

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 403

RECORD NO: 2021/776 JR

BETWEEN

D.A.

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND

THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Mr. Justice Heslin delivered on the 15th day of June 2022.

Introduction

1. In the present proceedings the Applicant seeks an order of *certiorari* quashing the decision of the International Protection Appeals Tribunal (“IPAT” or “the Tribunal”) of 23 July 2021, which was notified to him by means of a letter dated 27 July 2021 (“the decision”) to uphold the earlier negative decision of the International Protection Office (“IPO”) in respect of the Applicant’s application for international protection. The Oireachtas has tasked IPAT, not this Court, with decision-making powers for the purposes of an application for international protection. This court is not the decision-maker. The court’s role, as in all judicial review proceedings, is not to reach a view on the substantive issue, still less to substitute such a view for the one made by the decision-maker. Rather, this court is concerned with the way in which a decision has been made, not the *merits* of the decision taken. In other words, this court is concerned with the lawfulness of the decision challenged, but these proceedings do not constitute an appeal against the Tribunal’s decision.

Credibility

2. It is fair to say that Applicant’s case centres around the adverse credibility finding reached by IPAT which, contends the Applicant, were made unlawfully. Before looking at the relevant background and the various ways in which the Applicant contends that the adverse credibility findings were unlawfully made, it is useful to begin by referring to certain legal principles which are applicable to the assessment by IPAT of the credibility of the claims of an Applicant in the context of their application for international protection.

Applicable principles

3. Mr. Justice Cooke, in *I.R. v. Minister for Justice, Equality and Law Reform* [2015] 4 IR 144 (at para.11) gave the following guidance in relation to the appropriate approach to the assessment of credibility:

“So far as relevant to the issues dealt with in this judgment it seems to the court that the following principles might be said to emerge from that case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility to be carried out:-

1) the determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision maker and not by the court. The High

Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision makers;

2) on judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice;

3) there are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded;

4) the assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told;

5) a finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding;

6) the reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given;

7) a mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim;

8) when subjected to judicial review, a decision on credibility must be read as a whole and the court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person;

9) where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated; and

10) nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

Standard of proof

4. As was made clear by O'Regan J. at para. 3 of her decision in *O.N. v. Refugee Appeals Tribunal & Ors* [2017] IEHC 13, the correct standard of proof to be applied in assessing an Applicant's credibility is that of "the balance of probabilities, coupled with the affording to the Applicant of the benefit of doubt, in appropriate circumstances." This was reiterated by the learned Judge at para. 6 of her decision in *M.G. v. Refugee Appeals Tribunal & Ors* [2017] IEHC 94, wherein she stated that in *O.N.* the Court found that:

"...the correct standard of proof to be applied to past events was the balance of probabilities coupled, in appropriate circumstances, with the benefit of the doubt. The appropriate circumstances to attract the benefit of the doubt would be where the overall credibility of the Applicant is accepted."

Benefit of the doubt

5. S. 28 of the International Protection Act, 2015 ("the 2015 Act") concerns the "Assessment of facts and circumstances". S. 28(7) concerns the benefit of the doubt as regards aspects of an Applicant's Statements which are not supported by documentary or other evidence. S. 28(7) provides as follows:-

"(7) Where aspects of the Applicant's Statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that—

- (a) the Applicant has made a genuine effort to substantiate his or her application,*
- (b) all relevant elements at the Applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,*
- (c) the Applicant's Statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the Applicant's case,*
- (d) the Applicant has applied for international protection at the earliest possible time, unless the Applicant can demonstrate good reason for not having done so, and*
- (e) **the general credibility of the Applicant has been established.**"* (emphasis added)

6. It is clear from s.28(7)(e) that *before* the benefit of the doubt can be given in relation to undocumented aspects of an Applicant's claims, the Applicant's general credibility must be established. In other words, subject to the Applicant's general credibility having been established, undocumented aspects of the Applicant's case do not need to be confirmed (i.e. she or he can get the benefit of the doubt). The word "and" appears at the end of s.28(7)(d) meaning that, in order to avail of the benefit of the doubt (per s.28 (7)(e)), all the other aspects of s. 28 (7) (a) – (d) must also be satisfied.

7. In his judgment in *J.U.O.(Nigeria) v. IPAT* [2018] IEHC 710, Mr. Justice Humphreys made clear (at para. 16) that; "... *It is well established both in the UNHCR Handbook para 204 and in the International Protection Act 2015 s.28(7) that the principle of the benefit of the doubt simply does not apply unless the applicant's general credibility is already established.*"

8. It is also uncontroversial to say that it is not this Court's place to tell a decision-maker, to whom the Oireachtas has entrusted the relevant task, how to structure their decision or, for that matter, how to express it. The Court should also be extremely wary of challenges which, in substance, involve a criticism of the order in which the decision maker dealt with issues or which contend that the order in which matters were addressed suggests unlawfulness. This is particularly so in circumstances where a decision makes clear that all evidence was in fact considered.

9. Armed with the foregoing principles, I now propose to set out certain relevant facts, beginning with the background to the present proceedings.

Background

10. The Applicant is from Sunyani, Ghana and he was born on 25 December 1986. He has averred that he is married and has 3 children who reside in Ghana. He entered this State from Ghana, *via* Ethiopia, on 11 September 2018. On the same date, the Applicant completed an initial application form, giving notice that he was applying for international protection in this State in accordance with s. 15 of the International Protection Act 2015 ("the 2015 Act").

11. On 2 November 2018, a preliminary interview was conducted with the Applicant for the purposes of s. 13 of the 2015 Act. The Applicant was provided with, and duly completed, a very detailed "Application for International Protection Questionnaire" (the questionnaire). The Applicant completed the questionnaire, personally, and prior to retaining a solicitor. The questionnaire was received on 14 December 2018. A copy of the questionnaire comprised one of the exhibits which were before this court.

12. On 10 October 2019, the Applicant was interviewed pursuant to section 35 of the 2015 Act ("the s.35 interview"). The Applicant met with his solicitor two weeks prior to the s. 35 interview, at which point he found that he made a mistake in the questionnaire regarding questions 64(a) and (b).

13. The s.35 interview was conducted in the English language. The Applicant has averred that he speaks English (see para. 3 of the Applicant's affidavit, sworn 19 August 2021). A report of the said interview was prepared pursuant to section 35 (12) of the 2015 Act ("the s.35 Report") and it comprised exhibit "DA2" to the Applicant's affidavit. As can be seen therein, the Applicant confirmed that he understood the questions asked at interview (see Q 82, under the heading "closing questions").

