



**FIRST-TIER TRIBUNAL  
ASYLUM SUPPORT**

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Appeal Number AS/13/08/30300

UKBA Ref. 05/04/01347

Appellant's Ref.

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

Tribunal Judge	MS GILL CARTER
Appellant	MR MQ
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 4 June 2014, in which I substitute my own decision for that of the Secretary of State with the effect that the appellant should be provided with support.
2. This is a fresh hearing of an appeal which previously came before a Judge in a two-day hearing at this Tribunal ending on 13 September 2013. The decision made at that hearing was subsequently quashed by consent following a judicial review application made by the appellant.
3. The appellant, a citizen of Palestine born on 19 March 1982, appeals against the decision of the Secretary of State who discontinued support previously provided to him under Section 4 of the Immigration and Asylum Act 1999 (the 1999 Act) on 13 August 2013 on the grounds that the appellant had breached the conditions of his support.
4. The appeal was heard over two days on 29 April and 12 May 2014. The appellant was represented throughout by Mr Mackenzie of counsel, instructed by Deighton Pierce Glynn Solicitors. The respondent was represented by Ms Hogben. The appellant attended on both days and gave his evidence in Arabic through the assistance of independent court interpreters. The appellant's previous Housing Manager, Mr W, gave his evidence by way of telephone conference on 29 April 2014.

5. In reaching my decision I have taken full account of the submissions made on behalf of both parties, the oral evidence of the appellant and Housing Manager, Mr W, and a bundle consisting of 104 documents provided to the Tribunal and the respondent by the appellant's solicitor. I make it clear that, although they were included in the bundle, I have had no regard to the handwritten notes of hearing, decision or statement of reasons that relate to the quashed 2013 decision.
6. In addition to the documents contained in the appeal bundle, the following additional information was taken in evidence and circulated to both parties at or just prior to the hearing: Clearsprings Occupancy Agreement (provided by the respondent); South Wales Police Occurrence Details (originally marked not for disclosure by the respondent but subsequently disclosed); Police National Computer records of the appellant's convictions (provided by the respondent); skeleton argument (prepared by Mr Mackenzie); witness statement of the appellant dated 8 May 2014 (prepared by the appellant's solicitor) and letter dated 6 August 2010 granting Section 4 support to this appellant (provided by me from documents held on the court file).

### **Background**

7. The chronology of the appellant's application for asylum support is not in dispute in this case and is not relevant to it, save to say that the appellant was granted support under Section 4 on 6 August 2010 on the grounds that he was a) a failed asylum seeker, b) destitute and c) had outstanding representations in relation to his claim for asylum and was thus found to satisfy the Regulation 3 (2)(e) condition for support as set out in the Immigration and Asylum (Provision of Accommodation to Failed Asylum seekers) Regulations 2005 (the 2005 Regulations). It is undisputed that this remains the position.
8. The appellant lived in Home Office provided accommodation in Wales for some years. During that time he occupied a number of different residences in the same town, the chronology being roughly as follows: T Street from 27 August 2010 to 14 October 2011; LH from 2 February 2011 to 26 August 2011; PG Road from 16 August 2011 to 20 February 2012 and N Road from 7 February 2012 to 19 September 2013. After support was reinstated to the appellant during the course of his judicial review proceedings he was moved to C Street in Swindon on 7 October 2013. He remains at that address.
9. The appellant's support was discontinued on 16 January 2012 on the grounds that he was in breach of Regulation 6(2)(a) the 2005 Regulations in that he had failed to comply with specified standards of behaviour – his accommodation provider at his then address of PG Road having alleged 3 incidents of anti-social behaviour occurring during January 2012. The 2012 decision letter refers to incidents of 4, 10 and 15 January 2012 and in summary alleges damage to a central heating boiler and the locked boiler cupboard; inviting illegal occupancy; aggression towards the accommodation provider and breaking into the bedroom of another resident.
10. The matter came to this Tribunal on an appeal hearing on 27 January 2012 at which presiding Judge Saunders, having identified that he was faced with opposing accounts from the appellant and the accommodation provider and had no independent evidence, remitted the appeal for reconsideration by the Secretary of State. The judge highlighted that he had no report from any engineer or plumber or from the Home Office's own investigating officers to assist him in weighing the appellant's evidence that the heating system was

prone to leaks, which required the boiler to be shut down, against that of the accommodation provider that damage to the boiler was deliberate. In view of the remittal the Judge made no findings on any of the other allegations that were raised in the decision to discontinue support.

11. It was open to the Secretary of State after reconsideration to either discontinue support fresh or to determine that support should continue. In this case, I have not been made aware of any formal conclusion reached as a result of the reconsideration exercise but it is clear that support to the appellant then continued until the 13 August 2013 decision to discontinue it, which is the subject of the present appeal.

