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### Second-Hand Emotion?

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## **Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context**

Helen Baillot, Sharon Cowan and Vanessa E. Munro<sup>\*</sup>

Law and emotions scholars have emphasised the need to attend to the presence and influence of both positive and negative emotions in legislating and legal decision-making.<sup>1</sup> In line with this, in some quarters of legal practice and doctrine, there has been an appreciable shift in recent years away from the tendency to see emotionality as, at best, a distraction from, and, at worst, an obstacle to, legality. Despite this, there remain enclaves within which the dichotomisation of rationality and emotionality lingers, and is aligned with guiding conceptions of ‘professionalism’ to preserve a reluctance to acknowledge the role of emotion in framing legal decision-making processes and outcomes.

In this article, we position the context of asylum decision-making as a striking example of one such enclave. Central to the process of claiming asylum is applicants’ narration of experiences of fear, trauma, violence and persecution; accounts that, at a human level, are primed to provoke emotional responses, not only in the narrator but also in those to whom the account is relayed. The

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<sup>1</sup> K. Abrams and H. Keren, ‘Law in the Cultivation of Hope’ (2006) University of California Working Paper 1205 <<http://law.bepress.com/expresso/eps/1205>>; K. Abrams and H. Keren, ‘Who’s Afraid of Law and the Emotions?’ (2010) 94 *Minnesota Law Review* 1997; S. Bandes, ‘Moral Imagination in Judging’ (2011) 51 *Washburn Law Journal* 1; S. Bandes, ‘Repression and Denial in Criminal Lawyering’ (2006) 9 *Buffalo Criminal Law Review* 339; S. Bandes, ‘Introduction’ in S. Bandes (ed) *The Passions of Law* (1999); T. Maroney, ‘The Persistent Cultural Script of Judicial Dispassion’ (2011) 99 *California Law Review* 629; T. Maroney, ‘Law and Emotion: A Proposed Taxonomy of an Emerging Field’ (2006) 30 *Law and Human Behaviour* 119; A. Harris and M. Schultz, ‘(A)nother Critique of Pure Reason: Toward Civic Virtue in Legal Education’ (1993) 45 *Stanford Law Review* 1773; L. Henderson, ‘Legality and Empathy’ (1987) 85 *Michigan Law Review* 1574; and K. Abrams, ‘Feminist Legal Theory and the Emotions: Three Moments in an Evolving Relationship’ (2005) 28 *Harvard Women’s Law Journal* 325

emotion of fear is even built into the doctrinal test for refugeehood under the 1951 Geneva Convention Relating to the Status of Refugees.<sup>2</sup> And yet, these narratives (and the emotion that surrounds them) appear to require containment and management throughout the asylum application process. Asylum-seekers' accounts have to compellingly depict persecution and fear, whilst also meeting expected standards in terms of internal coherence, concision and credibility. Decision-makers are required to solicit these sensitive accounts from potentially vulnerable claimants, whilst dispassionately and objectively assessing their veracity and the accuracy of their predicted risk of recurrence. They do so, moreover, in a context in which margins of discretion for evaluating credibility are wide, measures for predicting future risk are speculative, resources are limited, and political pressures are ever present.

Drawing upon fieldwork conducted within the UK, which focussed primarily upon the treatment of applications from female asylum-seekers who claimed to have been raped in their country of origin, in this article, we explore some of the vectors of emotionality that permeate this arena. Without in any way trivialising the significant difficulties that may be posed by the application and review process to asylum-seekers, we focus here on the emotional challenges that may be experienced by the professionals involved; and particularly those who undertake legal or quasi-legal decision-making roles. We suggest that these professionals, when faced with an applicant's fear and distress, may use 'survival mechanisms'<sup>3</sup> marked by detachment and denial of responsibility to protect themselves from the contagion<sup>4</sup> of these emotions. Though reliance on such strategies may assist professionals' personal coping (at least in the short-term<sup>5</sup>), we argue that they risk being deployed in more maladaptive ways that impoverish the prospects of a full and fair hearing of asylum appeals.

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<sup>2</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 <<http://www.unhcr.org/refworld/docid/3be01b964.html>> [accessed 6 March 2013]

<sup>3</sup> M. Lipsky, *Street-level Bureaucracy: Dilemmas of the Individual in Public Services* (1980) 187.

<sup>4</sup> The term 'contagion' refers to the transference of emotional distress or trauma to professionals. We do not use it to connote 'infection' from asylum-seekers' 'foreign' bodies, nor to underplay the extent to which the asylum system itself, and the professionals within it, may contribute to, or indeed create, distress and trauma, as well as finding themselves exposed thereto.

<sup>5</sup> S. Folkman (ed), *The Oxford Handbook of Stress, Health, and Coping* (2011).

The asylum sector is clearly not unique in posing concerns about professionals' exposure to, and ability to cope with, emotional labour. Indeed, as will be discussed below, pre-existing research in criminal and family law, social work and medical arenas, has highlighted reminiscent challenges. Nonetheless, we believe that asylum decision-making provides a particularly potent breeding ground for contagious trauma and the adoption of 'survival mechanisms', due to its peculiar probative, evidential and narrative difficulties, together with its highly politicised and resource-limited context, and the extent of decision-makers' discretion involved. Moreover, the lack of transparency that often surrounds asylum decision-making and the difficulties that applicants may face in challenging a determination that is ostensibly based on individual assessments of credibility or risk render it an arena within which strategies of detachment or denial have the potential to operate regressively without censure.

In the next section, we provide an overview of the context and processes of asylum decision-making in the UK, and explain the scope of the present study; the first of its scale and kind to examine emotional labour in the UK asylum context. Having done so, we explore the complex nexus of emotional demands that can arise within the asylum system; examine the ways in which the trauma experienced by applicants can be said to be 'contagious'; and uncover the defensive strategies for coping which may be invoked by the professionals involved. We argue that the contagion of trauma, and the ways in which asylum professionals respond to it, can prevent applications from being most effectively presented or assessed. To the extent that reliance upon defensive strategies maps onto a broader ideological tendency within some legal or quasi-legal environments to deny or mismanage the influence of emotion, we will also highlight the need for certain institutional cultural shifts to encourage decision-makers to more fully engage with the emotional responsibility to the applicant, and to themselves, that their asylum work entails. Whilst these findings arose in the UK context, the fact that asylum procedures elsewhere similarly require the resolution of applications in the midst of an inherently emotional environment entails that they may well bear relevance for other jurisdictions.

## THE UK ASYLUM CONTEXT – PROCESSES AND PROFESSIONALS

Although soon to be disbanded and restructured,<sup>6</sup> primary responsibility for determining asylum claims in the UK currently lies with the UK Border Agency (UKBA), an executive branch of the Home Office that also has general responsibility for border control. UKBA personnel facilitate two interviews - 'screening' and 'substantive' - designed to elicit from asylum claimants pertinent information regarding their means and manner of travel to the UK and their substantive reasons for claiming protection.<sup>7</sup> Although not usually formally legally qualified, the 'Case Owner' (CO) who conducts the second of these interviews is also responsible for making an initial decision as to the veracity and validity of the applicant's claim.<sup>8</sup> This requires taking into account, amongst other things, the interview, any submissions provided by the applicant or her legal representative, 'objective' evidence regarding the applicant's country of origin, and the criteria for establishing a 'well-founded fear of persecution' on the basis of race, religion, nationality, political opinion or membership of a 'particular social group',<sup>9</sup> as set out under Article 1A of the 1951 Refugee Convention.<sup>10</sup>

Where, as often occurs,<sup>11</sup> the CO decides to refuse asylum, an avenue of appeal to the Immigration and Asylum Chamber of the First Tier Tribunal may be pursued by the claimant. Such appeals are presided over by Immigration

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<sup>6</sup> Speech by Home Secretary, Theresa May, 26/3/2013 - <<https://www.gov.uk/government/speeches/home-secretary-uk-border-agency-oral-statement>>

<sup>7</sup> For a summary of these, and the other, key stages of the current UK asylum process, see <<http://www.ukba.homeoffice.gov.uk/asylum/process/>> [accessed 6/3/2013].

<sup>8</sup> The CO's role in relation to asylum applicants is described by the UKBA: "Your case owner is the person who will deal with every aspect of your application for asylum, from beginning to end... Your case owner is responsible for interviewing you; making the decision on your application; managing any support you are entitled to receive and staying in touch with you; providing official documents; representing UK Border Agency if you make a legal appeal; and arranging your integration into life in the UK or your return to your country of origin" - <<http://www.ukba.homeoffice.gov.uk/asylum/process/caseowner/>> [accessed 6/3/2013].

<sup>9</sup> Detailed instructions, intended for use by COs when deciding asylum claims, are provided by internal Asylum Policy Guidance - <<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/consideringanddecidingtheclaim/>> [accessed 6/3/2013].

<sup>10</sup> Op. cit., n. 2

<sup>11</sup> In 2010, 75% of applicants in the UK were refused refugee status or any other form of Humanitarian Protection or Discretionary Leave to Remain at this stage - Home Office, 'Control of Immigration: Quarterly Statistical Summary, United Kingdom, Quarter 4 (October to December 2010)' (2010) 19 <<http://data.gov.uk/dataset/control-of-immigration-statistics>>

Judges (IJs). UKBA ‘Presenting Officers’ (POs) (who again, notwithstanding the fact that they perform a quasi-legal function, are not necessarily legally qualified) – or, in some instances, the original UKBA CO – are tasked with defending the reasons for initial refusal. While the same substantive considerations are pertinent at the appeal stage, the more structured - and often more adversarial - nature of the tribunal environment can influence the ways in which applicants’ narratives emerge and evidence is evaluated, with the role of the IJ varying somewhat depending upon the presence or absence of UKBA personnel and legal representatives at the hearing.

