



Home Office

# Asylum Policy instruction

## Sexual orientation in asylum claims

Version 6.0

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# About this guidance

This guidance tells you about the consideration and management of asylum claims made on the basis of sexual orientation. It provides specific guidance on:

- how to consider asylum claims made on the basis of sexual orientation at both the screening and substantive asylum interviews
- the additional considerations decision-makers should have in mind when assessing asylum claims that could include issues to do with sexual orientation
- how to take sexual orientation issues into account when looking at the persecution experienced and whether there has been a failure of state protection
- how to objectively consider future fear within the legal, political and social context of the country of origin

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then you can contact the Asylum Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the guidance rules and forms team.

## Clearance and publication

Below is information on when this version of the guidance was cleared:

- version 6.0
- published for Home Office staff on 3 August 2016

## Related content

[Contents](#)

# Introduction to sexual orientation in asylum claims

## Purpose of instruction

This instruction explains how caseworkers should consider claims made on the basis of sexual orientation. This is to make sure that the relevant information is obtained in order to make a balanced decision so that we grant protection to those who face persecution because of their sexuality and refuse protection to those who do not.

In all interviews, caseworkers as representatives of the Home Office are expected to maintain high professional standards and treat claimants with respect and sensitivity throughout.

This instruction must be read in conjunction with the main asylum policy instructions, in particular:

- Asylum interviews
- Assessing credibility and refugee status
- Considering and deciding a claim
- Gender issues in the asylum claim
- Gender identity issues in the asylum claim

This instruction applies to all Home Office staff who interview and consider asylum claims brought on grounds of sexual orientation.

## Background

Some asylum claims are based on a fear of persecution relating to sexual orientation. For many, discussing such matters may be unfamiliar to them and having to do so in an asylum interview, may prove additionally daunting. The asylum interview is a key part of the asylum process because it is the main opportunity for the claimant to provide relevant evidence about why they need international protection and for caseworkers to test that evidence. It is important that claimants disclose all relevant information at this stage and that caseworkers fully investigate the key issues through a focused, professional and sensitive approach to questioning, particularly as some evidence may relate to sexual violence. Such evidence is crucial in making sure that:

- asylum claims are properly considered
- decisions are sound
- when protection is granted, it is granted to those who genuinely need it
- protection is refused to those who do not need it

## Policy objectives

The policy objectives when conducting an asylum interview are:

- to provide an opportunity for the claimant to put forward sufficient evidence to establish their case
- to encourage full disclosure of all relevant facts, allowing the caseworker to investigate and consider the evidence about a particularly sensitive topic to identify and protect those who would face persecution if returned to their country of origin
- in the case of claims based on a risk of persecution for being lesbian, gay and bisexual (LGB), to establish whether a claimant is in fact LGB and the relevance of that to the asylum claim

## The best interests of the child

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK.

Officers must not carry out the actions set out above in this instruction in respect of children or those with children without having due regard to the section 55 duty. The statutory guidance under section 55, Every child matters - change for children, sets out the key principles to take into account in all activities.

The statutory duty in respect of children includes the need to demonstrate that:

- children are treated fairly and sensitively
- the child's best interests are made a primary (although not necessarily the only) consideration when making decisions affecting children
- asylum applications are dealt with in a timely and sensitive fashion
- identification of those who might be at risk from harm

This duty must be considered throughout the process.

## Language and terminology

LGB is an acronym used in many western cultures for 'lesbian, gay or bisexual'. It is often used to encompass a person's social identity and community. Although LGB is used as a collective phrase, this does not suggest that LGB people are a homogeneous group with a shared or collective identity, representation or experience of linked issues.

The issues faced by each distinct group of individuals can vary considerably by country and or region. In other cultures, this term or even the term homosexual is not used as a form of self-identification by people with a same-gender physical, romantic and/or emotional attraction. The term may exist but have very different connotations and may not imply any shared social identity or particular community affiliation based on sexual orientation. In some countries, there are no non-derogatory terms used when referring to lesbian, gay or bisexual individuals, or clear distinctions made

between sexual orientation and gender identity. For example, gay men in Jamaica are referred to as 'batty-men' and lesbians as sodomites. In Cuba, some transgender women refer to themselves as homosexual, as the term 'gay', in their culture refer to effeminate men. In others, no distinction is made between non-conforming sexual orientation and non-conforming gender identity. The term 'homosexual', due to its clinical etymology, may be offensive to some. The term 'gay' is one which is more globally used and recognised as being more neutral as a descriptor. In all instances, caseworkers should establish the terminology preferred by the claimant.

In some countries, in particular in the context of work on HIV/AIDS, the term 'men who have sex with men' (MSM) is used as a descriptor for heterosexual men who have sex with men because this is the sexual activity available to them, and also to men who simply do not see themselves as gay although their sexual conduct coincides with what others see as being gay. Nevertheless, as a result of 'globalisation' (in particular through the use of the internet and through activism), self-identification as LGB is spreading across countries.

The United Nations' High Commissioner for refugees (UNHCR) Guidelines on International Protection ([No. 9: Claims to refugee status based on sexual orientation and/or gender identity](#)) note the following definitions:

- lesbian: a lesbian is a woman whose enduring physical, romantic and/or emotional attraction is to other women
- gay men: gay is often used to describe a man whose enduring physical, romantic and/or emotional attraction is to other men, although gay can also be used to describe both gay men and women (lesbians)
- bisexual: bisexual describes an individual who is physically, romantically and/or emotionally attracted to both men and women

The [Yogyakarta principles](#) on the application of international human rights law in relation to sexual orientation and gender identity, (March 2007) define sexual orientation in the following manner:

- '...is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender'

This definition involves emotions and affections and not purely conduct or behaviour and draws the distinctions that sexual behaviour is not always in line with sexual orientation and that harassment of, or violence against, gay men and lesbians is often not solely because of their sexual behaviour, but also (or even more so) because of their identity, and/or non-conformity with prescribed gender roles or expected sexual morality.

Key considerations are:

- caseworkers must not stereotype the behaviour or characteristics of lesbian, gay or bisexual persons

- it is important to recognise that some individuals may hold a completely different perception of their own sexual orientation from those implied by the term LGB, or may be unaware of labels used in Western cultures: they may be unwilling to use the labels used in their language
- it will be necessary to establish how the claimant perceives themselves and how their behaviour or characteristics are perceived by the society which they are from

Caseworkers should be aware that interpreters may be using labels in the claimant's original language which are derogatory because no adequate translation exists, and that this may impact on the conduct of the claimant in interview. See Interpreter arrangements for further guidance.

## Handling claims from transgendered individuals

This instruction does not deal with the handling of gender identity based claims which includes claims from transgender or intersex individuals. Transgender describes people whose gender identity and/or gender expression differs from the biological sex they were assigned at birth. Transgender is a gender identity issue, not a sexual orientation issue and a transgender individual may be heterosexual, gay, lesbian or bisexual. It should, however, be considered that, whilst the experiences of discrimination and persecution for transgender people are often distinct, they may, in addition, experience discrimination and persecution due to other characteristics. For example, a person may have had gender re-assignment or dress in the manner of the opposite sex. A transgender woman may be perceived to be lesbian even after gender reassignment if her 'new' gender is not acknowledged. A transgender woman may be vulnerable as a woman and as a transgender person.

Intersex is a perfectly naturally occurring variation of human development and an intersex person may have a number of different variations in their physiology such as the biological attributes of both sexes or they may lack some of the biological attributes considered necessary to be defined under strict medical definitions as male or female. There is no evidence which links specific sex characteristics to sexual orientation or gender identity and an intersex person may identify as straight, gay, lesbian, bisexual or asexual, and may identify as female, male, both or neither. The extent to which intersex people may be transgender is a much-debated point, since not all intersex people disagree with the gender assigned to them at birth.

Separate instructions exist to consider the handling of gender identity claims. They can be accessed at the following link: [Gender identity issues in the asylum claim.](#)

### Related content

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# Legislation and legal framework

## The 1951 Refugee Convention

Claims relating to sexual orientation are primarily recognised under the 1951 Refugee Convention ground of membership of a particular social group, but may also be linked to other grounds, such as political opinion and religion, depending on the circumstances.

## EU law

The [European Council Directive \(2004/83/EC\)](#) of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection provides a framework for determining whether a person is a refugee. The Directive was transposed into UK law through the [refugee or person in need of international protection \(qualification\) regulations 2006](#) and through changes to the Immigration Rules, and has applied to all protection-based claims since 9 October 2006.

