The Contingency of Credibility: Gender-Related Persecution, Traumatic Memory and Home Office Interviews

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Credibility, defined as the ‘coherence and plausibility’ of a personal narrative, is used to determine asylum claims in Home Office interviews. This Article argues that since credibility assessment is subjective — and contingent — such criteria are inappropriate. Informed by Asylum Policy Instructions, non-governmental organisation (NGO) reports and psycho-legal research, it takes theories of memory as a point of departure and moves through the impact of trauma on recalling and relaying experiences of gender-related persecution. It discusses the internal and external barriers to disclosure during Home Office interviews. It then problematizes the way in which a decision-maker receives and interprets this personal story. Finally, through a deconstruction of credibility and an exploration of the pervasive ‘culture of disbelief’, it asks: is contingency-as-policy deliberately exclusionary?

A Note on Names
- Interviewer, case-owner and decision-maker will be used interchangeably, as will interviewee, claimant, asylum-seeker, appellant and applicant
- UKBA = United Kingdom Border Agency
- UNHCR = United Nations High Commission for Refugees
- PTSD = Post Traumatic Stress Disorder

I. INTRODUCTION

Question (Q): What is the focus of this Article?

Answer (A): UK Home Office (hereafter HO) asylum interviews: the initial screening interview and the substantive interview later, and how the telling of trauma (of gender-related persecution) (does not/cannot) fit(s) into this process. It explores how (a) persecutory event(s) travel(s) from the moment(s) of occurrence through the recall process to the translation of memory into an act of

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speech (and the difficulty of recounting sexual violence), and how this account of persecution is then interpreted by the decision-maker. Lastly, the (mal)functioning of the interview is explored against the backdrop of a wider and obsessive politics of ‘credibility’,¹ in a climate of mutual distrust.²

Q: Why this focus?

A: Most research on asylum decision-making looks at the system as a whole or disproportionately at the appeal and/or judicial review and beyond.³ In 2012, 30 per cent of the UKBA’s initial decisions to refuse asylum were overturned on appeal,⁴ indicating the dubious and substandard nature of initial decision-making,⁵ which has long been known. I explore the barriers to protection and acceptance apparent at this initial stage of the asylum process. I am interested in the idea of ownership of a narrative and how, ultimately, decision-making is not based on claimants’ lived experience but instead on how their story is told, and how it is received and processed by the interviewer.

Q: Why gender-related persecution?

A: Sexual violence⁶ against men and boys remains under-researched and under-reported due to stigma and silence;⁷ but I focus on persecution experienced

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⁴ Anderson and others, ‘The culture of disbelief: An ethnographic approach to understanding an under-theorised concept in the UK asylum system’ (n 1) 14.
specifically by women, whose asylum claims often contain particular complexities due to higher rates of sexual violence⁸ and non-state persecution.⁹ Women asylum seekers experience both sexism and racism. As Feder states, gender-related asylum claims occur within ‘overlapping cultures of disbelief’ that negatively impact credibility assessment.¹⁰

Q: Why credibility?

A: Unlike other areas of law, where there may be corroborating evidence, in asylum interviews, the acceptance or rejection of a claim is often based on nothing but the claimant’s narrative account of persecution. The Immigration Rules state that aspects of an applicant’s statement do not need to be backed up by evidence if five conditions are met. I will investigate two of these conditions, due to their particularly subjective nature:

(iii) the person’s statements are found to be coherent and plausible.

(v) the general credibility of the person has been established.¹¹

UNHCR guidelines,¹² UKBA Asylum Instructions,¹³ and Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 reflect this. The ‘determinative weight credibility findings play in the decision-making process’ is uncontested.¹⁴ Negative credibility findings form the core of refusals.¹⁵

I examine credibility assessment, using guidelines for decision-makers,¹⁶ and deconstruct the very notion of credibility which, bound up in subjective,

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⁹ Muggeridge and Maman (n 5) 20.
¹⁰ Feder (n 6) 305.
¹¹ Immigration Rules 2016, para 339L.
¹² UNHCR ‘Note on Burden and Standard of Proof in Refugee Claims’ (Geneva 16 December 1998).
¹³ UKBA Asylum Instructions 2012, para 4.1.
¹⁴ Feder (n 6) 296.
¹⁵ Querton (n 3) 37.
gendered and culturally-constructed notions of ‘coherence’ and ‘plausibility’, is based on fallacy. The assumptions that imbue decision-making contradict the widely available psycho-legal research on the effects of trauma on memory and the difficulties of disclosing sensitive, distressing experiences.

Credibility assessment is particularly problematic for claimants, like Voice 1, who have undergone the trauma of gender-related persecution, but this is merely a starting point for critique. The research presented here will challenge the political construct of ‘credibility’ and highlight the structural unfairness and discomfort of the interview system for all involved: applicants, interviewers, traumatised and non-traumatised alike.

Q: So why fictional Voices 1 and 2?

A: They are not the basis of the Article. Although fictional, the voices were born out of wide research: HO/UKBA/UNHCR guidelines, NGO reports, peer-reviewed psychological journals, trauma theory, legal theory and literary theory. The Article is also based on a variety of primary evidence: interview transcripts, refusal letters and documents which have been made accessible to me, along with conversations with asylum seekers and campaigners in London. I am unwilling and unable to disclose these sources. My methodology is interdisciplinary to show that, although HO interviews are a cog in the wheel of asylum law, the process depends on a multiplicity of intertwining realities and subjectivities that transcend purely legal analysis.

Having chosen this particular focus for my research, I am unfortunately unable to discuss many aspects of interviews which in other circumstances are central. Nor is it the scope of this Article to explore the asylum decision-making trajectory beyond interviews. My own decision-making and editing process in the writing of the Article, of limiting, excluding and choosing, is representative of how arbitrary the asylum decision-making process is: what questions are asked, what questions are side-lined. I want to illustrate the contingency of the situation: anything could influence the interview and anything could happen during its course. This is why I think fictional voices actually add a level of ‘credibility’, showcasing the dizzying breadth of

International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees’ (7 May 2002) UN Doc HCR/GIP/02/01.


18 I use a Sartrean notion of ‘contingency’ (Jean-Paul Sartre, La Nausée (Gallimard 1938)) as arbitrary/fragile/dependent on chance.
possibility. There is something more specific about fiction that empirical evidence cannot offer.

Writing on subjectivity, I felt it was important to include my own subjectivity too. Writing on the difficulty of constructing a linear, coherent and consistent narrative of trauma, I felt my own writing should reflect this. Attempting a clinical and objective piece of writing, I believe, would undermine my argument.

II. CHAPTER ONE: SETTING THE SCENE

Q: How do Home Office interviews work?

A: The screening interview is the first stage of the asylum process and occurs after making a claim for asylum. If the claim is made at an entry point into the UK (a port), then an immigration officer will conduct the interview immediately. If the interview is conducted at the entry point (‘the physical space of entrance into the country but also the metaphorical door of the law’\(^{19}\)), very shortly after arrival, the likelihood is that claimants are exhausted, frightened and confused.\(^{20}\) However, around 88 per cent of asylum applications in the UK are made ‘in country’;\(^{21}\) at an Asylum Screening Unit (ASU) such as Lunar House in Croydon for example, or from within an Immigration Removal Centre (IRC). Questions are limited to establishing nationality and identity (‘bio-data’) and ‘where that person claims to reside’\(^{22}\). This is determined by facts cross-checked alongside Country of Origin Information (COI) and sometimes through linguistic analysis, outsourced to a company called Sprakab.\(^{23}\)


\(^{20}\) Louise Pirouet, Whatever Happened to Asylum in Britain? A Tale of Two Walls (Berghahn Books 2001) 47.


