Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00171/2018 (V)

THE IMMIGRATION ACTS

Heard at Field House (by remote video means)	**Decision & Reasons Promulgated**
On 25th January 2021	**On 8th March 2021**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AAS
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Unrepresented

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The file contained the documents in paper format.

2. The Secretary of State appealed against a decision of First-tier Tribunal Judge Anthony, who allowed an appeal by AAS against the decision to revoke his protection status and to refuse his protection and human rights claim dated 11 September 2018. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with AAS as the Appellant and the Secretary of State as the Respondent.

3. An error of law was found by Upper Tribunal Judge Grubb in a decision dated 24 June 2020 and the decision of the First-tier Tribunal was set aside to be re-made in the Upper Tribunal, with no specific preserved findings of fact.

4. The further hearing for re-making of this appeal was originally listed for 20 October 2020, but converted to a case management hearing the day before following an indication from the Appellant's then solicitors that despite numerous attempts by different means, they had not had any response or instructions from the Appellant for some time. At the case management hearing, the Appellant's then solicitors indicated that they had had a telephone call the afternoon before the hearing (after the conversion to a CMR) from which it was clear that the Appellant knew of the listing but he had lost his phone and did not leave any further contact details in the alternative for them to return the call.

5. I issued directions on 20 October 2020 for this hearing to be relisted for a remote video hearing and for the parties to provide contact details for a Skype hearing within 14 days. In addition, (i) that by 10 November 2020 the Appellant was to make contact with his solicitors and/or the Upper Tribunal to confirm that he wished to proceed with his appeal; (ii) any further evidence to be relied upon to be filed and served no later than 14 days before the hearing; (iii) the Appellant to file and serve a composite bundle for the hearing; and (iv) the parties to file and serve a skeleton argument no later than 7 days before the hearing.

6. The directions included a warning to the Appellant that if he failed to make contact with his then solicitors or the Upper Tribunal or failed to comply with the directions for the hearing; no further adjournment of the appeal was likely and his appeal may be determined without a further hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 or a further hearing may proceed in his absence under rule 38 of the same. These directions were sent directly to the Appellant and his then solicitors. A notice of hearing followed on 23 December 2020, again sent directly to the Appellant as well as his solicitors.

7. On 22 January 2021, the Appellant's then solicitors applied for an adjournment of the hearing on the basis that they remained without instructions and had not had any further contact with the Appellant since the day before the case management hearing. The application was refused on the same date by Mr Hussain in the Upper Tribunal. The Appellant's then solicitors subsequently came off the record and are no longer representing the Appellant.

8. As at the start of the hearing on 25 January 2021, the Upper Tribunal had not had any contact at all from the Appellant, either in relation to the hearing or in the form of any further evidence or the composite bundle required. The directions and listing notice were sent directly to the Appellant (as well as his then solicitors who have made efforts to contact him) and to the same address as the previous listing notice which we know the Appellant had received from his very limited contact with his then solicitors on 19 October 2020 when he indicated he was aware of the listing for 20 October 2020.

9. I am satisfied that the Appellant has been served with the directions and notice of listing, as well as having been contacted by his then solicitors in relation to the hearing and the warnings contained therein about the likelihood of it proceeding if he failed to comply with directions in relation to it. The Appellant has failed to make any substantive contact with his solicitors in relation to this appeal for a significant period of time (including prior to the hearing listed in October 2020) and has failed to make any contact at all with the Upper Tribunal. Whilst it is understood that in the past the Appellant has had some mental health problems (with limited medical evidence of this for the period around 2016 to 2018 and only references to depression and anxiety predating this period), there is no up to date medical evidence (or any evidence at all) of any current difficulties or indication that the Appellant's failure to engage with his appeal is due to this; nor that there has been any specific adverse impact of the Covid-19 pandemic on the Appellant in relation to his engagement with his own appeal. There is little before the Upper Tribunal to indicate that the Appellant wishes to pursue this appeal at all and no indication if he does, as to why he has not engaged to date with the directions or listing or as to when he may be able to do so.

10. In all of the circumstances, particularly without any information as to when this appeal could proceed with the Appellant's involvement, if at all, it is not in the interests of justice to delay the hearing of this appeal any longer by adjourning it. The hearing proceeded substantively on 25 January 2021 on the basis of the evidence that had previously been submitted by the Appellant to the First-tier Tribunal and submissions made on his behalf to date and with oral submissions on behalf of the Respondent. I have taken into account when assessing the evidence that the Appellant did not appear before me to give oral evidence, such that his evidence was not tested; however, that does not significantly reduce the weight to be given to his evidence for two main reasons. First, the Appellant did attend the hearing before the First-tier Tribunal on which occasion he gave evidence and was cross-examined. Secondly, the factual background is largely undisputed (save as where indicated in submissions on behalf of the Respondent set out below). Further, although there were no formal preserved findings of fact from the First-tier Tribunal, the decision contains findings which are uncontroversial as to the Appellant's background and circumstances and which I adopt in this decision.

11. The issues in this appeal are as to (i) the Respondent's revocation of the Appellant's refugee status; (ii) humanitarian protection (albeit not expressly raised by the Appellant); (iii) Article 3 of the European Convention on Human Rights; and (iv)

Article 8 of the European Convention on Human Rights/private and family life exceptions to deportation.

Immigration Law and Rules Relevant to the Appellant

12. In accordance with section 3(5) of the Immigration Act 1971, a person who is not a British citizen is liable to deportation if the Secretary of State deems it to be conducive to the public good. For the purposes of this appeal, this includes cases in which a person is considered to be a persistent offender.

