



# FIRST-TIER TRIBUNAL ASYLUM SUPPORT

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Appeal Number 1: AS/23/11/45804  
22/10/04549 &  
Home Office 1: KIU/7621097

Appeal Number 2: AS/23/11/45824  
23/01/00553 &  
Home Office 2: TN4/5586529

Appeal Number 3: AS/23/11/45796  
Home Office 3: 22/11/01071 &  
TN2/5570733

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

<b>Tribunal Judge</b>	Principal Judge Sehba Storey
<b>Appellant 1</b>	AW
<b>Appellant 2</b>	AM
<b>Appellant 3</b>	BG
<b>Respondent</b>	Secretary of State for the Home Department

### 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 AST Procedure Rules) and gives reasons for the decisions made on Tuesday 9 January 2024, as detailed in paragraph 111 below.
2. The first appellant (AW) is a 25-year-old national of Iraq. He arrived in the UK on 22 September 2022. The second appellant (AM) is a 36-year-old national of Egypt. He arrived in the UK on 30 November 2022. The third appellant (BG) is a 35-year-old national of Georgia. He arrived in the UK on 19 October 2022.
3. The three appellants appeal against the decisions of the Secretary of State to discontinue their subsistence and accommodation support under section 95 of the Immigration and Asylum Act 1999 (the 1999 Act) on the grounds that they are in breach of a relevant condition upon which such support is based.

4. These appeals, give rise to common issues of law and fact and have been linked by the Tribunal to be heard together as a designated lead case (the appeal) pursuant to Rule 18 of the AST Procedure Rules. The three appellants are otherwise unconnected.
5. The appeal was heard on Wednesday 13 December 2023. The appellants were represented at the hearing by Counsel Mr Pemberton, of Brick Court Chambers, on the instructions of the Asylum Support Appeals Project (ASAP). The respondent was represented by Mrs Crozier, Home Office Senior Presenting Officer. There were a number of observers present at the hearing but otherwise played no part in proceedings.
6. Arrangements were made for AW, AM and BG to be provided with an interpreter. At the hearing, AM was assisted by Mr Todria in Georgian and BG was assisted by Mr Belkhiri in Egyptian Arabic. However, the interpreter booked for AW cancelled on the morning of the hearing and attempts to find an alternative interpreter were unsuccessful. The parties were opposed to an adjournment. AW confirmed that he was able to understand spoken English but would like the option to use an interpreter when giving evidence, should the need arise. I was able to establish that AW could communicate in Egyptian Arabic with Mr. Belkhiri, and with his agreement, and no objection from either Mr Pemberton or Mrs Crozier, I decided that it was in the interests of justice to proceed with Mr Belkhiri assisting. I am grateful to all parties for their cooperation with the Tribunal, but especially to Mr Belkhiri for managing a complex situation so well.
7. Although BG's evidence was taken first as he had a fixed return train ticket to Bristol, the evidence in this decision will be set out in the order AW, AM and BG.

## **BACKGROUND**

8. AW, AM and BG are asylum seekers who arrived in the United Kingdom between September and November 2022. All three claimed asylum and applied for subsistence and accommodation support under section 95 of the 1999 Act. The Secretary of State accepted each appellant as destitute and granted support. AW was housed in Buckingham, AM in Crawley and BG in Bristol.

## **AW**

9. On 19 October 2022, AW was issued a first letter granting section 95 support that set out the terms on which such support was granted. The letter included a paragraph headed "Asylum Support Conditions" and included the following instructions:

*"You must comply with these conditions, or we may suspend or discontinue the support we give you and/or any of your dependants.*

*If you fail to comply with these conditions, you, or any of your dependants may also be liable to prosecution.*

- *You must follow the travel arrangements made for you. For example, moving to another property. You must tell the Home Office in advance if there is any reason you will be unable to follow the travel arrangements.*
  - *You must live at the authorised address. ..."*
10. On 25 October 2023, AW was issued a second letter enclosing a Notice to Quit (NTQ) his Buckingham accommodation and instructions to relocate to the Bibby Stockholm (BBS) barge by 6 November 2023. The notice stated that if AW felt the proposed move was not suitable or adequate for his needs, he must make representations by 5.00pm on

Wednesday 1 November 2023, or as soon as possible, but in any event within 5 working days of receiving the notice. He was reminded that section 95 accommodation is offered on a no-choice basis and that where asylum seekers fail to accept an offer of suitable accommodation without a reasonable explanation, there should be no expectation that alternative accommodation will be offered. AW was warned that if he failed to relocate to the BBS barge on the date set or to submit representations within 5 working days (unless exceptional circumstances applied, as set out in the “*Failure to Travel to Bibby Stockholm Vessel Guidance*” (see below)), the service provider would evict him. Lastly, he was informed that a “bedspace” on the BBS barge would remain available for a further 5 working days after the eviction had taken place but if this were not taken up within this period, support would be discontinued and AW would no longer be able to access Home Office accommodation or subsistence support.

11. AW did not make representations. Although he claims he attempted to do so. Having failed to relocate as required, he was evicted on 6 November 2023. He did not accept the offer of a bedspace, which had remained available until 10 November 2023.
12. On 16 November 2023, 6 days after he had no access to subsistence or accommodation support, AW was issued a written decision to discontinue support with a right of appeal. The decision was sent to his Buckingham address.
13. On 20 November 2023, AW appealed the decision of 16 November 2023.

#### **AW's Medical Evidence**

14. AW's notice of appeal was completed by his GP, Dr Burdett. She stated that AW had told her he has water phobia, itchy skin and difficulty sleeping “due to flashbacks from the trauma in home country.” She said AW was “asking for meds for mental health” and specifically for Mirtazapine as AW thought he had been prescribed this in Germany and it had helped his insomnia and mood.
15. Accompanying the notice of appeal, was a consultation information sheet that recorded AW's attendance with Dr Camelia and a second attendance with Dr Huddy, both on 14 November 2023. AW was described as a new patient to surgery. He informed the doctor that he had suffered with asthma for 10 years and was prescribed a salbutamol inhaler in Germany. The consultation information sheet noted that “for the last few weeks he has woken up ...with DIB [difficulty in breathing] and experienced SOBOE [shortness of breath on exertion].” The doctor recorded normal temperature, normal pulse, 97% oxygen saturation and a mild wheeze. She diagnosed “suspected asthma” and prescribed a salbutamol inhaler. I note that all his GP attendances took place after AW received instructions to relocate to the BBS barge.

#### **AM**

16. AM was issued a first letter granting section 95 support on 4 January 2023 in identical terms to AW. A second letter enclosing a NTQ his Crawley accommodation and instructions to relocate to the BBS barge was issued on 26 October 2023, again allowing 5 working days to make representations.
17. On 2 November 2023, AM made representations that relocation to the BBS barge was not appropriate in his case and that he wished to remain in Crawley. He offered three reasons for seeking to challenge his relocation, namely that:
  - a) He is enrolled at Crawley College on an English language course; the fees have been paid in full and he is two months into the academic year;

- b) He receives regular physiotherapy from Crawley hospital for a problem with his foot and has a confirmed appointment on 16 November 2023;
  - c) He entered the UK legally and has lived in Crawley for 11 months.
18. On 6 November 2023, AM was informed that his reasons for not wanting to be relocated to the BBS barge did not meet the “*Allocation of Asylum Accommodation Policy*” criteria (see below), because exemption on educational grounds only applies to children in education; and his foot injury cannot be considered against the policy because he has failed to provide supporting evidence, “such as medical reports, [a] diagnosis or treatment”. He was told that he was considered suitable for relocation to the BBS barge and would be moved on 7 November 2023, as per the letter of 26 October 2023.
19. AM did not relocate to the BBS barge and was evicted on 8 November 2023. He did not accept the open offer of a bedspace on the BBS barge over the next 5 working days.
20. On 23 November 2023, 15 days after the date of his eviction from the Crawley accommodation, AM was issued a decision to discontinue his support with a right of appeal. The decision was sent to his Crawley address.
21. On 28 November 2023, AM appealed against the discontinuance of support and provided the following grounds of appeal:
- a) He was imprisoned on two occasions in Egypt and subjected to physical and psychological torture.
  - b) He cannot live in “a closed place again for any time” and the barge reminds him of prison in Egypt.
  - c) His “main medical reason” for opposing relocation is that he suffers from naviphobia following a near drowning incident in childhood and his fear and anxiety about the sea results in nausea, vomiting and drowsiness.

