011.

### The Home Office interview:

- consisted of 511 questions across two non-consecutive days (interpreter not required);
- was mindful of the applicant's state of health;
- gave the applicant space to provide detailed narratives at the beginning;
- included the following examples of questions:
  - Q. [responding to evidence about an early lesbian relationship] How often would you kiss and masturbate approximately over a week?
  - Q. [responding to evidence about being raped repeatedly in prison] I don't think you understand my question, when the officers started to rape you, do you remember how long this lasted for from beginning to end?
  - Q. Were you able to put up any resistance to these officers?
  - Q. Did these men wear protection when they forced you to have sex?
  - Q. [responding to evidence about working as a prostitute with female clients] Exactly what were you offering the women as a prostitute?
  - Q. [responding to evidence about one incident of intercourse with a man] Where did you have intercourse with this unknown person?
  - Q. You say that you have been a lesbian since the age of 12 years, you have never had a relationship with a man and on one drunken evening you decide to go against everything you believe in and have sex with a man, surely you could not have been that drunk that you did not realise what you were doing?

### Chief Inspector's Comments:

The interview in this case, although it led to a grant of asylum, was demeaning to the applicant. Some questions were insensitive and inappropriate, and some were likely to elicit sexually explicit replies.

- 4.35. Overall, we noted that one-third of the cases which contained unsatisfactory questions led to grants of asylum. We found no direct correlation between these unsatisfactory questions and refusal for lack of credibility, or any other reason, but we remain concerned that such questions were asked. All applicants should be treated with dignity and respect by the Home Office.

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*We found no direct correlation between unsatisfactory questions and refusal for lack of credibility.*

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### Dealing with explicit responses

- 4.36. As we have shown, some caseworkers in our sample asked questions which were almost certain to elicit a sexually explicit response. Onsite, less-experienced caseworkers described how uncomfortable they felt when their non-explicit question produced explicit sexual detail. They were particularly concerned about the risk of facing disciplinary proceedings if they were drawn into such issues.
- 4.37. We observed an interview where an experienced caseworker asked a question that produced unexpected explicit detail. The caseworker showed good practice in calmly explaining that that level

of detail was not required and then proceeding with a carefully reframed question. It is clear to us that the ability to cope confidently with unexpectedly explicit responses and to quickly reframe questions is a crucial skill: emphasis should be placed on it during the training and mentoring of new caseworkers. We are encouraged by the proposed inclusion in the new guidance (see paragraph 3.6) of a form of words for dealing with such situations; but having words to repeat is not the same as developing confidence and interviewing skills.

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*The ability to cope confidently with unexpectedly explicit responses and to quickly reframe questions is a crucial skill.*

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### **We recommend that the Home Office:**

Ensures that caseworkers do not ask sexually explicit questions, and equips them with the interviewing skills to cope professionally when sexually explicit responses are received.

### **Stereotyping**

- 4.38. UNHCR's 2013 report *'Beyond Proof – Credibility Assessment in EU Asylum Systems'*<sup>44</sup> makes the point that *'there are no universal characteristics or qualities that typify LGBTI<sup>45</sup> individuals, any more than there are for heterosexual individuals'*. However, certain stereotypes are common in society.
- 4.39. One such stereotype still prevalent in the UK is that lesbians project a masculine appearance. Any use of this stereotype by a caseworker risks an adverse impact on a lesbian woman who does not have this appearance. One of the female applicants we met told us that the feminine nature of her appearance had been a subject of questioning. Equally, within UK society, there are long-held stereotypes of gay men, such as flamboyance and/or a degree of femininity. Bisexual people may be subject to these stereotypes as well.
- 4.40. Staff told us that applicants may project and/or exaggerate stereotypical behaviour on the assumption that interviewers may base their judgement on stereotypes. Caseworkers were aware of what was termed *'embellishment'* and understood why applicants might feel compelled to act in this way. Staff told us that they would explore the claim in the normal way, as genuine applicants could just as easily feel pressured to embellish as those with unfounded claims.
- 4.41. Case law<sup>46</sup> has demonstrated that knowledge of stereotypes is crucial in considering potential risk on return. An individual who is heterosexual or asexual may display characteristics of LGB individuals in their home country. The case law arose from women whose appearance and/or lifestyle are seen as *'not straight enough'* facing persecution in Jamaica. The lack of a male partner or children risks their being the target of the same persecution as a woman who actually does identify as lesbian.
- 4.42. While staff showed awareness of LGB stereotypes, they should not allow them to creep into the wording of questions. Despite this being included in training, we detected a background of stereotyping and assumptions. In Chapter 6 we note that a Home Office audit of cases found stereotypical views of applicants.
- 4.43. In our sample, we found that 24 interviews (21%) contained a perceptible amount of stereotyping. This was mostly shown in questions formulated as presumptions that someone claiming to be LGB would have attended gay bars or rallies, or would automatically want to *'reach out'* to others in the *'gay community'* in some way. In one interview, for example, the applicant was asked *'Which annual*

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*We found that 24 interviews (21%) contained a perceptible amount of stereotyping.*

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44 [http://www.unhcr.ie/images/uploads/pictures/Beyond%20Proof\\_Credibility%20Assessment\\_%20in%20EU%20Asylum%20Systems\\_FULLL.pdf](http://www.unhcr.ie/images/uploads/pictures/Beyond%20Proof_Credibility%20Assessment_%20in%20EU%20Asylum%20Systems_FULLL.pdf)

45 T refers to Transgender (more usually now seen as the umbrella expression 'Trans') and I to Intersex. Gender identity cases have separate Home Office guidance.

46 [http://www.bailii.org/uk/cases/UKUT/IAC/2011/00251\\_ukut\\_iac\\_2011\\_sw\\_jamaica\\_cg.html](http://www.bailii.org/uk/cases/UKUT/IAC/2011/00251_ukut_iac_2011_sw_jamaica_cg.html)

*gay events have you taken part in?* While interviews are expected to cover life in both the home country and the UK, lack of such contact is not a prime reason for refusal.

- 4.44. An applicant faced with the question quoted above might feel pressured to embellish evidence on the understanding that a grant of asylum would be dependent on having attended such events. We do not mean that credibility should not be tested in this area but, for good practice, interviewers should avoid projecting any perceptible presumption or expectation into a question.

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*Interviewers should avoid projecting any perceptible presumption or expectation into a question.*

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- 4.45. We are concerned that stereotyped expectations might impact on genuine applicants still coming to terms with their sexuality, those who have decided not to express it openly in the UK (perhaps for religious reasons), and those who are not inclined to frequent clubs or participate in large organised events.
- 4.46. The current training on unconscious bias (including stereotyping) starts with an e-learning programme and is continued into the five-week training. We consider that exploring unconscious bias is more effectively done in workshops, with a trainer helping people to examine whether their own life experiences have led to any unconscious expectations of others. We therefore make the following recommendation:

#### **We recommend that the Home Office:**

Improves training so that stereotyping and stereotypical expectations of LGB activity and lifestyle do not appear in interview questions.

