Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01624/2019**
(V)

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
via Microsoft Teams	
On Monday 24 January 2022	**On Wednesday 09 March 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M S (AFGHANISTAN)
[Anonymity direction made]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Chirico, Counsel instructed by Ata & Co Solicitor
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim and although there is presently no question of the Appellant being returned to Afghanistan, I consider it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

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DECISION AND DIRECTIONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Athwal promulgated on 16 February 2021 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 6 February 2019 on all grounds. The Respondent had accepted that the Appellant cannot be returned to Afghanistan because he would face a real risk of breach of his rights under Article 3 ECHR. He has been granted limited leave to remain in accordance with the Respondent's Restricted Leave policy.

2. The appeal was concerned only with whether the Appellant is excluded from the protection of the Refugee Convention ("the Convention") and humanitarian protection by reason of his actions in Afghanistan when he was a "committed member of the Taliban" (using the words in the Appellant's grounds of appeal). Judge Athwal concluded that the Appellant is not a refugee or entitled to humanitarian protection as he is excluded by virtue of Article 1F(a) of the Convention ("Article 1F(a)").

3. The Appellant came to the UK in April 2006 and claimed protection on the basis that he was at risk as a result of a blood feud. His claim was refused and his appeal against that decision dismissed. He was returned to Afghanistan in August 2006 from where he relocated to Pakistan, assisted by UNHCR. The Appellant returned to the UK in April 2010 and again claimed asylum, this time expressing a fear of retaliation for having been a member of the Taliban. He said he had not mentioned this claim previously because he feared that the UK authorities would imprison him. He absconded for a short time in 2011. His second claim was refused by the decision under appeal.

4. The Appellant was recruited into the Taliban as a child between 1992 and 1995. He was imprisoned by the Northern Alliance and tortured. As I will come to, the Respondent does not dispute this account. The Appellant resumed his Taliban activities after 1998. The Respondent asserts that he was at this time complicit in acts which amounted to torture. The Appellant disputes this. He does not deny he was an active member. He denies however that his actions amounted to torture, and says that he was not responsible for acts of torture by others.

5. The Appellant suffers from complex mental health problems. He has been diagnosed as suffering from Post-Traumatic Stress Disorder ("PTSD"), Autistic Spectrum Disorder ("ASD") and Somatic Symptom Disorder ("SSD"). The Appellant relied in this regard on expert evidence from Professor Katona and Dr Heke. The experts also opined that the Appellant's mental health problems may have resulted in reduced insight. The Appellant also relies on his age when he was first recruited as mitigation for his actions. It is suggested that "the Appellant did not

have the necessary culpability in order to justify the exclusion" ([24] of the Decision).

6. The Judge considered the appeal having regard to section 55 Immigration, Nationality and Asylum Act 2005 ("Section 55") which permits the Respondent to certify that an asylum claimant is not entitled to the protection of Article 33(1) of the Convention because Article 1F applies. The Judge also took into account certain articles of the Rome Statute of the International Criminal Court 1998 ("the Rome Statute"). She also had regard to the Supreme Court's judgments in JS (Sri Lanka) v Secretary of State for the Home Department [2010] UKSC 15 ("JS (Sri Lanka)") and Al-Siri and another v Secretary of State for the Home Department [2012] UKSC 44 ("Al-Siri") as well as the Qualification Regulations 2006 and the UNHCR 2003 guidelines.

7. Having considered the evidence taking into account also the Appellant's vulnerability as a witness, the Judge found that the Appellant "was fully aware of the abuses being committed by the Taliban" and of the consequences of his action ([100]). Based on her assessment of the expert evidence, the Judge found at [101] of the Decision that she was "not satisfied that [the evidence was] sufficient to establish a lack of mental capacity on the Appellant's part". She concluded that the Appellant had carried out acts of torture against individuals and that "he was part of the organised machinery of the Taliban that allowed the leadership to maintain their power and control over the general population". She therefore upheld the Respondent's certification under Section 55 and dismissed the appeal on the basis that the Appellant should be excluded from the Convention and the grant of humanitarian protection.

8. The Appellant appeals the Decision on three grounds as follows:

> Ground 1: Failure to make findings on material issues and/or failure to take those issues into account when determining the appeal.
>
> Ground 2: Failure to have regard to evidence relating to credibility.
>
> Ground 3: Perverse findings about the Appellant's activities between 1995 and 1999 and/or procedural unfairness in respect of them.

9. Permission to appeal was refused by First-tier Tribunal Judge Zucker on 20 April 2021 in the following terms so far as relevant:

> "… 2. Ground 1 – Whilst it is arguable that the judge failed to make some preliminary findings relevant to the issue whether he should be excluded from the Refugee Convention (Article 1F) as more particularly set out at paragraph 11 of the grounds this is not material because the Judge did consider the appellant's mental state, vulnerabilities and the fact that the appellant's conduct continued after childhood (see paragraph 105).

> 3. Findings in respect of the Appellant's credibility were open to the judge. This goes to Grounds 2 & 3.
>
> 4. There is no reasonable prospect of the Upper Tribunal coming to a different view as to the eventual outcome in this appeal."

10. On renewed application to this Tribunal, permission to appeal was granted by Upper Tribunal Judge Grubb on 10 May 2021 as follows (so far as relevant):

> "… 3. Ground 1 is arguable. It was arguably relevant to consider, and therefore make findings upon, the matters set out in para 11 of the grounds in determining the appellant's culpability and application of Art 1F(a). Ground 2 is also arguable to the extent that, as Ground 1 asserts at para 11(iii), the judge failed to take into account whether or not the appellant suffered from PTSD and that affected his evidence.
>
> 4. Ground 3 is not arguable. There was no arguable perversity or procedural unfairness as alleged.
>
> 5. Permission is, therefore, granted limited to Grounds 1 and 2 only."

11. Although Judge Grubb made clear in his reasons that permission was granted limited to the first two grounds, he did not refuse permission in the operable part of the decision. Nor did he make any direction confining the grant of permission (as to which see EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 0117 (IAC)). I accept that it would be open to the Appellant to pursue the third ground notwithstanding Judge Grubb's observations. However, although he did not abandon the ground, Mr Chirico indicated that he would not be making any submissions about the third ground because, if I agreed with him on the second ground, the third would in any event fall away.

