

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 84
[2020 No. 567 JR]

BETWEEN

**AH, SH, RH (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND SH) AND RH (A
MINOR SUING BY HIS MOTHER AND NEXT FRIEND SH)**

APPLICANTS

AND

**INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE
AND EQUALITY**

RESPONDENTS

Judgment of Mr. Justice Cian Ferriter delivered on the 16th day of February 2022

Introduction

1. In these judicial review proceedings, the applicants seek an order of *certiorari* quashing the decision of the first respondent (“IPAT”) of 29th June, 2020 recommending that the applicants should not be granted either refugee status or subsidiary protection (the “Decision”). The essential grounds of challenge to the Decision relate to the manner in which IPAT assessed the credibility of the applicants as recorded in the terms of the Decision.

Preliminary Objection

2. The respondents raised a preliminary objection to the effect that the applicants’ arguments in the written submissions for the substantive hearing in this case went well beyond the issues on which leave was granted.
3. Paragraph 4 of the legal grounds section of the statement of grounds pleaded as follows:

“Having found the first and second applicants to be consistent in their claims, and having found that their accounts accorded with the COI before it, the first respondent erred in fact and in law and acted unreasonably and/or irrationally and breached the principles of fair procedures and natural and constitutional justice by applying an erroneously high standard of proof to its assessment of whether the applicants face a reasonable chance of persecution, or whether they would face a real risk of serious harm, should they be returned to Pakistan.”
4. The respondents submitted that the applicants’ written submissions impermissibly sought to address issues relating to the application of the benefit of doubt by the Tribunal and arguments relating to how the Tribunal addressed the issue of corroboration, matters not covered by the above plea.
5. The factual grounds section of the statement of grounds identified, in some detail, specific paragraphs of the Decision relied upon by the applicants to ground their case, which included paragraphs in which the Tribunal identified the absence of corroboration of the applicants’ claims, and paragraphs taken from the section of the Decision headed “*Benefit of Doubt*”. The applicants made the point that it was clear from the statement of grounds that the applicants were challenging the manner in which the Tribunal addressed the question of their credibility and that the arguments contained in the written submissions

for the substantive hearing were entirely consistent with the leave granted to them, the issues of corroboration and benefit of doubt being intrinsically tied up with the question of the correct standard of proof.

6. The applicants' written submissions in respect of the substantive hearing were delivered on 22nd January 2021. The respondents were able to deal with all of the arguments in those submissions and did so very ably in replying written submissions dated 19th March, 2021.
7. The respondents were not in a position to submit that there was particular affidavit evidence, or particular lines of pleading in their statement of opposition, that they were deprived of the opportunity of submitting in light of the contents of the applicants' substantive written submissions. That is unsurprising in circumstances where the applicants' case alleges legal error in the manner in which the Tribunal arrived at its decision and relies solely on the contents of the Decision in making those arguments.
8. I accept, of course, the importance of pleadings in judicial review proceedings defining precisely the issues between the parties and have taken into account the *dicta* in the authorities relied upon by the respondents in support of their preliminary objection, including those of O'Donnell J. (as he then was) in *Keegan v. Garda Síochána Ombudsman Commission* [2015] IESC 68, at paras. 42 and 43; the *dicta* of Murray C.J. in *A.P. v. DPP* [2011] 1 IR 729, at paras. 4, 5 and 10; and the analysis of Keane J. in *Qureshi v. The Minister for Justice and Equality* [2019] IEHC 446, at paras. 23 and 24.
9. However, in my view, on the facts of this case, the applicants did not stray materially beyond the grounds which they were granted leave to pursue. It was clear from the statement of grounds, and the legal submissions filed in support of the leave application, that the applicants were taking issue with the unlawful manner, as they saw it, in which the Tribunal had approached the question of assessing the credibility of their claims. In my view the applicants' case, while elaborated upon in written and oral submissions at the substantive hearing, did not seek to materially depart from the pleaded case. The pleaded allegation of the Tribunal applying an erroneously high standard of proof inexorably led to arguments as to the correct approach to assessing matters of credibility which necessarily embraced questions relating to the benefit of the doubt and the question of "corroboration" as that term was used by the Tribunal in the various paragraphs from the Decision identified in the statement of grounds.
10. In the circumstances, in my view, the preliminary objection is not well-founded and I propose, therefore, to proceed to address the substantive arguments advanced by the applicants in support of their claim for relief.

Principles in relation to the Assessment of Credibility

11. The parties were not in dispute as to the legal principles applicable to the question of the assessment by IPAT of the credibility of the claims of an applicant underpinning an application for international protection.

