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# The emotional impacts of working as an asylum lawyer

## ABSTRACT

Asylum practitioners often work with traumatised persons and hear stories of persecution and other traumatic narratives in their everyday work. This study sought to assess the emotional impacts of working as an asylum practitioner, and how these effects could affect a practitioner's performance in their role or their relationship with their clients. This qualitative study consisted of 10 semi-structured interviews with asylum practitioners in England and the Republic of Ireland. An inductive thematic analysis was used to analyze data. A number of key themes emerged, including participants describing having experienced or witnessed burnout and other negative emotional effects caused by working in this role. Practitioners also described having experienced feelings of detachment from clients, as well as in some cases cynicism and disbelief of their narratives. However, these emotional states were seen to engender positive as well as negative attributes in the delivery of legal representation. Heavy caseloads, the futility of working in a system where some clients have little chance of success, cuts to legal aid, as well as societal stigmatization of claimants were also cited as providing challenges for practitioners. A complex understanding of this role emerged in times of austerity, where anti-immigration sentiment is common within society.

## 1. INTRODUCTION

An asylum claimant is someone who is seeking protection in another state and recognition as a refugee. Their rights are protected under the Refugee Convention 1951<sup>1</sup> which seeks to protect any person unable to return to his or her country due to 'a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'.<sup>2</sup> Individuals should also not be returned to their states of origin for human rights reasons, for example, if they are in danger of being subjected to torture<sup>3</sup> or inhuman or degrading treatment.<sup>4</sup> In order for individuals to be recognised as refugees they need to go through the asylum process and explain their reasons for claiming asylum. Their narratives can often be traumatic and the claimants may also be experiencing post-traumatic stress as a result

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<sup>1</sup> Convention relating to the Status of Refugees, 189 UNTS 150, 28 Jul. 1951 (entry into force: 22 Apr. 1954).

<sup>2</sup> *Ibid.*, Article 1A(2).

<sup>3</sup> UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Article 3.

<sup>4</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (ECHR), 4 November 1950, ETS 5, Article 3.

of their experiences.<sup>5</sup> They may have substantial needs for health care.<sup>6</sup> They may experience pre-migration and post-migration adversities which can affect their mental health.<sup>7</sup> For example, pre-migration, they may have experienced war, organised violence, torture, sexual violence, genital mutilation, genocide, persecution, exploitation, trafficking and/or separation from their families. When travelling, they may have had traumatic experiences such as taking treacherous journeys, possibly in boats where they have witnessed people die, or they may have had to live in degrading conditions. Post-migration adversities may include social isolation, discrimination, poverty, and uncertainty over whether they will be forced to return to their country of origin.<sup>8</sup>

This paper is based on a small-scale empirical study which investigated the emotional impacts of working with asylum claimants and it considered whether training, education and workplace support could help to support practitioners. This paper will solely focus on the first part of the study concerning the emotional impacts of working as an asylum practitioner. The aims of this part were to evaluate what emotional impacts are felt by asylum practitioners in their roles, how the emotional work that practitioners undertake affects their role or relationship to their clients, and what other external emotional impacts affect practitioners. The aims were considered important for two reasons: first, from an ethical perspective, if professionals might be affected by hearing traumatic narratives we need to support them as best we can; second, if legal professionals are experiencing secondary trauma, burnout or other negative emotions caused by this work this potentially might affect the service they provide to their clients. On the latter point, this is particularly an area of concern given the high stakes, often life or death situations, involved for the client group.

This paper builds on previous research completed in the United Kingdom by Baillet et al who conducted an empirical study on this issue through interviews which took place from 2007 – 2010,<sup>9</sup> and to a degree the work of Westaby who assessed the emotional labour conducted by

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<sup>5</sup> K. O'Rourke and N. Crumlish "A systematic review of treatments for post-traumatic stress disorder among refugees and asylum seekers", *Journal of Nervous and Mental Disease* 198(4), 2010, 237.

<sup>6</sup> H. McColl and S. Johnson "Characteristics and needs of asylum seekers and refugees with London community mental health teams" *Social Psychiatry and Psychiatric Epidemiology* 41(10), 2006, 789.

<sup>7</sup> *Ibid.*, 789.

<sup>8</sup> *Ibid.*, 790.

<sup>9</sup> C. Westaby "Feeling like a sponge": the emotional labour produced by solicitors in their interactions with clients seeking asylum" *International Journal of the Legal Profession*, 17(2), 2010, 164.

asylum practitioners.<sup>10</sup> It was considered that given the limited research in this area, and the time which has elapsed since the publication of these papers, that this addition to the research would be timely and valuable, particularly as legal professionals face additional pressures since the introduction to cuts to legal aid following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).<sup>11</sup> While the research was primarily based in England, asylum practitioners worldwide work with traumatised persons and hear their stories, giving this paper international relevance.

A qualitative empirical study was undertaken which consisted of nine interviews in England, and one in the Republic of Ireland. The research found that working with traumatised asylum claimants and hearing their narratives can be emotionally demanding work which can have a negative emotional impact on practitioners, manifesting in self-reported burnout and emotional stress. It will also found that practitioners, to protect themselves from the emotional impacts of this type of work, can rely on protective mechanisms, such as emotionally detaching themselves from their clients. This, it emerged, could have positive effects in affording practitioners the potential to stay within their roles. However, it was also considered that too much detachment could lead a practitioner to depersonalise their clients. It was also discovered that practitioners can be cynical or disbelieving of client narratives. However, within asylum lawyering it was considered that this was a complex reaction, and could have positive or negative attributes. It was also evident that we cannot see the impacts of asylum narratives in a vacuum. Heavy caseloads, cuts to legal aid in England and Wales, the futility of working in a system where some clients have little chance of success, as well as the stigmatization of asylum claimants make working in this area of law additionally challenging. This research does not want to lose sight of the fact that asylum claimants deserve our protection as a priority, but it also wishes to stress that more should be done to protect practitioners working in this area of law – we cannot discharge our duties to asylum claimants, without protecting those who deliver assistance in protecting their rights.

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<sup>10</sup> H. Baillot, S. Cowan, V. E. Munro “Second-hand emotion? Exploring the contagion and impact and distress in the asylum law context” *Journal of Law and Society*, 40(4), 2013, 525.

<sup>11</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012 c 10.

## 2. THE ASYLUM PROCESS

Asylum claimants undertake an initial screening interview, then a substantive interview, by UK Visas and Immigration asylum case workers to decide whether they have refugee status.<sup>12</sup> When going through this process, and through any appeals, they are entitled to support from legal representatives.<sup>13</sup> An asylum claimant may arrive into a legal practitioner's office at any stage in the asylum process, including before the screening interview, or at an appeal stage. First, they will establish procedural aspects of their claim including, for example, assessing how the case will be funded, considering if there are there any conflicts of interest, and evaluating what stage their claim is up to. The practitioner will take down the personal details of the claimant, including their name and address, whether they have family, and other basic details before seeking to establish the reasons why the claimant is applying for asylum. Practitioners usually take a full witness statement from the claimant or instructions related to the claim. In taking a full witness statement or instructions the practitioner seeks to establish facts relevant to the asylum claim. They will ask, for example, how the claimant travelled to the UK, where they are from, where they have lived, their ethnicity, political opinion, their level of political engagement (e.g. are they members/ supporters of political groups or if they have imputed political opinion through association) or their sexuality. The practitioner will also seek to establish when their problems began, if they have been arrested, if an arrest warrant is in place, if they have been victims of state or non-state persecution and if they have been able or unable to avail of state protection.<sup>14</sup>

When providing guidance the practitioner will outline strengths and weaknesses of the claimant's case, explaining, for example, how the Refugee Convention applies to their case.<sup>15</sup> Some participants in the current study stated that the witness statement or instructions were the most important aspect of their role. While the taking of a witness statement or instructions is the main arena through which a practitioner will hear the traumatic narratives a client is telling, there are further points of contact where information may be provided. Practitioners normally

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<sup>12</sup> Asylum Aid, *Providing Protection: Access to early advice for asylum seekers*, Asylum Aid, available at: <http://www.asylumaid.org.uk/wp-content/uploads/2014/08/Providing-Protection.pdf> (last visited 3 March 2018), 12.

