

Cross-Party Group on LGBTI+ issues

Minute of meeting on Wednesday 8 May 2019

Venue: Scottish Parliament, Committee Room 2

1. Welcome and apologies

Present:

Jamie Greene MSP	(Co-Convenor - chairing)
Patrick Harvie MSP	(Co-Convenor)
Maruska Greenwood	LGBT Health and Wellbeing
Ian Mearns	LGBT Health and Wellbeing
Solomon	LGBT Unity
Ruth	LGBT Unity
Adam	LGBT Unity
Leila Zadeh	UK Lesbian and Gay Immigration Group (UKLGIG)
Vic Valentine	Scottish Trans Alliance
Hannah Pearson	Equality Network
Scott Cuthbertson	Equality Network
Paul Daly	LGBT Youth
Robin Goodwin	Scottish Bi+ Network
Dylan Morris	HIV Scotland
Will Dalgleish	Lothian HIV Patient Forum
Sacha Ponniah	Police Scotland (LGBTI Liaison Officers)
Patricia Johnston	Individual
Michael Richardson	Individual
Dr Kevin Guyan	Individual

Apologies:

Kezia Dugdale MSP
Jenny Gilruth MSP
Annie Wells MSP
Stonewall Scotland
Scotland Against Intersex Surgery
LEAP Sports
Turner Syndrome Support Society
LGBT Borders
Dr Matthew Waites

2. Introductions and new members

It was agreed to accept the requests of NASUWT, The Teacher's Union, to join the group. The secretary will add them to the mailing list and notify the Standards Committee team.

3. Minute of previous meeting (27 February 2019)

The group approved the minute.

4. Matters arising from the previous meeting

No matters arising.

5. LGBTI asylum seekers and refugees

Three members from LGBT Unity shared their personal stories of seeking asylum in Scotland with the group.

IM from LGBT Health spoke about their work with LGBTI+ asylum seekers and refugees. 10% of the LGBTI community they work with are asylum seekers and refugees, although they are not specifically funded to provide this support. They spoke of the high levels of trauma and the associated mental health impacts such as anxiety and depression, which are prevalent amongst this community. Asylum seekers are not allowed to work so LGBT Health provide them with volunteering opportunities and pay travel expenses. They also provide letters of support for asylum seekers for their legal cases.

Leila Zadeh, Executive Director of UK Lesbian and Gay Immigration Group (UKLGIG), provided the group with a presentation about their work:

The UK Lesbian and Gay Immigration Group (UKLGIG) supports lesbian, gay, bisexual, trans, queer and intersex + (LGBTQI+) people through the asylum and immigration system. They provide psychosocial support and legal advice and information. Their support workers and legal officer regularly visit LGBTQI+ people who are held in immigration detention centres.

The UK detention system: facts and figures

The UK has one of the largest detention estates in Europe. We are the only country in Europe not to have a limit on how long someone can be detained. It costs about £30,000 to detain someone for a year.

Between January and March 2019, 24,748 people were detained. However, only 39% of people were removed from the country or deported; 61% were released, their detention having served no purpose.

At the end of the first quarter of 2019, almost half of all people in detention had been there for more than 28 days.

Detention gets less effective the longer someone is detained. 48% of people leaving detention within 28 days or less are removed or deported from the UK. For people detained longer than 28 days, this drops to 35% or less. By the time someone has been detained for 2 years or longer, they are very unlikely to be returned.

Detention of LGBTQI+ people

In 2016, UKLGIG and Stonewall published research on the experiences of LGBTQI+ people seeking asylum while in detention, called No Safe Refuge. The report highlights the systemic discrimination, abuse and harassment that LGBTQI+ people face from both staff and other people who have been detained. The report contains examples of acts committed by fellow detainees and staff, and incidents where staff have failed to protect individuals.

In June 2016, the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – alongside the Chair of the UN Subcommittee on Prevention of Torture; the Chair of the UN Committee against Torture; and the Chairperson of the Board of Trustees of the UN Voluntary Fund for Victims of Torture - called on Member States to redouble their efforts to prevent the ill-treatment and torture faced by LGBTI people in places of detention.

The ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2016) raised similar concerns, stating that LGBTQI+ people were at the 'bottom of the hierarchy' in detention.

The Yogyakarta Principles plus 10 on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics, include obligations to ensure that asylum seekers are detained only as a measure of last resort and for the shortest possible time.

The vulnerability of LGB asylum seekers in detention has also been recognised by the European Court of Human Rights in the case of an Iranian asylum seeker who asserted that he was gay.

In March 2019, the Home Affairs Committee recommended that the Government should recognise that LGBTQI+ people are vulnerable in immigration detention.

