ABSTRACT

This paper is concerned with how immigration discourses normalise and regulate sexual citizens in the UK and the broader European migratory space. The chief focus of this paper is the *Unmarried Partners Rule* – the UK family reunion provision, which applies to same-sex couples. This policy will be explored through interviews conducted with same-sex migrant couples that highlight the heterosexist discourses embedded in the policy with its formulation of a 'marriage' model and its emphasis on 'evidence' of at least 2 years cohabitation. In addition, these same couples demonstrate how the possession of attractive skills to the state and financial dependency are an important element in achieving family reunion. The UK policy will be placed in the wider context of legal developments at the EU level. I will argue that the EU mirrors the UK in providing a conservative and narrow definition of the family, which is particularly problematic for sexual citizens making claims for partnership rights. Therefore, the aim is to provide new empirical data that illuminates current debates concerned with sexual citizenship and migration, in particular, critical work concerned with the conservative and normative effects of making claims for same-sex partnership rights.
Keywords: Sexual citizenship, immigration, family reunion, European Union, partnership rights

Sexuality and Immigration
INTRODUCTION

This paper examines sexual citizenship through the lens of migration. Its central aim is to explore the way in which immigration discourses produce and construct normative sexual subjectivities. It expands on a number of current debates in the work on sexual citizenship that are concerned with mobility, movement and 'relationship rights'. Much of the work on gay migration and mobility tends to be focused primarily on what is often rural–urban migration to big cities in the context of the USA, such as San Francisco (Castells 1983; Weston 1995) and New York (Chauncey 1994). In respect of this, a common trope in the literature is concerned with migration as a necessary part of building a lesbian, gay and bisexual identity, tied to narratives of coming out (Cant 1997). In addition, other significant literature has set out to explore the queer diasporic experience, and the presence of interlacing transnational networks of sexual dissidents (Sinfield 1996; Fortier 2002; Patton and Sánchez-Eppler 2000). Though this work generates important theoretical and ethnographic insights, it has a tendency to be as Stychin observes, limited to an American 'focus' and concerned with movement within nation states (Stychin 2003: 95).

This paper departs from this literature by focusing on the UK family reunion provision that pertains to same-sex couples. This will be placed into the wider context of policy developments in the European Union around family reunion and same-sex partnerships rights. In addition, the paper contributes new empirical research, which has been absent in these debates and which illustrates how the social practices of same-sex couples fit the normative requirements of the UK family reunion policy. Until relatively recently, migration for sexual citizens has been severely constrained by heterosexist policies that have not recognised the rights of sexual citizens in family
reunion policies. For example, in the UK until 1997, the reunification of 'spouses' has been a right that has only been available to married opposite-sex couples. This is despite some moves across the Europe (and beyond) that have begun to confer citizenship based on migrants' same-sex relationships. In the case of the UK, the resulting provision for same-sex couples marks on the one hand a liberalising of restrictive migration policies on sexuality, yet on the other hand, it reconfigures same-sex relationships along a traditional marriage model. Moreover, the re-embedding of marriage is tied up with regulative discourses that intersect with race, class and gender. In this paper, I critically trace these paradoxical developments in the arena of family reunion primarily in the UK, and the broader context of the European migratory space.

Immigration policies explicitly construct an idealised migrant along lines of class, gender, sexuality and race. In particular, with UK immigration policies being organised around economic imperatives, white gays and lesbians with 'marketable skills' have more chance of realising their transnational citizenship than others (Bell and Binnie 2000: 120). Sexual citizens that can fit the 'idealised' hierarchies of identity embedded in immigration regulations find their access to citizenship greatly enhanced. This is the case with recent moves to relax and widen forms of labour migration, as exemplified by the introduction of the Highly Skilled Migrant Programme in October 2003. The Home Office is keen to attract migrants who can fill shortage occupations in the welfare sectors of health, education, social work and the broader IT sector. However, in recognising how these intersections fit hegemonic immigration discourses, there is a risk of 'centring' the affluent, privileged white male migrant (Stychin 2000). There is also a danger that theoretical accounts collude with immigration policies discourses in producing a distorted picture of migratory
movements. This issue is especially problematic in theoretical accounts of family reunion within international migration literature, which as I argue below, have been 'masculinist' and heterosexist in its theorisations.

HETEROSEXISM AND THEORETICAL ACCOUNTS OF FAMILY MIGRATION

While gender-neutral in language, most countries' immigration policies, laws and regulations are still implicitly based on two highly gendered notions of the normative migrant: 'a male bread winner and head of household with female and child dependents; or a single, unattached migrant, also typically male, off to seek his fortune in a new labour market' (Dodson and Crush 2004: 97).