<sup>13</sup> *Immigration Rules (last amended July 2008)*, HC 395 (as amended), 23 May 1994, Rule 333B.

<sup>14</sup> Immigration Law Practitioner's Association (ILPA): ILPA, *Making an asylum application*, 2002, IPLA; this information has also been taken from discussions with the participants in the study.

<sup>15</sup> There is no official guidance about how witness statements should be taken. However useful (although out of date) guidance is provided by the Immigration Law Practitioner's Association (ILPA): ILPA, *Making an asylum application*, 2002, IPLA.

will have regular interviews with their clients and they will speak over the phone, or via letter or email. Where torture is raised, practitioners often obtain a full medical history and take step by step instructions on the circumstances surrounding the torture and the events themselves, including specific details of injuries perpetrated against their clients in order to arrange appropriate referrals.<sup>16</sup>

### **3. THE EMOTIONAL IMPACTS OF WORKING WITH TRAUMATISED INDIVIDUALS**

Asylum claimants are often traumatised people. In a study in 2005 it was found that asylum claimants are 10 times more likely to have post-traumatic stress disorder (PTSD)<sup>17</sup> than that of the general population.<sup>18</sup> Worldwide, it is estimated that tens of thousands of refugees settled in western countries probably have PTSD.<sup>19</sup> There are different medical classifications for describing negative mental effects associated with working with traumatised individuals, which include, for example, vicarious trauma, compassion fatigue, secondary trauma stress, and burnout.<sup>20</sup> While in medicine these classifications can have different medical characteristics and sequelae, given the nature of this research, these were unable to be explored in detail. Therefore, for the purposes of this paper, the terms secondary trauma and burnout will be used as short-hand to describe a number of related negative mental effects associated with working with traumatised individuals. These terms were additionally chosen as they were the most likely to be used by the participants interviewed. Secondary trauma refers to the psychological signs and symptoms that result from on-going involvement with traumatised individuals.<sup>21</sup> Burnout is described as ‘a syndrome of emotional exhaustion and cynicism that occurs frequently among individuals who do ‘people-work’ of some kind’.<sup>22</sup> It has been described as ‘an indication of the employee’s growing inability to adequately manage their

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<sup>17</sup> PTSD may occur when ‘(1) the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others (2) the person’s response involved intense fear, helplessness, or horror’ [DSM-IV Criteria for posttraumatic stress disorder 309.81].

<sup>18</sup> O’Rourke and Crumlish “A systematic review of treatments for post-traumatic stress disorder among refugees and asylum seekers” *Journal of Nervous and Mental Disease* 198(4), 2010, 237.

<sup>19</sup> M. Fazel, J. Wheeler, J. Danesh, “Prevalence of serious mental disorder in 7000 refugees resettled in western countries: a systematic review”, *Lancet*, 365(9467), 2005, 1309-14.

<sup>20</sup> C.R. Figley (ed.), *Compassion fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized*, New York: Bnmner/Mazel, 1995, 178-208.

<sup>21</sup> Y. Fischman, “Secondary trauma in the legal professions, a clinical perspective”, *Torture* 18(2), 2008, 108.

<sup>22</sup> C. Maslach and Susan E. Jackson ‘The measurement of experienced burnout’ *Journal of Occupational Behaviour* 2(4), 1981, 99.

emotions when dealing with clients'.<sup>23</sup> There is a plethora of research on burnout and its effect on individuals in a variety of professions, ranging, for example, from working as a health professional<sup>24</sup> to within call centres.<sup>25</sup> Nonetheless, working as an asylum practitioner is a striking example of performing a particularly emotionally demanding role, which draws some parallels to working as a counsellor, psychotherapist or social worker, where it is often recognised that structures should be in place to protect professionals from harm.<sup>26</sup>

Studies have confirmed the potential for secondary trauma or burnout across the legal profession.<sup>27</sup> In the United States, Levin and Greisberg found that lawyers working with victims of domestic violence and criminal defendants demonstrated significantly higher levels of burnout than mental health providers and social services workers.<sup>28</sup> In 2014, the Law Society in England and Wales reported that a huge 96% of solicitors of a sample group of 1,517 said they experienced negative stress, with 19 percent at 'severe' or 'extreme' levels.<sup>29</sup> Similar findings have been made in the United States where it has been found that lawyers have a high rate of depression - 3.6 times the rate of the general population.<sup>30</sup> Prevalence of alcohol and drug abuse has also been observed.<sup>31</sup> In Australia, it has also been identified that lawyers 'suffer from significantly lower levels of psychological and psychosomatic health well-being than other professionals'.<sup>32</sup> Numerous reasons have been advanced for the decline in well-being of legal practitioners. In an Australian study by James it was suggested that reasons for poor well-being included management issues, high billing requirements, associated long hours at work, and the absence of quality mentoring, as well as a lack of control over workload and having a

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<sup>23</sup> D. Zapf, C. Seifert, B. Schmutte, H. Mertini, M. Holz, "Emotion work and job stressors and their effects on burnout" *Psychology and Health* 16(5), 2001, 527.

<sup>24</sup> C.P. West, L.N. Dyrbye, J.A. Sloan, J.A., T.D. Shanafelt, 'Single Item Measures of Emotional Exhaustion and Depersonalization Are Useful for Assessing Burnout in Medical Professionals' 24(12), 2009, 1318.

<sup>25</sup> A.A. Mukherjee, N.J. Rod, P. Thirkell, J. Carruthers, 'Job resourcefulness, symptoms of burnout and service recovery performance: an examination of call centre frontline employees' 23(5), 2009, 338-350.

<sup>26</sup> This will be discussed further in the second part to this study.

<sup>27</sup> Fischman, "Secondary trauma in the legal professions, a clinical perspective", 107.

<sup>28</sup> A. Levin and S. Greisberg "Vicarious trauma in attorneys" *Pace Law Review*, 24(245), 2003.

<sup>29</sup> Law Society, "Solicitors' health and well-being: The Law Society's PC Holder Survey 2014" available at: <http://www.lawsociety.org.uk/support-services/research-trends/documents/health-and-wellbeing-2014/> (accessed 20/07/2017) 2.

<sup>30</sup> W.W. Eaton, J.C. Anthony, W. Mandel, R. Garrison "Occupations and the prevalence of major depressive disorder, journal of occupational medicine", 32, 1990, 1083-1132.

<sup>31</sup> G. A. H. Benjamin, E. J. Darling and B. Sales "The prevalence of depression, alcohol abuse, and cocaine abuse among United States lawyers" *International Journal of Law and Psychiatry*, 15, 1990, 233-246.

<sup>32</sup> R.T. Michalak, "Causes and consequences of work-related psychosocial risk exposure: A comparative investigation of organisational context, employee attitudes, job performance and wellbeing in lawyers and non-lawyer professionals", 2015, PsychSafe, available at:

[http://media.wix.com/ugd/a8d830\\_08ea2117408c4b3a9ae1b628f8d0d9ee.pdf](http://media.wix.com/ugd/a8d830_08ea2117408c4b3a9ae1b628f8d0d9ee.pdf) (last visited 20 March 2018), I.

large degree of responsibility.<sup>33</sup> Other factors suggest a decrease in mental well-being due to an increase in commercialism, as well as a loss of character and professionalism amongst lawyers.<sup>34</sup>

In respect of immigration and asylum lawyers, Surawski et al found in a study set in Australia that these professionals experienced moderate to high levels of stress in their work.<sup>35</sup> In the United Kingdom, Westaby noted the effects of having to perform emotional labour in solicitor-client consultations in asylum law as leading to burnout and decreased task efficiency as well as depression.<sup>36</sup> Baillot et al noted in their study of 104 participants who work with asylum claimants in the United Kingdom, including 25 legal representatives, that some described their work as distressing and upsetting, amongst other negative emotional signifiers.<sup>37</sup> The evidence suggests, therefore, that there are issues affecting the wider legal profession and across jurisdictions. However, asylum practitioners are a specific case worthy of consideration due to the nature of their work – the fact that they are dealing with individuals on a daily basis who have experienced gross and traumatic violations of their human rights, potentially over a prolonged period of time.<sup>38</sup>

#### 4. METHODOLOGY

This study was primarily conducted in England in 2017 where cuts to legal aid were (and still, at the time of writing, are) placing increasing demands on the legal sector. The discussion is based on semi-structured interviews with 10 immigration practitioners. The interviews were conducted in a number of locations in England but the researcher also undertook one interview in the Republic of Ireland, which although has a different legal system, operates under EU law

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<sup>33</sup> C. James “Lawyer dissatisfaction, emotional intelligence and clinical legal education” *Legal Education Review*, 18(2), 2008, 123-137.

