FIRST-TIER TRIBUNAL
ASYLUM SUPPORT

2nd Floor
Anchorage House
2 Clove Crescent
London
E14 2BE

Telephone: 020 7538 6171
Fax: 0126 434 7902
Appeal Number AS/15/05/33112
UKVI Ref. 05/12/01304/004
Appellant's Ref.

IMMIGRATION AND ASYLUM ACT 1999
THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)
(SOCIAL ENTITLEMENT CHAMBER) RULES 2008

Tribunal Judge	Mrs Sehba Haroon Storey
Appellant	Mr MA-A
Respondent	Secretary of State

STATEMENT OF REASONS

1. This Statement of Reasons is made in accordance with Rule 34(1) of the Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the 2008 Rules), and gives reasons for the decision given on Friday the 29th day of January 2016, dismissing the above mentioned appeal.

2. The appellant is a citizen of Ethiopia born on 24 August 1989, and appeals against the decision of the Secretary of State who, on 7 May 2015, decided to discontinue the provision his Asylum Support under Section 4 of the Immigration and Asylum Act 1999, (the 1999 Act). The Secretary of State contends that the appellant no longer satisfies the condition of entitlement in Regulation 3(2)(e) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (the 2005 Regulations).

IMMIGRATION HISTORY

3. According to the Secretary of State's reasons for refusal of asylum letter dated 12 January 2006, the appellant claimed to have left Ethiopia on 17 April 2004 and travelled to Sudan where he stayed for three days. He stated that he left Sudan and travelled to Libya and stayed there for a while, leaving Libya in August 2005. He stated that he then travelled to Italy, and from there to France and finally arrived in the United Kingdom on 9 December 2005. The appellant's claim for asylum in the United Kingdom was based on his fear of persecution in Ethiopia on account of his father's involvement with the government. He claimed that his father was a high ranking government soldier who was arrested

by the Ethiopian government in 2003 because he was opposed to the government. He claimed that his father was killed by the government, and that in 2004, they were responsible for arresting his brother for alleged involvement in a disturbance in Addis Ababa, where several people were killed. The appellant maintained that he did not personally support any political party in Ethiopia and that he had never been arrested or detained for any reason. Nevertheless, he claimed to have left Ethiopia because of fears that the government would arrest him. In the course of his asylum interview, it is said that the appellant was unable to provide any satisfactory evidence to substantiate his claim for asylum and it was believed that he had fabricated the account of his father's involvement in politics in order to enhance his asylum application.

4. The appellant appealed against this decision and his appeal was heard by the First-tier Tribunal, Immigration and Asylum Chamber (FTT-IAC) on 8 June 2006, and dismissed on 14 June 2006. The Immigration Judge (IJ) accepted on the strength of a medical report from Dr Mitchie, Consultant Paediatrician, that the appellant was born on 29 August 1989 and he was probably a minor at the date of his asylum interview and the hearing.

5. As to the substance of the appellant's claim, the IJ rejected that his father and brother had engaged in anti-government activities and concluded that the appellant had fabricated or embellished a number of aspects of his account in support of his asylum application. In particular, the IJ rejected his claim that his sister had fled to Kenya, his evidence concerning the unrest in Addis Ababa, his claims concerning his father's membership of AAPO and that his mother had been threatened. In relation to the appellant's journey from Ethiopia, the IJ noted that despite his claim that he had travelled through Italy and spent four months in France, the appellant had failed to claim asylum in either country. The IJ made allowance for the fact that he may have had difficulties recalling some details of events given his claimed age, but rejected the main core of his claim as inconsistent and incredible. She concluded that the appellant had "greatly fabricated and embellished his claim."

6. The appellant applied for reconsideration of the FTT-IAC decision under Section 103A of the Nationality, Immigration and Asylum Act 2002. On 30 June 2006, his application was rejected by the Upper Tribunal (UT-IAC) because the FTT-IAC decision did not disclose any arguable error of law. The appellant applied for a High Court review and this was refused on 5 July 2006. The appellant became appeal rights exhausted on 17 July 2006.

7. On 28 July 2006, the appellant's solicitors wrote to the Secretary of State and applied for him to be granted discretionary leave to remain in the UK until his eighteenth birthday, in line with Home Office policy in relation to unaccompanied minors. This was on the basis that the IJ had found as fact that the appellant's date of birth was 24 August 1989.

8. I do not know the result of the appellant's application for discretionary leave. There is reference in his letter of 24 August 2012 to him being supported by Swindon Social Services under Section 20 of the Childrens Act 1989. It may be that the Secretary of State agreed to provide him with support until his eighteenth birthday. I simply do not know.

9. On 11 February 2009, the appellant applied for assisted voluntary return (AVR). His application was approved on 13 February 2009, in consequence of which he was granted Section 4 Support. However, on 5 March 2009, he absconded from his accommodation and support was eventually terminated.

10. At some stage during March 2009 – February 2010, the appellant left the United Kingdom and travelled to France where he remained for possibly four months. On 1 March 2010, he returned to the United Kingdom and was detained on arrival. He applied for asylum under a bogus name and claimed to be an Eritrean national. He was fingerprinted and these confirmed he had previously applied for asylum as an Ethiopian national. He was given an opportunity to admit that he had previously made a claim but continued to maintain his false account until shown his fingerprint match. At this point, he acknowledged his deception and withdrew his bogus asylum claim.

11. On 18 March 2010, the appellant's solicitors submitted further submissions, again claiming that the appellant was an Eritrean national, but these were refused and certified as clearly unfounded. The Secretary of State also set removal directions for the appellant to be returned to Ethiopia and arranged a travel document interview at his Embassy. On 16 June 2010, the appellant was interviewed by an official at his Embassy but told the official that he was in fact Eritrean. Not surprisingly, the Ethiopian Embassy refused to issue him with a travel document. As a result of his failure to cooperate, the Secretary of State has been unable to remove him to Ethiopia, apparently having attempted to do so on four occasions. In June/July 2010, he was released on bail.