### **The Relevant Law**

12. Regulation 6 of the 2005 Regulations states as follows:

(1) The continued provision of accommodation to a person falling within section 4(2) or (3) of the 1999 Act is to be subject to such other conditions falling within paragraph (2) as-

- (a) the Secretary of State may from time to time determine, and
- (b) are set out in a notice to that person in writing.

(2) A condition falls within this paragraph to the extent that it relates to-

- (a) complying with specified standards of behaviour,
- (b) not relevant to this appeal
- (c) not relevant to this appeal
- (d) not relevant to this appeal.

### **The Specified Standards of Behaviour notified to the appellant**

13. Included in the appeal bundle is an undated support agreement, headed National Asylum Support Service (NASS) Agreement. Such an agreement is in my experience normally issued to persons receiving support under Section 95 of the 1999 Act not to those receiving Section 4 support - this latter category of persons finding the conditions of support set out in their support grant letter.
14. I am strengthened in my view that these conditions are not applicable to this appellant's case (having been superseded by the letter which granted him Section 4 support) since the NASS Agreement contains a preamble which advises applicants for support on their position should they wish to move to a new address and claim cash only support. Further at Section 5 it advises on how to collect cash support. Such scenarios do not apply to persons supported under Section 4 and thus there is no doubt in my mind that the conditions of support pertaining to this appellant are set out in his Section 4 grant letter and occupancy agreement and not in this agreement, on which I do not rely.
15. The 6 August 2010 letter granting Section 4 support specifies as follows:

*"In order to continue to receive Section 4 support, you must comply with the following conditions:*

- *You must comply with standards of behaviour specified by your accommodation provider, for example in an occupancy agreement and must not commit acts of anti-social or violent behaviour."*

16. All of the breaches alleged by the August 2013 decision relate to the period of the appellant's occupation at N Road. The occupancy agreement for N Road is provided and, insofar as they are relevant, the standards of behaviour specified therein are as follows:

*"5.2 - To look after and keep clean the interior of the Premises and the fixtures and fittings as provided.*

*5.3 - To use the Premises and the fixtures and fittings as supplied by the Provider in a reasonable and responsible manner...*

*5.11 - Not to permit at any time the Premises to be used as either temporary or permanent accommodation for any party who is not specifically authorised by the Authority and the Provider to reside in the Premises.*

*5.13 - Not to have or to use or allow any other person to have or to use in the Premises any controlled drugs or to permit the Premises to be used for any such activity.*

*5.17 - The Service User undertakes to be responsible for the behaviour of any person whether temporary or otherwise using the Premises or whilst entering or leaving the Premises or the common parts of the Premises and for ensuring that they behave at all times in a reasonable manner; not causing a nuisance, annoyance or disturbance, or any harassment whatsoever, to other occupants or otherwise, the Provider or members of their household or employees of the Provider. For the avoidance of doubt, harassment shall include but not be limited to:-*

- a) Violence or threat of violence towards any person*
- b) Abuse or insulting words or behaviour*
- c) Damage or threats of damage to property belonging to another party including damage to any part of a person's home*
- d) Writing threatening, abusive or insulting graffiti.*
- e) Any act or omission calculated to interfere with the peace or comfort of any other person or to inconvenience such person.*

*6.1 - Any incident of harassment, by the Service User or the other parties that the Service User is responsible for in accordance with this Occupancy Agreement or the contract with the Authority, may at the sole and absolute discretion of the Provider be considered as gross misconduct (see Section 3)".*

17. Schedule 3, which is headed Disciplinary Procedure, gives examples of misconduct as follows:

*“2.1- Instances of General Misconduct shall include, but are not limited to:*

- a) repeated refusal to carry out a legitimate request, or causing accidental damage to the premises.*
- b) Unreasonable behaviour towards the Provider (or agents), Service Users or members of the public.*

*NB: these issues are likely to be dealt with outside of this procedure with a verbal warning.*

*2.2 – Instances of Gross Misconduct shall include, but are not limited to:*

- a) Assault*
- b) Theft from Premises of Provider's goods or other goods which may result in a criminal prosecution*
- c) Malicious damage to Premises, including arson*
- d) An offence resulting in a judgment evidencing contravention of the laws of the United Kingdom.*
- e) Fraud*
- f) Absence from the Premises for prolonged periods*
- g) Arrests or enforcement notices*
- h) Using Premises other than for the purposes intended.*

*NB: For Gross Misconduct or, if the Disciplinary Process has been exhausted, the Provider reserves the right to request the Authority for immediate termination of this Occupancy Agreement.”*

