Fatal flaws in the UK Asylum Decision-Making System:

An Analysis of Home Office Refusal Letters

The process of deciding who is in need of international protection is well established most western liberal democracies, and has been subject to critical scrutiny for decades. And yet asylum seekers remain vulnerable to serious and ongoing flaws in that system. In this paper, based on research conducted in Afghanistan 2012-2018, Schuster explores a number of shortcomings in the asylum decision-making process, specifically with regard to the rejection of claims from Afghans. The analysis of *Reasons for Refusal Letters*, allows Schuster to examine the use of key tools in that process (previous cases and country of origin reports). Schuster argues that the current adversarial approach, which seeks to prove an applicant is not credible or does not need protection, undermines the legitimacy of the asylum and risks refusing protection to those in need and or condemning others to years of damaging appeals before they are granted asylum. She concludes by arguing for a shift to a more investigative approach, one that seeks to identify those in need of protection, rather than to keep numbers low.

Keywords: asylum, Afghanistan, UK, COI, credibility

Introduction

Asylum decision-making is challenging, based as it frequently is on 'incomplete, uncertain and limited evidence' and with the additional risk that 'decision-makers will take decisions from their own western assumptions unaware of the importance of cultural differences between themselves and claimants' (Thomas 2006: 84, Schroeder 2017). It also involves 'high error costs' the risk that those in need of protection will be rejected and that those who not require such protection will be allowed to stay, undermining migration controls (Thomas 2008: 491, Thomas 2006). According to the Home Office guidelines on Assessing Credibility and Refugee Status:

> The consideration of asylum claims deserves the greatest care - 'anxious scrutiny' as the UK courts express it - so that just and fair decisions are made and protection granted to those who need it… caseworkers need to investigate key issues through a sensitive,

> focused, and professional approach to the claimant's oral testimony and any written evidence against the background of country of origin information (COI) (2015: 4)

It is now 10 years since the Independent Asylum Commission **(**2008) found:

- That there have been commendable efforts to improve the calibre and training of decision-makers in recent years
- Despite these efforts, a 'culture of disbelief' persists among decision-makers which coupled with inadequate qualifications and training is leading to some perverse and unjust decisions
- That the adversarial nature of the asylum process (though not inherently unfair) stacks the odds against the asylum seeker seeking sanctuary

Focusing on the rejections of Afghan asylum seekers, this paper argues that the shortcomings identified over decades by legal scholars (Kälin 1986) and independent scrutineers continue to plague the asylum process. Although many of the errors made by decision-makers are corrected in the appeal process, the (corrigible) inadequacies in, and delays to, the asylum system mean that there remain concerns that some of those in need of protection fail to receive it, and of those who are recognized as refugees, some may not be entitled. Of those who are recognized, many first have to endure the prolonged agony of being disbelieved and forced into limbo for years with serious consequences for their health and integration (Blake 3013: 360). There are a number of legal analyses of the asylum process available, to which we refer below. However, here we are concerned to demonstrate the gap between the reality in the country of origin and the assumptions of decision-makers in the country of asylum in spite of sustained criticism of the process over decades.

Based on an analysis of Reasons for Refusal Letters (RFRLs[i]) sent to rejected Afghan asylum seekers, this paper examines shortcomings in the UK asylum decision-making process, arguing that the approach taken by decision-makers rather than being investigative continues to be adversarial, where 'the overriding aim is to win one's case' (Good 2014: 130), and to reject rather than to protect. Decision-makers, administrative and judicial, seek to prove that claims are unfounded by arguing that applicants do not belong to a group at risk, and by undermining claimants' credibility. While it has been acknowledged that unrealistic targets imposed on decision-makers account for some of the problems with their decisions (Independent Chief Inspector Borders and Immigration 2017; Independent Asylum Commission 2008; Thomas 2008; 498), in too many cases there is evidence of poor use and or misuse of COI reports and of ill-founded assumptions under-pinned by a 'culture of disbelief' (Jubany 2011; Independent Asylum Commission 2008).
Following an outline of the decision-making process, and the methodology used, the paper addresses the way in which a lack of knowledge and or selective reading of COI is used to undermine an applicant's credibility, before raising concerns about how Country Guidance cases have been used.

The asylum decision-making process

In the UK, an asylum claim is evaluated both in terms of the credibility of the applicant (whether the events recounted during a screening and a substantive interview may

reasonably be believed to be true) (Thomas 2006) and whether the events described give rise to a

> …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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country (Article 1A(2) 1951 Geneva Convention on the Status of Refugees, as modified by its 1967 Protocol).

