EVALUATION OF ORAL STATEMENTS

A scientifically based decision-aid for migration cases

PÄR ANDERS GRANHAG
SARA LANDSTRÖM
ANDREAS NORDIN

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PREFACE

In the vast majority of cases, the decision of a court or authority is based on an assessment of what has occurred or the current state of affairs. The decision-maker obtains knowledge of the existence of these facts through various sources of information: someone relating the facts, documents containing relevant information, technical clues or some other similar source. One of the most important tasks of a court or authority is to assess what conclusions can be drawn from the information available; in procedural law we call this *evidence assessment,* where we assess the evidentiary value of our information sources. In Swedish procedural law – in civil and criminal procedure as well as the administrative procedure – the question of what is to be regarded as proven is subject to what we call 'free evaluation of evidence', which means that the search for knowledge is a legally unregulated activity that is to be based on fundamental epistemological and scientific starting points. The conclusions we draw should thus build on scientifically based knowledge of reality. This involves us assessing on the basis of experience that certain observable conditions are usually associated with some other condition. The evidentiary value therefore lies in the knowledge of the empirical connection between different factual matters. We usually describe these connections as *laws of general experience.* It is thus these that need to be reasonably scientifically sustainable and, in any case, we need well-supported knowledge of which weaknesses or variations characterise the laws of general experience we are applying. There is no room for opinion!

It is important to be aware that the procedure described for conclusions applies to all types of information sources that may occur within various fields of law. The Swedish Code of Judicial Procedure may discriminate in favour of different sources procedurally, such as witness, expert, writing, sight and other sources, known as *means of evidence* but these special rules do not apply to the assessment of the value as evidence of the information provided by the source. The value of evidence is always to be determined without any legal rules and in accordance only with the laws of general experience with scientific exactitude.

As a decision-maker and investigator, it will often feel that it would be convenient to have guiding decisions from a higher authority, or templates, showing how to deal with evidence in individual cases. The connections and conclusions I have discussed above cannot ever be cast in stone, however. Although certain connections may feel reasonably safe, surrounding information – what we generally call auxiliary facts, i.e., circumstances affecting the evidentiary value – means we must draw other conclusions. This

means that the ideal of a checklist to tick off or a manual containing information on what will suffice and what will not, means by necessity that there can be no painstaking analysis and the free but demanding use of knowledge loses its intellectual and rational sharpness.

Another thing is that decision-makers may need structured support in order to find out what actual scientifically based knowledge is available and relevant for empirical principles that frequently occur in the type of case or business they normally deal with. In principle, this can be resolved by engaging experts for complicated matters but a decision-maker must attempt to personally keep up to date to a considerable extent. One of the most commonly occurring information sources is probably the statements provided by individuals who state that they have observed something. It does not matter whether the individual is regarded as, for example, a party or witness; the possibilities or limitations applying to the conclusions have nothing to do with the procedural role but with actual circumstances that can influence a safe conclusion (self-interest, for example). One of the problems with using statements as an information source is actually that we like to regard ourselves as fully capable of assessing individuals' 'credibility' and that home-made misconceptions disguised as laws of general experience can easily end up directing the assessment of evidence.

That is exactly why it is important for the structured evidence assessment in the judicial procedure and its focus on the critical examination of laws of general experience to be supplemented with exactly the kind of scientifically based knowledge of human ability of observation, memory and ability to express what people have seen and experienced - a chain of evidence that the father of the Swedish law of evidence, Per-Olof Ekelöf, described as early as in the 1950s. It is certainly obvious that the assessment of evidence is not limited to pondering over individuals' ability to observe and remember but often focuses to identify elements in the statement that may suggest that it is not genuine. This also requires access to a structured knowledge of statement analysis.

Against this background, it is vital that a paper now be produced in a manageable format to give caseworkers and decision-makers support to work in a structured and critical manner in order to assess the oral statements arising. It is, however, important that the text in the practical activity is not whittled down to absolutely certain notions of what makes it possible to rely on a statement and when you cannot do so, and does not become a further checklist to speed the work up. Those who will be using this decision-aid must be aware that the reason we cannot achieve simple, unambiguous

standard conclusions to enter in our document templates for the statements' value is that actual human behaviour is changeable and only predictable to a limited extent. Statistics can show whether the behaviours are ordinary or unusual but behavioural regularities are not a law of nature. Therein lies the difference when compared with a chemical analysis, for example, as evidence. This is the reason why a human statement will also give us concerns and must be treated with caution as an information source when making judicial decisions.

At the same time, the individual's narrative is often the only information we have and, in the normal course of events, the eyewitness is even the best information about what happened. The oral statement is inescapable as evidence and we need to be able to manage it. This report is a tool for doing this and it is the Agency's responsibility to implement the support as a way of developing case workers' and decision-makers' own ability to critically analyse statements and adapt to the systematic knowledge that the report provides.

Anders Stening
Stockholm, January 2017

THE PROJECT GROUP'S PREFACE

This decision-aid is a product of the project *Assessment of reliability of oral statements*: *Scientifically based decision-aid for more secure migration.* The project started in December 2015 after being granted funds within the framework of Vinnova's publication 'Innovation for more secure migration'. The project group behind the paper comes from Gothenburg University and consists of Professor *Pär Anders Granhag* (Department of Psychology), Docent Sara Landström (Department of Psychology), Docent *Andreas Nordin* (Department of Cultural Sciences), who wrote the paper, and assistant researcher *My Hyltegren,* who coordinated the project. The decision-aid has been produced in close cooperation with the Swedish Migration Agency's representative *Christian Andersson*, litigation officer and capacity building officer.

A reference group was linked to the project at an early stage of the work. The following persons were included in the reference group: *Samarie Wijekoon Löfvendahl* (UNHCR, Stockholm), *Sibylle Kapferer and Jorunn Leksås* (UNHCR HQ, Protection and National Security Unit, Geneva), *Lars Magnusson* (Magistrate at the Administrative Court in Gothenburg), Professor *Amina Memon* (Department of Psychology, Royal Holloway College University of London, UK, and Centre for Study of Emotion and Law) and Doctor of Philosophy *Hilary Evans Cameron (Faculty of Law, University of Toronto, Canada).* We would like to say a big thank-you to the reference group for all the important contributions and reflections its members have been responsible for. We would also like to point out that the reference group does not have any responsibility for the content of the decision-aid. This responsibility rests entirely with the project group.

The project group would also like to say a big thank-you to the employees at the Swedish Migration Agency who have taken the time to read earlier drafts of the decision-aid and provided valuable comments. It has been very important to get a response over the course of the process from the target groups the report is focusing on.

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The Project Group
Gothenburg, January 2017

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1. INTRODUCTION

The core of most migration cases is the applicant's statement. As there is often a lack of information that could verify the applicant's statement, the Migration Agency's employees face a great challenge: assessing the degree of reliability of the applicant's statement. What we have is the applicant's statement. Each individual applicant is entitled to make a statement and be listened to. Each individual statement must be evaluated and assessed in a legally correct manner. In migration cases, it is difficult to identify a challenge that is more relevant and frequent than assessing the applicant's statement. Shortcomings in this work can have very serious and sometimes vitally important consequences for individuals. In short, in order to seriously protect asylum law, the Migration Agency's employees must be given the support and resources necessary in order to be able to work professionally. By producing a decision-aid for assessing the reliability of applicants' statements, we have attempted to provide a contribution to this important and difficult work. To a great extent, the focus will be on asylum cases, but the decision-aid is also relevant in other types of migration cases that involve evaluating an oral statement.

Here, we will briefly describe some starting points that have been at the centre of the work on producing this decision-aid. Firstly, it is important to put the evaluation of statements or so-called reliability assessments into the proper context. An evaluation of an oral statement is a form of evidence assessment. The principle of free evaluation of evidence applies to Swedish law. This means that the person evaluating the statement is not bound by legal rules and that the evaluation must be done in accordance with laws of general experience that have scientific support and based on a general epistemological perspective and not a normative (prescriptive) perspective. In this case, it is knowledge of legal-psychology and the psychology of memory that provides support in the assessment of evidence.

Secondly, we are very aware that the evaluation of oral statements is a difficult task. There are no simple tricks for deciding whether or not the statement provided during an oral investigation corresponds to reality. In brief, it is impossible to decide whether a statement is true or fabricated on the basis on a superficial analysis of the content of the statement.

The third starting point is that assessments based on research-based knowledge of memory and legal-psychology are more legally secure and

correct than assessments based on subjective notions of what characterises a reliable statement.

Fourthly, basing one's assessment on evidence-based knowledge can never guarantee that the individual assessment will be correct. On the other hand, evidence-based knowledge guarantees that the quality of the many assessments carried out over a longer period of time will be higher, compared with if evidence-based knowledge is neglected. By increasing quality, we mean an increased number of correct assessments.

1.1. Objective of the decision-aid

The objective of the decision-aid is:

To provide scientifically founded knowledge in an accessible way with relevance for assessing the degree of reliability of an oral statement.

The decision-aid is not a manual for determining the reliability of the statements provided by applicants. The decision-aid does not present any simple solutions to complex problems. The fact that the knowledge we are passing on is research based does not mean that we are providing any kind of easy answer to migration cases. It is also important to emphasise that the decision-aid does not provide direct guidance when it comes to performing a future risk assessment or assessing what legal significance (legal issue) different states of affairs have. On the other hand, we present laws of general experience based on memory and legal-psychology research that can be used for assessing the oral statement. Our ambition is for the decision-aid to work in harmony with the knowledge and experiences the Agency's personnel already possess.

2. TRUTH AND LIES – RELIABILITY AND CREDIBILITY

Defining truth and lies is not easy; several doctoral theses have been written on the subject. In this context, we can satisfy ourselves with the following: A person, for example an asylum seeker, who has been involved in a certain event (e.g. has been subjected to serious maltreatment) and who is trying to recount the event in as correct and complete a manner as possible is *telling the truth*. The applicant is recounting something he or she has actually been involved in and does not intend to add, amend or withhold anything. A person who intends to speak the truth may of course have incorrect or fragmentary memories, but this is not the same as lying.

A person who is *lying* is doing so in a deliberate attempt to mislead someone else. Regardless of whether or not the attempt is successful, it is a lie. Put somewhat simply, there are three different ways of lying.

1. Taking an actual experience as the starting point and then changing certain elements, e.g. adding events that did not actually occur. In everyday terms, these are called half-truths.

2. Fabricating an entire course of events. What is narrated is a lie from start to finish.

3. Withholding information, for example, by saying 'I don't know' when the individual actually does know or 'I can't remember' although the person actually remembers.

While the borderline between truth and lies is fairly clear, things are trickier when it comes to the terms reliability and credibility. The fact that we alternate these terms in daily use is rarely of any great importance. But in some contexts, for example, migration cases, it is important that the terms are used consistently. For this reason, we wish to be clear about how the terms reliability and credibility are interpreted and used in this report.

Reliability refers to the statement; credibility refers to the person

Reliability refers to how correct a statement is in relation to an actual state of affairs (a fact). If the car actually was blue and the statement is 'It was a blue car', then the statement is reliable. *Credibility* refers to how a person is

perceived; an individual may be credited with a certain degree of credibility, often a high or low degree. There are many factors that could affect the degree of credibility ascribed to a person. An example of such a factor is how the individual in question behaves when he or she is providing the statement, for example, via body language. Another example is the emotions the person expresses.

If a person has turned out to have produced reliable statements in a previous context, it is convenient to regard him or her as credible. If a person has been caught lying in a previous context, there is a great risk of him or her not being regarded as credible. A statement from a person who (for one reason or another) is regarded as credible tends to be assessed as reliable. A statement from a person who (for one reason or another) is not regarded as credible tends to be assessed as unreliable. But of course, a statement from a person not regarded as credible can be reliable and a statement from an individual regarded as credible can prove to be unreliable. From our research we know that if you are too quick to form an opinion on a person's general credibility, there is a risk of this colouring your assessment of the reliability of the statement. We also know that the assessment of the degree of reliability (e.g. 'This has certainly been a clear and detailed statement') can colour the assessment of the individual's degree of credibility (e.g. 'We are dealing here with a person who is credible in all respects').

Assessments of credibility run the risk of being very subjective

Research shows that assessments of credibility run the risk of being very subjective. This is partly because there are often many possible factors to weigh in, but also because different assessors tend to give different weightings to the same factor. This leads to the situation whereby, when several assessors are observing the same individual, their assessments of credibility can vary strikingly. They see and hear the same person and witness the same body-language expressions, but perceive and interpret everything differently.

When it comes to assessing the reliability of a statement, research shows that there are often many different aspects to take account of, such as how detailed the statement is. Research shows that different people tend to focus on different aspects of the same statement. It is also the case that even if different people get caught up in the same aspect of the statement, it is not very unusual for them to interpret it differently and thereby give it a different weighting in the context. Despite this scope for subjectivity, which we will discuss in greater detail below, the message from research is clear: to make the right

decision, we need to focus on the reliability of the statement, not on the credibility of the individual.

