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PLP RESEARCH PAPER

Experiencing Asylum Appeal Hearings: 34 Ways to Improve Access to Justice at the First-tier Tribunal

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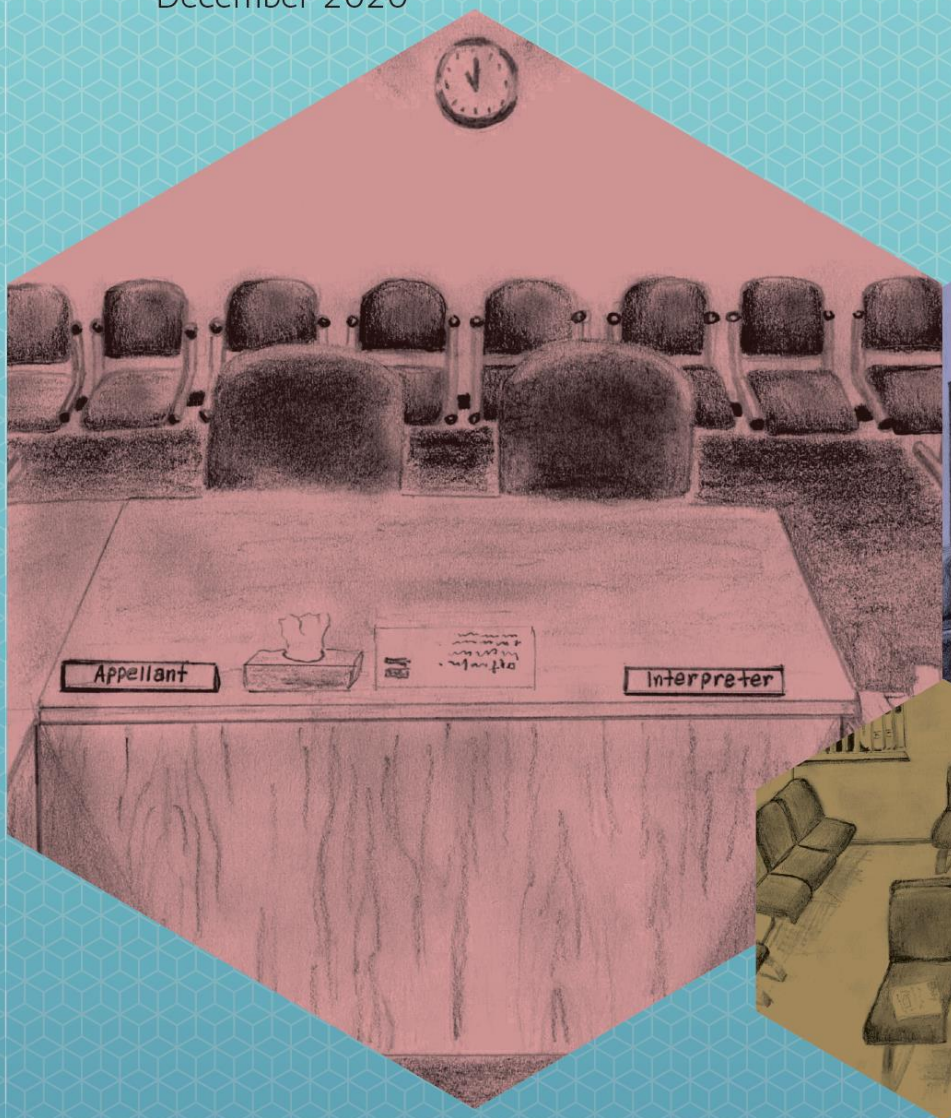

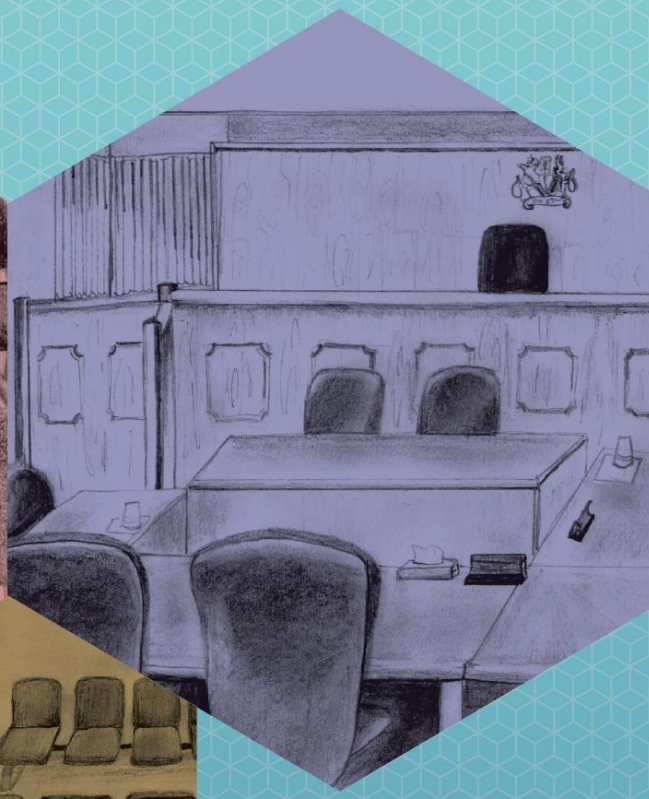

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Executive summary

Asylum seekers going to appeal face significant challenges. Not only are they often unfamiliar with the UK's legal culture and are operating in a second or third language, but they also frequently carry the mental and physical scars of traumatic experiences and journeys from their countries of origin. The legacies of their experiences of violence can mean that they struggle to disclose important aspects of their cases, that their memory of key events is impaired and that they harbour deep-seated mistrust of legal and state processes.

The First-tier Tribunal (Immigration and Asylum Chamber) (FtTIAC) has a grave responsibility to asylum seekers who come to the UK. An erroneous decision could lead to wrongful removal and exposure to the risk of torture or persecution. It is therefore essential that the highest standards of justice and fairness are maintained in this jurisdiction.

This report is based on detailed observational research work in FtTIAC asylum appeal hearings, funded by the Economic and Social Research Council. We observed 390 asylum appeal hearings in the UK from the public areas of hearing rooms and also interviewed 41 asylum appellants about their experiences.

Based on our research, we are concerned that the challenge of providing a fair and accessible asylum appeal hearing is often not being met. Too often, little attention is paid to the experiences and perspectives of appellants going through the process.

In this report we identify six challenging experiences that appellants commonly had during their asylum appeals: **confusion**, **anxiety**, **mistrust**, **disrespect**, **communication difficulties** and **distraction**. Each poses a significant threat to the ability of appellants to engage fully and effectively in the appeal process. For each challenge we offer a series of recommendations about how to improve fairness and access to justice in this jurisdiction. Procedural fairness and access to justice are not only cornerstones of an effective and just legal system, but are also important for maintaining long term public trust in the justice system. They are too important to be left to the discretion of individual judges.

Our recommendations are aimed at immigration judges, senior judges, the Ministry of Justice, Her Majesty's Courts and Tribunals Service (HMCTS), the Home Office and legal representatives for the appellant.[1] Many of our recommendations aim to reduce processual discretion in asylum appeals and make more good practices mandatory. Some of our recommendations are

original, and others reiterate ideas expressed elsewhere that we see as indispensable.

Confusion

1) Provide clearer and more accessible guidance to asylum appellants about what to expect in their hearings in a format they can understand. This means that it should be in multiple languages and ideally would not rely on the reading of text because some appellants cannot read. A link to our video *Going to Appeal,*[2] or similar[3], should be made available in the convocation letter for the hearing and on the Tribunal website, and it could also be played silently[4] in the waiting areas of the hearing centres. [FtTIAC]

2) Judges should always signpost clearly to appellants the different stages of the hearing, including when the hearing is over, and be aware that this may not be obvious in all cases. [IJs]

3) The guidance in the pre-hearing[5] guidance note should be updated and made mandatory. [SP Tribunals]

4) Work with an independent research organisation to conduct research with front-line immigration judges into ways to improve their implementation of, and compliance with, best practice as it is outlined in existing guidance. Present these ideas in anonymised form, to senior judges. [FtTIAC President]

5) For barristers, be aware that your client may not have known they may be required at the hearing centre for a full day. If possible, signpost them to potential refreshment facilities and give the client regular updates so that they can plan a break. [LRs]

6) We concur with Refugee Action's recommendation that the government should commit to 'ensuring that every person in the asylum system who is eligible for legal aid representation is able to access it', with particular attention paid to asylum dispersal areas. [MoJ]

7) We concur with Jo Wilding's recommendation to '[a]bandon standard fees and pay for all cases at hourly rates, auditing a sample of files and bills for each organisation or barrister'. [MoJ]

8) Ensure that every appellant can find and access a place for a private consultation with their representative or supporter, if they have one, before their hearing. [HMCTS]

9) During hearings, pause occasionally to ask appellants if they have questions or if they are understanding the proceedings. [IJs]

10) The scheduling of hearings should be reviewed to alleviate the time pressures that judges are under. Further research with judges is necessary to ascertain which parts of the current scheduling of asylum appeals are counterproductive, and what can be done to improve them. [HMCTS & FtTIAC]

Anxiety

11) Provide a 3-D virtual tour of the Tribunal space that users can take online before their hearing. There may need to be one for each of the main hearing centres that hold asylum appeals. These are easy to make on a platform such as Google VR. [HMCTS]

12) Judges should be prepared to intervene to reduce appellants' anxiety. Judges are best able to avoid intimidating environments when they are prepared to intervene to manage any negative behaviour of Home Office Presenting Officers (HOPOs), legal representatives and interpreters that might unnecessarily provoke anxiety. [IJs]

13) Judges should employ good listening practices such as avoiding interruptions where possible. When judges use these practices others (such as HOPOs, legal representatives and translators) often follow suit. [IJs]

14) Because appellants may not have been officially diagnosed with mental health issues, good behavioural practices should be extended to all appellants, not only to those with recognised mental health problems. [IJs]

15) Appellants and witnesses who are waiting for their case to begin should be more consistently well informed about how long they should expect to wait. [HMCTS]

16) Start times should be staggered, for example, by having a morning (10:00) and an afternoon (14:00) start time, as some hearing centres have already started to do. [HMCTS and RJs]

17) Consider ways to work with local community groups who may be willing and able to provide a listening ear to appellants or provide refreshments in the waiting area or in a specific room provided by the Tribunal. [RJs]

18) Make culturally appropriate food available for appellants before 10:00am and at lunchtimes in the hearing centres, without charge where possible,

or at least affordable for appellants. If this is unfeasible, consider taking an order from the people waiting and organising for a local shop or café to deliver the order. [HMCTS & RJs]

19) Make more information available about where food can be purchased in the vicinity of hearing centres. [HMCTS & RJs]

Mistrust

20) Inform appellants as early as possible in the process that this is not a criminal proceeding. This could be done via the courts and tribunals' orientation information, through the informational video we have already recommended, by the appellant's legal representative prior to the hearing, and/or by the judge at the commencement of the hearing. Consider revising the pre-hearing guidance note to include this instruction for judges. Consider also ways to make sure that the best practice contained in any guidance is adhered to in reality. [HMCTS, LRs, FtTIAC & SP Tribunals]

21) If it is safe to do so, require all parties to enter the hearing room at the start of the hearing at the same time, and leave together when the hearing is over.[6] [SP Tribunals & FtTIAC President]

22) Regularly remind everyone involved in the hearing to ensure that any interaction between the judge, HOPO, interpreter and legal representative that occurs when the appellant is present is sensitive to their presence and the possibility that they will be forming perceptions on the basis of the interaction. [FtTIAC President]

23) The Equal Treatment Bench Book has many useful observations on how to deal with vulnerability in courts and tribunals. Improving training based on the Bench Book, to ensure that judges effectively read, digest and implement the information contained within it, could be helpful. [FtTIAC President]

24) We endorse Asylum Aid and the National Centre for Social Research's detailed report into the difficulties of disclosure of rape and sexual abuse during asylum proceedings. In addition, we recommend giving careful consideration to how appellants can be reassured that interpreters, legal representatives, HOPOs and judges are professionals who will take sexual and gender based vulnerabilities into account in their practice. [FtTIAC President and IJs]

Disrespect

25) Strengthen the culture of taking sufficiently long breaks at lunchtime to enable judges, and others involved in the hearing, to come back refreshed and able to stay alert for the afternoon. [RJs & FtTIAC President]

26) Update the existing complaints system to make it more easily accessible for those who are unlikely to write a formal letter or email. [SP Tribunals & FtTIAC President]

27) Make it possible to lodge complaints in the first language of many appellants. [SP Tribunals & FtTIAC President]

28) Make more information publically available and easily accessible about the frequency of complaints made, the nature of the issues raised, the way they are considered, and the actions taken, to increase the transparency of the system. [SP Tribunals & FtTIAC President]

29) Require HOPOs to uphold the same duty to the Tribunal as barristers. [HO & MoJ]

30) Strengthen independent monitoring of Home Office practice during hearings in the FtTIAC. An independent body, for example the United Nations High Commissioner for Refugees (UNHCR), should be approached to carry out regular observations. [HO & MoJ]

Communication difficulties

31) Experts on interpretation should be consulted to develop specific guidelines on interpretation in the FtTIAC, and mandatory, thorough checking of understanding between the parties should be introduced on the basis of this consultation. [FtTIAC President]

32) Strengthen Home Office training, monitoring and appraisal, particularly with regard to cross-examination. HOPOs and Home Office Barristers (HOBs) should be more thoroughly trained in the use of clear language and required to avoid using an aggressive style during hearings. They should also be encouraged to focus on the main points of their argument rather than peripheral, trivial inconsistencies in appellants' narratives. [HO]

33) Highlight to judges the type of HOPO questioning styles that can create further issues with effective communication and emphasise their role in challenging these behaviours. [FtTIAC President]

Distraction

34) Provide childcare in FtTIAC hearing centres, as has been available in all Home Office hubs since July 2018.[7] For example, centres could have an on-site crèche with play workers scheduled for certain days and appellants with unavoidable childcare responsibilities listed on those days. Voucher schemes for a nearby crèche could also be considered. [SP Tribunals & FtTIAC President]

We know that the judges and other professionals involved in the FtTIAC do an extremely difficult and important job. In 2020 the challenges posed by the lockdown announced on 23 March have had wide reaching implications for the jurisdiction and new ways of working have had to be developed.[8] We hope this report can help to improve the accessibility of the FtTIAC as it continues to evolve in this context.

By drawing on appellant experience, this report highlights the role of confusion, anxiety, mistrust, disrespect, communication difficulties and distraction in constraining asylum seekers' access to justice. We show that there is a considerable way to go in ensuring that access to justice is reliably maintained for all asylum appellants. The recommendations we have listed seek to ensure that the asylum appeal process is not only efficient, but also fair and minimises stress for appellants.

Acknowledgements

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Abbreviations

DFT	Detained Fast Track
FtTIAC	First-tier Tribunal (Immigration & Asylum Chamber)
HMCTS	Her Majesty's Courts & Tribunals Service
HOPO	Home Office Presenting Officer
HOB	Home Office Barrister
IJ	Immigration Judge
LR	Legal Representative (unless otherwise specified, for the appellant)
MoJ	Ministry of Justice
RJ	Resident Judge
FtTIAC President	President of the First-tier Tribunal (Immigration & Asylum Chamber)
SP Tribunals	Senior President of Tribunals
SRA	Solicitors Regulation Authority
UNHCR	United Nations High Commissioner for Refugees

Contents

Introduction

Our approach

There is ongoing concern that Britain's courts are places that are overwhelming, disorientating and confusing for court users.[9] Asylum seekers are some of the most marginalised people in society and existing research highlights the difficulties they face in disclosing evidence throughout the legal process.[10] Without an accessible process, appellants may be unable or unwilling to speak and participate in their appeal, and therefore important pieces of evidence may not be considered and justice may not be served.