12. I do not know of the appellant's movements between July 2010 and August 2012. However, on 24 August 2012, he made further representations to the Secretary of State based, once again, on a claimed fear of persecution if returned to Ethiopia. The substance of this claim was much the same as that given in his first application, which had already been rejected by an IJ. Included with his application was a medical report from Dr Carrington, dated 8 August 2012. This report highlighted that the appellant had problems with sleeping and complaints of stress. The report stated that the appellant had been prescribed Trazadone.

13. On 8 November 2012, the Secretary of State considered the medical evidence but rejected the appellant's claim that his need for medical treatment entitled him to remain in the UK, because it was not exceptional, and because appropriate treatment was available in Ethiopia. She rejected the appellant's further submissions because they did not contain any material that had not already been considered and taken together with the previously considered material, they did not create a realistic prospect of success.

ASYLUM SUPPORT HISTORY

14. The appellant was granted Asylum Support (support) under Section 95 of the 1999 Act on 15 December 2005. This support continued until 21 July 2006 (save for 20 February – 20 March 2006, when his support was terminated). Thereafter, the appellant received support from Swindon Social Services. In February 2009, he applied for Section 4 Support, on the grounds that he was taking all reasonable steps to leave the United Kingdom under the Voluntary Assisted Returns and Reintegration Programme (VARRP). However, the information before me suggests that he absconded in March 2009, but Support was not discontinued until 28 October 2009.

15. I do not know where or how the appellant was supported from 28 October 2009 to June 2014, save that he appears to have been in detention between his date of re-entry into the United Kingdom on 1 March 2010 and his release on bail in June/July 2010.

16. On 18 June 2014, he applied again for Section 4 Support, on this occasion under Regulation 3(2)(b) of the 2005 Regulations because he claimed he was unable to leave the United Kingdom by reason of a physical impediment to travel or some other medical reason. On the strength of the medical evidence provided by the appellant, the application was granted on 30 June 2014. On 4 December 2014, the respondent reviewed the appellant's case and on 16 January 2014, she discontinued his support because the Home Office's medical advisor considered that there has been a relevant change in circumstances, in that the appellant was now fit to fly and return to Ethiopia.

17. The appellant's appeal against the decision of 16 January 2014 was heard by an Asylum Support Judge (ASJ) on 29 January 2015. The appellant was represented by the Asylum Support Appeals Project (ASAP) on instruction from the Citizens Advice Bureau. The ASJ remitted the case to the Secretary of State because she did not receive all the documents upon which the respondent's decision was based. The ASJ also recommended that further evidence should be obtained from the appellant's psychiatrist.

18. On 25 March 2015, the Secretary of State again discontinued the appellant's support on the grounds that he no longer satisfied the requirements of Regulation 3(2)(b) of the 2005 Regulations. At the hearing, on 13 April 2015, the appellant was represented by Mr. Amunwa (Counsel), instructed by ASAP (on behalf of Asylum Aid). The ASJ was satisfied that the respondent had discharged the burden upon her to show a change of circumstances justifying a discontinuation of Support under Regulation 3(2)(b). He rejected the appeal under Regulation 3(2)(b). However, the appeal was allowed under Regulation 3(2)(e) because the ASJ accepted assurances from Ian Kane, Asylum Aid's Legal Services Manager, (letter dated 10 April 2015), that Asylum Aid were actively pursuing a fresh claim on the appellant's behalf. Asylum Aid had also stated in their letter that they were taking the necessary and appropriate steps to obtain information from the appellant's medical advisers so that submissions could be lodged with the Home Office.

19. On 7 May 2015, the Secretary of State, discontinued the appellant's Support, because the further submissions referred to by Asylum Aid and ASAP at the hearing on 13 April 2015 had not materialised. At the hearing on 29 May 2015, Ms. Dixie of ASAP relied upon a Care Plan dated 15 April 2015 and argued, that the appellant's representatives should be given additional time to collate the evidence upon which to base the appellant's further representations. Noting the very little progress made in submitting further representations in the 46-day interval since his last decision, the ASJ rejected the appeal on 1 June 2015.

20. The appellant applied to set aside the decision of 1 June 2015, on the grounds that the decision was unreasonable. As none of the conditions in Rule 37 of the 2008 Rules was met, the set aside application was refused on 4 June 2015.

21. On 5 June 2015, the appellant commenced judicial review proceedings. In his detailed statement of facts and grounds, it was submitted that the ASJ had failed to inform the appellant of the reasons for his decisions of 13 April and 29 May 2015. It was also said [at paragraphs 29 and 38] that the ASJ delayed the production of his Statement of Reasons for both decisions. In fact, the ASJ had promulgated a seven-page Statement of Reasons for his decision of 13 April 2015 on 14 April 2015, and a six-page Statement of Reasons for his decision of 29 May 2015 on 1 June 2015. Conversely, no attempt was made to explain in a detailed statement of facts and grounds, why, having received the Care Plan dated 15 April 2015 from the appellant's psychiatrist, Asylum Aid failed to make further contact with the psychiatrist until 13 May 2015.

22. In any event, on 29 July 2015, the appeal was remitted by consent, by the Administrative Court, for hearing *de novo* because it was conceded that the ASJ had applied the wrong test when considering whether the appellant satisfied Regulation 3(2)(e) of the 2005 Regulations. Additionally, it was conceded that there was procedural unfairness in that the ASJ reached his own view as to the significance of the increase in the appellant's medication without allowing the parties an opportunity to comment.

THE DE NOVO HEARING

23. Unfortunately, owing to an administrative error, the appellant's file was misplaced causing delay in the re-listing of the appeal. The appellant was not prejudiced by this error as he has remained in receipt of Asylum Support since June 2015, under the terms of a Court Order.

24. On 18 December 2015, directions were issued to the parties in preparation for the hearing of this appeal on 6 January 2016. At the hearing, I heard oral evidence from the appellant, and submissions from his representative, Ms. Dixie of ASAP and Mrs. Crozier, Home Office Presenting Officer.

