



# Do asylum seekers play an active role in their appeal?



## Structure and Agency

The structure/agency debate is borne from the question, what primarily determines an individual's behaviour, societal structures or human agency? It considers the issue of whether an individual acts as a free agent or in a manner dictated by social structures.

Structures can be defined as the external forces that have an effect on our decisions, whilst agency is the ability of an individual to make choices in society, guided by their interests and values.

I am investigating the role that asylum seekers play in their own appeal, and the factors that influence this. My research questions ask what structural factors constrain their agency, and what sorts of enabling factors allow them to assert it.

## Constraints (snakes)

**Complex legal system**- They have to deal with interviews, evidence, appeals, tribunals with no legal knowledge, or even practical knowledge as to where to find evidence.

**Language**- Asylum seekers rarely have English as their first language, so it can be difficult for them to understand the hearing and get their point across clearly.

**Ineffective representation**- Legal representation is important for an equality of arms; the judge and HOPO know and understand the law, but the asylum seeker does not. If the representative is ineffective, the asylum seeker could be left confused, dissatisfied, and unable to present their case.

**Disbelief**- Evidence provided by the asylum seeker is cited, but disregarded or twisted to justify rejecting the case, shown through insensitivity and bias in the refusal letters.

*'Home Office officials and immigration judges are not evil monsters, but many lose their human empathy in their dealings with migrants and asylum seekers'* -Webber

*'I felt that I played a relatively minor role. Most of the work was done by the representatives, the lawyers.'* (Asylum seeker 5)

*'The representative stutters, and shuffling papers punctuate the hearing. It is clear that he is unprepared.'* (Observation 1)

*'The interpreter is effective; despite not being given time to engage, he interprets simultaneously, and interrupts the parties if they talk for too long without a pause.'* (Observation 29)

16	17	18	19	20
15	14	13	12	11
6	7	8	9	10
5	4	3	2	1

**Agency** (24)

**HOPO** - Disbelief - Hostility (14)

**Complex legal system** (8)

**A fair judge**- Explains the process (3)

**23 Ineffective representation** - Fumbles/lack of knowledge and evidence (23)

**22 Effective interpretation** - Interpreter speaks the same dialect (22)

**21 Language**- First Language is rarely English (21)

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**12** (12)

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**10** (10)

**9** (9)

**8** (8)

**7** (7)

**6** (6)

**5** (5)

**4** (4)

**3** (3)

**2** (2)

**1** (1)

**Tactics and resources** - Support from the community (5)

**Competent representation**- Well-prepared, thorough (9)

*'Well I would say fairness is having the opportunity to put their story across and that would mean having proper representation through an interpreter and legal representative.'* (Representative 3)

*'Me being here is not gonna change anything. No. it makes no difference at all.'* (Asylum seeker 3)

*'Access to justice is so limited for asylum seekers. So firstly, you have to have a credible representative, someone who understands the process.'* (Representative 5)

## Ladders to asserting agency

**Competent legal representation**- During observations, there were 35 instances of legal representatives furthering the case, and enabling the asylum seeker to assert their agency. Effective representatives were prepared, thorough, and introduced evidence to the judge.

**Effective interpretation**- Skilled interpreters alleviated some of the discomforts faced by asylum seekers; such as not being able to communicate effectively, and not understanding the process, through whispering throughout submissions, and interrupting the legal representative or HOPO if they had forgotten to pause. Some interpreters also went beyond literal translation, to convey meaning.

**Fair judge**- Often, the judges were neutral, information seeking, and used a calm, facilitating tone, pausing for the asylum seeker to speak.

**Tactics**- Observations uncovered 57 examples of asylum seekers asserting agency in some way. Asylum seekers frequently made eye contact with other parties, and used hand gestures to clarify points.

## Asylum seekers are both constrained and enabled in their appeal

Much of the work in this field focusses on the outcomes of asylum cases; and whether these are 'fair'. Courtroom observations and semi structured interviews allowed me to observe what actually happens in asylum appeal hearings, generating a meaningful description of the **procedures** employed. The **results** show that the agency of asylum seekers is both constrained and enabled in asylum appeal hearings. Judges, HOPO's and representatives all play an important role; their actions were captured more frequently in both constraining and enabling agency, leaving the question of whether asylum seekers play any active part in their claim.

Whilst asylum seekers employ **tactics** to assert their agency, using the available resources, several structural factors constrain their ability to assert agency.

**Luck** plays a part in these cases; such as access to competent representation, interpretation, a fair judge or HOPO.