Article 2(c) defines a refugee as a third country national who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country.

Article 10(1) (d) notes that:

depending on the circumstances of the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States.

## Caselaw

The European Court of Justice ruled, in December 2014, in the cases of [C-148/13](#), [C-149/13](#) and [C-150/13](#) (otherwise referred to as the ECJ December 2014 A, B and C judgment). This ruling addresses the issue of what evidence can be used to assess asylum claims brought on the basis of sexual orientation. Specifically, the court ruled that:

- questions based solely on stereotypical behaviour cannot be relied on in order to assess evidence put forward by a claimant: any assessment made solely on the basis of stereotyped notions associated with homosexuals will not satisfy the requirements of EU law, in that it does not allow those authorities to take account of the individual situation and personal circumstances of the claimant for asylum concerned
- detailed questioning in regard to sexual practices must not be asked: any such questions are contrary to the fundamental rights guaranteed by the EU Charter

of Fundamental Rights and, in particular, to the right to respect for private and family life

- sexually explicit evidence, even if it is provided voluntarily by the claimant, must not in any circumstances be accepted: such evidence does not necessarily have probative value and would of its nature, infringe human dignity, the respect of which is guaranteed by the EU Charter of Fundamental Rights: the effect of authorising or accepting such types of evidence would be to incite other claimants to offer the same and would lead, in effect, to requiring claimants to provide such evidence
- an adverse credibility finding cannot be made merely because a claimant did not raise issues of sexual orientation on the first occasion in which they claimed asylum

The Court of Justice of the European Union (CJEU) ruling also made it clear that the Home Office do not have to accept someone is LGB simply because they say so. It held that such declarations merely constituted the starting point in the process and were subject to proper assessment of the facts and circumstances.

[The Supreme Court in HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department \[2010\] UKSC 31](#) sets out the approach to take when considering asylum claims on the grounds of sexual orientation in terms of how to consider whether an individual's fear is well founded through an examination of their behaviour on return and the consequences of such behaviour.

## Applying the legal framework

### Considering the convention

In considering race as a convention reason, whilst actual or attributed racial identity is not specific to LGB cases, sexual orientation may affect the form that persecution takes in race-related cases. For instance, a particular racial group may target LGB persons not conforming to moral codes within their group in order to assert the group's racial 'superiority' or 'purity' for example by 'purging' the group of perceived 'impure' elements. Religion may also be a relevant factor in sexual orientation claims, such as where the attitude of religious authorities towards LGB people is hostile, or where being LGB is seen as an affront to religious beliefs in society.

In regard to national identity, while this is not specific to LGB persons, there may be occasions where it operates in tandem with sexual orientation to explain an individual's fear of persecution. For instance, a particular ethnic group may express hostility and discrimination towards LGB people that is not experienced by the LGB community in other parts of the country. In considering political opinion as a convention reason, where LGB practices are viewed as contrary to the policies, methods or beliefs of the potential actors of persecution, a claimant may apply for asylum based on a fear of persecution for acting in opposition to political opinion.

Further detailed guidance on in how to consider convention reasons can be found in the Assessing credibility and refugee status guidance.

The key considerations, which caseworkers should note, are that an asylum claim does not have to be on one convention ground only and whilst the claimant is required to establish that they have a well-founded fear, they are not required to identify accurately the convention reason for it. As with all other applications, someone who may not qualify for international protection under the 1951 Convention could nevertheless qualify for Humanitarian Protection (Subsidiary Protection). See Humanitarian Protection for further information.

## Determining membership of a Particular Social Group (PSG)

To consider whether an individual can be recognised as a member of a particular social group, it is important to have reason to conclude whether or not they are LGB, or would be treated as such, and whether LGB people are perceived to have a distinct identity in their country of origin.

Regulation 6(1) (d) of the Qualification Regulations states that:

- A group shall be considered to form a particular social group where, for example:
  - members of that group share an innate characteristic, or a common background that cannot be changed
  - or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it
  - that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society

The [European Council Directive \(2004/83/EC\)](#) and the [UNHCR guidelines on international protection no. 9: Claims to Refugee Status based on Sexual Orientation](#) confirm that, as understood in refugee law, a particular social group can be based on sexual orientation. LGB people in most countries will meet this definition and will thus form members of a PSG. If decision-makers are in doubt as to whether a person may be part of a PSG, they should refer to the Assessing credibility and refugee status guidance and/or discuss the case with a senior caseworker (SCW).

Caseworkers should also take note of the European Court of Justice ruling in the cases of [Joined Cases C-199/12 to C-201/12 \(\[2013\] WLR\(D\) 427, \[2013\] EUECJ C-199/12\)](#). The court ruled that the existence of criminal laws which specifically target homosexuals supports the finding that those persons must be regarded as forming a particular social group as they are identified through their 'difference'.

**Related content**  
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# Preparing for interview: LGB specific issues to consider

## Consideration of sexual orientation

A claimant may qualify for asylum when they fear persecution on account of their actual or perceived sexual orientation that does not, or is deemed not to conform to prevailing political, social or cultural norms in their country of origin. An asylum claim may also be founded on the basis that the claimant will be perceived to be LGB regardless of their actual sexual orientation. In such a claim, the emphasis is likely to be on factors perceived to indicate that someone is LGB in their country of origin.

An LGB person's sexual orientation is not solely, or even necessarily partly, defined by their participation in sexual behaviour and, in any case, this aspect of their behaviour may, in some claims, be irrelevant due to factors such as religious beliefs or cultural restrictions.

Caseworkers should note that when preparing for interview, a number of issues may present themselves which may cause the process to be especially challenging. This can include the following:

## Stigmatisation, shame and secrecy

Some LGB people may originate from countries in which they are made to feel ashamed, humiliated and stigmatised due to their sexual orientation. This may be through homophobic attitudes, instilled within children in early years that being gay is shameful and wrong. This can be compounded where the individual is made to feel different and separated from their peers, causing such negative messages to become internalised. Claimants may reference in their narratives, elements of strong disapproval from external sources, indicating that the claimant's sexual orientation and or conduct is seen to be unacceptable, immoral, sinful, and socially disgusting. This can emanate from many sources including the following;

- family
- friends
- teachers
- colleagues
- neighbours
- organisations of state
- law enforcement agencies
- religious leaders and political groups
- it may also arise from cultural customs and legislation

Where evidence of stigmatisation has been presented, caseworkers should explore whether the disapproval has been targeted generally against the LGB community or

directly against the claimant, and if so, what particular social, legal, cultural or religious norms the claimant feels their persecutors believed they were transgressing. Exploring the nature of the stigma the claimant has experienced, may enable the claimant to present a more coherent narrative around any feelings they had of being different or alienated and how such feelings may have impacted upon and determined their behaviour in respect to developing and expressing their sexual orientation.

A recognition that the claimant's sexual orientation or conduct is disapproved of, either by their family or because of legal, cultural or religious mores, may lead some LBG claimants to have developed beliefs that their sexual orientation is in fact 'wrong' and which needs to be either changed and more probably, hidden. In avoiding hostility, discrimination and possibly criminal sanctions, many claimants may have kept aspects of and sometimes, large parts of their lives secret. Many will have engaged in avoidance strategies, such as, only revealing their orientation to a very limited circle of people (or to no one at all), or abstaining from any sexual or emotional relationships or living extremely discreetly. Some will have, in addition to hiding their sexual orientation, evaded detection by engaging in lifestyles that conform to normative cultural heterosexual stereotypes.

### Painful self-disclosure

Recognising, understanding and accepting one's own sexual orientation, if it differs from mainstream social expectations, can be a long and or painful process, and in some instances, may only come in later stages of life. In such cases this must not be seen as undermining the 'genuineness' of an individual's claim. Many claimants may come from cultures which shun any open discussion of sexual orientation and it should be noted that LGB activity and identity will be often be surrounded by taboo, stereotypes and prejudice and be seen as being contrary to the fundamental moral, religious and political values of many societies. Discussing matters such as sexual orientation will for many, in the official context of an asylum interview, be extremely daunting. It is to be expected that some LBG asylum seekers may struggle to talk openly about their sexual orientation and find it difficult to disclose material information in a coherent or detailed manner.

