



Rape, trauma and delay

[Free Movement](#) — 13 May 2011

Ever since the mysterious disappearance of the IAA Gender Guidelines from the old IAA website, there has been an absence of good guidance to immigration judges on gender issues in an immigration context. The *Equal Treatment Benchbook* has a very good chapter on women and equality generally but it does not deal specifically with the unusual issues that arise in, for example, forced marriage, trafficking, Refugee Convention or human rights cases in the immigration tribunal. I've also got no idea how well thumbed this is by most immigration judges. The material in the old IAA Gender Guidelines was considered by many to include some useful, specific and well thought through reference points and ideas.

Asylum Aid very helpfully host a copy of the IAA Gender Guidelines if you would like to take a look.

One particular issue has always caused problems for women and trauma victims seeking asylum: the assertion, based on that most dangerous, pernicious of human qualities, common sense, that a victim of rape or other trauma would tell the Home Office all about it as soon as possible. UKBA officials and Presenting Officers make this assertion time after time after time in order to reject a claim or undermine evidence. In reality, it is nonsense. Rape and trauma victims are usually ashamed of what happened to them and do not rush to tell a complete stranger asking intimate questions in a grotty room with bolted down seats in Croydon straight after they arrive in the UK.

Some progress has been made in this regard in criminal cases. It is now accepted that the trial judge can give a direction to a jury specifically referring to the shame induced by rape and the delay this causes in reporting the crime. I thought it might be helpful to flag the terms of these directions up on the blog.

One such example can be found in the case of *Miller v R* [2010] EWCA Crim 1578 (09 July 2010):

“You are entitled to consider why these matters did not come to light sooner. The defence say that it is because they are not true. They say that the allegations are entirely fabricated, untrue and they say that had the allegations been true you would have expected a complaint to be made earlier...

...

Experience shows that people react differently to the trauma of a serious sexual assault where it has happened. There is no one classic response when it happens and I speak not only of children. Some may be compliant and submissive, some may disassociate themselves from what is happening; they may blank it out, they may freeze, others may protest and resist, they may scream and shout. Some may complain to the first person they see while others may feel shame and shock and not complain for some time. A late complaint does not necessarily mean it is a false complaint and that is a matter for you to consider in the context of all the evidence in this case.”

Another example comes up in the Court of Appeal case of *R v JD* [2008] EWCA Crim 2557 (24 October 2008), in which the following direction to a jury regarding delay in making complaint was upheld on appeal:

“Very often, women who are raped within relationships feel ashamed of what’s happened. They themselves feel the shame. Although they have nothing to be ashamed about, because they are the victim, that’s the reaction. They feel ashamed of what’s happened. They are often too traumatised or embarrassed to tell anyone what’s going on, and a very serious aspect of the offence in those circumstances is that a woman feels trapped. She is, after all, in her own home, very often simply too ashamed and embarrassed to tell anyone that the person that she has brought into her home to share her life, be with her children, is now raping her. She won’t tell her neighbours, friends... even very close friends...children, still less the police, because of those factors which bring to bear.

...

This is where you use your commonsense and your experience of life in determining that question, because it’s frequently said when women don’t complain about rape: “well it’s not true, because if it had been true they would have been straight down to the police station hammering on the door, saying “I’ve been raped”. But you may think it doesn’t work like that...”

Lord Justice Latham, giving the judgment of the Court, goes on at paragraph 11:

“We think that cases where a defendant raises the issue of delay as undermining the credibility of a complainant fall into a similar category save clearly that the need for comment is in this instance to ensure fairness to the complainant. But any comment must be uncontroversial. It is no part of the judge’s task to put before the jury Dr Mason’s learning without her having been called as a witness. However, the fact that the trauma of rape can cause feelings of shame and guilt which might inhibit a woman from making a complaint about rape is sufficiently well known to justify a comment to that effect.”

The problem for an advocate is that an immigration judge sits as judge and jury and may neglect to ‘self direct’. It is difficult to bring this sort of material to the attention of a judge without appearing to condescend and give a lecture, but it may be of use either in a skeleton argument or on appeal.

<http://www.freemovement.org.uk/rape-trauma-and-delay/>