Although a lot of attention has been paid to asylum law by academics and policy makers alike, its day to day implementation often escapes critical academic scrutiny. This is arguably because relatively few non-legal scholars study the law, meaning that most analysis is focussed on substantive and doctrinal legal issues rather than questions of process, implementation and experience. It is also extremely time consuming to observe a sufficient number of hearings to be able to draw general conclusions about day to day issues.

Our project adopts an inter-disciplinary perspective[11] on the day to day workings of asylum law within the UK's asylum appeal hearings. In the following sections we report on a project which examined what happens during asylum appeals by closely observing them from the public areas of hearing rooms. Our observations ran from 2013 to 2019. We complement the perspective our observations offer with interview evidence from appellants as well as others involved in the process.

Aims and objectives

Our research questions include:

- How do appellants experience asylum appeal hearings?
- What are the practical barriers to access to justice facing asylum appellants at asylum appeal hearings?
- How can access to justice in asylum appeals be improved?

In addressing these questions, this report aims to:

- develop a clearer understanding of asylum appeal hearings from the perspective of those experiencing them, by drawing on evidence collected from both experts by experience (i.e. appellants themselves), and our observations of asylum appeal hearings from the public areas of hearing rooms;

- and offer suggested improvements to policy and practice to the institutions and professionals involved in designing and carrying out asylum appeals.

Our intention is to suggest practical, workable changes to the existing system rather than a complete overhaul.

What is an asylum appeal hearing?

Initial decisions on asylum claims are made by Home Office civil servants. If the Home Office refuses an application for asylum, there may be an opportunity to appeal this decision. Not all applications based on human rights or protection grounds have a right of in-country appeal, but those that do must lodge an appeal within 14 days of the initial asylum decision being sent.[12] The appeal will then usually[13] be listed for a hearing at one of the hearing centres located around the UK which form the First-tier Tribunal (Immigration and Asylum Chamber) (FtTIAC).[14] On average, it takes 29 weeks from the asylum appeal being lodged to it being heard in the FtTIAC.[15]

Judging asylum appeals is challenging for various reasons. Judges are often required to stay abreast of situations in a wide variety of countries of origin which can change rapidly. Many appellants may have difficulties disclosing their experiences and it takes judicial skill to ensure that they are able to take a full and active part in proceedings. The content of cases can be extremely distressing as well, and the risk of secondary trauma of judges (as well as others involved in the hearings) must be constantly managed. Discerning what is true in this jurisdiction may be particularly challenging because the judge is often required to form a view about a cultural and geographical context that they may be unfamiliar with, and it may be difficult to assess credibility accurately working through an interpreter and/or remotely. The consequences of a wrong decision are clearly potentially very serious, which lays a grave responsibility on judges' shoulders. Added to all this, on-going reforms, high volumes of work and, recently, the impact of COVID-19 on ways of working in the FtTIAC make for a highly demanding and stressful working environment.

Why are asylum appeals important?

The UK's reliance on the appeal system as a remedy for erroneous initial decision-making is one of the reasons why asylum appeals in the UK are so important. A 2019 Migration Observatory report shows that of the asylum applications that were rejected between 2012 and 2016, 78% were appealed and 40% of these appeals were successful (i.e. overturned).[16] By way of comparison, in 2019 the successful asylum appeal rate was 21% in France and 17.2% in Germany.[17] Asylum appeals are usually the first time an immigration judge will have oversight of the asylum decision and the first opportunity an

asylum seeker will have to respond to objections to their claim raised by the Home Office.

The UK is signatory to the 1951 UN Refugee Convention and is therefore obliged to offer protection to refugees. To be able to uphold this commitment credibly, an effective and accessible appeal system is vital.

What happens at asylum appeal hearings?

In-person, oral asylum appeal hearings involve an immigration judge and usually:

- The appellant
- The Home Office Presenting Officer (HOPO), who is the legal representative for the government[18]
- A legal representative for the appellant

They can also involve:

- An interpreter[19]
- Witnesses
- Experts

Others may also be present in the room without taking part in the appeal directly, such as friends[20] or family of the appellant and members of the public (unless the hearing is closed to the public), as well as ushers and security personnel. During the period of our research (2013-2019) there were usually no audio recordings taken.

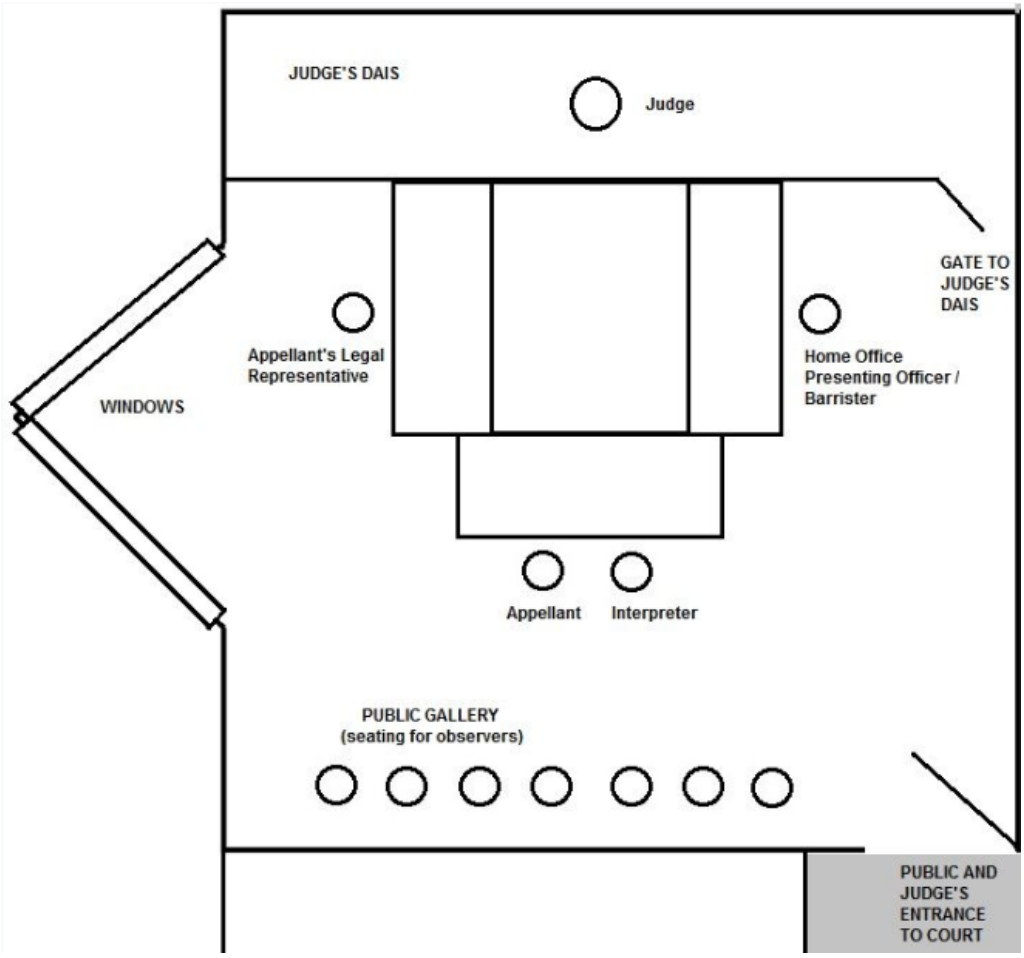

Figure 1 Typical layout in FtTIAC hearing rooms. At some hearing centres, IJs enter from a separate door. Credit: Rebecca Rotter.

Much of the asylum appeal decision-making process is weighted towards the paper appeal application and the arguments and evidence associated with it. Hearings, however, provide another important way that judges collect evidence and form an impression of the credibility of the appellant. Asylum appeal hearings are usually adversarial, focusing on submissions and cross-examination by the HOPO and the appellant's legal representative. The HOPO is primarily there to advocate for the Home Office's reasons for refusal outlined in the initial decision letter. The appellant and any supporting witnesses will be asked questions by their legal representative and then cross-examined by the HOPO.

The judge's role is primarily to direct proceedings. Depending on their style though, as well as who is present, they may adopt a more interventionist approach.[21]

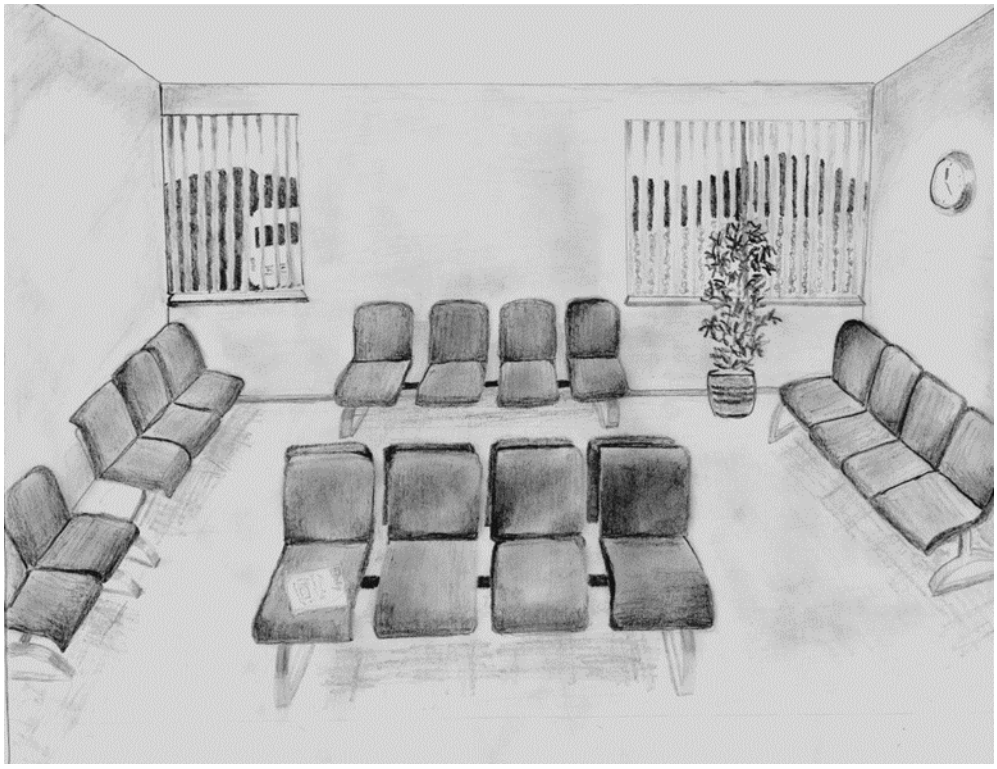

Figure 2 FtTIAC waiting area. Credit: Rebecca Rotter.

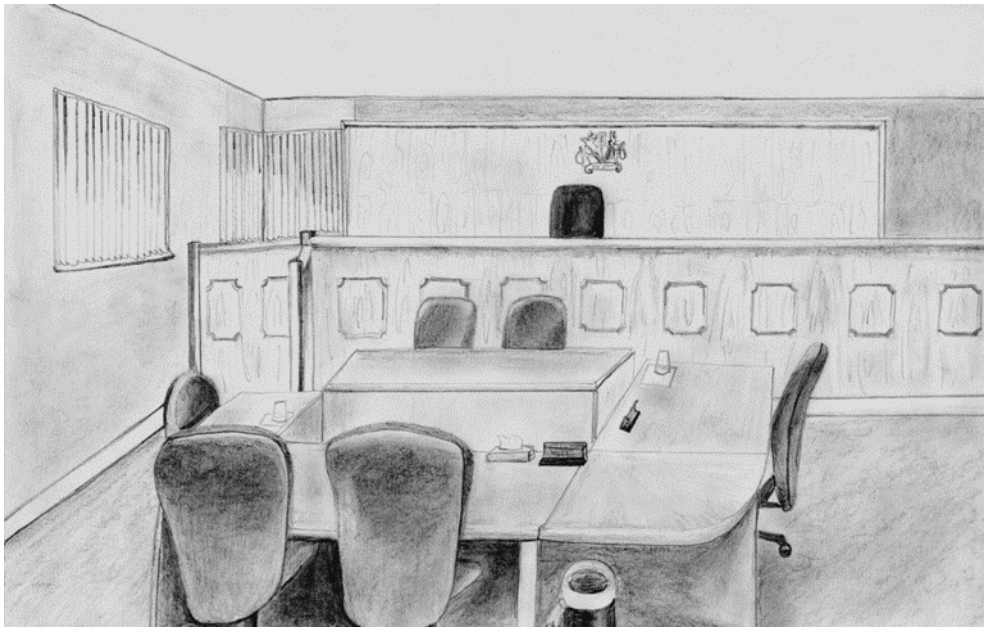

Figure 3 FtTIAC hearing room as seen from the public gallery. Credit: Rebecca Rotter.

Methodology

Ethnographic observation

Our primary method of gathering data was via court ethnographies. These involved observing asylum appeal hearings from the public galleries of hearing rooms as well as observing everyday life in the public areas of hearing centres and having informal conversations with the people who were there.[22] Hearings are usually open to the public, unless subject to specific exceptions, and tribunal listings are made publicly available online.

Between 2013 and 2019, we conducted ethnographic observations of 390 separate substantive asylum appeal hearings. Detailed handwritten notes, diaries and sketches enabled us to record a wide variety of qualitative aspects of the hearings. Initially we made short trips to eight different hearing centres in the UK (up to fifteen observations each), before focussing on four centres in particular where we carried out more intensive observations (3 mainstream and one Detained Fast Track (DFT[23]) centre). This included completing a 19-page pro forma during each hearing which allowed us to gather quantitative data on a wide variety of variables, such as case details, participants present, schedules and the behaviour of the participants.

Of the 390 hearings we observed, we completed pro formas for 290. All of the hearings we observed were FtTIAC asylum appeal hearings and 50 of the 290 hearings we observed with a pro forma were in the DFT. Given differences in the size and location of hearing centres, and in order to generate as representative a sample as possible across the different sizes and locations of hearing centres in the UK, we selected:

- a London tribunal,
- a non-London urban tribunal,
- and a tribunal outside a major urban area (henceforth we refer to this tribunal as the peri-urban tribunal).

Our 50 observations of the detained fast track were conducted at a hearing centre in London.

The Senior President of Tribunals and Her Majesty's Courts and Tribunals Service (HMCTS) were notified before the research began about our intention to conduct our observations and we are grateful for their correspondence confirming that they had no objection to it being undertaken, subject to anonymity and reporting restrictions.

During observations, we remained as inconspicuous as possible. We would explain what we were doing to the parties present whenever appropriate or when called upon to do so. Often this was to allay concerns that we were

media representatives. Given the already heightened stress of the circumstances, however, we generally felt it insensitive to approach appellants.

During the 240 observations of mainstream (i.e. not DFT) asylum appeals for which we completed a pro forma, we observed over 90 different judges; 153 hearings involved a male judge and 87 a female judge, but this ratio differed by centre. At the non-London urban hearing centre, 49% of cases involved a female judge; at the London hearing centre, 41%, and at the peri-urban hearing centre, 19%. There are no juries at these hearings: the decision rests with the (single) immigration judge.

The Home Office was represented in every hearing, by either a HOPO or HOB. In 15% of the cases, the appellant was unrepresented, but this varied by hearing centre: at the London hearing centre, 6% were unrepresented; at the non-London urban hearing centre, 13%, and at the peri-urban hearing centre, 25%. Appellants originated from over 35 countries, the main being Afghanistan (49 cases), Iran (23), Pakistan (21), Sri Lanka (19), Albania (16), China (11), Iraq (11) and Zimbabwe (10). An interpreter was used in 79% (173/218[24]) of cases.

Interviews

We also conducted interviews with two main groups:

- 41 former appellants who were asylum seekers or refugees who had been through the appeal process
- 19 legal representatives for asylum appellants, all of whom participated in UK asylum appeals

Appellants were recruited via charities and refugee community groups. The appellant interviewees were from a wide range of different countries, the most common of which were Uganda, DR Congo, Sri Lanka and Iran. 24 of the appellant interviewees were male and the rest female and the majority were in their twenties or early thirties (none were minors). Most interviews took place within three years of the appellants' appeal hearings, although some were recalling appeals up to a decade previously. Most of the interviews took place in London, although some took place in other cities in the UK.

