



Emerging Research Findings and Recommendations

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Please note that this document is a record of the emerging findings and recommendations of this research. As such, the document should not be used as a final record of the research findings and is subject to change.

Part A: Purpose of research

Asylum Aid's report [Unsustainable: the quality of initial decision making in women's asylum claims](#) (2011) demonstrated that women were more likely to have their initial appeal overturned on appeal than men. The [Immigration Appellate Authority Gender Guidelines](#) were in place for the tribunal from 2000 to 2006. The [Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance](#) was published. This research gave the opportunity to consider why there was a differential in women's appeals results and to what extent the Guidance Note was being implemented in women's asylum appeals.

a. Research Aim

To understand how women's asylum cases are dealt with on appeal, whether current guidance is followed and what support is available to women.

b. Research Questions

- How do women asylum seekers experience the appeals process?
- What are the range of ways the appeals process impacts on women asylum seekers?
- What are the factors underpinning women's asylum claims being successful on appeal?
- How is the *joint presidential guidance note (2010) on child, vulnerable adults and sensitive appellants* being implemented in relation to women's cases?

c. Research Design

Data Collection was conducted through four channels:

- Qualitative interviews with women who have been through the first-tier asylum appeal process since 2011 (22)
- Qualitative interviews with support organizations (5)
- Legal interviews with legal experts (5) and immigration judges (4)
- Legal analysis of women's case files (8)

Research ethics and expert guidance:

- All elements of the research were subject to approval by NatCen's Research Ethics Committee (REC).
- A Research Advisory Group (RAG) of 11 members was established to provide strategic guidance.

d. Women's Interviews

Interviewees came from 5 regions in the UK:

- Birmingham (1)
- Bradford (6)
- London (5)

- Manchester (8)
- Newport (2)

Interviewees hailed from three countries of origin:

- East, Central, and West Africa
- Jamaica and the Caribbean
- Pakistan

Their reasons for claim included Domestic Violence, FGM, Forced Marriage, Political, Particular Social Group, Religion, Sexuality, and Sexual Violence.

Interviewees' immigration status:

- Granted Status (Refugee or other Leave to Remain) (11)
- Appeal Rights Exhausted (11)

e. Legal sources

- Interviews with judges of First-tier Tribunal (IAC)
- Interviews with legal representatives
- Case files of women who had made an asylum appeal

Part B: Emerging findings and recommendations

1. Emerging Findings – interviews with women and support organisations

a. Women's expectations before the hearing

Some women did not know what to expect and others felt informed about the process. This was influenced in part by:

- Practical Preparation
- Understanding of the process
- Role of support organisations and supporters
- Role of legal representative.

Women recognized the importance of their own role in preparing for the hearing.

b. Arriving at the court

Women experienced anxiety around getting to the court on time, as well as uncertainty of the process to follow on arrival. Their experiences of the waiting room stance were influenced by

- Waiting time
- Role of the legal representative
- Role of supporters e.g. family and friends

c. In the hearing

Women's experiences were underpinned by the extent to which legal representatives and interpreters:

- Facilitated their understanding of the process
- Enabled women to play an appropriate role
- Provided an accurate, insightful, and impartial representation of their case
- Displayed an appropriate approach, manner, and desire to understand the case

Other factors included:

- The provision of an all-female court
- The nature of support received
- The attention to a woman's wellbeing

d. Hearing the outcome

Women's views on the determination document were driven by:

- Length (a long document meant the decision could be difficult to find)
- Complexity of the language used
- Content and outcome of the hearing

Next steps:

- Role of legal representative and information conveyed
- Role of other forms of support
- Report identifies gaps in support

e. Reflections and impacts of the asylum appeals process

Women saw the appeals process as a chance to get a successful outcome. However, the process also had a negative impact on women's mental health and wellbeing. Practical impacts on women included the risk of being left destitute and the inability to engage in education or work.

