FIRST-TIER TRIBUNAL
ASYLUM SUPPORT

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Appeal Number AS/19/02/39259
UKVI Ref. 13/11/00500

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

Tribunal Judge	MS G CARTER
Appellant	MR MYA
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 Procedure Rules) and gives reasons for the decision given on Tuesday the 5th March 2019. I substitute my own decision for the decision appealed against with the effect that the appellant is entitled to the provision of support in accordance with Section 95 of the Immigration and Asylum Act 1999 (the 1999 Act), limited to the provision of accommodation only.

2. The appellant, a 28-year-old citizen of Chad, appeals against a decision to discontinue support issued by the Secretary of State on 25 January 2019.

3. The appellant attended the hearing and gave his evidence in the Arabic language through the assistance of an independent interpreter. He had been assisted in the preparation of his case by his solicitor at Duncan Lewis, who authorised the Asylum Support Appeals Project (ASAP) to appear at the hearing on their behalf. The appellant was represented by Ms Mockford of the ASAP. The respondent was represented by Mrs Crozier.

Preliminary Issues

4. The decision of 25 January 2019 purports to terminate support provided to the appellant under Section 4(2) of the 1999 Act. A grant of such support would require the appellant, inter alia, to be a failed asylum seeker. At the outset of the hearing Mrs Crozier clarified that the decision letter is erroneous in this regard.

5. Support had in fact been provided to the appellant under Section 95 of the 1999 Act, reflecting the fact that he has an outstanding asylum claim. This position was agreed by the appellant and his representative and confirmed in the immigration chronology (largely set out in a Pre-Action Protocol response issued by the respondent on 10 December 2018). On the day of the hearing the appellant produced a letter from the respondent dated 26 September 2017, which granted him Section 95 support. Mrs Crozier confirmed that this support had continued until the 25 January 2019 discontinuance decision, which is the subject of this appeal.

6. There were several other flaws in the respondent's preparation of this case, namely a failure to provide an appeal bundle or response to directions and to furnish Mrs Crozier with a copy of the Notice of Appeal and attached documentation, served by the Tribunal on the respondent on 22 February 2019. From Mrs Crozier's diligent enquiries prior to the hearing, it appeared that these failures arose from the misconception that the case was handled by the respondent's Section 4 Team, whereas in fact it was conducted by the Section 95 Compliance Team.

7. Notwithstanding the errors in the preparation of the case and the decision letter, there was no objection from either party to the matter proceeding and I concluded that it was in the interests of justice for the hearing to go ahead.

8. The Home Office decision was based on the assertion that the appellant was no longer destitute, having received compensation from the Secretary of State in the sum of £14,500. Since the receipt of this sum was not contested and the test for destitution is equally applicable to Section 95 and Section 4 support, I concluded that there was no detriment caused by the erroneous terminology in the decision letter or the lack of an appeal bundle. The hearing therefore proceeded as if the decision letter of 25 January 2019 had referred to a termination of support under Section 95 of the 1999 Act rather than Section 4 of that Act.

Background

9. The chronology of the appellant's immigration case has not been provided in detail by either party, but it is evident from the 10 December 2018 Pre-Action Protocol response that the appellant's case has been passed from the respondent's Criminal Casework Team to the Cardiff Asylum Team and that the respondent has withdrawn an initial decision to refuse asylum and agreed to consider the appellant's claim afresh. Further evidence in support of this claim was provided by the appellant in November 2018 and the matter remains outstanding.

10. The appellant thus falls within the definition of an asylum seeker for the purposes of support and he has been provided with Section 95 support since 26 September 2017 up until the termination decision of 25 January 2019. He confirms that since that time his subsistence support has ceased, but he remains in his accommodation provided by the respondent.

11. With regard to the compensation payment, the appellant's solicitors helpfully confirmed in an email of 4 March 2019 that £14,500 was received by them on 26 June 2018 in respect of a damages claim against the respondent for the appellant's unlawful detention during 2015.

