

Written evidence from Dr S Chelvan, Barrister, Bedford Row Chambers [EAP0008]

Oral Evidence: The author would be honoured to be called by the Select Committee to provide oral evidence with respect to not only the contents of the responses to this submission, but any other issues of inquiry to be explored. The author is a specialist expert practitioner in the field of LGBTQ+ asylum with a national and international reputation in the field, having specialised in this field since 2001, with reported guideline cases since 2005. For the past five years *the Legal 500* Legal Directory have profiled the author in Tier-1 for Immigration, London Bar, stating for the past three years: “[h]is expertise in sexual identity related asylum claims is world renowned”. He was awarded the *Legal Aid Barrister of the Year* award in 2014, and the *Attitude Magazine Pride Award* in 2018, for his work on refugee claims based on sexual-identity. His PhD in Law was awarded in June 2019 by King’s College London, with his thesis based on his DSSH model and sexual-identity asylum claims in England and Wales.

SUMMARY: - The Emotional Journey:

In 2013, the Author provided Written and Oral Evidence to the Home Affairs Committee on Asylum, See Volumes 1 and 2¹ outlining his Difference, Stigma, Shame and Harm (‘DSSH’) model, created in 2011 as a basis of an alternative approach to the UK Home Office with respect to credibility assessment following the shift “from discretion to disbelief” after the Supreme Court guidance in July 2010 in HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31; [2011]1 AC 596.²

In 2014, the Independent Chief Inspector John Vine recommended in his report the adoption of the DSSH model by the UK Home Office in determining sexual-identity asylum claims.³ By

¹ ‘House of Commons Home Affairs Committee – Asylum – Seventh Report of Session 2013-14, Volumes 1 and 2 (printed 8 October 2013) (Volume 1, Oral Evidence, page 27, paragraph 59 “A leading barrister in this area, S. Chelvan”, Law Society Written Evidence Ev 143 “The Society endorses this evidence in its entirety”, and ILPA Supplementary Evidence, Ev 85 “His “Difference, Shame, Stigma, Harm” model has received considerable attention as a way of examining the evidence in these claims”, and author’s written evidence in Volume II, Ev w 125-128), Last accessed November, 7 2021

<https://publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw.pdf>

² See paragraph 82 of the judgment for the four stages to determine an asylum claim (for any Convention reason). The first limb is the subjective credibility assessment, to ‘prove’ LGBTQ+ (or perceived to be). The second limb is purely objective, to determine whether “open LGBTQ+ individuals have a well-founded fear of persecution”, and the third limb (whether the applicant will be open on return, therefore a refugee), and the final limb, if not open, if a reason for discretion is due to a fear of persecution, then the individual is a refugee. See also *LC (Albania) v Secretary of State for the Home Department* [2017] EWCA Civ. 351, paragraph 2.

³ Independent Chief Inspector’s report (recommendation 7, page 4: “Provides more detail about the DSSH model in its training for caseworkers so that it can contribute to the quality of interviewing”): ‘*An investigation into the Home Office’s Handling of Asylum Claims Made on the Grounds of Sexual Orientation*’ March-June 2014, Last accessed November 7, 2021:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/547330/Investigation-into-the-Handling-of-Asylum-Claims_Oct_2014.pdf UK Home Office. *The Home Office response to the Independent Chief Inspector’s report: ‘An investigation into the Home Office’s Handling of Asylum Claims Made on the Grounds of Sexual Orientation’ March-June 2014* (London, Home Office, October 23, 2014). Last accessed March 27, 2020,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/365654/ResponseAsylumClaimsBasisSexualOrientation.pdf. The most recent version of the published guidance was last updated in August 2016: UK Home Office. *Asylum Policy Instruction on Sexual orientation issues in the asylum claim (version 6)* (London, Home Office, August 3, 2016), page 29 of 41. Last accessed November 7, 2021, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf.