13. The Upper Tribunal considered the meaning of "persistent offender" in Chege ("is a persistent offender") [2016] UKUT 187 (IAC), which was endorsed by the Supreme Court in SC (Zimbabwe) v Secretary of State for the Home Department [2018] 1 WLR 4474. The Upper Tribunal found as follows:

> *"50. What, therefore, is the natural meaning of the phrase "persistent offender" in this specific statutory context? It can certainly be said, without unnecessarily straining the natural meaning of the word that an "offender" acquires that status by virtue of committing a crime, and having once offended he does not lose that status even if he never commits another crime. In other words, once an offender, always an offender. The fact that Parliament has deliberately legislated to remove the concept of spent convictions in this context also lends force to the view that "offender" means someone who has offended in the past however long ago that may have been.*
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> *51. However, Parliament did not use the phrase "repeat offender" or "serial offender". It used the phrase "persistent offender", and persistence, by its very nature, requires some continuation of the behaviour concerned, although it need not be continuous or even regular. There may be circumstances in which it would be inappropriate to describe someone with a past history of criminality as being a "persistent offender" even if there was a time when that description would have been an accurate one.*
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> *52. Take, for example, the case of an individual who in his youth had committed a series of offences between the ages of 14 and 17 which led to a string of minor convictions, but in adulthood had led a blameless existence for 20 years. Whilst it would be accurate to describe him as an offender, the natural response to the question whether he is now a persistent offender would be no. It would still be no if at the end of that long period of good behaviour he committed another minor criminal offence, even one involving proof of intention or recklessness. That is why, both logically and as a matter of the natural meaning of the language, Mr Malik's proposition that "persistent offender" is a permanent status cannot be correct.*
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> *53. Put simply, a "persistent offender" is someone who keeps on breaking the law. That does not mean, however, that he has to keep on offending until the date of the relevant decision or up to a certain time before it, or that the continuity of the offending cannot be broken. Whilst we do not accept Mr Malik's primary submission that a "persistent offender" is a permanent status that can never be lost once it is acquired, we do accept his submission that an individual can be regarded as a "persistent offender" for the purpose of the Rules and the 2002 Act even though he may not have offended for some*

time. Someone can be fairly described as a person who keeps breaking the law even if he is not currently offending. The question whether he fits that description will depend on the overall picture and pattern of his offending over his entire offending history up to that date. Each case will turn on its own facts.

54. Plainly, a persistent offender is not simply someone who offends more than once. There has to be repeat offending but that repetition, in and of itself, will not be enough to show persistence. There has to be a history of repeated criminal conduct carried out over a sufficiently long period to indicate that the person concerned is someone who keeps on re-offending. However, determining whether the offending is persistent is not just a mathematical exercise. How long a period and how many offences will be enough will depend very much on the facts of the particular case and the nature and circumstances of the offending. The criminal offences need not be the same, or even of the same character as each other. Persistence may be shown by the fact that a person keeps committing the same type of offence, but it may equally be shown by the fact that he has committed a wide variety of different offences over a period of time.

…

57. In order to answer the question whether someone is a persistent offender, the decision-maker (be it the Tribunal or the Secretary of State) must consider the whole history of the individual from the commission of the first offence up to the date of the decision and ask themselves whether he can properly be described as someone who keeps on committing criminal offences. Factors to be taken into account will include the overall pattern of offending, the frequency of the offences, their nature, their number, the period or periods over which they are committed, and (where relevant) any reasons underlying the offending, such as an alcohol or drug dependency or association with other criminals. This is in line with the guidance given in the Immigration Directorate Instructions, Chapter 13, version 5.0 (dated 28 July 2014) to which Mr Malik referred, which states that a persistent offender is "a repeat offender who shows a pattern of offending over a period of time". The guidance goes on to say "this can mean a series of offences committed in a fairly short timeframe, or which escalate in seriousness over time, or a long history of minor offences."

58. If the person concerned has been out of trouble for a significant period or periods within the overall period under consideration, then the length of such periods and the reasons for his keeping out of trouble may be important considerations, though of course the decision maker is entitled to bear in mind that the mere fact that someone has not been convicted for some time does not necessarily signify that he has seen the error of his ways. It may simply mean that he has paused in his offending. It is the overall picture of his behaviour that matters.

59. If during those periods of apparent good behaviour the person concerned was serving the custodial part of a short sentence, or was too unwell to go out and commit the kinds of offences he is generally prone to commit, there may be an explanation for the hiatus in offending which is not inconsistent with his being properly regarded as a persistent offender. Likewise, it he had a very strong incentive not to commit further offences, such as being subject to a community order, or a suspended sentence, or he is

on bail, or he has been served with a notice of deportation, the fact that he has committed no further offences during that period may be of little significance in deciding whether, looking at his history as a whole, he fits the description.

60. On the other hand, we agree with First-tier Tribunal Judge Whalan that an established period of rehabilitation may lead properly to the conclusion that an individual is no longer a persistent offender. Depending on the particular facts and circumstances, a former drug addict who has ceased shoplifting to feed his habit after a period in rehabilitation, and who has been out of trouble for a significant period of time thereafter, might not be capable of being termed a "persistent offender" because when his history is looked at in the round, it can no longer be said that he is someone who keeps on offending."

14. The Respondent may not make a deportation order where deportation would be contrary to the United Kingdom's obligations under the Refugee Convention or the Human Rights Convention.

Refugee Convention & cessation

15. It is for an Appellant to show that he is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.

16. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the Appellant were to be returned.

17. Article 1C of the Refugee Convention provides that the Convention shall cease to apply to any person falling under the terms of section A if *"(5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality."*

18. Finally, paragraph 339A of the Immigration Rules also deals with this issue in (v) as follows:

"(v) he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality."

