Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16349/2018

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On: 10th February 2020	**On 22 April 2020**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

DS
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant:	**Mr Dixon, Counsel instructed by Duncan Lewis & Co Solicitors**
For the Respondent:	**Mr Tan, Senior Home Office Presenting Officer**

'DECISION AND REASONS

1. The Appellant is a national of South Africa born in 1972. He appeals with permission the 26th March 2019 decision of the First-tier Tribunal (Judge Gurung-Thapa) to dismiss his appeal against deportation. Whilst the Appellant accepts that he is in law liable to deportation, he maintains that he should not be deported

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because to do so would be a disproportionate interference with his Article 8 rights.

Background

2. The chronology leading to the decision to deport is as follows:

1972	The Appellant born in South Africa
1974	The Appellant arrives in the United Kingdom aged 2
1982	The Appellant taken into care of the local authority, aged 10
1997	The Appellant is convicted of 3 counts of burglary and receives a suspended sentence of 2 years' imprisonment
2001	The Respondent grants Indefinite Leave to Remain
2008	The Appellant is diagnosed with paranoid schizophrenia, depression and anxiety after having twice attempted suicide (once by slashing his wrists, once by jumping into the Thames)
2011	The Appellant is convicted upon a guilty plea of 2 counts of indecent assault on a child under 14; 6 counts of indecent assault on a child under 16; 3 counts of gross indecency with a child under 16; one count of rape of a child under the age of 16. The victim of all offences was his younger sister, and all of the offences were committed prior to 1998. He is sentenced to 8 years in prison
	The Respondent notifies the Appellant of his liability to deportation
2015	The parole board unanimously supports the Appellant's application for release into the community

3. The decision to deport was taken on the 15th April 2016, just short of five years after the Appellant was first told that the Respondent considered him to be liable to be deported. There has thereafter followed a series of events which have significantly delayed the legal process. The Respondent imposed, and then rescinded, a certificate under s94(1) Nationality, Immigration and Asylum Act 2002; the Appellant's removal was affected with a medical escort to Durban but he was refused entry to South Africa because he was not in possession of a mandatory Emergency Travel Document; he was thereafter returned to immigration detention; a further planned removal was cancelled after the Appellant was referred to Neurology because he had been experiencing seizures. The position, as the appeal reached the First-tier Tribunal, was that it had then

been almost eight years since the Respondent had first indicated deportation action, three years since the deportation order had been signed and over three years since the parole board had authorised the Appellant's release. He remained in prison – not an immigration detention centre - at the date of the First-tier Tribunal hearing. He was 46 years old and had spent 44 years of his life in the United Kingdom.

4. The legal framework of the appeal before the First-tier Tribunal was uncontroversial. The Appellant is, by reason of his 2011 criminal conviction, liable to automatic deportation: s32(5) UK Border Act 2007. He can succeed in resisting deportation if he can show that any of the exceptions in section 33 of the UK Border Act 2007 apply. That section contains 6 exceptions, only one of which is potentially engaged on the facts: s33 (2)(a), that his deportation would breach his Convention rights, that is to say his rights under the European Convention on Human Rights.

5. Before the First-tier Tribunal the Appellant relied on Article 8 of the Convention, submitting that his deportation would be a disproportionate interference with his private/family life in the United Kingdom. Because he seeks to rely on Article 8 the Tribunal was bound to have regard to the provisions in respect of the public interest set out in s117C of the Nationality, Immigration and Asylum Act 2002:

> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> > (a) C has been lawfully resident in the United Kingdom for most of C's life,
> >
> > (b) C is socially and culturally integrated in the United Kingdom, and
> >
> > (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) **In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation**

> **unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.**
>
> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

6. The effect of these provisions was that it was not enough that the Appellant show that one of the 'exceptions' in s117C was met. The length of his sentence required him to show that there were over and above those matters, or equivalence thereof, "very compelling circumstances" such that his deportation would be disproportionate, notwithstanding the very substantial weight to be attached to the public interest in these circumstances. In order to discharge that burden the Appellant pointed to his very long residence in the United Kingdom; his private life here; his complete lack of connections to South Africa; his own difficult personal history including a claim that he himself had been abused as a child and had been taken into care; his diagnosis of serious mental illness, and the long delay in the decision being implemented. The Respondent pointed to the very lengthy sentence and the abhorrent nature of the crimes committed to submit that the public interest very clearly prevailed.

The First-tier Tribunal Decision

7. The First-tier Tribunal began its deliberations by considering whether the Appellant could meet the requirements set out at s117C(4) of the 2002 Act (and replicated at paragraph 399A of the Rules). It found that the Appellant has lived lawfully in the United Kingdom for most of his life [at its §50]. It further accepted that he was socially and culturally integrated here [§52]. As to whether there would be very significant obstacles to the Appellant's integration into South Africa the Tribunal found as follows:

    a) He has no ties to South Africa and has not been there since 1974 (*apart from the few days spent in hospital there following the failed attempt to deport him*) [§54];

    b) His family in the United Kingdom could provide him with emotional and financial support in South Africa [§60];

    c) If this is wrong he is of an age and maturity where he would be able to start a new life without family support [§69];

d) There is no satisfactory evidence to suggest that the Appellant will not receive the immediate treatment that he requires (for his paranoid schizophrenia, epilepsy and anxiety) [§66];

e) The Appellant is an intelligent and resourceful man who started work at the age of 15/16 [§69];

f) There is no reason why he could not find some sort of work in South Africa [§69].

Having considered all of those matters the Tribunal was not satisfied that there were very significant obstacles to the Appellant's integration in South Africa.

8. The Tribunal then turned to consider whether there were 'very compelling circumstances' over and above the matters set out above. On the Appellant's behalf Counsel had identified the relevant matters here as the fact that the Appellant had not committed any offences since 1997; the parole board and probation service regarded him as presenting a low risk of reoffending; his custodial record had been of a high standard; it was he who had disclosed the offences. He had also served a far longer sentence than he should have done because the Home Office refused to let him out. Against those matters was the substantial sentence and the nature of the crimes themselves; although it was his own confession that had brought about his prosecution he had not entered a guilty plea and his sister had been forced to come to trial and testify, an extremely difficult and painful experience for her. Weighing those matters together the Tribunal was not satisfied that there were here compelling circumstances and the appeal was dismissed.