Most of the decision-making occurs within the administrative apparatus of the Home Office (Thomas 2008), with the judiciary involved only at the appeals stage. The 'screening interview' takes place soon after arrival in the presence of an interpreter, and in the case of a minor, a responsible adult. A case worker will record basic information regarding the applicant's identity, including the names, ages and gender of different family members, a brief description of the events leading up to their departure and on which the claim for asylum is based, how they travelled to and entered the UK and whether they have family in the UK. At this stage, a decision will be taken whether to detain[ii]. The second, 'substantive', interview occurs within one month of the screening interview (though those who are detained would usually have been interviewed by the UKBA/UKVI again within a matter of days). During this second interview, more detail on the applicant's claim will be sought.

On the basis of this material, the decision-maker[iii] in the UK will first assess the application in light of provisions in the Refugee Convention/EU Qualification Directive (QD 2004)[iv] (Home Office 2015); and if unsuccessful, assess the application for Subsidiary Protection (under QD 2004)[v], for example, against Art.3 ECHR (freedom from torture and inhumane and degrading treatment). He or she will make an asylum decision[vi] and either inform the applicant that they have been successful or send an RFRL which explains the grounds on which the claim was rejected.

In 2016, 32% of those who managed to make a claim in the UK were granted asylum or some form of subsidiary protection at the initial decision stage. Most unsuccessful applicants will appeal against refusal to the Immigration and Asylum Chamber First Tier Tribunal (hereafter 'the tribunal'). In this case, a decision will be made on the case by an Immigration Judge. 42% of these applications were successful in 2016 indicating an ongoing problem with initial decisions and first instance appeals. This pattern of relying on the courts to address poor decision-making by Home Office agencies can be clearly seen in Afghan cases, where more than half of appeals (52%) are successful (Refugee Council 2018).

Over the years, the body of work examining the asylum process in UK, but also in the US and across Europe, has increased exponentially, focusing in particular on problems with assessing credibility (Thomas 2006, Sweeney 2009) and with COI reports (Good 2014). Recognition rates across the EU vary hugely, which as Guild (2016) points out calls into question the legitimacy of the asylum process.

There are certain failings common to asylum processes internationally. Much has been written by those with a psycho-social background questioning the demands for coherence, consistency and total recall made on people who have suffered mental illness, torture, trauma and or sexual abuse (Hunter et al 2013, Roger et al 2014, Memon 2012, Baillot 2012, Herlihy et al 2012, Herlihy et al 2002). A further strand of criticism

has come from anthropology in particular, with scholars addressing the issue of cultural bias, of the assumption of the universality of cultural norms that are specific to industrial and or occidental societies, but 'cultural misunderstandings caused by a lack of cross-cultural competency have remained the norm' (Einhorn and Berthold 2014: 30, Schroeder 2017, Kälin 1986). This paper focuses on the use made by adjudicators of COI reports (themselves problematic) and country guidance cases.

Data and Methodology

Since May 2013, I have prepared 60 expert reports at the request of 20 British legal representatives for Afghan asylum seekers. My expertise comes from five years living and working with Afghans in the community (rather than in compounds or guesthouses). This is an increasingly rare experience for scholars conducting research in Afghanistan given the risk averse nature of universities and research funders.

Country experts providing expert reports are sent, at a minimum, the witness statements of the asylum seekers and their RFRLs together with directions stressing that their role is to provide objective information and avoid advocacy (Thomas 2008). Instructions from legal representatives to experts usually ask them to refer to a number of key issues and anything else that may be relevant to the case. The RFRLs analysed for this paper were sent to me by solicitors, whose permission I sought to use them. The quotations used in this paper are from Home Office officials, and recur in different RFRLs – that is they are standard responses, and I have avoided directly using anything that might be attributed to (and hence identify) an individual asylum seeker. I also chose to focus on the most common issues that I have been asked to address, avoiding e.g. cases relating to gender or sexuality, which are fewer in number and more specific.

In spite of the importance of their role in the asylum process, decision-makers in UK asylum cases are not expected to have first-hand experience or specialist knowledge of the countries from which asylum applicants come[vii]. Instead, their decisions are informed largely by Country of Origin Information (COI) reports and previous cases that deal with relevant issues or offer guidance on cases from particular countries (Country Guidance – CG). Since 2004, 'country guidance determinations' by the Immigration Tribunal have been used to provide authoritative guidance on commonly occurring issues in individual asylum claims. It is expected that asylum decision makers will be familiar with these and with cases dealing with e.g. persecution and internal relocation, and will take them into account.

COI reports are desk-based compilations of second- and often third- or fourth-hand information[viii] gleaned from other reports compiled by UN bodies, such as UNHCR or UNICEF, IOM, WFP (and in the case of Afghanistan, UNAMA); by NGOs, such as Amnesty International, Human Rights Watch; by fact-finding missions from various governments who pool their information, and from newspaper articles, reports and interviews with experts. Sometimes the experts are anthropologists, but in many cases, the 'experts' have no knowledge of local languages, have spent very short periods in country without spending time in the community, but instead are obliged by security protocols to live in gated and usually armed compounds, often travelling in armoured vehicles and with bodyguards. Aside from COI reports prepared for national governments, the European Asylum Support Office also prepare reports on specific countries and or issues.