12. The Respondent has filed a Rule 24 reply dated 15 June 2021 seeking to uphold the Decision. In relation to the second ground, the Respondent asserts that the Judge "was fully aware of the mental health conditions that the appellant had been diagnosed with and makes several self-directions and considerations as to the impact the medical evidence had upon aspects of the appellant's evidence". It is also submitted that the Judge "accepted the medical conclusions and properly applied the presidential guidance on vulnerable witnesses". In relation to the first ground, the Respondent says in broad summary that the Judge has made findings on the issues which the Appellant says have been ignored and/or that no findings needed to be made as the facts were not in dispute.

13. The appeal comes before me to decide whether the grounds disclose an error of law in the Decision. If I conclude that they do, I then have to decide whether to set aside the Decision in consequence and, if I do set it aside, whether to remit the appeal or retain it in this Tribunal for re-making. At the outset of the hearing, Mr Chirico indicated that both parties agreed that there would be insufficient time to deal with a re-

making on this occasion, but both agreed that the appeal could remain in this Tribunal for re-making given the narrowness of the issues.

14. The hearing before me was conducted via Microsoft Teams. There were no technical issues affecting the conduct of the hearing. However, given the time taken in oral submissions, there was insufficient time for Mr Chirico to provide a substantive reply to Mr Clarke's submissions. It was also apparent to me, as I come to below, that there was something of a disconnect between the two parties on the first ground in particular. I therefore required Mr Chirico to explain his case on one issue in more detail. It was therefore agreed that he should provide his submissions in reply in writing by 4pm on Friday 28 January 2022. They were so provided. I indicated to Mr Clarke that if there were anything in those submissions which he considered had not been dealt with at the hearing and to which he needed to reply, he should make an application to the Tribunal to provide a response. I have not written this decision until after seven days following receipt of Mr Chirico's Reply and no such application has been made.

15. I had before me a core bundle of documents including the Respondent's bundle. I also had the Appellant's bundle before the First-tier Tribunal (referred to as [AB/xx]), certain documents filed by the Appellant electronically with the First-tier Tribunal and the Rome Statute provided by Mr Clarke. The Appellant's skeleton argument and supplementary skeleton argument before the First-tier Tribunal are appended to the Appellant's grounds. I refer to those hereafter as [ASA] and [ASA2] respectively.

DISCUSSION AND CONCLUSIONS

16. Although there is some overlap between the grounds, I take the Appellant's grounds in order.

Ground 1

17. The Appellant complains that the Judge has failed to make findings about matters pertinent to the question of whether the Appellant could be excluded under Article 1F(a) of the Convention, in particular the following:

    (a) the relevance of the Appellant's initial recruitment as a child soldier and the brutalising impact of that on him.

    (b) whether the Appellant had been detained and tortured by the Northern Alliance as he claimed.

    (c) whether he developed PTSD as a result of his torture during detention and the impact of that condition on his actions.

    (d) whether the Appellant suffered from ASD and the impact of that condition on his actions.

18. The Appellant asserts that the Judge failed to make factual findings on those issues and therefore failed to consider the Appellant's "culpability" against the complete factual background. It is asserted that if the Judge rejected the Appellant's evidence on those matters, then the Judge has given insufficient reasons for doing so and has acted procedurally unfairly. If she has accepted the Appellant's evidence, then it is said that the Judge has failed to take these factors into account when determining culpability.

19. Before dealing with the ground as pleaded and developed in oral submissions, it is necessary for me to say something about what is meant by "culpability". This is the issue which troubled me during the oral submissions. The Respondent appears to have understood that what is being argued is that the Appellant lacked capacity to be held criminally responsible for his actions under the Rome Statute. For that reason, Mr Clarke focussed on Article 31 of the Rome Statute. In his reply, which Mr Chirico began orally before he was prevented from finishing due to lack of time, he made plain that the Appellant's case was not that the Appellant lacked capacity which would be a complete defence to any crime. His case is that the matters to which I have referred are relevant as mitigation of liability for any actions which amount to crimes under the Rome Statute and therefore are relevant to Article 1F(a). It is this point in particular which I asked Mr Chirico to address in slower time and therefore in writing.

20. Mr Chirico submits that mitigation is, as I would accept, relevant to sentencing and not criminal responsibility. He refers me to Article 78(1) of the Rome Statute which requires that the Court "[i]n determining the sentence... shall…take into account such factors as the gravity of the crime and the individual circumstances of the convicted person." He explains that it is not the Appellant's case "that his mental ill-health and cognitive impairment at the time of his membership of the Taliban was such as completely to 'destroy' his capacity". His case is that "his culpability was reduced, below the similarly high threshold required for exclusion under Article 1F(a), by specific mitigating factors". Those are in essence the factors I have set out above.

21. I have read the ASA and ASA2 very carefully in light of the way in which the Appellant puts his case. I am not persuaded that this is the way in which the case was developed before Judge Athwal for the reasons which follow.

22. The Respondent's case under the exclusion clauses was put forward on both Articles 1F(a) and 1F(b). The Judge, as I accept, determined only the former. For that reason, I can ignore the submission at ASA2 dealing with Article 1F(b) which asserts at [(17(iii)] that "the offences were not sufficiently 'serious' to justify exclusion, having regard to all mitigating factors". I would accept that the Appellant there squarely relies on the mitigating factors of age, mental illness and history as undermining the Respondent's case under Article 1F(b) (in addition to other arguments

about whether the crimes were crimes within Afghanistan and whether they are non-political). That though is not put forward as the basis of a defence to an Article 1F(a) exclusion case. I observe as an aside that the case of AH (Algeria) v Secretary of State for the Home Department (UNHCR intervening) [2015] EWCA Civ 1003 to which Mr Chirico made reference during his oral submissions and which is cited at [43] of the Decision does not assist the Appellant either because that too is concerned with Article 1F(b). In any event, that judgment does not assist the Appellant's case on this point.