14. At the beginning of the s.35 interview, the Applicant took the opportunity to make corrections with regard to his questionnaire (see Section 3 of same, under the heading "opening questions"). I will presently look at the corrections made. The Applicant submitted copies of various documents and references, directly and *via* his solicitor, to the International Protection Office ("the IPO").

15. By letter dated 6 Feb 2020, the Applicant was informed that the IPO had recommended that he be refused both refugee status and subsidiary protection. The Applicant was also informed that the second named respondent Minister was refusing him permission to remain in this State.

16. By letter dated 26 Feb 2020, the Applicant's solicitors lodged a notice of appeal to IPAT.

17. On 5 July 2021, the appeal proceeded before IPAT. The Applicant was the only witness at the hearing. He gave his evidence in person, having sworn an affirmation.

18. By means of a written decision of 27 July 2021, IPAT refused the Applicant's claim for international protection. This is the decision which is challenged in the present proceedings. By order made on 30 November 2021 (Meenan J.) leave was granted. No issue concerning delay arises.

Summary of the Applicant's evidence before IPAT

19. The decision challenged contains a summary of the Applicant's evidence at the hearing before the IPAT. This can be found between paras. [2.5] and [2.14] of the decision and it is not suggested that the summary is inaccurate. To understand the nature of the Applicant's claim to the Tribunal, it is appropriate to set out that summary, which is as follows:

"[2.5] The following is a summary of the Appellant's evidence at hearing before the Tribunal:

The Appellant last resided in Sunyani, Ghana. The Appellant is married with three children. The Appellant's wife and children remain in Ghana. The Appellant was educated to university level and worked as a bank manager until 2013 when he opened his own auto parts business.

[2.6] The Appellant was born into an idol worshipping family. The Appellant's father was a fetish priest. He died in 1992 when the Appellant was five. The Appellant's grandmother took over the role of fetish priest until the Appellant was old enough to do the role. The Appellant's grandmother died in 2013 but nobody took care of the idols between 2013 and 2016.

[2.7] In March 2016, members of the Appellant's family came to his auto parts business and asked him to come to a family meeting. At this meeting the Appellant was told that it was his duty to take care of the idols and that he was the fetish priest. The Appellant did not want to do the job as it was full time and required a lot of attention. The Appellant asked for two weeks to think about it. They called him two weeks later and the Appellant said that he was not interested.

[2.8] On 23rd August 2016, the Appellant was called to another meeting at the family home. The Appellant was accompanied by a friend but he was convinced to leave. The family members locked the Appellant up in the shrine house. Initially the Appellant thought it was a joke but he was then left in there for three days without food or water. The Appellant agreed to become a fetish priest in order to be released from this kidnapping. The Appellant went to hospital for three days afterwards.

[2.9] The family members kept coming to the Appellant's business to ask him to start his duties. The Appellant kept giving excuses.

[2.10] The Appellant converted to Christianity on 24th December 2017 when he was baptised in the Tano River.

[2.11] On 31st December 2017, the Appellant bought a gallon of fuel and burnt down the shrine in the family home as he kept on being harassed by his family. The Appellant was caught and beaten by his family members. The Appellant was brought to Greenhills Medical Centre by a taxi driver who saw him after the beating. The Appellant left the medical centre when he saw some of his family members there.

[2.12] The Appellant went to [by] Accra bus and checked into Panthyne General Hospital. The Appellant met a friend there who gave the Appellant accommodation for two weeks. The Appellant sold his car and travelled to South Africa, via Swaziland in March 2018. The Appellant was in South Africa for four months. The Appellant lost his passport there. When [he] travelled to the Ghanaian High Commissioner to get a replacement, he was stopped by the South African police who demanded a bribe before they would let him go. The Appellant decided to return to Ghana to get more money. He met a man named Serge from whom he bought a fake South African passport. The Appellant returned to Ghana in May 2018.

[2.13] The Appellant returned to his wife in Sunyani and stayed indoors. He was able to arrange the sale of his business over social media. The Appellant's wife collected the money which he used to travel to Ireland. The Appellant left Ghana on 11th September 2018 and travelled to Ireland via Ethiopia.

[2.14] If the Appellant returns to Ghana, he fears he will be killed by his family members for failing to become a fetish priest and burning their shrine."

Legal Issues/Questions

20. It is not in dispute that IPAT rejected the credibility of the Applicant's 'core' claim of kidnap and assault. Thus, central to these proceedings is the view formed by IPAT that the Applicant was not credible. That adverse credibility finding by IPAT is said to have been unlawfully reached. In the Applicant's written submissions, the issues arising in these proceedings are said to be encapsulated in the following 4 questions:

- (i) *Did the Tribunal err in finding that the Applicant's claimed past experiences were non-credible, by basing that conclusion on flawed findings set out in the decision concerning the police (and/or their significance to assessing the credibility of claims of past persecution); the Applicant's trust in the police; the Applicant's account of his experiences with his (sic) police and the reasons given for the manner in which he presented his evidence in that regard; and/or the relevant burdens of proof and tests concerning the capacity of the police to provide protection?*
- (ii) *Did the Tribunal in finding that the Applicant's claimed past experiences were non-credible by basing that conclusion on flawed findings set out in the decision concerning the Applicant's temporary return to Ghana?*
- (iii) *Did the Tribunal apply an unlawful test of credibility which requires acts of persecution to be reported to the police in order to be believed?*
- (iv) *Did the Tribunal act irrationally or unreasonably; apply the wrong legal tests; or fail to provide adequate reasons in their assessment of the reliability of the documents as provided by the Applicant in support of his claim.*

The decision challenged

21. The Tribunal's decision was lengthy, detailed and, in my view, set out with clarity in a coherent manner, with reference to various headings. During the course of this Court's judgment, I will make reference to certain passages from the Tribunal's decision but, for present purposes, it is sufficient to quote the headings which appear in the various sections of the decision, which comprise the following:

[1] Introduction & case history;

[2] Case facts and documents;

[3] Nationality/ Statelessness;

[4] Assessment of facts and circumstances;

[4.3] The appellant born into a family with traditional religious beliefs and then converted to Christianity - Country of origin information;

[4.5] Appellant's account of traditional beliefs and Christianity;

[4.6] The appellant was kidnapped and assaulted by members of his family for failing to become a fetish priest and burning their shrine - Section 27 (7) of the 2015 Act;

[4.7] Country of origin information;

[4.9] The appellant's interactions with the police;

[4.18] Country of origin information;

[4.22] Relevant case law;

[4.25] Conclusion on the appellant's narrative in respect of his interaction with the police;

[4.30] The appellant's travel to South Africa and return to Ghana;

[4.34] The documents submitted;

[4.40] Conclusion;

[5] *Analysis of well-founded fear;*

[6] *Conclusion on qualification for refugee status;*

[7] *Analysis of serious harm;*

[7.3] *Grounds for subsidiary protection;*

[7.4] *Death penalty or execution;*

[7.5] *Torture or inhuman or degrading treatment or punishment of a person in his or her country of origin;*

[7.6] *Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict;*

[8] *Conclusion on qualification for subsidiary protection and overall conclusion.*

Aspects accepted

22. As IPAT's decision makes clear, certain aspects of the Applicant's narrative were accepted including his nationality; date of birth; the fact he was born into a family with traditional religious beliefs; and that he later converted Christianity.