Some of the RFRLs ran to 150 paragraphs, and cited dozens of reports and cases, others less than 50 paragraphs. Regardless of the length of the letters most were composed of standard paragraphs cut and pasted from templates and previous reports, scarcely tailored to the individual case.

The RFRLs follow the same basic structure:

- Summary of claim and future fear
- Immigration History
- Substantive Consideration of Claim for Asylum (e.g. fear of Taliban, blood feud, forced marriage), including refugee status claim and subsidiary protection claim (called 'humanitarian protection' in the UK) using COI reports to assess the plausibility of the claim
- Reference to the Horvath case on the sufficiency of protection available
- Reference to the Januzi case on the possibility of Internal Relocation within Afghanistan
- In some cases, reference to the AK CG case on Art.15c (levels of generalized violence
- Other grounds for being allowed to remain (Art. 8 ECHR)
- Reference to the availability of VARRP/RA (Voluntary Assisted Return and Reintegration Programme/ Return Assistance)

Having read more than 50 refusal letters during the period under analysis, it became apparent that decisions were flawed in significant ways: the COI reports cited in the RFRLs were not being used appropriately by the decision-makers, who used out of date reports and or cherry picked information to undermine the credibility of the claimant; the credibility of the applicant's account was frequently assessed by judging 'reasonableness' based on speculation, without any consideration of what might constitute reasonable behavior in Afghanistan – rather than Britain (UNHCR 2006: 9; Thomas 2006) and the application of case law to Afghanistan was flawed by a failure to consider the particular circumstances pertaining in Afghanistan.

For example, it is common to read that 'you have already demonstrated considerable personal fortitude in relocating to a country where you do not have any ties or speak the language and attempting to establish a life here' (RFRL 12A, 32)[ix] and on this basis should have no problem reintegrating into Afghan society, even though the young person in the UK will be fostered with a family, sent to school, fed, clothed and supported in a number of ways, none of which are available to young people arriving back in Afghanistan, which has no state provided support system.

This paper is divided into two parts focusing on these two problematic components of the asylum decision making process and their application in the cases of Afghan asylum seekers. In the first part, we consider a number of issues that highlight the failure of the decision maker to take account of 'significantly different cultural, political and social contexts' (UNHCR 2006: 9) and in the second part, the use by decision-makers of previous legal cases to assess the sufficiency of protection available, levels of generalized violence and the availability of an internal flight alternative.

Credibility

Credibility is a key issue in asylum decisions (Sweeney 2009). It provides the basis for judging whether or not someone is entitled to protection. Much of the literature, especially from legal scholars, concentrates on the issue of 'credibility' since this is probably the most important factor in the decision-making process (Anker, 1992; Kagan, 2003: 368; Byrne, 2007: 609; Thomas, 2011: 134; Anderson et al, 2014). The literature seems to come largely from legal scholars, who unsurprisingly focus on process and law, and on the *concept* of credibility (Byrne 2007, Cohen 2001, Eyster 2012, Farrell 2012, Hunter et al 2013, Thomas 2011), anthropologists who explore the social worlds of lawyers, judges, or occasionally that of countries of origin (Good 2012, 2014, Griffiths 2002, Khosravi 2007) and psychologists who explore issues such as consistency and memory, in particular in the context of trauma (Graham et al 2014, Herlihy et al 2002, 2012; Memon 2012, Rogers et al 2014). There are relatively few that focus on the extent to which cultural misunderstandings can affect decision-making (Kälin 1986, Schroeder 2017), though, as we will show, the analysis of RFRLs addressed to Afghans reveals many such misunderstandings.

Credibility is assessed on the internal consistency of the account offered by the applicant, the extent to which the account is consistent with what is known of events and facts in the country of origin (external consistency), and on the demeanor of the applicant, whether their alleged behaviour was 'reasonable' in the circumstance, though studies have shown that the latter is not a reliable guide (Thomas 2006), as 'reasonable' varies with context. Consistency is considered a key indicator of credibility, and inconsistency is frequently used to undermine credibility (Asylum Aid 1999; Cohen 2001).

The behavior of the applicant is judged according to the values of the decision-maker, who, for example, judges the reasonableness of whether and when an applicant discloses trauma, seeks protection from authorities, or relocates (Kalin 1986, Thomas 2006). Baillot, Cowan and Munro (2012), discuss the difficulties surrounding the disclosure of sexual abuse and rape of women asylum seekers, difficulties that also face male asylum seekers. Thomas (2006) points out that both late and prompt disclosure of certain traumatic facts can be used to make adverse findings, with decision makers arguing that late disclosure is a ruse, and that trauma would make early disclosure unlikely (Thomas 2006: 82).