### **AM’s Medical Evidence**

22. AM relies on medical evidence that pre-dates and post-dates his relocation decision, as follows:
- a) A letter from Dr Fitzgerald, Langley Corner Surgery, dated 1 March 2023 confirming that he is having “problems with insomnia, waking frequently during the night and his poor sleep is worsened by sharing a room with another person who has different sleeping patterns.”
  - b) A discharge letter of 19 October 2023 from Sussex MSK Partnership, recorded that AM first presented on 28 September 2023 with ongoing right ankle problems. He was treated with physiotherapy, home exercise plan, orthotics and pacing strategies, but “he is yet to notice an improvement.”
  - c) A letter from Dr Khan confirmed that he saw AM on 5 December 2023, concerning his mental health. He reported that AM spoke of being tortured during two periods of imprisonment in Egypt and of being detained in confined spaces. AM told Dr Khan that following his release from prison he was on medication for anxiety and depression for which he had supporting evidence from his doctor in Egypt. Dr Khan wrote that AM has said he still gets anxious in small spaces, travelling on a bus or train and often has to come off and take a break before he can continue.

- d) An undated letter from Dr Gomel Yusef, in Egypt, stating that in 2016, he treated AM for generalised anxiety disorder, panic attacks and claustrophobia. Dr Yousef did not volunteer his professional qualifications or how he is qualified to make this diagnosis. Nor did he state whether AM was treated with medication, therapy of both.
- e) An undated letter from Dr Hamdi Ali, in Egypt, in which he described himself as a “Doctor of the family.” He said that the appellant “drowned when he was young” and the event left him with “Navi phobia.” Dr Ali did not volunteer his professional qualifications or how he is qualified to make this diagnosis. Noe did he provide details of how the condition was treated.

## **BG**

- 23. BG was issued a first letter granting section 95 support on 3 November 2022 in identical terms to AW and AM. On 25 October 2023, he was sent a second letter enclosing a NTQ his Bristol accommodation with instructions to relocate to the BBS barge on 6 November 2023. He was given 5 working days (by 5 pm on Wednesday 1 November 2023) to make representations.
- 24. On 26 October 2023, BG made representations and asked not to be moved to the BBS barge. He provided the following medical reasons for challenging relocation:
  - a) He has breathing problems that are made significantly worse by dampness and cold;
  - b) He is blind in one eye and has difficulty living with sight loss;
  - c) He has a bullet fragment lodged in his left thigh; and
  - d) He has mental health issues including PTSD, sleep deprivation and suicidal ideation, which have improved since living in Bristol and attending church.
- 25. In support of his representations, BG submitted medical evidence of treatment for hearing loss, sight test, the presence of cataracts, “possible unexplained vision loss” and confirmation of shrapnel embedded in his thigh.
- 26. On 31 October 2023, his representations were rejected and he was told that evidence he had provided “does not make you unsuitable for the [BBS] accommodation.” The rejection letter informed BG that his medical evidence was referred to the Home Office Independent Medical Adviser, who advised that suitable medical and support services exist at or near the BBS barge and transfer of care is “an everyday process.” The author of the letter of 31 October 2023, commented that BG’s current medical conditions did not preclude residing on the barge and concluded that relocation will not significantly adversely affect his condition or treatment.
- 27. BG did not relocate to the BBS barge. On 6 November 2023, BG was evicted from his accommodation. He did not accept the open offer of a bedspace on the BBS barge over the next 5 working days.
- 28. On 15 November 2023, BG was sent a letter to his Bristol address, (from which he had been evicted) advising that his reasons for not wanting to be relocated to the BBS did not meet the “*Allocation of Asylum Accommodation Policy*” criteria and were refused on 31 October 2023. He was advised that having failed to accept the offer of

accommodation within the extended period, he was no longer entitled to support.

29. On 19 November 2023, BG appealed the decision of 15 November 2023, and confirmed the reasons set out in paragraph 24 above. Additionally, he said that he:
- a) Required surgery to repair his poor sight to prevent him going blind;
  - b) He has “stressful sleep and immature thoughts, any tension affects me and almost drives me crazy;”
  - c) The “bullet” in his leg causes pain when walking. This is worsened by dampness and cold;
  - d) He suffers attacks of anxiety every time he leaves his home; and
  - e) “The only reason why I don’t kill myself is that I have 3 children and I don’t want to leave them ....I don’t have any other hope any more...”

### **BG’s Medical Evidence**

30. In so far as relevant, BG’s medical evidence comprised the following:
- a) A chart setting out four reasons why he considered the BBS barge unsuitable for his needs and individual circumstances, namely:
    - (i) Breathing difficulties caused by a deviated septum for which BG was awaiting a septoplasty under the care of Dr Warren Bennett at St Michaels Hospital, Bristol;
    - (ii) Deteriorating vision, the suggestion of sight loss and correspondence from Specsavers;
    - (iii) An assertion that he has a bullet fragment lodged in his left thigh;
    - (iv) A claim that he suffers from PTSD, insomnia, and has experienced past suicidal ideation “which have improved since seeking medical attention and support ...in Bristol;”
  - b) Confirmation of registration with a local GP surgery on 15 November 2022.
  - c) Letter of 10 May 2023, from Specialist Registrar ENT, Dr Balakumar, of University Hospital, Bristol, advising that an MRI requested to investigate hearing issues could not be undertaken because BG had a bullet fragment imbedded in his left thigh;
  - d) Letter dated 24 July 2023, from Registrar Dr Balakumar, confirming normal results of a CT scan of BG’s head commissioned to investigate right-sided hearing loss. The letter confirmed that a septoplasty procedure was awaited.
  - e) Letter of 23 May 2023, from Miss Cole, Consultant Ophthalmologist at University Hospital, Bristol confirming diagnosis of non-significant cataract in both eyes, high myopia in both eyes, good vision with contact lens but otherwise nothing abnormal detected.

## **THE CENTRAL ISSUES**

### **Tribunal Directions**

31. On 1 December 2023, the Tribunal issued the following directions:

- a) Does the Tribunal have jurisdiction to hear appeals by appellants whose support under section 95 IAA 1999 is discontinued, owing to their refusal to relocate to the Bibby Stockholm barge (BBS), in breach of the conditions upon which their support is provided?
- b) If so, how are these appeals to be distinguished from the case of *Dogan v SSHD* [2003] EWCA Civ 1673 (*Dogan (CA)*) in which the late Laws LJ held that a refusal to relocate is not an appealable decision under section 103(2) IAA 1999, because the SSHD has not made regulations under section 103 (7) providing for decisions as to where support is provided under section 95 to be appealable.
- c) If these appeals are distinguishable from *Dogan (CA)*, what is the extent of the Tribunal's jurisdiction when deciding,
  - i) The reasonableness of the SSHD decision to relocate appellants to the BBS? And/or
  - ii) When an appellant's medical condition would make the BBS medically unsuitable for their accommodation.

### **Appellants' Response to Directions**

32. Mr Pemberton for the appellants filed a skeleton argument addressing the issue of jurisdiction, the alleged breach of conditions and an authorities bundle. I attach the index to the bundle, marked **Annex A**. Notwithstanding that I may not specifically refer to every document in the authorities bundle, I confirm that I have considered them in reaching my decision.
33. Mr Pemberton submits that the Tribunal has jurisdiction to hear the 3 appeals against the decisions of the Secretary of State to discontinue support in circumstance where:
  - a) The appellants have received a first decision to provide them with section 95 accommodation,
  - b) they have breached a condition of their support, in these appeals by failing to move to the BBS barge when instructed to do so,
  - c) support has been discontinued by a second decision for breach of a condition of support,
  - d) the second decision is one to stop providing support "*before that support would otherwise have come to an end,*" (section 102(3)).