In the case of the UK, family reunion policies are underpinned by a conservative and outdated notion of familial relations and gender roles. However, as feminist scholars have argued, such gendered assumptions abound in the theorisations of international migration (Ackers 1998; Kofman et al. 2000). Family reunion has tended to be marginalised in theoretical accounts that place particular emphasis on the individual 'primary' labour migrant (Kofman 2004). More specifically, there has been limited research on family reunion in the context of Europe, which tends to be concerned with the role of the family in receiving countries and issues surrounding integration (Kofman 2004). A significant amount of research on family migration has been concerned with the Asia-Pacific region, which has foregrounded the cultural, political and economic impact on the family as a result of transmigratory movements (Yeoh et al. 2002). It attempts, therefore, to transcend the preoccupation of existing migration literature that focuses on the two poles of 'individual and nation' (Yeoh et al. 2002). In addition, this literature broadens beyond the nuclear, western norms, to include
extended familial formations that indicate the diversity of family practices unrecognised by immigration policy. There is also a corrective to previous work, in that there has been some attention given to issues around gender (Hugo 2002). However, the range of compositions does not extend to non-heterosexual families. More generally, it reflects a lack of empirical and theoretical work concerned with family reunion and sexual identity in migration literature, which needs to be addressed as family reunion is the dominant form of entry in Europe (Kofman 2004). Furthermore, as Lutz states, with marriage remaining the 'gatekeeper' in EU immigration policy, difference is created between 'indigenous' nationals who are able to benefit from more liberal policies regarding cohabitation and migrants who are bound by more traditional norms (Lutz 1997: 105). The centring of heterosexual marriage at the EU level impedes the mobility of sexual citizens attempting to enter and move between European states.

UK FAMILY REUNION IN THE CONTEXT OF THE EUROPEAN UNION

European Union nationals moving from one EU country to another to work are entitled to bring in a 'spouse', which is defined in Community Law as a married partner. Therefore, at EU level spousal rights are legally defined as opposite sex married partners. This is illustrated by a number of important cases in the arena of European jurisprudence, where judgements have not recognised unmarried relationships in the context of migration. In the case of X and Y v. UK1 a British–Malaysian male couple, made a claim of interference to their 'family' life based on Article 8 of the European Convention on Human Rights, as they were unable to achieve family reunion in the UK. The Commission on Human Rights denied the couples claim, arguing their relationship was not equivalent to a heterosexual couple,
therefore did not fall within the ambit of a family but rather private life. In addition, sex discrimination was not applicable because a lesbian couple would also fall outside family life and the couple were 'professionally mobile' and 'it has not been shown that the applicants could not live elsewhere other than the United Kingdom or that their link with the UK is an essential element of their relationship' (Wintemute 1995: 104). The 'elsewhere' argument is, as Toner (2004: 102) argues, particularly problematic in view of the fear of ill-treatment the couple may receive in Malaysia, where homosexual acts are an offence. Thus, on one level, there is resistance on the part of the ECHR to recognise same-sex couples as family members, and on a second level recognise: '… that it is only possible to be gay or lesbian (or bisexual or transsexual) in specific places and spaces' (Binnie 1997: 241). Furthermore, recognition of 'interference' based on the right to privacy, is in line with other Commission decisions that proved successful for sexual citizens: lifting of the ban on armed forces in the UK, Lustig-Prean and Beckett v. United Kingdom; Smith and Grady v. United Kingdom; the decriminalisation of homosexuality in Northern Ireland, Dudgeon v. United Kingdom and arguments for the equal age of consent for gay men, Sutherland v. United Kingdom. Yet the emphasis on privacy at the EU level is paradoxical in view of the UK's unmarried partners' provision, which continues to undermine basic levels of privacy through surveillance and its stress on testing the stability of same-sex couples' relationships.

The X and Y case, outlined above is echoed in further such cases involving unmarried couples attempting to claim 'spousal' benefits via the European Court of Justice (ECJ). For example, the Reed case Netherlands v. Reed involved a British woman in a heterosexual unmarried relationship with a Dutch national for 5 years, who accompanied her partner to the Netherlands as he took up work for the subsidiary of a
British company based in the Netherlands (Ackers 1998: 128; see also Elman 2000).

Her application for a residence-permit based on her relationship was dismissed, as she was not considered a spouse of a community national, as they were not married (Ackers 1998: 128). A similar pattern is evident in other cases, such as *D v. Council* — in this instance, a Swedish gay man moved with his registered partner to Brussels to work for the European Council, the partner was not recognised as a spouse and could not benefit from the allowances spouses received. The ECJ in its judgement maintained a distinction between registered partnerships and marriage, thus the ECJ rejected the argument that the man's partner was being discriminated against. Even the Council of Europe in its employment provision does not regard registered partnerships on a par with married couples.

The patterns in community law regarding the refusal of European legal institutions to recognise same-sex couples as 'spouses' is best illustrated by a key case: *Grant v. South West Trains*, the result of which has been subject of much analysis and discussion by socio-legal scholars (Guild 2001; Morgan 2000; Elman 2000; Koppelman 2001; Bell 2002; Stychin 2003; Beger 2000). Lisa Grant presented her case to the European Court of Justice to challenge the refusal by her employees, South West Trains, to recognise her female partner in terms of travel benefits, usually accorded to married and unmarried opposite-sex partners. Indeed a male colleague had received such travel benefits for his unmarried female partner. Cherie Booth QC, who represented Lisa Grant, argued it was discrimination; if her partner had been a man, she would have received the benefit. The Court ruled there was no discrimination because had they been a gay male same-sex couple they would still have been refused. The invention of a 'imaginary' gay male couple to compare with the lesbian couple making their claim also reaffirmed their view that same-sex
partnerships are not equivalent to married couples (shades also of the X and Y case listed above; Elman 2000: 738). More broadly, the decision by the Court fits the 'ideology' EC rights discourse, in that there is 'no immediate cost to the state' and it reproduces the narrow definition of the family based on a traditional 'bread winner' model of economic dependency (Stychin 2003: 86). As I will argue, the UK similarly installs a traditional marriage-like model based on economic dependency in its immigration regulations for same-sex couples.

