Examining the impact of the Nationality and Borders Act 2022 on refugee women

Honkala, N. ORCID: https://orcid.org/0000-0001-9667-586X (2025) Examining the impact of the Nationality and Borders Act 2022 on refugee women. Laws, 14 (6). 82. ISSN 2075-471X doi: 10.3390/laws14060082 Available at https://centaur.reading.ac.uk/125448/

laws

MDPI

Article

Examining the Impact of the Nationality and Borders Act 2022 on Refugee Women

Nora Honkala

School of Law, University of Reading, Reading RG6 6EP, UK; n.a.honkala@reading.ac.uk

Abstract

The Nationality and Borders Act 2022 was enacted despite significant opposition from refugee charity and legal sectors. It is without question that the Act changes the domestic landscape of the refugee status determination system and has the potential to also negatively influence refugee status determinations in other jurisdictions. There are several sections of the Act that are particularly problematic for women's claims of asylum. The Act reverses well-established international and regional human rights and refugee law principles and standards. The reversal, in some cases, of decades of jurisprudence on the interpretation of the Refugee Convention poses a concern for the integrity of the law and administrative justice. While the Act imposes barriers for all claimants, it disproportionately affects some of the most complex cases, including refugee women fleeing gender-based persecution. Of the various changes brought about by the Act, this article focuses on three that are particularly relevant to women asylum seekers: first, the regressive way in which membership of a particular social group has been framed; second, the heightened standard of proof now required; and third, the associated evidential burdens in relation to trauma and disclosure. Ultimately, these changes are likely to have a disproportionate and discriminatory impact on women seeking asylum, particularly those fleeing gender-based persecution.

Keywords: refugee women; women asylum seekers; Nationality and Borders Act 2022; refugee convention; gender-based persecution; trauma

Academic Editors: James C. Simeon and Patricia Easteal

Received: 30 June 2025
Revised: 20 October 2025
Accepted: 21 October 2025
Published: 27 October 2025

Citation: Honkala, Nora. 2025. Examining the Impact of the Nationality and Borders Act 2022 on Refugee Women. *Laws* 14: 82. https://doi.org/10.3390/laws14060082

1. Introduction

Feminist activists and scholars have shown how the ways in which the Refugee Convention has been applied to asylum seeker women's claims have been gendered (see, for e.g., Macklin 1995; Crawley 2001; Freedman 2007; Edwards 2010). Women's claims thus necessitate an understanding of the particular implications of gender in relation to their claims. They therefore require a gender-sensitive interpretation of the Refugee Convention as well as gender-sensitive adjudication processes of such claims (UNHCR 2002a). As Crawley (2001) has explained, and the United Nations Refugee Agency (UNHCR) has long recognised, women still face inequalities in treatment under the Refugee Convention: first, that the interpretation of the Convention continues to marginalise women's experiences, and second, that procedural and evidential barriers decrease the quality of decision-making and disproportionately affect women.

This article examines these two challenges in the context of the Nationality and Borders Act 2022, outlining three main areas that are particularly problematic for asylum seeker women. Given that the changes imposed by the Nationality and Borders Act 2022 are so

recent, little research has been undertaken on its effects. So far, Powell and Rifath's work on Sexual Diversity and the Nationality and Borders Act 2022 (Powell and Rifath 2023), Haynes's analysis of the Act in relation to human trafficking (Haynes 2023), and Saenz Perez's review of asylum laws post-Brexit have all contributed to an understanding of the effects of the Act on specific groups and contexts. With the notable exception of a chapter by Querton and Morgan (forthcoming) on 'Access to Protection for Women Seeking Asylum in the UK', where the authors reflect on their research, advocacy work and representing women seeking asylum in the UK, no work has yet examined the effects of the Act specifically on refugee women. In the broader context of scholarship in refugee law, policy, and practice, Querton and Dustin (2022) have also noted a decrease in attention to the question of women in recent years. They attribute this to a combination of the long-standing nature of gendered critique in the field and the perception that inquiry into the protection of refugee women is no longer pressing due to changes in law and practice, for example, by the adoption of national gender guidelines or the recognition of women as a 'particular social group' (ibid.). Feminist work that makes the argument that the insights of feminist scholarship have not been carried out in practice therefore risks being perceived as 'unoriginal' (Arbel et al. 2014). These factors have contributed to consideration of gender issues in refugee law being relegated back to the margins (ibid.). This article responds to Querton and Dustin's call for a renewed focus on the rights and concerns of refugee women. Its aim, by examining the disproportionate effect of the Nationality and Borders Act 2022 on refugee women, is to contribute to efforts to re-centre refugee women in the evaluation of the current legal challenges posed by the Act. In so doing, the article aims to contribute to the existing scholarship in this regard as well as to feminist advocacy efforts in the field.

Drawing on feminist and trauma-informed scholarship, it is argued, therefore, that far from being over, concerns about the differential and gendered effect of the legal machinery on refugee women remain current and relevant. Examining the impact of the Nationality and Borders Act 2022 shows how the Act is one of the most recent examples of this in the UK. Overall, it is argued that, through significant changes to established practice, policy, and jurisprudence, the Act poses a threat to asylum seeker women's rights. The relative toothlessness of international protection mechanisms is shown in light of a concerted effort to restrict avenues for protection. Arguably, the current anti-migration and asylum political climate remains gripped within a discourse and action purported to reduce immigration targets. This, however, comes at the expense of the state's responsibility for providing international protection to refugees. It is further argued that while the Act creates a framework that is worrisome for all refugees, it is particularly the most complex cases, such as women fleeing gender-based persecution, that will be disproportionately impacted by the changes imposed by the Act.

To examine these changes and their impact, the article proceeds in four sections. Section 2 starts by situating the background of the Nationality and Borders Act 2022 in its wider social, economic and political context of increasing securitisation of migration. Section 3 moves to the substantial changes imposed by the act. It examines how some of the progressive moves forward in the interpretation of the membership of a particular social group ground have been reversed by the regressive step now entrenched in Sections 30–33 of the Act. Section 4 then discusses the changes to the standard of proof and their impact on women's claims. And finally, Section 5 situates the proposed changes to the rules on late disclosure within the context of persisting evidential barriers relating to trauma and disclosure. On the whole, it is evident that the Nationality and Borders Act 2022 has a disproportionate impact on women and that this poses a significant challenge in the protection of asylum seeker women's rights in the UK.

2. Background to the Nationality and Borders Act 2022

There are several challenges that asylum seekers encounter when facing a refugee determination system in the country in which they seek asylum. Navigating a bureaucratic system in a language potentially unfamiliar to them and relaying information about the reasons for their flight in an environment that does not encourage disclosure is not only difficult but also can be re-traumatising. Asylum seekers face not only these types of practical barriers in having their claims heard and understood, but they do so also in an increasingly 'hostile environment' in the UK, which has the effect of producing legislation that further erodes their rights to protection.

The rationale for the Nationality and Borders Act 2022, which was introduced under the previous Conservative government, is summarised in the 'Nationality and Borders Bill: Factsheet' (Home Office 2023b). Its aim was to be the 'cornerstone of the government's New Plan for Immigration, delivering the most comprehensive reform in decades to fix the broken asylum system' (ibid.). The 'Why we are doing it?' section starts by calling the system 'broken', noting the 21% increase in asylum applications in 2019, the 'too slow appeals system', and 'the cost of the system being over £1billion a year', before noting how known 'illegal entry in 2020 was around 16,000 people, and the number of people with no right to be here being removed has been steadily declining due to legal challenges'. It ends with a note that 'as a result, there are now over 10,000 Foreign National Offenders circulating on the streets, posing a risk to the public' (ibid.)

The wider context of securitisation of migration is evident in the language used in the rationale for the Nationality and Borders Act 2022. The social, political and economic background is not new, however. Indeed, as the political rationale for aid dwindled with the end of the Cold War, many States around the world adopted increasingly neo-liberal regimes of fiscal austerity and reform (Freedman 2007, p. 10). Internationally, States have decreased long-term development aid and increased funding for humanitarian emergencies in an effort to contain the problem of forced migration (see, for e.g., Castles 2004). While neo-liberal policies and processes of globalisation deepen structural inequalities around the world, Western States have responded by ever tightening border controls (Freedman 2007, p. 11). These restrictive policies have transformed the question of asylum into a question of security and have simultaneously criminalised many who seek refuge in the West (Huysman 2006, p. 58). The so-called non-entrée regime of the West, as Chimni (2007, p. 507) criticises, has been constructed in disregard of the letter and spirit of international law. For Chimni (2000, p. 252), the shift in refugee discourse from issues relating to refugee protection to the language of security has, in part, been a result of the more dominant States being able to use more powerful and effective UN machinery, such as the Security Council, or regional organisations, such as NATO, to implement their current policy of containment. Examples of externalisation of border/migration control measures that European states have employed are too numerous to discuss here (see, for e.g., Cantor et al. 2022). What has also been seen from pervasive media discourse is that refugees have, for a long time, now been perceived as threatening the host country's security (Chimni 1998, p. 289). The end result has been the 'erosion of fundamental principles of *non-refoulement* as States feel justified in closing their borders or returning refugees to the country of origin in less-than-ideal circumstances' (Chimni 2000, p. 252).

It ought to be mentioned, however, that the security paradigm focuses on a very specific kind of framing of security. The overall neo-liberal context has the effect of distinguishing between 'good' and 'bad' types of mobility. Persons who are comparatively more able to move are 'Westerners', the world's business elite, or other workers considered economically desirable, and, of course, tourists. This is even though the latter, as Bagaric and Morss (2005, p. 27) observe, 'often pose the greatest threat to the host community,

particularly in relation to sexual exploitation'. In the current neo-liberal regime, however it remains evident that 'travelling for profit is encouraged while travelling for survival is condemned' (Bauman 2002, p. 28).

Returning to the context of securitisation, it is referred to as the 'process whereby existential threats to a designated referent object, such as the State or society, are identified and if the process is successful, acted upon through the implementation of extraordinary measures (Watson 2007, p. 97). Once an issue has been securitised, political leaders implement extraordinary measures to counteract the threat, often through the use of force (ibid.). The continuous and fast-paced implementation of new legislation on immigration and asylum is an example of this. For example, the Nationality and Borders Act 2022 includes significant changes, including fewer in-country appeals, less protection and support granted to those recognised as refugees, inadmissibility of EU citizens' claims and damage to credibility with late evidence, and an introduction of an annual cap on the number of refugees the UK will accept, even through so-called 'legal and safe' routes (See for e.g., Home Office 2023a).