12. The relevant principles were comprehensively and authoritatively reviewed by Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353. I do not propose to set out all of the ten matters identified by Cooke J. in his synthesis of the relevant principles, but will reference a number of those matters when analysing the parties' submissions later in this judgment.
13. It is accepted that the onus of proof rests with the applicant albeit that a shared burden may in some circumstances come into play, as noted by the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status at paragraph 196:

"196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt."

14. It also accepted that the correct standard of proof to be applied in assessing the applicants' credibility is *"the balance of probabilities coupled, in appropriate circumstances, with the benefit of doubt. The appropriate circumstances to attract the benefit of the doubt would be where the overall credibility of the applicants is accepted."* (per O'Regan J. in *O.N. v. Refugee Appeals Tribunal & ors* [2017] IEHC 13, as reiterated by her in *M.G. v. Refugee Appeals Tribunal & ors* [2017] IEHC 94, at para. 6)
15. This reflects the UNHCR handbook approach as per paragraphs 203 and 204:

"203. After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognised. It is therefore frequently necessary to give the applicant the benefit of the doubt.

204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts."

16. The approach to the benefit of the doubt in relation to aspects of applicants' statements not supported by documentary or other evidence is reflected now in s. 28(7) of the International Protection Act, 2015 ("s. 28(7)"). s. 28(7) provides as follows:-
- 7) Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that—
- (a) the applicant has made a genuine effort to substantiate his or her application,
 - (b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,
 - (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,
 - (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, and
 - (e) the general credibility of the applicant has been established.
17. In short, it is clear that before the benefit of the doubt can be given in relation to undocumented aspects of an applicant's claims, the applicant's general credibility must be established (see s.28 (7)(e)). Once the applicant's general credibility has been established, undocumented aspects of the applicant's case do not need to be confirmed i.e. can get the benefit of the doubt where, but only where, the four other factors in s. 28 (7)(a) to (d) are satisfied.
18. As Humphreys J stated in *AA (Pakistan) v IPAT* [2019] IEHC 72, at paragraph 10, "*it is well established that the benefit of the doubt only applies where the applicant's general credibility has been established. Thus it can only apply to a specific element of the account within an overall context where such general credibility has been established.*" He further noted, in addressing an argument that in not extending the benefit of the doubt to all aspects of the applicant's story, the tribunal was not taking into account all matters referred to in s.28 of the 2015 act, that "*the Tribunal considered all material matters but did not extend the benefit of the doubt to matters that the applicant had not substantiated because the applicant's general credibility had not been established. That is what both the act and EU law requires*" (at paragraph 12).
19. It follows that issues as to the cogency or otherwise of an explanation provided by an applicant as to the absence of documentation to support an assertion material to the claim may be relevant to both issues of the applicant's general credibility and to the separate question of whether that aspect of the applicant's claim can be accepted without confirmation pursuant to the requirements of s.28 (7) and in particular s.28 (7) (b) and (c).

Parties' Positions

20. In short, the applicants submitted that the Decision was vitiated by the following errors:
- (i) that the Tribunal did not apply the correct standard of proof (of the balance of probabilities coupled, where appropriate, with the benefit of the doubt) in its credibility assessment but rather erred in holding that general credibility had not been made out because of an absence of "independent corroborating evidence";
 - (ii) that the Tribunal in its conclusion confused the concepts of general credibility of the applicants with whether or not the applicants, having established their general credibility, should be afforded the benefit of the doubt;
 - (iii) that the Tribunal fell into error in its concluding analysis under the heading "the benefit of the doubt" by failing to give reasons as to why the applicants had failed to meet the requirements of the separate subsections of section 28 (7);
 - (iv) that in relation to an important aspect of the applicant's case which was supported by documentary evidence, being the case that the applicants were threatened with violence by the second applicant's family, the Tribunal fell into error in rejecting the documents submitted (being FIR documents of complaints to the Pakistani police) simply on the basis that the Tribunal had held that the applicant's claims generally were not credible, as opposed to on the basis that there was anything in the documents themselves which suggested that they should not be relied upon.
21. The applicants submit that the Decision was also consequently flawed for a failure to properly give reasons for the apparent rejection of the credibility of the applicants.
22. The respondents, for their part, contend that the Tribunal demonstrated that it clearly understood the correct legal principles in relation to both assessment of general credibility and in relation to the "benefit of the doubt", as reflected in the individual subsections of s.28 (7) and that the Decision when read in the round provided a sufficiently reasoned explanation for why the Tribunal did not accept the overall credibility of the applicants' case.
23. In light of the arguments advanced by the applicants, it is necessary to look in some detail at the contents of the Decision.