2015, the model had been adopted by the Home Office as advanced by the author as a positive, and not a negative tool, for credibility assessment for LGBTQ+ asylum claims. The model has also been adopted by the UNHCR,⁴ the European Asylum and Support Office, the International Association of Refugee Law Judges,⁵ and governmental agencies globally (for example Switzerland, Sweden, the Republic of Ireland etc...). The author's response to the questions posed by the Inquiry hopefully assists the Committee in addressing the concerns it may have with respect to Home Office approach to credibility assessment, and "the emotional journey".⁶

The author was appointed in October 2019 as the Independent Reviewer by the Independent Advisory Group on Country Information to conduct a thematic review of Home Office Country of Origin ('COI') Reports on Sexual identity, Gender identity and expression ('SOGIE'). The author's 400 plus page report,⁷ approved by the IAGCI on 31 March 2020, and laid before Parliament by the Home Secretary in December 2020, analysed 31 Home Office SOGIE COI reports, providing ten recommendations, six fully accepted by the Home Office, and two partially accepted.⁸ This response includes some issues of significant concern

⁴ United Nations High Commission for Refugees, 'Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees' (HCR/GIP/12/09) (23 October 2012), paragraph 62: Last accessed November 7, 2021. <http://www.unhcr.org/50ae466f9.pdf> See for earlier context: UNHCR, IARLJ and ELENA, 'Informal meeting of Experts of Refugee Claims relating to Sexual Orientation and Gender Identity – 10 September 2011, Bled, Slovenia (2012) <https://www.ecre.org/wp-content/uploads/2016/05/UNHCR_IARLJ_ELENA-Report_Expert-Meeting_final_24-April-2012.pdf> Last accessed November 7, 2021 3 [7]. Chapter Four of this thesis addresses the international policy framework in detail. Importantly, the meeting was attended by two senior Upper Tribunal Judges, Upper Tribunal Judge Hugo Storey and Upper Tribunal Judge Judith Gleeson. See also UNHCR/IOM joint project for global fieldworkers – training on the DSSH model (December 2015): Maks Levin, 'UNHCR leads in LGBTI refugee, asylum seeker protection: largest and most comprehensive training package of its kind being rolled out globally' (24 December 2015) <<http://www.unhcr.org/567bb2869.html>> accessed 19 August 2018. In the specific 'Module 02: Conducting Interviews' this consists of 50 slides addressing the DSSH model, highlighting on Slide 3, in a flow chart: 'Learn to conduct respectful interviews exploring what questions to be ask and avoid, and other factors – Understand the *Difference, Stigma, Shame, Harm (DSSH)* model of conducting interviews – Review ways to create a *safe space* within the interview environment and encourage open and dignified communication. (*emphasis in text*)'

⁵ This model is additionally endorsed by the IARLJ, *IARLJ-EASO credibility assessment* (2018), pages 179-180, Last accessed November 7, 2021 [Evidence and credibility assessment in the context of the Common European Asylum System \(europa.eu\)](https://www.europa.eu)

⁶ For an outline of the mode, see UNHCR CREDO Project training in S Chelvan, and Gyulai, Gábor. "Chapter XI: Asylum Claims based on Sexual Orientation or Gender Identity," in Gábor Gyulai, eds. *Credibility Assessment in Asylum Procedures: A Multidisciplinary Training Manual Volume 2* (Budapest: Hungarian Helsinki Committee, Budapest, 2015), Last Accessed November 7, 2021 <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5582addb4> and for a detailed analysis of the history of the model and the need to ensure the refugee applicant is prepared for the Home Office interview by being prepared with a DSSH model statement, see, S Chelvan "Chapter 4: the DSSH Model and the Voice of the Silenced: Aderonke Apata – The Queer Refugee: "I Am a Lesbian" in Senthoran Raj and Peter Dunne, eds. *The Queer Outside in Law Recognising LGBTIQ People in the United Kingdom* (Palgrave, 2021).

⁷ S Chelvan, "Removing the Mask: Locating the 'Gay Martyr': Reviewing UK Home Office Country of Origin Information relating to Sexual Orientation and Gender Identity or Expression ('SOGIE') Protection Claims: - 'How COI is used for refugee status determination (second limb of Lord Rodger's binding guidance in *HJ (Iran)* (para 82).'" (10 February 2020) (see below for link).