\(^{22}\) UKBA 2012 (n 13) para 8.1.

\(^{23}\) The reliance on Sprakab for determining the language and dialect of asylum applicants has resulted in thousands of asylum seekers being ‘wrongly deported’; see Chris Green, ‘Hundreds of asylum seekers ‘wrongly deported’ after ‘inappropriate’ advice from Swedish linguistics firm’ (The Independent, 22 May 2014) <www.independent.co.uk/news/uk/politics/hundreds-of-asylum-seekers-wrongly-deported-after-inappropriate-advice-from-swedish-linguistics-firm-
The screening interview is made up of a pro forma questionnaire. Questions about their journey to the UK (to determine whether the UK is actually responsible for considering the asylum claim)\(^\text{24}\) and their physical health form the bulk of the interview. The applicant is asked only two questions about the basis of their claim: ‘What was your reason for coming to the UK?’ (4.1), and ‘Can you BRIEFLY explain why you cannot return to your home country?’ (4.2).\(^\text{25}\)

It is from this BRIEF claim summary that a decision is made on whether the applicant will enter through the Detained Fast Track (DFT), where they will be detained (in an IRC). A ‘quick decision’ is possible,\(^\text{26}\) should the case be deemed ‘uncomplicated’.\(^\text{27}\) A claim is usually decided within two or three days, and if refused (in 2008, 96 per cent of claims were refused on first instance\(^\text{28}\)), claimants only have two days to appeal. Individuals are deported upon refusal. This procedure has recently been challenged by Detention Action\(^\text{29}\) and was found to operate with ‘too high a risk of unfair determination for those who may be vulnerable applicants’.\(^\text{30}\)

The screening interview is followed by a substantive interview which is arranged through an ‘Invite to Interview Letter’.\(^\text{31}\) It is in the substantive interview that the claimant is questioned in detail about reasons for claiming

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\(^\text{24}\) The Dublin Regulation (Council Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) [2013] OJ L180/31) entered into force in July 2013 and became applicable to applicants for international protection from 1 January 2014. It aims to establish the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

\(^\text{25}\) Screening interview transcripts show that ‘BRIEFLY’ is written in upper case letters on the form.


\(^\text{28}\) Human Rights Watch (n 8) 1.

\(^\text{29}\) R (on the application of Detention Action) v Secretary of State for the Home Department [2014] EWHC 2245 (Admin).

\(^\text{30}\) ibid [221].

\(^\text{31}\) UKBA 2014, para 3.1.
asylum. If the interview results in a negative credibility finding, the claimant will be notified by a Reasons for Refusal Letter (RFRL). Voices 1 and 2 take place in the context of a substantive interview.

Q: So what is expected of asylum seekers?

A: Despite the many guidelines for interviewers, asylum seekers do not receive guidelines explaining what to expect. There are widely-held assumptions that claimants know what they need to do to fulfil the asylum process, when in fact, many people do not understand the procedure to apply for asylum and may feel that it is safer to enter the UK by way of another category, as a visitor for example, despite qualifying for refugee protection. Such misunderstandings are often the reason for delays to making an asylum claim.

However, from the very first encounter with the asylum process, claimants are expected to: explain (‘BRIEFLY’) the grounds of their claim, why they fear return, give a ‘coherent and plausible’ account of persecution suffered in their country of origin, and demonstrate how this persecution is a result of one of the reasons set out in Article 1.A of the 1951 UN Convention Relating to the Status of Refugees (hereafter the Refugee Convention):

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [her] nationality and is unable, or owing to such fear, is unwilling to avail himself [herself] of the protection of that country; or... is unable or, owing to such fear, is unwilling to return to it.

Retrieving accurate, detailed memories of pain and persecution, all the while behaving in a manner that will elicit the distrusting interviewer’s confidence (Noll describes credibility as ‘the subjective capacity to inspire belief’), whilst also making sure to be consistent and to reveal everything related to the claim at once is a lot to ask of someone who may be in shock/suffering from anxiety/PTSD/depression. It is a lot to ask of anyone.

32 Right to Remain (n 27).
34 Crawley (n 3) 210.
36 Noll (n 3) 149.
Q: And what about ‘fear of persecution’: how is that assessed?

A: Fear of persecution is routinely checked against so-called ‘objective’ Country of Origin Information (COI). COI can perpetuate stereotypes of country-wide experience through accounts which subsume a claimant’s singular story by blinkering the interviewer with a façade of evidential information. As Ben Okri writes, ‘Beware the stories you read or tell… they are altering your world.’

For women, the narrative the COI provides is problematic. Sexual violence and gender-related persecution are commonly under-reported, and only a short section in the COI addresses issues affecting women. ‘Women often constitute an invisible group in human rights and COI reports’.

Persecution has been interpreted as serious harm plus the failure of State protection. There must be an absence of state protection for non-state actors to be actors of persecution. Not being able to prove failure of state protection often results in refusals justified by Internal Flight Alternatives (IFA). If internal relocation is found not to be ‘unduly harsh’, claimants are told where they would allegedly be able to relocate to in their home country. Asylum Aid found that some RFRLs gave a list of such towns ‘but with no reasoning to support this’: a manifestation of contingency.

[VOICE 1]
You are a young woman from an un-named country. You are sitting very still and breathing too quickly. You are not going to talk about the journey you undertook from your village that evening some time ago: the fear, the noises, the intimidation, the threats, the thirst, the pain, inside your body in the nighttime, from the driver, and then from the security official, somewhere along the way, at some checkpoint, and then again from the men who you were in the

37 Ben Okri, Birds of Heaven (Phoenix 1996) 34.
39 Muggeridge and Maman (n 5) 20.
42 Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337/9 art 6(c).
43 UKBA Asylum Instructions 2013 para 5.1.5.
44 Querton (n 3) 47.
van with. These are details that you are not going to go into now. There is enough other darkness to tell and you would like an opportunity for someone kind to listen to you, to understand that this story is not an easy one to tell. That much patience is needed. That sometimes this story will be very confusing and jumbled up, and not make sense at all to whoever listens to it, or reads it. Their problems and life and experiences do not really have any comparison with yours, even though they will nod their head and say I understand what you went through, tell me more about it, when did this happen, who did this to you, why do you want to stay here, when did it happen, how did you get those papers, when was it, who were you with, you told us this happened why are your changing your mind, how long were you there for, when was it tell us more...

The questions keep on and all you can hear are the sounds of the soldiers’ boots and the cries and the rain and the shots outside and the footsteps coming closer and closer and you can smell the burning and taste the sourness of death on your tongue. The door bursts open onto you and your sisters.

The door opens violently and in comes a tall man who looks like an official. He does not look at you. He speaks to the man sitting down opposite you. He leaves again. The rain is beating, drumming against the window, desperate to force its way into the little cold room. He does not ask you if you would like some food, or a drink, or something warm to put around your shoulders.

45 UNHCR notes that the interview should be free from ‘interruptions and distractions’, yet they have witnessed personal interviews being interrupted by phone calls and colleagues of the interviewer entering and exiting; see UNHCR ‘Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice – Detailed Research on Key Asylum Procedures Directive Provisions’ (UNHCR 2010) 144 <www.unhcr.org/4c7b7f039.pdf> accessed 16 August 2014. Not only does this inhibit disclosure by creating distractions and impeding consistent questions and answers, it can also be anxiety-producing; a reminder of officials from the claimant’s home country. For people who have suffered ill-treatment from authority figures, it is ‘especially difficult to disclose information to someone in uniform’; see Querton (n 3) 44.