25. The appeal before me relates to the decision of the Secretary of State dated 7 May 2015. That decision states:

> *"The decision to provide you with support has been made under Regulation 3(2)(e) on the basis that you appear to the Secretary of State to be destitute and are in the process of making further submissions which you intend to submit to the Home Office (see enclosed Appeal Reason Statement).*
>
> *You have been given two weeks from the date of your appeal decision 16/04/2015 to give you a chance to submit further representations or provide evidence to show that you have an appointment booked to submit your further representations. You have failed to lodge further submissions within given time.*
>
> - *You have not been given permission to proceed with application for judicial review.*
> - *Have no evidence lodged with the Home Office that you are unable to leave the United Kingdom by reason of a physical impediment to travel or for medical reasons.*
> - *Have no outstanding AVR applications lodged via Refugee Action (Choices Voluntary Return Service).*
> - *Have a viable route of return available to your home country of Ethiopia.*
> - *Have no outstanding appeals in regard to your asylum claim."*

THE ORAL EVIDENCE

26. The appellant told me that he was diagnosed with depression in 2008 but at that stage, he was not on any medication. Asked whether he had seen a medical practitioner whilst in France in 2009, the appellant initially said that he had not done so, and then added that he could not remember. Between 2008 and 2013, the appellant confirmed that he had not consulted any medical practitioners/experts concerning his mental health. He claimed he was street homeless during this period and had no help with food or medication.

27. The appellant could not remember the date when he started seeing Dr Dayson, Consultant Psychiatrist, in Southampton, but he could recall that he was prescribed medication sometime in 2013. He said that he was treated by Dr Dayson regularly until he was transferred to Dr Carter, in London. He could not remember details of his medication prescribed over the years but was able to confirm that he was taking three different medications for depression and that in the past six months, the dosage had changed. In addition, the appellant received medical care from doctors at Barry House whom he sees on a regular basis. In the last month, he said he had sought their advice on four-five occasions and on one occasion, he had been referred to Kings College Hospital but he was not admitted overnight.

28. The appellant referred repeatedly to feelings of depression and said that he also had a stomach problem for which he was prescribed medication. He had previously been treated for tuberculosis and was on medication. In June 2015, he had received one visit from the Crisis Team to check that he was "okay" but had not received any further visits.

29. The appellant confirmed that he had consulted Freedom from Torture, (formerly Medical Foundation for the Care of Victims of Torture) (MF) in September 2015, with the intention of making further submissions to the Home Office. He could not explain why in the four months since his first appointment, no application was submitted by MF on his behalf. With reference to his sessions with Maide Showell, the MF Psychological Therapist, the appellant said that he initially saw her every three weeks but then this changed to weekly appointments. He said that in the last month he had seen the therapist every week. The appellant was asked why he had failed to mention being tortured, gang raped and the witnessing of torture and rape of women and children, to any of his other treating mental health professionals since 2008, or to his numerous legal representatives since 2005. The appellant said that there were many things that he did not discuss with Dr Dayson and others. He acknowledged that he had only ever spoken of these traumas to Maide Showell because he had not wanted to speak of them, to anyone else.

SUBMISSIONS FOR THE APPELLANT

30. Ms Dixie reminded me that the decision I have to make is whether it is reasonable to require the appellant to leave the United Kingdom in order to avoid the effects of destitution. If it is not reasonable, then he is entitled to support under Regulation 3(2)(e). In her submissions, there were three reasons why the respondent should not require the appellant to leave the United Kingdom. This was because:-

    a) The respondent had not provided any medical evidence of the appellant's ability to return to Ethiopia since March 2015;
    b) The appellant had provided three Care Reports from Dr Dayson and from Freedom from Torture in support of his case. As these had not been reviewed by Dr Wilson and Dr Keen, she asked that the appeal be remitted to seek their comments;
    c) Since 17 March 2015, serious concerns have been raised about the appellant's mental health, which had not been previously considered. She referred to the fact that the appellant had been prescribed anti-psychotic medication and that medical evidence confirmed that over the years this has increased in dosage.

31. Ms Dixie further submitted, that I should pay particular regard to the various Care Plans of Dr Dayson and the medical report of Dr Davidsson, in which reference was made to a suicide attempt and the reference to a Crisis Visit following an acute incident. In her submission, the appellant was not able to take steps to voluntarily return to Ethiopia because he had a medically recognised condition and is fearful of returning to his country of origin. She maintained that Dr Dayson records the presence of suicidal ideation, his opinion that the appellant's condition would worsen if he were to be removed and that he may attempt suicide, were all reasons to justify the appeal being allowed. She asked me to find that on the medical evidence available, the removal of support was likely to increase the risk of suicidal behaviour for which he had only been treated pharmacologically and not with psychological therapy. In her opinion, if the appellant had the option of treatment from the MF, which had not been offered to him since his arrival in the United Kingdom 15 years ago, the appellant might be in a better position to return to Ethiopia.

32. Ms Dixie invited me to allow the appeal but added that if I was not minded to do so, I should at the very least consider remitting the appeal to the Secretary of State to enable further consideration to be given to whether or not the appellant was able to take reasonable steps to return. Ms Dixie referred to the case of *Shala and Another v Birmingham City Council* [2007] EWCA Civ 624 and cautioned me against relying on the evidence of Dr Wilson and Dr Keen who, unlike Dr Dayson and Davidsson, had not met the appellant. With reference to the letter from MF, Ms Dixie said that Maide Showell had identified a strong new ground to put in further submissions on the appellant's behalf and that the appellant should not be required to leave the United Kingdom until these had been considered. Asked why no further submissions had been made despite assurances having been given to the Tribunal in April 2015 that further submissions would be made upon receipt of medical evidence, and despite an abundance of medical evidence being at the disposal of representatives, including several sessions with MF advisors and therapist, Ms Dixie was not able to explain the rather lengthy oversight but assured me that there would definitely be a new claim.