Aside from incredulity towards late or incomplete disclosures, there are a number of other assumptions that reveal the ignorance or prejudice of decision-makers.

Dates and Times

An issue that frequently recurs is vagueness or inconsistency with regard to dates and times. Vagueness around ages and birth dates are considered evidence of inconsistency in the West, although it is the norm in Afghanistan[x] and many other non-Western cultures (Kälin 1986; Cohen 2001, Blomaert 2009). When pressed about the birth dates of their children, most Afghans, particularly those who are not literate, will tie the birth to a season or Eid or Nowroz or to that of another child in the family. Occasionally, the year may be calculated by reference to, for example, the death of Najibullah or the start

of Karzai's presidency – though since people have poor memories for dates, this is not a reliable method, and such calculations can also be used to question accounts[xi].

The vagueness relates not solely to dates, but also periods of time. In one case, a boy who had left Afghanistan alone aged about 13 had travelled through Pakistan, Iran and Turkey into Europe via Greece. It had taken him two years walking much of the way, but the Home Office found his inability to specify how long he had spent in each country suspect, though the boy himself would have been very unlikely to understand that keeping track of time would be important. This confusion recurred in six of the letters.

The imprecision relates not only to months and years, but also to days and hours. In rural areas, little use is made of precise points in time. The day is divided by the calls to prayer and sunrise and sunset. In one letter, an applicant was accused of inconsistency because, having been pushed to give precise times, he responded 6am on one occasion and 8am on another. Given that children do not usually possess watches or mobile phones, such insistence on the clock was inappropriate. Outside the cities, there is no need to be more precise, so for young, illiterate men, it can be difficult to understand the significance of, or the need for precise repetition of the same information regarding times and dates.

Taliban Recruitment

In some cases, there appears to have been genuine (though still inexcusable) ignorance at work. However, in other cases it is difficult to decide whether what is in evidence is incompetence or malevolence. In a number of reports, text is copied and pasted into the documents from a range of sources, some of which support the claim, but are then ignored, while information damaging to the applicant's credibility is highlighted. For example, one 2014 letter disputed the boy's credibility referring to a 2003 UNICEF report which refers to the recruitment of 14-18 years, but ignored a USSD report from 2008 that refers to children as young as 12. Both of these reports referred to coercion and threats of violence, but the RFRL concludes 'The objective evidence does not suggest that the Taliban are taking children to fight for them without their consent'. Throughout the letters, there was evidence of careful selection of data to bolster rejection.

Blood feuds

In four of the RFRL letters, significant weight was attached to a Country of Origin Research and Information Thematic Report (CORI 2014) that was largely a summary of two long interviews with Professor Barfield and Dr Coburn, two acknowledged Afghan experts, and their written work. Professor Barfield was quoted on the as saying that according to *Pashtunwali*[xii] 'Women, girls and boys are excluded as targets in blood feuds'. This was used to conclude that a boy of fourteen would not need to fear revenge attacks in a cycle of revenge killings. However, an earlier report from the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), noted in an Annex that 'Close relatives: brothers, cousins, including children but targeting them when they come of age' could also be targeted. A short search on family feuds in the Afghan media (17/7/2014) details the killing of a 10th grade student[xiii], two women and a child bride[xiv], and a woman and her 12 year old

daughter[xv].

While academics such as Professor Barfield have a great deal to contribute to knowledge on social practices, it important to understand that social codes such as *Pashtunwali*, while carrying a huge amount of authority and acting as a guide to behavior, may be and are breached and therefore cannot act as absolute indicator of what may or may not have happened in a particular case. In this case, a relatively simple search would have revealed that the claim of the young man was not implausible.

Family Relationships/Communication

A common criticism of the accounts given by minors is that they are unable to give details of their father's employment, of his activities or of the events that precipitated their flight. It is not unusual in Afghanistan (and many other countries) for major decisions to be taken by the adults in the family without reference to children, including children directly affected by those decisions[xvi]. That includes decisions to send children to live with relatives, to marry them off, to send them to work or to send them abroad. Unquestioning obedience is a core virtue for Afghan children, and though some families are more relaxed than others, it is not reasonable for decision-makers to question the credibility of a young person's account because there are gaps in his or her knowledge of adult activities. Insisting that individuals fill those gaps puts pressure on them to fabricate responses, thereby undermining their credibility. Knowing how families function would enable decision-makers to ask more appropriate questions.

A key criterion for judging credibility is 'reasonableness', but for a decision-maker to judge the consistency of story – internally and externally – as well as 'reasonableness' requires an understanding of context. Wikipedia or CIA factbook searches on the history of Afghanistan, for example, are insufficient. The person making decisions needs deeper knowledge of the country, if errors such as claiming an Afghan applicant can return to Iran and become an Iranian citizen, or dismissing a claim because the currency of Afghanistan is referred to as a rupee rather than an Afghani (as is common in Nangarhar but also in Kabul).

