

# Through Her Eyes: Enabling women's best evidence in UK asylum appeals



Authors: Gina Clayton, Tanya Crowther, Jane Kerr, Sarah Sharrock and Debora Singer. Editor: Matt Barnard.

November 2017



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# Through Her Eyes

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Artwork by Eleonore Dambre.

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# Key Findings

When women flee human rights abuses and seek protection in another country, they are dependent on an asylum process that may not take account of their experiences as women. This research, conducted by NatCen Social Research and Asylum Aid, seeks to address the evidence gap in terms of understanding the factors underpinning the overturn of women's asylum refusals on appeal. The study involved interviews with women and a range of stakeholders, including support organisations, legal representatives and First-tier Tribunal judges. In addition, a range of case files were analysed.

Key factors identified in successful women's asylum appeals were:

- **sufficient information and support for women:** some women did not know what to expect at the tribunal and were not prepared to give evidence;
- **well-prepared legal representatives:** there were examples of poor legal practice where women's cases were undermined because legal representatives were ill-prepared, did not provide good quality legal advice and did not gather medical and country reports;
- **open-minded judges:** some legal representatives and women felt that judges did not approach cases with an open mind nor consider the evidence in the round;
- **access to expert evidence:** expert evidence was not always accessible due to availability and funding issues;
- **well-trained Home Office Presenting Officers (HOPOs):** one view among legal representatives and women was that HOPOs sometimes used aggressive cross-examination and demonstrated a lack of empathy;
- **skilled interpreters:** it was felt that interpreters sometimes did not interpret in full and excluded or downplayed gender issues;
- **childcare provision:** there was a lack of childcare provision, which undermined the opportunity for disclosure of abuse and violence.

The key recommendations are:

- **guidance for judges should be reviewed:** the Guidance Note by the President of the Immigration and Asylum Chamber should be reviewed and information on gender-based persecution made available to judges.
- **good practice by judges should be supported:** the current good practice and supportive culture that exists in sections of the judiciary should be built on.
- **the Tribunal Service should improve conditions for women:** there should be practical adjustments by the Tribunal Service in order to improve the experience of appeals for women appellants.
- **information should be provided for appellants:** The Courts and Tribunals Judiciary should create an easily accessible guide so that appellants know what to expect at the tribunal.
- **legal representatives should be trained to use good practice approaches:** training should include obtaining all possible evidence to support the initial claim, to enhance the quality of legal representation for women asylum appellants.
- **only skilled interpreters should be engaged:** Legal representatives and the Tribunal Service should only engage interpreters who have the linguistic ability and sensitivity to interpret gender issues in the correct language and dialect.
- **Home Office Presenting Officers (HOPOs) should receive relevant training and their practice should be audited.**
- **legal aid provision should be reviewed:** The Legal Aid Agency should review its funding of the provision of appropriate services including early expert reports.

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# Executive summary

## Introduction and methodology

- Throughout the past decade, one third of UK asylum applicants fleeing human rights abuses have been women seeking asylum in their own right. There are concerns that many asylum systems continue to treat the claims of women through the lens of male experiences, which can result in their claims to refugee status not being properly assessed or being rejected.
- To date, there has been little research in the UK on the asylum appeals process or analysis of tribunal determinations in relation to gender, and no definitive study of the reasons for refusal of asylum claims and appeals.
- This research, conducted by NatCen Social Research and Asylum Aid, seeks to address the evidence gap in terms of understanding the factors underpinning the overturn of women's asylum refusals on appeal.
- The study involved qualitative interviews with 22 women and a range of stakeholders, including five support organisations, five legal representatives and four First-tier Tribunal judges. In addition, eight case files were analysed.
- As this is qualitative research it is not possible to generalise in terms of prevalence of views and experiences.

## The UK asylum process

- The process for claiming asylum in the UK, and the ways in which decisions can be challenged, is complex. Initial decisions about asylum claims are made at a regional office of the Home Office, and if the claim is rejected, the applicant has the right to appeal to the First-tier Tribunal. If the appeal to the First-tier Tribunal is refused, a further appeal on a point of law may be made to the Upper Tribunal.
- The Joint Presidential Guidance Note (2010) on Child, vulnerable adults and sensitive appellants, issued in October 2010, concerns the treatment of cases involving children and vulnerable adults at the First-tier Tribunal Immigration and Asylum Chamber. The overall aim of the Guidance Note is to ensure that vulnerable individuals understand and are able to participate in proceedings.
- Existing research indicates a link between the appellant being legally represented and being able to present all the facts of their case, including those related to gender. Asylum seekers are eligible to apply for legal aid but the framework discourages legal representatives from taking the most complex cases to appeal.
- It has been argued that the combination of the lack of corroborative evidence, high standard of proof and the impact of trauma on disclosure creates significant challenges for positive credibility findings for many women.

## Women's experiences

- **Preparation:** The nature and level of support a woman received before attending the First-tier Tribunal affected how prepared she felt for her hearing and her expectations of it. But participants also recognised the role they could play in preparing for the hearing, both mentally and practically. Preparation took three forms: practical, procedural and emotional. In addition, expectations could be influenced by uncertainty around their legal representation.
- **Legal representatives:** Positive experiences of legal representation were underpinned by their good interpersonal skills. Negative experiences were affected by feeling that the legal representative prevented women from contributing to the hearing and believing that the representative had inadequate skills.
- **Judges:** Asylum seekers and participants from support organisations identified six attributes of a judge they felt made the appeal process a more positive experience:



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facilitating a women's understanding of proceedings; impartiality; a desire to understand their case; approach and manner; awareness of women's circumstances and culture; and concern with women's wellbeing.

- **Home Office Presenting Officers (HOPOs):** The adversarial nature of the asylum process could cause stress and upset and was described as being too focused on the issue of credibility.
- **Interpreters:** Experiences of interpreters were influenced by their ability to speak the woman's dialect and translate proceedings; their manner and style of speaking; and the interpreters' cultural background.
- **Comfort and wellbeing:** Women were not always offered breaks and judges were felt to not always attend to a woman's wellbeing and needs. Another area of concern was the lack of childcare.
- **Role of support:** Women received support from a range of sources but would have welcomed additional support around finding legal representation.
- **Impact of the appeal:** For some of those with an unsuccessful outcome, the impact on their wellbeing had deterred them from wanting to go through the appeals process again, even if they had been advised to do so.

### The legal process of women's asylum appeals

- **Barriers to disclosure:** Barriers for women in disclosing that they had suffered gender-based violence (GBV) included shame, cultural constraint, lack of familiarity with speaking about their experience, threats to themselves or their family, lack of trust in the system, and dominance by male relatives. Operational barriers to disclosure included a shortage of private conference space, the absence of childcare facilities, and the woman being unexpectedly faced with an all-male tribunal.
- **Evidential Issues:** GBV presented challenges to representatives in collecting evidence for an appeal, and to judges in assessing it. This put a significant burden on the woman's own testimony, and a focus on her credibility. Obtaining expert assessments could be difficult because of availability of experts and because of funding issues.
- **Sufficiency of protection and internal relocation:** Judges felt they received adequate information to make decisions on sufficiency of protection or internal relocation. They were informed by material in the public domain, such as Home Office reports and those from the US State Department, but differed in the extent to which they considered that they were free to consult Home Office reports outside of the hearing.
- **Impact of legal representation:** In the view of both legal representatives and judges, experienced and well-funded representation was fundamental to securing proper presentation of appeals to the tribunal and gave the best opportunity of an appropriate outcome. The key steps in preparation identified from file analysis and interviews were: establishing trust and facilitating disclosure; working with the appellant to prepare her for the hearing and collect evidence; obtaining expert evidence; and challenging previous actions of the Home Office or other legal representatives that were damaging to the appeal case.
- **Obtaining expert evidence:** In each of the cases of the women who had their appeal heard a second time by the First-tier Tribunal reviewed in this research, in the first, unsuccessful appeal, there was no expert evidence and very little other evidence. In each case, in the second, successful appeal there was a significant body of evidence, including expert evidence.
- **Atmosphere at court and skill of judges:** The judges interviewed felt that the asylum tribunal was an example of a 'humanitarian jurisdiction', though they also said that a minority of judges did not share that humanitarian perspective. Judges said they needed to ensure they had an open mind about the claim, be neither too credulous nor too disbelieving and create an atmosphere which enabled the

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woman to speak. Legal representatives reported that some judges had a manner that was 'interrogatory'.

- **Education, awareness and information:** Judges said that part-time judges missed out on some of the discussion with colleagues, and that more training was needed. Legal representatives said that many judges were unaware of trauma and gender-based issues and also advocated additional training for judges.
- **Credibility assessment:** In some cases initial Home Office refusals were based on peripheral points or on implausibility. In contrast, determinations in successful appeals were characterised by six principles: assessing all the evidence; focusing on the core of the claim; not needing to eliminate doubt; taking into account the context; accepting the reasons for partial or late disclosure; and where testimony was compelling, accepting it without additional evidence.

### The Guidance Note

- **Deciding whether the appellant was vulnerable:** Judges felt that legal representatives did not always raise the issue of vulnerability when they could, and there was variation among the judiciary in how proactive they thought it was appropriate for a judge to be.
- **Asking for an all-female tribunal:** Where giving evidence about sensitive issues in front of a man was intolerable for religious or cultural reasons, participants agreed that a request for an all-female tribunal should be respected. Where the woman had other reasons for wanting an all-female tribunal, there might be a more effective way to meet her concerns.
- **Impact of using the guidance:** Legal representatives reported that aggressive cross-examination did happen and felt that the Note was of limited value in controlling this practice.
- **Awareness and use of the Guidance Note:** The contents of the Note were referred to by some judges as common sense or a helpful aide memoire. There was little enthusiasm among the judiciary for amending the guidance, but they felt that greater awareness of it would be beneficial.

### Conclusions and recommendations

- **Factors impacting the success of women's asylum appeals:** Good quality legal advice, addressing the issues of sufficiency of protection and internal relocation, alongside evidence such as a medical report and/or country expert reports, were key to the success of women's asylum appeals. Practical issues, such as having a safe space both initially and at the tribunal to enable a woman to discuss her case with her legal representative, were also important.
- **Judges' attitude and credibility assessment:** it is important judges have good listening skills, an understanding of the appellant's case, a respectful and sympathetic questioning approach, awareness of their circumstances and concern about their wellbeing.
- **Use of the Guidance Note:** Awareness of the Guidance Note was generally limited, with brief coverage in judicial training, and many judges thought an open attitude was more important than specific guidance. In contrast, legal representatives made a case for needing both.
- **Key recommendations:** The Guidance Note should be reviewed to ensure it better reflects women's interests; judges' good practice should be shared; there should be practical adjustments in order to improve the experience of appeals for women appellants; legal representatives need to use good practice approaches, including obtaining all possible evidence to support the initial claim; HOPOs should have relevant training and their practice should be audited; and the Legal Aid Agency should review and facilitate funding of the provision of appropriate legal services.

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# Main report

## 1 Introduction and methodology

*I felt like I was on my own in there and everyone was against me. (Asylum seeker)*

When women flee human rights abuses and seek protection in another country, they are dependent on an asylum process that may not take account of their experiences as women. If they have their initial asylum claim refused they can appeal, and this research considers which factors influence whether that appeal is upheld and how the current guidance for judges is being implemented in their cases.

### 1.1 Context

Throughout the past decade, one third of UK asylum applicants fleeing human rights abuses have been women seeking asylum in their own right (Home Office, 2016a)<sup>1</sup>. In order to gain international protection in the UK, each individual needs to go through the UK refugee status determination (asylum) process.

The UN Committee on the Elimination of Discrimination Against Women notes its concern that many asylum systems continue to treat the claims of women through the lens of male experiences, which can result in their claims to refugee status not being properly assessed or being rejected.<sup>2</sup> Although some of the factors mentioned throughout this report may affect men as well as women, the focus of this research is solely on women's experiences in order to understand the particular issues they face. In recognising the different harms women experience and the barriers they face when they seek protection through the asylum system in the UK, this research builds on recent studies of this important issue.<sup>3</sup>

The impetus to consider why women's refusals are overturned at appeal stems from research published by Muggeridge and Maman in 2011. This found that within the research sample, the rate at which women's claims were overturned was higher than the average. This finding resulted in the Home Office disaggregating its statistics by sex and then backdating this data, which showed that from 2007 to 2014, women were more likely than men to have their refusal overturned at appeal. A difference of about 5% remained constant over seven years. In contrast, in 2015 the chances of women's and men's asylum appeals being successful were almost equal and in 2016 they were exactly the same (Home Office 2017).

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<sup>1</sup> In 2015, the proportion was lower at one fifth because although the number of women applying for asylum remained similar to previous years (6,788), the number of men increased significantly to 25,945 (Home Office, 2016c).

<sup>2</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women, UN Doc, CEDAW/C.GC/32 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/90/PDF/N1462790.pdf?OpenElement>

<sup>3</sup> See Muggeridge and Maman, 2011, Querton, 2012, Baillot et al, 2012/13, UNHCR 2013, Singer, 2014)

**Table 1**      **Difference in appeals allowed rate between male and female appellants 2007 - 2016<sup>4</sup>**

Year	Total appeals determined	Appeals determined: males	Appeals determined: females	Appeals allowed	Appeals allowed: males	% Appeals allowed: males	Appeals allowed: females	% Appeals allowed: females	Difference in appeals allowed rate between males and females
2007	12,395	8,282	4,111	2,784	1,677	20	1,106	27	7
2008	9,209	5,805	3,403	2,124	1,196	21	928	27	6
2009	12,813	8,159	4,650	3,712	1,997	24	1,715	37	13
2010	14,723	9,668	5,045	4,029	2,397	25	1,631	32	7
2011	10,597	7,487	3,104	2,779	1,860	25	919	30	5
2012	8,285	5,844	2,440	2,208	1,473	25	735	30	5
2013	8,325	6,037	2,286	2,078	1,432	24	646	28	4
2014	6,178	4,444	1,734	1,758	1,190	27	568	33	6
2015	9,224	6,225	2,999	3,260	2,249	36	1,011	34	2
2016	12,581	9,394	3,187	5,051	3,766	40	1,285	40	0

Original Source: Home Office

To date, there has been very little research in the UK on the asylum appeals process or analysis of tribunal determinations in relation to gender. There is limited research on evidential aspects of the appeal, such as credibility assessment (UNHCR 2013), and procedural aspects such as the gender of the judge (for example, Gill et al, 2015). There is also research on how specific types of gender-based violence are dealt with at tribunal based on tribunal observations of rape cases (Baillot et al., 2012) and on written determinations of forced marriage cases (Honkala, 2014). However, a qualitative analysis of the impact of navigating this process on the women themselves was missing from all these studies.

As well as there being little research on the process in general, there has been no definitive study of the reasons for refusal of asylum claims and appeals. However, the evidence that does exist suggests that refusals frequently rely on rejecting the credibility of the claim.<sup>5</sup> In the study of women's asylum claims by Muggeridge and Maman, (2011), credibility was the most frequent reason for refusal. They found that in all the cases analysed that were overturned on appeal, the women's credibility was poorly assessed by the Home Office and the judges at appeal applied a more appropriate standard of proof to credibility assessment.<sup>6</sup> This research suggested that credibility assessment is one of the key factors influencing whether women's asylum claims were upheld on appeal. However, as the research focused mainly on initial decision-making, this hypothesis required further investigation.

The only guidance to tribunal judges dedicated to hearing and deciding women's asylum appeals was withdrawn in 2006.<sup>7</sup> This means that the only guidance for the First-tier Immigration and Asylum Tribunal that might cover issues affecting women is

<sup>4</sup> Adapted from Asylum table as 14: Asylum Appeal applications and determinations, by country of nationality and sex. Home Office (2017) *Immigration Statistics*, Asylum Volume 4. Available at: <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2017/how-many-people-do-we-grant-asylum-or-protection-to>

<sup>5</sup> UNHCR 2013; Amnesty International and Still Human, Still Here, 201328, Cheikh Ali, 2012.

<sup>6</sup> In law, the standard of proof in refugee claims is a 'real risk' or 'reasonable likelihood' that the key events happened and that the harm feared will happen ( *R v Secretary of State for the Home Department ex p Sivakumaran* [1988] AC 958). This is said to be the low standard, not requiring proof on balance of probability.

<sup>7</sup> Asylum Gender Guidelines, Immigration Appellate Authority, Berkowitz and Jarvis, 2000, and see short history below.

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the *Joint Presidential Guidance Note on Child, Vulnerable Adults and Sensitive Appellants*, (hereafter referred to as the Guidance Note or simply the Note), which was issued in October 2010.<sup>8</sup> This has a more general purpose and is not addressed specifically to gender issues. Seven years after the Note was issued, it is timely for this research to also explore how it is being implemented in relation to women's cases.

## 1.2 Aims of the research

This research, conducted by NatCen Social Research and Asylum Aid, seeks to address the evidence gap in terms of understanding the factors underpinning the overturn of women's asylum refusal of appeal. Under this broad aim, the specific research questions were:

- how do women asylum seekers experience the appeals process?
- how does the appeals process affect women asylum seekers?
- what are the factors underpinning women's asylum claims being successful on appeal?
- how is the Guidance Note being implemented in relation to women's cases?

## 1.3 Research methodology

The research involved interviews with women and a range of stakeholders alongside case file analysis. It was focused on six locations: Birmingham, Bradford, Glasgow, London, Manchester, and Newport. These are key dispersal areas to which asylum seekers are relocated when they first apply for asylum. First-tier Tribunal Immigration and Asylum Chamber judges hear asylum appeals in each of these areas.

To contextualise and inform the data collection and analysis, initial scoping work was undertaken before the main stage of the research. This included observation of immigration tribunals, a focus group with women with personal experience of the process, and desk research to map the support organisation landscape and inform the selection of organisations through which women would be recruited and some of whose staff would be interviewed.<sup>9</sup> Recruitment and data collection was completed between November 2015 and November 2016.

The research was approved by NatCen's Research Ethics Committee (REC), which follows the principles of the Economic Social Research Council (ESRC) and Government Social Research (GSR). Additionally, a Research Advisory Group (RAG) of 13 members was established to provide strategic guidance as a 'critical friend' in the delivery and impact of the research. The methodology of two key elements of the research is described below.

## Understanding women's experiences

This strand of the research, which was led by NatCen, involved in-depth qualitative interviews with support organisation staff and with female asylum seekers who had appealed against the Home Office's decision in their case.

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<sup>8</sup> This guidance follows the Practice Direction of First Tier and Upper Tribunal: Child, vulnerable adults and sensitive appellants (Tribunals Judiciary, 2008).

<sup>9</sup> The findings from the scoping work are not published as they were intended to inform the research design rather than form the basis of a standalone output.



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## Interviews with support organisations

To learn more about the support that women are able or need to draw on during the appeals process, five members of staff from support organisations were interviewed. The organisations were generally small and local, as larger and/or national organisations had less direct experience relating to First-tier Tribunals. Staff in these local organisations had provided information and advice to women during the appeals process. Information sheets about the research were provided to inform the organisations and staff who were invited to take part in the research.

The selected organisations offered a range of support for women going through the appeals process, including:

- mental health and wellbeing support, including therapy;
- emotional and practical support at court hearings;
- evidence and witness statements for cases that involved sexual assault;
- legal advice about access to welfare and housing.

Interviews with staff from the support organisations took place between December 2015 and June 2016 and were carried out by telephone. They lasted between 35 and 50 minutes and explored the work of the organisation, experiences with this client group, and barriers in the provision of, and potential gaps in, support and information.

## Interviews with women who had experienced the asylum appeals process

Female asylum seekers were recruited through lawyers, non-governmental organisations (NGOs) and support organisations. Inclusion criteria for participants were that they:

- had an appeal heard in London, Manchester, Birmingham, Bradford, Glasgow or Newport;
- went through the appeals process from 2011 onwards (as the Guidance Note was issued in October 2010);
- were the main or sole asylum applicant; and
- did not have an ongoing legal case.

Due to the challenges of recruiting sufficient number of participants, a convenience sampling approach was used.

Interviews were arranged through support organisation gatekeepers or, provided they had given consent to be contacted by NatGen, were arranged directly with women. The research team also made sure that the participant was able to access appropriate support after an interview. All the interviews were face-to-face and most were carried out at the offices of the organisations that had helped to recruit the participants, but at their request some participants were interviewed at their home or at other neutral local venues. Interpreters were provided where required.

A topic guide was developed for these interviews in consultation with Asylum Aid and the Research Advisory Group (RAG). A summarised version is provided in Appendix A; key topics included:

- women's understanding of the legal mechanics of the asylum appeals process;
- the extent to which they had an active role in the hearing;
- how information was communicated to them;
- the nature of support they received; and
- the impact of the process on them.



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An informal, flexible approach was taken throughout the interviews, with the deliberate intention of creating an atmosphere that differed from the more formal interviews women had likely experienced with the Home Office. Researchers emphasised that participation was voluntary throughout the recruitment as well as at the start of the interview. Women were offered £20 as a thank you for their time. Such payments were of a one-off nature, and therefore there was no risk of implicitly creating a contract of employment. Some preferred to donate this to a charity of their choice. At the end of the interview women were also given a list of national organisations that provide support for asylum seekers/refugees in case they or others might find it useful in the future.

The findings reported are based on interviews with 22 women, carried out between May and November 2016. They lasted between 30 and 80 minutes. The women had a range of experiences, circumstances and backgrounds including coming from a range of countries of origin, having different reasons for claiming asylum, as well as their ages and region varying. Additional information on the sample is provided in Appendix A.

## Understanding the legal process of asylum appeals

Research to examine the legal process of women's appeal cases, led by Asylum Aid, involved qualitative interviews with legal representatives, analysis of case files of individual women who had been through the appeals process, and interviews with First-tier Tribunal judges.

### Interviews with legal representatives and First-tier Tribunal judges

Five experts with substantial experience of representing women in the field of asylum appeals participated in in-depth qualitative interviews. Legal representatives were identified through professional networks. All of the legal representatives interviewed as part of this research practised within the catchment areas of the tribunals selected for this research and represented clients at appeals in those tribunal hearing centres.

In addition, four First-tier Tribunal judges of the Immigration and Asylum Chamber (IAC) were also interviewed. All were experienced in hearing women's asylum appeals in the First-tier Tribunal. The judges were recruited through contact details passed to the research team by the senior president of tribunals.

The aims of the interviews with legal representatives and judges were to explore participants' experiences of women's asylum appeals and identify key issues that participants felt influenced the conduct and outcome of the appeals. This included their views and experiences of the Guidance Note.

A summarised topic guide is provided in Appendix A. Key themes covered were:

- how the tribunals dealt with female asylum seekers cases;
- whether the Guidance Note was referred to and followed;
- whether the Guidance Note was sufficient to take account of women's issues; and
- recommendations related to women's appeal cases.

### Case file analysis

Alongside interviews with legal practitioners, analysis of female asylum seekers' case files was carried out. This analysis aimed to identify how women's cases are dealt with at appeal, whether there are any commonalities regarding the refusal or overturning of

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women's cases, compliance with and sufficiency of the Guidance Note, and areas of good practice.