None of the interviews were conducted at the hearings we observed, nor were interviewees generally recruited from the hearings we saw due to the risk of appellants feeling that they had to participate, or becoming confused about our role.

The majority of lawyers we interviewed practiced in either London or the South West of England and were recruited via a combination of direct contact during fieldwork, snowballing[25], and email or social networking sites. We also

conducted interviews or had long conversations with a small number of others involved in the process such as appellants' supporters, HOPOs, HOBs, interpreters and ushers.

Informed consent to be interviewed – and for the interview material to appear in published work in an anonymised form – was collected from the interviewees. The research received ethical approval from the University of Exeter. Anonymised versions of the data generated by our pro forma are available on the UK Data Service's Reshare platform.[26]

In the quoted material that follows we have not corrected the English of our interviewees because we think it is important to keep their words as much as possible. This approach also gives an indication of the challenges they face when hearing legal English and attempting to follow it.

Scope & limitations of the research

The research we draw on naturally has limitations. Researchers might hear, observe and write about their observations in ways that are influenced by their own positionality and world views. Interviews are imperfect windows onto human experience too, because interviewees might misremember or misrepresent their experiences and struggle to put them into words.

Furthermore, we did not have access to appellants' case files and only had occasional 'behind the scenes' access. The advantage of this was that it gave us a view of asylum appeals that was different from the 'insider' view that previous studies have adopted. At the same time, we did not have the same view of hearings as the appellants, not only because we observed multiple hearings but also because of our privileged positions with regard to race, class, immigration status and understanding of asylum procedures.

We also acknowledge that appellants' perceptions of the process should be treated with caution, not least because they may be affected by the outcome of their appeal. The fact that we were able to interview them in the UK indicates that many of their appeals were successful, generating a possible sampling bias.

Judicial input into the research has also been limited. For example, we do not draw on interviews with judges here, despite gaining permission from the Senior President of Tribunals in 2015 to approach Resident Judges for interviews.[27] Only a small number of judges volunteered to be interviewed and, of these, they either did not meet the requirement of being a Resident Judge as stipulated by the Senior President of Tribunal's permission, or did not permit us to audio record the interview, so we do not draw on their evidence here. However, we did have informal conversations with judges

during breaks in hearings, and after them, and some of these conversations inform this report.

We refer solely to adult appellants in the report. We were invited into a small number of hearings involving children, but we have not made this a focus of our work. However, we do discuss the effect children who are accompanying adult appellants can have on these adult appellants' hearings in in the final section of the report.

There is also no space to explore the role of expert witnesses in asylum hearings, although we note that there has been valuable work in this area already[28] and that we only recorded the presence of an expert witness in four of the 240 mainstream asylum appeals we observed, which may indicate how unfeasible it is to find funds for them.

We did not usually collect information about the outcomes of the hearings that we observed. To do so was logistically impractical because decisions are only usually[29] issued some days after the hearing and are not made public. We were also conscious of the risk of bringing unhelpful media attention to bear on outlying judges and hearing centres if our research focussed on disparities in decisions, and we have reservations about the conclusions that can be drawn from disparities in success rates across hearing centres and judges in any case.[30]

We did not systematically collect case outcomes from our interviewees because we wanted our interviews to concern the process of the hearing event rather than the details of appellants' cases. This was important because it was easier for us to recruit interviewees when we emphasised that the topic of conversation would be the legal process and not the content and outcome of their cases, which appellants sometimes felt uncomfortable discussing.[31]

Finally, this research was well underway prior to the ongoing reform programme being implemented in the FtTIAC. The reform programme, guided by the vision outlined in the 2016 policy paper 'Transforming Our Justice System'[32], involves a wide range of elements across multiple jurisdictions which all come under this umbrella programme. In the FtTIAC, the primary development has been the shift towards a digital process, spurred on recently by the necessity to introduce more digital ways of working as a result of the COVID-19 pandemic.[33] Although our research does not include the impact of these recent changes, many of the recommendations detailed in this report take on an increased salience in light of these developments.[34]

Experiencing asylum appeal hearings

In the sections that follow we set out six types of appellant experiences that our interviewees commonly discussed. They were not the only ones that appellants told us about or that we witnessed. There were, for example, a range of positive emotions reported by former appellants, including pride that they had gone through the process and gratefulness to their judge and their legal representative, especially if the appeals had gone in their favour.

We have chosen to focus on the following experiences, however, because they were the more numerous and are the ones that point most clearly towards changes that should be made to improve the appeal process.

In disseminating our findings, we have prioritised making more information available for appellants about what to expect in their appeal hearings and how to approach them. This led to our video 'Going to Appeal',[35] which was released in 2018. The primary purpose of this report is to make recommendations to the institutions and professionals involved in designing and carrying out asylum appeals.

After each direct quote from an interview we give as much background about the interviewee as we can within the constraints of confidentiality, anonymity and what they told us. Within each section we make **recommendations in bold** when they arise, as summarised at the beginning of this report.

Confusion

Appellants were typically unfamiliar with tribunal hearings, their purpose, legal jargon and customs. They reported feeling confused about many aspects of the hearing process, such as who would be representing them at the hearing, who the various parties in the hearing room were, how to address the judge, and the order of speaking and questioning.

Some were surprised and distrustful of the fact that they would be represented by a barrister who was unknown to them and yet to whom they were expected to disclose aspects of their case frankly and rapidly before their hearing.[36]

> 'I said to the client this morning, "Hi, I'm Susan[37]." I introduced myself, then after a pause the client said, "Who are you?" And I said, "I'm your barrister." I mean I had said that I was a barrister, but they just didn't get it.' [Female Barrister, 25 years' experience].

Appellants also shared feelings of frustration about not being given sufficient information either prior to, or at the outset of, the hearing.

> 'They didn't give me a clear description of the court room or the people that're going to be there. They didn't give me any explanation who is who… The judge who was in front of me, what is his role? It was only when I was in the court and they're asking those questions that I find out which role belongs to who, who is doing what.' [Female Appellant, DR Congo]

> 'No one explained to me about the process… I don't have any idea where to go. You have to go to this place, you don't have any proper guidance where you have to go.' [Male Appellant, Eritrea].

Appellants often struggled to comprehend tribunal etiquette, including when they should stand and how to address the judge. They also often did not know how to communicate most effectively in the hearing room such as by speaking clearly and slowly and breaking up answers when there is an interpreter.

> 'Several appellants… tried to stand when talking to the judge, which the judge seemed to have little patience with.' [Ethnographic fieldnotes, 2013, non-London urban tribunal].

> 'No one told me anything. I don't know where to stand or sit, or what to call the judge. I said, "Yes My Lord", because I saw that on TV.' [Unrepresented male appellant, North African country].

Many members of the judiciary we observed appeared to take for granted the ritualised institutional cues with which appellants were unfamiliar. Appellants are usually single-players, or one-shotters. HOPOs, however, are repeat players in the appeal process, meaning that they are usually much more familiar with the setting and the strategies available. At times, this can be overlooked during the hearings. For example, judges sometimes did not make it clear when a hearing was beginning or ending. In the case of adjournments or withdrawals, there can be little to mark the fact that a decision has been reached and the appellant's hearing is over. In 55 adjournments that we observed with our pro forma, the judge did not explain what was happening to the appellant 40% of the time.[38] This can result in the appellant being left to sit at the back of the room, unclear of what is happening or expected of them.

It is also important not to underestimate the difficulty of going to appeal in a language other than one's first language, and we discuss this in more detail below in the section entitled 'Communication difficulties'.

The judiciary's guidance note for the pre-hearing introduction[39] advises that judges should take the opportunity at the start of hearings to, among other things, explain the purpose of the hearing and how it will proceed. Concerning vulnerable appellants in particular[40], other guidance suggests informing the appellant that they can request a break if needed, engaging in more active listening, controlling the manner of questioning to avoid harassment, and taking into consideration the potential need to adjourn the hearing to enable expert evidence to be called in to determine the appellant's ability to give cogent evidence. The Equal Treatment Bench Book notes that the importance of these procedures is heightened when the appellant is unrepresented.[41]

We were concerned, however, about the variability of these helpful judicial behaviours.[42] During the hearings we observed with our pro forma, judges stated their independence in around a third of cases (35%), explained that the appellant should say if they do not understand anything around half the time (53%) and explained the purpose of the hearing (61%) and how it will proceed (66%) in roughly two-thirds of cases. In most of the observed cases (88%) judges did not inform the appellant that they could request a break. The helpful judicial behaviours we observed were also correlated with judge and appellant gender: female judges tended to carry them out more frequently and judges tended to carry them out more frequently when the appellant was male.[43]

RECOMMENDATION (FtTIAC): Provide clearer and more accessible guidance to asylum appellants about what to expect in their hearings in a format they can understand. This means that it should be in multiple

languages and ideally would not rely on the reading of text because some appellants cannot read. A link to our video *Going to Appeal*,[44] or similar[45], should be made available in the convocation letter for the hearing and on the Tribunal website, and it should also be played silently[46] in the waiting areas of the hearing centres.

RECOMMENDATION (Immigration Judges): Judges should always signpost clearly to appellants the different stages of the hearing, including when the hearing is over, and be aware that this may not be obvious in all cases.

RECOMMENDATION (Senior President of Tribunals): The guidance in the pre-hearing guidance note should be updated and made mandatory.

The point about making the guidance mandatory, or at least giving it more teeth, is important. A lot of guidance already exists for judges[47] and the coronavirus pandemic has created the impetus to generate even more.[48] We know too, and welcome the fact, that immigration judges are required to attend regular training events organised by the Judicial College where there is frequent emphasis on the best approach to conducting hearings so as to ensure that all present understand their roles and can participate fully. While guidance and training are necessary and important however, we still observed high variability in implementation and compliance. How can judges be encouraged to implement the good practice that they are guided towards consistently and reliably? This is a problem for senior judges that needs to be carefully addressed without micro-managing front-line judges or making them feel as though their independence has been curtailed.

We note, and welcome, the fact that both salaried and fee-paid judges are part of a well-established system of appraisals, but we wonder if and how this system can be strengthened. More generally, could judges themselves be asked what policies would effectively commit them to the best practice that is contained in the guidance?

Conducting research with front-line immigration judges about how to address this problem could be a useful exercise. This would be most effectively carried out by an independent research organisation so that judges can be confident of anonymity and are able to speak freely and candidly, offering suggestions for improvement via both qualitative and quantitative means.

RECOMMENDATION (FtTIAC President): Work with an independent research organisation to conduct research with front-line immigration judges into ways to improve their implementation of, and compliance

with, best practice as it is outlined in existing guidance. Present these ideas, in anonymised form, to senior judges.

Mitigating factors

Legal representatives helping to prepare appellants

Appellants' confusion was sometimes mitigated by solicitors and barristers who provided guidance about the process. Some solicitors were extremely conscientious in looking after their clients, sometimes meeting them multiple times before their hearing date to prepare them, and some barristers kept appellants very well informed on the day of their hearing. Appellants appreciated these efforts.

> 'My barrister was waiting for me there when I arrived anyway … she was really good… She came every fifteen minutes to update me, "The judge is reading through the papers now, just wanted to come and let you know so you don't wonder what is going on, why it isn't starting." And then she is coming back after 15 minutes, 20 minutes and tells me what is going on, so that I don't get very anxious. Everybody was like,"My God, your barrister is good." Everybody thought that I had paid her privately, I said "no". She was really good.' [Female Appellant, Uganda].

RECOMMENDATION (Legal representatives): For barristers, be aware that your client may not have known they may be required at the hearing centre for a full day. If possible, signpost them to potential refreshment facilities and give the client regular updates so that they can plan a break.

The same appellant also described the significance of having a pre-hearing meeting a few days in advance:

> '[They were] like grilling me, you know, like being in court but even worse. She said, "I am doing this because this is the thing you are going to go through in the courts, so I am preparing you"'. [Female Appellant, Uganda].

Appellants also described how important it was for their solicitor to mentally prepare them for a potential refusal. This can help the appellant to better understand the legal process, as well as encourage them not to lose hope if a refusal is given. As one appellant recounted of their solicitor:

> 'Even if [the judge refuses the case], she's really prepared your mind, that's the good thing I liked [… She has] really prepared you mentally like, "I'll defend you, but don't be disappointed about what they are going to say." [Female Appellant, DR Congo].

Having a pre-hearing conference between the barrister and the appellant to prepare them for their hearing and potential outcomes is an effective way to

boost appellant confidence, knowledge of the process and quality of responses.

Judges making hearings easier to follow

We also observed many instances of helpful behaviour undertaken by judges to make the hearings easier to follow and participate in. At the outset of hearings, some judges would raise the appellant's health issues (often in cases where appellants had survived torture and were suffering from Post-Traumatic Stress Disorder) and remind everyone to take these into account by questioning the appellant with care and sensitivity. We often had the impression that when judges took the time to be helpful in these and similar ways, hearings would go more smoothly as a result.

Another important way judges aided appellants to take full and effective part in their hearings was to steer the HOPO and the legal representative towards good forms of practice. One HOPO told us that:

> 'In one instance the judge… made me change my submissions so that I was addressing them to the appellant rather than the judge and I was using terms that the appellant would understand rather than legal terminology. I thought that was really good because as far as you can it evens the playing field.' [HOPO, 3 years' experience].

Exacerbating factors

We were concerned, though, that these instances of good practice were too-often drowned out by a set of factors that exacerbated appellants' levels of confusion.

Being unrepresented

Unrepresented appellants are usually at a significant disadvantage compared to represented appellants, unless the representation is of very low quality.[49] While judges are advised to 'give every assistance' they can to unrepresented appellants[50], this does not usually compensate for the lack of legal advocacy in the hearing or legal expertise when compiling the submitted evidence. As numerous judges mentioned during our fieldwork, the submissions and additional evidence contained in the bundle are the primary sources that judges use to determine asylum cases, and unrepresented asylum seekers are largely unsupported in assembling these.[51]

Unrepresented appellants expressed feelings of intimidation and extreme vulnerability without a lawyer representing them. They also felt themselves to be at a disadvantage as they perceived that the judge would see them as easy to turn down. They were concerned that the fact they were unrepresented would be taken as a signal by the judge that their appeal had been seen by potential representatives as not worth taking up.[52]

> 'I felt nervous at the start, seeing everyone coming [into the waiting room and] having their lawyer with them. I was thinking, "What do I do?" This is his job, the Home Office, my job is not this. So I don't know what I will do.' [Unrepresented male appellant, North African country].

Of the 240 regular (non DFT) appeal hearings that we observed with our pro forma, 15% of appellants were unrepresented, and we saw significantly more unrepresented appellants in the peri-urban tribunal. This corroborates recent concern over so-called legal deserts in the UK in which there are serious shortages of immigration legal advice in the context of various cuts to legal aid in the UK over the past 15 years.[53]

It is particularly confusing for appellants when the legal representative that they had expected to be at the hearing does not arrive on the day. We saw this occur several times during our fieldwork. It can happen when the legal representative has dropped the case but either does not attempt to, or is unable to, communicate this to the appellant. It can also occur when the appellant has received notification that their case has been dropped but has not understood it. Legal representatives might drop cases that they do not want to lose or that are not profitable.[54]

> 'My representative didn't go there to represent me or anyone. They told me before the thing that they're going to be there in the hearing, in the court, but they didn't go… I represent myself. The interpreter, he was there… But even he, he was very shocked with the no representative for me.' [Male Appellant, Eritrea].

We did not observe a consistent response to such situations. Some judges appeared amenable to the possibility of adjourning the hearing, whereas others held the hearing anyway.

Problems with legal advice and representation

There are a range of problems with the provision of immigration and asylum legal advice, and the unexpected non-attendance of legal representatives on the day of the hearing is just one symptom of these.