### **The Matters in Dispute**

#### *The respondent's case*

18. Ms Hogben made it clear that she was instructed to rely only on the breach of conditions alleged in the 13 August 2013 decision to discontinue support. References to previously alleged breaches of conditions and to the appellant's criminal record were relied upon by the respondent only so far as they were said to show a pattern of behaviour consistent with the incidents alleged in the August 2013 decision.
19. The specific reasons why support was discontinued are set out in the decision letter of 13 August 2013 as follows:

*“I am satisfied that you no longer meet the criteria for Section 4 support because.....*

- You failed to comply with the standards of behaviour specified by your accommodation provider by damaging property on 9 May 2012.*

- You failed to comply with standards of behaviour specified by your accommodation provider by assaulting a fellow service user on 9 May 2012
- You failed to comply with standards of behaviour specified by your accommodation provider by having unauthorised guests in your Section 4 property on 25 May 2012
- You failed to comply with standards of behaviour specified by your accommodation provider by having unauthorised guests in your Section 4 property on 6 September 2012
- You failed to comply with standards of behaviour specified by your accommodation provider by assaulting a fellow service user on 5 August 2013."

20. Housing Manager, Mr W, produced property incident reports dealing with each of the matters specified in the discontinuance decision. He confirmed at hearing that the contents of these reports were accurate and correct. (References to a Mr B are to a fellow housemate). Dealing with these in chronological order, Mr W's incident reports record as follows:

*9.5.2012*

*"[The appellant] has again damaged the property and assaulted another service User. I was called to the property ... by [Mr B] who was assaulted by [the appellant]. [The appellant] broke into pipe housing in his room and the bathroom to turn the water off for all other clients who wish to use the bathroom. [Mr B] complained and was assaulted and the police called to the property. I attended the property ... with contractors to secure boxed in pipes only to find [the appellant] smoking herbal something in his room. [The appellant] caused several hundred pounds of damage to his last property but was given the benefit of doubt, he has now started to damaged this property, invite illegal occupation and assaulted another service user".*

*25.5.12*

*"I was called to the property on Saturday morning by [Mr B] who was in a distressed state after an incident in the early hours of the morning. This incident also impacted on the local residents once again. The other service users in the house are now being intimidated and frightened by [the appellant] who constantly is smoking drugs, drunk and invites several illegal occupants into the property. These problems we have had with this particular service user over the last several years and in several different properties. The quality of life of the other service users and residents of this area is now on the decline and is only a matter of time before we have a major incident... This client received a final written warning from UKBA several months ago. Since then this is the second serious incident that has occurred involving him. I attended the property to find [the appellant] and several illegal occupants as I am a lone worker and for my own safety as I have been threatened by [the appellant] and his illegal friends before" [sic].*

(Mr W confirmed in oral evidence that this account should conclude that he judged discretion to be the better part of valour in this case and left the property).

*6.9.12*

*"I was contacted last night by another service user [Mr B] to say that nobody could have any peace and quiet at the house as once again [the*

*appellant] has brought co-workers back to the house. I attended at 10:35pm to find several males in the lounge and the upstairs bedrooms. I did not contact the police because I did not [wish] to cause an incident at that time of night in the local community. [The appellant] has also throw in the rubbish all plate, cups and knives and forks" [sic].*

**5.8.13**

*"I received a phone call last night at 1900 hours from [Mr B] to say that he once again had an argument with [the appellant]. This client arrived home last night bleeding from a wound to his back and decided to clean it up using the cloths and tea-towels the other clients use in the kitchen. [Mr B] remarked about using these kitchen towels and [the appellant] took exception to this and assaulted [Mr B]. The police were called and [the appellant] was arrested for assault... [The appellant] was only in court on 12 July 2013 charged with common assault and racial abuse and once again we find ourselves doing an incident report on this client. This property is now becoming impossible to manage and be compliant with this client in place. He has a long history of deliberate property damage in several houses, assault and drug and alcohol abuse. This client must be removed from the property to safeguard the other service users and to limit the damage to the property as this client has several people sleeping illegally at the property every night".*

*(On 6 August 2013 Mr W adds the note that he interviewed Mr B that morning and he "was found to have several marks around his face and arm area and has clearly been assaulted.")*