The Decision

24. The Tribunal member gave a lengthy and detailed decision on the applicants' application for international protection.
25. The first part of the Decision is headed "*Introduction and Case History*". The second part of the Decision, headed "*Case Facts and Documents*", sets out (from paras. 2.6 to 2.36), a summary of the oral evidence, both direct and under cross-examination, of AH and then a summary of the oral evidence of SH.
26. The Decision then briefly summarises the submissions made on behalf of the applicants, and by the presenting officer, on the evidence, it being clear from the summary of the

presenting officer's submission that he was maintaining that the benefit of the doubt should not be extended to the appellants in circumstances where he submitted that they had not taken reasonable steps to substantiate their claims and "*in particular in the absence of a passport for AH, he submitted that he did not believe the benefit of the doubt could be extended to the appellants*".

27. At para. 2.39 of the Decision, there is summary of a submission by the presenting officer that:

"there were credibility issues in particular in respect of the failure to apply in the UK and that the appellants instead applied for numerous visas in the UK and remained there while illegal and potentially risking being sent back to Pakistan. He thus submitted that there were questions over their failure to apply for protection in the UK. He indicated that he also relied upon the credibility issues as noted in the s. 39 reports and relied upon the conclusions in the report."

28. In section 3 of the Decision, the question of the nationality of the applicants is addressed. Section 4 of the Decision is headed "*Assessment of Facts and Circumstances*". Section 4.3 of this part is headed "*Relevant Facts, Statements and Documentation*". This section of the Decision addresses each of the four grounds which formed the essential basis of the applicants' claims of fear of persecution if returned to Pakistan. Those grounds were as follows:

- (1) that AH was a member of the (opposition) MQM political party and was threatened after resigning from the party;
- (2) that the applicants married in 2011 without the approval of their families (a "love marriage");
- (3) that SH's family threatened the applicants and AH's family; and
- (4) that SH was threatened in the UK by someone who knew her family.

29. The Decision then proceeds to address each of those four matters in some detail at paras. 4.3.2 to 4.3.49 of the decision (pages 17 to 31 inclusive of the Decision).

30. The applicants made the point at the judicial review hearing that the theme that emerges from the treatment of each of the four grounds relied upon by the applicants in this section of the Decision is that, broadly speaking, the Tribunal notes that the evidence provided by the applicants accords with COI and has been consistent throughout the process; however, the decision-maker then emphasises that the applicants have failed to corroborate their claims with documentary evidence and that the relevant part of the claim must, therefore, be seen as "*uncertain, and dependent on an assessment of his general credibility*".

31. Accordingly, at the end of its treatment of the evidence in relation to AH's claim that he was a member of the MQM political party and was threatened after resigning from the party, the Tribunal states in its decision (at para. 4.3.12) that:

"Further, where his knowledge of the party consists of publicly known information and where there is nothing to corroborate directly his claim of membership, his claim in this regard must be seen as uncertain, and dependent on an assessment of his general credibility. This will be assessed in further detail below in the context of the assessment of the potential application of the benefit of the doubt. The Tribunal is mindful of the provisions of s. 28(7) of the 2015 Act in this regard, and if AH's general credibility is established, along with the other elements of s. 28(7), this aspect of his claim will not require confirmation by documentary or other evidence."

32. A similar approach, and set of conclusions, is found at para. 4.3.19 of the Decision in relation to the second ground advanced by the applicants, being that they married in 2011 in a love marriage without the approval of their families. At para. 4.3.19, the Decision notes that:

"this aspect of the appellant's claim is supported by available country of origin information showing societal disapproval of love marriages and a culture of arranged marriages. However, simply because a claim does not run counter to available of country of origin information alone does not mean that the claim is credible. Again, while significant, that is only one aspect of the assessment of credibility. In light of the absence of any independent corroborative evidence, this aspect of the claim (i.e. the claim of a love marriage occurring in 2011, following AH's return from the UK) can only be assessed as uncertain, and dependent on the assessment of the appellant's general credibility. This will be assessed further below, in the context of the assessment of the benefit of the doubt. Again the Tribunal is mindful of the provisions of s. 28(7) of the 2015 Act in this regard."

33. In the context of the applicants' third ground (that SH's family threatened the applicants and AH's family), the Tribunal notes, at para. 4.3.28 of the Decision, that the appellants have been internally consistent in respect of the threats on SH's family, and the claim accords with COI showing that repercussions can arise where parties engage in love marriages without family approval. The Decision goes on to note that *"while those are positive credibility indicators, it does not mean that the claim is necessarily credible. There are a number of credibility issues with the claim, including the issues identified above in respect of documentation."*

34. The Tribunal goes on, at paragraph 4.3.29, to set out why, in its view, in the circumstances of this case *"is not coherent for SH to claim to have remained living with AH's family in their home for a period of two years"* in essence holding that SH's actions in residing with AH's family almost immediately after an alleged attack by her family on AH's family's home were not consistent with those of a person who had a fear that she would be killed by her family.