9. Permission was granted on the 25th April 2019 by First-tier Tribunal Judge Fisher.

The Appellant's Grounds

10. The Appellant submits that the decision of the First-tier Tribunal is flawed for the following errors of law:

i) Making findings not supported by the evidence/inadequate reasoning. *In particular:*

The Tribunal found that the Appellant would be emotionally and financially supported in South Africa by his family in the United Kingdom (his mother and brothers). There was no evidential basis for this finding which ran contrary to the Tribunal's finding that the family were not prepared to offer him support *here*.

ii) Failure to take material facts into account. *In particular*:

The Tribunal concluded that the Appellant would be able to find work and support himself in South Africa, so enabling himself to buy the medication/ treatment he requires for his paranoid schizophrenia. It is submitted that in reaching that finding the Tribunal failed to have regard *inter alia* to the impact of that illness on the Appellant's ability to orientate himself, and so to secure employment within a reasonable time of his arrival there. In fact the country expert evidence was to the effect that the Appellant was very *un*likely to be able to secure employment and/or access to his medication within a reasonable timeframe.

Further it is submitted that in reaching its conclusion the Tribunal failed to have regard to the expert evidence that as a foreigner with no social connections the Appellant would be "extremely vulnerable" in South Africa.

iii) Failure to apply the 'balance sheet approach'. *In particular*:

The Tribunal makes a finding that the Appellant would not face 'very significant obstacles' to his integration in South Africa. It then proceeded to consider whether there were 'very compelling circumstances' such that the decision to deport should be overturned, but in doing so failed to weigh in the balance, in addressing that question, all of the matters that it had already considered in the context of the test under the Rules. The Appellant's serious mental illness was, for instance, a matter relevant to both the test of 'very significant obstacles' and 'very compelling circumstance', but it is omitted from consideration of the latter.

iv) Failing to recognise that the delay/mistakes in the Appellant's case had diminished the public interest in his removal. *In particular*:

The Appellant submits that the delay in proceeding with his deportation, including wrongly applied s94 certificates and an aborted deportation to South Africa, have diminished the public interest in pursuing his deportation now. The Tribunal failed to have regard to that matter.

v) Misdirection in law in respect of section 117C/paragraph 399A of the Rules. In particular:

The rule contains a three-part test. The Appellant must demonstrate that he has lived here lawfully for most of his life and that he is integrated here. The Tribunal found that he has discharged the burden in respect of both matters. The third question was whether there were 'very significant obstacles' to integration in South Africa. The Tribunal found that he had not shown that to be the case. Mr Dixon contends that in fact the burden in respect of that final limb lay with the Respondent and that the Tribunal materially misdirected itself in concluding otherwise.

Discussion and Findings

11. I deal with ground (v) first because it raises a discrete legal argument that does not turn on the facts.

12. Mr Dixon based his submission on the notion that because the rule can be taken to reflect an Article 8 balancing exercise (see for instance Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60) the successive limbs therein can be equated with the various stages in a classic *Razgar* enquiry. In such an enquiry it is for the individual claimant to establish that there is, for instance, a private life, and that the impugned decision interferes with it in a manner sufficiently serious to engage Article 8. It would then be for the Respondent to demonstrate that the decision is lawful and necessary, ie it is not disproportionate. Thus the burden of proof shifts from the claimant, to lie ultimately with the Secretary of State. That burden is plain from the wording of Article 8(2):

> "There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law, and is necessary in a democratic society…."

13. Mr Dixon submitted that the same shift in burden must also apply when looking at Article 8 through the prism of the Rules. Thus in this instance it would be for the *Appellant* to demonstrate that Article 8 was engaged by showing that he had lived in this country lawfully, and that he was socially and culturally integrated here: by meeting these tests he could demonstrate that he had a private life. Mr Dixon submits that properly understood the three-part test must then shift the burden to the Secretary of State, to prove that any interference was necessary in a democratic society, or that it was not disproportionate. On his analysis, it would be for the Secretary of State to prove that there were *not* very significant obstacles.

14. Mr Dixon's argument was unsupported by any authority, but that was not surprising since, as I understand it, it only occurred to him while he was on his feet. The analogy has its attraction, but for the following reasons I find it to be misconceived.

15. First, it fails to recognise that in the statutory scheme the Respondent's case rests simply on the presumption, approved by parliament, that a foreigner who commits crime (of sufficient severity) must be deported. That is where the public interest lies. That is how the Secretary of State means to discharge the burden of proof in showing the removal of that foreign criminal to be a proportionate and necessary response.

16. Second, it fails to have regard to the words of the provision itself:

> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

The drafter requires positive proof that obstacles exist; not that they do not. This would strongly suggest that the burden of proving the matter lies with the party who wants it proved. That this is so is reinforced by the fact that it concerns an 'exception' to the public interest requirement that criminals face deportation (because that is deemed by parliament to be a necessary and proportionate response).

17. Third, because read in this way the rule gives effect to long-standing domestic and Strasbourg jurisprudence on private life claims in removal cases: see for instance <u>Maslov v Austria</u> [2009] INLR 47.

18. I therefore find that ground (v) has no merit. The First-tier Tribunal was correct to find that the burden of proof lay on the Appellant in respect of each sub-section (a)-(c) of s117C.

19. I return to deal with the remaining grounds in order.

20. I am satisfied, in respect of ground (i), that there are some contradictory findings in the determination inasmuch as the Tribunal makes clear, in a careful analysis over six paragraphs (§55-60), that it does not accept that the Appellant has retained any "real close ties" with his family in the United Kingdom. They did not visit him in prison. The evidence about what support they might offer was vague and unsubstantiated. None of them came to the hearing. That being so, it is difficult to understand the basis for the 'in the alternative' conclusion at paragraph 60 that they would be willing and able to support him, both emotionally and financially, if he were to go and live on the other side of the world. I agree that there does not appear to be any evidential foundation for that

conclusion. That said, that error is entirely immaterial if the Tribunal was rationally entitled to conclude, as it did at §69, that the Appellant is intelligent, resourceful and able to find work and found a life for himself on his own, without any family support. That brings me to ground (ii).

21. The crux of this case is whether the Appellant is actually able to establish some kind of meaningful private – or family – life for himself in South Africa. If the effect of his removal would be, for instance, that his mental health spirals out of control, and that he finds himself a stranger in a strange land, living rough on the streets or in a shanty town, scavenging for food and presenting as easy prey for criminals, it could be said that his would amount to 'very compelling circumstances' of the sort that might tip the balance, no matter how deeply abhorrent his crimes. The analysis of the Appellant's personal characteristics, and how he might fare in the South Africa of today, was therefore determinative.

22. The First-tier Tribunal records that the Appellant was first prescribed the anti-psychotic drug Olanzapine in 2009 after voices in his head told him to slash his wrists and jump into the river Thames. He has been on it, or other anti-psychotics, ever since. It would appear that this medication has kept the Appellant stable – or at least it has contributed to his stability. He told a psychiatrist that he has not self-harmed for some 9 years and that he feels he has benefitted from the medication regime that he is on. Dr Nimmagadda, the Consultant Psychiatrist whose report was before the Tribunal, concluded that currently it was likely that the Appellant continued, from time to time, to 'hear voices', and that he did suffer from some anxiety, but other than that he is well. In contrast, if the current treatment were to be withdrawn, the prognosis in respect of psychotic illness would be poor. He would be likely to present with significant risk behaviours, including self-harm.