While COs and IJs are thus the key decision-makers, they are by no means the only important actors. Legal representatives (including solicitors, barristers and immigration advisers) may be engaged to varying degrees.<sup>12</sup> They can play a vital role in supporting claimants and ensuring that their accounts of persecution are presented in their fullest, and most compelling, form. Beyond this, there are other, non-legal professionals who also have a potentially significant role. In this uniquely international and multi-lingual context, professional interpreters are often present and their skills in accurate translation, as well as in negotiating the demands of their mediating function, can be crucial. Moreover, in a sector in which applicants are debarred from accessing mainstream welfare benefits whilst their claim is pending,<sup>13</sup> and often struggle to access wider support services, staff from specialist NGOs will have privileged understandings of the experiences of individual applicants and their communities. They may be called upon to provide different levels of emotional and practical support during the application, including producing ‘expert’ reports or accompanying claimants to interviews or tribunal hearings.

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<sup>12</sup> Statistics on the proportion of appeals in the UK that involve legal representation are not available, but it is widely accepted that this has decreased in recent years. Of the 182 hearings observed by Thomas, 18% involved unrepresented appellants. R. Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication* (2011) 116.

<sup>13</sup> The Immigration and Asylum Act 1999 debarred asylum claimants from accessing public funds and instead provided for the creation of a separate asylum support system which can be accessed by persons whose asylum claims have not yet been determined and who are deemed to be destitute - <<http://www.legislation.gov.uk/ukpga/1999/33/contents>> [accessed 6/3/2013].

Each of these categories of key professionals was represented in this study, and – whilst more attention was focussed in the study’s observation stage upon the appellate tribunal – the researchers had the opportunity to discuss perceptions of initial and appellate stages with all participants, and were permitted to observe, at least to some degree, all steps in the UK asylum application process.

## METHODOLOGY

The discussion below is based on data arising from two sources - (1) a series of semi-structured interviews with key professionals in the UK asylum system and (2) a series of observations of appeal tribunal hearings in which female asylum applicants sought judicial reconsideration of an initial UKBA refusal decision.

### *1. Stakeholder Interviews*

A small number of interviews were conducted in 2007 as part of a pilot study (n=13), but most were conducted, with the help of a Research Assistant, between August 2009 and December 2010. Tape-recorded interviews, lasting approximately 90 minutes, were carried out with a variety of asylum professionals working in 4 different UK regions. Three of these regions included a large urban centre that played host to a sizeable community of asylum-seekers; these three areas also contained very active asylum appeal tribunals and UKBA offices in which a large number of COs and POs were based. The remaining, fourth, region represented a somewhat smaller, though still significant, asylum community, within which the local tribunal heard a rather smaller number of asylum appeals. NGO workers, interpreters and legal representatives based in this region did, however, have extensive experience of hearings at other tribunals. In reflection of this, while interviews with UKBA personnel and IJs were limited to the first three regions, interviews with legal representatives, NGO workers and interpreters extended to the fourth region.

<b>Role</b>	<b>No. of participants</b>
Immigration Judge (IJ)	20
Legal Rep	25

NGO practitioner	21
UKBA personnel (CO/PO)	24
Interpreter	14
Total	104

Interpreters were contacted through an advert placed in the Institute of Linguists' newsletter, as well as an invitation circulated by the Tribunals Service, and snowballing of personal contacts. Meanwhile, all identifiable firms of asylum legal representatives and NGOs in each of the four regions were sent an approach letter, asking for permission to interview personnel with experience in dealing with cases involving women applicants (particularly, given the study's specific focus, where an allegation of rape had been disclosed). In regard to UKBA and judicial participants, a more formal process had to be undertaken. After consulting with policy and operational personnel, the UKBA granted us permission to interview its staff; and by liaising with team leaders as intermediaries, individual COs and POs were identified. Likewise, having secured permission from the President of the Immigration and Asylum Chamber to approach judicial participants, a lead liaison was identified in each of the relevant tribunal centres, who assisted us in inviting selected IJs to take part.

These methods of recruitment entail, of course, that all interview participants were self-selecting (albeit that some may have been volunteered by, or received encouragement from, a senior colleague or peer to participate). The limitations which this places on our findings must be acknowledged, as must the fact that – though the overall sample of 104 interviews is sizeable, particularly in the context of qualitative research in an arena where access is notoriously difficult – the numbers within each category of participant are relatively small. As such, we do not purport to offer generalizable conclusions. Nonetheless, particularly given the strength with which the themes emerged across participant interviews and the fact that we have been able to triangulate findings through ethnographic observation of appeal hearings, we believe that we are able to offer important insights into the ways in which these participants approach the emotional labour in which they are inevitably engaged in the context of asylum.



Interviews were semi-structured to ensure an appropriate balance between flexibility and comparability across participants who inhabit diverse roles within the asylum system. Participants were asked to reflect first on their perceptions of the scale of rape allegations within women's claims, the contexts in which such allegations arise, the ways in which they are disclosed and responded to, and the factors that might tend to support or undermine their credibility. Having done so, they were also asked to reflect more broadly on the environment in which asylum decision-making (both initial and appellate) takes place, what they considered to be the positives and negatives of their job, and the strategies that they have deployed to cope with any stress experienced.

## *2. Appeal Tribunal Observations*

The team observed 48 tribunal appeal hearings involving female claimants. Of these, 31 were referred to us through a combination of protocols agreed with participating legal practitioners, NGO support-providers and the Tribunal Service, and having been identified as cases within which the appellant had disclosed an allegation of rape. The remaining 17 cases were observed as a result of intermittent random sampling of all asylum appeals involving women being heard on a given day at a selected tribunal. Although not all of these randomly observed cases involved an allegation of rape, in 9 of the 17 hearings, a disclosure of rape or the threat of rape was involved; and in some others, possible experiences of sexual violence were alluded to - for example, through an appellant's mention of 'women's problems' necessitating a request for an all-female hearing or a comment from a UKBA PO that a case involved 'sensitive aspects' - although this was not specifically addressed during the proceedings.

Most of these referred and random observations were undertaken at the key tribunal centres within the three regions described above. However, a small number of referred observations were also undertaken at other hearing centres, where we were alerted to cases by legal representatives based in the study's key regions; in addition, to ensure that the research captured some insight into the

peculiarities of the process and environment in the ‘detained fast-track’,<sup>14</sup> a proportion of the random observations (n=10) were undertaken at a tribunal reserved for fast-track appeals and located at a large women’s detention centre.

During observations, the researchers took detailed notes, based on a template agreed in advance, which required recording not only the substantive content of the proceedings, but also reflections on the overall environment of the hearing, and the tribunal centre, as well as the body language and demeanour of all parties present. Time delays associated with the involvement of interpreters ensured that it was often possible to take verbatim notes contemporaneous with the tribunal proceedings; and where this was not possible, researchers took very detailed shorthand notes, which were supplemented with additional comments and observations in the immediate aftermath of the hearing.

In all of the referred observations, both the appellant and her legal representative knew of the presence of the researcher and were aware that the research was focused on the handling of claims of rape. In some – but by no means all – of these cases, the IJ and UKBA representative were also made aware of the researchers’ presence (although not always of the reasons behind it). Similarly, in the random observations, there were some cases in which the IJ had been alerted to the researcher’s presence and occasionally the IJ explained this to the parties present, but there were also cases in which nobody was aware of the reasons for the researchers’ presence, reflecting the current situation in which asylum hearings are open to the public unless a specific request has been made for ‘in camera’ proceedings. While the risk of presentational bias cannot be ruled out, it was not possible to identify any clear difference in terms of the tone or approach to hearings depending upon

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<sup>14</sup> Following the ‘screening’ interview, a decision may be made by the UKBA – often on the basis of the claimant’s country of origin – to place an individual within the ‘detained fast track’. The claimant will then be detained in secure premises pending determination of her application, which is intended to take place within two weeks. Although the UKBA’s own guidelines indicate that claimants who have suffered torture or been trafficked should not be detained – <[http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/detained\\_fast\\_processes?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/detained_fast_processes?view=Binary)> – there is no specific exception made for those who disclose a past experience of sexual violence. Evidence from previous studies indicates that women who claim to have been raped are detained with relative frequency (*Fast-Track Unfairness: Detention and Denial of Women Asylum Seekers in the UK* (Human Rights Watch 2010); and we certainly found evidence of such cases in our random observations.

participants' knowledge of the presence and purposes of the researcher; and, indeed, some of the hearings in which we witnessed the most obvious instances of bad practice in the handling of appellants and their rape claims were those in which the parties had been made fully aware of our observation and its focus.

In a quarter of all the observed cases (n=12), the research team was able – through correspondence with the legal representative involved – to secure the consent of the appellant to view surrounding case files. This permitted access to personal statements provided by the appellant, transcripts of the UKBA substantive interview, the UKBA refusal letter and the tribunal determination. Notes were taken on these documents on the basis of a standard template, with the aim of providing a greater level of context to the tribunal observations. Thus, factors such as the timing of the applicant's initial disclosure of rape, the number of lines devoted to it in the transcript of the UKBA interview, and whether, and how, it featured as part of the UKBA's reasons for refusal were noted, alongside considerations such as the applicant's country of origin, the existence of any dependents, the gender of her UKBA interviewer and so on.

### *3. Analysis and Research Questions*

Interview transcripts and notes from hearing observations and case files were anonymised, and then coded and analysed with the help of NVIVO, a computer-assisted qualitative data analysis programme. Simultaneous 'blind' coding was undertaken by all authors on a sample of transcripts and case observation notes. Rather than impose anticipated themes onto the data from the outset, during this initial period of open coding, themes were allowed to emerge spontaneously. In light of this, a list of themes was identified, with the remit of each being clarified to ensure consistency. These were then organised into a manageable coding structure (comprised of 40 'nodes') before more selective, thematic coding was conducted afresh and detailed analysis was undertaken.