35. The Decision then states as follows:

"[4.3.30] The only documentation in this case that is potentially directly relevant to the Appellants' claim are the two FIRs. The documents in question cannot be independently verified, in particular where the Appellants claim that SH's family are connected to and have influence with the police. Their credibility can only be assessed by reference to their contents and the detail provided therein and by reference to the credibility of the Appellants. The assessment of the reliability of an FIR, as with any document submitted by the Appellants, is irredeemably bound up in the determination of the Appellants' credibility. If the Appellants are not otherwise credible, the documentation submitted by them is not reliable...[the Tribunal then cited various authorities said to support that proposition]

[4.3.31] As such, the reliability of the documents submitted depends on the assessment of the credibility of the Appellants. Where there are issues with the coherence and consistency of this aspect of the claim, and also in respect of the lack of other documentation available, this aspect of the claim can only be assessed as uncertain, and dependent on the assessment of the Appellants' general credibility. This will be assessed further below, in the context of the assessment of the benefit of the doubt. Again, the Tribunal is mindful of the provisions of s. 28(7) of the 2015 Act in this regard."

36. Finally, in respect of the fourth limb of the applicants' case, that SH was threatened in the UK by someone who knew her family, the Tribunal concludes, at para. 4.3.38 of the Decision, that the applicants' claim "has largely been internally consistent but that there remain some credibility issues with this aspect of the claim":

"The Appellants, by their own acknowledgment, did not report any issues in the UK to the police there. The Appellants explained this on the basis that AH did not have permission to be in the UK and feared deportation to Pakistan; that leaves aside the fact it remained open to the Appellants to report the matter while also claiming protection in the UK. It also leaves aside the fact that they have not shown, beyond bare assertion, any reason why their claim would not have been fairly assessed in the UK."

37. The Tribunal then states, at para. 4.3.39, that:-

"Again, this aspect of the claim is not supported by any independent documentation. While it does accord with available COI to show that threats may be made in the UK as a result of breaches of "honour", that does not mean the claim is necessarily credible; the claim can only be assessed in the round, by reference to all relevant factors. In the circumstances of this case this aspect of the claim can only be assessed as uncertain, and dependent on the assessment of the appellants' general credibility. This will be assessed further below in the context of the assessment of the benefit of the doubt. Again, the Tribunal is mindful of the provisions of s. 28(7) of the 2015 Act in this regard."

38. The next part of this section of the Decision is headed "*Benefit of the Doubt*" which commences at para. 4.3.40:-

"[4.3.40] The Tribunal must consider whether it is appropriate to apply the benefit of the doubt in respect of the Appellants' claim. It is appropriate to apply the benefit of the doubt where the Appellants' general credibility has been established. General credibility may be established where an Appellant or Appellants have been consistent in respect of the central aspects of their claim, where the claim does not run counter to available COI and where they have made a genuine effort to substantiate their claim to the best of their abilities. An Appellant may be consistent even where there are minor inconsistencies, especially if those inconsistencies are in respect of non-central aspects of their claim. It is often appropriate to consider the application of the benefit of the doubt if there are a small number of such inconsistencies or credibility issues."

39. Both parties accept that this paragraph reflects the correct legal position as regards an assessment of general credibility and if that is established, the approach to benefit of the doubt. However, they are in dispute as to whether the Tribunal went on in the Decision to then correctly apply those principles.
40. The applicants submit that the Tribunal fell into fundamental error in not thereafter applying (or making clear how it was applying) those principles, in particular, in not setting out whether and, if so, how the applicants failed to make out their general credibility or if their general credibility was accepted, in failing to set how and why the applicants failed to meet the requirements of the separate subsections of s. 28(7). The respondents, for their part, submitted that the section "*The Benefit of the Doubt*" clearly, in substance, addressed the various relevant subparagraphs of s. 28(7) in addition to addressing the question of general credibility. It was submitted that this was a case where the absence of documentation was clearly relevant to both an assessment of the general credibility of the applicants' case and the individual subparagraphs of s. 28(7).
41. It is necessary in the circumstances to set out in some detail how the Decision proceeded thereafter.
42. The next two paragraphs of the Decision, paragraph 4.3.41 and paragraph 4.3.42 address the question of the applicant's delay in applying for asylum in the UK and follow immediately from the paragraph set out above which discussed the approach to an assessment of general credibility. The delay in applying for asylum in the UK was clearly a matter open to the Tribunal to regard as relevant to general credibility.
43. The next paragraph, paragraph 4.3.43, states "*overall, there are a number of factors which militate against giving the appellant's claims the benefit of the doubt*". There are then seven matters listed in the next seven paragraphs. It is clear from a consideration of these paragraphs and the conclusion that immediately follows them that they set out the Tribunal's reasoning (and reasons) as to why in the Tribunal's view the applicants have not been generally credible.