23. Thus the evidence about the availability of the Appellant's treatment regime in South Africa was of some significance. If it could be maintained, then this would support the First-tier Tribunal's conclusion that the Appellant would be able to surmount obstacles such as obtaining work, housing, friends, and all the other constituent parts of a normal life. If it could not, then this would throw that conclusion in doubt.

24. Mr Dixon did not dispute that the drugs that the Appellant requires are available in South Africa. Those representing the Appellant had commissioned a report from Adam Ashworth, Professor of AfroAmerican and African Studies at the University of Michigan[1] who explained that they can be purchased, for a price: "it is possible for the wealthy to obtain excellent treatment for whatever ails them" [at page 5 of the report]. At the time that he wrote his report a one-month

[1] Professor Ashworth has been an academic specialising in the study of Southern Africa since 1981; it does not appear that any issue was taken with his expertise. His current focus is on public health in the region.

supply of Clozapine cost R1087, but psychiatric consultations cost several times that amount, depending on location.

25. If you are not wealthy there are stocks in the public sector, but two problems there arise. The first is that supplies are not always reliable. The second is that the administration of anti-psychotics is complex. It requires regular monitoring and laboratory testing "if possibly fatal side-effects are to be minimized". It is here, in the monitoring and prescription, that the public health system is found to be "far from satisfactory". Professor Ashforth here sets out the detailed findings of a study of patients at one of the "most experienced and knowledgeable institutions dispensing psychiatric medicine in South Africa". The conclusion of that study is that across a range of measures the administration of the drugs was found to be non-compliant with international protocols for the treatment of schizophrenia. This evidence accords with Professor Ashworth's general conclusion that "public facilities have declined to below the standards once considered inadequate when reserved exclusively for Blacks".

26. Professor Ashworth concludes that unless the Appellant "is able to obtain a well-paying job, with health insurance, on arrival, it is unlikely he will be able to afford the costs of private treatment". Alternatively, he might eventually be considered eligible for a government issued Disability Grant. If so eligible he would receive a monthly grant of R1690. After buying his medication he would have enough left over for one "modest lunch at a suburban restaurant". Professor Ashworth continues:

> "Without supportive social networks, and/or substantial financial resources, [the Appellant] is likely to find himself in extremely difficult circumstances. He would also have difficulty in navigating the extremely complex maze of public health clinics in order to maintain his treatment regimen. Indeed, a recent study of pathways to mental health treatment in South Africa reports that most people who access mental health treatment in public clinics do so through arrest by the police".

27. It is against that background that Mr Dixon submits that the First-tier Tribunal was not rationally entitled to state, as it does at its §66: "there is no satisfactory evidence before me to suggest that the appellant will not receive the *immediate* treatment that he requires" (emphasis added). Mr Dixon accepts that the First-tier Tribunal certainly registers some regard to Professor Ashworth's evidence, but asks me to note that this only comes *after* the conclusion that is reached at §66. He further submits that the Tribunal gives no reasons or indication that it regarded his expert evidence as less than satisfactory.

28. I accept that the Tribunal did err in fact when it said that there was "no satisfactory evidence" to suggest that treatment would not be immediately available. That was the whole import of Professor Ashworth's unchallenged, and

uncriticised, evidence. Looking at the determination as a whole it is possible to say that the Tribunal had in mind at its §66 its subsequently expressed conclusion, at §69, that the Appellant would be able to find work and support himself. If that were the case then according to Professor Ashworth, he would, depending on his salary, be able to access the mental health treatment that he needs. It is however difficult to see that the Tribunal has here had regard to the mechanics: if the Appellant needs a job to get his medication, it is extremely unlikely that his access to medication would be "immediate". No consideration is given to whether the Appellant's history of offending and deportation, mental illness and long absence from South Africa might affect his ability to find work. Nor does the determination deal with this bleak assessment by Professor Ashworth:

> "Were he to return to South Africa without substantial financial resources, even were he not to be suffering from serious mental illnesses, [the Appellant] would be in serious difficulties. South Africa is the most socio-economically unequal country on earth. People with money live comfortably, though they have to invest substantial resources in securing themselves against crime. People with limited resources survive by virtue of their social networks. Devoid of supportive networks or cash, [the Appellant] will most likely be forced to take up residence in an informal settlement, where he would be considered a foreigner, and will be extremely vulnerable.
>
> With his condition of schizophrenia, he is in even more serious risk of harm. In addition to the stigma and discrimination that residents of countries such as the United Kingdom recognise as consequent to mental illness, and which is highly prevalent in South Africa, many people in Africa interpret auditory hallucinations, such as [the Appellant] experiences, as real communications with invisible beings. The hearing of 'voices' is sometimes understood as benevolent communications from tutelary ancestors, saints or helpful spirits – to mention but a few. More often, however, these hallucinations are interpreted as evidence of demonic forces issuing commands. This can result in self-harm and suicide but can also put the sufferer at risk of harm from others. This is particularly evident in impoverished communities where people are generally less educated and their lives subject to great stress and insecurity.
>
> In recent decades, the proliferation of Pentecostal churches in South Africa obsessed with hounding out demons has intensified the pressure on persons hearing voices such as is common with schizophrenia. Traditional African modes of understanding relations with invisible beings have also encouraged people to make sense of schizophrenic symptoms in religious idioms. A person subject to hallucinations, such as [the Appellant], who is not well known and

supported by his family and community is at risk of being attacked as an embodiment of evil spiritual powers intent on causing harm on the community".

29. Given Dr Nimmigadda's view that the Appellant still experiences auditory hallucinations even *with* his medication, this evidence was obviously pertinent to whether the Appellant would be able to safely re-establish himself in South Africa. The omission to weigh it in the balance was an error of law.

30. For the foregoing reasons I find ground (ii) to be made out. As this matter was fundamental to the overall decision it follows that the decision must be set aside.

31. I need therefore only be brief in dealing with grounds (iii) and (iv)

32. The complaint in ground (iii) is that the Tribunal failed to weigh in the balance any positive findings that it made when considering s117C(4) in its final reckoning on s117C(6). The Secretary of State accepted as a matter of principle that when a decision maker comes to look at whether there are "very compelling circumstances" all the evidence must be assessed in the round. Whilst I accept the legal validity of Mr Dixon's point, the materiality of it is difficult to identify here, where the First-tier Tribunal didn't appear to make any positive findings in the Appellant's favour that could usefully be "carried over" to inform its ultimate conclusions.

33. In respect of ground (iv) I accept as a matter of legal principle that delay in affecting deportation can be relevant: MN-T (Colombia) v Secretary of State for the Home Department [2016] EWCA Civ 893, EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 38. As I have set the decision aside on grounds (i) and (ii) the Appellant has leave to argue this point upon re-making, but I would observe that given the nature of his offending, and the very substantial public interest in his deportation, it is unlikely to add materially to the Appellant's case. At present it appears that the appeal is likely to turn on the Appellant's likely circumstances upon return to South Africa. Either they will drop below the standard considered acceptable in humanitarian terms, or they will not.

