

Unsustainable:

the quality of initial
decision-making in
women's asylum claims



EXECUTIVE SUMMARY

Asylum Aid has long held concerns about the treatment of women seeking asylum in the UK. This research was conducted to examine in detail one specific part of this process: the quality of the initial decisions made by the UK Border Agency (UKBA) when women claim asylum. The resulting report is the first in-depth study of decision-making for women seeking asylum since the introduction of the New Asylum Model in 2007. This Model was introduced partly to improve the way decisions were made, and this report tests how effective these reforms have proved.

Women's asylum claims regularly present issues that are different from those presented by men, and can be highly complex and challenging. The findings in this report have deepened our concern that the UKBA is badly failing to meet this challenge, and that women seeking asylum are frequently let down by an extremely poor standard of decision-making.

The research found that women were too often refused asylum on grounds that were arbitrary, subjective, and demonstrated limited awareness of the UK's legal obligations under the Refugee Convention. Many of the UKBA's decisions proved to be, in the words of an immigration judge examining one of the cases included in this research, "simply unsustainable", and 50% were overturned when subjected to independent scrutiny in the immigration tribunal.

After receiving advance notice of our research findings, the UKBA confirmed that its own internal data also indicates that a disproportionately high number of refusal decisions for women seeking asylum are overturned on appeal. The UKBA has stressed that these are provisional figures, but has also agreed to analyse this data further. Given the concerns raised by our research, this is a very welcome commitment.

Asylum Aid examined the files of forty-five women from three different UKBA regions – based in Cardiff, London and Leeds – who claimed asylum between 2007 and 2010. Nine of these women were also interviewed. The research analyses the case files and draws extensively on the decisions outlined in the reasons for refusal letters issued by the UKBA to those applicants refused asylum, and the determinations made by immigration judges in the cases of those applicants who appealed the initial decision. In addition to this, the report also draws on the opinions and reflections of some of the women themselves.

We also interviewed UKBA officials whose work focuses on training case owners and auditing asylum decisions.

Key findings

The UKBA consistently makes the wrong decisions for women seeking asylum, which then have to be corrected by immigration judges

The majority of women in our research were simply not believed. 87% of the cases in this research were initially refused, the majority because the UKBA did not accept the credibility of their asylum claim. However, 42% of these decisions were overturned on appeal, far above the average for all asylum cases (which stands at just 28%). This figure goes up to 50% when including decisions made after the reconsideration of an initial appeal. Immigration judges accepted the credibility of the applicant's claim in every one of the successful appeals.

The UKBA does not adequately consider the legal entitlement to protection provided to victims of gender-related persecution under the Refugee Convention

Although the Refugee Convention does not explicitly recognise persecution due to gender as one of the grounds on which an individual can be recognised as a refugee, an individual who has suffered gender-related persecution may engage the Convention on the ground of membership of a Particular Social Group (PSG). Despite this, the UKBA ignored PSG entirely in the majority of cases based solely on gender-related persecution, and decided that no Refugee Convention ground had been engaged. More than a third of these decisions were subsequently overturned on appeal when an immigration judge recognised that asylum should in fact have been granted on the basis that the women belonged to a particular social group.

Case owners do not consider issues at the heart of gender-related persecution

The UKBA case owners at times displayed a striking failure to understand the nature of the persecution from which women might flee. This poor understanding led to case owners doubting the credibility of applicant's accounts for no good reason. For example:

- One woman – whose passport had been confiscated by her husband, and from whom she had been subjected to threats, abuse and humiliation – was informed by the UKBA that she was not considered a victim of domestic violence because her husband had only tried to hit her once
- One refusal letter made repeated reference to an *arranged* marriage when considering the case of a woman who had been *forced* into marriage at fourteen to a man who had subsequently abused her over many years
- At one asylum interview, the case owner stated that they had never before heard the term “female circumcision”

Country of Origin Information and case law were used selectively or unrepresentatively

Case workers should work from balanced and objective Country of Origin Information (COI) reports, and from up-to-date and relevant case law. Even when information regarding the treatment and conditions facing women in their countries of origin was available in COI reports, or when there was relevant case law in existence, both were used selectively and unrepresentatively in support of negative decisions. Some case owners relied on case law that had been overturned by the time they made the decision.

For example:

- One decision-maker relied upon an article from the American gossip website www.gawker.com when refusing an application from a lesbian who feared the death penalty if returned to Uganda. No reference was made to the COI report detailing persecution of gay people in Uganda
- Another refusal letter, issued to a woman who feared 'honour'-killing if returned to Iraq, quoted a COI report about the support available from local police but omitted information from the same report about the danger that police may sexually assault women who approach them for help
- One case owner cited case law that trafficked women do not qualify as a PSG within the terms of the Refugee Convention. In deciding the appeal, the immigration judge pointed out that case law overturning this had been available at the time of the initial decision, and that the application of case law in the initial decision "must be regarded as wrong". The judge confirmed that 'former victims of trafficking' could constitute a particular social group

Measures introduced by the UKBA to improve the handling of asylum claims have not been adequately implemented

The adoption of gender guidelines in 2004 (last updated in 2010) provided UKBA case owners with guidance on assessing women's asylum claims appropriately. The introduction of the New Asylum Model in 2007 was intended to strengthen the UKBA's ability to make decisions accurately and quickly. But our research found that many of these measures have not been implemented adequately.

- The 'single case owner' model has been eroded. This model promised that a single UKBA case owner would be responsible for an asylum claim from the interview to either removal or integration. The continuity built into this had clear benefits for women seeking asylum, as it would help develop the trust necessary for the disclosure of distressing details. However, the case owner changed at least once for the majority of the women in our sample
- Substantive asylum interviews continue to be conducted in ways that are invasive and unhelpful. Some of the questions asked were both irrelevant to the claim and inappropriate. One victim of sexual abuse was asked if she had attempted to stop a man from raping her; another was asked to explain why several years of sexual harassment had ceased. One interview lasted five hours without a break, and in several instances case owners failed to pick up signals that the applicant was struggling to maintain their concentration during long and distressing interviews

Women seeking asylum are affected by a desperate lack of legal representation

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. This creates a problem for all women seeking asylum, but the situation was most fraught in Cardiff, where half of the women who went to appeal did so without any legal representation.

Key recommendations

To ensure more sustainable decision-making for women in the future, the UKBA should:

- 1) Ensure that case owners**
 - question asylum applicants appropriately, both through the nature and phrasing of questions and through their tone and attitude
 - understand how trauma affects memory and concentration
 - interpret and apply the Refugee Convention appropriately in relation to gender
 - identify and apply appropriately the ground of membership of a Particular Social Group
 - interpret and use appropriately case law relevant to gender
 - seek out and apply appropriately Country of Origin Information on gender related issues
 - take gender persecution, discrimination, cultural issues and economic issues into account when considering the reasonableness of internal flight alternative
- 2) Ensure the single case owner model is implemented from the first reporting event until the decision is made.**
- 3) Guarantee that women asylum applicants are provided with female case owners and interpreters at interview.**
- 4) With the Legal Services Commission, ensure that the evaluation of the Early Access to Legal Advice Project takes account of the particular needs of women claiming asylum.**

The Country of Origin Information Service should:

- 5) In its Country of Origin Information reports, expand on gender-specific issues including gender persecution, discrimination, and cultural and economic issues that impact disproportionately upon women.**

The Legal Services Commission should:

- 6) Guarantee access to free competent legal advice and representation to all asylum seekers in advance of their initial asylum interview.**
- 7) Revise the graduated fee scheme to ensure that it encourages good quality representation and does not act as a disincentive in complex cases.**

Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad.

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