<sup>34</sup> K. M. Sheldon and L. Krieger “Does Legal education have undermining effects on law students? Evaluating changes in motivation, values, and well-being” *Behavioural Sciences and the Law*, 22, 2004, 262.

<sup>35</sup> N. Surawski, A. Pedersen and L. Briskman “Resisting refugee policy: Stress and coping of refugee advocates” *The Australian Community Psychologist*, 20(2), 2008, 16-29.

<sup>36</sup> C. Westaby ““Feeling like a sponge”: the emotional labour produced by solicitors in their interactions with clients seeking asylum” *International Journal of the Legal Profession*, 17(2), 2010, 164.

<sup>37</sup> H. Baillot, S. Cowan, V. E. Munro “Second-hand emotion? Exploring the contagion and impact and distress in the asylum law context” *Journal of Law and Society*, 40(4), 2013, 525.

<sup>38</sup> Nevertheless, this work has relevance to other practitioners who work regularly with traumatised individuals, for example, criminal or family solicitors working with people who have experienced domestic or sexual violence, human trafficking or slavery, or other victims of serious crimes.

which sets out in Member States minimum procedures for establishing refugee status.<sup>39</sup> It was considered that many of the same issues would emerge from an interview in the Republic of Ireland and this was the reason for conducting this interview. All participants work as practising solicitors regulated by the Law Society of England and Wales, or the Law Society of Ireland, or are non-solicitors regulated by the Office of the Immigration Commissioner (OISC) (henceforth referred to as caseworkers). Participants were chosen using purposive sampling, enabling an appropriate group to be identified for the study. This type of research enables good-quality research of in-depth qualitative data relating to the subject matter under discussion as a route to the discovery of new ideas or theories.<sup>40</sup> A representative sample of participants was not selected, which is a limitation to this research, but this was inevitable given the small number of individuals who were selected for interviewing. Individuals were recruited through snowballing techniques,<sup>41</sup> as well as through an invitation through a mailing list, which is another limitation as representativeness was not guaranteed. However, given the themes which emerged during discussions and the insights of those interviewed, this research makes an important contribution to literature on the subject.

All, with the exception of the one participant based in the Republic of Ireland, were accredited to undertake legal aid work in the UK. One individual was a member of the Law Society's Immigration Law Advanced Accreditation Scheme in the UK – the highest tier of accreditation.<sup>42</sup> The participants were chosen with three aims. First, they were selected from a range of different professional backgrounds enabling the researcher a greater understanding of the training and education provided to individuals in the different routes. Therefore, seven individuals were qualified solicitors and three were caseworkers. The second basis for choosing individuals was firm size and type. It was considered that this was important because different professional environments could facilitate varying types of support, training and education based on their size or setup (which was a concern of the second part to this study). Of the 10 people interviewed, three individuals worked for a charity which employed less than 10 people, one participant worked as a self-employed tribunal advocate, two individuals worked as

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<sup>39</sup> Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, 2 January 2006, OJ L 326; 13 December 2005; this was recast in 2013 but the UK and Ireland do not participate in the amended directive.

<sup>40</sup> M. Denscombe, *The Good Research Guide for Small-Scale Social Research Projects*, 3<sup>rd</sup> edition, Maidenhead, Open University Press, 2007, 42.

<sup>41</sup> A snowballing technique was used that meant some of the participants knew one another. There was the potential for them to have shared experiences, or discussed experiences between one another.

<sup>42</sup> On the 01.07.17 there were 59 advanced supervisors in the United Kingdom.

practitioners linked to a university, one participant worked for a firm employing 11-25 people which specialised in immigration, one individual worked for an NGO employing less than 15 people, and another for a community legal centre which employed 11-25 people (albeit in different areas of practice). One individual worked for a firm with over 40 employees. The sample consisted of eight women and two men. Third, the participants were chosen with consideration to the length of time they had been working in the sector. This was considered important because of the different reactions individuals might have to emotionally-charged situations depending on their length of service. The participants selected worked with asylum claimants for a range of different lengths of time - from one year, to 30 years. In this paper, the role of the practitioner and the length of their experience is stated following longer citations, but it should be noted that this denotes experience within the immigration and asylum sector, as opposed to the individual role specified. Descriptors are used throughout the paper, such as, 'many' to illustrate that quite a few practitioners made similar observations. 'Some' or 'a number of' are used to denote a smaller number of participants making an observation than 'many'. These descriptors do not correlate directly to any specific number of observations.

#### *Procedures and data analyses*

The majority of interviews were conducted face-to-face, with two interviews being conducted via Skype. All interviews took place from March - June 2017. As stated above, a semi-structured approach to interviewing was adopted – this was to enable an appropriate balance between flexibility and comparability. Participants were asked to reflect on their role as professionals, including outlining how often they work with traumatised individuals, as well considering their responses to asylum narratives and their relationship with their clients. Participants were asked questions, such as: 'How often do you deal with what you might perceive to be traumatised individuals?', 'has your job affected you emotionally?', 'have you ever experienced issues you have been uncomfortable with?', 'have you dealt with specific clients where you felt that it has taken a lot out of you on an emotional level?', or, 'do you feel you can become cynical of the stories clients tell?'

An inductive thematic analysis was used as a means of identifying, analysing and reporting patterns, or themes, with the data.<sup>43</sup> It was considered that this was an appropriate approach to

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<sup>43</sup> V. Braun and V. Clarke "Using thematic analysis in psychology" *Qualitative Research in Psychology*, 3 (2), 2006, 79.

adopt due to its flexibility, which was considered important in conducting work in an interdisciplinary field, as well as its ability to provide a rich and detailed account of data.<sup>44</sup> A portion of initial themes were identified from the outset, as they had been observed when interviews were being recorded, and a number of further ‘nodes’ were added as the transcripts were thoroughly read and the coding process developed and became more structured. Key major themes were identified, in keeping with the process of thematic analysis, and subthemes identified through the observation of repetition within and across data sources in relation to the researcher’s questions.<sup>45</sup> All work was conducted by the author. NVivo 10 software was used to support analyses.

## 5. FINDINGS

Four major themes were identified in the analysis of the data: The first theme, linked to the aim of finding out the emotional impacts of this type of work, concerned participant observations of feeling or witnessing burnout, secondary trauma and other emotional impacts caused by working with traumatised clients and hearing traumatic narratives. In relation to burnout, participants discussed how it could affect the health of practitioners, influence a person’s ability to represent their clients, or lead them to change or leave their roles within the sector. Participants also noted more serious effects – such as inability to emotionally move on from cases and/or to ‘take them home’. The second theme, linked to the aim of the study to assess the relationship practitioners have with their clients, concerned how they described feelings of detachment. It was clear this could have positive or negative consequences. For example, detachment could serve as a protective mechanism from the emotional impacts of this type of work. However, it could also lead to practitioners becoming too distant from their clients, leading to the depersonalisation of them. It was also considered that an inability for some practitioners to detach themselves could mean that they could become affected by a client’s trauma. The third theme which emerged was linked to the second theme and related to how legal practitioners can become cynical or disbelieving of client narratives. This may be related to detachment and may also be a protective mechanism. In addition to this, practitioners discussed, in a fourth theme, how there were additional emotional impacts of working in asylum law unrelated to working with clients. Substantial caseloads, working in a system where some clients have little chance of success, cuts to legal aid, as well as the stigmatization of

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<sup>44</sup> Ibid, 78.

<sup>45</sup> A. Bryman, *Social Research Methods* (OUP, 5<sup>th</sup> edition, 2016), 584-586.

asylum claimants, were cited as external issues which have emotional impacts on asylum practitioners.