46 Bögner and her colleagues found that the smallness of the room and ‘sitting too close to the male interviewer’ made claimants feel uncomfortable; see Diana Bögner and others, “‘Refugees’ Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information’ (2010) 36(3) Journal of Ethnic and Migration Studies 519, 529. It was only in 2012 that the UKBA changed the spatial arrangement of the Asylum Screening Unit (ASU) to make private rooms available during the screening interview; see Asylum Information Database (n 21) 15. Prior to this, a plastic screen was placed between interviewer and interviewee – hardly conducive to an atmosphere of confidentiality and trust.

47 Breaks are to be ‘offered at the discretion of the interviewer’ (HO (n 16) para 5.10) but Asylum Aid found that interviewers frequently did not pick up on hints that claimants were struggling and needed a break; see Muggeridge and Maman (n 5) 37.
I don’t remember.

I am sorry.

You cannot answer that question. He is a man. He should not ask you this. Can they hear from outside the door? Your eyes are swimming with tears and all you want is the cold clear rain to envelop you and wash away your shame and your dirt and your thoughts and make it all go away, but he keeps asking his questions, and you cannot focus on how to answer. There is not enough time and you are tired. Your throat is burning. Your stomach is burning.

This man is a stranger to you. Will he believe you? How do you know he will not pass on information to the authorities in your country? How do you know he will not touch you, hurt you, arrest detain deport you?

[VOICE 2]
Your back hurts and your neck aches and your eyes are sore from straining to read the small print on the forms in front of you. Maybe you have a cold. You play with your pen and re-assemble the papers so that the Home Office logo can be seen and you trace the outline of the letters and idly shade in the spaces in between. Sometimes you think that there must be other jobs out there where you hear happy stories, where people just tell you something nice about their

48 ‘The interview may last several hours and you will be asked lots of questions. You may be asked questions several times in different ways’; see Right to Remain (n 27).
49 Sufferers of PTSD in particular have sleep problems due to nightmares, avoidance of sleep because of the distress that nightmares can cause and high anxiety which prevents sleep. Sleep deprivation impacts on the way memory functions as well as the type of memories recalled; see Jane Herlihy, ‘Evidentiary Assessment and Psychological Difficulties’ in Gregor Noll (ed), Proof, Evidentiary Assessment and Credibility in Asylum Procedures (Martinus Nijhoff 2005) 123, 132.
50 One meeting is barely sufficient to build trust with an interviewer; ibid 124.
51 ‘Be prepared for not being believed: this is the standard position of the Home Office’; see Right to Remain (n 27).
52 Guidelines state that case-owners should explain that all information will be dealt with in confidence and will not be disclosed to the authorities of the claimant’s country; see HO (n 16) para 4.2. However, in 2011, the UKBA organised a meeting between Sudanese asylum seekers and the representatives of the very government that had persecuted them in order to ‘verify personal data’. They were asked questions related to the whereabouts of their families and the problems they had with the government; see Stuart Crosthwaite, ‘The Border Agency are playing a game to scare us’, (Migration Pulse, 10 August 2011) <www.migrantsrights.org.uk/migration-pulse/2011/border-agency-are-playing-game-scare-us-0> accessed 26 August 2014.
53 The UNHCR Quality Initiative Project (QIP) describes frequent displays of ‘disinterest’ from interviewers including ‘staring out of windows and doodling’; see UNHCR ‘Quality Initiative Project: Third Report to the Minister’ (London 2006) para 2.4.43.
day, and what they say is obviously true because they have no need to deceive you. You think about all those conversations you used to have where you could joke around and not worry about offending anyone and not have to keep repeating the same questions as though you were a broken record.

She looks so fragile and you get a momentary pang of something like desire where you wish you could put your arms around her and tell her it will be okay and that you will make her laugh and maybe you could have a pint together and she would see what a nice guy you are. But that could never happen.

You sigh and wish it were simpler, that there would be something obvious that would take away your responsibility to judge how likely this woman’s story is going to be. Really, it would be easier if you only had interviews with men. She could ask to talk to one of the women officers, but you have been assigned her case. You cannot be bothered to check if she wants a woman interviewer now. It’s easier just to get on with it. It will be over soon.

The rain is so heavy, your head is heavy.


Please check and sign this.

III. CHAPTER TWO: DIFFICULTIES OF DISCLOSURE

3.1 (Mis)remembered: Memory and Trauma

*To articulate the past historically does not mean to recognize it “the way it really was” …It means to seize hold of a memory as it flashes up at a moment of danger.*

—Walter Benjamin, Theses on the Philosophy of History

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54 Each applicant will have been asked at screening to indicate a preference for a male or female interviewer, ‘requests made on the day of an interview… should be met as far as is operationally possible’; see UKBA 2010 (n 16) para 7.1. However, in reality – and as above – claimants are not always aware of this option; see Bögner and others (n 46) 527. Furthermore, Asylum Aid found that the majority of women interviewed for their research had not understood the full implications of the question and did not want to appear ‘difficult’ or ‘picky’ and on hindsight would have preferred a female interviewer; see Muggeridge and Maman (n 5) 35.

55 The identity of the claimant must be verified; see HO (n 16) para 4.2. This involves checking and signing at the bottom of pages 2-4 of the screening interview form; ibid para 4.5. Decision-makers are conditioned to distrust even whether claimants are really who they say they are.
What you witness
severs you from yourself,
then binds you tighter
to the shattered world.
—Karen Connelly, The Border Surrounds Us

While memory is generally regarded to be the brain’s ability to remember the past, it also has a more nebulous, abstract formation.58 If we see memory as constituting an individual’s perception of the past self’s experiences, it is necessarily a subjective, constantly adjustable process.59 Sartre, in developing ideas of facticity,60 contended that an individual’s past is subject to changing values and interpretations. Memory (and by consequence the self), is thus ‘born every day, springing from the past and set against it’.61 Memory, specifically autobiographical memory, is an ‘imaginative reconstruction... built out of the relation of our attitude towards a whole mass of organised past reactions or experience’.62 Therefore, rather than being immutable and fixed, it evolves as a synthesis of experiences rather than as the replay of a videotape.63 Antze and Lambeck, referring to Ricoeur’s hermeneutic spiral of interpretation,64 posit that memory can be updated and re-explored in light of what transpires later.65 Furthermore, memory is subject to distortion, inaccuracy and failure.66

These observations render problematic a fundamental assumption in the asylum process that autobiographical memories can be recalled reliably, consistently and accurately.67 Such assumptions are bound up in narrow attitudes to credibility, codified in guidelines, which state:

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56 Walter Benjamin, Illuminations (Fontana 1973).
58 Patricia Fara and Karalyn Patterson (eds), Memory (CUP 1998) 1.
59 Poststructuralism proposes a ‘subjectivity which is precarious... constantly being reconstituted in discourse each time we think or speak’; see Chris Weedon, Feminist Practice and Poststructuralist Theory (2nd edn, Blackwell 1997) 32.
60 Jean-Paul Sartre, L’Être et le Néant (Gallimard 1943).
65 Paul Antze and Michael Lambek (eds), Tense Past: Cultural Essays in Trauma and Memory (Routledge 1996) xix.
66 Herlihy and others, ‘What Assumptions about Human Behaviour Underlie Asylum Judgements?’ (n 33).
67 ibid.
The level of detail... about the past and present is a factor which may influence a decision maker when assessing internal credibility... It is reasonable to expect that an applicant who has experienced an event will be able to recount the central elements in a broadly consistent manner.68