34. I therefore set the decision of the First-tier Tribunal aside.

The Re-Made Decision

35. As I have set out above, the Appellant is subject to automatic deportation. Because he is a serious offender he can only resist deportation if he can show that there are "very compelling circumstances" over and above the other matters set out in s117C Nationality, Immigration and Asylum Act 2002. I mark at the outset that this test sets an extremely high threshold. Where an offender has been

sentenced to four years imprisonment or more the public interest will "almost always" outweigh any countervailing factors: Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60. "Very" imports a very high threshold. "Compelling" means circumstances which have a "powerful, irresistible and convincing effect": SSHD v Garzon [2018] EWCA Civ 1225.

36. In applying this extremely demanding test I begin by marking the nature of the Appellant's offence and the sentence imposed by the trial judge. Whilst it may be true that the Appellant has not committed a crime since 1997 this must be of minimal significance given that it is in my view likely that his victim continues to live with the consequences of those crimes on a daily basis. I have not been provided with a witness impact statement, nor psychological evidence in respect of the Appellant's sister, but I do not think I need it. It is overwhelmingly likely that this woman's life has been defined, and marred, by her childhood experiences[2]. There is little point in dwelling on the adjectives that might be employed to describe this offence. 'Abhorrent' and 'shocking' both feature in the reasoning of judges who have gone before me, and whilst I would adopt those terms the nature of the crime can be powerfully reflected in stating it as it is: the Appellant sexually assaulted his own sister, repeatedly, when she was a child.

37. That being the case I am quite satisfied that the weight of the public interest in the Appellant's deportation is so substantial that only the most extreme consequences could justify allowing this appeal. I do not say that as a matter of law the test of "very compelling circumstances" is to be equated with a violation of the United Kingdom's obligations under Article 3 ECHR, but in a case such as this the threshold must be approaching that highest of benchmarks. I say this mindful that the grounds of appeal are based not on Article 3 but Article 8: I appreciate that my task is to conduct a proportionality balancing exercise, but in light of the offences, I mention Article 3 as a benchmark, to reflect the strength of the public interest and to give an indication of what I am looking for in my cumulative assessment of the matters relied upon by the Appellant. I deal with each of those factors in turn.

Long Residence and Integration

38. There is now no dispute that the Appellant has lived continuously in this country since he was two years old[3]. He arrived in 1974 and he has been here ever since.

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[2] I make these comments cognizant of the sentencing remarks of HHJ Denniss to the contrary: having heard the victim in the witness box Judge Denniss did not consider that she displayed any signs of "overt serious physical harm or overt lasting psychological damage". He also considered that the victim's reasons for distancing herself from her natal family "are probably due to other factors entirely".

[3] In taking the decision to deport the Secretary of State accepted only that the Appellant had been here since 1977. Before me the Secretary of State was content to proceed on the basis of the uncontested finding of the First-tier Tribunal that he in fact arrived in 1974.

He was granted ILR in 2001. It was on this basis that the First-tier Tribunal found that the Appellant met the first two requirements of the private life exception at s117C(4) Nationality, Immigration and Asylum Act 2002: he has lived lawfully in the United Kingdom for most of his life and he is socially and culturally integrated here. Before me the Secretary of State accepted those findings.

39. The relevance of long residence in this case is the uncontrovertible reality that the United Kingdom is the only home the Appellant has ever known. He is today 47 years old and he has no meaningful experience of living in any society other than our own. His deportation would result in a nullification of the private life that he currently enjoys in this country. This is clearly a matter that must attract some weight: the question is, how much?

40. In Maslov v Austria (1638/03) [2008] ECHR 546 the ECtHR revisited the issues discussed in Uner v The Netherlands (46410/99) [2006] ECHR 873 that arise when a "long-term immigrant" commits crime. In both of those cases the court affirmed that the considerations set out in Boultif v Switzerland (54273/00) [2001] ECHR 497 are of especial relevance in cases where the deportee has spent a large proportion of his life, and childhood, in the host country, leading to this overall conclusion:

> "the Court considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile".

41. Mr Dixon understandably placed some emphasis on this jurisprudence. He submitted that since the Appellant was, at the date of the decision to deport, a settled migrant who had spent the vast majority of his minority in the United Kingdom, I must be satisfied that there are "very serious reasons" to deport him.

42. Whilst I accept that the very long residence of 42 years is a factor of some weight in this case, I do not accept that this is a case on all-fours with Maslov. The facts in Maslov that led the ECtHR to set the bar so high for the Austrian authorities were that Maslov himself was still a child at the date that he committed his offences; he was barely 18 at the date of the proposed deportation and was not deemed to be of sufficient age or maturity to be expected to start a new life for himself back in Bulgaria, a country he barely knew. These facts distinguish Maslov from a case such as this, where the criminality continued well into adulthood (at the date of the last offence the Appellant was 25 years old) and the Appellant is today a mature man of 47 years old. That the Maslov principles are limited by their reference to the facts in that case has been made clear by the Court

of Appeal: see for instance Mwesezi v Secretary of State for the Home Department [2018] EWCA Civ 1104 [at §11-12].

43. Although I do not accept that this is a pure Maslov case I am nevertheless prepared to attach some weight to the fact that the Appellant has lived in the United Kingdom for what is in effect all of his conscious life. It is accepted that he is socially and culturally integrated in this country and that life here is all he has ever known.

44. I would add one point, although it is one that I have attached no additional weight to. That is that it seems to me to be wholly probable that for a period during his childhood the Appellant would *prima facie* have been entitled to British nationality. He arrived, as a 'non-visa' national, in 1974. Although the Respondent can find no record of that entry, nor indeed any contact at all with the Appellant until 1999, the Appellant himself recalls that in the 1970s his South African passport contained a vignette confirming that there were no restrictions on his leave: in light of the matters uncovered by the *Windrush* enquiry[4] that is wholly plausible.

45. More significantly I know that from 1982 the Appellant was under the care of the Housing and Social Services Department of the Royal Borough of Kensington and Chelsea[5]. The Department confirmed this in a letter addressed to a Home Office caseworker on the 30th January 2001. The letter states:

> "[The Appellant] was known to the children and families social work team in the Royal Borough of Kensington and Chelsea from 1982 when he was taken into care and remained in the local authority care until adulthood the case was closed in 1996"

Given its duty of care it seems to me to be wholly unlikely that the social services department of Kensington and Chelsea would have taken legal responsibility for the Appellant over a 14-year period without ensuring that his immigration status in this country was secure. There being no Home Office records of any correspondence with the department would tend to indicate that the Appellant's passport was endorsed as he claims, reassuring the social workers charged with his care that he had permission to reside in the United Kingdom.