23. The grounds challenging the Decision rely on [4(a) and (b)] of ASA. Those read as follows:

> "(a) R has failed to show serious reasons for considering that A played a significant and substantial role in the commission of war crimes or crimes against humanity (including any role in directing others to commit such crimes); alternatively
>
> (b) Both as a result of A's age at all material times and as a result of his mental health and psychological impairment at material times, and/or as a result of these factors cumulatively, A does not have sufficient culpability to justify exclusion by reference to Article 1F(a)."

24. The way in which the case is put in the grounds of appeal challenging the Decision, in particular in relation to [4(b)] is that this "goes to the question whether, even if he did commit them, his culpability is reduced to such a level such that it would be disproportionate to exclude him from the protection of the refugee convention". In Mr Chirico's written Reply, it is asserted that, even if (as the Appellant appears now to accept) the Appellant still had mental capacity to commit the crimes notwithstanding his mental health etc, this "did not render these matters irrelevant or immaterial". No authority is put forward to support the proposition there made. There is no tying together of the reference to sentencing within the Rome Statute and the provisions of Article 1F(a).

25. The issue in any event is whether that was the way in which the case was developed before Judge Athwal. As I say, the Appellant's Article 1F(a) case is contained in the Appellant's first skeleton argument (ASA). I have looked at the way in which the point made at [4(b)] as cited above is developed. At [24(c)] of that skeleton argument, the Appellant puts the argument as follows:

> "Further or alternatively, even if A's activities for the Taliban between 1995 and 2001 would justify exclusion under Article 1F(a) for a person who had been a healthy adult during that period, it does not justify A's exclusion because..."

The Appellant then sets out the factors on which reliance is now placed as requiring a finding before stating that "in line with the UNHCR guidance, A did not have the necessary culpability in order to justify exclusion under Art. 1F(a)"

26. The Judge was there directed to the UNHCR guidelines ("the Guidelines"). Those parts of the Guidelines relied upon by the Appellant appear at [7] to [11] of the skeleton argument. At [12] to [13] of the skeleton argument, reference is also made to the UNHCR's background note ("the Background Note"). Those do not however assist the Appellant. It is made clear that "[f]or exclusion to be applied, individual responsibility must be established…" ([7(b)] ASA repeated at [9] ASA). The extract from the Guidelines cited at [10] ASA is particularly pertinent and I therefore set that out:

> "21. Criminal responsibility can normally only arise where the individual concerned committed the material elements of the offence with knowledge and intent. Where the mental element is not satisfied, for example, because of ignorance of a key fact, individual criminal responsibility is not established. In some cases, the individual may not have the mental capacity to be held responsible for a crime, for example, because of insanity, mental handicap, involuntary intoxication or, in the case of children, immaturity."

The extract cited then goes on to talk of other "defences to criminal responsibility" and "where expiation of the crime is considered to have taken place" but I do not understand the Appellant to say that those considerations apply to his case.

27. Reliance is also placed on what the Guidelines have to say about minors. As I will come to, this may have limited relevance as the Judge's findings are based on acts committed after the Appellant's majority. Nonetheless, since the Appellant says that this is a factor which has relevance, I set out what the UNHCR has to say as cited at [[11] ASA]:

> "The exclusion clauses apply in principle to minors, but only if they have reached the age of criminal responsibility and possess the mental capacity to be held responsible for the crime in question. Given the vulnerability of children, great care should be exercised in considering exclusion with respect to a minor and defences such as duress should in particular be examined carefully…"

28. That point is repeated in substance at [[13]ASA] when setting out the Background Note. Similarly, the point about lacking mental capacity is repeated. The Background Note as there set out goes on to say that "[w]here mental capacity is established, particular attention must be given to whether other grounds exist **for rejecting criminal liability**" [my emphasis].

29. The extracts contained in the skeleton argument can only be read as referring to an individual who lacks mental capacity or other reasons providing a complete defence to the crime. There is no reference there to the relevance of mitigation to responsibility. The focus is on the existence or otherwise of criminal responsibility for the commission of the crime. The Judge could not have been expected to understand the case in any other way.

30. For completeness, and since one of the factors which the Appellant says required a finding was whether the Appellant was a child soldier, I refer to the reference in the skeleton argument to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict ("UNCRC Protocol"). Articles 3 and 4 of the UNCRC Protocol are set out at [[14] ASA]. Broadly speaking, those require States who are parties to the UNCRC Protocol not to recruit for fighting those under 18 years and to "take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices". Whilst the recruitment by the Taliban of children to fight for them is obviously to be deprecated, I fail to understand how that has any relevance to whether the Appellant committed acts falling within Article 1F(a) provided he had the mental capacity to be held responsible for them. In any event, as the focus of Judge Athwal is on the period after 1998 and therefore after the Appellant's majority the point largely falls away.

31. I turn back then to the way in which the challenge to the Decision is pleaded and the basis for the grant of permission.

32. Mr Clarke submitted that it was not necessary for the Judge to make findings about the factors raised by the Appellant since they were not put in issue by the Respondent. I have considered that submission carefully and I have concluded that Mr Clarke is right on a full examination of all the documents before the Judge. I have reached that conclusion for the following reasons.

33. Dealing first with the Appellant's recruitment into the Taliban as a child, his case is that he had joined the Taliban by 1995 and was a soldier at that time. He said that he attacked Kabul with the Taliban in 1995. He is said to have volunteered to fight on the front line. There is some discrepancy as to the Appellant's age at that point in time. The Appellant says that he was born on 3 February 1980 but is said to have told the British Red Cross when they visited him in prison in 1995 or 1996 that he was 17 ½ years at that stage which would make him a couple of years older (see [3(a)] of the Respondent's decision letter dated 6 February 2019). On any view, though, he was a child at that time. However, it is not the Respondent's case that the Appellant's actions at that time brought him within the exclusion clauses. There is no indication in the Decision that the Judge did not accept the Appellant's case about this fact (as to which see below).

34. The second factor said to be relevant is whether the Appellant was detained and tortured as a child. As is said at [18] ASA, however, it was not disputed that the Appellant was tortured as a child. That is consistent with [19] of the Decision where the Judge said this:

> "19. The Appellant was drawn into the Taliban as a child between 1992 to 1995 and used as a child combatant. He was imprisoned by the Northern Alliance because of his association with the Taliban, during

which time he was tortured. **This account was not disputed by the Respondent and in any event was credible** in light of the confirmation by the Red Cross, the medical evidence and the Appellant's Taliban profile…."