Focus on the reliability of the statement

The evaluation of the statement ultimately involves deciding whether what the applicant is asserting corresponds to the actual facts. It is therefore about the degree of reliability of the statement. The research regarding credibility assessments shows that these often go wrong and that it is therefore problematic to allow our perception of the person's credibility to colour the assessment of the reliability of the statement. The road to determining the degree of reliability of a statement in a nuanced and objective manner is not via the assessment of the person's credibility. This is easier said than done as we humans are, more or less unconsciously, influenced by, for example, another person's body language. We may, for example, have an unconscious notion of how 'someone speaking the truth' behaves. An applicant behaving in such a way may cause us to assess his or her statements as more reliable solely for this reason. The research is clear; drawing conclusions about the reliability of a statement on the basis of how credibly an applicant behaves is not the way to achieve a nuanced and optimal reliability assessment.

3. REQUIREMENTS OF THE DECISION-AID

This decision-aid has arisen from three prerequisites we regard as fundamental. Firstly, in order to perform a fair assessment of the reliability of an applicant's statement, knowledge about the psychology of memory is required. Secondly, the oral investigation (the interview) must be based on this knowledge and thereby facilitate the applicant's account. Thirdly, knowledge is required of how different kinds of cultural variation influence oral investigations.

3.1. The importance of knowledge on the psychology of memory

Our memory is sensitive to different kinds of influence. The applicant's memory can be influenced by the circumstances of the actual event (*encoding*) during the period the event is stored in the memory (*storage*) and during the interview when the person is to attempt to recount the event (*retrieving*) (see Table 1, below).

Table 1. Three phases in the memory process

Encoding:	Our senses record what we experience. *Example*: Gorgis receives a death threat in his home in Syria. He hears the sound of crying, smells the odour of sweat and sees that the man making the threat has a political symbol on his shirt.*
Storage:	The period between encoding and retrieving. *Example: Gorgis often thinks about the death threat.*
Retrieving:	When we recount what we have experienced. *Example: Gorgis recounts the death threat to an official at the Swedish Migration Agency.*

* The examples in the decision-aid are fictional, unless stated otherwise

In order to allow for nuanced reasoning regarding the degree of reliability of a statement, various considerations need to be taken into account from the

psychology of memory. It is necessary to have essential knowledge about the various factors that affect our memory and how these contribute to forming the actual product of the memory - the statement. Discussing criteria for reliability without taking account of how our memory works is not just meaningless, it may also be dangerous. It can lead to criteria for reliability being misunderstood and used incorrectly, which can, in turn, lead to applicants' statements being systematically misjudged. The decision-aid therefore acknowledges the important links between knowledge about memory and assessing the reliability of statements.

3.2. A good interview situation

An applicant's statement is to a great extent the result of the interview conducted; the quality of the interview affects the quality of the statement. In order to provide the applicant with a good opportunity to present relevant information, it is necessary that the interview is constructed in a way that facilitate the recollection of relevant memories. Simply put, a good interview is characterised by (1) thorough planning, (2) proper rapport building and well-formulated inviting questions as well as (3) a proper ending. A brief description of each element is provided below.

3.2.1. Planning
Proper preparation guarantees a good interview

Before the interview commences, it is important to reflect on its objective and purpose. What do I want to find out? What is already known about the case? Who is the interviewee? Where does the interviewee come from? Is relevant country information available? Being well informed about the case in question makes the interview more effective, and it contributes to the applicant having more trust in the investigator. It is also important that the interview room is a calm and safe place where the applicant can speak without being disturbed and without external distractions. Reducing stress, eliminating disruptive noise and irrelevant visual impressions are of great importance if the applicant is to be able to concentrate, remember and recount his or her experiences and why he or she is applying for protection.

3.4. During the oral investigation
Start by generating trust

The interview should commence with the focus on empathy and sympathy for the applicant. Some applicants have suffered difficult and traumatic experiences that are often very difficult to speak about. Some applicants have

still not recovered from the trauma they have experienced and are still living under acute stress, which makes it difficult to concentrate, think back and recount. The person conducting the oral investigation should therefore put the focus on building rapport with the applicant, ensuring that he or she feels safe and secure enough to share his or her experiences. This is important, not only out of respect for the applicant and the experiences he or she has been involved in, but also because a safe interview situation leads to a more genuine statement and, hence, a better basis for the assessment of reliability.

A safe environment can be created by adopting a pleasant tone, trying to establish eye contact and having an empathetic and welcoming body language (i.e. facing the applicant, avoiding crossing the arms, etc.). Starting the interview by speaking about a neutral subject the applicant is interested in may also favour the creation of a safe environment. In this context, it is important to remember that communication going through an interpreter often increases the distance between the investigator and applicant. Particularly in those cases where the investigator decides to look at the interpreter or computer screen during the interview. The investigator should therefore focus on the applicant and show an interest in his or her account.

Free recall provide a better foundation

In order to avoid misunderstandings during the oral investigation, it is important that the investigator initially explains the reason for the interview, how the interview will be carried out and finds out whether there is anything the applicant is wondering about. The applicant should also be instructed to 'tell everything' and the investigator must concentrate on not interrupting the applicant's free recall. The understanding of the instruction 'tell everything' may vary depending on who the applicant is and where he or she comes from. That is to say, the applicant's cultural schema, age, maturity and what the applicant is about to recount often affect how much and what details the applicant is prepared to share (see 4.1; 6.2.1; 7).

Later in the decision-aid, we will present relevant criteria for assessing the reliability of an applicant's statement. The use of these criteria assumes that the actual statement is not directed by the investigator, for example, through leading questions. It is the information and details *given freely by the applicant* that provide the best basis for assessing the reliability of the statement. Instead of asking specific questions, the applicant should be asked to provide a free recall. The investigator should ask the applicant to recount everything of relevance to the investigation – great and small, and also the details that do not perhaps appear as important. Since our memory is

organized as a sophisticated associative network, where one memory activates another, the small and apparently insignificant details can lead the applicant to remember and recount the more important details. Although it may appear odd to both the investigator and the applicant to be speaking about details that are not particularly important, this can be crucial if the applicant is to remember really relevant details. Memories based on the self-experienced usually consist of feelings, sounds, smells and other sensory information that the applicant can remember more easily if he or she is given the opportunity to provide a free recall.

It is important to balance the recommendations based on the nature of the migration case. In those cases where the applicant's information is not in question, because, for example, the outcome of the case depends on a legal matter, it is not necessary to have a long verbal investigation of insignificant details. It is on the other hand a very good method when, for example, there is no other evidence at hand and the outcome of the case depends on how the oral statement is assessed.

Active listening

In order to make the account easier, neither the investigator nor the interpreter, should interrupt and ask questions while the applicant is giving his or her account. The investigator should instead listen actively by, for example, making eye contact or encouraging the person to continue. This encouragement make take place through sounds like, 'hmm', 'yes' or through body language, such as nodding, smiling or suchlike. Encouragement can also be given by saying 'tell more' or by repeating the last thing the applicant said as a question or assertion. It is important to be sensitive to whether the applicant can or wants to recount more. For example, body language that is too encouraging could lead to the applicant's statement being directed. Active listening is complicated when an interpreter is present and the communication is then at risk of becoming more distanced and fragmented (see 3.2.4).

Supplementary questions should be open

When the applicant feels that he or she is finished and has no more to tell, it may be valuable to summarise what he or she has recounted. The summary should be based on the words the applicant (or interpreter) has personally used. This is because a summary can eliminate any misunderstandings and result in supplementation. At best, the applicant's free recall will give valuable information, but follow-up questions are often necessary. In the free recall, the applicant may, for example, have accounted for the time when he or

she was arrested and sentenced in a court but the applicant may not have accounted for his or her experiences in prison. The supplementary questions asked after the free recall should preferably be open ones. For example: 'You say that you were arrested and sentenced to prison, can you tell me what it was like in prison?'

Direct questions (e.g. 'Were you subjected to threats or violations?') and *leading questions* (e.g. 'Did you leave your home country as a result of the threats and violations you were subjected to?') should preferably be avoided as they can lead to erroneous information. The risk with these kinds of questions is that they may influence the applicant's memory and that the applicant's answer therefore may be misleading. The applicant may search his or her memory for something that could resemble threats and violations and answer that he or she was subjected to these things despite this not being the case. By asking open questions, the applicant gets the chance to share his or her memories on the basis of his or her own experience instead of recounting something based on the investigator's opinions.

It is important to weigh potential disadvantages against potential benefits during questions about sensitive events. Rushing past a sensitive episode is inappropriate, as is forcing the applicant to continue to speak about something that he or she clearly feels uneasy talking about. If the applicant is asked to recount a trauma, the investigator must be prepared to deal with the feelings the applicant might demonstrate, e.g. by giving the opportunity for one or several pauses for the applicant to compose and collect him- or herself.

3.2.3. Closing the oral investigation
Give the applicant a real opportunity to complete his or her statement

Before the oral investigation is closed, it is important to give the applicant the opportunity to add further information. The investigator could, for example, ask 'Is there anything you would like to add? Is there anything important that has happened that you have not had the opportunity to recount?'. The interviewer should also provide information on who the applicant can contact after the interview if he or she has more case relevant information. It is not uncommon that the applicant fails to recount everything of importance during the interview. Sometimes the applicant may feel nervous and under pressure to perform well, which has a negative impact on his or her ability to remember information. At other times, the interview in itself and the opportunity to speak about one's memories may spark other memories into life. It is

therefore important to leave the door open and give the applicant the opportunity to provide supplementary information.

The question of whether the applicant would like to provide supplementary information is many times hurried over and/or be worded too formally. This may due to the perception that there is a lack of time. Perhaps it is time for lunch, perhaps the interview has been going on for a while, perhaps the applicant is showing signs that he or she wants the interview to end. Regardless of the reason, it is important to give the applicant the opportunity to supplement or correct his or her account before the interview ends. This is important in order for the investigator to get as good and complete a basis as possible to assess the degree of reliability of the statement.

During the closing, the applicant should also be given the chance to ask the investigator questions and find out about future steps in the process (e.g. 'What will happen now?', 'How long will it take?'). If the interview has been a taxing one and reopened old wounds, it may be valuable to give the applicant the opportunity to give his or her thoughts about the interview before leaving the room.

3.2.4. Effect of interpreter and translation

At the vast majority of investigations, an interpreter is present to communicate questions to and replies from the applicant. It is easy to expect interpreters to act as an invisible and neutral medium, translating literally and completely correctly. But research shows that interpreters actually play an active role in the process. All people, including interpreters, are coloured by individual and cultural expectations with regard to social identity, status, age, gender, religion, etc. The way the interpreter conveys the communication can result in the applicant's account being mitigated, amplified, distorted or changed in some other manner. Clear instructions to the interpreter, including training, are important prerequisites for avoiding this. Linguistic research has shown clear differences between trained and untrained interpreters. A common error made by untrained interpreters is that they ally themselves with the investigator or applicant and take his or her perspective during the interview and change the personal pronoun in the questions and answers from, for example, 'I' to 'we' or change the grammar from, for example, 'I would like to ask you...' to 'She would like to ask you....'. In addition, it is not uncommon for untrained interpreters to start conversations with the applicant or investigator without translating to the other party. The consequences of this will be the distance between the applicant and investigator increases and that the investigation becomes more difficult.

When an assessment of the degree of reliability is carried out in cases where an interpreter has taken part, the basis for the assessment will be what the interpreter has stated the applicant has said. If the statement has been changed in some way when being transmitted via the interpreter, the assessment of reliability is therefore at risk of being done on a more or less erroneous basis. In Table 2, we list some ways in which the basis for the assessment of reliability - the actual statement - can be misunderstood through communication via an interpreter.

As stated in the table, translation leads to more or less of a distortion of content such as nuances, style and abundance of details. In addition, it varies from interpreter to interpreter how much he or she intervenes in the account. Some interpreters fill in, clarify misunderstandings and unclear points and translate certain things more literally than others. It is therefore of the utmost importance to provide clear instructions to the interpreter to translate everything said literally, without mitigating or distorting.

Table 2. Sources of error in communication via an interpreter

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Translation

- Even though the interpreter and applicant are able to speak and understand the same language, they may come from different cultural, social and dialectal backgrounds, which colours how local expressions are interpreted.

- The more legal questions that the interpreter translates may be difficult for the applicant to understand and, vice versa, the applicant may recount things the interpreter has no nuanced expressions for.

- The meaning of the same expression may vary between different parts of a country (see 6.2.1; 6.3.).

- Pure misinterpretations (due to pronunciation, dialectal or linguistic differences) may occur when an interpreter believes the applicant is saying, for example, 'voodoo' but is saying 'widowhood ritual' or hears 'terrorist' when the applicant is saying 'tourist'.

Fragmented and distanced transfer of information

- During oral investigations, there is a tendency to encourage short answers and sentences for the benefit of an effective translation, which fragments the information that arises. The actual translation process and interview situation also affects communication.

- Because the communication goes between the applicant, interpreter, interviewer, interpreter and back to the applicant in stages, there is a risk of the applicant being

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encouraged by the interpreter to give a brief answer or not speak at all on some occasions. This can cause confusion and quietness or restrict the applicant's willingness to recount.

- As a result of the division of the communication into steps, the distance between the applicant and investigator increases. Active listening is complicated because all exchanges of opinion need to go through an extra stage, i.e. via the interpreter.

- The interpreter may have a tendency not to be able to keep up with or not be capable of long episodes of direct translation in dialogues.

