

Written evidence from Joint Council for the Welfare of Immigrants [EAP0019]

About JCWI

JCWI was founded in 1967 to ensure that the rule of law and human rights were respected in the immigration system. We are one of the UK's leading immigration charities covering all aspects of immigration, asylum, and nationality law. We provide specialist legal advice in immigration and asylum matters and carry out research on, examine and analyse immigration policy and law.

The information contained in this briefing is based on the work of our legal team representing people in the asylum system. Our legal department works predominantly with asylum seekers who have already been through the legal system and had their claims wrongly refused, to bring fresh claims. We hold a legal aid contract but can supplement the cost of taking a longer time on cases through charitable funding sources. While JCWI is usually successful in eventually obtaining a positive outcome for our clients thanks to our expertise and not being subject to the same pressures as other Legal Aid providers, this is not representative of how most asylum seekers experience the system.

Consultation Response

What is the nature and extent of UK asylum claims based on discrimination or persecution relating to protected characteristics?

A large proportion of asylum claims are based on the list of protected characteristics that are found in the Equality Act 2010. Even where a claim is ostensibly based on other factors, there is often a link to protected characteristics, for example, claims based on real or imputed political opinion are often linked to membership of an oppressed racial minority group.

Besides this, the trauma that asylum seekers face very often leads them to suffer from mental health distress reaching the severity of a disability.

What is the nature and extent of the dangers for those with protected characteristics who are seeking asylum in the UK?

Credibility assessments represent an important part of asylum determinations procedures. These assessments are based on several assumptions about human nature that are unsupported by the available evidence and have been criticised in academic studies in relevant areas. Many of these assumptions operate particularly harshly against people who have faced discrimination and ill treatment, meaning that those most in need of protection are being systematically failed.

These harmful assumptions operate in a context where Home Office decision-makers are poorly trained and huge gaps in Legal Aid resources mean asylum seekers struggle to find adequate, expert representation. In this context, the impact of these assumptions is extremely strong and powerfully embedded in Home Office decision-making culture, to significant detrimental effect.

The asylum system is designed in such a way as to be suited to an asylum seeker who is confident, knowledgeable, and able to produce the same detailed, chronological, and focused account of their experiences at every stage. Any ways in which an asylum seeker fails to fulfil this ideal, which is common, and often linked to difficulties arising from protected characteristics, will increase the likelihood that their account will not be deemed credible. This exposes people who experience disadvantages on the basis of protected characteristics face an increased likelihood of having their claim rejected, exposing them to the risk of *refoulement* to a place of danger. People whose claims are wrongly deemed not credible also face the cumulative harm of remaining in the UK with uncertain status and experiencing homelessness, dependency, detention, and humiliation.

Key assumptions that are unsupported by evidence and operate particularly harshly against those with protected characteristics in the asylum system are:

1. Claiming asylum after entering and residing for some time in the UK indicates a fraudulent claim
2. Gradually disclosing details of experiences, rather than a full account immediately, indicates deception or exaggeration
3. Giving an account that differs on retelling or struggling to provide detailed and precise answers to questions indicates a fabricated account

Below are some illustrative examples of how these assumptions create additional risks for people with protected characteristics, giving a non-exhaustive explanation of some of the most common issues JCWI encounters.

Mental Health Disability

Most asylum seekers that JCWI works with suffer from PTSD. This is usually to a degree that interferes significantly with their daily lives, but especially when it comes to their interactions with the asylum determination process. In JCWI's experience, regardless of medical evidence presented to decision-makers explaining their condition, elements of their account or presentation that are clearly attributed to their mental illness are instead standardly assumed to indicate fabrication.

A [core feature of PTSD is avoidance](#), meaning that on a conscious or subconscious level, genuine victims of trauma often avoid talking about their experiences and have great difficulty explaining them in consistent detail. This is one reason why genuine survivors of trauma may delay making an application or fail to provide the full detailed narrative of their experiences at the earliest opportunity.

Memories created while the brain is experiencing trauma or associated with traumatic events are [stored differently to other types of memory in the brain](#). They can be encoded in the memory in a disordered fashion, which can create difficulty in providing a consistent and chronological account. Applicants' ability to provide a coherent account can also be impacted because PTSD can lead to [difficulty in maintaining concentration](#). People suffering from depression can also exhibit these symptoms as well as a tendency to be unable to produce accounts that are detailed and specific.

Clear signs of mental health deterioration are very often ignored within the asylum system, which means that it is often only at a point of crisis that the situation is recognised. Even where the Home Office recognises the mental illness impacting applicants, the approach taken is often ill-informed and can be actively detrimental.

There is an expectation that someone suffering from mental illness must be completely debilitated in every aspect of their life for their condition to be genuine. This has resulted, for example, in medical evidence showing that a married applicant suffers from PTSD is met with suspicion on the basis that a person suffers from mental illness they would not have had the capacity to consent to marriage.

Moreover, some of the actions taken with the purpose of supporting sufferers of mental illness can be counterproductive. For example, being referred to the safeguarding unit which issues letters certifying that the applicant is vulnerable, can add significant additional delays to the resolution of an application, including when delays have been identified by clinicians as putting the individual at increased risk. Other unhelpful "safeguarding" measures include immigration detainees who are recognised as being at high risk of suicide are asked on a daily basis whether they want to kill themselves that day.

Women & Sexual Minorities

There is a wide range of well-established considerations that apply in particular to women accessing the asylum system that have been recognised in asylum [guidance](#). These considerations are only applied to a limited degree by the Home Office as regards credibility assessments.

