FIRST-TIER TRIBUNAL
ASYLUM SUPPORT

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

Telephone: 020 7538 6171
Fax: 020 7538 6200

Appeal Number AS/14/02/31111
UKBA Ref. 02/01/03013/006
Appellant's Ref.

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

Tribunal Judge	Mr. Christopher Rayner
Appellant	MR ML
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, and gives reasons for the decision given on Tuesday the 11th day of March 2014 remitting the above mentioned appeal to the respondent.

2. The appellant is a 35 year old citizen claiming to be from Sierra Leone, born on 11th day of March 1979. He appeals against the decision of the Secretary of State who on 22 February 2014 discontinued his support provided under Section 4 of the 1999 Act on the grounds that he was no longer destitute and therefore no longer satisfied the criteria for support in Regulation 3(1)(a) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 ("the 2005 Regulations").

3. The appellant attended the Tribunal. He was represented by Hai'Cole of the Asylum Support Appeals Project. Ms. Hogben represented the respondent.

4. The appellant has a long and complex immigration history, which I précis from the respondent's written appeal submission. He entered the United Kingdom illegally in 1996 using a false passport, but did not claim asylum until he was arrested on 4 March 2001. His asylum claim and subsequent appeals were unsuccessful, and he became appeal rights exhausted in March 2002. Since then he has been deported from and returned to the United Kingdom unlawfully on three occasions. He has been imprisoned on at least three occasions, most recently on 27 April 2009 when he was sentenced to a term of four years and six months imprisonment for offences of conspiracy to commit fraud. On 22 July 2009 the respondent served a notice of liability to deportation on the appellant.

5. I do not have a full history of the appellant's support history. As far as is relevant to these proceedings, Ms. Hogben explained that the appellant had been placed on Immigration Bail in October 2013. The latter granting him support pursuant to that bail is dated 25 November 2012. That bail was altered to Chief Immigration Officer Bail on 21 December 2012, when the appellant was released to Barry House by way of temporary accommodation. He was moved to section 4 accommodation on 25 January 2013.

6. Section 4(1)(c) of the 1999 Act allows the Secretary of State to provide, or arrange for the provision of, facilities for the accommodation of a person and his dependants if he is "*released on bail from detention under any provision of the Immigration Acts*". I note that this provision does not require a claimant to demonstrate that he or she is destitute, which is otherwise invariably a requirement before support or accommodation is provided to asylum seekers or failed asylum seekers. The respondent published Guidance to Decision Makers (which I shall call her policy) on the grant of support in Bail cases on 5 June 2009. That was most recently updated on 5 September 2013, and I note that this Policy contains no reference to destitution as a pre-requisite for the provision of accommodation under section 4(1)(c) of the 1999 Act. Finally, the respondent's letter of 25 November 2012 granting support does not refer to the appellant as being destitute at the time of grant.

7. As the respondent is discontinuing the appellant's support, the burden is upon her to demonstrate that she has grounds to do so. As noted above, the respondent provided accommodation to the appellant in November 2012 because he was released on immigration bail. The respondent raised no issue about the appellant's continuing eligibility under this provision in her discontinuation letter of 22 February 2014, the relevant part of which reads,

> "*On 24 October 2012 we approved your application of support under section 4(1)(c) of the Immigration and Asylum Act 1999 on the grounds that you were released on bail from detention under a provision of the Immigration Acts.*
>
> *I have reviewed your case to establish whether you still qualify for support and note that on 14 October 2013 you were awarded £12,500.00 by way of compensation payment to you by the Home Office.*
>
> *You now have funds available to support yourself in your own right, any bail conditions/restrictions can be varied to your new private accommodation and as such you are no longer entitled to support under section 4(1)(c).*
>
> ...
>
> *The Home Office destitution test has been considered in making this decision and we are satisfied that you have adequate funds to meet the basic living needs of your age group.*"

8. The respondent is therefore relying on the fact that the appellant is no longer destitute because of the compensation payment. As noted above, it is a basic requirement of nearly all forms of support for asylum seekers or failed asylum seekers that the Home Office is required to support them only if they are destitute. However, neither the enabling statutory provision (Section 4(1)(c) of the 1999 Act); nor the respondent's Policy; nor the letter of grant include a requirement for a claimant to be destitute before being eligible for support under

this provision. I also quote from the section of the respondent's Policy, at page 32, headed "Discontinue Support",

> *"If the supported person has neither been granted leave or left the UK, nor had his/her support discontinued as a result of a breach of condition, a supported person in receipt of support under section 4(1)(c) can only have their support discontinued if his/her bail conditions are amended at a bail hearing, to either end the grant of bail, or vary the bail conditions so that they no longer specify accommodation at the section 4 address"*

Again, there is nothing in this section of the respondent's Policy that suggests that support can be discontinued because an appellant ceases to be destitute.

9. Ms. Hogben clearly identified the difficulty that she had in attempting to support the respondent's letter of discontinuation in light of the law and Policy on this provision. She opened her case not by suggesting that she could show the appellant was no longer destitute, but by attempting to demonstrate that the appellant's conditions of bail had changed on 21 December 2012 when he moved from Immigration Judge to Chief Immigration Officer bail. I do not know if Ms Hogben is correct in that submission, and I do not need to decide that to-day. That is because this was not the submission that the appellant and his representative had attended the Tribunal to answer. Ms Hogben did not seek to argue that she could uphold the respondent's letter of discontinuation solely by demonstrating that the appellant was no longer destitute. In all the circumstances I decided that the appropriate way to deal with the appeal was to remit the matter for the respondent to reconsider the basis on which she purports to discontinue the appellant's support. If she relies on the "change of bail" ground, she must state that in a further discontinuation letter. If she wishes to argue that she is entitled to discontinue on the ground of the appellant no longer being destitute, she must state her authority to do that. Ms. Hogben (although I accept she cannot give an undertaking) acknowledged that the appellant would continue to be supported while the respondent reconsiders her position in this case.

10. I add just a short postscript to my decision. I was surprised when considering the statutory and Policy consideration for section 4(1)(c) accommodation that no provision was made to require the appellant to demonstrate his or her destitution. All other provisions for support for asylum seekers and failed asylum seekers contain either a specific statutory requirement that the applicant must be destitute (i.e. under sections 4(2) and 95 of the 1999 Act); or it has been introduced by the respondent in her Policy documents or by this Tribunal (i.e. sections 4(1)(a) and (b) of the 1999 Act: see the leading cases of the Principal Judge Asylum Support in The Principal Judge, Asylum Support). I can see no reason why appellants should not be required to demonstrate their destitution (or in discontinuation cases, continued destitution) when support is considered under section 3(1)(c) of the 1999 Act, although as the respondent has not attempted to introduce such a requirement in her own Policy, there may be some policy reason that I have not identified. In any event, should the respondent on a further occasion argue that this appellant is not entitled to support because he is no longer destitute, and the Tribunal agree that not being destitute is a valid reason to discontinue support, then this appellant will have to show how or if his £12,5000 compensation has been spent. If he cannot do so, or if the money has been spent inappropriately, the Tribunal may make adverse findings about his destitution. The appellant should not therefore attempt to divest himself of funds after this decision in order to attempt to show his destitution. These are however all matters that another Tribunal will have to determine.

Mr Christopher Rayner
Tribunal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 11th March 2014