



## Home Office

### Policy equality statement (PES)

#### Policy on the processing of asylum claims in detention

This statement considers the processing of asylum claims in detention in light of the recently revised instruction, Asylum Claims in Detention (renamed from [‘Detention: Interim Instruction for Cases in Detention Who Have Claimed Asylum, and for Entering Cases Who Have Claimed Asylum into Detention’](#)).

This was also known as the Detention Interim Instruction or DII).

From early 2000 until July 2015, the Home Office operated the Detained Fast Track (DFT) process, which provided for the detention of an asylum claimant on the basis that their claim appeared to be one in which a quick decision could be made. The timescales relating to the decision process were highly compressed (up to 10-14 days, but sometimes quicker), and from 2003, an accelerated appeal process also applied to decisions with in-country appeal rights.

On 2 July 2015, the then Minister of State for Immigration, James Brokenshire, announced to Parliament [HCWS83<sup>1</sup>] that DFT was to be temporarily suspended, because of unacceptable risks surrounding the safeguards within the system for particularly vulnerable claimants which had been identified and could not be immediately rectified.

Since that time, neither the ‘quick decision’ basis for detention nor the accelerated asylum process has been applied. The former DFT team was replaced by the Detained Asylum Casework team (DAC), which was tasked with considering the asylum claims made by those usually already detained for removal under general detention policy, to indicative and non-accelerated timescales.

The policy on processing asylum claims in detention rests solely on the various policies and instructions relating to the handling and consideration of asylum claims, and to general detention policy.

The Home Office is committed to delivering in a way that promotes equality and respects diversity and which meets the needs of people with protected characteristics. The Home Office must treat all asylum claimants with respect, dignity and fairness regardless of age, disability, ethnicity, nationality, race, gender, sexual orientation, gender reassignment, religion or belief. This fundamentally important principle underpins all Home Office policies,

<sup>1</sup> <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150702/wmstext/150702m0001.htm#15070242000015>

processes, guidance and staff training.

### Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

In considering whether the Home Office has had due regard to the Public Sector Equality Duty (PSED), consideration has been given to:

- Published [immigration statistics](#) (quarterly release, July to September 2017)
- Home Office case data, as held on the Case Information Database [CID], and from management information records
- Statements from and experience of caseworkers and officers from various business areas across the Home Office and those who work in Immigration Removal Centres (IRCs), including NHS doctors
- [Asylum instructions](#), [detention policy](#), [Detention Service Orders](#) (DSOs) and other policy and training relevant to equality and protected characteristics
- Evidence submitted in the 'JM and others' litigation relating to the safeguards in the DFT process
- Evidence submitted in the 'Hossain and others' litigation relating to safeguards in the DAC process
- The [Review into the Welfare in Detention of Vulnerable Persons](#), by Stephen Shaw CBE
- [Improving Mental Health Services in Immigration Detention: Action Plan](#)
- Concerns raised by partners at meetings on the DFT instruction and subsequently on the DII, and more strategic meetings including the Strategic Engagement Group (SEG) (formerly the National Asylum Stakeholder Forum [NASF])
- The [Policy Equality Statement produced on mental health in detention](#) and the consultation findings from that exercise
- Independent Chief Inspector of Borders and Immigration reports on asylum casework and the DFT ([4 February 2016](#), [23 February 2012](#), respectively). Due regard has also been given to HM Chief Inspector of Prisons reports (Harmondsworth, [16 January 2014](#) and [1 March 2016](#); Yarl's Wood, [29 October 2013](#) and [12 August 2015](#))

SCS sign off  
policy

Daniel Hobbs

13 December 2017

Name/Title

Daniel Hobbs, Head  
of Asylum and  
Family Policy Unit

Daniel Hobbs is the Head of Asylum and Family Policy (AFPU) within the Border, Immigration and Citizenship System Policy (BICS Policy). AFPU is responsible for domestic, EU and international policy relating to asylum and family immigration.

SCS sign off operations	Tyson Hepple 13 December 2017	Name/Title	Tyson Hepple, Director of Immigration and Protection
Tyson Hepple is the Director of Immigration and Protection within UK Visas and Immigration (UKVI). This directorate is responsible for processing asylum claims.			

Retain the completed PES for your records and send a copy to [Diversity team@homeoffice.gsi.gov.uk](mailto:Diversityteam@homeoffice.gsi.gov.uk) and your relevant business area Equality and Diversity Lead.

(PES Part 2 – Evidence and consideration)

## 1. Detained asylum casework framework

The function of deciding asylum claims in detention cuts across two distinct policy areas:

- the policies and processes for deciding asylum claims; and
- the policies and processes for determining suitability for detention.

All those involved in the deciding of asylum claims in detention have guidance and training to enable them to perform their duties in both areas.

### 1.1 Detention of those who claim asylum

Home Office policy on the detention of individuals for immigration purposes ('detention policy'), is set out in the document Detention and temporary release, within the policy collection, [Offender Management](#).

One of the bases on which detention may be authorised is to effect removal – this is the basis relevant to asylum cases being decided in detention.

There is a clear policy presumption against detention. However, if an individual is assessed to be unlikely to comply with conditions applied to temporary admission or release in the community, detention may be appropriate, to ensure compliance. In the case of detention to ensure compliance with removal, there has to be a realistic prospect of removal within a reasonable timeframe. What is reasonable is highly case-specific, given full consideration of all known current and past information.

Making an asylum claim is not of itself an attempt to frustrate removal, because a claimant may genuinely fear return to their country of origin. However, a claim made late in the process despite the claimant having a protracted history of engagement with the Home Office, or a claim made after the claimant is encountered working illegally having overstayed their visa, could be indicative of abuse of the immigration system and of a low level of compliance.

The Adults at Risk in Immigration Detention policy (also within the [Offender Management](#) policy collection) sets out certain indicators of risk which increase the presumption against detention. Individuals who have been identified as being at risk under the policy should be detained only when the immigration factors outweigh the risk factors in their particular case.

There is some overlap of the risk indicators set out in the policy with many of the protected characteristics under the [Equality Act 2010](#) in the list. The key indicators of risk are as follows, although there may be other conditions that may render an individual particularly vulnerable to harm in detention:

- Suffering from a mental health condition or impairment (this may include more serious learning difficulties, psychiatric illness or clinical depression; depending on the nature or seriousness of the condition)
- Having been a victim of torture
- Having been a victim of sexual or gender-based violence, including female genital mutilation
- Having been a victim of human trafficking or modern slavery
- Suffering from post-traumatic stress disorder, which may or may not be related to one of the above experiences
- Being pregnant
- Suffering from a serious physical disability
- Suffering from other serious physical health conditions or illnesses
- Being aged 70 or over and
- Being a transsexual or intersex person

The practical effect of the Adults at Risk in Immigration Detention policy is that individuals with protected characteristics who may be particularly vulnerable to harm in detention will be detained, or their detention continued, only when the immigration considerations outweigh the evidence of vulnerability in their particular case. However, in some cases, a decision to detain (or continue detention) in order to enforce removal may be necessary, even in respect of someone with protected characteristics.

Assessments regarding initial detention suitability in an IRC involve a detailed review by the Home Office detention gatekeeper. The allocation of a detainee to an IRC will take into account the history of the detainee's behaviour; the risk the detainee may pose to the safety and security of other detainees, staff and visitors; and any risks to the detainee that may be present. The Home Office accepts that being in detention may have an adverse effect on an individual. The detention of all individuals is continually reviewed in line with current known circumstances with regard to the changing nature of an individual's health and wellbeing.

All immigration removal centre suppliers are required to provide their staff with training on equality and diversity issues as part of their initial training course (ITC). Staff must pass the ITC to gain Home Office accreditation to work as a detention custody officer.