SUBMISSIONS FOR THE RESPONDENT

33. Ms Crozier for the respondent, agreed that the sole issue for me to determine was eligibility under Regulation 3(2)(e). With reference to the reports of Dr Wilson, Ms Crozier acknowledged that the respondent had always accepted that the appellant had residual PTSD and was at low risk of suicide. She did not consider that this was sufficient to entitle him to support under 3(2)(e). She reminded me that there were no further representations outstanding and no additional evidence had been supplied to the Secretary of State for further consideration. She asked me to apply my decision in *AS/14/11/32141, which* she considered pertinent to this case. In relation to the additional medical evidence, Ms Crozier asked me to note that the report of Dr Davidsson and the recent correspondence from MF received on the day of hearing had not been sent to the Secretary of State for consideration.

THE BURDEN AND STANDARD OF PROOF

34. The burden of proof is upon the Secretary of State to demonstrate that there has been a relevant change in circumstances justifying the discontinuation of Support previously awarded to the appellant. Once discharged, the burden

shifts to the appellant to demonstrate his continued entitlement to support under Regulation 3(2)(e). The standard of proof is always a balance of probabilities.

THE DOCUMENTARY EVIDENCE

35. I have considered all the evidence that is before me, including the Secretary of State's bundle of evidence. I confirm that I have had regard to all the documents contained therein, notwithstanding that I may not refer to specific documents below. I have had particular regard to the reports from the appellant's treating medical experts and the comments of Dr. Wilson and Dr. Keen on behalf of the Secretary of State. I have also read the two letters from MF, both dated 5 January 2016, the day before the hearing. The first letter is from Christine Benson, a legal advisor and the second letter is from Maide Showell, MF Psychological Therapist.

36. Maide Showell, confirms in her letter that she saw the appellant for initial clinical assessment on two occasions in September 2015, and a further session on 27 November 2015. She states that the appellant told her his father and brother were arrested and killed by the authorities in his country of origin and that he was imprisoned for twenty days. He told her that he had been tortured, which included severe beatings, death threats, and degrading and humiliating treatment. He also talked to her about his journey as an unaccompanied minor when he faced and witnessed further traumas and violence including being gang raped and witnessing women and children being raped and murdered by the gang. He maintained that he was already damaged as a child because of the torture but his experiences during his journey made him feel "filthy and disgusting" and he has had a "damaged mind" since then. It is said that the appellant is very frightened of the presence of men because of his experience of torture and sexual assault, and that he suffers "anxiety attacks". These experiences have dominated his life, especially since he has been facing the threat and fear of being removed to his country of origin and the threat of destitution.

THE MEDICAL EVIDENCE

37. According to a Patient Summary sheet, the appellant was diagnosed with a depressive disorder on 1 January 2008 and with depression from 6 June 2013. Both conditions are recorded as ongoing. The notes refer to the appellant as an asylum seeker from Ethiopia in 2011 and there is a reference to homelessness on 9 July 2014, which is said to be ongoing, and to a past condition of insomnia in October 2011.

Dr Dayson, Consultant Psychiatrist

a) **23 June 2014 Care Plan** – Dr. Dayson confirmed that he had treated the appellant since May 2013 for depression with auditory hallucinations and Post Traumatic Stress Disorder (PTSD). He noted that the original trauma suffered by the appellant concerned his brother and father being killed and then seeing his best friend being shot at the border with Sudan. Dr. Dayson noted that the appellant was depressed, felt hopeless and suicidal and his PTSD symptoms included vivid memories, nightmares, insomnia and some degree of paranoia. He noted the appellant's medications to which I shall not make further reference as neither the dosage, frequency, or subsequent increases are in dispute.

b) **7 July 2014 letter** – Dr. Dayson expressed concern that the appellant had been street homeless in Southampton since March 2014. The letter essentially asked for the appellant to be allowed to remain in Southampton in preference to being moved to Manchester in view of his diagnosis of PTSD and his established network of support from Mental Health Services. Dr. Dayson considered that moving him away from this meant putting him at increased risk of suicide.

c) **19 November 2014 Care Plan** – Dr. Dayson recorded that the appellant travelled to his appointment from London. He responded reasonably and normally to questions making normal effective responses. The appellant told him of his distress at receiving a letter from the Home Office about having to return home and that he feared for his life if he had to return. The appellant told Dr. Dayson that he felt suicidal at times because of a claimed threat of being killed if he returned to Ethiopia. Dr. Dayson noted that there was no current suicidal ideation and that this "*seems to be in response to Home Office letters*". Dr. Dayson diagnosed residual depression with psychotic symptoms and noted that the appellant was much better. The PTSD was also noted as residual symptoms only. The appellant was said to be a low current risk of suicide but "*if threatened with return to Ethiopia the risk of suicide could become severe*".

d) **12 December 2014 Care Plan** – Dr. Dayson recorded identical conclusions to his earlier report save for the additional comment that the appellant was having difficulty falling or staying asleep and that he sleeps 5-6 hours and is woken by voices as if someone is coming for him.

e) **20 February 2015** - Dr. Dayson recorded that the appellant had longstanding mental disorders of depression with psychotic symptoms and PTSD, which was being treated by medication. He added that, "*when under threat of repatriation, [the appellant's] mood has worsened and his suicidal thinking has become more intense putting him at significant risk of suicide. The prospect of travel from the UK would only serve to put him at significant risk of deterioration and consequent suicide. I regret that I cannot give an approximate date for when he might be safe enough to travel …*".

f) **24 February 2015 Care Plan** – Dr. Dayson recorded that the appellant was very depressed the previous week owing to the threat of eviction but that the court hearing had gone in his favour. In relation to suicidal ideation, Dr. Dayson recorded that there is always some thought of suicide but that the appellant does not contemplate methods and there are no definite plans, just thoughts. Once again, he assessed the appellant as being at low risk of suicide so long as there was no threat of deportation present.