The Lisa Grant case also highlights that the EC treaty did not begin as a 'human rights instrument' and its function was to create a single market (Koppelman 2001: 623). Therefore, the ECJ (as it applies in the Grant case) and the European Court of Human Rights have a 'margin of appreciation' allowing states some discretion to abandon Human Right norms based on 'local conditions', especially when it comes to social policy (Koppelman 2001: 633) and in particular on what is seen as 'sensitive' issues concerning the 'family' (Bell 2002: 207). This levelling down approach is particularly prescient with the recent EU Freedom of Movement Directive coming into force in May 2006 (see UK Lesbian & Gay Immigration Group, UKLGIG 2006a). The Directive 'on the right to citizens of the Union and their family members to move and reside freely within the territory of the Member States' contains provisions that are applicable to same-sex couples (UKLGIG 2006a). A key provision is that countries that do not recognise same-sex relationships should 'facilitate' entry for lesbian and gay couples in a 'durable' relationship (for a full discussion, see Bell 2005). However, as UKLGIG (2006a) report, the directive is a 'partial victory' as the 'right is not given', therefore there is no clear obligation on behalf of the state and once again it relies on national conditions regarding partnership rights (UKLGIG 2006a). The effectiveness of the Directive at the time of writing remains to be seen, but at present the shifts
towards strengthening the inclusion of same-sex couples in definitions of the family and spousal rights more generally appear to be in the hands of individual European states.

The reliance on 'local' conditions is particularly problematic in view of the varied and uneven availability of same-sex partnerships across Europe. For example, the Netherlands has a range of ways to recognise unmarried unions including cohabitation agreements, registered partnerships and more recently marriage, which is available to both same-sex couples and heterosexuals. Additionally, there are regional differences within nation states. Before the current availability of same-sex marriage, Spain had initially offered registered partnerships in certain provinces such as Aragon, Catalonia, Navarra and Valencia. Similarly, Germany until the passing of registered partnerships at a national level had varied availability of partnership rights in particular regions. The UK has lagged behind in recognition of same-sex relationships, not only those first initiated in northern European Union member countries such as Denmark, Sweden and Finland but other EU states such as France, Germany, Hungary, the Netherlands, Portugal and Spain (for a full survey, see the Guide to Same-sex Partnerships, ILGA 2005).

Questions remain as to what extent registered partnerships strengthen same-sex couples' immigration rights. As Binnie (1997: 242) comments, partnership rights for cohabiting and same-sex couples in their home country will not automatically be accorded to migrants. For example, non-French nationals who sign the Pacte civil de solidarité (PACS) have to be considered by the administration; immigration rights are not automatically conferred (ILGA 1999). Similarly, in Denmark, you need to be a Danish citizen domiciled in Denmark in order to take advantage of their partnership
rights for same-sex couples (Dupuis 1995: 104). In the Netherlands, since 1998, registered partners' are given the same immigration rights as married partners. However, until 2001, 'foreigners' did not have the right to partnership registration. A 'residence entitlement' was required either to register a partnership with a Dutch citizen or with another foreigner (Waaldijk 2001: 445). On 1 April 2001, a Bill came into force that stated only one of the couple needed to have Dutch citizenship or be domiciled in the Netherlands in order to marry (Waaldijk 2001: 451). Migrants may find, therefore, that they cannot automatically obtain rights, which are available to nationals of the country. The same applies to the UK, where Civil Partnerships cannot be granted to those who are 'subject to immigration controls' and overseas nationals need to have rights of entry before achieving their Civil Partnership in the UK (UKLGIG 2006b). As these instances show, there is a contradictory and discretionary element when it comes to migrants and partnership rights when they are available for indigenous citizens of nation-states.

The UK has taken quite an unusual route in comparison with other European states, in that it was a piece of immigration legislation in the form of the 1997 unmarried partners' concession that for the first time legally recognised same-sex relationships. The UK Civil Partnership Act was given Royal Assent on the 18 November 2004, this legislation gives same-sex couples 'almost' the same rights as married couples on financial arrangements and property. Most significantly, the Act also offers rights at the level of immigration providing the durability of the relationship is 'genuine' and financially solvent (this will be explained in more detail below). This is indicative of the paradoxical nature of how the unmarried partners' legislation has unfolded. On one level, it represents a 'liberal' reform of sexuality by the Labour government, yet it
is also underpinned by hegemonic discourses that produce lesbian and gay relationships in very specific ways. More significantly, family law in England and Wales mirrors the EU in producing a 'hierarchy' of family forms, that has marriage at the top and same-sex partnerships at the bottom (Bailey-Harris 2001: 608). However, as I will set out below, the unfolding of legislation that pertains to same-sex couples, in the context of immigration, has retained marriage as the model on which to organise and recognise relationships in the context of immigration.

**UK family reunion and the unmarried partners' concession**

The following best sums up the situation with regard to the UK and its policy on family reunion:

There is an ongoing tension within immigration control on the level of sexuality. On the one hand there is the perceived political need to assert the primacy of heterosexual over same-sex relationships. On the other hand there is the desire to assert the primacy of marriage over common-law heterosexual relationships. Within this tension there exists a romantic concept of marriage, which devalues and destroys arranged marriages at the expense of nuclear, “love” matches. All this has led to a constant merry-go-round of policy changes within immigration control (Cohen 2001: 106).