## **1.2 Deciding asylum claims**

Home Office policy on the processing of asylum claims is set out largely in the [Assessing Credibility and Refugee Status](#) and [Asylum Interviews](#) instructions.

The Asylum Interviews policy states that decision-makers must obtain sufficient information to determine an asylum claim and be able to subject that information to rigorous but sensitive enquiry so that asylum claims are properly considered and protection is granted to those who genuinely need it and refused to those who do not. All decision-makers – regardless of whether they are deciding a claim from an individual who is detained or not – are required to follow this guidance and must be mindful of the need to determine the claim fairly. The policy is clear that interviewing officers must treat claimants with respect, humanity, dignity and fairness, regardless of age, disability, ethnicity, nationality, race, gender, sexual identity, religion or belief when conducting asylum interviews.

The Assessing Credibility and Refugee Status policy states that properly considering claims and making well-reasoned decisions is one of the UK's fundamental responsibilities under the Refugee Convention. It also states that decision-makers need to investigate key issues through a sensitive, focused and professional approach to the claimant's oral testimony and any written evidence against a background of country of origin information (i.e. all decision-makers are trained to ensure a fair process to allow individuals to explain why they qualify for asylum). The policy also requires that appropriate support services are signposted to particularly vulnerable claimants.

The policy sets out the need to consider all available evidence, including documentary, medical, and verbal, in the round. It sets out factors to bear in mind when considering inconsistencies, taking account of a number of protected characteristics.

### **1.3 Asylum claims in detention and related processes**

To align asylum and detention policies, and to ensure that those who claim asylum in detention are detained for the shortest possible period and have their claim processed fairly, an instruction – Detention: Interim Instruction for Cases in Detention Who Have Claimed Asylum, and for Entering Cases Who Have Claimed Asylum Into Detention (Detention Interim instruction; DII) – was published on 16 July 2015. This instruction was revised and renamed as '[Asylum Claims in Detention](#)' on 19 September 2017. The instruction reminds Detained Asylum Casework (DAC) decision-makers of the need to consider the appropriateness of detention throughout the time a claimant is detained in accordance with published detention policy, and that the ability to conclude the claim fairly within a reasonable timeframe will have an impact on the claimant's suitability for detention.

A screening interview will take place as soon as possible after an individual claims asylum, either in detention or prior to being detained. Various questions are asked during screening that are of direct relevance to determining the suitability of the individual for detention as well as the suitability of considering their asylum claim in detention. Key information obtained at this stage includes points around age, health,

pregnancy, disability, basis of asylum claim, documents to submit then or subsequently, and preferences for interviewing officer gender. There are also specific questions asked during the screening interview which provide claimants with the opportunity to explain any reasons why they or their claim may not be suitable for consideration in detention.

The Asylum Claims in Detention instruction states that once the asylum screening interview has taken place, detention should be reviewed to see if removal is likely within a reasonable timeframe, bearing in mind the nature of the asylum claim and all the circumstances of that individual.

Claimants are signposted to sources of support and advice at screening. This includes organisations such as Migrant Help who are funded by the Home Office to provide support and advice to all asylum claimants.

At the induction interview carried out by DAC staff, every claimant has the asylum process explained and is given the opportunity to ask questions or raise any other issues. At this stage, all claimants are informed of the availability of publicly funded legal representation and, if the claimant does not wish and has no means to be privately represented, a publicly-funded duty solicitor will be appointed.

The publicly-funded legal representation is available prior to and during the asylum interview. This provision exceeds that received by those whose asylum claims are considered outside of detention. The Home Office guarantees a minimum of five working days from the time of instructing lawyers to the time of the interview, to improve claimant access to legal representatives, but the instruction emphasises that flexibility should be applied to timescales for deciding an asylum claim, taking account of the individual circumstances of the case and the need to ensure that claimants are given an opportunity to present their case fairly. If more time is needed in a case to ensure a fair decision, it will always be given.

The general framework within which asylum claims must be considered fairly applies equally to detained cases as to non-detained cases: detention must not prevent the fair and proper consideration of an individual's asylum claim.

The instruction states that detention should be reviewed at certain points, including when new information is received in support of the asylum claim. The purpose of this is to ensure that the claim can be determined fairly (i.e., within a reasonable timeframe that does not put the individual at a disadvantage, or otherwise render detention unlawful). In order to keep an individual's detention as short as possible, decision-makers are reminded that they should process the claim as quickly as the individual circumstances of the case allow. If it becomes apparent that for any reason the claim cannot be processed quickly (e.g. because of the claimant's need to obtain further evidence), then detention must be reviewed to ensure it is still appropriate.

## **1.4 Broad training provision**

Immigration and Protection operates an in-house 'Learning and Development Team', responsible for the development and delivery of training, to provide staff with the confidence and skills to deal effectively and fairly with claimants throughout the asylum process.

A key objective of the training provided is to ensure that staff are equipped to identify vulnerabilities or potential vulnerabilities related to gender, age, sexual identity, trafficking (modern slavery) and torture. Staff are also trained to ensure that all asylum claimants are treated with respect, dignity and fairness regardless of age, disability, ethnicity, nationality, race, gender, sexual orientation, religion or belief, with protection being granted to those who need it and refused where the claimant does not have a well-founded fear of persecution.

In line with policy, training also reminds decision-makers of the principle that all asylum claimants are potentially vulnerable and that it is important to ensure that particularly vulnerable claimants are given help in accessing appropriate services, for example, where there are concerns over physical and mental health, experience of torture, trafficking, sexual or domestic violence or child protection.

The team is responsible for delivering the Foundation Training Programme (FTP), as well as designing and/or delivering a wide range of additional 'refresher' courses to existing casework staff, addressing (but not limited to): credibility<sup>[1]</sup>; lesbian, gay and bisexual (LGB) asylum claims; safeguarding vulnerable claimants (including what makes someone vulnerable, how this affects their ability to give evidence, and how to deal with that in interview, etc.); Competent Authority training (modern slavery/trafficking); and Keeping Children Safe Tier 3.

#### **1.4.1 Foundation training programme (FTP)**

The FTP has historically been a five-week classroom course delivered to all new asylum decision-making staff. It is currently being redeveloped and it is envisaged that it will be split into two parts - an initial theory and decision-making part (3 weeks) followed by interview/other specialism (i.e. safeguarding) training (2 weeks). In between the two parts, decision-makers will spend a period of at-desk decision-making in order to consolidate their knowledge (6-8 weeks)

The first three weeks will be spent in the classroom covering law, evidence and decision-making. Delegates will be introduced to the legal and policy framework underpinning their work before putting these principles into practice with a series of case studies specifically designed to illustrate how underlying factors such as gender, torture, medical conditions, FGM, sexual orientation and domestic violence are to be taken into account in the assessment of evidence.

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<sup>[1]</sup> The credibility training was developed in response to the UNHCR's CREDO (credibility assessment) report, reports from Amnesty International and the Home Office's own Quality Audit Team and has received very positive feedback from a range of partners.



The two-week interview/consolidation training will also be back in the classroom and will emphasise the importance of well-reasoned findings, from credibility (and the factors behind this) to how to make the best use of country and other background information. It will also stress the need to allow asylum-seekers the space to present their cases as fairly and as sensitively as possible.

#### **1.4.2 Detained asylum casework training**

Decision-makers dealing with detained asylum cases receive an additional two day supplementary training course, delivered locally by senior caseworkers. This includes training in all detained casework policies and processes, including (but not limited to): procedural rules, detention, bail, flexibility and Rule 35 processes.

