

MIGRANT LAW CLINIC (Episode Two):  
LGBT+ ASYLUM: THE DSSH MODEL  
*The Emotional Journey*  
*and the DSSH model:*  
*A positive tool for credibility assessment.*

Dr S Chelvan

15 September 2020, Webinar, London



# SESSION TWO: THE DSSH MODEL

# VISION

**TO ENSURE ANY INDIVIDUAL WHO HAS  
A WELL-FOUNDED FEAR OF PERSECUTION IS  
PROVIDED SANCTUARY IN THE UNITED KINGDOM**







**Knowledge IS POWER**  
***(scientia potentia est)***

*Sir Francis Bacon and Thomas Hobbes*

FINDING SOLUTIONS

.....

The UK DOES GRANT  
ASYLUM



L

**Lesbian**

A woman who is primarily attracted to women.

G

**Gay**

A man who is primarily attracted to men; sometimes a broad term for individuals primarily attracted to the same sex.

B

**Bisexual**

An individual attracted to people of their own and opposite gender.

T

**Transgender**

A person whose gender identity differs from their assigned sex at birth.

T

**Transsexual**

An out-dated term that originated in the medical and psychological communities for people who have permanently changed their gender identity through surgery and hormones.

Q

**Queer**

An umbrella term to be more inclusive of the many identities and variations that make up the LGBTQ+ community.

Q

**Questioning**

The process of exploring and discovering one's own sexual orientation, gender identity and/or gender expression.

I

**Intersex**

An individual whose sexual anatomy or chromosomes do not fit with the traditional markers of "female" and "male."

A

**Ally**

Typically a non-queer person who supports and advocates for the queer community; an individual within the LGBTQ+ community can be an ally for another member that identifies differently than them.

A

**Asexual**

An individual who generally does not feel sexual desire or attraction to any group of people. It is not the same as celibacy and has many sub-groups.

P

**Pansexual**

A person who experiences sexual, romantic, physical and/or spiritual attraction to members of all gender identities/expressions, not just people who fit into the standard gender binary.

# Terminology:

*‘The word “gay” is preferred to the word “homosexual” for much the same reasons as the word “black” is preferred to the word “[nword]” for descriptive purposes of a particular sexual orientation as for a particular race or ethnicity.’*

Footnote 1 – Skeleton Argument before the Supreme Court for the Appellant *HT* - (March 2010)

NOT  
*STRAIGHT*  
ENOUGH

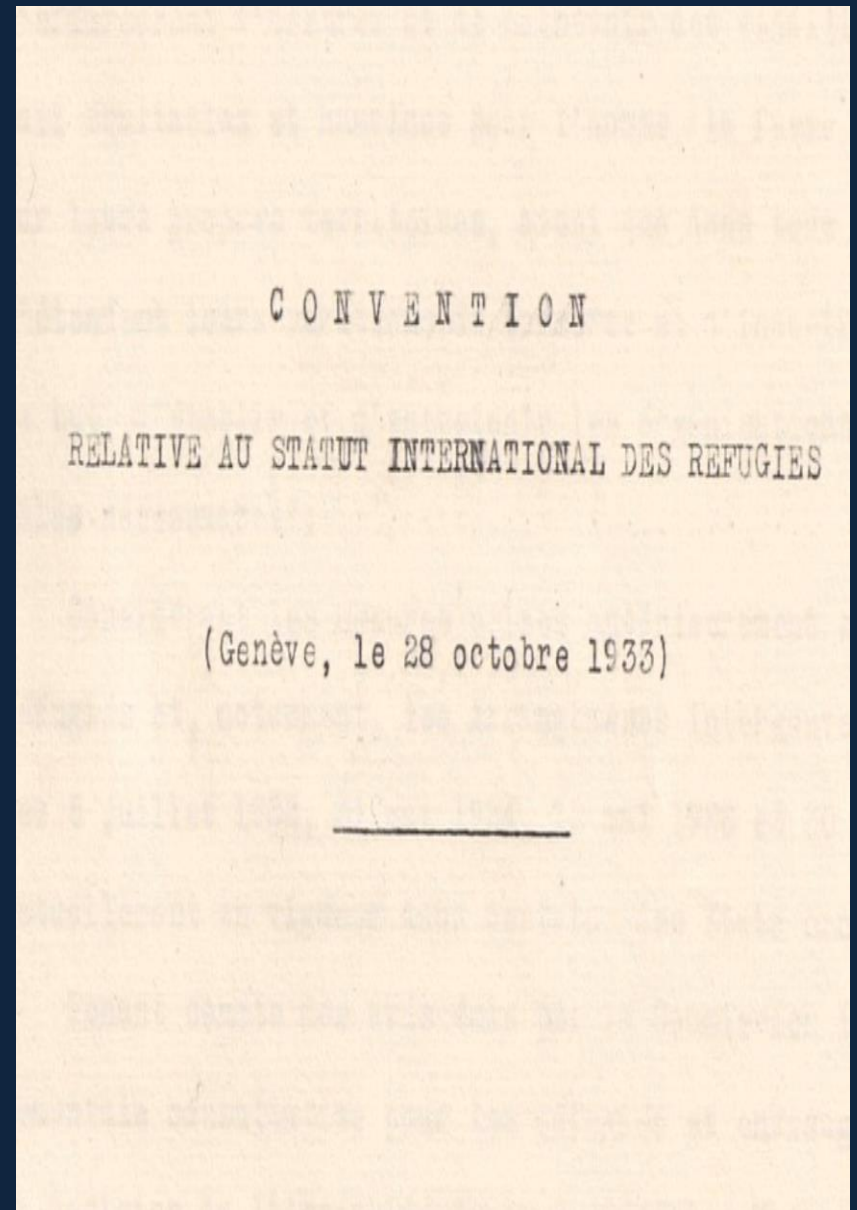


NOT  
CIS/STRAIGHT  
ENOUGH  
= the *Queer*  
*Refugee*



1933 International  
Convention on Refugees  
(Belgium, Bulgaria,  
Norway, Egypt and  
France)

Article 4. The personal status of  
refugees shall be governed by the  
law of the their country of domicile  
or, failing such, the law of their  
country of residence.