19. Paragraph 339A goes on to state that, *"In considering (v) and (vi), the Secretary of State shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no long be regarded as well-founded."*

20. The Court of Appeal in Secretary of State for the Home Department v MA (Somalia) [2018] EWCA Civ 994, further to the CJEU decision in Joined Cases C-175/08, C-176/08, C-178/08, C-179/08, Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi & Dier Jamal v Bundesrepublik Deutschland, 2 March 2010, concluded that: *"A cessation decision is the mirror image of a decision determining refugee status. By that I mean that the grounds for cessation do not go beyond verifying whether the grounds for recognition of refugee status continue to exist. Thus, the relevant question is whether there has been a significant and non-temporary change in circumstances so that the circumstances which caused the person to be a refugee have ceased to apply and there is no other basis on which he would be held to be a refugee. The recognising state does not in addition have to be satisfied that the country of origin has a system of government or an effective legal system for protecting basic human rights, though the absence of such systems may of course lead to the conclusion that a significant and non-temporary change in circumstances has not occurred."* [paragraph 2(1)].

21. Although in MS (Art 1C(5) Mogadishu (Somalia) [2018] UKUT 196 (IAC) the Upper Tribunal found that the Respondent is not entitled to cease a person's refugee status pursuant to article 1C(5) of the Refugee Convention solely on the basis of a change of circumstances in one part of the country of proposed return; this was before the Court of Appeal's decision in MA (Somalia) referring to the symmetry between a decision determining refugee status and cessation. In AMA (Article 15(c) – proviso – internal relocation) Somalia [2019] UKUT 11 (IAC), the Upper Tribunal found that changes in a refugee's country of origin affecting only part of the country may, in principle, lead to cessation of refugee status, albeit it is difficult to see how in practice protection could be said to be sufficiently fundamental and durable in such circumstances.

Country Guidance

22. The Country Guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) is applicable to the present appeal and neither party expressly sought any departure from it. The key findings for the purposes of this appeal as summarised in the headnote, with additional cross-referencing to the original paragraphs numbers in the main body of the decision given in square brackets for ease of cross referencing to relevant paragraphs in later decisions below:

    (i) The country guidance issues addressed in this determination are not identical to those engaged with by the Tribunal in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC). Therefore, where country guidance has been given by the Tribunal in AMM in respect of issues not addressed in this determination then the guidance provided by AMM shall continue to have effect.

(ii) *Generally, a person who is "an ordinary civilian" (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al Shabaab or by Al Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country.* [paragraph 407(a)]

(iii) *There has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM.* [paragraph 407(b)]

(iv) *The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab's resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.* [paragraph 407(c)]

(v) *It is open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of "collateral damage" in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so.* [paragraph 407(d)]

(vi) *There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West.* [paragraph 407(e)]

(vii) *A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming from majority clan members, as minority clans may have little to offer.* [paragraph 407(f)]

(viii) *The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan-based discriminatory treatment, even for minority clan members.* [paragraph 407(g)]

(ix) *If it is accepted that a person facing return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all the circumstances. These considerations will include, but are not limited to:*

- *circumstances in Mogadishu before departure:*
- *length of absence from Mogadishu;*
- *family or clan associations to call upon in Mogadishu;*
- *access to financial resources;*
- *prospects of securing a livelihood, whether that be employment or self-employment;*
- *availability of remittances from abroad;*
- *means of support during the time spent in the United Kingdom;*
- *why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.* [paragraph 407(h)]

(x) *Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.* [paragraph 407(h)]

(xi) *It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.* [paragraph 408]

(xii) *The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no formal links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real prospect of having to live in conditions that will fall below acceptable humanitarian standards.* [paragraphs 424 and 425]

Article 3 of the European Convention on Human Rights

23. In terms of the Article 3 threshold to be applied, the present case is not a "paradigm" case as in MSS v Belgium & Greece 53 EHRR 28. As confirmed by the Court of Appeal in Secretary of State for the Home Department v Said [2016] EWCA Civ 442, Article 3 was intended to protect persons from violations of their civil and political rights, not their social and economic rights. The return of a person who was not at risk of harm because of armed conflict or violence would not in the case of economic deprivation violate Article 3 unless the circumstances were such as those in N v UK [2005] 2 AC 296 (as summarised by Lady Justice Arden in paragraph 34 of MA

(Somalia) v Secretary of State for the Home Department [2018] EWCA Civ 994). The main conclusion on this point in Said is at paragraph 18 which states as follows:

> *"These cases demonstrate that to succeed in resisting removal on article 3 grounds on the basis of suggested poverty or deprivation on return which are not the responsibility of the receiving country or others in the sense described in para 282 of Sufi and Elmi, whether or not the feared deprivation is contributed to by medical condition, the person liable to deportation must show circumstances which bring him within the approach of the Strasbourg Court in the D and N cases."*

24. There is some concern expressed by the Court of Appeal in Said as to possible conflation between factors relevant to the assessment of internal relocation, humanitarian protection and Article 3 in MOJ, which need to be set out in full. The discussion is at paragraphs 26 to 31 which states as follows:

> *"26. Paragraph 407(a) to (e) are directed to the issue that arises under article 15(c) of the Qualification Directive. Sub-paragraphs (f) and (g) establish the role of clan membership in today's Mogadishu, and the current absence of risk from belonging to a minority clan. Sub-paragraph (h) and paragraph 408 are concerned, in broad terms, with the ability of a returning Somali national to support himself. The conclusion at the end of paragraph 408 raises the possibility of a person's circumstances failing below what "is acceptable in humanitarian protection terms". It is, with respect, unclear whether that is a reference back to the definition of "humanitarian protection" arising from article 15 of the Qualification Directive. These factors do not go to inform any question under article 15(c). Nor does it chime with article 15(b), which draws on the language of article 3 of the Convention, because the fact that a person might be returned to very deprived living conditions, could not (save in extreme cases) lead to a conclusion that removal would violate article 3.*
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> *…*
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> *28. In view of the reference in the paragraph immediately preceding para 407 to the UNHCR evidence, the factors in paras 407(h) and 408 are likely to have been introduced in connection with internal flight or internal relocation arguments, which was a factor identified in para 1 setting out the scope of the issues before UTIAC. Whilst they may have some relevance in a search for whether a removal to Somalia would give rise to a violation of article 3 of the Convention, they cannot be understood as a surrogate for an examination of the circumstances to determine whether such a breach would occur. I am unable to accept that if a Somali national were able to bring himself within the rubric of para 408, he would have established that his removal to Somalia would breach article 3 of the Convention. Such an approach would be inconsistent with the domestic and Convention jurisprudence which at para 34 UTIAC expressly understood itself to be following.*
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> *29. Having set out its guidance, UTIAC then turned to consider IDPs, about which each of the experts had given some evidence. It recognised that the label was problematic because there were individuals who are considered as internally displaced persons who have settled in a new part of Somalia in "a reasonable standard of accommodation" and with access to food, remittances from abroad or an independent*

livelihood. UTIAC considered that the position would be different for someone obliged to live in an IDP camp, the conditions of some of which "are appalling", para 411. It continued by quoting from evidence of armed attacks on IDP camps, of sexual and other gender based violence and the forcible recruitment of internally displaced children into violence, albeit that it did not accept the evidence it quoted. UTIAC also mentioned overcrowding, poor health conditions and (ironically) that the economic improvements in Mogadishu were leading to evictions from IDP camps in urban centres with vulnerable victims being unable to seek refuge elsewhere.

30. It is immediately apparent that the discussion of this evidence, which is culled from expert reports, understandably touches on concerns about violence, which in article 3 terms would be analysed by reference to the approach in MSS and Sufi and Elmi cases, and aspects of destitution, which would be analysed by reference to the approach in the N and D cases. The conflation continues in para 412:

> *"Given what we have seen, and described above, about the extremely harsh living conditions, and the risk of being subjected to a range of human rights abuses, such a person is likely to found to be living at a level that falls below acceptable humanitarian standards."*

Having further discussed the contradictory evidence about how many people lived in IDP camps, UTIAC concluded that "many thousands of people are reduced to living in circumstances of destitution" albeit that there was no reliable figure of how many people lived in such destitution in IDP camps. The determination continued:

> *"420. Whilst it is likely that those who do find themselves living in inadequate makeshift accommodation in an IDP camp will be experiencing adverse living conditions such as to engage the protection of article 3 of the ECHR, we do not see that it gives rise to an enhanced Article 15(c) risk since there is an insufficient nexus with the indiscriminate violence which, in any event, we have found not to be at such a high level that all civilians face a real risk of suffering serious harm. Nor does the evidence support the claim that there is an enhanced risk of forced recruitment to Al Shabaab for those in the IDP camps or that such a person is more likely to be caught up in an Al Shabaab attack …*
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> *421. Other than those with no alternative to living in makeshift accommodation in an IDP camp, the humanitarian position in Mogadishu has continued to improve since the country guidance in AMM was published. The famine is confined to history … The "economic boom" has generated more opportunity for employment and … self-employment. For many returnees remittances will be important …*
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> *422. The fact that we have rejected the view that there is a real risk of persecution or serious harm or ill treatment to civilian returnees in Mogadishu does not mean that no Somali national can succeed in a refugee or humanitarian protection or article 3 claim. Each case will fall to be decided on its own facts. As we have observed, there will need to be a careful assessment of all the circumstances of a particular individual."*

> *31. I entirely accept that some of the observations made in the course of the discussion of IDP camps may be taken to suggest that if a returning Somali national can show that he is likely to end up having to establish himself in an IDP camp, that would be sufficient to engage the protection of article 3. Yet such a stark proposition of cause and effect would be inconsistent with the article 3 jurisprudence of the Strasbourg Court and binding authority of the domestic courts. In my judgement the position is accurately stated in para 422. That draws a proper distinction between humanitarian protection and article 3 and recognises that the individual circumstances of the person concerned must be considered. An appeal to article 3 which suggests that the person concerned would face impoverished conditions of living on removal to Somalia should, as the Strasbourg Court indicated in Sufi and Elmi at para 292, be viewed by reference to the test in the N case. Impoverished conditions which were the direct result of violent activities may be viewed differently as would cases where the risk suggested is of direct violence itself."*

25. Paragraph 422 of MOJ stated:

> *"The fact that we have rejected the view that there is a real risk of persecution or serious harm or ill treatment to civilians or returnees in Mogadishu does not mean that no Somali national can succeed in a refugee or humanitarian protection or Article 3 claim. Each case will fall to be decided on its own facts. As we have observed, there will need to be a careful assessment of all the circumstances of a particular individual."*

26. The question of whether the risk of deprivation on return would lead to a violation of Article 3 of the European Convention on Human Rights was revisited in MA (Somalia). Lady Justice Arden, being bound by the decision in Said, confirmed that there is no violation of Article 3 by reason of a person being returned to a country which for economic reasons can not provide him with basic living standards. The Respondent in MA contended that the situation in Somalia was brought about by conflict, which is recognised by the European Court of Human Rights as an exception to the analysis. Lady Justice Arden however concluded at paragraph 63 that:

> *"… It is true that there has historically been severe conflict in Somalia, but, on the basis of MOJ, that would not necessarily be the cause of deprivation if the respondent were returned to Somalia now. The evidence is that there is no present reason why a person, with support from his family and/or prospects of employment, should face unacceptable living standards."*

27. This test has been expressly endorsed by the Court of Appeal in MI (Palestine) v Secretary of State for the Home Department [2018] EWCA Civ 1782 and by the Upper Tribunal in SB (refugee revocation; IDP camps) Somalia [2019] UKUT 00358 (IAC).

