



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01045/2019

THE IMMIGRATION ACTS

Heard at Bradford IAC
On 27 November 2020

Decision & Reasons Promulgated
On 05 January 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

AK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bartlam, Counsel instructed on behalf of the Appellant

For the Respondent: Mr Diwncyz, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan.

Anonymity

2. *Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The background:

3. On 16 June 2009, the appellant was arrested by the police after he claimed that he had entered the UK clandestinely by lorry. He claimed to be a minor but was assessed by the local authority as being an adult and therefore over 18.
4. On 17 June 2009, he claimed asylum and on the same day a screening interview was conducted. He claimed to have left Pakistan in August 2008 travelling to Iran, Greece, Italy, and France before arriving in the UK. According to the EURODAC fingerprint base, the appellant had been fingerprinted in Greece on 13 October 2008 as an illegal entrant. Requests were made to the Greek authorities inviting them to take responsibility for his asylum claim under the terms of the Dublin II regulation however his removal to Greece was cancelled as he submitted a human rights application.
5. On 15 October 2009 he was granted temporary release with weekly reporting conditions. Whilst it was stated the asylum claim would be considered in the United Kingdom and not Greece, the asylum claim was not proceeded with and was withdrawn on 7 February 2013 as the appellant had absconded.
6. Nothing more was heard from the appellant until 2 August 2015 when information was received from the police stating that he had been arrested for failing to stop, having no insurance, no driving licence and common assault.
7. On 29 September 2015 he was encountered outside the police station and he was arrested for being an absconder and on 2 October 2015 was informed that he was a person liable to be detained.
8. On 1 February 2016, the magistrates court is convicted and sentenced to 7 days imprisonment for two counts of driving offences and failing to surrender to custody.
9. On 7 February 2016 he notified the Home Office that he wanted to submit a fresh asylum claim and on 16 February 2016 screening interview was conducted.
10. On 4 April 2016 he was released again on reporting conditions.
11. On 8 August 2016 he signed a voluntary departure disclaimer and signed a facilitator returns form indicating he wished to return to Afghanistan.
12. On 9 August 2016 in the Crown Court he was convicted and sentenced to 76 months imprisonment for wounding with intent to do grievous bodily harm and having a bladed article which was a sharply pointed knife in a public place.

13. On 24 January 2017 he signed a form indicating he wished to be included in the early removal scheme, that he wanted to leave the UK and return to Afghanistan Kabul airport. He confirmed he did not intend to appeal any decision for his removal, and he confirmed that he understood that if he returned to the UK before his sentence expired he would be returned to prison to serve the remainder of his sentence.
14. By March 2017 on induction at the prison he told officials he did not know if he wanted to return to Afghanistan however on 2 May 2017 he asked for a form to sign in order to return to Afghanistan.
15. On 11 July 2017, the appellant was sent a decision pursuant to the immigration act 1971 and the UK Borders Act 2017.
16. Whilst the appellant replied to this letter on 26 July 2017, on 23 August 2017 he completed a form stating it wish to apply for facilitated return scheme and to leave the UK to travel to Kabul in Afghanistan.
17. On 27 November 2017 he informed them that he did not wish to return and was advised to put that in writing as to what his intentions were.
18. On 6 December 2017 he informed the prison that he was still unsure but on 19 January 2018 told the prison officials he definitely wanted to be deported and wished to be returned straight away.
19. On 14th February 2018 he was sent to disclaimer but then told an immigration officer who did not wish to be deported.
20. It is recorded that the appellant spoke to his brother who told him it was not safe.
21. A further screening interview was conducted on 16th February 2018 and on 22 March 2018 and asylum interview.
22. On 20 and 21 June 2018 he again informed the prison officials that he wanted to be deported to Afghanistan. On 8 July 2018 he informed the prison that he did not wish to be deported and that he explained the reasons for changing his mind about whether he wished to return was due to mental health problems.
23. On 27 July 2018, the appellant informed prison officials that he wanted to claim asylum as he feared his wife's relatives.
24. On 2 November 2018 he was sent to section 72 letter asking him to rebut the presumption that the crime he committed was a particularly serious one and that he was a danger to the community. A reply was received on 9 November 2018.
25. On 23 January 2019, the respondent issued a decision to refuse a protection human rights claim in the context of his deportation.
26. The respondent sought the appellant's deportation as a result of his conviction on 9 August 2016 where he was sentenced to 6 years and four months imprisonment for

wounding with intent to do grievous bodily harm and having a bladed article (a knife) in a public place.

27. The sentencing remarks of the trial judge are set out at paragraph [67] of the decision letter.
28. The decision letter at paragraphs 48 – 72 set out the respondent's reasons for reaching the conclusion that section 72 of the Nationality, Immigration and Asylum Act 2002 applied.
29. Consideration was given to his protection claim in the context of the country materials and the country guidance decision of *AK (Article 15(c)) Afghanistan* CG [2012] UKUT 0163. It was considered that whilst the security situation in Afghanistan remained volatile, with especially high levels of violence recorded in Helmand (which is where the appellant stated he had lived before coming to the UK) the appellant could return to Kabul were the levels of violence are lower than in Helmand.
30. At paragraphs 83 – 92 the respondent set out the credibility issues identified within his claim.
31. The light of the country guidance decision and the objective material, the respondent considered that it would not be unduly harsh for the appellant to internally relocate to Kabul.
32. The decision at paragraphs 108 – 113 set out the reasons for excluding the appellant from humanitarian protection on the basis of his conviction and imprisonment under paragraph 339D (iii) of the immigration rules.
33. At paragraphs 114 – 124 the respondent addressed Article 3 based on medical grounds.
34. It was noted that in the asylum interview undertaken on 22 March 2018 he claimed to suffer from mental health issues although no evidence had been provided to support the claim.
35. The respondent considered the objective material relating to psychiatric treatment Afghanistan dated 6 April 2017 and that treatment was available. The respondent set out the legal authorities including that of *N v SSHD* [2005] UKHL 31
36. In a determination promulgated on the 30 October 2019, FtTJ Tully allowed his claim and concluded that his illness had not reached any critical stage, whilst he had been in the UK since June 2009 it was not sufficient to demonstrate the UK was bound by any duty of care and that article 3 did not give a right to remain in the UK to continue to receive medical treatment. It was noted that there was no indication that a treatment currently received was unavailable in Afghanistan.

37. At paragraphs 125 - 129 the respondent considered article 8 noting that the bases his claims that he lived in the UK for 10 years and established a strong private life. However, no evidence had been provided in support of his article 8 claim. It was concluded that there were no very compelling circumstances in his case and that there was a significant public interest in deporting him.
38. It is recorded in the documents that the appellant completed his 38 months in prison sentence in May 2019.
39. The appellant appealed the decision, and it came before First-tier Tribunal Judge Tully on 15 October 2019.
40. In a decision promulgated on 30 October the FtTJ concluded that the conviction was "not of a particularly serious nature" within the meaning of section 72(2) (6) because she did not find that the appellant was a danger to the public. The judge attached weight to the fact that the appellant was unmedicated and suffering from a serious mental health issue. The judge made reference to the sentencing judge who found that the dispute related to the appellant and his victim and that he was not at risk of causing significant injury to members of the public. Given that he had no previous convictions for violence since 2016 the judge found that the appellant had rebutted the presumption.
41. In respect of his asylum claim the judge rejected his account that he would be targeted by members of his wife's family who live in Helmand and are associated with the Taliban.
42. The judge considered his evidence relating to his family relatives; the appellant claimed that he had been in contact with his parents since he came to the UK, but he had now lost touch. He said his brother was killed fighting for the Taliban. The judge did not accept that he had discharged the burden of proof that he lost contact with his family.
43. As to other generalised risks, the judge reached the conclusion that the appellant had a "serious mental health condition" and that he would be vulnerable on return to Afghanistan more than an ordinary returnee as a result of that condition. In the light of the mental health issues in his absence from Afghanistan from extended period, the judge did not accept he could reasonably return to his home area given the level of violence. As to internal relocation to Kabul, the judge found that he would not be with family support, he had mental health problems which would be a barrier to him accessing any support that might be available to him. The appellant had no education, no qualifications and had left Afghanistan when he was 18 and had no work history. The judge concluded that it would be unduly harsh to relocate to Kabul. The FtTJ therefore allowed the appeal.
44. The Secretary of State sought permission to appeal that decision and permission was granted by Designated First-tier Tribunal Judge Woodcraft on the 21st November 2019. The appeal came before the Upper Tribunal on the 13 January 2020.

45. In a decision promulgated on the 28th January 2020, the Upper Tribunal (Deputy Judge Black) reached the conclusion that the decision did demonstrate the making on an error on a point of law and set aside the decision (see decision annexed to this decision marked "Annex A").
46. Deputy Upper Tribunal Judge Black reached the overall view that the decision of the FtTJ lacked sufficient analysis and reasoning in support of the conclusions under section 72, asylum-generalised risk, Article 3 (medical grounds) and relocation, and Article 8.
47. The Deputy UTJ therefore set aside the decision and for the decision to be remade by the Upper Tribunal.
48. The Deputy UTJ made a direction that the FtTJ's findings as related to his "core claim" (and as set out at paragraph 38) should remain as preserved findings. This related to the specific claim put forward by the appellant in respect of being targeted by his wife's family.
49. The appeal was therefore to listed in the Upper Tribunal as a resumed hearing.
50. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that the appeal could not be determined without a face- to- face hearing, both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing.
51. Upper Tribunal Judge Norton-Taylor issued directions on the 29 April 2020 and set out the issues as follows:
 - (1) The preserved finding of fact at paragraph 38 of the FtT decision.
 - (2) Whether he is able to rebut either limb in respect of the section 72 certificate
 - (3) Whether the appellant is a refugee,
 - (4) Whether he is entitled to humanitarian protection
 - (5) Whether his removal would violate Article 3,
 - (6) Whether his removal would violate Article 8.
52. In an email reply dated 4 May 2020, the appellant's solicitors agreed those were the issues. No reply was received from the respondent.

The re-making decision before the Upper Tribunal:

53. At the resumed hearing both parties were represented by advocates; the Appellant was represented by Ms Bartlam of Counsel who had represented the appellant

previously and the Respondent by Mr Diwnycz, Senior Presenting Officer. Ms Bartlam provided a comprehensive skeleton argument in response to my directions.

The evidence:

54. The Appellant's solicitors had provided a copy of the bundle of documents which included in it the following documents:-

- Witness statement of the Appellant,
- Letter from Mr W dated 14/11/20,
- Psychiatric report, Dr W dated 19/3/20,
- psychological report Dr C,
- OASY's report,
- letter from probation officer dated 30 November 2020,
- human rights watch report: Afghanistan silent mental health circumstances dated 7/10/19
- Fast Company article dated 6 May 2019
- NRP, Afghanistan loan psychiatric hospital article dated 14/2/18
- Decision of the UT in DH (particular social group
- CG decision in AS (Afghanistan)
- Addendum report of Dr C (dated 1 October 2019).

55. The Respondent relied upon the material in the Respondent's bundle:

- including the screening interview dated 17 June 2019,
- disclaimer dated 8 August 2016, early removal scheme disclaimer,
- a response to information requested Afghanistan: psychiatric treatment dated 6 April 2017,
- appellant's handwritten response dated 26 July 2017,
- signed disclaimer and FRS dated 23 August 2017, Home Office letter dated 14 November 2018,
- asylum interview dated 22 March 2018,
- CPIN security humanitarian situation dated April 2018,

- section 72 letter dated 2 November 2018,
- appellant's section 72 response dated 9 November 2018,
- signed a deportation order dated 23 January 2019,
- decision to refuse a protection human rights claim dated 23 January 2019 refusal letter,
- copy sentencing remarks of 9 August 2016,

56. In addition, Mr Diwnycz filed a letter setting out some issues concerning the psychiatric report.
57. No up -to- date objective evidence was filed on behalf of the respondent.
58. At a previous hearing before the FtT it is recorded that counsel reported difficulties with the appellant understanding matters of evidence and/or the interpreter. This resulted in the hearing being adjourned and as a result Dr C (who had seen the appellant in May 2019) was asked to provide an addendum report to deal with the issues of capacity. That is set out in a separate document and not in the appellant's Original bundle. As a result of that document, and the diagnosis that Dr C had reached, it is agreed that he has capacity to instruct legal representatives. In summary Dr C stated that in his opinion the appellant met the criteria for diagnosis of schizotypal personality disorder which is a rare condition that resulted in some unusual effects on an individual. His condition is made worse by high impulsivity which may be termed ADD or be an aspect of his personality. Other aspects impaired communication; hearing loss, language, auditory communication, possible drug use and not waiting to listen properly. He probably blurts out lies, over which he has little control. The difficulties could be mitigated by allowing him more time to weigh up the consequences, which ultimately has the capacity to do. He concludes that he can present to someone without any hint of capacity difficulties and there is nothing in his medical records or psychological evaluations that suggests otherwise.
59. I have therefore had regard to that report when undertaking the hearing and also in the assessment of his evidence.
60. I have also reminded myself of the case of the case of AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 in which Sir Ernest Ryder, Senior President, referred to the Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant ("the guidance note") and also the Practice Direction, First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses. He went on to state that "the directions and guidance contained in them are to be followed and Failure to follow them will most likely be a material error of law".
61. Paragraph 2 of the Guidance Note states that, when considering whether an individual is vulnerable, any mental health problems, his or her social and cultural

background and any domestic circumstances are to be taken into account. In the Appellant's case, there is expert evidence from a psychiatrist and from Dr C (a psychologist) who make reference to his mental health problems and his diagnosis. The report of the psychologist confirms that he is fit to give evidence before the Tribunal.