The credibility of the accounts referred to above was being judged according to 'imagined' understandings of what is reasonable in a social context of which decision-makers have no first-hand knowledge. If that is going to continue, then those decision-makers need to access the work of people who do spend time in those countries – decisions on credibility and or risk cannot be made either by 'experts' who parachute in for short periods or by governments officials sequestered in armed compounds. They need training to search out and analyse relevant work, rather than selecting morsels that appear to undermine a particular account. Training is also required into the consequences that abuse, depression and post trauma stress disorders have for memory and cognition, the impact of malnutrition on development or simply the ways in which different cultures see human relations, time and officialdom.

It may well be that the account given by a particular applicant is fabricated – the problem is that the knowledge necessary for judging whether it is or not is wholly inadequate. Furthermore, no consideration is given to a context in which the risks of failure are so great that individuals may not trust that an accurate account of their well-

founded fear of persecution will access protection and so prefer to trust accounts furnished by successful relatives, friends or agents.

Country Guidance and Starred Cases

The three key issues to be considered by a decision-maker are a) whether the 'home' state is willing and able to offer sufficient protection (Horvath)[xvii]; b) whether the applicant could have safely relocated within the country of origin (Januzi)[xviii] and c) whether the level of violence was such that they would be at risk simply on account of their presence in the country (Elgafaji and AK). Guidance on each of these issues has been handed down in 'starred' decisions, which render the point of law or principle decided binding for subsequent cases and may and should be applied regardless of the country of origin of the applicant.

Since 2004 this has been augmented by Country Guidance (CG) cases which are decided by the Upper Tribunal where that decision contains an assessment of facts in a particular country that decision-makers ought to be aware of because it is likely to be of assistance in other cases from that country. A CG case is intended to offer authoritative guidance to the courts and decision-makers and to bring some consistency into decision making (Thomas 2008, Blake 2013). Subsequent decisions relating to the issue dealt with must take both kinds of cases into consideration, or be vulnerable to appeal on a point of law. Equally, CG cases can and should be revisited and replaced where there is 'credible, fresh evidence' (Blake 2013: 356). The UK courts are also bound to take into account decisions by the European Court of Justice (see below).

1. Sufficiency of Protection

The RFRLs argue that the Afghan security forces are 'reasonably willing' to protect the citizenry, dismissing claims that there is a sustained or systemic failure to do so. In all of the RFRLs analysed, the most recent of which was dated 20 May 2015, reference was made to the US Department of State Country Report on Human Rights Practices (2011), which describes the division of responsibilities between the different branches of the security forces, noting the Afghan National Police have 'primary responsibility for internal order but are increasingly involved in fighting the insurgency'. There were also references to a HRW report from 2012, covering events up to November 2011, as well as the COIR report from February 2013, which is a compilation of reports from 2011 and 2012. This in spite of an updated HRW report (March 2015) and regular reports from UNAMA, for example, who had published a report in February 2015, three months before that refusal letter was written.

Not only are these reports dated (all of the primary data used was at least 2 years old), but for the most part they refer to numbers of Security Forces recruited, and to plans for the future. There is little or no reference to the capacities or competences of these forces, although such data is available. In the 2015 UNAMA report, concerns were expressed by a number of bodies about abuses carried out by the Afghan security forces (UNAMA 2014, p.44), and especially the Afghan Local Police (ALP) (UNAMA 2014 p.50-6). These include sexual attacks and violence perpetrated by members of the ALP on civilians, and the rape of women, girls and teenage boys[xix] – also noted by the

US State Department report. These concerns were repeated in the February 2016 UNAMA report:

> The most common human rights violations attributed to ALP included severe beatings, property destruction, theft, threats, intimidation and harassment. UNAMA also documented targeted killings perpetrated by ALP members as well as illegal detention of civilians. Throughout 2015, UNAMA continued to document civilian casualties attributed to ALP during ground engagements (p.67).

Although his fieldwork was conducted in 2010 / 2012, Singh (2015) provides an assessment of the shortcomings of the Afghan judicial system that remains valid, and was echoed in a December 2015 conversation with a senior advisor to the Justice Sector Support Programme[xx] (JSSP) (a USAID funded programme to support the Ministry of Justice). In the words of this advisor, '[the judicial system] is just not working – it doesn't function'. In February 2016, Integrity Watch Afghanistan argued:

> The government's most urgent move must be to restore the public's trust in the state's ability to deliver justice. Less than half of victims who report incidents of violence or crime, report them to the police. The courts are also not seen as independent and those in power enjoy impunity. (IAW 2015)

These assessments raise serious questions about the sufficiency of protection available to the civilian population. However, having surveyed dated material that fails to assess the actual protection available to citizens, the RFRLs frequently conclude:

> You failed to go to the police…There were avenues of protection you and your family could have taken…you have failed to establish that the Afghan authorities are unable or unwilling to offer you effective help or protection

Or as another letter put it

> Whilst it is accepted that the protection in Afghanistan may not be the same as in the United Kingdom, it is considered that there is a system of protection in place and a willingness by the state to operate it.