However, if the ‘incompleteness and tentativeness’ of an account attests to its veracity,69 and if fragmentation and disorganisation are characteristic of trauma recall,70 which a high proportion of asylum seekers’ memories will involve, then should that which is judged as damaging credibility in fact be aiding it? It is particularly unreasonable to expect individuals with PTSD to recall details about traumatic events.71 Research, contrary to lay assumptions, suggests that detail is in fact impeded by traumatic experience.72

Traumatic memories are generally composed of fragments, often sensory impressions accessed vividly and involuntarily in the form of flashbacks,73 as though occurring in the present.74 Flashbacks can be provoked through triggers. Triggers are defined as ‘cues that symbolise or resemble’ an event,75 and are

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68 UKBA 2012 (n 13) para 4.3.1.
69 Laurence J Kirmaya, ‘Landscapes of Memory: Trauma, Narrative and Dissociation’ in Paul Antze and Michael Lambek (eds), Tense Past: Cultural Essays in Trauma and Memory (Routledge 1996) 173, 174.
71 Caruth describes PTSD as ‘the direct imposition on the mind of the unavoidable reality of horrific events, the taking over of the mind, psychically and neurobiologically, by an event it cannot control; see Cathy Caruth, Unclaimed Experience: Trauma, Narrative and History (John Hopkins University Press 1996) 58. It is important to remember that categorical diagnoses of PTSD do not apply to all individuals; not everyone who has experienced trauma develops PTSD; Arlie Y Shalev, ‘PTSD: A Disorder of Recovery?’ in Laurence J Kirmayer and others (eds), Understanding Trauma: Integrating Biological, Clinical and Cultural Perspectives (CUP 2007) 207. It is common to have symptoms without meeting all the criteria; see Jane Herlihy and Stuart Turner, ‘Should discrepant accounts given by asylum seekers be taken as proof of deceit?’ (2006) 16(2) Torture 81, 84. The absence of diagnosis should not negate trauma-related stress and anxiety that individuals may be experiencing. Turning such reactions into a psychiatric condition can be problematic: pathologising grief and distress and universalising and reducing heterogeneous experience. There is also the danger of focussing on the prefix ‘post-’ as though the trauma is consigned to the past; for many refugees and asylum seekers, isolation, uncertainty and destitution mean that trauma is ongoing.
72 Brewin (n 70).
73 Bessel A van der Kolk, ‘Trauma and Memory’ in Bessel A van der Kolk and others (eds), Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society (Guildford Press 1996) 279, 289.
74 Herlihy and Turner (n 71) 86.
75 Herlihy, ‘Evidentiary Assessment and Psychological Difficulties’ (n 49) 130.
often themselves sensory (as in the Proustian involuntary flooding of memory through the Madeleine\textsuperscript{76}). Because such memories are triggered rather than being consciously controlled, different aspects, experiences or events are likely to be recalled depending on the triggering incidents in the interview. This exemplifies the contingency of the interview; anything could be remembered and narrated. Further, HO interviews are highly anxiety-producing,\textsuperscript{77} and memory is known to be distorted by emotional state at the time of recall,\textsuperscript{78} especially as remembering trauma often means that people ‘feel or act as if they were being traumatized all over again’.\textsuperscript{79} Stress and anxiety have debilitating effects on recall capacity,\textsuperscript{80} producing a vicious cycle of anxiety and forgetting.

There are numerous psychological conditions, including depression, Dissociative Amnesia and Generalised Anxiety Disorder,\textsuperscript{81} which further complicate memory retrieval and concentration,\textsuperscript{82} and these can be exacerbated by interview proceedings. I wish to focus on two symptoms (of PTSD in particular) which are especially relevant to the difficulties of disclosure experienced by many asylum seekers: avoidance and dissociation. Avoidance describes the tendency to make deliberative efforts to avoid thoughts, feelings, or conversations about the traumatic event.\textsuperscript{83} It negatively impacts asylum claims\textsuperscript{84} because evading trauma-specific questions in the interview can be interpreted as a ‘failure without reasonable explanation to answer a question’, behaviour allegedly ‘designed or likely to conceal information or to mislead’.\textsuperscript{85} Avoidance can also explain failing to claim asylum ‘at the earliest possible time’, behaviour deemed damaging to general credibility.\textsuperscript{86} It is unreasonable to expect asylum seekers to voluntarily and immediately impart sensitive and traumatic events in an interview when they are unwilling or unable to access

\textsuperscript{76} Marcel Proust, 	extit{Du Cote du Chez Swann} (Bernard Grasset 1913).


\textsuperscript{78} van der Kolk (n 73) 281.

\textsuperscript{79} ibid 284.


\textsuperscript{81} Characterised by apprehensions outside a person’s control, and associated with fatigue, it severely impacts on general social functioning and the ability to focus; see American Psychiatric Association, 	extit{Diagnostic and Statistical Manual of Mental Disorders} (4th edn, American Psychiatric Association 1994).

\textsuperscript{82} J Mark G Williams and others, 	extit{Cognitive Psychology and Emotional Disorders} (2nd edn, Wiley 1996).

\textsuperscript{83} American Psychiatric Association (n 82) 468.

\textsuperscript{84} Herlihy and others, ‘Just Tell Us What Happened To You: Autobiographical Memory and Seeking Asylum’ (n 80) 665.

\textsuperscript{85} Asylum and Immigration Act 2004, s 8(3)(e).

\textsuperscript{86} Immigration Rules 2016, para 339L(iv).
these memories in the first place due to such avoidance mechanisms. The same applies to symptoms of dissociation, compounded by high stress environments such as asylum interviews. It has been found that people with a history of subjection to sexual violence show greater avoidance and dissociative symptoms.\(^{87}\) Dissociation can also occur peritraumatically (at the time of the traumatic event) as a psychological defence mechanism to protect a victim who is trapped.\(^{88}\) If this is the case, the individual will be unable to recall the event because effectively they were not present, psychologically, when it occurred.

For asylum decision-makers, the above is nothing new. Asylum guidelines ostensibly show ‘sensitivity and awareness of the effects of trauma on memory’,\(^{89}\) and acknowledge that there may be ‘difficulties in recounting the details because of the sensitive nature of those experiences’.\(^{90}\) Decision-makers are also reminded to be aware of behaviour symptomatic to ‘women who have been sexually assaulted’, such as:

- persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, shame, a pervasive loss of control and memory loss or distortion.\(^{91}\)

Yet despite this, credibility assessments are still based on erroneous assumptions about how memory functions and HO interviews continue to be negatively impacted by inaccuracies of recall, inconsistencies and so-called incoherence.\(^{92}\) One RFRL stated that ‘It is considered reasonable to expect you to recall with consistency the years in which your family members were allegedly killed’.\(^{93}\) An anonymous immigration judge assumed a ‘raped person’ would know (and remember and disclose) they were raped ‘given that rape is such a serious thing to happen to any woman’.\(^{94}\) Not only does this statement epitomise structurally sexist misconceptions of rape, but it is based on misguided expectations of how traumatic memories, particularly of a sexual nature, are formed, accessed and verbalised, or not. If certain memories are

\(^{87}\) Bögner and others (n 77) 78.
\(^{89}\) HO (n 16) para 5.4.
\(^{90}\) Ibid para 5.7.
\(^{91}\) UKBA 2010 (n 16) para 7.2.
\(^{92}\) Bögner and others (n 77); Herlihy and Turner (n 71); Herlihy and others, ‘What Assumptions about Human Behaviour Underlie Asylum Judgements?’ (n 33); Feder (n 6).
\(^{93}\) Muggeridge and Maman (n 5) 55.
\(^{94}\) Herlihy and others, ‘What Assumptions about Human Behaviour Underlie Asylum Judgements?’ (n 33) 361.
inaccessible, and incapable of being processed, they cannot be narrated in order for the guidelines to even be realised and for credibility to be assessed at all.