21. Disciplinary review letters were written to the appellant by Mr W on 6 June 2012 (in relation to the incident of 25 May 2012) and on 15 August 2013 (in relation to the incident of 5 August 2013). Both letters say that they are final written warnings and that any reoccurrence will lead to a recommendation for termination of the appellant's occupancy agreement. Both letters refer to disciplinary review meetings held with the appellant, although it is said that the appellant attended only the May 2012 meeting. There are no disciplinary review letters relied upon in relation to the incidents of 9 May or 6 September 2012.
22. For the sake of completeness I add that the bundle contains three other disciplinary warning letters, two in relation to the address of PG Road dated 10 and 12 January 2012 and another in relation to the address of LH dated 2 June 2011. These do not relate to the specific breaches upon which the respondent seeks to rely in the August 2013 decision to discontinue support.
23. In addition to the above the respondent relies upon witness statements from Mr B (the alleged victim of the 5 August 2013 incident). In two statements Mr B alleges that the appellant launched a verbal and physical attack upon him following Mr B's request that he not use kitchen cloths and towels to clean up blood. The respondent also produces police reports and incident logs in relation to the 5 August 2013 incident.
24. Finally the respondent relies upon an email from the Contract Compliance Manager at Ready Homes dated 25 April 2014, which confirms that invoices for damage to properties in which the appellant has resided cannot be provided, but that there was approximately £600 worth of damage to the boiler at PG Road and that, following the appellant's relocation from that address, redecoration, deep cleaning and disposal of rubbish was required. In relation to N Road it is said that additional cleaning of this property was required after the

appellant was relocated and that the kitchen had to be completely restocked due to the disposal of all the cooking and eating utensils therefrom.

25. Ms Hogben submits that the appellant has persistently refused to comply with the reasonable conditions of support and that his history shows both a pattern of behaviour and a lack of credibility. It is argued that the evidence should be taken in the round and any lack of detail in the disciplinary procedure followed by Clearsprings (the appellant's accommodation provider) and their employee Mr W, should not detract from the alleged breaches.
26. The appellant is said to have been fully aware of the conditions of his support. As long ago as January 2012 he must have known that he had been issued with a final warning about his behaviour as he had written to contest that warning. Further, common sense would dictate that, the police having been called to his accommodation twice in relation to alleged assaults on Mr B, the appellant might expect some consequences with regard to his support

#### *The Appellant's Case*

27. The appellant emphasises that no problems with his behaviour were reported during the period from August 2010 until October 2011 when he lived at T Street and was supervised by a different Housing Manager. There have also been no problems in his behaviour reported by his Housing Manager since he has been in Swindon from October 2013. The appellant produces a variety of witness statements from fellow housemates and persons in his new neighbourhood to support his account of his good behaviour since moving there.
28. He produces two letters from Mr Y, a fellow housemate at N Road from 26 August 2011 to 27 July 2012, which confirms that during this period Mr Y did not see the appellant behave aggressively to anyone else in N Road and that the appellant also behaved well at previous Home Office accommodation he shared with Mr Y.
29. Written evidence from Mr Al-H confirms that there was a period during which he was living in N Road after obtaining permission from Housing Manager, Mr W, and that during that time (from 28 July 2012 to 27 April 2013) he did not know the appellant to damage any property
30. In addition the appellant relies upon the fact that over a year elapsed between the two incidents of 9 May 2012 and 5 August 2013 when Mr B called the police and that no action was taken by the respondent or the accommodation provider as a result of the 9 May 2012 incident. During the intervening time the appellant asserts that he and Mr B lived together perfectly normally.
31. With regard to the incident of 9 May 2012, the appellant denies all of the matters alleged by Housing Manager, Mr W. He argues that the house is a multiple-occupancy property, with four bed spaces and that he is persistently blamed for any damage to the property. He denies smoking anything illegal in the accommodation. With regard to the allegation of assault, the appellant asserts that the incident was a mere verbal dispute with Mr B over two pairs of jeans that were missing from the appellant's bedroom and later returned by Mr B and about which the police took no action.
32. With regard to the allegations of unauthorised guests at N Road in May and September 2012, the appellant argues that he was not responsible for anybody



who stayed in the accommodation and that, as far as he knows, the only person who did so was Mr Al-H, who was not there at the appellant's invitation, but rather had the permission of the Housing Manager. Any assertions that the appellant threw out cutlery and crockery are also denied.