#### **Ineffective use of a standard question**

- 4.47. Home Office guidance and those who train caseworkers suggest some standard questions to ask LGB claimants. Some of these were followed slavishly by staff and one stood out as rarely being used effectively. This was *'What attracted you to [name]?'*. We observed a trainer advocate its use for eliciting more narrative, but we found multiple ineffectual uses. Where an applicant had named a number of previous lovers, interviewers would go through a litany of *'What attracted you to....?'* for each of them.
- 4.48. In the Figure 10 example, the interviewer had asked the first three questions earlier about a previous partner and been told about attraction to a physique. When asked this time, the applicant gave some detail about how he 'became attracted'. Our understanding of the training was that how he *'became attracted'* should then have been explored. There was sufficient material in the first reply for eliciting further detail but the interviewer shut down that route by asking a closed question about physical appearance.

## Figure 10: Case study of ineffective use of the ‘what attracted you to....?’ question<sup>47</sup>

### The Applicant (a Bangladeshi male):

- entered the UK as a student in 2009 and obtained an extension of stay in March 2013;
- was arrested in October 2013 after being found working illegally in breach of his student conditions and claimed asylum on sexual orientation grounds three days after removal directions were made.

### The Home Office interview:

- used the question in the following way:
  - Q. What attracted you to [name]?
  - A. I met him at [a London station] he looked like one of those people you could trust, somebody you could rely upon, I spoke to him over the phone, I skyped<sup>48</sup> him then over the period I became attracted to him.
  - Q. Did [name’s] physical appearance attract you to him?
  - A. Yes
  - Q. What in particular about his appearance did you find attractive?
  - A. He’s a handsome man, good-looking, healthy, tall.
  - Q. How tall?
  - A. 5ft 8inches roughly
  - Q. Would you describe him as fat?
  - A. No
  - Q. How would you describe his build
  - A. He is not fat he is not slim, he is something in between.

### Chief Inspector’s comments:

This question was used ineffectually because the caseworker narrowed the focus of attraction to the physical, rather than eliciting more comprehensive information. The general emphasis on physical aspects of sexual orientation showed some stereotyping of gay relationships.

## Receiving explicit material submitted as evidence

- 4.49. In its October 2013 report on asylum, the Home Affairs Committee referred to the ‘*submission of photographic and video evidence of highly personal sexual activity*’<sup>49</sup> in support of some asylum claims made on grounds of sexual orientation. This was also covered within the Observer article – ‘*They wouldn’t believe I was gay: how do you prove it to the Home Office?*’
- 4.50. We understood from staff that explicit material (photographs or video clips), if submitted before the decision, would be returned by the outcome of any appeal. However, during file sampling we found two files with sexually explicit material which had neither been returned nor stored securely.

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*We found two files with sexually explicit material which had neither been returned nor stored securely.*

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<sup>47</sup> Questions and responses are reproduced as recorded on the interview form.

<sup>48</sup> Skype is a voice contact and instant messaging service from an internet provider

<sup>49</sup> See footnote 24.

- 4.51. There were four photographs in one file, three were of two naked men pictured together but the fourth was of a much more explicit nature. These were not stored securely in any way but were loose in the file. We also found a USB device in a flimsy polythene pocket which was not sealed adequately to ensure it could not fall out. It was logged as having been submitted by the legal representative and containing explicit images.
- 4.52. ASU screening staff told us that LGB applicants regularly tried to submit explicit material at the screening stage. They advised applicants that screening was not the appropriate stage for submission and that they should tell their caseworker that they had the material. This advice may inadvertently be leading applicants to believe that explicit material will definitely be accepted, viewed and incorporated into decision-making.
- 4.53. We also found inadvertent soliciting of explicit material for the appeal stage in a decision document – ‘*despite your claim to have been intimate with [name], the pictures you have provided show no more than two males sitting together*’. Most refused applicants would understand this to mean that they must submit material at appeal showing more intimacy.
- 4.54. We found that senior managers in both detained and non-detained environments did not agree with staff receiving and/or viewing explicit material. They considered that objective evidence could be gained without this material.
- 4.55. Staff in the non-detained work stream did not believe that it added to a claim, and felt that it was ‘*degrading*’ for applicants to submit this material and for staff to view it. A manager in one area confirmed that no complaints had been received from legal representatives when material was not accepted or viewed. However, within the detained work stream, staff were told by trainers that they must view all evidence submitted in every case, including explicit sexual material.
- 4.56. Staff at a non-detained site told us that if a legal representative offered to display material on a laptop, they would not feel it appropriate to view it. However, staff at a detained site described a specific instance when an interview had been suspended while the caseworker viewed explicit material on the legal representative’s laptop in the interview room.
- 4.57. There is a real risk of procedural unfairness if caseworkers in some Home Office units are receiving, considering and storing explicit material when those elsewhere are not. There should not be such inconsistency of practice.
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- There is a real risk of procedural unfairness if caseworkers in some Home Office units are receiving, considering and storing explicit material when those elsewhere are not.*
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- 4.58. We had also found the instances of inadequate storage. Staff told us that any such material, if retained, would be described for the record, stored securely on the file (sealed and marked as explicit) and then returned to the applicant when any appeal action was complete. This was not our experience in those two cases.
- 4.59. There are stringent sanctions in place for Home Office staff in terms of accessing indecent and pornographic material and sharing it with colleagues. If it is decided that such material must be stored on file (even temporarily) then managers must ensure that storage arrangements protect staff from any unwarranted accusations of loss or misuse of indecent material.
- 
- Managers must ensure that storage arrangements protect staff from any unwarranted accusations of loss or misuse of indecent material.*
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- 4.60. We also note that, in response to a request from the Netherlands Council of State in relation to ongoing litigation, the Court of Justice of the European Union recently asked for advice from one

of the Court's Advocates General on this issue.<sup>50</sup> The Netherlands had not accepted some asylum claims despite explicit evidence being provided. The Advocate General's advice was that intrusive questioning and either requesting evidence of sexual practice or accepting the admission of such material contributed to undermining applicants' human dignity.

- 4.61. The Home Office must address this inconsistency of practice, policy, guidance and procedure in relation to the receipt, viewing, consideration and storage of explicit material.

**We recommend that the Home Office:**

Ensures a consistent approach towards the handling of explicit material presented to support an asylum claim.

<sup>50</sup> <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130ded7e89253218c46f9bc5a8c8b088c88d3.e34KaxiLc3eQc40LaxqMbN40aNYTe0?text=&docid=155164&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=417307>

# 5. INVESTIGATION FINDINGS – DECISION-MAKING AND APPEALS

## CHIEF INSPECTOR'S OVERALL ASSESSMENT

- I was reassured that senior management shared my concerns about the use of Detained Fast Track medical induction information in assessing credibility.
- I did not find evidence that previous heterosexual relationships, existing children or stereotypes of appearance were being used in a routine and widespread way as negatives in decision-making.
- In almost all the cases that I examined, I found that applicants were able to disclose their sexual orientation before or during their screening interview.
- Where the Home Office accepted the applicant's sexual orientation, it granted asylum in almost all cases.
- I found that decision results in the DFT and non-detained areas were almost identical for late claims, the vast majority of which were found to have no merit.
- The allowed appeal rate for DFT sexual orientation claims was more than twice as high as the rate across all its asylum categories.
- I was not satisfied that the process for Presenting Officers to give feedback to caseworkers was working consistently.