In October 2007 the Legal Services Commission (LSC) introduced the Graduated Fee Scheme – transforming the hourly remuneration rate for legal representation in asylum cases into a fixed-fee scheme. This aimed to create better value for money by rewarding the completion of cases, rather than time spent on cases, thereby benefitting efficient providers of representation, while forcing inefficient providers to change their practices. Various studies have been critical of this development however.[55] In effect, the fixed-fee scheme rewards '"factory" firms with a speedy through-put of cases, and discourages conscientious preparation and taking complex cases or those

involving vulnerable clients who cannot be hurried.'[56] It encourages firms to cherry-pick more straightforward cases, standardise their processes to the point of over-simplification, reduce the number of written witness statements, and not provide appellants with translations of statements.

It has also resulted in good lawyers ceasing immigration and asylum work, leaving many areas of the country in so-called legal deserts characterised by a lack of qualified lawyers taking immigration and asylum cases.[57]

> 'You can work around the clock for a pittance for a certain amount of time because you believe in the clients and the positive outcomes are a lot more valuable than … whatever you're going to get. But you can't do that forever, you can't do it long term, so you do burn out and people do leave because of overwork, high stress and low pay.' [Male barrister, over ten years' experience in asylum and immigration cases].

Research conducted by Refugee Action points to particular challenges in securing legally aided immigration and asylum advice in dispersal areas, noting that in March 2018 there were no local legal aid practitioners in 26 of the local authority areas with more than 100 people seeking asylum.[58]

RECOMMENDATION (Ministry of Justice): We concur with Refugee Action's recommendation that the government should commit to 'ensuring that every person in the asylum system who is eligible for legal aid representation is able to access it', with particular attention paid to asylum dispersal areas.[59]

With respect to the impact of these developments on appellants' experiences of asylum appeals, the fixed fee scheme can mean that solicitors struggle to find time to meet with their client before the hearing date. Numerous appellants also reported that even if they were able to meet with their solicitor or communicate with them ahead of their hearing date, they felt as though they were treated in a rushed manner during these meetings or during routine telephone communication. Some appellants told us that their solicitors appeared too busy to show them even basic signs of respect such as shaking their hand to greet them (before the COVID-19 pandemic) or remembering their name (see the section entitled 'Disrespect' for a fuller discussion).

> 'My lawyer, sometimes he couldn't even remember my name. In my country, your lawyer would be like, hello, how are you today? Here, it's like, what's your reference number, no, I didn't hear from the Home Office, bye.' [Female Appellant, Uganda]

Others reported that their barrister was ill-prepared on the day of the hearing, and often equated this lack of preparation to their case being unsuccessful.

> 'I said [to the judge], "But this lady doesn't know nothing about my case." He said, "She's got your folder." But she … didn't get chance to read anything, so it was kaput.' [Female Appellant, DR Congo].

Some of the barristers we interviewed conceded that the fixed fee scheme made is difficult to find time for their clients on the day of the hearing:

> 'The earlier [barristers] get involved and have these discussions with the solicitor and the client has an opportunity to weigh in and ask questions and to give you instructions the better…The fixed fee system means there's no money for that.' [Male barrister, over ten years' experience in asylum and immigration cases].

RECOMMENDATION (Ministry of Justice): We concur with Jo Wilding's recommendation to '[a]bandon standard fees and pay for all cases at hourly rates, auditing a sample of files and bills for each organisation or barrister'.[60]

Poor facilities

From the perspective of the barristers we spoke to, the lack of availability of consultation rooms in some of the busier hearing centres was also a matter of concern. We often observed barristers conducting pre-hearing legal consultations with appellants while standing, or even squatting, in the corridors.

> 'It's just terrible having to have a conference with someone in a corridor, you just can't get into it because people are walking past. I find that half an hour or forty-five minutes that I have with a client can make an absolutely huge difference to their prospects of success.' [Male barrister, two years' experience].

Where there was a lack of consultation rooms, we were concerned that appellants would struggle to disclose or discuss important aspects of their cases, given that the waiting areas of hearing centres are themselves public spaces. Barristers we interviewed also complained about the lack of advocates' rooms (rooms that only they can use) at some hearing centres.

RECOMMENDATION (HMCTS): Ensure that every appellant can find and access a place for a private consultation with their representative or supporter, if they have one, before their hearing.

Culture of speed

Our research has drawn attention to the detrimental impact that an excessively high speed of working through asylum appeals can have on the respect that parties are able to show each other during proceedings, as well as on the clarity and completeness of the information that is being shared.[61] While efficiency is desirable, we became concerned that in some instances considerations of speed were at risk of overshadowing the quality of the hearing.

> '[B]oth the HOPO and legal representative expressed a desire to get the case over and done with as quickly as possible and both were extremely brief in their roles. The whole hearing is just 48 minutes long! And there are two witnesses asides from the Applicant! I tell the HOPO afterwards that I'm shocked how quick it was and she replies by telling me that that wasn't particularly quick, she can do two Asylum Appeals by 11.15am![62] She's clearly proud of this, feeling that speed is a good sign.' [Ethnographic Fieldnotes, 2013, non-London urban tribunal].

It is not our intention to suggest that slowing down asylum appeals would be a good thing per se. But when speed becomes an objective over and above considerations of fairness and access to justice, this is undesirable and counter-productive.[63]

The speed of hearings, including the interaction between parties and the rapidity with which sections of the hearing were concluded, sometimes disorientated and disappointed appellants. They can wait for many months for their hearings, and when they leave without a sense of being properly listened to because they perceived that the judge and the other parties were in a rush this can be disheartening and can also undermine their impression of fairness and due process. These risks are particularly acute when appellants feel as if they did not understand the proceedings. Some judges we saw asked appellants during the hearing if they had questions or if there was anything that they did not understand.[64] Many appellants lacked confidence and felt overwhelmed during the hearing, so those that experienced this practice appreciated it.

RECOMMENDATION (Immigration Judges): During hearings, pause occasionally to ask appellants if they have questions or if they are understanding the proceedings.

RECOMMENDATION (HMCTS and the FtTIAC): The scheduling of hearings should be reviewed to alleviate the time pressures that judges are under. Further research with judges is necessary to ascertain which parts of the current scheduling of asylum appeals are counterproductive, and what can be done to improve them.

Anxiety

There are numerous reasons appellants feel anxious prior to and during their hearing. In particular, appellants can become distressed when questioned about sensitive matters during cross-examination. Occasionally this can result in individuals breaking down and crying, and even raising their voice and becoming visibly frustrated and angry. During our observations, many also showed signs of nervousness such as shaking, fidgeting, or speaking very softly. These are natural responses to what can be an intensely emotional and gruelling experience.

> 'The day of the hearing I was stressed, I couldn't sleep, I was going over the scenario in my head and what am I going to say? What will happen? How many people is going to be in the court to support me? And is the judge going to be female or male? Is he compassionate? All these things were going through my head, it was really stressful.' [Appellant, Female, DR Congo].

It is important to take the consequences of such feelings into account when considering appellants' responses to questioning, including cross-examination, during the hearing. In particular, many appellants found their level of nervousness to be debilitating during the hearing.

> 'Before I go to that court I had so much things to say but when I was there it was all completely… out of my brain, I didn't remember anything to say… because the situation it was really stressful and nervous and for me it was really big issue. I forgot everything … I forgot everything and didn't know what to say.' [Unrepresented Appellant, Afghanistan].

> 'You are, like, scared of saying anything, they ask you a question and you get panic, a panic attack. When you panic you can't say what you would like to say. But when you're comfort, you can speak.' [Appellant, Female, Uganda].

Often appellants had no idea what to expect at the hearings. They are unfamiliar with the surroundings and even the 'look, manner and language'[65] of the professionals who work at the hearing centres regularly. Preparing appellants for what to expect is therefore critical to facilitating their effective access to justice. In particular, appellants should be better supported to visualise the hearing centre in advance to reduce their anxieties.

RECOMMENDATION (HMCTS): Provide a 3-D virtual tour of each tribunal space that users can take online before their hearing. There may need to be one for each of the main hearing centres that hold asylum appeals. These are easy to make on a platform such as Google VR.

Mitigating factors

Judges with a human touch

Despite the inevitable time pressures and constraints under which members of the judiciary work[66], we observed how judges often demonstrated exceptional patience. While we found patience in general to be an important character trait within the judiciary, this proved particularly important in instances where an appellant had become distressed and emotional. Where a judge shows patience in such circumstances, they have the potential to calm the appellant and maintain effective communication.

> 'This particular judge certainly has a brisk manner and doesn't want things to drag out. But when something requires additional time (e.g. one unrepresented appellant didn't remember his interview and asked for it to be read back to him), he is very patient (in this case, re-reading the interview slowly and carefully, and without any evidence of annoyance).' [Ethnographic Diary, September 2013, peri-urban tribunal].

On such occasions, judges would offer a break if needed. One judge shared with us that he will pause a hearing if the appellant expresses a desire to visit the onsite prayer room.

It is important not to underestimate how much appellants value a judge who takes time to listen and understand their story. We heard accounts from appellants who described those who 'really listened' and how much it meant for them to feel heard and understood. The hearing is often the first time that appellants have had an opportunity to share their story in a neutral, independent space.

> '[The judge] was ready to listen to me when I had to talk, he really gave me time to talk, even when I add more things, just let me talk.' [Unrepresented Male Appellant].

A judge that shows a human touch can be invaluable in terms of encouraging the appellant's participation.[67] Some judges employed gentle humour to create a positive atmosphere.

We noticed that several judges demonstrated particular sensitivity towards appellants with recognised mental health issues. In one particular case, the judge made an effort to stress that the appellant must say at any point if he did not understand or felt unwell. She made eye contact with the appellant throughout the hearing to check he was okay, and spoke gently to him. The judge also requested that the legal representative and HOPO keep questions short and clear, so that the hearing would not be unduly long. We support these practices but also note that there is often a thin line between people with recognised mental health issues and those without. The Equal Treatment Bench Book notes that asylum seekers have higher than average

rates of mental health difficulties, yet asylum seekers' access to healthcare may be limited and their mental health issues left undiagnosed or unrecognised even by asylum seekers themselves.[68] For this reason we advocate that such good practices be extended to all asylum appellants.

The Equal Treatment Bench Book provides useful, comprehensive guidance to help judges create an environment that minimises anxiety. Commensurate with this guidance, we make the following recommendations.

RECOMMENDATION (Immigration Judges): Judges should be prepared to intervene to reduce appellants' anxiety. Judges are best able to avoid intimidating environments when they are prepared to intervene to manage any negative behaviour of HOPOs, legal representatives and interpreters that might unnecessarily provoke anxiety.

RECOMMENDATION (Immigration Judges): Judges should employ good listening practices such as avoiding interruptions where possible. When judges use these practices others (such as HOPOs, legal representatives and translators) often follow suit.

RECOMMENDATION (Immigration Judges): Because appellants may not have been officially diagnosed with mental health issues, good behavioural practices should be extended to all appellants, not only to those with recognised mental health problems.

These recommendations rest on judicial practice again. To reiterate what we highlighted earlier about implementation and compliance, it is not enough to produce guidance alone. The propensity to implement the good practice that is laid out in guidance needs to be improved. When good practice is implemented, as these examples show, the effects can be extremely positive, but such implementation remains variable. It might be made more consistent via strengthened forms of appraisal, but it may very well be that front-line immigration judges have good ideas of their own about how to improve the implementation of best practice.

Exacerbating factors

Even if judges do act with humanity and consideration, however, there are various other factors that can compound appellant anxieties.

Waiting for the hearing to begin

Appellants reported high degrees of nervousness when waiting for their hearing to begin and so minimising waiting time at the hearing centre is desirable, all other things being equal.

These challenges were noted in the report by Asylum Aid and the National Centre for Social Research (2017) which recommended that judges should schedule cases with particularly vulnerable appellants or appellants with children at the start of the day where possible.[69] We support this view and note that it seems to be quite common practice.

Some appellants told us that they were not well informed about how long they would have to wait. This kept them on edge, sometimes for hours. We also saw witnesses for the appellant becoming frustrated that they had to wait for an unspecified period of time, and we are concerned that this arrangement reduces the involvement of witnesses in hearings.

RECOMMENDATION (HMCTS): Appellants and witnesses who are waiting for their case to begin should be more consistently well informed about how long they should expect to wait.

Hearings are usually listed to start at 10:00 but there are exceptions in some hearing centres where 14:00 start times are also used.[70] We condone this practice of using staggered start times so that hearing rooms do not get congested and appellants, as well as others potentially involved in the hearing such as witnesses, do not have to wait around all day. As we understand, staggered start times are becoming more common as a result of the COVID-19 pandemic and the need to maintain social distancing. Consideration should be given to retaining this practice after the pandemic.

RECOMMENDATION (HMCTS and Resident Judges): Start times should be staggered, for example, by having a morning (10:00) and an afternoon (14:00) start time, as some hearing centres have already started to do.

One solicitor told us about a community group that organised for volunteers to be in the waiting area to chat with appellants, provide refreshments and give colouring books to children. The community group was working inside the hearing centre to provide this service.

RECOMMENDATION (Resident Judges): Consider ways to work with local community groups who may be willing and able to provide a listening ear to appellants or provide refreshments in the waiting area or in a specific room provided by the Tribunal.

It is our understanding that hearing centres hold 'user group' meetings which community groups or representative bodies may be invited to attend. We welcome this practice and encourage hearing centres to be inclusive wherever possible when inviting attendees. We welcome the engagement of the Tribunal with schools and colleges, for example, as has already occurred

in the past. Such a group would seem the ideal platform through which to launch the sort of initiative we have recommended.

Discomfort

Some of the hearing centres at which we conducted observations had poor catering and refreshment facilities, and lacked nearby shops and cafés. Appellants sometimes told us they had been hungry during their hearings because they were not able to find suitable food in the hearing centre or immediately outside it before their hearings. This issue affected legal representatives and others in the hearing centres as well.

Appellants were told to arrive at 10am even though their hearings might be heard much later in the day and, in unfamiliar surroundings, did not feel confident to leave to buy food, due to being unsure when their hearing would begin. Appellants were rarely able to, or wanted to, speak up about this issue. This was especially problematic for appellants who arrived early and were unaware of the lack of refreshments available, as they could be waiting at the hearing centre for several hours without sustenance. When we spoke with an usher about the lack of catering facilities, they reflected:

> 'If you haven't eaten, or you've been waiting for three hours or you've been up since 5am because you've had to travel a long distance, you're going to, even if you're telling the truth, you're going to get mixed up somewhere along the line.' [Usher, Male].

One interviewee reflected on his experience arriving at the hearing centre and being unable to purchase a bottle of water prior to his hearing:

> 'We were out there in the court half past eight and there was nobody else, we were the first persons and we thought, "What are we going to do?", and we were just looking around and there was nothing around so [we] try to find somewhere to buy water and couldn't get it.' [Accompanier of Appellant, 2014].

RECOMMENDATION (HMCTS and Resident Judges): Make culturally appropriate food available for appellants before 10:00am and at lunchtimes in the hearing centres, without charge where possible, or at least affordable for appellants. If this is unfeasible, consider taking an order from the people waiting and organising for a local shop or café to deliver the order.

Perhaps a local shop or café will be happy to offer a short menu at the centre.

RECOMMENDATION (HMCTS and Resident Judges): Make more information available about where food can be purchased in the vicinity of hearing centres.

Mistrust

We discerned mistrust of two types in the appeals we observed. First, appellants often feel as if they are treated like criminals during the hearings. If an appellant feels mistrusted then this can affect their confidence in, and engagement with, the process. Second, appellants themselves sometimes mistrust various actors in the process, including the HOPO, the judge, their own legal representative and the interpreter. If the appellant mistrusts actors involved in the appeals, this can inhibit disclosure of facts and events relevant to the hearing.

Appellants feeling mistrusted

The simple fact of being in a tribunal before a judge led individuals to internalise a criminal status, which then left them feeling disempowered and debilitated.

> 'It was the worst time I had in my life, honestly. I was thinking like you are a criminal.' [Male Appellant, Eritrea].

Having a lawyer was also experienced as criminalising.