⁸ See Annex C for author's detailed report (cited in the above footnote), and Annex A for list of recommendations Last Accessed November 7, 2021 <https://www.gov.uk/government/publications/inspection-of-country-of-origin-information-thematic-report-on-sexual-orientation-and-gender-identity-or-expression> For Home Office Response on Independent Chief Inspector's three recommendations, see Last Accessed November 7, 2021 <https://www.gov.uk/government/collections/responses-to-reports-by-the-independent-chief-inspector-of-borders-and-immigration> The author relied on drawing a comparison of the experimental statistics on asylum claims based on sexual orientation, on his knowledge of the risk factors outlined in the COI reports to

with respect to the Home Office's lack of improvement since the publication of the author's report, reinforcing a view of lack of engagement with refugee law, based on delay, denying the Home Office an ability to make accurate and reliance decisions.

Replies to Questions Posed by the Select Committee (Terms of Reference – selection of):

A. Asylum and protected characteristics:

- **What is the nature and extent of UK asylum claims based on discrimination or persecution relating to the protected characteristics?**
- **Are those with certain protected characteristics more or less likely to be granted asylum in the UK?**
- **What is the nature and extent of the dangers for those with protected characteristics who are seeking asylum in the UK?**

1. All refugee claims determined in the UK from those who arrive from outside the UK involve a physical journey (from country of persecution to the UK), and an emotional journey (subjective individual and/or objective “fear of persecution”). To submit the refugee does not engage with an emotional journey (even for those most traumatised can be objectively verifiable), would run counter to the definition of “a refugee”.⁹
2. Prior to 1999, the United Kingdom have been (negatively) determining asylum claims based on “homosexuality” for decades after the signing and ratification of the 1951 United Nations Refugee Convention (“the Refugee Convention”)¹⁰. Within the context of the national political climate which had just introduced section 28 (legislation banning the promotion of homosexuality as a ‘pretend family’)¹¹, in 1989 in *Binbasi*,¹² Counsel for the Home Secretary successfully submitted exclusion from refugee protection as sexual conduct, like political protesting leading to potential harm, is an act an individual ‘could be expected’ to refrain from. On this basis, the UK was not obliged to provide refugee protection.
3. It was only in 1999 in the landmark House of Lords judgment of *Shah and Islam*¹³ were women considered to be afforded Refugee Convention protection on the basis they form

deduce whether negative initial decisions were based on adverse credibility assessment alone, for example the Home Office accepts SOGIESC risk in Pakistan cases, and on this basis the majority of negative initial decisions could be safely regarded as due to adverse historic credibility assessment.

⁹ “[O]wing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality or former habitual residence and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”

The Convention Relating to the Status of Refugees, opened for signature, 28th July 1951, 189 U.N.T.S. 150, entered into force, 22nd April 1954, as amended by the Protocol Relating to the Status of Refugees 1967, 606 U.N.T.S. 267, entered into force, 4th October 1967. UK’s ratification of the 1951 Convention on 11 March 1954 and accession to the 1967 Protocol on 4 September 1968, Last accessed November 7, 2021:

<http://www.unhcr.org/uk/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>

¹⁰ 11 March 1954. Ratification of 1967 Protocol 4 September 1968.

¹¹ Referred to as “section 28”, but was actually clause 28 of the bill and section 2A of the Local Government Act 1988.

¹² R v. Secretary of State for the Home Department ex parte Zia Mehmet Binbasi [1989] Imm AR 595.

¹³ R v. Immigration Appeal Tribunal ex p Shah and anor [1999] 2 AC 629.

part of a Particular Social Group (one of the five protected Convention reasons), due to their innate and/or immutable characteristics (a characteristic that cannot change or cannot be required to be changed). Lord Steyn in the obiter breadcrumbs of the judicial table held on this basis, “homosexuals” could *also* be afforded protection.