Self-presentation

- Like everyone else, interpreters are particular about the impression they give.

- Interpreters may fill in and correct coarse or untidy speech in order to avoid appearing to be a poor or rude interpreter.

- The interpreter may keep quiet about any language confusion because this could be shameful from the interpreter's perspective and threaten his or her reputation for being competent.

3.3. The weight of knowledge of cultural variations

During an oral investigation at the Swedish Migration Agency, communication is often cross-cultural, i.e. the investigator and applicant have different cultural backgrounds. The two of them may, for example, have different so-called communication styles: the way in which the applicant provides his or her account may be different from what the investigator expects (see 6.2). It is also the case that the information that arises during the interview may be due to the investigator and applicant having different cultural backgrounds and thereby also different perceptions of, for example, shame, time and words for relatives. The basis for the assessment of reliability - the statement - is thereby at risk of being misunderstood. Knowledge of the importance of cultural variations is therefore necessary when considering migration cases. The content of this paper is consistently linked to relevant anthropological research and Chapter 6 is entirely devoted to illustrating the risks found in cross-cultural communication during oral investigations.

4. MEMORY AND RELIABILITY

Memory, statements and assessments of reliability are all related, and it is necessary to sort out what affects what.

Memory is a necessary requirement in order for us to make a statement. If the statement is compared to a flower, then memory is the earth it grows out of. No memory, no statement. There are some texts relevant to asylum procedures where memory is reduced to a factor that can influence the statement presented by the applicant. However, it is incorrect to view memory as one of many different influencing factors. The correct view is that our memory is exposed to various different types of influence.

In fairly simple terms, a statement can be seen as a product of our memory, and our memory is always more or less exposed to influence. There are many different factors that can influence an applicant's memory, and thus also influence what is said during the oral hearing. These influencing factors are often sorted into different groups. Examples of such groups include:

- the incident per se (e.g. whether it was traumatic)

- the interview itself (e.g. the type of questions asked)

- the person giving the statement (e.g. way of recounting; style of communication)

- cultural variations (e.g. regarding linguistic usage)

In certain contexts, one group of influencing factors – culturally specific factors, for example – will have more of an effect than others. In other contexts, the statement will be affected by different influencing factors entirely, such as the time that has passed between the incident and the interview.

Comparisons with how we 'normally remember' require knowledge about memory

It is not unusual to hear reasoning like 'This statement matches up well with how people normally remember this type of incident' or 'The statement is different from how people normally talk about…'. This reasoning shows that the person assessing the statement has created a standard or template based on previous knowledge and experience, and the statement to be assessed is now

being matched against that template. If the statement in question matches up with the established template, this is an advantage for the degree of reliability of the statement. If, on the other hand, the statement does not match up with the template, this is a disadvantage for the degree of reliability of the statement.

Evaluating new and incoming information in the light of previous knowledge and experience is a very common, and often successful, strategy. There are many indications that this strategy is also used in migration cases. Although every applicant is of course entitled to as uniform and objective an assessment of his or her petition as possible, the statement will be assessed in the light of the officer's previous knowledge and experience. If the template that the officer is using is well founded in the psychology of memory, this will ensure that the assessments made will be correct to a large extent. If, on the other hand, the template has a weak basis in the psychology of memory, there is a risk that this will lead to systematically incorrect assessments. In brief, basing an assessment of reliability on whether a statement matches up with or differs from a template for how we 'normally remember' requires reasonably good knowledge of the psychology of memory.

Migration cases often deal with a number of complex topics with respect to the psychology of memory

If the topics relating to the psychology of memory that Migration Agency officers come up against in their day-to-day work were simple and few in number, building up a template that works well would not be an especially complicated matter. Unfortunately, that is not the case. In fact, migration cases typically deal with many different topics within the psychology of memory. Moreover, several of these topics are complex ones, meaning that it is not possible simply to guess what research in the area has shown. Some examples of topics that may be of relevance are:

- the link between memory and trauma

- situating incidents in time

- talking about frequently repeated incidents

- remembering conversations

- remembering private (personal) incidents

Each of these topics has its own dedicated section in this chapter. Overall, the above means that it is relatively difficult and demanding to build up a template that works well. In order to assess the reliability of statements in a nuanced and correct way, it is therefore necessary to obtain at least basic knowledge of how human memory works. In this chapter, we therefore call attention to a number of relevant results from research on the psychology of memory.

4.1. Memory and trauma

A number of asylum seekers have been subjected to persecution, abuse, threats, torture and sexual assault. They are fleeing armed conflicts and may have witnessed severe tragedies or been forced to do things they have been having and still have strong feelings of shame or guilt about. These experiences can cause traumas and give rise to both physical (e.g. palpitations, dizziness and respiratory distress) and psychological reactions (e.g. flashbacks, nightmares and anxiety). The word *trauma* means 'damage' and, although a trauma may be physical as well as psychological, the word has often been linked specifically to psychological traumas and reactions to them. In this section, we will review how traumas can affect people's memory and the way they recount events.

Traumatic memories can be correct and detailed

When a difficult or traumatic incident occurs, the survival instinct kicks in. The brain tells the body to fight or flight, and does not waste unnecessary resources on gathering thoughts, feelings and sensory perceptions. It may therefore be difficult for a person to gather his or her memories immediately after the incident. Today, most researchers agree that people, a while after a trauma occurs, often remember and can describe it in reasonably good detail. Contrary to what many people think, memories of traumatic incidents are often correct and detailed. Studies have shown that accounts of traumatic experiences often include more details than memories of neutral (everyday) or positive events. Furthermore, traumatic memories of sexual violence can include more details and more sensory information than memories of other violence. Accounts of trauma are often dominated by sensory (e.g. how something felt), perceptual (the way something looked, sounded, smelled etc.) and emotional details. Although memories of traumatic incidents are often both correct and detailed, we should be careful in our expectations regarding individual applicants' statements. This is because a trauma can affect the applicant's attention during the incident itself and his or her ability or willingness to recount it.

4.1.1. Memory of central and peripheral details

There is strong support for what is known as the *Easterbrook hypothesis*, which states that our attention narrows and focuses on the most central aspect of a stressful or traumatic sequence of events. Research shows that people who have lived through a traumatic incident tend to remember *central details* (i.e. those that were in focus during the sequence of events) rather than *peripheral details* (i.e. those that were less significant at the time). The fact is that we often remember traumas and stressful incidents better than everyday events, particularly with regard to the central details. Even though the focus of our attention becomes narrower, we can sometimes, once the stress has passed, describe both central and peripheral details. However, the central details are greater in number and more nuanced than the peripheral details.

What is central and what is peripheral differs from applicant to applicant

Based on the above reasoning, it is reasonable to expect that an asylum seeker who has been subjected to torture will have been focusing on the direct threat, and will therefore have a good recollection of the person or people who carried out the torture and of the instruments that were used. It is, however, just as reasonable to expect that a different asylum seeker in a similar situation will have been focusing on potential means of escape and will therefore have no recollection at all of what the people involved or the instruments they used looked like. The conclusion we can draw from this is that it can sometimes be difficult to know what was central and what was peripheral to the person living through the incident. What is perceived as central by one person may be perceived as peripheral by another. During the oral hearing, it may therefore be useful to try to determine what the applicant's attention was directed at in the situation in question.

4.1.2. The gap between what we remember and what we recall

People tend to remember stressful experiences and traumas quite well, but research has identified a gap between what we remember of a trauma and what we actually recount. There are many reasons for only giving certain information – or not talking at all – about a trauma, such as post-traumatic stress, shame or guilt.

Effects of post-traumatic stress syndrome

Post-traumatic stress syndrome (PTSD) can affect people who have been through experiences such as abuse, rape, war or disasters. PTSD is

characterised by reliving the incident or incidents over and over again. The process of reliving may be triggered by external stimuli, such as sights, smells and sounds, and may cause anxiety, nightmares and memory problems. A person affected by PTSD has not fully processed the trauma, but continues to suffer from it as if it was still happening. Those affected may also try to avoid any thoughts, feelings, activities or situations associated with the trauma, and talking about it may provoke severe anxiety. Another memory problem associated with trauma is overgeneralisation, which leads to an impairment of the ability of a person suffering from PTSD to recall specific incidents from their *autobiographical* memory (which includes self-perceived events). This means that asylum seekers who have been subjected to trauma may find it difficult to bring to mind certain specific incidents from their lives, and rather talk about their life in more general terms. Instead of saying 'I was sad when my friend died in our second year of school', people with an impaired autobiographical memory (as a result of trauma) might say 'I was always sad at school'.

Most people remember, but not as many of them talk about sexual assault

Rape and other forms of sexual assault can give rise to strong feelings of shame and guilt. Guilt-laden feelings such as 'Maybe it was my fault that I was subjected to it?' or 'Could I have prevented it in some way?' are not unusual. Nor is it unusual for the person subjected to it to be ashamed of what has happened and not wanting other people to find out. Talking about sexual assault, either formally (e.g. to a Migration Agency case officer) or informally (to family and friends), is often very difficult to do, and many of those subjected to it choose not to talk about it. People seeking asylum after escaping armed conflicts and being exposed to threats, violence and rape may choose to talk about the threat and the violence, but avoid talking about the rape with hope of that what they have recounted will constitute sufficient grounds for asylum.

Many of those who do choose to talk about the sexual assault they have been subjected to have negative experiences of this due to other people's reactions to the news. Sexual assault victims have spoken about family members, friends and even legal practitioners directing accusations against them and, hence, talking about the abuse may feel like 'a second rape'. To get around feelings of shame and guilt, those subjected to sexual violence may give very few details, or even omit the most sensitive and intimate details, regarding the assault. It can be difficult to motivate applicants to talk about shame, guilt and taboo subjects like sexual violence. The person responsible for the interview

must therefore place a strong focus on building rapport and establishing trust with the applicant and make sure that he or she feels safe.

4.1.3. Women seeking asylum are particularly vulnerable

Women are affected by violence with strong associations of shame (e.g. family violence, sexual violence, honour-related violence and genital mutilation) to a greater extent than men, and we therefore wish to highlight that this leads to an increased risk of a gap between (a) what women tend to recount and (b) what they actually remember about the incidents in question. Some women seeking asylum have said that they would rather remain silent and not be granted asylum than talk about incidents that could bring shame on themselves and their families. The applicant may be afraid to disclose details that damage the honour of family members and thereby risk being punished by her family.

In some legal systems, it is completely legal – and culturally accepted – for a man to have sex with his wife against her will. In some legal systems and/or cultures, any infidelity by a woman against her husband is illegal/unacceptable, even if the 'infidelity' consists of the woman being raped. In some cultures, there is a lot of shame linked to this, as the woman is blamed for the incident and is therefore responsible for disgracing her family. These potential circumstances mean that the woman seeking asylum may choose to remain silent about details of sexual violence, even if the absence of protection against that violence may have been a reason for her leaving her home country. In Section 3.2., we emphasised the importance of showing understanding and empathy and of establishing contact during the oral investigation in order to motivate the applicant to talk about shame, guilt and taboo subjects. This is particularly relevant in order to narrow the gap between what women who are seeking asylum remember and what they choose to talk about.

4.2. Memory and time

It is not entirely unusual for an applicant to be encouraged, or to feel the need themselves, to try to situate a specific incident in time: 'When did X actually happen?'. This is sometimes about trying to sort out the chronological order of different incidents: 'Did A happen before B, or was it the other way around?'. Below, we will take a look at what research on memory has shown regarding these and related issues.

Situating private and public events in time

An important starting point is to be aware that it is often difficult for us to remember correctly when a specific event took place. It is not uncommon for us to give up and settle for an estimate. Research into the psychology of memory shows that, as a rule, people are better at working out the timing of private/personal events (e.g. a wedding in the family) than that of public events (e.g. when a particular government building in the capital was stormed). Research also shows that, for the vast majority of important private events, we can date them successfully to within a margin of error of about a month. For public events, we often do not have as precise a memory of the point in time when they happened, but instead rely on estimates. Unsurprisingly, for both private and public events, errors in situating events in time that took place far in the past are often more marked than those for events that happened recently. In this context, it is important to emphasise that we are all different in terms of how well we remember private events based on the culture we grew up in (see 4.5.).

The relationship between remembering dates and level of detail

It is a good idea to be aware of the relationship between (a) how much detail we remember and (b) where in time we tend to place the incident in question. The following principle generally applies:

- *I remember the incident very well, so it probably wasn't that long ago that it happened.*

or alternatively:

- *I have a very vague memory of the incident, so it probably happened quite a long time ago.*

How much detail we remember can be a good guide to when the incident actually happened, but not always. If the incident in question was not felt to be particularly important when it happened (i.e. when the memory was encoded), this means that it is not thought or spoken about particularly often. This in turn leads to quite a poor memory. The poor (undetailed) memory can, in turn, lead to incorrectly situating the incident in time, often too far in the past. If, on the other hand, the incident was felt to be very important and the person has therefore thought and spoken about it often, this often results in a good memory. The strong (detailed) memory can, in turn, lead to incorrectly situating the incident in time, often too recently. If an applicant is

unsuccessful in situating an incident in time, it is important to think about the different reasons why this might be the case. For example, it may be because the applicant did not feel that the incident was particularly important when it happened.