Documentary evidence

23. A reading of the decision as a whole confirms that IPAT did not come to a decision on credibility without also considering all other relevant evidence, including medical reports and COI information. At para [4.8] the Tribunal Stated that:

"The submitted country of origin information supports the Applicant's claim insofar as it demonstrates the existence of the position of fetish priest in Ghanaian society. It also indicates that there may be consequences to refusing such a position including social ostracism. The country of origin information indicates that such positions can be refused and indicates that there is little evidence of violence against traditional priests. However the Tribunal is satisfied that the appellant's claim does not run counter to the available general country of origin information.

The Tribunal also considered, *inter alia*, submissions by the Applicant's legal representative which were made with respect to COI information as can be seen from para. [4.18] where it is stated:

"The solicitor for the appellant submitted that it was plausible based on country of origin information that the police would not have dealt with a matter involving traditional religious belief and the appellant did not trust the police."

24. Paras. [4.18] to [4.21], inclusive, of the decision, refer to extracts from COI information (i.e. The US Department of State's *Country report on human rights practices Ghana 2018*; and Freedom House, *Freedom in the world 2019 – Ghana*). At para. [4.27] the Tribunal confirmed that it had "reviewed the country of origin information submitted", and went on to state, *inter alia*, that "It was not the perfect system for protection however the country of origin information indicates there was a functioning police force." From para [4.34], the Tribunal made specific reference to both of the medical documents submitted by the Applicant, dated 21 and 22 October, 2019, respectively. At para. [4.36] the Tribunal stated that: "The letters submitted are generally consistent with the narrative provided by the Appellant." As well as it being perfectly clear from the decision that these medical reports were considered, the Tribunal makes explicit, at para. [4.38] that they were considered "...when conducting the assessment of the appellant's credibility".

Two main areas

25. Counsel for the Applicant submitted that, insofar as a rejection of credibility was concerned, the first of what he described as two main areas, related to the issue of "reporting to the police", whereas the second

concerned “*returning to Ghana*” after the attack. This Court is very much aware that it is not its function to examine the evidence with a view to reaching a merits-based decision. Whilst keeping the foregoing principle ever in mind, it seems to me that, in order to assess the *lawfulness* of the adverse credibility finding, it is appropriate to look at the evidence upon which IPAT made the adverse credibility finding. Given that the Applicant’s counsel identified it as the first area, it is useful to begin with the issue of *reporting to the police*, starting with what the Applicant stated, or not, as regards this issue in his detailed questionnaire.

Questionnaire

26. Before looking at the information given, it is appropriate to note that the questionnaire which the Applicant completed is replete with statements, in the clearest of terms, which emphasise the central importance of completing the questionnaire truthfully, comprehensively and accurately.

Complete, true and accurate

27. The following examples suffice (with all page-references being to the ‘internal’ page numbers of the questionnaire; and any statements which are highlighted in ‘bold’ text reflecting the contents of the questionnaire itself):

“This questionnaire is a central part of your application for international protection in the State (Ireland) which you have made to the Minister for Justice and Equality (the Minister) and should be completed truthfully and comprehensively” (p. 1);

*“**You must be truthful and accurate in the information you provide.** Inconsistencies between the information that you provide in this questionnaire and your answers at interview, or other information or representations that you provide, may raise questions about the credibility of your claim. This may result in the refusal of your application...Equally, if you do not mention information relating to your claim... of which you are aware at this stage, but you seek to rely on that information later, there is a possibility that the credibility of your claim may be affected.”* (p. 3-4);

*“It is important that you answer **all** of the questions in this questionnaire fully and **truthfully.**”* (p.4)

Confirmation that the Applicant’s account was complete, true and accurate

28. Question 92 in the questionnaire contains the following statement which the Applicant made as to why he did not receive legal assistance in completing his questionnaire:

“Because it is my case and I can read and write so I did it by myself.” (p.59)

Furthermore, on internal page 61 of the questionnaire, the Applicant signed and printed his name by way of making the following declaration:

“I declare that the information provided in this questionnaire is complete true and accurate.”

“I did not report anything”

29. Question 62 in the questionnaire (internal p. 35) concerns the reasons and circumstances why international protection is sought. The Applicant’s answer to question 62 comprises internal pages 35 – 37 of the questionnaire and then continues after internal page 61, by way of a further 23-pages of handwritten narrative. As regards reporting to the police, the Applicant states the following:

*“...I started vomiting and I ask [my wife] to take me to hospital then she took me there. I was given some drips and treatment at the Sunyani Regional Hospital, by so doing **I spent 2 months at the hospital receiving treatment.** Due to this **I could not been able to report the matter to the police, and even if I had reported, nothing good will come out of it because the police are afraid**”*

of attending to such cases concerning Spiritual and idols, so I stop. I did not report anything."
(emphasis added)

In the foregoing Statement, the Applicant makes the following clear:

- (i) the Applicant did *not* report his assault to the police;
- (ii) the reason *why* he did not report the assault was because he was in hospital for a period of 2 months receiving treatment;
- (iii) *had* he reported the assault to the police (i.e. confirming for a second time that that he did *not* do so) it would not have benefited him;
- (iv) this is not said to be because he did not trust the police; or was afraid of the police; or regarded the police as corrupt; or that the police might want a bribe; or that he did not have money to pay a bribe; but for the very specific reason that the police are themselves *afraid* of involvement in cases concerning *idols*;
- (v) the Applicant then confirms for a third time that he did *not* report his assault, but he also makes very clear that he did not report *anything* (be that his assault or any other issue) to the police.

30. Question 65a. of the questionnaire (p. 39) asks: "*Did you report any incidents that happened to you... to the authorities in your country of origin...?*" and the answer given by the Applicant is to 'tick' the box marked "No". It is fair to say that this comprises a fourth time that the Applicant makes clear that he did not report anything to the police.

