

SOGICA Project (University of Sussex)— Written evidence (FAM0022)

The Organisation

1. [SOGICA](#) (Sexual Orientation and Gender Identity Claims of Asylum: A European Human Rights Challenge) has been a four-year (2016-2020) research project funded by the European Research Council (ERC) exploring the social and legal experiences of individuals across Europe claiming international protection on the basis of their sexual orientation or gender identity (SOGI). It was led by Professor Nuno Ferreira and a team of researchers at the University of Sussex who are Dr Carmelo Danisi, Dr Moira Dustin and Dr Nina Held.
2. We thank the Committee members for this opportunity to contribute. Our research addresses the needs of a group of people who are often marginalized and face particular problems reaching a safer place, claiming asylum in the UK, and integrating in the UK society.

Background and summary

3. SOGI-related human rights violations are the basis of an increasing number of asylum claims, amounting to thousands across Europe each year.¹ These asylum claims are often treated in an insensitive way, i.e. based on inappropriate legal, cultural and social notions. These claims are also of a striking complexity and significance for assessing the efficiency and fairness of an asylum adjudication system. With case studies on Germany, Italy, the UK, the EU and the Council of Europe, we have sought to determine how European asylum systems can treat SOGI claims more fairly, including through reform of domestic legal systems.
4. It is now nearly forty years since the first SOGI asylum claims were recognised, and a great deal of progress has been made at a global and European level. There is increased awareness of SOGI persecution as well as examples of good policy and practice that should be publicised and replicated. However, alongside these, the SOGICA project found many areas where improvement is urgently needed, including in the context of family matters. These recommendations largely reflect the views of almost 500 people, those who participated in the SOGICA project's interviews, focus groups and online surveys.²

¹ Jansenand, S. and Spijkerboer, T., *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, Vrije Universiteit Amsterdam, Amsterdam, 2011.

² Research participants are referred to in this submission either by their own first names or pseudonyms (according to their stated preference); references include the capacity in which participants were interviewed (if no capacity is specified, then the participant was an asylum claimant or legally recognised refugee); and survey respondents are referred to by a letter (S for 'supporter' and C for 'claimant') and numerical identifier.

5. SOGI asylum claimants are often presumed to be gay men, with no family or intimate relationships, arriving by themselves to the UK. Our fieldwork provided evidence of the fallacy of such assumptions: Ophelie, for example, reached Scotland with her partner. Many of the SOGI claimants and refugees interviewed in the context of the SOGICA project had been married (often forcibly), had had children, and were in relationships in their countries of origin at the time of escaping persecution and/or while living in the UK. For those who brought their children with them, claiming asylum in the UK was even more traumatising for the extreme emotional, psychological and economic difficulties their children were also undergoing. Some of our SOGI claimant participants left their children in the countries of origin and suffered the violence of this separation (Edith, Meggs, Miria and Stephina), yet others left them behind for a while but were then able to be joined by them (Jayne). When successful in obtaining international protection, they tried to bring their children to the UK, but the family reunification process was invariably lengthy and convoluted.
6. In this submission, we identify key elements of our findings and recommendations that we urge the UK government to adopt in its national asylum and migration policy. While these recommendations do not address the full range of concerns the SOGICA project has identified, they do pick up some of the key ones that concern how the UK asylum system affects the families of SOGI asylum claimants and refugees. Our answers focus on questions 7-9 of the inquiry, and reflect the fact that asylum claimants and refugees are entitled to enjoy the right to respect for family life without any discrimination based on SOGI or on any intersection between these or other characteristics.³ More generally, we recommend a rights-based approach to ensure SOGI minority asylum claimants are treated equitably.
7. It is critical that Committee members are aware of the experiences of SOGI asylum claimants and refugees in the UK when making their recommendations. This will allow UK law and policy to recognise the family needs of this group and make progress on the right to family life of SOGI asylum claimants and refugees, particularly in the context of increasing xenophobia and LGBTIQ+ (lesbian, gay, bisexual, trans, intersex, queer and others) hate crime in the UK and many other European countries, compounded by the negative effects of the COVID-19 pandemic.⁴
8. In discussing these findings and making these recommendations, we are aware that there is a bigger picture; that many of the problems that affect the families of SOGI minorities claiming asylum are shared with other claimants, refugees and migrants more generally – issues such as racism, a culture of disbelief, reductions in legal advice and representation, and arbitrary and inconsistent decision-making. While these issues are beyond the scope of our submission, we believe the findings and recommendations

³ UNHCR, *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees: Discussion Paper*, 22 September 2010, at paras 6-7.