We use memory strategies to place events in time

It is also useful to know something about the memory strategies that we are apt to use when we try to remember the date of a particular event. When attempting to date a public event, we often use autobiographical events (events from our own life) to help: 'I know that Princess Diana died in 1997, because the day after the accident I met my sister at Brännö. She was living there in 1997.' The autobiographical memory (my visit to my sister at Brännö) becomes a reference point for the public event (the death of Princess Diana). In other contexts, the reverse may be true. In other words, a public event acts as an important reference point for a private event.

There are three important lessons as far as these memory strategies are concerned. Linking private and public events...

- ... is a fairly common strategy

- ... increases the chances of situating a specific event in time correctly

- ... does not always lead to establishing the correct date

Explaining the reason *why* the date of a particular event can be remembered ('I remember it was in the spring of 2003, because that was the spring when my mum was so ill') is characteristic of a person who is genuinely trying to establish the correct date. The strategy does not always lead to success, but it can be regarded as an indication that the person in question is really striving to build as truthful a picture of the past as possible.

Narration is not always done in chronological order

When we need to reflect on an event that we have experienced, it is not unusual for the actual narrative process itself to trigger a wide range of new associations. One piece of information from our memory leads to another, which in turn leads to a third. In other words, the narrative process does not necessarily proceed in chronological order; rather, it follows the order in which we recall the various components and how they are associated with each other. For example, an applicant may give an account of how they fled to

Sweden by starting the story with how they walked through the desert at night to avoid border patrols, before moving the listener forward in time to a lorry trip through Europe and then back again in time to a refugee camp a long time before the walk through the desert. Thus, an account may be perceived as muddled and disjointed while it is being given, yet at the same time it can appear coherent and lucid once it is complete and all things have been added together.

Every time we pluck out a memory and recount it, parts of it are changed. The person who, in the example above, moved the listener back and forth while giving their account will, if asked to tell of their flight again, probably recount a story that more clearly follows a chronological order. This is because the event has now been repeated and, to an extent, processed. It is also reasonable to assume that, after the first occasion, the applicant will think of something in addition, which they will then add to their story; or they may correct something that has previously been recounted. An applicant may also have rehearsed and told their story prior to the interview, for example when registering during the asylum procedure.

4.3. Memories of often-repeated events

Example 1:

> *Ali explains to a case officer at the Migration Agency that he is from Mogadishu and that he has lived in the same house for the past eight years. For seven of these years, he travelled almost every Saturday to a political meeting place in a town outside Mogadishu. According to Ali, the journey takes around two hours. When the case officer asks Ali to describe the journey there, he replies in vague and general terms about what the route is like and has difficulties providing any detailed information. This makes the case officer doubt that Ali has been to the town.*

The fact that Ali's statement about the route to the meeting place is vague does not necessarily mean that it has been fabricated; it may instead be a result of what is called *script-based memory*. This is described in more detail in this section.

Even though, in a fundamental sense, each day is unique, this does not apply to everything that happens during a day. Most of what happens is something that we have experienced before. Some things, perhaps, we may have experienced only occasionally, but most things we have done hundreds – or

indeed thousands – of times: eating breakfast, cleaning our teeth, walking to work, going out for a quick lunch, shopping, preparing an evening meal and doing the washing-up. We have done these things so often that they have become a routine. Psychologists talk of what they call *scripts*, by which they mean our structured expectations.

We have structured expectations of events that we have experienced often

The example of 'going to a restaurant' is often used to illustrate the importance of scripts. If we have a restaurant visit *ahead of* us, we can easily break it down into various smaller components: for example, removing and hanging up our outer clothing, being shown to a table, being given a menu, ordering drinks and food, eating and then, at the end, paying the bill. We have an expectation of the order in which things will happen. Once the visit is *behind* us, if someone asks us about it we tend to remember and describe what typically happens during a visit to a restaurant. This tendency becomes particularly noticeable when a little time has passed between the visit and the request to recount the story. Let us imagine that something happened that deviated from the norm – for example, the waiter was slow in arriving and you therefore took a menu from the empty table next to you. There is a high probability that this minor deviation will be drowned out by what normally happens, so much so that it is simply lost.

We remember what is 'typical' for the situation

Critically, we can say that it is fortunate that our memory works in such a way that we tend to remember the 'typical' aspects of things we have experienced many times. If we were to store the memory of every unique occasion on which we cleaned our teeth, washed up or travelled to work, our cognitive resources would soon be exhausted. However, there is a flip side to our script-based memory. If a person is asked in a legal context – for example, during a verbal investigation – to provide an account of something that they have experienced many times (e.g. repeated assault), the person in question can easily get into difficulties. In the first instance, remembering individual occurrences is often found to be challenging. Secondly, it is often found to be difficult to give a detailed account of individual events that they have succeeded in remembering – as in the example with Ali. Both of these difficulties can be explained by our script-based memory, and both difficulties are relevant when assessing reliability. Below, we will describe some of the specific consequences of our script-based memory.

4.3.1. Consequences of script-based memory

The first consequence of the fact that we store and remember things in a script-based way is that, even if we have experienced the same thing on many occasions – for example, visited a certain market or walked to work – it can be difficult to identify individual visits or walks. Research indicates that, once we have experienced the 'same thing' a large number of times – for example, 50 times – it is not at all uncommon for us only to be able to identify a handful of all these events (just over 10%).

The second consequence of our script-based memory is that, when a person has succeeded in identifying individual events (from among a large number of events of the same type), what is recounted tends to be less complete and more general compared with what a person will recount about an event they have experienced only once. This consequence of script-based memory has a direct bearing on the so-called detail criterion (see 5.1.). One reason why an applicant's statement about a specific event is short on detail may be that it has been stored in script-based form.

The third consequence of the fact that we store and remember things in a script-based way is that there is an increased tendency to link a certain specific detail to the wrong event. You give an account of something that you actually did experience – for example, that on one occasion you left your glasses in the dentist's waiting room – but you do not manage to connect the loss of your glasses to the correct visit to the dentist. The fourth consequence is that we have a tendency to underestimate the number of times we have experienced the same thing. We may say: 'It must have happened at least 50 times', even though the correct number could well be 80 times.

There is no simple recipe for how we should navigate around the problems detailed above. Memories packed in script-based form will be general and non-specific at the time they are unpacked. For the person responsible for conducting an interview within the framework of a migration case, however, it is naturally important to be fully aware of the effects that could result from script-based memory. It is also very important to be aware of the purpose of the interview. Is it a case of trying to help the applicant to remember as many individual events as possible? Or is it about trying to help the applicant to remember as much as possible about one or more individual events that have already been identified? These are two entirely different challenges, and they require different techniques. A person who is facing having to try to identify individual events can be helped by being encouraged to explain when it happened for the first time, or when it happened for the last time (most

recently). It can also be helpful at times to ask the person to think back to whether any occasion was different – whether on one occasion something unusual occurred. Memory-facilitating techniques (see 3.2.) are available to assist applicants in remembering as much information as possible, and in as specific detail as possible, about an event that has already been identified.

4.4. Memory for conversation

In certain cases, it may be relevant for the applicant to recount what someone had said to them, or to recount a conversation in which they had been involved. Research shows that we usually do not have a verbatim memory of what someone said, or what we ourselves said. What we tend to remember is the actual topic of the conversation, who was involved and what views we and the others expressed. We remember the other party's points of view and arguments and what they wanted to say, but rarely the exact words and sentences uttered by the person in question. In short, we often remember the conversation, but without being able to quote any large parts of it.

But there are exceptions to every rule. If someone says something that dramatically departs from the norm, we tend to remember these words and expressions particularly well. It could be that someone, in an otherwise neutral conversation, mentions a sexual term of some kind. In this case, we will remember the unusual, charged word better than we remember the neutral ones. Another exception is where there is a message of clear personal significance – for example, when receiving a verbal threat of some kind. We often remember a serious threat word-for-word; it tends to burn itself into our memory.

4.5. Memory of private events
Culture affects our ability to remember private events

The ability to provide detailed descriptions of private/personal events and experiences is something that is often taken for granted in 'western' cultural environments. However, this ability is not universal, as it is not valued equally high in all cultural environments. Anthropological research recognises a distinction that may help to create a subtle contrast – a division between so-called interdependent and dependent cultures (see Table 3). Many applicants come from interdependent cultures, and in this section we will describe what the significance of this may be when assessing the reliability of statements.

People from interdependent cultures tend to remember and talk about shared social and historical events to a large extent, and to remember and talk about

specific, private events to a relatively small extent. One consequence of this is that applicants who come from interdependent cultures, as many applicants do, may find it more difficult to remember private events that it would be important to talk about during an interview. This may in turn give the impression that information is being withheld. The real reason for it, however, is that the applicant comes from a cultural context where the ability to remember private events has not been rewarded.

People from independent cultures tend to value their own memories higher, which often leads to a higher level of detail and emotional intensity. Research indicates that people from independent cultures communicate more, and thus repeat and exercise particular memories, which can improve their memories of particular episodes.

Table 3. Interdependent and dependent cultures

Interdependent cultures

Interdependent means 'dependent on each other' and is linked to collectivism. In interdependent cultures, the identity of the individual is often defined by social belonging, relationships and shared cultural similarities and heritages. These cultural environments tend to reward similarity and consensus. People from interdependent cultures have a tendency to underestimate their own importance and to adopt a more reserved role in groups with other people.

Examples of countries: Mexico, Brazil, Chile, Peru, Venezuela, China, Japan, South Korea, Pakistan, Portugal and Greece. Countries in Africa and the Middle East are also dominated by collectivist, interdependent cultures.

Independent cultures

Independence is linked to individualism. Independent cultures tend to reward individuals for seeing themselves as unique and unlike other people. Individuals who strive for their own goals and project their own importance are rewarded. People from independent cultures take the credit to a greater extent when they succeed and more often lay the blame on others when they fail.

Examples of countries: United Kingdom, USA, Australia, New Zealand, France, Germany, Belgium, Netherlands, Denmark, Italy and Sweden.

The type of private/personal memory information that an applicant has the capacity to communicate may therefore depend on whether the applicant comes from an interdependent culture or an independent culture. For officers of the Migration Agency, it is therefore important not to assume that applicants are able to talk about personal events in as much detail as the officers could have given for similar events in their own lives.

Although research has highlighted differences between independent and interdependent cultures in the example countries listed in Table 3, it should be emphasised that intracultural and individual variation exists in every society. Among other things, this means that tendencies common to independent cultures may be interspersed within interdependent cultures and vice versa. Countries such as India, for example, may show signs of both tendencies. The research referred to above provides knowledge of observations that have been made on a general level, but it is important in context to point out that there may be a great deal of individual variation within countries, between urban and rural areas, etc.

5. RELIABILITY CRITERIA

Today, there is extensive psychological research on what characterises reliable statements. For example, they tend to be more detailed than unreliable statements. At the same time, there is little evidence to support the idea that reliable statements are told in clear chronological order, or be more coherent or more consistent. In spite of this, these last three criteria frequently come up in assessments of reliability of criminal cases as well as migration cases.

The criteria must be nuanced

Two people may be in complete agreement about which criterion (general law of experience) applies, but interpret the investigation material in different ways in an individual case. For example, a person may consider a statement to be so detailed that it is likely to be based on a real event, while another person may deem the statement to be lacking in detail. Both persons are applying the same criterion, but interpreting the statement differently. However, there are ways to minimise problems, such as by being transparent in making decisions and, as far as possible, articulating the criteria (general law of experience) that apply and how they relate to the facts of the case.

This chapter aims first of all to present and nuance relevant, scientifically substantiated criteria that can provide support in assessing reliability in migration cases. The second aim is to point out criteria that are often applied, but that lack scientific support and should therefore be avoided. As has already been said, it is necessary to take into account a range of different considerations within the psychology of memory to allow for nuanced reasoning regarding the degree of reliability of a statement, and we will therefore take note of the important links that exist between memory and reliability.

In this context, it is important to point out that the criteria brought up here are not intended to provide employees of the Migration Agency with an easy recipe for assessing reliability in individual cases, since no such easy solution exists. Viewed over a large number of cases, however, the chances of making the right decision are significantly greater if the assessment is based on scientifically substantiated criteria than on homespun ideas about what characterises a reliable statement.

Statements about self-experiences differ from fabricated statements

There are a number of different methods that have been developed and are applied when assessing the degree of reliability of a statement. Without going into too much depth regarding the various methods, we wish to highlight one thing they have in common: the methods are based on the principle that statements about personal experiences are different from fabricated statements in terms of both quantity and quality. This is an assumption that has gained support from examining statements in experimental studies as well as in archive and case studies. The various methods of assessing reliability include some of the same criteria and some different criteria. Sections 5.1.–5.5. below discuss the criteria that have repeatedly received support from research within legal psychology. First, however, we need to make a clarification regarding the criterion 'general credibility', as it is often discussed and has a tendency to crop up in evaluations of oral statements.