12. Of that money, the solicitors retain £3,500 towards payment of statutory charges. The remainder was paid to the appellant in the following instalments:

(i) £3,000 in cash on 8 August 2018;
(ii) £5,000 by transfer to the appellant's friend's bank account on 25 October 2018;
(iii) £3,000 by transfer to the friend's bank account on 17 December 2018.

It is also confirmed that there are ongoing proceedings in respect of alleged unlawful detention during 2017, but no settlement has been made.

The Legislative Provisions Regarding Section 95 Support and Destitution

13. Section 95(1) of the 1999 Act permits the Secretary of State to provide or arrange for the provision of support for asylum seekers or dependants of asylum seekers who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

14. Section 95(3) states as follows:

For the purposes of this section, a person is destitute if –

(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or

(b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

15. The criteria to be used in determining eligibility for and the provision of accommodation under Section 95 are set out in the Asylum Support Regulations 2000 (the Regulations).

16. The period prescribed for the purposes of Section 95(1) is set out in Regulation 7(b) and is (in this case) 56 days beginning with the day on which that question falls to be determined.

17. Regulations 6(3), (4), (5) and (6) set out assets, income and other sources of support, which the Secretary of State must properly take into account and those which must be ignored when assessing destitution. It is specified in Regulation 6(4) that the Secretary of State must take into account –

(a) …income which [the applicant for support] …has or might reasonably be expected to have…;

(b) any other support which is available to the [applicant]…or might reasonably be expected to be so available …;

(c) any assets…(whether held in the United Kingdom or elsewhere) which are available to the [applicant]…or might reasonably be expected to be so available...

The Evidence and Submissions on Destitution

18. This is a termination of support and therefore the burden of proof falls on the respondent. The standard of proof to be applied is that of a balance of probability. The receipt of the sum of £14,500 is not in dispute, but the appellant argues that, as at the date of hearing, he satisfies the Section 95(3) destitution criteria in that, within the prescribed 56-day period, he does not have

the means to either obtain adequate accommodation or fund his essential living needs.

19. The appellant's account is that all of the money he has received has been spent. He did not inform the Home Office about the receipt of compensation, since he assumed that, given that it was paid by them, they would already have known about it. With regard to the first instalment, paid in cash to him in August 2018, he states that he bought clothing and other goods such as three mobile phones and a television. Within two or three months this money had been used up and he requested a further instalment from his solicitor.

20. With regard to the £5,000 paid in October 2018, the appellant explained that he does not himself have a bank account and therefore a friend in Newcastle agreed to receive the money and pass it to the appellant in cash. The appellant then travelled to his friend's address in Newcastle to receive the money, staying there for a short while. He received all of the money from his friend, but it was spent on going to clubs, restaurants, transport and gambling. There was also mention of alcohol and cigarettes, although the appellant later confirmed that his friend does not drink or smoke. When in Newcastle, the appellant stayed at his friend's address, since his friend has leave to remain and is employed, meaning that his accommodation was empty for much of the time. The appellant's evidence was that he travelled to visit his friend in Newcastle approximately 3 or 4 times for 4 or 5 days at a time. On each occasion the money was used as on his first visit.

21. By December 2018 the appellant had again run out of funds and his solicitor transferred the final instalment of the £3,000 to the bank account of the same friend. The third instalment was spent in the same way as the second. The appellant states that he ran out of funds completely in late January or early February 2019. Since that time and following the cessation of subsistence support, he has walked for an hour and a half to use a food bank. He has no other source of support and, whilst he is able to stay with his friend in Newcastle for a visit of a few days at a time, he would not be able to live with or be supported by him.

22. The appellant provided an email from the Red Cross in which they confirm that, on 1 March 2019, they referred the appellant to Leeds Asylum Seekers Support Networks, who can provide £5 from a winter fund to assist with topping up mobile telephones. The appellant duly received one such payment to assist him when travelling to the hearing.