44. Firstly, the Tribunal references (at paragraph 4.3.44) the applicant's claim that SH remained living with the husband's family for over 2 years after her family attacked his family's home holding that:

"It is simply not coherent to claim that the Appellants faced a risk from SH's family, yet for SH to remain living in a place that was not only known to them, but one which they had allegedly attacked previously, for over two years. This undermines both the credibility of the claim that SH lived with her husband's family for two years and the credibility of the claim that her family attacked her husband's family's home in the first place."

45. The applicants submitted that this was a flawed finding in circumstances where SH gave evidence that she had no other option but to live in hiding with her husband's family; however, in my view that is an argument going to the merits and not the lawfulness of the Decision or the decision-making process.

46. Secondly, the Tribunal notes that AH had not submitted any documentation whatsoever to corroborate the claim of involvement with the MQM and states:

"He has not submitted membership documentation nor any documentation that would show direct involvement with the party. He was asked about this and the only explanation given was that he ran away from them; that does not address why he would not have had documentation himself, as opposed to having to gain it from the party in question. This undermines the credibility of his claim of involvement with the MQM and the claim that he was threatened by them."

47. Thirdly, the Tribunal states that AH's alleged difficulties with the MQM are not supported by available COI stating:

"While available COI shows a degree of violence between rival factions of what was formerly a united political party, none of the COI submitted or available shows any risk to those who leave the MQM without joining another faction or another political party. This also undermines the credibility of AH's claim of involvement with the MQM and the claim that he was threatened by them."

48. The applicants point out that AH's actual claim was that he was threatened because he was in a senior position with the party (being the president of the college division of the party) and that this is not undermined by the COI material. However, again, that seems to me to be an argument going to the merits and not the lawfulness of the Decision or the decision-making process.

49. Fourthly, the Tribunal holds that AH has not demonstrated that he returned to Pakistan at any stage since first travelling to the UK, stating:

"The documentation from the UK Home Office shows that he was first granted a visa in 2009. AH accepted that he had submitted no documentation to show that he had travelled back to Pakistan in 2011; flight details or even a passport showing

passport stamps would have shown that he had flown to Pakistan. Indeed, flight details were submitted for SH, showing that she travelled from Pakistan to the UK in 2013. The fact AH has not submitted any documentation showing his travel to Pakistan in 2011, or his passport, is a significant negative credibility indicator in respect of his claim of having travelled back in 2011. This undermines the credibility of his claim in its entirety. The failure to submit any documentation showing his return to Pakistan is such that the Tribunal is not satisfied that all relevant elements at AH's disposal have been submitted or that a satisfactory explanation regarding any lack of other relevant elements has been given, in accordance with s. 28(7)(b)."

50. Counsel for the applicants pointed out that the explanation given by AH in his AIPQ in relation to the fact that he did not have his passport was that his passport (at the time of the AIPQ) had been retained by his travel agent. However, it seems to me that it was rationally open to the Tribunal to criticise the absence of a passport at the hearing before it, particularly bearing in mind the explanations given – or not given – by AH at the hearing before the Tribunal.
51. Fifthly, the Tribunal relied on the fact that the applicants had not submitted any proof of their marriage in 2011. It was submitted by the applicants that this was an example of a particularly stark conflation of general credibility issues with the lack of documentation, in circumstances where the Tribunal accepted that the applicants had been married. However, in my view, the reasons provided demonstrate a merits-based finding which was clearly rationally open to the Tribunal to make – the issue was not whether the applicants were married but whether they had been married in a love marriage in Pakistan in 2011:

"While the Tribunal accepts they are married, there is no documentation to verify when or where they got married. This, coupled with the lack of any evidence that AH travelled to Pakistan in 2011, seriously undermines the credibility of both the claim that they married in 2011 and, as a result, the claim that their marriage was a love marriage entered into without the approval of their families. The lack of documentation in this respect undermines the credibility of their claim in its entirety."

52. Sixthly, the Tribunal relied on the fact that the applicants did not report any issues to the UK authorities holding:

"While the Appellants attempted to explain this by reference to their visa status at that time, that does not explain why they could not have reported the issues to the police in the UK, and also claimed protection in the UK at the same time. The fact they did not report any issues to the UK authorities undermines the credibility of the claim that they were threatened while in the UK. The UK is a safe country with a functioning police force. If the Appellants were threatened with harm and genuinely believed they were at risk as a result, the Tribunal would expect that they would have reported these threats to the UK police. The failure to report these

threats undermines their claim that they were in fear of their lives and consequently the credibility that these events occurred."