# REFUGEE CONVENTION

## 1951 Refugee Convention – Article 1A (2)

✕ A refugee is a person who;

“... owing to well-founded 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 habitual residence, and is unable or, owing to such fear, unwilling to avail himself of the protection of that country...”

# The JOURNEY to SANCTUARY:

- PHYSICAL: Travel – “outside country of nationality or habitual residence”
- EMOTIONAL: FEAR – Subjective
- BUT – *Objective Test* - Well-founded
- Lack of effective state protection – “unwilling” or “unable”  
– ‘unwilling’ – reasonable – based on COI arising from subjective reasoning



For those who think sexuality is a choice:

**Choose it. Right now.**

**Choose to be gay.**



**What's the matter, can't do it?  
Why not? It's your choice, right?**

Can I *'prove'* that I AM GAY/Queer?

















































# HOW NOT TO 'PROVE' QUEER

# Phallometry and Vaginal photoplethysmography

*'Testing Sexual Orientation: A Scientific and Legal Analysis of Plethysmography in Asylum and Refugee Status Proceedings'* (ORAM – Organization for Refugee, Asylum & Migration, February 2011)

# TESTING SEXUAL ORIENTATION

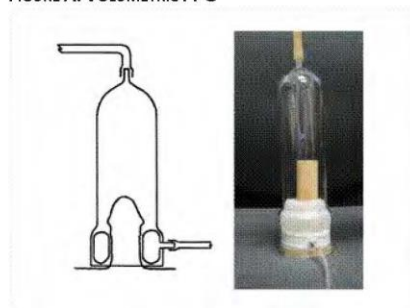
A Scientific and Legal Analysis  
of Plethysmography  
in Asylum & Refugee Status Proceedings



December 2010

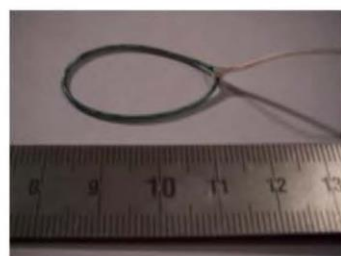
## 10. APPENDIX

FIGURE A. VOLUMETRIC PPG<sup>108</sup>



In the volumetric method of penile plethysmography, a tube is placed around the penis. As the subject's penis becomes flaccid or erect, the plethysmograph measures the change in air volume within the tube.

FIGURE B. MERCURY IN RUBBER STRAIN GAUGE<sup>109</sup>



Placed on the penis, the mercury-filled silicone ring measures the change in the circumference of the penis. An electrical current runs through the ring. As the ring expands, the mercury inside it thins, creating a quantifiable change in resistance against the current.

<sup>108</sup> Ray Blanchard, Chair, Paraphilias Workgroup, Centre for Addiction and Mental Health (Toronto, Ontario), Lecture at the 19th World Ass'n for Sexual Health (WAS) World Congress for Sexual Health: Paraphilias and the DSM-V: General Diagnostic Issues and Options Exemplified with Pedohebephilic Disorder (25 June 2009), available at [http://individual.utoronto.ca/ray\\_blanchard/index\\_files/WAS\\_DSM.html](http://individual.utoronto.ca/ray_blanchard/index_files/WAS_DSM.html).

<sup>109</sup> SexLab, Equipment & Instruments, <http://www.indiana.edu/~sexlab/ei-pp.html>.



FIGURE C. ELECTROMECHANICAL STRAIN GAUGE<sup>110</sup>



The metal cuff is placed around the subject's penis. Wires attached to the cuff measure changes in electrical resistance as the penis becomes flaccid or erect.

FIGURE D. VAGINAL PHOTOPLETHYSMOGRAPH<sup>111</sup>



Comparable in size to a menstrual tampon, the vaginal photoplethysmograph probe is inserted into the vagina, where it emits light. The photoplethysmograph in turns measures the absorption of light by the walls of the vagina, a function of the engorgement of the subject's vaginal walls with blood.

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<sup>110</sup> *Ibid.*

<sup>111</sup> The University of British Columbia Sexual Psychophysiology and Psychoneuroendocrinology Laboratory website, Equipment page, <http://www.psych.ubc.ca/~bglab/equipment.html>.



## The Question (December 2012):

*'We have a client that the Home Office refused his asylum claim. The Home Office does not accept that he is gay. We have lodged an appeal and currently awaiting a NOH.*

*Client on his part has provided additional evidence including a video showing him during the act. Accordingly to client, his partner on this video cannot be traced as this was a one night stand. However, according to client he obtained the permission of the other party before filming.*

*According to a colleague who has seen the video, the video is very convincing and leave little or no doubt about client's sexual orientation.'*

## The Reply:

*'We had a similar case where the client said he was gay. He forwarded videos and the IJ in Bradford did not have objections for the video to be played in Court. However, at the CMR we obtained the specific details of the POU who should be sent the material. The POU gave us the name of the officer and we send it under separate cover marked private and confidential explicit content. Surprisingly the POU assessed before the full hearing that the client was not aroused.'*



# Professional Conduct?

*'I was told once that I should not put forward evidence that I have not viewed. If your clients instructions are that he wants the evidence in, then I think it is our duty to follow the instructions and not feel embarrassed.*

*You are right that if clients start to make movies having sex to prove that they are gay does not sit right. However, as your aware many are desperate. However, coupled with attending gay night clubs, gay sessions, having a gay partner should assist to the lower standard of proof that they are actually gay.*

# HUMILIATING INTERVIEW TECHNIQUES (Oct 2013) (Interviewing Officer, Haslar)

**‘What do you find attractive above a man’s backside?’**

**‘Did you ejaculate in him?’**

**‘Why did you wear a condom?’**

*Source: Colin Yeo – Freemovement Blog – January 2014*

## Question One:

*Can sexual conduct be a relevant consideration in an asylum claim*

YES or NO?