Furthermore, in cases of successful securitisation, the international norms and rules of the international refugee regime are challenged and broken (Watson 2007, p. 100). Securitisation processes enable the unification of immigrants, refugees, and asylum seekers into a collective dangerous force (Huysman 2006, p. 56). Their different motives, experiences, and social circumstances are silenced and skewed to create a collective represented as 'endangering welfare provisions, the everyday security of citizens, the moral fabric of society', and so on (ibid.).

Arguably, the language used in the discussion of migration and asylum in the UK under the previous government's 'New Plan for Immigration' under which the Act was introduced, is couched in the wider context of ever-increasing securitisation of migration in Europe and reminiscent of a moral panic (S. Cohen [1972] 2004).[1] This has continued under the current Labour government. The policies and public messaging of the Conservative government's Rishi Sunak's 'Stop the Boats' campaign have been followed under Labour by Keir Starmer's 'Smash the Gangs', continuing the 'tough on asylum' rhetoric (see, for e.g., Sandford 2023; England and Edgington 2025). The fast-paced and complex changes to immigration and asylum laws have also been noted with concern (see, for e.g., Powell and Rifath 2023; Yeo 2020). The Nationality and Borders Act 2022 was followed by the introduction of the Illegal Migration Act 2023. And even though upon coming into power the Labour government cancelled the Rwanda scheme of extraterritorial asylum processing in Rwanda, it remains committed to further changes in this field. Currently, the Border Security, Asylum and Immigration Bill 2025 is in progress. The implications of these are beyond the scope of this paper. It may be noted, however, that the current government's focus remains one of purported deterrence of entry without the acknowledgment of root causes of refugee movements and the reality of very few 'safe or legal' means of entry for asylum seekers to the UK.

In this vein, the Nationality and Borders Act 2022 can also be seen to extend the 'hostile environment' (see, for e.g., Griffiths and Yeo 2021) policies in the UK. The 'hostile environment' refers to a set of measures implemented by the Immigration Acts of 2014 and 2016, secondary legislation and guidance documents and in cooperation with the Home Office and its partner agencies (Webber 2019). Briefly speaking, the measures seek to deny access to a range of public services designed to force undocumented migrants into destitution and therefore 'deport themselves' at low or no cost to the UK (ibid.). These signified an overall increasingly negative framing of migration and an increasing obsession

[1] For an analysis of folk devils and the Nationality and Borders Act in the context of human trafficking, see Haynes (2023).

in public messaging with 'slashing' migration numbers in the UK. Saenz Perez has opined that the perception of immigration as a security concern has somewhat declined post-Brexit with the introduction of an immigration system that enables the UK to choose the kind of immigration that it allows based on a points-based system similar to Australia (Saenz Perez 2023). She argues that nevertheless the securitization concerns that underpinned the hostile environment policy have now shifted toward asylum (ibid.).

Arising out of this wider political context, it is perhaps then no surprise that the preceding Bill faced concerted criticism from the refugee sector nationally as well as internationally from the UNHCR (see, for e.g., Asylum Welcome 2022; UNHCR 2021; Women for Refugee Women 2021). The UNHCR published comprehensive legal analysis and warned in several media statements that the preceding Bill undermined the 1951 Refugee Convention (UNHCR 2021). They warned, for example, of the risk to the lives and well-being of vulnerable people when the policies outlined in the Act were implemented (ibid.). Upon the passing of the Act through the legislative processes and having become law, the United Nations High Commissioner for Refugees, Filippo Grandi, released a press statement. In it, he stated that the UNHCR regrets that the 'British government's proposals for a new approach to asylum that undermines established international refugee protection law and practices has been approved' (Grandi 2022). Undoubtedly, the Act has significant and long-lasting consequences for many asylum claims. The following sections now focus on the three specific sections that are likely to have a disproportionate and discriminatory impact on refugee women.

3. Regressive Step on the Interpretation of the Membership of a Particular Social Group Ground

This section begins by outlining some of the history of judicial developments in the area of interpreting the particular social group ground in women's cases. Its purpose is to account for the considerable work that has been undertaken to advocate and shape understanding of the particularities of women's claims. It then looks at practice today before drawing out how Section 33 of the Nationality and Borders Act 2022 is a regressive step on the interpretation of the particular social group ground. In doing so, it evidences an oft-said situation where feminist wins that enable progressive steps forward are followed by regressive steps back and notes the adverse impact of this change.

3.1. Developments in the Interpretation of Membership of a Particular Social Group

According to the 1951 Refugee Convention, a person must have a well-founded fear of being persecuted for reasons of their race, religion, nationality, membership of a particular social group, or political opinion.[2] Membership of a particular social group ground is particularly significant for refugee women, as neither sex nor gender is listed as a reason for persecution in the 1951 Refugee Convention. The traditional beneficiary of the Refugee Convention in the aftermath of the Second World War was a sole, male, political activist fleeing persecution at the hands of state actors (see, for e.g., Arbel et al. 2014). Decades of work from feminist scholars and activists to expose the inadequacy of this framework to deal with the particular challenges relating to women's claims have arguably shifted gender as a concern in refugee law from the margins to the centre (see, for e.g., Arbel et al. 2014; Dauvergne 2021; Edwards 2010). Nevertheless, in practice, the Convention's origins continue to show up in particular ways in the difficulties for women to get their claims understood and recognised. The membership of a particular social group intractably remains an example of this. Being as it was designed as a 'residual' ground for protection,

[2] Article 1 A (2) of the Convention Relating to the Status of Refugees 1951, Hereinafter, the Refugee Convention.

there exists limited guidance in the *travaux préparatoires* on its interpretation (see, for e.g., Grahl-Madsen 1966; Hathaway and Foster 2003). As such, the boundaries of this Convention ground remain open to contestation, and at times such as the current, also open to considerable restrictions.

Many women face persecution as a result of their sex or gender, for example, based on gender-based violence, discriminatory denial of education, or access to political and civic equality in their countries of origin (Harrison et al. 2021). Many asylum seeker women thus have to show that persecution because of their gender makes them a member of a particular social group. In 1985, the UNHCR recommended that 'women who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a particular social group' (UNHCR 1985). Again, in 1991, the UNHCR stated in their guidance that 'women fearing persecution or severe discrimination on the basis of their gender' should be considered members of the particular social group (UNHCR 1991). It is noteworthy too, that the UNHCR recognised that women may also be considered under the political opinion or religion grounds (ibid.). Furthermore, the UNHCR, in their 1991 Gender Guidelines, recommended the adoption of gender- sensitive interpretation of each of the Convention grounds, as well as recognising the potential of an asylum claim to be based on more than one Convention ground (ibid.). In practice, however, women's gender-based persecution claims tend to be overwhelmingly decided under the particular social group ground (Cheikh Ali et al. 2012).

In 1995, the UNHCR called on States to develop gender guidelines for their adjudicators to encourage gender-sensitive application of the Refugee Convention (UNHCR 1995). This call was also echoed in the 1995 Beijing Declaration and Platform for Action. Women's organisations and activists undertook considerable efforts to push for further developments in the interpretation of the Refugee Convention to women's cases and developing guidance at national levels. Gender Guidelines were produced in 1993 in Canada (Immigration and Refugee Board of Canada 1993; Reissued 2023), in 1995 in the United States (United States Bureau of Citizenship and Immigration Services 1995), in 1996 in Australia (Department of Immigration and Multicultural Affairs [1996] 1997), and in the UK in 2004 (UK Border Agency 2018). In *Ward v Canada* in 1993, the Supreme Court in Canada adopted the protected characteristics approach, noting that the particular social group ground includes 'innate or unchangeable characteristics', including 'gender, linguistic background and sexual orientation'.[3] This was also the approach taken in New Zealand with respect to sexual orientation.[4] Test cases involving women and gender-based persecution in particular also eventually reached the courts. In the US, in the *Matter of Kasinga* in 1996, the Board of Immigration Appeals granted asylum to Fauziya Kasinga, a young woman from Togo who had fled female genital cutting and forced marriage.[5]

In the UK, it was only in 1999 that the highest court recognised gender as a protected characteristic and women as a particular social group for the purposes of the Refugee Convention in *Islam v Secretary for the Home Department, R v Immigration Appeal Tribunal and Another, ex parte Shah* (1999)[6]. The claimants in *Shah and Islam* were two women—Syeda Shah and Shahanna Islam from Pakistan—who were subjected to serious physical abuse by their husbands and were forced to leave their homes and apply for asylum in the UK. They claimed that if they were returned to Pakistan, they would suffer domestic violence as well as severe allegations of adultery made against them, for which there would be no state protection. The decision was groundbreaking in its acceptance of gender as a

[3] *Ward v Canada*, 2 SCR (30 June 1993).
[4] *Refugee Appeal No. 1312/93 Re GJ* [1995], New Zealand: Refugee Status Appeals Authority, 30 August 1995.
[5] *In re Fauziya Kasinga*, 3278, United States Board of Immigration Appeals, 13 June 1996.
[6] UKHL 20.

protected characteristic and women as a particular social group within the meaning of the Refugee Convention. It consolidated at the time emerging consensus on the need for gender- sensitive interpretation of the particular social group ground. In many ways, the case was a culmination of feminist strategies of the 1970s, the legacy of Women's Aid and others in shaping and moving understandings of, and responses to, 'domestic violence out of the 'private' and into the 'public' sphere (Honkala 2018).

Furthermore, the case followed the development of Gender Guidelines for the Determination of Asylum Claims devised by Refugee Women's Legal Group in 1998, and Lord Hoffman referred to these guidelines in *Shah and Islam*. They were also used in drafting the Immigration Appeals Authority (now Upper Tribunal) Gender Guidelines in 2000 (Berkowitz and Jarvis 2000). Nevertheless, even at the Tribunal level, support for these Gender Guidelines was only partial and studies found that adjudicators rarely made use of them to improve treatment of women in asylum appeals (see, for e.g., Black Women's Rape Action Project and Women Against Rape 2006). Furthermore, in 2006, the Asylum and Immigration Tribunal made a statement that its predecessor's IAA's Gender Guidelines were not its policy (Clayton et al. 2017).

3.2. Backward Step on the Interpretation of the Membership of a Particular Social Group

Foster (2014) has charted how the UNHCR engaged with the lack of uniform consensus on the question of membership of a particular social group ground and produced guidance on the matter. The UNHCR Guidelines outline the two dominant approaches—the protected characteristics approach and the social perception approach—and recommend that 'the two approaches ought to be reconciled' (UNHCR 2002b, para. 10)[7].