[4] See the review by Wendy Williams: https://www.gov.uk/government/publications/windrush-lessons-learned-review

[5] I note that Mr Dixon's instructions are to the contrary: his brief is that the Appellant in fact went into care in approximately 1986. This appears to be based on the Appellant's own recollection that he was taken into care after leaving home at the age of 14 (see for instance §22 of the First-tier Tribunal decision). Whilst I note this discrepancy I am minded to adopt the findings of the author of the letter from Kensington and Chelsea, given that she has drawn upon formal council records to give that information.

46. That being the case, I find that the Appellant would have been able to make an application for British nationality as early as 1983. Section 6(1) of the British Nationality Act 1981, read with Schedule 1, requires applicants to show five years lawful residence, with at least 12 months of indefinite leave immediately preceding the application. In 1983 the Appellant would have met those requirements. There being at that time no obvious issues of character, and assuming that such an application would have been made on the Appellant's behalf by Kensington and Chelsea social services, I can see no reason why it would not have been successful.

47. I am therefore prepared to accept that from sometime in 1983 the Appellant qualified for citizenship, and that he was failed by the social services department who neglected to make that application on his behalf. I am however unable to find that this was an entitlement that pertained right up to the date that the deportation order was signed, and his indefinite leave to remain extinguished: that is because we now know that in 1986 the Appellant started to commit crimes of a nature likely to cause the Secretary of State to exercise her discretion under s6 BNA 1981 unfavourably. As I note above this is a matter to which I have attached no additional weight to. The fact that the Appellant could or should at one time have naturalised as a British national is simply one facet of his long, long residence in this country and his deep social integration here.

Childhood Trauma

48. In CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2017 the Court of Appeal considered the deportation appeal of a man who had committed a series of crimes at a young age, spanning – as here – his teens and twenties. He had twice been sent to prison for in excess of 12 months and although not a serious offender like this Appellant, was required to demonstrate that there were "very compelling circumstances" in his case, since it had been found that none of the 'exceptions' at s33 of the Borders Act 2007 could be applied to him. The Upper Tribunal had dismissed his appeal. The Court held that in doing so the Tribunal had erred in failing to set CI's criminality in the context of his personal history [at §119]: that CI had been horribly neglected and abused as a child and had ended up in care [see §8] was a relevant consideration in the balancing exercise.

49. With this guidance in mind I recognise that the Appellant had a difficult childhood. His father had already left the family by the time that the Appellant and his mother arrived in the United Kingdom in 1974 and he has had no contact with him since. After their arrival the Appellant's mother formed a relationship with a man named Richard who was extremely abusive towards the Appellant. The Appellant reported to Dr Nimmigadda that Richard would beat him and that on multiple occasions tried to drown him by holding his head under water in the bath. His mother also hit him. It was this abuse that resulted in the Appellant

being placed in care. This personal history is recorded in the Appellant's medical notes and statement. It is also reflected in the sentencing remarks of Denniss HHJ who said that the evidence painted "a picture of somebody who has been seriously physically abused as a child", a history leading Judge Denniss to conclude: "I think it is very easy to understand, as you say yourself, how the abused became the abuser".

50. I mark that personal history, and the fact that the offending began when the Appellant himself was just a child of 14/15. Whilst it is important not to lose sight of the Appellant's clear culpability – particularly since the offending, the most serious offending, continued into his mid-20s – I have given some weight to the context in which these terrible crimes were perpetrated.

Rehabilitation

51. In his sentencing remarks, made on the 26th May 2011, HHJ Denniss told the Appellant "in my judgment you are at a low risk of committing further sexual offences and you do not represent in any way a danger to the public". I have been provided with extensive notes from the probation service covering their 9 years of working with the Appellant but I need not set this evidence out in any detail since their ultimate conclusions are uncontested by the Secretary of State, being consonant with the findings of Judge Denniss, Dr Nimmigadda, Dr Naidoo and indeed the parole board, who unanimously chose to release the Appellant from custody in 2015: the Appellant present a low risk of reoffending.

52. I attach some weight to that matter, and to the uncontested fact that it has been approximately 23 years since the Appellant committed a crime. I bear in mind that the crimes only ever came to light by his own spontaneous confession and Judge Denniss' assessment that they were to some extent a product of the Appellant's own history of abuse and assault as a young child. That weight is necessarily limited, however, since the statutory scheme provides for automatic deportation for past crime, and is not predicated on any forward-looking risk assessment: see Velasquez Taylor v Secretary of State for the Home Department [2015] EWCA Civ 845, PF (Nigeria) v The Secretary of State for the Home Department [2015] EWCA Civ 251. It is one factor that I have taken into account, but it has not assumed much significance in my overall assessment:

53. I now turn to consider the elements of the Appellant's case which in my view attract the greatest weight: the obstacles that he will face in returning to South Africa. I remind myself that the Appellant need not simply show that there are "very significant obstacles" to his integration there – itself a high test - but that there are "very compelling circumstances" over and above that matter.

Health

54. Although there are many other letters, records and reports in the bundles before me I have here drawn upon two main sources of information about the Appellant's current condition. These are the assessments made by two Consultant Psychiatrists, the expertise and conclusions of whom the Respondent accepted. The first is that of Dr Nimmigadda, whose report was before the First-tier Tribunal. It is undated but is based on assessments made in June 2018. The second opinion, that of Dr Kuben Naidoo, was sought for the purpose of the re-making of the decision in the Upper Tribunal. That report is based not on a single consultation, but on Dr Naidoo's own clinical knowledge of the Appellant: he has been his Responsible Clinician since March 2019.

55. From these reports I draw the following chronology in respect of the Appellant's mental health:

Approx 2002	The Appellant starts to experience constant auditory hallucinations in the form of voices talking – or screaming - at him day and night. Began to feel extreme anxiety and persecutory ideation as a result.
2002-2009	After an increase in paranoid thoughts the Appellant makes several serious attempts on his life. On various occasions he took overdoses, tried to slash his own throat, pushed a screwdriver into his rib cage, and slashed his wrists in front of his mother. In perhaps the most serious attempt he took an overdose and then threw himself in the Thames; he was in the water for 15 minutes before being pulled out and resuscitated by a RNLI.
	After the latter attempt the Appellant comes to the attention of mental health services. Diagnosed with 'treatment resistant' paranoid schizophrenia and treated with depot injections in the community.
March 2011	Appellant's conviction
	Under the care of the prison mental health team – depot injections prescribed.
	Prison medical records show consistent reporting of anxiety and depression as well as symptoms associated with psychosis, including auditory hallucinations, apathy, poor motivation, 'thought broadcasting', paranoia, hyper-salivation, tremors/shakes, myoclonic jerks, and a lack of social interaction.
2014	Last recorded incident of physical self-harm

March 2019	The Appellant released from prison following parole board hearing. Deemed to be stable at the point of release but prescribed anti-psychotic medication Clozapine. Following his release from HMP Whatton the Appellant is managed by Bootle Community Mental Health Team. Includes regular (monthly) blood monitoring for the purpose of managing his anti-psychotic medication.
c. April 2019	Last recorded incident of suicidal intent – Appellant felt urge to throw himself off a bridge but was able to resist.
Present	The Appellant continues to hear familiar, but unfriendly and critical voices. He reports being able to resist their negative commands. Ongoing anxiety and panic attacks.