As the above quote indicates, immigration policies place heterosexual marriage at the centre of the discourse of entitlement and rights of entry for 'spouses'. Any migrants whose intimate relationships do not appear to follow the immigration narratives of courtship and marriage are clearly 'othered' in these immigration policies. Therefore, same-sex couples, unmarried heterosexual couples, and polygamous relationships and 'arranged marriages' have traditionally been the 'undesirable' subjects of family
reunion policies. To elaborate further on this, they are also underpinned by a racialised dimension where 'arranged marriages' entered into by couples from the Indian sub-continent are increasingly viewed with suspicion. This reflects particular preoccupation by UK immigration to seek out 'sham marriages' that may have been entered into for migration purposes. This was encapsulated by the introduction of the primary purpose rule in 1980 by the Conservative Government (finally abolished in 1997), which tested whether marriage between Asian men and women were entered into for immigration purposes (Bhabba and Shutter 1994). Surveillance is especially trained on the migrants from the 'developing world' and is tied up with a number of assumptions of the motives of these unions and a general lack of recognition of other 'cultural practices' that do not follow Westernised conceptions of courtship and marriage.

The imperial and colonial backdrop of the provision for unmarried people is commented on by Cohen:

Following the 1962 Commonwealth Immigrants Act the rules allowed a man to be joined by a common-law woman partner. The 1973 rules, echoing the colonial white man's imperial prerogative to claim a black lover of choice, required examination of “any local custom or tradition tending to establish the permanence of the association” (2001: 107).

Until 1985, there was an immigration rule which allowed the unmarried female partner of a British man to be granted leave to enter or remain in the UK with his British partner, though this comparative right was not available to women. Wesley Gryk, a specialist lawyer practicing in this area, remarked:
No doubt this rule represented something of a vestige of the British imperial tradition whereby British Empire builders felt it their privilege to bring their non-British mistresses back with them from the far-flung corners of the empire (Gryk 1998: 3)

Due to the sex discriminatory nature of the rule, it was replaced by a 'concession', which refers to legislation that is outside the formal rules on 26 August 1985 (Gryk 1998: 3). Immigration officers were given instructions on 8 November 1985 to allow 'common law husbands and wives/mistresses' who are already settled in the UK, to make an application based on their heterosexual relationship 'outside marriage' (Gryk 1998: 3). The requirements stipulated that couples had to show they had been living together in a stable relationship and intended to continue in this way. The concession, already stated, was for unmarried heterosexual couples and did not apply to same-sex couples who were mounting a campaign and making a number of legal moves to challenge the lack of recognition for same-sex couples. Stonewall Immigration10 as it was then known, was one such body attempting to challenge the then Conservative government on the lack of recognition for same-sex couples.

On 22 February 1996, Stonewall Immigration sponsored an amendment to the Asylum and Immigration Bill. They argued for the insertion of 'inter-dependent' partners' in the existing concession which would put same-sex couples on the same par as unmarried heterosexual couples. Ironically, the parliamentary debate over the proposed amendment led to the removal of the concession, on the grounds of an increase in applications by foreign nationals based on their common-law relationship (HC Deb (1995–1996) 272, col.539). But what was significant about the accompanying parliamentary debate was that the Labour MPs who argued for the
amendment, stressed it would apply to couples in 'stable long-standing' relationships that intended to stay together (HC Deb (1995–1996) 272, col.534). This was against an opposing discourse that questioned the permanence of unmarried relationships and generally asserted the reliability of marriage in matters of migration. It also reflects a frequent trope advanced by a number of commentators, who have identified the 'good gay' discourse that has left its traces in current political discussions of gay rights (Epstein et al. 2000; Smith 1994; Bell and Binnie 2000; Stychin 2003; Richardson, 2004). That is, a gay identity which is assimilative, unthreatening and closeting. This was reflected in the arguments for the amendment, which attempted to legitimise same-sex relationships on an 'as good as' marriage discourse, that did not critique the primacy of marriage in immigration polices. However, the conservative nature of immigration policies that are preoccupied with surveillance and border control coupled with the seemingly 'controversial' issue of lesbian and gay rights, results in a highly normative regulatory framework for sexual citizens to meet.

The 1997 concession

On 10 October 1997, the Labour government finally introduced the concession for unmarried people, which was later to be incorporated into a rule on 2 October 2000. Both these dates are significant in relation to two legal moves that occurred in the EU and UK. First, the concession was introduced in the same year as the UK had signed up to the Amsterdam Treaty which later came into force on 1 May 1999. The Treaty included an important clause in Article 13 that included sexual orientation as grounds on which to prohibit discrimination. Article 13 was seen as an important step in that it potentially could prevent discrimination, particularly in relation to the availability of partnership rights (see Guild 2001; Bell 2002). However, Stychin (2003) is sceptical
that one of the official justifications given for the legislation was based on a 'discourse of human rights', even though this fitted closer to New Labour's rights discourse with its emphasis on 'stable relationships'. I will illustrate how the requirements of the legislation underpin and fit with the 'rights and responsibilities' discourse that underpin New Labour's move to liberalise on matters of sexuality (Bell and Binnie 2000) below. However, the possibility of costly litigation against the UK as a result of Article 13 may well underline the introduction of the legislation, as well as fitting neatly with New Labour discourse on areas of the family. Second, the date of the concession being made into a rule on the 2 October 2000 also comes as the Human Rights Act is incorporated into British Law. Therefore, the formalising of the legislation into a rule (which unlike a concession cannot be changed or amended) can be seen as a tidying up of legislation at the domestic level.