Women who participated in the qualitative interviews were asked for consent for their case files to be included in the analysis. They were told that this was voluntary and that individual case files and interviews would not be connected in the report. Women who gave consent for their case files to be included in the analysis provided information about which solicitor or support organisation held their file. Access to the case file was requested and where permission was given, the case file analysis was undertaken in the solicitor's or support organisation's office using the framework described below.

An additional recruitment approach was used towards the end of the project to maximise the number of case files analysed. Once approval had been granted by the project's funder and REC, solicitors were contacted directly and asked to discuss with relevant clients the possibility of sharing their case file. Only one case file was accessed through this approach due to difficulties in contacting women after their cases were closed, and the availability of recruitment materials in languages other than English.

Eight case files were analysed in total. Five of these related to women who had been granted refugee status and the rest to women whose asylum appeal was not successful.

An unexpected feature was that, in four of the files analysed, the woman's appeal had been heard a second time by the First-tier Tribunal. This gave a valuable opportunity to examine the conduct of the same appeal case by two different legal representatives at two different First-tier Tribunals, and contributed to the richness of the data.

## Analysis

With participants' permission, qualitative interviews were recorded and then transcribed verbatim. Notes were taken where permission was not given. The transcripts and notes were managed and analysed using the Framework approach. Within this approach data is organised using matrices that enable thematic analysis across cases but also analysis within and between cases, facilitating the development of typologies and allowing explanatory analysis to be undertaken (Ritchie et al., 2013). Further details of the Framework approach can be found in Appendix A. Verbatim quotations and examples from the interviews are used throughout this report to illustrate themes and findings where appropriate.

The case file analysis was supported by a framework developed by Asylum Aid with assistance from UNHCR: the template is provided in Appendix B. Interviews and case files were analysed separately. Where women participated in both strands, interview and case file data were not linked, to ensure women's anonymity.

This report illustrates the range and diversity of views and experiences among those interviewed and included in the case file analysis. Numbers of participants expressing particular views are not reported as any numerical inference is likely to be misleading or inaccurate because qualitative samples are not designed to be statistically representative of views held in the wider population.

## Challenges and limitations

As with any research, and particularly research involving sensitive topics and hard-to-reach groups, this project involved challenges. Acknowledging these and methodological limitations is a hallmark of high quality research.

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Identifying women who had experienced the asylum appeals process presented a significant challenge to this research, due to issues around access and eligibility. The nature of these challenges is set out below.

- Pressures on support organisations' resources affected their ability to recruit participants, with a number of organisations reporting that they were unable to help identify participants due to limited capacity and more pressing priorities, such as offering direct support to service users.
- Women whose asylum claims had been closed frequently lost contact with support organisations or solicitors. Future research in this area may benefit from taking a prospective approach to recruitment, with legal representatives identifying cases closing in the near future rather than waiting until they had closed.
- The fluid nature of women's circumstances meant that it was not always clear whether or not potential participants met eligibility criteria. This could be because women whose asylum claim had been rejected subsequently made a fresh claim or because they were not the sole claimant. This led to a number of interviews being arranged with women who were not in fact eligible. In four cases, this became apparent during the conversation immediately before the interview, and in these cases the interviews did not go ahead. A small number of interviews were conducted with women who did not meet the eligibility criteria. This was because despite the fact that the inclusion criteria were discussed at the start of the interview, ineligibility only became apparent during the interview. Data from most of these cases has been included as it was relevant to the research questions.

Due to these challenges, the total number of qualitative interviews with women fell short of the 30 planned. Furthermore, though every attempt was made to recruit participants from all six regions, the research team was not successful in recruiting women whose cases had been heard in Glasgow. While there was a broad range of countries of origin among participants, women from Middle Eastern countries were not interviewed. When this gap became apparent, organisations known to work with this group of asylum seekers were approached but were unable to assist with recruiting participants. These challenges limit the range and diversity of views and experiences captured by the research, and so limit the generalisability of the findings.

In addition, as women were recruited through support organisations, the views and experiences of women who had not accessed support during or following their appeal are not reflected in the findings. It is possible that their experiences and views differed from women who accessed support. A further methodological complication is the potential impact of the outcome of the appeal on women's recollection of the experience.

Recruitment materials were in English, and so, where women spoke other languages, gatekeepers would have had to communicate information about the research. Interpreters were used to facilitate some interviews, and a member of the research team conducted interviews with French speakers in their own language. Only 14 women who participated in interviews gave permission for their case files to be analysed. Of these 14, only eight files were analysed (seven fully and one partially) because it was not possible to secure access to the other six files.

The original research design also included in-depth interviews with HOPOs, with the intention of building greater understanding of their role in the asylum appeals process. However, permission to interview HOPOs was not secured. The Home Office initially explained that they had insufficient capacity for HOPOs to be involved in telephone interviews; subsequently the Home Office sought ministerial permission but no response was received by the end of project.

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## 1.4 Terminology and language

This report has been written to be accessible to a wide range of audiences and with this in mind, legal terminology has been explained when used. The terms ‘woman’ or ‘women’ are used to refer to the women who had been through the asylum appeals process and took part in this research. However, we also use the term ‘applicant’ for the person whose initial asylum claim is with the Home Office and ‘appellant’, which refers to the person who has made the appeal, particularly in chapter 4 which examines legal activity in women’s cases. The term ‘legal representative’ is used to refer to a woman’s solicitor, legal case worker or barrister. Lastly, the term ‘support organisation’ is used to refer to the organisations offering various forms of support for women going through the asylum process.

A glossary of terms used throughout the report is provided in Appendix C.

## 1.5 Report structure

The rest of the report is structured as follows:

- **chapter 2** explains the UK’s asylum process in order to provide key information that helps contextualise the experience of women and the views of support organisations and legal representatives;
- **chapter 3** describes the experiences of women who have been through the appeals process, including their experiences of preparing for the appeal, the appeal itself and the effect of the decision;
- **chapter 4** explores the legal process involved in women’s asylum appeals, including the assessment of the substance of women’s claims, the impact of and access to legal representation, the impact of the judge’s approach and issues relating to credibility assessments;
- **chapter 5** describes views on the Guidance Note;
- **chapter 6** sets out the report’s conclusions and recommendations.

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## 2 The UK asylum process

*I was tired physically, mentally, emotionally and spiritually. I was drained, really tired, because I've been fighting, it's like I've been fighting all my life. I don't think I had any more strength to fight. Honestly. I thought I'd fight enough. (Asylum seeker)*

This chapter sets out the reasons why women seek asylum and the decision-making involved in asylum claims. It also provides an overview of the asylum process focusing on evidential, legal and procedural issues relevant to women, including credibility assessment. Finally it considers judicial guidance relating to women's appeals.

### 2.1 Reasons for claiming asylum

Women claim asylum to escape persecution for a variety of reasons. Often women's claims are based on fear of gender-based harm. This might be inflicted for political, racial or religious reasons (as when women are raped in political detention), or for reasons which are in themselves gender-based, for instance domestic violence, forced marriage, female genital mutilation (FGM), and 'honour'-based crimes. Women may also claim asylum for a gender-based reason where the harm (e.g. imprisonment) is not gender-based but the reason is (e.g. violation of a dress code, or the activities of a male relative). They may also seek asylum for reasons unrelated to gender. Women can be persecuted at the hands of the state or non-state agents from whom the state fails to protect them<sup>10</sup>. Domestic violence, forced marriage, female genital mutilation (FGM), 'honour'-based crimes, or harm due to their sexuality, are likely to be by family members or the community<sup>11</sup>.

### 2.2 Decision-making in women's asylum claims

The 1951 Refugee Convention<sup>12</sup> is the key international instrument specifying the legal rights of refugees. According to the United Nations Refugee Agency, the Refugee Convention requires a gender-inclusive and gender-sensitive interpretation of the definition of a refugee (UNHCR, 2002).<sup>13</sup> However, it has been argued that women's experiences are marginalised through legal and policy processes (Crawley, 2001). In addition, because of women's position in society, or the nature of harm they have experienced, they can face additional barriers to those facing men when their protection needs are being assessed (Sen et al., 2004; Querton, 2012a). These barriers are detailed below.

Analysis of decision-making in women's initial asylum claims across the UK and Europe demonstrates that a woman's case may not be recognised as coming within the Refugee Convention for one or more of the following reasons:

- the definition of a refugee does not specifically mention gender as a ground for persecution;

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<sup>10</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, para 65.

<sup>11</sup> See for instance *Gender-related asylum claims in Europe: A comparative analysis of law, policies and practices focusing on women in nine EU Member States* Cheikh Ali, Querton and Soulard, 2012.

<sup>12</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

<sup>13</sup> UNHCR, 2002 GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees HCR/GIP/02/01

- not having any documentary evidence or disclosing evidence late results in an inaccurate credibility assessment;
- being treated as able to obtain state protection because evidence is insufficient to show that laws against gender-based violence in the country of origin are not enforced;
- lack of research on women's issues resulting in insufficient country evidence to support a woman's claim;
- being expected to relocate within her country of origin even if social customs do not allow women to live alone without a male relative's protection (Muggeridge and Maman, 2011; Cheikh Ali et al., 2012).

## 2.3 The UK asylum appeals process

The process for claiming asylum in the UK, and the ways in which decisions can be challenged, is complex. This section describes the main steps, with a fuller picture of the process set out in Figure 1. It is important to understand the key steps in the decision-making process in order to appreciate where female asylum seekers may face obstacles or challenges. Initial decisions about asylum claims are made at a regional office of the Home Office, having been assessed by a civil servant. If the claim is rejected, the applicant has the right to appeal to the First-tier Tribunal (Immigration and Asylum Chamber), an independent judicial body where decisions are made by judges. The appeal must be lodged within 14 days of the asylum decision being sent.

The tribunal proceedings are broadly adversarial (Thomas, 2013), with the judge listening to arguments from both a Home Office presenting officer (HOPO) and the asylum seeker or their legal representative. Due to the adversarial nature of the asylum tribunal, there is no opportunity for mediation. The adversarial nature risks aggressive cross-examination that may confuse, intimidate, or humiliate an asylum seeker who is automatically in a more vulnerable position than the HOPO (Thomas, 2011).

If the appeal to the First-tier Tribunal is refused, a further appeal on a point of law may be made to the Upper Tribunal, where decisions are also made by judges. An application for permission to appeal must be made within 14 days of receipt of the First-tier Tribunal decision. If permission is refused the only way in which the decision can be overturned is if permission is granted for judicial review. If permission to appeal against the First-tier Tribunal is granted, the Upper Tribunal will decide whether there was a material error of law and, if so, may make a new decision or return the case to the First-tier Tribunal to be heard again. In a very few cases, permission to appeal to the Court of Appeal may be granted, where the court accepts that the appeal has a real prospect of success, and it either raises an important point of principle or practice, or there is some other compelling reason for the Court of Appeal to hear it.<sup>14</sup>

Thereafter a very few appeals go to the Supreme Court on a point of law of public importance. Where, after refusal of all appeals, an applicant makes a fresh claim to the Home Office that is not accepted as a fresh claim, it may be possible to apply to the Upper Tribunal for judicial review.

## Legal representation

There is limited research that specifically considers legal representation for women asylum seekers. Interviews with women for Asylum Aid's 2011 study showed that they felt better informed about the asylum procedure and better prepared if they were legally represented. They stressed the link between being legally represented and being able

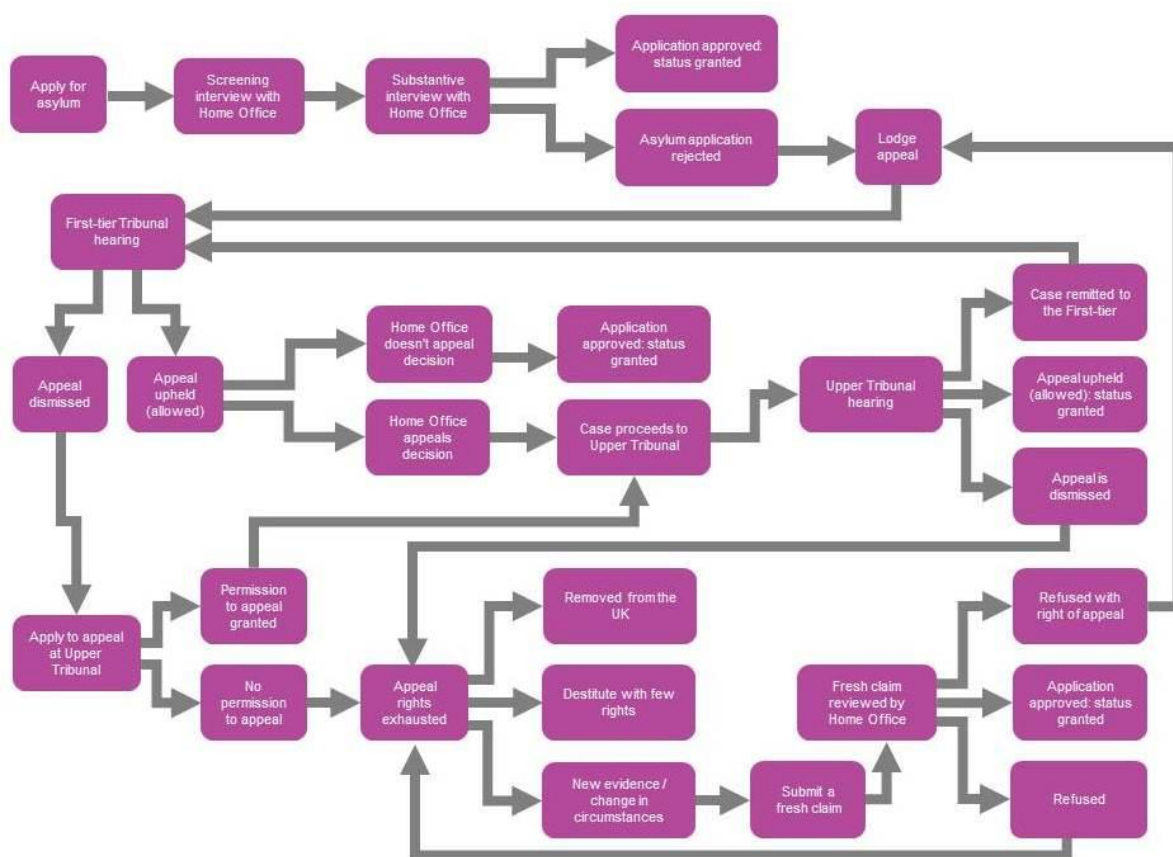
<sup>14</sup> Civil Procedure Rules rule 52.7



to present all the facts of their case. Women described feelings of being ‘let down’ by their legal representative when abandoned at appeal stage. The subsequent experience of going to the tribunal alone was described as leaving them exposed where a judge and Home Office Presenting Officer did not show sensitivity to the gender aspects of the claim (Muggeridge and Maman, 2011).

Asylum seekers are eligible to apply for legal aid but the system can particularly hinder women. The current means of legal aid funding for asylum work discourages legal representatives from taking the most complex cases to appeal. This can be especially damaging for complex gender-related claims for asylum. The existing legal aid funding framework may not cover the additional work required of legal representatives before taking these claims to appeal, and therefore women are vulnerable to losing support at a crucial stage (Muggeridge and Maman, 2011).

Figure 1: The Asylum Tribunal Appeals Process<sup>15</sup>



<sup>15</sup> This diagram shows the flow through asylum appeals process in the tribunal. It does not show the points at which judicial review may be sought, or appeals to higher courts.

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## 2.4 Refugee status determination

There are three key aspects to the refugee status determination (asylum) process. The first aspect (evidential issues) relates to the evidence that is brought to the decision-maker or judge that they must take into account in deciding eligibility for refugee status, including what evidence is available, what is admissible, the weight to be given to it, and the form in which it needs to be presented. The second aspect (legal issues) relates to matters of law and case law, including international protection law such as the Refugee Convention, which decision-makers and judges must comply with. The standard of proof to be applied to the evidence is also a legal issue. The final aspect (procedural issues) relates to practical matters concerning an asylum interview or an appeal at the tribunal. These three aspects are considered below with reference to women in the asylum appeals process.

### Evidential issues

It has been argued that the combination of the lack of corroborative evidence, high standard of proof and the impact of trauma on disclosure creates significant challenges for positive credibility findings for many women (Singer, 2014), the key evidential issue involved in refugee status determination.

#### **Credibility assessment**

The credibility of an applicant's claim that they would be at risk of persecution in their country of origin is a key issue in asylum decisions (UNHCR 2013; Amnesty International and Still Human, Still Here, 2013). In research focusing on women's cases, credibility was found to often be at the core of initial refusals (Muggeridge and Maman, 2011; Cheikh Ali, 2012; (Querton, 2012a). Credibility assessment is based on the judge's approach to the evidence. An appellant's ability to persuade a judge that the testimony given is true is often the most important factor in their appeal.

An analysis of asylum determinations in 1995 found that twice as many women as men were believed by judges (Harvey, 1998). All the refusals of women's cases that were overturned at appeal in the Asylum Aid study were because of an initial flawed credibility assessment (Muggeridge and Maman, 2011). Research into appeals in forced marriage cases found a tendency of judges to project their own political and cultural experiences on to the appellant, which affected their evaluation of credibility. There was also evidence of women's cases being decided on the basis of trivial and minor inconsistencies in their narratives as well as decision-making based on prejudicial gendered assumptions and speculation (Honkala, 2014). Conversely, research suggests that judges who overturned a refusal looked at a claim as a whole, considering whether the appellant had been consistent in the core matters, rather than a close examination of very particular details (Muggeridge and Maman, 2011).

Vicarious traumatisation is a recognised condition whereby a professional develops their own trauma symptoms as a result of being exposed to stories of cruel and inhumane acts perpetrated against others (Richardson, 2001) and may affect judge's ability to assess the evidence before them. Research by Baillot et al., 2013a found that judges use detachment and denial to protect themselves from difficult material and emotions that could lead to vicarious traumatisation. Furthermore, research by Herlihy (2010) found that judges may lack the necessary cultural awareness to make an accurate credibility assessment or use pre-conceived notions about individual behaviour to make their decisions. Despite this, judges have been found to express confidence in their ability to accurately evaluate the credibility of asylum claims (Baillot et al., 2012).

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## Documentary evidence

Credibility assessment is affected by the presence or absence of reliable documentary evidence. Documents relating to women asylum seekers' identity and political activity, their experience of gender-based violence in the public or private sphere, or relevant country information are often either non-existent or hard to access (Querton, 2012a). However, according to UNHCR and Home Office guidelines (UNHCR, 2002; Home Office, 2010), an applicant does not have to provide independent, corroborative evidence in order for their claim to be substantiated. Their claim simply needs to be coherent, consistent and plausible. Despite this Baillot et al. (2012) found a tendency for decision-makers to expect that an applicant will have corroborative evidence and to see it as a disadvantage if they do not.

## Oral testimony

Obtaining an accurate credibility assessment is particularly difficult without supporting documentation as without this, women need to rely on their oral testimony (Singer, 2015). However they may not have the opportunity to give this (Bogner et al., 2007). Where the opportunity is given, providing a narrative that is comprehensive and coherent can be challenging. For example, women victims of sexual violence have reported difficulties in disclosing personal experiences due to the impact of the trauma on recall (Herlihy, 2010), or because they would not discuss such issues in their own culture (Bogner et al., 2007). In addition, dissociative experiences, flashbacks and avoidance behaviours have been found to prevent disclosure (Bogner et al., 2007). And despite research showing that people are unlikely to give consistent narratives about traumatic experiences, an expectation exists among the judiciary that a truthful account will include detailed and consistent material of such experiences (Herlihy, 2010) and there may be distrust of inconsistencies by judges (Baillot et al., 2012).

## Legal issues

The legal structure and guidance around assessing asylum appeals is complex and decisions rely to a substantial degree on how decision-makers and judges apply and interpret the law. A number of aspects of the framework particularly affect female asylum seekers. The key legal issues are discussed below:

The Refugee Convention specifies that the grounds for making an asylum claim are based on the risk of persecution for reasons of race, religion, nationality, political opinion or membership of a **particular social group (PSG)**<sup>16</sup> but do not include gender. To be recognised as a refugee, a woman claiming asylum on the basis that she fears persecution solely because of her gender must demonstrate that this is on account of membership of a PSG. The complexity of its definition means that PSG is the ground most likely to be misinterpreted by decision-makers or legal representatives (Querton, 2012b).

The **standard of proof** in asylum claims is low, often described as the standard of reasonable likelihood or real risk<sup>17</sup>. Tribunal determinations refer to the low standard (Muggeridge and Maman, 2011). However, in practice, there is evidence that in some cases judges have required women's claims of rape to be substantiated by expert or other evidence, and research has suggested that a higher standard of proof may be actually applied (Baillot et al., 2014).

In cases where women fear harm from non-state actors, such as their family or community, decision-makers may assert that women affected by gender-based persecution have a **sufficiency of protection**. In such cases, women face an

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<sup>16</sup> See glossary for definition.

<sup>17</sup> *R v Secretary of State for the Home Department ex p Sivakumaran* [1988] AC 958

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additional legal requirement to show lack of protection as well as risk of harm. It is sometimes deemed that the state will provide protection even if laws against gender-based harm are not enforced or shelters (for example for those who have experienced domestic violence) are not safe (Clayton, 2014).

Decision-makers can consider that an asylum applicant will be safe elsewhere in their country. This is termed an **internal flight alternative** or **internal relocation**. Given that women's asylum claims are more likely than men's to involve non-state agent persecution, women are disproportionately affected by the application of the internal relocation option (Honkala, 2015). The Home Office has developed a 'belt and braces' approach and may refuse asylum claims on the basis that the applicant does not face a real risk of persecution in their home area and that even if they do, they could relocate to another region (Clayton, 2014).

## Procedural issues

The tribunal's structured and adversarial nature can influence ways in which appellants' narratives emerge and how evidence is evaluated (Baillot et al., 2013a). Some tribunals are so busy that demand for private rooms for pre-hearing consultation outstrips supply (Gill et al., 2015) preventing a final opportunity for disclosure.

Research also indicates that practice among the judiciary ranges in terms of the degree to which they are attentive to a woman's wellbeing and comfort and in terms of whether they take on the role of a 'detached arbiter of the competing adversaries' (Baillot et al., 2014: page 64). There is some evidence that a judge's approach may be influenced by the gender of the appellant. Research by Gill et al (2015) indicated that judges were more likely to introduce parties and thoroughly check understanding between the interpreter and the asylum seeker when the appellant was male rather than female.

The evidence also indicates that the gender of the presiding judge may influence their approach, though not always in expected ways. For example Gill et al. (2015) found that female judges were more likely to explain the hearing proceedings, but Jarvis (2003) found examples of female judges being both more and less sympathetic than their male counterparts. This diversity of behaviour perhaps explains why legal representatives have been found to advise against all-female courts on the basis that they would potentially be unsympathetic (Baillot et al., 2013b).