As noted above, the primary focus of the study lay in examining the ways in which claims of rape made by female asylum-seekers were disclosed, narrated,

responded to and evaluated throughout the asylum application process. As a result, interview discussions concentrated on these substantive issues, and the cases observed at the tribunal generally included an allegation of sexual assault. Unsurprisingly, then, many of the thematic nodes identified related to topics such as the role of rape within asylum claims, the point at which rape would be expected to be disclosed, the relevance of gender-matching between applicant and interviewer, and the factors that bolster or undermine the perceived credibility of the rape allegation, and asylum claim more broadly.<sup>15</sup>

When conducting interviews, however, the researchers also directly explored participants' views as to the emotional dynamics of asylum decision-making, and the ways in which such dynamics permeated the tribunal were evidenced in the observations conducted. This generated a number of nodes covering topics such as self-care, decision-makers' / interpreters' understanding of their role, trauma and stress, courtroom dynamics, processes and structures of decision-making, and training / guidance. The data contained within these nodes, and our analysis thereof, forms the basis of the present discussion.

In what follows, we adopt a qualitative rather than quantitative approach. We use descriptors such as 'many', 'several', or 'frequently' not to assert any kind of statistical significance, but to reflect the fact that the quotations and incidents selected for inclusion do not stand in isolation, representing instead one instance amongst others where a similar perspective was recounted. Where we use descriptors such as 'a number of' or 'some', we do so again to allude to the fact that the participant providing the quote, or the illustrative observation, was not alone in reflecting the encapsulated viewpoint, but to indicate that support was not so widely evidenced as where 'many', 'several' or 'frequently' is utilised.

Though the methods of recruitment for the data within this study, as outlined above, are restricted in the main to cases involving allegations of sexual assault,

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<sup>15</sup> See, further, H. Baillot et al, 'Hearing the Right Gaps: Enabling and Responding to Disclosures of Sexual Violence within the UK Asylum Process' (2012) 21 *Social and Legal Studies* 269; and H. Baillot et al, 'Reason to (Dis)Believe: Evaluating the Rape Claims of Women Seeking Asylum in the UK' (forthcoming).

it is important to point out that the relevance of many of the findings that emerged in relation to professionals' emotional labour is not similarly limited. As will be discussed below, although the intimate nature of rape may generate a peculiar form of discomfort amongst some professionals, for a large proportion of female asylum applicants (including those whose appeal hearings we observed), such a claim is often accompanied by allegations of other forms of non-sexual abuse or trauma, such as torture or the death of family members. In a context in which these can be equally, if not more, distressing to recount and respond to, the exceptionalism that attaches to rape is reduced. Likewise, the significance of the fact that this study focussed upon female asylum-seekers, in a context in which women have conventionally been more closely associated with emotionality than men<sup>16</sup>, though worth bearing in mind, ought not to be over-stated. Indeed, our findings suggest that male applicants' accounts of sexual abuse may prompt higher levels of emotional response amongst professionals, who view such violation as somehow more upsetting, more invasive and more likely to be true than comparable claims by women.<sup>17</sup>

## THE EMOTIONAL DEMANDS OF ASYLUM

The need to negotiate the personal, emotional consequences of the persecution stories of 'others' is one that affects all professionals working in the asylum arena, regardless of the fact that it may not always be directly acknowledged or reflected upon. Indeed, Sagy<sup>18</sup> has identified a series of 'psycholegal soft-spots' that can arise. These are places where the work undertaken in order to satisfy prevailing legal procedures produces negative or positive psychological consequences. While Sagy attributes these soft-spots specifically to asylum lawyers, we believe that they are also often relevant to the experiences of quasi-legal professionals, such as UKBA personnel, as well as to interpreters and

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<sup>16</sup> C. Gilligan, *In a Different Voice – Psychological Theory and Women's Development* (1982); C. Worden, 'Overshooting the Target – A Feminist Deconstruction of Legal Education' (1984) 34 *American University Law Review* 1141; C. Menkel-Meadow, 'Asylum in a Different Voice? Judging Immigration Claims and Gender' in *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, eds. J. Ramji-Nogales et al (2009) 202.

<sup>17</sup> See, further, Baillot et al, forthcoming, op. cit., n.15.

<sup>18</sup> Sagy, T. 'Even Heroes Need to Talk: Psycho-Legal Soft Spots in the Field of Asylum Lawyering' (2006) Bepress Legal Series paper 1014 <<http://law.bepress.com/expresso/eps/1014>>

NGO support workers; albeit that the ability and willingness of different role-players to acknowledge these emotional challenges may vary considerably.

More specifically, Sagy sketches three ‘soft-spots’ which arise: first, in meeting the challenge of enabling the client to fully narrate her account of persecution (particularly where the client suffers symptoms of PTSD which can adversely impact upon memory, concentration, coherence of account, etc.); second, in handling traumatic narratives as the asylum claim proceeds in a way that avoids re-traumatising the client; and third, in dealing with the personal impact on the lawyer or other listener of hearing the client’s traumatic narrative.

The first two ‘soft-spots’ speak to the ability of the listener to be aware of the applicant’s emotional state, which may be prompted by a range of often interwoven factors: the initial trauma of persecution; the trauma of relocation into a new and strange environment, often without familial or other support networks; the impact of the asylum process itself, as well as associated bureaucratic regimes, such as those responsible for the provision of welfare benefits and housing; and the impact of any decisions that are taken throughout the process, such as the decision to detain the applicant in the UK’s expedited ‘detained fast-track’ process. The existence of both of these ‘soft-spots’, as well as the different ways in which professional roles within the system might influence participants’ responses to applicants and their emotions, was amply demonstrated in the context of the present study.

On the one hand, descriptions provided by NGOs, interpreters and clients’ legal representatives frequently gave voice to the emotionality of the asylum context, as perceived by claimants. The application process was described variously as “really frightening”, “very daunting”, “extremely stressful” and “utterly horrifying”. Such respondents recounted examples of applicants having become distressed and tearful during interviews and tribunal hearings; and during the course of our tribunal observations, the researchers witnessed many such instances first-hand. Indeed, in one case, such was an appellant’s distress following questioning from the UKBA about a period of alleged captivity and

sexual exploitation that she had to be assisted from the tribunal room by a clinician. Participants spoke of applicants' psychological reactions to past traumas, which impeded them from fully disclosing experiences of violence, as well as of the professional's need to safely contain and elicit such disclosures in ways that avoid further re-traumatisation. One legal representative concluded that "much of the system is really in itself quite damaging" for applicants, whilst another insisted "it's amazing that people can cope at all, to be honest."

At the same time, however, other respondents (most often UKBA personnel and IJs) confidently maintained that the system overall is "not that bad" or "as good as it can get" and that, notwithstanding moments of distress, applicants on the whole "stand up to it pretty well and they can cope". Crucially, however, for many such respondents, this confidence was based on the presumption not only that the applicant would have a legal representative, but that this representative would have provided her with effective, advance guidance and support. Such a presumption is not always borne out in practice, and is increasingly under threat in the UK as a result of legal aid restrictions,<sup>19</sup> the rigorous application of a 'merits' test in asylum cases, and the recent collapse of two of the largest not-for-profit immigration advice providers – the Immigration Advisory Service and Refugee & Migrant Justice.<sup>20</sup> These participants' confidence in the sensitivity of the system was also often based on an assumption that the applicant in cases involving sexual assault will have been

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<sup>19</sup> In England and Wales, legal aid is subject to both a means and a merit test. The former is self-explanatory. Regarding merit, under current Legal Services Commission rules, 'Legal Help' is available for asylum cases up to the point of appeal, if the help would be of 'substantial benefit' to the applicant – first instance asylum applications usually meet this test. Thereafter (for appeal to First Tier Tribunal) legal aid is administered through 'Controlled Legal Representation' (CLR). CLR will not be provided unless the appeal is 'likely to be successful' – i.e. better than a 50-50 chance. The Legal Aid, Punishment and Sentencing of Offenders Act 2012 will come into force in April 2013. While lobbying has ensured that legal representation in asylum cases remains publicly funded, all other areas of immigration law are no longer eligible for legal aid (excepting cases involving trafficking or domestic violence). Concerns have been raised that this will have a negative knock on effect upon immigration firms that offer asylum advice, particularly when combined with a recent reduction of 10% on the fees that civil legal aid providers can charge. See Asylum Aid's Policy Briefing 3 <<http://www.asylumaid.org.uk/pages/policy.html>>

<sup>20</sup> A. Trude and J. Gibbs, *Cost of Quality Legal Advice: Refugee Interviews* (2010) <<http://www.icar.org.uk/9602/about-us/publications.html>>; J. Gibbs, *Justice at Risk: Quality and Value for Money in Asylum Legal Aid* (2010) <<http://www.icar.org.uk/9602/about-us/publications.html>>; For a discussion of the impact that a lack of legal representation can have, see J. Ramji-Nogales et al, 'Refugee Roulette: Disparities in Asylum Adjudication' (2008) 60 *Stanford Law Review* 295.

offered the opportunity to be interviewed by a female UKBA CO. As one PO put it, for example, “if they want a female interpreter or interviewer and interpreter, they can request that no problem and I mean, you know, they’re dealt with...very sensitively and with respect”. Aside from the fact that, in practice, limited resources entail that this gender-matching does not occur in all cases where it has been requested, such logic risks presenting gender-matching as a panacea in a context in which research has challenged the positioning of women as necessarily more receptive listeners to accounts of rape.<sup>21</sup>

To the extent that some of our UKBA and judicial participants thus risked minimising the effects of fear, distress and trauma upon (female) asylum applicants, they also risked underestimating the need for support and sensitivity, including other special gender-based measures designed to ensure a careful approach to questioning. It is perhaps no coincidence in this regard that most of the UKBA personnel interviewed showed limited or no awareness of the existence and content of their own organisation’s Gender Guidelines. In addition, notwithstanding research and official guidance which cautions against drawing inferences from an asylum applicant’s emotional demeanour,<sup>22</sup> particularly where they are recounting traumatic experiences in a cross-cultural and multi-lingual context, there was a tendency to maintain that a credible asylum narrative would be one that was both neat and linear, containing no emotional ‘bumps’ or only those that manifest the ‘right’ type of distress.