62. On the basis of this evidence, and as both advocates accept, I find that the Appellant is a vulnerable witness and whilst the Tribunal did not receive any communication from the advocates as to any special measures that may be necessary I was satisfied from speaking to the advocates at the hearing that steps were taken to ensure he was able to give evidence in accordance with the Guidance and in the light of the report.
63. The Home Office Presenting Officer had discussed with Counsel prior to the hearing the type of questions that would be asked and the manner of them. The questions asked both in evidence in chief and in cross examination were given in a calm and measured manner and if anything was unclear, questions were rephrased. I set out that if any breaks in the proceedings were required that could be accommodated at any time. In any event the oral evidence given was of a very short duration and I was satisfied that the Appellant was able to participate fully in the hearing and no concerns were raised during the hearing in this respect.

The Appellant's factual claim:

64. The basis of the Appellants claim is set out in the witness statement which he has signed and adopted in his oral evidence when Ms Bartlam took him through that evidence.
65. The appellant states that he was born in xxx, Helmand province, Afghanistan in 1990. He states that he does not know why in some documentation his date of birth is recorded as 1980. He states that he was 18 years of age when he left Afghanistan.
66. He lived with his parents, as well as his brother who was younger than him.
67. As a result of the situation in Afghanistan he never attended school or any type of formal education and had religious education at the mosque only. In his asylum interview in 2018 he stated that he was not married and that he had no children, but this was not true. He stated he was confused and felt very unwell when he provided the information. He confirms that he had a wife and daughter ("I only have a daughter I do not have a son") in Afghanistan and that he divorced his wife in 2014.
68. As to the events which led to him leaving Afghanistan, he states that his memories of Afghanistan were of war and that life was very hard and dangerous. He remembers of his life there that it was mainly to do with trying to hide from the Taleban so he would not be forced to join them. He states the Taleban would visit the area in order to take people to join them. They would come and knock on the door every 1 to 2 months and there would be 5 to 6 at a time.

69. He previously stated that he was kidnapped and tortured by the Taleban. The appellant states in his witness statement that he had explained that this was not true and that he had said this as he was feeling confused and unwell. The appellant says, "I felt scared about what was happening to me and panicked."
70. However, the appellant claims that it was true that the Taleban wanted to recruit him and all of the young men his area and that he persuaded his father to help him leave Afghanistan rather than be forced to fight and be killed.
71. The appellant states he left Afghanistan in 2008 when he was 18 years of age. His father wanted him to join the Taleban but respected the fact that this was not what the appellant wished so therefore he left him leave Afghanistan.
72. He claims before he left Afghanistan his parents arranged that he should marry a woman that he never met before he was to another town and he later found out that her father and brothers were a member of the Taleban. They had a daughter who was born just before he left to come to the UK. He claims that the initial plan was that he would come alone and then make arrangements for them to join him. However, when he reached the UK things changed because of his mental health and in 2014 he divorced her over the phone under Islamic procedures. As soon as the family found out they were furious, and they threatened to kill him. He believes his ex-wife's family would want to kill him if he returned to Afghanistan.
73. As to his travel to the United Kingdom, he states he travelled through Iran, Greece, Italy, and France and arrived in the UK on 16 June 2009. He reported for a long time but did not know what else he needed to do. He was confused and was scared of being returned to Greece.
74. The appellant claims that he was until recently still in contact with friends in Afghanistan and they told him at the end of 2017 that his brother was forced to join the Taleban and that he had been killed.
75. He states that he was previously in contact with his parents but lost contact with them and had no idea where they are today. He has no contact with anyone Afghanistan and there was no one who can help or support him.
76. In respect of his mental health, he states that he has issues where he gets confused and cloudy which is why he made the decisions saying that he wanted to go back to Afghanistan. He confirms that he does not wish to return there as it is dangerous.

The submissions of the parties:

77. Ms Bartlam on behalf of the appellant relied upon her written skeleton argument.
78. In addition she made the following oral submissions. In respect of the section 72 certificate, she submitted that she relied upon the decision in *EN (Serbia)* set out at paragraph 9 of her skeleton argument.

79. She acknowledged that the appellant had committed a serious offence in 2016. However she submitted the appellant at the time of the offence was not diagnosed and was not taking any medication in 2016 at the time of the offence and was not diagnosed until February 2019 when in custody and it was not until Dr C saw him in May 2019 that any firm diagnosis was made. That in fact was not conclusive until September 2019.
80. She submitted that was relevant because he has since been diagnosed with having a mental health condition and is now prescribed medication.
81. She submitted that since his release in April 2019, there was no indication of any misbehaviour of any kind and the information before the tribunal demonstrated that he had shown compliance with his licence and also with his mental health worker and the probation officer.
82. She submitted that in the report of Dr C referring to his impulsivity is on the basis of when the appellant is not on medication, but this was not the reason for committing the offence. Thus when he is being treated he is less likely to commit other offences.
83. As regards the OASys' report, risk of reoffending is said to be low. She submitted the appellant had shown remorse for his actions even when facing deportation and there is no evidence of any further risk of future offending. Thus she submitted he did not present a danger to the community and thus had rebutted the presumptions.
84. Ms Bartlam then turned to the Refugee Convention. In her submissions, she relied upon the decision of *DH (particular social group: mental health) Afghanistan* [2020] UKUT 00223, and that on the basis of the medical documentation the appellant was a member of a PSG and thus qualified for protection under the Convention provided there was a nexus between their condition and any prohibited treatment/persecution.
85. She submitted that whilst the appellant's case was not directly analogous with the decision in *DH* (as cited) some comparisons can be drawn. In particular, both appellants were from Afghanistan and that there is a paucity of mental health provision and a high level of stigmatisation of mental health. There was no dispute that the appellant had a serious mental health condition.
86. In terms of the decision, she submitted that in *DH* there were risks associated with the risk of imprisonment which is similar here and there is a link between his mental health and his offending.
87. She submitted that the question was whether there was a real risk of persecution. It was accepted on behalf of the respondent at this hearing that the appellant did not have any contact with his family and did not know where they are. They previously were in Helmand province. However the appellant would be returned to Kabul where it was accepted that he did not have a support network. In his case there are a number of risk factors including his lack of education, his limited employment history, and the perceived westernisation. Given that he has demonstrated to have

been vulnerable to bullying in the UK and also it is documented that he had been disowned by his cousin in the UK due to his mental health, these are all factors that when taken together demonstrate that his condition is causally linked to prohibited treatment on the basis of the evidence the social stigma, article 3 ill-treatment and lack of adequate mental health care provision in Afghanistan set out in the key passage index. She further submitted that this was worsened by having forsaken the Islamic religion.

88. There was also the issue of self harm and suicidal intent which was set out in the reports of Dr W and in the OASys's report.
89. It was submitted on behalf of the appellant that there was an inadequacy of mental health care provision in Afghanistan which has been recently exacerbated by the deteriorating security situation in the country and targeted attacks on healthcare provision during the pandemic as outlined in the recent UNAMA.
90. Ms Bartlam submitted that if the tribunal found that he was not a member of a PSG the purposes of the Convention, his appeal should be allowed on the basis that he faced a real risk of serious harm and return to Afghanistan by reason of the ill-treatment referred to above.
91. In the alternative, there are very compelling circumstances that outweigh the public interest in his deportation (under part 5A of the NIAA 2002).
92. Mr Diwnycz on behalf of the respondent did not provide a skeleton argument but provided a letter in which he stated that Dr W had provided reports in other tribunal hearings although he accepted that in none of those cited were there any criticisms made of Dr W. Reference was made to his qualifications although it was not explained why Dr W was not a psychiatrist.
93. In his oral submissions he stated that on behalf of the respondent he accepted that the appellant had no support network in Afghanistan and that he had no family that he could rely on and that he did not know where his family were and that this was an important issue and that the decision in *AS (Afghanistan)* was a " stumbling block.
94. He further accepted that the decision letter was out of date where reference has been made to the appellant having no mental health problems when that was now accepted in the light of the medical evidence.
95. Dealing with the appellant's mental health, Mr Diwnycz submitted that he had been the presenting officer in the decision of *DH* (as cited) and relied upon on behalf of the appellant. He submitted that the exact circumstances in that case were not the same as this particular appellant and that the basis of *DH* that he had an undiagnosed mental health issue which led to his difficulties.
96. When looking at the evidence here, whilst there may be questions about his competence in the light of his qualifications, the report falls short. It does not make any real reference to the reports of the psychologist. He submitted that the

psychologist's reports were "fulsome" and gave a "lasting diagnosis". Mr Diwnycz accepted the contents of the reports of Dr C but submitted that he had a concrete diagnosis which distinguished his case from that of *DH*.

97. He submitted that the question was whether there was medical help or assistance available to the appellant in Afghanistan and whether he could gain access to it and also if he would take that assistance. He submitted that in his oral evidence he was asked if he had taken his medication last night, but he said that he had not because he did not want to oversleep for the hearing. He submitted that there was evidence available in the report of Dr C to demonstrate that the appellant continued to be a risk of harm and therefore a danger to the community. This was also supported by the contents of the OASY's report and that the appellant had not rebutted the presumptions.
98. At the conclusion of the hearing I reserved my decision which I now give.

The legal framework:

99. The appellant is subject to automatic deportation by reason of the provisions of sections 32 and 33 of the UK Borders Act 2007. Section 32 defines 'foreign criminal' as a person who is not a British citizen, who is convicted in the United Kingdom of an offence, and in addition, that his offending meets either Condition 1 (sentenced to a period of imprisonment of at least 12 months) or Condition 2, that the offence is one of those specified as a serious criminal offence by order of the Secretary of State under section 72(4)(a) of the 2002 Act and the person is sentenced to a period of imprisonment.
100. If either Condition is met, the person is a foreign criminal, and the statute creates a statutory presumption (section 32(4)) that such deportation order is conducive to the public good. The Secretary of State is required to make a deportation order in respect of a foreign criminal, unless one of the Exceptions in section 33 is applicable, or the foreign criminal is outside the United Kingdom, or section 34(4) applies (making a fresh deportation decision under section 32(5)).
101. The statutory presumption that deportation is conducive to the public good ceases to apply (positively or negatively) if an Exception is applicable. The relevant exception in section 33 in this appeal is Exception 1:

"33. ...

- (2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach -
- (a) A person's Convention rights; or
 - (b) The United Kingdom's obligations under the Refugee Convention. ...

(7) The application of an exception -

- (a) Does not prevent the making of a deportation order;
- (b) Results in it being assumed neither that deportation of the person concerned is conducive to the public good, nor that it is not conducive to the public good."

161. Where the Secretary of State has certified her decision under section 72 of the 2002 Act, section 72(1) tells the Court or Tribunal how Article 33(2) of the Refugee Convention is to be applied. Section 72(10) of the 2002 Act requires the Tribunal to begin its consideration of the appeal with consideration of the section 72 certificate. The appellant will have appealed under section 82, 83, 83A or 101 of the Nationality, Immigration and Asylum Act 2002 (as amended), wholly or partly on the ground that to remove him from, or to require him to leave the United Kingdom, would breach the United Kingdom's Refugee Convention obligations (see section 72(9)(a)).

A section 72 certificate has the effect of raising a dual statutory presumption: first, that the claimant has been convicted on a final judgment of a 'particularly serious crime' and second, that he 'constitutes a danger to the community'. In the case of a person convicted in the United Kingdom, section 72(2) provides that both presumptions come into effect where the individual is sentenced to a period of imprisonment of at least 2 years.