Under both approaches, women have indeed been recognised as a potential particular social group in courts internationally. However, as Foster notes, 'one of the most pernicious difficulties' with this Convention ground 'is the overwhelming reluctance of both advocates and decision-makers to frame the relevant particular social group as simply 'women' (Foster 2014, p. 28). This has resulted in the creation of overly convoluted and artificially contrived groups in order to avoid concerns about size, breadth and 'floodgates' (ibid., p. 38). It is accepted in refugee law that the particular social group cannot be solely defined by the threat of persecution (UNHCR 2002b, para. 14); therefore, this narrowing of groups often risks adversely affecting women asylum seekers as it risks the group so defined falling foul of this general principle (Foster 2014, p. 31).

In the UK, the Protection Regulations (Refugee or Person in Need of International Protection (Qualification) Regulations 2006)[8], which were made in part at least to implement the EU Council Directive 2004/83, were repealed by Section 30 (4) of the Nationality and Borders Act 2022. The definition of the particular social group found in the Protection Regulations followed the wording of the Directive, which provided two criteria for whether a group to which a person belongs is a 'particular social group' within the meaning of the Refugee Convention. These were as follows:

(i) 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 their identity or conscience that a person should not be forced to renounce it, ***and***

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

This cumulative test, requiring both the immutable characteristic and the social perception approaches to be satisfied, imposed a two-tiered hurdle for applicants (Foster 2014, p. 25). As Foster (ibid.) noted, 'given that sex, gender and sexual orien-

[7] On Particular Social Group in general, see also Hathaway and Foster (2003).
[8] (S.I. 2006/2525).

tation have always been cited as quintessential examples' of the protected characteristics approach, a requirement for an additional test could be expected to result in additional and 'arguably unnecessary obstacles' for women asylum seekers (ibid., p. 25).

The test for particular social group has also been the subject of considerable domestic judicial examination and the highest court in the land has made clear that applying the test cumulatively will impose a higher standard than that required by international law (Querton and Morgan, forthcoming; and see *Fornah*). In 2006, in *Fornah*[9], in another significant case considering the scope of membership of a particular social group, the House of Lords examined whether the particular social group ground extended to women fleeing the threat of Female Genital Mutilation (FGM). They overturned the Court of Appeal decision and, following *Shah and Islam*, held that it did. For Lady Hale, the answer to the question of whether FGM amounted to gender-related and gender-specific persecution was as follows:

'so blindingly obvious that it must be a mystery to some why [the cases] had to reach this House. . ..the world has woken up to the fact that women as a sex may be persecuted in ways which are different from the ways in which men are persecuted and that they may be persecuted because of their inferior status according to their gender in their home society.' (ibid., paras. 82 and 86).

The House of Lords was clear that the UNHCR Guidelines on Particular Social Group were to be followed and the test to be applied was not cumulative. Nevertheless, challenges remained for refugee women and advocates supporting them. Research has shown, for example, that first-instance Home Office decision-makers in the UK systematically fail to consider the particular social group ground in relation to gender-based persecution claims (see, for e.g., Muggeridge and Maman 2011; Ceneda and Palmer 2006). Furthermore, Querton (2012b) also noted how the approach at the Tribunal level has been inconsistent on the issue and at times contrary to the House of Lords.

However, the issue seemed to have been finally put to rest in a recent landmark case at the Upper Tribunal in 2020 in *DH (Particular Social Group: Mental Health) Afghanistan*[10]. In this case, the Tribunal followed *Fornah* and expressly made clear that the requirements are alternative, not cumulative. Furthermore, as noted by Querton and Morgan (forthcoming), the 'revocation of the Protection Regulations 2006 provided an opportunity to redress doubts about the correct interpretations of the two limbs test for particular social group, however the opposite has occurred'. It is against this backdrop that the changes in the Nationality and Borders Act 2022 were introduced. Section 33 changes the definition of a particular social group by re-introducing the cumulative test. It will thereby have a disproportionate and adverse effect on women and girls claiming protection under the Refugee Convention. According to Section 33 (2), 'A group forms of particular social group for the purposes of Article 1 (A) (2) of the Refugee Convention only if it meets both' of the limbs. Section 33 of the Nationality and Borders Act 2022 therefore reverses *DH (Particular Social Group: Mental Health) Afghanistan* as well as the meaning of the particular social group ground set out in *Fornah*. The consequences of this cumulative test were already noted in *DH*, where the Upper Tribunal stated that requiring both criteria to be met 'can give rise to protection gaps which is contrary to the obligations of signatories to the Convention' (para. 59). The Tribunal further noted that the cumulative test did not accurately reflect international refugee law (para. 67), and in accordance with the object of the Refugee Convention, the concept of membership of a particular social group 'should be interpreted in an inclusive manner' by determining that it exists on the basis

[9] *Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home department* [2006] UKHL 46.
[10] [2020] UKUT 223 (IAC).

of the protected characteristics or the social perception approach, rather than requiring both (para. 68).

It is worthwhile noting that there also exists a wider concern over the tendency to view women's claims overwhelmingly as coming under the membership of a particular social group ground (see, for e.g., Crawley 2001; Edwards 2003, 2010). Crawley (2001), Honkala (2017), and Benslama-Dabdoub (2024), for example, have argued that the political opinion ground may be better suited to cases where asylum seeker women have resisted patriarchal norms or mores. This may better recognise women's political agency involved in such claims. There has also been illuminating analysis by Anderson (2023) and Briddick (2024) on the use of particular social group ground and political opinion ground specifically in the context of domestic/intimate partner violence, as well as by Dustin and Held (2018) with regards to asylum claims based on sexual orientation and gender identity.[11] Nevertheless, the membership of a particular social group ground remains the most used in women's cases involving gender-based persecution in practice (Cheikh Ali et al. 2012). Therefore, the effect of enshrining the cumulative nature of the test in the Nationality and Borders Act 2022 is particularly concerning. As Querton and Morgan (forthcoming) note, the provisions 'represent not only a missed opportunity to solidify existing good practice developed over several decades in the UK by the judiciary but actually give effect to a concerted regression of refugee women's existing protection standards'. Indeed, it is women then who will likely bear the disproportionate brunt of the changes to the interpretation of the membership of a particular social group.

The following sections will now turn to changes imposed by the heightened standard of proof and evidential and procedural elements, highlighting how these changes too are likely to have a gendered impact on women seeking asylum.

4. Heightened Standard of Proof

As noted above, according to the 1951 Refugee Convention, a person must have a well-founded fear of being persecuted for reasons of their race, religion, nationality, membership of a particular social group, or political opinion. The phrase 'well-founded fear' is a key phrase of the refugee definition. As the UNHCR has noted in its *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, 'it reflects the views of its authors as to the main elements of refugee character' (UNHCR 2019, para. 37). The Refugee Convention replaced earlier methods of defining refugees by categories, such as persons of a certain origin who were not able to enjoy the protection of their country, by introducing a general concept of 'fear' as a relevant motive (ibid., para. 38). Crucially, as fear is subjective, the Refugee Convention definition involves a subjective element, and therefore determination of refugee status will 'primarily require an evaluation of the applicant's statements rather than a judgement on the situation prevailing in his country of origin' (ibid.). The subjective element of fear is qualified by the 'well-founded' element, which implies that the 'frame of mind' of the refugee must be supported by an objective situation. In this way, the well-founded fear contains both subjective and objective elements that must be taken into consideration.

The linguistic ambiguity in the 'well-founded fear' of being persecuted has given rise to a wide range of different interpretations (Hathaway and Hicks 2005, p. 506). In general, there has been agreement that a fear is well-founded if the asylum seeker faces an 'actual, forward-looking risk of being persecuted in her country of origin' (ibid.). This has been called the objective element. According to the UNHCR's interpretation the subjective element, however, involves not only showing that she is genuinely at risk but also that

[11] For an analysis of how gendered understandings play apart in the exclusion of trafficked men see Magugliani (2024).

'she stands in trepidation of being persecuted' (ibid., p. 506). Even though this subjective element test has been used across different jurisdictions, there is no coherent understanding of what the test actually means. Several authors have tried to formulate a coherent way to interpret the subjective element. Hathaway has argued that international law does not provide a basis for the subjective element test, and the refugee determination should concentrate on the objective element of well-founded fear (Hathaway and Foster 2014, p. 105). Ultimately, as Noll (2005, p. 146) has remarked, the 'debate on the roles of any objective or subjective element is about the *power to define identity*'. Given the complexity of this question, the assessment of the subjective element thus becomes a question of credibility, about whether or not the decision-maker believes the story of the applicant. In the last section, the inability of the legal system to listen to the narrative of the asylum seeker will be further discussed. Suffice it to note here that what seems crucial, then, is not her story of her own persecution, of her own subjective fear, but rather the power to determine whether there is subjective fear in the first place or not. This power ultimately lies with the decision-maker.

In this context, it is crucial then to understand the implications of the changes to the 'well-founded fear' definition in the Nationality and Borders Acts 2022. In essence, the Act changes the 'well-founded fear definition', making it even harder for asylum seekers to cross the threshold. Section 32 of the Nationality and Borders Act 2022 introduces a new statutory framework through a two-part test for determining whether an individual has a well-founded fear of persecution. The new test, provided in Section 32 (2), requires that past facts are established on 'a balance of probabilities', in other words, using the standard for civil claims. Whereas the question of whether there is a future risk to the applicant will be assessed against a different standard of 'reasonable likelihood', as per Section 32 (4).

By introducing such a dual standard of proof, Section 32 reverses 20 years of UK asylum jurisprudence and goes against long-established UNHCR standards, which stress that 'refugee claims are unlike criminal cases or civil claims' (UNHCR 1998). Although the UNHCR Handbook is not legally binding on States it is widely recognised as providing an authoritative guide on the interpretation of the 1951 Refugee Convention. The Handbook states that the fear is well-founded if the applicant 'can establish to a *reasonable degree* that his continued stay in his country of origin has become intolerable' and that this does not require a 'probability calculus' (UNHCR 2019, para. 21). The UNHCR's 'Note on Burden of Proof in Refugee Claims' further states that substantial jurisprudence has developed on the issue and that 'there is no need to prove well-foundedness conclusively beyond doubt, or even that persecution is more probable than not' (UNHCR 1998, para. 17). To establish well-foundedness, it must be proved that persecution is '*reasonably possible*' (ibid.).