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<sup>21</sup> G. Cowan, ‘Women’s Hostility Towards Women and Rape and Sexual Harassment Myths’ (2000) 6(3) *Violence Against Women* 238; I. Anderson et al, ‘Can Blaming Victims of Rape be Rational? Attribution Theory and Discourse Analytic Perspectives’ (2001) 54(4) *Human Relations* 445; L. Ellison and V. Munro, ‘Of ‘Normal Sex’ and ‘Real Rape’: Exploring the Use of Socio-Sexual Scripts in (Mock) Jury Deliberation’ (2009) 18(3) *Social and Legal Studies* 291.

<sup>22</sup> W. Kalin, ‘Troubled Communication: Cross-Cultural Misunderstandings in the Asylum Hearing’ (1986) 20 *International Migration Review* 230; C. Rousseau et al, ‘The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board’ (2002) 15 *Journal of Refugee Studies* 43; Home Office, ‘Asylum Policy Instruction on Gender Issues in the Asylum Claim’ (HMSO 2010) <<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>>; J. Herlihy et al, ‘What Assumptions about Human Behaviour Underlie Asylum Judgments?’ (2010) 22 *International Journal of Refugee Law* 351.



The tenacity and complexity of this linkage between emotional demeanour and credibility is of considerable importance.<sup>23</sup> For current purposes, however, we are interested in the impact of emotionality not so much in terms of its influence on decisions regarding veracity, but more broadly in terms of the ability and willingness of decision-makers to engage with the narratives presented, and the emotional ‘fall-out’ which those who listen to these accounts in their professional capacity have to manage. This relates most closely, therefore, to the third of Sagy’s ‘soft-spots’ and engages the question of the contagion of applicants’ emotions for professionals in the asylum environment. In these regards, the question of credibility becomes less central. Where the listener is convinced that the narrative recounted was genuinely experienced by the person in front of her, this can heighten its emotional impact. Equally, there is a significant degree to which, irrespective of whether or not the listener ultimately considers the narrative to be true, listening to tales of violence and inhumanity being recounted, particularly on repeated occasions, can, and does, take its emotional toll. Even if the listener concludes that the violations were not perpetrated upon this individual, this may be accompanied by an appreciation that such treatment is meted out to others in the country of origin, or with an acceptance that the claimant has endured other forms of suffering which, though not relevant for asylum, elicit emotion (for example, sympathy) in those whose privileged background has shielded them from such harms.

A very large number of factors – both doctrinal and contextual – are at play in determining an asylum application. Amongst them, however, we suggest that the ways in which professional actors manage the emotional demands of their work can have a tangible impact upon how claims are handled and evaluated. In what follows, we explore in more detail the emotional impact upon professionals of hearing and engaging with asylum narratives. We examine the risks of contagion of trauma faced by those who routinely listen to allegations of persecution as part of their work. Susan Bandes has argued that the “failed empathy”<sup>24</sup> of decision-makers can have a particularly damaging effect upon

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<sup>23</sup> For a more detailed analysis of the role of demeanour in assessing credibility in asylum determinations see our discussion in Baillot et al, op. cit. (forthcoming), n.15.

<sup>24</sup> Bandes, op. cit. (2011), n.1, p. 38.

prospects for justice. Similarly, we question the impact that these emotional challenges, and the strategies that legal and quasi-legal decision-makers in our study appeared to deploy in order to deal with them, have upon the ability to engage fully with an applicant's allegations, to avoid creating victim typologies and to evaluate asylum claims in a fair, open-minded and responsible manner.

## THE CONTAGION OF TRAUMA IN THE ASYLUM CONTEXT

Vicarious Trauma, which is often associated with secondary traumatic stress disorder and compassion fatigue<sup>25</sup>, refers to the experience of a professional who develops his/her own trauma symptoms as a result of being exposed to stories of cruel and inhuman acts perpetrated by and towards others.<sup>26</sup> It can include symptoms similar to those associated with PTSD, such as re-experiencing the event witnessed or narrated, avoidance of recollection of the event witnessed or narrated, and numbing in effect.<sup>27</sup> Meanwhile, burn-out – which can act as a precursor to vicarious trauma - refers to “a pattern of emotional overload and subsequent emotional exhaustion”<sup>28</sup> resulting in symptoms such as fatigue, irritability, a sense of hopelessness, a decline in performance or cynicism. Burn-out can be caused not only by consistent exposure to traumatic material,<sup>29</sup> but also, chiming with the reasons for developing coping mechanisms observed by Lipsky<sup>30</sup> amongst ‘street-level bureaucrats’, by “conflict between individual values and organisational goals and demands, an overload of responsibilities, a sense of having no control over the quality of services provided, awareness of little emotional or financial reward, a sense of loss of community within the work setting.”<sup>31</sup>

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<sup>25</sup> J. Chamberlain and M. Miller, ‘Stress in the Courtroom: Call for Research’ (2008) 15 *Psychiatry, Psychology and Law* 237.

<sup>26</sup> J.I. Richardson, *Guidebook on Vicarious Trauma: Recommended Solutions for Anti-Violence Workers* (2001).

<sup>27</sup> C. Figley, ‘Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview’ in *Compassion Fatigue: Coping with Secondary Traumatic Stress Disorders in Those who Treat the Traumatized*, ed. C. Figley (1995) 1.

<sup>28</sup> C. Maslach, *Burn-out: The Cost of Caring* (1982) 3.

<sup>29</sup> D. C. Aguilera, *Crisis Intervention: Theory and Methodology* (1995).

<sup>30</sup> Lipsky op. cit., n.3

<sup>31</sup> M. Salston and C.R. Figley, ‘Secondary Traumatic Stress Effects of Working with Survivors of Criminal Victimization’ (2003) 16 *Journal of Traumatic Stress* 167, at 168; C. Maslach and M.P. Leiter, *The Truth about Burnout* (1997); B.A. Farber, *Crisis in Education: Stress and Burnout in the American Teacher* (1991).

Pre-existing studies have exposed a significant correlation between the incidence of vicarious trauma / burn-out and acting as a key participant in legal advocacy or adjudication. Zimmerman, having conducted interviews with 56 Canadian judges, outlined what he described as the “torment” they experienced in dealing with cases of sexual abuse, child maltreatment and domestic violence.<sup>32</sup> Building on this, Jaffe et al’s research with 105 judges involved in a range of criminal, civil and juvenile court adjudication, found that 63% suffered one or more symptoms associated with vicarious trauma, including anxiety, fatigue, flashbacks, and a lack of empathy or connection to others.<sup>33</sup> Meanwhile, Levin & Greisberg’s study found that a cohort of US attorneys working with victims of domestic violence and criminal defendants demonstrated significantly higher levels of traumatic stress and burn-out than other professionals engaged in mental health and social service work.<sup>34</sup> Indeed, it has been argued that, while vicarious trauma can be identified in all cohorts of lawyers, it is criminal advocates, who often encounter narratives of interpersonal violence and inhumanity, who have a particular vulnerability.<sup>35</sup>

Extrapolating from this research, the risks of professionals in the asylum process suffering ‘secondary’ or ‘vicarious’ trauma (or burn-out) has also been highlighted. Gosden has pointed to anecdotal evidence of vicarious trauma amongst advocates who were intensely involved with refugees and their claims for asylum.<sup>36</sup> Meanwhile, Westaby has documented the emotional labour undertaken by solicitors in the UK asylum sector which, she argues, can result in stress, depression and task inefficiency.<sup>37</sup> Research by Surawski et al found

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<sup>32</sup> I. Zimmerman, *Trauma and Judges*. Presentation to the Canadian Bar Association Annual Meeting, 13<sup>th</sup> August 2002.

<sup>33</sup> P. Jaffe et al, ‘Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice’ (2003) 54 *Juvenile and Family Court Journal* 1.

<sup>34</sup> A. Levin and S. Greisberg, ‘Vicarious Trauma in Attorneys’ (2003) 24 *Pace Law Review* 245.

<sup>35</sup> K.W. Saakvitne and L.A. Pearlman, *Transforming the Pain: A Workbook on Vicarious Traumatization* (1996); L.P. Vrkleviski and J. Franklin, ‘Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material’ (2008) 14 *Traumatology* 106.