Where stigmatisation may have inhibited an individual in coming to terms with their true sexual identity and openly expressing it, feelings of self-denial and shame may persist and some claimants may find it extremely difficult to talk freely and openly about the development of such identity. This may render the process of fact finding, in some cases, challenging and caseworkers should be aware that a sexual orientation claim can be linked to some of the most sensitive, intimate areas of an individual's private life such as emotions, affections, love and companionship.

Caseworkers are required to explore the claimant's feelings about their sexual orientation in a sensitive manner and where narratives of shame are presented, explore its impact on the claimant and what coping strategies or responses they may have adopted to deal with this, for example, whether the claimant found relief, support or guidance in religion, work, or friendships. It is equally important to explore

any strategies adopted where the claimant chose to hide or deny their sexual orientation.

## Capacity to present a claim

Caseworkers should be aware that some claimants may find it difficult to substantiate their claim or provide full disclosure of sensitive information. Discrimination, hatred and violence in all its forms may impact detrimentally on a claimant's capacity to present their claim and, where a claimant is in the process of coming to terms with his or her sexual orientation, or where they openly fear expressing it, they may be reluctant to identify the true extent of the persecution suffered or feared.

Caseworkers should also note that for those whose LGB identity has come to notice, many will have experienced rejection or persecution from within their own families and community and as such, may have had a much reduced, or no, supportive circle to turn to for support. In many cases, the harm suffered will have been experienced within a private, emotional and psychological sphere and as such, in comparison to other types of claim, this may limit the availability of any documentary evidence available to them to present their case. Additionally, discrimination and oppressive environments can often lead to a lack of information about the actual treatment of LGB persons within a particular country.

## Key considerations

Caseworkers and interviewers should therefore make sure that:

- the human dignity of the claimant is respected
- an open and reassuring environment is established to help build trust between the interviewer and the claimant
- assurances are given to the effect that information provided will be treated in confidence and in a non-judgemental manner
- they are sensitive to the fact that the asylum interview may well be the first occasion on which some individuals have needed to speak about their sexual orientation and that they may feel reluctant to speak openly about these issues when being questioned by figures of authority: they may not have felt either willing or able to disclose this information at for example, screening, which may be in a more open and public place and this will need to be explored in greater depth at interview
- they explain to asylum claimants that they have to relate their reasons for having made a claim
- they must not make an adverse credibility finding solely on the grounds that a claimant did not raise issues of sexual orientation on the first occasion that they claimed asylum, that is at screening, for further information see Establishing credibility during the interview



## Treatment that could amount to persecution

### Harm and violence

A climate of hostility including acts of violence, persecution and serious discrimination can exist in a particular country even when homosexual activity is not specifically laid down as criminal in a penal code or legal statutes or where laws do exist but are not enforced. Hostility and violence can be committed against LGB persons by non-state agents, such as mob or family violence, or violence perpetrated by other members of the public.

Claims made by people on the basis of their sexual orientation will often highlight a fear of being vulnerable, 'singled out' and suffering harm. LGB based claims can reveal exposure to extreme levels of physical harm, including the following:

- execution
- honour killing
- torture
- medical abuse
- inhuman or degrading treatment
- physical or sexual violence
- curative rape
- beating and other forms of physical abuse

Claims may also highlight psychological harm which be manifested through such measures as:

- arbitrary detention
- intimidation
- mob violence
- homophobic bullying
- forced prostitution
- and limitations on the freedom of movement

Caseworkers and interviewers should make sure that the interview establishes, where possible, whether the actual past or feared future threats came from state agents enforcing legislation or whether the persecution was a result of societal discrimination and general homophobia: either may be a basis for establishing a claim.

Caseworkers should also be mindful of the impact felt by some claimants arising from the harm and discrimination inflicted upon them by external sources. Such impact can take the form of:

- depression
- anxiety
- isolation
- post-traumatic stress
- suicidal tendencies and attempts

- self-denial
- hatred
- shame and guilt
- stress related psycho-somatic symptoms and diseases

## Discrimination

Hostility or the threat of violence towards LGB individuals need not be the prevailing feature of persecution. Discrimination may also represent a form of harm. This may be manifested in measures such as:

- socio-economic discrimination in school
- work or in accessing social services
- unemployment
- lack of access to health services
- lack of career opportunities
- exclusion from family support such as rights to inherit

Other forms of harm can be related to a country's legal system such as where same-sex relations and behaviour are criminalised, (even when not enforced), or where impunity is provided to those who persecute. Harm can also take the form of being excluded from religious groups and activities or excommunication and exclusion from cultural heritage and local communities. Discrimination and societal disapproval may not in themselves amount to persecution but, if expressed in an extreme way and without effective protection from the State, then outright hostility, general discriminatory measures and the cumulative effects of harassment, threats and restrictions can constitute persecution.

To establish a claim under the Refugee Convention the treatment feared must amount to persecution. Someone could face societal discrimination but this will not amount to persecution, nor establish a claim, unless it is of the level of severity that makes it persecutory in nature. A discriminatory measure, in itself or cumulatively with others, may however amount to persecution if it led to consequences, which were of a substantially prejudicial nature for the person concerned. For example, it may, depending on the facts of the case, amount to persecution if the discrimination has resulted in sufficiently serious consequences for the person concerned such as:

- serious legal, cultural or social restrictions on rights to, or ability to earn, a livelihood
- serious legal, cultural or social restrictions on rights to, or ability to enjoy, private and family life
- serious legal, cultural or social restrictions on rights to, or ability to enjoy, freedom of opinion, expression, association or assembly
- restrictions on political enfranchisement
- restrictions on the choice to practise or not practise a religion
- restrictions on access to public places
- restrictions on access to normally available educational, legal (including law enforcement), welfare and health provision



## Criminal sanctions

In the Court of Justice of the European Union ruling, in the cases of Joined Cases C-199/12 to C-201/12 ([European Court of Justice ruling: EUECJ/2013/ Joined Cases C-199/12 to C-201/12](#)), the court ruled that the criminalisation of homosexual acts does not in itself, constitute an act of persecution. However, a term of imprisonment which is a sanction against homosexual acts and which is actually applied in the country of origin which has adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.

The issue for caseworkers in considering whether legal provisions will amount to persecution (for example if there is a real risk of serious harm) is how such provisions are interpreted, whether they are applied in practice and their impact upon the claimant. Where the country of origin information does not establish whether or not, (or the extent to which) the laws are actually enforced, any pervading and generalized climate of homophobia could be indicative evidence that LGB persons are being persecuted.

In order for the presence of criminal sanctions against homosexual acts to amount to persecution (or to a threat of persecution), the sanctions must be at a certain level of severity, namely imprisonment rather than simply a fine, and these sanctions must be applied in practice. If there are criminal sanctions that are never, or even hardly ever, imposed in practice, then a claimant cannot demonstrate real risk on this basis. However, caseworkers must be aware that the severity of societal discrimination could in itself meet the required threshold, so this must be considered as well. If the legal provisions are not applied in practice, then someone cannot rely on criminalisation to demonstrate real risk, the risk must be considered in light of the practical application of the rule of law in the country to which the claimant is returned.

## Country information and guidance reports

Before interviewing a claimant, assessing credibility, considering internal relocation or deciding whether there is a need for protection, decision-makers should be aware of the status and treatment of LGB individuals in the claimant's country of origin. This should be by reference to the specific sections on handling claims made by LGB persons in COI and country-specific guidance products provided by the Country Policy and Information Team (CPIT) and other relevant background material.

This awareness includes, but is not limited to:

- the social cultural and religious norms of the country and how these affect the general response to LGB individuals
- the level of 'visibility' of LGB communities, including the presence of specific social, campaigning or support groups
- the efficacy of specific protection against violence available to 'identifiable at-risk groups' within the country, including LGB persons

- the legal status of LGB persons, including: criminalisation of same-sex sexual conduct (including whether implemented or not), recognition of same-sex relationships; any discriminatory measures

If information about LGB persons in a particular country is not available within existing country information and guidance products and it is essential to the case, a case specific research request should be made using the online country of origin information request form.

The relevant sections of Assessing credibility and refugee status should also be taken into account regarding actors of persecution and the sufficiency of state protection. See also Considering the option of internal relocation.

The LGB community represents a particular claim group, on whom it can be sometimes difficult to obtain relevant, current and accurate information. This can be because individuals within such groups may opt to live discreetly and/or because there is a lack of reporting on their treatment in the country of origin. As in all claims, the burden is on the applicant to establish their case.