- 5.1. The terms of reference did not include the quality of decisions, but the components of a decision are relevant to this investigation as they give an insight into whether guidance was being followed.

### Country of Origin Information

- 5.2. The Supreme Court ruling in *HJ (Iran)* and *HT (Cameroon)*<sup>51</sup> ensures that consideration is given to current treatment of LGB people in an applicant's country of origin. Home Office guidance instructs caseworkers to refer to the Country of Origin Information (COI) provided by the Country Policy Information Team (CPIT).<sup>52</sup> This service provides current objective material to inform decision-making.<sup>53</sup> To supplement it, caseworkers can also request specific information.

- 5.3. Our file sample showed that COI had been referred to in 90 cases (77% of all cases) and 27 (77%) from the total of 35 female cases. Among staff, we found a general feeling that it did not provide comprehensive coverage of sexual orientation issues and, in particular, issues relating to the treatment of lesbians and bisexual women. Provision of COI is currently under review by the Home Office.

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*Our file sample showed that COI had been referred to in 90 cases (77% of all cases) and 27 (77%) from the total of 35 female cases.*

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- 5.4. The Independent Advisory Group on Country Information

<sup>51</sup> See footnote 17

<sup>52</sup> <https://www.gov.uk/government/collections/country-information-and-guidance>

<sup>53</sup> Under section 48 of the UK Borders Act 2007, the Chief Inspector reviews the content of this material. He is supported in this by the Independent Advisory Group on Country Information.

provides thematic coverage of the COI material and it has been decided to continue having a thematic report on sexual orientation.

### Use of DFT medical induction records

- 5.5. Stakeholders and asylum applicants raised concerns with us that DFT medical induction records were being used to undermine credibility.
- 5.6. We found elements of this material being used in two cases within our file sample. One decision letter commented that *'you advised the staff during your induction that you were a heterosexual. This was put to you during your asylum interview and you claim you were never asked that question'*. We heard conflicting views from caseworkers as to whether it was acceptable to use information from the medical induction, on the basis that the applicant signed a disclosure clause. However, in discussion with a senior manager, it was considered that this material should not be used and its use was described as akin to *'self-incrimination without formal warning'*. The Home Office should clarify its stance on the use of this material and provide clear guidance.

### We recommend that the Home Office:

Clarifies its policy and guidance on use of DFT medical induction material for case considerations.

### Credibility and stereotyping

- 5.7. Assessing the credibility of sexual orientation claims is one of the main areas of criticism from stakeholders and applicants, who feel that, minor discrepancies, previous heterosexual relationships, having children, late claims and stereotyping by caseworkers are often held against claimants. In our file sampling we analysed negative evidence noted on the file. Some results are shown below:
- In 10 decisions (9%) a previous heterosexual relationship was not held against an applicant. In three (3%) it was;
  - There were no decisions where the existence of a child was held against the applicant (in three (3%) of cases there was a child);
  - There were no decisions where credibility was questioned on the basis of an appearance derived from an LGB stereotype.
- 5.8. Overall, our file sample results do not indicate that any of these issues were used negatively to refuse applications as a matter of routine.
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- Our file sample results do not indicate that any of these issues were used negatively to refuse applications as a matter of routine.*
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- 5.9. Training for caseworkers makes it clear that stereotyping should not be used to inform decisions – *'It is important that we do not make our decisions based on our stereotypical views on how someone who is gay, lesbian or bi-sexual should behave'*.<sup>54</sup>
- 5.10. A senior manager said that *'if you come from a country where you are stigmatised by your sexual orientation you are not going to suddenly be openly gay in the UK'*. But we noted that whether LGB claimants joined social or campaigning events was frequently a factor added to others in assessing credibility. However, these were contributory factors and not the only reason for refusal.
- 5.11. Figure 11 below sets out the most emphatic of such statements that we found within reasons for refusal. They come from both the DFT and non-detained work streams and it is of some concern that the wording would have been signed off by a senior caseworker.

54 FTP trainer notes.

### Figure 11: Excerpts from reasons for refusal in decision documents

‘There is no evidence to suggest that you have joined any LGBT groups. While you have been able to name some gay clubs in Manchester Canal Street it is considered that these venues are publicized in the public domain and cannot be taken as evidence of your sexuality. Your claim that you are homosexual is rejected.’

‘You do not go to any gay clubs because you are not a club person. You claim that you went to a gay pub once but you did not remember what exactly it was called or where it was which casts doubt on the credibility of your claim. You are not a member of any gay organisations and you did not attend any gay parades or parties. You do not read any gay magazines either. Although you claim you dress up, neither of the photographs you submitted supports your claim.’<sup>55</sup>

‘Furthermore it is noted that you claim you did not participate in any gay pride events, you were unable to name any gay charities and did not know of any annual gay events and had not taken part in any. It is considered that as a homosexual man living in the UK you would know of some gay charities and annual gay events, however your lack of knowledge on this further undermines your claim that you are homosexual as claimed.’

### Applicants feeling able to disclose sexual orientation to immigration authorities

- 5.12. Under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004,<sup>56</sup> and also European law,<sup>57</sup> negative inferences may be drawn as to an applicant’s credibility if they do not claim asylum as soon as possible after arrival in a safe country. Home Office guidance states, in line with the law, that credibility could be affected by ‘*a delay in making an application for asylum following arrival in the UK if the applicant is unable to provide a reasonable explanation for his actions.*’<sup>58</sup>
- 5.13. Stakeholder organisations raised concerns with us that those seeking asylum on the basis of their sexual orientation were likely to experience some difficulty in disclosing such personal experiences. This could result in their failing to raise the issue at the earliest possible stage. One stakeholder suggested that the Home Office routinely used such delays to undermine the credibility of sexual orientation claims.
- 5.14. The UNHCR report ‘*Beyond proof – credibility assessment in EU asylum systems*’,<sup>59</sup> while citing the view of the European Court of Human Rights that a delayed application may be indicative of lack of fear of persecution, argues that this ‘*relies on an underlying assumption that people will always behave rationally.*’ The report states that having been compelled to conceal and deny sexual identity may ‘*diminish an applicant’s capacity to disclose relevant information.*’ It concludes that an applicant may not ‘*make an application for international protection until compelled by circumstances such as the threat of forced return.*’<sup>60</sup>
- 5.15. Asylum applicants to whom we spoke told us that they had initially found it difficult to disclose such a personal matter. One said that she compared encountering a uniformed UK immigration enforcement officer to encountering police in her home country, where she had experienced state persecution. Another applicant described difficulty in disclosing when sitting ‘*in front of a government officer*’ and described a lack of interpersonal skills in his interviewer – ‘*talking to a wall does not give you the confidence to show your emotions and tell your story.*’

55 The original text included numerical references for the relevant interview questions but these have been omitted for ease of reading.