102. Both presumptions may be rebutted by appropriate evidence, as set out in section 72(6) and *EN (Serbia) v Secretary of State for the Home Department & Anor* [2009] EWCA Civ 630.
103. If both presumptions are not rebutted, then section 72(10)(b) of the Act requires the Tribunal to dismiss the appeal in so far as it relies on the Refugee Convention ground. No presumptions are raised in relation to human rights.
104. I have reminded myself that, when considering whether the Appellant has a well-founded fear of persecution for the purposes of the Refugee Convention, the burden of proof lies with the Appellant but that I have taken into account the fact that he is a vulnerable witness, which may have affected his ability to give evidence. The standard of proof is that of a reasonable degree of likelihood or a serious possibility.
105. A person is entitled to refugee status under the Refugee Convention if he has a well-founded fear of persecution on account of his nationality, religion, race, membership of a particular social group or political opinion.

37. Regulation 6(1)(d) of the Qualification Directive states that:

"A group shall be considered to form a particular social group where in particular

a) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

b) that group has a distinct identity in the relevant country as it is perceived as being different by the surrounding society".

Internal Relocation

106. Of particular relevance to part of the guidance given in this case is paragraph 339O headed "Internal Relocation". This states:

'i. The Secretary of State will not make:

(a) a grant of asylum if in part of the country of origin a person will not have a well-founded fear of being persecuted and the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

ii. In examining whether a part of the country of origin or country of return meets the requirements in i. the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

iii. It applies notwithstanding technical obstacles to return to the country of origin or country of return."

107. In considering the proper approach to the issue of internal relocation I have also to apply the principles set out by the House of Lords in Januzi [2006] UKHL 5 (which adopts the criteria now contained in paragraph 339O but also contains more detailed guidance) and AH (Sudan) [2007] UKHL 49.

108. In Januzi their Lordships held that the test for whether it would be unreasonable for an asylum seeker to relocate to a safe haven within his own country, was not whether the quality of life there failed to meet the basic norms of civil, political, and socio-economic human rights, but whether he would face conditions such as utter destitution or exposure to cruel or inhuman treatment, threatening his most basic human rights. There was no presumption that when persecution emanated from agents of the state or where the state encouraged or connived in that persecution by others, there could be no viable internal flight option. The greater the power of the state over all parts of the asylum seeker's country the less viable such an option would be and vice versa.

109. In AH (Sudan) their Lordships repeated that the test to determine whether internal relocation was available was as set out in Januzi namely whether it was reasonable to expect the Appellant to relocate or whether it would be unduly harsh to expect him to do so. The 'unduly harsh' test did not require conditions in the place of relocation to reach the Article 3 ECHR level. The inquiry was to be directed to the situation of the particular Appellant, whose age, gender, experience, health, skills, and family ties might all be very relevant. Cases had to be assessed holistically with specific reference to personal circumstances, including past persecution or fear thereof in family and social relationships.

Sufficiency of Protection

110. As the House of Lords decision in Horvath [2000] UKHL 37 demonstrates, to qualify as a 'non state agent of persecution' it is not enough to show the person or group concerned has a real potential to cause a claimant serious harm. There must also be a protection the non-state actor simply remains an 'agent of serious harm' not an 'agent of persecution'. As Lord Hope stated:

“The standard to be applied is therefore not that which eliminates all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard which takes proper account of the duty which the state owes to all its nationals.”

Analysis of the evidence:

111. I have set out above that it is common ground between the parties that the Appellant is a vulnerable witness by reason of his mental health condition. I have therefore taken account of and applied the Joint Presidential Note. In this context I make reference to the case of *JL (medical reports-credibility) China* [2013] UKUT 00145 (IAC), in particular paragraph 6, which referred to the situation where an Appellant was vulnerable and said that it was of particular importance to take into account the possible relevance of the Appellant being a vulnerable person to the credibility findings.
112. At paragraph 27 of the decision in *JL* judges are reminded that applying this guidance entails asking whether any of the inconsistencies in the Appellant's account could be explained by him being a vulnerable person.
113. The guidance at 10.3 at page 6, which gives guidance on assessing evidence, and paragraph 14, which says that where there were clear discrepancies in the oral evidence, consideration should be given to the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.
114. Paragraph 15 states that the decision should record whether the Tribunal has concluded that the Appellant is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and whether the Tribunal was satisfied whether the Appellant had established his or her case to the relevant standard of proof. It is noted that in asylum appeals

weight should be given to objective indications of risk rather than necessarily to a state of mind.

115. At para [21] (agreeing with the submissions made on behalf of the Appellant in that case), the Senior President dealt with the importance of considering the circumstances of a child or vulnerable witness when assessing their evidence in an asylum claim as follows:

"21. It is submitted on behalf of the Appellant that the agreed basis for allowing the appeal on the merits reflects core principles of asylum law and practice which have particular importance in claims from children and other vulnerable persons namely:

a. given the gravity of the consequences of a decision on asylum and the accepted inherent difficulties in establishing the facts of the claim as well as future risks, there is a lower standard of proof, expressed as 'a reasonable chance', 'substantial grounds for thinking' or 'a serious possibility';

b. while an assessment of personal credibility may be a critical aspect of some claims, particularly in the absence of independent supporting evidence, it is not an end in itself or a substitute for the application of the criteria for refugee status which must be holistically assessed;

c. the findings of medical experts must be treated as part of the holistic assessment: they are not to be treated as an 'add-on' and rejected as a result of an adverse credibility assessment or finding made prior to and without regard to the medical evidence;

d. expert medical evidence can be critical in providing explanation for difficulties in giving a coherent and consistent account of past events and for identifying any relevant safeguards required to meet vulnerabilities that can lead to disadvantage in the determination process, for example, in the ability to give oral testimony and under what conditions (see the Guidance Note below *and JL (medical reports - credibility) (China) [2013] UKUT 00145 (IAC)*, at [26] to [27]);

e. an Appellant's account of his or her fears and the assessment of an Appellant's credibility must also be judged in the context of the known objective circumstances and practices of the state in question and a failure to do so can constitute an error of law; and

f. in making asylum decisions, the highest standards of procedural fairness are required."

116. It is correct that the Appellant has not given a consistent account of the events in Afghanistan and this is accepted by Ms Bartlam on behalf of the appellant where he has been described as a "poor historian". The medical evidence set out in the reports of Dr C set out that his mental health condition as now diagnosed is the explanation for that.

117. Therefore, it is necessary to consider all relevant evidence before reaching a holistic assessment of the credibility of the Appellant's account. However, the credibility of his account can also be assessed holistically by looking at its consistency and plausibility, as above, and also by comparing it to what is known about Afghanistan.
118. There is no dispute that the appellant is a national of Afghanistan who entered the UK in 2009 and that he has never been granted any form of leave save for a short period of temporary release in October 2009 when he first claimed asylum before absconding.
119. I have set out earlier a précis of the claims that he is made relating to fear of persecution in Afghanistan which included being at risk from his wife's family who live in Helmand and are associated with the Taliban. None of those issues have been canvassed during this hearing and I have heard no submissions on behalf of the appellant seeking to support any factual background based on any past history. It is accepted that the appellant has given various accounts relating to his background which have been inconsistent in important respects; as to whether he was married, divorced and whether he has one, two or no children. The level of inconsistency throughout his claim has not been disputed by the appellant during this hearing.
120. As set out in the medical evidence, to which I will return to, it is accepted that he has a serious mental health condition that results in him being dis-inhibited, having perceptual disturbance/eccentricity, and blurting out lies without thinking about the consequences. Dr C (paragraph 28) was of the view that his inability to control his impulses leading to suddenly blurt out falsehoods which is the most likely explanation for the discrepancies in reporting aspects regarding being married, having children, speaking Chinese, and being kidnapped.
121. As set out as a preserved finding from the decision of IJ Tully is that the appellant had not discharged the burden of proof that he is divorced or be a target or be at risk from his ex-wife's family.
122. As I have not been asked to make any other findings concerning his account, and it has not been demonstrated that he was at risk from the Taliban when he left Afghanistan.
123. However, it is accepted on behalf of the respondent at this hearing in the light of the submissions made by Mr Diwnycz that the appellant upon return to Afghanistan will have no family support. It is accepted that he has not been in contact with his family and thus will have no support either on return to his home area or on the basis submitted by the respondent on return to Kabul.
124. The appellant comes from a particularly volatile part of Afghanistan. The EASO COI Report Afghanistan Security Situation (May 2018) states that "the Taliban have a 'high' 'active and physical presence' (districts attacked at least twice a week' in Tagab [AB page 213]. In 2017 UNAMA documented 101 civilian victims in Kapisa (34 deaths and 67 injured), a 19% decrease compared to 2016.

125. The CPIN Afghanistan: Security and humanitarian situation (April 2018) acknowledges that "Since the promulgation of AK in May 2012 the overall number of civilian deaths and injuries in Afghanistan documented by UNAMA has increased. The number of civilian casualties in 2016 (11,418 - 3,498 deaths and 7,920 injured) has increased by 32% compared to 2011 (7,842) - the highest since recording began in 2009; and a 3% increase in total civilian casualties compared to 2015 [Â§2.3.14]. The worst affected areas were the southern and eastern provinces of Helmand, Nangarhar, Kandaha, Kunar and Ghazni, which experiences 50% of all security related incidents. The Taliban increased their activities in northern and north-eastern Afghanistan and Farah in the west, as well as putting pressure on the Government's control of the provincial capitals of Farah (Farah province), Kunduz (Kunduz province), Lashkar Gah (Helmand province) and Tirin Kot (Uruzgan province) [Â§2.3.15]. Reflecting the worsening security situation, the first six months of 2017 saw the highest numbers of civilian casualties recorded in Kabul province due to suicide and complex attacks in Kabul city. However, nearly 60% of civilian casualties in Kabul city were caused by a single suicide attack in May 2017, and the number of high-profile attacks in the city in 2016 decreased from 2015 [Â§2.3.16]. the proportion of civilian casualties in Afghanistan remains low with around 0.03% of the population injured or killed each year (taking the 2016 UNAMA numbers against a population estimate of around 30 million). The proportion of civilian casualties recorded in Kabul city in the first six months of 2017 equates to 0.02% of the city's population [Â§2.3.17]."
126. I accept that concession when seen in the light of the country materials that relate to his home area and on the basis that he left Afghanistan over 10 years ago
127. The core of the Appellant's case relates to the appellant's mental health condition.
128. There are two report from Dr C, chartered clinical psychologist dated May 13, 2019 and updated report dated 1 October 2019.
129. He sets out at paragraph 14 the same questions that Dr W was asked to consider. For the purposes of his report he had the Home Office bundle, a draft statement, and medical reports from the prison.
130. It seems to be common ground that there is no record of any mental health illness or any psychiatric treatment prior to the appellant being received into custody.
131. There was no history of deliberate self-harm until 19 October 2017 when he self-harm with a razor blade causing superficial injuries following problems with inmates. In 2018 he was assaulted by a prisoner and had anxiety due to being assaulted by a prisoner. In 2018 he reported anxiety due to being hassled by prisoners who wanted to fight him and that he was bored, and he wanted to harm himself because of this. He lost his enhanced status due to an altercation.
132. Dr C reports that the medical records show that he was issued with deportation orders on 24 September 2019 and two days later, the first time, he reportedly heard animal noises and hit his head. Three days afterwards he reportedly heard voices

saying they will kill him. He reported seeing visual images of dead people. He also reported that he hits his head but no visible marks injury. Three days afterwards on 28 January 2019 a suicide attempt of hangings recorded due to his voice telling him self-harm. No physical swelling neck observed that there is light bruising. By next day he reported much better and claimed that a recent attempt of hanging was “unplanned and impulsive”. A self-report scale of mental health yields a low score.

133. The prison records as summarised by Dr C sets out that he was first assessed by a psychiatrist on 7 February 2019 whose opinion was that he had stress with underlying vulnerabilities. He “may have some psychotic symptoms” but more information was required from wing staff. The doctor believed that he should trial the antidepressant mirtazapine although “he was not considered depressed”. He was then given a single cell and reported that he been able to sleep. This is the final day of the medical records. He continued to hear voices and an atypical antipsychotic medication was being considered.
134. Dr C, at paragraph 59, stated that having reviewed the medical records the question his mind was “did a deportation threat trigger anxieties which triggered a hallucinate re-psychotic symptoms or was there another explanation such as malingering?”
135. Dr C saw the appellant two weeks after he had been released in May 2019. He referred to his behaviour at paragraphs 84 – 88, and found his presentation was consistent with his opinion that the appellant likely has “inattention and hyperactivity deficient disorder which is exacerbated by uncertain status and a concern about returning to Afghanistan as well as social difficulties associated with recent release and visit prison and detention and having few resources or available means to change his current predicament.” As a result no clinical assessment tools were undertaken. The opinion was based on interview and prior medical records.
136. The report refers to a previous diagnosis of “possible depression” and that he was taking no medication. There is also reference to the appellant having disclosed during his OASY’s assessment that he smoked a lot of cannabis at the time of the offence (in 2016).
137. Dr C’s opinion as to the appellant’s mental health is set out at paragraph 98 – 108. He states that he is aware of the credibility issues raised by the Secretary of State and that he is required to perform a “critical objective analysis”. We also consider the possibility that the appellant was malingering, fining, or exaggerating.
138. As to the reports of a history of voice hearing, Dr C said that was inconsistent with his medical records. Having considered the onset and content of the auditory hallucinations there are two most likely possibilities either he is faking/malingering of the voices, or they are part of a psychotic illness, possibly in the prodromal stage (before full-blown psychotic episode) or that they are accompanying a very severe depressive or trauma induced mental health condition.