Where there is a lack of country of information (COI) on the treatment of LGB individuals, this should not automatically lead caseworkers to make either the conclusion that the claim is unfounded or that there is no persecution of LGB individuals in that country. If there is limited or no evidence of persecution this could mean either that such harm takes place and is not reported or that there is no real risk of such harm in the first place. Caseworkers must not speculate there might be risk based on someone's assertions alone without further information. Caseworkers need to look at all available information about the position of minority LGB communities and groups. Where required, in considering the credibility of the claimant's account, CPIT should be approached for information.

If gay travel guides are referenced as a source of country evidence, it must be noted that the perspectives provided may not be applicable to locals. Such guides, if required, must be used critically and their content will require context and corroboration.

## **Non-state agents of persecution and state protection**

### **Protection**

Persecution can be perpetrated by the state in a number of ways. This may be through laws and the implementation of those laws which implicitly discriminate against LGB persons. This can involve prosecution, punishment, or the denial of judicial redress which is disproportionate or discriminatory. It can also be because certain elements of the state target, discriminate against, or treat differently, LGB persons through legal, administrative, police, or judicial measures, for example prosecution for petty crimes by police or restrictions on access to healthcare.

Usually, the harm inflicted, whether by state actors or non-state actors is intentionally directed at the claimant as a result of their sexual orientation. However, there can be

situations in which the harm experienced is because the claimant does not have access to appropriate protection because of their sexual orientation.

Individuals may be subject to abuse resulting from social customs or conventions because there is no effective means of legal recourse to prevent, investigate or punish such acts. Such failure of state protection may include, but is not limited to:

- lack of police response to pleas for assistance
- reluctance, refusal or failure to investigate, prosecute or punish individuals
- encouragement or toleration of particular social, religious or customary laws, practices and behavioural norms or an unwillingness or inability to take action against them (for instance, a state may not necessarily have laws criminalising same-sex relations but may continue to condone or tolerate societal or familial violence against gay, lesbian or bisexual people)

It should also be noted that a lack of access to appropriate protection can include situations where, for example, an LGB person may be afraid to report a crime against them to the police, because they are afraid of suffering additional harm from the police on the basis of their LGB identity.

## Key considerations

Where there is evidence of societal persecution, caseworkers will need to consider / explore:

- the extent to which a sufficiency of protection exists
- whether such acts of societal persecution are knowingly tolerated by the authorities
- whether the authorities refuse, or prove unable, to offer sufficient protection
- fear of future harm, even where a claimant has successfully avoided harm through life style choices, a fear of harm will always be present

## Effective Protection

Sufficiency of protection must be considered within the context of available country of origin information. Protection is generally considered effective when the state takes reasonable steps to prevent the persecution or suffering of serious harm, and where the claimant has access to such protection. It may not always be possible to access levels of protection from the state because of the general hostility that exists toward people who are LGB.

Even where laws criminalizing same-sex conduct have been repealed or other positive measures have been taken, such reforms may not result in any positive impact in either the immediate or foreseeable future regarding how society generally regards people with differing sexual identities. The existence of certain elements, such as anti-discrimination laws or the presence of LGB organisations and events may not be sufficient to undermine a well-founded fear held on the part of the claimant. Societal attitudes may often not be in line with the law and prejudice may be entrenched, giving rise to continued risk where authorities fail to enforce protective laws.

These areas must be fully explored and due consideration given to the fact that a claimant's fear of the authorities might prevent them from approaching those authorities for protection. General homophobia and intolerance of the LGB community may contribute to the lack of state protection, regardless of whether same sex relationships are criminalised. It is reasonable to ask whether redress was sought and/or to explore any reason for not seeking protection.

## Key reading

See 'Sufficiency of Protection' in the Assessing credibility and refugee status guidance

## Failure of Protection

The ways in which particular laws, social policies or practices (including traditions and cultural practices) are implemented may constitute or involve a failure of protection. For example:

- a law, policy or practice may have a 'legitimate' goal, for example, the maintenance of law and order out of respect for genuine religious or social sensitivities, but be administered through persecutory means
- the penalty for non-compliance with the law or policy may be disproportionately severe against the LGB community
- a law, policy or practice may not be enforced in practice and therefore may fail to deter or prevent the banned behaviour
- it may be difficult to report abuse to the police because of a culture of discrimination against LGB people within the police force
- there may be police tolerance of, or collusion in, discrimination and / or violence against LGB people
- a law, policy or practice which is not enforced, such as an unenforced law criminalising same sex relations, may result in lack of protection for LGB individuals and impunity for non-state actors, or may enable extortion and harassment by the police

## Reasonableness of seeking protection

In many cases it will not have been reasonable or possible for an LGB claimant to alert the authorities to their need for protection. This may be because protection may not be forthcoming or because, where there are criminal sanctions against LGB practices, the claimant is regarded as an offender rather than a victim. It may also be the case that the police tolerate attacks on LGB persons because of discrimination within the police force itself. A victim of an attack who approaches the police will in some countries be at risk of attracting additional persecution, either from members of the police force or by others who are passed information by members of the police force. Reporting an attack very often requires a declaration of sexual orientation and it may not be realistic to expect a person to officially 'out' themselves to state authorities. Each case must however be assessed on its individual merits in the light of country of origin information and guidance.

**Related content**  
[Contents](#)

# Conducting the interview

## Interpreter arrangements

Claimants are asked at the screening interview if they would like a male or female interviewer.

A request, made in advance, by the claimant for an interviewer of a particular gender should normally be met and, if that request cannot be met on the scheduled day, the interview should normally be re-arranged. This applies to the interpreter also, as far as practically is possible.

Where it is known that the asylum claim includes sexual orientation issues, it will be useful in advance of the interview to establish with the interpreter the available words in the language of origin and whether they carry any derogatory connotations. This is because the familiar western terms of 'homosexual', 'gay' or 'bi' may not, when translated, be used as forms of self-identification by all people (or in particular cultures) and, while the terms may exist in certain cultures, they may have very different and possibly derogatory connotations.

The interviewer should establish what words are to be used in both English and in the individual's native language of origin to reference, as appropriate:

- the concepts of hetero, homo and bi-sexuality
- the way in which the interpreter will explain any contact or encounters
- to ensure they do not cause offence or imply a derogatory connotation

## Language issues

Caseworkers should also be aware that the concept of 'sexual identification' or 'orientation' is not represented in all languages, and that certain words in such languages can imply that the behaviour to which they refer is inappropriate or 'sinful'. As a result, claimants may use unfamiliar words and phrases. Some people may not identify with the labels 'LGB'. Language used to discuss sexual orientation should be that which the claimant uses to perceives them self.

## Discharging the burden of proof

In order to qualify for asylum, a claimant must have a well-founded fear of persecution on the basis of their sexual orientation: the required threshold of which is to a 'reasonable degree of likelihood'. If an individual is claiming to be at risk on the grounds of sexual orientation, it follows that they will need to establish their case to a reasonable degree of likelihood that they are or are perceived to be of the sexual orientation in question.

Whilst a claimant must substantiate their claim and will be expected to put forward their reasons for claiming asylum so that all relevant information can be considered, caseworkers should, as good practice, assist the claimant to discharge this burden. The interview should be conducted as a sensitive enquiry into the development and

exploration of the claimant's sexual orientation and the extent to which it is relevant to the assessment of the need for protection. By putting a claimant at ease and approaching the interview with sensitivity, this can help a claimant to disclose, potentially, what is sensitive information early in the process.

Caseworkers should assist the claimant by:

- ascertaining the relevant aspects of the claim
- encouraging disclosure of all relevant information
- obtaining all the available information relevant to the claimant's case

To achieve this, the focus of the interview must be on allowing the claimant to provide a narrative that supports their claimed sexual orientation. It should never be an enquiry into any explicit sexual activity.

The provision of any extrinsic supporting evidence is not a prerequisite for a genuine claim. The Home Office accepts that most claimants may not be able to provide any extrinsic evidence. The Supreme Court has confirmed in [RT \(Zimbabwe\)](#) that there are no hierarchies of protection amongst the Convention reasons. In such circumstances it would be discriminatory to expect claimants with sexuality based claims to surmount a higher hurdle of providing extrinsic evidence to corroborate their claims. Where a claimant has extrinsic evidence, it will be considered, for example membership of LGB dating sites or support groups. We do not consider sexually explicit material as this is prohibited. Where a claimant has no extrinsic evidence, we will consider the claim based on their own credibility and consistency of statements with what we know. This position is supported by the Qualification Directive.