For those who think sexuality is a choice:

**Choose it. Right now.**

**Choose to be gay.**



**What's the matter, can't do it?  
Why not? It's your choice, right?**



# NOT LIVING A HETEROSEXUAL NARRATIVE































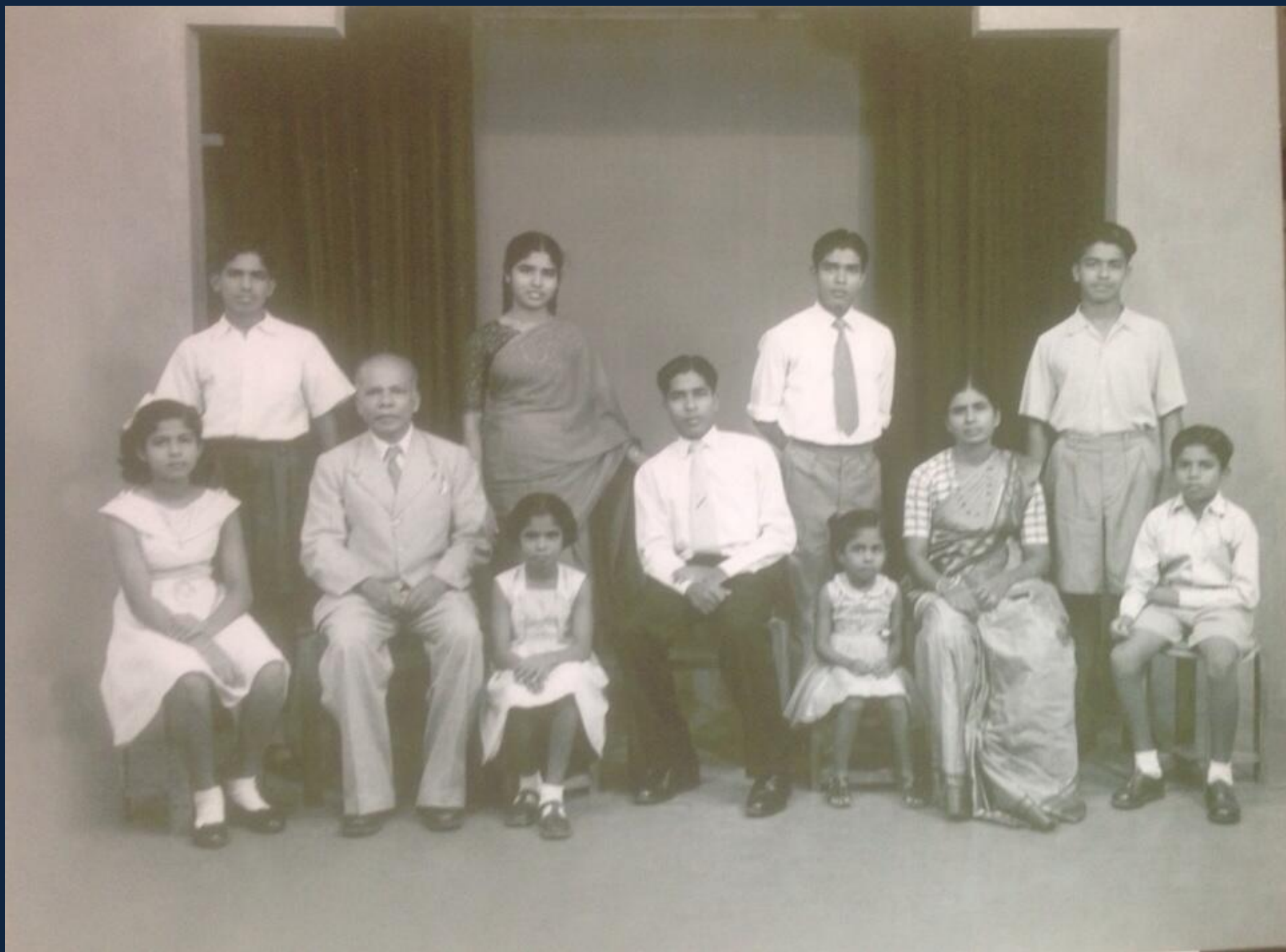


















# CREATE A SAFE SPACE

# The DSSH Model



# CREDIBILITY ASSESSMENT IN ASYLUM PROCEDURES

A MULTIDISCIPLINARY TRAINING MANUAL

VOLUME 1

2013

AUTHORS:

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# CREDIBILITY ASSESSMENT IN ASYLUM PROCEDURES

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VOLUME 2

2015

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DEBORA SINGER

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ZOE GIVEN-WILSON



# THE YOGYAKARTA PRINCIPLES

PRINCIPLES ON THE APPLICATION OF  
INTERNATIONAL HUMAN RIGHTS LAW  
IN RELATION TO SEXUAL ORIENTATION  
AND GENDER IDENTITY

**SEXUAL  
ORIENTATION**

...is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

**GENDER IDENTITY**

...is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of the bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech, and mannerisms.



XI. ASYLUM CLAIMS BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY .....	59
XI.1 Context and terminology.....	60
XI.2 How not to prove sexual orientation or gender identity?.....	69
XI.3 The DSSH model: a framework to understand asylum claims based on sexual orientation or gender identity.....	74
XI.4 Using credibility indicators in the DSSH framework .....	85





NO ASSESSMENT BASED ON STEREOTYPES	<p>"As regards [...] assessments based on questioning as to the knowledge on the part of the applicant for asylum concerned of organisations for the protection of the rights of homosexuals and the details of those organisations, such questioning suggests [...] that the authorities base their assessments on stereotyped notions as to the behaviour of homosexuals and not on the basis of the specific situation of each applicant for asylum."<sup>18</sup></p> <p>"[...] the assessment of applications for the grant of refugee status on the basis solely of stereotyped notions associated with homosexuals does not [...] satisfy the requirements of [EU law] in that it does not allow those authorities to take account of the individual situation and personal circumstances of the applicant for asylum concerned."<sup>19</sup></p>
NO QUESTIONING ON SEXUAL PRACTICES	<p>"[...] questions concerning details of the sexual practices of that applicant are contrary to the fundamental rights guaranteed by the [EU Charter of Fundamental Rights] and, in particular, to the right to respect for private and family life"<sup>20</sup></p>
NO USE OF EVIDENCE SHOWING SEXUAL ACTIVITIES	<p>"the production by [...] applicants of evidence such as films of their intimate acts, it must be pointed out that, besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by [the EU Charter of Fundamental Rights]"<sup>21</sup></p> <p>"Furthermore, the effect of authorising or accepting such types of evidence would be to incite other applicants to offer the same and would lead, de facto, to requiring applicants to provide such evidence."<sup>22</sup></p>
NO "TESTS"	<p>"[...] the submission of the applicants to possible 'tests'<sup>23</sup> in order to demonstrate their homosexuality [...] besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by [the EU Charter of Fundamental Rights]"<sup>24</sup></p>