> 'Even just having a lawyer… in some countries having a lawyer means you have done something terrible because I used to see some of them speak to their families and the families are like "My God, what have you done? You have a lawyer!" You know? So that alone makes people lose their case because they're thinking they have done a horrible crime and that's why they are going to court.' [Female Appellant, Uganda].

One appellant told us that when an opportunity to have a lawyer arose they refused precisely because they were not a criminal, so they were convinced they did not need one. Some appellants had previously only seen court rooms in television programmes focused on criminal cases and, without receiving sufficient information about asylum appeals prior to the hearing, therefore interpreted both the space and the judge as criminalising.

> 'It feels like you are a criminal and then court for two hour, not a very good experience. Feel like a criminal, not a person looking for protection. Very bad feeling.' [Female Appellant, DR Congo].

> 'It was the first time I had been in the court, I had never been in the court and it was very cold court atmosphere, no-one talk to another person and they were ready to refuse.' [Male Appellant, Eritrea].

In particular, appellants often felt the Home Office representative to be unnecessarily hostile and rude. Many were offended and distraught about being repeatedly called a 'liar' during their hearing.

> 'I was worried when they said, "You are a liar, you fabricate stories." What do they mean? My life story you are saying is a fabrication of stories?' [Male Appellant, Nigeria].

RECOMMENDATION (HMCTS, legal representatives, FtTIAC and Senior President of Tribunals): Inform appellants as early as possible in the process that this is not a criminal proceeding. This could be done via the courts and tribunals' orientation information, through the informational video we have already recommended, by the appellant's legal representative prior to the hearing, and/or by the judge at the commencement of the hearing. Consider revising the pre-hearing guidance note to include this instruction for judges. Consider also ways to make sure that the best practice contained in any guidance is adhered to in reality.

Appellants not trusting the asylum system

Appellants often have good reasons to be wary of the asylum system. At the same time there are some perceptions that are so disturbing to appellants that they should be addressed and minimised.

Appellants sometimes became convinced that the judge was on the side of the Home Office, for example. Many were upset because they thought the HOPO and judge were discussing the case before they entered into the hearing room, as both were often already in the hearing room by the time they arrived.

> 'The client [is] at a disadvantage, if they walk into the room and the person, the body that has refused their claim seems to be on such good terms with the independent person who's going to judge their appeal.' [Barrister, over 20 years' experience in immigration and asylum law].

RECOMMENDATION (Senior President of Tribunals and President of the FtTIAC): If it is safe to do so, require all parties to enter the hearing room at the start of the hearing at the same time, and leave together when the hearing is over.[71]

This concern extended to the closeness of their own legal representative with the HOPO too. One appellant told us how they had been surprised, and became distrustful, when their legal representative had shared information about their case in advance with the HOPO. Another was extremely suspicious when they learnt that their representative was paid for by the government:

> 'When I claimed asylum, and they said they will give me legal aid, I was afraid. Because legal aid is paid by the government. So in my head I thought, if a lawyer is paid by the government, then it means that the government can influence the process. … I felt like, "Hmm, OK" I was suspicious.' [Male Appellant, Cameroon].

When the HOPO and the legal representative have an informal conversation before the judge arrives, while the appellant is present, this can exacerbate feelings of distrust towards their legal representative.

> 'The barrister didn't defend me. I don't know what her role was that day, I was thinking that, "Oh, maybe they are together with the Home Office." Because even before the court hearing, I saw them chatting, having a laugh and I think if she's defending me why are they being so friendly. I thought, "Oh, maybe this is the system here this is how it works".' [Female Appellant, DR Congo]

We observed many of these pre-hearing informal chats, which often seemed to exclude appellants.

> 'The range of topics discussed during this catch up or ice breaker includes which private schools they send their children to, odds of succeeding with an adjournment request, current workload, health complaints and plans for the weekend/holidays. Often the conversation turns to the case ahead. Even where the appellant speaks English, this conversation usually proceeds with no recognition at all of the appellant sitting there. […] Until the hearing begins, the appellant often seems invisible. The different, 'visitor' status of the appellant in the court space is reflected in the fact they hardly ever take their coat off. Meanwhile, the HOPO and legal representative will settle in: removing their coat and laying out their papers.' [Ethnographic Fieldnotes, 2014, non-London urban tribunal].

We recognise that these pre-hearing informal conversations may assist the smooth running of the hearing by focussing submissions and identifying issues, such as missing documents, prior to the start of the hearing. Nevertheless, parties should be mindful of the presence of the appellant and their perceptions of these conversations.

RECOMMENDATION (President of the FtTIAC): Regularly remind everyone involved in the hearing to ensure that any interaction between the judge, HOPO, interpreter and legal representative that occurs when the appellant is present is sensitive to their presence and the possibility that they will be forming perceptions on the basis of the interaction.

Exacerbating factors

Lack of attention to signs of vulnerability

During our observations, non-verbal cues indicating signs of distress among appellants were frequently either missed or ignored by judges. We found that

often the judge will only ask if the appellant requires a break if they begin to audibly cry or stop talking. More subtle forms of distress like shaking, talking quietly and agitation were often ignored. By overlooking these cues, judges may have missed opportunities to build trust with the appellants and may have neglected signs of appellants' inability to participate fully in the hearing.

RECOMMENDATION (President of the FtTIAC): The Equal Treatment Bench Book[72] has many useful observations on how to deal with vulnerability in courts and tribunals. Improving training based on the Bench Book, to ensure that judges effectively read, digest and implement the information contained within it, could be helpful.

Difficulties with disclosure

Some female appellants also reported difficulties disclosing their evidence, especially to male legal representatives and interpreters.

> 'I did not know [my solicitor] was a man and in case of rapes I did not even tell them about my rape, there was no way I could trust a man reporting the rape. In some African cultures you never say anything about the rapes, not even to our fellow females. So that affected my case, because I did not tell them that and then when I had chance afterwards in court they did not give me time because I told them you have to give me a female solicitor and you have to give me more time… They [threw] out the case that very day.' [Female Appellant, Kenya].

> 'My interpreter is a man and they ask me about the rape. How can they ask him, how can I explain what happened to me when you are with a man. Seriously. So, it was a refusal.' [Female Appellant, Uganda].

The report by Asylum Aid and the National Centre for Social Research (2017) dealt with the difficulties of disclosure of rape and sexual abuse during asylum proceedings in detail.[73] For example, the report gives detailed guidance on listening and questioning techniques, as well as how the good will and expertise of the judiciary in this area can be built upon and extended further into HOPOs' and legal representatives' practice.

RECOMMENDATION (President of the FtTIAC and Immigration Judges): We endorse Asylum Aid and the National Centre for Social Research's detailed report into the difficulties of disclosure of rape and sexual abuse during asylum proceedings. In addition, we recommend giving careful consideration to how appellants can be reassured that interpreters, legal representatives, HOPOs and judges are professionals who will take sexual and gender based vulnerabilities into account in their practice.

Disrespect

Our observations point to two significant ways appellants were not afforded sufficient respect during the course of their asylum appeal hearing. Firstly, we highlight occasional disrespectful judicial conduct, which for the most part involved occurrences of disrespect through inaction, although at times included more actively hostile behaviour. Secondly, we highlight disrespectful conduct on the part of HOPOs through insensitive cross-examination.

We observed numerous instances in which a judge appeared disinterested in the appellant, looking away or out of the window for prolonged periods. There was also significant disparity in the adherence of judges to best practice guidelines[74], such as explaining to appellants that they were able to request a break. These guidelines are not only of practical value, but also of social value in the way that certain behaviours demonstrate respect towards the appellant. However, more needs to be done to ensure that they are reliably and consistently followed.

In one observation, a judge appeared to fall asleep during a hearing.[75]

> '[The judge] nodded off, jerked to attention, wrote a short note and then nodded off again in a perpetual cycle throughout the legal representative and HOPO examinations. … The interpreter later told me that she had noticed and thought it was very poor practice.' [Ethnographic Fieldnotes, 2014, London tribunal].

In the tribunals we observed, judges frequently did not break for lunch in the middle of the day. Sometimes this was because they wanted to work through a case before taking a break, to allow witnesses and others to leave as soon as possible, or to complete their cases for the day as quickly as possible. HOPOs and interpreters told us that they, too, sometimes prefer not to take a break so as to maintain their flow of thought. There have been calls from judges, however, to make sure that the judiciary break for lunch to safeguard their wellbeing and the quality of their work.[76]

RECOMMENDATION (Resident Judges and the President of the FtTIAC): Strengthen the culture of taking sufficiently long breaks at lunchtime to enable judges, and others involved in the hearing, to come back refreshed and able to stay alert for the afternoon.

On other occasions we saw frustrated judges get angry with appellants and use body language that was not appropriate to the situation such as wagging their fingers and pointing at appellants.

Although rare, we also saw isolated examples of judges being rude or hostile to appellants.

> 'She sneered at him, berated him frequently, scowled and screwed up her face in disgust. It was incredibly painful to sit and watch. He was unrepresented.' [Ethnographic Fieldnotes, 2013, Detained Fast Track case]

> '[Immigration judge] is incredulous in tone when questioning appellant - high pitched voice, scoffing.' [Ethnographic Fieldnotes, 2014, London tribunal]

> 'The whole dialogue seems to be the immigration judge trying to find arguments against the Appellant – it's frantic, prejudiced, unrelated arguments all put against the Appellant, not logically and calmly going through points. It seems as though the immigration judge is happy as long as he can accept the account, but as soon as anything is questionable he gets angry and argumentative.' [Ethnographic Fieldnotes, 2013, Detained Fast Track case].

> 'It was very clear when the immigration judge didn't believe his answers. She visibly rolled her eyes at some of his answers, raised her eyebrows in disbelief, seemed to sneer at him, her questions became increasingly incredulous (if not slightly sarcastic) and her voice increasingly loud in volume. Communication really broke down, which she interpreted as the appellant being difficult, and she eventually told him, "I'm just going to write that you aren't answering the questions."' [Ethnographic Fieldnotes, 2014, non-London urban tribunal].

One lawyer we spoke to was concerned that judges were more likely to be respectful to him than to the appellants:

> 'If [the judge] wants to be rude and aggressive and like that to me, I can handle it, I get paid to handle difficult judges and I don't mind doing it, I've got a lot of patience… But there's some judges who are like that just to the clients and not to us. They do reserve a modicum of respect for us as professionals, but they obviously don't think they need to extend that respect and that courtesy to the client, which is really problematic.' [Male barrister, over ten years' experience in asylum and immigration cases].[77]

Opportunities for appellants to complain about these sorts of issues exist but are limited in practice.[78] The Judicial Conduct Investigations Office does not deal with Tribunal Judges[79], so to complain about an FtTIAC immigration judge's perceived misconduct a complaint must be sent in writing to the President of the FtTIAC either by letter or by email.[80] Both the postal and email address are provided online.[81] However, appellants may have fears that complaining could affect their case.[82]

If the appellant instead wants to make a complaint to HMCTS about the way their case was handled administratively, or about the Tribunal building, security or how they were treated in an HMCTS building, there is a separate

website and complaints system. This system states clearly that judicial decisions made about the case will not be affected by making a complaint and that HMCTS want to know about instances when their service falls short of what users expect.[83]

However, in the case of complaints about perceived Tribunal judges' misconduct no such assurances appear to feature on the webpage that gives information about how to make a complaint.[84] We could find information only in English[85] (compared to English and Welsh in the case of the HMCTS complaints system[86]) which could effectively exclude a large number of appellants. Statistics about complaints that are made to the Judicial Conduct Investigations Office are reported in their annual report[87], which gives a breakdown of the type of complaints made and the actions taken. The Judicial Conduct Investigations Office itself aims to achieve various performance targets relating to their promptness in dealing with complaints, and reports on its success in achieving these. Since Tribunal Judges are not dealt with by the Judicial Conduct Investigations Office, however, we struggled to find statistics or information relating to the complaints that had been made about FtTIAC judges (if any), the actions taken as a result, or the promptness with which they had been handled.

It is important to acknowledge that not all complaints are well founded, and that the judiciary needs to be protected from spurious and unwarranted complaints. We have concerns, however, about the practical limitations of the opportunity to complain about judicial behaviour, language or conduct, during asylum appeal hearings.

RECOMMENDATION (Senior President of Tribunals and President of the FtTIAC): Update the existing complaints system to make it more easily accessible for those who are unlikely to write a formal letter or email. We note the 'Spot' app introduced by the Bar Council to allow barristers to report bullying and unprofessional conduct.[88] We consider that there are aspects of this system that might helpfully inform any new redesign of the complaints system available to appellants.

RECOMMENDATION (Senior President of Tribunals and President of the FtTIAC): Make it possible to lodge complaints in the first language of many appellants.

RECOMMENDATION (Senior President of Tribunals and President of the FtTIAC): Make more information publically available and easily accessible about the frequency of complaints made, the nature of the issues raised, the way they are considered, and the actions taken, to increase the transparency of the system.

Mitigating factors

HOPOs

We heard various examples of HOPOs being sensitive to the challenges faced by some appellants. One HOPO explained to us that he seeks to be sensitive towards appellants particularly when they are vulnerable. He makes adjustments to his approach where appropriate, including avoiding complicated legal terminology when addressing the appellant. During our observations we also noticed that some HOPOs were able to maintain a non-aggressive tone and ask open, non-accusatory questions during cross-examining.

> 'I might… say something like, "So in your asylum interview you said so and so", and then read out the question, "However I see in your document you've put so and so, can you explain to me why those accounts are different?". I'll use a tone similar to that, like a sort of gentle, a neutral tone rather than an aggressive one or huffing or rolling your eyes which just sounds ridiculous to me. That's not going to help anyone, that's just going to make the applicant feel uncomfortable.' [HOPO, 3 years' experience].

This approach avoided unnecessary discomfort and distress to appellants and could also facilitate better communication in the hearing.

The same HOPO explained to us that by focusing on the facts relevant to the case, and not simply drawing on peripheral points (which might include attacking the appellant's credibility on the basis of minor inconsistencies in their accounts) in order to win a case, he felt he was doing his job with integrity:

> 'I feel like to act with integrity is to only use points that you believe in that are strong, rather than using peripheral points.' [HOPO, 3 years' experience].

Exacerbating factors

Insensitivity of Home Office cross-examination

Sometimes appellants do not tell the truth, often for understandable reasons. Because of the lack of sources of evidence in this jurisdiction, judges are often forced to rely heavily on cross-examination of appellants and witnesses. One aspect of this technique is to highlight inconsistencies within appellants' narratives from which inferences can be drawn about the truthfulness of an account. Cross-examination is therefore a key part of asylum appeal hearings and we realise that asylum appeal hearings in the UK are adversarial.

However, this does not mean that the cross-examination has to be conducted insensitively. We are concerned that HOPOs sometimes forget this, and judges do not always challenge insensitivities in cross-examination.

Our research revealed that HOPOs and HOBs could be insensitive towards vulnerability and human suffering, for example, especially during the cross-examination. One lawyer recounted how one of his clients was treated during a cross-examination:

> 'I just had a case recently where there was an extremely vulnerable client who had been through a really horrific abuse in Ghana where she'd had a lot of sexual abuse as well as physical abuse… [Yet] the way he had cross-examined her had been so brutal and so unfeeling.' [Male barrister, over ten years' experience in asylum and immigration cases]

A number of our appellants reflected on how aggressive they had found the HOPO questioning.

> 'The woman from Home Office she was very aggressive with me and I don't know why.' [Female Appellant, Iraq].

We observed some HOPOs and HOBs disregard the distress of appellants to the extent that the judge or legal representative had to intervene.

> 'I represented someone with mental health problems and other physical health problems… When she's becoming upset and distressed, it's time to say, "Excuse me, tell the officer to stop." You know, my client needs two minutes.' [Barrister, 8 years' experience].

There was also concern that some HOPOs were not sensitive to the difficulties of disclosing sexual violence:

> 'I just think they [HOPOs] need a lot more training. I don't think that there is a lack of understanding on the nature of sexual violence, because there is a lot of published literature on it, it just needs to be applied a lot better. They say, "I can't understand why you didn't report the rape?" Well, why do you think?' [Manager of a law firm dealing with asylum cases, over 10 years' experience].