In *Fernandez v Government of Singapore and others*[12], in 1967, the House of Lords in the UK stated that when deciding cases involving future risk, a balance of probabilities approach was not the appropriate standard. Instead, the court took into account the severity of the consequences of the court's decisions being wrong either way and stated that it was not necessary to prove that it was more likely than not that the claimant was going to be detained or restricted on return; a lesser likelihood would be enough. In that case, Lord Diplock opined that he saw no significant difference between 'reasonable chance', 'substantial grounds for thinking', or a 'serious possibility', which were used as examples of such a lesser degree (p. 697).

For over 30 years, the standard of proof was the standard established in *R v Secretary of State for the Home Department, ex parte Sivakumaran*[13], an asylum case which followed

[12] [1971] 2 All ER 691.

[13] *R v Secretary of State for the Home Department, ex parte Sivakumaran and Conjoined Appeals (UN High Commissioner for Refugees Intervening)* [1988] AC 958.

Fernandez. In *Sivakumaran*, the House of Lords held that the applicant needs to demonstrate a 'reasonable degree of likelihood' of being persecuted for one of the Convention grounds. In *Karanakaran*[14], Lord Justice Brooke explained why the lower standard of proof ought to apply due to 'the notorious difficulty many asylum-seekers face in "proving" the facts on which their asylum plea is founded'. Furthermore, in *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department*, the Supreme Court clearly confirmed that 'where life or liberty may be threatened, the balance of probabilities is not an appropriate test'.[15]

Context of Credibility Assessments and Culture of Disbelief

The problem of the two-part test and the heightened standard of proof for the subjective element needs to be understood in the context of credibility assessments and the long-standing evidence of a culture of disbelief in the Home Office. This is because, as mentioned before, the ambiguity in relation to well-founded fear may lead decision-makers to revert to merely assessing credibility in its assessment. In both administrative and criminal law proceedings, credibility has been criticised as a vehicle for gender and cultural bias, in addition to producing unreliable results (see, for e.g., Tyler and Eastel 1998; Childs and Ellison 2000). And yet, as Coffey (2003, p. 377) notes, credibility is 'conceptually elusive' and yet 'adjudicatively influential.' Furthermore, in determining refugee status, an assessment of credibility has been described as the 'single most important step' (Kagan 2003, p. 367). For women in particular, the key reason for refusal of asylum is that they are not believed (Singer 2014). Women's claims are also more likely than men's to be overturned on appeal due to negative credibility findings at the initial Home Office decision-making stage (Muggeridge and Maman 2011). Overall, women suffer more from harms by non-state actors, making it more difficult to provide documentary evidence (ibid.). This is the case both in terms of the agent of persecution and their place in society in the country of origin, as well as the harm itself, for example, forced marriage or domestic violence (ibid.). Furthermore, it is generally more difficult to obtain country-of-origin information relating to the status and treatment of women (Querton 2012a, p. 37).

The UNHCR has always pleaded for a generous asylum policy in the spirit of the Universal Declaration of Human Rights. The UNHCR Handbook states that the examiner 'must apply the criteria in a spirit of justice and understanding' (UNHCR 2019, para. 190). It further acknowledges that, according to the general principle, the burden of proof rests on the applicant, but it also stresses that 'the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner' (ibid., para. 196). Repeatedly, the Handbook emphasises that the applicant should be given 'the benefit of doubt' at all stages of the process (ibid., paras. 62, 196, and 203). The impossibility of 'proving' everything in the applicant's account is recognised, and it is stated that it might sometimes be necessary for the examiner 'to use all the possible means at his disposal to produce the necessary evidence in support of the application' (ibid., para. 196). Importantly, the guidance states that 'untrue statements by themselves are not a reason for refusal of refugee status' and that 'it is the responsibility of the examiner to evaluate those statements in light of all the circumstances' (ibid., para. 199). The UNHCR Guidance is clear that the decision-maker does not need to be 'fully convinced of the truth of each and every factual assertion made by the applicant' (UNHCR 1998, para. 8). Indeed, it states that 'the adjudicator needs to decide if on the basis of evidence provided as well as the veracity of the applicant's statements it is *likely* that the claim of that applicant is credible' (ibid.).

The experiences on the ground, however, stand in stark contrast to UNHCR Guidance. Women's charity sector, for example, has repeatedly tried to make visible the overwhelm-

[14] *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449.
[15] *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31, para. 90.

ingly negative experiences of women seeking asylum who have shared their experiences of being disbelieved by Home Office officials (Dudhia 2020). In one of the Windrush Generation Reports, the Home Affairs Committee (2018, p. 20) noted that a 'change in culture at the Home Office over recent years as a consequence of political decisions has led to an environment in which applicants appear to have been automatically treated with suspicion and scepticism and forced to follow processes that appear designed to set them up to fail.'

It is worthwhile noting that, in contrast to some other jurisdictions, in the UK the decision on whether to grant refugee status or not is made by a government department official, an official at the Home Office. The asylum seeker has an onward right to appeal a rejection to an independent tribunal. Some other jurisdictions have an independent administrative Tribunal making first-instance decisions on refugee status, such as the Immigration and Refugee Board of Canada in the Canadian case. Countries also vary in their preferences regarding the backgrounds of initial refugee decision-makers. In the United States, asylum officials are most often recruited from law schools, NGOs, or immigration programs within the government, while in the Netherlands, case workers are trained lawyers (Immigration and Refugee Board of Canada 2018). In France and Sweden, individuals with international experience are purposefully sought out, whereas the UK recruitment poster emphasised the requirement to meet performance targets (ibid.). Studies have found that work experience, personal bias, gender, and lack of training, as well as which court the case is assigned to and whether the asylum seeker had legal representation, were all factors that affected the outcome of asylum decisions in US courts (Ramji-Nogales et al. 2009). While no such large-scale empirical studies have been undertaken in the UK context, a lack of sufficient training, high staff turnover, and low morale have all been noted as problems among first-instance decision-makers (see, for e.g., Neal 2021).

More specifically, a culture of disbelief at the Home Office is well documented by refugee charities, academics, independent inspectorates, the UNHCR, and Parliamentary Committees. For example, Amnesty International UK (2004) examined the reasons given by Home Office officials in their refusal letters and found that the (then) UKBA had a 'negative culture', which was evidenced by 'unreasonable assertions about individual credibility'. Furthermore, they stated that the problem of denial of credibility 'indicated a pursuit of the refusal of asylum claims as an objective, rather than a line of enquiry that investigates all the facts and focuses on the individual applicant's need for international protection' (ibid.). In her analysis of refusal letters of Afghan asylum seekers, Schuster (2018) noted that country-of-origin reports were not used appropriately by decision-makers. She noted out-of-date reports, cherry picking of information to undermine credibility of the applicant, and speculation about country conditions and a general failure to consider the particular circumstances pertaining to asylum seekers.

Concerns over the quality of Home Office refusal letters are long standing and led to the UNHCR embarking upon a project to monitor and improve the quality of Home Office decision-making (Henderson et al. 2023). The Quality Initiative Project based on the supervisory jurisdiction of the UNHCR under Article 35 of the Refugee Convention, ran between 2004 and 2009 (ibid.). In their reports, the UNHCR identified systemic problems both in individual decisions and in the context in which caseworkers operate (UNHCR 2025). They explained, for example, that' the tendency to reject or to disbelief every aspect of an applicant's claim. . .besides being a reflection of a misapplication of the law, suggests that there may be a culture of refusal amongst caseworkers.' (ibid., p. 12). Concerns remained throughout the subsequent UNHCR reports in 2006, 2007, 2008, 2009, as well as in the follow-up project, Quality Integration Project in 2010 and 2013 (UNHCR 2025). In the 'Lessons Not Learned' report by Freedom From Torture, which charted 50 reports from 17 different organisations, including parliamentary committees, the United

Nations, non-governmental organisations, academics, and independent inspectorates, poor Home Office decision-making was described as endemic (Freedom From Torture 2019). Examining the longstanding criticisms levelled against the Home Office, its analysis showed a 'convergence of views on the fundamental causes of poor decision-making, including the unrealistic and unlawful evidential burden placed on applicants and a starting point of disbelief, with a devastating impact on the individuals involved' (ibid.).

Furthermore, the report noted that the 'list of failures in the asylum decision-making is compounded by the failure or refusal of the Home Office to act on many of the recommendations made. The problems have therefore been recurrent and persistent' (ibid.). According to the Refugee Council, 48% of asylum claims were allowed appeal in 2024 (Refugee Council 2025), and in Asylum Aid's study of women's asylum claims, all those who were allowed appeal had their initial negative credibility finding overturned on appeal (Muggeridge and Maman 2011).

Poor quality decision-making has been attributed to a 'culture of disbelief' and a 'culture of denial'. Souter (2011) has used the notion of 'culture of denial' to explain situations in which Home Office officials act presumptively in a way that allows them to deny legal protection to asylum seekers. Souter argues that some of the refusals of asylum claims are the result of prior refusal to engage with the facts of the case, which may occur unconsciously. Baillot et al. (2012b) also found that caseworkers employ strategies of denial. For example, caseworkers found consolation in the fact that they were not the final decision-makers, thereby shifting responsibility to institutional factors.

In this context, it is evident how raising the standard of proof is likely to act as a significant barrier to protection in many women's asylum claims. As Querton and Morgan (forthcoming) argue, the dual standard of proof is 'likely to lead to confusion as the judiciary grapple with how to apply the new two-part test in practice and extended litigation, as both asylum seekers and the Home Secretary seek legal reviews of the way the lower courts have interpreted their obligations under this section'. They further note its adverse impact on asylum seekers and courts, as the system that is already overburdened will be forced to cope with the additional challenges (ibid.). Furthermore, 'the impact on requiring women who are more often than not survivors of gender-based violence', to prove the facts of their case to a heightened standard of proof will place 'an impossible burden on such women' (ibid.). The last section will focus on evidential burdens relating to trauma and disclosure, especially relevant in the context of gender-based persecution and which will further create difficulties for women in particular.