## 2.5 Guidance on asylum appeals and gender

As well as the Refugee Convention, there are key international treaties that oblige states to recognise the rights of women seeking asylum. The first is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which the UK is a signatory. In 2011, the CEDAW Committee noted that gender-sensitive registration, reception, interview and adjudication processes need to be in place to ensure women's equal access to asylum (CEDAW, 2011, emphasis added). In 2014, the CEDAW Committee noted that States should ensure that decision-makers at all levels have the necessary training, tools and guidance on the adjudication of gender-related asylum claims including developing relevant policies and guidance (CEDAW, 2014). The Istanbul Convention, which the UK is expected to ratify, states that parties shall take the necessary legislative measures to ensure that gender guidelines and gender-sensitive asylum procedures are in place (Council of Europe, 2011). Alongside the international treaties, at a national level, the UK's Public Sector Equality Duty

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(PSED) created under the Equality Act 2010<sup>18</sup> applies to asylum tribunals, requiring those serving within tribunals not to discriminate against women.

The following sections describe the UK guidance for judges relating to how gender should be taken into account in assessing asylum claims and making decisions in the tribunal based on the relevant international treaties and the PSED.

## The history of relevant tribunal guidance

In 2000, the Immigration Appellate Authority (IAA) published extensive gender guidelines to be applied in asylum and immigration appeals covering issues such as:

- the definition of persecution and the meaning of serious harm;
- the failure of state protection and the Convention grounds; and
- procedural and evidential issues, including obtaining oral evidence, country of origin information, expert evidence and credibility issues (Berkowitz and Jarvis, 2000).

Two studies examined the implementation of this guidance and found that tribunal judges made very little or no use of these to improve women's treatment in asylum appeals processes (Wallace and Holliday, 2005; Black Women's Rape Action Project and Women Against Rape, 2006).

In September 2006, the Asylum and Immigration Tribunal (AIT) declared that the gender guidelines published by its forerunner, the IAA, were not the policy of the AIT (Ockelton, 2006). There was a recommendation that the immigration judiciary look to the Courts and Tribunals Judiciary's Equal Treatment Bench Book<sup>19</sup> for guidance<sup>20</sup>. However this does not contain guidance that addresses the situation of women asylum seekers. This meant there was no guidance for judges specifically about women's asylum claims.

When the AIT was abolished, asylum appeals were brought within the First-tier and Upper Tribunal (Immigration and Asylum Chamber) (IAC). In February 2010, the practice direction on child, vulnerable adult and sensitive witnesses (Tribunals Judiciary, 2008<sup>21</sup>) was extended from the criminal justice system to asylum appeals. In October 2010, the IAC issued a Joint Presidential Guidance Note on Child, Vulnerable Adults and Sensitive Appellants (Tribunals Judiciary, 2010) which expands on the Practice Direction and is still in use<sup>22</sup>. This research examines the application of this Guidance Note in women's asylum appeals.

## The Guidance Note

As described above, the Joint Presidential Guidance Note (2010) on Child, Vulnerable Adults and Sensitive Appellants, issued in October 2010, concerns the treatment of cases involving children and vulnerable adults at the First-tier Tribunal Immigration and Asylum Chamber. The overall aim of the Guidance Note is to ensure that vulnerable individuals understand and are able to participate in proceedings. Its working principles are based on the importance of everyone 'understanding and being understood' during

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<sup>18</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty>

<sup>19</sup> <https://www.judiciary.gov.uk/publications/equal-treatment-bench-book/>

<sup>20</sup> [http://www.asylumaid.org.uk/wp-](http://www.asylumaid.org.uk/wp-content/uploads/2013/02/Tribunal_Procedure_Rules_AA_response_2009.pdf)

[content/uploads/2013/02/Tribunal\\_Procedure\\_Rules\\_AA\\_response\\_2009.pdf](http://www.asylumaid.org.uk/wp-content/uploads/2013/02/Tribunal_Procedure_Rules_AA_response_2009.pdf)

<sup>21</sup> <https://www.judiciary.gov.uk/publications/pd-child-vulnerable-adult-sens-witnesses/>

<sup>22</sup> <https://www.judiciary.gov.uk/publications/immigration-and-asylum-tribunal-rules-and-legislation-2/>



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the tribunal in order to ensure that ‘the process of law’ is not ‘impeded’ (paragraph 16). It recognises that appellants who have undergone traumatic experiences may be vulnerable and describes what measures immigration judges may consider to avoid re-traumatising them, and to ensure that evidence provided by them is admissible and reliable (Tribunals Judiciary, 2010). This includes: the judge controlling cross-examination; checking the appellant’s understanding and providing clarification; offering breaks and adjournments; recognising that vulnerability can require adapting the procedure to meet appellants’ needs; and, that vulnerability is relevant to decision-making.

In 2013, the president of the First-tier Immigration and Asylum Chamber commented that, following the gender guidance being withdrawn, such issues were covered in other ways, particularly through developed case law and the practice direction *on Child, Vulnerable Adults and Sensitive Appellants* (Tribunals Judiciary, 2008) and its associated guidance note (Tribunals Judiciary, 2010) (Rushton, 2013).

The Guidance Note does not entirely address the gaps that have appeared following removal of the IAA gender guidelines from the tribunal’s policies. Although it addresses problems related to the process and the examination/evaluation of evidence given by vulnerable individuals, it does not address the specific issues faced by women seeking asylum and the nature of their claims. These include the fact that women’s claims may be due to their gender, the need for appropriate questioning and the fact that the status and role of women varies in their countries of origin, relevant as the persecution of women happens within the context of gender roles within their countries (Querton, 2012a).

As the Guidance Note is regarded as covering women’s issues, it is noteworthy that it does not reflect the standards produced by the International Association of Refugee Law Judges (IARLJ) (Mackey, A., and Barnes, J, 2013) which explain how the experiences of women often differ significantly from those of male asylum applicants. The IARLJ standards recommend paying regard to the marginalisation of women’s experiences, and notes that political opinion can be manifested in different ways by women and men, for example being expressed as a refusal to abide by discriminatory laws or to follow prescribed codes of conduct. The standards also state that ‘a delay in the presentation of a claim should not be treated as a presumption that the whole claim lacks credibility’ and that ‘caution must be exercised in using aspects of the claimant’s demeanour, and the manner in which a claimant presents his or her evidence, as a basis for not accepting credibility’.

Finally it is noteworthy that the president of the First-tier Immigration and Asylum Chamber stated that if judges were not following or applying the Guidance Note, this was a matter of judicial management and discipline and should be reported to the relevant resident judge<sup>23</sup> (Rushton, 2013).

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<sup>23</sup> The resident judge is a senior judge who is responsible for the care and conduct of the tribunal centre to which he or she is allocated.



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## 3 Women's experiences

*He [the judge] doesn't believe that I was, you know, being abused, I was going through domestic violence...I know what I went through and for him to just sit down there and say that, it wasn't true. It really broke my heart. (Asylum seeker)*

This chapter explores experiences of the asylum appeals process from the perspectives of women and support organisations. It starts by considering women's expectations before the hearing, then explores their experiences of arriving at court and of the hearing itself. The chapter goes on to look at the period immediately after an appeal hearing and how women found out about the outcome, and concludes by describing the overall impact of the process on women.

### 3.1 Expectations about attending the First-tier Tribunal

As might be anticipated, some women did not know what to expect at the First-tier Tribunal, whereas others did feel informed about the process. Expectations were based on women's past experience of encounters with the Home Office, and on the level of support they received from both formal and informal sources.

#### Past experience

All asylum seekers arriving in the UK must undergo both an initial screening interview and a substantive interview, conducted by officers of UK Visas and Immigration<sup>24</sup>. Under the former detained fast track (DFT) asylum system, some women also reported having been detained following their screening interview. This meant that their asylum interview and First-tier Tribunal hearing took place while in detention. Although not within the scope of this research<sup>25</sup>, such experiences directly informed women's expectations of attending a further First-tier Tribunal hearing, particularly expectations around the style and content of the HOPO's questions. Women anticipated challenging questions or for questions to be asked in a negative way, echoing previous interviews.

*Given my past experience [I thought] that they're [HOPO] going to be rude, they're going to be mean, they're going to try and twist me, twist me, twist me and make me look bad. (Asylum seeker)*

#### Factors affecting preparation and expectations

The nature and level of support a woman received before attending the First-tier Tribunal affected how prepared she felt for her hearing and her expectations of it. But participants also recognised the role they could play in preparing for the hearing, both mentally and practically. Preparation took three forms: logistical, procedural and emotional. In addition, expectations could be influenced by uncertainty around their legal representation.

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<sup>24</sup> Part of the Home Office.

<sup>25</sup> Because DFT appeals take place within a different framework and not in the hearing centres selected for this research.

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## Logistical preparation

Due to the importance of the hearing, even practical issues such as knowing the details about when it was due to take place and how to get there influenced how prepared participants felt. Women felt reassured when they knew these details in good time before the hearing, either through receiving a letter with the date and time from either the tribunal or their legal representative (though participants were not always sure who had sent the letter) or having been contacted directly by their legal representative. In addition, participants said they found it helpful when support organisations were able to provide practical and financial assistance to help them get to the hearing. Unfortunately, there were also instances when participants described being given information about the hearings at very short notice, including examples where women were only given 24 hours' notice because their legal representative had forgotten to inform them of it.

## Procedural preparation

### Information about court processes

The information provided to women by their legal representatives ranged widely, with some participants describing feeling fully briefed while others felt they had had no meaningful information about what would happen. The kind of information women felt was useful was being told who would be present in the courtroom, what their role would be and how the courtroom would look. This orientation process was reinforced if women had had the chance to visit the courtroom before the hearing, an experience that was described as having a positive impact on their expectations of the process and indeed their experiences of the process itself. One participant, for example, described how knowing what to expect on the day of the hearing had helped her feel more relaxed.

**Women felt it was useful to be told who would be present in the courtroom, what their role would be and how the courtroom would look**

*It is important (...) to familiarise yourself with the space. (Asylum seeker)*

Participants also said that the familiarisation process may be further helped if they were able to observe an appeal hearing before experiencing it themselves.

In some instances legal representatives had shown women documents relevant to the appeal and given them guidance about how to act during proceedings. This included advising them to: remember what they had said in their appeal statement; not answer questions if they were unsure about what was being asked; to avoid giving vague answers; and to be brief in their responses. However, concern was expressed that giving brief answers might be detrimental to a woman's case and credibility.

*I felt that was a wrong thing to say because sometimes you need to...explain things properly. Not just be brief... where you use one or two short words, you'll feel like you're trying to hide something...I don't think that was good advice. (Asylum seeker)*

At the opposite end of the spectrum, other participants said they were given very little information from legal representatives about what to expect at the tribunal, even though they had told them that they did not feel prepared. Such concerns were met with assurances that the legal representative would take the leading role in the courtroom. Support organisations echoed women's concerns and said that the degree to which asylum seekers were prepared for the hearing very much depended on the approach and professionalism of their particular legal representative or solicitor. Understandably, participants felt that being less prepared undermined their chances of a successful outcome of the appeal.

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*You've not been prepared at all so you obviously know it's not going to go well unless a miracle happens. (Asylum seeker)*

Although all the women interviewed knew that the HOPO would ask questions, their expectations before the hearing of what it would be like again varied considerably. Some participants had had no discussions about what the HOPO was likely to ask, while others had taken part in role plays with their legal representative, with the solicitor criticising their statement and asking them 'nasty questions' in the way the HOPO's might. Though the role plays were aimed at helping women prepare for the appeal, they could also have the effect of making them feel worried or scared of the process. A support organisation suggested that the best practice approach was that women should meet their legal representative before the hearing to thoroughly discuss the case so that women could understand the legal argument that would be made against them and be better prepared for what to expect, particularly from the HOPO. Women also recognised the importance of thinking about the questions they may be asked in advance of the hearing.

**Women thinking about the questions they may be asked in advance of the hearing was important**

### **Role of supporters**

Women raised concerns that friends who were acting as witnesses at the appeal would be confused or 'caught out' by the questions asked of them as they were unfamiliar with giving evidence in court. A support organisation suggested that there is a role for them in preparing witnesses for potentially challenging questioning styles.

*Witnesses need to be resilient, as resilient as you can get them and prepared for attempts to be undermined. (Support organisation)*

Women also spoke to family members, friends and peers who had been through the asylum appeals process to learn about what could happen during and after the hearing.

*Ask for help. Ask questions. Talk to people who've claimed asylum before, ...What to expect; to be prepared. That's my advice to everybody (Asylum seeker).*

However, there was a danger that this could lead to misinformation and raise unrealistic expectations of what would happen. For example in one case the only information about what to expect was given by family members who had little understanding of the process and had thought that women could be taken to prison. This instilled fear in women at a time when they were already anxious. A support organisation also said that fears about being detained were common among the women they worked with, even though this is not a potential outcome of the First-tier Tribunal.

### **Collaboration**

The level of contact between a legal representative and a woman ranged from having never met, to meeting once or twice, to having met daily for two weeks prior to the hearing. A recommendation among women was that individuals should proactively contact their legal representation to prepare for the hearing.

*They've [the legal representative has] got lots of work to do, you just have to keep on reminding or pushing them ...if I got something...that would help my case I used to write an email and send him the evidence there and then. (Asylum seeker)*

However, in one case a participant was unable to get in contact with their legal representative after trying to call them numerous times before the hearing, which

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created feelings of stress and anxiety. A lack of communication led to women being unaware of the actions that their legal representatives were taking to prepare for the hearing. Other women described not having the opportunity to contribute to their appeal statement, either because they were unaware of the requirement to submit one or because their legal representative drafted it on their behalf (based on previous statements) and did not give them time to review it. A woman described how her legal representative would not discuss their statement with them, which resulted in her only having sight of it the day before the tribunal and being required to sign it on the day of the hearing, before entering the courtroom. These situations sometimes led to inaccurate statements being presented as evidence.

Where participants had a greater level of contact with their legal representatives, including having met the legal representative several times and had contact over the telephone and/or email, they felt more relaxed about attending court. Women also welcomed the legal representative sending them documents by email to sign ahead of the hearing. Where this had happened for example, a woman prepared by reading her appeal statement and refusal letter, which she likened to “revising”. However, a positive relationship and frequent contact with the legal representative did not necessarily eradicate negative expectations around attending court, as uncertainty about not knowing what to expect from the courtroom experience could still weigh heavily on women.

## Emotional preparation

Some women described being scared, confused, anxious and uncertain of what to expect while others said they felt more positive and ready for the tribunal hearing. The range of emotions were influenced by the level and type of support they had been able to access and apparent gaps in provision. Women reported that the role of support was important in making sure they felt emotionally prepared for their hearing, ready to enter the courtroom, and prepared to deal with whatever happened. In particular, women highlighted the benefit of being assigned a key worker by the support organisation, whose role was to provide practical support including recommending legal representatives and to provide emotional support, such as the opportunity to discuss traumatic experiences. Participants also felt that it was important for key workers to reinforce the need to have a realistic expectation that the appeal might not be successful.

In addition to support from organisations focused on helping asylum seekers, women recalled speaking with their wider support network about their fears of going to court, having to go through the process alone and about not knowing what to expect. This wider network included friends and professionals, such as counsellors. One of the key things that women described drawing from this support was the recognition of the importance of trying to maintain a positive attitude despite the fact that it was challenging to do so.

*It's not easy at all to be in this position and situation, but don't give up 'cause the victory is there...seek as much support as you can...'cause you need it. You need your sanity. (Asylum seeker)*

## Uncertainty and change of legal representative

Uncertainty around legal representation undermined women's confidence in the process and could negatively affect their expectations of the court experience and the outcome of their case. In some cases this was caused by the fact that the legal representative did not confirm that they

**Some women felt the legal representative 'didn't really care'**

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would be able to attend the hearing. Alternatively there could be concern over a lastminute change in legal representative<sup>26</sup>. For example, one participant described how shortly before the appeal their case had been handed over to a trainee solicitor, who was perceived as being less experienced and less knowledgeable about her case than her original representative. Some women said that the difficulty with their legal representative not being able to attend was because they were not available on that date, but others said they felt it was because the legal representative 'didn't really care'.

## 3.2 Before entering the courtroom

This section explores women's experiences on the day of their hearing before entering the courtroom, including what happened upon arrival, the time spent in the waiting area and the perceived impact of timeliness, professional support and the presence of others.

### Arrival

#### Getting to the tribunal

Women recalled being anxious about getting to court on time. There were a number of reasons for this, from having to take their children to childcare on the morning of the hearing, to finding the court, some having never visited the building or the city before. Among the women taking part in this research, none reported being given assistance with either childcare or travel arrangements<sup>27</sup>. However, support organisations described providing practical and financial support for this stage in the process, for example by helping women to apply for funds to cover their travel to court.

#### Entering the court

Women described having 'no clue' what they were supposed to do on arrival at the court building. In addition, women reported a range of experiences that contributed to the perception that they were treated like a 'criminal'. These included the building looking like criminal courts they had seen on television and being searched each time they entered or left the building. These experiences led women to question why they had been placed in such an environment.

*I am not a criminal, why am I here? (Asylum seeker)*

Support organisations suggested that in some cultures only those who have committed a crime appear in front of judges. They highlighted the importance of support organisations explaining that it is a positive opportunity to go in front of a judge and potentially get the chance to overturn the original refusal decision. Women also felt that it was important that they should appear confident in the courtroom itself.

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<sup>26</sup> In asylum appeals as in other legal cases, a solicitor or caseworker undertakes the preparatory work with the client, while a barrister may sometimes represents them at the hearing.

<sup>27</sup> Women on asylum support are entitled to have their travel to the hearing paid for in advance. It is unclear whether all of the women taking part in this research were aware of this.

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## Waiting

Women's experience of the waiting room was influenced by how long they had to wait, the professional support they received and the presence of others.

### Waiting time

The normal practice of tribunals is to call everyone at 10am, and all of the women interviewed as part of this study understood that they had to arrive at this time. Some women expected to be seen straightaway, however, as is normal, many participants said they had to wait several hours before their case was heard and that they were given no indication of when their hearing might begin. Participants felt that it was important that they should be more information about the length of time they might have to wait, so that they could bring food and medication if it was needed.

Where a delay was related to the Home Office (for example because Home Office officials did not have all the relevant documentation), there was an example of a woman being given a choice over whether to proceed on that day or to come back at another date. Participants viewed a later hearing, especially when the waiting time was unclear, as particularly problematic for women with children, regardless of whether the children were present or in childcare. If children were present a lengthy waiting period was challenging for them, and if not present childcare arrangements had to be considered.

### Presence of others

Women's experiences of professional support whilst waiting at the tribunal were underpinned by the nature and extent of preparation, whether their legal representative was present, and the presence of family and other supporters.

### Preparation

Preparatory discussions between women and legal representatives in the waiting room included the legal representative proactively preparing the woman and her supporters, as well as the woman asking questions, such as what would happen in court, whether or not she had to be present, and what to expect of the cross-examination. Where legal representatives responded to such questions, they explained the procedural elements of the court (such as the HOPO review of evidence and how long this would take), court etiquette (such as standing for the judge), the layout of the courtroom, and that they could take time answering questions. However, support organisations said that it was common for women to meet their legal representative and interpreter just before the hearing, at which point there was only time for very limited discussion. When this happened, women said they felt that they were not fully prepared about what to expect in the courtroom. In such cases, their legal representative told them that they would take charge of proceedings, with one woman recalling her solicitor remarking:

*No question, don't be scared, don't worry, lawyer is there. (Asylum seeker)*

While this was certainly intended to be reassuring, the participant said that it actually increased her anxiety as she remained unclear about what would happen.

Participants explained that private consultation rooms were available for women to discuss and prepare their case with their legal

representative. However, these were often in use, which led to sensitive conversations taking place in the waiting room in front of others.

**Lack of consultation rooms led to sensitive conversations taking place in the waiting room**



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### Absence of legal representation

While some women were surprised when the legal representative did not attend the hearing, others did not expect them to be there. This was either because they had been unable to contact them before the hearing or because the representative had told the Home Office that they could not attend and yet the date had not been changed.

*It was the people from Home Office, the judge, interpreter and...just myself...And the judge asking me, 'Why your solicitor don't come?' I told them, 'No, my solicitor not come because he send the letter [to the] Home Office, for change the date because he's busy for this time'. I say, 'I don't know why Home Office not change the date.'* (Asylum seeker)

Women described feeling alone and helpless when their legal representative was not there.

*When I looked and couldn't find my solicitor I felt helpless. This is supposed to be a developed country: why would they do that? In my country you pay someone to help and they will do their job; here they can get away with it.* (Asylum seeker)

### Family and wider support networks

The waiting area at courts could feel inhospitable and participants said that seeing other people leaving the court looking unhappy increased their anxiety. Some women were able to bring along family, friends, church members or peers for support. This could provide both emotional support, in the form of reassurance, and practical help in terms of staying with the women's children in the waiting room while they were in the hearing. However, the support was not always experienced as helpful. In some cases, participants said that friends or family heightened their anxiety by talking about potential negative outcomes, including the risk of imprisonment.

An important issue faced by participants without the support of others was the lack of childcare facilities at courtrooms. In one case a legal representative had requested that children wait in the main waiting area while they spoke with the woman in a private room.

## 3.3 In the hearing

This section explores women's experiences of the legal roles in the courtroom as well as interpreters and support providers. It then examines how women's needs are accommodated during appeal hearings and concludes by focusing on the role of the gender of those at the tribunal and the impact this may have on women's experiences.

### Legal personnel and interpreters at the tribunal

A judge and HOPO were present at all hearings; however, as described in section 3.1, this was not always the case for legal representatives or interpreters.

### Legal representation

Positive aspects of legal representation were underpinned by their good interpersonal skills.

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*She [the barrister] was so nice. We didn't talk about anything to do with the [case on the day] - we have been through this a million times by that stage, so she was just questioning my friends, who they are, you know what they're up to. She had called these people, really prepared up to the last dot. They had called most of them, gone through everything over the phone, so it was just about are you ready, are you prepared. (Asylum seeker)*

In contrast, negative experiences were underpinned by two main factors.

- **Feeling that the legal representative prevented them from contributing to the hearing:** Examples included the representative telling a woman that she was unable to speak directly with the judge or was told she could not clarify parts of the hearing she felt to be incorrect as it would not affect the outcome of the appeal. This could be perceived as contributing to the appeal being unsuccessful.

*Sometimes when I try to talk, she [the legal representative] will ask me like to keep quiet and...she do the talking...I didn't feel quite comfortable about it because I feel I wasn't allowed to speak up more...at the end of the day, that was what affected the decision. (Asylum seeker)*

- **Believing that legal representatives had inadequate skills:** indications of inadequate skills included the representative appearing unprepared, unconfident, unclear, inaccurate, that they lacked understanding of the case, or had not made sufficient use of the available evidence.

*I had a negative mind of the barrister because...she didn't really defend me on that time. She could have said things and she didn't say those things. (Asylum seeker)*

While in general participants felt that not having legal representation undermined the likelihood that their appeal would be successful, there were women who believed that there were benefits to women representing themselves because judges would take into account their lack of knowledge and experience. This view could translate into an unrealistic expectation of the success rate of appellants who did not have a legal representative.