This contrasts, he submits, with the case of *Dogan* in which the appellant received only one decision awarding support subject to a condition requiring him to locate to a first address.

### **The Secretary of State's Response to Directions**

34. The respondent did not reply to the Tribunal's directions concerning jurisdiction and relied instead on oral submission at the hearing.
35. In response to a request for information relating to facilities on or near the BBS barge, the respondent provided the following information (not all of it is reproduced here):
  - a) Those accommodated on the BBS are not detained and there is no curfew.

- There are rules for access to and egress from the Port to ensure safety and security, and adherence to the health and safety requirements of the Port.
- b) Service users are free to leave the vessel at any time, no permissions are required and there will be 24/7 arrangements in place to ensure that service users wishing to leave the site can be taken to the Port entrance.
  - c) Service users are not required to register with local GP practices as there is healthcare provision on site. A qualified senior health professional such as an Advanced Nurse Practitioner or Paramedic is onsite 5 days a week between the hours of 9am and 5pm. A General Practitioner will be available onsite one day per week between 9am and 5pm, with remote access to GP consultations when onsite care is unavailable or needs additional support.
  - d) Additional funding has been provided to assist local NHS services. Individuals will be signposted to the presence of the onsite nurse during their induction upon arrival. Prescriptions will be produced electronically and delivered to the vessel by a local pharmacy. There is no dentist provision on site. The on-site nurse can provide analgesia and reception can assist individuals to call the emergency dental line. In the absence of the onsite nurse, emergency advice is available using the 111 or 999 systems (coordinated through the 24/7 reception).
  - e) There is no specific role on the BBS vessel that is referred to as a Warden. The crew on board consists of security staff and welfare officers who are all trained first aiders and will be the first responder in case of a medical emergency onboard.
  - f) Discontinuation of support following a failure to travel to the vessel would only take place when an individual has failed to comply with the travel arrangements made for them and has failed to accept the offer of accommodation on the vessel in the five working days following their eviction from their previous accommodation. The appellants' decisions to not accept the offer of accommodation represents a persistent breach.
  - g) Individuals are able to reapply for Home Office support via Migrant Help at a later stage if required. Where a further application for support is accepted by the Home Office and there are available bedspaces on the vessel, the individual would be offered accommodation on the vessel. Where there are no available bedspaces on the vessel, the individual will be placed in alternative accommodation and will be moved to the vessel at a later date when a bedspace becomes available.
  - h) **The appellants remain entitled to Section 95 support, including subsistence and accommodation until the disposition of this appeal by the Tribunal. (Emphasis added).**

## LEGAL FRAMEWORK

### The IAA1999

36. So far as material, section 95 IAA 1999 provides:

**95. — *Persons for whom support may be provided.***



- (1) *The Secretary of State may provide, or arrange for the provision of, support for—*
- (a) *asylum-seekers, or*
  - (b) *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.”*
- (2) *.....*
- (3) *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....*  
*(emphasis added)*

37. Section 96(1) IAA 1999 provides:

**96. — *Ways in which support may be provided.***

- (1) *Support may be provided under section 95—*
- (a) *by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);*
  - (b) *by providing what appear to the Secretary of State to be essential living needs of the supported person and his dependants (if any); ....*
- (2) *If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.”*

38. Section 97 IAA 1999 provides:

**97. . — *Supplemental***

- (1) *When exercising his power under section 95 to provide accommodation, the Secretary of State must have regard to—*
- a) *the fact that the accommodation is to be temporary pending determination of the asylum-seeker’s claim;*
  - b) *the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation; and*
  - c) *such other matters (if any) as may be prescribed.*
- (2) *But he may not have regard to—*
- a) *any preference that the supported person or his dependants (if any) may have as to the locality in which the accommodation is to be provided; or*
  - b) *such other matters (if any) as may be prescribed.*

39. Appeals in relation to decisions of the Secretary of State regarding section 95 support are provided for in section 103 of the 1999 Act. So far as material, this provides:

### **103.— Appeals.**

- 1) *If, on an application for support under section 95, the Secretary of State decides that the applicant does not qualify for support under that section, the applicant may appeal to the First-tier Tribunal .*
- 2) *If the Secretary of State decides to stop providing support for a person under section 95 before that support would otherwise have come to an end, that person may appeal to the First-tier Tribunal .*
- 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.*

*The decision of the First-tier Tribunal is final.*
- 4).....
- 5) *If an appeal is dismissed, no further application by the appellant for support under section 4 or 95 is to be entertained unless the Secretary of State is satisfied that there has been a material change in the circumstances.*
- 6) *The Secretary of State may by regulations provide for decisions as to where support provided under section 4 or 95 is to be provided to be appealable to the First-tier Tribunal under this Part.*

.....

### **The Reception Directive**

40. On 27 January 2003, the Council of the European Union adopted Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers (the Reception Directive). The Reception Directive was transposed into UK law through the Asylum Seekers (Reception Conditions) Regulations 2005 and the Asylum Support (Amendment) Regulations 2005. As it remains part of UK legislation, I need not concern myself with the specifics of Council Directive 2003/9/EC.

### **Asylum Seekers (Reception Conditions) Regulations 2005 (the RC Regulation 2005)**

41. Regulation 5 confers a duty on the respondent to provide support under sections 95 and 98 where an asylum seeker is considered to be eligible for support.
42. Reflecting Article 17 of the Reception Directive, Regulation 4 provides the following:

#### ***Provisions for persons with special needs***

- 4.—(1) *This regulation applies to an asylum seeker or the family member of an asylum seeker who is a vulnerable person.*
- (2) *When the Secretary of State is providing support or considering whether to provide support under section 95 or 98 of the 1999 Act to an asylum seeker*

- or his family member who is a vulnerable person, he shall take into account the special needs of that asylum seeker or his family member.*
- (3) *A vulnerable person is –*
- a) *a minor;*
  - b) *a disabled person;*
  - c) *an elderly person;*
  - d) *a pregnant woman;*
  - e) *a lone parent with a minor child; or*
  - f) *a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence;*

*who has had an individual evaluation of his situation that confirms he has special needs.*

- (4) *Nothing in this regulation obliges the Secretary of State to carry out or arrange for the carrying out of an individual evaluation of a vulnerable person's situation to determine whether he has special needs."*

### **Asylum Support (Amendment) Regulations 2005 (the Amendment Regulations 2005)**

43. The Amendment Regulations 2005 altered the previous Asylum Support Regulations 2000 in two material ways. First, regulation 5(b) substituted a new regulation 19(2) to define a "*relevant condition*" as:

*"one which makes the provision of asylum support subject to actual residence by the supported person or a dependant of his for whom support is being provided in a specific place or location."*

Second, regulation 6 of the 2005 Regulations included a new regulation 20, which provided as follows:

#### **Suspension or discontinuation of support**

- 20.—(1) Asylum support for a supported person and any dependant of his or for one or more dependants of a supported person may be suspended or discontinued if—
- a) support is being provided for the supported person or a dependant of his in collective accommodation and the Secretary of State has reasonable grounds to believe that the supported person or his dependant has committed a serious breach of the rules of that accommodation;
  - b) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has committed an act of seriously violent behaviour whether or not that act occurs in accommodation provided by way of asylum support or at the authorised address or elsewhere;
  - c) the supported person or a dependant of his has committed an offence under Part VI of the Act;
  - d) the Secretary of State has reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has abandoned the authorised address without first informing the Secretary of State or, if requested, without permission;

- e) the supported person has not complied within a reasonable period, which shall be no less than five working days beginning with the day on which the request was received by him, with requests for information made by the Secretary of State and which relate to the supported person's or his dependant's eligibility for or receipt of asylum support including requests made under regulation 15;
  - f) the supported person fails, without reasonable excuse, to attend an interview requested by the Secretary of State relating to the supported person's or his dependant's eligibility for or receipt of asylum support;
  - g) the supported person or, if he is an asylum seeker, his dependant, has not complied within a reasonable period, which shall be no less than ten working days beginning with the day on which the request was received by him, with a request for information made by the Secretary of State relating to his claim for asylum;
  - h) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has concealed financial resources and that the supported person or a dependant of his or both have therefore unduly benefited from the receipt of asylum support;
  - i) the supported person or a dependant of his for whom support is being provided has not complied with a reporting requirement;
  - j) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has made a claim for asylum ("the first claim") and before the first claim has been determined makes or seeks to make a further claim for asylum not being part of the first claim in the same or a different name; or
  - k) the supported person or a dependant of his for whom support is being provided has failed without reasonable excuse to comply with a relevant condition. (added emphasis),**
- (2) If a supported person is asked to attend an interview of the type referred to in paragraph (1)(f) he shall be given no less than five working days' notice of it.
  - (3) Any decision to discontinue support in the circumstances referred to in paragraph (1) above shall be taken individually, objectively and impartially and reasons shall be given. Decisions will be based on the particular situation of the person concerned and particular regard shall be had to whether he is a vulnerable person as described by Article 17 of Council Directive 2003/9/EC of 27th January 2003 laying down minimum standards for the reception of asylum seekers. (Emphasis added).
  - (4) No person's asylum support shall be discontinued before a decision is made under paragraph (1).