I now move to a discussion on the barriers to the verbal act of disclosing trauma in HO interviews.

3.2  (Un)told: Pain, Shame and ‘Coherence’

Pain comes unshareably into our midst as at once that which cannot be denied and that which cannot be confirmed. Whatever pain achieves, it achieves through its unshareability and it ensures this unshareability in part through its resistance to language.

— Elaine Scarry, The Body in Pain

We are surrounded by [chaos], and equipped for coexistence with it only by our fictive powers.

— Frank Kermode, The Sense of an Ending

If pain is intrinsically unassimilable, resisting simple comprehension, how is articulation possible? Van der Kolk states that traumatic memory has ‘no linguistic components’. This can explain why for many asylum seekers traumatic experiences are not disclosed, and if they are, ‘coherence’ is difficult, quite simply because no complete verbal narrative of their experience exists. Silence, ‘what is unsayable’, may be the only option.

There is another type of silence: that which is brought about by shame. Heller’s general theory of shame proposes that it is simultaneously a primary, socialised effect, externally imposed and internally generated. Pre-migration denial and silence may have been internalised, especially in cultures of deeply-engrained notions of propriety and honour. Survivors of rape may wish to protect the

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97 Ann Scott, Real Events Revisited: Fantasy, Memory and Psychoanalysis (Virago 1996) 43.
98 Caruth (n 71) 6.
99 van der Kolk (n 73) 289.
100 Immigration Rules 2016, para 339L(iii).
101 Herlihy and Turner (n 71) 86.
social position of their relatives,\textsuperscript{104} feeling personally to blame.\textsuperscript{105} Disclosing the experience of rape would be admitting ‘something bad about themselves, rather than the perpetrator.’\textsuperscript{106} Feelings of shame are also bound up in PTSD avoidance symptoms,\textsuperscript{107} and asylum applicants who have been subjected to sexual violence have a higher prevalence and severity of such psychological symptoms, inhibiting their ability to disclose and describe experiences.\textsuperscript{108} Profound feelings of shame are recognised in asylum guidelines as a ‘major obstacle to disclosure’,\textsuperscript{109} yet asylum seekers are expected to ‘immediately tell strangers – UKBA officers and legal representatives – of any violence, including sexual violence’, experienced.\textsuperscript{110}

The expectation for asylum seekers to make claims promptly (and fully) is unfair.\textsuperscript{111} It is widely recognised that many people will never speak about sexual violence or will remain silent about it for many years.\textsuperscript{112} Late disclosure is to be expected of any traumatic remembering, what Caruth refers to as ‘the inescapability of its belated impact’.\textsuperscript{113} Guidelines acknowledge this, stating that late disclosure of gender-based violence should not automatically count against credibility,\textsuperscript{114} yet the reality is that delayed reporting does adversely impact credibility assessments.\textsuperscript{115}

Whether an asylum claim is delayed or made promptly, one of the key elements of credibility assessment is if a person’s statements are found to be ‘coherent’.

\textsuperscript{105} Bögner and others (n 46) 521.
\textsuperscript{107} Bögner and others (n 77) 79.
\textsuperscript{108} Feder (n 6).
\textsuperscript{110} Human Rights Watch (n 8) 3.
\textsuperscript{111} Immigration Rules 2016, para 339L(iv).
\textsuperscript{112} Berkowitz and Jarvis (n 109).
\textsuperscript{113} Caruth (n 71) 7.
\textsuperscript{114} UKBA 2010 (n 16) para 7.2.
\textsuperscript{115} Bögner and others (n 77); Ceneda and Palmer (n 38) 84-86; Louise Ellison and Vanessa E Munro, ‘Reacting to Rape: Exploring Mock Jurors’ Assessments of Complainant Credibility’ (2009) 49(2) British Journal of Criminology 202, 203.
This is defined as:

adj. 1 (of a person) able to speak intelligibly and articulately. 2 (of speech, an argument, etc.) logical and consistent; easily followed.
3 coherent; sticking together.\textsuperscript{116}

The guidelines specify coherence of ‘statements’ not ‘of a person’;\textsuperscript{117} but in reality, demeanour and behaviour also impact on ‘general credibility’. What constitutes coherence, both of a person and of speech, is subjective: the judgement of speaking ‘intelligibly and articulately’ is likely to be racialised and classist, and there is no universal logic against which to assess an account. Culture, world-view and language play a significant role in how an account is received. Whether an account can be ‘easily followed’ depends not only on the speaker, but on the listener’s ability and motivation to listen. The presence of an interpreter adds an extra layer to the assessment of coherence but unfortunately there is no space to explore this here.

Furthermore, if trauma is incommunicable/unshareable, then the assessment of coherence is destined to fail. Das writes that in the aftermath of violence, ‘if words now appear, they are like broken shadows of the notion of everyday words’;\textsuperscript{118} collecting them and making sense of them is no easy task.

I will now explore coherence-as-consistency. Consistency of an asylum claim is key to determining internal credibility.\textsuperscript{119} Guidelines state that an applicant’s inability to remain consistent... may lead the decision maker not to believe the applicant’s claim.\textsuperscript{120} Yet, it also states that claimants should be given the opportunity to ‘explain or clarify’ discrepancies.\textsuperscript{121} However, Amnesty International found that UKBA officers often fail to give asylum seekers the opportunity to rectify apparent discrepancies between the screening interview and the substantive interview.\textsuperscript{122} Refusal letters written ex post facto often cite discrepancies from the interviews, which have been spotted ‘later on’ and inserted into the RFRL.\textsuperscript{123}

\textsuperscript{117} Immigration Rules 2016, para 339L(iii).
\textsuperscript{118} Das (n 102) 69.
\textsuperscript{120} UKBA 2012 (n 13) para 4.3.1.
\textsuperscript{121} ibid.
\textsuperscript{122} Shaw and Witkin (n 106) 32.
\textsuperscript{123} ibid 20.
Discrepancies in (re)telling are, however, to be expected. As has been discussed, memory is subject to change and (re)interpretation in different circumstances and over time. The same applies to a narrative. Something is inevitably lost or gained in the act of speech:124 ‘Breaking is a hazard of transmission’.125 When people retell events they take different perspectives for different audiences and purposes,126 and there will always be distortions in successive accounts.127 Cohen draws on psychological studies128 to substantiate that ‘no two reformulations can be absolutely identical’, and that repeated recall over time increases error rate.129 Studies have shown that for people with PTSD, more discrepancies are found the longer the time between successive accounts.130 This is particularly relevant because there may be a significant time lapse between the initial screening interview and the substantive HO interview. As Herlihy argues, if discrepancies continue to be used to refute credibility, asylum seekers with PTSD (or, as mentioned earlier, who have experienced trauma but do not necessarily meet all the criteria for diagnosis) are more likely to be rejected systematically the longer their application takes.131 The long drawn-out decision-making process should thus be challenged, even more so if it has a disproportionately adverse impact on traumatised claimants.