53. The applicant submitted that the Tribunal failed to have regard to the subjective reasons advanced by the applicants as to why they did not report issues to the UK police at the time. However, in my view it is clear that the Tribunal here was expressing its view as to the objective justification for that course of action, a view perfectly open to the Tribunal to arrive at.
54. Seventhly, the Tribunal relied on the fact that the appellant did not claim protection in the UK, as follows:

"The Appellants have not demonstrated any good reason for not having done so, in particular where their visa status in the UK was insecure from 2014 onwards, long before any issues with threats being made against them in the UK. The Home Office documentation shows that AH's permission in the UK expired on 21 April 2013 and that SH's permission in the UK expired on 11 August 2014, with an application for leave to remain being refused on 14 October 2014, with no right to appeal. Beyond that, the Appellants had no permission to remain in the UK; they have given no reason why they did not apply for protection at that stage. It is not consistent to say that they did not claim protection in the UK because they had been threatened by a friend of SH's family, when that threat was only made in 2015 and when their permissions to remain in the UK expired in 2013 and 2014. The Appellants were aware that their status in the UK was precarious yet made no application for asylum in the UK. These issues also undermine the credibility of their claim in its entirety. Beyond a bare assertion that they were advised they would be deported, the Appellants have shown no reason why they were unable to claim protection in the UK. The Appellants' first child was not born until January 2016; as such, the claimed threat made while SH was pregnant was not made until a significant time after their permissions to remain in the UK had lapsed. Again, the UK has a functioning system for determining asylum claims. If the Appellants had elected to seek protection, the UK would have had an obligation to assess their claim and there is no basis to presuppose that would not have been done in an appropriate manner. The Appellants' failure to seek protection undermines their claims of subjective fear and consequentially the credibility of their claim."

55. The Tribunal then commented that the issues set out above "leave aside a number of other minor matters" to which it may have been appropriate to apply the benefit of the doubt were it not for the lack of general credibility.
56. The Tribunal then held that, on the basis of the matters set out above, it could not accept as reliable the FIRs submitted.
57. The Tribunal then stated its conclusions (at para 4.3.53) on the applicants' general credibility, as follows:

"In this case, as noted, there are multiple credibility issues in respect of central aspects of their claim. While it might have been appropriate to say that the Appellants' general credibility had been established if there were one or two minor inconsistencies or credibility issues, in this case there are several issues, as noted above, going to the core of the Appellants' claim. As such, the general credibility of neither Appellant has been established. Accordingly, it is not appropriate to give the Appellants' claim the benefit of the doubt. In light of the number and nature of the credibility issues identified above, the Tribunal thus does not accept that material elements of the Appellants' claim are credible, on the balance of probabilities. The Tribunal does not accept the credibility of the claims that AH was threatened after resigning from the MQM party, that the Appellants married without the approval of their families, that SH's family attacked the home of AH's family and threatened the Appellants or that SH was threatened in the UK by a person who knew her family." (emphasis added)

58. The respondent submitted that it is clear from the Decision (as summarised above) that the Tribunal carried out a full general credibility assessment and as a result of same the benefit of the doubt simply did not arise. They submit that the credibility analysis is fully reasoned. They submit that it follows that the conclusion reached as to the rejection of the credibility of the FIR documents is also unimpeachable in the circumstances.

Discussion

59. The applicants' case, fundamentally, is that the Tribunal erred in law in its approach to an assessment of the credibility of the applicants and their claims. It is said, variously, that the Tribunal did not apply the correct standard of proof, that the Tribunal wrongly conflated the concepts of general credibility with those of the benefit of the doubt and that the Tribunal failed to give reasons as to why it did not accept the applicants' explanations for the absence of documentation in respect of various aspects of the claim.
60. However, in my view, these contentions are not well founded when one looks at how, in fact, the Tribunal approached the question of credibility in the Decision. The Tribunal commenced its assessment of the "*relevant facts, statements and documentation*" in section 4.3 of the Decision by summarising, in para. 4.3.1, the primary alleged material facts (being the four limbs of the applicant's case for international protection) and then noting that:

"Each of these alleged material facts must be assessed in turn. At the conclusion of that assessment, it may be appropriate to consider the issue of the benefit of the doubt in respect of facts which were uncertain."

