

## Written evidence from SOGICA Project (University of Sussex) [EA0001]

### 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.<sup>1</sup> 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, and we address these here. These recommendations largely reflect the views of almost 500 people, those who participated in the SOGICA project's interviews, focus groups and online surveys.

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

5. In this submission, we therefore identify key elements of our findings and recommendations that we urge the UK government to adopt in its national asylum 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 the UK asylum system in particular.
6. In light of the Nationality and Borders Bill currently going through Parliament, 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 needs of this group and make progress on SOGI asylum rights and not regression, 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.<sup>2</sup>
7. These findings and recommendations are written bearing in mind the impact of the COVID-19 pandemic, which, among other things, has shown that at times of crisis inequalities between individuals and groups in society widen. This underlines the need for domestic legislation and policy to be based on international refugee and human rights standards, and not dependent on the good will of the government of the day. This will help ensure that in future global crises we really will be ‘all in in together’.
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 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 we discuss below are a basis for making some focussed and often small changes that would nonetheless make a real difference to the lives of SOGI and other asylum claimants and refugees within the larger context of the struggles for the rights of all refugees and SOGI minorities.

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<sup>2</sup> ‘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>; Fundamental Rights Report 2021 (2021) *European Union Agency for Fundamental Rights*. Available at: <https://fra.europa.eu/en/publication/2021/fundamental-rights-report-2021>.

## Key research findings and recommendations

### 9. Safe passage to the UK

There is little point in improving asylum law and policy if individuals at risk are unable to reach a safer place to claim protection. Even when passage to the UK for SOGI minorities fleeing persecution is possible, it is almost always extremely risky and costly.<sup>3</sup> The UK government should introduce humanitarian admission programmes and visas to help people in flight reach the UK safely.

### 10. A statistical evidence base

Any transparent and accountable asylum system needs to maintain and publish rigorous and up-to-date statistics on different types of asylum claims and their outcomes. Yet, current Home Office statistics only regard sexual orientation (not gender identity) and are only 'experimental'.<sup>4</sup> UK asylum and judicial authorities should record the number of SOGI claims submitted, and the grounds used to refuse or accept them. This information should be made public in order to support the work of charities, service providers, lawyers, and researchers.

### 11. Implementing the right to information

SOGI claimants are often unaware at the time of their arrival to the UK that SOGI can be a basis for claiming asylum.<sup>5</sup> This contributes to 'late' and poorly prepared legal claims. We recommend that UK authorities provide information about asylum and the right to make a SOGI-based claim, including in easy-read formats and different languages, at a minimum at ports of entry and at asylum interview, reception and accommodation centres. At the start of the screening interview, the interviewer should confirm that the claimant is aware of the different reasons for claiming asylum, including SOGI persecution. However, none of these measures should mean that failure to declare SOGI as the basis for claiming asylum is subsequently held against claimants.

### 12. Doing justice to 'late' claims

SOGI asylum claimants are likely to make their asylum claim sometime after arriving to the UK for a number of reasons, including their lack of awareness that SOGI is a legitimate basis for claiming asylum and their likely fear of disclosure to officials or to other people with whom they come in contact. Yet, 'late disclosure' continues to be a factor that is held against claimants and used by UK decision-makers to discredit their claims. UK asylum authorities should not discriminate against 'late' claims.

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<sup>3</sup> 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.

<sup>4</sup> Home Office, 'National Statistics: Asylum claims on the basis of sexual orientation 2020', Updated 26 August 2021. Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2021/asylum-claims-on-the-basis-of-sexual-orientation-2020>.

<sup>5</sup> 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 6.

### **13. Limiting the duration of asylum procedures**

The length of time that many SOGI claimants in the UK must wait for an initial decision and then for their appeal – sometimes totalling years – is a cause of much distress, as during this period people are generally unable to study, work, secure family reunion or move forward in any way with their lives.<sup>6</sup> UK asylum and judicial authorities need to invest in building their capacity to shorten the time and publish targets for both initial decisions to be made and for appeals to take place, although not at the expense of a thorough consideration of claimants' cases.