<sup>36</sup> D. Gosden, ‘What if no one had spoken out against this policy? The rise of asylum seeker and refugee advocacy in Australia’ (2006) 3 *Journal of Multidisciplinary International Studies* 1 <<http://epress.lib.uts.edu.au/ojs/index.php/portal/article/view/121/87>>

<sup>37</sup> C. Westaby, ‘Feeling like a Sponge: The Emotional Labour Produced by Solicitors in their Interactions with Clients Seeking Asylum’ (2010) 17 *International Journal of the Legal Profession* 153.

that the majority of a sample of 84 asylum advocates in Australia reported either high or moderate levels of stress, and of the two-thirds of advocates who had previously worked in other challenging social justice contexts, for example providing support to persons diagnosed with HIV/AIDS, over 80% found their work on asylum to be more distressing.<sup>38</sup> This is in line with research indicating that persons working with clients who have experienced trauma attributable to the actions of other humans are more likely to experience distress, and potentially the symptoms of vicarious trauma, than those working with clients whose trauma is attributable to a natural cause (such as illness).<sup>39</sup>

Contagion is a risk that faces all who engage with traumatic narratives.<sup>40</sup> It has been suggested, however, that it may be particularly significant for legal and bureaucratic professionals, since while “being exposed daily to detailed traumatic narratives is extremely demanding and adds an important emotional dimension”, lawyers are not trained to acknowledge these work-related emotions, let alone to address the traumatic impact they may have upon them.<sup>41</sup>

In the context of the present study, there is little doubt that the participants who appeared most comfortable in reflecting upon the implications of these emotional challenges were interpreters and NGO workers. Given that interpreters will often come from the same community as the appellant, have suffered similar persecution, or have family or friends remaining in the difficult circumstances that the appellant recounts<sup>42</sup> it is perhaps unsurprising that a striking finding was the extent to which they experienced extreme emotional difficulties. More than one described having “cried their eyes out” after

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<sup>38</sup> N. Surawski et al, ‘Resisting Refugee Policy: Stress and Coping of Refugee Advocates’ (2008) 20 *Australian Community Psychologist* 16.

<sup>39</sup> M. Cunningham, ‘Impact of Trauma Work on Social Work Clinicians: Empirical Findings’ (2003) 48 *Social Work* 451.

<sup>40</sup> S. Baird and S. Jenkins, ‘Vicarious Traumatization, Secondary Traumatic Stress, and Burnout in Sexual Assault and Domestic Violence Agency Staff’ (2003) 18 *Violence and Victims* 71; J.S. Felton, ‘Burnout as a Clinical Entity – Its Importance in Health Care Workers’ (1998) 48 *Occupational Medicine* 237.

<sup>41</sup> Y. Fischman, ‘Secondary Trauma in the Legal Profession, A Clinical Perspective’ (2008) 18 *Torture* 107, at 109.

<sup>42</sup> H. Holmgren et al, ‘Stress and Coping in Traumatized Interpreters: A Pilot Study of Refugee Interpreters Working for a Humanitarian Organisation’ (2003) 1 *Interventions* 22.

hearings, whilst others reflected on the long-term impact of being exposed to applicants' narratives of persecution: as one put it, "there are things that are stored in that chip in your brain and they are there forever, you ignore them some of the time, they ignore you some of the time, but they are never away."

It was also evident, by contrast, that those least comfortable with dwelling on the emotional demands of their work tended to be participants who were legally qualified (legal representatives and IJs) or performing quasi-legal roles (UKBA personnel). Thus, for example, one CO maintained that, despite having spent years listening to and evaluating asylum-seekers' accounts, "I don't think I've ever heard anything that's been harrowing, you know, that's distressed me in any way...I've never been personally bothered, I've never had a sleepless night about anything." Meanwhile one IJ insisted that "I'm blessed with a personality that doesn't hang on to things"; whilst another observed "once it [the decision] is signed off, you move on to the next one. You may remember it...because it raised an interesting point or there's an unusual part of it that may raise an issue later on, but no, I don't go home and mull it over and lose sleep over it".

It would be misleading, however, to suggest that *all* the legal and quasi-legal professionals involved in this study were oblivious to, or in denial of, these concerns. There were some legal representatives and UKBA employees who joined NGO workers and interpreters in describing their work variously as "really very distressing", "upsetting", "exhausting", "soul destroying" and "incredibly difficult emotionally". Although several barristers maintained that they do not tend to develop a strong bond with applicants since they are only involved in cases for a short time, it was also acknowledged that they "really do worry" and experienced a sense of "relief" when a case is decided positively. Meanwhile, one UKBA CO described how "every day listening to these stories of torture and rape...you do take it home" and suggested that he and his colleagues can feel "horrible" for refusing cases even when they are confident that the decision is sound because of the detrimental impact that it has on the applicant. Likewise, another CO acknowledged that we "do think about the job

a hell of a lot outside of work, dream about it...because it is constant and you hear all kinds of crazy things...some of them are absolutely tragic and horrific.”

And while most respondents focussed on the challenges posed by refusing asylum, there were occasional comments which suggested that the emotional intensity with which claimants receive a positive decision can also be difficult – one IJ, for example, recounted a case in which the appellant was so relieved at securing leave to remain that she became visibly upset, and noted that, as the presiding judge, this “was very moving. It was difficult to handle the distress.”

Of course, legal and quasi legal professionals do more in the asylum context than receive narratives of trauma and persecution. Given the time and procedural constraints of the process as it currently operates, UKBA personnel and legal representatives often play a key role in drawing out this information from reluctant claimants. This can cause additional emotional difficulties. As one legal representative put it, “it’s really awful to have to make someone tell you about something they don’t want to tell you. And sometimes you have to try really hard, and you have to push and push a really traumatised person...I’m fairly sure that I do stuff that isn’t healthy for those people and that’s difficult”.

For UKBA employees, moreover, there can be conflicting emotions arising from the different roles they are tasked with performing in relation to the asylum application. Although practice did not follow policy in all regions, or in all instances, the envisaged process for dealing with applications under the ‘New Asylum Model’ (NAM) in the UK entails that the same UKBA employee who undertakes the applicant’s substantive interview and makes a decision on granting leave to remain, will not only be responsible for communicating this decision in person to the applicant but, where that decision is negative, will also defend that refusal at any subsequent appeal. Such case management was introduced at least in part in an attempt to improve transparency and efficiency, as well as continuity and institutional knowledge with respect to particular claims. However, a number of UKBA interviewees reflected on the “awkward” position in which it left them. They suggested that it could be

difficult to communicate a refusal to a claimant with whom they had developed a relationship of confidence during the substantive interview, and that being required to defend that decision in the adversarial environment of the tribunal would be even more emotionally challenging. To some extent, of course, this discomfort reflects a broader tension that may be experienced by UKBA personnel tasked both with upholding the organisational aim of maintaining effective border control (the UKBA's most recent slogan was "Securing our Border, Controlling Migration") and determining refugee status on a case by case merits basis, ostensibly without regard to political priorities or quotas.

The emotional difficulties and attendant risks of vicarious trauma or burn-out experienced by professionals within the asylum system will vary not only according to their role and personal experiences, and the competing demands placed on them, but also their ability to manage or seek support in coping with the more harrowing aspects of their job. In the next section, we explore the coping strategies recounted by our participants as mechanisms by which to negotiate the impact of emotion, distress and trauma on their working and personal lives, as well as the constraints of processes and structures that govern their working practices. More specifically, we draw attention to two strategies – of detachment and denial of responsibility – that were regularly evidenced in this study by legal professionals and quasi-legal UKBA personnel with decision-making powers, and explore the extent to which such strategies harbour the potential to operate in ways that threaten the prospects for justice.

#### EMOTION AND TRAUMA: PROFESSIONALS' STRATEGIES FOR COPING

While the present study cast up several examples of potentially problematic mechanisms for negotiating the emotional contours of the asylum process, there was also evidence, in some cases, of very good practice. Thus, while some interpreters observed during hearings appeared markedly disengaged from the appellant - in one case, for example, doodling on scrap paper whilst relaying her account of having been raped and impregnated by her step-brother - there were others who made a concerted effort to provide a conduit not only for the

appellant's words but also for the emotional sentiment that underpinned their enunciation. Likewise, while there were some UKBA POs who ploughed on with rigorous cross-examination irrespective of the appellant's visible distress, there were others who acknowledged and sought to mitigate the difficulty that the appellant may experience in revisiting traumatic events. Some IJs ignored appellant's tears or distress, or rigidly closed down questioning on the more sensitive aspects of the appellant's claim, even where there appeared to be fresh information to be revealed. However, there were others who acknowledged the appellant's discomfort, offered breaks and allowed discursive space, both for traumatic narration and for responding to the emotions which it elicited.<sup>43</sup> In one hearing that we observed, for example, the IJ not only afforded the appellant repeated breaks when she became upset, but allowed her "a moment, not to compose yourself but to have a good cry, as that sometimes helps."

Individuals, of course, employ a variety of coping strategies to manage emotionally challenging situations. Some will be more 'problem-focussed', attempting to alter the situation, whilst others will be more 'emotion-focussed', designed to manage distress by reducing the situation's negative connotations.<sup>44</sup> In all cases, however, there is a risk of coping strategies operating in maladaptive ways, particularly in contexts where the emotional challenges are pervasive and the organisational conditions within which decisions are made are replete with resource-related, probative and political constraints. In this latter regard, Lipsky's work with 'street level bureaucrats', described as "the schools, police and welfare departments, lower courts, legal services offices and other agencies whose workers interact with and have wide discretion over the dispensation of benefits or the allocation of public sanctions,"<sup>45</sup> is instructive. It identified, as potentially maladaptive coping strategies, reliance on routines and stereotypes and the modification of perceived job roles or conceptions of the client to 'get the job done' and "render the inevitable gap between objectives and accomplishments more palatable."<sup>46</sup>

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<sup>43</sup> For further discussion, see Baillot et al, op. cit. (forthcoming), n.15

<sup>44</sup> R. Lazarus and S. Folkman, *Stress Appraisal and Coping* (1984)

<sup>45</sup> Lipsky op. cit., n.3, p xi

<sup>46</sup> S. Halliday et al, 'Street-Level Bureaucracy, Interprofessional Relations, and Coping Mechanisms: A Study of Criminal Justice Social Workers in the Sentencing Process' (2009) 31



In what follows, we explore evidence of strategies of detachment and denial being used by participating asylum decision-makers, and while acknowledging that these may be inevitable – and sometimes appropriate responses – we reflect on the risks that their maladaptive use might pose to such professionals’ ability to respond to, and justly evaluate, the asylum claim, and claimant, in question.