The criterion 'general credibility' lacks empirical support

The criterion *general credibility* is problematic in a number of ways. Just as the name suggests, it is entirely directed towards 'credibility', i.e. how the person comes across. Throughout this decision-aid, we warn against allowing a perception of credibility to guide decisions on the reliability of a statement. It goes without saying that this warning also applies to the criterion 'general credibility'. Unsurprisingly, research shows that perceptions of a person's 'general credibility' can be reached via many different routes. In brief, there is a fairly widespread tendency to use the criterion as a label for many different types of observations, such as body-language signals on their own, how body language matches up with what is being said and various emotional reactions. Research shows that the criterion 'general credibility' leaves a lot of room for subjective interpretation and that it is used fairly imprecisely, sometimes even downright carelessly. We therefore wish to emphasise that research within legal psychology provides no support for allowing perceptions of 'general credibility' to steer evaluations of oral statements.

5.1. Level of detail

There is strong empirical support for the idea that statements based on personal experience have a higher *level of detail* (with regard to events, places, objects and people) than statements that are not based on something that was experienced personally. As has previously been said, however, it is important to point out that there is a range of factors that affect how much detail the applicant will remember about a particular event. If the event was a traumatic one, the applicant will tend to remember more central details than

peripheral details. If the event was experienced several times, the memory will tend to represent 'the typical' rather than 'the specific' sequence of events.

Even if applicants do remember details, there may be a gap between what they remember and what they say. There is therefore good reason to look at the interview itself and the type of question that were asked. Open questions generate more details than direct questions. Level of detail is also affected by the applicant's cultural style of communication (i.e. how he or she recounts events; see 6.2.). The type of event the applicant is talking about also has a major effect on the level of detail. Earlier, we highlighted taboos, shame and guilt as examples of cultural barriers that affect the level of detail of a statement. In this context, the applicant's cognitive maturity and linguistic development should also be taken into account; these aspects are dealt with in Chapter 7. Given these factors, there is therefore good reason to nuance the criterion and look at the quality rather than the quantity of details. This will be the focus of the following section.

5.2. Type of information given in details

The criteria *contextual details, perceptual information, spatial information* and *temporal information*, which are described in Table 4, relate to the way we remember and describe events we have experienced ourselves. Research has shown systematic differences between how we remember information that we take in through our senses (what we hear, see, taste and smell) and what is based in our internal ideas and imagination. These differences can also be seen in accounts of personal experiences and fabricated events. Someone talking about a personally experienced event tends to include information about how it felt, looked, smelled and tasted more than someone who is fabricating an account. Furthermore, accounts that have their basis in personal experience tend to include more contextual, spatial and temporal information. Such information may, for example, relate to where the event took place (e.g. 'We were *in our garden* when it happened'), where objects and people were situated (e.g. 'I hid *behind* the garden table'; 'There was a man standing *next to* the patio door shouting at us') and when the event occurred (e.g. 'It happened in the *afternoon*'; '*First* he shouted to us to get down, *then* he raised his weapon'; 'It was all over in *twenty minutes*').

Table 4. Type of details

Criterion	Description
Contextual details	The account contains events described in relation to place, time and any other people involved.
Perceptual information	The account includes details about what the person saw and heard and how it smelled, tasted and felt.
Spatial information	The account includes spatial information, e.g. how objects were situated in relation to each other.
Temporal information	The account includes temporal information, e.g. expressions like 'just before' or 'at the same time as'

A requirement for using these criteria to support an assessment of reliability is that the statement has been given during a free recall and not as an answer to direct questions such as 'What did it smell like?' or 'When did that happen?'

5.3. Unstructured production

The criterion *unstructured production* is based on the fact that memories of personal experiences often do not follow a clear chronological sequence. This is directly linked to the way people tend to remember and recount events. The act of recounting itself evokes memories and associations, which lead to additional memory information. The account tends to follow the order in which we remember the various details of an event and how those details are linked, rather than a chronological sequence. If a person recounts an event in chronological order, this suggests that the person has repeated the event to himself or herself, or has talked about it before. Assume that an applicant for asylum in an interview with a Migration Agency case officer is recounting a personally experienced event. If the applicant has repeated the event in

question and has talked about it before (e.g. to a fellow traveller while escaping through Europe or to a case officer in another country), the event will, as it is recounted once again, tend to be structured chronologically to a greater extent. Since the event is a personal experience, the applicant will have no problem breaking with the chronology if he or she thinks of more details during the interview. If the event had *not* been experienced personally, but had instead been fabricated (but rehearsed), it is likely that the applicant would not have interrupted and adjusted the account, out of a desire to appear convincing.

5.4. Exhibited uncertainty

The criterion *exhibited uncertainty* relates to when the memories of an event are not completely clear and distinct, which leads to a degree of uncertainty in the account. The applicant may feel uncertain and spontaneously doubt whether his or her descriptions of different objects, people or events are completely correct, which may be expressed as 'I'm not completely sure', 'I think that's what happened, but I don't remember exactly'. People talking about things they have not experienced tend to avoid expressing uncertainty in order to appear convincing.

Expressions of doubt in a person's testimony may therefore be used as an indicator that the person is telling the truth, as long as the doubt is not expressed in answer to a direct question from the investigator. For example, if the investigator asks the applicant a direct question: 'What was the colour of the car you were travelling in?' and the applicant replies with 'I can't remember', this should not be regarded as exhibited uncertainty, as the applicant has not expressed doubt about his or her own testimony but rather about whether he or she remembers the colour of the car at all. If the investigator instead asks the applicant an open question: 'Tell me how you and your family came to Sweden,' and the applicant gives a comprehensive answer but interrupts the account with assertions like 'I don't remember exactly' or 'I'm not completely sure', this should be regarded as exhibited uncertainty.

5.5. Reproduction of conversation

Reproduction of conversation is about remembering the social interactions that form part of an event. Most interactions include dialogue, and the criterion therefore indicates that a person not only remembers a summary of what was said, but also certain verbatim quotations from the dialogue. The person may therefore report these quotations in the account. Instead of saying 'We talked about how we would get to Greece', the person might report some

direct quotations: 'I asked, "How shall we get to Greece?" and she said, "We need to go by boat.'' As well as verbatim quotations, the criterion also relates to how the person describes other people's actions, dialogues and reactions. For example: 'I asked him to go away and leave me alone, but he just stood there'.

It is important to emphasise that far from everyone reports direct quotations. The way in which a person talks about interactions and meetings with other people is also strongly linked to cultural styles of communication. The criterion should therefore be applied with care. If an applicant reports interactions and direct quotations, this may be a sign that the statement is reliable. However, if the applicant does *not* report interactions and quotations, this should not be used as an argument against reliability.

5.6. Realism

The term *realism* is used in a number of different ways in connection with evaluations of verbal evidence. It sometimes relates to the content of the statement itself – the statement is considered to be more or less realistic (more or less plausible). Sometimes it relates to the result of comparing the statement with external information or facts. Both of these uses of the term *realism* are relevant to migration cases and they are therefore both dealt with below.

Realism in the content of the statement

Research in legal psychology directed towards the value of different reliability criteria has mainly focused on realism within the statement itself. However, it may be problematic to use this in migration cases where applicants' accounts may include elements that can be difficult to understand and identify with. Something that is implausible or unlikely in a Swedish context may appear plausible or likely in a Somali context and vice versa. A particular challenge is migration cases where the individual officer makes assumptions based on perceptions such as 'That can't be what happened; it seems unrealistic'. This type of vague application of laws of general experience is dangerous as it can easily descend into the realm of simple prejudice.

Realism with regard to external information

In migration cases, just as in other contexts where there is a need to evaluate verbal evidence, the degree of realism (or plausibility) of a statement is often brought up after it has been matched up against external information of one kind or another. In migration cases, such external information may be of a

more general (e.g. country information) or more specific nature (e.g. case-specific information about when a particular embassy was open). A statement may be full of the elements we have presented earlier which, research shows, indicate that the statement was personally experienced. Nonetheless, the degree of reliability of a statement may be considered to be very low if the statement includes claims that are unrealistic and incompatible with our knowledge of reality. An extreme example might be a person who claims to have been sentenced to death by a court in Norway.

Another example might be an applicant claiming to have been brought before a revolutionary tribunal in his or her home country on a specific date. If information on the country exists indicating that the tribunal was closed on that date, this often affects the assessment of the applicant's statement – the statement is simply deemed to be unrealistic. But even if it seems unrealistic for a person to have been brought before the court at a closed tribunal, this is something that must be viewed in the light of a series of other factors before any conclusions are drawn. For example: How reliable is the information that the tribunal was closed on the date in question? Does the closure mean that there were no proceedings at all or were proceedings moved temporarily? Could the applicant have been mistaken about the date?

Comparing the applicant's statement with the background information available to the officer (e.g. country information or statements from others) may lead to a judgement that the statement lacks realism. This could also be regarded as a 'lack of congruity'. The way in which the available background information should be used is outside the scope that has been set for this decision-aid. However, we will return to 'lack of congruity' when we discuss the consistency criterion below.

In conclusion, the ability to evaluate realism requires a good knowledge of what is plausible or likely to expect with regard to the content of an applicant's account. It also requires correct and relevant legal and country information and a certain degree of care, as the individual variations can be significant.

5.7. The consistency criterion
The *consistency criterion* is often used to determine the reliability of statements. One reason for this is that the criterion can be applied in many different types of situation. It may be used to compare different parts of the same statement, such as what an applicant originally said about event X against what the same applicant says about X later in the conversation

(consistency within a statement). It can also be applied in situations where a comparison is made between what an applicant has said about event Y during one conversation against what the same applicant has said about event Y during a completely different conversation (consistency between different statements by the same person). A third situation in which the criterion is applied is when statements from different people (A, B and C) are compared where they have all discussed the same event (Z). This is consistency between statements by different people. When the situation allows for the use of the consistency criterion, it tends to wipe out every other criterion. It is therefore important to take a closer look at this criterion.

5.7.1. Clarifications regarding the consistency criterion

There are a couple of things that need to be clarified before we take a closer look at the support that the consistency criterion has from research within legal psychology. Firstly, the consistency criterion crops up under various different names (e.g. 'constancy', 'absence of contradictions', 'coherence'), and consistency is sometimes referred to as 'degree of congruity'. The results of applying the criterion are also expressed in slightly different ways, such as:

- *The statement is unchanged*

- *We have identified a couple of contradictions*

- *There is a lack of congruity*

- *When comparing what each of the three has said, we have not found any major contradictions*

This rarely creates any major problems, but it is a good idea to be aware of the fact that such language is not used consistently.

Secondly, consistency is not an objective measurement. There is no formula for calculating the degree of consistency of a statement. The degree of consistency awarded to two statements that are being compared is the result of a subjective assessment, with the degree of consistency reflecting the perception of an assessor. Research in this field shows that two people who each separately assess the degree of consistency between two statements can very well obtain different results. One of them may identify a certain deficiency in consistency that leads to an assessment that there are shortcomings in the statements in terms of consistency. The other person may identify the same deficiency and yet choose to downplay its significance, thus considering the degree of consistency to be fairly high. Different assessors

may draw attention to different aspects, or they may draw attention to the same aspect yet weight its importance differently. This does not mean that most aspects of the consistency criterion are 'free-flowing', but it is important to know that an assessment of consistency is not an absolute thing.

Thirdly, there is a widely prevailing accord as far as the application of the consistency criterion is concerned, and the principle is explicit: deficiencies in consistency have a negative impact on the degree of reliability, while a high level of consistency has a positive effect on the degree of reliability.

Of course, one important question is: what scientific support is there for the consistency criterion? This is a difficult question to answer. The reason for this is not that there is a dearth of research. In fact, there is a great deal of research directly or indirectly linked to the consistency criterion. Rather, the reason is that the criterion is used in so many different ways, and in so many different contexts, that it therefore becomes almost impossible to give a short, concise answer to the question as to whether or not the criterion is supported by research. Below, we will use a number of specific examples to attempt to clarify certain aspects of the applicability of the consistency criterion. The examples are based on us imagining a situation in which a person – for example, an asylum seeker – has been interviewed on repeated occasions about the same event.

5.7.2. Observation 1
– 'The main elements of the statement have not changed over time'

A comparison of the statements shows that there are no clear deficiencies in terms of consistency. The wording of our observation is: 'the main elements of the statement have not changed over time'. What value can be placed on our observation in terms of assessing the reliability of the statement? To answer the question, we need to examine what the research in the area shows. The research shows that both fabricated and personally experienced (true) statements tend to be high in terms of consistency. In other words, the results of the research are that no great value should be attributed to our observation about 'high consistency' when it comes to the reliability of the statement. The primary reason why people who are lying often succeed in producing statements with a consistency on a par with that of those who are telling the truth is that a liar *repeats* while a person telling the truth *reconstructs*. Liars are often fastidious in remembering and repeating what they have said during previous interviews, while those who are telling the truth will attempt, on each new occasion on which they are interviewed, to reconstruct the past. People who lie and people who tell the truth use different strategies – repetition

versus reconstruction – and yet often achieve the same end result, i.e. a high level of consistency. The observation that 'the main elements of the statement have not changed over time' makes neither a negative nor a positive contribution to the degree of reliability of the statement.

5.7.3. Observation 2
– 'Some parts of the statement have been changed over time'

Instead, let us imagine a situation in which a comparison of an applicant's various statements shows that there are actually certain deficiencies in terms of consistency. Our observation is therefore that 'some parts of the statement have been changed over time'. Once again, we turn to the research in the area to find answers as to the value of our observation. We immediately see that we will not find any answers unless we first examine what type of 'deficiency' we have identified.