139. Because of his apparent inability to remain still and poor impulse control, Dr C consider whether he was suffering from bipolar disorder.
140. Based on the factors used to determine consider malingering, on the balance of probabilities, Dr C stated “the most likely that he is not being truthful about hearing voices and some other reported difficulties. It is possible, but unlikely that he either has a psychotic illness or is in the early stages of an episode of psychosis. I think it most likely that he is malingering” (at paragraph 102).
141. Based on his previous presentation of providing a false history, Dr C relied less than usual on self-reported symptoms but took them into account. He believed that he would have arrived at the same conclusion even if there had not been other evidence of fabrication.
142. Other possibilities exist, for example drug use, but again he stated, “I think this is less likely than malingering”.
143. At paragraph 105 he stated “in my opinion, the appellant is anxious about the possibility of deportation and emotionally stressed due to his current very difficult social situation where he is not yet given any income, noisy permitted to work. However, I did not believe he meets criteria for anxiety disorder, depressive order, or a trauma order such as PTSD.
144. At paragraph 106 he states “however, he does have an unusual presentation that has been consistently observed several years in a range of locations. He has been untruthful, and he has admitted that, including aspects that there is no apparent gain. For example, whether he has one child to Afghanistan or that he speaks Chinese. I believe his impulse control, including singing was part of an effort to appear mentally unwell, although he told me he does have a mental illness.” At 107 he states “I therefore considered whether he has traits that includes pathological lying, poor impulse control that indicates the presence of a personality disorder. There are features that indicate the possible presence of a personality disorder, such as an antisocial behaviour disorder. I do not have sufficient information to give an opinion either way”.
145. Dr C considered he did not present as someone with a learning disability. He was able to demonstrate an intelligence that was not consistent with an intellectual impairment. However, he presents some difficulties evaluating information.
146. The diagnosis of Dr C is set out at paragraphs 109 – 112.
147. He diagnosed attention deficit disorder (ADD) which explained his presentation. It is also associated with his offending history and there is an overlap between the possible personality disorder traits that he may have and a childhood history of attention deficit and hyperactivity disorder (ADHD). However, his diagnosis was unconfirmed because he could not get a history from the appellant but on balance he thought it “very probable that he meets the criteria for ADD.” The rest of his opinions which were expressed were premised on the basis that he believed that he

had ADD. He observed that there is an overlap of difficulties between ADD and antisocial personality disorder and the children diagnosed with ADHD are more likely to subsequently develop antisocial personality disorders in adult hood.

148. He recommended that there was a range of possibilities for treatment including medication that needs to be based on factors that require further assessment.
149. As to vulnerability and risk, Dr C stated "assessing the risk of suicide was made more difficult because in my view he was malingering. On balance I do not believe that his attempts in prison were serious attempt to end his life. They were more likely to have been due to boredom (as he stated) and a desire for better self. His harming and suicidal behaviour is consistent with ADD. People with ADD are at a greater risk than the general population to commit suicide. 16% of people with a diagnosis attempted suicide. When combined with the presence of another disorder such as depression, which he is prone to the chances of suicidally associated with 4-12 x higher risk. He has a number of risk factors that further increase the likelihood of suicide and they apply even though he may not have attempted to have seriously wanted to end his life on other attempts. They are set out at paragraph 121 and reference is made to suicide attempts at para 122.
150. At paragraph 123, Dr C states that the appellant was not expressing a desire to end his life upon assessment, but he is extremely impulsive and has a history of deliberate self-harm. The history combined with the risk factors play similar sadistically high risk of suicide. The risk is much greater if he is deported since deporting carries the risk of provoking a mood or anxiety disorder.
151. In summary at paragraph 124 he stated "because of the risk of the onset of a coexisting mood disorder and is ADD, he statistically is at a very high risk of suicide if deported. Because of his impulsivity which has previously been expressed by stabbing someone, it is likely that future attempts will come with little warning."
152. At paragraphs 125 - 129 Dr C addresses an assessment of whether a risk is increased if a decision was taken to deport him an assessment of his ability to cope and overcome difficulties on return to Afghanistan under the heading "vulnerability". He states that adults with ADD are a far higher risk of developing mood and anxiety disorders and deportation is likely to provoke a mood disorder which will place a much higher risk of completed suicide compared if he remained in the UK. If deported is at a far higher risk than if you remained here where he has some support mechanisms.
153. Paragraph 127 records "[the appellant] is impulsive and makes rash decisions without thinking through. A DHD is associated with an irritability and the kinds of alterations that there is a record of him being in during prison."
154. Dr C stated that he could not predict the precise vulnerabilities that he has but that he would be at "mortal risk in Afghanistan compared to the UK. If he gets into altercations and Afghanistan weapons are more common and revenge is more likely.

Despite his protestations that he will not join a military group is impulsivity increases the likelihood that he will.”

155. The summary reached is as follows:

- The appellant was probably malingering some symptoms and difficulties. He is also known to fabricated aspects of history. He says things that come into his mind irrespective of the truth, without thinking of the consequences. He has poor impulse control over what he says and what he does (para 130).
- T the appellant on 1 October 2009; the assessment was in English and without an interpreter although there were some difficulties in understanding they were easily solved and had little to do with the language difficulty. He most likely explanation is that he suffers from attention deficit and hyperactivity disorder (ADHD) or attention deficit disorder (ADD) .to so thought it is probable that he has ADD.
- ADD/ADHD making vulnerable to developing a mood or anxiety disorder if deported.
- When combined with other risk factors his condition places him in a statistically higher possibility of suicide.
- He is also greater risk of joining a military fighting group getting involved in potentially life-threatening altercations and a host of other risks due to very poor impulse control.
- It is likely that his condition has played a role in his offending in the UK
- his condition is never properly been assessed or treated. This should happen as soon as possible by contacting his GP.

156. There is an updated report from Dr C dated October 7, 2019. This report was commissioned because when he appeared before the tribunal there were concerns as to whether he had capacity to give evidence. At paragraphs 6 – 11, Dr C makes reference to the events at the hearing and with his own counsel.

157. Dr C reassessed him on 1 October 2019. The assessment was in English and without an interpreter however tradition states there was difficulties in understanding they were easily solved and likely had little to do with the language difficulty. He stated that the appellant’s difficulties are “unusual and rarely seen” (paragraph 14).

158. His opinion on his mental health in the context of his previous report and that his presentation could be explained by malingering, drug use and poor impulse control. And that is poor impulse control was attributed to a possibility of a personality disorder and/or attention deficit disorder which would explain his presentation across domains.

159. Dr C now gives a different opinion. He considered that “the most likely explanation of his difficulties is schizotypal personality disorder. This is unusual and fairly rare disorder that is categorised by the World Health Organisation as a psychotic disorder and characterised by DSM 5 as a personality disorder.”
160. At paragraph 22, he describes schizotypal personality disorder as a “pervasive pattern of social and interpersonal deficits including reduced capacity of close relationships, cognitive or perceptual disturbances and eccentricities of behaviour.”
161. He gives an example of unusual belief at paragraph 23.
162. There is a strong impulsivity difficulty component his presentation which is associated with ADD but may be better to put into a personality disorder trait (as paragraph 107 previous report). “Whatever term we name is impulsivity the effect is the same, he is impulsive and cannot control himself or sit still for any length of time”. Dr C considers that his condition is consistent with this statement that he is a mental health problem that causes him not to think straight and say whatever comes into his mind (see paragraph 37 previous report). Both of the assessments to support the assertion.
163. Dr C recognised that his difficulties may be complicated by drug use, malingering, and exaggeration and though he may be malingering or exaggerating some aspects, Dr C was of little doubt that he has mental health difficulties that are serious, probably treatment resistant and caused a range of difficulties across domains.
164. He also remains of the opinion that his inability to control his impulses leads him to suddenly blurt out falsehoods which is the most likely explanation for the discrepancies in his reporting of aspects regarding being married, having children, speaking Chinese, and being kidnapped.
165. The risks to himself remain valid and that the difficulties are greater than previously thought (see paragraph 29).
166. At paragraphs 30 – 31 Dr C deals with the issue of capacity and at paragraphs 32 – 34 deals with communication problems irrespective of capacity.
167. In summary Dr C stated that in his opinion the appellant met the criteria for diagnosis of schizotypal personality disorder which is a rare condition that resulted in some unusual effects on an individual. His condition is made worse by high impulsivity which may be termed ADD or be an aspect of his personality. Other aspects impair communication; hearing loss, language, auditory communication, possible drug use and not waiting to listen properly. He probably blurts out lies, over which he has little control. The difficulties could be mitigated by allowing him more time to weigh up the consequences, which ultimately has the capacity to do. He concludes that he can present to someone without any hint of capacity difficulties and there is nothing in his medical records or psychological evaluations that suggests otherwise.

The psychiatric report:

168. A psychiatric assessment was undertaken by Dr W, consultant psychiatrist on 11 March 2020. Dr W is not a treating psychiatrist and had been instructed to prepare the report for the proceedings on behalf of the appellant's solicitors.
169. Counsel confirmed in a letter after the hearing that Dr W had the reports from Dr C when reaching his diagnosis.
170. Dr W states that he has regard to what the applicant has told him and what is contained in the medical records and other documents as "assumed facts". The only fact that he had personal knowledge his findings on examination as set out in the section entitled "psychiatric examination". He states he interviewed and examined the applicant in Urdu. I note that the interviews undertaken with the Home Office have been carried out in Pashtu.
171. The report sets out the chronology of events. It is inaccurate where it states that the appellant has resided in the UK since June 1999 (this should be 2009). It sets out that "there is a long-term threat to his life in Afghanistan because of the enmity with his in-laws. In 2013 he divorced his wife over the phone. His in-laws consider this to be incredibly insulting and have threatened to take revenge for this humiliation. He feels extremely vulnerable and unsafe in case he returns to Afghanistan." As to his marital history, it is stated "the applicant was married in Afghanistan some time before he left Afghanistan.... He later had a daughter... In 2013 he divorced his wife over the phone leading to threats of revenge."
172. As to drinking alcohol and substances, he told the psychiatrist he occasionally smokes but denied using any drugs and that he gave up drinking alcohol in 2016.
173. He has no family history of mental illness.
174. As to past psychiatric treatment in the UK, the psychiatrist notes that since his arrival "he has faced considerable hardships... He is financially and emotionally vulnerable, leading to bouts of depression and suicidal ideation and plans. During his stay in prison, he started taking mirtazapine and olanzapine at night has continued that medication to the GP. He notes "there is no history of assessment by any psychiatrist or admission to a mental health unit". He reported an instance when he decided to end his life and showed a large scar over his right wrist which he attributed to an attempt to end his life. The psychiatrist notes "he did not report any significant medical illness."
175. Dr W set out his current mental state. He observed that the appellant did not appear to be keen on answering questions did not understand the importance and relevance preparing a psychiatric report. He maintained good eye contact but became emotionally overwhelmed when describing his problems.
176. As to his mood, both subjectively and objectively, he appeared to have a low mood. "His past experiences Afghanistan ongoing problems in the UK burden him. He

reports having active suicidal ideation is acknowledges at times having thoughts that life is not worth living.”

177. As to thoughts it is recorded that “he remains preoccupied with intrusive thoughts about the consequences of return to Afghanistan and threats to his life upon return. He reported that these worrying thoughts became overwhelming over the last few months.
178. Under “perceptions”, the appellant reported that he had heard voices in his head. They are multiple mixed gender voices, and they are trying to harass and intimidate him. He has no control over them, and it is stressful for him.
179. Under the section “insight” it is stated that the appellant has full insight into his mental health problems. He attributed this to threats to his life in asylum case in the UK. He recognised his symptoms and is ready to consider treatment. He is also motivated to engage with this treatment plan.
180. The “predisposing factors for depression”, include threat to life in Afghanistan as he has deserted from becoming a Taleban accomplice, threats of his in-laws, experiences of long-term immigration in the UK. Precipitating factors are his continued illegal migrant status and reported recurring intensive dramatic thoughts in the prison sentence. The “maintaining factors for depression” are stated to be financial constraints, fear of rejection of asylum application uncertainty about the future.
181. The prognosis is stated as follows:

“Based on my own assessment of the mental state, the overall prognosis remains poor in the short term. There have been recurrent episodes of depression with an increased risk of suicide. He has intrusive traumatic thoughts. With progressing age, the episodes of depression tend to become recurrence, severe and resistant to treatment. The prognosis is further made worse with associated symptoms of traumatic stress. The ongoing stressors will take time to resolve, but he is motivated to engage with treatment and work with health providers to find solutions with problems.