33. Turning to the events of 5 August 2013, the appellant accepts that a problem arose between himself and Mr B as a result of the appellant using the kitchen washing-up sponges to clean blood occasioned by a traditional healing ceremony performed on him by Mr Al-H. The appellant's account is that, when challenged by Mr B, he offered to replace the sponges but that at this point Mr B became aggressive, hitting the appellant on the nose with a bottle of washing-up liquid and causing his nose to bleed.
34. Finally the appellant denies receiving any disciplinary review letters save for one in 2012, to which he responded. He was either unaware of any disciplinary review meetings or did not know that what appeared to be conversations with the Housing Manager were in fact such formal meetings. He can only understand a few words in written English. It is his view that, for reasons that are unknown to him, Mr B does not like him and makes allegations about him which are not true and the Housing Manager, Mr W, always accepts Mr B's point of view without checking with the appellant or his other housemates. The appellant threatened to make a complaint about Mr W's conduct in January 2012, which he says was aggressive.
35. Mr Mackenzie submits that proof of wrongdoing is not made out and, even if the respondent's evidence is taken at its highest, it is insufficient to warrant the termination of support. Further detailed submissions were given both orally and in writing with regard to the alternative argument that, if any breaches of the conditions of support were established, these remained insufficient to meet the test of a persistent and unequivocal refusal to observe the reasonable conditions of occupation as set out in *R v Kensington and Chelsea RLBC, ex parte Kujtim (2000) 32 HLR 579* or the test set out in the respondent's own policy and/or the conditions of support. Finally any deprivation of support would be disproportionate to a legitimate aim under Article 8 and may risk breaching the appellant's Article 3 rights.

### **Discussion of the Evidence and my Findings**

36. This case concerns a discontinuance of support and thus the burden of proof is on the respondent. The standard of proof is that of a balance of probability. The appellant could certainly not be said to be of unimpeachable character. He has past convictions in 2009 for possession of cannabis and using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence. In 2010 he received a community supervision order for destroying or damaging property and a conditional discharge, again for using threatening, abusive, insulting words or behaviour. On 26 April 2013 he received an 18 months conditional discharge for attempted theft from a person and on 16 September 2013 he received a community order following a conviction for racially/religiously aggravated common assault/beating, albeit that he explains that this sentence was imposed in his absence. The appellant remains subject to a restraining order with regard to the victim in this case.
37. The above notwithstanding, the present appeal is not about the appellant's past wrongdoing but rather centres on whether or not the respondent has proved a breach of Regulation 6 in the terms alleged by the 13 August 2013 decision. In this case, for the following reasons, I have concluded that the evidence falls short of that standard.

38. I fully appreciate the pressures upon Housing Managers such as Mr W and the sheer numbers of occupants that are managed by Mr W and his colleague in the nearly 140 properties which they supervise. However, it must nonetheless be self-evident that, if their evidence is to be relied upon to demonstrate a breach of conditions which would have such a serious consequence as to cause the withdrawal of support and accommodation from an appellant, the evidence that they produce must be cogent, clear, unambiguous and consistent.
39. Mr W made the reasonable comment in his oral testimony that Housing Managers must make daily decisions as to which matters require recording and investigating and which do not, if they are not to spend nearly all of their day record-keeping and little of it dealing with problems on the ground. However in this case the recording has shown an unfortunate confusion between what is unsubstantiated allegation and supposition and what is evidence. Mr W also either fails to record or at least fails to produce to the Tribunal records of matters which are of key importance to the decision-making process.
40. Mr W is also placed in a difficult position by his employers at Clearsprings, since he is a lone worker and therefore often the sole witness to events in which he later assumes the role of investigating and reporting officer. However, given this particular problem, it must be incumbent upon such Housing Managers to take steps to ensure that whatever independent evidence can be obtained is obtained, whether that is by way of photographs, plumbing, repair or maintenance reports and invoices or independent witness evidence such as complaints from neighbours or other residents. If the respondent is to rely primarily upon Housing Managers to police compliance with the conditions of support, then it is for the respondent to also ensure that a complete picture of the available evidence is gathered and assessed before taking the decision to discontinue support and to make Housing Managers aware of what should be provided.
41. I am mindful that two of the allegations contained in the decision to discontinue support relate to incidents occurring some 15 months before that decision was taken and a third to an incident that occurred almost a year prior to the decision. It would seem therefore reasonable to conclude that the incidents of May and September 2012 were not considered sufficiently serious to warrant a discontinuance of support at that time. Indeed only one of these incidents prompted the issue of a warning letter from the Housing Manager.
42. I accept that there may be occasions on which the respondent chooses not to act initially on what would appear to be an isolated incident of misbehaviour but subsequently discontinues support when it proves to be part of a larger picture of continued breach. However, in this case there is almost a year between the last property incident report of September 2012 and the 5 August 2013 incident which appears to have been the tipping point leading to discontinuance and further not all of the allegations are of a similar nature to each other. This raises questions in my mind as to the value and purpose of including the earlier incidents in the respondent's decision.
43. In any event I have examined the 2012 alleged breaches in detail. On 9 May 2012 it is said that the appellant broke into pipe-housing and turned off the water in N Road. I have no evidence of any damage to N Road beyond the verbal account of Mr W, which is disputed by the appellant. The Ready Homes list of costs does not detail any such damage and, other than the reference to previous similar damage at PG Road, there is no indication as to how the

damage in N Road could be specifically linked to the appellant. I remind myself that Judge Saunders remitted an appeal on the question of the damage at PG Road precisely because such allegations required further investigation before any decision to discontinue support could be justified and that no further decision from the respondent was forthcoming after that investigation.