### **14. Abolishing detention of SOGI claimants**

Detention is an injustice to any individual who has not been charged with or found guilty of a crime, and that includes all asylum claimants. Although trans asylum claimants are no longer subject to detention in the UK, LGB claimants are.<sup>7</sup> LGB claimants in detention not only experience difficulties in accessing the information and advice they need to make their claim, but often also experience discrimination and re-traumatisation related to their sexual orientation. The UK Government should end the detention of LGB asylum claimants, including the inhuman practice of detention without a time limit.

### **15. Statutory guidance on SOGI asylum**

Although the Home Office possesses guidance specific for both sexual orientation and gender identity claims,<sup>8</sup> guidance is often misapplied.<sup>9</sup> UK asylum authorities should ensure guidance for decision-makers on SOGI claims is applied consistently and regularly reviewed. SOGI asylum claimants and refugees should be recognised as the main source of expertise in this field of policy and law, and should be involved in preparing and delivering guidance and training materials.

### **16. Mandatory training**

There is a worrying degree of inconsistency in decision-making, with claimants from the same country and sometimes with very similar experiences receiving inconsistent decisions, and officials failing to apply existing law and policy correctly. The Government should ensure provision of better training for all parties, including decision-makers, judges, interpreters, and service-providers, to improve their confidence in the quality of their work as well as to benefit SOGI asylum claimants. Training should be mandatory on induction and repeated at regular intervals.<sup>10</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid, chapter 4.

<sup>8</sup> 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](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>.

<sup>9</sup> Dustin, M. and Ferreira, N., 'Improving SOGI Asylum Adjudication: Putting Persecution Ahead of Identity', *Refugee Survey Quarterly*, Volume 40, Issue 3, September 2021, Pages 315–347.

<sup>10</sup> 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 11.

### **17. Judicial guidance and training**

Judges in the UK have access to the Equal Treatment Bench Book. Codes alone, though, are not enough and there should also be measures in place, such as mandatory induction and ongoing training, to ensure that all judges are familiar with and apply the Equal Treatment Bench Book in an appropriate manner.

### **18. Promoting a culture of empathy**

The experiences of a significant number of our participants point to the lack of empathy and human rights awareness of several decision-makers and other actors in the asylum system. The specificities of guidance and training materials depend on the institutional context, however there are some elements that should be included in all materials, including: the importance of empathy, awareness of equality and human rights, appropriate terminology, confidentiality assurances, how to create a safe space, training on the effects of trauma on individuals and unconscious bias.

### **19. Improving legal advice and representation**

SOGI asylum claims are often particularly complex and require legal representatives who have experience and expertise in this area. Yet, many SOGI claimants have difficulty accessing good legal advice in the UK, and people in detention centres, reception centres or remote accommodation are particularly likely to have difficulties.<sup>11</sup> Part of the problem is a general lack of sufficient funding for legal aid, and the Government needs to invest in this area not only as an ethical requirement, but in the interest of efficiency.

### **20. Offering adequate interpretation services**

Interpreters have an important role in interviews and at appeal hearings, and it is critical that SOGI claimants in the UK are able to feel confident about interpreting services in both these settings. An interpreter who is homophobic or transphobic, or perceived by the claimant to be such, can seriously damage communication. SOGI claimants may be wary of interpreters from their own ethnic communities as they may fear they share the homophobia or transphobia they have fled or will put them at risk by disclosure.<sup>12</sup> UK asylum authorities should allow claimants to provide their own interpreter at the expense of the State, and to request a replacement where they have concerns about the interpreter provided. Claimants should be informed that they have the right to request a male or female interpreter and the exercise of this right should be facilitated.

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<sup>11</sup> Ibid, chapter 6.

<sup>12</sup> Ibid, chapter 6.

## 21. Procedural needs

Asylum procedures are often inadequate and even harmful to SOGI claimants.<sup>13</sup> There are a number of practical improvements that asylum and judicial authorities should make both in relation to interview and appeal hearings. Officials should always introduce themselves, check the claimants' name and confirm how they would like to be addressed. Claimants should be informed that they have the right to request a male or female interviewer and the exercise of this right should be facilitated.