31. Question 65b. (also p.39) is: "*If yes, when and to whom did you report it? Please include any documents which may support this claim*", in response to which the Applicant answers is "N/A", thereby confirming, for fifth time, that he did not report anything to the police in Ghana. This is followed by question 65c. (again p.39) which asks: "*What action was taken by the authorities referred to in Question 65a?*" Once more the Applicant answers "N/A", confirming for a sixth time that he did not report anything to the police. Question 65d. (p. 40) is: "*If you did not report it, state clearly why you did not.*" The answer given by the Applicant was as follows: "*This is purely a traditional and it involves a lot of Spirituality and in Ghana our Constitution does not deal or support any Spiritual matters*".

32. By means of the foregoing answer, the Applicant confirms for a seventh time that he did not report anything to the police in Ghana. He is also very clear as to the *reason* why he reported nothing. The reason given, consistent with his answer to question 62, is because the matter was "*Traditional*" involving "*a lot of Spirituality*". It will also be recalled that the core element of the Applicant's claim is that his life is at risk *not* from the police in Ghana or any State actors, but from his own family, as a consequence of his refusal to act as a "fetish priest".

Questionnaire – corrections

33. As I mentioned earlier, the Applicant took the opportunity at the start of his s.35 interview to make certain corrections in relation to the answers he had previously given in his questionnaire. The need to make these corrections was said by the Applicant to have arisen as follows: "*...I did everything by myself. I did not get the opportunity to meet my solicitor. I just met him one-on-one just two weeks ago and it was then that I found out that I made a mistake on my questionnaire pages 64a & b. I want to make the corrections now if it is possible.*"

34. The corrections exclusively concerned questions 64a. and b. Neither of these questions related to reporting matters to the police in Ghana. Rather, in response to the question: "*What corrections do you want to make?*" the Applicant's answer was: "*I ticked death penalty in error. I want to say that I want to tick*

torture or inhumane treatment in that question." (see p.2 of the s.35 report). The foregoing comprised the only corrections which the Applicant wished to make. Immediately after giving notice of the foregoing corrections, and in response to the question: "Are you satisfied that the information you supplied in your questionnaire is true and accurate?" the Applicant Stated "Yes".

35. It is fair to say that by confirming, once more, at the start of his s. 35 interview that all the information in his questionnaire was true and accurate, the Applicant was confirming, *inter alia*, and for the eighth time, that he had not reported anything to the police in Ghana (see p.2 of s. 35 report).

The s.35 Interview

36. Internal page 15 of the s. 35 report begins with the following question and answer:

"Q52 - *Did you go to the police to report your problems/issues in Ghana?*

A - *No*"

It is fair to say that the foregoing is entirely consistent with what the Applicant stated, repeatedly, in his questionnaire: that he had not reported anything to the police. In other words, right up to and including the foregoing answer, the Applicant's account was clear and consistent and to the effect that he had neither reported the assault, nor any other problem or issue whatsoever, be that before or after the assault. A further exchange followed immediately afterwards:

"Q53 - *Can you tell me why you failed to report to the police?*

A - *I went to the police station first but they did not listen to me. They said it was purely a family and spiritual issue and so they cannot come in. They did not do anything and I went back home. Ever since then, anything concerning my case, I did not go to the police station again.*"

The Applicant's account, up to this point, was that he *never* went to the police and he was also clear and specific as to the *reasons* why. He now asserts that he *did* go to the police. Without purporting to be a decision-maker, it is uncontroversial to say that both accounts cannot be true and there is, on any fair and objective analysis, a fundamental inconsistency between not reporting anything and reporting something.

37. Leaving that aside, it is also fair to say that his assertion that he *did* go to the police is, in objective terms, inconsistent with a lack of trust in the police preventing him from going to them. Nor does the Applicant assert, at this point, any lack of trust in the police; or any fear of the police; or any apprehension that the police would seek a bribe; or were incompetent.

Opportunity to explain inconsistencies

38. The International Protection Officer immediately gave the Applicant an opportunity to explain the inconsistencies in his account, by means of a question which the Applicant answered as follows:

"Q54 - *In your questionnaire you stated that you did not report your problems to the police. In this interview, you just said that you went to the police station. Can you clarify the inconsistencies?*

A - *It was a mistake on my side. They did not even take my statement. I was thinking that if I say that I went there, I may not have anything to prove myself.*"

It seems clear that the Applicant's reference to a "*mistake*" was a reference to the account which he had given in his questionnaire multiple times and in response to interview Q.52 in his s.35 interview (i.e. that he had never gone to the police) and the reasons which he had given in his questionnaire (that he was in hospital for 2 months receiving treatment / the matter was purely "*Traditional*" and involved "*Spirituality*").

39. It is fair to say that, by means of the Applicant's answer to Q54, he was asserting (i) that the account given multiple times about never going to the police was *not* true; and (ii) that his explanation for giving an

untrue account in his questionnaire (and in response to Q 52 at the s.35 interview) was that, because he did not have proof that he had gone to the police in Ghana, he decided to say that he had never gone to the police. At Q59, the interviewer put the following question to the Applicant:

"Q59 - Country of origin information from Freedom in the World 2019 said that Ghana is a free country. Can you explain to me how you would not be able to avail of help or protection there?"

A - It is safe for some people and not for some others. If a whole army general and policemen are being killed and there are a lot of kidnappings going on and a lot of mob justice is not free. The police that are meant to protect us are being killed. The army officer is a cousin to the immediate former President. He was given a mob justice and was killed in a broad daylight."

It is fair to say that, in the foregoing answer the Applicant was making clear that the police in Ghana are *victims* of violence, not that the police were untrustworthy, or that he was in fear of them. The final page of the transcript from the s. 35 interview (internal p.21) contains *inter-alia* the following questions and answers:

"Q.82 – Did you understand the questions asked today?"

A – Yes.

Q.83 - Are you happy with the conduct of the interview?"

A - I am ok, but some questions were so tough.

Q.84 - Can you tell me the questions that were tough for you?"

A - About your questions on police protection."

40. At para. [4.9] onwards of its decision, the Tribunal referred to the account given by the Applicant of his interactions with the police in Ghana and pointed out the inconsistencies between what he said in his questionnaire and during the s.35 interview. The Tribunal also referred to the Applicant's evidence on the same topic, as given by him at the appeal hearing before it. This can be seen from para. [4.13] onwards:

"[4.13] At hearing before the Tribunal the appellant was asked by the presiding officer why he did not report the kidnapping and attacks to the police. The appellant replied that he went to the police but he had no proof, so they did not take a report. It was pointed out that the appellant was in possession of medical reports showing his injuries. The appellant then replied that the police do not deal with spiritual matters.

[4.14] The Tribunal asked the appellant when he went to the police. The appellant said he went in 2016, before the kidnapping and assaults, to complain he was being forced to become a fetish priest. The police said they would not do anything.