5. Evidential Burdens Relating to Trauma and Late Disclosure

The Nationality and Borders Act 2022 is especially punitive for traumatised claimants, who may not be able to share and articulate their 'whole' story when they first enter the UK. Many women refugees need access to psychological support, appropriate legal advice, and to feel safe before they can open up about the traumatic experiences they have gone through. The process of disclosing a history of violence and abuse can often take an extended period of time and can be incredibly difficult for survivors (Dudhia 2020). And yet, the Nationality and Borders Act 2022 encourages decision-makers to treat any person who raises evidence at a later point in the asylum process as untrustworthy. The Act therefore contradicts long-standing evidence about the difficulties women face in disclosing abuse and trauma, particularly for survivors of gender-based violence or modern slavery (see, for e.g., Latin American Women's Rights Service (LAWRS) and the Step Up Migrant Women Campaign 2022).

Many refugees will have experienced complex trauma, whether through their fear of or actual experiences of persecution in their country of origin, their experiences during

their flight and/or during their process of seeking asylum. For many, the 'going through' the refugee determination system can be re-traumatising. While this is the case for many refugees, it is particularly women refugees who disproportionately face the potential re-traumatisation, as their claims are more likely to involve gender-based persecution and violence. It is particularly difficult to recount experiences of gender-based violence within the context of the refugee determination system. Oftentimes, the very environment in which asylum interviews happen prohibit any feelings of safety, which would encourage disclosure. Asylum claims are made on arrival to the UK or at a later stage 'in-country' by the asylum seekers themselves. A decision on whether or not to grant refugee status or humanitarian protection status to an asylum seeker is made by a 'case owner', who, in the first step of the process, takes down basic information regarding the applicant, including nationality, religion, details of family members, what their claim is based on and why they cannot return to their home country, their travel route, and whether they have family in the UK. Biometric information, including fingerprints of the claimant and any family members over 5 years old, and a photograph are taken. At the end of the interview, the applicant should receive a record of the asylum screening meeting. A decision on whether to detain the applicant is then made.

After the screening interview, the claimant will receive a letter arranging a second, substantive asylum interview, during which the decision on refugee status will be made. This interview can last several hours, and breaks are usually scheduled every hour or two. The interview is by its very nature tiring and the stakes for the claimant high. In this context, the asylum seeker may make mistakes or have inconsistencies in their story, which might later affect their credibility adversely in the eyes of the case worker. Potential legal representatives can attend the interview but can only interrupt if there is a serious misunderstanding between their client and the interviewer (Gbikpi 2025). As legal aid does not pay for a representative to attend the interviews, it is rare that an applicant is represented. The interview should be transcribed and recorded, and a copy given to the claimant. However, the Right to Remain charity has noted that many asylum claimants do not receive a copy in time, or if at all, and advises claimants to lodge a complaint with the Home Office if this is the case (Right to Remain Toolkit 2025). Any potential errors ought to be noted within 5 days. In case the case goes to appeal, correcting any errors promptly can be beneficial to the claimant's credibility and vice versa.[16] There are also issues relating to remotely conducted asylum interviews. These can have benefits for the Home Office in terms of distributing workloads, easier allocation of interpreters, and reduction of travel, which can all improve efficiency and reduce delays (Helen Bamber Foundation 2022). At the same time, however, as the Helen Bamber Foundation and Asylum Aid have found, there are challenges inherent in remote interviews. In addition to practicalities, such as poor internet connection or interpreters' cameras not working, challenges remain, such as lack of visual cues, difficulties in interpreting silences, and identifying signs of mental distress, like dissociation, to name a few (ibid.).

As a result of the efforts of refugee NGOs and UNHCR recommendations that an asylum claimant be given the choice of the sex of the interviewer, asylum claimants are now asked whether they would like a male or female interviewer (Muggeridge and Maman 2011; UNHCR 2002a; UK Visas and Immigration 2023). The right to request a female interviewer is undoubtedly important for many women who have experienced sexual violence, as it may assist in facilitating disclosure of traumatic experiences. However, this does not come without its problems. Asylum Aid, for example, in their research, found that the reason many of their clients felt that they were not able to give an informed

[16] *MM (unfairness; E & R) Sudan* [2014] UKTU 105.

response to the question was because of the environment in which the question was posed (Muggeridge and Maman 2011). Some felt intimidated, especially having their interviews held through a glass window, and felt hurried, confused, and uninformed (ibid.). The majority of their clients interviewed for the research felt that, in hindsight, they would have requested a female interviewer (ibid.). Notably, Baillot et al. (2014) warned of the risk of female interviewers being regarded as a panacea, particularly if they were based on the assumption that women would necessarily make for more receptive listeners in this context. Furthermore, if there is an assumption that all women would prefer a female interviewer, a claimant's lack of preference may be interpreted as counting against them in an already suspicious decision-making environment. Even if a woman would choose to have a female interviewer, operational time constraints mean that this does not always happen (ibid.). Moreover, as Jubany (2011) has noted, the assumption that women may disclose sexual violence more readily to a female interviewer may have an effect on the immigration officials as well. Female interviewers represent a minority in the workforce, and they regularly listen to stories of rape and sexual violence. This, in turn, can have a desensitising effect on them and further create scepticism of asylum seekers' narratives (ibid.).

Even if a woman has a choice of the sex of the interviewer, common barriers to disclosure remain, especially in disclosing experiences of gendered and/or sexual violence. Both depression and post-traumatic stress disorder are associated with a pattern of overgeneral memory, in which individuals have difficulty retrieving memories of specific events (McNally 2005, p. 131). Trauma can alter a person's time and space perceptions and cause memory blocks and dissociation (Rousseau et al. 2002). Memories of traumatic events can include incomplete accounts and flashbacks that are experienced in the present and are often triggered by external or internal cues rather than being subject to conscious recall (see, for e.g., Anderson et al. 2000; J. Cohen 2001; Evans Cameron 2010). Herlily (2014) notes how people suffering from PTSD due to experiences of sexual violence will be more likely to be prioritising above all other considerations, the avoidance of thoughts, feelings, and conversations about their experiences, as well as having potential gaps in their memory about the details of those experiences. Difficulties in concentrating, especially common for traumatised persons, can be responsible for numerous little mistakes, which, in a legal setting, are easily interpreted as lack of credibility (Herlily 2014).

In research about their experiences, many refugee women recount traumatic interviews that felt to them like interrogations (Muggeridge and Maman 2011). Studies in the context of the criminal justice system have found rigid, interrogative, and direct answer format of testimony, as well as the adversarial environment of the courtroom, to be obstacles to victims of rape (Baillot et al. 2009). A significant proportion of women seeking asylum will have experienced rape and/or sexual violence, including during conflict in their country of origin, and will face similar obstacles within the refugee determination process. An understanding of trauma and its effects on disclosure would be necessary for a gender-sensitive approach to refugee determination, and yet it has been shown that asylum interviewers often lack understanding of trauma and its effects on disclosure and are not trained in these matters (Rape Crisis England and Wales and Imkaan 2024).

In this context, the changes imposed by the currently prospective Sections 18, 19, and 26 of the Nationality and Borders Act 2022 relating to late disclosure will make matters worse, as they go against widely established research on trauma and its impact on asylum seeker testimony. For example, Section 18 of the Act on the 'Provision of evidence in support of protection or human rights claim' allows an evidence notice to be issued on a person who has made a protection claim or human rights claim. This notice requires 'the recipient to provide, before the specified date, any evidence in support of the claim.' Furthermore, Section 19: 'Asylum or human rights claim: Damage to claimant's credibility'

imposes an adverse credibility finding on those who provide evidence at a later date 'unless there are good reasons why the evidence was provided late'. Finally, Section 26: 'Late provision of evidence in asylum and human rights claim: weight' compels decision-makers to 'have regard to the principle that minimal weight should be given to the evidence' 'unless there are good reasons'. This is undefined in the Act and leaves it to the discretion of the Home Secretary.

The Home Office's own Asylum Policy instructions include statements that 'shame and trauma that a person has experienced as a result of gender-based harm may, however, result in their oral testimony being less than complete, coherent or consistent' and that 'it may also mean that they delay disclosure of particularly traumatic events, such as, for example, incidents of sexual violence' (UK Visas and Immigration 2023). However, relying on first-instance decision-makers to evaluate and do so is problematic because of the poor-quality decision-making noted above. Previous studies have noted with concern the lack of awareness of even the existence of such guidelines by decision-makers (Baillot et al. 2012a). Assessments of gender-based persecution claims require a trained interviewer who understands shame, fear of authorities, and trauma, and that not understanding what may be relevant to an asylum claim may also be a reason behind late disclosure (Cheikh Ali et al. 2012).

In their research on stakeholder interviews, Baillot et al. (2012a) showed that a number of case owners thought that disclosure of sexual violence was likely to occur at an early stage in the asylum process. Consequently, many of their respondents felt that in cases where sexual violence or rape was not disclosed early, both the rape and the credibility of the claimant could legitimately be doubted (ibid.). Thomas (2006) has also pointed out that it has been both late and prompt disclosure of rape, torture, and persecution which has been used to make adverse credibility findings. Moreover, even when the law recognises rape as a form of persecution, rape myths, such as victim blaming, false allegations, and the idea that rape is a rare act of aggression, may all impact the ability of an asylum decision-maker to apply the law (Oxford 2023).

Women may also experience heightened difficulties due to the intersection of gendered and/or cultural or religious expectations, trauma, shame, and sexual orientation for example. For those, in particular, whose claims involve sexual orientation, the lack of privacy in the asylum interviews may be deeply troubling. In her interviews with lesbian asylum seeker women in the UK, Bennett (2014, p. 144) noted how this was, for many, the first time they had to publicly identify as a lesbian. One woman described these experiences as 'humiliating', another stated that this 'was not something you can do easily, especially to complete strangers', while another questioned whether the immigration officials had any idea of the difficulties they faced when discussing their sexuality for the first time (ibid.). Bennett noted how, for many lesbian asylum seekers, their sexuality was embedded within negative emotions and memories (ibid.). In addition, she noted that, as others have pointed out, lesbian (and gay) asylum seekers have to negotiate between internalised homophobia, feelings of shame, and the negative connotations associated with labels such as 'lesbian', which can have an influence on their ability to disclose or reveal their sexual orientation in the asylum context (ibid. see also Berg and Millbank 2009). Through his interviews with sexually diverse refugees, Powell (2021) has also shown how the current expectations of relating their experiences through a narrative of a fixed and culturally contingent sexual identity did not match with the lived experiences of many sexually diverse refugees, who viewed their sexuality rather through attractions, behaviours or orientation. Expectations to conform to Westernised notions of 'gayness' have also been identified as barriers to being believed in this context (ibid. see also Millbank 2009).