**HOME OFFICE - RELEVANT GUIDANCE AND POLICY** (emphasis added throughout)

44. The Home Office guidance and policy relevant to these three appeals are the *Allocation*

of *Asylum Accommodation Policy*, version 10, published on 9 October 2023 ([Allocation of accommodation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)); *Conditions of Support Guidance*, version 2.0, published on 7 March 2023 ([Conditions of support \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)); and the *Failure to Travel to Bibby Stockholm Vessel Guidance*, version 3.0, published on 24 November 2023 ([Failure to Travel to Bibby Stockholm Vessel policy guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)).

### ***Allocation of Asylum Accommodation Policy***

45. The suitability criteria, set out on page 15 of the Allocation of Accommodation Policy provides that when considering an individual's suitability to be accommodated at a vessel, caseworkers should “**consider all of the evidence available**”. (my emphasis throughout). This includes, but is not limited to:

- asylum screening interviews,
- ASF1s, where available,
- information on Home Office systems,
- supporting correspondence from the applicant or their representative
- any other information that may inform the decision-making process.

46. The policy continues that “**additionally,**” if an individual meet “any of the following criteria” they are **not** suitable for the BBS (and other sites), namely:

- they fall within the definition of “vulnerable person” under Regulation 4 of the Asylum Seekers (Reception Conditions) Regulations 2005 and have had an individual evaluation of their situation that confirms they have special needs for support under section 95 of the Immigration and Asylum Act 1999 - the relevant points in these regulations are that a vulnerable individual is:
  - a disabled person
  - an elderly person
  - an individual who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence; and in each case, **has had an individual evaluation of his situation** that confirms he has special needs
  - they have serious mobility problems or physical disability
  - they have complex health needs within the meaning given by the Healthcare Needs and Pregnancy Dispersal Policy at paragraph 4.16 - the relevant complex health needs are:
    - active tuberculosis and infectious / active communicable diseases (when making dispersal arrangements for applicants with Tuberculosis also refer to chapter 7.2: Tuberculosis – Dispersal Guidelines)
    - serious mental health issues where there is a high risk of suicide, serious self-harm or risk to others (when making dispersal arrangements for applicants with mental health issues, also refer to chapter 7.3: Mental Health– Dispersal Guidelines)
    - chronic disease, for example, kidney disease where the patient requires regular dialysis
    - HIV (when making dispersal arrangements for applicants with HIV, also refer to chapter 7.1: HIV – Dispersal Guidelines) .....

Each case should be **individually assessed** and if you are unsure whether an individual is suitable to be accommodated, you should discuss the matter with a senior caseworker or manager.

.....

Should an individual be allocated accommodation at an ex-MoD site, vessel or Napier and new information on their suitability to remain or room share come to light from the accommodation provider or statutory bodies, the case should be reviewed and alternative accommodation may be allocated. In addition, asylum seekers allocated to the accommodation have full access to the advisory services provided by Migrant Help and are able to raise issues about their suitability to be accommodated at the site.

47. The *Allocation of Asylum Accommodation Policy* further provides that where an individual is considered unsuitable for room sharing, they may be accommodated in a single room.

### **Conditions of Support Guidance - version 2.0, published on 7 March 2023**

48. This Guidance is directed at caseworkers. On page 13, under “*Discontinuance of Support*,” caseworkers are reminded that any decision to discontinue support for breach of conditions must be taken **individually, objectively and impartially**, and the decision should be based on the particular situation of the supported person. Particular features that should be taken into consideration, “which are not exhaustive,” are:

- the seriousness of the breach of the conditions
- the explanation for the breach of the conditions
- the extent to which there have been previous breaches of conditions.

This Guidance also states that particular attention should also be given (I read this as in addition to the above) to whether the supported person is a **vulnerable person**.

### **Failure to Travel to Bibby Stockholm Vessel, version 2.0, published 23 October 2023**

49. This document provides guidance for caseworkers on taking decisions when allocating accommodation on the BBS barge at Portland Port.
50. The paragraph headed, *Representations on relocation to the Bibby Stockholm vessel at Portland Port*, provides that any representations must be made within five working days of the date that the NQT is issued. Extensions of time to return representations are discouraged. The intention appears to be that representations will be considered within five working days.
51. In the paragraph headed *Decisions on the representations*, caseworkers are directed where required, to consult the Home Office Asylum Support Medical Adviser and/ or the Home Office Psychiatrist for their expert opinion.
52. The paragraph *Decisions on the representations*, suggests four possible outcomes for representations. These are:
- a) To reject the representations where there are no valid grounds, and the individual is suitable to be accommodated on the vessel.
  - b) Having considered all of the information now available in the context of the Allocation of Accommodation guidance, to decide that the individual is not suitable to be accommodated on the vessel.
  - c) After receiving the opinion of the Home Office Asylum Support Medical Adviser and/or the Home Office Psychiatrist make a referral for further

- expert evidence
- d) Further information is required from the individual before a decision on suitability can be reached.

### **HOME OFFICE Medical Advisors**

53. 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 common-sense 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.”

54. The observations 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. I interpret Sedley LJ comments as intended to caution against treating Home Office medical Advisors as experts, on par with expert medical practitioners. He was not dismissing their role and advice as having little value, so much as urging decision-makers to use their advice to understand the medical evidence before them.
55. This was confirmed in *London Borough of Wandsworth v Allison* [2008] EWCA Civ 354 (*Allison*) in which 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 used by decision-makers to understand the medical issues and to evaluate for themselves the evidence before them.

### **Home Office - Notice to Quit Letter (NTQ)**

56. The NTQ advises claimants that they are required to relocate to the BBS by a specific date. If, however, they consider the move is not suitable or adequate for their needs, they are asked to make representations no later than five working days of receiving the NTQ. Claimants are informed that representations will be assessed against the *Allocation of Accommodation Policy*. An assurance is given that no move to the BBS barge will take place until “all information, including representations” has been considered by the Home Office and the claimant is given a decision in writing. Claimants are reminded that asylum support is provided subject to conditions and that a breach of conditions may lead to early suspension or discontinuation of support. The claimant is further warned that if representations are not made or where they are rejected, and the claimant fails to relocate to the BBS barge, they will be evicted from their accommodation. However, “a bedspace” on the BBS barge remains available to them for five working days after eviction has taken place. If the bedspace is not taken up, support will be discontinued

after five working days (triggering a right of appeal to the AST) and thereafter, neither accommodation nor subsistence support will be available to the individual.