56 <http://www.legislation.gov.uk/ukpga/2004/19/section/8>

57 [http://www.emnbelgium.be/sites/default/files/publications/council\\_directive\\_2004\\_eg\\_eng.pdf](http://www.emnbelgium.be/sites/default/files/publications/council_directive_2004_eg_eng.pdf)

58 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257426/considering-protection-pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257426/considering-protection-pdf), page 17.

59 See footnote 44.

60 As footnote 44, page 202.

5.16. We found that 95% of sampled applicants were able to disclose that the basis of their claim was their sexual orientation, either at some point before the asylum screening interview or most commonly during it. This included applicants who had been in the UK for many years before claiming asylum (up to 16 years in one case) and who had not until that point raised a fear of persecution in their home countries as a result of their sexual orientation.

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*We found that 95% of sampled applicants were able to disclose that the basis of their claim was their sexual orientation before the asylum screening interview or most commonly during it.*

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5.17. ASU staff, who told us that they saw an average of two new sexual orientation claims a day, said that the recent introduction of private interview facilities had made a difference to claimants' willingness to disclose at screening. In their experience, the majority had been in the UK for some time and were aware of the UK's open attitude to sexual orientation, which helped to allay apprehension.

5.18. We accept that some individuals might delay disclosure beyond screening for a variety of reasons, such as fear of reprisals, or because they might still be coming to terms with their sexual orientation. However, our sample found that the overall proportion of those who did not disclose that their claim was based on their sexuality by the time of their formal asylum screening interview was low, at only 5%.

5.19. Our findings do not therefore support a view that late disclosure (caused solely by an applicant feeling unable to disclose sexual orientation) is a significant issue in these cases.

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*Our findings do not support a view that late disclosure (caused solely by an applicant feeling unable to disclose sexual orientation) is a significant issue in these cases.*

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### **Acceptance of sexual orientation**

5.20. In our sample there was an almost complete correlation between whether the applicant was accepted as LGB and whether they were granted asylum. 46 claimants (39%) had their sexuality accepted and were granted asylum. In a further four cases (3%); the Home Office accepted the claimant's sexual orientation but refused their applications. This was either because the Home Office assessed that their sexual orientation did not place them at risk of harm on return or because it considered that the individuals could relocate to an area in their home country where their sexual orientation would not place them at risk. Figure 12 below sets out just such a case.

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*There was an almost complete correlation between whether the applicant was accepted as LGB and whether they were granted asylum.*

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**Figure 12: Case Study of a refusal of asylum where sexual orientation was accepted but internal relocation was considered possible**

**The Applicant (an Indian male):**

- made an asylum claim at ASU on the basis of sexual orientation while in the UK on a Tier 4 student visa.

**The Home Office:**

- accepted the applicant's sexual orientation as claimed;
- used the COI to assess that the applicant could relocate within his home country and live free from persecution;
- issued a decision document including the following –

*'You have chosen to live openly as a gay man in the United Kingdom. It is therefore considered reasonably likely that you would choose to live openly as a gay man in India.'*

*'It is noted that there is discrimination against gay people in India, however the available background information indicates that there is an emerging gay movement in larger cities of India and that it is possible for gay men and women to live open homosexual relationships. It is noted that you have never been to Delhi or Mumbai, and therefore have not experienced what it is like to be a gay man in these cities. It is considered that you could internally relocate to Mumbai and live as an openly gay man.'*

**Chief Inspector's Comments**

This is an example of effective use of the available country of origin information to make a sustainable decision.

**Late sexual orientation asylum claims**

5.21. Senior managers did not believe that LGB claims were more likely to be used for deception than those made on other grounds, and very late claims after long periods in the UK appear across all categories of asylum claim.

5.22. Notwithstanding this, caseworker decision-makers considered that a very late claim on the grounds of sexual orientation, sometimes after removal directions had been set, could often be an indicator of an unfounded claim. Our sample confirmed a pattern of late claims made by those who had been in the UK for a number of years. Circumstances included the following:

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*Our sample confirmed a pattern of late claims made by those who had been in the UK for a number of years.*

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- A Nigerian male, living illegally in the UK since 2000, came to the attention of the Home Office in 2013 after a conviction for possessing two false documents. He claimed asylum when removal directions were set for the end of his seven-month sentence. At screening, he declared the basis of his claim to be a village oil feud, but at the substantive interview he claimed to be bisexual and in fear of a demonic cult because of his Catholic religion. The claim was refused and the appeal and further submissions dismissed.
- A Pakistani male entered the UK on a student visa issued for most of 2010 and 2011, overstayed and was encountered working illegally in 2013. He claimed asylum on sexual orientation grounds after removal directions were set. The claim was refused, the subsequent appeal dismissed and the applicant removed.

5.23. Figure 13 below illustrates the complexity of assessing credibility in these types of cases. In this instance, the application resulted in a grant, despite the claimant's poor immigration history.

### Fig 13: Case study of an asylum grant following late disclosure

#### The Applicant (a Ugandan male):

- first arrived in the UK in 1995;
- applied for indefinite leave to remain in 2009 and, after rejection, applied to stay outside the rules on compassionate grounds (rejected);
- made two applications for an EEA residence card as the husband of a German national in 2011 (both refused);
- applied for leave to remain outside the rules on compassionate grounds in 2012 (rejected). Was later arrested for possession of a false ID card with intent to work, seeking to obtain leave to remain by deception and seeking to avoid enforcement action by deception – received a 10-month custodial sentence;
- claimed asylum on the basis of sexual orientation in September 2013, the application supported by multiple corroborating evidence.

#### The Home Office:

- granted asylum on the basis of the applicant's bisexual orientation.

#### Chief Inspector's Comments:

This was a claim that was assessed as genuine following proper investigation. It was taken on its merits by the Home Office despite the applicant's adverse immigration history.

### Outcomes and appeals relating to late asylum claims on grounds of sexual orientation

5.24. Caseworkers must enquire into the reasons for a late asylum claim and then assess whether the explanation given is reasonable. A late claim on sexual orientation grounds was cited as an issue relating to credibility in 48 (41%) of the files that we sampled. In some cases, the Home Office noted that sexual orientation grounds had been cited only after other types of claims had been refused.