g) **15 April 2015 Care Plan** – Dr. Dayson recorded the appellant as continuing to suffer depression and psychotic symptoms together with PTSD. He assessed him as being at low risk of suicide but anticipated that the risk would increase if the appellant was under threat of deportation and "*he would then be likely to commit suicide*". He expressed the opinion that the appellant should not be deported from the United Kingdom as the effects of this would be immensely distressing with the resurgence of depression and suicidal thinking which would put his life at risk. He then went on to assess the appellant's future prospect once back in his own country assuming that he made it there before ending his life beforehand.

h) **2 June 2015 Care Plan** – Dr. Dayson described the appellant's condition as stable with continuing symptoms of depression with psychotic symptoms

and PTSD. He again stated that the appellant was at low risk of suicide, which was likely to increase under threat of deportation, but added that there was a moderate risk of self neglect as he was without support. His conclusions were in all respect identical to his report of 15 April 2015.

i) **16 July 2015 Care Plan** – Dr. Dayson recorded that the appellant told him that he was "OK" although he was not sleeping well because he had to share a room with three others and felt depressed as result. The appellant told Dr Dayson that he had been successful in his appeal and was "*back in the system now*" with provision of support, money and accommodation. Dr Dayson recorded that the appellant was at low risk of suicide and low risk of harm to others notwithstanding an episode some days earlier when he had experienced bad thoughts.

Dr Lars Davidsson, Consultant Psychiatrist

38. In his report dated 18 June 2015, Dr Davidsson confirmed that he had seen the appellant prior to preparation of his report and that the appellant had confirmed that he was from Ethiopia. The appellant told Dr Davidsson that his father had been killed in prison and the same was true of his brother. He recorded the appellant as stating that he had spent 20 days in prison in 2003 at which time he was very badly treated, beaten and tortured. He told Dr Davidsson that his mother was still alive in Ethiopia but that he did not know where. He also had a sister living in Kenya but again he did not know of her whereabouts. The appellant had claimed that he did not choose to come to the United Kingdom and that he was brought here by the "*people*". He spoke of being stressed and depressed and made reference to having to share a room with two people, which he did not like because he felt they were mocking him. The appellant told Dr Davidsson that prior to his arrival in the United Kingdom, he had not suffered from any particular mental illness. He described his current condition as not wanting to go out, suffering from nightmares about his father and brother and hearing voices in his head.

39. In relation to the specific questions he had been asked, Dr Davidsson confirmed that the appellant had PTSD and depressions and commented that his prognosis was very much "*dependent on the outcome of his immigration case, as well as on the quality of the treatment he is given*". He noted the appellant had only been given pharmacological treatment but that he was also under the care of the local Crisis Home Treatment Team following one acute incident in the previous week. Dr Davidsson supported the appellant's need for a sole occupancy room and asked that he should not be moved from his current residence in London. In relation to the risk of suicide and self-harm, Dr Davidsson said the following:

> *"I do not, per se, consider the risk of suicide and self-harm to be increased by moving him outside London. This is more dependent on the outcome of his immigration case. However if he had to move from London he would lose both his professional support (both medical and legal) as well as his informal support (his church and the support he is given from the charity). This does have the potential to cause substantial harm to his mental wellbeing. If he were once again to revert to sleeping rough he is equally likely to suffer substantial harm to his mental health".*

Dr James Wilson – "Now Medical" Psychiatric Advisor

40. Dr Wilson, is a medical practitioner who is employed by Now Medical Limited, and who is a qualified psychiatrist. Now Medical Limited are asked by the Secretary of State to provide an expert, objective and independent assessment of available medical evidence in order to assist in determination of various matters including the entitlement of failed asylum seekers to Asylum Support under Regulation 3(2)(b) and Regulation 3(2)(e) as appropriate. I note that his reports and those of others doctors employed by Now Medical Limited, are based on an assessment of the medical evidence provided to them, which may or may not include the individual's medical records. In the case of this appellant, I accept that when providing such an assessment to the Secretary of Sate, Dr. Wilson did not have access to the appellant's medical records save for the summary notes provided by his GP and the reports of Dr. Dayson. Dr. Wilson is not authorised to carry out an examination of the individual. Dr. John Keen is also employed as a legal adviser to the Home Office.

41. I have before me a number of assessments of medical evidence prepared by Dr. Wilson, which state as follows:-

a) **23 December 2014** – Dr. Wilson noted that the appellant had a history of PTSD and depression and who is stated to be open and responding normally to questions but distressed about a letter from the Home Office and was fearful about having to return to Ethiopia. He noted that whilst there was reference to suicidal ideation in the medical reports, these were described as situational and responsive to Home Office letters but absent to any active suicidal intent or planning. He acknowledged that the medical evidence revealed some residual features of PTSD, some low-grade psychotic symptoms but in his opinion, these did not meet the contraindication criteria for fitness to fly as laid out in the psychiatric guidelines issued by the Civil Aviation Authority. In the opinion of Dr Wilson, the appellant was fit to fly and therefore was to leave the United Kingdom. In relation to Regulation 3(2)(e), Dr Wilson recognised that this was outside his area of expertise but nonetheless, recognised the possibility that the appellant may act impulsively during the process of leaving the United Kingdom owing to his reluctance to leave rather than to any active mental illness.

b) **12 January 2015** – Dr. Wilson noted the GP summary of the appellant's medical conditions and treatments in particular with antidepressants and low dose antipsychotic medication. In his opinion, there was no supporting evidence to indicate that the appellant had a degree of mental illness that would preclude him from being fit to fly or being unable to leave the United Kingdom.