61. As we have already seen, in respect of each of the four limbs of the applicants' case, the Tribunal then examines the key contentions advanced by the applicants, and highlights issues it has with the cogency of the claims advanced. The Tribunal notes in respect of each of the four limbs, where it is of the view that the applicants' claims are in respect of matters which are uncertain, and "*dependent on an assessment of general credibility*", that "*this will be assessed in further detail below in the context of the assessment and the*

potential application of the benefit of doubt" (see paras. 4.3.12, 4.3.19, 4.3.31 and 4.3.39). (emphasis added)

62. The Tribunal then in the "benefit of the doubt" section conducts its assessment of general credibility and offers detailed reasons as to what it is rejecting the applicants' general credibility, culminating in an express finding to that effect in paragraph 4.3.53 of the Decision, (quoted at paragraph 57 above).
63. The fact that the Tribunal had issues in relation to the plausibility and cogency of the case advanced by the applicants and their explanations for lack of documentation is evident from the contents of the Decision under each of the four headings of their claim in the first part of Section 4.3 of the Decision, where the Tribunal expressly identifies the concerns it had with the claims made.
64. Thus, for example, in relation to the claim that AH was a member of the MQM political party and was threatened after resigning from the party, the Tribunal references the fact that AH had submitted no vouching documentation in respect of his involvement with the MQM party; had made no mention of an issue with the MQM in his s. 8 interview; had made no mention at any stage prior to the Tribunal hearing of MQM members visiting his parents' house or threatening them (para. 4.3.8). The Tribunal further notes that none of the COI demonstrates issues for members who wish to leave or have left, without those persons joining or wanting to join another faction of the party (para. 4.3.11).
65. In relation to the applicants' claim to have been married in a love marriage in Pakistan in 2011 without the approval of their families, the Tribunal raises the question of the sufficiency of the detail provided by the applicants, noting that there was no documentation to verify AH's return to Pakistan at any stage between 2009 and 2016 and no documentation to verify the date of the marriage. The Tribunal notes AH's "*only explanation for why he returned to Pakistan, rather than SH travelling to the UK*", being "*because their brains were not working like that at the time*". The Tribunal states that:

"This does not adequately address why they could not have arranged for SH to travel to the UK nor does it provide an answer as to why they were not able to provide any documentation whatsoever showing that AH have returned to Pakistan... The appellants had given no adequate explanation for why they were unable to submit any documentation showing either AH's travel or the date of marriage."
66. This demonstrates a clear engagement by the Tribunal with the reasons for lack of documentation on a core element of the applicants' case and the Tribunal's view as to the inadequacy of same.
67. In relation to the claim that SH's family threatened the applicants and AH's family, the Tribunal in its Decision notes that there are a number of credibility issues with the applicants' claims, including the issues already identified in respect of documentation (para. 4.3.28). The Tribunal expresses the view that it is not coherent for SH to claim to

have remained living with AH's family in the home for a period of two years and gives detailed reasoning for that view (para. 4.3.29). In relation to the FIR documentation, the Tribunal notes that "*the documents in question cannot be independently verified*" and links the credibility of the documents to the overall credibility of the appellants, citing case law which clearly endorses that as being a legitimate approach (para. 4.3.40).

68. In relation to SH's claims that she had been threatened in the UK by someone who knew her family, the Tribunal notes that there were credibility issues with this aspect of the claim, pointing out that the applicants did not report any issues in the UK to the police there and then records the applicants' explanation for same, while raising issues in relation to the cogency of that explanation (para. 4.3.38).
69. Accordingly, the Tribunal carefully set out the applicants' case under each of the four limbs of their claim for protection, expressly identified credibility concerns and offered reasoned views as to why explanations for lack of documentation were not convincing or why the particular account given by the applicants was not coherent or persuasive and then made clear that it would make final findings on the applicants' account following an assessment of general credibility and the benefit of the doubt.
70. The Tribunal then went on, in the section headed "*The Benefit of the Doubt*", to correctly set out the approach in law to the benefit of the doubt, i.e. it being appropriate to apply the benefit of the doubt where the applicants' general credibility had been established. The Tribunal then correctly set out the test on assessing general credibility (para. 4.3.40). While this section is headed "*Benefit of the Doubt*", the contents of the section makes clear that the question of benefit of the doubt would only be reached if the applicants' general credibility is established and the Decision thereafter reasons in some detail as to why the applicants' general credibility was rejected, the benefit of the doubt, therefore, not arising.
71. The Tribunal then assesses in some detail matters to which it was clearly open to the Tribunal to have regard in assessing general credibility, including the applicants' delay in applying for asylum in the UK; issues with SH's claim that she remained living with the husband's family for over two years after her family had attacked his family's home; issues in relation to discrepancies between AH's alleged difficulties with the MQM and the available COI; and issues as regards the cogency and coherence of AH's contention that he had returned to Pakistan 2011 pointing out in this regard that, in contrast to SH who submitted flight details, AH had not submitted any documentation showing his travel to Pakistan or his passport. These latter matters were said to constitute "*a significant negative credibility indicator in respect of his claim of having travelled back in 2011. This undermines the credibility of this claim in its entirety.*" (para. 4.3.47), a merits-based finding which was perfectly open for the Tribunal to arrive at and with which this Court cannot interfere.
72. The lack of any evidence that AH travelled to Pakistan in 2011 is relied upon, in conjunction with the absence of documentation to verify when and where the applicants got married, to ground the Tribunal's view that their claim that they were married in 2011