182. In the summary of conclusions, the following is stated:-

“The appellant reports of persistent risks to himself and return to Afghanistan because he deserted from the Taleban.

There is a history of depression and recurrent suicidal ideation is with plans.

In my opinion the applicant suffers from recurrent depressive disorder along with features of PTSD.

He needs to improve his mental health treatment with Pharmacological/psychological therapeutic approaches.

His risk of self-harm is high and the risk of suicide while in the UK will increase once he is informed of his deportation.

If he is deported to Afghanistan, he will have to face extreme stress and lack of support, thus increasing his vulnerability to suicide.

He recommends reviewing his current dose of medication and increasing it and that this would need to be monitored. He would need to continue this treatment fully six months after he recovers from his symptoms. His response to treatment may be limited due to his current immigration matter.

When considering the psychosocial precipitating factors and elements of PTSD, it is also suggested that the applicant will benefit from receiving psychological therapy such as CBT for the treatment of depression/ anxiety. This is a technique to help them understand thoughts and feelings that lead to potentially problematic behaviour. The local NHS mental health service can provide this. The treatment period can vary. The psychiatrist recommends at least 8 to 12 weekly sessions. There is also a need to be signposted to local ethnic support group to end his social isolation and enhance integration in the community. If the current symptoms are left untreated, his condition may worsen to the extent that it becomes resistant to treatment and the risk can escalate there is a risk of deterioration in his mental health fails to comply with the medical treatment as recommended any further exposure to a stressful situation which is likely to face and return Afghanistan may facilitate a severe aggravation his symptoms without appropriate treatment, his prognosis is poor."

183. As to the impact on his mental health upon deportation, the psychiatrist again refers to the appellant having resided in the UK for the last 20 years since 1999, (again this is a factual error). He states medical treatment for options for mental health are scarce in Afghanistan. "However, the main issue is that he will be exposed to life-threatening consequences of his desertion from the Taliban and revenge from his in-laws. Financially sustaining himself will be a problem with all these ongoing psychosocial issues, monitoring his mood, seeking psychiatric help and adhere to the treatment plans.
184. Dr W concludes "in my opinion, return to Afghanistan will have an extremely detrimental impact on his mental health with worsening risk to self."
185. As can be seen from the summary of the medical reports there is no agreement between the experts involved as to the appellant's correct diagnosis. Dr C considers that the appellant's condition is "unusual and rarely seen" (I refer to paragraph 15 of his addendum) and that having had the opportunity to provide a further report and consider his condition he is of the opinion that the most likely explanation for his condition is that he is suffering from a schizotypal personality disorder which is an unusual and fairly rare disorder; which is categorised by the WHO as a psychotic disorder and characterised by the APA as a personality disorder. He states the

condition is made worse by high impulsivity which may be termed attention deficit disorder as an aspect of his personality.

186. Dr W by way of contrast diagnosed him suffering from a recurrent depressive order along with features of PTSD with a high risk of suicide.
187. Both are experts in their differing fields, Dr W is a consultant psychiatrist and Dr C is a chartered psychologist. Whilst Mr Diwnycz submitted that Dr W does not appear to have the correct letters after his name, no further submissions or evidence was provided in support of this submission. He has also provided a number of reports to the tribunal as a psychiatrist consequently I have no difficulty accepting his expertise as a psychiatrist. However in terms of diagnosis I have reached the conclusion that the reports of Dr C have the greater weight in the sense that he has been able to see the appellant on more than one occasion and also has made reference to other material available to assist him in reaching his overall diagnosis. I have not found that to be the position with Dr W.
188. Dr W stated that he has had regard to the medical reports, and counsel was expressly asked if Dr W had been sent the copies of Dr C's reports and she sent a letter confirming this to the tribunal after the hearing. However there is no reference to any diagnosis reached by Dr C in the report of Dr W. This is important because in Dr C's report he makes reference to the appellant's mental health condition and how this relates to the appellant's inability to provide a consistent and plausible factual history. It can be noted from the report of Dr W that he appears to accept the appellant's account as to events in Afghanistan and in his conclusion stated, "the main issue is that he is exposed to life-threatening consequences of his desertion from the Taleban and revenge from his in-laws."
189. It is also the case that Dr W refers to the appellant of having "no history of assessment by any psychiatrist". However as set out in the medical records as reflected in Dr C's report, the appellant was seen by a psychiatrist in February 2019 and that he was assessed by Dr Fazeli whose opinion was that the appellant had "stressed with underlying vulnerabilities" and that "he may well have some psychotic symptoms." Importantly, the report of Dr C sets out some aspects of the appellant's account which Dr C considered provided evidence of malingering or exaggeration. There are also factual mistakes made in the report of Dr W where he refers to the appellant having lived in the United Kingdom for over 20 years since 1999, both in the county's history and also when stating his conclusions.
190. Therefore the position is that both differ as to their precise diagnosis. Whilst that is the case, it is still plain that the appellant is suffering from serious mental health condition. I therefore attach more weight to the reports of Dr C. Mr Diwnycz does not dispute its contents, nor has he sought to challenge any aspect of its contents during this hearing.
191. That said, I am satisfied the Doctor W is a consultant psychiatrist with the relevant expertise and whilst I have outlined certain areas of difficulty, I do attach weight to

his report and its contents. I observe his diagnosis as to the high risk of suicide is consistent with the report of Dr C in this respect. Both experts have given reasons for reaching their respective conclusions on this issue and whilst they differ in their diagnosis and given that they are different experts in different fields, they are in agreement about that issue. I accept their evidence on the issue of the risk of suicide and self-harm and again this has not been challenged by the respondent during this hearing.

Section 72:

192. In the light of the appellant's conviction having pleaded guilty to wounding with intent on being in possession of a bladed article which led to his sentence of imprisonment of 6 years and 4 months, it is necessary to consider the issue of the Section 72 certificate.

193. Section 72 of the 2002 Act provides (so far as is relevant) as follows:-

Section 72 Serious criminal

- (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
- (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is -
 - (a) convicted in the United Kingdom of an offence, and
 - (b) sentenced to a period of imprisonment of at least two years.
- ...
- (9) Subsection (1) applies where -
 - (a) a person appeals under Section 82, 83 [F1, 83A] or 101 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention, and
 - (b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).
- (10) The Tribunal or Commission hearing the appeal -
 - (a) must be a substantive deliberation on the appeal by considering the certificate, and

- (b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the grounds specified in subsection (9)(a).

194. Where the Secretary of State has certified his decision under section 72 of the 2002 Act, section 72(1) tells the Court or Tribunal how Article 33(2) of the Refugee Convention is to be applied. Section 72(10) of the 2002 Act requires the Tribunal to begin its consideration of the appeal with consideration of the section 72 certificate. The claimant will have appealed under section 82, 83, 83A or 101 of the Nationality, Immigration and Asylum Act 2002 (as amended), wholly or partly on the ground that to remove him from, or to require him to leave the United Kingdom, would breach the United Kingdom's Refugee Convention obligations (see section 72(9)(a)).
195. A section 72 certificate has the effect of raising a dual statutory presumption: first, that the claimant has been convicted on a final judgment of a 'particularly serious crime' and second, that he 'constitutes a danger to the community'. In the case of a person convicted in the United Kingdom, section 72(2) provides that both presumptions come into effect where the individual is sentenced to a period of imprisonment of at least 2 years.
196. Both presumptions may be rebutted by appropriate evidence, as set out in section 72(6) and *EN (Serbia) v Secretary of State for the Home Department & Anor* [2009] EWCA Civ 630.
197. If both presumptions are not rebutted, then section 72(10)(b) of the Act requires the Tribunal to dismiss the appeal in so far as it relies on the Refugee Convention ground. No presumptions are raised in relation to human rights.
198. I am guided in my approach to the section 72 certificate by the decision of the Upper Tribunal in *Mugwagwa* (s.72 - applying statutory presumptions) Zimbabwe [2011] UKUT 338 (IAC). Paragraph 1 of the judicial headnote to that decision is as follows:
- "1. The First-tier Tribunal (Immigration and Asylum Chamber) is required to apply of its own motion the statutory presumptions in s.72 of the Nationality, Immigration and Asylum Act 2002 to the effect that Art 33(2) of the Refugee Convention will not prevent refoulement of a refugee where the factual underpinning for the application of s.72 is present even if the Secretary of State has not relied upon Art 33(2) and s.72."*
199. The Upper Tribunal in *Mugwagwa* explained the effect of the section 72 certificate as follows:
- "23. Section 72(2) creates statutory presumptions that the requirements of Art 33(2) are met and, as a consequence, the prohibition against refoulement will not apply. Section 72 is in mandatory terms: "[a] person shall be presumed...". In our judgment, where s.72(2) or any of the other statutory provisions creating presumptions in s.72 applies, the Tribunal is under a duty to apply s.72 to the individual in the appeal. Given the evidential base provided by these presumptions, subject to rebuttal, Art 33(2) will apply in such circumstances so that that a refugee's removal will not be a breach of the Refugee Convention. Of*

course, the individual will, whilst he fulfils the definition in Art 1 of the Refugee Convention, still have the status of a refugee in international law; and he cannot be removed from the UK to his country of nationality as that would inevitably infringe Art 3 of the ECHR. However, given the terms of the 2002 and 2007 Acts, his appeal relying on 'asylum' or 'refugee' grounds cannot succeed.

200. In the decision of EN (Serbia) (as cited) the following was stated at [45]-[47] and at [66]:"

"45. These remarks apply with equal force here. Moreover, I see no need for any gloss on the express words of Article 33(2). The words "particularly serious crime" are clear, and themselves restrict drastically the offences to which the Article applies. So far as "danger to the community" is concerned, the danger must be real, but if a person is convicted of a particularly serious crime, and there is a real risk of its repetition, he is likely to constitute a danger to the community.

46. The Appellants submitted that Article 33(2) requires that the danger to the community must be causally connected to the particularly serious crime of which the person has been convicted. I would accept that normally the danger is demonstrated by proof of the particularly serious offence and the risk of its recurrence, or of the recurrence of a similar offence. I would also accept that the wording of Article 33(2) reflects that expectation. But it does not expressly require a causal connection, and I do not think that one is to be implied. By way of example, I do not see why a person who has been convicted of a particularly serious offence of violence and who the State can establish is a significant drug dealer should not be liable to refouled under Article 33(2). In any event, it seems to me that a disregard for the law, demonstrated by the conviction, would be sufficient to establish a causal connection between the conviction and the danger. If so, the suggested added requirement of a causal connection has little if any practical consequence.

47. I would add that I have no doubt that particularly serious crimes are not restricted to offences against the person. Frauds, thefts, and offences against property, for example, are capable of being particularly serious crimes, as may drug offences, particularly those involving class A drugs. In addition, matters such as frequent repetition or a sophisticated system or the participation of a number of offenders may aggravate the seriousness of an offence.

...

66. I see no reason why a rebuttable presumption, imposed for the purposes of a decision as to whether removal would be in breach of Article 33(1), should be incompatible with Article 33(2) of the Convention, at least in cases in which it may reasonably be inferred that a conviction gives rise to a reasonable likelihood that a person's conviction is of a particularly serious crime and that he constitutes a danger to the community. The Convention does not prescribe the procedure by which the conditions required by Article 33(2) are to be established; and the creation of a rebuttable presumption is a matter of procedure rather than of substance. I accept that the Convention places an onus on the State of refuge. Under section 72, it is

for the Secretary of State to establish that the person in question has been convicted of a relevant offence. In practice, once the State has established that a person has been convicted of what is on the face of it a particularly serious crime, it will be for him to show either that it was not in fact particularly serious, because of mitigating factors associated with its commission, or that because there is no danger of its repetition he does not constitute a danger to the community.”

