

Briefing by Asylum Aid (February 2014)

Background

During 2013 the Home Affairs Select Committee (HASC) held a wide-ranging inquiry into asylum. Their conclusions and recommendations were presented in their report published in October 2013.¹ The Home Secretary responded in December 2013.²

Asylum Aid gave both written and oral evidence to the HASC, particularly focusing on issues relating to women seeking asylum.³

This briefing provides Asylum Aid's response to the Home Secretary's response to the HASC report. Again we focus specifically on the quality of decision-making, particularly in relation to women's asylum claims.

Summary

We welcome the fact that the Home Secretary has accepted some of the recommendations made by the HASC. However, we were disappointed to find that whilst claiming that they agreed with the recommendations, in some cases their stated policy does not in fact result in the recommendations being implemented.

In summary we do not believe the Home Secretary's response goes far enough. Despite statements of good intentions in relation to quality of decision-making the Home Secretary does not provide sufficient details of what mechanisms it intends to use to improve the current situation.

We agree with the HASC's emphasis on using performance management to improve standards. Whilst the Home Secretary agrees with some of these ideas, we believe a consistent package is required which includes line management, performance management, supervision and appraisals systems to probe the results of quality audits, grant/refusal rates and overturn on appeals.

Merely training case owners on gender issues in asylum claims does not alone result in a change of practice. This needs to be supported from the top. To change the current culture there is a need for far greater leadership and vision. We are pleased that Sarah Rapson, Interim Director of UK Visas and Immigration (UKVI), has taken on the role of Gender Champion, and would urge her to use this to promote a gender-sensitive asylum system. But to mainstream gender throughout UKVI, there

¹ Available HTTP: www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71.pdf

² Available HTTP: www.parliament.uk/documents/commons-committees/home-affairs/Cm%208769%20Asylum%20Government%20Response.pdf

³ Available HTTP: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/uc71-i/uc7101.htm>

needs to be more joined-up thinking throughout the organisation. This change in culture could, for example, ensure that case owners are using the correct standard of proof – reasonable degree of likelihood of an applicant being at risk of persecution – in women’s cases.

We would urge the UKVI to take the opportunity of the police and Crown Prosecution Service (CPS) current overhaul of their own guidance on credibility in sexual offences cases to see what lessons could be transferred in relation to credibility assessments for women seeking asylum (see below).

Recommendation 1 – Delays in initial decisions

We welcome the fact that the Home Secretary accepts that well over 90% of initial decisions should be taken within 6 months and states that they are currently reviewing the customer service standards. Our experience at Asylum Aid has shown that UKVI falls well short of this recommendation. Whilst welcoming the Home Secretary’s agreement to make improvements, we would also welcome knowing how they intend to achieve this.

Recommendation 2 – Culture of disbelief

The Home Secretary does not accept that there is a “culture of disbelief.” We disagree with her interpretation that this means a prejudice on the part of their case owners. We use “culture of disbelief” to mean a systemic or institutionalised rather than an individual problem.

The Chair of HM Inspectors of Constabulary has recently been reported as stating that are serious questions about whether a “culture of disbelief” persists in some police forces when it comes to women making rape allegations.⁴ In contrast to the UKVI, they are willing to accept this possibility and consider strategies to eliminate this.

The Home Secretary states that case owners need to apply a degree of rigour when testing asylum claims and that this can lead to suggestions that the bar is sometimes set too high. We do not see this as a “suggestion.” This is because there is plenty of independent evidence⁵ highlighting cases where the requirement for evidence goes

⁴ Available HTTP: <http://www.theguardian.com/society/2014/jan/31/rape-claims-police-forces-allegations>

⁵ Asylum Aid (2011) *Unsustainable: the quality of initial decision-making in women’s asylum claims*, London: Asylum Aid, online. Available HTTP: <http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf>; UNHCR (2013) *Beyond Proof, Credibility Assessment in EU Asylum Systems*, Brussels: UNHCR; Amnesty International/Still Human Still Here (2013) *A question of credibility: why so many initial asylum decisions are overturned on appeal in the UK*, London: Amnesty International. Online. Available HTTP: http://www.amnesty.org.uk/uploads/documents/doc_23149.pdf

beyond the appropriate standard of proof of reasonable likelihood detailed in UKVI's own guidance.⁶

The Home Secretary accepts that UKVI need to reduce the number of cases which they avoidably got wrong. However, they do not detail how they will accomplish this. We would urge UKVI to introduce a process of accountability to enable this to happen.