c) **27 January 2015** – Dr. Wilson considered the comments of Dr. Dayson dated 12 December 2014 that the appellant had travelled to Southampton from London independently to see him and that his mood was stable with no active suicidal thinking. He noted that according to Dr. Dayson, there were some residual symptoms of depression and psychosis as well as residual symptoms of PTSD but that the appellant's main concerns related to having to return to Ethiopia. Having had regard to Dr. Dayson's comments that the appellant was a low current risk of suicide but that the risk would escalate if he was returned to Ethiopia, Dr. Wilson accepted that

there was some risk of the applicant acting impulsively but considered that there was an absence of evidence that he was currently mentally unwell.

d) **17 March 2015** – Dr. Wilson noted Dr. Dayson's further assessment of 24 February 2015 and took on board that there was evidence of some thoughts of suicide, albeit the absence of any active planning or intent. He further noted that there were some residual features of PTSD and some low grade auditory hallucinations and paranoia. Dr. Dayson's comment that the appellant had insight and was capacious with respect to his treatment and further that he was at low risk of suicide unless under threat of deportation. Dr. Wilson accepted the evidence contained in Dr. Dayson's reports but concluded that as the appellant was able to attend appointments appropriately, was described as capacious, and not showing any deterioration or confusion in his mental state and did not meet the contraindication set out in the Civil Aviation Authority medical guideline for psychiatric conditions, he maintained his earlier view that the appellant was fit to fly.

42. Dr John Keen's only involvement in this case was to comment on whether the appellant should be provided with a single room on mental health grounds. His report is not relevant to the decision before me.

THE LEGISLATIVE FRAMEWORK

43. In so far as is relevant, Section 4 of the 1999 Act (as amended by section 49 the Nationality, Immigration and Asylum Act 2002 and section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) provides:-

Accommodation for persons on temporary admission or release

'(1) [...not relevant]
(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—

(a) he was (but is no longer) an asylum-seeker, and
(b) his claim for asylum was rejected.

44. Regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 ("the Regulations"), which came into force on 31 March 2005, lays down the criteria to be followed in respect of failed asylum-seekers and their dependants and provides:

"Eligibility for and provision of accommodation to a failed asylum-seeker

'(1) Subject to regulations 4 and 6, the criteria to be used in determining the matters referred to in paragraphs (a) and (b) of section 4(5) of the 1999 Act in respect of a person falling within section 4(2) or (3) of that Act are-

(a) that he appears to the Secretary of State to be destitute, and
(b) that one or more of the conditions set out in paragraph (2) are satisfied in relation to him.

(2) Those conditions are that—

(a) [...not relevant]
(b) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
(c) [...not relevant]
(d) [...not relevant]
(e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998."

45. Section 103 of the 1999 Act as amended provides a right of appeal to the First-Tier Tribunal (Asylum Support). So far as is relevant, this states:

'(1) [...not relevant]

(2a) if the Secretary of State decides not to provide accommodation for a person under section 4, or not to continue to provide accommodation for a person under section 4, the person may appeal to the First-Tier Tribunal.

(3) On an appeal under this section, the First-Tier Tribunal may –

(a) require the Secretary of State to reconsider the matter;
(b) substitute its decision for the decision appealed against; or
(c) dismiss the appeal.'

GUIDANCE FROM THE COURTS

46. In *R (on the application of the Secretary of State for the Home Department) v Chief Asylum Support Adjudicator* [2006] EWHC 1248 (Admin),(*Osman*) Holman J held that regulation 3(2)(b) of the 2005 Regulations required the Secretary of State and ASJs on first instance appeal, to conduct a careful and deliberate two-step approach. Firstly, it was necessary to consider whether an appellant was unable to leave the United Kingdom. The word "unable" had exactly the same meaning as not able. If they were unable to leave, it was necessary to continue to the second step and determine, whether that inability to leave was by reason of a physical impediment to travel or for some other medical reason. The second step, had two limbs, namely, whether the inability was:

(a) by reason of a physical impediment to travel; or
(b) some other medical reason.

47. Holman J held that the application of reg.3(2)(b), did not provide for any test of whether it was undesirable or unreasonable for an appellant to leave the United Kingdom, but simply whether he was unable to leave.

48. In *Shala & Another v Birmingham City Council* [2007] EWCA Civ 624 (*Shala*), Sedley LJ had this to say about the use of medical advisers by local authorities in deciding entitlement to priority housing [at 22]:

> " 22. It is appropriate in this light to consider the role of a practitioner such as Dr Keen. While this court in *Hall v Wandsworth LBC* [2005] HLR 23, §42, described his report to the local authority as constituting not merely commonsense comment but expert advice, the limited extent and character of his expertise has to be borne in mind by those using his services. As another constitution of this court pointed out in *Khelassi v Brent LBC* [2006] EWCA Civ 1825, §9, 22, Dr Keen is not a

> psychiatrist, with the result that the county court judge had been fully entitled to regard his dismissive comments on a qualified psychiatrist's report insufficiently authoritative for the local authority to rely on. In this situation a local authority weighing his comments against the report of a qualified psychiatrist must not fall into the trap of thinking that it is comparing like with like. His advice has the function of enabling the authority to understand the medical issues and to evaluate for itself the expert evidence placed before it. Absent an examination of the patient, his advice cannot itself ordinarily constitute expert evidence of the applicant's condition."

49. The remarks of Sedley LJ in *Shala,* are as relevant to the decisions of the Secretary of State and this tribunal as they are to local authorities. The decision is often relied upon by representatives as suggesting that Home Office medical Officers are not qualified to make assessments of appellants, in the absence of a medical examination, which they are not authorised to carry out. In my opinion, Sedley LJ was cautioning against treating Home Office medical Advisers as experts, on par with expert medical practitioners. He was not dismissing their role and advice as having little value but urging decision-makers to utilise this advice in understanding the medical evidence before them.

50. This was confirmed in *London Borough of Wandsworth v Allison* [2008] EWCA Civ 354 (*Allison*) in which the Wall LJ, giving the lead judgment, held [at 77] that the comments of local authority and Home Office medical advisers were intended, and should be utilised by decision-makers to understand the medical issues and to evaluate for themselves the evidence before them. Wall LJ went on to find that Dr. Keen's advice seemed to him to be well-founded in his medical expertise, and he was thus fully entitled to advise Wandsworth on the manner in which Mr. Allison's medical difficulties would be likely to affect him.