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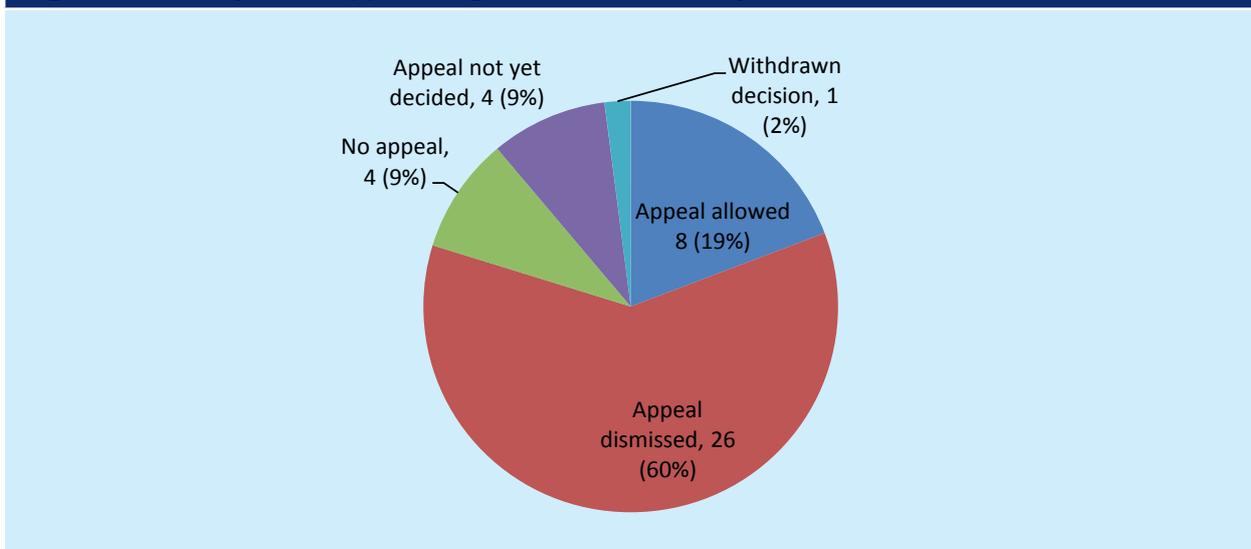
*A late claim on sexual orientation grounds was cited as an issue relating to credibility in 48 (41%) of the files that we sampled.*

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5.25. We analysed whether there was a difference between the DFT and the non-detained areas in the way these 48 late claims were dealt with. The occurrence was different, with 29 (59%) DFT cases and 19 (28%) non-detained ones being classed as late claims. However, the decision results for these cases were almost identical – the DFT refused 26 (90% of their cases) and the non-detained areas refused 17 (89% of their cases).

5.26. Between 23 April and 13 May 2014 we sampled the outcomes of those 43 (90%) of the 48 late claimants who appealed against refusal. Four appeals had not yet been decided. Figure 14 below shows that 26 appeals (60%) were dismissed, with eight allowed (19%). This suggests that the Home Office makes reasonable decisions on late claims.

**Figure 14: Analysis of appeals against refusal of asylum on the basis of a late claim<sup>61</sup>**



### Detained Fast Track process

5.27. Stakeholders and asylum applicants expressed the view that detention restricted the ability to gather evidence to corroborate a claim and led to more refusals. Figure 15 sets out the split of decisions within all the flagged asylum decisions made in 2013.

**Figure 15: Split of 2013 decisions in all flagged cases<sup>62</sup>**

	DFT	Non-Detained	All cases
Granted	28 (22%)	85 (55%)	113 (40%)
Refused	99 (77%)	63 (41%)	162 (57%)
Other outcome	1 (0.8%)	7 (5%)	8 (3%)
Total	128	155	283

5.28. The intake of the two work-streams can differ greatly. Non-detained cases contain a higher proportion of early claims or claims made while the individual has continuing leave on non-asylum grounds. The DFT, on the other hand, has a higher proportion of those typically found without permission to be in the UK or working illegally. The Home Office should continue to keep the situation under review.

5.29. Figure 16 below shows outcomes of appeals which had been heard by the time we sampled the cases. It shows that dismissed appeal rates for sexual orientation cases were almost identical between the DFT and non-detained work streams at 66% and 67%.

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*Dismissed appeal rates for sexual orientation cases were almost identical between the DFT and non-detained work streams.*

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61 Percentages do not sum to 100 owing to rounding.

62 Percentages for the two middle columns do not sum to 100 owing to rounding.

**Fig 16: File sample appeal outcomes in DFT and non-detained locations**

Outcome	DFT	Non-Detained
Dismissed	21 (66%)	18 (67%)
Allowed	9 (28%)	6 (22%)
Other outcomes (withdrawn appeal or decision withdrawn pre-appeal)	2 (6%)	3 (11%)
<b>Total</b>	<b>32(100%)</b>	<b>27(100%)</b>

- 5.30. We took the allowed appeal rates in Figure 16 and investigated any difference between these and allowed appeal rates across all asylum categories. Management information provided by the Home Office<sup>63</sup> indicated that, of appeals determined by the First-Tier Tribunal in 2013 against all asylum decisions taken, non-detained areas had an allowed appeal rate of 29% for all asylum appeals, compared to a lower 22% rate for sexual orientation cases (a 7% difference).
- 5.31. Conversely, the DFT had a much lower allowed appeal rate for all asylum claims at only 11%, whereas its rate for sexual orientation cases was 28%, a marked difference. The Home Office should analyse why over a quarter of DFT sexual orientation cases are resulting in allowed appeals.

### **CONDUCT OF APPEALS**

- 5.32. Those applicants who appeal against refusal will have a further encounter with Home Office staff, when they are questioned by Presenting Officers (POs). The way in which POs approach cross-examination in these cases is therefore also important. We spoke to 11 POs, who said that inappropriate questions were not asked. This was echoed by the Designated Judge.<sup>64</sup> However, some stakeholders, and a number of the asylum applicants whom we met, did refer to inappropriate questioning by POs.
- 5.33. Presenting differs from interviewing; POs may legitimately be more adversarial. Witnesses in many types of court case may object to the cross-examination which they experienced, even if it was in fact conducted professionally.
- 5.34. Staff held the opinion that the presiding judge and/or legal representative would immediately object to inappropriate questioning, which would represent an additional disincentive to pursuing it. However, we are not in a position to examine whether that is the case.

### **Feedback to those making the decisions**

- 5.35. POs were unanimous that they would withdraw any case with an interview transcript which contained explicit questioning. This should then lead to feedback on what caused the withdrawal. It became apparent, through our discussions with caseworker decision-makers, POs and managers, that feedback from appeals was not consistently being given or received. While there is an electronic feedback facility for completion by POs, this was not always used and did not filter back directly to the caseworker.

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*Feedback from appeals was not consistently being given or received.*

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<sup>63</sup> The 29% figure in this paragraph and the 11% figure in the next paragraph relate to appeals decided in 2013, rather than appeals against decisions made in 2013, to which our file sampling figures relate. This is because Home Office systems cannot distinguish between appeals against a 2013 decision to refuse asylum and appeals against a separate decision for the same person. The data derives from management information and is therefore provisional and subject to change. The information has not been quality assured under national statistics protocols.

<sup>64</sup> We sought to observe a sexual orientation case in court, but it did not prove possible in the timeframe.

- 5.36. We consider that feedback from appeal outcomes should always be given to the decision-makers and their managers, as a developmental tool to identify good practice and improve decision quality. It is an issue on which we have made recommendations in numerous previous reports.<sup>65</sup>

### **Analysis**

- 5.37. Decision-makers and POs had no knowledge of the results of any analysis into appeal outcomes. The Home Office Quality Audit Team conducted a thematic review and analysis into allowed appeals on the grounds of sexual orientation; the internal report – published in September 2012 – did not identify any major areas of concern, but it did make recommendations for improvement. We have been advised that local analysis is conducted on all allowed appeals and any issues identified are fed back to managers. There would be benefits in including allowed appeals in future thematic analysis of these cases, as the Home Office has done in the past.