*Theme 1 -Burnout, secondary trauma and other emotional impacts*

The interviewees were asked about how much they worked with traumatised clients to assess their level of engagement. While most interviewees stated that not every claimant they worked with was traumatised, and because of the range of practitioners interviewed not everyone had constant contact with claimants, many of the participants discussed working with traumatised individuals on a daily basis. The interviewees mentioned a myriad of factors they believed had caused traumatisation in claimants. These ranged from the initial causes of trauma in the claimant's country of origin, their journey to the UK, as well of the experience of claiming asylum within the state. The majority of the participants noted that they had either directly experienced negative emotional feelings as a result of working with asylum claimants and hearing their narratives, or had witnessed these in others. The participants categorised experiences in a number of ways – including describing secondary, or vicarious, trauma (most of the individuals had heard of one or both in previous contexts), stress or burnout.

Most of the participants were more willing to speak about burnout than secondary trauma. The participants used the term 'burnout' but none of the participants provided an explanation of it. Although burnout and its impact on legal representation were discussed amongst the practitioners, it is obviously not something specific to working in asylum law or law in general. It was notable that a number of the participants had experienced burnout, or had witnessed it in others, providing an insight into how demanding this role is. For example, one participant stated that they had experienced burnout and it was directly related to the emotionally demanding work they do. Another described how they had 'definitely felt it in the last year'. Some participants described the potential for burnout to have an effect on the service they or others provide, the motivation of practitioners, as well as absence in work. Two participants noted how they had witnessed the health of colleagues decline as a result of what they perceived to be burnout. For example, they described seeing some colleagues drink more alcohol or their physical health to deteriorate. Another participant described how working with children created added difficulties – an additional 'turn of the screw' - which he felt in the case of one of his colleagues led to burnout:

I mean one or two people spring to mind... And I think in one case the person was working a lot with children, which is a whole other turn of the screw... And I mean I work with adults

typically and I sort of try to stay away from working with children. Because as difficult as it can be to work with adults, this area of work, working with children is just a whole other level of, you know, trauma and emotional angst. And in the case of one ex-colleague that I'm thinking of, it was quite visibly... I say it was getting to him, but it was kind of manifesting in the sense that he was working kind of abnormally long hours and he was incredibly dedicated. People in the office generally were concerned that he was beginning to burn out, that he was beginning to experience burnout. Now I don't know exactly what the psychological criteria for that are, but there was just that feeling around (Solicitor B – 8 years' experience).

It was a striking aspect to this study how quickly some participants described having experienced burnout themselves, or witnessed others they had worked with experiencing it. It was evident that burnout could potentially be a significant problem within the sector. This study also questioned whether burnout could have the potential to affect a practitioner's ability to perform their role and there was some evidence of this. This is an area of concern, because poor legal representation could have a significant impact on this client group, necessitating that we evaluate structures that we could put in place to support these legal professionals (which is the focus of the second part to this study). One solicitor described the effect of burnout on her ability to meet client's needs:

When you burn out you don't give your all, do you? I'm somebody who wants to. I think I'm in this... to make a difference.... I know I'm burning out when I am feeling like I'm lacking energy with pursuing clients' cases. Sometimes I get to a point where I feel I'm no longer good enough, just because I've been dealing with quite a lot (Immigration and asylum caseworker – 8 years' experience).

Another solicitor suggested if she felt burnout it might have impacted her judgment on what claimants she took on as clients:

[I]s it possible that things like being burnt out, because of trauma and the perception of the trauma level in the client, makes a difference? I could see that it could do, yes. I would be surprised if it never does. Last year it was my decision what cases were taken on and what weren't, and I'm not going to say that my level of trauma and how pissed off I was with drop-in that day... was going to make a difference to my judgment calls, because it probably did at some point (Solicitor A - 8 years' experience).

Participants also linked discussions of burnout with the amount of time that individuals spend within their roles – this became a recurring theme within discussions. It should be noted that

although the research is comparatively dated, it has been observed that a significant proportion of lawyers in the wider sector have aspirations to leave the profession. In a study in 2007 conducted by YouGov and The Lawyer it was indicated that, of a sample group of 2500, 24 percent wanted to leave their jobs.<sup>46</sup> In a study conducted in Australia it was also indicated that a large number of lawyers wish to leave their jobs.<sup>47</sup> In the present study, one participant described how ‘not many people do it for a long time... I’ve been part time, I don’t think I would do it full-time... it’s sort of playing the long-game’. Another described turnover to ‘maybe abnormally high... it did seem striking that there was such a high turnover of staff... it might have been in the order of kind of three to four years, that kind of way.’ However, some of the participants had been in the profession for a long time: ‘[there are] people who get out of the area for one reason or another... you know, reasonably early in it. And there's kind of a core... that core has been here for as long and longer as I've been practising’. Another commented, ‘there are probably less people who stay at it for a long period of time than those who go off and do other things, but I can certainly think of a considerable number of individuals who’ve stuck at this’. The practitioners who made these comments were not drawn from the younger demographic interviewed and it was admitted by one practitioner that maybe younger solicitors who are working more at the ‘coal-face’ of asylum law might think differently. Lack of longevity in a role is a cause for concern because it is likely to be an indicator of burnout and/or lack of job satisfaction but it also may mean that experience is being lost within the sector. This is a particular concern as immigration and asylum are comparatively complex areas of law<sup>48</sup> and therefore experience should be valued. A wider study into the retention of asylum practitioners within the profession would be of benefit to provide greater clarity on this issue.

Some participants were willing to note that they had experienced more serious effects resulting from their work, noting the potential for secondary trauma. For example, one of the participants noted with concern that the details of some of their client’s cases stuck with them for a number of days:

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<sup>46</sup> The Lawyer, “24 percent of lawyers want to quit”, July 2007, available at: <https://www.thelawyer.com/issues/2-july-2007/twenty-four-per-cent-of-lawyers-want-to-quit/> (accessed 20/03/2018).

<sup>47</sup> L. Schmidt “Law is Hell”, *Business Review Weekly*, 29 September 2000, 70; M. Coghlan “Young lawyers rebel against billable hours”, *Australian Financial Review*, 4 August 2006.

<sup>48</sup> For example: M. Fouzder ‘Tribunal judges criticise 'far too complex' immigration system’ *The Law Society Gazette*, 22 January 2018.

Well, generally, legal professions are one of the most dangerous from the point of view of vicarious trauma...If we're normal people, obviously, we, to an extent, empathise... And I also am a little bit afraid of it because I can see that my emotional retention is very high. When I find out about some gruesome details of a client's case, I can just think that, over and over again for a number of days (Immigration and asylum caseworker – 1 year experience).

This is interesting from the perspective that this individual clearly feels impacted to a deep level by the type of work that they undertake, to the extent that they find it difficult to bring closure to the emotions that they felt. It was not clear that this specifically impacted on this individual's ability to provide legal representation, but they did note that they were concerned that it might:

I think that one must learn to avoid, to just develop some coping techniques... from a utilitarian point of view it's not good for the system of immigration assistance to experience, like, to live with one case all the time but to take as many cases as possible and just bring those cases to a happy ending (Immigration and asylum caseworker – 1 year experience).

Another individual described 'taking cases home' in relation to specific clients. The statement below is from a female practitioner who gave the impression that she felt more emotionally affected by the situations she describes because of her gender, and because she could identify and empathise more with female clients who had been victims rape or FGM.

You get certain cases where you feel it as a person and probably take it home with you and do tend to get affected by particular accounts, especially if it's women who have been raped. I also find it really difficult to deal with victims of FGM. I've had quite a few of them. Dealing with that kind of case does impact on me. I do take it home with me and I feel sad sometimes. I struggle to move on from one person to the next. My focus kind of goes on that one person for a week, I think, in terms of being mentally present and the way I do my work and it can get impacted by particular individuals (Immigration and asylum caseworker – 9 years' experience).