It is worth noting that when asked to repeat information that has already been given, people can assume that the first account was unsatisfactory and therefore supply extra or different information or ‘fill in the blanks [to] complete the picture’.132 Similarly, where accuracy over dates is demanded, and when people

124 Philosophers of language, eg Searle (John R Searle, Speech Acts: An Essay in the Philosophy of Language (CUP 1969)) characterise speaking as the performance of ‘speech acts’ and explore the connection between what is said, what is intended, what a sentence means and what the hearer understands.
125 Stefania Pandolfi, Impasse of the Angels: Scenes from a Moroccan Space of Memory (University of Chicago Press 1997) 281.
127 Antze and Lambek (n 65) xii.
131 ibid 327.
132 van der Kolk (n 73) 297.
cannot remember clearly, the temptation can be to ‘invent’ a date.133 When there is so much at stake in an interview, it is understandable for claimants to want to give an account close to the ‘appropriate image of the “convention refugee”’ in order to satisfy decision-makers’ expectations.134 The notion of an ‘appropriate image’ assumes gendered stereotypes and similarly ‘appropriate’ emotional expressions, particularly when speaking of gender-related violence.135

Kaufman and his colleagues found that credibility judgments were strongly influenced by the emotions displayed and ‘not by the content of the story’.136 For claims related to sexual violence, this issue creates a catch-22: ‘the complainant’s distress is not seen as corroborative, but absence of distress can be used against her’.137 Spijkerboer writes that ‘in sum, applicants should display emotion but not too much’.138 Guidelines state that decision-makers should not be influenced by ‘subjective factors, for example, if the applicant appears nervous... or entirely calm and rational’.139 The fact that this has to be stated in the guidelines suggests that assumptions about demeanour play a part in decision-making.

Ultimately, telling is performative: ‘We select, we omit, we exaggerate, we embellish, and we dramatize as we relate events’.140 It must be remembered that an account is not given in a vacuum, it is related to a listener whose presence, as well as verbal and non-verbal responses, will mould and shape a narrative. This brings us onto the dynamic relation between the speaker and listener in an interview setting.

IV. CHAPTER THREE: HOW A STORY IS RECEIVED

4.1 (Un)heard: What is ‘plausible’?

133 Pirouet (n 20) 50.
137 Sue Lees, Carnal Knowledge: Rape on Trial (Hamish Hamilton 1996) 119.
139 UKBA 2012 (n 13) para 4.3.1.
140 Marsh, Tversky and Hutson (n 126).
What might have been is an abstraction
Remaining a perpetual possibility
Only in a world of speculation.
—T.S. Eliot, Burnt Norton141

Facts are hard to establish and capable of being given many meanings. Reality is built on our own prejudices, gullibility and ignorance.
—Salman Rushdie, Midnight’s Children142

Once told, it is the role of the decision-maker to interpret an account not only for its credibility-as-coherence but also for its credibility-as-plausibility. Findings of plausibility, especially when there is a lack of objective evidence, are generally based on assumptions about human interaction and behaviour.143 Interpretation is an inherently problematic terrain and will always be reductive, even stifling.144 In the same way that there is never an objective narrator,145 there can never be an objective listener. Everyone has their own set of biases that will destabilise neutrality and this, from the outset, problematizes credibility as the method of asylum decision-making.

UNHCR states that ‘disbelief is a very human coping strategy that undermines objectivity and impartiality’.146 This section explores how such disbelief comes about.

The definition of plausible is as follows:

adj. 1 (of an argument, statement, etc.) seeming reasonable or probable. 2 (of a person) persuasive or deceptive.147148

Again, it is the plausibility of a person’s ‘statement’ which is being assessed,149 not ostensibly the person themselves. However, outward displays of emotion and behaviour impact on general credibility.

141 TS Eliot, Burnt Norton (Faber and Faber 1941).
143 Herlihy and others, ‘What Assumptions about Human Behaviour Underlie Asylum Judgements?’ (n 33) 364.
144 Susan Sontag, Against Interpretation and Other Essays (Farrar, Straus and Giroux 1966).
145 Foucault (n 17).
146 UNHCR ‘Beyond Proof: Credibility Assessment in EU Asylum Systems’ (Brussels 2013) 40.
147 The word ‘deceptive’ is surprising here, but is not the meaning attached to plausibility by the UKBA.
149 Immigration Rules 2016, para 399L(iii).
The assessment of plausibility is rooted in subjective processes of reasoning.\(^{150}\) The word ‘reasonable’ crops up time and again in the UKBA guidelines on determining credibility,\(^{151}\) and the phrase ‘a reasonable explanation must itself be believable’ shows just how vague and subjective such assessment is,\(^{152}\) begging the question of whose reasonableness is being applied. In relation to assessing fear of persecution, the UNHCR Handbook recognises that fear itself is ‘subjective’,\(^{153}\) and in order for the expressed fear of persecution to be deemed credible, such fear must, again, be ‘reasonable’.\(^{154}\) As Douzinas and Warrington state, ‘fear is either reasonable and can be understood... or is unreasonable and therefore non-existent’.\(^{155}\) In one RFRL (from April 2014), the very fact of having survived persecution was used as a reason for not qualifying fear of persecution:

You were able to live in Bangladesh until 2006 without coming to any harm... This is considered to be inconsistent with your claim that you will be killed by these people upon your return to Bangladesh.\(^{156}\)

In this case, the appellant’s fear was not seen as plausible, her claim was not credible and so she was refused asylum.

Conceptions of plausibility are culturally-constructed and propped up by remnants of colonial hegemonic prescriptions of authenticity in narratives. Spijkerboer posits that the ‘norm’ by which accounts are judged is ‘Western and often traditional’.\(^{157}\) Actions that might therefore seem implausible or illogical by such western standards would not be so if viewed within their specific cultural and local context.\(^{158}\) Take for example decision-makers’ assumptions on how authorities ‘over there’ behave,\(^{159}\) which mould the perception of ‘failure of state protection’, integral to claims of persecution. Culturally-imbued assumptions are also relevant to understandings of sexual violence, which are shaped by context-specific factors including socio-cultural values, historicity

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150 Feder (n 6) 299.
151 UKBA 2012 (n 13).
152 ibid Annex A.
153 UNHCR 1992 (n 16) 37.
154 ibid 41.
155 Douzinas and Warrington (n 19) 208.
156 RFRL from an unnamed source to author (April 2014). I cannot and am unwilling to disclose any further information as aforementioned.
157 Spijkerboer (n 138) 77.
159 Herlihy (n 33) 359.
and constructed gender roles.\textsuperscript{160} Furthermore, we all have a frame of reference, affected, of course, by cultural setting, but also by lived experience. This is often referred to as ‘schemas’, a term developed by Frederic Bartlett and described as a jumble of ‘innumerable traces’.\textsuperscript{161} Everyone relies on this personal and integrated world-view and set of stereotypes to predict the ‘possible and likely behaviour’ of others.\textsuperscript{162} However, there are certain experiences that we cannot relate to or even imagine and ‘in these realms, our otherwise useful stereotypes are insufficient’.\textsuperscript{163}

Yet the assessment of pliability in asylum decision-making is frequently predicated upon personal assumptions or how-I-would-behave-in-your-situation, even if the situation is outside the lived experience of the decision-maker:

Since no evidence is provided to support such allegations of implausibility, it can only be assumed that they are based... on what the Secretary of State would do if [s]he was a prison guard, a guerilla or a drugs baron... Equally, the refusal letter will claim that the Secretary of State knows how your client would and would not have acted... how much torture she would take without confessing, or whether she would risk returning to her village.\textsuperscript{164}

Such assumptions are ‘based on nothing more than the sensibilities of the caseworker themselves, in accordance with their own view of what would constitute ‘rational’ behaviour in a given situation’.\textsuperscript{165} An RFRL cited in Asylum Aid’s 2011 report states: ‘You claim you ‘fell in love’. This is not consistent with the fact that you saw him three times in total’.\textsuperscript{166}