28. It is well established that in Article 3 cases where the risk to the individual is not from treatment emanating from intentionally inflicted acts of the public authorities in the receiving state or from those of non-State bodies in that country when the authorities there are unable to afford him appropriate protection; it is only in very

exceptional circumstances that there would be a violation of Article 3. The principles are summarised by the European Court of Human Rights in N as follows:

> *"42. Aliens who are subject to expulsion cannot in principle claim entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling state. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the contracting state is not sufficient in itself to give rise to breach of art 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the contracting state may raise an issue under art 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. In D v UK … the very exceptional circumstances were that the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support.*
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> *43. The court does not exclude that there may be other very exceptional cases where the humanitarian considerations are equally compelling. However, it considers that it should maintain the high threshold set in D v UK … and applied in its subsequent case law, which it regards as correct in principle, given that in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-state bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country.*
>
> *44. … Advances in medical science, together with social and economic differences between countries, entail that the level of treatment available in the Contracting State and the country of origin may vary considerably. While it is necessary, given the fundamental importance of Article 3 in the Convention system, for the Court to retain a degree of flexibility to prevent expulsion in very exceptional cases, Article 3 does not place an obligation on the Contracting State to alleviate such disparities through the provision of free and unlimited healthcare to all aliens without a right to stay within its jurisdiction. A finding to the contrary would place too great a burden on the Contracting States."*

Immigration Rules and Article 8 of the European Convention on Human Rights

29. The requirements where a person claims that their deportation would be contrary to the United Kingdom's obligations under Article 8 of the European convention on Human rights in so far as they are set out in the Immigration Rules and relate to this appeal are:

> ***"398.** Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and*
>
> *(a) …*
> *(b) …; or*

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. *…*

399A. *This paragraph applies where paragraph 398(b) or (c) applies if –*

(a) the person has been lawfully resident in the UK for most of his life; and
(b) he is socially and culturally integrated in the UK; and
(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported."

30. By virtue of section 117A of the Nationality, Immigration and Asylum Act 2002, Part V of that Act applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches Article 8 of the European Convention on Human Rights and as a result would be unlawful under section 6 of the Human Rights Act 1998.

31. Section 117B applies to the public interest considerations in all cases and section 117C applies additional considerations to cases involving foreign criminals. So far as relevant to this appeal, section 117B sets out factors to be considered in all cases and the additional consideration in cases involving foreign criminals provides as follows:

*"**117C. Article 8: additional considerations in cases involving foreign criminals***

(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."

The Appellant's immigration and criminal history

32. The Appellant is a national of Somalia, born on 7 June 1973, who fled Somalia in 1992/1993 to Kenya and from there came to the United Kingdom on 22 August 1998, claiming asylum on arrival on the basis that he was at risk of persecution in Somalia as a member of a minority clan, the Barwani clan (also known as Bravanese and a sub-clan of the Benadiri). The Appellant was recognised as a refugee on 6 June 2000 and granted indefinite leave to remain.

33. On 22 June 2017, the Appellant was fined £60 following his conviction of 2 counts of theft.

34. On 6 July 2017, the Appellant was convicted of possessing an offensive weapon in a public place and failing to surrender to custody, for which he was sentenced to a community order with rehabilitation activity, ordered to pay a victim surcharge and a £10 fine.

35. On 6 November 2017, the Appellant was sentenced to six months' imprisonment following his conviction for having a blade or sharply pointed article in a public place, possessing an offensive weapon in a public place (broken glass bottle) and failing without reasonable cause to surrender to custody in breach of a community order. The Appellant was also ordered to pay a victim surcharge.

36. On 17 November 2017, the Respondent indicated an intention to deport the Appellant and on 10 May 2018, the intention to revoke his refugee status. The Appellant did not make any representations in response to either letter.

37. The Respondent notified the UNHCR of the intention to revoke the Appellant's refugee status on 1 June 2018, to which they responded on 29 June 2018. First, it was noted that the trigger for consideration of cessation of status was the Appellant's criminal convictions, which in the UNHCR's opinion, was not appropriate. Secondly, it was not agreed that the situation currently pertaining in Somalia warranted the application of Article 1C(5) of the Refugee Convention on an individual or collective basis. The UNHCR did not consider that the situation in Somalia has fundamentally changed such as to apply this provision. Thirdly it was not accepted that the Respondent had discharged the burden of proof on her with evidence that demonstrated the specific fundamental changes needed for cessation, together with adequate consideration of the individual circumstances of the Appellant. Background evidence was referred to which recorded continuing persecution of minority clans, in particular in southern and central Somalia. A recommendation was made for a thorough assessment of the Appellant's case, including a thorough assessment of any continuing clan and family ties and their capacity to support him; as well as an assessment of relevant improvements since the Appellant was recognised as a refugee the purposes of Article 1C(5) of the Refugee Convention and of the current human rights situation in Somalia.

The Respondent's decision

38. The Respondent revoked the Appellant's refugee status under paragraph 339A(v) of the Immigration Rules and Article 1(C)(5) of the Refugee Convention because he no longer, because of the circumstances in connection with which he has been recognised as a refugee have ceased to exist, can continue to refuse to avail himself of the protection of his country of nationality. In the decision letter, the Respondent responds to the points raised by the UNHCR about the proposed revocation and relied upon the country guidance in MOJ to the effect that the Appellant would no longer be at risk on return on the basis of minority clan membership in Mogadishu; which is consistent with information contained in the Respondent's Country Information and Policy Note in relation to Somalia.