Confidentiality protocols should be in place, including for interpreters, and the claimant should be informed of these. Interviewers and judges should avoid questions that seek a linear evolution or moment of discovery such as 'when did you realise you were gay (or lesbian/bisexual/transgender/etc.)' in favour of open-ended questions that allow the claimant to tell their story in their own time and terms. We recommend that claimants be allowed to take a supporter or friend, as well as their legal representative, to their interview to provide moral support. To improve accountability and claimants' trust in proceedings, there should be accessible complaints procedures as there are in most areas of public service.

## 22. No such thing as 'safe countries'

The UK still designates some countries as 'safe', meaning that claims from people from these countries ('safe country of origin') or having passed by such countries ('safe third country') will be assumed to be unfounded or less likely to be successful.<sup>14</sup> This is not only in conflict with the need to carry out an individual assessment of each asylum claim, but is particularly problematic for SOGI claims, as SOGI rights and protection may be denied in countries with otherwise acceptable standards. UK asylum authorities should no longer designate some countries as 'safe'.

## 23. Accelerated procedures

'Safe country' lists are associated with 'fast-track' procedures,<sup>15</sup> which are detrimental to SOGI claimants, whose cases are recognised as being complex and time-consuming to prepare. Rather than making use of accelerated decision-making procedures for claimants of certain nationalities, asylum authorities should favour the same thorough consideration to all claims.

## 24. Improving the quality of Country of Origin Information (COI)

Accurate and extensive COI is critical to good asylum decision-making, yet data on SOGI asylum is scarce and often outdated, leading to flawed decisions.<sup>16</sup> Asylum and judicial authorities should make better use of existing resources, such as the European Asylum Support Office (EASO) COI portal,<sup>17</sup> in decision-making and further develop their COI resources. General and SOGI asylum NGOs should be invited to contribute their expertise and knowledge (and appropriately paid for their input).

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<sup>13</sup> Ibid.

<sup>14</sup> Section 94 NIAA (Nationality Immigration and Asylum Act 2002); Home Office, 'Inadmissibility: safe third country cases – Version 5.0', 2020. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/947897/inadmissibility-guidance-v5.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947897/inadmissibility-guidance-v5.0ext.pdf).

<sup>15</sup> AIDA / ECRE, 'Country Report: United Kingdom', 2020. Available at: [https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-UK\\_2020update.pdf](https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-UK_2020update.pdf).

<sup>16</sup> Dustin, M., 'Many rivers to cross: the recognition of LGBTQI asylum in the UK', 2018 *International Journal of Refugee Law*, Vol. 30 (1), pp. 104–127.

<sup>17</sup> <https://www.easo.europa.eu/information-analysis/country-origin-information>.

## 25. Making use of all the Refugee Convention grounds

In order to recognise the many factors and identities that are the basis for SOGI persecution (inc. religious and political beliefs), decision-makers should make use of all Refugee Convention grounds when assessing SOGI claims, rather than invariably relying on the ‘particular social group’ (PSG) category.<sup>18</sup> Where the PSG category is used, asylum and judicial authorities should follow UNHCR guidance and only require that claimants either share an innate or fundamental characteristic or common background, or are perceived as having a distinct identity as a group – not both.<sup>19</sup>

## 26. Persecution over membership of a PSG

To accurately reflect international refugee law and European jurisprudence, asylum authorities should stress that the question for decision-makers to ask is not whether claimants are ‘truly’ LGBTIQ+, but only whether they are likely to be persecuted on SOGI grounds if they were to be returned to the country of origin.<sup>20</sup>

## 27. Criminalisation of same-sex sexual acts as persecution

Against UNHCR guidance,<sup>21</sup> UK asylum authorities do not recognise legislation criminalising same-sex sexual acts as persecution unless that legislation is enforced and entails significant penalties. This ignores the broader societal discrimination that accompanies legislation and the fact that unenforced legislation may be enforced at any time.<sup>22</sup> UK asylum and judicial authorities should recognise criminalisation of same-sex sexual acts, regardless of enforcement, as sufficient to make a finding of persecution. Following this, asylum and judicial authorities should also recognise that, as criminalisation usually applies to a country’s entire territory, there can rarely be internal flight or relocation alternatives for SOGI claimants from those countries.