## OTHER GUIDANCE FROM THE COURTS

57. In *R (Limbuella) v SSHD* [2005] UKHL 66, [2006] 1 AC 396, their Lordships made clear that the Tribunal is to read and give effect to the IAA 1999 and the Amendment Regulations 2005 in such a way as is compatible with ECHR rights. Thus, it is a breach of Article 3 ECHR for an asylum seeker to be left destitute in the United Kingdom. The House of Lords held, unanimously, that to leave a person street homeless would be both inhuman and degrading.
58. Given the profound consequences of evicting an appellant, namely a risk that they may become destitute if left without basic food and shelter, in breach of their Article 3 ECHR rights, a high degree of probability is required when making such a decision (*R v London Borough of Barnet ex parte Khawaja & Khera* [1984] 1 AC 74 (HL)). The Home Office thus bears the burden showing that there is a breach of conditions, with a “*high degree of probability.*”
59. When considering whether the withdrawal of support for destitute asylum seekers on the ground of a breach of a Regulation 20 condition is reasonable, I also have regard to *R v Kensington and Chelsea RLBC ex parte Kujtim* [1999] 4 All ER 161 (CA). Giving the lead judgment, Potter LJ held (at [32]) that in circumstances where an applicant either unreasonably refuses to accept the accommodation provided or if, following its provision, by his conduct he manifests a “*persistent and unequivocal*” refusal to observe the reasonable requirements in relation to the occupation of such accommodation, then the accommodation provider is entitled to treat its duty as discharged and refuse to provide further accommodation. That will remain the position, said his Lordship, unless and until the applicant can satisfy the accommodation provider that there is no longer reason to think that he will persist in his refusal to observe the reasonable requirements of the accommodation provider. Gibson LJ emphasised (at [33 - 34]) that the accommodation provider should only consider its duty to provide accommodation as discharged when satisfied of the applicant’s persistent and unequivocal refusal to comply with a requirement,
- “ *...coupled with a careful consideration of his current needs and circumstances. Either or both may involve consideration of any relevant medical condition or infirmity known to [the accommodation provider].*”
60. His Lordship added that before concluding that there has been a persistent and unequivocal refusal, it will plainly be desirable to write a letter of final warning.
61. In *R (Hetoja) v SSHD* [2002] EWHC 2146 (Admin), Lightman J held (at [25]) that in performing his duty to provide accommodation under section 95 of the IAA 1999, the Secretary of State is obliged to provide adequate accommodation and to consider (amongst other factors) the individual circumstances of the applicant as they relate to his accommodation needs (including family ties). While regard may not be had to preferences, regard may be had to the factors underlying those preferences.

## BURDEN AND STANDARD OF PROOF

62. When termination of support is justified on the grounds of breach of Regulation 20, it is for the respondent to establish that breach. Once proven, it is for the appellant to demonstrate that he has a reasonable excuse for any breach.



## TRIBUNAL JURISDICTION

63. The Tribunal's jurisdiction to hear these appeals was considered as a preliminary issue and submissions were heard from both parties. As both parties are now in agreement on the Tribunal's jurisdiction to hear these appeals, I have limited my comments on otherwise lengthy submissions on point.
64. The case of *Dogan* was concerned with the right of asylum seekers to appeal to the Tribunal against a decision of the Secretary of State to give support to an asylum seeker, subject to conditions.
65. The 1999 Act provides that the Tribunal can only entertain appeals by applicants for asylum support in two specific circumstances, namely:
  - a) Under section 103(1) when the Secretary of State on an application for support under section 95 has decided that an applicant "does not qualify for support under section 95"; or
  - b) Under section 103(2), when the Secretary of State "decides to stop providing support for a person under section 95 before that support would otherwise have come to an end".
66. A third potential source of appeals is contained in section 103(7) by which Parliament provided for regulations to be made to provide an appeal where "decisions as to where support under sections 4 and 95 is to be provided". Such an appeal will only be accorded to asylum seekers when regulations are made under Section 103 (7), but to date, none have been made.
67. In the Administrative Court, Silber J referred to appeals under section 103(1) as "non-qualification appeals"; appeals under section 103(2) as "stoppage appeals"; and appeals under section 103(7) as "location appeals" (*R (SSHD) v CASA and Dogan* [2002] EWHC 2218 (Admin)).(*Dogan (Admin)*).
68. The Honourable Judge held that the right to bring what he termed "a stoppage appeal" under section 103(2), only arises if the asylum seeker can show that two separate decisions had been made, namely a *first decision* to grant support and then a *second later decision*, to terminate it prematurely. Thus, an asylum seeker (like *Dogan*) cannot pursue a stoppage appeal if the Secretary of State only makes one decision granting either support for a limited period of time or support subject to a condition, such as, that it will only be provided if the claimant relocates to a particular area.
69. In the Court of Appeal, Laws LJ acknowledged that the case raised "a question of some importance" and agreed that section 103 (2) "contemplates that section 95 support has earlier been provided to the claimant and the Secretary of State then stops it, prematurely for whatever reason, before it would otherwise have been stopped." (*Dogan (CA)*).
70. I note that all three appellants in this case have received a first decision granting support subject to conditions, and a second decision, namely the decision under appeal. I am therefore satisfied on the application of *Dogan (Admin)* and *Dogan (CA)*, that I have jurisdiction to hear these appeals. Both parties so agree.
71. In relation to the extent of that jurisdiction, the parties further agree that I must consider whether these appellants had reasonable excuse for their failure to comply with the condition breached and whether that breach was persistent and unequivocal. The appellants do not seek to challenge the Secretary of State's decisions to require them to

relocate to the BBS barge *per se*. However, their individual circumstances and any further relevant factors as per the “*Allocation of Asylum Accommodation*” policy and the “*Failure to Travel to [BBS] vessel*” guidance, are relevant, they say, to the question of whether they had reasonable excuse for not complying with a relocation decision.

72. Mr Pemberton rightly adds (unopposed by Mrs Crozier) that the Tribunal’s jurisdiction also extends to consideration of whether the discontinuation decisions would leave the appellants destitute in breach of their rights under Article 3 of the European Convention on Human Rights (ECHR), incorporated into domestic law by the Human Rights Act 1998. He referred me to seven judgments of AST judges, in support of his argument.
73. Noting that accommodation is provided on a no choice basis, both representatives further agree that the Tribunal does not have jurisdiction to decide where support is provided or if such provision is adequate. I agree.

### **THE TRIBUNAL HEARING - Oral Evidence**

74. The Tribunal heard evidence from the three appellants as follows:

#### **AW**

75. AW stated that:

- a) He suffers from asthma, difficulty breathing and panic attacks when in confined spaces. On 2 December 2023 he was travelling by bus and felt breathless. He asked other passengers to open the window, but his request was ignored. He said that he lost consciousness whilst on the bus and an ambulance was called to take him to hospital. He produced evidence of his admission to hospital on 2 December. This recorded that he had suffered a panic attack. AW said that when he has an asthma attack his breathing is severely restricted and he believes he is going to die. He spoke of other incidents in crowded places when he has had similar episodes of breathlessness.
- b) AW said that whilst in Germany, he saw a psychologist but attempts to contact him to obtain medical evidence have been unsuccessful. He confirmed that he is on prescription medication, (an inhaler) for asthma.
- c) AW claimed that he suffers from water phobia. He said he first experienced this when travelling by small boat from Turkey to Greece, and that, whilst on the boat, he became breathless and felt that there was water all around him, with no avenue of escape. He said that he believed he was going to die. He said that his fear of water affects him whenever he sees “a lot of water” and that he experienced this when crossing the channel by boat from France. He said that he believed when he got in the boat that he would be able to cope, but once the boat was out into the sea, he lost consciousness as a result of his phobia. He said that the thought of having to live on a boat made him nauseous and dizzy “as if the planet is rotating around me.” He confirmed that he had discussed his fears with his GP. He had also mentioned feelings of sadness. These were brought on by his long separation from his family and having to live alone.
- d) AW said that he has difficulty sleeping due to his traumatic experiences. He said he consulted a psychologist in Germany because he was experiencing repeated nightmares and was unable to sleep with the light out. He said that he continues to have nightmares but the medication recently prescribed (he said he is on mirtazapine) is of some assistance. He was unable to confirm whether the

psychologist in Germany had diagnosed a specific condition. AW was visibly unwell during the hearing and required a break. He said that he was feeling tired, anxious and was visibly perspiring.