4. 2004 to 2010 were the worst recent period in the UK’s approach to sexual-identity asylum claims, with the emergence of the ‘reasonable tolerable discretion test’, where the Home Office would accept an individual’s claimed sexual identity (e.g., lesbian from Jamaica), accept risk was an objective one in the country of origin (real risk of curative rape or murder)¹⁴, but would then reject and return an applicant on the basis that they would return and be ‘discreet’ (majority would run away from harm, rather than to harm).¹⁵ This led in 2010 to both Stonewall in “*No Going Back*”,¹⁶ and UK Lesbian and Gay Immigration Group in “*Failing The Grade*”¹⁷ publishing reports highlighting the clear discrimination by the Home Office in refusing 98-99 % of LGB claims on the ‘discretion test’, compared to 73% refusal in initial decisions in non-LGB cases.
5. In 2020 (statistics published on August 26, 2021), the refusal rates have dramatically decreased, with a 49% grant rate for LGB applicants in 2020, being slightly higher than the 45% grant rate for non-LGB applicants.¹⁸ The appeal outcomes for LGB appellants was the same as non-LGB appellants, at 47% in 2020. As outlined in the summary to this written response, this change in pattern can be due to a variety of factors, including training of caseworkers (decision-makers), and Presenting Officers (Home Office representatives conducting appeals).
6. What is clear with the increased number of positive decisions in refugee claims, noting statistics are only available for sexual-identity, and not gender-identity and expression asylum claims, is there is a ‘gap’ with application of the credibility assessment policy guidance and application by individual Home Office caseworkers.¹⁹ But there is also additionally a ‘preparation gap’ of refugee applicants where NGOs/legal advisors are failing to prepare applicants for interviews. In the current procedure following the lodging of the asylum claim at the Asylum Screening Unit, there are 28 working days to submit a completed Pre-Interview Questionnaire, with any supporting statements and

¹⁴ See SW (lesbians – HJ and HT applied) Jamaica CG [2011] UKUT 251 (IAC).

¹⁵ This ‘test’ was disproportionately applied to gay, lesbian and bisexual refugee applicants, with only one reported non-LGB case reported applying this discretion test (SZ and JM (Christians – FM confirmed) Iran CG [2008] UKAIT 00082). Ironically, in SW (Jamaica) the lesbian appellant was positively found to be a returnee who would be open on return, notwithstanding the real risk of curative rape or murder.

¹⁶ Miles, N, ‘No Going Back: Lesbian and Gay People and the Asylum System’ (STONEWALL May 2010), Last accessed November 7, 2021 https://www.stonewall.org.uk/sites/default/files/No_Going_Back_2010_.pdf

¹⁷ ‘Failing the Grade’ (UK Lesbian and Gay Immigration Group, April 2010) Last accessed November 7, 2021 <https://uklgig.org.uk/wp-content/uploads/2014/04/Failing-the-Grade.pdf>

¹⁸ UK Home Office, “Asylum Claims on the basis of Sexual Orientation” (August 26, 2021) Last accessed November 7, 2021 <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2021/asylum-claims-on-the-basis-of-sexual-orientation-2020>

¹⁹ The most recent on-line Policy Position paper is the 2017 Home Office Equality Impact Policy Position Paper – Processing Asylum Claims of those in Detention, September 19, 2017 Last Accessed November 7, 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/667250/Home_Office_PES_-_Processing_asylum_claims_in_detention_-_September_2017.pdf which states:

“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.”

documents. There is an additional (now lengthy) period prior to the substantive interview where a DSSH model statement can be drafted prior to the substantive asylum interview, noting with those applicants who are legally aided it is accepted there will be limits with pre-interview preparation.

7. On this basis where the refugee applicant is given the opportunity to explore their own emotional journey within a safe space with their representative, the current dangers for those SOGIESC (Sexual Orientation, Gender Identity and Expression and Sex Characteristics (e.g. Intersex)) refugee applicants are from Home Office decision-makers not correctly applying the DSSH model guidance, noting it is a positive tool for determining claims, and not a negative determining tool to refuse applications.
8. The additional systematic barriers come from a lack of legal representative prior to interview (for example due to lack of legal aid lawyers), and/or lack of preparation of the refugee applicant prior to interview to ensure they are aware of the areas they will be asked questions on, hence the need for a DSSH model statement, and the 'safe space' where the refugee applicant can explore these emotions.

B. Do current domestic and international laws and conventions governing the UK's asylum process provide effective protection against discrimination for those with protected characteristics?