*When did you first realise you were straight?*

# DIFFERENCE

## DIFFERENCE

All lesbian, gay, bisexual and trans persons live their life in **heteronormative societies** (where being straight and identifying with one's biological sex is the norm). Therefore the journey usually starts by discovering that an individual is, in some way, **different**.



‘I knew I was different, even in primary school. Friends would talk about boys they thought were hot, but I didn’t really like any of them.

It took me years to tell anyone. I thought my friends might not bother with me any more and my parents would be upset and think I was a bad person.

... Then I spoke to another teacher, who said, “On my [teacher training] course I was told that I am not allowed to support homosexuals, ...” [emphasis added]

Kirstie, 16

*The School Report* (Stonewall) (3 July 2012) (reported in *The Guardian*, p. 34, 3.7.2012).

## CJEU – X, Y and Z –v- Minister voor Immigratie en Asiel (C-199/12 – C-201/12) (7 Nov 2013)

- According to that definition, a group is regarded as a ‘particular social group’ where, inter alia, two conditions are met. First, members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. Second, that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society
- (para 45).

# C-473/16 – F v. Hungary

## Advocate General Wahl's Opinion (5 October 2017)

- [30] For example, there may be countries where ...[t]here may, on the other hand, **be situations in which the simple act of behaving in a way which, from a traditional point of view, is perceived to be non-gender-conform, (15)** may create an actual risk for the person concerned of being subject to physical or psychological harm. (16)



- ? Recognition that the applicant is **not like other girls/boys** in childhood or adolescence (or like other women/men later on) with respect to gender roles;
- ? Experiences of **emotional isolation, distress**, etc.;
- ? Gradual recognition of sexual and emotional **attraction to members of the same sex**;
- ? Gradual recognition of **gender difference** in gender identity claims;
- ? Experiences of **same-sex conduct** (don't forget that under EU law it is prohibited to ask sexually explicit questions!);
- ? Experiences of **relationship** and strong emotional ties with someone from the same sex;
- ? Personal experience of **living differently** from straight people;
- ? Association with other gay or trans people – “**group-differentiated identification**”;
- ? Any particular **turning point or milestone** that helped realise and understand her/his difference.

First Name Last Name Title Email Address Phone Number Address Postcode Country



Home Office

## Asylum Policy instruction

### Sexual orientation in asylum claims

Version 6.0

## Responding to a claimant's narrative: issues around 'difference'

Most LGB asylum claimants live their lives in societies where being 'straight' is considered as the norm. From the perspective of the persecutor, the issue can be the fact that the individual is not conforming to common prevailing normative heterosexual stereotypes. In effect, the behaviour which may give rise to harm, harassment or persecution may not be LGB behaviour (or perceived LGB behaviour), but behaviour or lifestyles which are deemed not to be heterosexual enough.

Sexual orientation is a concept that creates space for an individual to explore and determine their self-identification. Its expression can range along a continuum that includes exclusive and non-exclusive attraction to the same or the opposite sex. For most people there is little or no sense of choice about their sexual orientation. While for most people sexual orientation is determined at an early age, for others they may continue to evolve across a person's lifetime. Different people realize at different points in their lives that they are LGB.

In many cases, an LGB person's first awareness of their developing sexual orientation may be a perception of feeling 'different' from other peer members of their community. Such perceptions of difference need not necessarily relate to feelings around sexuality, they may well pre-date sexual awakenings and begin in childhood. Conversely, feelings of being different may arise from the attitudes and behaviour of others towards the claimant, there could be situations where the individual is perceived by those around him as being different and which results in hostility and stigmatising behaviour by those people.

A wide variety of indicators may be presented in narratives by claimants, which may suggest a sense of being different or 'apart from'. Such indicators may include childhood behaviours indicating strong identification with the opposite gender, while for others experiences of difference may be manifested in unusual feelings and strong emotions towards another person of the same sex. Other indicators may be:

- recognition that the claimant is not like other girls/boys in childhood or adolescence
- feelings of isolation







might have got the support I needed too.



**Allison Bailey**  
@BluskyeAllison

A 12 year old is a child. Stop putting children in with adults and labelling them LGBTQ+. Let children grow up without adult agendas. What you're doing is a safeguarding red flag. It's

622

357

2,544



**Scott Cuthbertson**  
@ScotCuthbertson

I remember thinking there was something different in primary school aged 10/11. I didn't have the words to describe it until I was 14/15, even then I daren't tell another sole.

12:20 · 08/09/2020 · [Twitter for iPhone](#)

11 Retweets 354 Likes



**Tristan Stewart-Robertson** @S... · 3d   
Replying to [@ScotCuthbertson](#)

I'm pre-internet when there was a local bar with a rainbow flag but I had no idea what



# STIGMA

## STIGMA

Having identified “difference” leads to the recognition and experience of stigma. Gay and trans people suffer from or recognise the stigma attached to their difference, as they do not conform to the social, cultural and religious norms of their host country. Stigma is a Greek word (*στίγμα*), the relevant meaning of which is extreme social disapproval of or discontent with a person or group, based on a certain characteristic that serves to distinguish them from other members of a society.