Detention makes it harder for LGBTQI+ people to be granted refugee status

Detention has a direct impact on the prospects of LGBTQI+ people to successfully claim asylum. In order to convince the Home Office or Tribunal that they are LGBTQI+ as claimed, an asylum seeker must be in a situation of trust and security in which to consider and discuss their sexual orientation or gender identity. This is extremely difficult if you come from a country where persecution has meant you have never spoken about your sexual orientation or gender identity, or you have experienced trauma. It can be an impossible task to do so whilst in detention, where fear of discrimination or harassment requires you to conceal your identity as much as possible.

To obtain a legal aid lawyer, people are limited to the specific contractors for each detention centre. These advisors do not necessarily have the specialist knowledge required for asylum claims based on sexual orientation or gender identity.

Added to that is the difficulty of amassing the kind of corroborating evidence expected routinely by decision makers whilst in detention, especially if the person is trying to avoid being outed to staff and other detainees. Home Office caseworkers and decision makers frequently expect LGBTQI+ asylum seekers to:

- offer witnesses (including ex-lovers) who will attest to their knowledge that the asylum seeker is LGBTQI+ as claimed
- provide evidence of attending LGBTQI+ events, organisations or venues, or online dating
- demonstrate that they would wish to live openly and not conceal their sexual identity

all whilst hiding their sexual orientation or gender identity because of the adverse circumstances of detention and without access to social media or smart phones while they are detained.

The government does not keep statistics on the number of LGBTQI+ people who are detained.

The Immigration and Social Security Coordination (EU Withdrawal) Bill

The Immigration Bill could lead to an increase in the use of detention. 26,000 EEA nationals could become subject to domestic immigration powers. A time limit would help prevent more people being deprived of their liberty for administrative reasons.

MPs from across parties are supporting new clauses 1 to 8 which have been tabled as amendments to the bill at report stage. They contain a package of measures

which would end indefinite detention in the UK and implement in its place a workable system that ensures detention is only used as a last resort to effect lawful removals from the UK.

The amendments would lead to a 28-day backstop for detention. They would also require judicial oversight within 96 hours of someone being detained – at present, the decision to detain someone is made by Home Office civil servants and automatic bail hearings take place only after 2 months. The proposed changes would ensure that immigration detention is used sparingly, only where necessary to effect deportation or removal, and for the shortest possible period.

Reasons for a 28 day time limit

1. Home Office policy

The Home Office's Enforcement Instructions and Guidance indicates that they can predict, with a sufficient degree of confidence, that removals can take place within a time period of 28 days (four weeks) when certain conditions are met, even in complex cases:

'55.3.2.4: In all cases, caseworkers should consider on an individual basis whether removal is imminent. If removal is imminent, then detention or continued detention will usually be appropriate. As a guide, and for these purposes only, removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks.'

2. Mental health impact

Detention has a damaging mental health impact, and after 30 days of incarceration there is a rise in the severity of harm. Setting a time limit under 30 days can protect people in detention from this significant level of harm. In evidence to the Joint Committee on Human Rights, two people who had been held in a detention centre described not knowing how long they would be held as "mental torture".

3. Parallels with criminal justice system

In the public health, counter-terror and criminal justice systems, where individuals face the possibility of detention without charge, 28 days or lower is considered sufficient time for the government to achieve its aims while recognising that there should be limits on its power to deprive individuals of their liberty.

4. Recommendations by select committees and APPGs

The Joint Committee on Human Rights has twice recommended a 28 day time limit on immigration detention. The Home Affairs Committee has also recommended a 28 day time limit, as have the APPGs on Refugees and Migration.

5. Cost savings

Recent research by Liberty found that a 28-day time limit could save the tax payer up to £35m per year net.

LZ shared copies of UKLIG's most recent research report, Still Falling Short, with the group. The research looks at the standard of Home Office decision-making in asylum claims based on sexual orientation and gender identity.

PH and JG thanked all of the speakers and commended the LGBT Unity speakers for sharing their personal stories with the group.

JG commented that the asylum process is an issue reserved to Westminster.

LZ urged all politicians and members of the group to encourage their UK colleagues to support the amendments to the Immigration Bill at Westminster to bring in a 28 day limit to detention.

6. Updates on other matters/ AOB

SP from Police Scotland invited group members, as key stakeholders, to join the Police Scotland LGBTI Reference Group. Any interested members should liaise with SP.

MG from LGBT Health told the group that they had recently launched the Return to the Closet film, made by older members of the LGBTQ+ community and film artist Glenda Rome, about their needs, aspirations and visions of care. The film has generated a lot of positive discussion and LGBT Health are currently in discussions with the Care Inspectorate.

7. Date of next meeting: Wednesday 30 October, and agreement of main discussion items for the October meeting

As there is such a long gap until the next meeting due to room availability, the secretariat will liaise with group members over the summer regarding the main discussion items for the next meeting. If any group members are interested in presenting, they should contact the group secretariat.