51. In *Birmingham City Council v Clue* [2010] EWCA Civ 460 (*Clue*), the case concerned the exercise of a power or the performance of a duty by local authorities to support persons illegally present in the United Kingdom. Dyson LJ giving the lead judgment, held [at 62] that where there is a legal impediment to an applicant returning to their country of origin, local authorities (and the Secretary of State by analogy), cannot properly justify a refusal to provide assistance. In his judgment, if an arguable application for leave to remain on Convention grounds can only be pursued from within the United Kingdom, this presents a legal impediment to their return. In such circumstances, he found it difficult to conceive how assistance could properly be refused.

52. Of particular relevance for this tribunal when determining appeals under Regulation 3(2)(e), where it is said that the appellant has submitted further submissions which remain outstanding, are Dyson LJ comments [at 66], that:

> " ....when applying Schedule 3, a local authority should not consider the merits of an outstanding application for leave to remain. It is required to be satisfied that the application is not "obviously hopeless or abusive" .... Such an application would, for example, be one which is not an application for leave to remain at all, or which is merely a repetition of an application, which has already been rejected. But obviously hopeless or abusive cases apart, in my judgment a local authority which is faced with an application for assistance pending the determination of an arguable application for leave to remain on Convention grounds, should not refuse assistance if that would have

the effect of requiring the person to leave the UK thereby forfeiting his claim."

FINDINGS OF FACT

53. In arriving at my findings of fact, I have taken into account the evidence as a whole, including the Secretary of State's refusal of asylum and support, the decision of the IJ against the refusal of asylum, subsequent decisions of the UT, the oral evidence of the appellant and all medical evidence. In relation to the medical evidence I have taken particular care to consider it as part of the evidence as a whole, in order to ensure that it has not been compartmentalised: see *SA (Somalia)* [2006] EWCA Civ 1302; *AM, R (on the application of the Secretary of State for the Home Department)* [2013] EWCA Civ 521. I have also reminded myself of the importance the courts and tribunals have attached to those writing medical reports making sure they study any assessments that have already been made by the immigration and/or appellate authorities, and that failure to do so may lead to rejection of the opinions expressed in their reports: see *SS(Sri Lanka)* [2012] EWCA Civ 155 at [30].

54. I make the following findings of fact:

a) The appellant is a failed asylum seeker. His appeal against refusal of asylum has been finally determined and he has exhausted his appeal rights.
b) The IJ did not find the appellant a credible witness and found as fact that he had "greatly fabricated and embellished his [asylum] claim." In particular, she rejected his evidence that his father and brother were killed by the government because of their political opinion, which formed the basis of his asylum claim.
c) The appellant left Ethiopia on 17 April 2004 and travelled to Sudan where he stayed for three days. He then travelled to Libya where he remained until August 2005. He then travelled from there to Italy and from Italy to France where he remained for four months before entering the United Kingdom via Calais on 9 December 2005. He did not apply for asylum in any country other than the United Kingdom..
d) During the course of his asylum interview, the appellant did not mention that he had been arrested and detained in Ethiopia; that he was beaten and tortured whilst in custody; that he had witness the death of his friend in Sudan; that he was gang raped and witnessed the rape and torture of women and children during his journey from Ethiopia; and that he was suffering from mental illness on arrival in the United Kingdom.
e) At his appeal hearing before the IJ, the appellant was represented by a solicitor. He gave evidence in the form of a written statement prepared by his solicitor and oral evidence to explain the discrepancies in his account. He did not mention the incidents detailed in d) above when he had the opportunity to do so.
f) During the period September 2015 – 6 January 2016, the appellant saw Maude Showell of MF on three occasions, as detailed in her letter of 5 January 2016, and not "every three weeks" and at some stage "on a weekly basis" as he claimed in oral evidence to me.
g) Whilst I am conscious that conditions such as PTSD can sometimes not manifest themselves until a significant time after the event(s) giving rise to it, I reject the appellant's statement to MF that on arrival he already had a damaged mind. I prefer his statement to Dr Davidsson in June 2015, that prior to his arrival in the United Kingdom he did not suffer from any

particular mental illness. There is no mention of any mental illness in his asylum interview or at his asylum appeal.

h) I reject as implausible and incredible his claim in his MF interview (eleven years later) that whilst in Ethiopia, he was arrested and detained for twenty days. I prefer his evidence in the course of his asylum interview and appeal which does not refer to any arrest and detention in Ethiopia.

i) I reject as implausible and incredible his claim to MF, that he was tortured and gang raped and that he witnessed the rape, torture and murder of women and children.

j) The appellant was diagnosed with depression in 2008, probably around the time he became appeal rights exhausted. He was prescribed medication by Dr Dayson in 2013, and this is continuing.

k) Dr Dayson diagnosed the appellant as suffering from PTSD and depression in 2013. This was on the basis that Dr Dayson, (and later Dr Davidsson), accepted (apparently without reference to the Secretary of State's refusal of asylum letter or the decision of the IJ), his claims concerning the murder of his father, brother and friend. Their findings in relation to PTSD, whilst made in good faith, were made in ignorance of the fact that these claims had been rejected by an IJ in an unchallenged decision.

l) In the context of the evidence as a whole, I reject the findings of Dr Dayson and Dr Davidsson that the appellant suffers from symptoms associated with PTSD. This is because, taking the evidence as a whole, the trauma on which this finding is based, has been found to be fabricated. I reject the suggestion that he has suffered other treatments and traumas as claimed because the appellant has failed to mention these for eleven years despite having several opportunities to do so. I have seen nothing to suggest that Dr Dayson and Dr Davidsson had any objective evidence before them that the appellant has suffered such traumas or treatment or that his subjective fears of ill-treatment on return to Ethiopia have any objective foundation.