We also found evidence of the negative effect of the targets that HOPOs were expected to meet:

> 'HOPOs often felt the need to justify their approach by referencing the immense pressure they face to meet their targets. One HOPO we met during an observation of a hearing shared at length how difficult her job is becoming and the increasing pressures they are under, and felt they are undertrained and underpaid, particularly in comparison to legal representatives.' [Ethnographic Fieldnotes, 2013, peri-urban hearing centre].

The target culture that exists within the Home Office was evident through many of our interactions with Home Office staff. HOPOs, who spoke to us during breaks as well as before and after the hearings that we observed,

explained how they have to be able to behave in ways they would not in every day society. While some appeared to relish the combative, argumentative style that can characterise adversarial appeal hearings, others reported feeling pressure to meet their targets or the need to be tough. One shadower from the Home Office, for example, told us that she was *'too soft'* to be a HOPO.

Another HOPO explained that they are expected to win a certain percentage of their cases,[89] but also said this was unfair, given some cases are bound to be successful no matter how good the HOPO is [Ethnographic Fieldnotes, 2013, peri-urban tribunal]. The HOPO also told us that if targets are not met, they are often informally reprimanded, which deeply undermines their confidence and can be counterproductive as their role is *'all about confidence'* [Ethnographic Fieldnotes, 2013, peri-urban tribunal]. The target culture of the Home Office with respect to asylum appeal hearings has been an issue for some time. In 2014, The Guardian reported that HOPOs were being offered incentives like gift vouchers and extra holidays if they won a certain number of cases.[90]

The Solicitors' Regulation Authority notes that qualified solicitors are 'officers of the court' and as such have an overriding duty to the rule of law and the administration of justice.[91] Barristers are also bound by similar principles.[92] By contrast, as Dr John Campbell notes[93], 'HOPOs are *not* "officers of the court" who have an obligation to promote justice and the effective operation of the judicial system'.

As noted above, sometimes the Home Office employs legally qualified barristers to act for them instead of HOPOs and the internal tension that this can provoke is revealing. One Home Office Barrister (HOB) reflected on the difficulties he had in pursuing the objectives of the Home Office and following their guidelines, whilst also remaining faithful to his duty to the Tribunal.

> 'If I see the [Home Office's] decision is wrong as a matter of the law, I can't go in front of a judge and say, "No it was right." That's ridiculous. One, because I'm not discharging my duty to the court and two, I'm just embarrassing myself as a lawyer, frankly.' [Male HOB, 2014].

This sort of restraint is entirely appropriate. Not only will it result in better quality justice, but it may also save the Tribunal and the actors involved time and money by avoiding having to spend an unnecessarily long time discussing clear cases.

A freedom of information request in 2011 about HOPOs' code of ethics led to the publication of their professional standards.[94] At that time, these professional standards included instructions to not mislead the judge, but did not place the same emphasis on an over-riding duty to the court that the

barristers' code of conduct does. They were also far less exhaustive. This inequality of duties between the representatives of the two parties is noteworthy.

RECOMMENDATION (Home Office and Ministry of Justice): Require HOPOs to uphold the same duty to the Tribunal as barristers.

We also suggest monitoring HOPOs via an independent organisation. At the time of writing the Independent Chief Inspector of Borders and Immigration has begun their first inspection of HOPOs and has consulted as part of this, but has not yet published their report. We welcome this sort of scrutiny of HOPOs, and are keen to see some regularity in the inspections undertaken.

RECOMMENDATION (Home Office and Ministry of Justice): Strengthen independent monitoring of Home Office practice during hearings in the FtTIAC. An independent body, for example the United Nations High Commissioner for Refugees (UNHCR), should be approached to carry out regular observations.

Communication difficulties

The difficulties of operating in a foreign language during legal processes, including asylum processes, are well known. We welcome the fact that facilitating effective communication is a common focus of both the training of judges and their appraisals. In agreement with existing research[95], we found that language proved to be a significant barrier that was often not sufficiently overcome by the presence of an interpreter. We recorded that an interpreter was present in 79% of the cases we surveyed with our pro forma.[96]

Legal representatives that we spoke to about interpreting emphasised how important it was to have a competent interpreter and how much they appreciated good interpretation skills. One lawyer gave the following example:

> 'She makes the client really calm and the judges all really like her [and] give her a little bit of leeway… And her English grammar is perfect and she gets all the tenses right and the genders… For example, in Ghanaian quite often there is no gender, so she says, "He or she did X." Or "He or she did Y." All the other interpreters just guess he or she… [but] this interpreter will say, "Is it a man or a woman?" And they'll say, "It's a man." And then they'll all know what's going on.' [Male Barrister, asylum and immigration specialism].

Numerous appellants, however, told us that they had experienced problems with their interpreter.

> 'The information was not like I want to say it. The information [he gave] was short, it wasn't my full story.' [Female Appellant, Venezuela].

Appellants were often unhappy because their interpreters were not fluent in their dialect.

> 'He spoke my language in a different way to me.' [Female Appellant, Uganda].

> 'I don't think she comes from where she says she did.' [Female Appellant, DR Congo].

One appellant told us that an unsuitable interpreter had been booked for her, perhaps because of an assumption that Farsi and Dari are interchangeable, or because of an error in the booking.

> 'I know my language is very similar to Farsi but still there are a lot of different words and different things, they can be mistranslated very easily. She had no idea… how to speak my language, I did understand her but … there was a lot of things she didn't understand from me.' [Unrepresented Appellant, Afghanistan].

We also heard that the differences in the languages of Somalia were sometimes overlooked.

> 'With Somali you've got so many different varieties of the language and if you're representing a Somali Ashraf Benederi and you've asked for a Afrehamar speaker, you won't get one, you'll get someone from Puntland. Even in a case where the main issue in the case is whether you speak a certain dialect the court won't facilitate you having an interpreter in the dialect, which is a little bit bonkers.' [Male Barrister, 2014].

During our observations we observed frequent confusion about how to translate the words for different family members, as well as dates because appellants did not always use the Gregorian calendar. Some interpreters also faced significant intercultural challenges. For example, in determining the credibility of a Catholic Chinese appellant, one interpreter was asked by the HOPO '*When Jesus was born did anyone come to see him?'.* The interpreter, who seemed to have little knowledge of Christianity, said '*I can't understand. He [the appellant] says something about gold' [Ethnographic Fieldnotes, 2014, London Tribunal].*

Interpreters themselves have a challenging job. We generally observed high levels of respect shown by judges for interpreters, but interpreters expressed dissatisfaction at being expected to travel long distances and work for long periods of time. Although we saw judges offering interpreters breaks and generally being mindful of their needs, interpreters told us how tiring the job was. They mentioned the importance of having a private space to take their breaks, a functioning kettle, vending machines and a place to securely store their bags and coats.

In their *Best Practice Guide to Asylum and Human Rights Appeals,* Henderson, Moffatt and Pickup (2020)[97] provide a detailed discussion of the challenges of interpretation in asylum hearings including in relation to the contracting arrangements for interpreters. In particular they cite situations in which it may be necessary for legal representatives to challenge interpretation, and guidance for judges on how to effectively check understanding between interpreter and appellant at the start of the hearing. Judges used a short dialogue, such as the one that is recommended in the pre-hearing guidance note[98], to check understanding between the parties in only 27% of the mainstream (i.e. non-DFT) hearings we surveyed with our pro forma. More commonly they simply asked if the appellant and interpreter understood each other, which is a less thorough test (judges did at least this 98% of the time).

RECOMMENDATION (President of the FtTIAC): Experts on interpretation should be consulted to develop specific guidelines on interpretation in the

FtTIAC, and mandatory, thorough checking of understanding between the parties should be introduced on the basis of this consultation.

Exacerbating factors

Anxiety about language issues

As well as corroborating the technical difficulties in interpretation that previous research has highlighted, our findings reveal the degree of anxiety that was induced by language difficulties. The language barrier made appellants feel disempowered and overwhelmed. Appellants feared that their level of English was a source of weakness that would reduce their ability to engage effectively in the hearing.

> 'So, for me, they saw I was weak, I didn't understand anything and that was my weakness, I couldn't speak English.' [Male Appellant, West/Central Africa].

Even appellants who had studied English found that the accent in Scottish and Welsh tribunals was disconcertingly unfamiliar:

> '[I] sought asylum on my first day in the country, I wasn't used to this accent, where I studied in [English speaking country] the accent is totally different. I could not understand what they were speaking here and I wasn't given enough time to start getting used to [it] at all. I wasn't prepared at all. I thought they could prepare me here, give me enough time to start grasping what they are speaking. I am reliant on that.' [Female Appellant, Uganda].

Part of the issue was that some appellants were very good English speakers, and therefore felt that they did not need an interpreter, but were then thrown by different accents. Others were concerned that their own accents (when speaking English) put them at a disadvantage:

> 'Maybe because of the way I speak, my accent. Maybe they misunderstood.' [Female Appellant, Nigeria].

Certain HOPO questioning styles

We were concerned that certain styles of questioning by HOPOs made it more difficult for appellants to communicate clearly and confidently. HOPOs will also sometimes ask what one HOPO described as *'tiny, silly questions'* [Ethnographic Fieldnotes, non-London urban tribunal] to try to identify an opportunity to undermine credibility by getting the appellant to contradict themselves on peripheral, trivial details. Although we saw some judges intervene to stop them doing this, others allowed them to continue. Psychologists have established that inconsistency is not only common when two descriptions are given of the same event at different times, but that inconsistencies in peripheral details are especially likely if the events recalled are traumatic ones.[99] This technique can therefore be viewed as a cynical

tactic that exploits the trauma of appellants in order to undermine their credibility.

Another tactic was what we call 'miscommunication', which involved allowing misunderstandings to go uncorrected during a conversation in order to give the impression to the judge that the respondent was being unhelpful or evasive. This is unlike everyday communication, where both speakers attempt to repair the conversation when there is misunderstanding. According to this technique, if an appellant does not appear to understand the question the HOPO would simply repeat it verbatim louder, rather than chose an alternative wording.

A third tactic we call 'boxing-in'. Unlike the previous two tactics, this is a normal part of cross-examination in any adversarial hearing, including asylum appeal hearings. However, the experience of being subject to this tactic as an appellant can not only be very distressing, but can limit the ability of the Tribunal to ascertain a full and accurate account of the appellant's asylum claim.

This tactic was frequently observed and involved the HOPO making statements with which the appellant must either agree or disagree, rather than asking open-ended, exploratory questions.[100] For example:

> 'You have no direct experience of living as a Christian in Pakistan. Correct?' [Ethnographic Fieldnotes, 2014, London tribunal].
>
> 'It doesn't appear you have ever experienced your wife being persecuted or attacked. Is that a fair summary?' [Ethnographic Fieldnotes, 2014, London tribunal].
>
> 'So your mother was in the house, was she?' [Ethnographic Fieldnotes, 2014, London tribunal].

The addition of a well-chosen suffix can add to the accusatory feel of a conversation, and thereby increase the pressure on the respondent. It also sets an expectation that the appellant will either agree or disagree with the statement, thereby constricting the opportunity to provide more detail or correct aspects of the statement that are not accurate, securing a subordinate linguistic role for the appellant. In several cases the Judge reminded the HOPO/HOB not to do this.

This type of boxing-in can mean that appellants are frustrated and feel misunderstood.

> 'You can only say "yes" or "no". That's all they ask, you can't explain anything. You have all these problems in your mind, and you can't explain it, you can only say "yes" or "no".' [Female Appellant, Venezuela].

We also observed HOPOs using complicated double negatives in questions, for instance *'I don't think you didn't go, did you?'*, as well as asking multiple questions at once, which appellants sometimes interpreted as intentionally off-putting:

> 'The Home Office were asking questions, asking, asking… then the Home Office they play mind games. She asks me a question, she talks a lot of things, she was talking for even ten minutes, so in that ten minutes she asked me six questions and when she finishes I have to answer of course. So, when I answer the first question, second question she is quiet, the third question she says, "Stop, but you said this, this, this. Why you said different?" I said, "Why did you stop me, you just talked for 10 minutes, you asked me 6 different questions, so you don't understand that I'm answering your first question, I am answering your second question".' [Male Appellant, West/Central Africa].

While legal representatives can challenge these HOPO questioning styles, appellants are also able to do so. In this same case the HOB was using a confusing technique of questioning, so the appellant asked the judge:

> 'Please tell the barrister [not to] confuse me… I'm trying my best to provide every detail, if you ask me two questions, and I answer two questions, don't tell me this is not good.' [Male Appellant, West/Central Africa].

In this instance, the judge agreed with the appellant.

Judges would also occasionally intervene to stop certain topics or styles of questioning from the HOPO. When the HOPO persisted with inappropriate or overtly hostile styles of questioning, this type of intervention from the judge is critical in resetting the hearing towards a more neutral atmosphere.

> 'The judge was good, and again because there were people shouting, he would say, "Don't talk like that, you should talk like this. Don't talk like this." The judge was very kind to me.' [Female Appellant, Uganda].

We found that in situations where the judge adopted a gentler approach, other parties also followed suit. The HOPO can be influenced by the precedent set by the judge for creating a calm, non-intimidating environment for the appellant.

> 'The judge was … very understanding. When I was speaking and the HOPO tried to interrupt, the judge said, no, let her finish. She was nice.' [Female Appellant, Uganda].

RECOMMENDATION (Home Office): Strengthen Home Office training, monitoring and appraisal, particularly with regard to cross-examination. HOPOs and HOBs should be more thoroughly trained in the use of clear language and required to avoid using an aggressive style during hearings. They should also be encouraged to focus on the main points of their argument rather than peripheral, trivial inconsistencies in appellants' narratives.

RECOMMENDATION (President of the FtTIAC): Highlight to judges the type of HOPO questioning styles that can create further issues with effective communication and emphasise their role in challenging these behaviours.

Distraction due to the presence of children

The issue of children as appellants is not dealt with here as it is outside the scope of the research. Rather, in this section we are concerned with children at the hearing centres who are accompanying their parents or guardian while their parents or guardian are appellants.

Right to Remain rightly encourage appellants to find someone to look after their child or children on the day of the hearing so that they do not have to go to the Tribunal, or to bring someone with them who can wait with the children in the waiting area of the Tribunal while the hearing goes ahead.[101]

Yet appellants are often poor and not permitted to work, so may struggle to find the money for a babysitter. They may also not have a wide social network of relatives and friends to draw on for help with childcare. These realities, coupled with the fact that there are currently no childcare services provided at hearing centres, means that appellants sometimes have little choice but to bring their children with them into the hearing.

We observed numerous appellants with a baby or young children in the hearings. In one case in which a mother appeared in the hearing with her baby, the judge sought to encourage her, telling her she was doing well in relation to managing the baby when it started to cry. The tribunal also took a break for a nappy change. However we also noted that the mother was upset and *'distracted by her baby who is sometimes crying'.* [Ethnographic Fieldnotes, 2014, London tribunal]. During a break, the interpreter held the baby which, although kind, is obviously not one of the interpreter's responsibilities.

We also became aware that at least one hearing centre did not provide baby changing facilities accessible to men as well as women.

Mitigating factors

Goodwill from tribunal staff

A reliance on the kindness and goodwill of people in the hearing centre was evidenced in cases involving appellants with young children. At one hearing centre we observed a security guard showing sensitivity when conducting security searches and turning the security check into a game [Ethnographic Fieldnotes, 2014, non-London urban tribunal].

An appellant also told us that they had to rely on a security guard to care for her child during her hearing.

> 'I was there with my daughter, but one of the security guards have to watch her all of the time, so they didn't provide childcare for me. I was really stressful as well because I was thinking about her and about me as well. When she cries she want to come in the room, they kept telling her [to] get out.' [Female Appellant DR Congo].

While the appellant said it was 'nice' that a guard had entertained her child, she was also concerned that it was not their responsibility to provide childcare.