Additional reasons that women may have to delay their applications or to divulge the full detail of their cases are [well-documented](#). These include being focused on the day-to-day needs of children, the shame that they experience surrounding sexual violence and abuses that a high proportion experience, or because they are less experienced in dealing with bureaucracy and engaging with the authorities than men.

Women are usually considered as dependents on their partner's asylum claim rather than registering a claim in their own right, where their partner has been the primary target of persecution, or to avoid the woman having to provide a narrative that will cause her feelings of shame. In the circumstances under which a woman later separates her claim from her partner and makes a claim in her own right, either because of relationship breakdown, in cases of domestic violence, or for other reasons, the Home Office consider this to be damaging to credibility.

Another issue that despite being well-understood in legal guidance, academic studies and expert reports is that of late disclosure due to shame on the part of LGBT+ asylum applicants. The Home Office will often make a negative credibility assessment on this basis despite the abundant evidence explaining why it may be difficult for asylum seekers coming from deeply homophobic countries and especially where they have suffered violence including sexual violence, to disclose details regarding their sexual orientation at an early stage. There are [numerous examples](#) of decision-makers basing credibility assessments on stereotypes regarding "typical" behaviours of LGBT+ groups.

Nationality & Borders Bill

The Nationality and Borders Bill will exacerbate and entrench the issues highlighted above regarding credibility assessments of the claims of applicants with protected characteristics. The key ways in which it will do this is through the introduction of a 'one-stop' procedure, priority removal notices and a 'good faith' requirement. These clauses put into place requirements that credibility is damaged or access to justice limited in instances where the typical behaviours described above are observed.

While the Bill maintains the scope for representations to be made in individual cases to explain why delays have taken place or why these procedures are not appropriate, this will not be enough to protect the majority of asylum seekers. These clauses are designed on the basis of the existing culture of disbelief that permeates [Home Office decision making](#). They will be applied in a context where there is inadequate training for Home Office decision-makers to enable them to overcome the bias against credibility, nor are most asylum seekers able to obtain adequate expert legal representation due to the extremely limited availability of Legal Aid funding.

The Two-Tier System for Refugee Protection

Under the Nationality and Borders Bill, recognised refugees will be classified into a two-tier system based on the arbitrary grounds of how they have travelled to make their application, rather than on the basis of need. This will exacerbate the existing problems faced by asylum applicants with protected characteristics in several ways.

The first way is recognised by the Home Office in its [Equality Impact Assessment](#), which notes that the Bill will create discrimination on the basis of nationality and race, as certain racial and national groups are more likely to become refugees and less likely to be able to travel to the UK on any kind of a visa, thus more likely to embark on irregular journeys. The discrimination, it finds, will fall on certain nationalities from countries of majority black and brown populations including Afghans, Sudanese, Vietnamese, Syrian and Iraqi. The discrimination is justified in this assessment on the basis of the legitimate aim of the legislation. Whether the aim is legitimate or not, however, it cannot be used to justify causing racist discrimination when, as it is noted in the EIA itself, there is little evidence in support of the approach being taken to achieve that aim. The approach, it finds, is more likely to in fact exacerbate the situation than to resolve it. No policy aim, however legitimate can be used to justify discrimination when the approach to achieve it is so clearly not supported by

the evidence. The suggestion that the mere aim of a policy is enough to justify discrimination undermines the purpose and value of conducting an equalities assessment at all. This is particularly egregious given the nationalities in question that it is accepted will face discrimination under the new two-tier asylum system are from countries with some of the highest recognition rates as refugees in the world.

The two-tier system will also create discrimination against women and children, although in this case indirectly. While the government argues that it is mainly men who enter the UK through irregular means in order to claim asylum, and therefore the impact of its two-tier system will impact more strongly on men, this overlooks the question of family reunification. Under the two-tier system, refugees found to be in “group two” – those who have entered the country other than through resettlement – will have limited rights to family reunification. The beneficiaries of family reunification that will be impacted by this are, according to [analysis from the Refugee Council](#), 90% women and children.

Finally, the two-tier system will once again impact most negatively on people who are suffering from mental illness as well. The extended delays and reduced security that refugees will be offered is bound to significantly negatively impact on the mental wellbeing of vulnerable individuals. Individuals will benefit only from a temporary status which needs to be repeatedly renewed. With each occasion that they are required to do so, there is a risk that the process does not go smoothly, [especially for people who are suffering from mental health crisis](#). In these circumstances they will lose their legal status and become undocumented, despite being recognised refugees who cannot be returned to their countries of origin, they will lose their status in the UK, adding to the population forced to live outside of the protections of our society, vulnerable to the Hostile Environment and further exploitation and abuses.

Standard of Proof

The Nationality and Borders Bill seeks to raise the standard of proof required of asylum seekers to that existing in other areas of civil law in the UK, meaning that a traumatised individual fleeing their home country would face the same requirements for proving their experiences as someone conducting family law proceedings in the UK.

Any increase in the requirements placed on asylum seekers will lead to more people falling through the gaps. In JCWI’s experience it is vanishingly rare for a person with no real need of protection from persecution to falsely gain refugee protection from the state, while the number of cases of people who are genuinely fleeing persecution but fail to obtain the protection they need is very high. These changes will inevitably impact more harshly on the most vulnerable including all the groups of applicants with protected characteristics that have been discussed throughout this response.

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