### **Quality Assurance**

- 5.38. The Home Office has given significant scrutiny to interviews and decisions in sexual orientation cases since the Observer article was published. However, POs told us that there had been no specific scrutiny of presenting in these cases. Given the concerns expressed by stakeholders and applicants, and the current extremely close scrutiny of other stages of the process, we are surprised that the Home Office has taken no measures to assure itself that POs are approaching these cases in an appropriate manner: an obvious approach would be for managers to observe a proportion of sexual orientation cases in court.

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65 For example - <http://icinspector.independent.gov.uk/wp-content/uploads/2013/01/marriage-and-civil-partnerships-FINAL-PDF.pdf>

# 6. INVESTIGATION FINDINGS – MANAGEMENT AND OVERSIGHT

## CHIEF INSPECTOR'S OVERALL ASSESSMENT

- The Home Office has made significant efforts to improve the handling of sexual orientation cases, dating from before the Observer article.
- While noting the usefulness of thematic reviews by the Home Office's Quality Audit Team and scrutiny of questioning so far (all from before the Observer article), I consider that thematic reviewing has so far been too limited in its statistical coverage and should call on a wider evidence base.
- I found that Management Information was poor, with only 36% of sexual orientation cases flagged as such by staff, within the records I sampled. This means that the Home Office has greatly underestimated the incidence of sexual orientation claims.
- My subsequent sampling of unflagged cases produced no examples of sexually explicit questions as published in the Observer, although the level of stereotyping was higher than in the flagged cases.
- I welcome senior managers' indications to me that they will continue the extra scrutiny of sexual orientation cases until they are sure that matters have been resolved.
- While I acknowledge the impact of the Observer article and the subsequent Home Office investigation on the majority of staff, the Home Office must ensure that it continues to probe the credibility of claims in line with asylum law.

### Quality assurance

- 6.1. The Home Office has made significant efforts to improve its handling of sexual orientation cases since the Observer article was published, but it had also done some work on the issue before that. This was partly through its Quality Audit Team (QAT), which assesses how well the Department handles asylum cases. Each month, QAT randomly selects 5% of all decisions made, while ensuring that each caseworker is assessed every six months. We also noted that one area had established its own local dip-sampling regime, as the manager did not feel that 5% provided sufficient local depth for management information.
- The Home Office has made significant efforts to improve its handling of sexual orientation cases.*
- 6.2. In August 2011, QAT's predecessor unit conducted a thematic review of 55 sexual orientation decisions made between April and June 2011, to determine whether the guidance and training, introduced following changes to case law in 2010, were having a positive impact. This identified good practice, such as sensitive questioning of applicants, but also areas of concern, such as too great a focus on applicants' behaviour and lifestyle at the expense of broader emotional and cultural experiences.
- 6.3. In September 2012, QAT examined why seven of those applicants, out of 29 who had appealed, had been granted asylum following an allowed appeal;<sup>66</sup> this largely supported the conclusions of the

<sup>66</sup> One of the seven had the refusal withdrawn before the appeal because of new evidence adduced.

initial review. It was agreed with stakeholders that regular further reviews of the quality of decisions and appeals in sexual orientation cases would follow.

- 6.4. Between April and November 2013, QAT audited 19 sexual orientation cases as part of its standard sampling of 5% of all asylum cases. Eleven interviews and ten decisions across the sample were judged to feature ‘serious’ errors. This was higher than the average, although many of these errors were unrelated to sexual orientation and no cases were found to have the most serious ‘critical’ errors.
- 6.5. QAT conducted a thematic review in January 2014, assessing the same 19 cases together to elicit common sexual orientation themes. It identified some improvements since the 2011 review, such as improved questioning, but noted that problems remained, in particular stereotypical views of LGB applicants. The Home Office therefore decided to pursue targeted interactions (such as mentoring and further training) with the staff who had made the errors.
- 6.6. The Home Office has promised stakeholders that further thematic reviews will follow every six months, and the January review noted that the next one would be in August 2014. Additionally, since November 2013, the standard QAT marking sheets have included five questions specific to sexual orientation claims, such as whether the decision avoided inappropriate or discriminatory language.
- 6.7. All of the above happened before the Observer article, as did the decision to include material specific to sexual orientation cases in the general guidance on interviewing, as we discussed in Chapter 3. Commendable work had been done. However, while on site, senior managers acknowledged that the article had applied extra pressure on the Home Office to improve its handling of sexual orientation cases, as the figure below demonstrates.

**Figure 17: Additional scrutiny of sexual orientation cases in place following the Observer article**

	<b>DFT</b>	<b>Non-Detained</b>
Current cases	All interviews checked by a ‘second pair of eyes’ <sup>67</sup> before service of decision.  All decisions checked by a ‘third pair of eyes’ <sup>68</sup> before service.	All decisions checked by a ‘second pair of eyes’ before service.
Historical cases	Cases where decisions had been made between 1 April 2013 and the publication of the article were reviewed.	Senior caseworkers checked cases from the previous six months.

- 6.8. The Home Office stated that the review of historical non-detained cases raised no issues, but it is disappointing that it did not make a formal record of the review. As a result, we cannot confirm this conclusion.
- 6.9. The summary of the review of historical detained cases stated that most had been dealt with well, but identified issues in 9% of them. Most were questions which should not have been asked and/or should have been rephrased, or reasons given in decision documents which were not sufficient to undermine the claim.
- 6.10. While we did not evaluate whether decisions were correct, the review’s conclusion that 9% of DFT cases were problematic is not dissimilar to our sample finding that one in seven DFT cases (14%) contained one or more unsatisfactory interview questions. Most of the problematic interview

67 All ‘second/third pairs of eyes’ checks are conducted by senior caseworkers.

68 There is already a ‘second pair of eyes’ check for all cases.

questions identified in the internal review concerned sexual activity, although none seems to have been as serious as those in the Observer article. All cases identified by the review were notified to relevant managers.

6.11. A senior manager told us that the checks on current cases would continue until the department knew that it was doing the right thing, probably in late 2014.

6.12. The actions taken by the Home Office to assess its performance against the sexual orientation guidance and training were positive. However, we are concerned that future thematic reviews may assess only the cases selected as part of the regular quality monitoring. Limiting the evidence base from which future thematic reviews can draw conclusions will miss opportunities to assess different and wider groups of LGB cases.

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*The actions taken by the Home Office to assess its performance against the sexual orientation guidance and training were positive.*

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6.13. Assuming that all sexual orientation cases will be flagged in the future, it would be more valuable to randomly select a larger number of relevant cases from all those that have been decided, as we have suggested for another category of asylum cases in a recent report.<sup>69</sup> This might result in the reviews occurring less frequently than six months, but it is more important and more valuable to have a wider evidence base.