We believe that the poor quality of credibility assessments persists because policies and training are ignored or overlooked. UKVI performance management systems fail to prevent this.

Recommendation 3 – Overturn of appeals as a learning opportunity

Given that the current rate of overturn on appeal is 30%, we are pleased that the Home Secretary agrees with this recommendation. We believe that their willingness to compare quality assessments for initial decisions and the appeal outcome is welcome as are their plans to monitor individual case owners' refusal and grant rates. However we are disappointed that there is no mention of the remainder of the HASC's recommendations such as integrating this issue into staff development and appraisals.

We believe it will not be possible to use successful appeals as a learning opportunity to improve the quality of decision-making without a very clear mechanism for accountability and performance management. Currently it is left to immigration judges to apply the appropriate standards in accepting many of the same accounts of persecution further down the line.⁷

Recommendation 4 – Regional screening

The Home Secretary states that Home Office policy ensures that regional screening is exceptionally available for those applicants where it would be unreasonable to expect them to travel to Croydon. However, our experience is that this policy does not provide for consistency between regions and still results in people who are very vulnerable being forced to make the long journey to Croydon. The Home Secretary does not accept evidence presented to the HASC by Asylum Aid stating that an

⁶ UK Border Agency (2012) *Asylum Process Guidance, Considering Asylum Claims and Assessing Credibility*, Online. Available HTTP:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/consideringanddecidingtheclaim/guidance/considering-protection-.pdf?view=Binary>

⁷ Amnesty International/Still Human Still Here (2013) *A question of credibility: why so many initial asylum decisions are overturned on appeal in the UK*, London: Amnesty International. Online.

Available HTTP: <http://www.amnesty.org.uk/uploads/documents/doc_23149.pdf>; Asylum Aid (2011) *Unsustainable: the quality of initial decision-making in women's asylum claims*, London: Asylum Aid, online. Available HTTP: <http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf>

asylum seeker travelling from Scotland went into labour at the Asylum Screening Unit in Croydon. However we have this from a credible source (the Scottish Refugee Council) which has written evidence. Conversely we were not aware of a woman from Leicester going into labour at the ASU.

We welcome the provision of space for children during their parents' screening interview.

The Home Secretary states its policy on childcare during asylum interviews. From 2007 onwards, childcare was brought into some regions following lobbying by a range of NGOs coordinated under what became the *Charter of Rights of Women Seeking Asylum*.⁸ We understand that provision is being maintained at Cardiff, Leeds and Solihull. However in Glasgow the provision has been suspended for two years due to bureaucratic issues. There is still no adequate provision in London or Liverpool.

We welcome the Home Secretary's statement that their invitation-to-interview letters now reflect UKVI childcare policy. The Refugee Women's Strategy Group and Asylum Aid have been lobbying for this since October 2010.

Recommendation 5 – Interpreters

Recommendation 6 – Further representations

The Home Secretary's statement that it is vital that applicants provide all relevant information as early as possible in the asylum process does not give sufficient weight to the difficulties which victims of rape or torture have in disclosing such events. There is clear evidence of this in research in relation to victims of rape and sexual violence in the criminal justice system in the UK which has led to guidance stating

the trauma can cause feelings of shame and guilt which might inhibit a victim from making a complaint. This was recognised by the Court of Appeal in R v D (JA) [2008] EWCA Crim 2557, where it was held that judges are entitled to direct juries that due to shame and shock, victims of rape might not complain for some time, and that "a late complaint does not necessarily mean it is a false complaint".⁹

There is also research showing that women who claim asylum after being raped or falling victim to sexual violence are often traumatised and that this can lead to discrepancies and confusion over recall of events surrounding that trauma, or to late

⁸ Available HTTP: www.asylumaid.org.uk/wp-content/uploads/2013/02/Charter.pdf

⁹ CPS Guidelines on Prosecuting Cases of Child Sexual Abuse (Annex C, para d).
http://www.cps.gov.uk/legal/a_to_c/child_sexual_abuse/#a13

disclosure of those events.¹⁰

Recommendation 7 – Customer Service

Whilst fully supporting the emphasis of the new UKVI on customer service, we believe that it is important that the Home Secretary recognises that asylum seekers are in a very vulnerable position and may well not be in a position to make complaints or to respond honestly to surveys regarding the quality of service they have received.

We believe UKVI should think more laterally about ways of identifying the quality of their customer service. For example, in our casework at Asylum Aid we regularly have to resort to judicial reviews simply to get a decision from UKVI. One idea would be for UKVI to use the number of judicial reviews it is served with as an indicator of customer service.

