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# The Love that Must Speak Its Name: Inadmissibility, Credibility and LGBTIQ+ Asylum in 2024

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*Guest post by Alex Powell. Alex is Principal Lecturer in Law at Oxford Brookes University. His research focuses on how the UK process LGBTIQ+ or queer asylum claims, with a view to critically challenging the ways in which sexuality is (re)constructed within the asylum process. His first monograph, drawing on 26 interviews with LGBTIQ+ refugees, representatives of the third sector, and legal practitioners, is currently under contract with Bristol University Press.*

In 2017, I began a PhD looking at the issue of how an asylum claimant shows that they are LGBTIQ+ for the purposes of securing refugee status in the UK. The situation was perilous, with poor decision making, as explored [Rainbow Migration](#), well-documented cultures of disbelief, as document by [Jubany](#), as well as a swing from discretion—the idea that a claimant could return to their country of origin and simply hide their diversity—to disbelief, where the government simply argues that the person in question is not LGBTIQ+. However, writing in 2024, it is difficult to express just how much more hostile the asylum system has become, and the numerous pernicious implications this has for all asylum claimants, but perhaps particularly those whose claims hinge on their non-normativity, such as those who are LGBTIQ+.

My doctoral work drew on interviews with those have lived experience of claiming asylum in the UK to critically interrogate the Home Office's 2016 Asylum [Policy Instruction, Sexual Orientation in Asylum Claims](#). In essence, I sought to compare the UK Government's approach to claims made on the basis of diversities around sexual orientation or identity with the lived experiences of those who had navigated the UK asylum process. My findings, [summarised in this 2021](#) article, highlighted that decision-makers were overly reliant on logics of identity that framed sexuality as a fundamental status that shaped the social connections of a person and was the essence of who they are. This was despite the fact that for many claimants, their sexual diversity manifested in numerous ways that did not accord with the conceptions of identity commonly seen in the UK.

As subsequent research has begun to recognise, many of these issues can be argued to be linked to the embrace to models by the Home Office (See [Dawson and Gerber](#)). These models have, as both I ([2021](#)) and Dawson and Gerber have suggested, calcified a fixed way of conceptualising sexual and gender diversity. These conceptualisations, can then be seen as having fuelled a form of [stereotyping related to where people go and who they spend time with](#).

These issues were profound and the negative effects which they had have been well documented by a number of [authors](#). But, those who arrived here could make a claim and, with the support of the third sector and lawyers, secure status in the UK. However, since then, there has been a fundamental shift in the legal framework that, I argue, hugely exacerbates the issues these claimants face. For those who arrive in 2024, following the passing of the Nationality and Borders Act (NABA) 2022 and the Illegal Migration Act (IMA) 2023, the threat of inadmissibility and the rise in the standard of proof, as well as the still to be commenced duty to remove pose a significant threat.



One of the biggest changes is the dramatic expansion of the concept of inadmissibility. Section 16 of the NABA amended Part 4A of the Nationality, Asylum and Immigration Act. This provides expansive powers for the secretary of state for the Home Department to declare asylum claims inadmissible for those who have arrived in the UK with a



‘connection’ to a ‘Third Safe State’. Inadmissibility is not a rejection, but rather a statement that the given person is not eligible to make a claim for protection. Without a workable agreement to move claimants to a third state, it effectively creates a form of limbo where those seeking asylum can neither regularise their status in the UK, nor be removed. The situation has since been exacerbated by the IMA: section 5 which means that (once brought into force) any claimant arriving unlawfully from a third ‘safe state’ after faces their claim being declared inadmissible. These claimants face a state of permanent limbo with the possibility that hundreds of thousands of people will find themselves facing an effectively permanent ban on regularising their status, banned from working and confined to state provided accommodation. This is catastrophically harmful for all claimants. However, due to the use of **mass accommodation**, and the difficulties with challenging removal on the basis that the proposed state is not a safe one for an LGBTIQ+ claimant to have claimed asylum in, the impacts are likely to be even more severe for them.

Moreover, many claimants are likely to find themselves captured by the Secretary of State’s duty to remove, as per section 2 of the IMA. Whilst it can be said with virtual certainty that the secretary of state will not, in most cases, be able to comply with this duty, this renders asylum seekers even more vulnerable. This vulnerability is then exacerbated by the fact that section 5 renders various forms of human rights claims and even judicial review ‘non-suspensive’, leave ordinary checks and protections not applicable to them. Given that, at time of writing, Rwanda—a country from which the UK has, even this year, accepted asylum seekers on the basis that their LGBTIQ+ status places them at risk of persecution—is the only country with whom the UK has secured a transfer agreement, the risks for harm to sexual and gender minorities should be clear.

Considering most standard forms of legal challenge will not prevent removal, those seeking to avoid the duty to remove are instead required to make a suspensive claim. This requires them to show that they face a ‘real imminent and foreseeable risk’ of serious and irreversible harm. For those whose claims hinge on diversities of sex and gender, this likely means a need to show evidence to support their being LGBTIQ+. In other words, claimants will likely face similar evidential issues to those addressed above in the context of a full asylum claim. The difference is in the extremely tight timeframes provided under the suspensive claim process, as well as the likelihood of having even greater difficulty access appropriate, **publicly funded, legal advice**.

Even when a claimant is able to circumnavigate inadmissibility and begin the process of making an asylum claim, section 32 of the NABA has introduced a **higher standard of proof**, shifting from the low ‘reasonable degree of likelihood’ standard to the higher ‘balance of probabilities’ standard. This requires asylum claimants to provide even more evidence to support their claims in the midst of a ‘culture of disbelief’. In the context of LGBTIQ+ asylum claims, this will pose additional challenges and will likely have significantly and disproportionate negative implications for LGBTIQ+ asylum claimants.

All of the issues I have highlighted in this article apply to all asylum applicants. As the **United Nations High Commissioner for Refugees** has stated, the UK has introduced laws which are at **variance with the obligations** set out under the Refugee Convention. The UK has, for the majority of claimants, effectively abolished the right to asylum. Whilst this affects everyone, it has particularly pernicious effects for LGBTIQ+ claimants. It compounds many of the issues that had been highlighted within earlier literature and creates serious vulnerabilities through the imposition of dangerous reception conditions and the threat of removal to unsafe conditions in legal situations which leave claimants with very limited recourse to prevent that removal. For many claimants, the flawed system which existed in 2017 has now been all but abolished. Whilst we often see narratives of progress around LGBTIQ+ rights, this should be a prominent example that history does not follow set paths. We must keep fighting for the freedom and security of all LGBTIQ+ people.

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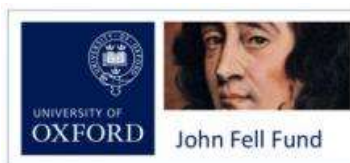
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