> 'Sometimes the guard can have enough, he's got a whole duty to do. So she will be running around the corridor and it's not good. [...] you can't focus, it was really stressful.'

The appellant went on to describe being unable to focus during her hearing due to her child being outside the room. We were also concerned that these informal arrangements exposed the staff involved to risks.

Measures Introduced by HMCTS

HMCTS has also made various improvements recently for child asylum appellants. Some of these improvements also impact the issue of children accompanying adult appellants including waiting areas being redecorated and mobile toy boxes introduced.[102]

Exacerbating factors

Distracting effect of children

Our research revealed a number of specific issues regarding appellants attending hearings with their children. Firstly, for appellants with young children (e.g. around five or six years and under) with them in the room, it was often found to be a source of distraction, especially if the child was crying or running around. Judges may also be affected when particularly unruly children are in attendance.

Children in the hallways of the tribunals, even if they are being looked after by a parent, can also be a distraction in hearings.

> 'There is a very loud child shouting in the hallway and several children running up and down. The immigration judge says she would like to throttle the child.' [Ethnographic Fieldnotes, 2014, London tribunal].

> 'They come with a child [and] they don't have anyone to look after them. Now they are thinking of having day-care ...at least the women will be more focused because when the children are crying and distracted the woman is all

over the place and she starts forgetting her days and can't be focused anymore, they conclude she is lying.' [Female Appellant, Nigeria].

Inhibiting effect of children

Conducting hearings with slightly older children present (e.g. over six years) can be distressing for both the child and the parent, especially when the parent is asked to disclose sensitive information. Not only can this be upsetting, but it can also inhibit the parent from speaking openly and therefore potentially damage their case.[103] Parents who have been through a particular trauma, for instance torture or sexual abuse, will very likely not have told their child about it. As one usher told us:

> '[In the hearings] some of the things they're discussing are pretty horrific sometimes and if you've got a four year old, they understand that, they might not know all the words, but they understand that mum's sitting there and she's in floods of tears, talking. It's not good; it does happen fairly frequently I think as well.' [Usher, Male].

RECOMMENDATION (Senior President of Tribunals, President of the FtTIAC and HMCTS): Provide childcare in or near to FtTIAC hearing centres, as has been available in all Home Office hubs since July 2018.[104] For example, centres could have an on-site crèche or pop-up play area with play workers scheduled for certain days and appellants with unavoidable childcare responsibilities listed on those days. If the lack of space makes this unfeasible in some centres, voucher schemes for a nearby crèche could also be considered.

Conclusion

In his report on the Modernisation of Tribunals, Sir Ernest Ryder described how the current programme of modernisation was intended to 'put the user in the driving seat'.[105] He elaborated that in following this commitment, '[u]sers' experience and perception of the quality of justice will be improved'.[106] This approach marks a significant juncture and we are keen to see it come to fruition.

We hope this report can lend weight to arguments for improving access to justice in the immigration and asylum tribunal, as well as offering practical recommendations for how this can be implemented. Whether participants, including appellants, feel justice has been done is important, not simply for maintaining procedural fairness and access to justice, but for longer term public trust in the justice system.

By drawing on appellant experience, we have highlighted the role of confusion, anxiety, mistrust, disrespect, communication difficulties and distraction in constraining asylum seekers' access to justice. These challenges would not be revealed by an analysis of hearing outcomes or other high-level quantitative data, but can be drawn out through interviews with court users and ethnographic engagement with asylum appeal hearings.

There is a considerable way to go in order to ensure that access to justice is maintained for all asylum appellants. With this is mind, the recommendations in this report seek to ensure that the asylum appeal process is not only efficient, but is fair and minimises stress for appellants.

References

[1] The individual or body best placed to implement each of our recommendations is denoted in brackets after each recommendation. For example, MoJ (Ministry of Justice); HMCTS (Her Majesty's Courts & Tribunal Service); HO (Home Office); FtTIAC (First-tier Tribunal Immigration and Asylum Chamber); SP Tribunals (Senior President of Tribunals); FtTIAC President (President of the FtTIAC); IJs (Immigration Judges); RJs (Resident Judges); LRs (Legal Representatives for the Appellant).

[2] Available here in multiple languages: http://geography.exeter.ac.uk/research/appeal/. (Accessed 13/12/20).

[3] See for example Right to Remain's video guidance for asylum appeals. Available at: https://www.youtube.com/watch?v=8ohnE1K3qC8 (Accessed 02/12/20).

[4] The English video we have produced has subtitles.

[5] The pre-hearing guidance note was published in May 2002 for the Asylum and Immigration Tribunal but was carried over to the FtTIAC, see https://www.judiciary.uk/publications/immigration-and-asylum-tribunal-rules-and-legislation/ (Accessed 06/11/20).

[6] This could be dangerous at the current time due to COVID-19 and the need for social distancing, but should be considered if and when it is safe to do so.

[7] See Home office guidance for asylum interviews, version 7.0. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf (Accessed 04/11/20). See also Singer, D. (2018) *Childcare in Asylum Interviews: The Story of a Successful Campaign*. Available at: https://consonant.org.uk/childcare-in-asylum-interviews-the-story-of-a-successful-campaign/ (Accessed 04/11/20).

[8] See for example the FtTIAC User Guide issued in June 2020. Available at: https://www.judiciary.uk/wp-content/uploads/2020/06/FtTIAC-User-Guide-June-2020-Final-12.6.20-1.pdf (Accessed 02/12/20).

[9] JUSTICE (2019) *Understanding Courts*. Available at: https://justice.org.uk/wp-content/uploads/2019/01/Understanding-Courts.pdf (Accessed 05/06/20).

[10] Baillot, H., Cowan, S., & Munro, V. E. (2012). 'Hearing the Right Gaps' enabling and responding to disclosures of sexual violence within the UK asylum process. *Social & Legal Studies*, *21*(3), 269-296; Asylum Aid and the National Centre for Social Research (2017) *Through her Eyes: Enabling Women's Best Evidence in UK Asylum Appeals*, London. Available at: https://www.bl.uk/collection-items/through-her-eyes-enabling-womens-best-evidence-in-uk-asylum-appeals (Accessed 13/12/20).

[11] Including expertise from law, anthropology and human geography.

[12] The Right to Remain Toolkit outlines which asylum applications can be appealed. Accessible at: https://righttoremain.org.uk/toolkit/refusal/ (Accessed 18/04/20).

[13] A proportion of appeals are decided on paper without an oral hearing. See Thomas, R. (2017). Oral and paper tribunal appeals, and the online future. *The UK Administrative Justice Institute* (blog). January 31, 2017. Available at: https://ukaji.org/2017/01/31/oral-and-paper-tribunal-appeals-and-the-online-future/ (Accessed 13/12/20).

[14] This tribunal is independent of the government. The number of hearing centres has reduced since 2011-12. There were 19 hearing centres listed in a response to a Freedom of Information request that we received in 2014 that concerned 2011 and 2012, including: Belfast, Belfast Laganside, Birmingham, Bradford, Glasgow, Harmondsworth Fast Track, Harmondsworth, Hatton Cross Fast Track, Hatton Cross, Liverpool, Manchester, Newport, North Shields, Stoke, Sutton, Taylor House, Walsall, Yarlswood and Yarlswood-Taylor House. In early 2020, updates from HM Courts and Tribunals Service listed Taylor House, Hatton Cross, Birmingham, Harmondsworth, Yarl's Wood, Nottingham, Newport, Bradford, North Shields, Manchester, Glasgow and Belfast.

[15] Data from 12 months to end September 2019. Chris Philp MP, answer to written question, asked by Parliamentary Question on 28 January 2020. Available at: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-01-28/9115/ (Accessed 09/06/20).

[16] Walsh, P.W. (2019) *Briefing: Migration to the UK: Asylum and Resettled Refugees.* The Migration Observatory. Available at: https://barrowcadbury.org.uk/wp-content/uploads/2019/11/Briefing-Migration-to-the-UK-Asylum-and-Resettled-Refugees.pdf (Accessed 13/12/20). Based on Home Office immigration statistics, the report highlights that of all asylum applications received between 2012 and 2016, 38% resulted in an initial decision to grant asylum, humanitarian protection, or another form of leave.

[17] There was an initial grant rate of 24% in France and 35% in Germany in 2019. The Asylum Information Database provides these statistics for France https://www.asylumineurope.org/reports/country/france/statistics and Germany https://www.asylumineurope.org/reports/country/germany/statistics. (Accessed 18/04/20).

[18] Or Home Office Barrister (HOB). Sometimes the Home Office will employ qualified barristers instead of using HOPOs that they have trained. In this report, we generally use 'HOPO' to refer to the Home Office representative, as it is most commonly a HOPO, rather than a HOB, that is present.

[19] As well as the interpreter who is employed by the Tribunal, a second interpreter who is working for the appellant's legal representative may also be present to provide interpretation during the pre-hearing conference and to ensure full and accurate interpretation during the hearing itself. See Henderson, M., Moffat, R. & Pickup, A. (2020) *Best Practice Guide to Asylum*

and Human Rights Appeals. Available at: https://www.ein.org.uk/bpg/chapter/34 (Accessed 18/04/20).

[20] This could include McKenzie Friends, although we not discuss them in this report.

[21] Henderson, M., Moffat, R. & Pickup, A. (2020) *Best Practice Guide to Asylum and Human Rights Appeals*. https://www.ein.org.uk/bpg/chapter/34. (Accessed 18/04/20).

[22] These people were informed about our role as researchers.

[23] The Detained Fast Track was a system for deciding asylum claims and appeals whilst the asylum seeker was in detention. It was suspended in 2015.

[24] In 22 of the 240 cases, it was not possible to unambiguously record whether the case was interpreted, for example because there were issues relating to the match between the interpreter's language and that of the appellant or because the interpreter was there but not used.

[25] Snowball sampling refers to the recruitment of research participants via other research participants.

[26] Gill, N. and Rotter, R. and Burridge, A. and Allsopp, J. (2019). *Asylum appeal hearing observations at First-tier Tribunal hearing centres in the UK, 2013-2016.* [Data Collection]. Colchester, Essex: UK Data Archive. 10.5255/UKDA-SN-852032.

[27] Resident Judges are the principal judges in each hearing centre.

[28] See for example Good, A. & Kelly, T. (2013*) Expert country evidence in asylum and immigration cases in the United Kingdom: Best Practice Guide.* Available at: https://www.ein.org.uk/sites/default/files/Expert%20Country%20Evidence%20BPG.pdf. (Accessed 18/04/20); Good, A. (2006) *Anthropology and Expertise in the Asylum Courts*. Routledge.

[29] During our observations, occasionally the judge announced the decision on the day.

[30] For information about disparities in asylum appeal success rates in the UK, see BBC (2017) Asylum Seekers Face Appeals 'Lottery'. Available at: https://www.bbc.co.uk/news/uk-42153862 (Accessed 08/07/20). For a discussion of the limitations of analyses based on success rate disparities, see Gill, N., Rotter, R., Burridge, A., & Allsopp, J. (2018). The Limits of Procedural Discretion: Unequal Treatment and Vulnerability in Britain's Asylum Appeals. *Social & Legal Studies*, 27(1), 49-78). Available at: https://journals.sagepub.com/doi/full/10.1177/0964663917703178 [open access]. (Accessed 13/12/20).

[31] Some appellants revealed the outcome of their cases to us in the course of the interview in any case.

[32] Ministry of Justice (2016) Transforming our Justice System. Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf (Accessed 16/07/20).

[33] For an analysis of the impact of the transition to a digital appeals process, see Hynes, J. *et al* (2020) Online Immigration Appeals: A Case Study of the First-tier Tribunal. Available at: https://publiclawproject.org.uk/wp-content/uploads/2020/08/200825_Online-Immigration-Appeals_FINAL.pdf (Accessed 02/10/20).
[34] We have fed into discussions of the reform programme elsewhere, see the report by JUSTICE entitled 'Immigration and Asylum Appeals – a Fresh Look'. Available at: https://justice.org.uk/wp-content/uploads/2018/06/JUSTICE-Immigration-and-Asylum-Appeals-Report.pdf (Accessed 13/12/20).
[35] Available here in multiple languages: http://geography.exeter.ac.uk/research/appeal/. (Accessed 13/12/20).
[36] In England and Wales barristers tend to present the case at the hearing whilst solicitors prepare the appeal by gathering the required evidence and drafting the appellants' statement. This is why appellants may not meet their barrister before the day of the hearing. In Scotland the situation is different.
[37] Names and other identifying features have been altered.
[38] For a discussion, see Gill, N., Rotter, R., Burridge, A., & Allsopp, J. (2018). The Limits of Procedural Discretion: Unequal Treatment and Vulnerability in Britain's Asylum Appeals. *Social & Legal Studies*, 27(1), 49-78). Available at: https://journals.sagepub.com/doi/full/10.1177/0964663917703178 [open access]. (Accessed 13/12/20).
[39] Hodge, H. J., (2002) Adjudicator Guidance Note: Pre Hearing Introduction, Guidance Note No. 3, May 2002. Available at: www.judiciary.gov.uk/wp-content/uploads/2014/07/GuideNoteNo3.pdf (Accessed 13/12/20).
[40] According to the guidance, an 'individual may be vulnerable because of an innate characteristic (e.g. age), because of his or her personal characteristics (e.g. mental health problems) or because of events over which they had or have no control e.g. detention or torture.' Carnwath, RJA. (2008). Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, 7-8. Available at: https://www.judiciary.uk/wp-content/uploads/2014/07/ChildWitnessGuidance.pdf (Accessed 20/02/2019).
[41] Judicial College (2018) Equal Treatment Bench Book and Guidance www.judiciary.gov.uk/publications/equal-treatment-bench-book/ (Accessed 10/06/20).
[42] See Gill, N., Rotter, R., Burridge, A., & Allsopp, J. (2018). The Limits of Procedural Discretion: Unequal Treatment and Vulnerability in Britain's Asylum Appeals. *Social & Legal Studies*, 27(1), 49-78). Available at: https://journals.sagepub.com/doi/full/10.1177/0964663917703178 [open access]. (Accessed 13/12/20). The variability of judicial explanatory remarks was also cited as a source of confusion for asylum appellants in: Asylum Aid and the National Centre for Social Research (2017) *Through her Eyes: Enabling Women's Best Evidence in UK Asylum Appeals*, London. Available at: https://www.bl.uk/collection-items/through-her-eyes-enabling-womens-best-evidence-in-uk-asylum-appeals. (Accessed 02/05/20).

[43] See Gill, N., Rotter, R., Burridge, A., & Allsopp, J. (2018). The Limits of Procedural Discretion: Unequal Treatment and Vulnerability in Britain's Asylum Appeals. *Social & Legal Studies*, 27(1), 49-78). Available at: https://journals.sagepub.com/doi/full/10.1177/0964663917703178 [open access]. (Accessed 13/12/20).
[44] Available in multiple languages at: http://geography.exeter.ac.uk/research/appeal/ (Accessed 13/12/20).
[45] See for example Right to Remain's video guidance for asylum appeals. Available at: https://www.youtube.com/watch?v=8ohnE1K3qC8 (Accessed 02/12/20). We understand that one hearing centre has developed a model video showing how COVID-19 measures work, HMCTS is in the process of developing similar guidance, and that the FtTIAC is developing more guidance that builds on work in these and other areas.
[46] The English video we have produced has subtitles.
[47] Among other guidance in the Equal Treatment Bench Book, the Joint Presidential Guidance Note 2 of 2010 relates to the concern that appellants should be able to understand what is happening. Available at: https://www.judiciary.uk/wp-content/uploads/2014/07/ChildWitnessGuidance.pdf (Accessed 02/10/20). Further guidance appears in Practice Directions, Practice Statements and Presidential Guidance.
[48] For example, see the FtTIAC User Guide: https://www.judiciary.uk/wp-content/uploads/2020/06/FtTIAC-User-Guide-June-2020-Final-12.6.20-1.pdf. (Accessed 13/12/20). The President of the FtTIAC has also issued two practice statements during the current public health emergency.
[49] Bail for Immigration Detainees (BID) and Asylum Aid (2005) *Justice Denied: Asylum and Immigration Legal Aid—A System in Crisis.* London: BID; Genn, H. (1993) Tribunals and informal justice. *Modern Law Review* 56(3): 393–411; Hambly J. (2019) Interactions and Identities in UK Asylum Appeals: Lawyers and Law in a Quasi-Legal Setting. In: Gill N., Good A. [Eds.] *Asylum Determination in Europe*. Palgrave Socio-Legal Studies. Palgrave Macmillan; James, D. and Killick, E. (2012) Empathy and expertise: Case workers and immigration/asylum applicants in London. *Law and Social Inquiry* 37(2): 430–455; Ramji-Nogales, J., Schoenholtz, A. I. and Schrag, P. G. (eds) (2009) *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*. New York: New York University Press; Schoenholtz, A., & Jacobs, J. (2002). The State of Asylum Representation: Ideas for Change. *Georgetown University Law Center: Immigration Law Journal*, 16, 739–772; Rhode, D. L. (2008). Whatever happened to access to justice. *Loy. LAL Rev.*, *42*, 869.
[50] Hodge, H. J., (2003) *Adjudicator Guidance Note: Unrepresented Appellants, Guidance Note No. 5*, April 2003. Available at: www.judiciary.gov.uk/wp-content/uploads/2014/07/GuideNoteNo5.pdf (Accessed 13/12/20).
[51] An appellant can be unrepresented both before their hearing and during it.