[my emphasis]

It is as plain as it could be that the Judge accepted the Appellant's case that he was recruited by the Taliban as a child and was detained and tortured by the Northern Alliance.

35. In fact, the thrust of the Appellant's case is not that the Judge failed to make any findings about the aspects pleaded but that she failed to factor them into her assessment. Leaving aside the conclusion I have already drawn about the relevance of these factors save in relation to culpability (in the sense of mens rea) for the crimes, the point which the Appellant is making is that these events had such an impact on his mental state that the exclusion clauses should not be applied.

36. Moving on then to the other factors based on the Appellant's mental health, Mr Chirico's submission was that, although the Respondent has accepted that the Appellant suffers from these conditions now, she did not accept that he suffered from them at the time of his crimes. In the initial decision letter, the Respondent considered this aspect in the following way:

> "108. You referred to your own experience of having been tortured and noted that, as a result of this, you did not want to commit torture. However, you have not suggested or provide any medical evidence to suggest that your experience of torture had resulted in sufficient mental deficiency so as not to be responsible for your actions…"

Article 31 of the Rome Statute is then cited.

37. As is there noted, at that time (February 2019) the Appellant had not produced any medical evidence. Following the submission of medical evidence, the Respondent provided a supplementary decision letter dated 20 November 2020 which considered the medical evidence. The Respondent therein accepted that the Appellant suffers currently from health problems but it was "not believed that these materially affected your actions prior to entering the UK". Although it might be said that this was not an acceptance that the Appellant suffered from PTSD whilst in Afghanistan, the medical evidence itself says only that PTSD has been "caused by the cumulative effect of the multiple traumatic experiences" which the Appellant described (Professor Katona at [10.5, AB/34]) and that "[t]he PTSD is…a direct consequence of the torture he was subjected to when taken by the government in Afghanistan" (Dr Heke at [7.2.1, AB/68]. Dr Heke also records that "[w]hilst [the Appellant] has not specified exactly when the symptoms started he was able to report that he started to struggle more generally on his release from this period of detention and that then on leaving Afghanistan in 2001/2002 having a

long period of instability moving from different countries and trying to seek asylum, including being detained in the UK, led to a deterioration in his mental health". There is so far as I can see no firm opinion that the Appellant began to suffer from PTSD during the period when the Appellant committed the acts which the Judge found him to have committed.

38. Even if I am wrong about that, the Respondent in her supplementary decision letter, at [7] accepts that the Appellant's mental health condition "may have been as a consequence of events that took place in AFG" but concludes that "it did not affect how you acted at the time of the alleged abuses".

39. ASD is of course a different matter. Both experts having accepted that the Appellant probably falls within the spectrum, Dr Heke asserts, perhaps unsurprisingly, that this is "a developmental condition" and therefore "has been life-long". The Respondent does not take issue with this in the supplementary decision letter. She has though considered it "in relation to potentially excluding criminal responsibility" ([10] of the supplementary decision). She rejects that position however and concludes at [13] of the supplementary decision with the following:

> "It is not believed that the medical evidence submitted detracts from the assessment that you had sufficient mental capacity to understand the gravity of the crimes to which you have been associated and which it is believed you have committed yourself."

40. That then is the extent of the dispute between the parties. The Respondent accepted that the Appellant has PTSD and ASD, that those conditions might have existed in the past and/or been caused or contributed to by the Appellant's experiences in Afghanistan but did not consider that they absolved the Appellant from his responsibility for the crimes which she said that the Appellant had admitted to committing.

41. Of course, I am concerned not with what the Respondent made of the Appellant's case but how the Judge approached it and whether she erred in her consideration of it. The Judge set out the Respondent's position at [14] and [15] of the Decision as follows:

> "14. The Appellant referred to his own experience of being tortured but at the time the refusal letter was written, the Appellant had not provided any medical evidence in support of his claim. The Respondent's view was that the Appellant's statement indicated that he was aware of the implications of torture, and that he was not proud of his role. This gave serious reason for considering that he did not lack the mental capacity to understand the nature of his conduct. Furthermore, from his own experience he would appreciate the effects that torture would have on his victims. This issue was considered further in the supplementary decision letter dated 20 November 2020.
>
> 15. In the supplementary decision letter the Respondent acknowledged that the Appellant suffered from complex health problems, but she did

not believe that these materially affected the Appellant's actions prior to entering the UK. It was noted that the Appellant had been diagnosed with Post-Traumatic Stress Disorder ('PTSD') and Somatic Symptom Disorder ('SSD') and that this may have been as a consequence of the events that took place in Afghanistan. However, it was not accepted that these conditions affected how the Appellant acted at the time of the alleged abuse, and that his original accounts in both asylum interviews, were considered to be credible. It was believed that the Appellant's most recent statement was an attempt to distance himself from his previous admissions. The medical evidence provided did not detract from the Respondent's assessment that the Appellant had sufficient mental capacity to understand the gravity of the crimes with which he had been associated with, and which he committed himself."

42. Having set out the Appellant's case in response at [18] to [22] of the Decision, the Judge summarised his position as follows:

> "23. Against that background, there were no substantial grounds for believing that the Appellant committed war crimes. During the conflict before the Taliban took power, the Appellant has some combat experience but there is no evidence that he committed war crimes. The Appellant's activities when he resumed his Taliban activity after 1998 did not amount to crimes against humanity i) the Appellant's activities were not directed against the community but at the Taliban ii) the actions he took against the Pakistani airmen did not amount to torture iii) it was not shown that the Appellant was individually responsible for acts of torture by others.
>
> 24. Further or alternatively even if the Appellant's activities for the Taliban between 1995 and 2001 would justify exclusion under Article 1F(a) for a person who had been a healthy adult during that period, it did not justify the Appellant's exclusion because: he was a child combatant; he was a child victim of torture and developed PTSD; the impact of the two-fold abuse was likely to have continued through his early adulthood; he was likely to have suffered from ASD at all times which resulted in concrete and inflexible thinking and reduced insight; and in those circumstances and in line with UNHCR guidance, the Appellant did not have the necessary culpability in order to justify the exclusion.
>
> 25. In relation to Article A1F(b) it was submitted there was sufficient overlap with Article 1F(a). However, Article 1F(b) does not properly apply: The Appellant's acts, upon which the Respondent relied did not amount to a 'crime' at the place and time committed, because they were committed by an agent of the state, in line with what was permitted by the State. Article 1F(b) is inapt to deal with this situation, which is properly covered by Article 1F(a) or Article 1F(c). Further, the Appellant's acts were non-political in nature. They were committed in political context and in pursuit of a political goal, on the Appellant's evidence they were not so egregious as to fail the predominance test; and the aim was a legitimate one. Finally, the offences were not sufficiently 'serious' to justify exclusion, having regard to all mitigation factors as set out above."