#### **1.4.3 Credibility**

A particularly important course is that relating to credibility. It is a one day consolidation course, written in consultation with the UN High Commission for Refugees (UNHCR) and other partners. It covers assessing the evidential value of questions in interviewing, including the advantages of asking open questions, as well as consideration of the various reasons why someone may not present as credible in an asylum interview. There are also discussions on issues such as speculation and implausibility. The course makes explicit reference to key concepts around affording fairness to the claimant, including the following key points:

- The requirement to apply the lower standard of proof in asylum cases (that of a reasonable degree of likelihood)
- The need to ensure the claimant is afforded every opportunity during the interview to explain inconsistencies or apparently implausible evidence
- The requirement to afford the benefit of the doubt to parts of the evidence that cannot be corroborated where a claimant is generally credible
- The requirement to approach interviews with sensitivity and compassion, particularly where asking questions about matters that may be very difficult for the claimant to talk about in detail
- The requirement to consider the effect of incidents of torture or trauma on memory and recall and to ensure claimants are given every opportunity to disclose information about why they need international protection
- The requirement to consider the credibility of the core of the claim, rather than peripheral details

#### **1.4.4 Trafficking and modern slavery**

Specific training addresses issues of trafficking and slavery, servitude and forced or compulsory labour, to assist staff in recognising and properly handling the cases of those who may be victims.

Competent Authority Training (Modern Slavery/Trafficking) (CA) is a one day course for specialist decision-makers trained as competent authorities. It covers the National Referral Mechanism (NRM) from end-to-end and the competent authority's responsibilities at each stage, including the purpose of the NRM, timescales for decision-making and support for victims.

Home Office e-learning on human trafficking and the NRM aimed at UK Border Force, UK Visas and Immigration and Immigration Enforcement staff was updated and re-launched in March 2016 with revised text relating to modern slavery and other relevant policy changes. There are three courses. The NRM e-learning course is for all those commands. There is a specific modern slavery e-learning course for the use of Border Force and a separate modern slavery e-learning course for the use of UK Visas and Immigration and Immigration Enforcement. The training is mandatory for all in-country staff in those areas. Home Office staff working in a detained environment must therefore complete two mandatory training courses on modern slavery and on the NRM.

The e-learning courses cover the issues surrounding Modern Slavery, providing a general insight into what Modern Slavery is, some of the general indicators to look out for if there are grounds for suspecting that someone might have been a victim of modern slavery and some more detailed information about specific types of exploitation such as sexual exploitation, forced labour, and domestic servitude. Staff are also trained to refer cases into the NRM.

#### **1.4.5 Vicarious trauma training**

Interviewing officers and decision-makers in Immigration and Protection have also been provided with vicarious trauma training to equip them with coping mechanisms for anything they may hear and be affected by during the course of their work. The course is also aimed at reminding decision-makers to be alert to the signs of vulnerabilities, including signs that might be implicit in a claim, and to deal with these issues in a sensitive manner.

## **2. General issues**

### **2.1 Stephen Shaw review**

In February 2015, the then Home Secretary commissioned Stephen Shaw CBE, the former Prisons and Probation Ombudsman, to undertake a fundamental review of how the Home Office treats vulnerable people who are detained. In January 2016, his report, “Review into the Welfare in Detention of Vulnerable Persons”, was published. The report made a number of recommendations in relation to managing vulnerability in detention, which have clear relevance to the equality issues under consideration here.

The [Government accepted the broad thrust of Stephen Shaw’s recommendations](#) and committed to accepting a broader definition of those at risk, including victims of sexual or gender-based violence (including female genital mutilation), those with learning difficulties, those with post-traumatic stress disorder and transsexual individuals. It committed to introducing a new policy to recognise the dynamic and individual nature of vulnerability. It did this through the introduction of the Adults at Risk in Immigration Detention policy, which was first published on 12 September 2016, accompanied by training for operational staff.

The follow up to the review by Stephen Shaw CBE into the welfare in detention of vulnerable persons started on 4 September 2017 and will review the implementation of all recommendations.

#### **2.1.1 Detained Casework Transformation Programme**

The Detained Casework Transformation Programme (DCTP) was established to deliver some of the recommendations in the Shaw Report, notably in relation to managing detention casework. The programme is geared towards the Home Office’s approach to detaining the most suitable cases and progressing them swiftly yet fairly. It promotes greater consistency across the system and examines how to increase internal independent oversight of decision-making. The DCTP aims to maximise the efficiency and effectiveness of the detention estate and, in response to Stephen Shaw’s recommendations, change the processes for carrying out detention reviews, put in new and improved safeguards for the vulnerable, strengthen existing safeguards against the possibility of unduly prolonged periods of detention, and implement new approaches to case management.

The DCTP is implementing a new approach to the case management of those who are detained, replacing the existing detention review process with a revised approach. This includes a focus on reducing removal timescales, combined with a more rigorous assessment of who enters detention through the detention gatekeeper function. The aim is to ensure that the minimum possible time is spent in detention before people leave the country. Each case is considered on its individual facts, supported by a new vulnerable persons’ team – the Adults at Risk Returns Assurance Team (see below).

#### **2.2.2 Adults at Risk Returns Assurance Team (ARRAT)**

It is not always possible to identify a vulnerable person at the outset of a period of detention, as evidence is not always available, and an individual's vulnerability does not always immediately manifest itself. Importantly, those who are known or likely to be vulnerable, including those with protected characteristics, are not routinely detained, under existing published policy (in particular see the Adults at Risk in Immigration Detention guidance).

Following the piloting of a detained asylum safeguarding team, a consistent approach to assuring detention for adults at risk was agreed in June 2017, with the Adults at Risk Returns Assurance Team (ARRAT) being formally established in September 2017.

The purpose of the team is to provide an oversight and assurance function for the detention and return of adults at risk and other vulnerable individuals. It supports detained casework commands in managing potentially vulnerable or at risk adults through to return and making lawful and reasoned decisions throughout the period of detention.

The key areas for which the team will have responsibility will be:

- Creating a vulnerability expert network
- Oversight of protected characteristics and minority groups within detention, and
- Operational policy implementation and assurance

ARRAT will not take over ownership of any cases, but will run assurance processes to ensure consistent decision-making regarding the detention of vulnerable and at-risk adults, and will offer support and guidance to business areas in order to achieve this. The recommendations of ARRAT should be followed unless there is a good reason not to do so.

### **3. Specific consideration of protected characteristics**

The impacts of asylum case consideration and detention under the Detained Interim Instruction (which is substantively the same as the Asylum Claims in Detention framework) on those with protected characteristics are assessed below.

Data has been obtained in respect of a cohort of cases from November 2016, during which time 143 claimants were routed for consideration of their asylum claims in detention. In some instances, different data periods have been used (in which cases it is clearly identified).

Of the 143 claimants initially routed for consideration of their asylum claim in detention, 89 were subsequently released from detention once it became apparent that an individual was no longer suitable for detention for one reason or another, including: the need to obtain medical evidence; Rule 35 reports; bail; the timescales for resolution of a judicial review; and the timescale for proposed appeal hearing or required for an Emergency Travel Document (ETD).

Internal data relating to flexibility requests obtained for the month of November 2016 has been examined. This shows that 11 of 12 requests for flexibility were granted. Although the data is not differentiated by protected characteristics, it clearly shows that in the cases where flexibility was requested, it was exercised in the majority of cases. This will have included cases involving those with protected characteristics (insofar as such individuals are considered suitable for asylum case consideration in detention). The nature and the extent of flexibility afforded to claimants will be based on their individual circumstances and needs.