56. Dr Naidoo explains that the Appellant's condition is currently stable because of the Clozapine prescription. Although he continues to hear voices and feel anxious the medication suppresses the more extreme psychotic symptoms such as suicidal ideation. He requires regular blood monitoring whilst on this medication because it has a side effect of reducing the white blood cell count in the body, leaving the patient open to life threatening infection. The purpose of the monitoring is therefore to manage the prescription accordingly. It is in this context that Dr Naidoo expresses serious concerns about the Appellant's welfare should he be deported to South Africa. Whilst Clozapine is available, in the absence of regular monitoring the prescription could not be safely managed. This disruption to his medication regime should be assessed in the context of deportation being "major negative life event that could contribute to a relapse in his illness. Coupled with social isolation and his risk history, this may place him in a particularly vulnerable situation".

57. Dr Nimmigadda expresses similar conclusions. He points out that Clozapine is the anti-psychotic of last resort, prescribed only in paranoid schizophrenia deemed to be 'treatment resistant'. The Appellant has responded to it "reasonably well" but continues to hear voices. He believes that the Appellant's prognosis if removed to South Africa is likely to be poor. The prescription of Clozapine is complex (he makes the same point as Dr Naidoo about the importance of blood monitoring) and expresses the view that if the Appellant is unable to access treatment his mental health is likely to deteriorate; he might present with significant risk behaviours, including self-harming. On a positive note Dr Nimmigadda states that the Appellant has complied well with his treatment regime, remains largely stable and has had no personal difficulties with those treating him. He remains in telephone contact with his family in London and derives some support from that.

58. Other than these reports the most recent material of note is a letter I was given on the day of the resumed hearing. It is from Dr C Willis, a Staff Grade Psychiatrist who is part of the community mental health team currently managing the Appellant in Bootle, and it is dated 7th February 2020. Dr Willis confirms the current prescription of Clozapine, Omeprazole, Levitiracetam and Epilim, all of which are to treat either epilepsy or paranoid schizophrenia. Dr Willis writes that notwithstanding this treatment the Appellant remains extremely anxious and continues to experience auditory hallucinations. He avoids going out if at all possible as a result of his anxiety. A letter to similar effect was sent by the Appellant's GP Dr White in January – Dr White states that the Appellant reports avoiding either crowded or confined spaces, either of which can trigger panic attacks.

Work History

59. Although he left school with no qualifications the Appellant did manage, at least until he became too unwell, to hold down several good jobs. He worked from the age of 15 at a warehouse which rented props to the film industry. He then worked as a systems engineer for a courier company for approximately two years and latterly as a guard for the Ministry of Defence at Millbank and Regents Park Barracks. At some point he also worked as a bus driver. The prison service confirm that he worked throughout his time in prison.

Conditions in South Africa

60. The Appellant has supplied two reports by Professor Ashworth.

61. The first is dated 23rd May 2018 and summarised at my §24-28 above. In this report Professor Ashworth was asked to address the specific issues surrounding the Appellant's access to mental health treatment. The global conclusion reached by Professor Ashworth is that although Clozapine is technically available in South Africa, regular and safe access to it is complicated. The Appellant would need to find a well-paying job, preferably one with health insurance, to obtain it privately since the cost of one month's supply would be prohibitively high to those on a low wage or the minimal income provided by state disability benefits. The costs of psychiatric consultations are even higher. In the public sector the government of South Africa has, since the fall of the apartheid regime in 1994, aspired to create a world-class and human rights compliant program for the treatment of mental illness, but has roundly failed to meet those aspirations. Provision in the public sector is now worse than it was under apartheid: "public facilities have declined to below the standards once considered inadequate when reserved exclusively for Blacks".

62. There is in addition the added difficulty of the cultural response to mental illness. Professor Ashworth points out that in South Africa many people interpret auditory hallucinations as real communications with invisible beings. Such hallucinations are most often "interpreted as evidence of demonic forces issuing commands. This can result in self-harm and suicide but can also put the sufferer at risk of harm from others. This is particularly evident in impoverished communities where people are generally less educated and their lives subject to great stress and insecurity". The recent proliferation of Pentecostal churches in South Africa has exacerbated this problem, since they are "obsessed" with hounding out demons. Professor Ashworth concludes that a "person subject to hallucinations, such as [the Appellant], who is not well known and supported by his family and community is at risk of being attacked as an embodiment of evil spiritual powers intent on causing harm on the community".

63. At the initial 'error of law' hearing I noted Professor Ashworth's evidence that the Appellant would face "serious difficulties" in establishing himself in South Africa, *absent* his mental health issues. He wrote that South Africa is the most socio-economically unequal country on earth, and it is still struggling with the legacy of apartheid. The aspirations of the black majority remain unfulfilled and poverty, unemployment, violence and crime remain endemic. People rely on social networks, in particular family structures to survive. In light of that evidence I asked if Professor Ashworth was able to comment on any particular issues that might arise for the Appellant because of his racial identity. He is what is referred to, in South African parlance, as 'coloured': what we would call mixed-race or dual heritage. Under apartheid this was one of four ranked racial categories, the others being 'white', 'Indian' and 'black'. These communities were kept apart and in check by operation of law. At various times the white-minority regime used the 'Indian' and 'coloured' communities as a political tool to suppress or outmanoeuvre the black majority, bestowing upon them privileges and benefits in an attempt to co-opt them into propping up the status quo. Given the potential legacy of that period in South African history I requested that Professor Ashworth make specific comment about the Appellant's race.

64. The result was his addendum report dated 25th October 2019. Professor Ashworth writes that since President Mandela left office, and the immediate optimism of the 'rainbow nation' receded, it is "generally acknowledged that racial tensions and intercommunal violence… have increased considerably". The 'coloured' community express a grievance that under apartheid they were not white enough, yet under the new government they are not black enough. Professor Ashworth cites one sociological study into 'coloured' identity as concluding: "there is a strong feeling that the Coloured people have traded one set of oppressors under apartheid for a larger, even more unscrupulous set of oppressors since 1994". The racial segregation once enforced by law has now become the *de facto* norm:

> "Racial tensions and intercommunal violence between black African and coloured communities have increased significantly in recent years, resulting in an informal system of segregation reinforcing the racial separations in residential areas once enforced by law, particularly in low-income informal settlements. These areas are notoriously hostile to outsiders".