[52] Given that government funded legal representatives might jeopardise their access to government funded cases if they lose too many cases, this is not an unrealistic concern.
[53] Wilding, J. (2019) *Droughts and Deserts: A Report on the Immigration Legal Aid Market*, http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf (Accessed 25/04/20); Burridge, A. & Gill, N. (2017) 'Conveyor-Belt Justice: Precarity, Access to Justice, and Uneven Geographies of Legal Aid in UK Asylum Appeals', *Antipode*, 49(1), pp. 23–42.
[54] There is long-standing concern over unscrupulous legal firms operating in this jurisdiction. See: Bail for Immigration Detainees (BID) and Asylum Aid (2005) *Justice Denied: Asylum and Immigration Legal Aid—A System in Crisis*. London: BID. Available at: https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/208/Justice_Denied.pdf (Accessed 13/12/20); see also JUSTICE (2018) *Immigration and Asylum Appeals - a Fresh Look.* London: JUSTICE. Available at: https://justice.org.uk/wp-content/uploads/2018/06/JUSTICE-Immigration-and-Asylum-Appeals-Report.pdf (Accessed 13/12/20).
[55] Gibbs, J. (2010) *Justice at Risk: Quality and value for money in asylum legal aid. Interim Report*. Available at: https://www.bl.uk/collection-items/justice-at-risk-quality-and-value-for-money-in-asylum-legal-aid-interim-report (Accessed 02/05/20); Wilding, J. (2019) *Droughts and Deserts: A Report on the Immigration Legal Aid Market*. Available at: http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf (Accessed 25/04/20); Refugee Action (2018) *Tipping The Scales: Access to Justice in The Asylum System*. Available at: https://www.refugee-action.org.uk/tipping-scales-access-justice-asylum-system/ (Accessed 16/07/20).
[56] Webber, F. (2012). Borderline Justice: The Fight for Refugee and Migrant Rights. London: Pluto, p68.
[57] Wilding, J. (2019) *Droughts and Deserts: A Report on the Immigration Legal Aid Market*. Available at: http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf (Accessed 25/04/20).
[58] Refugee Action (2018) *Tipping The Scales: Access to Justice in The Asylum System*. Available at: https://www.refugee-action.org.uk/tipping-scales-access-justice-asylum-system/ (Accessed 16/07/20).
[59] Ibid 58.
[60] Ibid 57.
[61] Hambly, J. and Gill, N. (2020) Law and Speed: Asylum Appeals and the Techniques and Consequences of Legal Quickening. *J. Law Soc.*, 47: 3-28. Available at: https://onlinelibrary.wiley.com/doi/full/10.1111/jols.12220 [open access]. (Accessed 13/12/20).
[62] Hearings are usually scheduled to start at 10:00am (although we are aware of some hearing centres listing hearings in the afternoon).

[63] Ibid 61.
[64] We saw this in 13% of hearings. See Gill, N., Rotter, R., Burridge, A., & Allsopp, J. (2018). The Limits of Procedural Discretion: Unequal Treatment and Vulnerability in Britain's Asylum Appeals. *Social & Legal Studies*, 27(1), 49-78). Available at: https://journals.sagepub.com/doi/full/10.1177/0964663917703178 [open access]. (Accessed 13/12/20).
[65] JUSTICE (2019) *Understanding Courts*. Available at: https://justice.org.uk/wp-content/uploads/2019/01/Understanding-Courts.pdf (Accessed 09/07/20), p. 4.
[66] For example, according to the Senior President of Tribunals' 2019 Annual Report, the outstanding caseload for 2018-19 in the FtTIAC stood at 25,448 with overall receipts and disposals for the year at 43,355 and 59,407 respectively. See Senior President of Tribunals (2019) Senior President of Tribunals' Annual Report. Available at: https://www.judiciary.uk/wp-content/uploads/2019/10/6.5845_The-Senior-President-of-Tribunals-Annual-Report-2019_Print_NoCrops.pdf. (Accessed 18/04/20).
[67] Asylum Aid and the National Centre for Social Research (2017) *Through her Eyes: Enabling Women's Best Evidence in UK Asylum Appeals*, London. Available at: https://www.bl.uk/collection-items/through-her-eyes-enabling-womens-best-evidence-in-uk-asylum-appeals. (Accessed 02/05/20).
[68] Judicial College (2018) Equal Treatment Bench Book and Guidance. Available at: www.judiciary.gov.uk/publications/equal-treatment-bench-book/ (Accessed 10/06/20).
[69] Asylum Aid and the National Centre for Social Research (2017) *Through her Eyes: Enabling Women's Best Evidence in UK Asylum Appeals*, London. Available at: https://www.bl.uk/collection-items/through-her-eyes-enabling-womens-best-evidence-in-uk-asylum-appeals (Accessed 02/05/20).
[70] See Right to Remain's video introduction for appellants at 5 minutes 30 seconds. Available at: https://www.youtube.com/watch?v=8ohnE1K3qC8 (Accessed 13/12/20).
[71] This could be dangerous at the current time due to COVID-19 and the need for social distancing, but should be considered if and when it is safe to do so.
[72] Judicial College (2018) Equal Treatment Bench Book and Guidance. Available at: www.judiciary.gov.uk/publications/equal-treatment-bench-book/ (Accessed 10/06/20).
[73] Asylum Aid and the National Centre for Social Research (2017) *Through her Eyes: Enabling Women's Best Evidence in UK Asylum Appeals*, London. Available at: https://www.bl.uk/collection-items/through-her-eyes-enabling-womens-best-evidence-in-uk-asylum-appeals. (Accessed 13/12/20).
[74] See, for example: Immigration and Asylum Tribunal Guidance Notes. Available at: https://www.judiciary.uk/publications/immigration-and-asylum-tribunal-rules-and-legislation-2/ (Accessed 13/12/20);

Judicial College (2018) Equal Treatment Bench Book and Guidance. Available at: www.judiciary.gov.uk/publications/equal-treatment-bench-book/ (Accessed 10/06/20).

[75] Various instances of judges falling asleep in the UK have been reported in the media, including in the High court (BBC (11 February 2019) High Court judge apologises after falling asleep. Available at: https://www.bbc.co.uk/news/uk-47195605 (Accessed 08/07/20)), in the employment tribunal (The Times (6 June 2019) Tribunal decision scrapped after ruling by sleepy judge fails to put case to bed. Available at: https://www.thetimes.co.uk/article/tribunal-decision-scrapped-after-ruling-by-sleepy-judge-fails-to-put-case-to-bed-fpdt6gnwq (Accessed 08/07/20)), and in the crown court (BBC (26 July 2014) Judge 'falls asleep' during child rape case. Available at: https://www.bbc.co.uk/news/uk-england-28498362 (Accessed 08/07/20)). The issue is not new and has been subject to academic attention, for example in Banerjee, D. (2007). The case of "Judge Nodd" and other sleeping judges—media, society, and judicial sleepiness. *Sleep*, 30(5), 625-632; Longo, C. (2010). Sleeping Judges: Consideration of Prejudice and Counsel Responsibility at Trial. *Can. L. Libr. Rev.*, *35*, 11; Tranberg, H. (1998). While You Were Sleeping: What to Do about Sleepy Judges-Stathooles v. Mount Isa Mines Ltd. *U. Queensland LJ*, *20*, 130; Murray, S. (2008). To Judge is 'To Sleep: Perchance to Dream: Ay, There's the Rub'. *Alternative Law Journal*, 33(3), 151-154.

[76] See for example: Fouzder, M. (14 January 2020) Lunch means lunch: family judge issues wellbeing protocol. Law Gazette. Available at: https://www.lawgazette.co.uk/practice/lunch-means-lunch-family-judge-issues-wellbeing-protocol/5102700.article (Accessed 04/11/20).

[77] Whilst this barrister felt he could 'handle' this kind of judicial behaviour and was glad when it was just directed at himself rather than to his client, it nevertheless undermines trust in the justice system.

[78] The complaints procedure is set out at: https://judicialconduct.judiciary.gov.uk/. The Judicial Conduct (Tribunal) Rules 2014 are available at: https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/Judicial_Conduct__Tribunals__Rules_2014.pdf (Accessed 13/12/20).

[79] https://judicialconduct.judiciary.gov.uk/making-a-complaint/what-can-i-complain-about/ (Accessed 13/12/20).

[80] https://judicialconduct.judiciary.gov.uk/contact-a-tribunal-president/ (Accessed 13/12/20).

[81] Ibid 80.

[82] For a discussion of designing complaints systems for vulnerable complainants, see: Brennan, C., Sourdin, T., Williams, J., Burstyer, N. & Gill, C. (2017) Consumer vulnerability and complaint handling: challenges, opportunities and dispute system design. *International Journal of Consumer Studies*, 41(6), pp. 638-646. doi: 10.1111/ijcs.12377.

[83] https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/complaints-procedure (Accessed 13/12/20).
[84] Ibid 80.
[85] Ibid 80.
[86] Ibid 83.
[87] See for example: https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2019/11/JCIO-Annual-Report-2018-19.pdf (Accessed 04/12/20).
[88] https://www.barcouncil.org.uk/support-for-barristers/equality-diversity-and-inclusion/talk-to-spot.html (Accessed 04/12/20).
[89] See Campbell, J, R. (2019). The World of Home Office Presenting Officers. In: Gill, N. & Good, A. [Eds.], *Asylum Determination in Europe: Ethnographic perspectives*, 1st Ed. Cham, Switzerland: Palgrave Macmillan., 91-108; Anonymous (2020) I'm a Home Office Presenting Officer: ask me anything. *Free Movement*, 09/09/2020 [blog]. Available at: https://www.freemovement.org.uk/im-a-home-office-presenting-officer-ask-me-anything/ (Accessed 02/10/20).
[90] The Guardian (14 January 2014) Home Office staff rewarded with gift vouchers for fighting off asylum cases. Available at: https://www.theguardian.com/uk-news/2014/jan/14/home-office-asylum-seekers-gift-vouchers. (Accessed 25/04/20).
[91] https://www.sra.org.uk/risk/risk-resources/balancing-duties-litigation/ (Accessed 25/04/20).
[92] https://www.barstandardsboard.org.uk/the-bsb-handbook.html (Accessed 25/04/20).
[93] See Campbell, J, R. (2019). The World of Home Office Presenting Officers. In: Gill, N. & Good, A. [Eds.], *Asylum Determination in Europe: Ethnographic perspectives*, 1st Ed. Cham, Switzerland: Palgrave Macmillan., 91-108 [open access].
[94] See https://www.whatdotheyknow.com/request/code_of_ethics_for_homeoffice_pr (Accessed 06/11/20).
[95] Gibb, R. & Good, A. (2014) Interpretation, translation and intercultural communication in refugee status determination procedures in the UK and France, *Language and Intercultural Communication*, 14:3, 385-399; Berk-Seligson, S. (2002*). The bilingual courtroom: Court interpreters in the judicial process*. Chicago, IL: University Press; Gill, N., Rotter, R., Burridge, A., Allsopp, J., & Griffiths, M. (2016) Linguistic incomprehension in British asylum appeal hearings. *Anthropology Today* 32(2): 18-21; Dahlvik, J. (2018*) Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria*. Springer; Henderson, M., Moffat, R. & Pickup, A. (2020) *Best Practice Guide to Asylum and Human Rights Appeals*, Electronic Immigration Network. Available at: https://www.ein.org.uk/bpg/chapter/34#toc1. (Accessed 25/04/20); Maryns, K. (2014) *The asylum speaker: Language in the Belgian asylum procedure*. Routledge.

[96] Excluding ambiguous cases.
[97] Henderson, M., Moffat, R. & Pickup, A. (2020) Best Practice Guide to Asylum and Human Rights Appeals, Electronic Immigration Network. Available at: https://www.ein.org.uk/bpg/chapter/34#toc1 (Accessed 25/04/20). See in particular chapter 34, 'Interpretation at the Hearing'.
[98] The guidance can be found at: https://www.judiciary.uk/publications/immigration-and-asylum-tribunal-rules-and-legislation/, entitled 'Guidance Note 3 (May 2002) – Pre-Hearing Introduction' (Accessed 13/12/20). It suggests that the judge says: 'Now to ensure that the interpreter understands you, I would like you to tell the interpreter how you arrived at court this morning. Tell the interpreter what time you left and some details of your journey here', and then checks for understanding after this dialogue.
[99] Herlihy, J., & Turner, S. W. (2007). Asylum claims and memory of trauma: sharing our knowledge. *The British Journal of Psychiatry*, 191(1), 3-4.
[100] This is despite the fact that the 'Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance' clearly highlights the need for parties to 'ensure questions asked are open ended wherever possible' (p.5). Available at: https://www.judiciary.uk/wp-content/uploads/2014/07/ChildWitnessGuidance.pdf (Accessed 02/10/20)
[101] See https://righttoremain.org.uk/appeal-hearings-how-you-can-prepare/ (Accessed 04/11/20).
[102] The other improvements (for children as appellants) include: National Business Centres mark-up child appellant files with a sticker so the hearing centres can identify these easily; child cases are given single point of contact and contact details shared; children are introduced to opposing legal professionals, the judge, interpreters and any other third party in advance of hearing; the use of informal language and first names only throughout proceedings; additional time allowed to refresh memory of evidence and statements; professional users are expected to use a developmentally appropriate questioning style; physical set up of court is adapted- e.g. all users at same level round a table (personal communication between Gill and HMCTS, 17th September 2020).
[103] Research by Helen Bamber Foundation points to the importance of environmental factors, such as noise and lighting levels, in facilitating asylum seekers' disclosure of traumatic events. Abbas, P., von Werthern, M., Katona, C., Brady, F. & Woo, Y. (2020) The texture of narrative dilemmas: qualitative study in front-line professionals working with asylum seekers in the UK, *BJPsych Bulletin*. Cambridge University Press, pp. 1–7. doi: 10.1192/bjb.2020.33.
[104] See Home office guidance for asylum interviews, version 7.0. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf (Accessed 04/11/20). See also Singer, D. (2018) Childcare in Asylum Interviews: The Story of a Successful Campaign. Available at:

https://consonant.org.uk/childcare-in-asylum-interviews-the-story-of-a-successful-campaign/ (Accessed 04/12/20).

[105] Senior President of Tribunals (2018). *The Modernisation of Tribunals 2018: A Report by the Senior President of Tribunals*, p10. Available at: https://www.judiciary.uk/wp-content/uploads/2019/01/Supplementary-SPT-report-Dec-2018_final.pdf. (Accessed 24/04/20).

[106] Ibid 105.

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