The risk of decision-makers employing their own cultural assumptions is high in a context where the countries asylum seekers come from are diverse, where country-of-origin information is patchy, and the decision-makers are unlikely to be experts in that information and where they need to work within a context of external pressures such as time and limited resources, as well as targets. For instance, Schuster (2018) illustrates these difficulties through different norms about dates and times pertaining to Afghans when asked about birth dates. She notes, for example, that for many Afghans, particularly those who may be illiterate, birth dates would be tied to a season, Eid or Nowroz, or that of another child in the family. And yet, in the West, she notes, vagueness around ages and birth dates would be considered as evidence of inconsistency (ibid.). There is a heavy reliance on dates in the Western legal system, which places additional burdens on the accuracy of the dates (Shuman and Bohmer 2004). Conversely, inaccuracies in dates become commonly used vehicles for adverse credibility findings (ibid.).

Moreover, others have pointed out how credibility remains gendered. In her ethnographic study of women refugee claimants in the United States, for example, Oxford (2014) witnessed numerous judges reprimanding women applicants for 'abandoning' their children to the care of other family members. She further noted that she had conversely never observed immigration officials chastise men applicants for the same. Oxford argued that this gendered phenomenon had repercussions for women asylum seekers who were not deemed credible by judges who could not fathom why a woman would leave her children in the care of other family members while migrating to another country (ibid.). Other studies too, have shown how adjudicators' problematic gendered and cultural assumptions play a part in denying the agency of refugee women as well as having an adverse effect on their asylum claims (see, for e.g., Honkala 2022).

These examples are particularly relevant to women asylum seekers, as the heightened standard of proof discussed in the previous section is likely to increase reliance on 'objective' country-of-origin information. In light of this being patchy on women for many countries of origin, as well as the lack of sufficient awareness and training in cultural- and gender-sensitive adjudication processes, the provisions on late disclosure are likely to further complicate the assessment of credibility in many women's asylum claims. All in all, Sections 18, 19, and 26 on provision of late evidence and its adverse effects on credibility findings therefore go against long-established guidance from the UNHCR on how to approach late disclosure, especially in cases of gender-based persecution. This is likely to pose additional barriers to protection for women seeking asylum.

6. Conclusions

Almost 15 years ago, on the anniversary of the Refugee Convention, in 2011, the Committee of the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) adopted a statement that called for gender equality for refugees. The CEDAW Committee 'Called on States to recognise gender related forms of persecution and to interpret the 'membership of a particular social group' ground of the 1951 Convention to apply to women. Gender -sensitive registration, reception, interview and adjudication processes also need to be in place to ensure women's equal access to asylum' (CEDAW 2011).

CEDAW Committee has thus recognised the need for both gender-sensitive interpretation of the convention but also gender-sensitive adjudication processes that are necessary for the protection of the rights of asylum seeker women. Likewise, Article 60 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (The Istanbul Convention) requires the UK to adopt gender-sensitive

asylum procedures, including refugee determination systems.[17] In addition, Article 61 further stipulates that no victim of violence against women, irrespective of their status or residence, shall be returned 'under any circumstances' to any country where their life would be at risk. The provisions of the Nationality and Borders Act 2022 pose a threat to, and an erosion of, these protections.

In an environment of a culture of disbelief and the prevalence of encountering procedural and evidential barriers to disclosure of traumatic experiences, the heightened standard of proof and the changes to the well-founded fear of being persecuted are likely to have a significant effect on the protection of the rights of asylum seeker women. They are likely to extend the asylum process for many as they seek to appeal on complex grounds (Querton and Morgan, forthcoming). This is unlikely to serve even the government's own aim of cutting costs within the system (ibid.). More acutely, refugee women, while they wait for the next step, may also face disproportionate risks in the UK. They may experience further violence within asylum accommodations, where they may live in fear of sexual harassment or violence from other asylum seekers and/or staff when placed in mixed-sex accommodation (Rape Crisis England and Wales and Imkaan 2024). The charity sector has long criticised the insufficient and ineffective safety measures within such accommodations and called for urgent reforms in England and Wales, where accommodation has been repeatedly called out for being sub-standard and posing a risk to health (ibid.). Furthermore, the government's 'No Recourse to Public Funds' (NRPF) policy has been critiqued for forcing failed asylum seekers into destitution, which makes them especially vulnerable to further economic and/or sexual exploitation by perpetrators that are able to use their lack of immigration status as a means of control (ibid.).

Despite decades of work by feminists leading to jurisprudential developments in the understanding of the Refugee Convention grounds, practices of first-instance decision-makers continue to lack gender sensitivity. Moreover, due to the political nature of restricting immigration targets employed by the Home Office, women are likely to face the brunt of stricter immigration rules. Women are more likely to rely on the membership of a particular social group ground for their gender-based persecution claims, and the regressive step in the interpretation of that ground is likely to affect their claims disproportionately. The heightened standard of proof now required is also likely to significantly affect refugee women, in particular those whose claims are often complex. And finally, the sections surrounding late disclosure will likely particularly affect women who may face further complexities in their disclosure due to the effects of trauma and sexual violence. Not only do the changes raise the question of whether the UK is meeting its international legal obligations towards refugees on the ground, they have the worrying potential to result in more women being wrongly refused asylum and subsequently pushed into destitution. This also increases the risk for women being pushed into abusive situations and experiencing further violence. Undoubtedly, the changes imposed by the Nationality and Borders Act 2022 therefore evidence a further restriction of the protection of the rights of refugee women in the UK.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: The original contributions presented in this study are included in the article. Further inquiries can be directed to the author.

[17] For a discussion of the potential of The Istanbul Convention, see Warin (2024).

Conflicts of Interest: The author declares no conflict of interest.

References

Amnesty International UK. 2004. Get it Right—How Home Office Decision Making Fails Refugees. Available online: https://www.amnesty.org.uk/files/get_it_right_0.pdf (accessed on 24 March 2025).

Anderson, Adrienne. 2023. 'There Should be Equality in Opinion': Political Opinion in Intimate Partner Violence Claims. *International Journal of Refugee Law* 36: 123–36. [CrossRef]

Anderson, Stephen J., Gillian Cohen, and Stephanie Taylor. 2000. Rewriting the Past: Some Factors Affecting the Variability of Personal Memories. *Applied Cognitive Psychology* 14: 435–54. [CrossRef]

Arbel, Efrat, Catherine Dauvergne, and Jenni Millbank, eds. 2014. *Gender in Refugee Law: From the Margins to the Centre*. London: Routledge.

Asylum Welcome. 2022. The Anti-Refugee Bill Has Become Anti-Refugee Law—But We Won't Back Down. Available online: https://www.asylum-welcome.org/the-anti-refugee-bill-has-become-anti-refugee-law-but-we-wont-back-down/ (accessed on 17 June 2025).

Bagaric, Mirko, and John Morss. 2005. State Sovereignty and Migration Control: Th Ultimate Act of Discrimination? *Journal of Migration and Refugee Issues* 1: 25–50.

Baillot, Helen, Sharon Cowan, and Vanessa E. Munro. 2009. Seen but not Heard? Parallels and Dissonances in the Treatment of Rape Narratives Across the Asylum and Criminal Justice Contexts. *Journal of Law and Society* 36: 195. [CrossRef]

Baillot, Helen, Sharon Cowan, and Vanessa E. Munro. 2014. Reason to Disbelief: Evaluating the Rape Claims of Women Seeking Asylum in the UK. *International Journal of Law in Context* 10: 105–17. [CrossRef]

Baillot, Helen, Sharon Cowan, and Vanessa Eveline Munro. 2012a. 'Hearing the Right Gaps': Enabling and Responding to Disclosures of Sexual Violence Within the UK Asylum Process. *Social & Legal Studies* 21: 269–96.

Baillot, Helen, Sharon Cowan, and Vanessa Munro. 2012b. 'Research Briefing: Rape Narratives and Credibility Assessment (Of Female Applicants) at the AIT', Edinburgh Law School: The University of Edinburgh. Available online: https://www.pure.ed.ac.uk/ws/portalfiles/portal/18454620/Baillot_Cowan_Munro_research_briefing_rape_narratives_and_credibility_assessment_of_female_claimants_at_the_ait.pdf (accessed on 2 April 2025).

Bauman, Zygmunt. 2002. *Society Under Siege*. Cambridge: Polity Press.

Bennett, Claire. 2014. Lesbians and United Kingdom Asylum Law: Evidence and Existence. In *Gender in Refugee Law: From the Margins to the Centre*. Edited by Efrat Arbel, Catherine Dauvergne and Jenni Millbank. London: Routledge, pp. 138–56.

Benslama-Dabdoub, Malak. 2024. Epistemic Violence and Colonial Legacies in the Representation of Refugee Women: Contesting Narratives of Vulnerability and Victimhood. *International Journal of Law in Context* 20: 54–73. [CrossRef]

Berg, Laurie, and Jenni Millbank. 2009. Constructing the personal narratives of lesbian, gay and bisexual asylum claimants. *Journal of Refugee Studies* 22: 195–223. [CrossRef]

Berkowitz, Nathalia, and Catriona Jarvis. 2000. Immigration Appellate Authority (UK). *Asylum Gender Guidelines*. November 1. Available online: https://www.refworld.org/sites/default/files/legacy-pdf/en/2000-11/3ae6b3414.pdf (accessed on 28 May 2025).

Black Women's Rape Action Project and Women Against Rape. 2006. *Misjudging Rape: Breaching Gender Guidelines and International Law in Asylum Appeals*. London: Crossroads Books.

Briddick, Catherine. 2024. Resisting Domestic Violence. *International Journal of Refugee Law* 36: 106–22. [CrossRef]

Cantor, David, Nikolas Feith Tan, Mariana Gkliati, Elizabeth Mavropoulou, Kathryn Allinson, Sreetapa Chakrabarty, Maja Grundler, Emilie McDonnell, Lynn Hillary, Riona Moodley, and et al. 2022. Externalisation, Access to Territorial Asylum and International Law. *International Journal of Refugee Law* 34: 120–56. [CrossRef]

Castles, Stephen. 2004. Why Migration Policies Fail. *Ethnic and Racial Studies* 27: 205. [CrossRef]

Ceneda, Sophia, and Clare Palmer. 2006. *"Lip Service" or Implementation?: The Home Office Gender Guidance and Women's Asylum Claims in the UK*. Women's Refugee Project. London: Asylum Aid.