76. In response to Mrs Crozier, AW said that:

- a) He had decided to travel by boat to the UK from France because this was better than being deported back home or being killed. He lost consciousness after the boat had set off from France. Asked to specify the number of occasions he had attended hospital with panic attacks, AW said that the first occasion was when he arrived in Dover and he was taken to hospital directly. The second occasion was two weeks previous to the hearing but that on other occasions he had not needed to attend hospital because his friends gave him his medication and helped him relax. He did not have letters of discharge from hospitals he had attended other than his most recent admission to Charing Cross hospital.
- b) AW said that he was first prescribed medication on 2 November 2023, seven days after he received the notice to relocate to the BBS barge. He said that the delay was due his accommodation provider ignoring his repeated requests for help to arrange a GP appointment. He said that he complained to the respondent about the service provider's failings. He attributed the delay in receiving the medication he needs (as per the Charing Cross letter of discharge of 13 December 2023), to failings on the part of his accommodation provider.
- c) He confirmed that his admission to hospital following a panic attack on 2 December 2023, was as a result of a self-referral.

## **AM**

77. AM stated that:

- a) He was imprisoned on two occasions in Egypt; the first in 2013 for 15 days and the second in 2015 -2016 for more than 13 months. He was tortured, beaten, humiliated and kept in solitary confinement for 23 hours daily in a cell without a toilet. He has also been detained in two police stations. He said that this impacted his mental health. He saw a doctor in Egypt but then left to go to China.
- b) He has a fear of water and that at the age of 8 or 9 he experienced a near drowning when an adult threw his shoes in the water and he jumped in to retrieve them only to find the water too deep to handle. A relative also died by drowning and he has never felt able to swim or travel by sea. He arrived in the UK by air.
- c) He is enrolled at Crawley college to study English language in the hope that this will help him find employment. He said that if he had to relocate to the BBS barge, he would not be able to continue his studies and cannot enrol on another course until next September. 2024.
- d) He has an injury to his ankle for which he is receiving physiotherapy treatment. He has been given exercises to manage at home. He did not attend his last appointment. He accepted that he could continue the exercises on the BBS barge.
- e) AM said his main issue, is that he suffers from nightmares and cannot sleep. He needs the light on at night but if he is sharing a room, this disturbs other residents. He is on prescription drugs for headaches caused by lack of sleep

but he could not name the medication.

78. In response to questions put by Mrs Crozier, AM said that:

- a) When studying for his doctorate in China he was given exclusive use of accommodation.
- b) Dr Hamdi Ali, (author of one of two medical reports originating from Egypt,) is his uncle. He is a qualified doctor who treats members of the family and he was able to obtain the letter from him in response to the HO request for evidence.
- c) The reference to “naviphobia” is a reference to his childhood experience of near drowning, which is well known to his uncle. He said he was not treated for the condition as no treatment is available; and
- d) He was diagnosed with generalised anxiety disorder in 2016 by Dr Gomel Yousef, a psychiatrist, following his release from prison. This is confirmed in Dr Yousef’s letter produced in evidence. AM said that his wife contacted the doctor to obtain the evidence for him. He said that he has never been prescribed medication but did attend counselling sessions. He was advised to mix with people. This contradicts AM’s statement to his GP (see paragraph 22 above) that he was on medication for anxiety and depression.

## **BG**

79. BG confirmed that:

- a) Following his eviction he was homeless but despite this, he chose to remain in Bristol where he considered himself settled in the community around friends who support him and his local church, which he attends regularly. He said that he has permission to work, and his friends have offered to find him employment. This would not be possible on the BBS barge. Initially he did not accept an offer of temporary accommodation pending the outcome of this appeal but he has now done so. I do not know if this is in Bristol.
- b) BG stated that he is a war veteran having fought against Russia in the 2008 war in Georgia, when he was shot in the left leg. He said that a fragment from the bullet remains lodged in his thigh even after two surgical attempts to remove it. As a result, his left leg is slightly shorter than the right. In cold weather and damp conditions, he experiences pain in the leg and spine. This impacts him severely.
- c) His other medical issues are breathing and snoring “a lot” at night. The breathing difficulties causes sleep deprivation which leaves him tired and no energy.
- d) He has right eye cataract and is in constant pain. There is a burning sensation in the eye. His hearing in the right ear is not “100%”. His hospital is in Bristol, and his eye appointments are fixed. There is no hospital on the barge.
- e) In relation to his mental health, BG said that he is under stress and he has found it difficult to cope, especially after the war. He is always worried about his children back home. He said that he is reminded daily of the images and impact of the war and “the things that the Russians have done.” He added that his mental health is worsened because he cannot move on with his life, not helped by homelessness. The previous night he had slept in a car. He had tried to engage with the NHS about his mental health but had made no progress.

- f) BG believed that living on the BBS barge would adversely affect his mental health. He commented that he had seen images on television of people jumping out of windows and claimed that “all the refugees there are not happy with the conditions.”

80. In response to questions by Ms. Crozier, BG said that:

- i) Since leaving Georgia in 2008, he has not seen a psychiatrist;
- ii) He has not been diagnosed with PTSD;
- iii) His information about life on the BBS barge comes from the press and listening to the accounts of those accommodated on the barge;
- iv) He has cataracts but laser treatment is not available on the NHS and he believes he is slowly losing his sight; and
- v) BG repeatedly stated his wish to remain in Bristol.

### **Other Evidence**

81. I have seen an email from an individual who goes by the name with initials “UK.” He claims to have shared a room with AM at the Radisson Red Hotel, room 161. He states that he has “personally witness[ed]” AM struggling to sleep, sleepwalking and becoming frustrated” with his “somnambulish disease.” He adds that he had to change his room because of this. The evidence came to Mr Rogers at ASAP indirectly and I cannot be satisfied that it is genuine.

82. In addition, Mr Pemberton has provided a 36-page statement from Mr Dikoff, dated 12 December 2023. Mr Dikoff is employed by the charity, Migrants Organise. The statement provides a history of the BBS barge. It includes a statement of truth and is signed and dated. Whilst it makes interesting reading, it is not relevant to the issues before me.

### **Mr Pemberton’s Closing Submissions**

83. I do not propose to set out closing submissions in any great detail as I will address these in my analysis. Mr Pemberton accepts that support can be terminated under Regulation 20 (1) (k), where a condition is not complied with without reasonable excuse. He asks the Tribunal to exercise its jurisdiction in these appeals and treat the central issue as being whether given each appellant’s personal circumstances, they had a reasonable excuse not to relocate. He takes issue with the Home Office approach, which he says is flawed because it focussed on one narrow point, namely, whether by reason of a medical diagnosis it was not possible to relocate to the BBS barge. He submits that this is a flawed approach as it ignores other factors which are equally important. The question is not only whether there is a medical diagnosis to prevent travel, but whether each appellant had reasonable excuse for not relocating, which involves looking at all the circumstances as required by Home Office policies and guidance. This, says Mr Pemberton, was not done by Dr Keen, Home Office Medical Adviser in these appeals or by the respondent’s caseworkers concerned.

84. The correct approach, says Mr Pemberton, is firstly, to look at all the evidence including the medical evidence together with the personal circumstances of each appellant, and then decide whether this amounts to reasonable excuse.

85. Secondly, if I am not satisfied that the appellants had reasonable excuse for their refusal to relocate, I must go on to consider whether they are destitute in the absence of the

provision of support, and if so, whether to leave them without support would violate their Article 3 ECHR rights under the Human Rights 1998.