*[4.15] The Tribunal asked the appellant why he did not report the kidnapping and assaults to the police when they happened. **The appellant said that the police would want a bribe and the appellant did not have money.** The Tribunal pointed out that the appellant was able to fund his trip to South Africa and to Ireland with money. **The appellant replied that he did not report the assaults as he did not trust the police.***

[4.16] The Tribunal noted that the appellant had specifically stated in his questionnaire that he did not attend the police but this account had now changed. The appellant replied that he filled in the questionnaire incorrectly as he did not have any evidence of attending the police.

[4.17] The solicitor for the appellant submitted that it was plausible based on country of origin information that the police would not have dealt with a matter involving traditional religious belief and the appellant did not trust the police." (emphasis added)

41. It is fair to say that at no stage in his questionnaire or during his section 35 interview did the Applicant claim that he did not trust the police; or that the police would want a bribe; or that he did not have the money to pay a bribe to police. This was said for the first time at the appeal. From [4.25] onwards of the decision, the Tribunal set out its *“Conclusion on the appellant’s narrative in respect of his interaction with the police”*. This *“Conclusion”* begins as follows: *“The appellant has provided conflicting narratives in respect of whether he reported his fears to the police.”* The foregoing is undoubtedly true. The Tribunal then stated: *“In the questionnaire, the appellant specifically stated that he did not report matters to the police.”* Again, this is correct. The Tribunal continued: *“This narrative changed at the s.35 interview to a statement that he tried to make a report to the police but nothing was done.”* The foregoing is also correct. The Tribunal then stated: *“At hearing before the Tribunal, this was clarified to a statement that he tried to make a report to the police prior to suffering any harm from his family.”* Once more, this is correct. The Tribunal went on to say: *“The appellant asserted that the reason he failed to state this in his questionnaire was because he did not have any proof of his attempt to report matters to the police.”* Again, the foregoing is correct. The Tribunal’s decision proceeded as follows:

“[4.26] The Tribunal does not accept the explanation provided by the appellant as to why he stated in his questionnaire that he did not report matters to the police. The appellant specifically stated in his questionnaire that he did not attend the police. The appellant’s claim that he wrote this as he did not have any proof of reporting matters to the police is not accepted as reasonable. The inconsistent narratives provided by the appellant as to whether he reported his fears to the police or not undermine the credibility of his narrative and his general credibility.”

42. The foregoing adverse credibility finding was, in my view, one which was open to the Tribunal to reach, in light of the evidence before it. It was an adverse credibility finding which flowed from the conflicting accounts given by the Applicant at various stages. When summarising the position at para. [4.25] the Tribunal did not make any error of fact, nor did it rely on any error of fact to reach the adverse credibility finding on the issue of reporting to the police. The Tribunal manifestly had grounds to support this adverse conclusion on the Applicant’s credibility.

Different explanations

43. Later in the decision, the Tribunal, at para. [4.28] stated *inter-alia* the following, in relation to the issue of reporting to the police:

“When asked to account for his failure to report these serious incidents to the police, the appellant gave explanations which included that he had no evidence, the police do not deal with spiritual matters, he did not have money to bribe the police, and he did not trust the police. The Tribunal found the appellant evasive and hesitant at the hearing when dealing with this issue. Whenever it was pointed out to the appellant that a previous explanation was incoherent, the appellant provided a new explanation for his behaviour. The Tribunal is not satisfied that this is consistent with general credibility on the part of the appellant.”

Incoherent

44. In the foregoing extract from the Tribunal’s decision, reference is made to no less than four *different* explanations proffered by the Applicant in respect of his failure to report his assault to the police. Leaving entirely to one side the fact that, in his initial account he repeatedly stated that he never reported anything to the police, but in a later account he claimed to have made a report in 2016 (prior to the assault allegedly perpetrated by his family), it is clear from the evidence that those 4 different explanations were, in fact,

proffered by Applicant. It is not asserted by the Applicant that the Tribunal was wrong in finding that he had, in fact, given these various and differing accounts. As can also be seen from the foregoing, the Tribunal found that the Applicant gave *incoherent* explanations. There is a cogent connection between the foregoing and an adverse credibility finding.

Evasive

45. Nor was the giving of multiple different explanations and their incoherence the *only* basis for the adverse credibility findings, as the Tribunal's decision makes clear. It must be recalled that the Tribunal, unlike this Court, saw and heard the Applicant when he gave his evidence. It is in that context the Tribunal found the Applicant to be (i) *evasive*; (ii) *hesitant*; and (iii) someone who provided a *new* explanation for his behaviour whenever it was pointed out that a previous explanation was incoherent. There is no challenge made in these proceedings to the legitimacy of the Tribunal's finding that the Applicant was evasive and hesitant. A finding of *evasiveness* speaks to a deliberate unwillingness on the part of a witness to give a clear, or full, or honest answer to questions.

Hesitant

46. A finding of *hesitancy* speaks to delay in giving, or reluctance to give, answers as a witness in reaction to questions asked. This seems to me to be a finding which would be very difficult, if not impossible, to divine purely from a reading of words on a printed page, even where a full transcript of the relevant appeal was available.

Demeanour and reaction

47. The foregoing underlines the reality that it was the Tribunal member who had the opportunity to hear and see the witness and to observe his demeanour when he gave his testimony and it seems to me that there is no legitimate basis, in the present case, upon which this court could take the view that these findings of evasiveness and hesitancy could be 'second-guessed'. The Tribunal's findings that the Applicant was evasive and hesitant as a witness bring into sharp focus the significance of the 8th principle outlined by Cooke J. in *I.R.* to the effect that, as well as reading the decision as a whole, this Court must "...be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of **the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an Applicant when testifying in person**" (emphasis added). The decision challenged was one which was based, *inter alia*, on findings which the Tribunal was in a unique position to reach, namely, that the Applicant was evasive and hesitant in his testimony.

Providing a new explanation

48. Similar comments apply in relation to the Tribunal's finding that the Applicant was someone who provided a *new* explanation when it was pointed out that the previous explanation was incoherent. To be someone prepared to offer a *new* explanation when it was pointed out that a prior explanation was incoherent, speaks directly to the preparedness of the witness to give testimony which is truthful and comprehensive. This is also finding which speaks directly to credibility.

The Applicant's reliance on *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297

49. With reference to the issue of reporting to the police, the Tribunal found that the Applicant's account lacked credibility because he gave mutually inconsistent accounts at different points; and was evasive and hesitant as a witness; and was someone willing to give a new explanation in an effort to explain incoherent

explanations previously given. The factual position in the present case is materially different to that which the Court of Appeal (Hogan J.) dealt with in *R.A.*, upon which the Applicant's counsel relied.