Cheikh Ali, Hana, Christel Querton, and Elodie Soulard. 2012. *Gender Related Asylum Claims in Europe: A Comparative Analysis of law, policies and Practice Focusing on Women in Nine European Union Member States*. Brussels: European Parliament, Directorate Genera for Internal Policies, Department of Citizens' Rights and Constitutional Affairs. Available online: https://www.europarl.europa.eu/thinktank/en/document/IPOL-FEMM_ET(2012)462481 (accessed on 10 April 2025).

Childs, Mary, and Louise Ellison, eds. 2000. *Feminist Perspectives on Evidence*. London: Cavendish.

Chimni, B. S. 1998. The Global Refugee Problem in the 21st Century and the Emerging Security Paradigm. In *Legal Visions of the 21st Century: Essays in Honour of Judge Chirstopher Weeramantry*. Edited by Anthony Angie and Garry Sturgess. The Hague: Kluwer International, pp. 283–99.

Chimni, B. S. 2000. Globalisation, Humanitarianism and the Erosion of Refugee Protection. *Journal of Refugee Studies* 13: 243. [CrossRef]

Chimni, B. S. 2007. The Past, Present and Future of International Law: A Critical Third World Approach. *Melbourne Journal of International Law* 8: 499.

Clayton, Gina, Tanya Crowther, Jane Kerr, Sarah Sharrock, and Debora Singer. 2017. *Through Her Eyes: Enabling Women's Best Evidence in UK Asylum Appeals*. London: Migrants Resource Centre, NatCen and Asylum Aid.

Coffey, Guy. 2003. The Credibility of Credibility Evidence at the Refugee Review Tribunal. *International Journal of Refugee Law* 15: 377–417. [CrossRef]

Cohen, Juliet. 2001. Errors of Recall and Credibility: Can Omission and Discrepancies in Successive Statements Reasonably Be Said to Undermine Credibility of Testimony? *Medico-Legal Journal* 69: 25–34. [CrossRef]

Cohen, Stanley. 2004. *Folk Devils and Moral Panics*. London: Routledge. First published 1972.

Crawley, Heaven. 2001. *Refugees and Gender: Law and Process*. Bristol: Jordans.

Dauvergne, Catherine. 2021. Women in Refugee Jurisprudence. In *The Oxford Handbook of International Refugee Law*. Edited by Cathryn Costello, Michelle Foster and Jane McAdam. Oxford: Oxford University Press.

Department of Immigration and Multicultural Affairs. 1997. Refugee and Humanitarian Visa Applicants Guidelines on Gender Issues for Decision-Makers. *International Journal of Refugee Law* 9: 195–212. First published 1996.

Dudhia, Priscilla. 2020. Will I Ever Be Safe? Asylum-Seeking Women Made Destitute in the UK. Women for Refugee Women. Available online: https://refugeewomen.co.uk/wp-content/uploads/2020/02/WRW-Will-I-ever-be-safe-web.pdf (accessed on 17 June 2025).

Dustin, Moira, and Nina Held. 2018. In or Out? A Queer Intersectional Approach to 'Particular Social Group' Membership and Credibility in SOGI Asylum Claims in Germany and the UK. *Genius* 2: 74–87.

Edwards, Alice. 2003. Age and Gender Dimensions in International Refugee Law. In *Refugee Protection in International Law. UNHCR's Global Consulations on International Protection*. Edited by Erika Feller, Volker Turk and Frances Nicolson. Cambridge: Cambridge University Press.

Edwards, Alice. 2010. Transitioning Gender: Feminist Engagements with International Refugee Law and Policy 1950–2010. *Refugee Survey Quarterly* 29: 21–45. [CrossRef]

England, Rob, and Tom Edgington. 2025. Is the Government Meeting Its Pledges on Illegal Immigration and Asylum? *BBC*. May 21. Available online: https://www.bbc.co.uk/news/articles/c9dqqj0v1ndo (accessed on 30 June 2025).

Evans Cameron, Hilary. 2010. Refugee Status Determinations and the Limits of Memory. *International Journal of Refugee Law* 22: 469–511. [CrossRef]

Foster, Michelle. 2014. Why We Are Not There Yet: The Challenge of 'Particular Social Group'. In *Gender in Refugee Law: From the Margins to the Centre*. Edited by Efrat Arbel, Catherine Dauvergne and Jenni Millbank. London: Routledge, pp. 17–45.

Freedman, Jane. 2007. *Gendering the International Asylum and Refugee Debate*. London: Palgrave Macmillan.

Freedom From Torture. 2019. Lessons Not Learned: The Failures of Asylum Decision-Making in the UK. London: Freedom From Torture. Available online: https://www.freedomfromtorture.org/sites/default/files/2019-09/FFT_LessonsNotLearned_Report_A4_FINAL_LOWRES_1.pdf (accessed on 20 October 2025).

Gbikpi, Nath. 2025. How to Claim Asylum in the UK. *Free Movement Blog*. Available online: https://freemovement.org.uk/how-to-claim-asylum-in-the-uk/ (accessed on 17 June 2025).

Grahl-Madsen, Atle. 1966. *The Status of Refugees in International Law*. Leyden: A. W. Sijthoff.

Grandi, Filippo. 2022. *News Comment: UNHCR's Grandi Fears UK Legislation Will Dramatically Weaken Refugee Protection*. Geneva: UNHCR Press, UNHCR Press Releases, 27 April. Available online: https://www.unhcr.org/us/news/press-releases/news-comment-unhcrs-grandi-fears-uk-legislation-will-dramatically-weaken (accessed on 4 November 2024).

Griffiths, Melanie, and Colin Yeo. 2021. The UK's Hostile Environment: Deputising Immigration Control. *Critical Social Policy* 41: 521–44. [CrossRef]

Harrison, Stephanie, Emma Fitzsimons, Ubah Dirie, and Hannah Lynes. 2021. *The Nationality and Borders Bill: Advice to Women for Refugee Women Executive Summary*. London: Garden Court Chambers. Available online: https://www.refugeewomen.co.uk/wp-content/uploads/2021/11/Garden-Court-legal-opinion-on-Nationality-and-Borders-Bill.pdf (accessed on 17 June 2025).

Hathaway, James, and Michelle Foster. 2003. Membership of a Particular Social Group Ground, Discussion Paper No. 4, Advanced Refugee Law Workshop, International Association of Refugee Law Judges. *International Journal of Refugee Law* 15: 477–91. [CrossRef]

Hathaway, James, and Michelle Foster. 2014. *The Law of Refugee Status*. Cambridge: Cambridge University Press.

Hathaway, James, and William S. Hicks. 2005. Is There a Subjective Element in the Refugee Convention's Requirement of 'Well-Founded Fear'? *Michigan Journal of International Law* 26: 505–62.

Haynes, Jason. 2023. Human Trafficking: Iconic Victims, Folk Devils and the Nationality and Borders Act 2022. *The Modern Law Review* 86: 1232–64. [CrossRef]

Helen Bamber Foundation. 2022. Remote Home Office Substantive Asylum Interviews. Available online: https://www.helenbamber.org/sites/default/files/2023-02/HBF_Remote%20interviews%20briefing%20Final%20April%202022.pdf (accessed on 24 September 2025).

Henderson, Mark, Rowena Moffatt, Alison Pickup, and Monika Nollet. 2023. *Best Practice Guide to Asylum and Human Rights Appeals*, rev. ed. Available online: https://www.ein.org.uk/bpg/chapter/1 (accessed on 24 March 2025).

Herlily, Jane. 2014. Psychological Barriers to Fair Refugee Determination Relating to our Understanding and Expression of Gender. In *Gender in Refugee Law: From the Margins to the Centre*. Edited by Efrat Arbel, Catherine Dauvergne and Jenni Millbank. London: Routledge, pp. 116–35.

Home Affairs Committee. 2018. The Windrush Generation Sixth Report of Session 2017–2019. July 3. Available online: https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/990/990.pdf (accessed on 30 June 2025).

Home Office. 2023a. Nationality and Borders Act Compared to Illegal Migration Bill: Factsheet. July 20. Available online: https://www.gov.uk/government/publications/illegal-migration-bill-factsheets/nationality-and-borders-act-compared-to-illegal-migration-bill-factsheet#why-hasnt-the-government-implemented-all-the-provisions-in-the-naba (accessed on 17 June 2025).

Home Office. 2023b. Nationality and Borders Bill: Factsheet. Updated 13 October. Available online: https://www.gov.uk/government/publications/the-nationality-and-borders-bill-factsheet/nationality-and-borders-bill-factsheet (accessed on 11 April 2025).

Honkala, Nora. 2017. "She, of course, holds no political opinions": Gendered Political Opinion Ground in Women's Forced Marriage Asylum Claims. *Social & Legal Studies* 26: 166–87.

Honkala, Nora. 2018. Islam v Secretary for the Home Department, R v Immigration Appeal Tribunal and Another, ex parte Shah (1999). In *Women's Legal Landmarks: Celebrating the History of Women and Law in the UK and Ireland*. Edited by Erika Rackley and Rosemary Auchmuty. Oxford: Hart Publishing.

Honkala, Nora. 2022. "An Unhappy Interlude": Trivialisation and Privatisation in Forced Marriage in Asylum-Seeker Women's Cases in the UK. *Refugee Survey Quarterly* 41: 472–97. [CrossRef]

Huysman, Jef. 2006. *The Politics of Insecurity: Fear, Migration and Asylum in the EU*. London: Routledge.

Immigration and Refugee Board of Canada. 1993. *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65 (3) of the Immigration Act*. 9 March, Last Updated and Currently 'Gender Considerations in Proceedings Before the Immigration and Refugee Board, 31 October 2023. Available online: https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx (accessed on 14 April 2025).

Immigration and Refugee Board of Canada. 2018. Report of the Independent Review of the Immigration and Refugee Board: A Systems Management Approach to Asylum. Available online: https://www.canada.ca/content/dam/ircc/migration/ircc/english/pdf/pub/irb-report-en.pdf (accessed on 25 May 2025).

Jubany, Olga. 2011. Constructing truths in a Culture of Disbelief: Understanding Asylum Screening From Within. *International Sociology* 26: 75–79. [CrossRef]

Kagan, Micheal. 2003. Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination. *Georgetown Immigration Law Journal* 17: 367–415.

Latin American Women's Rights Service (LAWRS) and the Step Up Migrant Women Campaign. 2022. Written Evidence Submitted by the Latin American Women's Rights Service', Nationality and Borders Bill Session 2021–2022. Available online: https://committees.parliament.uk/writtenevidence/109017/pdf/ (accessed on 17 June 2025).