The 1997 concession and resulting rule were moulded very much on a 'married couple' model as couples must present their relationship 'akin to marriage'. It included a 4-year cohabitation period that same-sex couples had to satisfy. This 4-year cohabitation period provided a 'Catch 22' situation, in that in order to satisfy the requirement, couples needed to be living together in the same country, the very process this concession was trying to facilitate. In 1999 as a result of vigorous lobbying by Stonewall Immigration (the government had promised to review the concession after a year), the period of cohabitation was reduced to 2 years, while the probationary period was increased from 1 to 2 years.

Another significant fact regarding the 1997 concession was that it originally included an impediment that stated that unmarried couples must show they are 'legally' unable to marry under UK law other than because they are related by blood or under the age
of 16 (JCWI 1999). This meant that unless they are a same-sex couple, transsexual or some 'other bar to marriage' (e.g. religious grounds) the couple must marry, whether they are unwilling to or not (JCWI 1999). As Gryk (1998) argues, it marked a 'retrograde step' for unmarried heterosexual couples who were now excluded in family reunion provision. The legal impediment was later removed for heterosexual couples, as a result of a Home Office White Paper (Home Office 2002) on 1 April 2003. However, the legal impediment was indicative of the preservation of marriage within the family reunion provisions. To a certain extent, unmarried heterosexual couples find themselves 'queered' with their lesbian and gay counterparts, as the regulations construct a somewhat outdated and conservative construction of heterosexuality that is clearly tied to marriage, despite the rise of cohabitation in the UK (ONS 2001). Therefore, up until 2003, opposite sex unmarried couples had to marry in order to achieve their family reunion.

METHODOLOGY

Before discussing the empirical material in detail, I want to briefly comment on the type of sample being drawn on. The interviewees were recruited by accessing lesbian and gay networks, through 'snowballing', a technique that has been used to 'tap into' gay and lesbian friendship networks (see Weston 1991; Heaphy et al. 1998). In addition, adverts were also placed, first in Diva, a magazine for gay women and then the Gay Times, which tends to be aimed at a gay male readership. An advert was also placed on the website Gay.com, which has an immigration page and a message board. A total of 14 couples were interviewed between November 2000 and November 2001, evenly split between female and male same-sex couples. Alongside interviews with same-sex couples, a number of legal professionals working in the field were also
interviewed. The account of one specialist lawyer is also included in this paper, as he comments both on his own experience making an application and that of his clients. The interviews were semi-structured and the aim was to allow couples to tell their story of their application. There were key questions of concern, e.g. how couples met the 2-year cohabitation criteria; how did they establish proof of this; where did they make their application (in the UK or outside); what were the implications on their resources and did they take legal representation? Therefore, the aim was to build a picture of the type of couples in terms of class, ethnicity and nationality.

Those entering based on their relationship with a UK resident, were as follows: South Africa (six nationals), America (three), New Zealand (one), Canada (one) the former Yugoslavia (one), Nigeria (one) and Slovakia (one). With one exception, the sample national comprised predominantly white third-country nationals. A reason for this is that all the couples were successful applicants and therefore, as I will argue, they reflected the idealised migrant that policy constructs. Though attempts were made to gather a sample that reflected couples who were unable to achieve their family reunion, this proved problematic for a number of reasons. Despite reassurance of confidentiality, these couples were still undergoing an appeals process and were concerned that participation in my research would hinder this process. In addition to this concern, many felt they could not commit due to the pressure on their own time and energy focused on pursuing the appeal process. Case law, some of which I have referred to in this paper, gives some indication of the issues that prevent couples achieving family reunion, but I am aware the empirical material can only provide a partial picture of the experiences of same-sex migrants and in the conclusion, I reflect further on the limitations of this material. However, the interviews do provide much
needed accounts of same-sex couples experiences that are largely absent in the relevant literature.

**IMMIGRATION PRACTICE AND SAME-SEX COUPLES**

What is also evident is the way in which the law as Stychin (2000) has observed, acts as a disciplinary power that assembles and produces sexual subjectivities in highly normative ways. The differentiation of the married and the unmarried in the provision of family reunion underpins this disciplinary power and as I shall demonstrate, places particular burden on the 'other' of this binary to prove and present their relationships in the full gaze of the law. Therefore, the process of gaining citizenship for sexual dissidents requires them to produce narratives of their intimate and domestic lives that in turn reproduce 'traditional' gender and class relations. This traditional model is not only mythical but one that is deeply anachronistic, with rates of divorce doubling across EU countries between 1960 and 1995 (this precludes Ireland, where divorce was illegal); this is despite marriage rates declining by nearly one-third during the same period (European Commission 1997: 20). This links with concerns raised by feminist scholars, such as Geraldine Pratt and her empirical work on domestic Filipina workers, she argues when subordinate groups make claims around rights, they often 'accept and redeploy' a 'stigmatised identity' that results in the congealing of identities (Pratt 2004: 105). To elaborate further, there is a danger that the claiming of citizenship around partnership rights results in sexual dissidents conforming and reproducing a narrow, traditional model of the family (Elman 2000; Robson 1994), one that is premised on equivalency to a heterosexual norm. Moreover, Stychin (2000: 613) in his discussion of the reunification of spouses, comments on this linkage between 'financial responsibility' and the emphasis on 'good' stable relationships in
citizenship discourses. My empirical material substantiates these concerns as couples in my sample were able to conform to the 'akin to marriage' requirements of the rule, alongside being able to show they were financially dependent and possessed skills that were attractive to the state.