*75 per cent of people who represent themselves they do win their cases, 'cause I think the judge get a bit lenient when you represent yourself 'cause he knows that now you don't have a lawyer that you can't do anything. (Asylum seeker)*

## Judges

Judges' approach had a substantial effect on women's experiences. Together asylum seekers and participants from support organisations identified six attributes of a judge they felt made the appeal process a more positive experience.

- **Facilitating a women's understanding of proceedings:** It was reported that there was a wide discrepancy in the degree to which judges explained what would happen at the beginning of the hearing. In some cases judges were described as having introduced themselves and others in the courtroom, explained the process and asked women to let them know if they did not understand anything.

*A good judge...will introduce themselves, say what their role is, say what the Home Office and the solicitor's role is...So he explains the whole process before*

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*she starts...making it as fair as possible for her to give...her statement. (Support organisation)*

However, participants also said that in other cases there was no explanation of the process and women reported that they did not always feel able to speak up if they did not understand something. This situation was exacerbated by the use of technical language and when English was not the first language of the asylum seeker.

- **Impartiality:** Some women expected judges to be impartial while others became aware of its importance during the hearing when the judge challenged the HOPO's level of preparation or their questioning style. For example, in a case of gender-based violence a participant recalled the judge stopped the HOPO from asking questions about medical evidence as the information could be obtained from other sources. In contrast, some women whose cases were unsuccessful felt the judge was biased when they were perceived to take the side of the HOPO, adopted an accusatory approach towards the woman, appeared to not want to understand her case, or were felt to hold a prejudiced view of them. For example, a woman reported that immediately after the hearing had finished and while she was still in the courtroom, the judge had questioned her sexuality because of her appearance and family status.

*When they finish and the Home Office rep sat there and everyone went out and I was in there with them. They were talking, and he [the judge] said to me, you know, 'But you don't look like a lesbian, you don't dress like a lesbian'. (Asylum seeker)*

- **A desire to understand their case:** This was conveyed when the judge clarified points of uncertainty or facilitated a woman's contribution in the hearing.

*[The judge gave] Very nice, simple, clear instructions, 'Talk louder, we all have to hear you'. You know, 'If you don't understand anything, ask'. (Asylum seeker)*

In contrast when the judge's attention was seldom directed at the woman, this could be interpreted as a lack of will to understand the case, potentially because the outcome had been decided.

*He [the judge] didn't ask me any questions. Up to now, I feel that the judge already made up his mind about our case before we went. (Asylum seeker)*

- **Approach and manner:** From women's accounts it is clear that judges varied considerably in the extent to which they adopted an informal or formal approach to the hearing and their interaction with the women. In some cases, the judges seem to have made an effort to engage with the women, who then described them as 'polite', 'respectful', 'kind' and 'sympathetic'. This impression was reinforced when judges accommodated the needs of the woman and her supporters, for example arranging for extra seats or allowing a witness to present their evidence first because they had to leave early.

**Judges varied considerably in the extent to which they adopted an informal or formal approach**

In contrast, when judges took a formal approach, they were described as 'scary' and as having a 'harsh' or 'horrible' way of asking them questions and also the way they questioned others in the courtroom including the HOPO and legal representative. From the women's point of view this exacerbated an already stressful situation. This approach was also interpreted as expressing dislike of the women or having a preconceived opinion of her.

*When I came back, I say to one of my friends, 'Oh my God. I think this judge hates me.'...The judge never asks me a question...The Home Office representative was asking me questions and then the only thing the judge says was, 'Respond.' That's it. (Asylum seeker)*

- **Awareness of women's circumstances:** women were put more at ease when judges displayed awareness of their culture and country of origin and of the nature of their claim, particularly in sexuality and gender-related-harm cases. Without this awareness, judges could unwittingly make what were perceived to be inappropriate comments or requests, for example when a judge had instructed a woman to look directly at him without realising that this was a sign of disrespect in her culture.
- **Concern with women's wellbeing:** Women felt it was important that the judge displayed an appropriate concern with their wellbeing, for example checking on their comfort. There were examples given when judges were perceived as lacking a basic concern with women's comfort, for example where they had not recognised or acted upon signs of stress or asked whether the woman needed a break.

It is worth noting that women's views of the judge were not determined by whether they had been successful in their appeal, as there were examples of women with both successful and unsuccessful outcomes who described judges in a positive way.

## The role of the Home Office Presenting Officer

At the hearings the Home Office is represented by a Home Office Presenting Officer (HOPO) whose primary role is to put the case for the Home Office and test the evidence given by the woman (and any witnesses) by cross-examination. Support organisations said it was important to prepare women for this.

**The adversarial nature of the process could still cause stress and upset**

While some women recognised that the role of the HOPO was to argue in favour of the Home Office's initial decision, the adversarial nature of the process could still cause stress and upset. This manifested itself when women felt that HOPOs had not focused on the totality of the evidence, for example not fully questioning all witnesses present, or had concentrated on the reasons given for the initial refusal rather than asking questions about the case itself. This feeling was compounded when women were unable to fully respond to their case by the HOPO.

But the main way which the process had a negative effect on women's experiences was through the approach HOPOs took when questioning them. This was described in highly emotive terms such as 'horrible', 'difficult', 'embarrassing', and as being too focused on the issue of credibility. Women reported being accused of lying or felt that the HOPO had focused on aspects of the case which suggested this.

*I think the Home Office lawyers are there to prove you wrong...They have to win the case and get paid...At times they ask questions that you feel oh, you shouldn't ask this...you can cry at times. They are really hard questions. It's like you're going through a problem and somebody is making fun out of it. (Asylum seeker)*

This approach to the way the women were questioned could also lead them to feel that the HOPO had no understanding of the women's circumstances or those in her country of origin or were not able to empathise with their plight.

*So it's hard to take what she's saying, to understand what she's saying...And you lived that life and...they're just reading through what it said and they didn't live your life, so that's really hard. That's really harsh. (Asylum seeker)*

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However, the adversarial nature of the proceedings did not mean that HOPOs were necessarily felt to be hostile. For example, a participant who had experience of two different HOPOs at different hearings described how exchanges with the first did not feel antagonistic or unnecessarily challenging, which led to a more positive or at least neutral perception of the HOPO.

*I thought that maybe, as a woman, she would have empathy... I felt more confident... but the second time, as they [Home Office] appealed, it was man and his way of talking... I was a bit scared and I wasn't very confident". (Asylum seeker)*

The participant went on to describe how she felt more at ease with the first HOPO and that they were interested in her answers. The participant felt the different manner could be attributed to their personalities rather than gender.

## The role of interpreters

Interpreters are commonly used at appeal hearings because English is often not asylum seekers' first language<sup>28</sup>. Some women welcomed the fact that an interpreter was available, but for others an interpreter was unexpected and unwanted and created feelings of confusion. This was because women had been unaware of this option or had not requested their services because they felt they had a good command of English. Even if women felt they were not needed, they could feel obligated to use an interpreter as they were unfamiliar with the court process and were not explicitly given the option of not doing so. A judge may also insist on an interpreter being used if present.

**Women sometimes felt that their case had been misrepresented because of poor quality translation**

Experiences of the interpreter were influenced by three factors, discussed below.

- **Ability to speak the woman's dialect and translate proceedings:** Some interpreters spoke a different dialect to the woman, which made it difficult for the women to understand what they were saying. In addition, women sometimes felt that their case had been misrepresented because of poor quality translation.

*He [the interpreter] did not understand the case was about sexuality and...he wasn't saying the correct way I was saying or I was trying to explain. He was explaining in his way. (Asylum seeker)*

However, participants also recognised that their assessment of the accuracy of the translation was dependent on them having a good working knowledge of English, so those with little or no understanding may have been unaware of the quality of translation.

- **Manner and style of speaking:** Participants said that they did not always feel that the interpreter was kind or empathetic. An interpreter's style of speaking in terms of their accent and tone of voice also influenced how women felt about the experience of working with them.
- **Interpreters' cultural background:** There could be difficulties when an interpreter had the same cultural background as the woman. This could cause problems when there were potential clashes between how the woman and the interpreter viewed their country of origin, or where this was felt likely. This could lead to a woman being unsure about what information to divulge or be concerned about the confidentiality of the appeal when the interpreter came from the same community.

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<sup>28</sup> An interpreter can be arranged by a woman's legal representative or the court.



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## An all-female court

Women's experiences included instances of all-male and all-female courts alongside cases where court officials included both genders. For some, the gender of the people in these roles was felt to be less important to their experiences and outcome than their manner, understanding of the case and performing their role to a high standard.

*I didn't mind because he [the woman's legal representative] was very good...he gave time to talk and he listened to me...when he felt I was unwell, talking about all that happened in my country, we were taking breaks. (Asylum seeker)*

### Support organisations felt that appeal courts should ask women whether they have a preference for the gender of officials at the tribunal

However, there were other participants who felt the gender of the judge HOPO or interpreter had impacted on experiences of the hearing, and ultimately affected the outcome. Support organisations felt that appeal courts should ask women whether they have a preference for the gender of officials at the tribunal. This was because they felt not all of their clients could

openly discuss some sensitive issues in front of men.

*If your solicitor is male and the Home Office male and the judge male...they're talking about quite intimate things, particularly you know for FGM...or rape or anything like that. It must be incredibly difficult and I know the women haven't always said exactly what they want to say. (Support organisation)*

This was echoed by the experiences of some women.

*I didn't have the mind, the courage, to explain because he's [the HOPO] a guy. I was feeling ashamed. We didn't talk that much...I didn't explain - because he's a man! (Asylum seeker)*

In contrast, women had felt hopeful when they had a female judge as they anticipated another woman would show more empathy, understanding, and sensitivity if they had to discuss their experience of past trauma such as sexual abuse at the hearing.

The Guidance Note indicates that an all-female court can be offered to appellants. There was uncertainty among support organisations over whether women were explicitly made aware of this, and this was reflected in women's accounts. Some women said that they would have been interested in this option even when they had a positive outcome with a mixed gender court. Conversely, a preference for an all-male court was also expressed. This was based on previous experience of finding men more understanding and less judgemental than women when discussing issues around sexuality.

*Sometimes woman could be harsh...they are more questioning you...The man is more like asking you question, try to understand you but womans, they will not understand you, just try to judge you... If I go to some places regarding my sexuality or my life or things, I prefer to talk to a man. (Asylum seeker)*

## The nature of support received

As discussed, both formal and informal support played an integral role in women's experiences. At the hearing, supporters included partners, family members, friends, members of the faith community, other asylum seekers, representatives from support organisations and expert witnesses. While some women had over ten supporters in the courtroom, others had none. In some cases this was because the women did not have a support network to draw on, but it could also be because they were not aware that

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representatives from support organisations and other supporters could accompany them to tribunals. It was clear a lack of support could compound an already difficult and stressful experience, with one participant describing it as 'emotional torture'.

*I felt like I was on my own in there and everyone was against me. (Asylum seeker)*

Supporters attended the hearing to give evidence, show their support for the credibility of a woman's case, and to give practical and emotional support. The benefits of support included increased confidence and resolve.

*Having supporters with you, standing by you, is the best thing. Because you know that no matter what happen I've got people here with me. So...that makes you feel a bit confident and more... relaxed. (Asylum seeker)*

One perception among participants was that the HOPO and legal representative treated women with support differently, because the presence of supporters demonstrated that others also believed in their asylum claim.

## Women's comfort and wellbeing at the tribunal

The Guidance Note states that adequate breaks are to be provided during the hearing and that the appellant's comfort and understanding of proceedings should be checked throughout. Women described hearings ranging from 30 minutes to three hours. One of the reasons given for a shorter hearing was the absence of witnesses. Women were not always offered breaks and judges were felt to not always attend to a woman's wellbeing and needs. For example, one woman experienced panic attacks in the courtroom but felt that the judge had either been unaware of or unsympathetic about this. However in other instances women were offered breaks or requested them for a specific reason such as feeling unwell. Not all women were aware that they could request this and this would have been welcomed by some. In addition to breaks, other examples of attending to a women's wellbeing included the judge confirming whether a woman wanted to continue when she felt unwell and providing a drink of water.

As described in section 3.2, another area of concern to women and support organisations was childcare. For example, in one case although it had not been the woman's preferred option, her children had been present at the hearing. The woman found this distracting, even though her lawyer had tried to be helpful by being aware that she needed to attend to them. There was also concern that if in the courtroom children may see their mother in a stressful situation. Conversely there was another example where a woman's children had not been allowed into the courtroom and had been left to wait outside.

*I think they [the children] sit on their own because we, thought we were all going to go in. I was expecting, until we all went to the door, they said, 'No, no, no, the children cannot, can't come in,' and then they took them back. Up to now, I didn't even know what happened with the children. (Asylum seeker)*

Support organisations described looking after children outside of the courtroom while the woman was inside, although this was not reported by the women interviewed.

## The end of the hearing

At the end of a hearing women described how the judge relayed the outcome of the hearing, told them that they would receive a judgment within a specified period of time (usual between two weeks and a month) or gave extra time for the expert witness to collect more evidence.

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*The judge couldn't able to pass any verdict at that time, so he gave the expert witness another - he gave us [x] months to bring more evidence from the expert witness. (Asylum seeker)*

Women's feelings at the end of the hearing ranged from feeling liberated and satisfied that it was over, especially when it was felt the hearing had gone relatively well, to feeling exhausted, emotionally drained and disappointed when this was not the case.

*I was, you know, hundred times better... because I was too much scared for a few things...I had a new solicitor...so I was too much worried but after the hearing, I was sort of satisfied that, whatever is will be the decision, the hearing is gone ... So, I was just satisfied that there is nothing wrong apparently. (Asylum seeker)*

*I was tired physically, mentally, emotionally and spiritually. I was drained, really tired, because I've been fighting, it's like I've been fighting all my life. I don't think I had any more strength to fight. Honestly. I thought I'd fight enough. (Asylum seeker)*

In one case, the behaviour of officials at the end of the appeal seemed to undermine a participant's confidence in the process, even if there was a potentially innocent explanation. One woman reported finding this stage 'suspicious' when the judge, legal representative and HOPO then had a meeting without her being present, which made her feel that somehow her credibility was being questioned.

## 3.4 After the tribunal

This section explores women's experiences after the tribunal hearing. This includes women's experiences of hearing the outcome and their views on the determination document. It goes on to explore next steps in the period after the hearing and the role of various types of support, including gaps in support provision, before setting out the impact of the process on the women.

### Hearing the outcome of the appeal

Although women were told they would find out about the outcome of their appeal between two weeks and a month after the date of the hearing, in reality it varied between a week and two months. In one case accommodation problems meant a participant had moved since the hearing, which meant that the letter had to be redirected to their new address. This was problematic because upon receiving the determination there could only be a very short time left of the appeal period, with the shortest timeframe reported as being as little as two days.<sup>29</sup>

The First-tier Tribunal sends out the determination to the woman and to their legal representative if they have one. In cases where women were clear about the origin of the determination, it had been sent from their legal representation, either spontaneously or in follow up to a phone call made by the legal representative. Women's views on the determination document were driven by one or more of three factors: length, language and content.

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<sup>29</sup> The time allowed for submitting an appeal is 14 days from when the decision is sent, or five if the appellant is in detention. However, at the time when some of these appeals were heard it would have been 10 working days, five if the woman was in detention, and two in the DFT. The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2604 replacing the Asylum and Immigration Tribunal (Procedure) Rules 2005 SI 230.

- **Length:** for some women, the determination was too long and as such the decision was not easy to find.
- **Language:** some women found the document difficult because of the complexity of the language it used. For example, some women did not understand the case law and legal content and terminology. Determinations were written in English rather than a woman's first language, which was a further barrier to comprehension in some cases. To overcome this issue women reported using Google Translate or sought formal or informal support.
- **The content:** women's responses were obviously affected by whether the judgement was in their favour or not. However, the reasons for a negative outcome were also important, particularly if it included doubt about their credibility because they felt they were being accused of lying.

*He [the judge] doesn't believe that I was, you know, being abused, I was going through domestic violence...I know what I went through and for him to just sit down there and say that, it wasn't true. It really broke my heart. (Asylum seeker)*

There could also be suspicion that the judgement reflected a lack of understanding of their case and some blamed it on their mistrust of men and inability to form new relationships.

*That day when I got the letter...and I thought oh God this is going to be a good news and it says refuse, because the fact that I didn't make a family here. Yes I didn't make a family here. (Asylum seeker)*

## Support upon receiving an appeal outcome

The role, variation in, and impact of both formal and informal support women received after hearing the appeal outcome are explored in this section. Gaps in support available after the tribunal are also highlighted.

### Role of legal representation

Where a woman had contact with her legal representative following a positive outcome, the representative explained the Home Office's right to apply for permission to appeal and the number of days within which this could take place. There were examples of good practice where the legal representative had also contacted the woman once the period for Home Office appeal was over to reassure her that her decision had not been appealed, which women were relieved to hear.

#### Where the outcome was a refusal some women had their file closed, though it was not always clear why

Where the outcome was a refusal some women with legal representation had their file closed at this point, though it was not always clear why. When they did receive an explanation, it centred on the fact that the representative felt they had a weak case or a lack of evidence. In some cases the legal representative told participants they agreed with the decision of the judge.

*The...lawyer said that they agree with what the judge said. So, therefore, they cannot represent anymore, so they...told me my case has been closed and then you can give me my files back. (Asylum seeker)*

Some women with closed cases found a new solicitor and submitted a fresh claim or appealed to the Upper Tribunal and subsequently had successful outcomes. Medical evidence for a fresh claim could help increase a woman's confidence about going through the process again. Among participants in this study, some were still in the

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process of looking for a new solicitor, submitting a fresh claim, or were unsure whether they would put in a fresh claim due to their negative experiences so far.

Legal advice at this stage helped women feel positive about the future and informed about next steps. Women described their legal representative telling them what they would need to do to submit a fresh claim when their appeal was unsuccessful. Although disappointing at the time, women appreciated the legal representatives' willingness to take the case forward. One participant described the positive impact this had on her mental health and that it made her feel more hopeful about the future.

*These amazing lawyers...which helped me win, and also see life in another way and not just on a negative side. (Asylum seeker)*

For women who had no legal representation and a negative outcome, options were limited and they felt unable to challenge the determination.

## Role of other forms of support

Women recalled receiving emotional, practical, financial or psychological support following their tribunal, hearing from sources such as peers who had been through the asylum system, women's groups, support organisations, GPs, church pastors and counsellors. Of particular importance to women was the emotional support offered by peers, as they found it easier to discuss their experiences with others who had experience of the process themselves.

**Support organisations and supporters from faith communities also provided practical and emotional support**

Where women had engaged with support organisations during and/or after the hearing, they played an important role in helping women to understand the appeal decision, find other services and obtain further support. Practical and financial assistance was provided with a range of issues, including:

- help understanding the content of the determination document;
- contacting the legal representative on the woman's behalf;
- help finding new legal representation;
- help preparing material for appeal;
- introductions to a group for asylum seekers whose claims/appeals had been refused;
- help to obtain counselling;
- finding suitable accommodation;
- providing an address for correspondence to be delivered in the absence of a permanent fixed address. This option was also used to help protect against wider disclosure of a woman's sexuality;
- providing weekly living allowance; and
- monthly meetings which provided lunch and social activities.

Support organisations and supporters from faith communities also provided practical and emotional support to some women after the tribunal hearing. This included help with interpreting the determination document, emotional support if they had been refused, and help with seeking employment if they had received a positive outcome.

Women spoke of two impacts that access to informal support had had on them after the tribunal.

- **Increased confidence:** women reported feeling more confident when they had support after the tribunal hearing. For example, women felt good about



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themselves when they had received positive feedback from peers who had seen the woman in court representing herself.

- **Sense of belonging:** being part of a support organisation or women's groups provided women with a sense of belonging and having friends, and as a result they felt less isolated.

*I feel like I have a family. (Asylum seeker)*

Without the belief and trust of the support organisation and the support of others who had experienced similar situations, women could imagine a very negative situation where they may have been at risk of self-harm.

*When I went to [name of support organisation], I was very very depressed... I was even taking anti-depressants. I only thought about ending myself (....) when I met them, things started to work (...) they gave me hope... hope that maybe one day the situation would change... (Asylum seeker)*

## Gaps in support

Women would have welcomed additional support around accommodation and finding legal representation, views echoed by support organisations who said that more awareness raising and support was needed for women about how to access good legal advice. This was felt to be particularly important in the context that there was less legal aid available compared with two years ago, the impact of which may be that more women have to represent themselves at the First-tier Tribunal.<sup>30</sup>

*They may find themselves making appeals on their own, independently representing themselves, and getting that paperwork process is a real challenge given the short timeline as well. (Support organisation)*

Women without access to support had found it difficult to find their own solicitor when their current legal representative had closed the case or they had moved out of the legal representative's catchment area. This was exacerbated by a tight deadline to appeal.

Support organisations highlighted further issues around a lack of support that were underpinned by challenges related to accessibility and awareness. This included access to affordable legal representation, counselling services, information about what asylum is and what the process of asylum and appeals entails, and childcare during the appeal hearing.

Women and support organisations felt that women's experiences of the appeals process could be more positive if there was more awareness and understanding among judges and legal representatives around the experiences and impact of issues such as FGM, same sex relationships, sexual and domestic violence and trafficking. However, it was acknowledged that there are often cultural and gender-specific barriers that

**There are often cultural and gender-specific barriers that prevent women from fully disclosing some issues**

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<sup>30</sup> This view among support organisations may have been informed by the effect of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO), which removed legal aid from immigration matters with effect from April 2013. This followed other cumulative cuts in immigration and asylum legal aid, documented e.g. by Sheona York, *The end of legal aid in immigration: a barrier to access to justice for migrants and a decline in the rule of law*, Journal of Immigration, Asylum and Nationality Law (2013) Vol. 27.2. The effect of LASPO on asylum appeals is indirect, and no published data were identified as to how many women asylum appellants are unrepresented following implementation of LASPO.

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prevent women from fully disclosing such issues. A view among support organisations was that this may in part be resolved by providing the option of female legal representation and a female interpreter; however this view was not always shared by women.

## Impact of going through the asylum appeals hearing

Women experienced a range of feelings and emotions during the hearing, from finding it stressful, intimidating and being unsure of what would happen, to viewing it as their chance to get a successful outcome.

*I liked the last experience...everyone was so positive...Fight, we're going to fight, we're going to win, that kind of attitude. It was really, really nice. (Asylum seeker)*

The effect of the appeals process on women could be significant. Even with a positive outcome, some women had felt scared or wanted to put the experience behind them. This could mean that they were reluctant to return to court to support other women going through the process or they engaged in symbolic acts to expunge the experience, such as burning their appeal paperwork. For some of those with an unsuccessful outcome, the impact on their wellbeing had deterred them from wanting to go through the appeals process again, even if they had been advised to do so.

*I got a letter from the Home Office...that they refused me. And I was like, again, I can't deal with that. I just had enough and I feel more or less, me not being here, it just, you know it would be better off. (Asylum seeker)*

There were also a range of practical impacts on those with negative outcomes, the most immediate of which was the risk of being left homeless and a lack of financial support and, due to the potentially lengthy timeframe of the appeals process, the feeling that they were left in limbo.