Macklin, Audrey. 1995. Refugee Women and the Imperative of Categories. *Human Rights Quarterly* 17: 213–77. [CrossRef]

Magugliani, Noemi. 2024. Trafficked Adult Males as (Un)Gendered Protection Seekers: Between Presumption of Invulnerability and Exclusion from Membership of a Particular Social Group. *International Journal of Refugee Law* 34: 353–72. [CrossRef]

McNally, Richard. 2005. *Remembering Trauma*. Harvard: Harvard University Press.

Millbank, Jenni. 2009. "The Ring of Truth": A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations. *International Journal of Refugee Law* 21: 1–33. [CrossRef]

Muggeridge, Helen, and Chen Maman. 2011. *Unsustainable: The Quality of Initial Decision-Making in Women's Asylum Claims*. London: Asylum Aid. Available online: https://www.asylumaid.org.uk/sites/default/files/2021-08/asylum-aid-unsustainable.pdf (accessed on 17 June 2025).

Neal, David. 2021. An Inspection of Asylum Casework: August 2020–May 2021. Independent Chief Inspector of Borders and Immigration. Available online: https://assets.publishing.service.gov.uk/media/6194e64f8fa8f50380e90241/An_inspection_of_asylum_casework_August_2020_to_May_2021.pdf (accessed on 17 June 2025).

Noll, Gregor. 2005. Evidentiary Assessment Under Refugee Convention: Risk, Pain and the Intersubjectivity of Fear. In *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*. Edited by Gregor Noll. Leiden: Martinus Nijhoff Publishers, pp. 141–59.

Oxford, Connie. 2014. Where are the Women? In *Gender in Refugee Law: From the Margins to the Centre*. Edited by Efrat Arbel, Catherine Dauvergne and Jenni Millbank. London: Routledge, pp. 157–74.

Oxford, Connie. 2023. The Gory Details: Asylum, Sexual Assault and Traumatic Memory. *Sexes* 4: 188–221. [CrossRef]

Powell, Alex. 2021. "Sexuality" Through the Kaleidoscope': Sexual Orientation, Identity and Behaviour in Asylum Claims in the United Kingdom. *Laws* 10: 90–110. [CrossRef]

Powell, Alex, and Raawiyah Rifath. 2023. Sexual Diversity and The Nationality and Borders Act 2022. *Legal Studies* 43: 757–61. [CrossRef]

Querton, Christel. 2012a. *'I Feel as a Woman I'm Not Welcome': A Gender Analysis of UK Asylum Law, Policy and Practice*. London: Asylum Aid. Available online: https://asylumaid.org.uk/sites/default/files/2022-01/Querton%202012.pdf (accessed on 23 June 2025).

Querton, Christel. 2012b. The Interpretation of the Convention Ground of "Membership of a Particular social Group" in the Context of Gender-Related Claims for Asylum: A Critical Analysis of the Tribunal's Approach in the UK. Refugee Law Initiative Working Paper No 3. Available online: https://sas-space.sas.ac.uk/4690/ (accessed on 10 April 2025).

Querton, Christel, and Jennifer Morgan. Forthcoming. Access to Protection for Women Seeking Asylum in the UK. In *Representing Violence Against Women: Asylum, Voice and Testimony*. Edited by Georgina Colby and Jane Freedman. Oxford: Oxford University Press.

Querton, Christine, and Moira Dustin. 2022. Women in Refugee Law, Policy and Practice: An Introduction to The Refugee Survey Quarterly Special Issue. *Refugee Survey Quarterly* 41: 347–54. [CrossRef]

Ramji-Nogales, Jaya, Andrew I. Schoenholtz, and Philip G. Schrag. 2009. *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*. New York: New York University Press.

Rape Crisis England and Wales and Imkaan. 2024. 'Not Safe Here': The Systemic Failures to Protect Women and Children from Sexual Violence and Abuse in Asylum Accommodation. Report by Rape Crisis England and Wales and Imkaan. October. Available online: https://www.imkaan.org.uk/not-safe-here-report (accessed on 18 February 2025).

Refugee Council. 2025. Top Facts from the Latest Statistics on Refugees and People Seeking Asylum. Available online: https://www.refugeecouncil.org.uk/stay-informed/explainers/top-facts-from-the-latest-statistics-on-refugees-and-people-seeking-asylum/ (accessed on 12 June 2025).

Right to Remain Toolkit. 2025. Online Resources. Right to Remain. Available online: https://righttoremain.org.uk/toolkit/about/ (accessed on 20 October 2025).

Rousseau, Cecily, François Crépeau, Patricia Foxen, and France Houle. 2002. The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of Decision-making Process of the Canadian Immigration and Refugee Board. *Journal of Refugee Studies* 15: 43–70. [CrossRef]

Saenz Perez, Christina. 2023. The Securitization of Asylum: A Review of UK Asylum Laws Post-Brexit. *International Journal of Refugee Law* 35: 304–21. [CrossRef]

Sandford, Daniel. 2023. What Does Rishi Sunak's Promise of Stop the Boats Mean? *BBC*. January 4. Available online: https://www.bbc.co.uk/news/uk-64164339 (accessed on 17 June 2025).

Schuster, Lisa. 2018. Fatal Flaws in the UK Asylum Decision-Making System: An Analysis of Home Office Refusal Letters. *Journal of Ethnic and Migration Studies* 46: 1317–87. [CrossRef]

Shuman, Amy, and Carol Bohmer. 2004. Representing Trauma: Political Asylum Narrative. *Journal of American Folklore* 117: 394–414. [CrossRef]

Singer, Deborah. 2014. Falling at Each Hurdle: Assessing the Credibility of Women's Asylum Claims in Europe. In *Gender in Refugee Law: From the Margins to the Centre*. Edited by Efrat Arbel, Catherine Dauvergne and Jenni Millbank. London: Routledge, pp. 98–115.

Souter, James. 2011. Culture of Disbelief or Denial? Critiquing Refugee Status Determinations in the UK. *Oxford Monitor of Forced Migration* 1: 48–59.

Thomas, R. 2006. Assessing the Credibility of Asylum Claimants: EU and UK Approaches Examined. *European Journal of Migration Law* 8: 79–96. [CrossRef]

Tyler, Deb, and Patricia Eastel. 1998. The Credibility Gap. *Alternative Law Review* 23: 211–15.

UK Border Agency. 2018. *Asylum Policy Instruction. Gender Issues in Asylum*. Current Version UK Visas and Immigration. *Gender Issues in Asylum Claims: Caseworker Guidance*. Available online: https://www.gov.uk/government/publications/gender-issue-in-the-asylum-claim-process (accessed on 17 June 2025).

UK Visas and Immigration. 2023. Guidance: Assessing Credibility and Refugee Status in Asylum Claims Lodged on or After 28 June 2022. Updated 28 September. Available online: https://www.gov.uk/government/publications/considering-asylum-claims-and-assessing-credibility-instruction/assessing-credibility-and-refugee-status-in-asylum-claims-lodged-before-28-june-2022-accessible (accessed on 10 April 2025).

UN Committee on the Elimination of Discrimination Against Women (CEDAW). 2011. CEDAW Statement on the Anniversaries of the 1951 Convention Relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness. October 19. Available online: https://www.refworld.org/policy/statements/cedaw/2011/en/83246 (accessed on 18 March 2025).

UNHCR. 1985. Executive Committee Conclusion No. 39 (XXXVI). Refugee Women and International Protection—Adopted by the Executive Committee. Available online: https://www.refworld.org/policy/exconc/excom/1985/en/41720 (accessed on 17 June 2025).

UNHCR. 1991. Guidelines on the Protection of Refugee Women. Geneva. Available online: https://www.refworld.org/policy/opguidance/unhcr/1991/en/12143 (accessed on 17 June 2025).
UNHCR. 1995. Executive Committee Conclusion No. 77 (XLVI). Available online: https://www.refworld.org/policy/exconc/excom/1995/en/42013 (accessed on 17 June 2025).
UNHCR. 1998. Note on Burden and Standard of Proof in Refugee Claims. Available online: https://www.refworld.org/policy/legalguidance/unhcr/1998/en/23696 (accessed on 26 November 2024).
UNHCR. 2002a. Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of the Article 1 (A) (2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees. U.N. Doc HRC/GIP/02/02. Available online: https://www.unhcr.org/media/guidelines-international-protection-no-1-gender-related-persecution-within-context-article-1a (accessed on 17 June 2025).
UNHCR. 2002b. Guidelines on International Protection No. 2: '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. U.N. HCR/GIP/02/02. Available online: https://www.unhcr.org/uk/media/guidelines-international-protection-no-2-membership-particular-social-group-within-context (accessed on 17 June 2025).
UNHCR. 2019. *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees*. Geneva, Reissued. Available online: https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967 (accessed on 25 February 2025).
UNHCR. 2021. Legal Observations Nationality and Borders Bill. October. Available online: https://www.unhcr.org/uk/media/unhcr-legal-observations-nationality-and-borders-bill-oct-2021 (accessed on 17 June 2025).
UNHCR. 2025. Quality Protection Partnership: Reports. Available online: https://www.unhcr.org/uk/what-we-do/quality-protection-partnership (accessed on 17 June 2025).
United States Bureau of Citizenship and Immigration Services. 1995. *Considerations for Asylum Officers Adjudicating Asylum Claims from Women*. Camp Springs: United States Immigration and Naturalisation Services. Available online: https://www.refworld.org/reference/research/uscis/1995/en/8617 (accessed on 14 April 2025).
Warin, Catherine. 2024. Gender in European Union Asylum Law: The Istanbul Convention as a Game Changer? *International Journal of Refugee Law* 36: 93–195. [CrossRef]
Watson, Scott. 2007. Manufacturing Threats: Asylum Seekers as Threats or Refugees? *Journal of International Law & International Relations* 3: 95–118.
Webber, Frances. 2019. On the Creation of 'Hostile Environment'. *Race & Class* 60: 76–87.
Women for Refugee Women. 2021. 52 Organisations Unite to Tell Priti Patel that the Nationality and Borders Bill Will Have a 'Cruel and Discriminatory' Impact on Women. November 24. Available online: https://www.refugeewomen.co.uk/womens-charities-condemn-government-asylum-plan/ (accessed on 17 June 2025).
Yeo, Colin. 2020. *Welcome to Britain: Fixing Our Broken Immigration System*. London: Biteback Publishing Ltd.