#### **We recommend that the Home Office:**

Ensures that future thematic examination of asylum claims made on the grounds of sexual orientation makes use of a wide evidence base.

#### **Management information**

6.14. The Home Office must produce accurate management information on sexual orientation cases. This is necessary, both to allow it to assess compliance with guidance and training, and also to provide accurate information to Parliament, stakeholders and the public.

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*The Home Office must produce accurate management information on sexual orientation cases.*

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6.15. In 2011, staff were told to place a record on CID when encountering an asylum claim based on sexual orientation. This was not a mandatory field on the database which staff were prompted to complete as part of their regular records, but an additional 'flag' which they had to add. The flagging process was created in response to Freedom of Information requests, Parliamentary Questions and other data requests. Any internal or published statistics about sexual orientation claims depend upon its accurate application.

6.16. In October 2013, Home Office officials indicated to Ministers that they would shortly advise them to publish data on sexual orientation claims. Following an estimate that only 19% of sexual orientation claims from 2012 bore the flag, Ministers decided not to publish. In January 2014, a senior manager issued a reminder to staff to apply the flag on CID, to enable the publication in spring 2014 of data from the first quarter of the year. At the time of writing this report, it had not been published.

6.17. We conducted our own assessment of compliance with flagging in 2013, within the top countries for flagged sexual orientation claims in that year (see paragraph 2.4 for details of those countries). We reviewed all asylum claims from those countries for decisions made between October and December 2013 (750 cases). We found

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*We found 116 sexual orientation cases, but only 42 (36%) were flagged - this was still a woefully poor level of compliance.*

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69 <http://icinspector.independent.gov.uk/wp-content/uploads/2014/07/NSA-report-FINAL-WEB.pdf>, paragraphs 5.45-5.48

116 sexual orientation cases, but only 42 (36%) were flagged. While better than the 19% which the Home Office estimated for 2012, this was still a woefully poor level of compliance.

- 6.18. Our findings indicate that 15% of asylum claims from the countries that most commonly produce sexual orientation claims were made on those grounds in the last quarter of 2013. If the under-recording is typical of all asylum applications made in 2013, then it indicates that at least 3.9% of all asylum claims will have been made on sexual orientation grounds. This is almost three times as many as the 1.4% suggested by the Home Office Management Information provided (see Figure 2), which only identifies cases that have been flagged on CID.

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*If the under-recording is typical it indicates that at least 3.9% of all asylum claims will have been made on sexual orientation grounds.*

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- 6.19. Staff need to understand the importance of recording the basis of such claims, both for internal assurance purposes and also so that the Home Office can provide reliable statistics to Parliament and stakeholders.
- 6.20. The broad consensus from our discussions with staff was that the person who first became aware that sexual orientation was a ground for asylum should apply the flag (in line with the January reminder), but also that anyone picking up the case later should check this and apply the flag if it had not already been done. As our sample results show, this means that it should usually be done at screening. Screening officers to whom we spoke agreed that this was their role, and that they had been told about the flag. Home Office guidance does not mention the flag but it is important that it should do so, and make clear who should apply it.
- 6.21. Staff in one area told us that the requirement to apply the flag was included in a checklist for caseworkers, but we did not find systematic checking, by managers or others, to ensure that sexual orientation cases were correctly flagged.

- 6.22. Of the asylum decisions taken between March and May 2014 (the first three full months after the Observer article), 161 were flagged.<sup>70</sup> This compared with 71 as a quarter of all flagged decisions in 2013. The Home Office must maintain the pressure to flag these cases, so that the true picture of asylum claims based on sexual orientation is captured.

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*The Home Office must maintain the pressure to flag these cases.*

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### **We recommend that the Home Office:**

Ensures that all asylum claims made on grounds of sexual orientation are accurately recorded as such.

### **Sampling of sexual orientation claims which had not been flagged**

- 6.23. Although we identified no sequences of questions similar to those reported in the Observer in our main file sample, all those cases had been flagged. A caseworker who failed to comply with the flagging requirement might be less likely to comply with other requirements. We therefore requested 18 additional files from the unflagged cases that we had identified from the last quarter of 2013. Six were grants and 12 were refusals, in line with the approximate distribution of the sample of flagged cases.

<sup>70</sup> This is internal Management Information provided by the Home Office for this investigation, based on an extract of data taken on 13 June 2014. It has not been quality assured to the level of published national statistics so should be treated as provisional and therefore subject to change.

6.24. We were reassured to find that there were no questions like those in the Observer in the sample of unflagged cases. The proportion of cases containing unsatisfactory interview questions was, however, slightly higher than in our main sample (17% [three cases], compared to 11%). Unlike our main sample, we were pleased to see that all applicants were asked about how they had first come to realise that they were lesbian, gay or bisexual, giving them an opportunity to provide a narrative.

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*There were no questions like those in the Observer in the sample of unflagged cases.*

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6.25. However, we were concerned that the proportion of interviews which contained some stereotyping was almost double that in our main sample (39% [seven cases] compared to 21%). This underlines the need for the Home Office to ensure that all sexual orientation claims are flagged correctly. This will allow the Department to monitor all cases and challenge stereotyping.

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*We were concerned that the proportion of interviews which contained some stereotyping was almost double that in our main sample.*

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### **Use of the former discretion test**

6.26. While the process set out in *HJ (Iran)* and *HT (Cameroon)* relating to whether applicants could be 'discreet' in their home country was correctly applied in most of the cases in our sample, we identified two cases where it was misapplied. For example, in one of those cases the letter stated: *'As you have demonstrated that you are discreet about your sexuality and relationships in the UK, it is considered reasonable to expect you to be discreet in Pakistan, as you have done there previously. It is considered that you can reasonably be expected to tolerate living discreetly in Pakistan'*. The Home Office needs to remain vigilant to ensure that all staff are properly applying the law.

### **The impact of the Observer article on the asylum process**

6.27. Staff reaction to the Observer article, as expressed to us, was stark. *'Shocked'*, *'horrifying'* and *'outrageous'* were among the responses described by staff. One manager said: *'I didn't recognise that line of questioning'*. Staff also offered some analysis of the questions, such as *'not only inappropriate but ineffective'*. Similarly, the extra internal checking, while necessary for the Home Office to provide assurance to itself and to others, has understandably had an impact on staff.

6.28. During this investigation, we found that some staff were apprehensive when they encountered a sexual orientation case. They feared inadvertently doing something wrong. Referring to the media coverage, one manager said that *'caseworkers will have been scarred by this'* and a senior caseworker told us that caseworkers approached him for advice before interviewing in about 80% of these cases.

6.29. We found good provision of support for interviewers. In Croydon, for instance, a senior caseworker was available near the interview rooms. Where interviewers were using centrally-linked computers, they could seek advice via the instant messaging option on screen without suspending the interview.

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*We found good provision of support for interviewers.*

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6.30. However, there is a risk that any nervousness about dealing with sexual orientation cases may cause staff to avoid questions which they should ask. Although sexually explicit questions should not be asked, it may sometimes be necessary to ask (non-explicit) questions around an episode of sexual behaviour in order to test credibility (often relating to risk of discovery).