39. The Respondent considered that the Appellant was an adult male in reasonable health who would not face any significant obstacles to reintegration on return to Somalia and would still be able to converse in his first language and would be familiar enough with Somali culture to re-assimilate, adapt and form a private life there. By reference to MOJ, the Respondent also relied on enhanced employment prospects for returnees and the availability of financial assistance under the Facilitated Returns Scheme to help with re-establishing himself on return. The Respondent did not accept that the Appellant would face any prospect of living in circumstances falling below what is acceptable in humanitarian protection terms and there would be no breach of Article 3 of the European Convention on Human Rights.

40. Separate consideration was given to the Appellant's health and Article 3 of the European Convention on Human Rights and generally in relation to the Appellant's asthma but it was considered that this did not meet the high threshold for such cases.

41. The Respondent then considered the Appellant's rights under Article 8 of the European Convention on Human Rights in the context of paragraphs 398 and following of the Immigration Rules. The Appellant had not made any claim to have established family life in the United Kingdom, nor did he respond to the Respondent as to any private life developed here. However, it was accepted that the Appellant would have established private life in the United Kingdom having spent some twenty years living here.

42. The Appellant was identified as a persistent offender having received three convictions for six offences between June and November 2017, whose presence in the United Kingdom was not desirable and it was noted that the offending included possession of offensive weapons which pose a risk of harm to the public. The Appellant's deportation was therefore required unless one of the exceptions applied. The Appellant was unable to meet the private life exception in paragraph 399A(i) of the Immigration Rules as he had not been lawfully resident in the United Kingdom for most of his life, only twenty out of his forty-five years; the majority having been spent in Somalia and Kenya. The Respondent accepted that the Appellant may be socially and culturally integrated in the United Kingdom for the purposes of paragraph 399A(ii) of the Immigration Rules, but that there was a lack of evidence of

any positive contribution to the community, including of work and his criminal offending counted against the conclusion. Finally, the Respondent did not accept that paragraph 399A(iii) of the Immigration Rules was satisfied as the Appellant would not face very significant obstacles to reintegration in Somalia, as he would be familiar with culture, customs and language spoken there and would be able to use any training, education and employment experience from the United Kingdom to re-establish himself. The Appellant may also have extended family, friends or other ties remaining but could in any event establish a private life without any such assistance.

43. Finally, the Respondent considered whether there were any very compelling circumstances to outweigh the public interest in deportation. The Respondent stated that there is significant pubic interest in deportation given the Appellant is a persistent offender who had three convictions for six offences in a short period in 2017 and as the Appellant's indefinite leave to remain would be cancelled following the making of a deportation order. The Appellant had not identified a strong private life claim over and above the exceptions to outweigh the significant public interest.

44. A deportation order was signed on 22 October 2018.

The Appellant's claim

45. In a written statement signed and dated 20 June 2019 (prepared for the First-tier Tribunal hearing), the Appellant sets out his history in Somalia and circumstances in the United Kingdom. In Somalia he studied up to college in a private institution but did not go further to obtain a degree or other equivalent qualification. The Appellant's father passed away many years ago and the rest of his family comprise of his mother, four sisters and two brothers. The last contact the Appellant had with family was with one of his sisters in 2014. He presumes his mother currently resides in Somalia but would be very elderly and frail.

46. The Appellant is a member of the minority Barwani tribe who were attacked by the militia around 1990, during which the Appellant lost his home and his brother was killed. The Appellant moved to Kenya to live with his uncle in or around 1993 and stayed there for four or five years (without any legal status) before his uncle found an agent to assist him travelling to the United Kingdom. He arrived in the United Kingdom on 29 August 1998, claimed asylum and was subsequently recognised as a refugee and granted indefinite leave to remain in June 2000.

47. The Appellant moved to Birmingham in 2003 where he studied and sought employment. The Appellant obtained a forklift licence in 2016 and then worked in a warehouse as an operations operative whilst looking for a job as a forklift driver.

48. In September 2016 the Appellant was attacked in a park, leaving him unconscious with a head injury causing a brain haemorrhage and a stroke, causing left-side paralysis. As a result the Appellant had physiotherapy but was left unemployable and incapacitated. The Appellant turned to alcohol whilst not being able to work and with increasing symptoms of stress and depression.

49. The Appellant set out his criminal offences. In relation to shoplifting, the Appellant was stealing alcohol. In relation to the failure to surrender, he stated that he messed up the dates and attended on the wrong date. In relation to the broken bottle, the Appellant stated that he was under the influence of alcohol and had an argument with someone, who insulted him, he broke a bottle and warned the other person that he was ready, but never tried to assault or injure anyone with it. The Appellant had been chased by someone with a knife on two occasions around November 2017 and was scared for his safety, such that he kept a knife for self-defence, particularly as he had difficulties walking and wanted some protection.

50. On 2 February 2018, the Appellant was released from prison and had by then stopped drinking alcohol. He completed his probationary period in February 2019. Following the Appellant's release, he has been seeking employment and planning on starting a course related to construction work; overall trying to change his life and move away from a bad situation stemming from his attack and injury which led to his downfall.

51. The Appellant's offences were all relatively minor and he is not a threat to anyone in the United Kingdom. The Appellant is a quiet person who keeps himself to himself, although he is seen as an easy target. The Appellant stated that there are no excuses for his criminal offences but that he is not a prolific offender, he made mistakes during a turbulent and difficult time but he is now completely rehabilitated and in a better place. The Appellant highlights that he had been in the United Kingdom lawfully for over nineteen years before getting into any trouble and describes himself as a lonely person with few friends.