FOCUS on

*DIFFERENCE*

NOT IDENTITY

STiGMA



STiGMA



STiGMA





# Lawrence v Texas (2003) US S Ct

- "[P]reserving the traditional institution of marriage' is just a kinder way of describing the State's moral disapproval of same-sex couples."
- Scalia J

# *Obergefell v. Hodges* (26<sup>th</sup> June 2015) (US Supreme Court)

- “By statute, [Obergefell and Arthur] must remain strangers even in death, a state-imposed separation Obergefell deems ‘hurtful for the rest of time,’”



**Rashed  
JORDAN**

Walking down the street,  
people would laugh at me.



# SHAME



## SHAME

Shame is a natural consequence of stigma. The disapproval and other negative messages of society are **inevitably internalised**, and thus lead to a feeling that the difference of the person,

<sup>34</sup> This is generally quite typical in gender-related asylum cases; see the example of Maria-João and João-Maria in Chapter X.1.

coupled with stigma, is **something wrong, which needs to be changed or at least hidden**. In some cases, this internalisation process is so strong that it leads to explicitly homophobic attitudes and behaviour. The feeling of shame does not need to reach the level of severe mental anguish and suffering. It is a natural consequence of stigma, that as a human being, they will then experience shame. Shame can also result from indirect stigma (see above): **it is not necessary to be personally identified and stigmatised as someone “different”**, often the generally existing homo- or transphobia (for example using homophobic expressions as general pejorative terms can teach children from a very early age that being gay, or not conforming with gender norms, is something shameful).



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## Chris Morris (31 October 2012, Pink News)

■ Nobody should have to soul-search and wonder why their love is considered less worthwhile than other people's. Nobody should question if loving someone makes them sick or evil. And nobody should be afraid to love, unable to even imagine themselves in love.

## Stigmatisation, shame and secrecy

Some LGB people may originate from countries in which they are made to feel ashamed, humiliated and stigmatised due to their sexual orientation. This may be through homophobic attitudes, instilled within children in early years that being gay is shameful and wrong. This can be compounded where the individual is made to feel different and separated from their peers, causing such negative messages to become internalised. Claimants may reference in their narratives, elements of strong disapproval from external sources, indicating that the claimant's sexual orientation and or conduct is seen to be unacceptable, immoral, sinful, and socially disgusting. This can emanate from many sources including the following;

- family
- friends
- teachers
- colleagues
- neighbours
- organisations of state
- law enforcement agencies
- religious leaders and political groups
- it may also arise from cultural customs and legislation

Where evidence of stigmatisation has been presented, caseworkers should explore whether the disapproval has been targeted generally against the LGB community or





# HARM

## HARM

Difference, stigma and shame exist in the majority of narratives of lesbian, gay, bisexual, trans and intersex people, even in countries where there exists no risk of persecution. What identifies the refugee? **The fear of suffering harm because of their sexual orientation and gender identity.** Harm is connected to stigma, which makes the gay or trans person **extremely vulnerable and “singled out”** from society. In the DSSH model, harm should be understood **in a comprehensive manner**, not limited to those practices that qualify as persecution in refugee law. The following table provides a non-exhaustive overview of the different types of harm a gay or trans person may suffer:

## Treatment that could amount to persecution

### Harm and violence

A climate of hostility including acts of violence, persecution and serious discrimination can exist in a particular country even when homosexual activity is not specifically laid down as criminal in a penal code or legal statutes or where laws do exist but are not enforced. Hostility and violence can be committed against LGB persons by non-state agents, such as mob or family violence, or violence perpetrated by other members of the public.

Claims made by people on the basis of their sexual orientation will often highlight a fear of being vulnerable, 'singled out' and suffering harm. LGB based claims can reveal exposure to extreme levels of physical harm, including the following:

- execution
- honour killing
- torture
- medical abuse
- inhuman or degrading treatment
- physical or sexual violence
- curative rape
- beating and other forms of physical abuse

Claims may also highlight psychological harm which be manifested through such measures as:

- arbitrary detention
- intimidation
- mob violence
- homophobic bullying
- forced prostitution
- and limitations on the freedom of movement



# DIFFERENCE



## STIGMA



## SHAME



## HARM



## Question Two:

Is *Difference* a Positive or Negative  
Emotional experience....

Option One: POSITIVE

Option Two: NEGATIVE

Option Three: NUETRAL?

# DIFFERENCE



# STIGMA



# SHAME



# HARM



## *Question from Dr. Jean-Pierre Gauci (BIICL)*

To what extent do you think that a model similar to DSSH can be applied to other vulnerable groups of asylum seekers example victims of trafficking, victims/persons at risk of honour crimes or other victims of GBV?





Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA 12842 2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12 September 2016

Decision & Reasons Promulgated  
12 DEC 2016  
.....

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

D-- D--

(ANONYMITY DIRECTION MADE)

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Chelvan, Counsel, instructed by AT Legal Solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**REASONS FOR FINDING ERROR OF LAW AND DIRECTIONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. I make this order because the appellant is the victim of domestic violence and the decision requires some consideration of her child. I see no legitimate public interest in knowing the identities of the people concerned and people whose cases require them to give very personal details about their histories should not expect their identities to be broadcast unnecessarily.

29. I agree that the Tribunal erred when it said the appellant does not belong to a particular social group. The appellant's grounds refer to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and particularly Regulation 6(d) which says that:

"a group shall be considered to form a particular social group where, for example: members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society."

30. There are two ways in which the appellant could form a social group. Possibly because she is a woman and women can be perceived as weaker or somehow less worthy than men and but more appropriately in this case she could be seen as a woman who has been the victim of domestic violence and, according to the evidence, at risk of ostracisation because of her broken relationship if she lives outside it and more violence if she remains within it. At the risk of being trite, a person is not entitled to international protection by reason of being a member of a particular social group. Rather, if a person needs international protection then the kind of protection to which she is entitled depends on whether or not she is a member of a particular social group. If she is, and if that is the reason for her persecution, then she is a refugee. If she is not then she is (probably) entitled to some other kind of protection.
31. I have read the respondent's reply. It is not helpful on this point. Paragraph 5 is bizarre. I mention it only to say that Ms Isherwood disavowed it hastily. It was settled by an experienced Presenting Officer who I think on this occasion must have been distracted when he settled the grounds. Being a refugee and being a victim of domestic violence are not mutually exclusive.
32. Similarly there is nothing in the objection to the appellant relying on an unreported decision. In any event the grounds do not really "rely" on such a decision. That is overstating the position. All the grounds do is refer to a properly identified unreported decision that is helpful. It is not suggested that it amounts to a novel proposition of law. It may have been better not to have been mentioned it but this is a peripheral point.