Again, in addition to this raising concerns about how individuals are being impacted by their work, this statement also provides some indication that this practitioner might find it difficult moving from one client to the next. It seems that, for this individual, it requires a lot of emotional labour in order to put something which is emotionally demanding aside and to perform as a professional again for another person. Yet, this is what is required from asylum practitioners. They hear stories of trauma daily, but as many of the participants discussed, they may have numerous appointments in one day, therefore they need to forget about the trauma

of one individual's narrative and move on. This undoubtedly can be a difficult thing to do, particularly if individuals (as the participant describes above), have a high level of emotional retention. One practitioner also spoke about the fact that a number of his clients had committed suicide, or had attempted to do so, and he expressed worry over the effects that this could have.

Not all participants described being emotionally affected by their work in a negative way. For example, one participant described how the sadness of asylum narratives was a motivator to do a better job. Another participant, with significant experience as an asylum practitioner, discussed how she felt emotionally invested in her work, but in way which enabled her to help clients. Nevertheless, she was clear she had witnessed the emotional toll of asylum work on some individuals:

Ironically, I think I do get emotionally invested, but I think I do it in an appropriate way, because you can't... you can't, I think, give somebody back their humanity without showing your own humanity, and therefore coming closer to them, but it's not that I would abuse the professional etiquette of, you know, what is... what is an appropriate relationship with a client, but it's just the way of dealing with that client, that it would be different. But I've certainly seen impact upon different people who... some of whom burn out, not relatively quickly but after a period of time; others who seem to be a bit more, for want of a better expression, like sponges, and what somebody's saying to them then really gets inside them and begins to have a huge impact... (Immigration and asylum practitioner – 30 years' experience).

Secondary trauma in individuals can have a wider impact. As it can for burnout, it may affect retention of staff, which in turn can negatively financially impact on firms because all companies invest in training of staff. One individual described the effect of 'vicarious trauma' on the firm she worked for:

I think when I started... I'd never heard of vicarious trauma... Over the years that I've been here there was turnover and turnover so the company itself has had to realise that and try to think what do we do about that (Solicitor – 12 years' experience).

Whether the financial impact of investing in training and education for practitioners in issues concerning secondary trauma or burnout might be considered to be worthwhile by every company is questionable. Nonetheless, it is worth noting that when conducting this study the researcher spoke to the Home Office who explained that they introduced training in vicarious training for immigration case workers, illustrating that they feel that there is a benefit here.

## *Theme 2- Detachment from clients*

The participants to this study were questioned on their level of detachment from their clients, and how this might affect their roles and their legal representation. Participants discussed ‘distance’ as a measure of being emotionally detached to clients. The pervading impression given was that practitioners could become too alienated from their clients, or too attached to their clients, both of which could have negative consequences. Nevertheless, it would be incorrect to state that practitioners are fixed to specific points of a spectrum at all times – there was an impression given in some interviews that the approaches of practitioners to their work could vary, for example, on their mood or other external factors, such as their family or social life, or the type of case individuals are dealing with (for example, as previously discussed, one participant was clear that she was particularly affected by FGM and rape cases). Therefore, whereas some individuals could be of a certain disposition most of the time, variable factors could affect a person’s approach to their clients at other times. It was also evident that how practitioners relate to their clients is complex and the level of attachment or detachment that they have to them is based on a multitude of factors, some of which were also positive, including protecting themselves from emotional harm.

Notably, none of the participants interviewed described being completely distanced from their clients. All of the participants discussed commitment to what they do and to their clients and some of the participants expressed this in strong terms. For example, one participant articulated:

You have the privilege to being exposed to a side of life that most people don’t know about and maybe aren’t equipped to deal with. And that’s a very, very deep privilege and deep honour to be able to help people in their hour of need (Solicitor B – 8 years’ experience).

Most participants described getting into the role because they wanted to help individuals. For example, one interviewee described how you need to be interested in ‘social outreach in order to pursue this type of career because it’s neither very financially rewarding nor easy to do, like, emotionally. So one has to be very committed’.<sup>49</sup> Nevertheless, some of the participants noted alienation or disillusionment with their work. For example, one participant noted:

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<sup>49</sup> On the contrary, one participant noted that ‘you would be surprised... there are a few people are not really sympathetic... to the refugee stuff’.

I think the toll is that you get a bit alienated sometimes, that's a toll in itself, isn't it? So I wouldn't maybe divide it in that way. I think it definitely has an impact on you, yes. I suppose, as well, in my career I've veered between settings where there's a lot of it and settings where there's not as much (Solicitor A – 8 years' experience).

In Baillot et al.'s 2013 study, they observed that asylum workers frequently recounted reliance on strategies that afforded them 'distance' and 'detachment' from the narratives that they were presented.<sup>50</sup> They describe this as having a number of important roles, including ensuring impartiality, performance of the work role, as well as being a protective mechanism against the emotional impacts of the role. On the latter point concerning emotional impacts, it was evident in the study that these findings could be corroborated.<sup>51</sup> For example, one participant noted that detachment can act as a protective mechanism, whilst another described: 'It's not just regarding my personal wellbeing but also me being able to deliver my professional services as long as possible. So I had to... detach myself a little bit'. Many of the practitioners described a need for some detachment from their clients, and some described that being legal professionals allowed for this. For example, one participant described that because she became an asylum practitioner through the legal route it enabled her to detach herself. It was unclear whether she meant that legal education provides training in being emotionally detached or if she meant that other professions might lend themselves to greater emotional attachment to clients (e.g. social workers). However, it is notable, that it is recognised that legal education has had a history of promoting a detachment to emotions.<sup>52</sup> Whether this is considered to be beneficial to subsequent legal practice is outside the scope of this paper, but it has been criticised by some within the field of law and emotion.<sup>53</sup> Another participant viewed how his professional status might be a beneficial safeguarding mechanism. This participant did not go into this in further depth, but it might be inferred that he means that understanding that he is a 'lawyer', and that he has a role to play within a professional setting, could help him deal with the emotional impacts of his work.

I suppose people do become somewhat estranged from their position and maybe start to treat clients as numbers as a result of that, where they maybe don't necessarily see the person there

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<sup>50</sup> Baillot, Cowan, and Munro "Second-hand emotion? Exploring the contagion and impact and distress in the asylum law context" 528.

<sup>51</sup> The other points were not discussed by participants in the same way, but may have been with a larger study group.

<sup>52</sup> R. Grossi 'Understanding law and emotion' *Emotion Review*, 7(1), 2015, 55-60.

<sup>53</sup> *Ibid*; see also: K. Abrams and H. Keren 'Who's Afraid of Law and the Emotions?' *Minnesota Law Review*, 94(6), 2010, 1997-2074.

anymore because they've dealt with so many clients and they need to protect themselves... I can maybe see, myself, how that professional status could potentially be a safeguarding mechanism but a beneficial safeguarding mechanism, for that person in order to be able to do that type of work, for example (Tribunal advocate – 15 years' experience).

The same participant recognised that having professional distance allowed them to 'survive', providing an indication that distance could provide protection from the emotional impacts of working with traumatised individuals, because otherwise they might not stay in their role:

I think most people do adopt a version of themselves but one in which certain elements are taken out, so a professional distance. You have to have that. I think it's better to have that professional distance just for reasons of survival but also it's to do with the expectations of the client as well and because your role is not to be the person's friend (Tribunal advocate – 15 years' experience).

Another participant, describing the emotional impacts of working in this area of law, stated that they could cope with the demands of their work because of their professional distance from their clients, indicating again that lack of attachment could help them perform their labour effectively (but sometimes they bend the rules):

It does... it does impact, of course, but I wouldn't say that it impacts in a negative way, and interestingly enough, it isn't because I have always maintained a professional distance from them. Sometimes I bend the rules a bit over that. If I find someone who's particularly vulnerable, then I will make sure they can make direct contact with me (Immigration and asylum practitioner – 30 years' experience).

This same participant, however, noted that she felt that some practitioners were not able to distance themselves appropriately and described the dangers of this:

Most recently I can think of colleagues... who would have really been impacted by people they were dealing with and didn't have in place or didn't operate the kinds of... not barriers, but the kinds of protections that ought to be there that allow them to then distance themselves to some degree, and I think a lot of that is to do with personality and a lot of that is to do with experience, and then of course you've got training and you've got support... But even where support was available, we still found that people for some reason, and I've never gone into depth to analyse it, were not necessarily able to step away completely from the trauma that the other person was

experiencing and began to take it on themselves (Immigration and asylum practitioner – 30 years' experience).