65. In light of this continued segregation, Professor Ashworth concludes that the Appellant would have "little option" but to seek accommodation in a 'coloured' neighbourhood, and thereby expose himself to very difficult living conditions. These communities have the highest murder rates in the country:

> "In the years since the democratic transition in 1994, Coloured neighbourhoods have become subject to control by organised criminal gangs. As a recent study reported these gangs have evolved from groups of youngsters hanging around street corners defending their territory from outsiders into "criminal empires…[that] have managed to integrate themselves into the social organizations of their communities and have established themselves as 'critical institutions of provision'. The problem of gang violence in Coloured townships has become so extreme that in July of this year the South African government deployed the army into affected neighbourhoods in an attempt, so far unsuccessful, to keep the peace. These neighbourhoods are extremely dangerous".

66. Professor Ashworth dismisses the notion that the police might be able to offer the Appellant protection from criminality on the grounds that the police are notoriously corrupt and ineffectual. Most crimes go unreported and few people bother turning to the police. Those who can afford it employ private security guards. Those who cannot rely on "informal social networks or vigilante groups and local gangs for a modicum of security in the face of rampant crime". Professor Ashworth makes clear that these options are unlikely to be available to a stranger such as the Appellant:

> "Lacking a dense social network capable of providing protection [the Appellant] would be extremely exposed to the predations of criminal gangs and in grave danger of being subjected to violence in the neighbourhoods where he would inevitably be forced to seek accommodation. His medical conditions would make integration into those neighbourhoods even more difficult."

67. Mr Tan took no particular issue with Professor Ashworth's analysis of South African culture and society. He did however strongly object to the way in which Professor Ashworth had interpreted the evidence on the availability of drugs and treatment for the mentally ill. The Respondent relied on two primary sources, each in turn relied upon by Professor Ashworth. The first is a report by the World

Health Organisation 'Report on the Mental Health System in South Africa' published in September 2007. Mr Tan pointed out that according to this report, 80% of the population has access to free psychotropic medicines, and that these are available at a minimal cost, "generic antipsychotics" being available at the cost of 24 cents per day. The second document was a report, co-sponsored by a number of NGOs and co-funded by the European Union, entitled 'Stop Stockouts'. It was published in 2017 and is concerned with the availability or otherwise of medicine in South Africa. Mr Tan pointed to a table therein showing that various anti-psychotics are available in South Africa in over 90% of the facilities that usually stock medicine.

68. Having considered all of the evidence, I am satisfied that Professor Ashworth's research is valid and that I can place weight upon it. The WHO report relied upon by the Respondent dates back to 2007 and refers only to "generic anti-psychotics". As such it is unclear whether that is inconsistent with the very specific evidence given by Professor Ashworth about Clozapine, and its current cost of R1087 per month (I am not told whether that would be considered, in 2007, to be a "generic" medication, or whether there has been a marked change in price due to inflation or other factors). As for the more recent 'Stop Stockouts' report is it correct to say that this lists three particular types of anti-psychotic medication (Zuclopenthixol, Haloperidol and Risperidone) and indicates that they are widely available. I am unable however to find any reference in that report to Clozapine (or Clozaril, another name by which it is known). As the evidence of Dr Naidoo and Dr Nimmigadda makes clear, the Appellant is on Clozapine, with the attendant risks to his immune system, because no other drugs have worked. Nor do Stop Stockouts make any comment on the administration or monitoring of the medication, a key part of the prescription of Clozapine according to the evidence of Drs Naidoo and Nimmigadda.

Discussion and Findings

69. As I hope I have made clear (see my §36-37 above) the nature of the offending and the length of sentence in this case mean that the weight to be attached to the public interest in the deportation of the Appellant is very great indeed. The cumulative weight of what might be termed the 'UK factors' – the Appellant's extremely long residence and strong integration, his history of childhood trauma, rehabilitation and low risk of reoffending – are indeed compelling, but would in my view fall short of displacing the public interest in a case such as this. Parliament, society and indeed the Appellant's victim are all entitled to consider that crimes such as this must attract severe consequences, consequences that could include the deportation of a man who is entirely British in his social and cultural identity [see §118 CI (Nigeria) *supra*]. Those are not however the only relevant factors in this case. Far more significant, in my view, are the likely consequences for the Appellant upon return to South Africa.

70. The Appellant has no ties whatsoever with South Africa, a country he left before he would have been aware of any cultural or social norms. Mr Tan urged me to find that he may be able to derive some support from his paternal family there but such a finding would be entirely speculative – there is no evidence that the Appellant has ever had any contact with his paternal family, or that they would be willing to offer him assistance. Having left that country as an infant there is nothing to suggest that he was in London brought up in a particularly South African *milieu*. Although his mother no doubt imparted some values and behaviours, there is no evidence that the family were part of a wider diasporic community, or that the Appellant, in any event in care during his formative years, would have developed any understanding of South African society. Even if he had done, the South Africa of the 1970s is obviously an extremely different place to the South Africa of today. The complex legacy of apartheid means that incomers to South Africa face a unique set of challenges in 'fitting in'. Reading Professor Ashworth's evidence I find that the Appellant would have little to no chance of integrating there in the sense of establishing a meaningful private life for himself. In Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 Lord Justice Sales put the test like this [at §14]:

> "The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life".

71. As a 'coloured' man with no social or operative familial connections, and no idea of how society operates, I have no hesitation in concluding that the Appellant would not be "enough of an insider" to successfully navigate the challenging landscape of South Africa almost half a century after he left that country. It is of course true that the Appellant was at one time capable of working to support himself. He has during his life in the United Kingdom built friendships and relationships. Those capabilities would however be sorely tested upon removal by the confluence of his poor socio-economic prospects in South Africa, his race and his lack of connections there. I am not satisfied that there is any real prospect of the Appellant managing to establish any meaningful private life in South Africa in the foreseeable future. Accordingly I am satisfied that the final limb of the test set out at s117C(4) of the Nationality, Immigration and Asylum Act 2002 (and replicated at paragraph 399A of the Immigration Rules) is met.

72. I must now assess whether there are "very compelling circumstances over and above" that matter.

73. The unchallenged medical evidence is that the Appellant has, over at least the past 18 years, battled with one of the most severe forms of mental illness. His medical notes refer to depression, anxiety, bi-polar disorder and psychosis but the two consultant psychiatrists who have provided evidence to this Tribunal concur that the final diagnosis is of treatment resistant paranoid schizophrenia.

74. In the period before he was diagnosed, and before he had access to treatment, the disease compelled the Appellant to attempt to take his own life on multiple occasions. At various times voices in his head commanded him to slash his own wrists, slash his own throat, take overdoses, push a screwdriver into his ribcage and jump into the River Thames.