### **Mrs Crozier's Closing Submissions**

86. In her closing submissions Mrs Crozier reminded the Tribunal that the decision to house asylum seekers on the BBS barge arose as a result of "massive pressure" on the Home Office to provide adequate housing for those arriving in the UK, and the BBS barge is one such facility. Asylum seekers can be assured of subsistence, accommodation, and access to medical assistance. said Mrs Crozier. The regulations are non-specific and require only that essential living needs be catered for. Mrs Crozier reminded me that this Tribunal is no stranger to Dr Keen and his methodology for responding to requests for information by the Home Office. The judges who hear AST appeals will, she said, have seen Dr Keen's "two sentence advice" in the past as "this is how he operates," but he can only comment on the information provided to him. In rare circumstances, Dr Keen has been known to ask an appellant to provide additional documents, to assist him in the decision-making process.
87. Mrs Crozier acknowledged that the Secretary of State has not raised destitution in these appeals. She accepted that if left without access to section 95 subsistence and accommodation support, the appellants would be destitute. Being left unsupported whilst they otherwise remain eligible for support under Regulation 3(2), may, she said, engage the appellants' Article 3 ECHR rights. However, Mrs Crozier's position is that these appellants were offered adequate support but declined the offer, and any resulting consequences are of their own choosing.
88. Finally, she asked me to provide guidance for caseworkers and Dr Keen on the correct methodology to apply when considering these cases.

### **FINDINGS OF FACT**

89. Having considered the oral and documentary evidence as a whole, I make the following findings of fact in relation to **AW**:
  - a) An entry in AW's medical notes suggest that he registered as a new patient at the Bush Doctor surgery on 14 November 2023. I do not know whether he was previously registered at another surgery but there is no mention of this in the papers before me. If the Bush Doctor is his first GP registration since arriving in the UK on 22 September 2022, it would appear to suggest that he has enjoyed reasonably good health for over 12 months. Whilst I accept his evidence of recent difficulties with arranging doctor appointments, I do not accept that this has been the case since September 2022. Had it been so, the claimed severity of asthmatic symptoms alone would have resulted in additional A & E attendances or recourse to 111 services for prescription medication. The documentary evidence before me is that his first attendance at A & E was on 1 December 2023 but that there were no other hospital emergency attendances in the previous 12 months (Document 15, Imperial College Healthcare Trust, 2 December 2023).
  - b) At AW's GP attendance on 14 November 2023 as a "new pt to surgery," the GP noted difficulty in breathing ("DIB") and diagnosed "suspected asthma" for which he prescribed a salbutamol inhaler. AW claimed to have suffered with asthma for 10 years but the GP scheduled a review for 1 August 2024, eight months after his first appointment. This does not suggest to me that the GP was concerned about the severity of AW's asthmatic symptoms.

- c) On 2 December 2023, AW was taken to hospital by ambulance following an incident involving breathlessness whilst on a bus. The hospital notes record a panic attack and DIB but nothing else abnormal was detected. It has been suggested that this was a self-referral but the hospital records clearly state that he was “BIBA,” that is to say brought in by ambulance.
- d) On 12 – 13 December 2023, AW was seen at the A & E clinic at Charing Cross hospital for diagnosis/impression Sepsis and tonsillitis (indication). He was prescribed metronidazole (an antibiotic used for the treatment of skin and mouth infections); phenoxymethylpenicillin potassium tablets (also an antibiotic used to treat skin and throat bacterial infections); benzydamine spray (non-steroidal anti-inflammatory drug used for pain and swelling); paracetamol tablets and ibuprofen tablets. This indicates that he had an active infection and I accept that he was still unwell but chose to attend his hearing post discharge on 13 December 2023.
- e) I am not able to make findings of fact concerning AW’s claimed treatment in Germany, his water phobia, insomnia, nightmares or inability to sleep in the dark. This is because firstly there is no independent medical evidence of these conditions, and secondly, some of these may be manifestation of his DIB.

90. I make the following findings of fact in relation to **AM**:

- a) A doctor of Agricultural Philosophy, acquired in China, AM is a student at Crawley college studying English Language in the academic year 2023 – 24. I accept it may not be possible for him to transfer his studies mid-year to another college.
- b) He has an ankle injury for which he receives physiotherapy treatment. He has been given exercises to manage at home and can continue with these anywhere.
- c) AM has scarring to his mid-abdomen and mid-back on the left side which he attributes to being shot by military police in Egypt whilst taking part in a protest. I am not in a position to assess AM’s claimed causation of this scarring but can readily accept that he has scarring as described.
- d) On the strength of Dr Fitzgerald’s March 2023 letter, I accept that AM suffers from insomnia that is worsened by sharing a room with another person who has different sleeping patterns to him. I do not accept that he is also troubled by nightmares or the need to keep the light on as this is not mentioned by Dr Fitzgerald nor whether AM is on medication to assist the insomnia.
- e) As regards the letter from Dr Khan dated 5 December 2023, I note that this post-dates the NTQ. In my view, this is evidence only of AM’s discussion with his GP and of little or no evidential value.
- f) I reject the evidence of “UK” in paragraph 81 above. Firstly, I have not seen any evidence of the sender’s identity. Secondly, Mr Rogers at ASAP appears to have come by the evidence third or fourth hand. Furthermore, the condition he refers to, namely somnambulism, is not one that is acknowledged by AM or his GP.
- g) I do not accept on the limited evidence before me that AM develop “naviphobia” - a fear of boats and cruise ships, as a result of the incident he refers to as near drowning in childhood, even when coupled with the unfortunate death by

drowning of a relative. Had AM said he developed a fear of water or drowning, I may have found this more plausible. However, his claim that he developed a specific fear of boats and ships seems to me to be convenient coming as it does in response to a decision requiring him to relocate to the BBS barge.

- h) In any event, I am not able to attach weight to the contents of Dr Ali's letter because it does not set out details of his medical qualification so that I can be satisfied that he is qualified to diagnose AM's medical conditions.
- i) I am also not able to accept solely on the contents of the letter from Dr Gomel Yousef that AM required treatment for severe depression and generalised anxiety disorder, panic attacks and claustrophobia in 2016. This is because Dr Yousef also omits to mention details of his medical qualification and without it, I cannot be satisfied that he is, a psychiatrist, as described by AM, able to diagnose and treat AM for mental health disorders.
- j) In any event, I note that AM has not seen Dr Yousef for over seven years and the latter is not therefore able to assist me in determining whether AM's current mental health makes it unreasonable to require AM to relocate to the BBS barge.
- k) Lastly, AM states in his evidence that he was imprisoned on two occasions in Egypt: the first in 2013 for 15 days and the second in 2015 - 2016 for more than 13 months. He states that he was tortured, beaten, humiliated and kept in solitary confinement for 23 hours daily in a cell without a toilet. He also claims to have been detained in two police stations. AM states that this has impacted his mental health for which he saw a doctor in Egypt, but none since 2016. The evidence of imprisonment is consistent with his account on arrival, although there was no mention then of the alleged inhuman and degrading treatment. That is not to say it did not happen. I note, however, that since his arrival in the UK in November 2022, he has not sought treatment from his GP or a referral to mental health services or self-referred to organisations that assist victims of torture.

91. I make the following findings of fact in relation to **BG**:

- a) Prior to receipt of instructions to relocate to the BBS barge, BG lived in Bristol where he was settled in the community, amongst friends and a support network that included his church. He was registered with a GP and in receipt of treatment for his eye, ears, nose and leg injury.
- b) At the date of hearing on 13 December 2023, BG was street homeless. So strong was his attachment to Bristol that he elected to sleep in cars or on the street rather than accept an offer of temporary accommodation.
- c) I accept that BG is a war veteran, wounded in conflict, and that he has a bullet fragment imbedded in his left thigh that causes him pain and discomfort, particularly in cold, damp conditions. I do not know the severity of the pain he experiences as this is not documented in medical evidence before me.
- d) I accept that BG was diagnosed with posterior subcapsular cataracts in both eyes; retinal thinning, and possible unexplained vision loss (Specsavers letter of 21 November 2022.) He currently has a diagnosis for high myopia in both eyes, often associated with increased risk of glaucoma, cataracts and retinal detachment. I accept that his vision is declining and that he genuinely believes



he is losing his sight in one eye. However, the claimed level of severity is not supported by independent evidence.

- e) BG has been under investigation for burning sensation in both ears and right-sided hearing loss for which he has had a CT scan, but nothing abnormal was detected. He is awaiting a hospital appointment for septoplasty, surgery for his deviated nasal septum.