Nationality and Borders Bill 2021:

9. It is important to note the clear concerns of Stonewall and Rainbow Migration with respect to the current Refugee Bill 2021. Various concerns about impending legislation will impact on SOGIESC claims in three significant ways.
 - (i) *Delay not the fault of the Refugee Applicant – Clauses 16, 21, 23 and 34:*
 10. Firstly, SOGIESC refugees will be deterred from claiming asylum, increasing the real risk of exploitation of this exceptionally marginalised and vulnerable group by those 'off the radar'. Additionally, claims are 'delayed' due to discovery of SOGIESC identity whilst in the UK (sur place claims) and/or due to other factors outside their control (i.e. intersectional barriers such as gender, and race, leading to delay due to homophobic and/or transphobic diaspora environments).
 - (ii) *Lack of Safe Routes to the UK for LGBTQ+ Refugees – Schedule 3:*
 11. Secondly, the two-tier system of criminalising those who claim asylum in what are current traditional pathways would have a significant impact, as pathways directly out of countries where persecution is feared, rarely include 'safe third countries' routes, specifically at the start of a journey fleeing persecution. For example, Afghan LGBTQ+ refugees would travel through Home Office accepted unsafe third countries (for example

Pakistan) in order to seek asylum in the UK – it could never be argued they had any other option?

(iii) *Our Historical Debt to LGBTQ+ Refugees – the Unspoken Pull Factor:*

12. Thirdly, the UK has a historical debt to a large number of LGBTQ+ refugees, not owed by countries such as France. Our British Empire exported throughout the Commonwealth Victorian laws criminalising same-sex conduct now either continually used, or form the core of continued updated laws, leading to the persecution SOGIESC refugees. Noting there are currently just under 70 countries with anti-gay criminal laws, with approximately 40 in the Commonwealth, the current and impending legislative penalties to SOGIESC refugee applicants ignores our moral and historical debt to this protected characteristic group of refugees due to our introduction of these laws, wholly undermines the lower-tier protection routes provided by the Bill.
13. The Select Committee should be aware the author wishes to make clear SOGIESC refugees are not ‘more vulnerable’ than any other class of refugee applicants, as all refugees are vulnerable (this is why they come within the refugee definition). Highlighting the three above points of concern merely illustrates from the perspective of SOGIESC refugees the impact this impending legislation will have on this group of refugee applicants.

C. How is the Government addressing any discrimination or specific dangers for those with protected characteristics in the asylum process, and what more could be done?

Country Policy and Information Team – Grave Concerns:

14. The Home Office’s Country Information and Policy Team is ‘not fit for purpose’, requiring urgent internal management reform to ensure the Home Office provides accurate and reliable country information to decision-makers.
15. Since the adoption by the IAGCI of the Author’s report, there have been three specific Country Information reports of very grave concern.

(i) *Sri Lanka – forced anal examination of suspected gay men:*

16. On 30 September 2020, the Home Office published the current version of their Country Policy and Information Note: Sri Lanka: Sexual-orientation, Gender Identity and Expression.²⁰ This continues to be the version on the Home Office website, notwithstanding the fact in March 2021, at the Home Office National Asylum Stakeholders’ Forum, Equality Sub-group, the author provided a detailed paper²¹

²⁰ Last Accessed November 7, 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/923254/Sri_Lanka- SOGIE CPIN - v4.0_1 .pdf

²¹ Last accessed November 7, 2021: <https://www.33bedfordrow.co.uk/upload/files/NASF%20Equality%20sub->

highlighting the flawed approach in the COI report and provided post-September 2020 evidence of ‘forced anal and vaginal examinations’ by the Sri Lankan authorities of men suspected to be gay (gay men and a trans man), as well as evidence of prosecutions of gay men.²²

(ii) *Kenyan – Kenneth Macharia:*

17. In July 2021, the gay Kenyan rugby player Kenneth Macharia succeeded in his asylum appeal before Judge Mensah,²³ notwithstanding the fact the Home Office April 2020 SOGIE CPIN report²⁴ on Kenya was used to argue gay men are not at risk of persecution.²⁵
18. This policy and litigation position was used by the Home Office even after the Kenyan High Court in May 2019 upheld the constitutionality of the anti-gay criminal laws on the basis that to decriminalise would allow gay men to live together, and this would be contrary to the 2010 Kenyan Constitution prohibiting same-sex marriage. Ironically, noting his earlier appeal was heard in December 2016, the current CPIN highlighted the 2018 Court of Appeal judgment holding forced anal examinations were unconstitutional, noting at the time of Kenneth Macharia’s December 2016 appeal, the earlier High Court judgment held they were constitutional, and on this basis should have been the basis of a successful earlier appeal.

