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Lesbian and Gay Asylum-Seekers

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The Government's full coalition agreement published on 20 May 2010 includes the following statement:

"We will stop the deportation of asylum seekers who have had to leave particular countries because their sexual orientation or gender identification puts them at proven risk of imprisonment, torture or execution."

Before the general election, the Conservative party published a Contract for Equalities. This was the party's manifesto on equalities. This document includes the following statement:

"...we would change the rules so that gay people fleeing persecution were granted asylum. At the moment gay asylum seekers are often returned to countries with homophobic regimes and told to keep their sexuality a secret."

This information sheet provides information about these commitments, and other events in recent months relating to asylum claims by lesbian, gay, bisexual and transgender people.

Responsibility for implementing these commitments

Primary responsibility for meeting these commitments lies with Theresa May MP. She is the Home Secretary and the Equalities Minister. Before the general election she was the Shadow Equalities Minister, and was responsible for the Conservative party's Contract for Equalities. She is the most senior person in Government directly responsible for both equalities and the asylum system.

Recent reports by UKLGIG and Stonewall

The UK Lesbian and Gay Immigration Group (UKLGIG) and Stonewall have both published reports this year on the asylum system.

UKLGIG published its report – "Failing the Grade" – in April 2010. It reviewed 50 decisions by the UK Border Agency to refuse asylum. The report is available at:

<http://www.uklgig.org.uk/docs/Failing%20the%20Grade%20UKLGIG%20April%202010.pdf>

Stonewall published its report – "No Going Back" – in May 2010. Stonewall spoke to asylum-seekers, legal representatives, others assisting asylum-seekers and UK Border Agency staff. The report is available at:

http://www.stonewall.org.uk/what_we_do/2583.asp#Asylum

The two reports make several findings about the UK asylum system and how it affects lesbian and gay asylum-seekers. Many of these findings are shared. The findings include that:

- Country information relied upon by the UK Border Agency is inadequate, and UK Border Agency decision-makers wrongly conclude that a lack of information about experiences of lesbian and gay people in a particular country indicates they do not suffer persecution there.
- Asylum is in some cases refused by relying upon UK Border Agency country policy (set out in Operational Guidance Notes) even where the policy conflicts with the evidence in the UK Border Agency country information.
- UK Border Agency decision-makers have a lack of confidence or understanding of sexual identity. This makes it less likely that a lesbian or gay asylum-seeker will have sufficient confidence to disclose details about their sexual identity or what has happened to them, and leads to UK Border Agency decision-makers disbelieving them.
- UK Border Agency decision-makers and immigration judges make wrong assumptions about how a lesbian or gay person would behave. This leads them to ask inappropriate questions and then to disbelieve an asylum-seeker because he or she has not given the answer the decision-maker thinks would be given by a lesbian or gay person.

Supreme Court judgment

This month, the Supreme Court gave judgment in the case of *HJ (Iran) & HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31. The judgment is available at: http://www.supremecourt.gov.uk/docs/UKSC_2009_0054_Judgment.pdf

This case concerns two gay asylum-seekers, one from Iran and the other from Cameroon. The Supreme Court is the highest court in the UK, and the judgment is very important for lesbian and gay asylum-seekers. It relates directly to part of the commitment that was set out in the Conservative party's Contract for Equalities. The importance and effect of the judgment is very well summarised in the first paragraph of the judgment of Lord Rodger:

“A gay man applies for asylum in this country. The Secretary of State is satisfied that, if he returns to his country of nationality and lives openly as a homosexual, the applicant will face a real and continuing prospect of being beaten up, flogged, or worse. But the Secretary of State is also satisfied that, if he returns, then, because of these dangers of living openly, he will actually carry on any homosexual relationships ‘discreetly’ and so not come to the notice of any thugs or of the authorities. Is the applicant a ‘refugee’ for purposes of the United Nations Convention relating to the Status of Refugees...?”

The UK Border Agency, and the immigration and Court of Appeal judges who had dismissed the appeals of HJ and HT, all effectively answered this question – ‘No’. Lord Rodger concluded: *“The answer is Yes.”* The other Supreme Court judges agreed with him.

Theresa May MP responded to the Supreme Court judgment by saying:

“I do not believe it is acceptable to send people home and expect them to hide their sexuality to avoid persecution.” (reported in *The Guardian* on 7 July 2010)

It is to be hoped that the Home Secretary's positive response is followed by a careful review of those cases where the UK Border Agency has refused asylum, or the immigration judiciary have dismissed appeals, on the basis that someone should hide their sexuality. However, it will be just as important that the findings in the reports of UKLGIG and Stonewall are addressed so that many other lesbian and gay asylum-seekers are not wrongly refused asylum.