To enable claimants to present their case, it may be necessary to ask questions about where claimants have socialised or whether, for example, they have been members of clubs, groups or organisations, including through social media. Where a claimant has indicated that they have interacted with the LGB community, questions enabling the claimant to detail their knowledge and/or interactions with LGB contacts, groups and activities (in either their country of origin or the UK) may be useful. It is important however to note, that claimants who were not, or are not, open about their sexual orientation may not have information about LGB venues or culture. Ignorance of commonly known meeting places and activities for LGB groups is not necessarily indicative of claimant's lack of credibility. Lack of engagement with other members of the LGB community in the UK or failure to join LGB groups may be explained by economic factors, geographic location, language and/or cultural barriers, lack of such opportunities or a fear of exposure. It may also be through personal choice.

Any perceived lack of contact with the LGB community, is a relevant area of investigation to explore and they should be considered on a case by case basis, in the round with all other evidence.

While the interview is the primary opportunity for claimants to present their case, caseworkers must be able to guide and control the interview to make sure



compliance with the CJEU ruling in the cases of [C-148/13](#), [C-149/13](#) and [C-150/13](#) in regard to sexually explicit narratives. Under EU law, it is prohibited to ask sexually explicit questions. Further advice on how to do this can be found the Handling sexually explicit material guidance.

## Imputed sexuality

There may be some cases in which a claimant asserts that they would be persecuted in their home country on the basis that they are considered to be gay or lesbian or bisexual, even though they are not. A claimant can qualify for asylum due to being perceived to be LGB even when they may not be so.

In such cases, the issues must be fully investigated and questioning must facilitate as detailed an account of someone's experiences relevant to their claim for protection as is possible, in order to establish all material facts. Claimants will need, in establishing a valid asylum claim, a causal link between their well founded fear and a Convention reason of race, religion, nationality, political opinion or the membership of a particular social group. The consideration which must be made is to be found in para 82 of the test which was established by the Supreme Court in [HJ \(Iran\) and HT \(Cameroon\) v SSHD \[2010\] UKSC 31](#). It requires that, when a claimant applies for asylum on the ground of a well-founded fear of persecution because they are LGB the test to be satisfied includes consideration of the evidence of whether they would also be treated as LGB by potential persecutors in their country of nationality.

Caseworkers must note that an individual should not and cannot be required to hide their sexual orientation in order to avoid persecution. This principle has been established in both [RT \(Zimbabwe\) v SSHD \[2012\] UKSC 38](#) and [HJ \(Iran\) and HT \(Cameroon\) v SSHD \[2010\] UKSC 31](#). In cases in which a heterosexual individual is accused of being LGB in their country of origin and they would be persecuted as a result, they would still fall to be allowed asylum.

## Considering self identification as lesbian, gay or bisexual

Many LGB individuals will have lived as heterosexuals in order to avoid suffering the negative consequences that identification as being LGB entails. Many lesbian women and gay men may feel obliged to conform outwardly to family and social expectations of them and will currently or have previously lived, in heterosexual relationships, be married and/or have children. There are many reasons for which lesbians or gay men may get married, with a partner of the different sex, and hide their actual sexual orientation for years or decades which can include the desire to avoid stigma and persecution, or to live up to social or family expectations, to avoid stigma.

Evidence of existing or former opposite-sex relationships, or parenthood (both of which may need to be explored at interview) may be considered relevant in a credibility assessment, but must not be automatically taken as evidence which indicates a lack of credibility and must not lead to an automatic rejection. This applies equally, irrespective of whether the claim is based on gay, lesbian or bisexual issues. Rather, this information should be used to fully discover the material



elements of the claim. Should concerns about the credibility of a claimant who is married arise, it may be appropriate to ask questions surrounding the reasons for marriage. If the claimant is able to provide a consistent and reasonable explanation of why they are married and/or have children, that should be taken into account in weighing the credibility of evidence.

Interviewing officers should be aware that lesbian and gay relationships in some countries may bear little resemblance to relationships in the UK. The Court of Appeal in [NR \(Jamaica\) v SSHD \[2009\] EWCA Civ 856](#) has made it clear that what is relevant is 'current' identity. Many claims, especially those from countries in which criminal sanctions for homosexuality are applied, will stand on whether or not the claimant actually is LGB. The key consideration must be focused on assessing the **current** sexual orientation of the claimant. A claimant's self-identification as lesbian, gay or bisexual cannot however be accepted as an established fact on the basis solely of the declarations of the claimant. As has been noted, the European Court of Justice ruling, in December 2014, in the cases of [C-148/13](#), [C-149/13](#) and [C-150/13](#), made it clear a decision maker does not have to accept someone is LGB simply because they say so. It held that such declarations merely constituted the starting point in the process and should be subject to a proper assessment of the facts and circumstances.

A detailed account of someone's experiences in relation to the development and realisation of their sexual orientation can help to establish their credibility by establishing how and when they realised that they were of that orientation. It is therefore important to establish the range of life experiences that may have informed or affected an individual's sexual orientation or how they are perceived. The focus of any such enquiry **must not** be on sexual activity. For guidance on handling sexually explicit narratives, see Responding to a claimant's narrative: issues around sexually explicit narratives.

It is not necessary for a claimant to be in a same-sex relationship or to have had experience of one. Although these factors can be significant, they are not conclusive as to an individual's sexual orientation. It is however acceptable to investigate the existence of current or previous friendships and relationships with other LGB persons, either in this country or in the claimant's country of origin and to enquire about the nature of the relationships in question.

Caseworkers must test the evidence submitted and explore assertions made at interview. The standard of proof required is to the lower standard – that of a reasonable degree of likelihood. Any differences between statements made at screening, in any written statements and at interview should be put to the claimant, as should any conduct prior to the claim which may have a bearing on the claimant's general credibility. If there is insufficient evidence to establish that the claimant is reasonably likely to be LGB, then, having taken account of all the evidence in the round, claims can be refused.

## Key considerations

Caseworkers and interviewers should make sure that:

- all material facts which are at the core of the claim are established
- the interview should sensitively explore what the claimant is claiming as their current sexual identification
- questions asked should be open questions that allow claimants to describe their experiences and the development of their orientation (or the orientation imputed to them by their potential persecutor) and how this has affected their experiences both in their own country and in the UK
- the interview is not adversarial
- any inconsistencies or gaps within the account are fully explored and tested

## Responding to a claimant's narrative: issues around 'difference'

Most LGB asylum claimants live their lives in societies where being 'straight' is considered as the norm. From the perspective of the persecutor, the issue can be the fact that the individual is not conforming to common prevailing normative heterosexual stereotypes. In effect, the behaviour which may give rise to harm, harassment or persecution may not be LGB behaviour (or perceived LGB behaviour), but behaviour or lifestyles which are deemed not to be heterosexual enough.

Sexual orientation is a concept that creates space for an individual to explore and determine their self-identification. Its expression can range along a continuum that includes exclusive and non-exclusive attraction to the same or the opposite sex. For most people there is little or no sense of choice about their sexual orientation. While for most people sexual orientation is determined at an early age, for others they may continue to evolve across a person's lifetime. Different people realize at different points in their lives that they are LGB.

In many cases, an LGB person's first awareness of their developing sexual orientation may be a perception of feeling 'different' from other peer members of their community. Such perceptions of difference need not necessarily relate to feelings around sexuality, they may well pre-date sexual awakenings and begin in childhood. Conversely, feelings of being different may arise from the attitudes and behaviour of others towards the claimant, there could be situations where the individual is perceived by those around him as being different and which results in hostility and stigmatising behaviour by those people.

A wide variety of indicators may be presented in narratives by claimants, which may suggest a sense of being different or 'apart from'. Such indicators may include childhood behaviours indicating strong identification with the opposite gender, while for others experiences of difference may be manifested in unusual feelings and strong emotions towards another person of the same sex. Other indicators may be:

- recognition that the claimant is not like other girls/boys in childhood or adolescence
- feelings of isolation

- self-doubt and loneliness
- gradual recognition of sexual and emotional attraction to members of the same sex or feelings of not wanting to be exposed to others

Where any such issues are raised during interview, they should be explored in order to identify material facts and relevant circumstances.