(iii) *Home Office discrimination against lesbians:*

19. In October 2021, the Home Office litigation position before the specialist Upper Tribunal rejecting risk on return in an appeal of a Bangladesh lesbian collapsed, where it became clear the Home Office had granted asylum to her girlfriend earlier that year.²⁶ The Home Office April 2020 SOGIE CPIN on Bangladesh²⁷ was cited by the Home Office in a 2020

[group%20paper%20-%20IAGCI%20SOGIE%20Thematic%20Review-%20%20-%20203%20March%202021%20for%209%20March%202021%20meeting%20to%20be%20circulated%20.pdf](#)

²² (30/10/20) Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions | Human Rights Watch (hrw.org)

[Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions | Human Rights Watch](#)

(hrw.org) <https://www.hrw.org/news/2020/10/20/sri-lanka-forced-anal-exams-homosexuality-prosecutions> and Arrests and Harassment of LGBTIQ Persons (article by Shihara Maduwage, for Groundviews (22 October 2020) [Arrests and Harassment of LGBTIQ Persons – Groundviews](#),

<https://groundviews.org/2020/10/22/arrests-and-harassment-of-lgbtiq-persons/> Last accessed November 7, 2021.

²³ FTT Determination promulgated 24 June 2021, Last accessed November 7, 2021

<https://www.33bedfordrow.co.uk/upload/files/D.O.S%2024%2006%202021%20Decision%20by%20IJ%20Mensah%20PA%2004147%202020%201.pdf>

²⁴ Last Accessed November 7, 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879496/Kenya-SOGIE-CPIN-v3.0_GOV.UK.pdf

²⁵ ‘Gay Kenyan Rugby Player Kenneth Macharia Wins Asylum Appeal – Dr Chelvan instructed – calls for Urgent Home Office Reform’ (33 Bedford Row Chambers, 19 July 2021), Last Accessed November 7, 2021 <https://www.33bedfordrow.co.uk/insights/news/gay-kenyan-rugby-player-kenneth-macharia-wins-asylum-appeal-dr-chelvan>, click on link to see national and international media attention this case attracted.

²⁶ ‘Home Office Case before the Upper Tribunal Collapses in Bangladesh Lesbian Asylum Case’ (33 Bedford Row Chambers, 15 September 2021), Last Accessed November 7, 2021

<https://www.33bedfordrow.co.uk/insights/news/home-office-case-before-the-upper-tribunal-collapses-in-bangladesh-lesbian-asylum-case>

²⁷ Last Accessed November 7, 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880555/BGD-

Consent Order from the Court of Appeal to assist the Home Office in establishing whilst they accepted gay men are at risk, the Home Office position was *lesbians are not at risk* of persecution in Bangladesh.

20. There is a clear inter-sectional ‘double-bind’ of persecution of lesbians in Bangladesh, based on gender and sexual-identity, completely ignored by the Home Office. Where the Home Office accepts persecution of gay men (primarily based on the murder of two activists in 2016), then the fact there is no evidence of actual reported persecution of named persecution of lesbians is generally accepted due to their forced invisibility, specifically where there is clear evidence of sexual violence towards women who do not conform to social norms, and persecution of non-straight gay men who are identified due to their non-conformity with heteronormative norms.
21. The approach of the Home Office was particularly troubling as their report cannot name a single ‘open’ lesbian in Bangladesh, and ‘but for’ the fact this appellant’s girlfriend had been granted refugee status the Home Office was intending to continue to litigate from a position of no risk to lesbians in Bangladesh, causing continued indefensible anguish to the appellant, and costs to the public purse.

CONCLUSIONS:

22. The fact the Home Office does not address clear and unarguable escalation of risk to LGBTQ+ refugees, highlights a lack of institutional safeguarding for this group of refugees.
23. These are just three examples in the past year, noting that whilst the Home Office have not updated their guidance, there will be refugee applicants who are refused asylum. This highlights an urgent need for internal reform with a change within management of CPIT, and urgent update of reports, in order to restore public confidence.
24. **There are clear areas of concern with respect to discriminatory practices of the Home Office towards those with SOGIESC protected characteristics.**
25. **The author would be honoured to be invited to expand and explain further any of the above responses.**

November 2021