### *1. A ‘Matter of Fact Approach’: Detachment or Disinterest?*

In navigating the emotional impacts, and risks of contagious trauma, associated with their work, participants in our study – and particularly those functioning in legal or quasi-legal capacities (legal representatives, IJs and UKBA personnel) – frequently recounted reliance on strategies which afforded them some ‘distance’ or ‘detachment’ from the narratives with which they were presented. Lending credence to a construction of legality within which rationality and emotionality are distinct, many participants associated this distancing with the need to adopt a ‘matter of fact’ or ‘objective’ approach. Respondents often emphasised the incompatibility of becoming embroiled in the emotion of the situation and being able to do their jobs appropriately. One IJ, for example, emphasised that getting “emotionally drawn in” would be “a very bad thing to do” since it would jeopardise his impartiality, whilst another insisted that “the only way to function as a good lawyer is to cut yourself off from the emotion.” Similarly, another maintained that “the best approach is straightforwardness, clear questions, simple questions, matter of fact questions, non-judgmental questions, so that the information can just come out....We all know that when we get emotionally caught up in something, it is hard to make sense of it.” This approach was also endorsed by other legal and quasi-legal participants. Thus, one legal representative maintained, for example, that one has to be “sympathetic but detached” in order to perform one’s role effectively, whilst a UKBA CO insisted that “rape is just a word...You look at it from a step back...and don’t get so emotionally involved that you can’t do your job.”

While it may do a disservice to the ways in which the emotional demands of ‘good lawyering’ might be better accommodated, this approach can be seen to reflect a legitimate coping mechanism designed to provide “a way of defending oneself from hearing the traumatic material of the survivor.”<sup>47</sup> At the same time, hiding behind the rhetorical comfort (for some lawyers at least) of ‘matter of fact’ approaches may disguise the extent to which, in reality, it is far more difficult for professionals to avoid the emotional impact of engaging repeatedly with traumatic narratives. More problematically, it became apparent that, for many of our participants, this approach translated not so much into a controlled balance between detachment and sympathy, but a reluctance to engage at all with the narratives of abuse – specifically, of rape – that had been disclosed.

In line with previous research, which found that therapists working with Holocaust survivors had a tendency to take part in a “conspiracy of silence” whereby they avoided the traumatic material their clients tried to relate<sup>48</sup> a number of participants maintained that it was more ‘sensitive’ to avoid asking questions about the incident of rape itself. Respondents indicated that while there were occasions in which the circumstances of the attack would be rigorously explored – sometimes as a result of a deliberate strategy by legal representatives to provoke an emotional display by the applicant – an equally, if not more, common strategy, particularly on the part of UKBA personnel and (some) IJs, was to avoid questioning on this topic altogether. At best, this entailed that decision-makers relied exclusively on a frequently “flat, unemotional” written account of the alleged rape, which would often – but not always – have previously been provided in the applicant’s personal statement. At worst, it led to decision-makers ploughing on in ignorance of this element of the claim, or of potentially vital details in relation to it, focussing instead on other aspects of the claimant’s account – often as part of what was interpreted by some respondents as a strategy designed to undermine the applicant’s credibility. Indeed, having identified the use of similar ‘avoidance strategies’ amongst stakeholders in cases before the Canadian Immigration and Refugee

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<sup>47</sup> M. Salston and C.R. Figley op. cit., n.31, p.170

<sup>48</sup> Y. Danieli, ‘The Treatment and Prevention of Long-Term Effects and Intergenerational Transmission of Victimization: A Lesson from Holocaust Survivors and their Children’ in *Trauma and Its Wake*, ed. C. R. Figley (1985) 295.

Board, Rousseau et al argued that, while presented as a way to protect the claimant from the distress of providing sensitive testimony, this often ensured that accounts of traumatic events, which were not permitted a full narration, could be easily dismissed, thereby doing a serious disservice to applicants.<sup>49</sup>

While by no means immune from reliance on such avoidance strategies, several legal representatives in the present study expressed frustration at their use by others in the asylum process. One legal representative, for example, observing that UKBA POs often “skirt around” the claim of rape, noted that this minimised and managed the emotional fall-out in the tribunal: “I suppose the advantage for them is the judge then doesn’t actually hear the appellant give evidence...and unlike ourselves where we get clients breaking down in tears and the obvious emotion of going through what they’ve gone through, that’s all wiped out in the court, it’s so anodyne.” While for some respondents, this approach was an entirely appropriate, “impartial” and “professional” response<sup>50</sup>, for others, it was more problematic, reflecting decision-makers’ discomfort with the particularities of the rape claim and / or their personal unease at the emotional response its narration might elicit. Thus, whilst one CO acknowledged, “some interviewing officers don’t like to ask specific questions – how were you raped, how many men, what exactly did they do,” an IJ observed: “there is a discomfort around facing and dealing with what may have happened to people...because then you’ve got to face what that means and how you feel about it, which is not good.”

Such apparent reluctance to probe was exemplified in one hearing that we observed in which the appellant recounted at her substantive interview having been held in detention in the Democratic Republic of Congo on three occasions and having been raped during the third period. It was apparent from the transcript of this interview that the male UKBA CO (who, having forgotten his spectacles, wore sunglasses throughout) did not ask for any further detail regarding the alleged rape, and nor did he ask any questions about the applicant’s treatment during the previous detentions, despite evidence

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<sup>49</sup> C. Rousseau et al, *op. cit.*, n.22, p.59

<sup>50</sup> *id*

indicating that rapes in such conditions were common.<sup>51</sup> The resulting lack of detail on this point was later relied upon in this case to support the UKBA's assertion that the applicant had invented her claims of detention and abuse.<sup>52</sup>

As well as the procedural justice concerns that it prompts, such an approach ignores the extent to which it may be crucial to survivors of rape (and other forms of violence) to be afforded an opportunity to narrate what has happened to them and for asylum applicants to feel as if their case has been heard at its fullest. It risks cloaking disengagement as sympathy, and dissociation as (legal) rationality. What is more, it denies the reality that, in many cases, a more 'sensitive' approach would be to engage in careful questioning, perhaps through trained intermediaries, to elicit information without re-traumatising.

Despite these potential difficulties, many of our interviewees emphasised that this more detached approach was something that they had cultivated – consciously or otherwise – over time, to assist them in acting professionally. Though previous research is divided as to whether persons performing the same job-role over an extended period are more or less likely to experience vicarious trauma / burn-out<sup>53</sup>, many respondents were confident that they had, with experience, learned to better cope with the emotional aspects of their work. As one legal representative put it, for example, “when you start in this you hear all these stories and you get quite sort of caught up in it all and everything, but I’ve been doing it too long to get emotional about them any more...I just treat it all as just a story, I don’t think about the reality of it.”

But this reference to treating the narrative as just a story raises further, and potentially serious, concerns. Even where it begins as a self-protective psychological strategy, such an approach may develop into an automatically dismissive and sceptical attitude towards claimants, impacting on the way in

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<sup>51</sup> *The Democratic Republic of Congo Country of Origin Information Report* (Home Office Country of Origin Information Service, 9<sup>th</sup> March 2012).

<sup>52</sup> This refusal was overturned at appeal with the IJ citing lack of questioning by the UKBA about abuse in detention as a reasonable explanation for the appellant's initially partial disclosure.

<sup>53</sup> Cunningham, op. cit., n.39; A. Birck, 'Secondary Traumatization and Burnout in Professionals Working with Torture Survivors' (2002) 7 *Traumatology* 85

which their credibility is assessed, and their chances of receiving an open-minded evaluation. This was well-exemplified by one UKBA CO who maintained that “it is literally just standing back, reading it as you would read a book...and then, when you have a person in front of you and you are asking them questions, focussing on your questions...in your head, you have to go in thinking I don’t believe this story, because if you went in there believing that story, you couldn’t really do your job.” To the extent that this approach corresponds, or even partially contributes, to what critics have dubbed a ‘culture of disbelief’ within the UKBA<sup>54</sup>, it may also gain institutional confirmation, detrimentally impacting further on the quality of decision-making.

Adoption of strategies of detachment, when operationalised in maladaptive ways, has thus also been associated with a gradual process of ‘case hardening’. It is not simply that professionals may become more detached from the stories that they hear, failing to fully engage with their human and emotional dimensions. Over time, the various stories risk being received as routine and mundane, to the extent that it may become difficult for decision-makers to approach each case afresh and avoid creating hierarchies of persecution which demand ever higher levels of suffering to incite sympathy. As one UKBA PO put it, “to start with it was quite traumatic...and then, after a while, I suppose once you’ve read a lot of these cases and you tend to sort of get past the stage where they might, they’re probably not telling the truth anyway...I don’t know if you become hardened to it, well perhaps you do a little bit; you learn ways of dealing with it”.

Previous observers have raised the spectre of ‘case hardening’ in the asylum context,<sup>55</sup> and many of our participants were alert to this risk. One IJ

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<sup>54</sup> Amnesty International UK, *Getting it Right: How Home Office Decision-Making Fails Refugees* (2004); Independent Asylum Commission, ‘Fit for Purpose Yet? The Independent Asylum Commission’s Interim Findings’ (2008); R. Gupta, ‘Trapped by a Culture of Disbelief’ *The Guardian*, 5<sup>th</sup> September 2007; J. Souter, ‘A Culture of Disbelief or Denial? Critiquing Refugee Status Determination in the United Kingdom’ (2011) 1 *Oxford Monitor of Forced Migration* 48. For a more in-depth discussion of the culture of disbelief in the context of this research, see Baillot et al, forthcoming, op. cit. n.15.