## 3.1 Age

### 3.1.1 Policy

Detention may have a disproportionately adverse impact on children and the elderly. Detention policy sets out detention policy in respect of age. In particular:

- Section 55.9.3 stipulates that those under the age of 18 should not be detained, other than in very exceptional circumstances (which are limited and are set out)
- Adults at Risk in Immigration Detention policy similarly notes that those aged 70 or over will automatically be regarded as an adult at risk in the terms of the policy, and that they consequently should be detained only if the immigration factors outweigh the risk factors such as to displace the presumption that individuals at risk should not be detained.
- Section 55.9.3.1 includes guidance on dealing with individuals where the Home Office does not accept their claim to be under the age of 18, and explains that the guidance must be read in conjunction with the [Assessing Age](#) asylum instruction and [DSO 14/2012](#) on managing age dispute cases in the detention estate.

The consequence of these policies to the detention of asylum seekers is that neither those who are accepted as being under 18 nor those who are 70 or over will normally be detained whilst their asylum claim is considered.

### 3.1.2 Quantitative evidence of impacts

[Published immigration statistics](#) show that the majority of people who claimed asylum in the UK in 2016 were between the ages of 18 and 34. It is a small proportion of total asylum intake who are either over the age of 64 or under the age of 18.

Home Office management information records information regarding the age of individuals whose asylum claims are considered whilst they are in detention. None of the 143 claimants routed for detained asylum consideration in November 2016 were under 18 or over 70. (There is no formal general definition in Home Office policies of 'elderly', however, the age of 70 or over is used in the Adults at Risk in Immigration Detention policy, and it is relevant and appropriate to use the same definition for the purpose of this review.)

In the same cohort, there were no cases where age was disputed.

We have no reason to consider that the November 2016 cohort is not a representative monthly cohort for those who have their asylum claims processed in detention. [Published immigration statistics](#) for the period October 2016 to September 2017 record that a total of 695 asylum claimants in the overall asylum system had their age disputed, with 692 disputes being resolved. 66% of resolved cases were assessed to be over 18, despite claiming to be a child when the age dispute was raised.

The data shows that in two thirds of the cases where the Home Office gave individuals the benefit of the doubt despite believing that they could be adults, the Home Office was in fact right to dispute their age. Analysis of management information on cases detained between January and September 2016 who disputed being treated as adults, found that of the six individuals subsequently found to be children after being detained as adults, only one claimed to be a child at the point of or prior to being detained.

### **3.1.3 Qualitative evidence of impacts**

Unaccompanied children may only be detained, for the purpose of removal, in the very limited circumstances permitted under paragraph 18B of Schedule 2 to the Immigration Act 1971. It may also be necessary to detain them for very short periods of time for safeguarding purposes; for example, the time taken to ensure that their immediate welfare needs are taken care of at the point of first encounter, to register the claim for asylum and to transfer them in to the care of children's services.

Concerns raised by stakeholders or in litigation have often centred on age-disputed cases, where it is alleged that processes sometimes fail by detaining individuals who are found to be children after having been detained.

The Assessing Age policy has in-built safeguards to ensure it is compliant with section 55 of the [Borders, Citizenship and Immigration Act 2009](#) which requires the immigration authorities to take account of the need to safeguard and promote the welfare of children.

Claimants whose age has not been accepted as claimed by the Home Office will initially be afforded the benefit of the doubt and treated as children until a further assessment of their age has been made, unless their physical appearance and demeanour very strongly suggests that they are significantly over 18 years of age.

This ensures that those who may be children are not exposed to risks which might compromise their safety or welfare in the meantime and allows a margin of time for these individuals to produce evidence showing that they are a child and for a local authority age assessment to be conducted.

It is essential that decisions in age disputed cases are made early by immigration officers and, where there is doubt about whether they are under 18, that a Merton compliant age assessment is obtained at the earliest opportunity, in order to correctly place an individual into adult or child asylum processes.

### **3.1.4 Consideration/actions/mitigations**

Parliament has legislated to place limitations on the detention of unaccompanied children when it does become necessary for the purpose of removal.

Unaccompanied children can be detained for a maximum of 24 hours for the purpose of administrative removal only. The policy in relation to age dispute cases also has a number of safeguards built into it, in order to minimise the risk of detaining individuals who it is subsequently established are children.

The Adults at Risk in Immigration Detention policy makes explicit provision relevant to the impact of age, discussed here, and lists being aged 70 or over as being a vulnerability/risk indicator weighing against detention.

The evidence is clear that those whose cases were processed in detention by the DAC team were between the ages of 18 and 70 (notwithstanding the consideration of other factors relevant to detention).



## 3.2 Disability

### 3.2.1 Policy

For the purposes of the Equality Act, disability is described as being: ‘A physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on an individual’s ability to carry out normal daily activities.’

The Adults at Risk in Immigration Detention policy sets out the Home Office approach to detaining those with serious physical disabilities, as well as those with mental health and other health conditions. It is clear that such disabilities and conditions are risk indicators, the impact of which (where relevant) must be properly considered and weighed against immigration compliance factors in any decision to detain. Under the policy, an individual will be detained only when the immigration factors outweigh the risk factors such as to displace the presumption that individuals at risk should not be detained.

The Asylum Claims in Detention instruction is also clear that decisions to detain or maintain detention of those who have claimed asylum must take account of the nature of the asylum claim and all the circumstances of that individual. Particular attention should be paid to any vulnerabilities that have been raised which may affect not only an individual’s suitability for detention, but also their ability to properly present their asylum claim in detention. If for any reason a decision on the asylum claim is likely to be significantly delayed, for instance by the need for the claimant to obtain further evidence, detention must be reviewed.

The Assessing Credibility and Refugee Status instruction is clear that just and fair decisions are the objective in asylum claims. It also states that the policy objective in considering asylum claims is to ensure that they are correctly decided, in a timely and sensitive way, and that claimants are treated with respect, dignity and fairness, regardless of protected characteristics.

### 3.2.2 Quantitative evidence of impacts

The Home Office does record whether detained asylum seekers have disabilities, but the records are not limited to disabilities that fall under the Equality Act definition. However, information relating to medical concerns held by IRC officials and medical staff is recorded (in free-text fields), and has been manually reviewed.

This review has shown that four individuals who *may* have met the Equality Act threshold for disability were recorded as having been detained for asylum consideration in November 2016. All four were subsequently released from detention when, because of their particular individual circumstances, they were considered unsuitable for ongoing detention under the Adults at Risk in Immigration Detention policy.<sup>2</sup>

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<sup>2</sup> This information is not part of routinely published statistics. The data is recorded for management information purposes. It is taken from locally-held sources which have not been subject to audit and could be subject to change upon review.

### 3.2.3 Qualitative evidence of impacts

In all circumstances involving the detention of individuals with disabilities, steps were taken to ensure any condition was satisfactorily managed, including through making any reasonable adjustments. Those who are not suitable for detention are released to have their claim determined in the community. The Home Office has a specific policy on [Asylum Seekers With Care Needs](#), which provides guidance for asylum support decision-makers, the voluntary sector and local authorities on the handling of applications for support from asylum seekers who may have a need for additional support /care due to age, illness or disability.

In addition, the Home Office recognises that levels of disability falling below the Equality Act threshold may nonetheless have an effect on an individual's wellbeing and their participation in the asylum process.

Issues relating to mental and physical health have been raised by stakeholders, for example at the Stakeholder Engagement Group (SEG) equalities sub-group, and featured in Stephen Shaw's report.

Under [Rule 34 of the Detention Centre Rules 2001](#), all detainees admitted to an Immigration Removal Centre (IRC) are either referred to a doctor or offered a consultation appointment with a doctor within 24 hours of their arrival, following their initial healthcare screening by a nurse within two hours of admission. However, detainees are not compelled to attend such appointments, or to disclose a physical or mental disability or history of mental or physical illness if they do attend.