33. I have read DM (Sufficiency of Protection-PAG-Women-Domestic Violence) Albania CG [2004] UKIAT 00059. Mr Chelvan, rightly, points out that the definition of PSG is now set out in Regulation 6(1)(d) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Regulation 6(1)(d)(ii) prescribes that "the group has a distinct identity because it is perceived as different by the surrounding society". I accept the evidence of Dr Antonia Young that such victims who left would be "branded for life" as someone who has dishonoured her community. The extent of that branding will no doubt vary in each case and not all victims of domestic violence will need international protection but I am satisfied that the group is distinctive enough to amount to a particular social group.
34. I find that the First-tier Tribunal was wrong to conclude that the appellant had not been the victim of persecution. I do not find it necessary to decide if every sexual act in the course of the marriage was consensual or whether the appellant was in fact raped on any occasion during the marriage. Even if, as the First-tier found, the appellant had exaggerated the violence in the course of her marriage it was accepted that she had been repeatedly beaten in different ways on different occasions. In my judgment the severity of violence in a marriage is only one of the factors that has to be considered in determining if it is described properly as persecutory. Any violence between partners is to be taken seriously although some violence is plainly even much serious than others. A horrible element of domestic violence is not just the fact of the violence but the fact that it is inflicted in a relationship where the victim, usually but not always a woman, should be entitled to support and affection. When that is replaced by violent bullying and controlling behaviour it is horrible for her and there is clear evidence here of repeated nasty acts of violence intended to humiliate and overbear the victim. This is clearly sufficiently severe to amount to persecution. Again, I disagree with the First-tier Tribunal's findings to the contrary.

# DISABILITY PROTECTION CLAIMS:

## PSG and ‘difference’

- NO article 3 ECHR high threshold for medical treatment cases (see N v UK – ‘very exceptional circumstances where humanitarian grounds are compelling’ or *Paposhvili v. Belgium* (Application no.41738/10)):
- **W (Zimbabwe) (2015)**– FTT unreported – physical disability – stigma – marginalisation – social and economic marginalisation – ‘*treated differently as a result of her disability*’ (para 50) [ Home Office concession] **See Feb 2016 ILPA Mailshot.**
- **AC (Russian Federation) (November 2018)**– Home Office grant of asylum – HIV status accepted to come within PSG



# Newsweek

HOW MUCH INFLUENCE DO YOU THINK KATE HAS OVER THE ROYAL FAMILY? HER RELATIONSHIP WITH WILLIAM?

WHY SPEAKING IN THREE OR FOUR THE FOLLOWING YOU SEE AS THE MODELS FOR WOMEN TODAY?

REBECCA ADAMS  
ELIZABETH II  
MALALA YOUSAFZAI  
HILLARY CLINTON  
CHAKRABARTY  
MIRANDA HART  
PRICE HOW  
THINK THE ROYALS  
OF THE FUTURE  
ANY, ARE  
REGARDING  
VIEWS OF  
FEMINISM

03.18.2014  
INFLUENCE DO YOU  
KATE HAS OVER  
LIFE GENERALLY?  
RELATIONSHIP WITH

WHAT SHE SAYS  
IN PUBLIC?  
OR FOUR, IF  
FOLLOWING  
YOU SEE AS THE  
MODELS FOR  
WOMEN TODAY?

BOWLING  
QUEEN

Exclusive poll:  
the end of the  
fairytale

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“Gay asylum seekers forced to ‘prove’ their sexuality – Newsweek Europe – 25 Sep 2014

“The first question he poses to clients is, “When did you realise you were different?” “The majority of LGBT people can identify a narrative of difference that predates sexual awakening,” he says. “Straight boys cannot do that.”

It’s a simple starting point that cuts across borders.”

BEST PRACTICE:

ADDUCE THE STATEMENT  
*PRIOR* TO INTERVIEW

# Home Office Policy (2017):



Annex A



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>

### 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.

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



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/09684/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 January 2018**

**Decision & Reasons  
Promulgated  
On 10 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**BM  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Chelvan, counsel.

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer.

**DECISION AND REASONS**

*An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court.*



1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing her appeal against the respondent's decision of 23 August 2016 refusing her application for international protection.

#### Background.

2. The appellant is a citizen of Pakistan born on [ ] 1980. She first arrived in the UK on 8 February 2011 with leave to remain as a student valid until 3 June 2012. She was granted further leave to remain in the same capacity until 30 September 2013. However, a further application for a residence card as the spouse of an EEA national was refused on 3 July 2015. On 10 December 2015, she applied for asylum and her application was refused in the decision of 23 August 2016, the subject of this appeal.
3. Her application for asylum was based on her claim that she was a lesbian and was in a lesbian relationship with her partner, a citizen of India. Her partner has also applied for asylum but her application was refused and certified in a decision made on 26 August 2016. However, the respondent did not accept that the appellant was lesbian and for that reason found that she would not be at risk of persecution on return to Pakistan. Her application was refused accordingly.
4. The appellant appealed to the First-tier Tribunal. The judge did not find that the evidence of the appellant or her partner was credible or that the evidence of a further witness was sufficiently cogent for him to conclude that the appellant and her partner were in a lesbian relationship. For these reasons, her appeal was dismissed.