This statement suggests that this participant considers that there is a complexity in coping with the emotional demands of working in asylum law, noting a number of factors that might determine how individuals deal with the emotion involved. Notably, she thinks that some individuals do not have an ability to obtain distance from trauma. She also considers that experience is one factor which helps individuals – it appears because that experience teaches them how to develop protections to create distance from their clients. However, if practitioners are not staying in their roles for a long time, are they in a position to acquire this experience? Or for those starting off, fresh from an academic qualification with no prior training in working with traumatised individuals, will they just have to hope that things will get better after time for them? These are difficult questions to answer, and these comments might give us some sense of why some practitioners leave their roles.

Therefore, for some participants, distance from clients was recognised as having positive attributes and an inability for practitioners to distance themselves from clients was perceived to be something which was risky for them to do, as it had the potential to lead to burnout. However, it was also recognised that distance could lead to 'depersonalisation' of their client group, meaning that there was an acknowledgment by some participants that they had begun to treat clients as cases or numbers, rather than as individuals. This has been observed elsewhere – in Newman's study on whether criminal legal aid lawyers are alienated workers (in the Marxist conception of the word)<sup>54</sup> he argues that, to many criminal lawyers, clients have lost their individual identity and instead have become 'numbers'.<sup>55</sup> In the current study, one participant directly described Newman's observation in relation to how they sometimes perceived clients – they stated that they could sometimes think of clients as numbers or cases.<sup>56</sup> The implication of this is that clients are depersonalised – treated *too much* at a distance where they have become entities, rather than people. The concern here is that clients

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<sup>54</sup> Marx describes alienation as: "An immediate consequence of the fact that man is estranged from the product of his labour, from his life activity, from his species-being is the estrangement of man from man... In fact, the proposition that man's species-nature is estranged from him means that one man is estranged from the other, as each of them is from man's essential nature" (K. Marx and F. Engels, *Collected works 1843-44: Volume 3* (Lawrence & Wishart, London, 1975) (1844)).

<sup>55</sup> D. C. Newman "Are lawyers alienated workers?" *European Journal of Current Legal Issues*, 22(3), 2016.

<sup>56</sup> *Ibid.*

may not be represented as well, because practitioners are not sufficiently concerned about them on a human level.

Treating clients as numbers, rather than as individuals, might be a product of hearing the same narratives repeatedly and consequently becoming desensitised. Baillot et al in their study imply how repetition can be linked to desensitisation, describing how ‘over time, the various stories risk being perceived as routine and mundane’, further noting the potential for case-hardening, combined with a detachment to work.<sup>57</sup> This phenomenon has been observed elsewhere in psychology. For example, although not directly analogous but relevant, there is significant literature on the desensitisation of emotions caused by repeated viewing of television violence – for example, in a study by Mullin and Linz it was found that repeated exposure to sexually violent films lead to emotional desensitisation towards domestic abuse victims.<sup>58</sup> It appears from these studies that repeatedly being subjected to stories of trauma, even if it is through the television screen, can lead to desensitisation.

One participant noted the effect of repetition on their work, describing that it has a desensitising effect. In particular, she noted a lack of surprise with regards to specific cases where individuals have been sexually assaulted where they come from certain countries, and reflected on the fact that those kinds of cases have become routine for her. One participant described how experience (and by implication taking on repetitive cases) helped her handle the emotional impacts of asylum narratives. Another participant described in negative terms the effects of repetition on judges, discussing how they could potentially become ‘case-hardened’ because they worked with ‘a conveyor belt of cases’ implying this could lead to them making poor decisions. This appeared to mean that they would become emotionally hardened or desensitised to cases. There might be another explanation for treating clients as numbers – it might be the case that it is easier to treat traumatised individuals in this way again because it allows individuals distance from their traumatic narratives, thereby acting as a protective mechanism. As one participant noted:

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<sup>57</sup> Baillot et al, p. 532.

<sup>58</sup> R. C. Mullin and D. Linz ‘Desensitization and resensitization to violence against women: Effects of exposure to sexually violent films on judgments of domestic violence victims’ *Journal of Personality and Social Psychology* 69(3), 1995, 449-459. ; see also S. Mrug, A. Madan, E. Cook and R. Rex ‘Emotions elicited by television violence; emotional and physiological desensitization to real-life and movie violence’ *Journal of Youth and Adolescence*, 44(5), 1092-1108.

I think I've definitely seen maybe people who worked in administration and maybe ran offices have that approach, you know, and sort of prefer to treat people as numbers. And I mean again, I can see that it's emotionally a lot easier to deal with the idea of clients as a group, rather than sort of individual stories (Solicitor – 15 years' experience).

A need for balance was identified by many of the participants, which was in line with what Baillot et al found in their study – how practitioners needed to be 'sympathetic but detached'.<sup>59</sup> Too much detachment, it was considered by some, could have negative consequences, one of these being that practitioners could become cynical in their work and disbelieving of their client's stories. However, a complex understanding emerged as to the role of cynicism within asylum lawyering and how it can have both positive and negative attributes. This will be the focus of the next section.

### *Theme 3 - Cynicism and disbelief of client narratives*

Cynicism, according to the Oxford English dictionary is characterised by being 'disposed to disbelieve in human sincerity or goodness'.<sup>60</sup> Within work, an employee can be cynical in their approach to people they come into contact with, or the place they work for. It is linked to disbelief, although it is not synonymous with disbelief. In being 'disposed to disbelieve in human sincerity or goodness' it may mean that a cynical person may take a cautious approach to believing what a person might say. It may also mean that a person takes a cautious approach within their interactions with individuals, because they view them to lack credibility. Within workplaces it is associated with disillusion, scorn, disgust and suspicion<sup>61</sup> of institutional structures, wider environments, or change.<sup>62</sup> Cynicism tends to be viewed as a 'deviant emotion'.<sup>63</sup> This was reflected in the current study where some participants discussed cynicism in negative terms. There is the potential that a wholly cynical or disbelieving attitude within a practitioner could affect a person's approach to their work and their willingness to 'go the extra mile'. Baillot et al also describe how detachment from client narratives can lead to a reluctance to engage with stories of abuse, which is very serious given the need to gather accurate

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<sup>59</sup> Ibid, 529.

<sup>60</sup> Oxford English Dictionary, accessed 06/03/2017.

<sup>61</sup> R.L. Dhar 'Cynicism in the Indian I.T. Organisations: An Exploration of the Employees Perspectives' *Qualitative Sociology Review*, 5(1), 2009, 152.

<sup>62</sup> M. Carey 'Mind the Gaps: The rise and implications of cynicism within social work' *British Journal of Social Work* 44(1), 2014, 127.

<sup>63</sup> Ibid.

information in witness statements.<sup>64</sup> Could the same be said for cynicism? It has also been observed that for asylum claimants with PTSD the experience of not being believed can increase intrusions,<sup>65</sup> so if a practitioner appears not to believe their client it could affect their mental health. However, some participants reflected on there being the potential for ‘healthy cynicism’ of client narratives – could this be the case?

Participants discussed cynicism in relation to clients, but also the wider legal environment (e.g. one participant discussed their cynicism in relation to how asylum law is enforced in the UK). The focus in this section will be on how participants described cynicism in relation to their interactions with clients. For the most part, cynicism appeared to be a by-word for scepticism or disbelief over client narratives. Although cultures of disbelief are typically discussed relating to decision-making in asylum claims,<sup>66</sup> it was evident from this study that cultures of disbelief could be found within the community of legal representatives also. This is an important aspect to this study, because whether a claimant is believed or not might affect the approach a representative has to their work, their relationship with their clients, as well as their internalisation of emotions related to working in this area. It should also be noted that a large majority of asylum claims rest and fall on the claimant’s credibility,<sup>67</sup> so whether they are believed or not is central to the process. Most of the participants, possibly unsurprisingly, did not admit to feeling that they bought into a culture of disbelief in a sense that they disbelieved large numbers of their client base. However, participants did discuss how clients might lie about the substantive nature of their claim, where they are from, what their background was, or how they got into the UK, amongst other claims. Undoubtedly, there are false claimants, so disbelief over specific claims is unavoidable, and as one participant stated, often they are hearing implausible stories because getting to the UK is a very difficult task for many claimants which might make a person question whether what they were saying was possible. Some participants discussed specific false claims being made, although these were

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<sup>64</sup> Baillot, Cowan, and Munro “Second-hand emotion? Exploring the contagion and impact and distress in the asylum law context” 529.