Recommendation 8 – Asylum Operating Model

The new Director of Asylum's plan to retain more staff at the HEO grade is to be welcomed as the complexity of asylum decisions means that relying on staff at the EO grade is unlikely to improve the quality of decision making. However, we are very concerned that the intention is to move away from asylum case ownership. We believe a single case owner is essential to enable asylum applicants to build up trust and be able to disclose their experiences. It also protects them from the trauma of having to tell their story more than once. We are particularly concerned at the idea that decisions will be made by someone other than the case owner who has interviewed the asylum applicant, as we do not understand how they will have sufficient information simply from the file.

We believe the National Referral Mechanism (NRM) concerning the identification of victims of trafficking should be removed from UKVI responsibilities as it is inappropriate to make a decision on whether somebody has been trafficked within the context of determining their immigration status.¹¹ Having said this, while the NRM stays within UKVI, we welcome the suggestion that decisions are undertaken through a central team to provide consistency and expertise.

¹⁰ Diana Bögner, Jane Herlihy and Chris R. Brewin, 'Impact of sexual violence on disclosure during Home Office interviews' (2007). *British Journal of Psychiatry*, 191, 75-81.

¹¹ This argument is made by the Centre for Social Justice in its report *It Happens Here: Equipping the United Kingdom to fight modern slavery* (March 2013). Available HTTP: [http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB\(5\).pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB(5).pdf)

We welcome the plan to write more concise and user friendly refusal letters and keep interviews as short as possible, with the proviso that applicants are given time to tell their story in a way that feels comfortable to them.

Recommendation 9 – Country information on Sri Lanka

Recommendation 10 – Country of origin information and country’s specific litigation team

Recommendation 11 – Gender

We welcome the Home Secretary’s statement that it is “committed to making the asylum system more gender sensitive and has made significant progress in recent years, including putting in place new enhanced guidance, supported by high quality training for all decision makers”. We were consulted on the new guidance and were involved alongside UNHCR in the development of the new training for decision makers on gender issues. We were pleased that this incorporated a number of the themes and examples from our research.¹²

We are pleased that the Home Secretary states “the Home Office is working on a number of other initiatives in light of the far reaching commitments it made in the Home Secretary’s violence against women and girls action plan, including a pilot of referrals of victims of sexual and gender based violence to the appropriate services, and regular audits of decisions in gender based cases. These initiatives reflect the fact that the Home Office takes very seriously the needs of women who have been the victims of sexual and domestic violence.” The addition of the action points to which the Home Secretary refers followed the Missed Out campaign run by the *Charter of Rights of Women Seeking Asylum* during the winter of 2012. We await with interest the progress made in the initiatives detailed in the action plan and are working alongside the Home Office on these.

We agree with the Home Secretary that the same probative criteria should be applied in all cases. In doing so, i.e. by using the lower standard of proof of reasonable likelihood,, UKVI needs to take into account that many women are persecuted in the private sphere and so do not have documentary evidence of this harm and might be at risk if they asked for state protection. In addition, it may be difficult for them to provide coherent, consistent, chronological narratives due to the trauma they have experienced.

¹² Asylum Aid (2011) *Unsustainable: the quality of initial decision-making in women’s asylum claims*, London: Asylum Aid, online. Available HTTP: <http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf>

We welcome the Home Secretary's statement that it will continue to work to ensure that its decision makers are supported in making high quality decisions in gender and other cases. However this will only happen if UKVI puts into place strong performance and management systems.

We welcomed the HASC's statement in recommendation 11 that "At a time when the criminal justice system is finally waking up to the needs of victims of domestic and sexual violence, the asylum system should be doing the same." We were disappointed that the Home Secretary hasn't taken up this suggestion. As Baroness Stern states in her report of how rape allegations are handled

*a substantial amount of change has been introduced in recent years by the public authorities that carry responsibilities in this area. Attitudes, policies and practices have changed, fundamentally and for the better.*¹³

Following the Savile and Rochdale cases, the police and CPS are now working on new overarching guidelines for handling sexual offences cases. The latest CPS Guidelines on prosecuting cases of child sexual abuse say

*Police and prosecutors should therefore look to build a case which looks more widely at the **credibility of the overall allegation** rather than focusing primarily on the **credibility and/or reliability of the child or young person***¹⁴

Also considering credibility, the previous Director of Public Prosecutions, Keir Starmer, stated

*If the criteria for testing their [victims of sexual offences'] credibility match the characteristics that make them vulnerable in the first place, we have a fundamental flaw in the approach to credibility.*¹⁵

We continue to believe that UKVI has lessons to learn from their colleagues in the criminal justice system, especially at a time when they are considering issues of credibility in cases of sexual offences in depth.