23. In submissions Mrs Crozier highlighted that the appellant would have been aware of the conditions of support and did not report receipt of the compensation funds. She considered his answers to be contradictory, vague and generic and she suggested that someone receiving such an unfamiliarly large amount of money might be expected to keep a careful account of his expenditure.

24. Ms Mockford stressed (with examples from an internet search of accommodation) that the appellant would require available funds of upwards of £2,400 to provide for his subsistence and accommodation within the next 56 days. The appellant's account was, she argued, considered and consistent. It was, she suggested, entirely plausible that a young man, without any settled status, when receiving such an unexpectedly large amount of money might simply spend it. The accelerated rate of spending was consistent with the account of gambling.

My Findings on Destitution

25. In assessing the credibility of the evidence and in particular the appellant's responses, I have throughout considered the appellant's vulnerability. I have had sight of the expert psychiatric report prepared by Dr Wootton on 15 November 2018 in relation to the appellant's immigration proceedings. It is relevant to my decision that the psychiatrist concludes that, due to post-traumatic stress disorder and other mental health problems, the appellant should be regarded as a vulnerable witness and treated accordingly. In accordance with the Senior President's guidance, I therefore narrowed down the issues at the outset of the hearing and, where necessary cross-examination was controlled and the appellant's understanding was checked through the interpreter, with clarification given where necessary.

26. I note that Dr Wootton concludes that the appellant's "vulnerabilities and his mental health significantly impact on his current level of functioning including his ability to concentrate and express himself. This may be a problem even if with appropriate measures … and his behaviour in the tribunal may appear angry and distracted" [sic].

27. In fact, despite a lengthy hearing, the appellant did not present any of the above behaviours. On the contrary, his concentration appeared good, his answers were spontaneous and on occasion, where appropriate, he smiled. In response to my enquiries, he confirmed that he was not worried and felt well, despite being a little tired from an overnight stay in the respondent's emergency accommodation in order to break his journey from Leeds.

28. I found the appellant's account to be consistent throughout examination in chief and cross-examination. This does not, however, mean that I am satisfied that his account is credible. The appellant stated that his grounds of appeal were prepared after a detailed conversation on the telephone with his solicitor, during which an interpreter was used. Yet, the grounds of appeal focus only on the appellant's difficulties with regard to the right to rent and appropriate and make no mention whatsoever of him no longer having access to his compensation money.

29. The appellant has disposed of a very significant amount of money in a very short period. His oral testimony left much of this money unaccounted for. On a balance of probability and in the absence of any corroborative evidence whatsoever, I am not persuaded that his account is credible.

30. Although I accept that money spent on gambling may be difficult to evidence, there are elements of the appellant's account for which he could be expected to produce corroboration. The need for such corroboration was reinforced to the appellant on 1st March 2019, according to an email from his solicitor, but such evidence has still not been forthcoming.

31. I would expect the appellant's accommodation provider to be able to confirm absences from the accommodation, which might support the account of trips to Newcastle and to see, as a minimum, some detailed evidence from the friend in that city, which would confirm the visits and their activities, together with bank statements showing the receipt and withdrawal of the compensation money.

32. The appellant also spoke of the purchase of three mobile telephones, which are said to have been subsequently confiscated by the police. This too could be evidenced. The appellant has also provided no evidence to support his assertion about using food banks and I place little weight on the one charitable

payment of £5, since this was requested after the lodging of the appeal and would have required no detailed assessment of destitution.

33. On balance I find that, in the absence of any supporting evidence, the appellant's account of his speedy disposal of the entirety of the compensation money is lacking in plausibility. I therefore find the respondent's decision that the appellant is not destitute to be proven.

Disposal

34. On the basis of the above I have no hesitation in determining that the appellant is not entitled to be provided with support by way of subsistence. However, I have concluded that the appellant's support by way of accommodation should not be terminated at this stage.