I pause to observe that the final sentence of [25] of the Decision reflects the argument to which I have already referred which applies however only to Article 1F(b) (see [22] above).

43. Judge Athwal made reference to the Appellant's mental health conditions at [30] of the Decision when considering his vulnerability. Having thereafter set out the legal framework which applies (and is not disputed), the Judge began her findings and reasoning at [50] of the Decision. I summarise below the findings made.

44. Having considered the various accounts given by the Appellant about how he came to become a member of the Taliban as a child ([51] to [56]), the Judge did not accept that the Appellant was automatically enrolled into the organisation. She found that the Appellant had chosen to become a member and his later accounts that he had no choice in the matter were, the Judge found, "an attempt by the Appellant to minimise his involvement with the Taliban" ([57]).

45. The Judge considered in some depth the activities which the Appellant was said to have carried out as a Taliban member following his return to the Taliban after 1998 at [58] to [87] of the Decision. The Judge concluded on the appropriate test that the Appellant had ordered the use of torture and had himself carried out such actions ([88] and [89]).

46. Under the heading "Mental Health and Culpability", the Judge then turned to consider the impact of the Appellant's mental health on his actions. She began that section as follows:

> "91. I turn to consider whether the Appellant intended to engage in torture and understood the consequences of his actions. The Respondent accepted that the Appellant suffered from complex current health problems but did not believe that these materially affected his actions prior to entering the UK.
>
> 92. The Appellant relies on the evidence of Prof. Katona and Dr Heke to establish the Appellant's age and psychological condition had a likely impact upon his ability to make a fully informed choice about joining the Taliban, his understanding of the implications of it."

47. Having set out extracts from the reports of the experts at [94] the Judge made the following findings:

> "98. Mr Chirico has submitted that the expert evidence demonstrates that the Appellant had a reduced insight into his actions and those of the Taliban. I have set out the expert conclusions in full and that is not the conclusion I draw from it. Dr Heke stated that the Appellant demonstrated concrete thinking in relation to other matters, but he avoided discussing whether his role in the Taliban had contributed to unnecessary deaths of others. At 7.6.4 of her report she states that she cannot say what acts the Appellant was involved with. She defers to Dr Katona. Dr Katona believes that the Appellant attempted to rationalise

the cruel behaviour in which he participated because it did not reconcile with his belief that the Taliban were 'kind'.

99. I have taken into account the Appellant's own evidence as set out above, which I found to be contradictory and as such undermined the Appellant's credibility. I have taken into account his knowledge of that the Taliban did [sic], and the consequences of his own actions. He has stated that he was compassionate, but he did not describe the Taliban as 'kind'. In his January 2021 statement at paragraph 66, he stated:

> *"I did not support many things the Taliban stood for. I did not like chopping off people's hands for minor crimes such as theft. I did not like beating civilians on the streets to force them to do their prayers. I did not like the way women were treated by the Taliban. They were un-Islamic practises [sic] that the Taliban embarked upon. In my view, the practises [sic] were un-Islamic, but I was not in a position to change that. I was only a 17/18 year old student and could not have any roles in such decisions. However, I hoped that one day people would live in the same way as I saw people lived in Kabul during Dr Najibullah this time."*

100. **I am satisfied that the Appellant was fully aware of the abuses being committed by the Taliban. In his interviews he stated that he would send people to the courts to be punished. I am therefore satisfied that he was fully aware of what would happen to them at these courts and that he was fully aware of the impact torture had on the individuals and his men questioned.**

101. I have taken into account the expert evidence and the Appellant's evidence. I am not satisfied that it is sufficient to establish a lack of mental capacity on the Appellant's part."

[my emphasis]

48. Although the paragraphs which follow are headed as conclusions, they do provide a useful summary of the Judge's findings. For that reason, I set out the relevant parts of that section also:

"104. I am satisfied that the Appellant carried out acts of torture against individuals who were believed to have carried out crimes against civilians; defamed the Taliban; or incited inter-factional fighting. This led to some suspects falsely admitting to crimes that they later denied. I am satisfied that as commander of an intelligence unit, he was part of the organised machinery of the Taliban that allowed the leadership to maintain their power and control over the general population. He has demonstrated that he was aware of the human rights abuses carried out by the Taliban but nevertheless carried out orders to administer torture myself [sic] and through his unit and sent suspects to the Taliban courts for more serious punishments.

105. I am satisfied that he joined the Taliban as a child but renewed his membership as an adult because he believed the Taliban would bring order to the country. He carried out torture and punishments because he

> believed it was morally the right thing to do. The Appellant's admissions in 2013 and 2015 were clear and credible evidence of the actions he undertook. I am satisfied that the Appellant's subsequent claim, that he automatically become a Taliban member in 1999; never used physical violence apart from one occasion when he slapped suspects; never ordered his unit to use torture, were an attempt to distance himself from his actions.
>
> 106. The Appellant has not raised in his skeleton argument or submissions that he was acting under superior orders. I am however satisfied on the basis of the Appellant's evidence that he was aware that the orders he executed would result in the torture and inhuman treatment of individuals, but nevertheless carried them out and remained a commander until the fall of the Taliban."