Interviewees expressed a desire to move on from the experience. This included reluctance to return to court, symbolic acts to expunge the experience, and expressions that they had now moved on with their lives.

2. Emerging findings - legal process

a. Key Findings

- Judge's manner and approach makes a difference
- Credibility assessment in the round
- Women's claims often involve gender-based violence
- Important to address difficulties of giving, obtaining, and assessing evidence
- Thorough preparation by legal representative makes a difference

b. Judge's manner and approach

"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, exhibiting an awareness of the best practice reflected in the 2010 Guidance Note.

Interviewees emphasized the importance of qualities like *"sensitivity,"* and *"permissiveness,"* using phrases like *"it's their day."*

They also stressed the importance of awareness, of intervening if the appellant appears unwell or there is a problem with the interpreter, and of curtailing aggressive questioning.

Opinions varied on the pros and cons of allowing children in the hearing room.

c. Credibility

In the files analysed, all successful appeals were upheld on the basis of the judge's assessment of credibility. Where an appeal was upheld, credibility was assessed in the round; dealing with women's testimony, medical evidence, and COI as a whole. Assessments of credibility in successful appeals were not speculative.

d. Gender-based violence

i. giving evidence

In cases involving gender-based violence, disclosure may not be made initially or fully. Reasons for this include shame, loyalty, threats, fear of or for family, or the appellant not knowing that she has an independent claim.

Interviewees expressed that it is the role of the legal representative to establish trust and enable disclosure.

Interviewees stressed the importance of confidentiality and privacy in these cases. An appellant should be free from interference by her family.

ii. obtaining other evidence

Harm happening in the private sphere may lack supporting evidence. There may be no physical signs, and the cause of psychological symptoms can be hard to determine.

Accordingly, medical and country experts are often needed. Obstacles to this include funding, availability of the relevant experts, and timing.

One legal representative referred to the *"sheer level of interference by others"* in the lives of women appellants.

iii. assessing evidence

Interviewees emphasized the importance of judges having education and information about:

- The prevalence of GBV, conditions for women in countries of origin
- The impact of GBV, specifically the effects of trauma on memory
- Reasons for late disclosure, including the effect of shame on testimony
- The potential need for an all-female tribunal

e. Legal representation

Preparation is critical. Poor preparation can damage a case irreparably.

Analysis of files showed that where a woman was given two First-tier Tribunal hearings, her legal representation was radically different between the first and second hearings.

Important factors included the quality and volume of evidence and the level of involvement of the appellant.

Interviewees expressed the importance of the legal representative in dealing with problems in the Home Office interview or with the appellant's previous representative.

f. Access to justice

All women in the files analysed had changed their legal representative, some more than once.

For three of the four who had a second First-tier tribunal hearing, this was secured by persistent action outside the standard procedure.

g. Guidance Note

i. 2010 Guidance Note

The GN was used as a tool for some legal representatives to make representation about conduct of hearing for vulnerable appellants.

Sometimes it was used to request an all-women tribunal.

Judges varied in their use of the GN. Some thought that they did not need to refer to it because the recommendations contained in it were simply "common sense," while others expressed always having it to hand.

Legal representatives varied in their views about the GN. Some thought it should be amended to give guidance on women's appeals, while others felt the attitude expressed in it is more fundamental.

ii. Gaps in Guidance Note

Gaps identified included:

- Section 5 2000 IAA Gender Guidelines
- Effect of shame in preventing early disclosure
- Influence of male relatives
- Women not aware that what has happened to them may found an asylum claim
- Judge's conduct of hearing
- Relevance of Home Office interview

3. Key Recommendations

a. Tribunals and Judges

- A review of the Guidance Note with a view to strengthening its value and use as a tool to enable best practice
- Practical adjustments at Tribunal centres: child care, sufficient conference rooms to ensure privacy, interpreters who have both language and sensitivity

b. Legal Representatives

- Obtain evidence early
- Arrange pre-hearing visit (this could also be done by support organizations)
- Conference with advocate before hearing
- Training in gender-based claims including use of legal aid
- SRA and OISC consider guidance and/or CPD requirements