**Intimacy and proof**

The unmarried partners' rule has always demanded proof and evidence to satisfy the cohabitation period (both when it was 4 and 2 years). This reflects the objectivist and empiricist tone of this legislation, where couples become 'cases' to be scrutinised and examined. It also connects with the Home Office's general preoccupation with preventing abuse of the immigration legislation and their more immediate concern that only 'genuine' relationships enter under this provision. The type of evidence the Home Office requires encompasses legal, formal documentation and more personal items. These include: 'joint commitments (such as joint bank accounts, investments, rent agreements, mortgage, death benefit, etc.)', as well as: 'correspondence which links them to the same address'; 'any official records of their address (e.g. Doctors records, DSS record, National Insurance record, etc.)', and more personal evidence: 'letters from third parties' and 'any other evidence that adequately demonstrates their commitment to each other' (IND 2000: 2–3). In the absence of a marriage certificate, the rule has built in formal bureaucratic mechanisms to ensure it is a 'genuine' relationship. Additional items that couples can use as evidence are letters and correspondence between them, photographs of them together (this is not explicitly stated in the criteria but all the couples in my sample have included them) are offered up as evidence for the Home Office's inspection.
The emphasis on providing personal documentation marks the crossing of public boundaries by the state into the intimate 'private' domestic spaces of the couples. It is also part of the process where couples have to construct an account of their relationship that matches the very specific temporal linear narrative set out in the regulations. Photographs, letters and cards are key sources used as evidence of time the couple spend together. They are also used to show the relationship is 'subsisting' during periods apart, which the regulations state must not exceed a period of 6 months. Therefore, when couples 'tell the story' of their time together, these intimate items can be used as evidence to substantiate their story. As many couples commented, such material was often hard to collate, as couples did not always keep ephemeral material, such as letters, envelopes addressed to them both, or photographs of themselves as a couple. Evidence such as testimonies from a 'third party' is based on a notion that same-sex couples will be 'out' to family, friends and employees. Statements from family members were particularly problematic, as many of the interviewees had faced negative responses from relatives and parents. One of the couples (M11) describes their feelings about the process of obtaining statements from third parties (family, friends, employers):

A: But there was funny stuff like we had to go to the bank to ask them for a letter stating that we both have bank accounts; both our accounts are the same, same as with the Doctor. I went to the police station to get a signed declaration that we live [together] … [it is] quite an admission asking all these people to state we live together: my mother his mother, family and friends that sort of thing, saying they'd known us as a couple.
In the case of the above couple, the process was made slightly easier by the fact that they were both 'out' to their family and friends. This is something they acknowledge in the interview:

X: You have to look at it this way, we were very fortunate that both our families are happy with the situation. What would happen if our families didn't know about us and we have to go and ask them please could you say we have been a couple for … that could freak them out. We were just fortunate that way, a lot of people obviously don't tell their parents or don't want their families to know or are too scared and they want to go down that line – that's going to make it difficult.

Other couples had either faced negative responses from family and friends or felt uncomfortable being 'out' to these people. Therefore some couples could not include letters from family but as G (M9) points out:

G: We had enough evidence without the letters from family and his family were very helpful, they all wrote letters. In my case, the family don't know so I couldn't, I didn't (…) we can't provide letters, because my mother doesn't know.

Similarly couple (M10):

B: We had both our names on the lease, but I was the signer and J was a witness.

So they had all that and letters from my parents [pause] J did your Dad write a letter?

J: No.

But more significantly, many felt uncomfortable with the intrusive nature attached involved in producing such evidence, as this interviewee (F4) comments:
L: I suppose also being gay your kinda closed about your relationship; not a lot of people you share it with you, and suddenly you've got to write all those things down on paper and share it with a complete bureaucrat somewhere, who's probably sitting there laughing …

Interviewees who had supportive friends, family and work colleagues who were able to vouch for them as a same-sex couple found the ability to provide statements from third parties less problematic. But that is not an option for migrants who come from more severe homophobic environments, where being 'out' has severe repercussions.

**Financial responsibility**

Documentation of joint accommodation and financial agreements not only provide evidence of periods of cohabitation but also demonstrate a level of financial responsibility that is closely connected to the 'akin to marriage' element of the regulations. In this context, 'akin to marriage' is tied to a traditional 'dependency model' that forms the family reunion provisions. There is an expectation that the EU citizen will financially support the 'trailing spouse', especially as the regulations stipulate that dependents have 'no recourse to public funds'. In my sample, many of the couples did not have joint bank accounts or jointly rented or owned property, therefore, couples that had previously been economically independent had to make adjustments to conform to the type of coupledom set out in the criteria. An extract from my one of my interviews with a South African female (F3) couple illustrated this point, in they had to obtain a joint mortgage despite previously owning separate property:

P: We had decided anyway, right at the beginning of the relationship that we would both own property. We wouldn't buy it together, instead we would each buy
our own property and live in one of them and rent the other. That was something we had decided ages ago.