## 28. Abolishing ‘discretion reasoning’

The UK now recognises that it is unacceptable to require SOGI claimants to return to their country of origin and live ‘discreetly’ by concealing their SOGI.<sup>23</sup> However, ‘discretion reasoning’ persists in the assumption that it is reasonable to return to their countries of origin claimants who would ‘choose’ to hide their SOGI for reasons other than persecution, such as social customs. This is a dangerous policy in assuming that decision-makers can establish the future behaviour of an individual and ignoring that choosing whether or not to disclose their SOGI is rarely within the individual’s control. Authorities should remove all traces of ‘discretion’ thinking from decision-making.<sup>24</sup>

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<sup>18</sup> 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 7.

<sup>19</sup> UNHCR, *Guidelines on International Protection: Membership of a Particular Social Group within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 2002. Available at: <https://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-%20membership-particular-social-group.html>.

<sup>20</sup> Dustin, M. and Ferreira, N., [‘Improving SOGI Asylum Adjudication: Putting Persecution Ahead of Identity’](#), *Refugee Survey Quarterly*, Volume 40, Issue 3, September 2021, pp. 315–347.

<sup>21</sup> 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*, 2012, para. 26 ff. Available at: <https://www.refworld.org/docid/50348afc2.html>.

<sup>22</sup> 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 7.

<sup>23</sup> *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department* [2010] UKSC 31.

<sup>24</sup> Danisi, C., Dustin, M., Ferreira, N. and Held, N., [‘Queering asylum in Europe: Legal and social experiences of](#)

## 29. Standard and burden of proof

SOGI asylum claimants are often required to meet unfairly high evidentiary standards. In practice, asylum and judicial authorities apply a standard of proof that goes beyond the 'reasonable degree' threshold claimants are required to meet under international refugee law, often simultaneously violating the principle of the benefit of the doubt.<sup>25</sup> Asylum authorities also often fail to adopt a sufficiently active role in evidence-gathering. Instead, asylum authorities should respect the correct standard of proof, including the principle of the benefit of the doubt, and share the burden of proof with asylum claimants.

## 30. Use of humane means of evidence

Although it is now accepted that evidence of an explicit sexual nature should not be elicited or accepted, interrogating claimants about their relationships and behaviour regularly goes beyond what should be permissible. The excessive scrutiny of claimants' sexual history and experiences of persecution that often takes place in asylum interviews and hearings in the UK fails to respect claimants' personhood and would not be acceptable in other settings.<sup>26</sup> Asylum and judicial authorities should apply the same standards of civility and dignity to SOGI (and all) asylum claimants as to any other member of society when gathering evidence.

## 31. Stereotyping

UK asylum decision-makers often fail to understand the individual SOGI claimant, because of assumptions and prejudices. These include, among others, expectations that claimants have a partner or are sexually active, take part in LGBTIQ+ activism, provide a 'coming out' narrative, and have difficulty reconciling their SOGI with their religious beliefs.<sup>27</sup> Conforming to such stereotypes undermines the individual premise of refugee decision-making. Asylum and judicial authorities should not make use of 'stereotyped notions' neither during the interviews, nor in their decisions.

## 32. Credibility

Credibility is a key element in many, if not most, SOGI asylum decisions, by which we mean overall belief in the claimant's testimony. Decision-making is too often based on an attempt to objectively 'prove' a claimant's SOGI and starts from a position of scepticism that the claim is 'genuine'.<sup>28</sup> Time and again during our fieldwork, claimants asked us, despairingly or wearily: 'So how can I prove my SOGI?' We recommend that asylum and judicial authorities take the evidence, particularly the personal testimony, submitted by claimants as the starting point for credibility assessment. The default position should be belief in claimants' account of who they are and what has happened to them.