50. The *R.A* case concerned a national of the Ivory Coast whose arrival in this State on 12 May 2011 coincided with intense civil conflict in his home country. That was borne out by the COI information which was available to the RAT. However, (wholly unlike the position in the present case) the Tribunal in *R.A.* did not refer to the COI at all, in considering whether the Applicant's account might be true. The veracity of the Applicant's account – that his house had been burnt down by militia on 11 April 2011 and that he had gone into hiding on that day – was central to the entire credibility assessment in the case. It was in those particular circumstances, that Mr Justice Hogan found that at least some reference to the COI information was required; and the Tribunal had failed to consider the credibility of the Applicant's claim in the context of relevant COI information, thus rendering the decision invalid.

51. As Hogan J. explained (at para. 61) in *R.A.*, the Tribunal concluded that the Applicant could not have been at risk because of his basic lack of knowledge of certain details concerning the political state of affairs in the Ivory Coast in 2011 and the nature of the conflict between various factions. The learned judge went on to state: "*The premise of the adverse credibility finding was that anyone who had in fact participated in these political activities would have had a far greater knowledge of the relevant detail than this Applicant appeared to have had*". It was in the foregoing context that Hogan J. held that it was incumbent on the Tribunal to assess the documentary evidence.

The premise for the decision

52. The factual position in this case and the role of COI information in the decision are utterly different to *R.A.* Throughout his questionnaire, the Applicant made clear that he had reported *nothing* to the police. Moreover, he clearly stated that this would have been pointless, not because he did not trust the police, but because the latter are afraid of involvement in *spiritual* matters. As the Tribunal accurately noted in its decision, the Applicant subsequently gave materially different accounts.

53. The premise of the adverse credibility finding was entirely different to that in *R.A* and involved no unresolved tension with aspects of country of origin information or the medical reports. The premise underpinning the Tribunal's decision in this case was that the Applicant could not be believed as at different stages he gave what were materially different and inconsistent accounts; incoherent explanations; and was someone willing to offer a new explanation whenever it was pointed out that a previous explanation was incoherent (alleged lack of trust in the police being only *one* of many different reasons proffered by the Applicant in a belated effort to try to explain inconsistencies identified). Moreover, that adverse credibility finding was not reached on the basis of a 'papers-only' appeal, but in circumstances where the Tribunal saw and heard the Applicant and could observe his demeanour and, having done so, also found him to have been evasive and hesitant in his evidence. The foregoing was the substantive basis for the Tribunal's conclusion as to the Applicant's credibility and the process by which it was arrived and the evaluation conducted by the Tribunal can be readily understood by any objective reading of the decision as a whole. This was a materially different decision to that in *R.A.* in which the Applicant did not give different and inconsistent accounts or incoherent explanations, nor was found to be evasive and willing to change his evidence. In short, COI information had a very different significance in *R.A.* due to the very different premise for the decision.

54. In the present case, again unlike the situation in *R.A.*, the Tribunal *did* refer to the documentary evidence, comprising both COI information and medical reports, in its decision. There can be no doubt about the fact that the Tribunal considered same. I am entirely satisfied that in the present case the Tribunal

member complied, in full, with the principles outlined by Cooke J in *I.R.* in the manner in which they were commented upon by the Court of Appeal in *R.A.* In the present case, the Tribunal assessed the Applicant's credibility based on a consideration of *all* evidence which was before the Tribunal. In other words, the evidence does not support a finding that credibility was assessed in a 'vacuum' divorced from any consideration of the documentary evidence. It is clear that the entirety of the evidence was considered 'in the round' and the Tribunal's credibility findings emerged after a fair and rational analysis of same.

55. I reject the contention, which is advanced on behalf of the Applicant in the present case, that the Tribunal was under an obligation, which it failed to discharge, to set out a *fuller* analysis of the documentary evidence. On the facts of this case there was no additional but undischarged obligation flowing from the *ratio* of or *obiter* guidance given in *R.A.* Furthermore, and contrary to what is asserted in the Applicant's submissions, the Tribunal did not make any 'finding' that the Applicant lacked trust in the police. Rather, in the manner dealt with at para. [4.29] of the decision, the Tribunal considered whether a lack of trust in the police would reasonably explain non-reporting.

56. This is not a situation where the Applicant consistently claimed that he did not report anything to the police because he did not trust them, but the Tribunal found the police to be trustworthy having regard to country of origin information and the foregoing represented the *premise* of the Tribunal's decision. If that were the position (and it is not) the Tribunal might well have had an obligation to provide a fuller explanation as to how the Tribunal had dealt with the documentary evidence. In short, on the particular facts of this case, I am satisfied that purported reliance on *R.A.* cannot avail the Applicant in this case.

The Applicant's return to Ghana

57. As I turn to look at the "second area" in respect of which adverse credibility findings were reached, I wish to make clear that I do so because this was the sequence followed by the Applicant's counsel in oral submissions. This should not be taken as conveying the impression that an analysis of parts of a decision as if they were hermetically-sealed and stand-alone is legitimate. It is not. The Tribunal's decision comprises a unitary whole and must be read as such. On the Applicant's account he left Ghana because he was in fear for his life following a serious assault perpetrated by his family and he travelled to South Africa *via* Swaziland. The Applicant also claimed to have left South Africa and *returned* to Ghana on 1 June 2018. The section 35 report contains *inter alia*, the following questions and answers (see pages 14 and 17):

"Q49 - After leaving Panthyne General Hospital where did you go to?"

A - I went to a friend's house and stayed for about a month and a week in Accra in a place called Dome-Kwabranya.

...

Q64 - Can you tell me why you returned to Ghana if you were really in fear of your life in Ghana?"

A - Accommodation was so hard there and asylum seeking there was not secure and I was very sick also.

Q65 - Were you threatened when you returned to your home in Ghana?"

A - When I went back to Ghana, I got to Sunyani at 2 a.m. and went straight to the house. Only my wife knew. I hid in the house until I came here.

Q66 - How long did you spend in Ghana before travelling to Ireland?"

A - Three months.

Q76- It is not credible that you would be in Ghana after returning from South Africa and not be attacked if you have a genuine fear. Can you comment?"

A - I was very sick and no one knew that I was in the house. I was in the room and growing lean."

From para. [4.30] onwards, the Tribunal's decision dealt with this issue of the Applicant's return to Ghana, as follows:

"[4.30] According to the Appellant's account at hearing before the Tribunal, he travelled to South Africa from Ghana where he stayed between March and May 2018. At the S. 35 interview, the Appellant was asked why he returned to Ghana if he was in fear of his life there. He stated "accommodation was so hard there and asylum seeking there was not secure and I was very sick also" (Q64,s35)

[4.31] At hearing, the Presenting Officer asked the Appellant whether anything happened to him after he returned to Ghana from South Africa. The Appellant replied that he went to Sunyani late at night and stayed indoors until he left Ghana. It was put that it was strange the Appellant returned to Ghana if he was in fear of his life. The Appellant replied that he returned so that he could sell his shop. The Appellant sold the shop over social media and his wife met the purchaser to complete the sale.