<sup>55</sup> M. Travers, *The British Immigration Courts* (Policy Press 1999); UNHCR (2008) *Quality Initiative Project: Key Observations and Recommendations* (5<sup>th</sup> Report) 6 <[http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/5\\_QI\\_Key\\_Observations\\_and\\_Recommen](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/5_QI_Key_Observations_and_Recommen)

commented, for example, that “I think every judge recognises the danger that, as you hear more cases along the same lines, so you start becoming slightly tougher...because of the harrowing nature, you think oh well, that’s not as bad as that one, and then there’s a problem...you do get that sort of upping of the level.” At the same time, other respondents nonetheless confessed to falling into this tendency. One UKBA CO commented, “the job, once you have done it for a certain amount of time, ... you take the attitude of – I know you shouldn’t and this is one of the things they warn you in the training, you know, that every case is different and in every case there is a human being’s life at stake – but it does get to the point where it is the same grind, you hear the same story over and over again and it does, you know, it is human nature, you think ‘oh, I have heard this before’.” Meanwhile, a legal representative observed that “people are incredibly hardened to accounts of violence in this field and are no longer shocked to their socks as they ought to be, and horrified at the inhumanity of man.” Supporting the conclusion that case-hardening functions, at least in part, as an emotional coping strategy, moreover, some participants even reflected on its self-defensive benefits. As one IJ put it, “if you disbelieve everybody you see who has been tortured, then you don’t have to grapple with the emotional side of what it is to listen to somebody who has been tortured ... Judges become case hardened, they achieve a distance, but they achieve it at the expense of having any kind of empathy or compassion.”

## *2. The Buck Stops Where? Coping through Denial of Responsibility*

An alternative strategy which was frequently recounted by participants as a mechanism by which to cope with the ramifications of their professional actions, including their emotional impact, was to deny or shift ultimate responsibility. For many, the responsibility which came with their work – particularly where it involved preparing an applicant’s case, determining its veracity or making a decision to refuse or grant asylum – augmented

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[dations.pdf](#)>; Asylum Aid, *Relocation, Relocation: The Impact of Internal Relocation on Women Asylum-Seekers* (2008)  
<[http://www.asylumaid.org.uk/data/files/publications/89/Relocation\\_Relocation\\_research\\_report.pdf](http://www.asylumaid.org.uk/data/files/publications/89/Relocation_Relocation_research_report.pdf)>

significantly the emotional toll which was already experienced as a result of engaging routinely with traumatic narratives in tense environments.

This too required management in order for the professional to avoid becoming overwhelmed. There were some participants who dealt with this responsibility by embracing as fully as they could the importance of their task and becoming ever more conscientious. As one IJ put it, for example, “I can’t say I lose any sleep about it now, but I am too thorough. I write huge determinations which go on forever...That’s the only way I can live with myself, to make sure that I have investigated it as thoroughly as I would want my case to be investigated.” On the other hand, a large number of participants managed this emotional challenge by trivialising their role in securing a final outcome for the applicant, or shifting responsibility for it to other personnel or institutional factors.

A number of UKBA COs, for example, sought consolation in the fact that they were not the final decision-makers. They emphasised that their refusal of an applicant’s asylum claim was – in the words of one CO - “really only the start of a long road,” which would not in itself necessarily see a person removed, since there is the potential to apply to the tribunal for judicial reconsideration. Another CO suggested, “in the back of your mind as well, you know, this alone isn’t going to return them straight away, they have a right of appeal and so it will go and be reviewed by somebody else...they’ll make sure it’s the correct decision.” Similarly, another commented that “in terms of the responsibility that your decision has, you just have to think about the wider aims of the organisation and also know that we’re making the first decision...and that the applicant had other rights of appeal, so you’ve got to shift the responsibility on to someone else otherwise you would just get very depressed.”

Meanwhile, a number of IJs at the First Tier Tribunal emphasised that they too were not beyond review – as one put it, “you sign it off [the decision] and that is that. If you’ve got it wrong, the Court of Appeal or somebody will tell you.” Another commented “I’m perhaps not getting it right all the time but they have got the appeal option so if I have got it wrong then hopefully somebody will get

it right at some point.” For several IJs in particular, the emotional work that this insistence afforded did not go unacknowledged. One observed that “at the end of the day, we are only the bottom layer of a whole series of appeals that can go on and on and on...So it sort of numbs that bit about ‘if I make this decision, will this mean this person goes back and suffers this’, you know”; another referred to the fact that further appeal exists as a “nice comfort blanket” that cushions against the full weight of responsibility for the decision.

Once again, while reliance on such strategies may be understandable, and can doubtless perform a function in enabling decision-makers to better cope with the emotional dimensions of their work, they pose a number of risks in the asylum context. For one thing, this approach assumes that applicants will have both the understanding of the system and the financial means available to lodge an appeal. In a context in which there is significant evidence that asylum-seekers often do not properly understand the application process, this cannot be relied upon. Moreover, the substantial cuts to legal aid availability in asylum cases in the UK render it increasingly unlikely that applicants will have the means to make the kind of prolonged series of appeals that are theoretically available to them, and upon the existence of which many of our participants relied in order to mitigate their personal or professional responsibility.<sup>56</sup>

In addition, such an approach may underestimate the extent to which an initial refusal decision, particularly when made on the grounds of (in)credibility, can damage both the confidence of the appellant and the perception of her claim. As one NGO worker emphasised, “once they have an initial decision, and it can be a totally, totally wrong decision for lots of reasons, it is then very difficult to get that decision overturned.” Although the overturning of refusal decisions at the tribunal is by no means uncommon,<sup>57</sup> our interviews with UKBA POs indicated

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<sup>56</sup> Gibbs, op. cit., n.20

<sup>57</sup> In 2010, the First Tier Tribunal determined 17,930 appeals. 27% of these were allowed (Home Office, 2010: 20), raising concerns over the quality of initial UKBA decision-making: E. Smith, *Right First Time? Home Office Asylum Interviewing and Reasons for Refusal Letters* (Medical Foundation for the Care of Victims of Torture 2004); but see also Thomas, op. cit., n.12, p. 71; Asylum Aid, ‘Unsustainable: The Quality of Initial Decision-Making in Women’s Asylum Claims’ (2011) <<http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf>>; Home Office, ‘Quality and Efficiency Report: Thematic Review of Gender Issues in Asylum Claims’ (2011)



that they typically approach appeal cases with scepticism. As one put it, for example, “I think the attitude is, well, most of the time we don’t believe them [the appellants] anyway it’s just made up...It would be different if I were a Case Owner where I see everybody that comes into the country and I saw the people that were allowed, you know...(but) these are people that have been through and they have been found to be not believed...they’re not to be believed in the majority of cases.” Moreover, even where they may personally question the merits of an individual refusal decision, some POs reported to us that they still see it as their role to robustly defend that decision at the tribunal on behalf of the UKBA. For example, one told us: “Whatever happens you are going to try to knock that because you know, you’ve made a decision, you’ve got to defend the decision. If it was something that was absolutely glaring and it was obvious to me we’d made a mistake, then obviously we would look at it and maybe withdraw the decision and change it. But it tends not (sighs) that’s unlikely, we would probably still be fairly certain of what we’d said.” This kind of approach may impact negatively upon the overall tone of the hearing, the attendant capacity of the appellant to present her case, and the decision of the IJ.

For many of the legal and quasi-legal professionals that we interviewed, then, a reassuring way of managing the emotion associated with their decision-making was to defer responsibility for the final outcome to another, superior body or role-player. Meanwhile, for others, seeking refuge in a formalistic approach to their task in applying the law served a similar function. As one IJ put it, “what you’re looking for is not the truth I am afraid...but is there a sufficiency of evidence...So what I’m really doing is trying to work out is there a real risk on return and that way, that does kind of detach myself from the harrowing features... So I don’t get too emotionally embroiled in a case.” This strategy was vividly illustrated in one hearing we observed during which an unrepresented appellant, who had recounted a story of rape and domestic abuse, clearly agitated the presiding IJ by saying, in response to the invitation to provide a statement in reply to the UKBA’s submissions, that “if the decision is that I be deported to Pakistan, it is your right to kill me here.” Although the appellant broke down in tears immediately after this comment, the IJ offered her no

opportunity to compose herself, nor to provide a further statement, but instead responded in a rather ‘frosty’ tone – “I would like you to control yourself a moment. I want to explain my duty. It is not my duty to send you here or there. That is for the Home Office. My duty is to decide if you qualify to stay here in light of the law of this country. I have to work in the law. That is my job and all I can do.” A similar approach was evidenced, moreover, in another hearing we observed in which, responding to the appellant’s plea “to consider my case very carefully so that you please don’t send me back”, the IJ insisted “I don’t send anyone anywhere...If the appeal is dismissed, it is up to the Home Office to send you back or not. I am entirely independent of the Home Office. Only they make the decision as to who gets sent back. The decision I make is whether or not you should be recognised as a refugee or if you do not have a reason to remain in this country.”