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[seeking international protection on grounds of sexual orientation and gender identity](#)', Springer, 2021, chapter 7.

<sup>25</sup> Ibid, chapter 7.

<sup>26</sup> Ibid.

<sup>27</sup> Dustin, M. and Held, N., "They sent me to the mountain": the role of space, faith and support groups for LGBTIQ+ asylum claimants', in Richard Mole (ed.), *Queer migration and asylum in Europe*, UCL Press, 2021, pp. 184-215 (pp. 195-202); 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 7.

<sup>28</sup> Dustin, M., '[Many rivers to cross: the recognition of LGBTQI asylum in the UK](#)', 2018 *International Journal of Refugee Law*, Vol. 30 (1), pp. 104-127. 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 7.

### **33. Facilitating family reunification**

If international protection is granted, a first priority for some individuals is to be reunited with their children and partners, but this is often a lengthy and traumatising process in itself.<sup>29</sup> UK asylum and judicial authorities should ensure that they 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.

### **34. Promoting social integration**

None of the four UK nations possesses a comprehensive policy for SOGI refugees' integration.<sup>30</sup> We recommend that the Government develop holistic policies for refugee integration that recognise the specific needs of SOGI claimants. The priority for such policies is to ensure that every claimant and refugee feels safe and welcomed from the time of arrival, and is quickly recognised as a respected member of the host society. This is essential in light of the wide-spread hostility to refugees (and migrants more generally) in the UK, juxtaposed with persistent and often increasing homophobia and transphobia.

### **35. Safe and adequate accommodation**

Many SOGI asylum claimants are housed in general accommodation or reception centres where their needs are unrecognised or – worse – they experience discrimination.<sup>31</sup> Asylum authorities need to pay particular attention to the safety of SOGI claimants in asylum accommodation, where residents are vulnerable to homophobic, transphobic, racist and anti-migrant violence and hate crime. Asylum authorities should give SOGI claimants the choice to be accommodated with other SOGI claimants in separate facilities if that is their wish. There are particular concerns for trans claimants, making trans-specific accommodation upon request a priority. Such accommodation is often better provided by NGOs than contracted out to large companies. Individuals should have as much choice as possible about the area where they live and the type of housing in which they live, and have access to appropriate information, support groups and social activities.

### **36. Fostering physical and mental health**

SOGI asylum claimants have particular health needs that are often overlooked: like many asylum claimants, they are likely to have mental health problems and often suffer from depression.<sup>32</sup> Hormonal or gender-affirming therapy for trans claimants and refugees, including continuity of medical care, is also an area of need. Health authorities should increase service provision in both these areas and ensure SOGI asylum claimants and refugees are aware of their healthcare entitlements. More broadly, access to healthcare should be universal, not restricted to emergency provision, and include staff and interpretation services trained on asylum and SOGI matters.

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<sup>29</sup> 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.

<sup>30</sup> 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 4.

<sup>31</sup> Ibid, chapter 8.

<sup>32</sup> Ibid, chapter 9.

### **37. Facilitating equal access to the labour market and education system**

SOGI claimants' access to the UK labour market is extremely limited. If working, they are often discriminated against on grounds of both SOGI and ethnic background or refugee status; they may also need to rely on community support to find work – all factors which may make it hard for them to be open about their identities, and make it necessary for the Government, employers and trade unions to take measures to tackle these particular experiences of workplace discrimination.<sup>33</sup> The denial of the right to work to many asylum claimants, in combination with a long asylum process, may not have a particular SOGI dimension but was raised by nearly all of our participants as a cause of stress and hardship. This means that the Government should include in social integration policies measures to improve access to the labour market, further and higher education, and training.