<sup>65</sup> K. Schock, R. Rosner, C. Knaevelsrud “Impact of asylum interviews on the mental health of traumatised asylum seekers” *European Journal of Psychotraumatology*, 6, 2015, 7.

<sup>66</sup> H. Baillot, S. Cowan, V. E. Munro., “Reason to (Dis) Believe: Evaluating the Rape Claims of Women Seeking Asylum in the UK” *International J. of Law in Context*, 10(2), 2014, 105-136; J. Souter, “A Culture of Disbelief or Denial? Critiquing Refugee Status Determination in the United Kingdom” *Oxford Monitor of Forced Migration* 1(1), 2011, 48-59; Amnesty International UK, Getting it Right: How Home Office Decision-Making Fails Refugees (2004); O. Jubany “Constructing truths in a culture of disbelief: Understanding asylum screening from within” *International Sociology*, 26(1), 74-94.

<sup>67</sup> J.A. Sweeney ‘Credibility, Proof and Refugee Law’ *International Journal of Refugee Law*, 21(4), 2009, 700–726.

not linked to discussions of a general sense of cynicism or disbelief. Some of this, it appears, was linked to a perception that there was ‘coaching’ within asylum communities (and as one participant noted, a legitimate asylum case can be undermined by bad coaching):

There was a thing, when I first started in 2009 when I got a few Zimbabwean clients, because there was a big Zimbabwean case in 2008 that was really helpful, so a lot of people came out the woodwork... There were loads who had claimed to be South African on arrival, and... that’s not even helpful... they say, oh the whole community, they told us what to do. (Solicitor – 8 years’ experience).

Another participant explained:

Equally, I think, the more claims you see, the more you see patterns in what people say and their accounts of what’s happened to them and my own view is that there’s a proportion of people who have been given a story to tell, they’ve been advised which story to tell and they tell it... Now, I tend to think it’s a relatively small fraction of people who are simply telling a story... (Immigration and asylum practitioner – 15 years’ experience).

As well as divulging specific examples, participants discussed being cynical or disbelieving of claimant narratives in a more general sense, or witnessing it in others. It was recognised by one participant as relating to how practitioners distance or detach themselves from clients. This can be illustrated in the statement below:

If somebody is struggling with their own emotions and how they deal with it, yes, they’re not going to take... they may try and distance themselves. I’ve got one example of somebody who I was trying to supervise. They just had become quite cynical and that was hard because they would regularly talk about just, you know, things in, yes, just a quite cynical way where I, kind of, thought if you’re cynical about the client, how are you going to get good information from that client? If you’re, kind of, coming out of it going, oh well, they don’t know the first thing about Syria, so they are definitely not Syrian? (Solicitor – 12 years’ experience).

Another participant discussed cynicism as a protective mechanism – a safeguard against the emotional impacts of asylum work. His belief was that not believing everything a client is telling you can protect you because if you were to believe everything a client told you it could have ‘emotional consequences’:

I think, as a person does this work more and more often, then they can come up to take on the mind-set of the suspicious decision-maker where they start from a default position of disbelieving what people are telling them. And, in part, that might be just, sort of, accommodation to the pressures that they're under but I suspect that it may also be a coping mechanism as well because if you either don't believe your client or you don't care whether your client is telling the truth or not, then the, sort of, emotional consequences of what you're being told or what could happen to your client, win or lose, because if you believe that somebody has obtained their status falsely through telling a story that isn't true, than that won't necessarily sit easily with you. So if you take on a more, sort of, cynical view, more detached view, that can stop you thinking about those, sort of, moral consequences but also distance you from the emotional difficulties of hearing accounts of persecution over and over again (Tribunal advocate – 15 years' experience).

A surprising observation which was made by some of the participants was that having a cynical or disbelieving attitude could make them better practitioners. The participants discussed how getting into the minds of the 'suspicious decision-maker', referring to Home Office case workers making asylum decisions, allowed them to spot issues of concern in their claimant's narratives. For example, for the same participant he felt 'you would not be doing your job properly if you didn't forewarn your client about what the objections are going to be to what they're saying'. Another participant described how sometimes she could be too cynical, but also that being of a cynical disposition could help because 'they're looking for reasons to refuse you, aren't they?' It was clear that there was a level of cynicism amongst the practitioners, but it is not apparent that it could be viewed in wholly negative terms. It was described that there is utility in having 'healthy cynicism' of client narratives – a practitioner may be better able to identify and explain the strengths and weaknesses of an asylum seeker's claim. Nevertheless, there is the potential that a cynical attitude towards clients might create internal feelings of disbelief which could be a hindrance to effective work – as one of the participants above stated 'if you're cynical about the client, how are you going to get good information from that client?' There is also the possibility that it could lead to ill-feelings towards work – if a practitioner by default does not believe their clients, it may affect their motivation within their roles, either in respect of their clients or in a more general sense. One participant, for example, described how she had left private practice because she had become cynical, although notably this was in relation to external issues which had impacted upon her from the wider legal environment. These types of issues will be discussed in the next section.

#### *Theme 4 - The external emotional impacts affecting practitioners*

It was clear from the study that the negative mental effects caused by working with asylum claimants and hearing their narratives is not the only difficulty of working as a practitioner. Heavy caseloads, which could be attributed in part to the impacts of cuts to legal aid in England and Wales, were cited as a particular concern amongst participants. One practitioner described how ‘you tend to go more burnt out because of the work... I don’t think you can separate that from case load’. Another interviewee placed emphasis on the legal environment as causing burnout:

[There] was a constant downgrading of rights, scope and so on. There were numerous new pieces of legislation. It was a combination of feeling hopeless, not being able to do anything useful, and being overwhelmed by the amount of knowledge I had to acquire to advise somebody... when I started I had quite a few clients who were extremely traumatised... but I would say that was easier to cope with than the overall feeling that I was being disabled as a lawyer (Immigration and asylum practitioner – 25 years’ experience).

This statement alludes to some of the issues which will be discussed later in this paper about how external factors, such as stigmatisation of asylum claimants in politics and society affects practitioners emotionally. The point concerning the changes to immigration law is particularly worth highlighting - the juridification of immigration law is without question. There have been seven immigration law statutes in UK law since 1999,<sup>68</sup> multiple revisions to the Immigration Rules,<sup>69</sup> and this area is made additionally complex by its close relationship with EU law and the law of the European Court of Human Rights. Juridification is evidently a response to migration being a central area of debate within the politics of the United Kingdom of which all main parties included as key areas of policy within their manifestos in the 2017 election,<sup>70</sup> as well as society (as discussed below). Immigration law is undoubtedly complex, and requires practitioners to continually learn. This was not just solely recognised by this participant – it was mentioned by others.

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<sup>68</sup> The Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the Immigration, Asylum and Nationality Act 2006, the Borders, Citizenship and Immigration Act 2009, the Immigration Act 2014 and the Immigration Act 2016.

<sup>69</sup> These are too numerous to discuss.

<sup>70</sup> For example; Conservative Party (2017). *Forward Together: The Conservative Manifesto*. London: Conservative Party; Labour Party (2017) *For the many not the few: the Labour Party Manifesto*. Labour Party; SNP (2017) *Stronger for Scotland: SNP Manifesto 2017*. Edinburgh: SNP. Liberal Democrats. (2017). *Change Britain’s Future: Liberal Democrat Manifesto 2017*. London: Liberal Democrats.

The context to the point that the above participant has made about not being able to do anything useful relates to having to deal with cases where it is very difficult for claimants to succeed. Some of the participants made this point, referencing specific client groups as having poor chances of success (e.g. South Africans, Russians and Afghans). In particular two participants described how they felt that Afghani clients were not being given a fair hearing by the Home Office as it was often being considered that it was safe to return them to Afghanistan.<sup>71</sup> This participant described how this has a ‘disabling’ effect which created ‘futility’, which appears to have had a complex effect in how she felt towards her clients. This further interesting point highlights that it was not the emotional impacts of asylum narratives which created this feeling, but a perception of a lack of usefulness which, impliedly, led to cynicism.