[4.32] When asked by the Tribunal why he returned to Ghana, the Appellant replied that he ran out of money in South Africa. The Tribunal asked the Appellant why he returned to his home if he was in fear of being killed there. The Appellant replied that he had no friends in Accra. The Tribunal noted that the Appellant had stayed with a friend in Accra previously so the statement that he had no friends in Accra was incorrect. The Tribunal referred the Appellant to Q 49 of S 35 interview where he discussed staying with a friend in Accra. The Appellant replied that the house he had previously stayed in was rented out and that he did not want to bother his friends in Accra.

[4.33] The Tribunal is not satisfied that the appellant has provided a reasonable explanation for his decision to return from South Africa to Sunyani. The Appellant has provided multiple reasons for this return involving difficulty with accommodation in South Africa, illness, a desire to sell his shop and lack of money. If these events occurred and they genuinely put the appellant in fear of his life, it would be expected that the appellant would not voluntarily return to Sunyani. The Tribunal is not satisfied that any of these multiple reasons is a sufficient explanation for returning to Sunyani in the event the appellant genuinely believed that he would be killed there on his return. The decision of the appellant to return to Sunyani undermines the subjective element of the appellant's claimed fear of persecution in Ghana and the credibility that any of these events occurred."

58. Despite the submissions made on behalf of the Applicant to that effect, this was not a situation where the Tribunal simply found the Applicant's reasons to be *"insufficient"*. To suggest this is for the Applicant to zone in on a single word and to construct an argument which seems to me to both involve over-scrutiny of how the Tribunal member expressed himself and to ignore the substance of the decision, read as a whole. At the heart of the Tribunal's finding was not the adequacy of a specific reason or reasons, but the multiplicity of same and the incoherence of the Applicant's shifting account as well as findings (seen with reference to the *reporting to the police* issue) that he was evasive and hesitant and willing to offer new explanations. With regard to the *return to Ghana* issue, the Tribunal's finding that the Applicant provided *multiple* reasons for his return from South Africa to Ghana is, without doubt, factually correct. It is also factually correct that those different reasons comprised (i) difficulty with accommodation in South Africa; (ii) illness; (iii) a desire to sell his shop; and (iv) lack of money.

Core claim

59. It is clear that underpinning the adverse credibility findings concerning his return to Ghana was the fact that the Applicant gave multiple different reasons for his return and the Tribunal's view that his return to Ghana undermined the core claim and the credibility of the Applicant's account. The foregoing seems to me to be the adverse credibility finding which was open to the Tribunal to make, having regard to the evidence before it. Having assessed all evidence in a fair, rational, and lawful manner, the Tribunal reached adverse credibility findings, by reason of which the Tribunal did not accept the Applicant's claim that he was kidnapped and assaulted by members of his family. As this was at the very core of his claim, his application for international protection was refused.

Required to report

60. The submission made on behalf of the Applicant that the Tribunal *required* him to report serious incidents to the police (or laid down such a test) is simply not borne out by an objective reading of the entirety of the Tribunal's decision. Rather, the Tribunal asked itself whether, if these events occurred, it was reasonable to expect that the Applicant would not have reported them to the police and came to the view that it was not. That view was neither irrational or unreasonable in the sense those terms are commonly understood or have a meaning in the judicial review context. It was not at all impermissible for the Tribunal to consider whether the Applicant had a good explanation for not reporting matters to the police. It is also fair to say that the Applicant accepted that the reporting of acts of persecution can be an *indicia* of the credibility of a subjective fear of harm. In truth, the essence of the proposition made by the Applicant in these proceedings is that his reasons were coherent and that the Tribunal erred in finding otherwise. That proposition is utterly undermined by any objective review of the evidence. That is not to suggest that this Court should review facts to reach a merits-based decision. That is not the case, but it is clear that the decision-maker came to a view, having considered all evidence, which was reached lawfully, with a legitimate, rational, obvious and cogent connection between the evidence and the Tribunal's findings.

Positives and negatives

61. The Applicant's purported reliance on *DVTS v. Minister for Justice* [2008] 3 IR 476 cannot avail him. This is not a situation where there was conflicting COI information and the Tribunal failed to explain preferring one account over another. The COI information which was before the Tribunal contained both positives and negatives in relation to the policing situation in Ghana. It referred, *inter alia*, to due process being mostly upheld, the police being responsible for law and order, and specialised units being in existence to address different types of crimes. It also referred, *inter alia*, to incidents of police brutality, corruption and negligence. Reflecting this, the Tribunal Stated that there was "*not the perfect system for protection*" but "*there was a functioning police force*". This was not an unexplained rejection of COI information, but a legitimate summing-up of the position disclosed by the COI information. Nor did any COI information state that the police could not be trusted insofar as traditional religious matters were concerned. To say the foregoing should not distract from the *premise* of the Tribunal's decision which did not involve a contest between whether the police could, or could not, be trusted insofar as dealing with spiritual issues. Rather, the premise for the decision was that the Applicant was unable to persuade the Tribunal of his credibility in general and the Tribunal's decision was, in my view, rational, reasoned, clear and lawful.

State protection

62. Paras. [4.22] to [4.24], inclusive, of the decision comprised a setting-out of legal principles in relation to, *inter alia*, the weight to be given to country of origin information and other evidence (*OAA v. RAT* [2007] IEHC 169 (Feeney J)); the rebuttable presumption that a State is capable of protecting its citizens (*GOB v. Minister for Justice Equality and Law Reform* [2008] IEHC 229 (Birmingham J., as he then was)); and that the absence of a reasonable explanation for the failure to seek protection can go towards an Applicant's credibility (*TO v Refugee Appeals Tribunal & Anor* [2013] IEHC 258 (Mac Eochaidh J)). The Applicant submits that, whereas the 2015 Act provides for a specific presumption that a country is safe for an applicant by virtue of section 33, such a country is required to be designated by the Minister, pursuant to s. 72, whereas Ghana is not so designated. Relying on the *expressio unius* doctrine, it is contended that no statutory presumption arises, and a similar submission is made in relation to the Procedures Directive (2005/85/EC) with particular reference to Article 31 thereof (similar to s. 33 of the 2015 Act). Reliance is also placed on Hathaway and Foster's "*The Law of Refugee Status*" (2nd ed. pp 319 – 323) wherein the authors suggest that there should be no presumption of State protection. Furthermore, the Applicant contends that such a presumption "seems inconsistent with" Article 3 ECHR/Article 4 of the Charter and/or the State's duty of co-operation. The foregoing submissions made on behalf of the Applicant seem to me to ignore what was plainly the *premise* for the Tribunal's decision. As I observed elsewhere in this judgment, this was by no means a situation where, from the outset of making his claim for international protection, this was an Applicant who claimed that he could not trust the police and the basis for the Tribunal's decision hinged on findings as regards the extent of State protection, in particular that the police could be trusted in respect of dealing with matters involving traditional religious beliefs. In reality, the fundamental basis for the Tribunal's decision was on entirely different grounds, as a reading of the entire decision makes clear. The Tribunal is explicit as to those grounds and I have referred to them in this judgment. Furthermore, the Applicant has not demonstrated that, insofar as the Tribunal considered State protection in the context of a credibility assessment, that the Tribunal acted unlawfully. The Applicant has submitted no authority for the proposition that the rebuttable presumption, that a State is capable of protection its citizens from non-State actors, has been disappplied by statute or is inconsistent with EU law.