⁴ 'Homophobic and transphobic hate crimes surge in England and Wales', *The Guardian*, 14 July 2019, available at: <https://www.theguardian.com/world/2019/jun/14/homophobic-and-transphobic-hate-crimes-surge-in-england-and-wales>; European Union Agency for Fundamental Rights, *Fundamental Rights Report 2021*, FRA 2021, available at: <https://fra.europa.eu/en/publication/2021/fundamental-rights-report-2021>.

we discuss below are a basis for making some focussed and often small changes that would nonetheless make a real difference to the families of SOGI and other asylum claimants and refugees within the larger context of the struggles for the family rights of all migrants and refugees.

Key research findings and recommendations

9. Safe passage to the UK

Several women told us about the violence they suffered when they had to leave their children to escape or were separated from them against their will (Meggs, Stephina). As Stephina told us:

[i]t was the most difficult thing for me to leave my daughter because I love her to death like, every fibre in me appreciates that I have got a child as brilliant as she is.

Even when passage to the UK is possible for SOGI minorities fleeing persecution with their partners and children, it is almost always extremely risky and costly.⁵ The lack of legal channels for non-traditional families normalises the invisibility of such relationships. Travelling together does not mitigate the risks that migrants often encounter in their journey to Europe, as it may increase the risk of being discovered, especially in transit countries with high levels of homophobia and transphobia. That is why, in order to avoid suspicions, our participants Mary and Zaro – a lesbian couple – decided to travel individually to the UK, despite the increased anxiety and distress that such a solution caused them.

The UK government should introduce humanitarian admission programmes and visas to help people fleeing homophobia and transphobia reach the UK safely with their partners and children.

10. Having a (heterosexual) family does not deny one's sexual orientation

In the UK, both the Home Office 2016 Sexual Orientation guidance and the 2011 Gender Identity guidance state that the claimant's credibility is not necessarily undermined by having had opposite-sex relationships or children.⁶ Yet, this still happens, with bisexual claimants being particularly disbelieved if they have children or have been married.⁷ For example,

⁵ Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021, chapter 5.

⁶ Home Office, *Asylum Policy Instruction. Sexual Orientation in Asylum Claims. Version 6.0*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf; Home Office, *Gender Identity Issues in the Asylum Claim: Transgender*, available at: <https://www.gov.uk/government/publications/dealing-with-gender-identity-issues-in-the-asylum-claim-process>.

⁷ Lewis, R.A., "'Gay? Prove It": The Politics of Queer Anti-Deportation Activism' (2014) 17 *Sexualities* 958 at 965; Dustin, M. and Held, N., 'In or out? A Queer Intersectional Approach to

Patti, who self-identified as a bisexual woman, explained that her asylum request was rejected for having married someone of the opposite sex:

I was refused because [the UK] Home Office was saying, oh, if I am a lesbian, oh that I have lived with a man, why should I have lived with a man. But I was telling them the marriage was against my wish, yes. They said, oh, they don't believe that.

Bisexuality disappeared in the Home Office's decision and Patti was "transformed" into a heterosexual who was pretending to be a lesbian.

Women's experiences of marriage and child-bearing are recurrently used to undermine their asylum claims. Several participants talked about children being used to discredit claimants (Chloe, NGO worker; survey participant S4, lawyer). What these asylum decisions fail to grasp is that having children is simultaneously the result and cause of very complex sets of circumstances. Children of SOGI claimants were often the result of forced marriages (Edith, Meggs, Miria) and sometimes even rape (anonymous participant). To the violence of undergoing a forced marriage or rape, the asylum system adds the violence of denying them international protection. This happens despite the UNCHR SOGI Guidelines clearly stating that having married and/or having children are factors that 'by themselves do not mean that the applicant is not LGBTI'.⁸

Home Office decision-makers should not use a SOGI claimant's past relationships/marriages and child-bearing as detrimental to their credibility.