*'I had to wait a long time before the appeal which is really tiring. You are like losing [x] years. You can't go to school. You can't...live your life. You can't work. You can't do anything, just sitting... They play with you.'* (Asylum seeker)

When considering recommendations for other women going through the process, women described the importance of proactive preparation, both mental and practical. This included making contact with the legal representative, accessing support organisations, visiting the tribunal in advance of the hearing, thinking about the questions they may be asked, and speaking with women who had been through the process.

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## 4 The legal process of women's asylum appeals

*You've not been prepared at all so you obviously know it's not going to go well unless a miracle happens. (Asylum seeker)*

This chapter focuses on two questions: what are the factors that underpin women's asylum claims being successful on appeal in the First-tier Tribunal, and how is the Joint Presidential Guidance Note of 2010 being implemented in women's cases? The findings in the chapter are drawn from interviews with legal representatives and First-tier Tribunal judges, as well as analysis of case files.

In a number of the files analysed, the final decision of the First-tier Tribunal, which resulted in the grant of refugee status, was given after the woman went through a First-tier Tribunal hearing for a second time. This is unusual, and in most cases resulted from persistent legal applications outside the standard procedure.

### 4.1 The substance of women's claims

Legal representatives and judges said that there were two aspects of asylum appeals often encountered in women's cases. Firstly, gender-based violence (GBV) was commonly an issue in women's asylum appeals and that this brought particular challenges in obtaining, presenting and assessing evidence. How effectively these challenges were addressed influenced whether the claim succeeded on appeal. Secondly, it was common for women to have suffered or to be in fear of harm from family or other private citizens (as distinct from the state). Where this was the case, the appeal would need to deal with whether the woman could be protected by her home state, or live safely in another part of that country.

#### Gender-based violence

GBV includes rape and sexual assault, domestic violence, 'honour' killing, forced marriage, FGM and trafficking. Participants said that this form of violence presents three particular challenges in asylum appeals:

- it may be difficult for the woman to disclose what has happened for reasons of shame, loyalty, current threats to herself or her family, or difficulty expressing the nature and extent of the harm;
- where the harm happened or is feared in the private sphere, supporting evidence may be more difficult to obtain; and
- there may be no visible signs of physical harm and psychological impacts may be difficult to evidence; in addition both signs and symptoms may only be attributable to their causes by highly skilled medical practitioners.

**Gender-based violence was commonly an issue in women's asylum appeals and that brought particular challenges**

These are also challenges at the stage of the initial claim, and, as discussed below, the extent to which they have been met at the initial stage may influence how effectively they can be dealt with on appeal.

#### Barriers to disclosure

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Participants identified a number of barriers for women in disclosing that they had suffered GBV. These included shame, cultural constraint, lack of familiarity with speaking about their experience, threats to themselves or their family, lack of trust in the system, and dominance by male relatives. There was a view among legal representatives that these barriers were particularly acute for women from rural backgrounds or those with little education. Legal representatives also said that women did not always know that abuse they had suffered could be a basis for claiming asylum.

Participants identified barriers to disclosure of GBV, not only arising from the woman's circumstances and experience but also from the operation of the asylum system. Barriers to disclosure again were said to affect women with little education or from rural backgrounds particularly acutely, and were identified in all stages of the process.

*This system is meant to encourage people to tell their story but it does the opposite... The experience of disclosing horrific things at every stage is wrong. The tribunal; the Home Office interview rooms with the chairs chained to the floor; the policies; the style of the whole thing. It's not the right environment to ask someone to make a disclosure... There needs to be more support for women who have been raped. (Legal representative)*

Although this research does not analyse the asylum process in the Home Office before the case is appealed, legal representative interviews and file analysis revealed that sometimes disclosure was not facilitated at the Home Office interview, and this created further problems at the appeal stage.

**Home Office interviewers did not acknowledge when rape or torture was mentioned, or ask further about it**

Examples of this were seen in three of the files analysed where Home Office interviewers did not acknowledge when rape or torture was mentioned, or ask further about it, apart from, in one case, whether the applicant had seen a doctor. The reason for not acknowledging rape or torture was not clear from the case files, but legal representatives suggested that both training and a change in approach was needed to help Home Office interviewers respond to and facilitate disclosure:

*Home Office interviewers need training in questioning. They should learn to not just move on when traumatic material is disclosed. Learn to check and understand what is said to them. More of a safeguarding approach and not about catching people out. (Legal representative)*

Operational barriers to disclosure at the appeal stage were also identified by participants. They cited the absence of a conference with the barrister who was to represent the woman at the appeal hearing; a shortage of private conference space in tribunal hearing centres to enable this, the absence of childcare facilities at tribunal centres, and the woman being unexpectedly faced with an all-male tribunal (i.e. the judge, HOPO and clerk).

These barriers at initial and appeal stages meant that in some cases crucial information was (a) never disclosed (b) only disclosed at the door of the courtroom or in the courtroom or (c) disclosed to the legal representative after the asylum interview. Any disclosure later than the asylum interview risked being treated by the Home Office or appeal judge as 'late'. This could be problematic because a legal provision<sup>31</sup> allows judges and the Home Office to take into account delay in claiming asylum or in disclosing information when deciding whether to believe the claimant.

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<sup>31</sup> Section 8 Asylum and Treatment of Claimants, etc. Act 2004

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As a result, both lack of disclosure and 'late' disclosure could have serious consequences for appeals. If GBV is not disclosed, fundamental evidence in the appeal is missing, and the appeal may well fail. Where disclosure is 'late', this could lead to the applicant being disbelieved. If she was disbelieved in her initial claim, participants said this placed more emphasis on establishing her personal credibility at the appeal hearing in the tribunal. Where legal representatives had the opportunity to advise the applicant before her asylum interview, they placed emphasis on trying to achieve a positive credibility finding at this stage. Where disclosure had not been enabled early on, there was a risk of GBV being marginalised throughout the process. For example, in cases where the issue of GBV was not explored in the interview, it was then barely referred to in the refusal letter. In some cases where substantial expert evidence was produced for the tribunal hearing, this was remedied, but in others the claim to have been raped was rejected in the First-tier Tribunal since there had been little emphasis on it and limited evidence.

**It was difficult to assess the claim simply from her evidence, especially if she was traumatised**

## **Evidential Issues**

GBV presented challenges to representatives in collecting evidence for an appeal, and to judges in assessing it. Firstly, as time had inevitably elapsed between any physical violence and the woman's asylum claim in the UK there might be no or few physical signs of harm. This was often the case for women who had experienced rape or other sexual violence, but could also be true when there had been other forms of domestic violence. Secondly, the causes of any scarring could be difficult to attribute, and there are few specialists in identifying these causes and they are not always available. Similarly, the cause of psychological harm could be difficult to evidence. Finally, by its nature, documentary or other supporting evidence from the woman's country of origin was unlikely to exist.

The result of these problems was to put a significant burden on the woman's own testimony, and a focus on her credibility. Judges said that in cases based on GBV there might be no evidence before them other than the woman's own testimony, and it was difficult to assess the claim simply from her evidence, especially if she was traumatised, unwell, or suffering psychologically. In law, the Home Office and tribunal may accept an asylum seeker's testimony without corroboration if it meets conditions, including that it is considered to be coherent, plausible, internally and externally consistent, and promptly given.<sup>32</sup> Legal representatives commented that in practice judges often expected to see supporting evidence. In refusing an appeal they referred to the absence of 'support' rather than 'corroboration' since it was an error of law to require corroboration. The challenges of obtaining expert evidence are described further below.

While obtaining expert assessments might be difficult, other evidence, for instance from family members, might sometimes be available. However, legal representatives were cautious about this as it was sometimes regarded by the judge in the appeal as 'self-serving'. This meant that the judge thought it had been produced because the appellant wanted it rather than because the testimony was true.

## **Sufficiency of protection and internal relocation**

The availability of state protection and internal relocation were common reasons for refusing women's asylum claims, but participants regarded these as issues that could

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<sup>32</sup> Immigration Rules HC 395 para 339L



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be addressed effectively on appeal, provided evidence was obtained. Judges felt they received adequate information to make decisions on sufficiency of protection or internal relocation. They were informed by material in the public domain, such as Home Office reports and those from the US State Department, and the judges interviewed thought that all judges were or should be familiar with them. However, judges differed in the extent to which they considered that they were free to consult Home Office reports outside the hearing. Some thought any judge should look at material in the public domain, whereas others thought that there was no duty, in an adversarial system, to look at material they were not pointed to. Judges said that the quality of Home Office reports and other material in the public domain had improved significantly, and was relevant and useful. It was also pointed out by a judge that Home Office reports and those by the US State Department are produced by governmental bodies that have an interest in the issues, and are not the only sources.

Judges said that in some cases they did turn down appeals on the grounds of sufficiency of protection or internal relocation after careful, factual analysis, but acknowledged that decisions refusing an appeal on the basis of sufficiency of protection were difficult because a woman might have had '*terrible experiences*' (First-tier Tribunal judge), yet not qualify for asylum.

## 4.2 The impact of legal representation

In the view of both legal representatives and judges, experienced, well-funded and skilful legal representation was fundamental to securing proper presentation of appeals to the tribunal and gave the best opportunity of an appropriate outcome. Analysis of files for this study indicated that the actions of legal representatives were influential on the outcome, although having an active legal representative did not ensure winning the appeal in every case. In the cases where the women had had two First-tier Tribunal hearings, the legal representative who prepared the second (successful) hearing was markedly more active than the legal representative in the first (unsuccessful) hearing.

**Experienced, well-funded and skilful legal representation was fundamental to securing proper presentation of appeals**

Legal representatives said that preparation of an appeal case before the hearing itself was critical. Although good preparation could not assure success, inadequate preparation could damage a case irreparably. The following steps in preparation were identified from file analysis and interviews:

- establishing trust and facilitating disclosure;
- working with the appellant to prepare her for the hearing and collect evidence;
- obtaining expert evidence;
- challenging previous actions of the Home Office or other legal representatives that were damaging to the appeal case.

In addition to preparation, legal representatives said that the skill of the advocate in the appeal hearing was critical in enabling the appellant to demonstrate her credibility. Aspects of this are discussed below.

### Establishing trust and facilitating disclosure

Legal representatives said that establishing trust between themselves and a female client as soon as possible was an important foundation for preparing the case. This applied at whatever stage of the process they first met their client, whether before the asylum interview, after refusal and before the appeal, or after she had been finally refused when they were looking at whether a fresh claim could be made.

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Given the importance of full and early disclosure, legal representatives placed emphasis on ensuring they had confidential time with women to enable them to speak freely. This sometimes entailed excluding third parties or restricting their involvement. Lawyers did this by various means including reassuring a supporter then asking them to leave, allowing a supporter to remain as long as they did not intervene or dominate

**The presence of children was said to inhibit disclosure if the children were old enough to understand what was said**

the interaction, and arranging independent interpreters so that a family member was not employed in that capacity.

Legal representatives pointed out that legal aid did not fund childcare to give a woman confidential time with her lawyer. The presence of children was said to inhibit disclosure if the children were old enough to understand what was said, and legal representatives advised their clients to make arrangements for children to be cared for elsewhere. However, sometimes their presence was unavoidable.

Some women interviewed for this study were represented at their appeal hearing by a different legal representative from the one with whom they had been preparing the case, and some discomfort was recorded about this, as discussed in chapter 3. Barristers who carried out this specialist task of representing women at the hearing stressed the importance of having a conference (i.e. a personal meeting) with the client before the appeal hearing in order to build confidence between barrister and client. They also related this to the issue of disclosure. In their experience sometimes important information was disclosed immediately before the hearing or even in the hearing, when it was too late to discuss implications with the woman. Having a conference beforehand was important to facilitate earlier disclosure and prepare properly for the hearing.

Organising such a conference is in the hands of the legal representative who instructs the barrister. Barristers said that legal representatives varied in their practice and in their use of the legal aid rules in relation to conferences. Some routinely organised a conference, and ensured they could finance this from legal aid. Others never did. In the case of vulnerable women, barristers said a conference was essential, but in these cases it was also not always arranged. This was attributed to high caseloads and extreme work pressure.

Legal representatives had a range of views and experiences as to the impact of the gender of the legal representative. Some regarded the gender of the legal representative as less important than their attitude and experience, while others provided a female representative for a first interview as a matter of routine. Some female legal representatives said that women asylum clients requested women lawyers, and they themselves had developed a specialism in women's asylum claims through being in demand as a woman.

## Preparing for the appeal

File analysis and interviews with legal representatives revealed that lawyers could employ a range of skills and measures to work with their client throughout the case and prepare their client for the appeal.

### Interviewing skills

Legal representatives need to be able to carry out an interview in a way that facilitates disclosure of critical information. Participants said that although it could be difficult to facilitate accurate disclosure of traumatic experiences from vulnerable or traumatised women, few legal representatives were trained in these interview skills. Legal representatives who had not received training said that they had learned by working

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with those more experienced than themselves. In whatever way it was acquired, the skill to enable disclosure was critical.

### **Preparing for the asylum interview**

Legal representatives explained that the issues to be dealt with at the appeal could be narrowed if a legal representative had been consulted before the Home Office interview and prepared the applicant for this interview. This entailed going through the kind of questions the Home Office interviewer would ask, which enabled the woman to think through her experience and prepare herself. Even if the claim was refused, legal representatives said that there were likely to be fewer issues to address in the appeal where the interview was well prepared.

**Legal representatives said that there were likely to be fewer issues to address in the appeal where the interview was well prepared**

Legal representatives said that many Home Office decision makers appeared not to be familiar with guidance relevant to women's claims, or else did not apply it. This included advice to consider evidence in the round, not in isolation, and advice that shame and trauma as a result of gender-based violence might result in 'evidence being less than complete, coherent or consistent' or in delayed disclosure (Asylum Instruction *Assessing Credibility and Refugee Status*, January 2015). One legal representative adopted a practice of sending relevant guidance to ensure it was applied, and this was a further advantage of being instructed at an early stage. However, it appeared from the file analysis that not all legal representatives who were consulted before the Home Office interview prepared their clients for it.

### **Preparing for the appeal hearing**

Some women whose files were analysed had worked intensively with their lawyer on producing a full statement before the hearing, addressing issues raised by the Home Office and presenting their own account in full detail. In other cases there was not a full statement. Preparation for cross-examination was also done in some cases and not in others. In a case that went to the First-tier Tribunal for a second hearing, the barrister attributed the first-time failure as in part due to lack of preparation for cross-examination.

### **Sharing information and evidence gathering**

In some of the files analysed, the lawyer had worked actively with the appellant to gather letters, emails and testimony from contacts shared with the lawyer by the appellant. This testimony contributed directly to the issues at the core of the claim and resulted in substantial bundles of evidence for these cases from a range of sources. This level of work was particularly observed in preparation for the second First-tier Tribunal hearing in those cases where the woman had two First-tier Tribunal hearings and had been refused at the earlier hearing.

Although it is not possible to conclude that any one of the factors described above determines that an appeal will succeed, in the cases analysed there was evidence that these factors at least contributed to an appeal being upheld.

## **Obtaining expert evidence**

Expert evidence was a key factor in success before the tribunal in a number of the cases analysed, with reports from GPs, counsellors, therapists, medico-legal reports, scarring reports, psychiatrists, country of origin experts, the Red Cross, and Lesbian Gay Bisexual Transgender (LGBT) organisations all playing an important part. In each of the cases of the women who had their appeal heard a second time by the First-tier Tribunal, in the first, unsuccessful appeal, there was no expert evidence and very little

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other evidence. In each case, in the second, successful appeal there was a significant body of evidence, including expert evidence. A legal representative who often represented women seeking to reopen their case after it had been refused through the appeal system, concurred that the absence of medical reports was often a reason for the failure of the claim previously. They also noted that it was not always possible to reopen the case, and the damage done earlier by a lack of evidence was sometimes irreparable.

While the production of extensive reports is a key factor underpinning the overturn of women's asylum refusals, some legal representatives interviewed suggested that the need for this was created by the operation of the asylum system. In law, the standard of proof in refugee claims is a 'real risk' or 'reasonable likelihood' that the key events happened and that the harm feared will happen<sup>33</sup>. This is said to be a low standard, not as high as the balance of probability. However, participants felt that the volume of evidence required to succeed in asylum appeals amounted to the application of a higher standard of proof.

*I think we have lost sight of the test completely.....the standard of proof applied is slightly higher than the balance of probabilities. (Legal representative)*

This point is considered again below in relation to credibility assessment.

Despite the importance of expert evidence, legal representatives raised three issues related to obtaining it: funding, availability and timing.

## Funding

Issues with funding revolved around legal aid, which was the usual source of funds for expert reports. Legal aid funding for steps taken by a legal representative beyond a certain standard amount of work must be approved by the Legal Aid Agency. Expert reports are considered to be beyond that basic standard and thus need approval. The Legal Aid Agency (LAA) routinely required three quotations in order to agree funding for an expert report, and legal representatives had to justify to the LAA their request for funding. Some legal representatives said that funding was usually agreed if they sent to the LAA the section of the Home Office decision they intended to challenge by expert evidence, together with details of the expert. Others said that extensive correspondence with the LAA was often needed, with the LAA disputing issues that legal representatives felt indicated a lack of understanding of the law or the case.

**Sometimes the expert's minimum fee was higher than the maximum that the Legal Aid Agency would pay**

However, even where the LAA accepted the need for an expert report, sometimes the expert's minimum fee was higher than the maximum that the LAA would pay. In addition, it could be difficult to persuade the LAA to fund a second or follow-up report where this was needed. Also to save costs, the LAA might suggest that an NHS practitioner could write the report free of charge. Although some legal representatives said they had been able to make use of NHS reports, others said that NHS reports did not answer the legal representative's questions or comply with the rules on expert reports.

The importance of public funding to obtain expert reports was illustrated in one case file. Although the judge adjourned the case for the purpose of obtaining a medico-legal report, funding was not available, and all that was produced at the hearing was a GP's report, which was not seen as adequate and the appeal failed. The case was won

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<sup>33</sup> *R v Secretary of State for the Home Department ex p Sivakumaran* [1988] AC 958.

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eventually at a subsequent appeal hearing when a new representative obtained a medico-legal report on legal aid.

The UK's asylum tribunal system is adversarial, which means that each side is responsible for bringing their own evidence, and the tribunal judge cannot order or request evidence, though they can, as in the example above, adjourn a case to enable the representative to produce a report. However, legal representative interviews revealed that where the representative had been unable to persuade the LAA to fund a report that they thought vital to the case, very occasionally the judge at the pre-hearing review had been persuaded to direct that 'the Legal Aid Agency are recommended to provide funding'.

### Availability of experts

Legal representatives said that the fact that in some subjects there are few specialists sometimes meant that there might not be anyone available to provide a report within a reasonable time or in reasonable proximity. Alternatively, it could mean that three quotations could not be provided, or they might be obtained in order to satisfy the LAA requirement, but a quotation chosen by the LAA on the basis of cost was not in fact suitable. One legal representative highlighted a gap in that the major specialist organisations that produced medico-legal reports did not report in cases of domestic violence, which meant it was particularly difficult to obtain a report on the nature and likely causes of scars received through domestic violence. This difficulty was exacerbated where the woman, for religious reasons, could not tolerate being examined by a man, since women with this specialism were not available in many parts of the UK.

**It was particularly difficult to obtain a report on the nature and likely causes of scars received through domestic violence**

Judges said that sometimes in cases of FGM or forced marriage, the woman's own testimony might be the only evidence before the tribunal. Whether this was due to scarcity of relevant experts, lack of action by a representative or lack of funding was not known.

### Timing

Legal representatives and judges commented on tensions around the timing of expert reports. A medico-legal report could take many months to prepare, since there are few specialist organisations and they are in high demand. This generally meant the tribunal hearing was delayed. Judges were willing to grant adjournments when an expert had been identified and preferably instructed, and funding was obtained. They would usually not grant adjournments where no arrangements were in hand for the report.

However, both judges and legal representatives were aware that women were distressed by waiting for lengthy periods for their appeal to be heard and some women wanted to go ahead without the report, or with a less extensive report. Legal representatives spoke about needing to weigh the benefits of getting the best evidence against the distress of waiting, an invidious choice between the woman's wellbeing and the prospect, though not certainty, of a better outcome eventually.

**Legal representatives spoke about needing to weigh the benefits of getting the best evidence against the distress of waiting**

### Challenging previous actions

Legal representatives found that where there had been previous bad practice that affected the quality and presentation of evidence or other preparation of the case, it was helpful to the appeal to make a complaint and show that to the judge. For instance, where there had been poor practice at an asylum interview, such as aggressive



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questioning following a disclosure of rape, some legal representatives made a complaint, and then included the complaint and any response in the bundle of documents prepared for the appeal. If the Home Office had not replied to the complaint before the pre-hearing review, the judge could order a response. Legal representatives felt this was an effective way to ensure that the judge was aware of problems that had affected the evidence given by the appellant. They said that complaints procedures were underused by their profession. In case files the effectiveness of complaints against previous legal representatives was highlighted where the substance of the complaints had had been accepted and settled by a compensation payment. They were then cited in judicial review proceedings or later appeals to explain previous shortcomings in the case that otherwise counted against the appellant.

## 4.3 Access to representation

Although good quality legal representation was critical to an appeal outcome, from the women's interviews and file analysis it was apparent that the women in our study found it difficult to access legal representation of sufficient quality.<sup>34</sup> In all the cases where files were analysed, women had changed their legal

representative, some more than once. These difficulties were not restricted to the cases examined in this study as judges also commented on a reduction in the availability of 'lawyers of the calibre needed', and on the disparity between some excellent representatives and others of lesser competence. The reduction in availability of good lawyers was attributed to reductions in legal aid. Loss of quality representation has been connected elsewhere with loss of public funding, partly due to closure of non-governmental organisations and private firms.<sup>35</sup>

**The reduction in availability of good lawyers was attributed to reductions in legal aid**

Some women, both in our study and in other cases referred to by participants, were not able to obtain any representation for their appeal hearing. Analysis of interviews and files suggested a connection between poor quality representation at an early stage and no representation at the appeal hearing. The view of the experienced practitioners interviewed was that women's cases were often capable of succeeding, if proper investigative work was done and evidence collected. Although legal representatives can withdraw legal aid before the appeal hearing if the case does not have sufficient merit, interviewees pointed out that the strength of the case may not be apparent until this investigative work has been done. Expert reports and other evidence should be obtained at an early stage, and legal aid should not be withdrawn before this investigation was complete. In their view, good practice should very rarely result in a woman not being represented in an appeal tribunal.

In the cases analysed there was little evidence of investigative work at an early stage, even where the woman had a legal representative and had experienced sexual violence and torture. The reasons for a lack of early investigation were not apparent

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<sup>34</sup> A study commissioned by the Solicitors Regulation Authority identified barriers to obtaining good quality asylum advice (MigrationWork, 2016).