52. In his written statement, the Appellant makes a number of references to having suffered from anxiety and depression and that he was, at that time, receiving support for managing his depression.

53. The Appellant states that he has no connections back in Somalia and no contact with family members there, who he does not even know if they are alive or where they are. He states that he has no means to survive in Somali and would be destitute and homeless on return there, a country which he has not been in since 1993 and which is now completely alien to him. The Appellant believes that he would struggle to cope with life in Somalia and would still be at risk there as it is a terrible place with people suffering.

54. The appeal file includes a typed record of proceedings from the First-tier Tribunal which sets out the oral evidence of the Appellant. He confirmed on that occasion that he last had contact with his mother in Somalia four to five years ago and his sister around the same time. When asked why contact had ceased, the Appellant referred to his assault and injuries in 2016, his rehabilitation and alcohol and dealing with his mental health and that since he had been in hospital the phone number didn't work anymore. The Appellant confirmed he had no family in the United Kingdom. The Appellant had not been to Somalia in more than 25 years, he would not know where to go on return and has no home there. On arrival in the United

Kingdom, the Appellant had someone who helped him for the first year with learning English and taking care of himself.

55. Mr Ismail Mohammad Ali also prepared a written statement in support of the Appellant's appeal before the First-tier Tribunal and attended the oral hearing to give evidence on his behalf. Mr Ali is a support manager based at the Appellant's address and has known him since 1 May 2017, seeing him every day (save for his period of imprisonment), offering him advice and assistance as well as breakfast. Mr Ali believes that the Appellant has learned from his lessons from his criminal convictions and will not repeat his past mistakes. He describes him as a polite gentlemen who always tries to co-operate with others and has never been seen to be rude or violent. The Appellant is quite lonely and has only a few friends. Mr Ali states that the Appellant has given up alcohol, showing will power and determination.

56. The typed record of proceedings includes Mr Ali's oral evidence before the First-tier Tribunal. To the best of his knowledge, Mr Ali did not know of any family in Somalia of the Appellant and he had not talked to him about his family. Mr Ali saw the Appellant most days and had not seen him drinking or drunk, nor were there any traces of alcohol (such as bottles or cans) on unscheduled weekly room checks.

57. The other documentary evidence before the First-tier Tribunal (and therefore before me) was a doctors' certificate that the Appellant was not fit for work during the period 2 February 2018 to 2 March 2018 due to an intracerebral haemorrhage and a letter dated 19 May 2019 inviting him to a Wellbeing Group with Birmingham Health Minds following a recent assessment.

58. The background country evidence relied upon and extracted in the skeleton argument on behalf of the Appellant included articles and reports from the Voice of America News, the UNHCR, Human Rights Watch, Freedom in the World, US Country Report, UK Foreign Office, the UN and the Respondent's Country Information and Policy Notes; all dating between 2016 and 2019.

59. In the absence of the Appellant attending the hearing, nor any representative on record or having made submissions on his behalf; I take into account the skeleton argument submitted on his behalf for the First-tier Tribunal hearing. This set out the relevant factual and legal background to the appeal, highlighting the Appellant's lengthy lawful residence in the United Kingdom since 1998 and that he could have secured British nationality some time ago. On the Appellant's behalf, it is accepted that he can not meet the requirements of the Immigration Rules for an exception to deportation (not having any family in the United Kingdom and not having lived more than half of his life in the United Kingdom) and it was submitted that his case should be considered on Article 8 grounds outside of the Immigration Rules.

60. On the Appellant's behalf, specific reliance is placed on him having spent two thirds of his life in the United Kingdom and having no ties to his country of birth; that he has responded well to the rehabilitation programme and is unlikely to reoffend,

managing the problems he had in the past with alcohol. Further the Appellant has worked in the United Kingdom and is fluent in English. He has spent a considerable period of time lawfully in the United Kingdom with only very recent criminal convictions and only one custodial sentence of six months. The Appellant is not a threat to the public and is integrated in the United Kingdom.

61. In relation to risk on return to Somalia, the Appellant relies on the representations from the UNHCR in relation to his case and with reference to the background country material, submitted that the security situation in Somalia remains volatile, complex and difficult to predict with ongoing risk from Al-Shabaab particularly in central and southern Somalia, with attacks on Mogadishu; as well as continuing clan based violence and discrimination; and adverse impact of climate change and drought. It was submitted that the Appellant has no family and no support mechanism in Mogadishu who could assist him in re-establishing himself, which is a serious impediment to him being able to re-adjust.

62. Although specific to the Respondent's appeal and issue of whether there was an error of law in the First-tier Tribunal's decision, I have also taken into account the written submissions made on the Appellant's behalf in response to the grounds of appeal by the Respondent.

The hearing

63. As set out above, the Appellant did not attend the hearing, nor was he represented. Mr Lindsay did not have all of the Appellant's bundle or skeleton argument before the First-tier Tribunal available to him at the hearing and therefore some time was spent running through that evidence and the factual findings by the First-tier Tribunal (albeit not formally preserved) to identify any factual matters not in dispute and those which were. Mr Lindsay confirmed that most of the facts are uncontroversial and not in dispute, save for three matters; first whether the Appellant is likely to continue to offend (on the basis of the earlier decisions of the Respondent and First-tier Tribunal based on the Appellant being a persistent offender); secondly, the weight to be attached to the UNHCR letter and the relevance of MOJ; and finally, in relation to the Appellant's contact with his family in Somalia and the lack of evidence of any serious effort to re-establish contact with them.

64. In relation to the revocation of refugee status, Mr Lindsay relied upon the country guidance in MOJ to show a significant and non-temporary change in the circumstances in Mogadishu and that the Appellant was no longer at risk on return to Mogadishu on the basis of his minority clan membership nor for any other reason.