If behaviour does not conform to expectations, then it is seen as implausible. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act

\textsuperscript{161} Bartlett (n 62) 214.
\textsuperscript{162} Herlihy and others, ‘What Assumptions about Human Behaviour Underlie Asylum Judgements?’ (n 33) 363.
\textsuperscript{163} ibid.
\textsuperscript{164} Mark Henderson and Alison Pickup, Best Practice Guide to Asylum and Human Rights Appeals (Electronic Immigration Network 2012) <www.ein.org.uk/bpg/chapter/1> accessed 23 August 2014, para 1.35.
\textsuperscript{165} Shaw and Witkin (n 106) 19.
\textsuperscript{166} Muggeridge and Maman (n 5) 55.
2004 gives a list of behaviours deemed ‘damaging to credibility’. RFRLs will pick up on such behaviour, often totally unrelated to the claim itself, stating (in a sentence that crops up so often that it must just be ‘cut and paste’) that ‘credibility has been damaged as a result of your actions’. Subsection 3(a)-(d) of section 8 of the Act describes failure to produce a (valid) passport or travel documents, ‘without reasonable explanation’, as ‘kinds of behaviour... treated as designed or likely to conceal information or mislead.’ However, such standards are arbitrary and misguided. Not possessing ‘valid’ travel documents is in fact often a consequence of persecutory experience. In the words of an asylum-seeker I spoke to on the subject of HO interviews, when fleeing persecution, ‘getting all the right documents in order is not going to be your priority – running for your life is going to be your priority’.

Not only does certain behaviour outside HO interviews affect the credibility assessment, but behaviour during the interview is also scrutinised in order to ascertain truth-telling or lying, again, based on (false) assumptions. Vrij and his colleagues outline some of the lay assumptions on deception, including the fact that professionals tend to overestimate their ability to detect deceit. For example, the assumption that liars change their story leads, by fallacious reasoning, to the idea that changes in a story indicate lies, which is why credibility is often negatively impacted by discrepancies. Another common assumption is that lying and telling the truth each produce differing body language. However, signs of nervousness and shame, such as avoiding eye contact and fidgeting, can wrongly be interpreted as symptoms of dishonesty. Averting one’s gaze, for example, is one of many culturally-mediated forms of non-verbal communication. As Granhag and his colleagues write, it is a sign of respect in certain African cultures (as in parts of South Asia), whereas, in western cultures, it can be interpreted as an indicator of deception. As well as being problematic from a cultural perspective, interviewers may see such demeanour as embarrassment at having engaged in the ‘reprehensible act of lying’. Such interpretations are reductive. There are multiple reasons, beyond and instead of the allegedly embarrassing act of being caught lying, which

167 RFRL (n 156).
169 Juliet Cohen, ‘Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be said to Undermine Credibility of Testimony’ (n 129) 11.
170 Vrij and others (n 168) 100.
171 Granhag and others (n 119) 31.
172 Vrij and others (n 168) 96.
explain such demeanour. For example, the fear of not being believed will often result in body language which jeopardises credibility.¹⁷³

There is also the assumption that deception is more taxing than truth-telling.¹⁷⁴ However, the opposite is more likely since recalling details of once-repressed traumatic memories, attempting to overcome barriers of shame, and the difficulties of summarising a complex account of gender-related persecution (possibly in a language that is not one’s own), together with the bureaucratic complexity of an unfamiliar, frequently hostile environment, are plenty of reasons for displays of high-effort recall and anxiety.

An interview is a two-way process. I will now explore the role of the interviewers in more detail, showing that there are more than just personal assumptions at play in the decision-making process.

4.2 (Mis)trusted: ‘Just a Few Bad Apples’ or Contingency-as-Policy?

But the border guard is not amused, he does not believe, he is paid to doubt you.
— Karen Connelly, The Border Surrounds Us¹⁷⁵

Take note: I am powerful. But from room to room stand gatekeepers, each more powerful than the other.
— Franz Kafka, The Trial¹⁷⁶

The assessment of credibility (as-coherence-and-plausibility) is irrefutably subjective, and as Herlihy and her colleagues write, ‘where there is subjectivity there is inevitably inconsistency’.¹⁷⁷ Such inconsistency manifests itself in arbitrary decision-making and high administrative error rates.¹⁷⁸ If asylum is granted based on ‘a nice judge on a good day’,¹⁷⁹ from a selection of a ‘highly

¹⁷³ Herlihy and others, ‘Just Tell Us What Happened To You: Autobiographical Memory and Seeking Asylum’ (n 80) 670.
¹⁷⁴ ibid.
¹⁷⁵ Connelly (n 57).
¹⁷⁶ Kafka (n 19).
¹⁷⁷ Herlihy and others, ‘What Assumptions about Human Behaviour Underlie Asylum Judgements?’ (n 33) 364.
¹⁷⁸ Griffiths (n 2) 10.
¹⁷⁹ Bail for Immigration Detainees, ‘A nice judge on a good day: immigration bail and the right to liberty’ (Bail for Immigration Detainees 2010).
heterogeneous population’ of officials,¹⁸⁰ then the outcome of HO interviews will be contingent.

Too many examples exist of substandard decision-making and incompetent interviewers. If credibility is to be used to determine asylum claims, then it should at least be employed by informed decision-makers. Yet Asylum Aid documented a limited awareness of the UK’s legal obligations under the Refugee Convention,¹⁸¹ as well as a limited awareness of the Home Office Gender Guidelines.¹⁸² For example, despite Female Genital Mutilation (FGM) being explicitly mentioned in the guidelines, one interviewer told a claimant: ‘I have not heard of female circumcision’.¹⁸³ Similarly shocking statements have been issued by HO employees, such as the viewing of trafficking as a ‘labour contractual relationship’ when one trafficked applicant was refused asylum on the basis that she had gained ‘valuable work experience which could be put to use on return to her country of origin’.¹⁸⁴

The UNHCR Handbook reminds decision-makers that claims should be assessed with a ‘spirit of justice and understanding’,¹⁸⁵ yet claimants have reported feeling persecuted and physically unsafe during interviews.¹⁸⁶ Furthermore, asylum seekers commonly report feeling disbelieved,¹⁸⁷ with interviewers making no effort to hide incredulity despite guidelines stating that this should be avoided: ‘improbable’ statements should not be accompanied by ‘facial expressions of disbelief’.¹⁸⁸ In the same way that interviewers may be influenced by a claimant’s body language, so too will interviewers’ non-verbal and verbal responses inhibit or facilitate claimants’ disclosure.

Suggestibility, or how a narrative is constructed by the questions asked, or the way in which they are phrased, is often a consequence of what the interviewer wants or does not want to know. They may seek information confirming existing beliefs or expectations,¹⁸⁹ referred to by Vrij and his colleagues as ‘confirmation bias’.¹⁹⁰ This is recognised by UNHCR as a risk that:

¹⁸⁰ Gill (n 3) 215.
¹⁸¹ Muggeridge and Maman (n 5) 5.
¹⁸² Ceneda and Palmer (n 38) 25.
¹⁸³ Muggeridge and Maman (n 5) 39.
¹⁸⁴ Querton (n 3) 30.
¹⁸⁵ UNHCR (n 16) para 202.
¹⁸⁶ Bögner and others (n 46) 526.
¹⁸⁷ Griffiths (n 2); Querton (n 3); Muggeridge and Maman (n 5).
¹⁸⁸ HO (n 16) para 5.1.
¹⁸⁹ Herlihy and others, ‘What Assumptions about Human Behaviour Underlie Asylum Judgements?’ (n 33).
¹⁹⁰ Vrij and others (n 168) 97.
decision-makers may, consciously or unconsciously, categorize applications into generic case profiles and make predetermined assumptions about their credibility.191

Interviewers’ predetermined assumptions can lead to closed questions which allow only yes/no answers rather than a narrative space.192 Furthermore, due to the malleable nature of memory, suggestive questions can ‘contaminate’ memory,193 whereby memory is updated with additional (mis)information.194 People have been prevented from going into detail or from bringing up an issue relevant to their claim.195 This is problematic since guidelines specify that a lack of detail may influence internal credibility.196 It is doubly unfair to assess credibility if a claimant has been prevented from giving a full account.