201. The appellant was informed in writing on 2 November 2018 about the intention of the respondent to refuse protection under refugee Convention on section 72 grounds. In accordance with section 72 (6) the 2002 act he was invited to rebut the presumption that the crime that he was convicted of on 9 August 2016 was a particular serious crime and that his continued presence in the UK constituted a danger to the community.
202. It is recorded in the decision letter that he replied stating that he wished to apologise for his inconsiderate unusual behaviour and that ever since he was not able to express in words his feelings of disgust, shame, and pain that he suffered every day and for causing unimaginable physical and mental health of his victims, members of the family the wider community. He accepted full responsibility for the offence and that he would play no part in any criminal activity. It was said that there was no justification for his behaviour however he was suffering from depression, anxiety and PTSD which directly stemmed from traumatic events had witnessed in Afghanistan.
203. He further submitted that since he had been imprisoned, he had matured and had better insight and completed courses whilst in custody including Brics, maths ESOL, training in catering (kitchen) and training in gardening. Over the past six months he demonstrated his new reformed character by being an enhanced prisoner. It was submitted that he had taken huge strides towards reform and to complete rehabilitation.
204. The respondent gave consideration to the case law in the context of the statutory framework. It was noted that conviction of a particularly serious crime in and of itself was not sufficient and that the person concerned, must, in view of the crime, also must present a danger to the community. Having considered the representations and acknowledging that he had clearly made an effort to reform, it was noted that the efforts had been made within a controlled environment and thus would carry less weight than if he were on licence and demonstrated good behaviour in an uncontrolled environment.
205. The decision letter sets out the sentencing remarks at paragraph 67. It was acknowledged that the sentencing judge found that he appeared not to be a threat to the general public but concluded that the offence was still serious enough to merit a prison sentence of six years and four months. Thus the respondent concluded that the appellant had not rebutted the presumptions and that his appeal under the Refugee Convention should be dismissed.

206. Ms Bartlam on behalf of the appellant submits that whilst acknowledging the past offending, the tribunal was asked to take into account a number of factors in reaching a conclusion. Firstly, the appellant pleaded guilty to the offence and that the remarks of the sentencing judge concerning the limitations of the offence were of importance. The judge took into account that there were no offences of violence previously recorded against him and that it was not a "serious injury in the context of the offence". The judge did not find that he was a dangerous offender.
207. It was also submitted that the appellant's mental health and its possible role in his offending had not been taken into account as the appellant did not have a mental health diagnosis in 2016 or February 2019 and did not commence medication until early 2019. Reliance was placed upon the insight shown in his offending and his remorse as exhibited in his letters (see RB 53 – 56 and 147 – 150), his absence of any subsequent offences of violence and that it was significant that he had been on licence since April 2019. The respondent had not provided any evidence of risk to the community.
208. I am satisfied that the appellant is a person to whom Section 72(2) of the Nationality, Immigration and Asylum Act 2002 applies as he has been convicted of an offence and sentenced to a period of imprisonment of at least two years. That leads to presumptions (a) that he has been convicted of a particularly serious crime and (b) that this constitutes a danger to the community of the United Kingdom.
209. As to the interpretation of Section 72, the Court of Appeal in *EN (Serbia) v SSHD* [2009] EWCA Civ 630 said this at [46] to [47]:

"46. The Appellants submitted that Article 33(2) requires that the danger to the community must be causally connected to the particularly serious crime of which the person has been convicted. I would accept that normally the danger is demonstrated by proof of the particularly serious offence and the risk of its recurrence, or of the recurrence of a similar offence. I would also accept that the wording of Article 33(2) reflects that expectation. But it does not expressly require a causal connection, and I do not think that one is to be implied. By way of example, I do not see why a person who has been convicted of a particularly serious offence of violence and who the State can establish is a significant drug dealer should not be liable to refouled under Article 33(2). In any event, it seems to me that a disregard for the law, demonstrated by the conviction, would be sufficient to establish a causal connection between the conviction and the danger. If so, the suggested added requirement of a causal connection has little if any practical consequence.

47. I would add that I have no doubt that particularly serious crimes are not restricted to offences against the person. Frauds, thefts, and offences against property, for example, are capable of being particularly serious crimes, as may drug offences, particularly those involving class A drugs. In addition, matters such as frequent repetition or a sophisticated system or the participation of a number of offenders may aggravate the seriousness of an offence. It is also of note that at [62] the Secretary of State accepted that the relevant provisions of the Qualification Directive are directly effective."

210. The court said this at [66] and at [80]:

"66. I see no reason why a rebuttable presumption, imposed for the purposes of a decision as to whether removal would be in breach of Article 33(1), should be incompatible with Article 33(2) of the Convention, at least in cases in which it may reasonably be inferred that a conviction gives rise to a reasonable likelihood that a person's conviction is of a particularly serious crime and that he constitutes a danger to the community. The Convention does not prescribe the procedure by which the conditions required by Article 33(2) are to be established; and the creation of a rebuttable presumption is a matter of procedure rather than of substance. I accept that the Convention places an onus on the State of refuge. Under section 72, it is for the Secretary of State to establish that the person in question has been convicted of a relevant offence. In practice, once the State has established that a person has been convicted of what is on the face of it a particularly serious crime, it will be for him to show either that it was not in fact particularly serious, because of mitigating factors associated with its commission, or that because there is no danger of its repetition he does not constitute a danger to the community.

....

80. I conclude that section 72 can be and is to be interpreted conformably with Article 14(4) of the Directive, and therefore as creating rebuttable presumptions in relation to both of the relevant requirements of Article 33(2), i.e. in relation to the seriousness of the crime and in relation to danger to the community, and I would reject the Secretary of State's submission to the contrary. Parenthetically, it is interesting to note that this result is consistent with the Explanatory Notes to the Bill, which stated at paragraph 198 in relation to section 72:

'A person may rebut the presumption that they have committed a particularly serious crime and are a danger to the community.'

We were told that this was an error, corrected by the Minister during the course of the Parliamentary proceedings on the Bill"

211. Paragraph 339D of the Immigration Rules provides as follows:

'339D. A person is excluded from a grant of humanitarian protection for the purposes of paragraph 339C (iv) where the Secretary of State is satisfied that:

(i) there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;

(ii) there are serious reasons for considering that they have guilty of acts contrary to the purposes and principles of the United Nations or have committed, prepared, or instigated such acts or encouraged or induced others to commit, prepare or instigate such acts;

(iii) there are serious reasons for considering that they constitute a danger to the community or to the security of the United Kingdom; or

(iv) there are serious reasons for considering that they have committed a serious crime; or

(v) prior to their admission to the United Kingdom the person committed a crime outside the scope of (i) and (iv) that would be punishable by imprisonment where it committed in the United Kingdom and the person left their country of origin solely in order to avoid sanctions resulting from the crime.'

212. As the appellant's case has been certified under section 72 ((9) of the 2002 Act, the first point is to consider whether the appellant has discharged the presumption that he constitutes a danger to the community and is excluded from Refugee or Humanitarian Protection.
213. Ms Bartlam on behalf of the appellant did not seek to argue that the appellant had not been convicted of a particularly serious crime in the light of his conviction for wounding and the sentence he received. Her submissions were that he had successfully rebutted the presumption of the danger to the community. I have set out the nature of those submissions above.
214. I remind myself that it is not for the respondent to establish that the appellant presents a risk to the community, it is for the appellant to rebut the statutory presumption that he represent such a danger.
215. I have considered with care the submissions on behalf of the appellant and those set out in the decision letter and those provided in their oral argument to which I have regard. I have also considered the issues raised in the light of the documentary evidence before the tribunal.
216. The circumstances of the offence the appellant committed are recited in the sentencing remarks and also in the OASys report. This was a very serious offence not only by reason of the length of sentence imposed but also by reference to the commission of the offence. The appellant pleaded guilty, partway through the trial to offences of unlawful wounding with intent to do grievous bodily harm by stabbing his victim several times in the face, shoulder, and arm. According to the report, the attack on the victim was a revenge attack and following an earlier altercation. The appellant approached the victim from behind and punched him in the face then pulling a knife out and stabbing him several times. The victim suffered injuries to his face body and as a result of the stab wounds he received, two of which required suturing.
217. The appellant's offence was clearly serious with aggravating features including the possession of a knife and acting in revenge. The OASys report refers to the offence being committed at the time when the appellant was under the influence of either alcohol or drugs (cannabis).
218. Ms Bartlam submits that whilst this was a serious offence, the appellant had not committed any violence of this type previously and relies upon the remarks made by

the sentencing judge to demonstrate that he is not a danger to the community. The sentencing judge stated that he had to consider whether he was a significant risk of causing serious injury to members of the public. The judge stated that he did not find the “dangerousness criteria” to apply and sentenced him to a determinate sentence of six years and four months.

219. However as a matter of sentencing law, it is not a requirement for an extended sentence to be passed were a younger person is found to be dangerous within the meaning of the Criminal Justice Act 2003 (see section 226A(4). In R v Chowdhury [2016] EWCA Civ 1341 the Court of Appeal reaffirmed the principle that young people are likely to act impulsively and more likely to respond to any sentence imposed and more likely to affect change, especially when any sentence is likely to be long. A practice has evolved over time when sentencing young people for serious offences that a formal dangerousness assessment is not always commissioned if the sentencing judge has in mind a long determinate sentence. Therefore I would not consider the absence of a formal finding of dangerousness to mean that the appellant would not have met that test if such a test had been commissioned. Moreover, I do not consider that the mere fact of a determinate sentence means that the appellant could not have been found to be dangerous.
220. Furthermore the sentencing judge did not have the evidence that is before this tribunal in the form of the OASys’s report and the reports of Dr C and Dr W.
221. The OASys’ report has been compiled by the probation service and I consider that this is a report which should be afforded weight. That report sets out that the appellant poses a high risk of harm to the public and other persons, which is greater if the appellant felt wronged or disrespected and likely to resort to violence if someone was violent to him. The risk is assessed as a high risk to members of the public and the risk is likely to be serious including serious physical assault. The risk of reoffending is also set out in the report. The probability of non-violent offending is said to be 30% (first year) and 44% in the second year leading to an assessment of a medium risk of reoffending of non-violent offences. The probability of violent offending is 12% in the first year and 21% in the second year and is identified as a low risk. However as set out in the risk to the public, whilst the risk of reoffending is statistically lower, the harm caused would likely to be serious harm.
222. The OASys report identifies indicators of risk in relation to the appellant. The probation service assessed the appellant as having problems dealing with conflict with others without resulting to violence. This is supported by the commission of the offence that following a disagreement with the appellant he approached his victim and assaulted him with a weapon in attempt to settle the grudge between them, which the probation officer found was confirmed by the victim.
223. When looking at the evidence, this view is supported by the appellant’s conduct whilst in custody. The appellant is described as having issues of problem solving and consequential thinking as well as temper control and anger management. There is

reference to this behaviour in custody and that the report states “there are concerns about his behaviour in custody”.

224. Both the OASys report and the report of Dr C refer to adjudications whilst in custody it is stated that he has four adjudications for assault other prisoners and fighting with another prisoner. It is recorded that he had previous adjudications in 2016 although no details are given. In January 2017 he assaulted a prisoner. On 31 July 2017, it is recorded that there was a fight between the appellant and another prisoner over tobacco. It does not appear that this incident was serious, and the description is of the two men grappling with each other. The appellant is recorded as regretting his actions and that he would approach the situation more sensibly next time. However following that incident on the 11 September 2017, it is recorded that he was taken off level I gym fighting with the same prisoner. He sustained more injuries but both prisoners admitted that they had been fighting. On 17 Jan 2018 there was an assault by the appellant upon another prisoner and on 12 October 2018 there was a further reference to an incident. Consequently the probation service considered that this evidence demonstrated the appellant had issues in “problem solving and consequential thinking” as well as “temper control and anger management”.
225. The OASys report at section 7 concluded that there were identifiable indicators of risk of serious harm and that he has potential to cause serious harm to the public but unlikely to do so unless there is a change in circumstances.
226. The report sets out the likely circumstances that would increase risk. They are identified as follows; unemployment, lack of engagement with pro-social activities, lack of constructive use of his time, unsettled immigration status, drug and alcohol misuse, pro-criminal peer group associations, lack of suitable accommodation, failure to develop an inability to manage heightened emotions of anger, failure to deal with conflict situations without resulting to violent behaviour, failure to develop alternative thinking skills and to improve problem solving skills, impulsiveness and desire to thrill seeker without thinking through the consequences of his actions, if diagnosed with mental health issues, lack of engagement with mental health services.
227. A specific risk factor relates to drug and alcohol misuse. A letter from the mental health support worker took the view that substances had not appeared to be a risk in any of the paperwork that he had seen, and this had been confirmed by the probation officer. However this is not consistent with the material in the OASys report or that in Dr C’s report. It is stated that prior to custody the appellant was leading a lifestyle with no direction, no stable accommodation or employment and had misused drugs and alcohol. The previous offences of driving (although they are of course a different character from those of violence) were described as “evidence of recklessness and risk-taking behaviour” as the pattern of driving offences show that he did not learn from his mistakes. The report also sets out that the appellant was under the influence of cannabis when he committed the offences in 2016 and according to the CPS papers he was under the influence of alcohol.