44. The second allegation with regard to 9 May 2012 is that of an assault on Mr B. There are some contradictions in the appellant's account in that his written statement says that an argument arose between him and Mr B because two pairs of jeans, which had been left in the appellant's bedroom, had gone missing but were subsequently produced by Mr B from the bathroom. However, in oral evidence the appellant stated that there was no argument and that he merely asked Mr B why he had put the jeans in the bathroom. He was unable to account for why Mr B then called the police.
45. However despite the apparent contradiction regarding whether an argument did or did not take place, it remains the case that the police, having spoken to both Mr B and the appellant, took no action. This would seem unlikely if there had been an assault. Further, despite a number of directions orders from this Tribunal, no police evidence has ever been submitted by the respondent and neither are there any witness statements from independent witnesses or from the alleged victim himself. Additionally there is no mention of a previous assault in the police evidence regarding the 5 August 2013 incident between the appellant and Mr B and Mr B does not refer to a previous assault by the appellant in his own 2013 witness statement.
46. For the above reasons I conclude that the respondent has not discharged the burden of proof with regard to the 9 May 2012 complaints.
47. Turning to the incident report of 25 May 2012, the allegation is that local residents and service users in N Road were being intimidated and threatened by the behaviour of the appellant, illegal occupants were invited by him to that address and that the appellant constantly smoked drugs and was drunk. Housing Manager, Mr W, reports that he attended the property on a Saturday morning and found several illegal occupants.
48. It was difficult to establish from Mr W's oral evidence what led him to the conclusion that the persons he observed on his visit were illegally occupying the property as opposed to visiting it, nor how many persons were involved. Mr W's account was that, being a lone worker, he left rather than challenging a number of young men who were at the property.
49. I can see nothing in the conditions of occupancy which prohibits the appellant or any other resident from having guests. This is not of itself fatal to the respondent's case because, although the occupancy agreement deals at paragraphs 5.11 with illegal occupants, it also specifies at 5.17 that guests should not cause a nuisance, disturbance or annoyance to others.
50. However, despite Mr W's reports about such behaviour, it would appear that the respondent chose not to rely upon this ground since the decision to discontinue support does not refer to any visitors to N Road as being in breach of the specified standards of behaviour, but merely relies upon the assertion that the appellant had unauthorised guests.
51. Since the appellant was not instructed in writing by either the respondent or the accommodation provider that guests are prohibited at N Road or that all visitors

must be authorised, I find the respondent's decision to be flawed inasmuch as it asserts that the mere presence of visitors amounts to a Regulation 6 breach.

52. Even if the decision letter had been written in terms which referred to the visitors' conduct on 25 May 2012 as breaching the occupancy conditions, I note that, when asked about specific threats, Mr W qualified this to say that the appellant himself did not physically threaten him, but was verbally challenging and that he felt intimidated by the behaviour of the visitors in the sense that he would evict them from the house, whereupon they would usually sit on the garden wall awaiting his departure. In the absence of any other specific evidence I do not find this to be sufficient to amount to a Regulation 6 breach warranting the termination of support.
53. There is no evidence produced of any complaints recorded from other housemates (save for Mr B) in relation to any of the alleged breaches, despite Mr W recommending to the other occupants in relation to the 6 September incident that they should make official complaints through the Welsh Refugee Council and asserting in oral evidence that such complaints had been made but were not considered sufficiently significant to be recorded. There is also no evidence of complaints from neighbours and no referral was made to the police on the subject of illegal drugs. Thus the vast majority of the allegations made by Mr W are unsubstantiated.
54. Last of the 2012 incidents is that of 6 September. The decision to discontinue support relies once more simply upon the assertion that the appellant had unauthorised guests and not upon the behaviour of those guests. Mr W reports that he attended N Road at 10.35pm at Mr B's request to find several men in the lounge and upstairs bedrooms. Although Mr B alleged, when requesting Mr W's visit, that the peace of other residents was being disrupted, Mr W did not record any such behaviour or take any action on his visit. He notes that he did not contact the police, but confirmed orally that there were no activities such as would warrant police intervention in any event.
55. It is the case that a warning letter had been issued to the appellant in relation to the incident of 25 May 2012 (albeit that he now says that he did not receive this correspondence). This letter could have been a vehicle for ensuring that the appellant was made aware of additional conditions of behaviour at N Road, for example in relation to having visitors, but in fact it states that the expectations for his future behaviour have been set out in an attached schedule. Mr W confirmed that there was no such attachment.
56. That being the case, the appellant could not be expected to be aware of additional standards of behaviour that were not already specified in his occupancy agreement or conditions of support. A bar on visitors is not such a standard of behaviour.
57. To conclude, I find that the respondent has not shown that having guests in N Road was of itself a breach of conditions or that any visitors to the house were necessarily invited solely by the appellant or that the conduct of any visitors to N Road was such as to be in breach of the occupancy conditions.
58. To complete the incidents of 6 September, an assertion is also made in the incident report (although not repeated in the decision letter) that the appellant had thrown out the crockery and cutlery from the accommodation. The Ready Homes email does confirm that new crockery and cutlery had to be purchased, but I cannot link its disposal to the appellant with any degree of probability, since the only evidence offered was Mr W's confirmation that he assumed the