#### The Error of Law.

5. Permission to appeal was granted by the First-tier Tribunal. At the hearing before me it was agreed by Mr Chelvan and Ms Fijiwala that the First-tier Tribunal had erred in law such that the decision should be set aside. Firstly, the judge erred in law by entering into a fact-finding exercise to decide whether the respondent had meant to concede that the appellant's partner was lesbian (para 27 of the decision letter relating to her claim where such a concession is recorded) without following the procedure approved by the Court of Appeal in NR (Jamaica) v Secretary of State [2009] EWCA Civ 856. Secondly, the judge erred in law by failing to analyse the evidence of the appellant in the context of the DSSH model as set out in the respondent's policy documents including API Sexual Orientation in Asylum Claims, 3 August 2016.
6. Both representatives agreed that the proper course was for the appeal to be remitted to the First-tier Tribunal for reconsideration by way of a full rehearing and the directions set out in [7] below were also agreed save that Mr Chelvan submitted that the finding of fact made by the judge at

[72] of his decision that “the appellant and her partner may well share a room together” should be preserved whereas Ms Fijiwala argued that it would be artificial for this fact alone to be preserved if the appeal was to be heard afresh. I am satisfied that the right course in the light of the errors of law made by the judge is for there to be a full rehearing with no preserved findings of fact. Ms Fijiwala indicated that she intended to consider whether the concession relating to the appellant's partner should be withdrawn and also that she would be reviewing the decision relating to the appellant as the evidence had not been assessed in the context of the DSSH model.

7. Accordingly, I make the following directions:

- (a) the appeal is to be remitted to Taylor House for reconsideration by way of a full rehearing before a different judge on the basis that as at the date of this hearing the concession that the appellant's partner is a lesbian still stands.
- (b) if the respondent wishes to withdraw the concession that the appellant's partner is a lesbian, she must provide reasons why the concession should be withdrawn based on the evidence in her protection claim. These reasons are to be filed with the First-tier Tribunal on or before 18 January 2018, a copy being served on the appellant.
- (c) the decision on the review of the appellant's claim in the light of the concession about the failure to use the DSSH model is to be filed with the First-tier Tribunal on or before 1 March 2018, a copy being served on the appellant.
- (d) the respondent is to file the relevant documents relating to the appellant's asylum application on or before 1 March 2018, copies being served on the appellant.

Decision.

- 8. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for reconsideration by way of a full rehearing by a different judge.
- 9. In the light of the issues raised in this asylum appeal, I am satisfied that this is a proper case for an order to be made under rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I make an order prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

PA/09684/2016

Signed: H J E latter

Dated: 8 January 2018

Deputy Upper Tribunal Judge Latter

appellant.

- (c) the decision on the review of the appellant's claim in the light of the concession about the failure to use the DSSH model is to be filed with the First-tier Tribunal on or before 1 March 2018, a copy being served on the appellant.



# UNHCR/IOM and IARLJ-EASO

# module 02 facilitation guide

**Working with Lesbian, Gay, Bisexual,  
Transgender and Intersex (LGBTI) Persons  
in Forced Displacement and the  
Humanitarian Context**  
November 2016



## INTERVIEW BASICS

### Teaching the Difference, Stigma, Shame, Harm (DSSH) Model

#### Understanding the DSSH Model

The DSSH Model was developed by UK barrister S Chelvan as an alternative means of interviewing individuals and assessing credibility within the asylum context. Although the model is most applicable to RSD interviews, the themes it contains are useful for a wide range of interviews, including protection and resettlement interviews.

The **key idea** contained in the DSSH Model is that the vast majority of LGBTI people **have experienced difference** in their lives, generally beginning with the realization that they are different than the majority of their peers and family members and eventually extending to the realization that they are different than the majority of society. Those realizations of difference may or may not be accompanied by stigma – whether from their peers or family, or from larger society – and the shame that is a result of stigma. It may also be accompanied by harm from a wide range of sources, including state and non-state actors.

The premise of the DSSH Model is that, by **exploring difference** in an individual's life, including in a wide range of thematic areas such as childhood, family, school, religious institutions, the workplace and various facets of the society in which the individual lives, the interviewer can avoid asking questions of a sexual or invasive nature they might otherwise feel they need to ask in order to establish a claim and “prove” the individual is LGBTI.

#### The Term “Difference”

In this context, **the term “difference”** does not represent an individual being inferior to another person or other persons. Rather, the term acknowledges that everyone has characteristics of difference, whether they are related to gender, ethnicity, nationality, sexual orientation, gender identity, age, ability or other factors. In societies around the world, some differences are celebrated, some are treated neutrally and some become the target of stigma, marginalization and persecution. Approaches to difference may depend on a number of factors, such as whether the society is urban or rural, and may change over time.

It is important to note that the **use of the word difference** in this context is not intended to mark LGBTI people as inferior to or socially partitioned from the majority of individuals from whom they are different – keep in mind that being LGBTI is only one of numerous diversity characteristics that every individual human being possesses. Rather, it is meant to acknowledge that LGBTI persons have characteristics in relation to sexuality, gender identity and sex that are not always the same as others, and, that, in some cases, this difference could be regarded negatively and result in them being stigmatized, marginalized or targeted for harassment or persecution.

#### Alternatives to “Difference”

In some locations, the word difference has a **negative connotation** in English and training participants thus feel uncomfortable using it with persons of concern. If this is the case, explore the reasons for these connotations – including whether they apply only to LGBTI people, or if they apply to all instances of characteristics of difference in people – and determine whether there is an alternate word that can be used that will have the same positive outcome in relation to interviews but avoid causing discomfort to the interviewer or individual being interviewed. For instance, in many cases, the **alternative question**, “Can you tell me more about being ----?” or “Can you tell me how it feels being ----?” will suffice to elicit the information needed for that particular interview.

Remind participants that the DSSH Model is **premised upon interviews** with LGBTI individuals, and that difference is a common theme regardless of whether the interviewer asked questions using that particular term. In other words, whether or they use the term, they may find the individual they are interviewing addresses difference anyway.

*The DSSH Model was created by S Chelvan. All DSSH material presented in this training has been adapted from his publicly available work. For more information about S Chelvan, see: <http://www.no5.com/barristers/barrister-cvs/s-chelvan-immigration-asylum-and-nationality/>.*

## Judicial analysis

# Evidence and credibility assessment in the context of the Common European Asylum System



*EASO Professional Development Series  
for members of courts and tribunals*

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2018



One model referred to in the literature, the ‘Difference, Stigma, Shame, Harm’ (DSSH) model 2 <sup>(651)</sup>, is based on the notion that there are some basic characteristics or elements that are likely to be common to people acknowledging a gender or sexual identity that is contrary to the heteronormative societies in which they live (where identifying with one’s biological sex and being heterosexual is the norm). The model suggests a structured methodology for the assessment of claims based on gender and sexual identity and is explained, with practical examples in Volume 2 of the Hungarian Helsinki Committee *Credibility assessment training manual*. The four key elements are briefly described in Table 32 below.

