



Olivia Blake MP
House of Commons
London
SW1A 0AA

1st March 2022

Dear Olivia,

Thank you again for securing the debate in Westminster Hall on 2 February on the perceived effect of provisions in the Nationality and Borders Bill on LGBT+ people. I am conscious that we ran out of time before I could give you a full response during what was a short debate, so please take this letter as such.

The Nationality and Borders Bill is part of our New Plan for Immigration, which will deliver a fair, but firm asylum system. These are undoubtedly complex problems and there is no easy or quick fix. But by increasing the fairness and efficacy of the system, we will be able to better protect and support those in genuine need of sanctuary.

The Government is committed to equal rights, including upholding the rights of people who are LGBT+. As you will be aware, we have prepared an Equality Impact Assessment for the policies we are delivering through the Bill, which was published on the 16th September 2021¹. This includes an assessment of the potential impacts of the Bill's measures on people who are LGBT+. This will be kept under review and updated where required.

The welfare and dignity of all claimants will remain central to our decision-making processes. Robust safeguarding measures will be in place to protect asylum seekers, including those who are LGBT+. LGBT+ people at risk of persecution in their home countries will continue to be welcomed into the UK and given the chance to rebuild their lives here.

Differentiation

In the course of the debate, Members discussed our proposals on creating differentiated entitlements for refugees. Caseworkers who are considering granting someone group 2 refugee permission will do so on a case-by-case basis. This may include taking into account reasons why an individual did not come directly or why the claim was not made without delay – which may well include someone being fearful of presenting to the authorities as an LGBT+ person, or similar such reasons.

One Stop Process

¹ <https://www.gov.uk/government/publications/the-nationality-and-borders-bill-equality-impact-assessment>

As Members also noted, the Bill will introduce a new and expanded 'one-stop' process to ensure that asylum, human rights claims, and any other protection matters, are considered at the earliest opportunity. These measures will require a claimant who provides late evidence after receiving an evidence notice to provide a statement setting out why the evidence was late. Where there is no good reason for evidence being provided late, this should be taken into account by the decision-maker – whether that is the Home Office or the Courts – as damaging to a claimant's credibility. The decision-maker must also have regard to the principle that minimal weight should be given to that evidence. But where there is good reason, there will be no damage. Under the broad and flexible powers in the Bill, decision-makers will be able to exercise discretion and respond sensitively to the individual circumstances of every case. By encouraging individuals to bring all of their evidence upfront in protection and human rights claims, we will be better able to ensure we identify any unmeritorious claims and ensure those who need international protection receive this as soon as possible.

We do recognise that in comparison to other types of claims, there may be limited evidence, such as documentary evidence, available to LGBT+ individuals, or objective material to verify and support their claim. We also recognise and accept that the absence of external evidence does not necessarily mean the claimant is not the sexuality or gender identity they are claiming. And we recognise that the intimate nature of disclosure, set against an individual's cultural background, may make it difficult to disclose and discuss sexuality or gender identity with officials. And so, I would also like to provide reassurance that our policies and training are already designed to support claimants in explaining their claim in a sensitive and safe environment.

Our Asylum Interview guidance, published in June 2021, supports decision-makers in ensuring that the claimant is at ease and able to disclose all relevant material, to enable an accurate consideration of their protection needs. We have also worked with key partners including the UNHCR, Stonewall and Rainbow Migration to develop separate guidance on sexual identity and gender identity issues in asylum claims. These emphasise the need to sensitively explore sexual and gender identity issues.

Training for decision-makers emphasises the need to sensitively explore a claimant's sexual identity rather than sexual practices and makes it clear that any form of stereotyping is inappropriate. Training also involves consideration of what it means to be gay, bi-sexual or trans and how underlying factors such as sexual or gender identity must be taken into account in the assessment of evidence. Our decision-makers are mindful that many asylum seekers come from cultures in which it is very hard to talk about their sexual orientation or gender identity. Decision-makers also recognise that understanding and accepting one's own identity may be a long and painful process.

We continue to work to ensure that LGBT+ claimants are given every opportunity to disclose information relevant to their claim before a decision is taken, including where that information may be sensitive or difficult to disclose. All available evidence is carefully and sensitively considered against a background of relevant case law and in light of published country information, which covers country specific LGBT+ issues. I can also assure you that we will seek to review and update the training and guidance provided to decision-makers where necessary, to ensure that we continue to help claimants to provide the required evidence under the new asylum system. Decision-makers will continue to assess claims on a case-by-case basis, as is right in these circumstances.