Contradictions have a negative impact on the degree of reliability

One type of deficiency in consistency is contradictions. At the first interview, the applicant in question mentioned working as a tradesperson since 2005; at a later interview, the applicant mentioned having worked for the country's security service for the previous 15 years. The research in the area is clear: obvious contradictions are uncommon and, when they do occur, they have a negative impact on the degree of reliability.

Both liars and people telling the truth can drop information during repeated interviewing

Another type of deficiency as far as consistency is concerned is when people drop information during repeated interviewing; in other words, where during later interviews they omit information (details) that they had initially recounted. Here, the results of research in the area are less clear as there can be many underlying reasons why people drop information. One reason may be that the applicant feels that he or she has already given a very detailed account of a certain event and therefore does not feel the need to do so again. In other words, the applicant may more or less consciously omit certain information, or choose to recount the information in summary form. Another reason may be that the person has quite simply forgotten some information. What is important here is that both liars and those telling the truth are apt to drop some information during repeated interviewing, and that it is therefore risky to draw any strong conclusions on reliability on the basis of such an observation.

There are several reasons why information may be added

A further deficiency in consistency is when information is added from one interview to the next; in other words, when information or details emerge during later interviews that the person in question did not initially mention. A situation like this often requires deeper analysis. The first question to ask is: what information has been added? Is it a case of new details about a previously introduced topic (e.g. the woman who now also remembers that she lost a tooth during the violent abuse that she has already described)? Or is it a case of the introduction of an entirely new topic (e.g. the man who now remembers that he was not only locked in a small cell but also that he was tortured)? The fact that the applicant, at a later interview, or towards the end of the same interview, remembers more about an event that he or she had previously recounted, fits in well with how our memory normally works. Remembering and recounting an event evokes surrounding and related information. After an interview, when we think back to what we had talked about, it is typical for us to remember further details ('How could I have forgotten to mention *that*?'). The fact that information is added in this way should not have a negative impact on the degree of reliability; instead, it reflects the way in which we often remember and recount stories.

It is more of a problem when an entirely new topic is introduced at a later interview. However, there are reasons to warn against being too quick to draw the conclusion that the person in question has elaborated on the story simply to ensure that he or she really gains protection. There are other reasons why the account may have been elaborated upon. One such reason may be that the applicant believed that the original account should have been sufficient to gain protection, and that the applicant had therefore chosen entirely consciously not to recount certain experiences (e.g. against a background of feelings of shame). Another reason may be that the applicant, for one reason or another, had been excessively passive during previous discussions and not recounted a particular event as it was not felt at the time to be of particularly great relevance.

Reduced degree of specificity

A fourth type of deficiency is changes in the degree of precision. What had been described in an initial interview as a 'light-blue car' may, in a later interview, become 'a blue car' and then, later on, be described simply as 'a car'. A characteristic of human memory is that, the more time that passes, the more the statement declines in terms of degree of specificity. A gradual decline in the degree of specificity should not be used as an argument against

reliability; rather, this is typical of people who are making repeated and honest attempts to reconstruct a previously experienced event.

5.7.4. Applicability of the consistency criterion

In summary, research shows that the consistency criterion has more value in some situations (where there are certain deficiencies in consistency) and less in others (in the absence of deficiencies in consistency). It is important that an identified deficiency should not necessarily have a negative impact on the degree of reliability – especially not where it is based on (a) an applicant having added certain information about a previously introduced topic, or (b) the statement having lost something in terms of specificity.
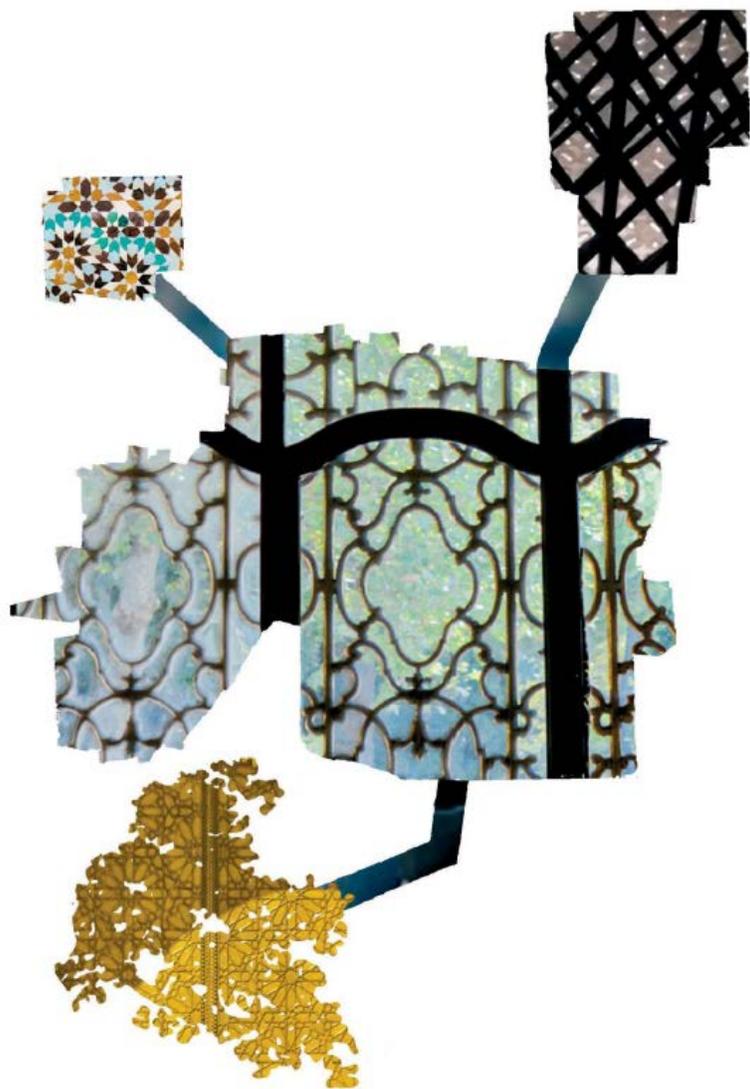
7. CROSS-CULTURAL COMMUNICATION

In Chapter 3, we stated the prerequisites of the decision-aid, highlighting – among other things – the importance of knowledge of cross-cultural communication when assessing reliability. As the officer and applicant in migration cases often come from different cultural backgrounds, the applicant's statement becomes a result of so-called cross-cultural communication. There are some risks involved in making a reliability assessment of such a statement. Knowledge of these risks is therefore necessary in order to ensure that the reliability is assessed in a nuanced way. In this chapter, we will present the relevant and research-based knowledge of some such risks. Although we will provide specific examples below, it is important to be aware that the knowledge presented here is more general compared with that in the previous chapter. We would therefore like to stress that, where possible and where there is a requirement to do so, individual officers should themselves seek knowledge for the specific case (in the Migration Agency's database for legal and country of origin information or other sources).

6.1. What is culture?

The term *culture* has a number of different meanings. In the decision-aid, we define culture as social information that is identical and shared within a group of people in a certain environment. The social information may, for example, be social norms and ideas. This can be illustrated by comparing the term with the various layers of an onion. The outermost layer represents explicit aspects of culture, such as behaviour and artefacts (i.e. objects or other products created by people). The innermost layer illustrates silent, intuitive compliances – for example, things that it is taboo to discuss. Between these layers sit the values, norms and rules. The various layers of culture interact and can be difficult to separate from each other. It is also the case that each layer has a different relevance in different contexts. During cross-cultural communication – for example, at an interview in a migration case where the investigator and applicant have different cultural backgrounds (i.e. come from different cultural environments), the various layers can come to the fore.

We will use an example to clarify what this can mean.

Example 2:

Samira is applying for asylum and is interviewed by a case officer at the Migration Agency. Samira sees the case officer as a person in authority and therefore acts in a deeply respectful and controlled way, keeping her statements brief. Samira's behaviour represents the explicit aspects of culture, i.e. **the outer layer of the onion.** *This behaviour is based on Samira having cultural values, norms and rules – i.e. the* **middle layers of the onion** *– that state that she should conduct herself in a deeply respectful, controlled way when communicating with people in authority. Samira therefore also withholds information that she has been subject to honour violence in the family. The* **innermost layer of the onion** *in this example is the 'feeling in her bones' that Samira has gained through the environment in which she grew up, which states that talking about such matters to a person in authority is taboo.*

6.1.1. The cultural schema

The analogy with the onion shows that the cultural information in our consciousness affects the content and wording of our communication. Cultural values, norms and rules (the middle layers of the onion) are represented in cognitive terms in accordance with something called *the cultural schema.* Scripts, which we described in section 4.3., are a type of schema. While scripts are expectations of how, for example, a visit to a restaurant will proceed, a 'schema' is a more general concept of how we sort and store information cognitively. A schema is based on us having experienced certain regularities in our environment, allowing us to process information more efficiently. We can therefore talk of so-called 'silent knowledge'; for example, we may have a schema whereby we unconsciously know that we can exchange money for goods in a shop. We do not need to waste cognitive energy giving conscious thought to this when we enter the shop. Another example of information stored in a schema relates to the expectations of what we need to do in specific situations. In summary, based on our definition of the term 'culture', a *cultural* schema is a way of thinking that is highly similar within a group of people who live, or have lived, in a certain cultural environment.

Our cultural schemas act as templates for how we should behave

Cultural schemas come to the fore in social interaction between people, as in the example with Samira. Such schemas are necessary for social interaction as they provide us with a template for how we should act in relation to other people. In the example above, Samira had a cultural schema for

communicating with officials and authorities. The cultural schema in question is built on her previous experiences – for example, in her home village, or in her dealings with authorities. The schema colours her interaction with the case officer and affects the exchange of information between them. The statement, which will form the basis for an assessment of reliability at a later stage, is thus influenced by the fact that it was communicated in a cross-cultural situation.

6.2. Styles of communication
Culture influences the way we express ourselves

When people from different cultures meet and communicate, for example during an interview in a migration case, this can give rise to what are known as cultural clashes. This can happen when an applicant's cultural schema regarding how to behave in that situation is different from what the officer expects. *Style of communication* is an anthropological term that is important for understanding cross-cultural communication and cultural clashes. Different people have different ways (styles) of communicating and expressing information. These styles of communication are often unconscious and originate in the cultures we have grown up in; our styles of communication vary from culture to culture. A person's style of communication, for example that of a Swedish Migration Agency case officer, may affect what the case officer expects from the way an applicant communicates and expresses information. In cases where communication is cross-cultural, there is a risk of different styles of communication leading to misunderstandings. The following three sections describe what can happen when such misunderstandings happen, and what the case officer can do to minimise this risk.

6.2.1. 'Telling the truth' and 'telling everything'
We want to come across as believable

An example of a situation when styles of communication are relevant is when an applicant for asylum is asked to 'tell the truth'. The vast majority of us want to come across as believable, and we therefore tend to adapt our style of communication in order to achieve this aim. We adapt it through the information we give, the information we leave out, and how we give an account. This tendency varies from person to person and from situation to situation. When an applicant is asked to 'tell the truth', the statement may be affected by cultural schemas about what the applicant considers it socially expected or desirable to say. Because of this, applicants will adapt their style of communication in order not to appear rude, ignorant or uncooperative. This

should therefore be taken into account when assessing the results of an interview.

The applicant may find it difficult to know what is considered relevant information

Even the meaning of the instruction to 'tell everything' can vary depending on the cultural schema and affect how much an applicant is prepared to say and the details he or she is prepared to give. Styles of communication may be adapted by talking in full about some matters but only in part about others. Some matters may be left out entirely. The form in which the account is given may also change. The applicant may be fully prepared to give a detailed account, but it may also be the case that the applicant becomes suspicious of the investigator for some reason and therefore decides to keep it brief. It may also be difficult for some applicants to understand what details are considered relevant and how they are expected to present them, i.e. what the expected style of communication is. Some applicants, for example, may be genuinely willing to provide information during an interview and be convinced that they have said everything on the basis of their cultural expectations and style of communication. In spite of the genuine willingness of such applicants and their perception that they have 'told everything', an interviewer will not necessarily have the same view. This may be because the investigator expects a different style of communication for the information provided.

Clarify what is expected of the applicant

There is unfortunately no simple recipe for Migration Agency officers to handle the fact that the meaning of 'telling the truth' or 'telling everything' varies from individual to individual and from culture to culture. However, as highlighted above, we do recommend that the investigator should, at the start of the interview, clarify the purpose of the interview and emphasise the importance of recounting everything that could be relevant to the application. Giving a cursory presentation of the purpose of the interview at the start and then immediately starting to ask questions is therefore not recommended. A clear explanation of the interview's purpose and a real opportunity for the applicant to ask questions, both before and during the interview, are required. Furthermore, towards the end, applicants should be given the necessary time to complete their statements.

6.2.2. Cultural variations in emotionality and verbality

Anthropological research on cultural styles of communication shows that, during asylum hearings, there are often expectations or even requirements for

emotions to be restrained 'just enough', i.e. for the *emotionality* displayed to be in line with the investigator's style of communication. It is often expected that the account will be structured and it is assumed that the applicant will be able to put words to experiences, problems, thoughts and even details of a more sensitive nature – i.e. the applicant is expected to demonstrate well-developed *verbality*. Table 5 shows four different types of style of communication, which vary in emotionality and verbality.