There is a link between those claiming asylum and those who claim to be victims of torture (which although not constituting a disability under the Equality Act definition, may indicate a physical or mental health condition).

[Rule 35 of the Detention Centre Rules 2001](#) requires doctors in IRCs to report to the Home Office, to ensure that those with particular needs or who otherwise may not be suitable for detention can be brought to the attention of the Home Office, to inform welfare considerations and detention review decisions. Specifically, doctors must report:

- 35(1) ... on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention
- 35(2)... on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State
- 35(3)... on the case of any detained person who he is concerned may have been the victim of torture

The process is supported by [DSO 9/2016: Detention Rule 35 Reports](#), which explains the role and responsibilities of both doctors and Home Office contact

management teams in IRCs, most particularly when and how to complete a Rule 35 report, and what steps to take to ensure it is promptly considered by the relevant decision maker, as part of both the detention review process and overall consideration under Adults at Risk in Immigration Detention policy.

### **3.2.4 Consideration/actions/mitigations**

A number of policies and instructions work together to ensure that those meeting the Equality Act definition of disability do not inappropriately enter/remain in detention while their asylum claim is considered.

In respect of physical and mental health or disability, the Adults at Risk in Immigration Detention policy sets out that those with a serious disability would be regarded as being at risk, and would be detained only when the immigration factors outweigh the risk factors to displace the presumption that individuals at risk should not be detained.

However, if an individual with a physical or mental health condition is not already excluded from detention by detention policy criteria, the imperative for fairness set out in the asylum policies means that if their condition will have a negative impact on their ability to present their asylum claim fairly, there must either be adjustments made (in an environment where they are assured legal representation and where timetable flexibility is provided where necessary), or if a fair decision were to require significantly protracted consideration timescales, the review of detention due under detention policy would likely result in release.

## **3.3 Gender reassignment**

### **3.3.1 Policy**

Under the Equality Act 2010, an individual has the protected characteristic of gender reassignment where the person has proposed, started or completed a process of changing the physiological or other attributes of the sex assigned them at birth. This does not only cover situations where the individual has begun hormone treatment and or gender reassignment surgery. Section 43 of the Act notes that the protected characteristic also applies where a person decides to spend the rest of their life in the opposite gender without seeking medical advice or without medical intervention.

As recommended in Stephen Shaw's review, the Adults at Risk in Immigration Detention policy regards transsexuals (that is, individuals who have transitioned, or are transitioning, from one gender to the other) to be people who may be at risk in immigration detention. The policy also regards those who are intersex as being at risk. Under the policy, a transsexual or intersex individual will be detained only when the immigration factors outweigh the risk factors such as to displace the presumption that individuals at risk should not be detained.

If, after the proper consideration of all relevant factors in detention policy and under the Adults at Risk in Immigration Detention policy, it is determined that a transsexual individual should be detained, it is possible that their asylum claim could be considered in detention. Where transsexual individuals are detained, Home Office policy is governed by [DSO 11/2012: Care and Management of Transsexual Detainees](#), which provides extensive guidance to IRC operators and others. The key aim of the DSO is to ensure that transsexual detainees are treated with proper regard for their dignity and are held safely. It seeks to manage risk and ensure that it is addressed in line with the well-established risk management systems in place across the detention estate. Following the Stephen Shaw review, the DSO is being extended to cover intersex detainees.

The asylum policy relevant to gender reassignment and those who identify as, or are in any other way transsexual, is set out in the instruction, '[Gender Identity Issues in the Asylum Claim](#)'.

### **3.3.2 Quantitative evidence of impacts**

The Home Office does not centrally record statistics relating to detainees and/or asylum claimants who are undergoing/have undergone gender reassignment. The Home Office also does not record central statistics relating to claimants who present gender identity claims or who identify as transsexual.

### **3.3.3 Qualitative evidence of impacts**

Accounts obtained from DAC team induction officers, workflow managers and decision-makers, are that although claims involving transgender/transsexual issues have occasionally been considered in detention in the past, no such claims have been processed by DAC since its creation in July 2015.

### **3.3.4 Consideration/actions/mitigations**

In the circumstances in which a transsexual individual is detained, the mechanisms and safeguards noted within the sexual orientation section (section 3.8, below) to protect detainees from any form of harassment and bullying will also apply.

Moreover, as with all cases, where additional time is required for a claimant to obtain material evidence necessary for a fair decision in his/her case, Home Office policy is clear that this should be given.

Under current policy, provided an individual is suitable for detention in accordance with Detention and Temporary Release (read alongside the Adults at Risk in Immigration Detention policy), there are no grounds for excluding transsexual individuals from detention on an unmitigated basis.

The Home Office is committed to improving guidance and training on the handling of gender identity in asylum claims. In this regard, it is reviewing and revising the existing asylum policy instructions 'Gender Identity Issues in the Asylum Claim' and 'Asylum Case involving Gender Recognition, to ensure that the specific needs and experiences of transsexual asylum seekers are met and clearly referenced. Part of this process involves consulting with stakeholders with expertise in this area. The revised instruction is designed to improve the management of gender identity asylum claims and will take account of the Government's response to the recommendations from the [House of Commons Women's and Equality Committee Inquiry on Transgender Equality](#) which was published on 14 July 2016.

Additionally a bespoke e-learning course based on the revised instruction will be developed.

Although the protected characteristic of gender reassignment is distinct from sexual orientation, the provisions and structures set out in section 3.8 will, in many cases, apply in mitigating the impacts of this protected characteristic on the ability to present an asylum claim fairly in detention.

As set out above, transsexual people are regarded as an at-risk group by the Adults at Risk in Immigration Detention policy. Under the policy, an individual will be detained only when the immigration factors outweigh the risk factors to displace the presumption that individuals at risk should not be detained.

## **3.4 Pregnancy and maternity**

### **3.4.1 Policy**

Detention may have a disproportionately adverse impact on pregnant women. That is why [section 60 of the Immigration Act 2016](#) places restrictions on the circumstances in which pregnant women may be detained for the purpose of removal and on the duration of their detention. Since 12 July 2016, pregnant women may not be detained for the purpose of removal for longer than 72 hours, extendable to up to a week in total with Ministerial approval.

### **3.4.2 Quantitative evidence of impacts**

The Home Office did not previously centrally record information relating to pregnancies, but from the commencement of section 60 of the Immigration Act 2016 a central record is now held relating to pregnancy in detention.

Between July 2015 and October 2017, 911 females were detained while their asylum claims were considered. Of the 911, 4 were released following DAC being notified they were pregnant (the pregnancies not being known or confirmed prior to detention).<sup>3</sup>

### **3.4.3 Qualitative evidence of impacts**

None applicable.

### **3.4.4 Consideration/actions/mitigations**

The effect of section 60 of the Immigration Act 2016, made operational in Detention of Pregnant Women (in the Offender Management policy collection), is that pregnant women cannot now be detained whilst their asylum claims are considered, given the time limit on their detention.

This measure solidifies an operational decision taken in December 2014, prior to the suspension of DFT, to exclude pregnant women from detention while their asylum claim was processed. (This decision was subsequently extended to apply to the work of the DAC team after the suspension of DFT.)

The Adults at Risk in Immigration Detention policy also addresses the situation of pregnant women. It is very clear that in all cases in which a pregnant woman is being detained for removal, her pregnancy will be regarded as amounting to level 3 evidence and the pregnancy will therefore be afforded significant weight when assessing the risk of harm in detention. Under the policy, an individual will be detained only when the immigration factors outweigh the risk factors to displace the presumption that individuals at risk should not be detained.

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<sup>3</sup> This information is not part of routinely published statistics. The data is recorded for management information purposes. It is taken from locally-held sources which have not been subject to audit and could be subject to change upon review.