This ability to demonstrate a marriage-like relationship through interdependent financial responsibilities is reflected across the sample, most notably through couples obtaining joint bank accounts in order to satisfy the 'akin to marriage' requirement. The regulations require couples to organise their finances in a way that does not match their own social practices and one that requires them to conform to an out-dated and gendered legacy of interdependent relations. As feminist criticisms highlight, relationship-based rights reinforce a model of citizenship that privileges 'coupledom' founded on heterosexist and gendered norms (Richardson 2000: 267).

Additionally, family reunion provision has historically rested on an assumption of an active male 'breadwinner' followed by a passive female dependent (Ackers 1998: 9). Theoretical accounts have also tended to mirror that assumption and ignore the way in which 'dependents' feature in the labour market. (Kofman et al. 2000: 65). Therefore, my next discussion addresses the role of skills and the way in which the provision produces sexual citizens along the lines of class.

**Skills and financial resources**

As argued earlier in this paper, sexual citizens that possess desirable skills will find their claim to citizenship greatly eased. Both parties making an application are required to demonstrate financial maintenance, be it through savings, property or other 'liquid assets'. More specifically, migrants that have skills and employment experience that fit gaps and shortages in the labour market find this has a favourable bearing on their application. This emerges quite clearly in my research, in that the
couples fitted current shortage sectors that the Home Office seeks to fill through skilled migration.

All the couples in my interview sample possessed either formal higher education qualifications or had considerable vocational experience in areas such as the medical profession, nursing, NHS locum, teaching, technology and business. They also indicated that their employability was an important element of their application, especially in cases where they had difficulty in providing full documentary proof of cohabitation. Two of the couples that applied outside the UK, who attended a short interview as part of the application procedure, remarked on the importance of their employment history in this process (F5):

A: I said that … S [her partner] was a teacher and that her contract ended at the end of August and that fortunately we had some letters from headhunters, one environmental and one advertising, asking for supply teachers. I showed him [immigration official] those and said as soon as she gets back she'll do supply [teaching]. I had kept my wage slips from when I had temped here and I showed him when I worked here before at a temping agency. I am employable and he wanted to see my CV and I showed him that and he was like, 'yeah you definitely have skills' and then I offered to show him bank accounts and stuff like that, to show that we had money between us.

Similarly with this couple (M10):

J: Yes, he did ask me where did I work, I explained I was working for … at the time, he asked where does B work and what does B do; he asked a few personal questions about him and stuff like that: where does he work and how long has he been working there for.
The attention paid to employability also has a gendered dimension to it, with female
couples with qualifications and experience necessary to join the shortage areas of the
feminised 'care' giving occupations in the welfare sector, finding it easier to migrate.
This was reflected in my sample where (F3) the aforementioned South African couple
were able to demonstrate substantial experience as nurses, which they felt, had a
positive bearing on their final successful application:

P: If you look at our CVs, nursing for the last 15–20 years, M as well. And I
think as well, the other thing that might have had a positive bearing was that we
were both in our thirties and that we are not youngsters. It gives the impression that
you are more responsible, you know those kinds of things. We thought that had a
positive bearing; our age, our profession.

The couple above comment how they were aware of shortages in the NHS and
therefore knew they had skills that were in demand, which had a positive bearing on
their decision to move the UK. It raises the importance of the complex intersections
between immigration regulations, gender and labour markets that Raghuram (2004)
explores in her empirical work on tied migration and overseas doctors in the UK. In
the context of the couple above, their specific skills and experience dovetail neatly
with labour shortages, making them highly desirable as a white female English
speaking couple in a long-term relationship.

As my interviews show, couples are keenly aware of how access to resources and
acquisition of attractive skills are all positive elements of their successful
reunification. As Barry O'Leary, a specialist immigration solicitor, whose Israeli
partner made an application based on their relationship summarises:
For us it was quite an easy one because I don't earn like stacks of money but I am in a very regular job – also, whether it makes a difference or not, because I am a solicitor, they do think you're going to be able to support yourself; and [name of partner] my boyfriend, is in a different situation to start with, because he speaks fluent English, he's always been working as a teacher in the UK on the weekends and was able to get letters saying we desperately want to give him a job when he comes back, so we had a lot going for us; its all those things I can see creating problems for my clients, it's a nightmare for them.

The above statement is similarly echoed by another interviewee (M9) from the former Yugoslavia who talks about his qualifications and work experience:

G: It was like okay not just coming to this country [pause] I was going to be useful … so everything is related to [your] profession and everything. Okay … because I achieved a qualification and all, my stay and everything was legal, I had no criminal records, I was working … had National Insurance number and everything; I wasn't in anyone's pocket.

The dominant discourses of the idealised migrant are clearly reflected in the above quote. Similar themes arise around the interlocking facets of skills, and access to funds resulting in a successful application. They also fit in with the wider ideology of the unmarried partners rule with its emphasis on a 'genuine' stable relationship. Therefore, as the practises of same-sex couples show, the regulations produce normative sexual identities that fit UK discourses of the idealised migrant in terms of ethnicity, class and gender.

CONCLUSION
The aim of this paper is to add to existing critical scholarly work on sexual citizenship, that is bringing to the fore the relationship between immigration and sexual citizenship and provide new data on the experiences and practices of same-sex couples achieving their family reunion in the UK. As I have argued, the empirical material substantiates the way in which the achievement of relationship rights has resulted in a particular normative construction of sexual identity. In particular, it illustrates how the conferring of rights for sexual citizens at the level of migration has also been accompanied by a containment of the type of sexual relations that can be admitted for citizenship, which is reflected by the couples in my sample.