Table 32: Four key elements of the DSSH model

<b>Difference</b>	The first element is that the individual has identified at some point as being different. This realisation may have come early or later in life, may have nothing to do with sex or relationships and may be a series of acknowledgements of difference — there is rarely one ‘turning point’.
<b>Stigma</b>	Stigma refers to the recognition and experience of social disapproval due to the individual not conforming to social, cultural and/or religious norms of the society.
<b>Shame</b>	Shame in this context can be seen as an internalisation of the stigma, or disapproval of others. It leads to the feeling that something is wrong and must be changed, or hidden, and may lead to explicit homophobia. It is likely to lead to a fear of suffering harm, thus giving rise to avoidance strategies such as keeping one’s identity hidden, living a double life (e.g. marrying) and/or overemphasising ‘conforming’ gender roles.
<b>Harm</b>	The fear of suffering serious harm <b>because</b> of one’s sexual orientation or gender identity is what may motivate a person to apply for international protection.

The notion of harm within this model also raises procedural considerations for individuals who may never have been able to talk about their identity openly to anyone, for whom their identity has been a source of stigma and potential harm, and who may not be aware of their rights regarding their sexual orientation and/or gender identity within an asylum claim <sup>(652)</sup>. As the *Beyond proof* report indicates:

The presence or absence of certain stereotypical behaviours or appearances should not be relied on to conclude that an applicant does or does not possess a given sexual orientation and/or gender identity. There are no universal characteristics or qualities that typify LGBTI [lesbian, gay, bisexual, transgender and intersex] individuals, any more than there are for heterosexual individuals. Their life experiences can vary greatly even if they are from the same country <sup>(653)</sup>.

<sup>(651)</sup> The DSSH model 2 was created in 2011 by United Kingdom barrister S. Chelvan. This model is referred to by the UNHCR in its *Guidelines on international protection no 9* (op. cit., fn. 171, para. 62), and endorsed by various governments around the world, including New Zealand, Sweden and Finland (see Adams, W. L., ‘Gay asylum seekers forced to “prove” their sexuality’, *Newsweek Europe*, 25 September 2014; endorsed by the Independent Chief Inspector of Borders and Immigration (United Kingdom), *An Investigation into the Home Office’s Handling of Asylum Claims Made on the Grounds of Sexual Orientation*, March–June 2014, paras. 3.18–3.20, with this recommendation accepted by the Home Office in 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, paras. 7.1–7.3. Following publication as Chapter XI of the *Credibility assessment training manual*, Vol. 2, op. cit., fn. 27, the United Kingdom Home Office have completely overhauled their training manual to apply DSSH as a tool to positively determine an LGBT asylum claim. The DSSH slides are now incorporated within the global training of both the UNHCR and the International Organization for Migration (see Module 2). The Swiss authorities also now use the DSSH model (“A Step Forward” for Asylum Decision-Making in Switzerland’, No 5 Chambers, 8 March 2016). Various NGOs around the world apply the DSSH model, including Australia (Kaleidoscope) and EIRE (Irish Refugee Council). EASO has applied DSSH to its training materials since 2015 for claims based on sexual orientation and gender identity.

<sup>(652)</sup> See Hungarian Helsinki Committee, *Credibility assessment training manual*, Vol. 2, op. cit., fn. 27, p. 85.

<sup>(653)</sup> UNHCR, *Beyond proof*, op. cit., fn. 14, p. 71. Internal references originally in this excerpt originally refer to: This issue has been addressed by a number of United States Courts: *Shahinaj v Gonzales*, 481 F.3d 1027, 1029, (8th Cir. 2007); *Razkane v Holder*, Attorney General, 562 F.3d 1283, 1288, (10th Cir. 2009); *Todorovic v US Attorney General*, 621 F.3d 1318, 1325–1327, (11th Cir. 2010). See also Jansen, S. and Spikerboer, T., *Fleeing homophobia: Asylum claims related to sexual orientation and gender identity in Europe*, 2011. United Kingdom policy guidance states: ‘stereotypical ideas of people — such as an “effeminate” demeanour in gay men or a masculine appearance in lesbians (or the absence of such features) should not influence the assessment of credibility.’ UKBA Asylum Instructions, *Guidelines on sexual orientation issues in the asylum claim*, October 2010; UNHCR, *Guidelines on international protection no 9*, op. cit., fn. 171, para. 60(ii).

# THE DSSH MODEL

# DIFFERENCE

# STIGMA



# SHAME

# HARM

# DSSH MODEL TESTIMONIALS

DIFFERENCE  
STIGMA  
SHAME  
HARM



Michael Ferguson  
Immigration Solicitor

## The DSSH Model Testimonials



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## MIGRANT LAW CLINIC

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**Vanessa Delgado**  
Consultant Immigration Solicitor

## The DSSH Model Testimonials

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DIFFERENCE  
STIGMA  
SHAME  
HARM



Adenike Apata  
Human Rights Activist

## The DSSH Model Testimonials



PALGRAVE SOCIO-LEGAL STUDIES

# The Queer Outside in Law

## Recognising LGBTIQ People in the United Kingdom

*Edited by*  
Senthorun Raj · Peter Dunne

*Edited by* Senthorun Raj · Peter Dunne

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N<sup>o</sup>5  
BARRISTERS  
CHAMBERS



# Q & A



### Question Three:

*Do refugee claims involve an emotional journey?*

YES or NO

# FEEDBACK FORMS

# VISION

**TO ENSURE ANY INDIVIDUAL WHO HAS  
A WELL-FOUNDED FEAR OF PERSECUTION IS  
PROVIDED SANCTUARY IN THE UNITED KINGDOM**

# MIGRANT LAW CLINIC: Episode Two LGBT+ ASYLUM and the DSSH Model

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