<sup>35</sup> The effect of cumulative cuts in immigration and asylum legal aid has been documented e.g. by Sheona York, *The end of legal aid in immigration: a barrier to access to justice for migrants and a decline in the rule of law*, Journal of Immigration, Asylum and Nationality Law (2013) Vol. 27.2. For the effect of LASPO on the availability of asylum advice and representation see e.g. Amnesty International, *Cuts that hurt: the impact of legal aid cuts in England on access to justice*, October 2016; Immigration Law Practitioners Association *Evidence to the Bach Commission* 29 April 2016 and <http://thejusticegap.com/2016/04/carries-cost-three-years-laspo-legal-aid-cuts/>.

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from the files. In some cases both the judge and the Home Office drew the conclusion that, as the woman had received legal advice, she would have produced evidence if she had it; therefore she must have none and her case lacked credibility. These cases succeeded later on with effective representation and thorough evidence. However, in order to arrive at this point, some women had been through lengthy and complex procedures including multiple further submissions to the Home Office; detention; receiving removal directions<sup>36</sup>; being taken to the plane for departure; judicial review<sup>37</sup>; and a number of tribunal hearings.

**Some judges and the Home Office drew the conclusion that, as the woman had received legal advice, she would have produced evidence if she had it**

Where a woman was not represented at appeal, the reasons were not apparent from the case files. Judges and legal representatives made the point that it was unusual for the Home Office not to be represented in an asylum appeal. They highlighted that what is known as ‘equality of arms’ is a basic requirement of justice, i.e. that there is a fair balance between the opportunities afforded the parties involved in litigation.<sup>38</sup> Participants made

the point that, even allowing for resource pressures in the public sector, the Home Office had ‘enormous’ resources compared with the appellant. At least at the institutional level, the Home Office always had the option to be represented. Given the importance of representation to the outcome, they thought that appellants should have the same opportunity.

One judge noted that it was important not to draw inferences about the merits of the case from the fact of a person *not* being represented. Judges were aware that legal representatives may refuse legal aid and not represent an asylum appellant where they thought that the case did not have enough merit. However, in order to give a fair hearing, where an appellant appears unrepresented, judges must put speculation about this out of their mind as lack of representation *per se* ‘does not say anything about whether their claim is good or bad’ (First-tier Tribunal judge).

Legal representatives said that in some instances women had actively sought them out because they spoke the woman’s first language. They thought that women felt freer to tell their story when they were able to do so in their own language. Women who came to them for this reason had often found them by word-of-mouth recommendation. Conversely, it was felt that trust was abused by some less scrupulous lawyers who spoke the woman’s first language. Where women were controlled by others, and spoke little English, legal representatives said that they were vulnerable to less competent legal representatives taking advantage of them by building trust but then doing poor work.

## 4.4 The impact of judges’ approach

Judges of the First-tier Tribunal said that the core of their work was ‘*fact-finding*’ and ‘*evaluation*’. They were not often concerned with issues of law, since these were decided by the Upper Tribunal (First-tier Tribunal judge). Judges pointed out that the tribunal system is formally adversarial, meaning that the two parties in the case are responsible for presenting their appeal and for deciding what evidence to submit, and judges can only decide the appeal on the basis of the evidence that is presented to them. They cannot (with limited exceptions) influence the evidence that is produced.

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<sup>36</sup> A notice of when the person will be forcibly removed from the UK, and the flight details.

<sup>37</sup> A complex form of legal action based on fundamental errors in procedure.

<sup>38</sup> *Airey v Ireland* (App no 6289/73) [1981] ECHR 1.

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As stated above, the judges interviewed identified the challenges of women's asylum appeals as they often related to GBV. They considered that judges could help to meet these challenges by creating an atmosphere in the tribunal that enabled the appellant to be at ease as far as possible and so give her best evidence, as discussed in the sections below.

## Atmosphere of court and skill of judges

The judges interviewed felt that the asylum tribunal was an example of what is known as a 'humanitarian jurisdiction'. This can be understood to mean that the work of the tribunal is respectful of human conditions and reflects, or should reflect, its role as a safeguard to ensure that those who need international protection will obtain it. However, they also said that a minority of judges did not share that humanitarian perspective. This chimes with evidence from interviews with legal representatives and women refugees and asylum seekers in which instances were cited of judges appearing to be predisposed to disbelieve the appellant. Judges interviewed said it was important to put the woman at ease so that she could give her best evidence. They used words such as '*sensitivity*', '*subjectivity*' and '*permissive*'.

*The role of the tribunal is to get the best evidence. To do that, you need to be sympathetic to the needs of the individual. (First-tier Tribunal judge)*

These needs included being able to speak freely about distressing experiences, to attend to her children if necessary, and take breaks. These points were strongly endorsed in the women's interviews, and legal representatives too reinforced the importance of judges being sympathetic to the appellant and understanding their experience.

*Court manner is important because if the appellant panics she won't remember things and give good answers. (Legal representative)*

Judges said they needed to ensure they had an open mind about the claim and be 'neither too credulous nor too disbelieving' (First-tier Tribunal judge)<sup>39</sup>, while also bearing in mind the cultural and political conditions of the women's country of origin, and listening carefully to her evidence and her response to questions.

Legal representatives said that some judges interacted 'really well' with the appellant and knew how to make her feel comfortable. This was particularly important when the appellant was vulnerable. However, they reported that others had a manner that was 'interrogatory', sometimes going outside the issues raised in the appeal, which was seen as inappropriately intrusive. Legal representatives also suggested that there should be more training for judges about mental health issues. This included the appropriate way to interact with an appellant, understanding the relevance of psychological reports, and how mental ill health might be manifested.

## Management of appeal

In managing the appeal, judges faced issues related to the pre-hearing review, unrepresented appellants, children's presence in the hearing room, and other practical arrangements.

### Pre-hearing review

The pre-hearing review is a procedure in which the representatives and the judge identify whether the case is ready for the tribunal hearing. This includes whether any

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<sup>39</sup> Also endorsed and explored in Mackey A. and Barnes J. 2013 as the quality of objectivity

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expert evidence is to be called and is ready, the number of witnesses, and the anticipated hearing length. Since early 2016 the review generally consists of a paper questionnaire, although an oral review can be requested by the appellant or legal representative. The questionnaire includes a question about whether the appellant has any specific requirements. This may be used to ask for a single gender tribunal or establish that the appellant should be treated as vulnerable. Legal representatives said that establishing the appellant's vulnerability at the pre-hearing stage gives the Home Office an opportunity to ensure that an inexperienced HOPO is not allocated to the case.

Judges commented that when pre-hearing reviews were conducted in person they could raise questions that the representative had missed, for instance to ask if an all-women tribunal would be appropriate. The paper procedure put the onus more on the representatives to ensure that appropriate conditions for their client are requested.

### **Unrepresented appellants**

Judges said that their role in relation to unrepresented appellants was an issue debated amongst the judiciary.<sup>40</sup> There was a trend towards taking a more proactive role where appellants were unrepresented, but this did not happen consistently. It was seen as a complex issue, since the judge is not permitted to become an advocate for the individual, but they have responsibility for the fair conduct of the hearing. Judges identified a number of ways to deal with this, which included:

- asking questions of the appellant to help her put forward her case and give her best evidence;
- explaining to the appellant what the Home Office Presenting Officer was saying to enable her to answer it;
- asking questions of the Home Office Presenting Officer, explaining to the appellant that these were questions she would ask if she were represented, though without stepping into the role of advocate;
- intervening if the competence of the interpreter appeared to be an issue;
- if an unrepresented appellant appeared unwell or unresponsive, to pause the hearing and ask if there was a legal representative in the building who could talk to the appellant.

### **Children in the hearing**

In general, legal representatives and judges thought that the presence of appellants' children in the hearing room affected their ability to put their case. However, they felt it was particularly undesirable if the children were able to understand what was being said, since this could be upsetting and might inhibit their mother from speaking openly. Despite this, participants said that children were sometimes in the hearing room because women lacked trusted friends or neighbours with whom they could leave their children, and there was no organised childcare in the tribunal building. They also said that previously tribunal staff sometimes looked after appellants' children but this was no longer permitted. Some of those interviewed thought that occasionally it still happened, but this practice could not be relied on.

**Children were sometimes in the hearing room because women lacked trusted friends or neighbours with whom they could leave their children**

Judges managed the presence of children in the hearing by permitting the mother to breastfeed during the hearing (if that was her preference), allowing children to play freely in the courtroom if that enabled the mother to feel more relaxed, and giving

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<sup>40</sup> Gray and Gray and Lewis, Tribunals, Winter 2015 -16

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children pens and paper to draw with. Some judges described giving breaks to enable a mother to attend to a distressed child or for a child to sleep, while legal representatives said that some judges continued the hearing despite children being upset.

*I have seen them cope with it by the interpreter rocking the child in a pushchair while interpreting, and children in the courtroom wailing, and the judge just carrying on. (Legal representative)*

Where a woman was present in the tribunal building with children, some judges were willing to hear her case early in the day to reduce the waiting time and enable her to leave. Adjournments due to lack of childcare were uncommon. Judges thought that the women would rather continue. A rare example was given of an adjournment being granted for lack of childcare when short notice was given of the hearing and a social worker supported the application to adjourn. While clearly some judges made efforts to accommodate appellants' children, legal representatives reported that there were also judges who were less tolerant and who complained about the presence of children in the courtroom.

### Practical arrangements

Tribunal service resources were not the sole or direct responsibility of judges, but were raised as an issue by both judges and legal representatives. Legal representatives said that the lack of facilities to look after children meant that they found it much more difficult to have pre-hearing discussions with the woman about her case, leading to the risk of something important being missed. The legal representative would be unable to risk asking a question in the hearing to which they could not anticipate the answer, since it might inadvertently damage the case. Judges and legal representatives suggested that having voluntary organisations helping with childcare or crèche facilities attached to the tribunal would have a positive impact on women's appeals.

**The lack of facilities to look after children meant that women found it much more difficult to have pre-hearing discussions**

Another practical issue raised by judges was transport to the tribunal. Although there is often provision for paying fares, it can fail to cover the cost of transport to more inaccessible hearing centres since travel in one day may be impossible. Women with children were particularly adversely affected by this since overnight accommodation for a family would be prohibitively expensive for a family on asylum support.

## Education, awareness and information

Both judges and legal representatives said judges needed to appreciate the realities of GBV and be aware of the potential impact of cultural norms in order to assess evidence effectively. This applied to assessing women's testimonies, supporting evidence about the circumstances of the claims, and the adequacy of state protection and possibility of internal relocation. Judges said that developing this knowledge and awareness required both training and the support of more experienced colleagues. Both were available to some degree, but they thought that part-time judges in particular missed out on some of the discussion with colleagues, and that more training was needed. In addition, although case studies based on gender issues were included in training materials, there was little specific coverage of the issues raised by women's asylum appeals.

Recent training on trafficking for the judiciary had raised awareness of its prevalence, its hidden nature, and the extent of abuse that trafficked women suffered. Judges found events like these useful and thought they were important, but said that the learning from them also needed to be embedded in practice. This was an ongoing process, a



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view echoed by legal representatives who said that there was a need to keep re-evaluating judges' knowledge and understanding.

Judges said that both their experiences in hearing and overseeing appeals and the training they received indicated that the abuse of women was widespread. They said they found this shocking and also that it could be difficult to fully acknowledge the extent of the abuse. However, legal representatives said that many judges were unaware of the extent to which women could be controlled by others and advocated training for judges on gender issues that included the ways in which women's lives are controlled, and the nature of social conditions in women asylum seekers' countries of origin. This kind of awareness raising would help in cases such as those where internal relocation was proposed by the Home Office, partly on the basis that the appellant was educated and so could obtain a livelihood elsewhere. Representatives said that, in a country where lone women were unsafe, education and a livelihood would not protect them. In order to assess risk, the judge needed understanding of how GBV worked in that society.

**Many judges were unaware of the extent to which women could be controlled by others**

Education of judges was also important in relation to the effect of trauma. One judge said that the combination of cultural differences and the many different ways that trauma can affect a person presented a challenge in ascertaining the cause of symptoms and assessing the appellant's account. Education about the impact of trauma on memory, recall and oral testimony was thought by both judges and legal representatives to help judges in making this assessment. Some training was available but they felt more was needed due to the complexity of the issue.

## 4.5 Credibility assessment

Credibility assessment in the tribunal is the process of considering the statements and other evidence provided by the appellant and determining whether and which can be accepted for the purpose of deciding whether she has a well-founded fear of persecution or serious harm for a reason covered by the Refugee Convention.

The initial credibility assessment is carried out by the Home Office, whose guidance advises that it can be based on the level of detail given, on internal or external (in)consistency, and (im)plausibility, and should focus on the core of the claim, not peripheral issues<sup>41</sup>. The International Association of Refugee Law Judges (IARLJ) states that a credibility assessment should be carried out 'in the round', on the basis of all the evidence, and taking into account that findings based on internal and external consistency logically have more weight than those relying solely on plausibility.<sup>42</sup>

UNHCR states that credibility assessment is necessarily a core element in the determination of asylum claims, but they have identified a disproportionate reliance on credibility in asylum refusals.<sup>43</sup> It is therefore not surprising that in all the files analysed in this study the case turned on credibility and was granted or refused on that basis both in the initial decision and on appeal.

Judges said that assessing credibility is a challenging task and that listening carefully to the appellant with an open mind was crucial. Judges said they are often assessing the appellant's testimony in conjunction with medical evidence and country of origin

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<sup>41</sup> Asylum Policy Instruction *Assessing credibility and refugee status* Version 9.0: 6 January 2015

<sup>42</sup> Mackay and Barnes (2013) pp. 33-34.

<sup>43</sup> Beyond Proof, UNHCR 2013 p.29.

information. They aim to put it all together and 'deal with things in the round from the point of view of sensitivity'. (First-tier Tribunal judge)

Judges also noted that there are a number of possible reasons for an appellant being distressed while giving evidence. They suggested this could be because of the psychological impact of previous trauma, or the effect of being in the tribunal hearing, facing people in authority in an unknown situation, or because the appellant was not telling the truth. Judges said that in attempting to ascertain the reasons for distress they were assisted by other evidence in addition to the appellant's testimony. They also said that it was important for judges to understand the working of memory, and that memory sometimes is lost and comes back much later after traumatic events. They were clear that claims should not be treated as not credible because of minor discrepancies.

In the case files analysed for this research, the Home Office credibility assessments were inevitably adverse to the applicant, since that was the reason for the appeal. These assessments were based on the asylum interview, the screening interview, and evidence produced by the applicant. The evidence presented by the applicant included personal material, such as emails, bank statements and letters, in one case a DVD of a relevant event and in another a statement prepared by her solicitor, which gave a brief account of torture and rape. In a number of cases, the style of interviewing was combative. This included stopping the applicant's explanations and insisting on 'yes/no' answers. In some cases the interviewer moved on when torture or rape was mentioned, without inquiring further. In summary, the evidence base for the Home Office credibility assessments was limited.

**In a number of cases, the style of interviewing was combative. This included stopping the applicant's explanations and insisting on 'yes/no' answers**

Where the reasoning in Home Office refusals diverged from guidance and law, this was most often in two respects. The first was where adverse credibility findings were based on peripheral points or points that did not address the core issue in the claim. The second was where credibility assessment was based on what was stated to be inconsistency, but which was actually closer to implausibility. This reasoning took the form of 'if you had....then you would have....', where the alternative behaviour was related to expectations that were not sourced in the refusal letter (e.g. 'if your family were angry with you they would not have allowed you back', and 'you would not have been able to have a lesbian relationship given the strictness of school rules and social attitudes').

In contrast to these Home Office decisions, determinations in successful appeals were characterised by six principles.

- 1. Assessing all the evidence:** The credibility assessments in many of the appeals, including all the successful appeals, were based on all the evidence, including the appellant's testimony and statements. In the successful appeals, the judge noted the consistency of the supporting evidence and the appellant's account. In an unsuccessful appeal that was based on all the evidence, the judge did not find the medical evidence sufficient to overcome the credibility problems she found in the appellant's account, and doubted the plausibility of other supporting evidence.
- 2. Focusing on the core of the claim:** The core is the reason for claiming asylum and the ill-treatment that the appellant fears or has experienced already. Peripheral matters in these cases included, for example, addresses in letters, and details relating to family events that took place in parallel to the appellant's experiences. Where the evidence supported the core of the claim, most judges did not give weight to discrepancies on peripheral issues.

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- 3. Not needing to eliminate doubt:** The judges in the successful appeals did not rely on eliminating doubt and uncertainty. For example, a judge in one determination explicitly noted that ‘there are very few asylum claims where there will not be areas of doubt and uncertainty’.<sup>44</sup> This approach extended in one case to a finding by the judge that an appellant had produced a false letter to strengthen her case, but that this did not affect her credibility, as the other evidence was sufficient. In the successful appeals, although some judges expressly allowed room for doubt, the level of evidence provided appeared to go beyond the asylum standard of proof, and the same judges also commented on the level of conviction they had attained. One said ‘there can be no doubt that the appellant is a lesbian’. Another said that the case was ‘not finely balanced’. He had ‘no doubt’ as to the truth of her claim. These comments were made in a second First-tier Tribunal hearing, which was obtained after action by the appellant and her legal representative that went beyond the standard asylum process, and reversed an earlier First-tier Tribunal decision.
  - 4. Taking into account the context:** In assessing the appellant’s account, the judges in the successful appeals drew on the appellant’s testimony and the context from which she came as a basis upon which to interpret actions, and allowed for complexity of human behaviour. For example, in the cases analysed which were based on sexual identity, they took into account the emotional impact of previous ill-treatment, criminalisation of an appellant’s sexuality in her home country, the complexity and stress of a personal journey of coming out as a lesbian against such a background, and an appellant’s lack of knowledge of how her sexuality would be regarded in the UK. One judge commented on the consistency of an appellant’s behaviour with the need to be secretive in a country in which her sexuality, if discovered, would lead to severe punishment. Where appellants had given an account of the actions of their family and advanced reasons for those actions, the judges treated that account as cogent and reasonable. Unlike earlier adverse decisions in the same cases (whether Home Office or tribunal) they did not rely on the more speculative form of reasoning ‘if you had....then you would have...’ without an explicit foundation for this.
  - 5. Accepting partial or late disclosure:** In the successful appeals, the judges accepted the reasons why there had been partial or late disclosure of rape and torture and expressly said that the delay should not be held against the appellant. This was not just a case of believing or disbelieving reasons that were given, but demonstrated an understanding or acceptance of the barriers to disclosure.
  - 6. Accepting testimony without additional evidence:** Although in most of the successful appeals there was a considerable body of evidence, and this was crucial to the credibility assessment, this was not always the case. In one appeal, the appellant’s testimony in addition to some supporting letters obtained by the appellant and information about the country of origin were sufficient for the judge to make a positive credibility assessment. The statement was very thorough, and the judge found her an impressive witness. Legal representatives interviewed pointed out that, in law, the testimony of the appellant is itself evidence, and does not require corroboration.<sup>45</sup> They said that a woman’s claim should be capable of succeeding based on her own testimony, but more often than not her unsupported testimony was rejected both by the Home Office and judges.

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<sup>44</sup> This point is made by UNHCR 2013 p.28.

<sup>45</sup> Article 4 of the Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

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Although the analysis of the case files does not prove that applying these principles inevitably leads to a successful appeal, it does provide powerful evidence that following them can help ensure a more thorough and sophisticated assessment of the claim. Given the complexity of the issues raised in these cases, it is not unreasonable to assume that this approach will mean that appeals are more likely to succeed.

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## 5 The Guidance Note

*And you lived that life and...they're just reading through what it said and they didn't live your life, so that's really hard. That's really harsh. (Asylum seeker)*

The aim of the Guidance Note on Child, Vulnerable Adult and Sensitive Witnesses is to support judges in ensuring vulnerable appellants and witnesses receive a fair hearing. Legal representatives can make an application to the judge requesting that the Guidance Note be applied or taken into account in specific ways in a particular appeal and occasionally permission for a further appeal has been granted on the basis that the Guidance Note was not applied in the First-tier Tribunal when it should have been.

Applying the guidance affects the conduct of the hearing. For instance the judge may ask the parties to agree issues beforehand so as to confine cross-examination to non-sensitive issues; they may control the style of cross-examination to avoid re-traumatising the appellant and may be particularly alert to the need to give breaks. It can also affect the tribunal's assessment of the appeal as it reminds a judge to take account of a witness's vulnerability in assessing their evidence. The Guidance gives discretion to the judge to order that a tribunal should be single gender. This means the judge, the HOPO and the interpreter are of the same gender. Therefore, recognition of a woman appellant as vulnerable can have an important effect on her experience of the hearing, and on the outcome.

Vulnerability is broadly and non-exclusively defined in the Note. Factors to be taken into account in deciding whether someone is vulnerable include: mental health problems; social or learning difficulties; religious beliefs and practices; sexual orientation; ethnic, social and cultural background; domestic and employment circumstances; and physical disability or impairment that may affect giving evidence. A person can also be identified as vulnerable because of their experiences in their country of origin. Examples in the Note are: victims of trafficking; persons who have sustained serious harm or torture; and those who are suffering from Post-Traumatic Stress Disorder (PTSD).

The guidance also incorporates the definition of 'vulnerability' used in the Safeguarding Vulnerable Groups Act 2006, which defines vulnerability in terms of the circumstances the person is in rather than their individual characteristics. These circumstances include detention in 'lawful custody', which means that people in immigration detention are vulnerable.

Participants' comments on the use of the guidance covered the following themes, discussed below:

- deciding whether the appellant is vulnerable or sensitive;
- asking for an all-women tribunal;
- conduct of the hearing – the impact of using the guidance; and
- limits and benefits of the guidance.



## 5.1 Deciding whether the appellant is vulnerable or sensitive

Guidance Note para 5.1 *The primary responsibility for identifying vulnerable individuals lies with the party calling them but representatives may fail to recognise vulnerability.*

While the Guidance Note gives the judge the power to decide whether an appellant should be treated as vulnerable or sensitive, judges and legal representatives agreed that, as the Guidance Note says, the primary responsibility for raising this lies with the legal representative. The first opportunity to do this is at the pre-hearing review. If the application of the Guidance Note is not raised at the review, it can be raised at the beginning of the hearing itself.

Judges felt that legal representatives did not always raise the issue of vulnerability when they could, and there was variation among the judiciary in how proactive they were, or thought it was appropriate for a judge to be, in addressing this. If the judge had concerns about the appellant's state of mind, a proactive approach was to ask the legal representative if they had considered whether their client was well enough to give evidence. If the representative confirmed that they were, the judge had to accept how the representative was putting the case. If the appellant was not represented, the judge would sometimes pause the hearing, and ask if there was a legal representative in the building who could talk to the appellant.

**Judges made the point that deciding whether someone was vulnerable was not always straightforward**

Legal representatives who used the Note and raised the issue of vulnerability said that they normally gave medical evidence to support their argument and judges would normally require this. Some said that it was desirable for accessible and inexpensive forms of evidence to be accepted since more expensive and extensive reports were not always available. For example, in circumstances where a woman was suffering from PTSD but the trauma that caused it was not treated as relevant to the asylum appeal, the LAA would not fund psychiatric reports since these would not affect the outcome of the case. However, the woman would still be vulnerable in terms of facing a tribunal hearing, which could be evidenced by a GP's letter. Legal representatives' experience was that some judges accepted a letter from a GP for this purpose and some did not. To address this issue, one legal representative administered mental health screening forms themselves, which were accepted by the tribunal.