appellant to be at fault as the pile of household equipment was in the garden outside of his window.

59. This brings me to the incident of 5 August 2013, which it is clear is the trigger leading to the discontinuation of support, no action having been taken against the appellant for the incidents of May and September 2012 prior to that time. It is generally agreed that there was an altercation in the kitchen of N Road, which came about after the appellant began to clean up blood using the sponge used to wash dishes and which culminated in the police being called by Mr B. However, there are two conflicting accounts. Mr B says that the appellant assaulted him but the appellant says that Mr B was the aggressor. Mr W stated in oral evidence that the incident of 5 August occurred as a result of the appellant bringing large numbers of illegal occupants to the house, but since this is not reflected in the police evidence or that of Mr B, the appellant or Mr Al-H I have accorded it no weight.
60. The 5 August incident was not witnessed by Mr W, who was informed about it by Mr B. It was witnessed by Mr Al-H, who has provided a written statement. Mr B also provided a handwritten statement for the respondent and a witness statement for the police. The accounts of the appellant and Mr B are noted in the police occurrence details log, as is the account of an independent witness, who is presumably Mr Al-H. The appellant also gives his account in a written witness statement provided for the purpose of the Tribunal and there is a note taken by his solicitor in the police station.
61. There are internal inconsistencies in the statements of all the witnesses. For example, the appellant in his written statement prepared for the Tribunal hearing alleges that Mr B hit him on the nose with a bottle of washing-up liquid, such that other persons in the house had to intervene and escort Mr B upstairs. No mention is made of any incident occurring other than on the ground floor of N Road. This account reflects that given by the appellant to his solicitor in the police station and is largely reflected in the police occurrence details, save for the fact that the police log records the appellant as having been assaulted with a bar of soap and there is no mention of Mr B being escorted upstairs - rather it is said that the appellant walked upstairs followed by Mr B who was still aggressive but who after a while knocked on the appellant's door and asked that the incident be forgotten.
62. By contrast in oral evidence the appellant gave an account which more closely reflected that of Mr Al-H, whose written evidence confirmed that a plastic bottle was thrown by Mr B in the kitchen but crucially added that, after he intervened to move Mr B upstairs to his room, Mr B began to fight the appellant again on the first floor of N Road, requiring further intervention by Mr Al-H.
63. Equally Mr B's statements also contain discrepancies. In his witness statement written for the respondent he refers to the incident as occurring at 6:00pm, whereas the police log and Mr B's own statement to the police refer to 8:10pm. In the witness statement for the respondent he mentions the appellant as being accompanied by one friend, whereas in his statement to the police he mentions two friends. He alleges in his statement to the respondent that the appellant was abusive to him and followed him to the lounge, whereupon the appellant hit him in the face with his shoes and then punched him. However, in the police witness statement there is no mention of the lounge.
64. It is the case that the appellant was the only person who was arrested. However, the evidence of PC 5421 of the South Wales police is that the appellant alleged at the scene that he had been hit on the nose by Mr B and

was asked whether he wished to make a complaint, but stated that he did not. By contrast, Mr B did make such a complaint and thus the appellant was detained pending investigation of the same.