### **38. Nurturing civil society initiatives and NGOs**

Asylum claimants in the UK often trust charities and depend on them for support, far more than they depend on other service providers.<sup>34</sup> There are excellent SOGI refugee organisations that offer invaluable help. However, charities often support either refugees or SOGI minorities, but not both. This means SOGI asylum claimants and refugees are not always able to obtain holistic services that are responsive to all their needs. There must be adequate funding for SOGI-specific refugee charities to expand their reach. There is also potential for charities working in different fields to explore partnership options and develop joint or shared services, but always drawing on the expertise of the SOGI-specific refugee organisations and SOGI refugees themselves. Community organisations set up by SOGI claimants themselves are a huge source of support and expertise but often face a particular struggle to obtain funding. Funders should make their funding more accessible to new community organisations with expertise on SOGI asylum. Funders should also support collaboration between NGOs working in different areas.

### **39. Withdrawing the Nationality and Borders Bill**

The Nationality and Borders Bill currently going through the Parliament assumes that the asylum system exists to deter illegal entry of people and remove people more easily. This is wrong. The UK asylum system needs reform but not as set out in the Bill. The starting point for reform should be the creation of a fair, accessible and adequately resourced system that treats people in a humane manner consistent with international law and guidance. The Bill is not effective in doing this and conflicts with the UK's commitments under international refugee law, risking reducing access to justice for many people who have experienced harm, particularly groups with protected characteristics. The Bill also does not address integration needs and concerns, and will cause further complexities and delays to a system that is already inefficient. Moreover, it is likely to compound the current failure to consistently comply with the 'benefit of the doubt' principle in asylum decision-making. The Bill should thus be abandoned. The basis of the UK's asylum policy should instead be recognising our shared humanity and meeting our commitments under international refugee and human rights law, and domestic equality and human rights law.

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid, chapter 10.

#### **40. The Nationality and Borders Bill as discriminatory**

If the Bill is approved, SOGI claimants will be discriminated against and disadvantaged in a number of ways, including in terms of denial of access to justice through reduced appeal rights and a discriminatory two-tier decision-making system dependent on the route taken to reach the UK, which is beyond claimants' control. Those with more than one protected characteristic are likely to be particularly disadvantaged, e.g. LGBTQI+ members of religious minorities who already find it difficult to access support. The proposal to treat people differently based on how they reached the UK and when they claimed asylum is particularly unfair and alarming and has implications for particular groups. SOGI claimants may have very different experiences of persecution amongst them, but most have in common the lack of choice in their route to the UK, the likelihood that they arrived without any concrete evidence of their persecution to present, and in some cases a lack of awareness of their right to claim asylum on the basis of SOGI-related persecution. In addition to the disproportionate impacts for those with protected characteristics, the measures proposed will undermine the ability of public bodies – for example, local authorities and health providers – to carry out their responsibilities under the Public Sector Equality Duty, not least because of the 'chill' effect these measures will have in making it less likely that asylum claimants will feel confident in coming forward to engage with service providers. This will have many unintended consequences on a national level, ranging from lower rates of COVID vaccination to non-completion of the Census (both already identified as problems) among asylum-seeking communities. The Bill should be abandoned and, instead, the Government should prioritise compliance with the Public Sector Equality Duty, other measures in the Equality Act 2010, and obligations under the Human Rights Act 1998, to develop an asylum system that is humane, fair and efficient.

*November 2021*

## 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
- Dustin, M. and Ferreira, N., '[Improving SOGI Asylum Adjudication: Putting Persecution Ahead of Identity](#)', *Refugee Survey Quarterly*, 2021
- Dustin, M. and Held, N., "'They sent me to the mountain": the role of space, faith and support groups for LGBTIQ+ asylum claimants', in Richard Mole (ed.), *Queer migration and asylum in Europe*, UCL Press, 2021, pp. 184-215 (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)
- Dustin, M., '[Many rivers to cross: the recognition of LGBTQI asylum in the UK](#)', 2018 *International Journal of Refugee Law*, Vol. 30 (1), pp. 104–127
- Dustin, M. and Held, N., '[In or out? A queer intersectional approach to 'particular social group' membership and credibility in SOGI asylum claims in Germany and the UK](#)', *GenIUS*, 2018, No. 2, pp. 74–87 (open access)