Interviewers’ desire to avoid hearing traumatic stories,197 to escape ‘vicarious trauma’,198 can explain the above. Decision-makers’ jobs are clearly difficult,199 and being responsible for a decision that has ‘dramatic repercussions’ for a claimant’s life brings ‘psychological weight’.200 However, when a claimant’s safety, mental health and chance of a chosen life are ultimately dependent on the decision-maker’s interpretation of their story and subsequent judgement of credibility, this cannot justify reductive questioning, stereotyping or silencing.

Nonetheless, Feder suggests that decision-makers should be supported in recognising and managing symptoms of vicarious trauma, which could help penetrate the ‘refusal mind-set’.201 Individual case-owners should not simply be vilified as ‘bad apples’, as this runs the risk of depoliticising restrictive asylum

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191 UNHCR ‘Beyond Proof: Credibility Assessment in EU Asylum Systems’ (n 146) 40.
192 Juliet Cohen, ‘Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be said to Undermine Credibility of Testimony’ (n 129) 4.
195 Bögner and others (n 77) 78—79.
196 UKBA 2012 (n 13) para 4.3.1.
198 Charles R Figley, Compassion Fatigue: Coping with Secondary Traumatic Stress Disorder in Those Who Treat the Traumatised (Routledge 1995).
199 Griffiths refers to HO employees as ‘undertrained, underpaid, overworked’ (Griffiths (n 2) 12) and time pressure exacerbates stress levels, with HO workers facing ‘tight deadlines, strict targets and monotonous work schedules’; see Gill (n 3) 228.
200 Rousseau and others (n 134) 49.
201 Feder (n 6) 318.
determinations. Decision-makers are akin to cogs in the wheel of the asylum system, subject to ‘state-justified ideational conditioning’, internalised through an institutionalised culture of disbelief. The oppressively negative decision-making environment is part of the UK’s agenda of exclusion, aimed at reducing immigration and deterring future applicants. The Home Office has the dual function of processing asylum claims and reducing net migration; Teresa May has stated a target of cutting it to below 100,000.

This accounts for the structural deficiency in the way narratives are allowed to be presented and the way credibility assessment is designed to catch claimants out, rather than elicit a full, human story, instead provoking discomfort, intimidation and time pressure. The New Asylum Model (NAM) introduced shorter time scales through a ‘new tightly managed process’, but what may have been gained through the focus on bureaucratic efficiency has been lost in fairness and thoroughness. Speed and quality of decision-making are ‘rarely a matching pair’. Accelerated procedures (the BREVITY of the screening interview and the DFT) produce barriers to disclosing sensitive information, and asylum seekers often feel they have to ‘hurry up’, entering onto a ‘fast-
moving treadmill with structural features inhibiting or even preventing [women] from making their cases effectively’. Whilst the asylum system can be dizzyingly fast, enforced extensive waiting for claims to be processed as well as excruciatingly slow red-tape and a backlog of cases create temporal uncertainty, moving ‘quickly only when it suits, and slowly when it does not’. Ultimately, the way in which HO interviews are conducted, the time pressures, the waiting, the uncertainty, do nothing to ease difficulties in relaying traumatic memories of gender-related persecution or in facilitating disclosure of any sort. Instead, difficulties are exacerbated. The obsession with credibility, assessed by measures proven unfair and unsustainable, points to being deliberately, paradoxically, inappropriate and flawed. Credibility is a self-destructive political construct: it is based on fallacy and sets out to keep out the very people that the Refugee Convention claims to protect and welcome.

V. CONCLUSION

“Truth” is not a feature of current propositions which are asserted of an “object” by a human “subject” and then “are valid” somewhere, in what sphere we know not. Rather, truth is disclosure of beings through which an openness essentially unfolds.

– Martin Heidegger, The Essence of Truth

As I have shown, credibility as a means to determine asylum claims is inappropriate. The way in which it is assessed is inconsistent with psycho-legal research that highlights the difficulties of accessing traumatic memories and of processing and disclosing them. Factors like the lack of ‘coherence’ in a narrative, discrepancies, a lack of detail, late disclosure, certain demeanour and types of behaviour – which negatively impact credibility assessments, are in fact manifestations of trauma and often the consequence of fear, shame and

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216 Human Rights Watch (n 8) 3.
219 Detention Action (n 29) [196].
220 Muggeridge and Maman (n 5).
222 Feder (n 6); Juliet Cohen, ‘Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be said to Undermine Credibility of Testimony’ (n 129); Diana Bögner, ‘What prevents refugees and asylum seekers exposed to violence from disclosing trauma?’ (DClInPsy thesis, University College London 2005); Bögner and others (n 77); Herlihy (n 49); Herlihy and others, ‘Just Tell Us What Happened To You: Autobiographical Memory and Seeking Asylum’ (n 80).
anxiety. Further, this is worsened by the stressful interview process. In sum, credibility is undermined when the elements used to judge it are based on misconceptions, assumptions and fabrications.

The difficulty of accessing and disclosing traumatic memories of gender-related persecution is exacerbated by the responses (and presence) of the recipient of the personal account: a uniformed, time-pressured Home Office employee who is conditioned to be sceptical and required to judge a story for its ‘plausibility’. I have critiqued plausibility as a culturally problematic and gender-insensitive construct. HO decision-makers are not only vessels of individual, subjective and heterogeneous assumptions rendering decision-making contingent, but they are also affected by the climate of suspicion and xenophobia within the Home Office, engendered by net migration-reducing targets.

In this conclusion, I could suggest recommendations for HO interviews. Interviewers could receive rigorous training in and guidance on how to assess veracity and reliability/plausibility. But that would be condoning credibility as the standard by which claimants should be judged. I could suggest minor improvements in the initial screening interview, like additional pieces of paper given with the questionnaire, to allow more space to give reasons for seeking asylum so it is not just to be outlined BRIEFLY. Or, I could suggest that more up-to-date/gender-sensitive/varied Country of Origin Information be used. Or better qualified interpreters. Or more time to reflect on answers without the pressure of being hurried. Or more breaks in those interviews that drag on when people are tired/stressed/traumatised. Or a free lunch. If this adversarial, hostile and dehumanised/ing system is to remain in place, maybe it is better to suggest such improvements. But all of the above recommendations have already been made and systematically ignored. This means that the (mal)functioning of credibility assessments in HO interviews, the intentional discomfort they elicit by intentionally failing to cater for the needs of people who require time to process traumatic experiences and a safe space in which to disclose such experiences, points to a wider politics of hostility to legitimise exclusion.

Ultimately, the above conclusions and recommendations are so very disappointing when what is required is for the UK asylum system to be transformed radically and unrecognisably. People seeking asylum should not be mistrusted from the outset.

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223 Granhag and others (n 119) 46.
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