Part C: Discussion, reflection, and additional recommendations

Expert Panel:

- Catriona Jarvis, Judge of the Upper Tribunal (Immigration and Asylum Chamber) (retired)
- Kathryn Cronin, Barrister
- Princess Chineze Onyeukwu, Protection Gap Advocate
- Debora Singer, Asylum Aid

Contributing Attendees:

- Rachel Henson, Wilson Solicitors
- Sheila Grewal, Tribunal Judge
- Dudu Mango, WAST Manchester
- Miriam Yousef, WAST Manchester
- Alimatu Kijena, WAST Manchester
- Maya Pope-Weidemann, Right to Remain
- Amina Memon, Professor of Psychology, Royal Holloway, University of London

a. Role of legal representative

Panellists emphasized the importance of the legal representative and pre-trial preparation, and offered some concrete suggestions for legal representatives.

- Princess Onyeukwe: Most of the factors leading to a positive appeal can be achieved with thorough preparation by the representative. When legal representatives are more concerned with getting through a heavy case load and making money than with the appeal at hand, preparation will not be thorough.
- Kathryn Cronin: Ensuring proper preparation by lawyers is more important than any advice that can be given to judges, because good preparation can preclude the need for an appeal in the first place. Lawyers dealing with asylum appeals need to be trained to take a good statement in a way that avoids credibility issues that can arise at tribunal. This includes being knowledgeable and sensitive to the factors that can influence perceptions of credibility (anxiety, education level, etc.)
- Rachel Henson, Wilson Solicitors: Legal representatives already feel overburdened and are unlikely to be happy with additional regulations or mandatory training. A better approach is to encourage best practice.
- Catriona Jarvis: Lawyers should be in the habit of always asking “is there anything else you want to tell the judge?” at the end of testimony at a hearing. This allows an appellant who might be anxious or unsure about how to answer questions to take charge of her own testimony and make sure that she states everything that she wants to.

- Kathryn Cronin: Training for OISC advisers and lawyers needs a different focus as now there is lots about the law but not how to deal with people. The report should recommend more training for advisors and lawyers on gaining confidence and treating asylum seekers with empathy. Lawyers often focus the case too much on the events leading to an asylum seeker's flight and not enough on the asylum seeker as an individual, her life, and her background. Remedying this balance would help to humanize asylum seekers and combat the assumption that they have come to the UK solely for better jobs.
- Sheila Grewal, tribunal judge: The report is correct to emphasize the importance of appellants 'running the show' and taking an active role in their own appeals. However, some lawyers might worry that enabling their clients in this way will make them appear "soft." It is important to combat this assumption.

b. Empowering asylum seekers

All attendees who spoke agreed on the importance of empowering asylum seekers and encouraging them to take an active role in their own appeals. Several made concrete suggestions as to how to improve and foster this practice.

- Kathryn Cronin: The report should recommend that an easily accessible guide be published for asylum seekers. Such a guide would be visual and accessible online, and would include practical information such as what a court looks like, and what to expect on the day of the hearing.
- Caitriona Jarvis: The Appeals Tribunal used to have a leaflet about visiting the tribunal which mentioned visiting before the hearing.
- Alimatu Kijena: recounted her experience of being unaware when she first came to the UK that her circumstances were grounds for an asylum claim (forced marriage; FGM). She was told by people she knew that she could not get asylum because she did not come from a war zone and would be deported. The fact that she had been in the UK for 6 years before seeking asylum was brought up during her claim as a negative.
- Rachel Henson, Wilson Solicitors: Any guides provided for women asylum seekers because of this research should include experiences from other women of basic misunderstandings that have negatively impacted the appeals process. For example, many asylum seekers have never been to court before and expect to be able to give representations to a judge like in criminal court. Practical guidance to manage these sorts of expectations is essential.
- Princess Onyeukwe: The Home Office is overworked, but it has made positive improvements in similar areas in the past, showing that it is willing to change. However, it is very important to inform women about their rights and teach them how to act in initial interviews. Asylum Aid's Protection Gap Advocates have produced a film providing such information.

c. Role of the judge

While many agreed that the legal representative is paramount, attendees also stressed the role of the judge in shaping women's experiences, and suggested some recommendations that the report could make relating to judges who consider asylum claims.