49. As I have already pointed out, there was little if any dispute about the facts. The Judge has accepted that the Appellant joined the Taliban as a child. It was asserted by the Appellant that the issue regarding the Appellant's detention and torture by the Northern Alliance was not disputed. That was accepted by the Judge at [19] of the Decision (see [34] above). The Respondent accepted that the Appellant suffered from mental health conditions as identified by the experts. The Judge also accepted that evidence. The Judge therefore made findings so far as was necessary about all the factors on which the Appellant relies in his grounds challenging the Decision.

50. As I have already explained, the real thrust of the Appellant's complaint is that the Judge did not consider those factors as mitigation of the crimes that the Appellant was found to have committed but focussed only on whether those factors impacted on his capacity and therefore provided a defence to the crimes. However, for the reasons I have set out, I do not accept that the way in which the Appellant put the case before me is the way in which the case was put before Judge Athwal. I am therefore not satisfied that the Appellant has shown there to be any error by his first ground. The Judge determined the case in the way it was put to her.

51. Even if the Appellant had persuaded me that the way in which he now puts his case is the way in which the case was put and that Judge Athwal had failed to consider it, I would not have found that the error could make any difference to the outcome for the following reasons.

52. Article 1F(a) applies to an individual who "has committed a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in relation to such crimes". Articles 30 and 31 of the Rome Statute appear under the heading "Part III General principles of Criminal Law". Although not making express use of the word "culpability", it is evident from Article 25 that what is required is individual criminal responsibility. Article 30 of the Rome Statute requires there to be "intent and knowledge" of the "material elements". In other words, in common with criminal acts more

generally, the individual must possess the necessary mens rea. Article 31 provides grounds for excluding criminal responsibility but crucially not for diminishing it (which is the effect of the Appellant's submissions now made). That includes where "[t]he person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of the law". Mr Chirico has expressly disavowed any reliance on that article.

53. Whilst I accept that Article 78 permits the court to "take into account such factors as the gravity of the crime and the individual circumstances of the convicted person" that is relevant only to sentencing. Those factors may provide some mitigation when it comes to sentencing but they do not impact on either the nature of or individual responsibility for the acts which constitute international crimes. There is nothing within Article 1F(a) which requires a court or tribunal to consider the seriousness of the crimes by reference to what might be mitigating factors when sentencing. The Appellant has provided no authority to support such a link. The link is not supported by the Guidelines or Background Note as cited in the Appellant's skeleton argument before Judge Athwal.

Ground 2

54. The Appellant submits that Judge Athwal failed to have regard to evidence relating to the Appellant's credibility. The Appellant made various admissions in the course of interviews in 2013 and 2015 which he now says should not be taken at face value. He says that his more recent accounts should be accepted as should his explanation for the earlier admissions.

55. The reason the Appellant says that inconsistencies between his previous interviews and more recent accounts should be disregarded is the impact of his medical conditions. It is asserted that the Judge failed to have regard to the evidence in this regard.

56. As Judge Athwal noted at [47] of the Decision, whilst the Appellant was treated as a vulnerable witness "[i]t is for the judge to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before them, taking into account the evidence as a whole". Judge Athwal expressly accepted at [48] of the Decision that "potentially corroborative evidence should be taken into account" and that "[s]ome forms of disability cause or result in impaired memory", in particular that "[t]he order and manner in which evidence is given may be affected by mental, psychological, or emotional trauma or disability" and that "[c]omprehension of questioning may be impaired".

57. Having set out the inconsistencies in the Appellant's accounts about joining the Taliban from 1998, the Judge said this at [57] of the Decision:

> "The Appellant's original accounts from 2013 and 2015 were provided two years apart, and yet they remained almost identical. It was not until 2020 that the Appellant's account radically changed, and he stated that he was automatically made a member of the Taliban. The Appellant has not addressed the inconsistencies between these various accounts in his January 2021 statement. There is no suggestion in the medical evidence that his mental health conditions would prevent him from accurately recollecting what happened in his past. This new account is inconsistent with his previous explanations and the only reasonable inference I can draw is that this is an attempt by the Appellant to minimise his involvement with the Taliban. I therefore do not accept that the Appellant was automatically converted to the Taliban. I find that after he was released from prison, he remained a member of the Taliban, and joined the madrassa on the instructions of more senior members."

58. Similarly, having examined the varying accounts about the Appellant's role after 1998, the Judge noted at [62] of the Decision that "[t]he Appellant's account about his role within the Taliban has remained consistent throughout".

59. The Judge next considered the evidence about the Appellant's acts as a member of the Taliban. The Appellant's case was, as the Judge says at [64] of the Decision, that he did not make the admissions which the Respondent says he did in the course of his asylum interviews in 2013 and 2015. It was suggested that the Appellant had not understood parts of the interview and that at various points he had said that "we" committed various acts rather than that he did so himself. The Judge therefore considered in considerable detail at [65] to [79] of the Decision what the interview records from 2013 and 2015 showed. She then said this:

> "80. The Appellant as set out above, has retracted from these admissions and he has provided the following explanations in his January 2021 statement.
>
> > *77. In my answer to question 152 of my AR dated 18 July 2013 where I said 'I meant to way that 'we' would hit them with a cable' I meant to say we would deal with small crimes. I never meant to say I personally hit anyone with a cable. I was under interview pressure. As far as I remember I was made [sic] by the repeated questions asking the same questions. I may have said words to get over it. It was Ramadan time and I had been fasting. I remember I had not been sleeping for a few nights. I was warned by the interviewing officer to focus on my interview and on the questions. I remembered the interpreter said he could only interpret sometimes as he said he was confused. I would deal with small crimes only, my job wasn't to torture is correct. Members of our group sometimes hit people during arrests and this was only when they resisted and when there was clear evidence that the person committed a crime against civilians were spying for northern alliance or when they did not show where they had hidden their weapon. I remember I always advise a suspect to give at least some weapon to avoid being beaten.*

81. I have considered this explanation, but it is not only in July 2013 that he made these admissions. He said the same again in October 2015 and in July 2020. He had two further opportunities to correct his July 2013 account but he did not, and I attach significant weight to the Appellant's failure to do so.