Table 5 also gives examples of geographic locations that can be linked to each style of communication, but of course there are also variations between individuals from the same area. Clearly, not everybody from East Asia has a restrained and indirect style of communication, and a person from Central America will not necessarily communicate with an expressive and direct style. The references to geographic areas should therefore be seen as tendencies and not as definitive areas of distribution.

Table 5. Emotionality and verbality

Expressive emotionality

Direct verbality
A tendency to give concrete responses to questions, put words to emotions and to do so with empathy (common in parts of Southern Europe, the Middle East and Central America)

Indirect verbality
A tendency to reply to questions with indirect answers, e.g. containing strong expressions of emotion to emphasise seriousness and sincerity (common in the Arab countries of the Middle East and North Africa)

Restrained emotionality

Direct verbality
A tendency towards objective reasoning without expressions of emotion (common in the Anglosphere)

Indirect verbality
A tendency to give cautious, veiled answers and to deal with problematic questions by referring to metaphors (common in East Asia)

Emotionality and verbality may also play a part in how well a person's style of communication fits a particular interview situation. In general, it may be said that many applicants' styles of communication are not adapted to the expectations and underlying requirements that they meet during the migration process. It is probably more common for applicants in Sweden to have a more expressive style of communication, while the interview situation assumes that the style of communication is relatively restrained. The same applies to verbality: it is not a given that applicants will be as verbal in their style of communication as officers expect them to be. These circumstances show how important it is for the officer to bear these potential differences in mind when meeting with the applicant in order to avoid misunderstandings and false conclusions.

6.2.3. Cultural variations of power distance
Difficult to call attention to misunderstandings

In many of the cultures that applicants come from, it is not acceptable to question authority. There is therefore a risk that applicants will have cultural schemas that make it difficult to criticise or call attention to problems or misunderstandings. The migration process inherently involves a balance of power between the officer and the applicant, which is reinforced if the applicant has cultural schemas that make it difficult to communicate with authority figures. Variation in the educational backgrounds of different applicants is also relevant in this context. Those with a low level of education may, for example, be afraid of not understanding the questions that are asked and feel uncertain about what is, or what is considered to be, the 'right' answer. These risks can be described and nuanced with the help of the term 'power distance'.

Table 6. Power distance

Lower power distance

Societies with a lower power distance tend to be less hierarchical and more focused on equality. These are seen as 'flatter' societies. Power relationships are expected to be democratic and inclusive for the individuals in society. People from societies with a lower power distance tend to have a greater mistrust of authority and be more critical.

Higher power distance

Societies with a higher power distance are more hierarchical. Individuals are expected to follow orders and take the initiative less. It is older people and/or authorities who are allowed to take the initiative. People from cultures with a higher power distance will

surrender responsibilities, decisions and initiative to leaders or authorities to a greater extent.

In a society or culture, members expect and accept a certain unequal distribution of power. However, expectations and acceptance vary from society to society. In anthropological research, this is known as a society's power distance (see Table 6).

Power distance can influence the oral hearing

The significance of power distance and belief in authority should be taken into account particularly when applicants come from areas with a high power distance. Examples of higher power distance can be found in the Arab world, the Middle East (e.g. Turkey, Iran, Afghanistan, Azerbaijan) and East Asia (e.g. China, Thailand, Vietnam, Myanmar), but variation between individuals from these areas can be high. However, there is a tendency for people from these areas to find it less acceptable to challenge or question authority, which may mean that they find it more difficult to supplement or raise objections against written statements and interpretations from interviews, for example, as this may be perceived as 'not allowed' or shameful. If the applicant finds it difficult to provide supplementary information or to raise an objection, for example as a result of the applicant's assumption of the need to keep the interpreter or officer 'happy', there is a risk of relevant information being withheld. The example below shows how power distance can be expressed.

Example 3:

Aisha comes from a village in Iraq. She lives with her mother, who is a widow, and an uncle and his family. In the oral hearing, Aisha finds it difficult to speak out voluntarily, thereby passing responsibility for making sure that relevant information is presented on to the investigator. For example, she may be waiting for the investigator to ask a question before she says anything. Despite having been asked several times to give a free recall, it is difficult for Aisha to see her role and her importance in the oral hearing.

Even if the interviewer starts by saying that it is important for the applicant to 'say anything that might be relevant', the influence of the cultural schema may make this difficult. The balance of power between the investigator and the applicant may be reduced using the kind of trust-building actions we described in Section 3.2.2., such as respectful body language and clarifying questions when the applicant does not understand. If the applicant does not

present certain information until later in the interview, this may be because it is only then that the investigator has gained the applicant's trust.

6.3. Cultural variations in terminological systems

As well as the problems that can be caused by different styles of communication when examining migration cases, there is also a risk of misunderstanding in cross-cultural communication due to cultural variations in terminological systems.

The meanings of different terms vary from culture to culture

Applicants may come from cultures with different categorisations of things and events from those used by the investigator or interpreter, and the way they use language to talk about them may therefore also be different. Anthropological research has shown that this is the case, for example, for terms describing body parts and terms to refer to family members. When applicants talk about their families or their bodies, there is therefore a risk of misunderstanding. Such misunderstandings influence the statement and are thus significant for the assessment of reliability. To illustrate this, two real examples are given from a Tamil context that has been described in anthropological research.

Example 4:

*A Tamil asylum seeker was considered to have provided contradictory information regarding what **body part** a bayonet cut had been inflicted on. Was it a foot or a leg? However, the contradiction did not arise because the applicant's statement about the bayonet cut was fabricated, but because the Tamil language does not distinguish between 'foot' and 'leg'.*

Example 5:

*From the same Tamil context, reliability was deemed to be low because it was considered that an applicant had spoken in an unclear way about close **family members**. However, Tamil has more specific terminology for brothers: it uses one term for 'older brother' and another for 'younger brother'. The reason for the unclear statement was therefore due to a variation in cultural terminology and not because the statement was fabricated.*

Knowledge of cultural differences in meaning promotes a fair assessment of reliability, particularly when working with interpreters. As well as changes in the meanings of terms between different cultures, misunderstandings can also arise when the parties involved use different calendar systems and/or have different perceptions of time.

Perceptions of time and calendar systems vary from culture to culture

Unfortunately, research from England shows that (at least in asylum contexts in England) trick questions about times and dates are common and that replies to such questions are often used in assessments of reliability. There are international studies that point out that vagueness regarding dates and times is one of the most common forms of perceived contradiction in asylum cases. This vagueness can also cause the statement to be deemed to have a low degree of reliability. We therefore wish to highlight the associated risks further.

We work on the basis that trick questions of this type should be avoided. Trick questions can lead to vague and/or contradictory replies from applicants, and there is an imminent risk that these replies will be held up as grounds for low reliability. Contradictions in statements may result from the investigator and the applicant, with or without an interpreter, having different perceptions of time and/or calendar systems, for example. A number of applicants come from cultures in which they have learnt to specify time in a different, more general and less precise way (e.g. in South Asia, the Middle East and certain Arab countries), which can lead to vagueness. It is also likely that applicants from rural areas or applicants with lower levels of education will tend to refer to general times such as during the day or in the early or late morning rather than the precise time of a specific event.

The applicant may also use a different calendar system and division of months from the system used in Western countries (the Gregorian calendar). This can cause problems with questions about the dates of family events, birthdays of family members or dates of arrests or torture, for example. Applicants may, for example, come from cultures that do not use our calendar system, where months are divided up differently in ways that can only be partially translated (for example, in India, Sri Lanka and the Middle East). It is easy for confusion, uncertainty and vagueness to arise in information on events when an applicant does not count time in the same way we do with the Gregorian calendar, or is not used to dividing it up in that way.

As a result of these potential cultural variations regarding perceptions of time and calendar systems, we recommend that, if it is important to specify points in time in a specific migration case, the case officer should determine the calendar system that the applicant uses and ask how the applicant tends to refer to time.
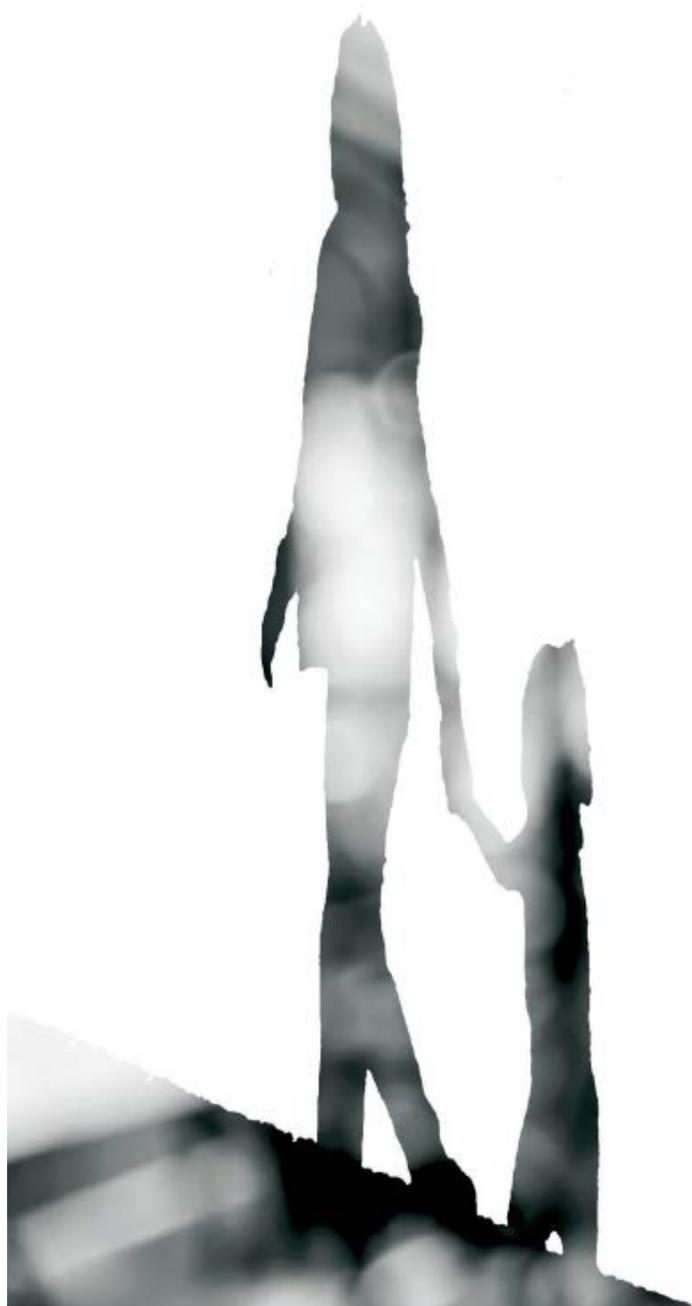
7. EVALUATING CHILDREN'S STATEMENTS

There is a range of cognitive and social factors that can influence the capacity of children and adolescents to talk about what they have experienced. Because children's cognitive development is gradual, there are a number of considerations to be made when assessing statements made by children and adolescents. Knowledge of memory is fundamental for those assessing a statement made by a child or an adolescent. Our memory and language abilities develops gradually during childhood, as does a child's ability to recount an event correctly. The older the child becomes, the more information the child can provide. However, given the right conditions, such as asking questions that are adapted to the child's age and developmental level, children as young as three or four can provide brief, reliable statements about things they have experienced.

7.1 Children's memory ability
Younger children give shorter statements

Preschool-aged children (around 3–6 years old) are not able to hold as much information in their memory as older children and adults. They also have less prior information that can help them understand what they are experiencing. This means that small children often make shorter statements with fewer details than older children and adults. It also means that younger children may find it difficult to give a free recall even if it has only been a short time since the event took place.

The fact that young children provide briefer and less detailed statements is also because they do not yet have the full ability to form continuous memories. They can talk about an event, but they cannot situate it at the right time, in the right place or in the right context. An example of this is that preschool-aged children often talk about events as if they had happened yesterday even if they happened six months ago. This is not necessarily because they believe that the event happened yesterday, but 'yesterday' may be the best term they have available to them to describe the past. In fact, children of preschool-age are thought to be able to remember events that took place relatively far in the past. The problem is that they often have difficulties describing the event. People talking to young children should therefore not expect their statements to be as long and detailed as those of older children or adults.

Specific details are more difficult for younger children to remember

Regardless of age, children seem to remember central details better than peripheral details, just like adults. However, younger children find it more difficult than older children to recall specific details. There is also a greater risk that younger children will associate a detail derived from a particular event with a completely different event. As has already been described, memories of repeated events can be stored in scripts, and young children's scripts usually contain fewer details than those of older children.

Increased knowledge and experience produces longer statements

Our memory ability develops with age, and children will generally remember events better the older they are. At early school age (around 7–11 years), children's statements about events they have experienced are generally more detailed and their statements contain more contextual, perceptual, spatial and temporal information compared with those of preschool-aged children (see 5.2.). From approximately the age of about 12 years of age, children largely remember in the same way as adults. Of course, there may be significant individual variations, but children of that age tend, like adults, to have the ability to think logically and abstractly, handle several concepts at once and predict the future consequences of their actions.