If you walk past a homeless person on the street every day you surely have [a] human reaction, it's someone who is in a terrible circumstance, but the reason we do this work [in asylum law] is we think we can do something... Hopefully you're being useful and that's the reason I gave up my private practice job, because I perceived I wasn't being useful. My burnout... was because I worked too hard at being useful... you reach a point where there's futility in the work and you're parading yourself before a series of clients who you feel nothing for. That's more difficult than having an overwhelming personal reaction to somebody who you can in fact assist. It's very different. (Immigration and asylum practitioner – 25 years' experience).

This point was raised by another participant who described her frustration that some clients will simply not succeed, because the Home Office have declared their countries safe even if this is disputed by expert witnesses. This undoubtedly provides an extra complexity to the role, where individuals are working with people who they feel do need help, but they are not in a position to provide it, creating these negative emotions of ‘futility’ ‘frustration’ ‘disability’ and ‘helplessness’. What this participant is explaining is that it is not the impact of the asylum narrative that is creating these negative emotions – but something different – an understanding that you cannot help someone who is in need. There is also the additional pressure, not mentioned by this practitioner, that when they cannot help clients, they are having to deal with thinking that they might not be safe if they are returned to their countries of origin.

The cuts to legal aid in the UK through LASPO have also had an impact on the legal sector within the UK including the provision of legal services in asylum law. Although there

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<sup>71</sup> S.E. Rasmussen ‘Is it safe for Britain to send refugees back to Afghanistan?’ *The Guardian*, 23 March 2017.

is no research to date on the issue, it cannot be discounted that the cuts to legal aid could be affecting the well-being of legal practitioners generally. In addition to a delimiting effect of access to justice the cuts have seen firms, Citizen Advice Bureaus, and law centres close in large numbers with clients facing lengthy delays. Firms report to having to turn clients away.<sup>72</sup> This undoubtedly gives an impression of overstretched firms and advice centres – the impact of which must be felt by those working within the sector.

The effect of the cuts to legal aid were discussed by a number of participants and it was evident that not only are practitioners having to deal with emotionally demanding work, but they are having to do this within an environment that is stretching them much further than before. Participants discussed the pressures of working where there are heavy restrictions on legal aid. It was manifest that the participants considered that the impact of cuts to legal aid were impacting upon the services they could provide, for example, one interviewee describing the sector as ‘overwhelmed’. Participants described legal aid rates not being high enough, impacting on their personal wages, or their business. What practitioners could take on as cases, and what they could not, became a recurring discussion in interviews. On the one hand, while having a smaller amount of cases was described as economically unviable, having too large a caseload created unmanageable pressure on the firm. For example, one participant stated:

So it’s sometimes difficult and sometimes I would, well, try to see all possible ways for us to take the case. But on the other hand I had also known that we just didn’t have the capacity to take all those people. It was, like, I think our caseload was just not manageable, was unsustainable. And it’s, like, all one has to do is just... I had to just make some compromises as we always had to (Immigration and asylum caseworker – 1 years’ experience).

Of course, this is not something which is particular to firms that work in immigration and asylum – it is common knowledge that issues such as this are experienced by many who work within service industries. Nevertheless, cuts to legal aid are having an additional bite when once financially stable firms struggle to make ends meet. This might mean that practitioners are having to take additional cases on because there is a lack of provision elsewhere or to make money. One participant reported having heard of practitioners forgoing taking full witness statements due to time pressures and billing targets. When it was questioned by the interviewer whether, for example, practitioners could safeguard themselves from some of the impacts of

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<sup>72</sup> C. Baksi “Civil legal aid: access denied” *The Law Society Gazette*, 7 April, 2014.

secondary trauma by taking less clients on, thereby not exposing themselves to so many traumatic narratives, one participant described how having a smaller caseload could make it difficult for firms to survive:

It isn't actually I think probably financially feasible for a firm or an individual practitioner to maintain a caseload of just 50 if they want to make it pay, and that's where the difficulty is, particularly now with the extreme restrictions on legal aid (Immigration and asylum practitioner – 30 years' experience).

Another described a feeling they were not being paid enough for the work they do:

When you look at how many corporate lawyers get paid, it's obscene to think that we're getting paid so little for doing all this work (Solicitor C – 8 years' experience).

In addition to issues directly impacting on their work, a number of the participants discussed how negativity towards asylum claimants within some sections of society had an impact on them. As stated above, immigration has been a key theme in recent elections and referenda and anti-immigration sentiment informs the political debate in the UK. Immigrants and asylum seekers are often conceived as an economic and cultural threat.<sup>73</sup> Research by Goodwin and Milazzo have found that strong concerns over immigration were central to explaining the vote on Brexit,<sup>74</sup> and that immigration concerns were most likely sharpened from 2015 onward as a result of the pan-European refugee crisis.<sup>75</sup> This type of rhetoric, it was clear, had a direct impact on some of those who were interviewed. One participant described:

I do tend to find myself avoiding the news about certain issues and issues that affect my client group... It can get a bit much. At the moment it's quite hostile. It's all anti-immigration and anti-refugees, whether it's America or here in the UK it's not really great news in the media. You're trying to help that client group, and you keep listening to all the negativity and I think it does get to you and makes you feel like you're fighting a losing battle (Immigration and asylum caseworker – 12 years' experience).

Another stated:

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<sup>73</sup> A. Harell, S. Soroka, S. Iyengar “Locus of control and anti-immigration sentiment in Canada, the United States, and the United Kingdom” *Political Psychology*, 38(2), 245-260.

<sup>74</sup> M. Goodwin and C. Milazzo “Taking back control? Investigating the role of immigration in the 2016 vote for Brexit, *The Journal of Politics and International Relations*, 19(3), 462

<sup>75</sup> *Ibid.*, 455.

Yes, and just the way the UK political system is, the amount of negativity. I think for me, personally, Brexit brought it into stark reality for me because I have never felt like an outsider in the UK until Brexit and now I feel, even myself, you know, and that's nowhere on the scale of animosity that there is to asylum seekers (Solicitor – 12 years' experience).

It was clear that the emotional impacts of asylum narratives took its toll on some practitioners, however, it was apparent that there were a multitude of factors impacting on them. It is difficult to separate the emotional impacts of working with traumatised clients with other factors, as participants were as likely to discuss external issues affecting them, such as hostility to their client group. It is clear that practitioners are having perform their roles in a difficult environment. This does not detract from the fact that working with traumatised asylum claimants is difficult. Instead, it necessitates a wider re-assessment of the structural systems in which practitioners operate, support mechanisms that are in place, and training and education provided to these professionals.

## **6. CONCLUSION**

It was evident from this study that for practitioners who work with asylum claimants and hear their narratives of trauma and persecution that it can take an emotional toll on them. Participants discussed how some cases 'stayed with them' because of their traumatic content, or they self-reported feelings of burnout in themselves or discussed having witnessed it in others. Some of the participants described in very direct terms the impact of specific narratives on practitioners, such as in cases of FGM, rape, or when clients commit suicide. There were some surprising findings - while some participants described the potential for alienation, cynicism and disbelief of client narratives, which could have negative implications for the representation of those claiming asylum, it was unanticipated that these sorts of perceived negative attitudes to work could also be viewed in a positive light – as a means of providing better representation to clients. It was also clear the emotionally demanding aspect of listening to client narratives was not the only stressor to practitioners, and some of the participants seemed more concerned about the effects of legal aid cuts, large caseloads, as well as their inability to help some of their clients. What was very clear was that practitioners are asked to perform emotionally demanding work, with a vulnerable client group, in an environment where there are a multitude of constraints on their resources, external pressures and stigma towards the people they try to help. This undoubtedly takes its toll. There is a need to ensure that structures are in place to support asylum practitioners – including training and education in secondary trauma and

burnout, as well as the potential for structural re-design to support individuals who hear traumatic narratives on a regular basis. These structures of support will be further elaborated upon in the second part to this study.