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*There is a risk that any nervousness about dealing with sexual orientation cases may cause staff to avoid questions which they should ask.*

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- 6.31. There has been an increase in the grant rate of flagged cases in March to May 2014 (the first full three months after the Observer article).<sup>71</sup> Senior managers should monitor this trend to ensure that caseworkers are assessing cases in accordance with training and guidance.
- 6.32. A senior manager considered that it was '*a natural human reaction*' for staff to be cautious following the Observer article, but also said that all managers should be '*giving people the confidence that they can ask questions as long as they are appropriate*'.
- 6.33. Caseworkers need to be sensitive towards an applicant's circumstances and experiences. However, this must not be at the expense of robust scrutiny of the asylum claim.

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71 This is derived from management information provided by the Home Office, to which the same caveats as those in footnote 70 apply.

# APPENDIX 1: ROLE & REMIT OF THE INDEPENDENT CHIEF INSPECTOR

The role of the Independent Chief Inspector ('the Chief Inspector') of the UK Border Agency (the Agency) was established by the UK Borders Act 2007 to examine and report on the efficiency and effectiveness of the Agency. In 2009, the Independent Chief Inspector's remit was extended to include customs functions and contractors.

On 26 April 2009, the Independent Chief Inspector was also appointed to the statutory role of independent Monitor for Entry Clearance Refusals without the Right of Appeal as set out in section 23 of the Immigration and Asylum Act 1999, as amended by section 4(2) of the Immigration, Asylum and Nationality Act 2006.

On 22 March 2012, the Chief Inspector of the UK Border Agency's title changed to the Independent Chief Inspector of Borders and Immigration. This followed a decision by the Home Secretary in February that year to transfer the Border Force functions from UKBA back into the Home Office.

On 26 March 2013, the Home Secretary announced that the UK Border Agency would be abolished and all remaining functions would also transfer back to the Home Office.

The Chief Inspector's statutory responsibilities remain the same. The Chief Inspector is independent of the Home Office and reports directly to the Home Secretary.

## APPENDIX 2: GLOSSARY

<b>A</b>	
Asexuality	This may be considered as a lack of sexual orientation, as opposed to LGB orientation
Asylum	Protection given by a country, pursuant to the Refugee Convention of 1951, to someone with a well-founded fear of persecution in their home country
Asylum Casework Directorate (ACD)	The part of the Home Office that processes claims for asylum
Asylum Screening Unit (ASU)	The Home Office unit in Croydon which is the lead location for asylum applications and also conducts screening interviews
<b>C</b>	
Case Information Database (CID)	A database used by the Home Office, designed to record all applications for leave to remain and to record what has happened in each case
Caseworker	A Home Office official whose role is to interview asylum applicants and make decisions on cases
Country of Origin Information (COI)	Information used in various stages of the refugee status determination process. It should inform decision makers and legal advisers about the political, social, cultural, economic, and human rights situation of a particular country, as well as humanitarian situations
<b>D</b>	
Designated Judge	A judge within the First-tier Tribunal (Immigration and Asylum Chamber) who, as well as hearing cases, is responsible for a team of judges
Detained Fast Track (DFT)	An accelerated asylum case management process whereby certain applicants, whose claims are assessed as able to be decided quickly, are detained in immigration removal centres for the duration of their claims

Discretion test	The consideration of whether an applicant whom a caseworker has found to be LGB would behave discreetly with regard to their sexual orientation. Before <i>HJ (Iran)</i> and <i>HT (Cameroon)</i> (see below), it was common to refuse applicants on the basis that they could behave discreetly; an applicant found to be LGB and at risk of persecution if s/he behaved openly would <i>now</i> be refused only if s/he chose to behave discreetly because that was what s/he wanted to do or because of social and/or family pressures, rather than because s/he feared persecution.
<b>E</b>	
Explicit material	Photo(s) or video(s) submitted by applicants purporting to show them engaged in intimate sexual contact or actual sexual relations with another person
<b>F</b>	
First-tier Tribunal (Immigration and Asylum Chamber)	A tribunal to which applicants can appeal against many asylum and immigration decisions made by the Home Office. It is a part of the Tribunals Service.
Flag/flagging	The requirement for Home Office staff to place a marker on CID in those cases where an applicant is claiming asylum on the basis of their sexual orientation
<b>H</b>	
<i>HJ (Iran) and HT (Cameroon)</i>	<i>HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31</i> . The Supreme Court case which established how asylum claims based on sexual orientation should be approached, in particular by narrowing the scope of the discretion test
<b>I</b>	
Intersex	A group of conditions increasingly being called ‘disorders of sex development’ (DSDs) – being born with a difference of sex development or variation of sex anatomy. These conditions relate to gender identity and have separate guidance.
<b>L</b>	
LGB	Lesbian, gay or bisexual
LGBT	Lesbian, gay, bisexual or trans.
LGBTI	Lesbian, gay, bisexual, trans or intersex
<b>O</b>	

Observer article	Article published in the <i>Observer</i> newspaper on 9 February 2014, which quoted some very sexually explicit questions that had been asked in an asylum interview. The article prompted the Home Office to undertake various actions to assess and improve its handling of sexual orientation claims, including the Home Secretary's commissioning of this investigation.
<b>P</b>	
Particular Social Group (PSG)	One of the five grounds for claiming asylum set out in the Refugee Convention of 1951. Such a group must exist independently of any persecution suffered and the characteristic which defines the group must be immutable. Most claims based on sexual orientation tend to fall within the PSG category.
Presenting Officer (PO)	A Home Office official who presents appeals on behalf of the Home Office in the First-tier Tribunal (Immigration and Asylum Chamber). Their role is to be 'Officers of the Court' and to assist the court in any way necessary
Pride London	An inclusive event for LGBT people and others, aimed at both campaigning on issues and celebrating inclusivity
<b>Q</b>	
Quality Audit Team (QAT)	Home Office team which assesses the quality of its handling of asylum cases
<b>S</b>	
Screening interview ('screening')	Interview for the purpose of establishing initial information from an asylum seeker in support of his or her claim
Senior caseworker	A Home Office official who provides guidance and direction to decision-makers about the handling of asylum cases
Sexual behaviour	This denotes activities to find or attract partners for physical or emotional intimacy, and/or sexual contact.
Sexual orientation	This denotes a person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of the same, a different or more than one gender.
Stonewall	The largest LGB equality organisation in Europe, it is a charity which works across campaigning, lobbying and education.
<b>T</b>	

Trans	Trans (the umbrella expression now in use for a range of previous terms e.g. transgender). Applications from trans people are gender identity cases, with separate Home Office guidance.
<b>U</b>	
UKLGIG	UK Lesbian and Gay Immigration Group. UKLGIG is a charity that promotes equality and dignity for LGBTI people who seek asylum in the UK or who wish to immigrate to the UK to be with their same-sex partner
UNHCR	Office of the United Nations High Commissioner for Refugees. UNHCR is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide.

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