Although children in their early teens can often recount events they have experienced in the same way as adults can, they lack the knowledge and life experience that can guide them to make the right decisions, for example when making a statement. Knowledge and experience of different events are important conditions for understanding and storing information in our memory, it is also important in allowing us to recount the events we remember. Research has shown that, at a stressful doctor's examination, children (of both preschool and school age) who had the examination explained to them in advance remembered it significantly better than children who were not told anything about the examination in advance.

As their age increases, so does children's level of knowledge, and they develop more strategies for storing information in their memory. This happens continuously during childhood and all the way into adolescence. When assessing statements made by children and adolescents, it is important to reflect on whether the children can be considered to have a knowledge of what they are being asked or whether they are talking about events they have not properly understood. It is also important to ascertain whether the children took part in the events they will be describing or only witnessed them. Research

shows that children remember events they took part in themselves better than events they only witnessed. The capacity of adolescents to remember and talk about events is often comparable to that of adults. During the teenage years, however, big changes take place, both physically (sexual development) and psychologically (identity development), which make the adolescent more vulnerable and more susceptible to influence from social and emotional factors. Moreover, adolescents do not have the same capacity as adults to make decisions, assess risks, see the bigger picture or plan for the future. This is often reflected in risky decisions and also in the fact that adolescents' reasoning can at times be regarded as entirely logical and at times as fairly irrational.

7.1.1. Children's memory of trauma

Research has shown that children, like adults, remember traumatic sequences of events and that they remember central details better than peripheral ones. By examining interviews with children of different ages (3–17 years old) who have witnessed murders, homicides or similar, researchers have been able to establish that most children (including younger children) tend to give complete statements when it comes to crucial details. The main difference is that older children report more details than younger children. These are primarily details of their own thoughts and emotions (e.g. 'I was scared'), the perpetrator's emotions and utterances (e.g. 'He was angry') and details of how the victim reacted (e.g. 'She was crying').

There is a gap between what children remember and what they tell

Children tend to remember traumatic events well, but the problem is that they often do not want or dare to talk about them. One factor that makes it difficult for children and adolescents to talk about violence, trauma and abuse is their relationship with the perpetrator. Studies have shown that children who have been subjected to different types of abuse within their family (or by people with close links to their family) often blame themselves for the abuse. In order to understand what is happening and why it is happening, it is easier for the child to think 'It's my fault that this is happening'.

These feelings of guilt make it difficult for the child to talk about the abuse, and it is often necessary to have several conversations with a child whom will be talking about emotionally difficult events.

It takes time for a child to produce a detailed statement because it takes time to build trust to the investigator. Even if there is trust, it may be difficult for both younger and older children to talk about sexual abuse. They can talk in

detail about the context surrounding it, but be unwilling to talk about the abuse itself. For example, they may leave out sexual information and minimize the severity of the abuse. Even older children and adolescents tend to withhold information or deny the traumatic events if they have some relationship to the perpetrator. In interviews with children and adolescents, this may be expressed through responses like 'I don't remember' or 'I don't know' when asked direct questions about the abuse. However, research has been able to differentiate between children who do not remember abuse and those who remember it but choose not to talk about it. Those children who do not remember abuse are the very youngest, those who were asleep and those who were drugged during the abuse. However, those who remember the abuse but have chosen not to talk about it often have strong emotional reasons for making that choice. They are suffering from shame and feelings of guilt; they are loyal to or dependent on the perpetrator; they are afraid of the consequences of disclosure, and they lack trust in adults and the legal system.

Children find it easier to talk about violence than about sexual abuse

Violence is not as taboo as sexual assault; nor does it appear to give rise to the same feelings of shame and guilt. Research has shown that children find it easier to report and talk in detail about violence compared with rape. However, it should be noted that children who have grown up in an environment where violence is common but where it is forbidden to talk about it may, just like children who have been subjected to sexual abuse, be very reticent about what they have witnessed or been subjected to.

7.2. Interviewing a child
Children must be given the opportunity to provide a free recall

Interviewing people who have had difficult experiences is always a challenge, and it is especially challenging to interview a child. Just as with interviews of adults, it is important for the investigator to establish contact and build the child's trust. This can be done by talking about a neutral subject such as favourite games, toys or activities. If the child has limited linguistic ability, this can also be done through interactive games, such as drawing something together with the child. Before the child is interviewed, it is important for the child to find out the purpose and framework of the interview. For example, it is important to make it clear to the child that he or she is allowed to say 'I don't know', 'I don't understand' or 'I don't remember'. Children, particularly younger children, have a tendency to want to please the investigator and to answer questions even if they do not know, understand or remember. Children may therefore invent answers to questions because they

think that the important thing is to give an answer. It is therefore important to allow them to give a free recall, and to ask them open questions even though children tend to give shorter statements and answers than adults. Children must be given the opportunity to recount their memories from their own perspective. Otherwise, there is a significant risk that they will construct their statements based on the investigator's questions.

The interviewer must also make it clear to the child that it is OK to talk about what the child has experienced – that there are no wrong answers and there is nothing that it would be bad to talk about. Otherwise, there is a clear risk of the child censoring information and leaving out details that he or she does not think the interviewer wants to hear (e.g. about sexual abuse or other taboo subjects). The same information also needs to be given to an interpreter, if there is one present, so that the interpreter does not censor information but rather translates exactly what the child says. Having an interpreter present during child interviews is of course challenging, not least in cases where the child has an insufficient vocabulary. The interpreter may, with the best intentions, attempt to help the child by simplifying the questions and elaborating on the answers. It is extremely important that the interpreter receives clear instructions to translate everything verbatim, even if the child's answers are incomplete or incoherent.

Being interviewed can be a stressful experience for both younger and older children, and breaks are often necessary. How long an interview can go on without a break varies from case to case. It is often clear when it is time for a break as the child starts to become tired and unfocused. As a rule, pre-school children need to take breaks more often than older schoolchildren, who (if they have attended school) are more used to sitting still for longer periods. For children who cannot, do not want to or are not prepared to answer questions, a short break may not be sufficient; it may become necessary to stop the interview and continue at a later time.

## Children are sensitive to non-verbal communication

Compared with adults, children are more sensitive to non-verbal communication. It is therefore important for investigators to try to remain neutral and not to show their reactions to what the child is saying. If the investigator shows mistrust, the child may stop talking or change their statement because it is not good enough. If the investigator is too positive (e.g. nods in a very encouraging way), the child may make up additional information to please the investigator. Repeated questions may have a similar effect. If the same question is asked several times, the child may give a

different answer, having interpreted the repetition as evidence that the first answer was wrong.

Children may need guidance in recounting events

Preschool-aged children may need a certain amount of guidance in order to talk about an event, and may find it difficult when replying to open questions to describe what they have experienced or witnessed. At the same time, they tend to respond impulsively to yes or no questions. One way to try to get around this problem is to tell children clearly what to talk about – for example: 'Tell me about how you and your family came here to Sweden' – and how you want the child to talk about it: 'I want you to tell me everything you remember, even small details that you might not think are that important, because those could be important to me so I can understand what your journey was like'. This is something that is also useful to do with older children and adolescents.

The ability to retrieve information from memory is dependent to a large extent on children's linguistic ability: not only the ability to talk about an experienced event, but also the ability to understand the questions that are asked. This means that it is important for those working with interviewing children to consider the child's linguistic abilities. For example, children under the age of three should rarely be interviewed because they have a limited vocabulary. Those interviewing preschool-aged children (3–6 years old) should adapt their language to the child's level and be careful not to use words that the child may not understand. Even children of school age (7–12 years old) may have a limited vocabulary, particularly children who did not go to school in the country where they lived. In brief, by building up a relationship, talking about neutral topics and getting to know the child a little before the interview itself starts, the investigator can gain a better understanding of the child's age, maturity and ability to answer questions, and then adapt the interview accordingly. This requires flexibility and patience. However, if the purpose of the interview is to obtain information and to be able to assess the reliability of the statement on the basis of that information, then that is what is required.
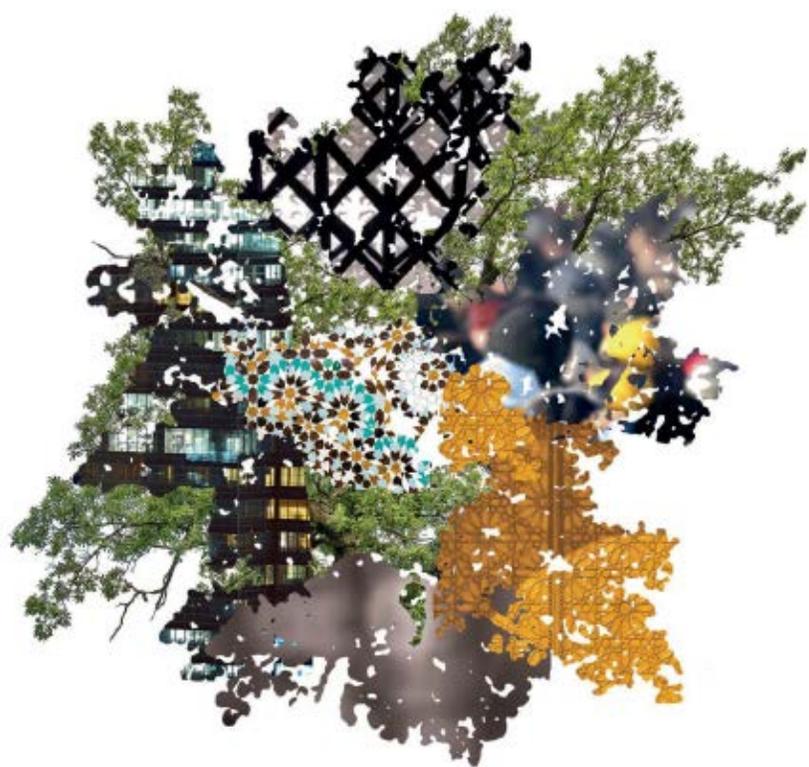
8. SUMMARY

The primary aim of the decision-aid has been:

to provide scientifically founded knowledge in an accessible way with relevance for assessing the degree of reliability of an oral statement.

In order to achieve this aim, we have been guided by four fundamental principles. These principles can be seen as the four legs of the decision-aid. The first fundamental principle is that assessments of reliability in oral statements should be regarded as a form of evidence assessment, and in Swedish law the principle of free evidence assessment applies. This means that the assessment should be made in accordance with current knowledge theory, which in this case should be equated to knowledge of the psychology of memory and legal psychology. The decision-aid has taken this into account by referring to current and relevant knowledge of the psychology of memory and legal psychology. Secondly, there are good reasons to remain humble in the face of the task of assessing oral evidence. The decision-aid makes it clear that there is no simple recipe for determining the degree of reliability in an oral statement. Our third fundamental principle is that assessments founded on research-based knowledge of the psychology of memory and legal psychology will be more nuanced and correct than assessments founded on subjective perceptions. In brief, the way to ensure the legal certainty of assessments is through evidence-based knowledge and not homespun assessment rules. We have expressed this in the decision-aid by being very clear about which reliability criteria are supported by research and which ones are not supported. Fourthly, it is important for us to be clear that, even if the assessments that are made are founded on evidence-based knowledge, there is no guarantee that an individual assessment will be correct. However, with the help of evidence-based knowledge, a larger number of the many assessments made over a long period of time will be correct than if that knowledge is neglected.

In summarising the decision-aid, we would like to highlight another couple of aspects. We have made it clear that the way to ensure the legal certainty of the assessment of an applicant's statement is through assessments of reliability (what the applicant actually says) and not through assessments of credibility (how the person comes across). Throughout the decision-aid, we point out the importance of those whose job it is to assess reliability have acquired at least a basic knowledge of the psychology of memory. This is important because assessing reliability requires the consideration of a number of different aspects of the psychology of memory. One example of an area within the psychology

of memory that requires additional insight is the way in which different forms of trauma affect how our memory functions. In the decision-aid, we make it clear that research has shown that we often remember traumatic events well, but that it can be difficult to talk about traumatic experiences. This means that it is not unusual for there to be a gap between (a) what applicants remember and (b) what they actually say. It is a major challenge for the interviewer to attempt to reduce this gap by means of various approaches, and primarily by building trust. The decision-aid also highlights a number of other important links between the interview situation itself and the subsequent assessment of reliability. Since it is during the interview that the basis for the assessment of reliability (the applicant's account) takes on its appearance and shape, the interview must be maintained at quite a high quality level. To allow for a nuanced assessment of reliability with legal certainty, applicants must be given the opportunity and the necessary help to retrieve their authentic memories.

A large portion of the decision-aid is dedicated to the discussion of various criteria for the assessment of reliability, and two criteria that are given particular attention are *level of detail* and *consistency*. Both of these criteria may be of value when assessing reliability, but it is also important to be aware of how they should be applied and of how they should not be applied. The support document makes it clear that most criteria can be applied in several different ways, and that it is not unusual for only some of these possible modes of application to be supported by research. The support document also notes the need for considering different cultural factors, both in the interview itself and when assessing the reliability of the statement.

It is our hope that our document will provide support for the difficult but necessary task facing the officers of the Swedish Migration Agency with regard to assessing the reliability of oral statements.

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DEPARTMENT OF PSYCHOLOGY

Box 500, 405 30 Gothenburg, Sweden