- Princess Onyeukwe: relating to the appellant and making her feel welcome is important to alleviate the sense of anxiety that can often prevent a woman from giving best evidence. Things that judges can do to establish this “human touch” include welcoming people and making them feel comfortable, allowing children in the courtroom and making them feel welcome as well as not allowing aggressive questioning. Women are more vulnerable to credibility issues than their male counterparts, particularly when describing experiences of gender-based or sexual violence. This makes it especially important for judges to foster a welcoming atmosphere and combat the anxiety that can exacerbate the appearance of non-credibility. However, judges should be aware that the composure and demeanour of a woman at her own appeal is unlikely to be representative of her credibility.
- Catriona Jarvis: the fact that the same case can be treated so differently depending on the judge that handles it is evidence that training for judges on dealing with women’s asylum appeals is not adequate. The approach taken should be more predictable and uniform. Judges should always introduce themselves to appellants. The fact that this doesn’t happen uniformly indicates the need for further training.
- Debora Singer: the best practice that women asylum seekers sought mirrored the good practice that judges recognise so this emphasises the importance of judges educating other judges by sharing good practice.

d. Sensitivity to specific issues

Many attendees felt that the asylum process was not sensitive enough to specific issues that could impact upon a woman’s experience. They felt that the report should emphasize the fact that the process is lacking in sensitivity to things like dialect, tribe, sect, religious difference, etc., and relies too heavily on generic information that does not accurately apply to the individual experiences of many women asylum seekers.

- Kathryn Cronin: The existing Guidance Note for judges is poor. One resource for improving this would be to look at previously published bench books. These could be amended to help judges understand gender specific issues. For example, judges should be equipped with resources on the specifics of issues like FGM in different cultures and communities. This sort of information should be in the bench books, not just in gender guidelines.
- Kathryn Cronin: Country evidence tends to be too generic to be helpful. For example, country reports are unlikely to include evidence pertinent to an appellant’s specific village, tribe, etc. The report should focus on strategies for lawyers to prepare better country-specific evidence.
- Mariam Yousef: echoed that from her experience as an asylum appellant, the tendency is to consider to look at country evidence too generally.

e. Role of interpreters

Several comments touched upon the importance of having a competent and sensitive interpreter, when one is used.

- Dudu Mango: recounted her experience of bringing her daughter to an asylum interview with her to help with the English, but when she arrived her daughter was not allowed in and no interpreter was made available. The interviewer convinced her that the interview would

be simple and straightforward and she would be able to understand, but when she was confused by terms she had not heard before (like 'GP') she was not allowed to stop. This led to inaccurate information in her file which continued to affect her case at appeal.

- Alimatu Kijena: recounted being assigned an interpreter who did not speak her dialect, and being called a liar when she said she didn't understand the proceedings.
- Rachel Henson: The recent practice of hiring private interpreters might impact negatively on this; cheaper interpreters are less likely to be adequate.
- Catriona Jarvis: having an interpreter with the appropriate language skills and who is versed in the sensitivities required to deal with women's asylum claims is essential.

f. All-female courts

Opinions differed on the utility and desirability of allowing asylum-seekers to request female judges/representatives or all-female courts.