## 3.5 Race

### 3.5.1 Policy

Published detention policy contains no criteria directly relevant to detention or exclusion from detention on the grounds of race, ethnicity or nationality. Any such detention may in principle be appropriate, according to the particular facts of the case. The Asylum Claims in Detention instruction does not add to published policy in this respect.

[Section 94 of the Nationality, Immigration and Asylum Act 2002](#) requires refusal decisions in respect of particular nationalities to be certified as clearly unfounded, unless a claimant provides evidence that they are not clearly unfounded (with the consequence of the right of appeal in certified cases being exercisable only from outside the UK). The asylum decisions are taken on a case-by-case basis, but the presumption of certification creates an expectation of early removal, which is a key factor in detention decisions. Notwithstanding any other factors relevant to detention, this indirectly favours certain nationalities as being more suitable for detention whilst their asylum claim is considered.

The need for travel documentation for removal may also lead to certain nationalities being found more suitable for detention than others as removal can take place sooner in respect of those who have travel documents or whose documents can be obtained relatively quickly than in respect of individuals who require travel documentation that is difficult to obtain.

To the extent that those of particular nationalities are particularly affected by a decision to consider their asylum claims in detention, they will also be affected by the updated instruction. The Secretary of State considers this a proportionate reflection of the legitimate public policy aims of the Asylum Claims in Detention policy, in enforcing removals and ensuring cooperation with immigration control.

### 3.5.2 Quantitative evidence of impacts

Data relating to nationality is recorded in respect of those entering detention, those claiming asylum, and asylum decisions.

[Published immigration statistics](#) show that the largest number of people who entered detention in 2016 came from South Asia.

*Total Africa North	1,220
*Total Africa Sub-Saharan	3,672
*Total America North	573
*Total America Central and South	1,867



*Total Asia Central	973
*Total Asia East	1,093
*Total Asia South	7,439
*Total Asia South East	1,026
*Total EU 14	571
*Total EU 2	1,667
*Total EU 8	2,452
*Total EU Other	11
*Total Europe Other	2,827
*Total Middle East	3,234
*Total Oceania	83
*Total Other	195

Management information from November 2016 shows that asylum cases accepted for consideration in detention were dominated by five nationalities: Albania (21); India (20); Pakistan (19); Bangladesh (18); Nigeria (16). Claimants of all other nationalities who had their asylum claims processed in detention in the period were recorded in figures of 10 or less.<sup>4</sup>

Published data also shows that in 2016, the top five nationalities accepted for consideration in detention were also in the top eleven for asylum claims made in the UK.

Country of nationality	Total applications	Total initial decisions	Total refusals	Certified refusals	Other refusals	3rd country refusals
Pakistan	2,870	2,023	1,731	448	1,204	79
Bangladesh	1,944	1,230	1,160	251	906	3

<sup>4</sup> This information is not part of routinely published statistics. The data is recorded for management information purposes. It is taken from locally-held sources which have not been subject to audit and could be subject to change upon review.

Albania	<b>1,493</b>	<b>819</b>	<b>597</b>	251	303	43
India	<b>1,498</b>	<b>905</b>	<b>899</b>	761	128	10
Nigeria	<b>1,158</b>	<b>776</b>	<b>698</b>	289	403	6

Management information shows that the Albanian, Indian, and Nigerian claims processed in detention received a high number of certified refusals, which is reflective of those nationalities being listed in section 94 of the 2002 Act, as claims which should, if refused asylum, be certified as clearly unfounded, unless on the facts of the case the claim is not clearly unfounded (and mirrors the situation of such claims overall): Of 16 refusal decisions made in respect of the Indian cases in November 2016, 15 were certified as clearly unfounded (94%) and 1 received an in country right of appeal. Of 12 refusal decisions in respect of Albanian cases, 11 were certified as clearly unfounded (92%) and 1 received an in country right of appeal. Of 15 refusal decisions made in respect of Nigerian cases, 12 were certified as clearly unfounded (80%) and 3 received an in country right of appeal.

The same information shows that of the 18 Bangladeshi cases processed in detention, 17 decisions were made. 7 cases were refused with an in-country right of appeal, 10 cases were refused and certified as clearly unfounded. It also shows that of the 19 Pakistani cases, 17 decisions were made. 7 cases were refused with an in-country right of appeal and 7 cases were refused and certified as clearly unfounded.<sup>5</sup>

### **3.5.3 Qualitative evidence of impacts**

Although we have not identified any specific qualitative evidence of the impact of deciding an asylum claim in detention on nationality as a protected characteristic, nationality may dictate the language an individual speaks, and if English is not an individual's first language, he or she may find interaction with others difficult. There has been significant wider research on the importance of language acquisition, e.g.: Language Issues in Migration and Integration.<sup>6</sup>

### **3.5.4 Consideration/actions/mitigations**

The data suggests that where a decision is made in respect of the main Asylum Claims in Detention intake nationalities, it is in almost all cases a refusal decision, and in a substantial proportion of those, a certified refusal. These are decisions

<sup>5</sup> This information is not part of routinely published statistics. The data is recorded for management information purposes. It is taken from locally-held sources which have not been subject to audit and could be subject to change upon review.

<sup>6</sup> [https://esol.britishcouncil.org/sites/default/files/Language\\_issues\\_migration\\_integration\\_perspectives\\_teachers\\_learners.pdf](https://esol.britishcouncil.org/sites/default/files/Language_issues_migration_integration_perspectives_teachers_learners.pdf)

which will lead to removal (which is the basis for detention in the Asylum Claims in Detention framework<sup>7</sup>).

It is however noted that around 50% of the four nationalities examined were released prior to the time of decision, due to existing general safeguards that do not appear to be linked to particular protected characteristics.

All detained claimants are provided with advice about what to expect during the asylum process. This has been translated into a number of languages, and all detained claimants have access to interpreter services and publicly funded legal advice.

Unlike non-detained asylum cases, asylum cases processed in detention are given automatic access to legal advice before the interview, legal representation at the interview, and detained claimants can seek further advice from their lawyer in the period between the interview and the decision being served. Asylum claimants whose cases are processed in detention therefore receive additional support – particularly in accessing to legal advice – to safeguard against any (perceived or real) difficulties faced by bringing an asylum claim whilst detained, including English not being the claimant's first language.

The Home Office recognises the need for legal representatives to take effective instructions from asylum claimants. Despite smaller asylum intake numbers since the suspension of DFT, the Home Office has maintained the number of interview rooms available, which in real terms means more access and availability of rooms for legal representatives to consult their clients. The continuation of guaranteed representation through the Legal Aid Agency and access at Immigration Removal Centres provides both a fairness of opportunity and in preparation time for all claimants.

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<sup>7</sup> It is important to note that under the Detained Fast Track, the basis for detention was that a quick decision could be made on the asylum decision.

## **3.6 Religion and belief**

### **3.6.1 Policy**

Published detention policy contains no criteria directly relevant to detention or exclusion from detention on the grounds of religion or belief (or the lack thereof). Any such detention may in principle be appropriate, according to the particular facts of the case.

There are no provisions in asylum policy favouring or excluding consideration of asylum claims in detention on this ground. The Asylum Claims in Detention instruction does not add to published policy in this respect.

### **3.6.2 Quantitative evidence of impacts**

Data regarding claimants' religion is not routinely published. However, such information is recorded on files, where it is declared at the point of asylum screening.

A review of the cases that were routed for asylum consideration in detention in November 2016 has been undertaken. Of 99 cases where an entry relating to declared religion was present, 44 claimants were recorded as Muslim; 30 were recorded as Christian (7 Catholic, 23 not recorded), 10 were recorded as Sikh, 8 were recorded as Hindu, and 7 were recorded as Buddhist.<sup>8</sup>

### **3.6.3 Qualitative evidence of impacts**

No impacts have been identified.