Judges made the point that deciding whether someone was vulnerable was not always straightforward. Sometimes their assessment had to be made without supporting evidence and in the face of conflicting accounts, for instance where a person claimed to be a victim of trafficking, but the Home Office disputed this. In these instances the judge must decide whether the appellant should be treated as a vulnerable person, and the Guidance Note offers no resolution of this dilemma.

The breadth of the definition of vulnerability gave rise to discussion with the judges as to whether all asylum seekers are vulnerable. One view was that vulnerability should not be treated as exceptional, and all asylum seekers are vulnerable. This included those whose claims were bound to fail.

*Even those with patently false asylum claims are not bad people. I am sure that anyone who comes to the country seeking asylum has been through something, even if [they don't qualify for] asylum. (First-tier Tribunal judge)*

Other views were that the Guidance Note should be applied with proportionality and discretion and could not apply to all asylum seekers since this would slow down proceedings unacceptably, or that vulnerability should be considered on the merits of each case but not taking into account the effect on the tribunal system.

## 5.2 Asking for an all-female tribunal

Guidance Note 5.3 (i) *Consider any request for a single gender tribunal but bear in mind that sensitive issues may not be the subject of questions or core to the evidence.*

The Guidance Note allows appellants to ask for a single gender tribunal, and some legal representatives associated the Note entirely with this option. Whether to grant this or not is at a judge's discretion. Some legal representatives felt that even though requests were usually granted, the Note should be amended to make this mandatory if requested in order to ensure that the woman obtained the conditions she felt she needed. Judges interviewed agreed that it was not for them to query a request for an all-female court, as the aim should be for the woman to have the conditions which enabled her to give her best evidence. It was accepted that a woman's cultural and religious background may make it intolerable for her to address some subjects in front of a male judge.

*I would not dream of refusing; to refuse would be to prejudge. (First-tier Tribunal judge)*

Judges interviewed were aware that among the judiciary some felt that all judges should be able to put an appellant at ease, regardless of gender, and that it is against principles of justice for the appellant to choose their judge.

Aside from the explicit application of the Note, some judges considered the impact of the gender of the tribunal on a woman appellant. If all the personnel in the tribunal were men, a judge described how he asked if the appellant would like a woman clerk to come in. His observation was that this helped the appellant to feel more at ease, not only because a woman was present, but also because it showed that the judge himself was alert to the appellant's feelings.

From the legal representative interviews it was apparent that when a request for an all-female court had been made, it did not always happen. A case was cited by a legal representative where the request had been made in advance, but on the day of the appeal hearing the judge was male. He refused to adjourn so the appellant could have an all-female court, despite the fact that she was very distressed. The representative felt that the outcome of the appeal was affected by not having an all-female court. However, permission to appeal the outcome was refused, on the basis that granting an all-female court was discretionary.

**An all-female court was sometimes treated as a licence to be more intrusive**

While participants accepted that for some appellants an all-female court was necessary for religious or cultural reasons, they did not think that the expectation that female judges would be more sympathetic was well-founded. In their experience it could be the reverse. Some participants' experience was that male presenting officers were sometimes more reticent when cross-examining women about sensitive issues, and that having an all-female court was sometimes treated as a licence to be more intrusive. An alternative way to protect the woman from intrusive cross-examination was by agreeing in advance which issues were accepted by the Home Office and thus

would not be subject to cross-examination. This is advised in paragraph 9 of the Note.<sup>46</sup> Even this might not avoid distressing cross-examination (e.g. if the Home Office agreed a woman was raped but not by whom), but was thought by legal representatives to be more effective than requesting an all-female court if the woman's concern was intrusive cross-examination.

In summary, where giving evidence about sensitive issues in front of a man was intolerable for religious or cultural reasons, participants in this research agreed that a request for an all-female tribunal should be respected, though participants were aware that some judges did not agree with this approach. Where the woman had other reasons for wanting an all-female tribunal, her reasons should be explored with her by the legal representative, since there might be a more effective way to meet her concerns.

## 5.3 Impact of using the guidance

Guidance Note 3. ...*It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole.*

The Guidance Note states that where an appellant is identified as vulnerable or sensitive, the conduct of the hearing should be adapted to suit their needs (2010; paras 7-10). Some legal representatives regularly used the Note when the appellant was vulnerable to draw the tribunal's attention to the need for sensitivity in cross-examination. Participants said that referring the tribunal to the Guidance Note at the start of the hearing meant that if cross examination strayed into questioning that was inappropriate, the basis had been laid to challenge this. If there was medical evidence, or a concession by the Home Office that the appellant had been tortured or sexually assaulted, the judge would usually agree that questioning on these events was unnecessary and curtail it, though a minority of judges would say that the questioning was necessary.

The curtailment or pre-empting of intrusive questioning could also be initiated by the judiciary themselves. Legal representatives described how in cases with medical evidence the judge sometimes began by saying 'we're treating this client as vulnerable in line with tribunal guidance'. Although legal representatives said that HOPOs ought to be aware of the importance of not conducting aggressive cross-examination with vulnerable appellants, an instruction from the judge at the beginning of the hearing to say that cross-examination should be conducted sensitively was felt to be useful and made a difference.

Despite these practices, it appeared from legal representatives' interviews that aggressive cross-examination did happen, and some legal representatives felt that the Note was of limited value in controlling aggressive cross-examination because some judges employed too high a threshold in deciding what was acceptable. One legal representative described a judge acting in a highly insensitive manner in a case where the appellant had been subject to very severe human rights violations, and had medical reports attesting to psychological problems as a consequence. In contrast, judges interviewed said that they would never tolerate aggressive or hostile

**Judges interviewed said that they would never tolerate aggressive or hostile questioning**

<sup>46</sup> Agreement between the parties before oral evidence as to the matters agreed or in dispute enables questioning to be focused, sensitive and minimises potential trauma. If the parties have

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questioning. They asserted that HOPOs would not, in their presence, cross-examine on rape, though they might on inconsistencies in matters peripheral to the rape.

In addition to challenging the HOPO's cross-examination, legal representatives described using the Note to appeal where the judge had disregarded medical evidence and decided on the basis of their own observation that the appellant had no mental health problems, or where it had not been applied properly in the assessment of evidence. Judges affirmed that the Note could be used in this way though in their experience it rarely was.

Lastly, the Note advises judges to check whether the appellant requires breaks and if so to ensure that they are provided. Legal representatives pointed out how difficult it could be for a vulnerable person to say that they need a break, even in response to being asked. They suggested that a woman sometimes felt that agreeing to a break reflected badly on their evidence, or that they did not want to pause the hearing as they just wanted to get through it. Participants suggested that this part of the Note could be implemented more effectively if the judge decided at the start that they would have a break every half an hour, as this would take the burden off the appellant.

## 5.4 Awareness and use of the Guidance Note

Legal representatives had learned about the Guidance Note from preparing appeals and working with other experienced legal representatives. All participants in this study thought that awareness of the Note among legal representatives and judges was limited. While the Note is covered in judicial training, judges reported that it was not given a dedicated session. All judges interviewed were

**All participants in this study thought that awareness of the Note among legal representatives and judges was limited**

aware of the Note and of the considerable discretion they could exercise regarding its use, although they varied in the use they made of its specific provisions. One carried it with them as a key document and consulted it often. Others rarely referred to the actual text of the guidance. The Note advises that the judge should introduce all the individuals in the hearing room and ensure there has been an adequate explanation of the process and the issues at stake. Judges suggested that this was basic good practice that should apply in all cases.

The contents of the Note generally were referred to by some judges as common sense or a helpful aide memoire to alert judges to good practice, and a useful reference point. There was little enthusiasm among the judiciary for amending the guidance, but they felt that greater awareness of it would be beneficial. No tribunal decisions in the case files analysed referred explicitly to the Note, though in one case the tribunal determination recorded that, because of 'medical difficulties', the judge had checked regularly with the appellant whether she understood the process. In another, a woman had attempted to use the Note herself to argue for permission to appeal, following advice not from her lawyer but from a support organisation. There was no outcome to this application as the appellant was released from detention and obtained a new right of appeal following the closure of the Detained Fast Track procedure.

Paragraph 15 of the Note requires the tribunal to record its decision on whether the appellant was vulnerable or sensitive, and the effect of this on the decision. There was a view from the judges interviewed that more emphasis could be given to this obligation.

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## Shortcomings of the Guidance Note

Despite being generally supported, legal representatives did identify a number of shortcomings of the Note. Some suggested that the Note needed to be revised to cover the interpretation and application of the Refugee Convention in women's claims. For example it could include guidance of the kind that was in the 2000 IAA Guidelines on understanding rape in the asylum context. This included the political use of rape, the fact that it may have social consequences, such as ostracism and exclusion, alongside physical and psychological consequences, and that it may not be sexually motivated but 'intended to inflict violence and humiliation' (IAA 2000 page 17). Other examples were the particular ways that women may be persecuted on grounds of religion or politics, where non-conformity with social roles may be attributed to political or religious dissent.<sup>47</sup> It was pointed out that these and other issues are in the UNHCR Gender Guidelines, which could act as a reference point for new material.<sup>48</sup>

Many of the issues raised by both legal representatives and judges about the conduct, preparation and hearing of appeals were dealt with in section 5 of the IAA Guidelines 2000. Examples include the need for independent, confidential space in which a woman can discuss her claim, the importance of safety and gender in the tribunal hearing, reasons for women's reluctance to disclose their experience of severe violence and the impact that this can have on the timing of disclosure and thus assessment of credibility. Some participants felt that the IAA Guidelines 2000 could assist in revision of the Note, while others were unaware of the IAA Guidelines 2000.

Judges confirmed the need for awareness and understanding of both procedural and substantive issues, but were sceptical that amending the Note was the way to achieve this. They saw regular training and developing awareness as more fundamental and effective in relation to procedural issues. They thought that as guidance on issues such as internal relocation, sufficiency of protection, and the conditions that women experience in their country of origin, now comes from case law, it does not belong in the Note.<sup>49</sup>

Legal representatives commented on the difficulty of communicating and evidencing the conditions that women experienced in their country of origin, but differed on whether a judicial approach to these could usefully be covered in the Note. For some legal representatives, even if the Note was amended to deal with the broad principles of women's claims, including the application of the Refugee Convention, this would not be enough on its own, as the Note does not itself change attitudes. Without awareness of the experience of women in the asylum system, the provisions in the Note were of limited value: training and sensitivity were both needed. An example given was the provision in the Note that says that judges can suggest that vulnerable individuals have someone to support them. The point made was that this discretion adds little if the judge is not aware of the significance of such support, including from professional organisations such as the Helen Bamber Foundation.<sup>50</sup>

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<sup>47</sup> For instance UNHCR guidelines paragraphs 25 and 26.

<sup>48</sup> GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees UNHCR, 2002.

<sup>49</sup> In country guidance cases the Upper Tribunal makes findings about specific situations in particular countries which are binding on future cases, for instance, that lesbians are at risk of violence in Jamaica (*SW (lesbians - HJ and HT applied)* [2011] UKUT 251).

<sup>50</sup> <http://www.helenbamber.org/>



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## 6 Conclusion and recommendations

*These amazing lawyers...which helped me win, and also see life in another way and not just on a negative side. (Asylum seeker)*

This qualitative research was designed to consider the reason for women's initial asylum decisions being overturned on appeal and how the current guidance for judges is being implemented. The findings demonstrate a clear link between aspects of the appeals process that women wanted to be improved and the good practice identified by legal representatives and judges. Perhaps unsurprisingly, areas of less positive practice were also identified. This chapter explores the main conclusions of the research followed by key recommendations and a hypothetical case study based on these recommendations being implemented.

### 6.1 Factors impacting the success of women's asylum appeals

Triangulation of the findings provides an insight into the factors that contribute to women's initial refusals being overturned on appeal. Bringing together the experiences and expertise of the women asylum appellants, legal representatives and judges and comparing these creates a picture of how the appeals process can result in the reversal of initial asylum decisions. There is a marked overlap in the findings from all three sets of participants as well as the case files. In addition, in the cases with two First-tier Tribunal hearings, the contrast between the first appeal and the second appeal demonstrated the impact of a higher level of preparation and evidence. This section sets out the key points to emerge and indicates how the appeals process can be improved.

#### Women's isolating experience

A picture emerged of women needing more communication, information, opportunities to speak and appropriate involvement in their case from both the legal representatives and the judges. This would provide an opportunity for women to take some control of events leading up to and at their appeal. This is important as the result of the appeals process has a profound impact on their lives. The fact that some women had to go through two tribunals to obtain a positive decision at appeal demonstrated the precariousness of women's situation. Without this second positive decision they could be destitute or forcibly removed from the UK.

Women appreciated when judges were attentive and understanding, and when they were able to speak directly to the judge themselves. They found it more difficult when legal representatives made mistakes of fact or when HOPOs or judges challenged them. Although some women experienced HOPOs as being interested in what they had to say, others found them aggressive and intimidating. Women also raised concerns about interpreters not understanding their dialect and/or not interpreting in full, sometimes when this related to gender issues. Being told they had to speak through the interpreter when women wanted to speak directly to the judge was also a concern. There was a clear link between the level of support women received and how they felt about the appeal and the outcome.

In practical terms, waiting on the day with no set time for their appeal hearing increased women's anxiety. In addition, knowing what to expect at the tribunal was important. One woman's confidence was raised by being able to visit the court for orientation

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purposes. Such visits are available for victims and witnesses called to attend criminal courts, as are videos and leaflets. Similar resources would clearly be beneficial for asylum seekers going to appeal hearings, especially those who are vulnerable. Informal support, particularly peer support, also increased women's confidence.

## Legal representatives' crucial role

A well-prepared legal representative played a central role in helping women both to prepare for and to take part in the appeals hearing. In some cases a female legal representative was automatically provided, however some female asylum seekers said that a legal representative's attitude and experience were more important than their gender. It was noticeable that women in the case file analysis had commonly changed legal representatives throughout the progress of their case.

The findings indicated that the level of legal representation is an important influencing factor on the outcome of women's appeals. This research provides strong evidence that good quality legal advice, addressing the issues of sufficiency of protection and internal relocation, and evidence such as a medical report and/or country expert reports were key to the success of women's asylum appeals. Funding for such reports is available at the appeal stage from the LAA, although there were some challenges in obtaining this.

Women linked the extent to which their legal representatives prepared them for their appeals to the process and outcome of them. They welcomed legal representatives who were prepared, confident, understood their cases and represented them accurately, made sufficient use of evidence, and facilitated their understanding of the process. This chimes with the judges' and legal representatives' understanding of what good practice is, and their recognition that, while thorough preparation of an appeal case could not assure a positive outcome, it was a key factor. Lack of funding contributed to lack of preparedness. It was noted that where women had access to support organisations, those organisations could play an important role in helping prepare them for their hearing.

There were also practical factors that influenced the outcomes of the women's appeals. Having a safe space at the tribunal without supporters or children present provided an opportunity for a woman to discuss her case with her legal representative, including sensitive issues such as gender-based violence. If a barrister had been instructed by her legal representative, a conference (meeting) between the barrister and the woman was essential to ensure full understanding and trust between them. It was not clear whether legal representatives knew that this conference could be funded through legal aid.

However, instances where it appeared that a legal representative was trying to be helpful were not always perceived as such. Women did not find it reassuring to be told '*not to worry*' and that the legal representative would deal with everything. In addition, being told to give brief answers made women anxious that their case had been affected by them curtailing their explanations. Ironically, some women were of the view that they had more chance of a successful appeal outcome without a legal representative, particularly if they felt having a legal representative had prevented them from speaking for themselves.

## Judges' attitude and credibility assessment

Both women and judges recognised that the judge's attitude was crucial to the result of a case. Women wanted judges with good listening skills, an understanding of their case, a respectful and sympathetic questioning approach, awareness of their circumstances and concern about their wellbeing. Judges considered these same

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attributes as good practice, namely sensitivity, having an open mind and knowledge and understanding of women's situations in their countries of origin, considering the evidence in the round, and being neither too credulous nor too sceptical.

Both legal representatives and judges agreed that there were challenges in women's cases. Documentary evidence is often very limited where women have experienced harm from family or community members. At the same time, it can be difficult for women to express the trauma they have suffered. Judges therefore felt they would benefit from more training on the impact of trauma on memory to help them to make credibility assessments.

The combination of women finding it difficult to disclose traumatic events and decision-makers finding it difficult to acknowledge or probe them has a potentially damaging effect on women's asylum cases. This could make the credibility assessment more challenging unless sufficient good quality evidence had been collected. The extent of women's experience is often hidden from public view. In cases of gender-based violence, a report is not always provided by legal representatives when it would be useful. A drawback to the adversarial system is that judges are reliant on evidence that is placed before them. They can control this only in limited ways such as making directions at the pre-hearing review, or, at the appeal, adjourn the case to enable the appellant to obtain more evidence, thus creating a delay. Judges noted that making the case apparent to the tribunal required good legal representation and advocacy.

In the case files analysed, successful appeals were always due to credibility assessments. This concurs with previous findings from research on initial decision-making in women's asylum claims (Muggeridge and Maman, 2011). The tribunal determinations in these successful cases built a picture of the appellant's situation, drawing on the body of evidence available. The credibility assessments were based on a rounded picture. In terms of the good practice standards set out by the International Association of Refugee Law Judges, the judges drew grounded 'inference from all the evidence' but there was a notable absence of 'subjective speculation'<sup>51</sup>. These appeal determinations overturned Home Office credibility assessments that had often treated factors in isolation and engaged in subjective speculation. Complex concepts that affect women's cases disproportionately such as Particular Social Group, standard of proof, sufficiency of protection and internal relocation were not seen as an issue by judges.

In speaking about the difficulties of dealing with cases of gender-based violence, one judge referred to people's tendency to protect themselves from knowing about the nature and extent of abuse, and commented that this affects judges too. One of the reasons those involved in the asylum system may disbelieve women or men seeking asylum is to avoid distress or vicarious traumatising. A challenge for the judiciary is to increase awareness of the extent and effects of gender-based violence while avoiding psychological harm. Providing support to educate judges about vicarious traumatising might improve their ability to cope with and give fair consideration to personal accounts of horrific events. This has been recognised in the Home Office which, in 2016, set up a national programme of training and support in relation to vicarious trauma for all their decision-makers. Providing opportunities for the good practice described by the judges to be shared among all judges has the potential to enhance the quality of the appeals process.

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<sup>51</sup> IARLJ 2013, section A7.

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In summary, key factors identified in successful women's asylum appeals are:

- resources so that women appellants know what to expect at the tribunal;
- legal representatives who are well-prepared, provide good quality legal advice including use of appropriate medical and country reports as evidence, address issues of sufficiency of protection and internal relocation, brief women appellants sufficiently and ensure time for appellants to meet barristers in advance;
- judges who have good listening skills and an open mind along with knowledge and understanding of women's situations in their countries, consider the evidence in the round, are neither too credulous nor too sceptical and do not use subjective speculation;
- HOPOs who show an interest in an appellant's answers and do not use aggressive cross-examination;
- interpreters who interpret in full, including gender issues; and
- provision of childcare.

## 5.2 Use of the Guidance Note

Awareness of the Guidance Note was generally limited, with brief coverage in judicial training. It was not referred to in the determinations in the case files analysed as part of this research. Some of the judges interviewed considered it to be common sense. Many of them thought an open attitude was more important than specific guidance. In contrast, legal representatives made a case for needing both. Perhaps because the Note was developed from criminal justice guidance, it does not take into account the specific needs of women seeking asylum.

Identifying vulnerable appellants at the pre-hearing review in line with the Note has implications for the rest of the case. For example, it can be used to prevent aggressive or intrusive cross-examination. There is currently circularity in that being identified as vulnerable might depend on an appellant's credibility assessment while being deemed vulnerable may be necessary for proof of credibility. Information such as a GP's or social worker's letter should be treated as sufficient to identify an appellant as vulnerable. Judges felt that legal representatives did not always raise the issue of vulnerability when they could.

According to the Note, a decision to provide an all-female court is discretionary. Although support organisations encourage the use of all-female courts, legal representatives were found not to do so because of concerns that female courts could be harsher. Women themselves also felt that a judge's training and abilities were more important than their gender.

The issue of children being present at the tribunal was mentioned across the different participant groups taking part in this research. If unable to access childcare, women might have to bring children to the hearing, which could result in them being distracted and/or limiting what they disclosed in order to avoid traumatising their children. Childcare facilities for asylum interviews are provided by the Home Office in most regions for these reasons.

When the Istanbul Convention is ratified, the UK will be obliged to have gender guidelines and a gender-sensitive asylum system in place (Council of Europe, 2011).

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The Home Office has had gender guidelines since 2004.<sup>52</sup> With amendments, the Note could form these gender guidelines for the appeals process.

Many of the issues that have emerged in the current research are also covered in section 5 of the IAA Guidelines 2000 which covers procedural and evidential issues. These include:

- the effect of shame in preventing early disclosure;
- problems relating to the influence of male relatives;
- reasons for women's reluctance to disclose their experience of sexual violence and the impact that this can have on the timing of disclosure and the assessment of credibility;
- guidance to the judiciary on the conduct of the hearing specifically related to obtaining good quality testimony from women appellants.

The fact that many of the gaps and problems interviewees encountered are addressed in section 5 of the IAA Guidelines 2000 demonstrates that this is still relevant and important. This suggests that some of the information that could go into a revised Note is already available. Given the evidence of mixed practice in relation to women's asylum appeals and the ratification of the Istanbul Convention, it would appear to be a good time to revisit the Note. However, as the judges and legal representatives in this research pointed out, revising the Note alone will not change judges' attitudes; training and sensitivity are needed. It is for this reason that the recommendations below suggest doing both.

In summary the revision of the Note to increase its relevance for the cases of women in the asylum appeals process would help improve how these are dealt with. The sharing of good practice amongst judges on the best way to deal with women's appeal cases would also benefit the process.

## 6.2 Recommendations

Building on the factors identified in the research that resulted in women's overturns at appeal our recommendations suggest sharing of good practice and improvements to the Guidance Note. It is noteworthy that many improvements to the appeals process that women felt they would benefit from are considered good practice. The key practical improvements identified were provision of pre-hearing resources such as visits or videos to help with expectations and the provision of childcare. In terms of the preparation for and conduct of asylum appeals, the women, the legal representatives and the judges all identified similar good practice.

These findings lead us to the following recommendations.