## DISCUSSION

- 92. To the best of my knowledge, the issues raised in this lead case have not been litigated, up to this point, in any other court or Tribunal.
- 93. The first issue in this appeal, namely whether the Tribunal has jurisdiction to hear these and similar appeals is agreed for the reasons given in paragraphs 63– 73 above.
- 94. That said, my jurisdiction is limited to consideration of whether the appellants breached a condition of their support requiring them to relocate to the BBS barge and if so, was it without reasonable excuse. I set out below my finding in relations to each step required to be taken before a decision to discontinue support can lawfully be made.
- 95. The Parties agree (and I concur) that I lack jurisdiction to question the Secretary of State's decision requiring appellants to relocate to the BBS barge or to any other location. However, I can consider whether this accommodation is suitable having regards to their individual circumstances against the suitability and other criteria in the *Allocation of Asylum Accommodation Policy*, the *Failure to Travel to Bibby Stockholm vessel* guidance and the *Conditions of Support Guidance*. These include but are not limited to physical and mental health. Furthermore, I am persuaded by Mr Pemberton's argument that an appellant's reasons for non-compliance with instructions to relocate may be considered singularly or collectively. Thus, whilst a single reason for a breach may not amount to reasonable excuse, several reasons when taken together may do so.

### Compliance with the Secretary of State's Policy and Guidance

- 96. The *Allocation of Accommodation policy* and the *Conditions of Support guidance*, both refer to the requirement to conduct individual evaluations. There is much emphasis on considering "all of the evidence" and doing so "objectively and impartially." The outcome is the decision of the caseworker, not Home Office medical advisors. Dr Keen's role is to provide an expert opinion to caseworkers (paragraph 51 – *Failure to Travel to BBS Guidance*) within the limited extent and character of his expertise. In particular, caseworkers must remember that Dr Keen is also not a psychiatrist and thus not qualified to give expert opinions on mental health issues (*Shala*). Having consulted with a Home Office medical advisor, it is for the caseworker to decide individually, objectively and impartially whether any decision to discontinue support for breach of conditions is supported by the evidence. Both the analysis and the evidence on which the decision is based should be disclosed to the Tribunal in the event of an appeal. Failure to set out the process that led to the decision to discontinue support for breach of conditions, may result in the grant of section 95 support or a remittal for further consideration.

### Firstly, was there a breach of conditions?

- 97. The first question in these appeals is whether there was a breach of a condition of support. All three appellants in this case were served with letters granting section 95 support conditional on the compliance with conditions. One such condition (Regulation 20 (1) (k)) was that they must not fail without reasonable excuse to comply with a relevant

condition. In these appeals, the appellants received notice to move to the BBS barge but failed to do so, resulting in a clear breach of Regulation 20 (1) (k).

**Secondly, was the breach persistent and unequivocal?**

98. On the evidence before me, documenting in each appeal, not one but two refusals to relocate to the BBS barge, I accept that the failure to comply with a condition of support was persistent and unequivocal.

**Thirdly, was the breach without reasonable excuse?**

**AW**

99. In my judgment, AW did not discharge his burden to demonstrate reasonable excuse for failure to relocate to the BBS barge, (until the day before the hearing.) His medical evidence post-dated the instructions to relocate. There was no medical evidence of treatment received in Germany and no medical record in the UK of his claimed physical and mental conditions and phobias prior to November 2023. What little evidence he did produce was no more than his own post decision narrative to his GP for which there had been no other consultation or treatment. But for his emergency admission to the Charing Cross Hospital on 12 December 2023 with sepsis and tonsillitis, I would have dismissed his appeal.
100. My decision of 9 January 2024, that AW is entitled to section 95 support was made solely on the basis of his poor health and obvious vulnerability at the date of hearing. I leave it to AW's treating physicians and to those advising the Secretary of State, to take stock of whether AW has now recovered.

**AM**

101. I do not accept that AM's ankle injury, insomnia, claimed nightmares and interrupted studies amount to reasonable excuse (individually or collectively) for failing to relocate to the BBS barge.
102. I note however, Dr Fitzgerald's confirmation of having seen scarring to AM's mid-torso consistent with bullet wounds, that AM suffers from insomnia that is worsened by sharing a room with another person who has different sleeping patterns to him and AM's oral evidence of imprisonment, torture, inhuman and degrading treatment. AM's claim that he is a victim of torture is yet to be examined by the Secretary of State and I therefore make no further comment concerning this claim.
103. Looking at AM's evidence as a whole, it seems to me that Dr Keen's response that a transfer to the BBS barge was not likely to "significantly adversely affect AM's condition or treatment" and that residing on the BBS barge was suitable on medical grounds in his case, failed in my view to engage individually with AM's reasons and personal circumstances. In addition, given the evidence of Dr Fitzgerald, the respondent's caseworker also failed, as required by the *Allocation of Asylum Accommodation Policy*, to consider whether AM was unsuitable for shared accommodation on the BBS barge, and if so to direct that he should be accommodated in a single room, assuming of course that there are single occupancy rooms on the BBS barge. The caseworker may have concluded that AM was suitable for room sharing, but on the documents disclosed in the respondent's bundle, I cannot be satisfied that this assessment took place.
104. In the light of the respondent's failure to give individual, objective and impartial consideration to AM's needs and personal circumstances, I remit the appeal to the Secretary of State for this to be done.

## **BG**

105. BG produced a considerable body of documentary evidence within 48 hours of receiving instructions to relocate to the BBS barge confirming the treatment he was receiving for his various conditions, as set out in paragraph 91 above. This included evidence of unexplained vision loss, loss of hearing, pain and discomfort in his left leg attributable to the presence of shrapnel imbedding in his thigh, deviated nasal septum, and resulting difficulty sleeping and breathing.
106. BG was entitled to receive a response in writing, setting out why his representations were rejected. The response from Dr Keen (email of 27 October 2023) simply stated that:
- “suitable medical and support services exist on the Bibby Stockholm and given this, I don’t think transfer will significantly affect the applicant’s condition or treatment.”
107. In my judgement, Dr Keen failed to address BG’s individual circumstances as he was required to do under Home Office policy and guidance. In particular, neither he nor the caseworker considered it necessary to address BG’s statement in his representations that he suffered from poor mental health including the presence of past suicidal thoughts, and two reference in his grounds of appeal to passive suicidal ideation. At no stage was consideration given to whether a referral to a Home Office psychiatrist might be more appropriate than to Dr Keen, who is not a psychiatrist. I find this particularly troubling given the recent death by suicide of a resident on the BBS barge.
108. In the light of the respondent’s failure to give individual, objective and impartial consideration to BG’s circumstance, I remit the appeal to the Secretary of State for his representations to be fully considered.
109. For the reasons stated above, there was compliance with Home Office policy and guidance in AW’s case up to the day before the hearing but not in the cases of AM and BG. I have considered whether in the light of such failure AM’s and BG’s appeals should be allowed. I am not, however, satisfied ,in the absence of additional evidence going to AM’s vulnerability as a possible torture victim, or confirmation of BG having received medical attention and support for mental health problems including suicidal thoughts, that one or both appellants are unsuitable for relocation to the BBS barge.

## **ARTICLE 3 ECHR RIGHTS UNDER THE HUMAN RIGHTS 1998**

110. As the practical effect of my decisions is that AW, AM and BG will be offered Home Office accommodation and subsistence support pending re-assessment of their case for suitability for relocation, it is not necessary for me to consider whether they are destitute in the absence of the provision of support, and if so, whether to leave them without support would violate their Article 3 ECHR rights under the Human Rights 1998.

## **MY DECISIONS**

111. The decision in the cases of AW, AM and BG are as follows:
- a) In the appeal of AW, I substitute my own decision for the decision appealed against and find that AW is entitled to the provision of support in accordance with Section 95 of the Immigration and Asylum Act 1999.
  - b) The appeal of AM is remitted to the respondent to reconsider the matter.

c) The appeal of BG is remitted to the respondent to reconsider the matter.

112. Nothing I have said in this judgment is intended to suggest that AW, AM and BG are unsuitable to relocate to the BBS barge.

**Signed:**

**Date:** 5 February 2024

**Sehba Haroon Storey**  
**Principal Judge Asylum Support**

**Appendix A**

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