228. The OASys report refers the appellant stating that he occasionally used cannabis but that in the view of the probation officer "it is possible that he is minimising these drug issues" and the assessment was made that drug use was linked to the risks of harm.
229. Thus the information in the OASys report is not consistent with the letter from the appellant's mental health support worker.
230. In assessing the question of whether the appellant is a danger to the community, there is a letter from his probation officer (at pages 116 - 117 dated 13/11/2020). In that letter he states that the appellant has been on licence since his release in April 2019 and is accommodated in bail housing. He has attended 90 appointments with no unauthorised absences. He is described as having language difficulties and his use of English, though improving was still basic. He is engaging with the community service mental health team and has been seen in September and November 2020 and has had one session with a psychiatrist to provide advice on medication. It is recorded that he is engaged with the probation service by phone contact and office appointments on alternative weeks. It is recorded also that "he still seems rather isolated in the community".
231. I take into account in his favour the positive engagement with the probation service as set out in the letter. I take into account also that it is not a very long time to be in the community and the proceedings in relation to deportation are still ongoing which for most would perhaps provide a strong incentive to behave.
232. I also take into account that the letter written on 13 November 2020 still refers to the current assessment of the appellant as "is currently assessed as a high risk of harm against members of the public". It still states that "the risk is greater if the appellant felt wronged or disrespected or someone was violent to him the risk would also increase he failed to engage with probation or mental health services". The letter reaffirms the OGRS3 tool assessment as a medium probability of non-violent offending and a low probability of proven violent type offending.
233. The letter gives no other insights as to how the identifiable risk factors in the OASys report have been addressed. Importantly the letter does not state the risk of harm assessed as high to members of the public has changed.
234. There is a report from a psychiatrist to which I have referred to earlier. Whilst the appellant's earlier appeal was set aside and directions issued by Deputy Upper Tribunal Judge Black for a psychiatric report and for the tribunal to consider the section 72 certificate, the report does not address risk of harm to the public or whether the appellant is a danger to the community. It is therefore of no assistance in assisting the appellant to rebut the presumption.
235. There are also two reports of Dr C which I have referred to above. Those reports do not directly address risk to members of the community although the contents of those reports do have relevance when considering that issue.

236. At paragraph 124 the doctor considers his condition in the light of attempts to self-harm. The appellant is described as “extremely impulsive”. Dr C also considered that it was his impulsivity which had previously been expressed in stabbing someone and that, “it is likely that future attempts will come with little warning”. Whilst I read this in the context of the risk of self-harm, certain features of the evidence of Dr C’s report applying to this appellant refer to his instability and impulsivity and are still current risk factors. That evidence is consistent with the risks identified in the OASys report with the appellant unable to manage heightened emotions and failing to deal with conflict situations and that his impulsiveness occurs without giving thought to the consequences of his actions.
237. Dr C also states at paragraph 121 that he is impulsive and makes rash decisions without thinking them through. The condition of ADHD is associated with irritability and Dr C linked this alongside the altercations in prison (see paragraph 121). In summary Dr C consider that the appellant had poor impulse control over what he says and what he does.
238. In his addendum report Dr C referred again to his “strong impulsivity” and that this associated with ADD may be better attributed to a personality disorder trait. At [29] Dr C stated “my previous opinion regarding Mr AK himself remains valid. However now I have greater clarity my opinion in his difficulties are greater than I previously thought and the risk to him and others greater than previously expressed.” At [45] Dr C considered that the appellant had a rare condition that resulted in some unusual effects.
239. Whilst Ms Bartlam submits that the sentencing judge did not find him to be a risk to the public, the judge did not have the advantage of the OASys report, nor did he have the medical reports of Dr C and Dr W. There was no diagnosis of any link between the mental health of the appellant and the offence. In my judgement that lessens the weight attached to the view that was taken upon sentencing.
240. The evidence in the OASys report as to the high risk of harm to the public has not changed according to the letter dated 11 November 2020 which still refers to that as a current assessment and the letter does not make any reference to his risk having changed.
241. As I have stated I take into account give positive weight to his engagement with the probation service and that of the mental health support team but as said previously he is still subject to licence and deportation proceedings.
242. When looking at the risk factors identified in the OASys report, it does not appear that those risk factors have been resolved or that any significant changes have taken place.
243. In respect of the issue of drugs and alcohol, that remains an area of concern. Both appear to be part of his offending as evidenced by the CPS papers and the appellant’s own evidence. Furthermore, the letter from the mental health service refers to the appellant having taken alcohol (and hashish in the past and cannabis) that he used

this in the past to “change his mind and deal with headaches”. The report also notes that “he feels that he may return to these if the pain in his head is not controlled.” Thus the evidence in that letter suggests that the appellant may resort to taking drugs to self-medicate and thus the associated risk appears to remain.

244. Dr C makes reference to this at paragraph 40 in his report that he had a history of prior drug use, but it was not possible to know he was using drugs unless drug tests have been taken. There is no evidence that such tests have been undertaken. The OASys’ report refers to the appellant attending WTD Brent or other substance misuse services. Similarly there is no evidence of attendance in this respect.
245. There is no evidence of attending any courses to deal with anger management, managing emotions or thinking skill courses to lessen the risks identified in the OASys report.
246. The description of being socially isolated and having a “lack of prosocial activities” still remains the position as evidenced in the letter from the probation officer who reported the same isolation in the community. I accept that COVID-19 is likely to have had an effect upon this, but his presentation has not changed in any real way. Dr W had also found this to be the position and referred to him being “isolated” and that he required treatment for six months for CBT to understand feelings and thoughts that could lead to “potentially problematic behaviour”.
247. Drawing together those points, the evidence in the OASys report which expresses the view that the appellant is a high risk of harm to the public should be given weight. It is supported by the evidence of Dr C which I have referred to and there is little supporting evidence that the appellant has addressed in any significant way the risk factors identified in that report. I have weighed in the balance that there have been positive steps identified in relation to his engagement with the probation service and that he has complied with the terms of his licence and engaged with the mental health services in some respects. I am satisfied that the appellant’s offending was a particularly serious crime. This was an attack upon a victim by way of revenge and was aggravated by the use of a knife. I conclude that the presumption that this was a particularly serious crime has not been rebutted. Furthermore, when considering the evidence in its totality, I prefer the submissions made on behalf of the respondent that when considered cumulatively, in light of the OASys’s report and the detailed reports of Dr C that the appellant has not rebutted the presumption that he no longer presents a danger to the public and that is offending is unlikely to recur.
248. In the light of that finding, I uphold the section 72 certificate. The appellant therefore cannot rely upon the Refugee Convention or Humanitarian Protection.
249. In the alternative Ms Bartlam submits that the appellant should succeed under article 3 of the ECHR.

Article 3:

250. Ms Bartlam on behalf of the appellant relies upon the medical evidence advanced on behalf of the appellant in the reports of both experts.
251. It is submitted that the evidence points to the appellant being at risk of suicide should he be returned forcibly to Afghanistan.
252. There is no dispute as to the applicable legal principles.
253. The Court of Appeal decisions in *J* and *Y (Sri Lanka)* govern a discrete area of assessment under Article 3 relating to suicide risk. The decisions in *J* and *N* were heard at around the same time in May 2005. By that time, the Court of Appeal in *J* handed down its decision, it had the benefit of the House of Lords decision in *N*. The Court of Appeal conducted a detailed review of the European and domestic case law.
254. The six points it drew from these authorities for the purpose of assessing Article 3 in the context of suicide risk were:
- "26. First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see *Ullah* paras [38-39].
 27. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in *Soering* at para [91], the court said:

"In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which *has as a direct consequence the exposure of an individual to proscribed ill-treatment.*" (emphasis added).

See also para [108] of *Vilvarajah* where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka..."
 28. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of *D* and para [40] of *Bensaid*.
 29. Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of *Bensaid*).
 30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-

treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.

31. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights."

255. The first three points set out the basic requirements to show a breach of Article 3. The third point made clear that there is an enhanced threshold in cases that come within the *N* paradigm. The last three points went beyond the decision in *N* to consider the context in cases involving the assessment of suicide risk.

256. The Court of Appeal in the *Y (Sri Lanka)* modified the fifth point as follows:

"15. ... The corollary of the final sentence of Â§30 of *J* is that in the absence of an objective foundation for the fear some independent basis for it must be established if weight is to be given to it. Such an independent basis may lie in trauma inflicted in the past on the appellant in (or, as here, by) the receiving state: someone who has been tortured and raped by his or her captors may be terrified of returning to the place where it happened, especially if the same authorities are in charge, notwithstanding that the objective risk of recurrence has gone.

16. One can accordingly add to the fifth principle in *J* that what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return."

257. The assessment of suicide risk is a discrete aspect of the extension to Article 3 considered in *D* and *N*. In *MM (Malawi) v SSHD* [2018] EWCA Civ 2482 Counsel for the Secretary of State accepted that it was a distinct area of assessment under Article 3 [63]. The Court of Appeal in *J* made clear that there was a high threshold in 'foreign cases', and acknowledging the decisions in *D* and *N*, made clear that the threshold was even higher in cases where " the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state".

258. The nature of the potential harm in a suicide risk case is sufficiently serious to engage the operation of Article 3 within the meaning of the *N* paradigm. If a person can show that there is a real risk that they will commit suicide on return to the receiving state, the feared harm clearly meets the minimum level of severity required i.e. intense mental suffering leading to their imminent death.

259. The fifth and sixth points highlighted in *J*, modified in *Y (Sri Lanka)*, simply focus the assessment on issues specific to the circumstances relating to suicide risk. First, an initial assessment of whether there is a real risk that the person is likely to commit suicide if returned to the receiving state. This would normally be assessed with reference to expert psychiatric evidence. Second, whether effective measures can be

put in place before, during and after removal to reduce the risk of suicide below a real risk. This would normally be assessed with reference to evidence relating to the circumstances in the receiving state."

260. In *AXB (Art 3 health: obligations; suicide) Jamaica* [2019] UKUT 397. Much of the decision is not relevant to the issue to be determined in this case. In so far as the Upper Tribunal concluded that the *N* paradigm is the threshold that must be met in a case involving the assessment of suicide risk, it says nothing more than, and does not alter, the approach taken by the Court of Appeal in *J*. In that case, the Court of Appeal incorporated the high threshold into the six-point approach to the assessment of suicide risk. As made clear in the previous decision in this case, it is self-evident that the nature of suicide is such that it reaches the *N* threshold because a person who is at real risk of killing themselves is likely to experience intense mental suffering leading to the risk of death. The focus of the assessment in a case involving potential suicide risk is not usually the threshold but whether the evidence shows that there is a real risk of suicide happening before, during or after removal of the person to their country of origin.
261. The Supreme Court also handed down the judgment in *AM (Zimbabwe) v SSHD, Dr C* [2019] UKSC 17. It contains an analysis of the ECtHR decision in *Paposhvili v Belgium* [2017] Imm AR 867. In particular, the Supreme Court clarified what was meant by the modest extension of the *N* test at [183] of the ECtHR decision with reference to:
- "... situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy."
262. The Supreme Court did not make specific findings relating to the effect of *Paposhvili* on the assessment of suicide risk. Consequently, the substantive Article 3 issues discussed in *AM (Zimbabwe)* do not alter the position relating to the six-point approach outlined in *J*. The nature of the risk of suicide is likely to meet the *N* paradigm or the *Paposhvili* extension for the reasons I have already given.
263. The focus of the assessment is usually on the likelihood of suicide happening, taking into account relevant medical evidence and any evidence relating to the availability of support and treatment that might ameliorate the risk.
264. The Supreme Court identified several procedural requirements outlined by the ECtHR in *Paposhvili* at [23] and went on to analyse the decision as follows:
- "32. The Grand Chamber's pronouncements in the *Paposhvili* case about the procedural requirements of article 3, summarised in para 23 above, can on no view be regarded as mere clarification of what the

court had previously said; and we may expect that, when it gives judgment in the *Savran* case, the Grand Chamber will shed light on the extent of the requirements. Yet observations on them may even now be made with reasonable confidence. The basic principle is that, if you allege a breach of your rights, it is for you to establish it. But "Convention proceedings do not in all cases lend themselves to a rigorous application of [that] principle ...": *DH v Czech Republic* (2008) 47 EHRR 3, para 179. It is clear that, in application to claims under article 3 to resist return by reference to ill-health, the Grand Chamber has indeed modified that principle. The threshold, set out in para 23(a) above, is for the applicant to adduce evidence "capable of demonstrating that there are substantial grounds for believing" that article 3 would be violated. It may make formidable intellectual demands on decision-makers who conclude that the evidence does not establish "substantial grounds" to have to proceed to consider whether nevertheless it is "capable of demonstrating" them. But, irrespective of the perhaps unnecessary complexity of the test, let no one imagine that it represents an undemanding threshold for an applicant to cross. For the requisite capacity of the evidence adduced by the applicant is to demonstrate "substantial" grounds for believing that it is a "very exceptional" case because of a "real" risk of subjection to "inhuman" treatment. All three parties accept that Sales LJ was correct, in para 16, to describe the threshold as an obligation on an applicant to raise a "prima facie case" of potential infringement of article 3. This means a case which, if not challenged or countered, would establish the infringement: see para 112 in *AXB v Secretary of State for the Home Department* [2019] UKUT 397 (IAC). As the tribunal explained at paragraph 123, the arrangements in the UK are such that the decisions whether the applicant has adduced evidence to the requisite standard and, if so, whether it has been successfully countered fall to be taken initially by the Secretary of State and, in the event of an appeal, again by the First-tier Tribunal.