1. **The Guidance Note by the President of the Immigration and Asylum Chamber should be reviewed to ensure it better reflects women's interests in the First-tier Asylum Tribunal.** Section 5 of the Immigration Appellant Authority Guidelines 2000 is still relevant in this respect and should be drawn upon. Additions or extensions to the Guidance Note should include the following.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257386/gender-issue-in-the-asylum.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257386/gender-issue-in-the-asylum.pdf)



- The importance of judges making appellants feel comfortable in unfamiliar surroundings, for instance by explaining procedures, introducing all involved and stating that cross-examination should be conducted sensitively.
- The importance of judges using a balanced and objective approach in assessing credibility.<sup>53</sup>
- The need to make active use of the pre-hearing review to manage the case, including identifying vulnerable appellants.
- A broad approach to what evidence is deemed sufficient to determine vulnerability, to enable appellants to be identified as such at the pre-hearing review (e.g. a GP or social worker's letter) and recording the decision as to whether the appellant was vulnerable.
- The requirement that an all-female tribunal must be provided if requested, recognising that this might create delay in listing for hearing. This should be a clearer option on the pre-hearing review form.
- Identifying before the hearing which issues are not disputed by the HOPO, thus avoiding unnecessary cross-examination on distressing issues.
- Hearing vulnerable appellants' cases and those with children first to prevent unnecessary waiting.

**2. The current good practice and supportive culture in the judiciary should be built upon.** This would benefit all judges and aim to help prevent vicarious trauma. A series of events by and for the judiciary focusing on implementing the Note should include sharing good practice on the following topics:

- open attitude in assessing credibility;
- questioning approach and listening skills;
- awareness of women's circumstances in their country of origin;
- extent of gender-based harm;
- nature of rape, its political use and the difficulties in disclosure;
- impact of trauma on memory, recall and oral testimony;
- determining evidence of vulnerability;
- curtailment of improper or aggressive cross-examination;
- credibility assessment in cases of gender-based violence;
- understanding the impact of hearing information about human rights abuses and how to deal with this.

In addition, judges should review compliance with directions and call parties to account where bundles are not served before the hearing in compliance with directions.

**3. There should be practical adjustments by the Tribunal Service in order to improve the experience of appeals for women appellants.** These should include:

- prioritising women who have children and/or are vulnerable in the timing of their hearings;
- the provision of sufficient consultation / conference rooms to allow private space for preparation and disclosure and ensure that sensitive conversations are not held in common areas;

<sup>53</sup> As in IARLJ 2013, section A.8.

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- the provision of childcare, either at each tribunal or through a local nursery or voluntary organisation, would ensure children would not be present at the hearing or in the waiting area.
4. **The Courts and Tribunals Judiciary should provide relevant information to both asylum appellants and to judges.** This should be done in the following ways:
- by creating an easily accessible guide for asylum seekers. The information could be parallel to the Ministry of Justice video ‘Going to court – a step by step guide to being a witness’;
  - by providing information on gender-based persecution and its prevalence for judges in a bench book (e.g. FGM and its prevalence, forced marriage etc.);
  - by supporting asylum appellants through wider use of schemes like that of the Personal Support Unit.
5. **Legal representatives should be trained to use good practice approaches, including obtaining all possible evidence to support the initial claim, to enhance the quality of legal representation for women asylum appellants.** This should be put into practice in the following ways:
- legal representatives should be encouraged to obtain all evidence possible to support the initial claim, including researching country-specific evidence and commissioning a medical report and country expert’s report where relevant, with early use of legal aid to cover these disbursements;
  - a pre-hearing visit, arranged by a legal representative or support organisation, to introduce appellants to the tribunal setting, provide information about what to expect at the hearing and help them prepare emotionally and practically, would reduce women’s anxiety about attending the tribunal;
  - where a different advocate will appear at the hearing, the legal representative should set up a conference with the woman’s advocate in advance to enable the appellant to build up trust and share information;
  - legal representatives would benefit from undertaking training regarding gender-based cases and in the use of legal aid to support full preparation of women’s appeals.

In order to achieve this, training providers for legal representatives should cover how to treat asylum seekers with empathy, as well as covering knowledge of the law, and should include the above good practice in training.

6. **Legal representatives and the Tribunal Service should only engage interpreters who have the linguistic ability and sensitivity to interpret gender issues in the correct language and dialect.**
7. **HOPOs should have relevant training and their practice should be audited.** HOPOs’ training and Code of Practice should be reviewed to ensure advocacy and witness handling takes account of gender issues. The Home Office’s internal audit of HOPO practice should be supplemented by regular audits through its quality audit team or that of UNHCR with the provision for feedback from the audit to be fed back to the HOPO regularly and via their performance appraisal.

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8. **The Legal Aid Agency should consider funding provision of appropriate legal services to women seeking asylum in order to fulfil its duties under the Equality Act 2010.** This funding provision should include early expert reports to support initial applications, pre-hearing visits and conferences with barristers prior to the hearing.

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## 6.3 Putting recommendations into practice

The correspondence between the views of the women asylum seekers and the professionals means that to improve the experience of the appeals process for women seeking asylum requires the extension of current good practice by legal representatives and judges.

The hypothetical case given below shows how, regardless of outcome, the appeals process could be experienced based on the recommendations above.

Malaika and her young daughter flee her home country, escaping domestic violence. She is refused asylum after her initial interview. Her legal representative, Elizabeth, meets with her to explain the appeals process and to take instruction. Elizabeth explains this still comes under legal aid and that Malaika does not need to pay anything.

Elizabeth works with Malaika to provide a detailed witness statement in response to her refusal letter. She obtains a medical report detailing Malaika's psychological state and a report from a country expert explaining whether there is sufficiency of protection in her home country or whether it would be safe for her to move to another location in her home country.

When she receives the date for the appeal, Elizabeth phones Malaika to make sure she understands the appeal letter. A month before the hearing, the pre-hearing review takes place. No face-to-face hearing is required at this stage; Elizabeth sends in appropriate documents. She ticks the box that asks whether Malaika is vulnerable and encloses some clear evidence to support this, using criteria that have been agreed by the Tribunal Service.

A week before the tribunal hearing, Elizabeth takes Malaika to visit Anita, the barrister who will be representing her. They discuss her case and Malaika corrects some misunderstandings about her narrative.

A few days before the hearing, Elizabeth takes Malaika to visit the tribunal building. She explains the security system and shows her the waiting area and the hearing room. Malaika sits where she will be seated at the tribunal hearing. After this, she feels more confident about the hearing. Elizabeth also shows her the childcare provision.

On the day of the tribunal hearing, Malaika goes to the hearing centre. She has been called to arrive at 10am. She leaves her little girl playing in the childcare room. Malaika and her barrister go to one of the many consulting rooms and cover expectations for the day. Because she is vulnerable and has a child, Malaika's case is the first to be heard that morning, and she is relieved not to have to wait.

In the hearing room, the judge introduces Malaika to everybody. The judge explains the procedure clearly and checks that Malaika understands. The HOPO has read the case in advance and is familiar with the issues that need not be repeated. He has a respectful manner and restricts his questioning to key matters, avoiding minor inconsistencies and information Malaika has already provided at her initial interview. There is no need for the judge to prevent any over-rigorous questioning. When Malaika gets upset talking about what happened to her, the judge offers her a break. The judge asks Malaika some questions directly so she feels able to put her case forward. The

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judge records that Malaika is a vulnerable appellant and the effect this has on their decision.

A month later, Malaika receives the determination letter. Elizabeth receives it at the same time and invites her into her office so that they can read it together. Elizabeth explains what the determination says. The judge has clearly considered whether Malaika was harmed for a Refugee Convention reason, has any state protection, and could go elsewhere in her country. It is clear from the determination that the judge has considered the evidence in the round, undertaken an accurate credibility assessment, and used the lower standard of proof.

Whatever the judge's decision, the process has enabled Malaika to have her case heard fairly in a way that maintains her dignity.



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# Appendix A

## Methodology: additional information

This appendix gives further information about the qualitative methodology used. In total, 36 individuals participated in the research, and eight case files were analysed.

### Summary of women's interviews sample

As discussed in chapter 2, 22 women participated in in-depth qualitative interviews conducted by NatCen to explore experiences and perceptions of the asylum appeals process and its impact. These women had a range of experiences, circumstances and backgrounds including countries of origin, reasons for claiming asylum, age and region where their appeal was heard, as summarised below.

**Table A1: Achieved sample of women (n=22)**

**Court of Appeal**

London	5
Birmingham	1
Manchester	8
Bradford	6
Newport	2

**Region of origin (categorised)**

East Africa	5
The Caribbean	2
Central Africa	6
West Africa	7
Pakistan	2

**Reason for claim<sup>54</sup>**

Sexuality	6
Sexual Violence	4
PSG	1
Political	2
DV	5
FGM	2
Forced Marriage	3
Religion	2

**Status**

ARE	11
Leave to remain, including refugee status	11

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<sup>54</sup> Total exceeds 22 because some women had multiple grounds for their claim and have been included in both categories cited.

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**Age at time of interview**

Unknown	9
20-29	4
30-39	7
40-49	1
50-59	0
60 and over	1

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<b>Total</b>	<b>22</b>
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## Topic guides

Tailored topic guides were used in all interviews to help ensure a consistent approach across all the interviews and between members of the research team. The guides were used flexibly to allow researchers to respond to the nature and content of each discussion, so the topics covered and their order varied between interviews.

Researchers used open, non-leading questions, and answers were fully probed. The main headings and subheadings for the topic guides used for the interviews with women and interviews with judges are provided below as examples. Slightly different versions of these guides were used for the interviews with support organisations and legal representatives.

### Topic guide: interviews with women who have experienced the asylum appeals process

#### 1. Introduction

- NatCen and the study
- Length and nature of interview
- Content of interview
- Conditions of interview: issues around confidentiality and anonymity
- Reporting
- Recording interview
- Introducing case file analysis
- Questions
- Consent to participate

#### 2. Background and overview

- About the participant today
- Overview of case, decision and current status
- Overview of the appeals process – what and who is involved

#### 3. Expectations and experiences before going to court

- Information they had about the process, who told them and when
- Expectations before going to court

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#### **4. Experiences at the court**

- Arriving at the tribunal: expectations and experiences
- Experience with interpreters
- Experience with support organisations
- Description of the courtroom, including layout and others present
- Views on the representation of their case
- Experiences of questions and cross-examination
- Views about the judge
- Others in the courtroom – roles and impact
- Support agencies and informal support, including gaps and perceived impact
- Information and understanding of what would happen next
- Overall experience, including possible improvements

#### **5. Experiences after the hearing**

- Experience immediately after the tribunal
- Hearing the outcome about the outcome of the court/tribunal [their determination]
- Expectations for next steps
- Support organisation involvement, including perceived impact and gaps

#### **6. Reflection and Recommendations**

- Feelings about the tribunal now
- Recommendations for change, including rationale and anticipated result

## **Topic Guide: Interviews with First-tier Tribunal judges of the IAC**

### **1. Introduction**

- Introduce self and NatCen
- Introduce the research and its purpose
- Length and nature of interview
- Content of interview
- Issues around confidentiality and anonymity
- Reporting
- Recording interview
- Questions
- Consent to participate

### **2. Background and overview**

- Role and responsibilities
- Experience of appeal cases
- Experience of dealing with sole applicant appeal cases from women

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### 3. Views and experiences of how women's cases are dealt with at appeal

- Overall views on how women's asylum cases are dealt with at appeal
- Particular issues affecting how women's appeal cases are handled
- Whether and what training and support they have received on handling women's cases
- Comparison with training and support on handling asylum appeal cases more generally/of other appellant groups.

### 4. Awareness, understanding and application of the Practice Guidance

- Understanding of the Guidance
- Views on the sufficiency of the guidance and whether it reflects their understanding of 'best practice'
- Key strengths/ weaknesses/gaps in the Guidance
- Implementation of the Guidance in relation to women's cases
- Factors affecting whether and how the Guidance is implemented in appeal cases involving women

### 5. Recommendations

- Overall views on how women's cases are dealt with on appeal
- What, if anything, would improve how women's cases are handled
- Overall views on the Guidance and its implementation
- What, if anything, would improve awareness, understanding and implementation of the Guidance

## Qualitative analysis

Interview data were managed and analysed using the Framework approach developed by NatCen (Ritchie et al., 2013). This matrix-based analytic method facilitates rigorous and transparent qualitative data management, with a thematic framework used to classify and organise data according to key themes, concepts and emergent categories. Separate frameworks were developed for interviews with women, support organisations, legal representatives and judges.

For each of these strands, an analytical framework was developed by identifying key topics emerging from the interviews from their transcripts and/or notes. Matrices relating to each thematic issue were then set up, with columns in each matrix representing key topics and rows representing individual women.

These themes were used to classify and categorise the data from each interview so as to enable analysis across and within each of the cases. To ensure consistency of approach to data management, the research team were given a thorough briefing about the analytical framework and a detailed description of what should be included in each sub-theme.

The Framework for interviews with women was embedded in NVivo version 10. The software enables summarised data from to be linked to the verbatim transcripts. This approach means that each part of a transcript that was relevant to a particular theme was noted, categorised, and made easily accessible for analysis.



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The final analytic stage involved interrogating the charted data to draw out experiences and views, identify similarities and differences and seek to explain emergent patterns and findings.

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# Appendix B

## Case file analysis framework

As discussed in chapter 2, analysis of eight women's case files was carried out as part of this research. This analysis explored the reasons for the initial refusal of women's asylum applications and why the original decisions were upheld or overturned at appeal. Key case issues (including the decisions made, number of appeals, length of the application process, gender and credibility issues, and reasons for refusal) were charted using a tailored analytical framework.

A summarised version of the framework, showing its main headings and subheadings, is provided below.

### Case file analysis: summarised framework

#### 1. Summary

- Outline of the legal process of the case

#### 2. Screening interview

- Any documents submitted, and details
- Any issues raised later by applicant, Home Office, legal rep or judge about the content or process of screening interview

#### 3. Substantive interview

- Gender of those present – any issues
- Length of interview, breaks, other indicators of process
- Disclosure of previous experience which could amount to persecution?
- Probing of sufficiency of protection?
- Probing of internal relocation?
- Any credibility issues put to applicant?

#### 4. Representation

- Was there a legal rep before/after substantive interview?
- Representations to HO before/after substantive interview?
- Seek expert evidence before/after substantive interview?
- Expert evidence obtained? Any obstacles?
- Written advice to applicant about substance of claim/steps she could take to obtain evidence?

#### 5. Refusal letter

- Convention reason accepted? Gender-based?
- Past persecution accepted?
- Future risk accepted? Effective protection considered?
- Internal relocation relied on? If so, were specifics put in interview?

- Any specific credibility findings?
- If so, were they based on:
  - Internal inconsistency
  - External inconsistency
  - s.8 2004 Act
  - Inherent implausibility
  - Inference from demeanour
  - Lack of corroboration
  - Late disclosure

## **6. Preparation for appeal**

- Legal aid granted/refused/appealed?
- Was appellant represented at preparation stage?
- Statement by appellant addressing reasons for asylum refusal?
- Any gender-related issues in the statement which were not apparent in the AIR/RFRL?
- Does legal rep seek and obtain expert reports – psychological, medical, medico-legal, country of origin?
- Obstacles to expert evidence?
- Other new evidence at this stage?

## **7. First Tier Appeal hearing**

- Was appellant represented?
- Was an adjournment requested and why? Was it granted and why?
- Outcome: Asylum allowed/dismissed; Human Rights allowed/dismissed
- What evidence was before tribunal?
  - Appellant in person?
  - Experts in person? (medical/country/other)
  - Other live witnesses?
  - Expert report(s)? (medical/country/other)
  - COI
  - Psych studies and reviews
  - Documents
- Evidence of use of Guidance Note (2010)?

## **8. Judge's determination**

- Convention reason accepted? (as HO, or different?) Gender-based? (as HO, or different?)
- Past persecution accepted? (as HO, or different?)
- Did the judge consider that there was a real risk of persecution in the future? What factors did they take into account? (as HO, or different?)

- Did the judge consider whether there was effective protection, with reference to any gender-related factors? (as HO, or different?)
- Did the woman seek protection? If not, how was this dealt with?
- Did the judge find that internal relocation was available? Were risk and reasonableness assessed both in relation to the individual woman and the social conditions of the country of origin?
- What was the place of any COI in the judge's determination?
- What was the place of expert evidence?
- Was a country guidance case used and how?
- Was credibility a material factor in the decision? Were there specific adverse or positive credibility findings?
- Were credibility findings based on:
  - Internal (in)consistency
  - External (in)consistency
  - s.8 2004 Act
  - Inherent (im)plausibility
  - Inference from demeanour
  - Corroboration
  - Late disclosure
  - Other (specify)
- List any gender-related comments in the judge's determination

## **9. After the hearing**

- Was there any further appeal to Upper Tribunal (made or applied for)?
- Outcome of permission applications
- Outcome of appeal to Upper Tribunal
- FTT upheld/overturned/error of law and remitted etc.
- Comments incl. gender-related issues affirmed/dealt with differently

## **10. Any concurrent trafficking case?**

- Details

# Appendix C

## Glossary

Term	Abbreviation	Definition
Appellant	-	A person appealing to a court or tribunal. In the context of this research, this refers to the asylum seeker
Appeals Rights Exhausted	ARE	A stage at the end of the asylum process at which the individual has used all their legal rights to appeal their asylum decision and has still been refused asylum
Asylum and Immigration Tribunal	AIT	Predecessor to the Immigration and Asylum Chamber of the First-tier and Upper Tribunal (abolished in 2010)
Country of Origin Information	COI	Information about conditions in the country from which the asylum seeker has come (to which the Home Office would return them if their claim failed). Country of Origin Information is usually in the public domain, published by the Home Office or international bodies, and refers to human rights, political and other conditions relevant to asylum claims
Detained Fast Track	DFT	A former procedure in the asylum system, in which some asylum seekers were detained immediately after their screening interview and their claims decided according to a rapid timetable. Appeals also took place in detention following a rapid timetable
Dispersal area	-	Places to which asylum seekers are relocated when they first apply for asylum
Domestic Violence	DV	Any incident of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been intimate partners or family members regardless of gender or sexuality ( <a href="http://www.domesticviolencelondon.nhs.uk/1-what-is-domestic-violence-/1-definition.html">http://www.domesticviolencelondon.nhs.uk/1-what-is-domestic-violence-/1-definition.html</a> )
Female Genital Mutilation	FGM	Female genital mutilation (FGM) is a procedure where the female genitals are deliberately cut, injured or changed, but where there's no medical reason for this to be done ( <a href="http://www.nhs.uk/Conditions/female-genital-mutilation/Pages/Introduction.aspx">http://www.nhs.uk/Conditions/female-genital-mutilation/Pages/Introduction.aspx</a> )
First-tier Tribunal	-	The level of the unified tribunal system in which



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appeal cases are first heard

Gender-based violence	GBV	“Gender-based violence against women” means ‘violence that is directed against a woman because she is a woman or that affects women disproportionately’; (Art. 3 d, Council of Europe Convention on preventing and combating violence against women and domestic violence)
“Honour” based violence	HBV	“‘Honour based’ violence is a crime or incident which has or may have been committed to protect or defend the honour of the family and/or community.” (CPS, ACPO and support groups common definition) <a href="http://www.cps.gov.uk/legal/h_to_k/honour_based_violence_and_forced_marriage/#a04">http://www.cps.gov.uk/legal/h_to_k/honour_based_violence_and_forced_marriage/#a04</a>
Home Office Presenting Officers	HOPO	Civil servants who represent the Home Office in immigration and asylum appeals before the tribunal
Humanitarian Protection	HP	A status granted by the Home Office on the basis of recognised protection needs. Carries rights almost equivalent to refugee status
Immigration and Asylum Chamber	IAC	The division of the First-tier Tribunal which hears immigration and asylum appeals
Immigration Appellate Authority	IAA	The predecessor to the Asylum and Immigration Tribunal
Internal relocation	-	The legal concept that an asylum seeker could successfully avoid harm by moving to another part of their home country. Refugee status may be refused on this basis
Guidance Note	-	Joint Presidential Guidance Note on Child, vulnerable adults and sensitive appellants, issued by the IAC in October 2010. Available at <a href="http://www.judiciary.gov.uk/wp-content/uploads/2014/07/ChildWitnessGuidance.pdf">http://www.judiciary.gov.uk/wp-content/uploads/2014/07/ChildWitnessGuidance.pdf</a>
Legal Aid Agency	LAA	A government agency, sponsored by the Ministry of Justice, which oversees and decides on the allocation of public funding for legal representation for eligible kinds of legal work
Legal representative	-	A legally qualified person who advises and represents a person to other parties and in legal proceedings
Leave to Remain	LTR	Permission from the Home Office to live in the UK for a fixed or indefinite period

Practice Direction	-	Advice and instructions given to judges by senior judges
Particular Social Group	PSG	<p>One of the five Convention reasons in the Refugee Convention. Refugee status can be claimed when persecution is feared for a Convention reason.</p> <p>A particular social group is “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights” (UNHCR, 2002). Persecution based on gender or sexual identity will often be argued to be for reasons of membership of a PSG</p>
Refugee Convention		<p>The key international instrument specifying the legal rights of international refugees. Established in 1951 in response to the displacement of the Second World War, it provides that protection can be granted if persecution is feared on one of five grounds: political opinion, nationality, race, religion or membership of a Particular Social Group (PSG)</p>
Refugee Status	RS	Formal recognition by the relevant government body (the Home Office in the UK) that a person has a well-founded fear of persecution for a Convention reason in their country of habitual residence, and is entitled to protection by the state which recognises this
Screening interview	-	The first interview conducted by UK Visas and Immigration when an individual applies for asylum. It establishes identity, route of travel, and the broad basis of the claim
Sexual Exploitation	SE	Sexual exploitation describes situations and relationships where adults or children receive 'something' (e.g. accommodation, alcohol, drugs, affection, money) in exchange for performing sexual activities
Substantive interview	-	The second interview conducted by UK Visas and Immigration, on the basis of which asylum can be granted or refused
Support organisation	-	<p>Organisations offering various forms of support for asylum seekers, including:</p> <ul style="list-style-type: none"> <li>• Mental health and wellbeing support, including therapeutic support</li> <li>• Accompanying women to court hearings</li> </ul>

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		<ul style="list-style-type: none"><li>• Help with food and travel, and other relief from destitution</li><li>• Providing advice about access to welfare and housing</li></ul>
Sexual Violence	SV	Sexual violence and abuse is any behaviour of a sexual nature which is unwanted and takes place without consent or understanding ( <a href="https://www.nidirect.gov.uk/articles/sexual-violence-and-abuse-definition">https://www.nidirect.gov.uk/articles/sexual-violence-and-abuse-definition</a> )
UK Visas and Immigration	-	Part of the Home Office, responsible for decisions on immigration and asylum applications
Upper Tribunal	-	The second level of the unified tribunal structure. Decisions of the First-tier Tribunal can be appealed to the Upper Tribunal if permission is granted on the basis that there has been an error of law
Sufficiency of protection	-	The legal concept that the state is able to offer effective and accessible protection against persecution
United Nations High Commission for Refugees	UNHCR	The UN Refugee Agency

“You’ve not been prepared at all so you obviously know  
it’s not going to go well unless a miracle happens.”

(Woman seeking asylum)

“I liked the last experience...everyone was so positive...  
Fight, we’re going to fight, we’re going to win, that kind  
of attitude. It was really, really nice.”

(Woman seeking asylum)