The Security Forces are largely unable to prosecute those who are close to, or in the employ of, commanders who rule Afghanistan. Where prosecution does occur, those same commanders ensure through bribery and threats that their men are released. Reports on how this works are widely and publicly available (e.g. HRW 2015) but rarely cited in RFRLs, or if cited, then ignored. Many Afghans are reluctant to approach

the police for fear they themselves will be beaten or jailed without trial. It is therefore unreasonable to claim that there is a 'sufficiency of protection' or access to justice for Afghans, especially those without power or resources.

2. Generalised Violence

The level of violence required was established in the European Court of Justice (CJEU) case *Elgafaji*[xxi] and applied to a number of Afghan cases[xxii], including the case of Afghan national GS (2009). This held that the objective evidence did not establish that the level of violence necessary to trigger Article 15(c) was reached for 'mere civilians in any part of Afghanistan'. In other words, there would not be a real risk to the life or person of civilians who were returned to Afghanistan just because of their presence on Afghan territory. Three years later GS was revisited in the case of AK[xxiii], which reached a similar conclusion, namely that:

> the level of indiscriminate violence in that country taken as a whole is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk which threatens his life or person.

During those years, decision-makers were relying on out of date reports, when more up-to-date reports were available.

In every single RFRL, including those from 2015 and 2016, the Home Office continued to rely on UNAMA and NATO reports from 2010, 2011 and on occasion 2012, when there were more recent reports available. In RFRLs from September through to December 2015, for example, no reference was made to the July 2015 UNAMA report. In response to an earlier version of this paper, a former Home Office case-worker explained that the pressure to meet targets[xxiv] was such that they did not have the time to check for more recent reports and instead relied on cutting and pasting previous Refusal Letters. Given the high costs of errors, and the ease with which this material can be found, this does not indicate either 'the greatest care' or 'anxious scrutiny' demanded by the Home Office Guidelines.

In the years following AK, and in spite of the documented deterioration in security, this decision was again upheld in 2016[xxv] and 2018[xxvi]. Even where it was accepted that an applicant came from a province in which there were high levels of indiscriminate violence (Helmand, Kandahar) it has been consistently argued that, while it could be argued that that level of violence exists in parts of Afghanistan, there are sufficient options for internal relocation available. It is to this argument we now turn.

3. Internal Relocation (IFA/IRA)

All of the RFRLs argue that, even if the applicant's fear was well-founded and they were unable to return to their home province, it would be reasonable for them to relocate to Kabul (or Mazar I Sharif or elsewhere) since 'Afghanistan is a country with a land mass of 652,230sq km, and a population of 29,835,392'[xxvii] (Afghanistan COIS 2013).

The case guidance on AK Afghanistan [2012] also discussed IFA/IRA, the reasonableness of which was considered in Januzi. According to the House of Lords in this case, the starting point for [the assessment of reasonableness] should be the guidance contained in the UNHCR Guidelines.

The *UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum-seekers from Afghanistan* (UNHCR 2018), whether or not it is reasonable to expect someone to relocate to, for example, Kabul, depends on a) the personal circumstances of the applicant, 'including their age, gender, health, disability, family situation and relationships, as well as their educational and professional background', b) the ability of the applicant 'to live in the proposed area in safety and security, free from danger and risk of injury', as well as c) to exercise their human rights and have the possibility of economic survival. With regard to the latter, access to (i) shelter; (ii) essential services, such as potable water and sanitation, health care and education; and (iii) livelihood opportunities, or proven and sustainable support to enable access to an adequate standard of living are essential.

Although access to shelter, essential services and livelihood opportunities all rely on access to social networks (Monsutti 2005, 2006, Harpviken 2009 and Kantor and Pain 2010) this fact of Afghan life and society is routinely ignored in the RFRLs, which state that 'Kabul is a large anonymous city of 5 million people', the implication being that it would be easy to hide from persecutors. On the contrary, Kabul is a collection of villages, often reproduced by those displaced from the provinces. People are expected to go to the neighbourhoods where they can activate their networks, and that risks bringing them to the attention of those they are fleeing. Strangers in different neighbourhoods stand out and would find it difficult to access shelter or work.