and that their marriage was a love marriage entered into without the approval of the families was lacking credibility. The applicants' failure to report any issues to the UK authorities and the failure to claim international protection in the UK is also determined by the Tribunal to undermine the credibility of their claims.

73. It is manifest that the Tribunal forms the view that the applicants are not generally credible (para. 4.3.51). Having made that finding, the Tribunal holds that it is not satisfied to apply the benefit of doubt. This approach is entirely consistent with the legal principles governing assessment of credibility.
74. The Tribunal further makes the determination, following the finding that the applicants' claims are not generally credible, that it could not accept as reliable the FIR's submissions (para. 4.3.52).
75. In my view, it is clear from the foregoing that the Tribunal's conclusion (at para. 4.3.53) on credibility, and the process by which it arrived at that conclusion, is perfectly compliant with the legal principles on assessment of credibility and, where appropriate, the benefit of the doubt. In light of the actual process of analysis and reasoning in the Decision as summarised above, I do not believe it can be fairly said that the Tribunal applied the wrong standard of proof or wrongly conflated issues of general credibility with benefit of the doubt or engaged in any circular reasoning as alleged.
76. In so far as the applicants complain that the Tribunal while saying it was mindful of s.28(7) did not reason out expressly what aspects of s.28(7) it was considering but rejecting, I do not believe that contention is well-founded in circumstances where the establishment of general credibility is a *sine qua non* to a Tribunal thereafter considering whether aspects of an applicant's claim might be accepted without documentary or other evidence, as is clear from s.28(7)(e). The applicants placed emphasis on the decision of Keane J in *OP v the Minister for Justice* [2019] IEHC 298 as being an authority in support of their position on this argument. However, it is clear on the facts of that case that the Tribunal there had neither set out why it was accepting or rejecting the applicant's general credibility, nor had the Tribunal engaged with any of the terms of the forerunner of s.28 (7) such that the Court there was left "*to attempt to infer which of the necessary conditions for the acceptance of the applicant's statements without confirmation the tribunal concluded had not been met*".
77. In contrast, on the facts of the case here, it is clear that the Tribunal rejected the applicants' general credibility and in those circumstances was not accepting core aspects of the applicant's claims which were unsupported by documentation such as AH's claim that he had travelled back to Pakistan in 2011 to be married in a love marriage with SH. The Tribunal expressly rejected the applicants' general credibility so the question of the other factors in s.28(7) did not materially arise. In any event, in so far as matters arose which might have gone to both general credibility and other aspects of s.28(7), the Tribunal did in fact specifically cite s.28(7)(b) in the context of its rejection of the explanation given by AH as to his alleged return to Pakistan in 2011 to marry SH – see para 4.3.47 of the Decision set out at paragraph 49 above.

78. I do not accept the applicants' contention that the Tribunal failed to give a sufficient explanation for the reasons advanced by the applicants for the lack of documentation in respect of various aspects of their claim. On the contrary, the Tribunal took particular care to reason through why it did not accept the explanations advanced by the applicants as to lack of documentation and as to their case generally. Cooke J. made clear in I.R. (at paragraph 11(4)) that "*The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed...*". In my view, the assessment here clearly met that requirement.
79. Finally, the Tribunal's determination, that it could not accept as reliable the FIRs submitted (para. 4.3.52) was also a finding open to it to make on the evidence before it in light of the Tribunal's view as to the applicants' lack of general credibility. As noted by the Tribunal itself, Humphreys J held in *OA (Nigeria) v IPAT* [2020] IEHC 100, that "*the general rule is that an assessment of the reliability of documents cannot be separated from an assessment of the credibility of the applicant; and if there are exceptions to that, then they are more theoretical than real for virtually all practical purposes*" and applied that general rule to the facts before it. It is not for this Court to interfere with a finding lawfully and rationally open to the Tribunal.

Conclusion

80. In the circumstances, I refuse the relief sought by the applicants.