82. The Appellant tried to explain why he made admissions in July 2020. He stated:

> *"106. I know that in my original appeal statement of July 2020 I said that I had personally beaten Taliban members between 10 to 15 times. This is incorrect. It was a very long statement and sometimes when people ask me lots of questions I become impatient I would say okay and yes. I may not have paid attention to some points written in the statement when my solicitor read it back to me. I had been taking medication and most the time I'm under pressure and I'm not stable mentally. I'm sometimes good and sometimes bad. I'm not normal person. For some 10 years I've been living in one room and when I look at the walls I feel like I am in prison. That is the reason that I did not pay attention. Depending on my condition at the time I may say yes today but tomorrow may tension properly [sic] and would say no I did not."*

83. The fact that the Appellant was unwell and taking medication in July 2020 does not explain why he provided similar accounts about personally being involved in administering beatings in 2013 and 2015. Dr Katona has set out the Appellant's medical history at paragraph 8 of his report. In 2013 and 2015 the Appellant told his GP that he was experiencing muscle weakness. He was not prescribed any medication until July 2017. On 11 December 2015 the Appellant reported issues with poor sleeping, but that was two months after his last interview. The Appellant now states that in 2013 the interviewer stated that he was confused, but there is no evidence before me that any such issues were raised prior to January 2021.

84. This is not the only account that undermines the Appellant's credibility. His account of what happened to the Pakistani engineers also changed. In his January 2021 statement of paragraph 78 the Appellant admitted to slapping the Pakistani engineers 'a couple of times'. At paragraph 79 he stated that it did not mean they deserved being beaten. At the time he believed they deserved it but now realises it was wrong to beat them. He stated that he did not know what happened to them they could have been imprisoned for a few months and then released or maybe the judges sentence them to be whipped. However at question 177 of the October 2010 interview, page E22 RB it records, get records [sic] *"we arrested all those Taliban who involved in that and we beat and tortured them by what I'm still happy what I've been against those Taliban who gave the entrance to Pakistan engineers. So you believe that the people you beat up and you tortured you believe that they deserved it? …I was trying to defend my country and those people who came and took those engine's [sic] and wherever I live I will not betray that country so I was all to my country and I will be loyal to wherever I live and those people betrayed the government to the public world and to that, I didn't kill them but just punish them."*

85. The Appellant has failed to adequately explain why his evidence has changed. I do not accept that he confused 'I' with 'we' or that he was describing what the Taliban did. I have read all the interviews and the Appellant has on several occasions clearly differentiated between what he did, what his team did and what Taliban advocated. He states that it was not his job to torture, but he also states that it was his job to punish and obtain confessions, and the techniques set out above were used to obtain those confessions.

86. Whilst compound and complex questions may have be [sic] asked towards the end of the October 2015 interview, that was not the case initially. The Appellant was asked single, open ended questions, which I have set out above. It is clear that in July 2013 the Appellant was asked a straight-forward question and he stated that waterboarding and sleep deprivation was being used. During the October 2015 interview, this subject was returned to at various different stages. The Appellant clarified that people were whipped with metal aerials and cables and that no one could 'endure the cable of the Taliban'. At page E20 RB, the Appellant describes how people were beaten by the cable and it is clear that he is recounting his own experience and he explained how his group investigated matters. He clearly stated that they would beat the person if he was not ready to tell the truth. At page E21 RB the use of waterboarding and sleep deprivation is discussed in detail. At page E27 the matter is returned to and the Appellant stated that these techniques were used, not regularly, only once a year because he did not torture people for minor reasons.

87. I have considered the account provided by the Appellant against the objective material set out in the letter of refusal dated 6 February 2019 from paragraphs 28 to 35. The accuracy of this information has not been challenged by the Appellant, nor has he submitted anything to rebut it. The Appellant's account that he did not have to use torture and never directed his men to do so is completely implausible when compared against the background information….

88. I have taken into account that the Appellant's vulnerabilities [sic], but on the basis of the evidence before me and for the reasons set out above, I find that there are serious reason for considering that in 2013, 2015 and 2020 the Appellant, who was in charge of 250 to 300 men, ordered his men to use waterboarding, sleep deprivation, whippings with metal aerials and cables. He also beat people and used metal cables to do so. In January 2021 the Appellant denied this and changed his evidence. I have considered the Appellant's explanation for changing his evidence, but for the reasons set out above, I do not find his explanation credible"

60. The wording of the final paragraph there set out is slightly odd as it is not suggested that the Appellant carried out the acts of torture in 2013, 2015 and 2020; rather he made admissions about them at those times. However, it is clear when that paragraph is read as a whole that the Judge means to say that it was the Appellant's evidence in those years that he had done what is alleged in the past.

61. In his submissions, Mr Chirico drew my attention to paragraphs [82] and [83] of the Decision and said that the only reason given by the Judge for disbelieving the Appellant's explanation about his condition when the admissions were made is the lack of medical evidence that he was ill at that time. The point made is that the medical experts are of the view that the Appellant is likely to have suffered from his mental health conditions for some time even if not being treated for them.

62. Mr Chirico's submission however ignores the entirety of the Judge's findings about credibility. Those findings have to be read together. The Judge's conclusion that the Appellant is not credible in his latest account is not only a rejection of his assertions about the circumstances of the earlier interviews but also based on the Appellant's consistency between interviews years apart (which is unexplained) and his ability to give detail about the methods used. The Judge took into account the Appellant's vulnerability ([88]) as well as consistency of the Appellant's description of his actions against the background material ([87]). In other words, the Judge did as she directed herself she should do and considered all the evidence.

63. Mr Chirico accepted that the medical experts had not been asked to deal with the impact of the mental health conditions they had diagnosed on the Appellant's recall for example. He confirmed that the Appellant's case is that his evidence is "beset" by the difficulties created by his mental health and his inability to give a consistent account. That is however the case which the Judge considered but rejected. If anything, the difficulty for the Appellant is his ability before 2021 to give a consistent account in a number of interviews which he then needed to explain away when he retracted that evidence.

64. Notwithstanding his acceptance that the medical experts had not been asked to address how the Appellant's mental health condition might impact on consistency of his accounts, Mr Chirico did seek to suggest that Dr Heke's report might assist in this regard (although there is no reference to any such evidence in the grounds of appeal or the written reply). I have read carefully the reports of Dr Heke and Professor Katona. Those appear at [AB/26-84].