Not every LGB person will have experience of, or be able to communicate any sense of being different. Caseworkers must be mindful that a narrative, from which the idea of difference is absent, should not imply that the claimant is being untruthful in presenting their claim. For some the process of understanding and accepting their sexual orientation may not have been accompanied by life changing ‘turning points’ or experiences which can be helpful in providing narrative to present their case at interview. Caseworkers should not expect narratives to contain evidence of any such turning points or milestones such as first romantic encounters, declarations of feelings to others or the joining of LGB organisations.

Conversely where a narrative does express the idea of difference, caseworkers must have no expectations of any ‘common’ themes to be presented. The development of an individual’s sexual orientation will be different for each person and caseworkers must recognise that any feelings of being ‘different’ will vary from person to person and for many, any recognition of being different may only have begun in adulthood.

Caseworkers should also be mindful that it can often be the case that in societies where sex and sexuality is a taboo or where genders are separated from each other in many spheres of life, it may take longer for LGB individuals to realise any idea of difference than societies where there is more sexual freedom and where genders are in continuous contact with each other. In societies where women are expected not to have sexual desires and or where women are in an inferior power position as compared to men, lesbians may only realise ‘difference’ later than gay men.

Where a narrative indicating difference is presented, caseworkers should never assume that it will or should be accompanied by evidence of discomfort or evidence indicating a desire not to conform to the society’s normal gendered expectations of activities and roles. For example, many gay men, as boys, may have been perfectly happy to play stereotypical male games such as football and many lesbians may have been happy to have married and become mothers.

Caseworkers should not however assume at interview, that the claimant will have experienced the idea of ‘difference’ and must never ask a direct and leading question, such as ‘when did you realise you were different’? Questions that explore ‘difference’ should focus on what realising their sexual identity meant to the individual concerned and use the non-pejorative (having an unpleasant or disparaging connotation) terminology with which the claimant has indicated they are comfortable with.

## Key considerations

Caseworkers and interviewers should make sure that:

- LGB claimants are encouraged to provide a narrative identifying key experiences important to their sexual orientation and encouraged to describe how it developed in their life
- exploration of the evidence is conducted sensitively and considered in the round, taking into consideration factors such as education, communication skills and cultural background
- the claimant is enabled to express their self-realisation of their sexual orientation (and through subsequently exploring this to facilitate a better indication of how a claimant may have experienced 'differences' in relation to the development of their sexual orientation)

## Responding to issues around sexually explicit narratives

The interview is the primary opportunity for claimants to present their case for fearing persecution on the basis of their sexual orientation. There may however be occasions during interview when they voluntarily provide narratives regarding the development of their sexual orientation which may focus on issues of sexual activity, or physical or sexual attraction.

The claimant must be allowed to make such disclosures as they wish, however caseworkers must not pursue any such narratives with further lines of questioning which may invite sexually explicit disclosure. Home Office policy is clear, **questions about claimants' sexual practices must not be asked and there are no circumstances in which it will be appropriate for the interviewer to instigate questions of a sexually explicit nature.** This includes questions about explicit sexual activity or physical attraction. Caseworkers must not ask for or seek such information. It is sufficient only to record such narratives. However, where such narratives present credibility concerns with earlier disclosures, caseworkers should explore these to seek clarity. This applies only to the events around the reported sexual activity, not the activity itself. When sexually explicit disclosures are made, caseworkers must follow the guidance below, on 'Communicating sexually explicit policy to claimants'.

There may be some LGB cases in which a claimant may indicate that they have been a victim of a sexual attack or rape, either from state authorities or from within their communities or families. The investigation of the detail of such an incident should be dealt with in accordance with the existing Home Office guidance on victims of torture or other trauma in the Conducting the asylum interview guidance. This would constitute an exemption to disclosing sexually explicit material as evidence.

## Key considerations

- the focus of the interview should be on the claimant's sexual orientation and not on their sexual activity
- questions about a claimant's sexual practices must not be asked
- there are no circumstances in which it will be appropriate for the interviewer to instigate questions of a sexually explicit nature , this includes questions about explicit sexual activity or physical attraction

- questions posed by the interviewer must be clear so that the claimant understands that the information requested does not relate to sexual activity

## Communicating sexually explicit policy to claimants

There can be several reasons why claimants may offer a narrative to substantiate their claim which predominately focuses on sexual activity. For example, this could be when they have been inappropriately encouraged to do so by other claimants or their advisers. It may, however, be genuinely the case that there is no other evidence available, or that their claim is defined by sexual activity only.

When such narratives are offered (excepting allegations of sexual attack or rape), the interviewer should make the following declaration:

‘Stop please. I am not going to ask you any detailed questions about sex. I do not want to stop you from giving us your story but, if you talk about your sex life, I will not be following up your statements with questions which ask you for further sexual detail. You need to know that we do not consider descriptions of the detail of physical sexual activity as providing evidence of your sexuality’.

There may however be circumstances, such as when the claimant has independently cited sexual activity as evidence in support of their claim, in which it is reasonable to ask questions relating to the circumstances **surrounding** the sexual activity of a claimant.

If, for example, the claimant volunteers information to the effect that their sexuality had been discovered, perhaps by a family member, or that it had come to the notice of others, it is likely to be necessary, and therefore reasonable, in order to test the credibility of any events described, to ask such questions as whether the activity took place in a public environment or if it was likely to have come to the notice of others, how it came to be known, or by whom.

Questions addressing what happened as a result, including the immediate behaviours, events, implications or consequences following an incident of detection (a sexual relationship or otherwise) from family, community or state authorities are appropriate. The purpose of the questioning must be purely to test the consistency of the account provided in order to assess credibility. There should be no exploration of the detail of the claimed sexual activity itself, European law prohibits this. It is however important, where a claimant has mentioned an incident of sexual activity, that the context of how that incident and its subsequent consequences, gave rise to the claimant’s fear of harm are covered in some detail since, in many cases this will be the information on which the credibility of the claim is likely to turn.

It is perfectly acceptable for a claimant to acknowledge that they have engaged in sexual activity. However, if it is apparent that a claimant is about to provide further detail or if a claimant actually makes reference to physical sexual activities such as penetration, kissing or oral sex, caseworkers should intervene and make the declaration above.

It is permissible to ask whether a claimant has had previous same-sex friendships or relationships (akin to a partner) in either this country or in their home country. Questions about where or how a claimant met or arranged to meet sexual partners (if cited as evidence) are appropriate as they link to questions considering the risks and consequences of being discovered, and the activities undertaken to prevent such discovery. Follow-up questions investigating how any same-sex friendships and relationships were maintained, developed and nurtured, while remaining discreet, or even secretive, are appropriate. Equally, where claimants are vague or reluctant to elaborate further about any previous partners they have cited, it is appropriate to enquire about the nature of the relationship cited. Caseworkers should not necessarily expect claimants to recall all details of previous relationships or even, in some circumstances, the names of previous partners.

Questions about the nature of any sexual activity undertaken or how often undertaken are not however appropriate.

## Key considerations

Caseworkers and interviewers should make sure that:

- when sexually explicit narratives are offered in interview (excepting allegations of sexual attack or rape), the claimant is informed that any detail of physical sexual activity will not be considered as providing evidence of sexuality
- credibility is considered through questions which relate to the circumstances surrounding any sexual activity which has been cited, these types of question are permissible
- the nature of any relationships cited in interview are investigated through sensitive questioning
- any sexual activity cited are not investigated through further questioning

## Submission of sexually explicit audio visual material

In [C-148/13](#), [C-149/13](#) and [C-150/13](#) the European Court ruled that Member States must not accept sexually explicit material. In cases in which a claimant or their legal representative seeks to submit such material, it must be refused and returned to them. Any visual material depicting sexual acts must not be accepted. Using sexually explicit evidence about a claimant's intimate life will be considered as humiliating and degrading and will violate their right to private life.

In establishing the range of life experiences that may have informed an individual's sexual orientation, claimants may offer, by way of example, evidence of membership of social media, smart phone apps or other internet platforms designed specifically to enable LGB individuals to connect and network with other members. Evidence of membership of such sites should not be refused as it may have a bearing on the credibility of the claimant's case, for example, evidence of a prolonged membership may count as credible evidence in establishing, as a material fact, if the individual's sexual orientation is as claimed. Features of such platforms may however include 'profile account' pictures and/or descriptive biographical text. Chat history with other individuals may also be clearly apparent. Such chat history may include sexually explicit content in pictorial form.