35. Ms Mockford's primary argument was on destitution and, as I have set out above, on this the appellant fails. However, for other reasons, I am satisfied that he does not have any means of obtaining adequate accommodation within the next 56 days.

36. This is due in part to the acknowledged difficulties experienced by asylum seekers in entering into rental contracts and in large measure to the confusion in the respondent's records set out in paragraphs 4 and 5 of these Reasons as to whether the appellant is an asylum seeker or a failed asylum seeker.

37. Ms Mockford raised what might be called "right to rent" arguments as an alternative, should I find against the appellant on destitution. I do not need to set out these provisions in any detail here, since the appellant fairly acknowledged in his oral evidence that he had made no attempts to seek rental accommodation of any sort when receiving his compensation money.

38. In brief, provisions of the Immigration Act 2014 (the 2014 Act) prohibit landlords from letting premises to persons disqualified as a result of their immigration status. Contravention by landlords can give rise to both a civil penalty notice and a criminal offence. Any breach can be avoided if landlords can show they have carried out relevant checks set out in Section 24 and 26 of the 2014 Act prior to entering into a tenancy

39. The practical effect for asylum seekers is that they do have permission to rent, but a prospective landlord would need to obtain a Positive Right to Rent Certificate by contacting the Landlord Checking Service. (Right to rent may be assumed if an answer is not received within 48 hours). For refused asylum seekers the situation is not as straightforward, since the Home Office would be required to grant permission to rent before a Positive Right to Rent Certificate could be issued. There would appear to be no clear processes for this.

40. Thus, the confusion in records regarding the appellant's status as an asylum seeker or failed asylum seeker creates a significant barrier to the smooth commencement of any tenancy. The appellant additionally argues that his only identity documents remain with the respondent and, without further confirmation or copies from the Home Office, this would also represent a disadvantage in the rental market.

41. Significantly, on 1 March 2019, Mr Justice Martin Spencer, sitting in the High Court, reached the conclusion that Sections 20 to 37 of the 2014 Act (i.e. the right to rent sections) are incompatible with Article 14 ECHR in conjunction with Article 8: *R (Joint Council for the Welfare of Immigrants) and Secretary of State*

(Home) and (1) Residential Landlords Association, (2) Equality and Human Rights Commission and (3) Liberty [2019] EWHC 452 (Admin).

42. I am mindful in this case of Spencer J's conclusions that, "landlords are discriminating against potential tenants on grounds of nationality and ethnicity" and that, "it is a short further step to conclude that this is having a real effect on the ability of those in the discriminated classes to obtain accommodation, either because they cannot get such accommodation at all or because it is taking significantly longer for them to secure accommodation".

43. These conclusions do not absolve the appellant from the need to demonstrate his own destitution to this Tribunal, which he has failed to do. However, I accept, following the findings of Spencer J, that it is disproportionately difficult for the appellant to successfully enter into a rental contract. In this case that difficulty is compounded by the confusion as to which of the right to rent provisions apply to him, given the inconsistent recording by the respondent as to his asylum-seeking status.

44. On this basis I conclude that the appellant does not have the means to obtain adequate accommodation within the statutory period and thus I substitute my decision for that of the respondent, with the effect that the appellant should be continued to be provided with support by way of accommodation only under Section 95 of the 1999 Act.

45. Whilst accommodation is provided the respondent can be expected to assist in resolving the appellant's difficulties, either by providing him with the appropriate identification, confirmation of immigration status and rental permissions to enable him to seek his own accommodation or by maintaining his current accommodation but making a proportionate charge for the same.

46. The appellant remains at liberty to submit to the respondent at any stage evidence of a changed financial position. He should be aware that this will include not only any evidence of destitution, such as was not presented during the hearing, but also the receipt of any new financial assets, for example by way of damages awarded in the ongoing proceedings about the 2017 detention.

Signed: Ms G Carter Dated: 8 March 2019
Deputy Principal Judge, Asylum Support
SIGNED ON THE ORIGINAL [Appellant's Copy]