General credibility/Benefit of Doubt

63. Pursuant to s.28 of the 2015 Act, the Tribunal was entitled to consider the Applicant's general credibility. Whether the Applicant could explain the non-reporting of the alleged crime (being the very subject matter of his protection claim) was a matter permissible for the Tribunal to consider, both in logic and in law. The foregoing seems to me to demonstrate how thoroughly the Tribunal considered all matters, notwithstanding the reality that, in giving his account, the Applicant proffered two wholly incompatible versions, namely, that he had *not* reported anything to the police and that he *had*. There was no error on the part of the Tribunal by not applying the s.28(7) "*benefit of the doubt*" provision in the 2015 Act, as to whether there was a lack of trust in the police. The benefit of the doubt provision only applies where general credibility has been established. As Humphreys J. Stated (at para.16) in *JUO (Nigeria) v. IPAT* [2018] IEHC 710:

"It is well-established both in the UNHCR Handbook para. 204 and in the International Protection Act 2015 s. 28(7) that the principle of the benefit of the doubt simply does not arise unless the Applicant's general credibility is already established."

It seems to me that the focus by the Applicant in his case before this Court on the issue of *lack of trust in the police* and the attempt to build on that issue a case to the effect that there was insufficient engagement

with documentary evidence etc. is, in reality, (i) an impermissible effort to divorce this issue from the Tribunal's decision as a whole which also ignores (ii) that lack of trust in the police was never asserted in the extremely detailed questionnaire comprising the account the Applicant gave, knowing (the questionnaire having stated it with crystal clarity) that his account needed to be that truthful, accurate and comprehensive; (iii) that lack of trust in the police, as well as being a reason which emerged at the 11th hour, was just one of several reasons given by someone the Tribunal found to be evasive and hesitant and willing to give a new reason when it was pointed out that prior accounts were incoherent.

Weight

64. The Tribunal made explicit that it had considered the Applicant's medical reports. It is well settled that the weight to attach to such evidence is quintessentially a matter for the decision-maker (see Birmingham J. in *M.E. v RAT* [2008] IEHC 192 at para 27). It was lawful for the Tribunal to conclude that it should not place weight on the medical reports on the basis that it did not find the Applicant to be generally credible. Insofar as the Applicant contends that his medical reports were documents supportive of his claim and the Tribunal was wrong not to have employed the s.28(7) 'benefit of the doubt' provision regarding his claim of kidnap and assault, the evidence discloses that full assessment of credibility taking account of all evidence was conducted by the Tribunal without, as well as with, s.28(7) of the 2015 Act.

No fundamental change

65. In light of the evidence before this court, I am bound to reject the submission that there was "*no fundamental change to the evidence*" of the Applicant as regards his interactions with the police. That proposition is fatally undermined by an examination of the facts. Nor does an examination of the decision support the submission that the Tribunal unreasonably rejected the Applicant's claim that he did not have money to bribe police. It is clear that this was one (of several) explanations proffered by the Applicant which had not featured at all in his claim as detailed in his questionnaire. It is plain that the Tribunal's consideration of this was bound up with the consideration of general credibility, the ultimate conclusion being that the Tribunal did not find persuasive the Applicant's supplying of a new explanation for his decisions when it was pointed out that prior explanations were incoherent.

Saw and heard the witness

66. Furthermore, this adverse credibility finding was reached by a Tribunal who, unlike this Court in judicial review, saw and heard the Applicant when he gave his testimony and was in a position to observe his demeanour. As Humphreys J. pointed out in *JUO (Nigeria) v. IPAT* [2018] IEHC 710 (at para. 13):

"It should also be emphasised, in credibility cases in particular, that the Tribunal member is an independent statutory quasi-judicial office holder who has seen and heard the witnesses and is almost always in a much better position than the court on judicial review to decide whether an account given by a particular applicant is credible."

Conclusion

67. The reasons for the decision are undoubtedly sufficient for the Applicant to understand the substantive basis for the conclusion on credibility. That conclusion, although reached by a Tribunal member who considered the entirety of the evidence before him, including the Applicant's medical reports and country of origin information, flowed from the inconsistencies in the Applicant's account, the multiple explanations given, the incoherence of same, his willingness to proffer a new explanation when a prior account was pointed out to be incoherent as well as the Tribunal's findings that he was evasive and hesitant as a witness. In my

view, the Applicant has fallen far short of demonstrating that the adverse credibility findings were other than fairly and lawfully reached by the Tribunal member who considered all available evidence and information, taken as a whole. The reasons underpinning the decision comprise facts in respect of which the Tribunal made no error and which have a clear, cogent and legitimate connection with the adverse credibility finding reached by the Tribunal. Regardless of the undoubted skill with the case was put on behalf of the Applicant, this Court is satisfied that the decision was the result of a lawful process and the answer to all four questions posed in the Applicant's submissions is in the negative. There was no error on the part of the Tribunal and no infringement of any legal provision, or principle of natural or constitutional justice, which would justify the setting-aside of the decision. Rather, the decision represents the outcome of a very careful and entirely lawful approach on the part of the Tribunal member tasked by the Oireachtas to make the decision which, in the view of this Court is unimpeachable. For these reasons the Applicant's claim should be dismissed.

68. On 24 March 2020 the following statement issued in respect of the delivery of judgments electronically: *"The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."* Regarding the question of costs, the Respondents have been entirely successful and the Applicant has been entirely unsuccessful. Thus, my preliminary view is that the 'normal' rule that costs should 'follow the event' applies. The parties should correspond with each other, forthwith, regarding the appropriate form of order including as to costs which should be made. In default of agreement between the parties on any issue, short written submissions should be emailed to the registrar within 14 days.