Caseworkers must make it clear to the claimant that any sexually explicit element is not regarded as evidence in support of the claim and is not required. Key to accepting such evidence (if offered) is whether the evidence pertains to the duration of membership, which might be available from the account details page of the app, or the evidence relating to the date of the earliest online chat with other members. A screen shot provided of such pages may not necessarily indicate that the evidence provided relates to the account held by the claimant. To establish that the evidence provided relates to the claimant, it may be necessary to view the claimant's telephone as any such platforms are log-in activated and individual-account specific. In such circumstances in which a claimant wishes to offer such evidence, the claimant should be advised of the Home Office policy outlined above in 'Communicating sexually explicit policy to claimants' and asked to resize the phone screen or to scroll away from any sexually explicit photographic material which may contravene Home Office policy.

Similarly, if written evidence is submitted which contains elements, which are sexually explicit, such as explicit love letters, online diaries, or extracts from a personal blog, claimants must redact such elements prior to submission.

## **Other evidence prohibited by the European Court A, B and C Judgment**

Where psychiatric or psychological expert opinion about sexual orientation is submitted, caseworkers must be mindful that being gay, lesbian or bisexual is not a mental disorder; there is no medical or psychological methodology for establishing an individual's sexual orientation and any such examinations may be seriously humiliating and degrading. The 'testing' of sexual orientation in an asylum procedure is prohibited by the A, B and C judgment and such evidence must be refused and the claimant informed that any such report would not be considered as providing evidence of sexuality.

Assessing the credibility of an asylum-seeker's statements regarding their sexual orientation on the basis of stereotypical assumptions alone is prohibited by the A, B and C judgment. This means that although any knowledge of or contact with LGB-rights organisations, or the 'gay scene' (in terms of cultural life, entertainment and social groups), may contribute to credibility assessment, in most cases the mere lack of such knowledge is not necessarily a relevant indicator. This is because the individual may not have access to these resources due to economic or social reasons, or may simply make a personal choice not to engage with these groups or organisations or indeed may choose to continue to hide their sexual orientation in the UK. Requiring or expecting lesbian, bisexual or gay asylum-seekers to know about the certain organisations, or the 'gay scene', in order to be credible is based on stereotypical assumptions.

## **Key considerations**

Caseworkers and interviewers should make sure that:

- claims based on sexual orientation should be considered with reference to evidence (including oral testimony at interview) which is not sexually explicit
- a claimant is never be asked to supply video or photographic evidence of sexually intimate acts, any such evidence of a person engaging in sexual activity is not in and of itself evidence of sexual orientation and has no evidential value
- any 'evidence' purporting to portray the claimant having performed sexual acts is not to be accepted
- if a claimant enquires about the submission of audio-visual material or recordings, they are informed that any evidence must not contain sexually explicit material
- in line with the Conducting the asylum interview guidance, any submission of audio-visual material, recordings or photographic images that are not of a sexually explicit nature are accompanied with an explanation of: precisely where, when, and by whom the material was recorded, who and what is being depicted, how it is relevant to the asylum claim and confirmation that it does not contain sexually explicit material
- if it is apparent that the material contains images of a sexually explicit nature, it should be handed back to the claimant or their legal representative and must not be viewed

## Resources to assist in the preparation for interview

Further guidance can be found at 'This information in this page has been removed as it is restricted for internal Home Office use only'.

UNHCR. See paragraphs 63 (i) - 63 (ix) (Credibility and Establishing the Claimant's Sexual Orientation) of the [UNHCR guidelines on international protection no. 9: Claims to Refugee Status based on Sexual Orientation](#).

### Related content

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# Considering credibility

## Credibility - consideration of the claim

This section is to be read in conjunction with the assessing credibility and refugee status guidance.

The interview may be the primary, or even the only, source of evidence, especially if the case is one of non-state persecution. In the absence of external or objective evidence, the interview is particularly important in ensuring that sufficient evidence is gathered to inform a decision.

In establishing the individual's sexual orientation and determining whether protection is needed, it is reasonable to expect that the level and nature of the information provided by the claimant should demonstrate personal experience and knowledge, allowing for any underlying factors. Vague and limited statements will not generally meet reasonable expectations of sufficiency of detail or personal experience.

Consideration of the claim should first focus upon whether the account itself is credible. This means considering whether the account is sufficiently detailed. Levels of detail and specificity are not only about requiring the claimant to provide objectively known facts and minutiae. They are also about establishing, for example, what has motivated the individual into realising their sexual orientation, which they may not previously or openly have been able to acknowledge in their country of origin.

The absence of objective information to corroborate a claimant's account may be a relevant factor, but should not necessarily be taken to mean that any claimed fact did not occur. Caseworkers must be mindful that some LGB claimants may have been able to avoid specific incidents of persecution by remaining discreet. The fact that where there have been no historic incidents of violence must not, in itself, be regarded as evidence of an absence of a genuine fear of future persecution. In instances in which the law provides for sanctions against homosexual acts, if a claimant indicates an awareness of the illegality of any of their actions, caseworkers must not assume that this should have prevented the claimant from engaging in those actions. Even if they know that they are against the law, it should not be an assumption that individuals do not carry out illegal acts in their country of origin.

Where persecution has been claimed, it is reasonable, subject to any underlying issues, to expect a detailed and consistent account of any incidents of persecution and/or ill treatment a claimant (or others they know) has experienced, even if they are not aware of the exact legal or social position of LGB persons in their country of origin. It is also reasonable to expect the claimant to explain what (if anything) they did or thought, in response to any actual or feared ill treatment, persecution or discrimination, while bearing in mind that people will often act impulsively when expressing their sexual orientation and may engage in actions even when they know that they are illegal.

Caseworkers must consider whether the material facts relating to the person's account of their actual or perceived sexual orientation and of their experiences is reasonably detailed, internally consistent (for example, oral testimony, written statements) as well as being externally credible (for example, consistent with generally known facts and the country information). Caseworkers should take into account all mitigating reasons why a person may be inconsistent or unable to provide details of material facts such as age; gender; mental or emotional trauma; fear and/or mistrust of authorities; education, feelings of shame; painful memories, particularly those of a sexual nature, and cultural implications.

When the facts being established in a case are plausible, internally consistent, coherent and consistent with other evidence including COI, this will go towards establishing that they can be accepted. Where there is a strong correlation between aspects of the claimant's account and external evidence, the greater the weight caseworkers should attribute to those aspects.

In considering material facts, caseworkers are reminded that these must always be assessed in the context of the evidence as a whole and not in isolation. An assessment of their credibility must be made against the correct standard of proof. All factors must be considered in the round, and appropriate weight attributed to them in order to properly assess the key issues in context.

Where there is a lack of evidence, or where it has not been possible to establish material facts to the required standard, it may be necessary to consider whether to apply the benefit of the doubt under the terms of [Rule 339L](#) and to consider the claimant's personal credibility in the light of any behaviour which may call that credibility into question. If evidence exists, for example of deception in one or more other material facts and/or poor general credibility concerns, in respect of the behaviours applicable to [S.8 of the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#), an assessment must be made of the damage done to the person's 'general credibility'.

Where a material fact falls to be rejected, it is likely that other material facts linked to it will be rejected too. So, even if a claimant's assertion to be LGB has been determined as a material fact, the consideration of all material facts in the round may lead to the sexual orientation material fact being called into question.

Caseworkers will need to be able to make a well-reasoned decision on whether or not the claimant is LGB. If the decision is that a claimant is not LGB as claimed, then the caseworker must show their rationale for reaching that conclusion.

## **Credibility - considering late disclosure of sexual orientation**

Consideration must be given to any possible reasons for not disclosing the issue of sexuality at the first available opportunity during screening. Feelings of shame, cultural implications, or painful memories, particularly those of a sexual nature, may have led some claimants to feel reluctant about speaking openly about such issues and may therefore not be uncommon. While adverse inference should not

necessarily be drawn from someone not having immediately declared their sexual orientation at the screening stage, failure to mention it at the main asylum interview, when there is every opportunity to do so, may call into question the credibility of the claim, unless there are very good reasons for not having mentioned it at that point. Each claim must be considered on its individual merits and all factors considered in the round. Any late disclosure must be fully investigated and the overall credibility of a claim considered 'in the round'. The A, B and C judgment prohibits the rejection of credibility when it is made only on this ground. Caseworkers must not therefore make an adverse credibility finding **merely** because the claimant did not rely on LGB grounds on the first occasion on which they claimed persecution there must be more weighing against the claim.

