

SELF-HELP TOOL 5: USING THE VULNERABLE WITNESS GUIDANCE

There are rules/guidance for judges to ensure that people get a fair hearing and can take part in their case. One of these is guidance on how vulnerable people are treated. This guidance is called: [Joint Presidential Guidance Note No. 2 of 2010 on Vulnerable Witnesses](#). (When you go to the tribunal or to court you are a “witness”.)

HOW THE VULNERABLE WITNESS GUIDANCE CAN APPLY TO YOUR CASE

- 1. You can be considered vulnerable for different reasons:** if you suffered rape and other sexual violence or torture, are traumatised and/or have mental health problems (“*sustained serious harm or torture or are suffering from post-traumatic stress disorder*”). You should also be considered vulnerable if you are in detention (“*detained in lawful custody*”).
- 2. If judges don’t consider whether you are a vulnerable witness it is an ERROR IN LAW** and you are entitled to another appeal hearing.

THE GUIDANCE CAN HELP YOU INSIST ON YOUR RIGHT TO:

- A. An adjournment to get a lawyer.** The Guidance calls on judges to:

“Identify and record whether the appellant is legally represented. If not consider whether an adjournment of the substantive hearing would enable representation to be obtained” (Para 5 vi).

- B. A Case Management Review Hearing (CMRH)** to decide whether “special measures” are needed to help you as a vulnerable and traumatised person. The Guidance says:

“In so far as it is possible potential issues and solutions should be identified at a CMRH or pre-hearing review and the case papers noted so that the substantive hearing can proceed with minimal exposure to trauma or further trauma of vulnerable witnesses or appellants.” (Para 4).

- C. Sensitive treatment if you are a victim of rape, other violence and/or trafficking.** The Guidance puts a responsibility on judges to:

“Curtail improper or aggressive cross examination; control the manner of questioning to avoid harassment, intimidation or humiliation. . . . Pay special attention to avoid re-traumatisation of a victim of crime, torture, sexual violence.”

When assessing the evidence judges have a responsibility to consider:

“The order and manner in which evidence is given may be affected by mental, psychological or emotional trauma or disability.” (Para 3)

- D. Psychiatric evidence.** The Guidance calls on judges to:

“Consider whether expert evidence e.g. as to disability, age or mental health is required, particularly if there is a dispute on an issue over ability to participate in the proceedings; consider whether an adjournment would be appropriate to enable either party to obtain reports.” (Para 5 vii).

- E. A single gender hearing;** that is an all woman hearing.

SAMPLE LETTER

To Whom It May Concern

Date

The judge in my case didn't consider whether the Tribunal's *Joint Presidential Guidance Note No 2 of 2010 on Vulnerable Witnesses* applied to me. I therefore write to ask...

[PICK FROM THE LIST BELOW & DELETE THE REST]

1. To be released from detention.
2. For my removal to be stopped.
3. For the Tribunal to set aside my last appeal determination, because the judge did not consider if I was vulnerable, and allow me another appeal.
4. For an in-country appeal because my case is not "clearly unfounded" if considered in light of the guidance.
5. For an adjournment of my appeal hearing to allow time for me to find lawyer.
6. For the Home Office to treat my further submissions as a fresh claim and not rely on a previous Tribunal judgement that failed to treat me as a vulnerable witness.
7. For a judicial review of the Home Office's refusal to treat my further submissions as a fresh claim.
8. For legal aid because the Legal Aid Agency relied on the judge's ruling to say my case has no merit.

REASONS:

I didn't get a fair hearing because I wasn't treated like a vulnerable witness in accordance with the Tribunal's *Joint Presidential Guidance Note No 2 of 2010 on Vulnerable Witnesses*.

The Guidance informs judges that:

[RETAIN WHICH OF THE TWO DESCRIPTIONS BELOW QUALIFIES YOU TO BE A VULNERABLE WITNESS - IT MAY BE BOTH - AND DELETE OTHER IF IT DOESN'T APPLY TO YOU]

1. "A person is a vulnerable adult if he has attained the age of 18; he receives any form of health care; he is detained in lawful custody,"
2. "Some individuals are vulnerable because of what has happened to them e.g. they are victims of trafficking or have sustained serious harm or torture or are suffering from PTSD."

I attach the decision of "*YF (Cameroon) v SSHD in the Court of Appeal, civil division. Application for a second appeal. (Ref: C5/2014/2595)*", in which the Court of Appeal allowed an appeal to proceed on the basis that the Tribunal had failed to consider Ms YF's case with reference to the Guidance. The Tribunal concurred and Ms YF was allowed a new appeal, as a result of which she was granted full refugee status. The Home Office also agreed in this and other cases that the Tribunal's failure to apply the Guidance was "an error in law".

Yours sincerely

FORM 269D1



**IN THE COURT OF APPEAL, CIVIL DIVISION
APPLICATION FOR A SECOND APPEAL**



REF: C5/2014/2595

YF (Cameroon) -v- Secretary of State for the Home Department

Decision on an application for a second appeal. The Judge will not give permission unless he or she considers that (a) the appeal would raise an important point of principle or practice or (b) there is some other compelling reason for the Court of Appeal to hear it.

ORDER made by the Rt. Hon. Lord Justice Beatson

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Permission to appeal is granted.

Reasons

1. I am satisfied that there is an arguable ground in that neither Tribunal appears to have taken account of Joint Presidential Guidance Note No. 2 of 2010, the guidance to Tribunals as to the assessment of the credibility of an account of rape, and in particular late disclosure. While it would not be fatal not to refer explicitly to the guidance, in the present case there is nothing in the reasoning of the FTT and the UT to show that it was taken into account. The FTT's decision (at [44]) simply states that YF's failure to mention sexual assault by the priest and her uncle in Cameroon to the medico-legal expert who examined her in June 2013 "is inconsistent with considering herself to be at risk of harm on return". The UT's decision (at [27]) simply accepts that the FTT was entitled (at FTT, [51]) to take into account that, in the screening interview, YF did not mention a fear of returning for any reason other than fear of her ex-partner. Neither Tribunal record whether it concluded that YF was a vulnerable or sensitive appellant, as required by paragraph 15 of the guidance. The failure to consider the guidance is also relevant to the question whether the case should have been adjourned or taken out of the detained fast-track process, particularly because the FTT judge recognised that the appeal was, in factual terms, more complex than one would ordinarily expect to see as a fast-track case: see FTT, [31].
2. In my view the second appeals test is satisfied because the question of how Tribunals are to approach Joint Presidential Guidance, and this guidance note in particular, raises an important question of principle.

Information for or directions to the parties

This case falls within the Court of Appeal Mediation Scheme automatic pilot categories*. Yes No

Recommended for mediation Yes No

If not, please give reason:

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment) Half a day
- b) any expedition



Signed: J Beatson

Date: 5 September 2014

By the Court

Notes

- (1) Permission to appeal will only be granted in respect of second appeals if the court considers that:
 - (a) the proposed appeal would raise some important point of principle or practice; or
 - (b) there is some other compelling reason for the relevant appellate court to hear the appeal.
 In respect of second appeals from the county court or High Court, see CPR 52.13. In respect of appeals from the Upper Tribunal, see Article 2 of the Appeals from the Upper Tribunal Order 2008 (SI 2008/2834).
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 16(1) of CPR PD 52C.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 7 days of the date of the listing window notification letter and seek to agree the bundle within 21 days of the date of the listing window notification letter (see paragraph 21 of CPR PD 52C).

Case Number: C5/2014/2595