### **3.6.4 Consideration/actions/mitigations**

The data broadly suggests a correlation between religion and nationality, which can closely relate to basis of claim and case outcomes.

Whilst factors such as certification under section 94 of the 2002 Act and operational considerations such as removability for those who are refused asylum may mean that some nationalities are more likely to be detained than others, and whilst nationality may in some instances correlate with religion, there is no evidence that those of a particular religion are more likely to find it difficult to present their asylum claim in detention.

Detainees are free to practice their religion whilst detained and are supported in doing so by the manager of religious affairs appointed in each IRC. There is provision of a multi-faith team in each centre as well as religious services, faith rooms and religious literature. Dietary requirements arising from a person's religion will also be met too.

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<sup>8</sup> This information is not part of routinely published statistics. The data is recorded for management information purposes. It is taken from locally-held sources which have not been subject to audit and could be subject to change upon review.

## **3.7 Sex (gender)**

### **3.7.1 Policy**

Published detention policy contains no criteria directly relevant to detention or exclusion from detention on the grounds of gender.

Some of the nationalities listed under section 94 of the 2002 Act as being due for clearly unfounded certification if refused asylum (unless not clearly unfounded on the facts of the case) exclude female claimants from the provision. (The relevant nationalities are: Ghana, Nigeria, Gambia, Kenya, Liberia, Malawi, Mali and Sierra Leone.)

The Asylum Claims in Detention instruction does not add to published policy in this respect. Any such detention may in principle be appropriate, according to the particular facts of the case.

### **3.7.2 Quantitative evidence of impacts**

The Home Office records statistics on the gender of detainees and asylum seekers.

Of 143 claimants managed by DAC from November 2016, 32 were female (around 22% of the total) which is broadly equivalent to 20% claims made by females nationally in 2015 (6788 from a total of 32,733). Of these cases, 4 were certified, 11 were refused with an in-country right of appeal, and 17 were released prior to decision. A total of 32 cases is considered to be too small to draw statistically significant conclusions.

111 claimants were male (which included 21 Albanians, 16 Indian, 12 Nigerians, 8 Ghanaians, 3 Mauritians, 2 Ukrainians, 1 Malian and 1 Sierra Leonean). 1 claimant was granted asylum, 61 were refused and certified as clearly unfounded, 27 were refused with an in-country right of appeal, 11 applications were withdrawn, and 11 claimants were released prior to the decision.<sup>9</sup>

### **3.7.3 Qualitative evidence of impacts**

The Home Office holds a quarterly Stakeholder Engagement Group (SEG) equalities sub-group, where concerns and issues such as gender in the asylum claim are discussed with corporate partners. External partners have highlighted concerns about women feeling uncomfortable presenting their claims to a male interviewer, particularly when it involves sexual violence.

The Shaw report recommended expanding the criteria for vulnerable cases to include victims of sexual or gender-based violence (including female genital mutilation (FGM)).

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<sup>9</sup> This information is not part of routinely published statistics. The data is recorded for management information purposes. It is taken from locally-held sources which have not been subject to audit and could be subject to change upon review.

### 3.7.4 Consideration/actions/mitigations

The [Gender Issues in Asylum instruction](#) recognises that gender related claims may either be brought by a woman or a man, but are more commonly brought by women. Interviewing officers are sensitive to the difficulties women have in disclosing relevant information. It acknowledges that some women may have difficulty in communicating their experiences during their claim.

Gender training was developed in consultation with Asylum Aid – who advocate for female asylum seekers – and UNHCR. The Home Office also piloted the course with both organisations and amended the content in light of their feedback.

The Home Office liaises closely with stakeholders on gender related issues, including active involvement in the wider Home Office strategy to tackle violence against women and girls (VAWG). The Home Office has further developed an asylum gender action plan and have made good progress in improving the asylum process for women. Action taken includes offering asylum claimants the choice of whether they would like a male or female interviewer and interpreter and signposting women to support services. The flexibility policy and access to legally aided lawyers also helps to address any disadvantages women in particular, but also men, may face in presenting their asylum claim in detention.

Progress in improving the gender sensitivity of the asylum process has been recognised by corporate partners. Asylum Aid has previously wrote to the Immigration Minister to say they were delighted that recommendations put forward as part of the ‘Protection Gap’ campaign have been included in the asylum gender action plan and acknowledged the progress the Home Office has made so far.

Specific training (as set out earlier in this report) is provided on trafficking and modern slavery, servitude and forced or compulsory labour, to assist staff in recognising and properly handling the cases of those who may be victims. In 2016, 51% of all referrals to the National Referral Mechanism were female.<sup>10</sup>

The Adults at Risk in Immigration Detention policy specifically includes sexual or gender-based violence (including FGM) as an indicator of risk that may mean that an individual is unsuitable for detention. An ‘at risk’ individual will be detained only when the immigration factors outweigh the risk factors identified to displace the presumption that individuals at risk should not be detained.

Furthermore, in response to the Shaw review, the Home Office published [DSO 06/2016 about women in detention](#), to provide consistent standards for the treatment of women in immigration detention and under escort.

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<sup>10</sup> <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file>

## **3.8 Sexual orientation**

### **3.8.1 Policy**

Published detention policy contains no criteria directly relevant to detention or exclusion from detention on the grounds of an individual's sexual orientation. Any such detention may in principle be appropriate, according to the particular facts of the case.

There are no provisions in asylum policy favouring or excluding consideration of asylum claims in detention on this ground. The Asylum Claims in Detention instruction does not add to published policy in this respect.

[Note that a number of impacts and issues which relate to sexual orientation overlap with those of the protected characteristic of gender reassignment.]

### **3.8.2 Quantitative evidence of impact**

The Home Office does not centrally record statistics on the sexual orientation of detainees or asylum claimants. Statistics are however maintained in respect of whether the asylum claim is based (partly or wholly) on sexual orientation via a manual flagging system. However, this data does not indicate that a claimant identifies as having a particular sexual orientation. This will sometimes be a characteristic that has been imputed to the claimant by their country of origin.

An examination of case data has been undertaken in respect of those cases bearing a sexual orientation claim flag (26 out of the 143 cases managed under the DII framework in November 2016). 19 claimants were recorded as being homosexual or having a claim based on homosexuality, 7 were recorded as bisexual or having a claim based on bisexuality.<sup>11</sup>

### **3.8.3 Qualitative evidence of impact**

Through litigation and feedback from stakeholders, a number of concerns have been raised relating to asylum claims based on sexual orientation. It is said that such claims are inherently complex, and claimants have difficulty substantiating their claim, often needing time to obtain evidence from multiple sources to corroborate the claim, including from abroad. It has also been asserted that LGBT claimants experience specific difficulties which are not normally experienced by other asylum seekers, including a lack of support from either their home community or LGB communities, and a lack of independent evidence about their identity and about conditions in their country of origin. It is considered by some stakeholders that LGB claimants do not have an effective opportunity to present their cases in a detained environment or within detained timescales and as such are unsuitable for detention.

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<sup>11</sup> This information is not part of routinely published statistics. The data is recorded for management information purposes. It is taken from locally-held sources which have not been subject to audit and could be subject to change upon review.

Concerns from stakeholders have additionally been raised that a culture of harassment, bullying and abuse exists for LGB detainees, including from other detainees, and that safeguards remain ineffective in detention and that because of their perception of high volumes of abuse, it is inappropriate to detain these cohorts of cases. Indeed these are issues also discussed in the Stephen Shaw report. However, this report did not recommend that the Home Office should consider LGB as a vulnerable group in detention, unlike for transgender claimants.