33. In the event that the applicant presents evidence to the standard addressed above, the returning state can seek to challenge or counter it in the manner helpfully outlined in the judgment in the *Paposhvili* case at paras 187 to 191 and summarised at para 23(b) to (e) above. The premise behind the guidance, surely reasonable, is that, while it is for the applicant to adduce evidence about his or her medical condition, current treatment (including the likely suitability of any other treatment) and the effect on him or her of inability to access it, the returning state is better able to collect evidence about the availability and accessibility of suitable treatment in the receiving state. What will most surprise the first-time reader of the Grand Chamber's judgment is the reference in para 187 to the suggested obligation on the returning state to dispel "any" doubts raised by the applicant's evidence. But, when the reader reaches para 191 and

notes the reference, in precisely the same context, to "serious doubts", he will realise that "any" doubts in para 187 means any serious doubts. For proof, or in this case disproof, beyond *all* doubt is a concept rightly unknown to the Convention.

265. The procedural issues discussed in *AXB* and *AM (Zimbabwe)* clarify the usual principles relating to the assessment of a human rights claim. The overall burden of proof is on the appellant to produce evidence to show that there are substantial grounds for believing that there is a real risk of serious harm amounting to a breach of Article 3. The threshold is high in health cases if the risk does not emanate from the authorities in the receiving state. It is thus open to the respondent to produce evidence to show that appropriate health care or other effective mechanisms are available to reduce the risk of Article 3 ill-treatment below a real risk.
266. I have set out my assessment of the medical evidence earlier and that whilst both experts have reached differing opinions as to the appellant's diagnosis, the one issue that they are consistent about concerns the risk of suicide and self-harm.
267. Dr W's report makes reference to being preoccupied with intrusive thoughts about the consequences of return to Afghanistan and reported that the worrying thoughts have become "overwhelming over the last few months" and that he has "active suicidal ideation and acknowledges at times that having thought that life was not worth living" (at page 18). His prognosis based on his assessment of his mental state was that it "remains poor in the short term. They have been recurrent episodes of depression with an increased risk of suicide. He has intrusive traumatic thoughts." The opinion of Dr W is that the appellant needs to improve his mental health treatment with pharmacological/psychological and psychotherapeutic approaches and that "his risk of self-harm is high". Dr W's view is that the risk of suicide while in the UK will increase once he is informed of any removal. The report of Dr C and also the OASys report sets out past incidents of self-harm. The first appears to have been on 19 October 2017 when he self-harmed with a razor blade causing superficial injuries following problems with inmates. It is also recorded at page 36 of the appellant's bundle that in January 2019 after being issued with deportation orders, a suicide attempt was recorded due to a voice telling him to harm himself. There is reference to that being "unplanned and impulsive". He was later prescribed promethazine (which was not used for psychotic hallucinations, but an antihistamine used to promote sleep).
268. In his opinion (page 44 AB) Dr C observed that assessing the risk of suicide was made more difficult because in his view he was "maligning" (I think that that should mean malingering") and reached the view that on balance he did not believe his attempts in prison were serious attempts to end his life but more likely to have been due to boredom and a desire for better cell. However, Dr C considered that his harming and suicidal behaviour was consistent with a diagnosis of ADD. The view he expressed was that people with ADD are at a greater risk than the general population to commit suicide. When combined with the presence of another disorder such as depression, which the appellant is prone to and may have previously met criteria, the chances of suicide are associated with a four - 12 x higher risk.

269. Dr C considers that the appellant has a number of risk factors which further increase the likelihood of suicide whilst he may not have attempted to have seriously wanted to end his life, the risks still apply. This is set out at paragraphs 120 – 124. During the assessment that was made last year, Dr C considered that he was not expressing a desire upon that assessment but clarified that that the appellant was “extremely impulsive and has a history of deliberate self-harm”. Thus the history combined with the risk factors for this particular appellant placed him at a statistically high risk of suicide. His opinion is consistent with the later view taken by Dr W that he is at a “very high risk of suicide if deported”.
270. In his addendum report, Dr C amended his diagnosis to that of a schizotypal personality disorder which was unusual and a fairly rare disorder. It is described at paragraph 22 of his addendum report and again he confirms paragraph 25 that there is a “strong impulsivity difficulty component to his presentation, which I still believe is associated with ADD but may be better attributed to a personality disorder trait. At paragraph 27, he stated that “his difficulties may well become complicated by drug use, malingering and exaggeration. However, although he may be malingering or exaggerating some aspects, I am in little doubt that he has mental health difficulties that are serious, probably treatment resistant and cause a range of difficulties across domains.” Dr C confirms at paragraph 29 that his previous opinion regarding this to himself remains valid. He goes on to state “however, now that I have greater clarity my opinion as it is difficult as a greater than I previously thought and the risks to him and others greater than I previously expressed.”
271. Mr Diwnycz on behalf of the respondent has not sought to challenge the reports of Dr C in fact, he relied upon the reports when making his submissions on the issue of danger to the community and the section 72 certification.
272. For the reason that I have set out earlier, I consider that the reports written by Dr C should have weight attached to them and I am satisfied that he has the relevant expertise to reach the opinions that he has. Both medical experts have reached the same view that the appellant is at a high risk of suicide in the event of any removal from the UK as a result of an unusual and serious mental health problem which has at its core his impulsivity and the effect upon his behaviour. Whilst the letter from his mental health worker at [p6AB] refers to the appellant having no current thoughts, I prefer the evidence set out in the expert reports and in particular the reports of Dr C which provide background to his diagnosis and thus are more likely to be a fuller consideration of the likely present risk to the appellant’s well-being.
273. Thus I conclude that there is cogent evidence to show a risk of suicide on return and therefore there is sufficient evidence to demonstrate a risk of him reaching the threshold set out in in the decision of J v SSHD (as set out above).
274. I recognise that the threshold is high in health cases if the risk does not emanate from the authorities in the receiving state. It is therefore open to the respondent to produce evidence to show that appropriate health care or other effective mechanisms are available to reduce the risk of Article 3 ill-treatment below a real risk.

275. There has been no reference to any objective material during the course of this hearing on behalf of the respondent or any submissions made to demonstrate that there are effective mechanisms available in Afghanistan to reduce any risk of article 3 ill-treatment below a “real risk”. Conversely, Ms Bartlam on behalf of the appellant relies upon the objective material which demonstrates a lack of adequate mental health care provision in Afghanistan as set out in the key passage index and reference made to the human rights watch report “Afghanistan’s silent mental health crisis dated 7/10/19, evidence from WHO mental health Atlas Afghanistan, and the respondents CPIN Afghanistan: security and humanitarian situation and health care provision and by reference to the CG decision in *AS (safety of Kabul) Afghanistan* CG [2020] UKUT 00130.
276. When considering the latest country guidance decision, I observe that the tribunal stressed the importance of a fact specific assessment by reference to the returnee’s personal characteristics. It is stated that in all cases an individualised case-by-case assessment as required, taking into account an individual’s personal circumstances including factors such as his age, health, disability, languages spoken, educational and professional background, length of time outside of Afghanistan, connections to an experience of Kabul and family situation and relationships (at[252]). Whilst this is not in the context of article 3 considerations, in my judgement it has some relevance when addressing this issue.
277. As set out in the submissions made by Ms Bartlam, the appellant has no family support that he can call upon to assist him in re-establishing any form of life in Afghanistan or importantly to access the important mental health provision that he requires or to provide him with the support upon return to reduce the “real risk” of article 3 harm. He has been absent from Afghanistan since 2009 and has no education and a limited employment history.
278. There is no dispute that physical and mental health is an important factor in the decision makes reference to the “very high levels of mental health problems in Afghanistan” which create “significant needs” (at [241]), there is a lack of trained professionals and “inadequate infrastructure” (at [241]).
279. Ms Bartlam relies upon the evidence of Dr Ahmad as set out in the decision in *AS*. Dr Ahmed’s view of the lack of mental health assistance in Kabul was described as consistent with the views expressed by the UNCHR and other objective material and in particular that there were a large number of people who suffered from undiagnosed and untreated mental health problems, [146], that public healthcare is poor quality medications frequently counterfeit and that the psychiatric services are “inadequate”. Her evidence was that there is “little understanding of mental health” and “people with mental health conditions are stigmatised and socially ostracised” (at [83]).
280. Dr Ahmed set out at [83] that there were inadequate psychiatric services and only one mental health hospital in Afghanistan which has only 60 beds for inpatients and 40 in a separate facility for drug addicts.

281. The report from human rights watch (pages 118 -121 AB) also makes reference to the population in Afghanistan and that half the population has experienced depression, anxiety, or post-traumatic stress as a result of the conflict and violence over a prolonged period. Those who seek treatment and who have experienced psychological distress instead of being offered psychosocial support are being told that they have physical complaints and thus do not receive the help that they require (page 119). Over the past 15 years, the government has trained 750 psychosocial counsellors who can provide basic mental health counselling but that those who use the facilities are recorded as suffering abuse such as forced hospitalisations and treatments. Further reference is made about the stigma attached to seeking help for mental health. That is supported by the evidence in the UK that the appellant's family relative does not want contact with him due to his mental health condition.
282. There is no dispute, and it is common ground in light of the concession made on behalf of the respondent that the appellant has no support network or connections with Kabul. He is not in contact with his family members and has no relatives or friends that he could call on for any assistance with his mental health condition or to assist him on return to Afghanistan. There is no evidence before the tribunal that he has a Tazkera and the lack of such a document prevents the returnees from accessing government services which would include mental health provision.
283. The CPIN Afghanistan: security and humanitarian situation (version 7.0 dated May 2020) sets out the position as to healthcare at paragraphs 6.1 – 6.6.6. It records that the challenges in providing the best possible healthcare relate to poverty and distance to health facilities, inadequate access to priority health services due to distance, high cost, low awareness, insecurity, and shortage of female healthcare providers. The UN special rapporteur report in 2017 stated “the healthcare challenges facing the displaced included specialist physical or psychosocial treatment needs due to conflict or trauma, which is not commonly available. While some locations for internally displaced persons had dedicated clinics providing basic health services, these were frequently poorly equipped, lack doctors and could not treat serious or emergency health problems. Restrictions on the construction clinics, due to a population threshold criteria and funding shortages, meant that some communities lacked local healthcare facilities and to travel long distances to access to regular services.”.
284. The material relied upon by Ms Bartlam also includes the UNAMA special report Afghanistan: attacks on healthcare during the Covid 19 pandemic (June 2020) which in its contents refers to incidents affecting health care provision during the period where there were 12 deliberate attacks and remaining three incidents involving incidental harm to healthcare caused by ongoing fighting. Since those incidents, it is reported that the situation had deteriorated; the Taliban continued abducting healthcare workers and attacked a pharmacy, the Afghan National Security forces carried out deliberate acts of violence and intimidation affecting a healthcare facility, workers, and delivery of medical supplies. This is general objective material which demonstrates that the inadequacy of healthcare provision in Afghanistan has recently been exacerbated by the deteriorating security situation the country, targeted attacks on healthcare provision during the covid 19 pandemic, and thus

supports the general material which demonstrates that for this appellant there is a real risk that he would not receive treatment or assistance to prevent a real risk of article 3 ill-treatment upon return. The tribunal has not been provided with any submissions on behalf of the Secretary of State to demonstrate that there are any available mechanisms appropriate for this particular appellant and that even if the state could provide support whilst in the UK, it is plain that there are no mechanisms or support available for the appellant in Afghanistan.

285. For those reasons I am satisfied that there is a real risk of article 3 ill-treatment and therefore his appeal is allowed on human rights grounds (Article 3).

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the decision is set aside; the appeal is re-made as follows: the appeal is allowed on Article 3 grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 14/12/ 2020

Upper Tribunal Judge Reeds