75. Even after treatment commenced, the Appellant has over many years continued to experience symptoms of his disease. The medical records kept by HM Prison Service during his incarceration refer to a wide range of issues. The Appellant was reported to exhibit external symptoms including an inability or unwillingness to interact with others, tremors and 'myoclonic jerks' (jerking/twitching of the muscles) and hyper-salivation. Internally he continued to experience auditory hallucinations in the form of hostile voices, anxiety, panic, paranoia and 'thought broadcasting' (the notion that others can hear or know your thoughts). As the Appellant's GP, current community mental health team and Dr Naidoo all report, he continues to experience such symptoms today, even after many years on the drug of last resort for his condition, Clozapine.

76. The Appellant's mental illness is, for the purposes of this decision, his defining personal characteristic. Against the background of the medical and expert evidence I now assess the likely events following deportation. I do so by imagining – in light of the known facts – what the best case scenario might be.

77. The best-case scenario for the Appellant is that upon his arrival in South Africa he has with him enough medicine to last him until his next blood test – I make it clear that this is something of an assumption on my part since it was given no evidence nor undertaking by the Respondent that this would in fact be the case. Let me assume that he received a blood test and new prescription on the day before his flight, so he has about one months' supply. Let me also assume that he is in possession of some money, perhaps supplied by the Home Office or IOM – again this is wholly speculative and I was provided with no assurances that this would be the case (setting aside the COVID-19 suspension of the programme there is the additional difficulty that his return would not be voluntary[6]). Perhaps he will have been given some extra money by his family, but again there was no evidence to say that this would be the case. Let me assume that the Appellant's

[6] https://www.gov.uk/return-home-voluntarily
Accessed on the 16th April 2020.

mother, herself out of South Africa for approaching 50 years, still had sufficient local knowledge to direct him to a suitable – ie 'coloured' - neighbourhood.

78. The Appellant arrives in that neighbourhood with enough drugs for a month and enough money for a month's rent. Let me assume that he will also have sufficient funds to feed himself for that month. So far so good. He is in his room, he has food, and his mental health has, notwithstanding the massive stress of deportation, somehow remained constant.

79. At this point I find it very difficult to see how, even in the best-case scenario, the Appellant is going to manage once his funds and medications run out.

80. He knows no-one and is very obviously an outsider. He is in effect an Englishman who has turned up wanting to live in what Professor Ashworth describes as an area so "extremely dangerous" that the state felt the need in 2019 to deploy the army. According to that unchallenged evidence, such neighbourhoods are subject to control by organised criminal gangs and are closed communities, hostile to outsiders. That is the reality outside his door. I accept Professor Ashworth's evidence that in those circumstances he is likely to attract some attention, and be easy prey for criminals.

81. The Appellant already suffers, in the stability of the United Kingdom and with full access to treatment, a range of symptoms associated with his disease. In particular he continues to hear hostile voices, and experience intense feelings of paranoia, anxiety and panic. Professor Ashworth has, over the course of his career, focused his study on the perception of mental illness and/or difference in South African society. He has written extensively on the perceived existence of witches and demonic possession. This is how many South Africans, particularly those from impoverished communities, understand mental illness. Professor Ashworth writes that unless you have protection, those around you are likely to react to your illness with hostility: "a person subject to hallucinations, such as [the Appellant], who is not well known and supported by his family and community is at risk of being attacked as an embodiment of evil spiritual powers intent on causing harm on the community". This is how the Appellant is likely to be received by the people around him.

82. Again assuming that the Appellant's current symptoms of his disease remain constant, it would in my view be perverse to conclude that those conditions would not significantly impede the Appellant's ability to try and find work, to negotiate what Professor Ashworth describes as the "extremely complex maze" of pathways into the public health system, or simply to interact with others on a day to day level. In the best case scenario the Appellant has a month to locate a clinic where he can access blood monitoring for a further prescription of Clozapine. Having had regard to Professor Ashworth's evidence it is clear that this will be a huge challenge for the Appellant. It is not one that on the evidence, he appears likely to be able to surmount. At present his anxiety levels are such

that he is effectively housebound. He suffers from panic attacks going out in Bootle, where he lives, but in this scenario the streets of the United Kingdom are replaced by a strange neighbourhood in a strange country, controlled by violent gangs and where the population at large perceive you to be controlled by demons.

83. It is against that background that the debate about whether Clozapine is readily available in South Africa begins to recede in significance. Assuming once again a 'best case' scenario I am prepared to accept that the Appellant, in his anxiety-riddled and psychotic state, might be able to locate and access a clinic where the drug is available at little or no cost. In light of Professor Ashworth's evidence there must however remain serious concerns about whether the appropriate blood testing and monitoring would be conducted, leaving the drug with reduced efficacy and compromising the Appellant's immune system. Even assuming that he manages to surmount that obstacle and find a clinic complying with international prescription norms, he is still a complete stranger who knows no-one, with serious mental health issues, attempting to integrate in one of the most violent societies in the world.

84. That was the very best case scenario that I can envisage for the Appellant. I find that the cumulative challenges faced by the Appellant in that scenario are such that the very high test set out at s117C(6) is met. The public interest requires the Appellant's deportation, but not at the expense of the United Kingdom's international obligations under the ECHR. Even assuming that his condition does not worsen and that he has access to some initial funds and medication, I am unable to find that the conditions faced by the Appellant would be anything less than inhuman and degrading.

85. It follows that I need not explore at length the worst case scenario, where the stress of deportation causes the Appellant's mental health to deteriorate. This was the outcome considered likely by Drs Naidoo and Nimmigadda, and I make it clear that I have no reason to doubt their evidence. My findings above notwithstanding, the more likely outcome for the Appellant is that his deportation would cause his mental health to spiral downward. His ability to negotiate even the most urgent matters – such as finding accommodation – would be severely compromised. Anyone he speaks to will quickly understand that he is not 'normal'. He will be viewed with curiosity at best and hostility at worst. Without anyone to vouch for him I find it very difficult to see how he will get a job, and with worsening mental health I find it very difficult to see how he would manage to negotiate the public health or benefits system. He will be easy prey for criminals or for those who perceive his mental illness to somehow be a threat to them. On the evidence I have I find the most likely consequence of deportation would be that the Appellant will, very quickly after his arrival in South Africa, run out of money, run out of drugs and find himself living on the streets. The public interest does not require that.

Anonymity

86. The Appellant is a criminal and his identity would not therefore ordinarily attract protection. I am however concerned that identification of the Appellant could lead to identification of his victim. Further I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that because of the medical evidence in this case it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

87. The decision of the First-tier Tribunal contains material errors of law and it is set aside.

88. The decision in the appeal is re-made as follows:

"The appeal is allowed on human rights grounds".

89. There is an order for anonymity.

Upper Tribunal Judge Bruce   Date: 17th April 2020