m) According to Dr Dayson, so long as support remains in place, the appellant is "OK". According to Dr Davidsson, the appellant's prognosis is very much "*dependent on the outcome of his immigration case, as well as on the quality of the treatment he is given*". Notwithstanding the appellant's claimed symptoms and suicidal ideation, both Consultant Psychiatrists have assessed him as being at low risk of suicide but anticipate that the risk would increase if the appellant was under threat of deportation.

n) The appellant's conduct since his arrival in the United Kingdom has been dishonest and deceitful. He has lied in his interview; at his appeal; he absconded from his section 4 accommodation; he left the United Kingdom and attempted on re-entry to make a fraudulent asylum claim; and, faced with the prospect of losing his support, he has fabricated serious claims of being raped and tortured.

o) I do not find the appellant a credible witness. I am satisfied, for the reasons given, that he is not suffering from PTSD. I accept that he has situational depression, which is worsened when he receives a negative decision in relation to his immigration and asylum support. This is supported by Dr Dayson and Dr Davidsson, both of whom have commented extensively on the relationship between the appellant's mental health and his immigration and asylum support status.

p) Asylum Aid has failed to honour the assurance they gave to this Tribunal in April 2015, that they would submit further representations on the appellant's behalf, as soon as possible, notwithstanding that they were in possession of the awaited medical evidence from Dr Dayson. Such assurances will doubtless be carefully scrutinised in the future. Nine months later, the further submissions have still not materialised.

DISCUSSION

55. This appeal concerns the application of regulation 3(2)(e) of the 2005 Regulations and not regulation 3(2)(b). The appellant's appeal against the refusal of support under regulation 3(2)(b) was dismissed by an ASJ on 13 April 2013 and was not challenged. The ASJ was right to conclude on the evidence that there had been a relevant change in circumstances and the appellant was not unable to leave the United Kingdom.

56. Ms Dixie submits that my jurisdiction is limited to determining whether the provision of accommodation is necessary for the purpose of avoiding a breach of the appellant's Convention rights, within the meaning of the Human Rights Act 1998. She submits that the Secretary of State has not provided any medical evidence of his ability to return to Ethiopia since March 2015 whereas the appellant has provided three Care Reports from Dr Dayson and evidence from MF in support of his case. She says that since the Home Office medical advisers have not reviewed these reports, I should remit the appeal for their comments. Furthermore, she seeks to persuade me that since 17 March 2015, serious concerns have been raised about the appellant's mental health, which have not been previously considered. She refers me to the appellant's prescription for anti-psychotic medication and the evidence that over the years the dosage has increased.

57. I do not consider it necessary to remit the appeal for the reasons stated by Ms Dixie. In *Shala* and *Allison,* the Court of Appeal confirmed that Home Office medical advisers were not experts and should not be treated as such. Their role is limited to assisting the decision-maker (in this case me) to understand the medical evidence, but the final decision is for me to make. Leaving aside, the unsubstantiated claims in the letter from MF (which I reject), the more recent Care Reports of Dr Dayson and Dr Davidsson are essentially no different in substance to those previously considered by Dr Wilson. I am satisfied that remitting the appeal would serve no purpose, other than to further delay the inevitable outcome. I am satisfied that I do not require any further assistance from Dr Wilson to understand the medical issues and to evaluate the evidence for myself.

58. I have considered the medical evidence very carefully and I have set out above what I accept and what I reject, together with my reasons. At its very best, the evidence of Dr Dayson and Dr Davidsson supports a finding that the appellant is at low risk of suicide, if an attempt is made to enforce his return to Ethiopia. I note the reference in Dr Davidsson's report to a recorded incident of attempted suicide. Save for this isolated comment, there is no evidence that the appellant has attempted suicide when he was refused asylum; or when he lost his appeal before the IJ; or the UT; or indeed when his application for discretionary leave and his further submissions were rejected. When faced with such negative decisions, the appellant has absconded from his accommodation; gone to another country (France); changed solicitors; and resurfaced in the United Kingdom to seek asylum in a bogus name. His reaction to negative decisions has been to challenge them or find ways around them and the fact that he is still here eleven years after he became appeal rights exhausted, supported by the Secretary of State under section 4 of the 1999 Act is testament to his desire to continue to live in the United Kingdom and not to end his life.

59. Even assuming I am wrong and he is genuinely at low risk of suicide as described by medical experts, I reject the suggestion that a perceived risk of suicide creates an entitlement under the Human Rights Act 1998 to be supported in the United Kingdom in defiance of its immigration laws. In reaching this conclusion, I have

applied the judgment of Dyson LJ (as he then was), in *J v Secretary of State for the Home Department* [2005] EWCA Civ 629 to the facts in this case. I am satisfied that the Secretary of State has in place an effective process that ensures the safety of those at risk whilst they remain in the United Kingdom, if necessary through a process of detention under the Mental Health Act. Additionally, at the point of removal, she can arrange a suitable escort(s) who will if required, medicate or restrain the appellant to ensure that they do not self-harm whilst in transit. Hence, the presence of a low risk of suicide should not be a bar to removal.

60. The appellant is not entitled to the provision of support under regulation 3(2)(e). He does not have any outstanding further representation or appeal. If the fear is that to remove his support will leave him destitute, then he can avoid destitution by cooperating with the Secretary of State to obtain a travel document from the Ethiopian Embassy. If he is able to give instructions to solicitors and travel alone to see his consultant psychiatrist, he is able to attend an appointment at his Embassy. Assuming his continued cooperation, he will be entitled to support under regulation 3(2)(a). In the course of removal, the Secretary of State must put in place sufficient safeguards to escort him from the United Kingdom. On the evidence before me, I am satisfied that the appellant will not leave voluntarily.

61. The appeal is dismissed.

Ms Sehba Haroon Storey
Principal Judge, Asylum Support

Dated: 12 February 2016

SIGNED ON THE ORIGINAL **[Appellant's Copy]**