The pressure from a population explosion due to the arrival from Internally Displaced Persons (IDPs) and those returned from Iran and Pakistan has stretched the *basic infrastructure and essential services* to breaking point, such that some areas of the city do not have water, while it is contaminated in others, and schools run three shifts a day (in unheated classrooms). There are many hospitals in the city, but like universities, most of these are private, run for profit and are inadequately staffed by poorly qualified doctors and nurses. Treatment for mental health problems is extremely limited: the only public hospital has sixty beds for severe cases, is in Kabul and is woefully inadequate[xxviii].

The extremely limited basic infrastructure increases the dependence on networks. This is a society in which many life events (birth, marriage, death) remain undocumented, so networks of people who can vouch for a person's identity and character, who will push their case for employment or accommodation, are essential. Equally, most people do not have bank accounts, so when a deposit is needed for accommodation, or when someone falls ill, dies or gets married, the network will pool and loan money without interest according to Islamic custom.

A conservative estimate put uemployment at 23.9% (with 30% youth unemployment) plus 23.9% underemployment (Central Statistics Office 2018). It is unfortunately the case that jobs are mostly given to members of a social network rather than the most qualified person. This applies whether the position is that of a cleaner or a military commander (Giustozzi and Ali 2016). Those returning are competing with many other young men the same age who understand 'the Afghan way of doing things'. Even the

day labourers who stand on the corners waiting for work know each other and rely on contacts. A newcomer competing for the little work available would be elbowed out. This is not to say that there is not a willingness to help, but that in conditions of extreme poverty, the survival of one's own family and networks comes first.

Given the gap between labour supply and demand, unemployment can have unwanted and serious social repercussions. Aside from destitution and the increased pressure to migrate, there is also the temptation of militancy by the desperate and disillusioned, giving rise to what are called the *'$10 Taliban'*. This is a recurring theme amongst Afghan journalists[xxix], first highlighted in the ICOS report *Operation Moshtarak: Lessons Learnt in 2010*. Among the those interviewed for the *Refugee Support Network* research project (Gladwell et al 2016), two of the returnees who had resisted pressure to join the insurgents for months eventually succumbed, though one subsequently managed to flee to India.

The letters adduce a number of different arguments to assert the 'reasonableness' of relocation to Kabul. Among the most common is that if the claimant was capable of relocating to the UK, 'which has a different language, culture and climate to Afghanistan', he could be expected to return to Kabul without serious difficulty especially since would also have the benefit of a UK education, and improved English. At the risk of stating the obvious, while networks are also hugely important support structures in Britain and Europe, in Afghanistan they are the *only* support structures and without them relocation is not feasible.

In sum then, it is clear from an assessment of the various reports, that at no time would it have been reasonable to assert that there was a sufficiency of protection available to those fearing persecution in Afghanistan, assessments of violent and volatile conditions need to be updated more regularly based always on the latest data and internal relocation is only possible to areas where an individual has a support network.

Conclusion

Reading the RFRLs, it is difficult not to conclude that the driving force in the investigation of an asylum claim is finding grounds to refuse it. There have been a number of articles about an ingrained 'culture of disbelief' or 'culture of denial' (Cohen 2002, Welch and Schuster 2005, Jubany 2011, Souter, 2011). And that culture is one that is shaped – inevitably – by a political context that constructs asylum seekers as liars and cheats, and of asylum destinations as besieged. While giving decision-makers the resources, time and training they need to make good decisions is vital, more important is changing the culture within the bureaucracies charged with making decisions, taking the time to understand the cultural, political and social context from which people are fleeing, treating asylum seekers with dignity and respect and making every effort to identify those in need as soon as possible. Whether due to the pressures to meet targets, or to ignorance or prejudice, the current system in the UK penalizes people in need of protection. As noted at the beginning of this article, the error costs are high.

The number of people deported to Afghanistan from Europe in 2017 was less than 600, and from the UK less than 100 (The Guardian 22/12/2017). Compared to the 100s of thousands deported from Iran and Pakistan, these figures may appear

insignificant. Leaving aside the question of whether those individuals were or were not returned to danger (or others without a claim allowed to remain), it is clear that in the case of Afghan asylum seekers, and very probably those from other countries in conflict, initial and subsequent flawed decisions on their cases are keeping individuals and their families in a state of limbo and inflicting serious psychological damage. Better informed, and better, decisions need to be made sooner. Those better decisions require taking seriously the statement from the Home Office guidelines stated at the top of the paper. That means giving decision-makers clear instructions that their role is to identify those in need of protection – and that may mean assisting them with their claim, rather than sabotaging it. It also means listening to the decades old argument that front-loading the system, ensuring high quality decision-making on initial claims is better for all concerned.

Most Afghans in the UK (thought still less than those in other EU states) eventually received protection, but most only after a prolonged and damaging process. It is better for refugees who have the opportunity to integrate socially and economically much sooner, reducing the damage they suffer and allowing them to become contributing members of society.

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[i] This is the abbreviation used by UKBA/UKVI – the numbers refer to the sample of letters analysed.