Well-founded fear

In the debate, you raised particular concerns about our plans to define what we mean by a “well-founded fear” of persecution for the purposes of Article 1 of the Refugee Convention. The definition of “well-founded fear” is part of a wider group of clauses which seek to define the UK’s interpretation of the key concepts of the Refugee Convention; in doing so, making the system more accessible and understandable to all. This will help decision-makers and judges make consistent decisions on whether someone is a refugee. As part of this work, we will set out a new approach to determining whether an individual has a “well-founded fear” of persecution, which is currently subject to a broad interpretation by decision-makers. I would like to reassure you that the new “well-founded fear of persecution” test is compliant with our obligations under the Refugee Convention and will ensure those who genuinely require protection in the UK are granted refugee status, while preventing those with unmeritorious claims from succeeding.

The test will support improved decision-making by setting out a clear test for decision-makers to follow, which includes the Courts. This will contribute to greater consistency between Home Office decision-makers and the Courts.

This test has two elements. The first element considers if the claimant is who they say they are and whether they are experiencing genuine fear of persecution. The claimant will need to establish this to the “balance of probabilities” standard and this will include a credibility assessment, considering all the relevant evidence. This includes consideration of opportunities the claimant had to claim asylum in other safe countries. If previous opportunities to make a claim have not been taken, or if a claim is contradictory, that could impact on the credibility of a person’s testimony.

The second element will consider whether the claimant will face persecution if they return to their country of origin or country of former habitual residence. This will need to be proven to the standard of “reasonable degree of likelihood”. We already have specific Asylum Policy instructions on considering sexual orientation, and gender identity issues in asylum claims which set out in some detail how decision-makers should fully investigate the key issues through a focused, professional and sensitive approach to questioning. As part of the operationalisation of the programme, we will seek to update the training and guidance provided to decision-makers, and we will concentrate on ensuring that interviews are sufficiently detailed to enable claimants to meet the higher standard required regardless of the nature of their claim.

The UK will also continue to meet its obligations as a signatory to the European Convention Human Rights (ECHR) by not removing any individuals who may be subject to a breach of their human rights upon return, particularly in the context of Articles 2 (right to life) and 3 (prohibition of torture or degrading treatment or punishment) of the ECHR. Those who are not refugees but would face an Article 2 or 3 breach upon return will be granted a form of protection in the UK.

Accommodation

Turning to our plans for accommodation centres, the Government has a statutory obligation to provide safe and secure accommodation whilst meeting the essential living needs of asylum seekers and some cohorts of failed asylum seekers who would otherwise be destitute. Hotels are currently being used to meet some of these duties, but this is not sustainable in the long-term. Part of the solution is to increase the stock of dispersal accommodation (i.e. flats and houses) ; however, accommodation centres are also a key part of our ongoing work to build capacity across the asylum estate whilst ensuring we

meet our obligations to accommodate individuals whilst their claims are being processed. Those accommodated at the centres will receive support to cover their essential living needs – generally through “in-kind” provision but supplemented by some cash where appropriate. People who are resident at the centres will also have the same access to services that are provided for in the local community as those in other existing accommodation. Our accommodation providers are contractually required to take account of any particular circumstances and vulnerabilities an individual may have, which can include sexual orientation and gender identity. We will signpost LGBT+ asylum seekers to relevant NGOs specialising in the support of these individuals. Also, individuals will have opportunities to disclose information and supporting evidence as to why they should not be housed in accommodation centres. This could include reasons linked to being LGBT+.

Overseas asylum processing

Finally, overseas asylum processing is one part of a system-wide reform designed to break the business model of people smugglers and disincentivise unwanted behaviours that risk lives. Changes within the Nationality and Borders Bill aim to reduce the draw of the UK by working to make it easier to remove people overseas where their claim will then be processed. We will do this by making it possible to remove an individual without going through a certification process, provided the place they are being removed to meets specified safety requirements. By working to establish overseas asylum processing, we are sending a clear message to those who are risking their lives and funding criminal gangs both here in the UK and abroad or else otherwise abusing the asylum system, that this behaviour is not worth it. We must make it easier to ensure such people are simply not allowed to remain in the UK. Access to protection in the UK should be based on need, focusing primarily on people in regions of conflict, not driven to our shores by the actions of criminal enterprise.

I want to be clear we would only ever operationalise this policy in accordance with our international obligations. Even where we determine a country is generally safe, vulnerabilities will be taken into careful consideration, and any oral or written representations from the individual will be considered ahead of their removal to a safe third country. I should emphasise this includes vulnerabilities linked to someone being LGBT+.

In concluding, let me thank you for raising these important issues. The Government fully supports LGBT+ people and stands with those around the world facing persecution in relation to their gender, sexuality, or identity. As I have said, the Nationality and Borders Bill will help us to fix an asylum system that is broken. This Bill will mean we are better able to support those in need of our protection – and this emphatically includes people who are LGBT+.

As promised in the debate, I am also placing a copy of this letter in the Libraries of both Houses.

With best wishes,

Yours ever,



Tom Pursglove MP - Minister for Justice and Tackling Illegal Migration