65. Professor Katona reviewed the Appellant's medical notes in his report and, consistently with Judge Athwal's reasoning, notes that the Appellant was seeing his GP throughout the period from 2013 but made no mention of any mental health issues (save in relation to sleeplessness in 2015). It was not until 2017 that the Appellant was prescribed medication. Judge Athwal's findings in that regard are therefore factually accurate.

66. At [11.4] of Professor Katona's report, he opines that the Appellant's "past traumatic experiences may have also contributed to his difficulties in giving a full, clear and consistent account of himself". However, as I have already observed, much of the Appellant's difficulty now is that he was able to give a full account which was consistent in both 2013 and

2015 (and to some extent also in 2020) but now seeks to depart from it. That passage therefore does not assist.

67. Similarly, at [7.7.1] of her report, Dr Heke opines that the Appellant's mental health conditions would be "capable of affecting [the Appellant's] ability to recall events in an internally, consistent, chronologically sequenced manner". She recognises that accounts of asylum seekers are often inconsistent. At [7.7.3] of her report, Dr Heke opines that "it is difficult for [the Appellant] to give coherent responses" and that he would "struggle to provide succinct answers to questions". Dr Heke's opinions are however given in the context of the Appellant's ability to give evidence at a hearing rather than offering an opinion about his ability to provide consistent evidence in the past. As with Professor Katona's report, in any event, Dr Heke's opinion does not explain why the Appellant's mental health conditions (even if present at the time) would enable him to give consistent accounts two years apart and maintain that account some years later but then provide an explanation for him changing his evidence thereafter and more recently.

68. I am not satisfied that the Appellant has demonstrated any error in the Judge's credibility findings by reference to the medical evidence. The medical experts explained why the Appellant's evidence might not be consistent due to his mental health problems. However, the Judge Athwal was entitled to rely on the earlier interviews which had been consistent and which had provided detail in those interviews of the acts the Appellant admitted to committing and to conclude that the only reason for the Appellant's more recent change of evidence was in an attempt to distance himself from those acts.

Ground 3

69. Ground 3 has some overlap with ground 2. Although Mr Chirico did not abandon this ground, he made no submissions about it. I therefore focus on the way in which this ground is pleaded. In general terms, the challenge is one of perversity and/or procedural unfairness.

70. I deal first with the assertion that the Judge wrongly focussed on the period when the Appellant re-joined the Taliban. It is said that the Appellant's account in this regard was not in issue and the Judge should not therefore have made adverse credibility findings. The grounds of appeal make reference to [51] to [61] of the Decision.

71. I observe that there is some tension in this regard between the Appellant's first ground and this ground. By his first ground, the Appellant suggests that the Judge has failed to make findings about certain aspects of the Appellant's account and does not accept the Respondent's position that these matters were not in issue. By this ground, it is suggested that certain aspects were not in issue and therefore the Judge should not have made any credibility findings about them. Notwithstanding the potential inconsistency in those positions, I

turn to consider what the Judge did at [51] to [61] of the Decision to consider whether there was any procedural irregularity.

72. The issue identified by the Judge at [51] to [57] of the Decision is not what actually occurred in the period when the Appellant re-joined the Taliban but whether he did so voluntarily. The Judge's recitation of the Appellant's evidence in previous interviews about this is factually accurate. It is not suggested in the earlier interviews that the Appellant was in any way forced to re-join but that he did so voluntarily.

73. The Judge is equally factually accurate in his reference to the Appellant's statement at [51] of the Decision. The Appellant there says that he had no say in becoming, once again, a member of the Taliban. He asserts that he and the others could not have refused to join. He says that re-joining the Taliban was automatic. It is suggested that the Judge's understanding of the Appellant's case is inaccurate. Reference is made in the grounds to [63] of the Appellant's statement but the Appellant fails to explain what was meant at [64] of the statement if not as the Judge has understood it.

74. The Appellant did not give evidence at the Tribunal hearing. He was not therefore cross-examined. As Mr Chirico himself said in the course of his submissions, credibility was not in the forefront of the minds of the parties. He said that "credibility was not as at large in the way it has become". That was said in the context of his explanation why the medical experts had not been asked to offer an opinion about the impact of the Appellant's mental health condition on his evidence. Mr Chirico explained that the appeal had initially been listed for hearing in September 2020, but that hearing had to be adjourned because the Respondent had indicated that, whilst she was content not to cross-examine the Appellant, she would still be making submissions about his credibility. That then made clear that credibility was in issue.

75. The Appellant's evidence about re-joining the Taliban may not have marked a fundamental departure from his previous case. Nonetheless, there was a change. It was one which the Judge was entitled to consider. It is not suggested that there was any concession by the Respondent in this regard (unlike the position in relation to the Appellant's detention and torture by the Northern Alliance to which I referred earlier).

76. In relation to the section of the Decision at [58] to [61], the grounds are misconceived. As the Judge concluded at the end of that section, "[t]he Appellant's account about his role within the Taliban has remained consistent throughout". The Judge's findings at [62] are therefore made on the basis of consistent evidence and do not include any findings about the Appellant's credibility.

77. I am not satisfied that the Appellant has shown any procedural irregularity in the way in which the Judge dealt with the Appellant's case at [51] to [61] of the Decision. The Judge has not misunderstood the

Appellant's evidence. It is not explained how [64] of the Appellant's statement can be reconciled with his earlier accounts. The Appellant was on notice that credibility was in issue. He did not give evidence. It was for those representing him to explain any differences between the accounts.

78. I have already considered under the second ground the way in which the Judge dealt with the inconsistencies in the Appellant's accounts and why his mental health conditions and past history did not explain them to the Judge's satisfaction. I do not repeat what is there said. Far from being a perverse finding on the evidence, I am satisfied that the Judge was entitled to reach the conclusion she did on that evidence.

CONCLUSION

79. For the foregoing reasons I am not satisfied that the Appellant has identified errors of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

DECISION

I am satisfied that there is no error of law in the decision of First-tier Tribunal Judge Athwal promulgated on 16 February 2021. I therefore uphold that decision with the consequence that the Appellant's appeal remains dismissed.

Signed: L K Smith Dated: 15 February 2022
Upper Tribunal Judge Smith