[ii] Minors will not normally be detained.

[iii] From 2008-2013, the UK Border Agency (UKBA) was responsible for making these decisions. Since 2013, it is UK Visa and Immigration (UKVI). All the refusal letters analysed in this article were issued either by UKBA or UKVI.

[iv] The recast QD 2011 does not apply to the UK (Blake 2013).

[v] This includes Article 3 ECHR but not Article 8 ECHR (Private and Family Life), which is considered to fall outside the remit of 'law' and continues to be discretionary under EU law (but of course not under Article 8 ECHR). My thanks to Prof Helene Lambert for this note and the previous one.

[vi] It has recently emerged that these decision-makers are given five weeks training, and that it is common practice for the Home Office to recruit undergraduates on a gap-year to deal with cases (The Guardian, 27 February 2016).

[vii] A former HO case worker explained (in response to a presentation of this paper at SOAS) that when she started, individual decision-makers would tend to work on and develop some in depth knowledge of particular countries. However, decision-makers are now given a series of refusal/acceptance templates, a digital library of reports to consult and targets that make careful consideration of cases unlikely (see Independent Chief Inspector of Borders and Immigration 2017).

[viii] So that these reports cite other reports citing other reports with the inevitable consequence that much of the data is out of date.
[ix] RFRL = Reasons for Refusal Letter, I = initial decision; A = appeal decision, number = paragraph number. This formulation also occurs regularly in decisions on claims from nationals of other states (https://www.theguardian.com/world/2018/jan/12/child-trafficking-cruel-home-office-orders-cannabis-slave-back-to-vietnam).
[x] While teaching in a school in Dashti Barchi (a suburb of West Kabul), I asked a class of 35 girls to tell me their date of birth or at least their age. One girl, who had recently got a passport to join family in Germany, could tell me both. Not one other could tell me a birthdate, 3 specified '16' or '17' and the remaining 31 girls gave their ages as '16 or 17'. Differing measurements and concepts of time have been the subject of much anthropological study – see for example Munn's overview (1992).
[xi] The research manager on my last project has inadvertently ended up with three different birthdates on his birth certificate, school certificate and passport – a common occurrence.
[xii] Pashtunwali, or Pakhtunwali, is the customary law of Pashtuns in Afghanistan and Pakistan, codifying the social norms that govern the Pashtun way of life. These codes indicate how to behave in order to protect and recover one's honour and that of the family (Benson and Siddiqui 2013). Elements of Pashtunwali have been incorporated into the social norms of other ethnic groups.
[xiii] http://www.afghanistantimes.af/news_details.php?id=4671
[xiv] http://www.afghanistantimes.af/news_details.php?id=5591
[xv] http://in.reuters.com/article/2012/01/15/afghanistan-feud-bomb-idINL3E8CF0D820120115. See also CORI 2014
[xvi] Hutchins' study of British families emigrating to Australia, for example, noted that some of the children were not informed until the last minute of their family's decision to migrate (2011).
[xvii] Horvath – [2000] UKHL 37
[xviii] Januzi – [2006] UKHL 5
[xix] And continue to feature in every UNAMA report since then.
[xx] He requested anonymity. A similarly bleak assessment was made in January 2016, in a leaked NATO report that described the Afghan National Army as 'mission incapable', according to Der Spiegel (09/01/2016), which added: 'Altogether across the country, only one of 101 infantry battalions is classified as 'ready for battle' and 38 units have 'massive problems,'' http://www.spiegel.de/politik/ausland/afghanistan-nato-bericht-stellt-einsatzbereitschaft-der-armee-infrage-a-1071149.html
[xxi] Elgefaji - CJEU – C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie (Art 15c)
[xxii] PM and Others (Kabul – Hizb-I-Islam) Afghanistan CG [2007] UKAIT 00089 and MI (Hazara - Ismaili – associate of Nadiri family) Afghanistan CG [2009] UKIAT 00035
[xxiii] AK – Afghanistan [2012] (Art 15c CG Afghanistan) UKUT 00163
[xxiv] See endnote 8.
[xxv] HN & SA vs SSHD – Afghanistan [2016] Court of Appeal (Civil Division)
[xxvi] AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) found that the recommendations in AK 'remain unaffected', United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 16 April 2018, available at: http://www.refworld.org/cases,GBR_UTIAC,5ad638104.html
[xxvii] There has been no national census in Afghanistan since the Soviet period, there have been massive population movements, and hundreds of thousands of unregistered births and deaths so such ostensibly precise figures are inevitably a fiction and irrelevant to the issue of relocation.
[xxviii] In the RFRLs on which this paper is based, mental health was not such a significant issue, but I have noted a sharp increase in the number of applicants with such problems in the last two years in particular.
[xxix] http://centralasiaonline.com/en_GB/articles/caii/features/pakistan/main/2014/09/11/feature-01