65. The appellant was subsequently released. The police occurrence details note that, after the receipt of independent witness testimony to the effect that Mr B was the aggressor and there was no assault, it was concluded that there was no realistic prospect of conviction. However, the civil and criminal standards of proof being different, it would be misconceived to conclude that the fact that there was no prosecution necessarily leads to the conclusion that the appellant's account was accurate and Mr B's account was not.
66. Were there to be some clear evidence of injuries to Mr B and the extent and nature of these, it might be possible to test this against the assertion from the appellant and Mr Al-H that Mr B was the only aggressor and that there was no assault on him. However, the evidence provided by the respondent is sparse in this regard. It would certainly appear that any injuries to Mr B were minor. The information given by the police to the appellant's solicitor at the police station was that Mr B had no visible injuries save for a minor scratch to his forearm. Housing Manager, Mr W, states in a report dated 6 August 2013 that Mr B was found to have several marks around his face and arm area and had clearly been assaulted. However, in oral evidence, Mr W stated that the only marks he observed were a slight redness to Mr B's arm and face, which was observable only when Mr B pointed it out to him. The respondent purports to rely on a police photograph of injuries to Mr B, but the photograph provided is nothing more than an almost entirely black sheet of A4 paper from which nothing at all can be determined. Despite specific directions on the point, a clear copy of the photograph was not provided. There is thus no evidence of injuries to Mr B which are clear enough to show that he was indeed the victim of an assault
67. In summary therefore there are two diametrically opposed accounts of what occurred. Mr B in his police statement admits that, when the fight escalated to the first floor of N Road, he started to fight back in self-defence. The appellant, however, does not admit in any written statement to engaging in fighting. It was Mr W's position that, whether or not the appellant started the violence, he had admitted in an interview with Mr W some three or four days after the incident that he had hit Mr B.
68. I agree that violent conduct amounting to a breach of the conditions of support does not necessarily rely on who was responsible for instigating an altercation. However, if such an admission (which strenuously is denied by the appellant) is to be relied upon as a ground to discontinue the appellant's support, it should be properly documented. Mr W gave evidence that, in any disciplinary interview that he conducts only the allegation is recorded and followed up in the disciplinary review letter. The response of the person being interviewed is recorded only in Mr W's own notes, which do not find their way on to that person's file. Thus the alleged admission by the appellant was, according to Mr W, recorded only in his own notes, which have never been produced to the respondent or the Tribunal or seen by the appellant.
69. A disciplinary review letter with regard to 5 August 2013 incident was issued to the appellant on 15 August 2013. However, it refers to a disciplinary review meeting on 8 August 2013, which it acknowledges the appellant failed to attend (at the same time as purporting to formally record the outcome of the discussions that took place at that meeting). It does not refer to any admission from the appellant. Of note is Mr W's admission in oral evidence that, at the time when he recommended a termination of support on the basis of 5 August

2013 incident, he was unaware that the police had released the appellant without charge. Indeed he was under the illusion that the appellant had been prosecuted for the incident.

- 70. Accordingly I conclude that there were significant flaws in the investigation procedure, which have not been remedied by any evidence gathering and assessment exercise conducted by the respondent prior to the discontinuance of support. It is for the respondent to prove the alleged breach. In this case, although I must only be satisfied to a balance of probability, there is virtually no corroborative evidence of the 2012 incidents and such evidence as has been offered in relation to the August 2013 incident is inconclusive.
- 71. Crucial evidence such as a contemporaneous and clear recording of the appellant's alleged admission and photographs of any injury to Mr B have not been produced. Whilst I accept that in cases of this nature it is often the account of one witness, such as an accommodation provider, against an appellant a decision to discontinue support has very significant consequences for the supported person and I would expect to see clear evidence of the alleged breaches. In this case such evidence has not been provided.
- 72. The appellant should be aware that his appeal has succeeded solely because the respondent has failed to prove her case to the requisite standard and not because I have necessarily found him to be of blameless conduct. He has produced a number of witness statements demonstrating that, since he moved to the Swindon area, his conduct has been exemplary. I have placed no reliance on these since his residence in that area has been in the context of ongoing court proceedings relating to the previously alleged breach of conditions. He should, however, be in no doubt that the continued provision of support is contingent upon his continuing good behaviour and that, if he remains in any doubt as to the conduct expected of him in his Home Office accommodation or the standards of behaviour set out in his occupancy agreement, he should be sure to contact his local advice agency in order to clarify the same.
- 73. The appellant highlighted in his closing remarks that he now felt isolated in the Swindon area. However, having found that he should continue to be provided with support, I remind him that the location of the accommodation to be provided is not a matter for this Tribunal, but is wholly within the discretion of the respondent. If the respondent has concluded that it is prudent to house him away from an area in which he has been beset by allegation and counter-allegation and has come to the negative attention of the police, then it is within her remit to place him in such an area.
- 74. For the reasons given above I substitute my own decision for that of the Secretary of State with the effect that support should be provided to the appellant under Section 4 of the Act. Having found that the respondent has not proved the alleged breach of conditions to the requisite standard I have no need to proceed to consider Mr Mackenzie's alternative submissions.

Signed .....  
 Deputy Principal Judge, Asylum Support [File Copy]

Dated .....