The issue of immigration between EU states highlights the uneven development of partnership rights across the European space. The level of recognition depends heavily on the type of sexual citizenship frameworks within the nation state. The diverse responses to relationships rights across European nation states indicates that migrants may lose 'spousal' rights at the level of migration, if they are moving to a country that does not adequately recognise same-sex relationships. As Binnie asserts: 'Nothing throws the question of the different ways in which formations of sexual citizenship are constructed by nation states into greater relief than the migration process' (Bell and Binnie 2000: 119). This unevenness across EU states is exacerbated by the lack of protection offered by European jurisprudence that continues to define a 'spouse' as a married opposite couple. It remains to be seen if the new Freedom of Movement Directive will strengthen the claim of same-sex couples to be seen as equivalent to opposite sex couples. Therefore, there remains a hierarchy of relationships at the EU level centred around opposite sex marriage, which may extend to same-sex couples only when they can assimilate into a 'marriage like' model and fulfil the requisite tests for durability and stability. This is also mirrored at the UK
level where the recognition of same-sex relationships in family reunion is premised on those very same normative values.

Reflecting on the type of couples featured in my research, it is clear that the possession of certain types of skills encouraged by UK immigration had a positive bearing on their family reunion. This raises questions about what Stychin (2000) refers to as the 'enabling' and 'constraining' discourses of citizenship. Implicitly, sexual citizens that may have weak or 'thin' evidence of their relationships may well have their claim to citizenship strengthened by skills that allow them to enter the labour market. It also seems to illustrate how rights for sexual citizenship are underwritten by the economic imperatives of the nation state. Ultimately, queer migrants could potentially circumvent the intrusive and difficult stipulations of family reunion provision and enter as individual labour migrants. That option is of course available to sexual citizens that can fit the class-based norms that underpin immigration discourses. But it could also serve to widen the gap between queer migrants who do not fit both the narrow model of sexual citizenship on offer or the desirable skill categories the Home Office aims to encourage.

The issues outlined in the paper connect with wider critical strains in the work of sexual citizenship. The 'good' relationships encouraged by immigration accord with other developments in the UK legal arena concerned with relationship rights. Most notably, it brings to mind the implications for sexual citizenship in view of the recent passing of the Civil Partnerships Act, which within this very volume, is gathering significant attention by 'queer scholars'. In particular, it highlights to what extent the recognition of Civil Partners in the context of immigration creates further hierarchies within the realm of same-sex relationships. What about those unable to marry or
obtain a civil partnership, does this create some sexual citizens more equal than others? Similarly, what about those couples that are resistive of these types of relationships rights and chose not to formalise their relationships in this way much in the same way as opposite sex couples that choose not to marry? The UK Lesbian and Gay Immigration website (UKLGIG 2004) suggests migrants with legally obtained marriages abroad should be recognised (as they presently are not) by the UK immigration authority. This looks to be the next legal challenge and is illustrated by a recent case involving a British couple who lost their case in the High Court: they sought to have their same-sex marriage, which was obtained in Canada, recognised in the UK as marriage and not a civil partnership (Minto 2006).

Furthermore, the discussion of migration and relationship rights illuminates wider concerns about the types of rights strategies that are currently being articulated, especially around same-sex partnerships and marriage (see, e.g. Cooper 2001; Stychin 2004; Bell and Binnie 2000; Richardson 2004). In the political debates that formed the unmarried partners' rule, there was little criticism of marriage as an institution where rights are contained. Those advocating recognition of 'spousal' rights appear to take an assimilationist approach in that they appealed to discourses of genuineness and stability. In many cases, as the empirical material shows, many of the couples had to reorganise previously independent financial arrangements (separate property, bank accounts) in order to fulfil the 'akin to marriage' stipulation. However, although immigration and gay rights seem to attract an especially conservative response in public debates and a doubly conservative policy, there are apparent alliances between unmarried heterosexual couples and same-sex couples. Heterosexual couples that choose not to marry will find themselves increasingly outside current legislative frameworks, such as the Civil Partnership Act. There are parallels with family
reunion, where at varying times both same-sex and opposite sex unmarried couples have been absent in the provision. Or perhaps, there is scope for creating 'radical alliances' with heterosexuals who may want to take up registered partnerships rather than marriage (Cooper 2001: 90). What is clear is that current moves to obtain partnership rights or same-sex marriage should be viewed with caution. As my empirical material shows, such strategies squeeze out or constrain more diverse ways of organising intimate and erotic relationships. Furthermore, by exploring relationship rights in the context of immigration, they raise how such 'normalisation' is connected to wider discourses of exclusion along the lines of gender, ethnicity and class. As sexual citizens migrate to states across and beyond the European space, there needs to be more empirical material that can further illuminate the type of conditions and discourses that 'constrain' or 'enable' that move.

ENDNOTES

1. X and Y v. UK application No. 9369/81, 3 May [1983].
10. Stonewall Immigration is now known as the UK Lesbian and Gay Immigration Group (UKLGIG). The previous name arises from their loose affiliation with the Stonewall lobby group, which campaigns on lesbian gay bisexual and transgender issues.
11. M and F denotes Male or Female, followed by a number, e.g. (M11) that correlates with the order in which the couple were interviewed. Individual interviewees are identified by an initial in order that their responses remain anonymous.

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