Not only do these provide interesting examples where members of the judiciary, who were often the recipients of responsibility ‘buck-passing’ from UKBA personnel in our study, re-located responsibility back with the UKBA as the key administrative body operating on behalf of the Home Office, they also clearly illustrate a distancing of oneself from the real consequences of one’s decision by seeking refuge in the faceless formality of legal principle. Just as some respondents referred to a designated individual or institution further up the appeals chain that they could identify as having ‘real’ responsibility for the decisions that they merely initiate, these respondents undertook a similar approach by personifying the law and legal system in order to designate it as having its own agency, irrespective of their necessary function within the system’s operation. Such an approach is in line with previous work, exploring coping strategies amongst US public defenders, which found that they sought to absolve themselves of responsibility for their contributory actions.<sup>58</sup> It also chimes with concerns raised by Abrams and Kerner, who note that judges who try to disconnect from the affective impact of their work underplay the “daunting power” that they have over the lives of others.<sup>59</sup> While, once again,

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<sup>58</sup> D.R. Lynch, ‘In Their Own Words: Occupational Stress Among Public Defenders’ (1998) 34 *Criminal Law Bulletin* 473, at 491

<sup>59</sup> Abrams and Kerner, op. cit. (2006 & 2010), n.1

these tactics may assist decision-makers in coping with the emotional consequences of their work, they provide an artificial barrier that can slip into a lack of engagement with, and ownership over, the decisions that they take.

## MOVING FORWARDS: ALTERNATIVE STRATEGIES

We have traced two key strategies - of detachment and denial - recounted to us by a number of the asylum professionals that we interviewed and evidenced in the tribunal observations that we conducted. Each of these strategies was engaged with at a highly individual level. Nonetheless, it was evident that they were particularly heavily relied upon by legal and quasi-legal (UKBA) participants, who considered them to be not only personally useful but professionally appropriate. Detachment (at least where it stopped short of manifesting case-hardening) was associated positively with 'getting the job done', whilst denial was premised upon the existence of a well-functioning legal system in which the participant either formed only a small part or acted merely as an enforcer of its guiding principles. To this extent, we suggest that our professionals' defence of their use of these strategies often relied upon and bolstered a tendency to deny or label as 'unprofessional' the existence and influence of emotion within legal decision-making. In this section, we reflect briefly on what this might mean in terms of moving forward.

When participants were directly asked to reflect on how they coped with the emotional demands of their work, most recounted internal and informal strategies, rather than referring to any kind of institutional or professional support provided by their employers. Participants typically emphasised the importance of learning how to "look after yourself" and ensuring that one has hobbies or other "diversions" to alleviate the pressure of work. In line with previous research<sup>60</sup>, references to what were seen as positive coping mechanisms, such as exercise, yoga, and socialising were particularly frequent, as were comments suggesting that some participants chose to speak to family or friends in order to provide a release – although these comments were often

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<sup>60</sup> L. Schauben and P. Frazier, 'Vicarious Trauma: The Effects on Female Counsellors of Working With Sexual Violence Survivors' (1995) 19 *Psychology of Women Quarterly* 49

matched by statements from other participants indicating that friends and family were the last people that they wished to talk to, preferring instead to 'block out' the events of the working day when they got home.

It was not uncommon for participants to indicate that, where they felt they needed to, they would speak with work peers to "off-load" after a difficult session. Indeed, a number of respondents – particularly those working as UKBA COs - were very positive about the level of informal support that they received from colleagues in this way. As one put it, for example, "the Case Owners are an amazingly supportive group for each other." The difficulty with this is that it risks increasing the emotional burden on colleagues who themselves have had to confront challenging narratives and may be struggling to process these. It is also a solution which will not be available for many others working in the asylum process - specifically interpreters, IJs and many legal representatives - who tend to work in relative isolation and without the kind of collegial support of a number of similarly employed peers.

Beyond this, another source of concern associated with an exclusive reliance on peer-support mechanisms is that the core strategies for responding to emotional difficulties are thereby left to be conditioned by the internal parameters and culture of the organisation. Martin et al have argued that organisations have emotional cultures that "consist of language, rituals and meaning systems, including rules about the feelings workers should, and should not, feel and display."<sup>61</sup> By relying on peer groups to provide emotional support, there is a risk of stagnating received conventions, such that "staff learn to pay attention to (stress) and talk about it in the 'organisational' way."<sup>62</sup> This, in turn, may stifle genuine engagement with emotion and solidify "embedded trauma" *within* organisations.<sup>63</sup> This might be of particular concern in the context of the UKBA, where, as noted above, critics have identified other

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<sup>61</sup> P.Y. Martin et al, 'Crisis Work: Rape Work – Emotional Dilemmas in Work with Victims' in S. Fineman (ed.) *The Emotional Organisation: Passions and Power* (2008) 44, at 46

<sup>62</sup> S. Hormann and P. Vivian, 'Toward an Understand of Traumatized Organizations and How to Intervene in Them' (2005) 11 *Traumatology* 159, at 163

<sup>63</sup> *id*

co-existing cultures of scepticism and disbelief, which can further support the adoption of maladaptive emotional responses towards applicants' narratives.

Although such concerns might lead us rapidly to the conclusion that one productive way forward would be the instantiation of more professional, structured systems for supporting key actors in acknowledging and coping with the emotional demands imposed upon them by their asylum work, our findings indicate that this will not be a straightforward process. It is true that some of our participants commented unfavourably on what they felt was a lack of formal avenues for support within their organisations, in order to help them in dealing with the emotional impact of their job role - for example, structured processes for raising concerns with senior managers or being referred for specialist counselling. As one UKBA CO put it, "you have to cope with it on an individual level, but maybe more help from the organisation wouldn't go amiss." At the same time, however, in those organisations such as the UKBA where such structures - in the form of a referral for counselling - are formally in place, a large number of participants appeared to have a very limited awareness of their existence and often emphasised that they were unlikely to find it necessary to go beyond informal peer support. Another UKBA CO noted that she was "not aware of anything that we've got in place to help people....but I'm sure there are...I think if you needed to talk to someone there are, there would be, something available for you." Despite reporting that she had been "absolutely horrified" and "really quite upset" when she was first required to deal with cases involving rape, she went on to insist that "I've never been so upset that I've sort of felt the need to do that...I just sort of consider it as part of the job now...and you just learn to deal with it emotionally, I think". As discussed above, this learning to 'deal with it emotionally' may, however, mean clinging to defensive 'survival mechanisms'<sup>64</sup> that protect the well-being of the listener at the potential expense of a fair and full hearing for the applicant.

This is in line with the findings of previous research, involving criminal lawyers, which found that, notwithstanding evidence of high levels of subjective distress,

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<sup>64</sup> Lipsky op. cit., n.3

self-reported vicarious trauma, depression, and stress, only half of respondents had even considered discussing work-related distress with a supervisor, and far less had considered, or sought out, other forms of professional assistance.<sup>65</sup> The implication underpinning many of the responses of our participants in this regard was that seeking support for the emotional aspects of their role would be viewed as admitting a weakness or failure, or inability to perform one's work effectively, and that, as such, would not be something comfortably brought to the attention of senior managers (or indeed peers, to whom they also may feel a sense of accountability). This reinforces an approach within which, as Bandes puts it "acknowledging the role of emotion may brand one as not merely weak but downright unlawyerlike"<sup>66</sup>; indeed, it chimes with previous research exploring emotion in the legal context wherein those practices identified by professionals as optimal coping strategies (such as the availability on request of professional counselling / support) were nonetheless seen to be at odds with the realities of the juridical environment.<sup>67</sup> In the present study, there were some participants who intimated that the emotionally challenging nature of their work, coupled with a lack of appropriate support, did compromise their ability to perform their jobs optimally – as one UKBA employee put it, "as a Case Owner, you do want to be...compassionate to them, but it's quite difficult if you're being confronted with things that you're unable to deal with yourself". However, the extent to which such professionals would take advantage of the opportunity for additional, formalised support, in the absence of a substantial change to the organisational cultures of the bureaucratic and juridical institutions that currently operate in the context of asylum was unclear.

## CONCLUDING REMARKS

There can be little doubt that those who bear the heaviest emotional toll in the asylum process are those vulnerable and displaced people for whose protection the international refugee system was initially constructed. Paying attention to the distress and trauma of asylum applicants is crucial if we are to create an

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<sup>65</sup> Vrklevski & Franklin, *op. cit.*, n.35

<sup>66</sup> Bandes, *op. cit.*, n.1, p. 342; see also Harris & Schultz, *op. cit.*, n.1

<sup>67</sup> Jaffe et al, *op. cit.*, n.33

appropriately humane forum for the narration and evaluation of stories of persecution, flight and future risk. At the same time, however, professionals' repeated confrontation with narratives of persecution and violence, together with the constraints and complexities of asylum decision-making processes and structures, mean that they may have difficulty coping with the emotional demands and responsibilities associated with their work. That they should seek out strategies for managing this is far from surprising. Indeed, it speaks to what may well be the limits of our human ability to engage deeply and empathetically with the suffering of others without eventually becoming overwhelmed. But the creation, invocation and defence of these strategies does not occur in a vacuum, and the ways in which they are framed by the peculiar contours of the asylum environment must be reflected upon. This is an arena in which discretion is substantial, resources are tight and uncertainty abounds. However, wherever possible, institutional frameworks – offering both training and counselling – for the support and management of emotional labour must be offered, and their use by employees encouraged, if decision-makers and others working in the system are to undertake their daily tasks without running the risk of undermining the fairness of the process of asylum determination. For this to be effective, cultural shifts must take place as to notions of professionalism and effectiveness. Just as the emotion of applicants must be managed to ensure compelling, coherent and credible persecution narratives, so the emotion of decision-makers is often muted and contained in the pursuit of 'professional' outcomes. In a legal context in which emotion is rarely so easily quarantined and what constitutes an objectively rational conclusion is rarely so self-evident, we argue that these 'survival mechanisms'<sup>68</sup> should be monitored carefully lest they allow professionals to find their own refuge in distanced and distancing conceptions of legality that, in promoting coping strategies of detachment and denial, risk undermining justice.

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<sup>68</sup> Lipsky op. cit., n.3