Evidence relating to lesbian, gay and transgender individuals in the determination of their asylum claims in detention was submitted and considered in the High Court case of Hossain. It is significant to note that the judgment did not find sexual orientation or those with claims based on sexual orientation to be unsuitable for detention or for asylum consideration in detention.

### **3.8.4 Consideration/actions/mitigations**

The Home Office accepts that claims involving sexual orientation (and gender identity) may be sensitive in nature for reasons such as feelings of shame and secrecy and a reluctance of the claimant to speak openly about their sexual orientation. This does not however necessarily make such claims inherently complex or incapable of being fairly decided within reasonable timescales in detention.

Consideration of these asylum claims involves consideration of both country information and the credibility of the claimant. Country information, which addresses the risk of persecution arising as a result of sexual orientation, plays a significant role in many cases in deciding whether or not to grant protection.

The Asylum Claims in Detention policy provides for flexibility in considering claims, and where it becomes apparent that a fair decision cannot be taken within a reasonable timescale (for example, where additional pertinent evidence needs to be obtained), flexibility may be afforded or release from DAC agreed.

In recognising that those claiming asylum on the basis of their sexual orientation may experience specific difficulties not routinely experienced by other asylum seekers, all decision-makers – regardless of whether they are processing detained or non-detained cases - are trained to handle evidence that includes persecution or serious harm, potentially including sexual violence, with sensitivity. In particular, decision-makers are trained to give the claimant the opportunity to put forward relevant evidence to establish their claim. This enables a thorough consideration of evidence to ensure that those who are at risk of persecution are granted protection in the UK. Decision-makers are also required to provide flexibility in the consideration of all asylum claims to ensure individuals can present their claim fairly.

LGB training (and refresher training), developed in cooperation with corporate partners, is provided to decision-makers, including those dealing with detained asylum casework, which provides guidance on how to effectively and sensitively explore LGB issues at interview and how to address credibility appropriately in LGB decision letters. It outlines the DSSH (Difference, Stigma, Shame, Harm) model and



how it can be used when conducting LGB interviews to explore credibility effectively and sensitively.

Safeguarding and protection is provided through a robust framework of safeguards which is applicable for all detainees, including a comprehensive set of operating standards which sets out the required auditable minimum level of care and service across all aspects of IRCs.

Of importance is [DSO 02/2016: Lesbian, Gay and Bisexual Detainees in the Detention Estate](#). This provides guidance for all staff and suppliers operating in the detention estate, including escorting staff, on managing LGB detainees to ensure equality of treatment.

Our operating contractors are required to ensure the safety and security of all detainees equally. All service providers are contractually required to comply with all primary and secondary legislation, Detention Centre Rules and all Detention Services Orders, and as such have in place policies and procedures to safeguard those in their care including anti-bullying strategies, support plans, complaint raising/resolution procedures and policies to ensure that due regard is given to the protected characteristics of the Equality Act 2010.

In April 2016, the Home Office published [DSO 03/2016: Consideration of Detainee Placement in the Detention Estate](#), which sets out instructions on the use of the detainee risk assessment system to inform the placement of detainees in the detention estate.

Allocation of detainees to removal centres must consider the history of the detainee's behaviour and the risk posed to the safety of other detainees, staff and visitors. Any new or changing risks identified after a detainee arriving at a centre must be documented and shared to ensure that the detainee can continue to be managed appropriately.

Mechanisms and safeguards exist to support our policies and to protect all detainees from all forms of harassment and bullying. The Home Office operates a comprehensive complaints system if detainees feel that they have not been treated in accordance with standards. Equally, we are committed to ensuring that any individual who has their asylum claim processed in detention can fairly present their claim.

The Home Office engages openly, regularly and constructively with stakeholders, including Stonewall, UNHCR and UKLGIG to review processes and make improvements where possible. These partners have played important roles in working collaboratively with the Home Office, particularly in developing guidance and training, notably with the training piloted with a smaller group of external partners before being rolled out to caseworking staff. Cooperation continues through the Stakeholder Engagement Group, in particular the sub-group on equality, regular LGB training meetings and ad-hoc meetings between Home Office officials, the Director of Immigration and Protection and partners on a variety of issues.



## **3.9 Marriage and civil partnership**

### **3.9.1 Policy**

Published detention policy contains no criteria directly relevant to detention or exclusion from detention on the grounds of married or civil partnership status. Any such detention may in principle be appropriate, according to the particular facts of the case.

There are no provisions in asylum policy favouring or excluding consideration of asylum claims in detention on this ground. The Asylum Claims in Detention instruction does not add to published policy in this respect.

[DSO 6/2015: Marriage or Civil Partnership of Detainees](#), provides guidance to staff in IRCs about facilitating the marriage or civil partnership of a detainee.

### **3.9.2 Quantitative evidence of impacts**

The Home Office records information relating to asylum claimants who declare at screening that they are married. However, that information is not recorded in such a way as to enable statistics to be drawn to identify whether the relationship endures, or whether the married/civil partner is present in the United Kingdom.

### **3.9.3 Qualitative evidence of impacts**

The Home Office is mindful of the stress that may arise in circumstances where individuals are detained for removal apart from their partners or spouses, whilst their asylum claims are decided.

### **3.9.4 Consideration/actions/mitigations**

The period of detention for those whose asylum applications are considered in detention will be of a relatively short duration. The interference with the marriage or civil partnership will therefore be slight.

Detainees can receive unlimited daily visits from family members throughout the day, with only reasonable restrictions on duration, in line with [Rule 28 of the Detention Centre Rules 2001](#). Detainees may also make or receive telephone calls and emails, allowing contact with partners and other family members. Adult families awaiting removal who claim asylum in detention and for whom detention remains appropriate will usually be detained together in purpose built family suites at Yarl's Wood IRC.

## **Part 2 - Policy Equality Sign-off**

N.B. The PES can be completed throughout the development of a policy but is only signed at the point the policy is made public i.e. finalised and implemented.

To assist in evaluating whether there is robust evidence that could withstand legal challenge, the following questions must be asked prior to sign-off.

### **Q. Has 'due regard' been made to the three aims of the General Duty (section 149 of the Equality Act 2010)?**

- I. Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- II. Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- III. Foster good relations between people who share a protected characteristic.

Due regard has been given to all three aims - Daniel Hobbs.

I have thoroughly reviewed the PES and am satisfied that it covers all aspects of the general duty - Tyson Hepple.

### **Q. Have all the protected characteristics been considered – age; disability; gender reassignment; pregnancy and maternity; race (includes ethnic or national origins, colour or nationality); religion or belief (includes lack of belief); sex; and sexual orientation?**

Yes - Daniel Hobbs.

They have - Tyson Hepple.

### **Q. Have the relevant stakeholders been involved and/or consulted?**

No specific consultation has taken place with stakeholders on the PES but regular discussions on this issue with partners have taken place, which are reflected in this document, and will continue - Daniel Hobbs.

Although specific consultation has not taken place on this PES, as co-chair of our Stakeholder Engagement Forum, I do have regular discussions with a full range of stakeholders on these and other issues relating to the care of asylum seekers - Tyson Hepple.

### **Q. Has all the relevant quantitative and qualitative data been considered and been subjected to appropriate analysis?**

All relevant available data has been considered - Daniel Hobbs.

Yes - Tyson Hepple.

### **Q. Have lawyers been consulted on any legal matters arising?**

I am aware that HOLA have been consulted during the development of this updated PES - Daniel Hobbs.

Yes. Tyson Hepple.

**Q. Has a date been established for reviewing the policy?**

The policy will be reviewed in a year - Daniel Hobbs.

Yes, in December 2018 - Tyson Hepple.