- Kathryn Cronin: all-female courts are counter-productive. They lead to the perception that an appellant has sought special treatment, and they actually foster more intrusive/traumatic questioning than courts where men are present (women feel able to ask more sensitive questions in the absence of men.) Additionally, the stereotype that female judges are kinder or more understanding than male ones is simply untrue.
- Mariam Yousef: The prospect of facing a male judge can be a great source of anxiety for some female asylum seekers. In some cases, a woman's faith or her history of violence can make it impossible for her to disclose relevant information to a man (judge, interpreter, interviewer). For these women, inability to access a female judge can mean that appeals drag on for much longer than necessary.
- Rachel Henson: The majority female attendance at this event highlights the need to get more male practitioners informed and engaged on this issue. Practically, it won't always be possible for everyone who wants a female judge or representative to get one.
- Princess Onyeukwe: While cultural factors should not be ignored, asylum seekers should realize that they won't always be able to get a female judge, and should be open to telling their story to a man if possible. The experience should be framed as an opportunity to be heard, rather than focused on who is listening.

g. Further research

Finally, attendees identified points for further investigation and research.

- Catriona Jarvis: Why do some women feel unable to share the information in their case files with researchers even if it is anonymized?
- Kathryn Cronin: The report overall is too generic; its suggestions would benefit from more specificity.
- Kathryn Cronin: The project misses an important chance to highlight the data showing that women's asylum appeals are on average more successful than men's. Why is this? Cronin believes this pattern can be traced to assumptions that female asylum seekers are more vulnerable and in need of protection than men. The same assumptions aren't generally

made about young men, although this group is in fact very vulnerable. More research is needed to understand and combat this imbalance.

- Rachel Henson: stereotypes lead to a system in which young men are seen as healthy and able to cope with the challenges they might face if sent back to their country of origin, but women are not.
- Maya Pope-Weidemann: The culture of disbelief in cases involving women is not unique to asylum claims. It is also prevalent in domestic and sexual violence claims in the UK. One major reason is that the behaviour resulting from trauma is often seen to reflect lack of credibility. How can we make this more apparent to the general public, who tend to believe that the legal process is fair and impartial and as such unaffected by stereotypes?
- Maya Pope-Weidemann: What is the impact of racist assumptions on perceptions of credibility?
- Kathryn Cronin: “Women” is too homogenous a group for an informed study. The study should differentiate between women based on factors such as level of education and urban vs. rural origins. The Home Office tends to treat women differently based on which of these categories they fall into, and this affects the entire asylum process. For example, the ability to accurately sequence dates and events creates an impression of credibility at interviews and in court. Women from rural backgrounds who aren’t used to using clocks or calendars often have trouble with this, which puts them at an automatic disadvantage. In addition to investigating how these sorts of factors affect the appeals process for women, the report should identify the type of advice that can be given to lawyers, judges, support organizations, etc. to adjust their focus and approach to women’s individual backgrounds.
- Amina Memon: Many of the issues here have been addressed in the research and literature on providing support for vulnerable witnesses (i.e. children and those with special needs). The report should look to resources like the Vulnerable and Intimidated Witness legislation and special measures, as well as consulting experts who have already dealt with issues of anxiety and perceptions of credibility in terms of vulnerable witnesses.
- An asylum seeker: The report seems to be focussed on women who claim asylum because of gender based violence; are the issues and findings similar for women who claim asylum because of political persecution? Debora Singer of Asylum Aid noted that these cases are sometimes easier because political asylum seekers are more likely than asylum seekers escaping gender-based violence to have documentary evidence to support their credibility. The attendee pointed out that when someone has faced political persecution, the documentary evidence from their country of origin might be falsified or not credible.
- Rachel Henson: How does institutional infrastructure impact on the appeals process? For example, do difficulties getting legal aid funding result from insufficient knowledge about what is available?
- Rachel Henson: Are some geographical areas in the UK more affected by the issues raised than others?
- Catriona Jarvis: The Prisons and Courts Bill is currently in committee, and could possibly make major changes to the tribunals system including merging courts and tribunals. Therefore, the time is ripe revising the Guidance Note.