Through her eyes: Enabling women’s best evidence in UK asylum appeals

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Aims

The purpose of this research was to improve the understanding of factors related to successful appeals against asylum refusal for women. The project explored women’s experience of the asylum appeal process and how it affects them

Methodology

This research focused on six asylum dispersal areas: Birmingham; Bradford; Glasgow; London; Manchester and Newport.

Initial scoping work included observation of immigration tribunals and a focus group of women with lived experience. In

depth qualitative interviews were undertaken with 22 women, as well as with support organisations, legal representatives and first tier tribunal judges.

Secondary data was obtained through asylum case file analysis. Eight files were analysed in total of which five were a successful asylum appeal. In four of the files analysed, the asylum appeal was heard twice by a first-tier tribunal, giving the research team the opportunity to assess how the same case was handled by two different legal representatives.

Key issues

The researchers provide an overview of the UK asylum system, including the appeals process.

Women's reasons for claiming asylum in the UK often relate either directly or indirectly to gender-based harm. These harms could come from the state, from their family members or their community. Gender is not explicitly mentioned as grounds for persecution in the 1951 Refugee Convention.

Attending a First-Tier Tribunal hearing is revealed to be challenging for women. In light of any previous experiences of detention, and their initial screening interview, they may anticipate hostility during the hearing. The authors reported the following findings in relation to women's experiences:

- How prepared women felt for the First-Tier Tribunal is related to the support received beforehand. The research found that women do not always know what to expect, in some cases often being left on their own at the appeal level due to legal aid restrictions. There were examples in this research where women were given 24 hours' notice of a hearing.

- Experiences of legal representation varied, with some women feeling their representative was not sufficiently skilled or prevented them from contributing to the hearing. Others reported a positive experience, related to their representative's interpersonal skills.
- The attributes of the judge were a factor in women's experience of the process.
- The adversarial nature of the process was seen as a source of stress, and it was felt there was too much emphasis on credibility.
- Experiences of interpreters varied depending on factors such as their cultural background or ability to speak the woman's dialect.
- Women sometimes felt there was not enough attention paid to their comfort and wellbeing, and childcare was an issue.
- Additional support with finding legal representation would have been helpful.
- Some did not want to go through the appeals process again due to their negative experiences.

In terms of the legal process, the research found:

- Multiple barriers to disclosing gender-based violence such as threats to themselves or family members, shame, and all-male tribunals.

- Difficulties in evidence-gathering in cases of gender-based violence places the onus on women's own words and an emphasis on her credibility.
- Good legal representation was seen as key for well-presented appeals.
- In the cases reviewed in the research, no expert evidence had been made available in any of the first unsuccessful appeals.
- Judges felt they had enough information to decide on sufficiency of protection and internal relocation.
- Judges spoke about needing to ensure an open mind. Some were reported to have an 'interrogatory' manner.
- It was suggested that training is needed for judges who may not be aware of trauma and gender-based issues.
- Attributes of successful appeals included: all the evidence being assessed; consideration of contextual factors; reasons for late disclosure being accepted; acceptance of compelling testimony without additional evidence.

In relation to the Guidance Note on Child, Vulnerable Adult and Sensitive Witnesses:

- It was suggested there were sometimes missed opportunities to raise the issue of vulnerability.

- Participants agreed there were circumstances where an all-female tribunal would be appropriate, although not all women interviewed shared the view these were needed.
- It was felt the Guidance Note did little to prevent ‘aggressive cross-examination’.
- Awareness of the Guidance Note should be increased.

Conclusion

Key factors in the success of women’s asylum appeals are identified as: the availability of expert evidence; the level of preparation of legal representatives; well-trained Home Office Presenting Officers; open-minded judges; adequate interpreters; enough support and information, and childcare. All these elements are not always present. In addition to that, as claims often relate to gender violence and due to the sensitivity of that issue, women may fail to explain or disclose all information which might cause their credibility to be questioned and their case to be rejected.

This research explored how women experience the appeal process and how this affected them; considering factors underpinning the success of asylum appeals, and how the Guidance Note is implemented in women’s cases. On the one hand, a lack of knowledge and awareness of what the appeal entails, and inadequate representation and sourcing of evidence increase the likelihood of failure. On the other hand, factors such as the quality of evidence presented, the preparation involved,

the impartial attitude of the judge and a competent interpreter were seen as important for appeals to be successful.

Recommendations

The authors made the following recommendations:

- The Guidance Note on Child, Vulnerable Adult and Sensitive Witnesses (which should ensure a fair hearing for vulnerable witnesses) needs to be reviewed.
- There should be events for judges to share good practice.
- Practical changes are needed to improve women's experience of the appeals process including providing a more conducive environment for women to and disclose sensitive information.
- Relevant information should be provided to people appealing their asylum decision and to judges, such as via an accessible guide.
- Legal representatives to review their approaches to ensure good practice, such as maximising evidence gathering in support of the first claim, and organising pre-hearing visits to the tribunal to help women feel more prepared.
- Interpreters in appeals should be sufficiently linguistically skilled in terms of gender issues, and in the relevant dialect.
- The training and Code of Practice of Home Office Presenting Officers should be reviewed to ensure gender issues are considered.

- To satisfy the duties under the Equality Act 2010 the Legal Aid Agency should consider making legal aid available for women asylum seekers.

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