We also recommend that the Home Office adhere to UNHCR guidelines, which emphasise the need to adopt a non-judgmental approach.⁹

11. Recognising non-heterosexual relationships

Proving same-sex relationships in countries where claimants are persecuted on SOGI grounds is obviously very difficult, since those relationships are often lived in hiding. Yet, evidence is still required and then mishandled. Jayne's experience is illustrative of this:

I put in pictures, they wanted, when I went for the interview they said they wanted pictures of me and my ex-girlfriend and I presented, they didn't want in their words anything explicit. So I took some holiday pictures and put it in there, and the judge said, they are just two women on a beach.

In other words, while Home Office decision-makers required evidence of

"particular Social Group" Membership and Credibility in SOGI Asylum Claims in Germany and the UK' (2018) 5 *GenIUS* 74.

⁸ UNHCR, *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*, 23 October 2012, HCR/GIP/12/09, at para 63(vi).

⁹ *ibid* at para 62.

an intimate bond but not of a sexual nature, they nonetheless refused to discern a 'meaningful' relationship from a picture featuring the couple together. We also learned of the case of two claimants of the same sex from Sri Lanka whose sexual orientation was questioned even after they married each other (Gary and Debbie, lawyers).

We recommend better quality training for decision-makers, to support them in dealing appropriately and non-stereotypically with supporting evidence.

We also recommend that the Home Office adhere to the UNHCR guidelines in terms of sharing the burden of proof in collecting evidence.¹⁰

12. Ensuring enough social support

Displacement causes much distress to refugee parents and families, on account of family separation, loss of social support and a sense of reduced parental efficacy. While having their children with them during the asylum process offered some of our research participants some emotional comfort against the violence of the asylum system, it also entailed a range of complex issues related to children's extremely limited income, lack of employment opportunities, and overall growing resentment against their parents for the situation in which they find themselves and the violence they undergo within the asylum system (Jayne, UK).

We recommend that SOGI refugee families be more holistically supported, recognising the multiple layers of discrimination and integration challenges they face.

13. Facilitating family reunification

If international protection is granted, SOGI claimants whose partners and/or children remained in their countries of origin often urgently want to reunite with them through family reunification, but this is often a lengthy and traumatising process in itself.¹¹ Family reunification should be a speedy and smooth procedure to minimise the anguish and pain caused to beneficiaries of international protection. For this to come true, family reunification norms need to be applied without discrimination based on sex or sexual orientation. This includes the consistent recognition of unmarried partners as potential beneficiaries of family reunification, the inclusion of relationships established *after* the applicant's entry in the UK, and only requiring reasonable evidence to prove the relationship and dependency. Moreover, any request for evidence needs to be realistic and fair. For example, authorities should not make the enjoyment of the right to family life dependent on specific documentation from the country of origin, such

¹⁰ UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, available at: <http://www.refworld.org/docid/3ae6b3338.html>, para. 6; UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>, para. 196.

¹¹ Danisi, C. and Ferreira, N., '[Legal Violence and \(In\)Visible Families: How Law Shapes and Erases Family Life in SOGI Asylum in Europe](#)', *Human Rights Law Review*, 2021.

as in the case of marriage or civil partnership, as it may be unrealistic for applicants to obtain such documentation.

When children are involved, a rights-based approach should combine respect for the right to family unity with considerations based on the principle of the best interests of the child, enshrined in Article 3 of the Convention on the Rights of the Child.

We recommend that authorities evaluate SOGI claimants' family reunification requests taking into account both these claimants' difficulty in having their relationships recognised in their countries of origin or transit, as well the connected struggle to provide evidence of such unions.

The Government should also reintroduce legal aid for all refugee family reunification cases.

12 September 2022

Further reading

Further analysis of many of the issues discussed in this submission can be found in the following publications (in chronological order):

- Danisi, C., Dustin, M., Ferreira, N. and Held, N., '[Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity](#)', Springer, 2021 (open access)
- Danisi, C. and Ferreira, N., '[Legal Violence and \(In\)Visible Families: How Law Shapes and Erases Family Life in SOGI Asylum in Europe](#)', *Human Rights Law Review*, 2021 (open access)
- Andrade, V. L., Danisi, C., Dustin, M., Ferreira, N. and Held, N., '[Queering Asylum in Europe: A Survey Report](#)', SOGICA Project / University of Sussex, July 2020 (open access)