## Religious and/or political affiliations

A claimant's religion is not a basis for rejecting their claim. LGB individuals may be adherents of religions that disapprove of homosexuality, preach against it, or indeed forbid it. Similarly, a person may have a political affiliation to a political grouping which is not pro-LGB. A person does not have to subscribe to every belief of a religion or views of a political group in order to be a member of it. Decision-makers should take care to avoid judgemental questioning that suggests that a person is rejected by his or her religion or that their behaviour would be seen as 'sinful'.

## Resources to assist

Further guidance can be found at:

- the information on this page has been removed as it is restricted for internal Home Office use only
- Assessing credibility and refugee status
- Gender issues in the asylum claim
- Gender identity issues in the asylum claim

UNHCR. See para. 63 (i)- 63 (ix) Credibility and Establishing the Claimant's Sexual Orientation and/or Gender Identity at [Guidelines on international protection no. 9: Claims to refugee status based on sexual orientation and/or gender identity](#).

## Related content

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# Considering issues in the claim

## Considering the option of internal relocation

In line with paragraph 339O of the [Immigration Rules](#), if there is a part of the country of origin to which the claimant 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 relocate, then the application for asylum should be rejected.

Depending on the person's individual circumstances, there may be certain areas or cities in the country of origin where the treatment of LBG individuals is better and would not amount to persecution. Caseworkers should refer to Country Information and Guidance products provided by the Country policy and information team to consider evidence of such treatment and assess whether LBG individuals could live openly there without fear of persecution or serious harm. Where internal relocation is an issue, decision makers must make a clear assessment of whether the claimant would be at risk of persecution or serious harm in the place of relocation, whether effective domestic redress is available and explore with the claimant, whether the option of internal relocation is feasible or reasonable.

Further background reading on considering internal relocation can be found in on the Gender identity issues in the asylum claim guidance.

It should be noted that, in certain countries, financial, employment, housing, logistical, social, cultural and other factors might mean that an LGB person may face particular difficulties. This may be particularly the case for lesbians who are unmarried, or single/lone parents (who could be perceived to be lesbians), especially in countries in which women are expected to have male protection. Women may also face a particular form of discrimination in the place of relocation and thus be unable to work and, therefore, survive in the place of relocation. Men who are identified as gay or bi-sexual may face discrimination when attempting to secure work.

## Considering Discretion

In terms of considering an individual's behaviour in response to persecutory fear, the UNHCR's guidance on discretion, as contained within [The guidelines on international protection no. 9: claims to refugee status based on sexual orientation and/or gender identity \(October 2012\)](#), notes:

'That a claimant may be able to avoid persecution by concealing or by being 'discreet' about his or her sexual orientation or gender identity, or has done so previously, is not a valid reason to deny refugee status. As affirmed by numerous decisions in multiple jurisdictions, a person cannot be denied refugee status based on a requirement that they change or conceal their identity, opinions or characteristics in order to avoid persecution. LGBTI people are as much entitled to freedom of expression and association as others'.

This is to be understood in the following terms:

- people cannot be required to behave discreetly in order to avoid persecution
- internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location

In terms of the legislative framework for considering specifically, the question of discretion, the relevant and binding caselaw remains [the Supreme Court ruling in HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department \[2010\] UKSC 31](#). The principles noted by the UNHCR above, are underpinned at paragraph 21 of the ruling:

‘There is no place, in countries such as Iran and Cameroon, to which a gay claimant could safely relocate without making fundamental changes to his behaviour which he cannot make simply because he is gay.’

When considering sexual orientation asylum applications, the Supreme Court has set out the approach to take and has established the test that should be applied when assessing such a claim. The following steps need to be considered:

1. Is the claimant gay or someone who would be treated as gay by potential persecutors in the country of origin?
2. If yes, would gay people who live openly be liable to persecution in that country of origin?
3. How would the claimant behave on return? If the claimant would live openly and be exposed to a real risk of persecution, they have a well-founded fear of persecution even if they could avoid the risk by living discreetly.
4. If the claimant would live discreetly, why would they live discreetly? If the claimant would live discreetly because they wanted to do so, or because of social pressures (for example, not wanting to distress their parents or embarrass their friends) then they is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if they lived openly, then they are a refugee.

All of the above steps need to be considered. Paragraph 35 of the judgment identifies how to consider conduct if returned. It notes that the individual cannot and must not be expected to conceal aspects of their sexual identity, and where it is found that the individual will in fact conceal aspects of their sexual identity if returned, a consideration must be made as to why they will do so. Paragraph 35 (d) notes that if it is found that the claimant will conceal aspects of their sexual orientation in response to social pressures or for cultural or religious reasons of his or her own choosing and not because of a fear of persecution then the claim for asylum must be rejected.

For caseworkers, the distinction between someone hiding their sexual orientation due to societal pressure and someone hiding it for persecution reasons is an important one to note. If someone is LGB, the HO position and policy is that we cannot and do not expect or require them to act discreetly in order to avoid persecution. While they may choose to be discreet, it is their reasons why so that are

important. If they choose to act discreetly for non-Convention reasons, for example embarrassment or personal religious reasons, to the effect that they would not be at real risk then their claim is, in principle, capable of being refused.

HJ requires that in order to succeed in a protection claim, the claimant must establish that at least one of the reasons why he or she would behave discreetly would be out of fear of persecution or serious ill-treatment. Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as an LGB person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of their sexual orientation if returned, decision makers must consider why the person will do so.

If someone has hidden their sexual orientation in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. If the reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded. Caseworkers should note that where societal attitudes are hostile towards LGB persons and the state is either actively hostile to, or silently tolerates the hostility, an LGB claimant may have no other choice, due to a fear of exposure to persecution, than to be discreet and therefore not be able to live openly if returned to their home country. An exploration must be made of all the reasons why the claimant may be likely, or feel compelled, to be discreet.

It is **not the case** that if an individual has been found to be LGB and from a country where LGB individuals are persecuted, that the requirement for the claimant to establish individual risk is removed or that a grant can be automatically made. The assessment of whether an individual is at risk on return remains a core element of the required consideration. Consideration therefore, of the claimant's conduct on return is required as the individual behaviour of the claimant, in terms of living freely and openly as an LGB person, will be linked to the degree of risk to which they are exposed. All of the specific facts of the individual's circumstances must be assessed, through consideration of the third and fourth limbs of the test.

The HJ judgment makes it very clear that the point of analysis is how the individual would act on return. How the individual has acted until now in their country of origin or in the UK is immaterial. Case workers should not equate any historic absence on the part of the claimant in openly expressing their sexuality, for any reason, as evidence of voluntary discretion. The mere fact that someone may, in their past, have been discreet, even for non-protection reasons, does not mean that those reasons were either the sole reasons why they were discreet, nor do they indicate how the claimant will continue to behave on return.

## Key considerations

Caseworkers and interviewers should make sure that:

- they do not approach applications from the assumption that individuals could exercise discretion in order to avoid persecution
- any consideration of relocation is made in terms of how the individual may choose to live on return to their country of origin
- how a claimant will behave on return is investigated at interview, the primary basis for assessing this is the evidence of the individual
- the risk the individual might be exposed to if they chose to live openly as is their right, is investigated

## **Bad faith claims**

Internal relocation is an option, which can be considered in certain situations, such as in cases in which the LGB issue has been rejected, when a claimant then engineers the creation of risk by self-advertisement, by intentionally putting their claim into local media to create the perception that they are LGB. Such cases need to be considered on their merits and on a case by case basis. Assessment must be given to the likely impact of such actions. If it would result in serious harm by perception, irrespective of their lifestyle, this could justify protection.

### **Related content**

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# Specific advice for screening officers

Screening officers should familiarise themselves with this guidance.

This guidance contains the professional standards that all officers are required to demonstrate in handling claims from individuals, in which the basis or part basis of their asylum claim is due to claimed or imputed sexual orientation issues.

In terms of the screening interview, only a brief basis of claim needs to be captured on the screening form and this is irrespective of the nature of the claim. However, where sexual orientation is the basis of an asylum claim, it is important to note that it is inappropriate to ask intrusive questions, including questions about sexual activity or physical or sexual attraction.

In situations in which a claimant has volunteered detailed and/ or explicit material regarding their claim, screening staff should familiarise themselves with the [Conducting the interview](#) section of this guidance. Although the asylum claim must not be substantively explored during the screening process, it is important for screening officers to be aware of the factors that may inhibit someone disclosing their sexuality.

## **Related content**

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