¹³ Stern, V. 2011 The Stern Review, A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales, Home Secretary Equalities Office

http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf

¹⁴ CPS October 2013 CPS Guidelines on Prosecuting Cases of Child Sexual Para 50, emphasis added. Abuse http://www.cps.gov.uk/legal/a_to_c/child_sexual_abuse/#a13

¹⁵ Starmer, K. 2013, The criminal justice response to child sexual abuse, Crown Prosecution Service http://www.cps.gov.uk/news/articles/the_criminal_justice_response_to_child_sexual_abuse_-_time_for_a_national_consensus/

Recommendation 12 – LGBTI applicants

We are pleased that the Home Secretary reiterates that “an asylum seeker is required only to demonstrate that there is a reasonable degree of likelihood of their being at risk of persecution”. We also welcome the Home Secretary’s statement that they are committed to “ensuring that their policy on credibility assessment is reflected in practice through the Next Generation Quality Framework and robust performance management where case owners fail to properly apply guidance”.

Whilst these statements were made in the context of LGBTI applicants, we understand them as being relevant to all asylum applications.

Recommendation 13 – LGBTI applicants and safe countries

Recommendation 14 – the Detained Fast Track

The Home Secretary states that where sufficiently reliable information is available that indicates an applicant is unsuitable for the process, they will not be entered into the Detained Fast Track (DFT). However we know of cases where women have been placed in the DFT despite specifically stating at screening that they have been victims of domestic violence or that their claim is based on their sexuality or who have evidence of having been trafficked. These claims clearly do not fit the DFT criteria as they are too complex to be decided quickly.

Asylum Aid believes that the DFT should be abolished.

Until then, cases where there is evidence or an assertion or indicator of gender-based violence or of sexual orientation or gender identity should be added to the DFT exclusion criteria.

Recommendation 15 – Early Legal Advice Project (ELAP)

We welcome the Home Secretary’s commitment to investigate how the effective collaboration of asylum decision makers and legal representatives can benefit the most complex cases. The findings from ELAP must be the beginning of a constructive dialogue on making better asylum decisions, not the end.

We would also welcome the front loading of evidence and the timely submission of witness statements as recommended by the HASC.

Recommendation 16 – Legal Aid

The legal aid system carries no incentives for high quality work. While it rightly protects against substandard legal advice, there is no built-in motivation to go beyond that and provide work of the highest standard.

Whilst asylum seekers will be exempted from the Home Secretary's proposed residence test in relation to accessing Legal Aid, the proposals will nonetheless have a potentially catastrophic impact on asylum seekers and refugees. Stripping more and more money from Legal Aid threatens the survival of all charities which rely on Legal Aid in whole or in part, and will remove expertise from key areas of work with very vulnerable people. This includes complex and challenging work around the needs of women seeking asylum.

Recommendation 17 – Guidance for complaining about asylum solicitors

Recommendation 18 – Support system

We have grave concerns about the Home Secretary's intention to continue to suspend support for failed asylum seekers as this leaves people desperately vulnerable. Evidence shows that women who are destitute become vulnerable to sexual violence and exploitation. They are also forced to engage in transactional activity including sexual activity to get a roof over their head.¹⁶ Despite the Home Secretary's strategy to End Violence Against Women and its emphasis on protection, destitute women asylum seekers are not protected from such violence.

Recommendation 19 – Allowed appeals regarding asylum support

Recommendation 20 – Transfer to mainstream benefits

Recommendation 21 – English language classes

Recommendation 22 – Housing

Recommendation 23 – Accommodation providers entering properties

We welcome the Home Secretary's agreement concerning the conduct of accommodation providers. A requirement concerning this should be included in the contracts between the Home Office and accommodation providers and regularly monitored. We would particularly stress the trauma that a woman experiences if a male accommodation provider enters her home without being invited in.

Recommendation 24 – National Audit Office's inspection of asylum accommodation contract

¹⁶ Crawley, H. et al. 2011. *Coping with destitution, survival and livelihood strategies of refused asylum seekers living in the UK*. Oxford: Oxfam; Dorling, K. et al. 2012. *Refused: the experiences of women denied asylum in the UK*. Women for Refugee Women.