65. In relation to Article 3, Mr Lindsay submitted that the Supreme Court's decision in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 had no material bearing on the standard to be applied in the present case. First, because this appeal is not on health grounds (there being no up to date medical evidence available) and secondly, even on a slightly lower standard, the very high threshold has not been met by the Appellant. The Appellant has not shown that there is a real risk of him ending up in an IDP camp and in particular has not show MOJ. Mr

Lindsay submitted that there is no reason why the Appellant could not re-establish contact with his family or at least obtain some basic support. The Appellant has some education, vocational qualifications and employment experience and there is no evidence of any current health problems hindering is ability to find employment. The Appellant left his home area of Mogadishu as an adult and should have retained knowledge of language and culture there to assist him on return. Further, the Appellant is eligible to apply for the Facilitated Assistance Scheme with up to £500 available on departure to help him re-establish himself on return. In these circumstances, there is no real risk of the Appellant ending up in an IDP camp and no breach of Article 3 of the European Convention on Human Rights.

66. In relation to Article 8 of the European Convention on Human Rights, Mr Lindsay submitted that the Appellant is a persistent offender and in any event there is a strong public interest in his deportation. The Appellant's criminal offences were of a serious nature evidenced by his sentence of six months' imprisonment and there was repeat offending over a short period of time. On the Appellant's side of the balance, there is very little, consisting of some private life but no family life and his offending detracts from the quality and weight of his private life. There was no evidence of any further offending since late 2017 and no up to date PNC available. Mr Lindsay submitted that the absence of offending is however not strong evidence of rehabilitation given that during this period the Appellant was subject to the threat of deportation. On balance, the public interest in deportation outweighs the Appellant's right to respect for his private life. The requirement for very exceptional circumstances is a stringent test which is not met on the facts of this case.

Findings and reasons

Revocation of refugee status

67. The Upper Tribunal found in MOJ that there was, in 2014, no longer any real risk to a minority clan member in Mogadishu. Clans were instead significant for social and economic support rather than protection and the country guidance concluded that there were no clan militias in Mogadishu, no clan violence and no clan based discriminatory treatment, even for minority clan members. That showed a significant change from the previous country guidance and conditions in Mogadishu.

68. In the course of this appeal has there been not been any specific submission on behalf of the Appellant that there should be a departure from the country guidance in MOJ, albeit a range of material post-dating it has been relied upon to show continuing problems for minority clans and in relation to the general security situation in Somalia. However, the material highlighted on behalf of the Appellant does not specifically refer to any deterioration of the situation in Mogadishu, and to the contrary the January 2019 Country Policy and Information Note 'Somalia: Majority clans and minority grounds in South and Central Somali' expressly quoted and relied upon by the Appellant, refers to continuing improvements in Mogadishu in terms of representation for most clans, including minority groups, and well-established communities and businesses for some minority clans. There is a lack of cogent

evidence to support a departure from the country guidance on this point in relation to this Appellant's home area to which he would be returned, namely Mogadishu. I therefore apply the country guidance in MOJ.

69. I have taken into account the detailed representations from the UNHCR and background evidence referred to therein but also find that the contents therein, even taken cumulatively with the material relied upon by the Appellant does not provide cogent evidence to support a departure from the country guidance.

70. In circumstances where by the time of the decision in MOJ there had already been a significant change in the situation for minority clans such that they were no longer at risk as such in Mogadishu and where there is a lack of cogent evidence of any worsening or different situation in many years since then; I find that the Respondent has established that there has been a significant and non-temporary change of circumstances in Mogadishu since the Appellant was granted refugee status such that he would no longer be at risk on the basis of his minority clan membership.

71. The Appellant has not specifically relied upon any other reasons for fearing a real risk of persecution on return to Mogadishu and I do not find that there is any other basis for him to do so. The country guidance in MOJ also concludes that there is no real risk of persecution to a civilian from Al-Shabaab, which applies to this Appellant who would return as an ordinary civilian.

72. The Appellant's appeal against the revocation of his refugee status is therefore dismissed, the Respondent has established that the conditions in Article 1(C)(5) of the Refugee Convention and paragraph 339A(V) of the Immigration Rules are met on the facts of this case.

73. For the same reasons as set out above and in accordance with the country guidance in MOJ, the Appellant does not face any Article 15(c) risk.

Article 3

74. Although the Appellant's appeal is dismissed on asylum and humanitarian protection grounds for the reasons set out above, his appeal must still be considered under Article 3 of the European Convention on Human Rights. As set out above, MOJ includes country guidance on this as well, albeit this has to be read in light of the Court of Appeal's decision in Said and MA.

75. The relevant facts in this appeal are that the Appellant will be returning to Mogadishu for the first time since 1992/1993 when he fled following clan violence. The Appellant most recently had contact with any family in Somalia in 2014 and states that he was unable to make contact since around 2016 due to his circumstances at that time and that a contact telephone number stopped working. There is, as the Respondent notes, no evidence of any serious or more recent attempts by the Appellant to re-establish contact with family members. Even if the Appellant were able to re-establish contact, there is no evidence either way as to whether they are in a position to offer him any material support on return. There is no dispute that the

Appellant does not have any other continuing connections with extended family or friends in Somalia and in accordance with MOJ, he is unlikely to receive any assistance re-establishing himself from clan members given he is from a minority clan who have little to offer.

76. There is little information available as to the Appellant's circumstances in Mogadishu prior to his departure, other than that he had been in education and lived there as a young adult; fleeing during a time of clan violence and conflict. The Appellant's journey to the United Kingdom was funded by his uncle in Kenya in 1998 and there is nothing to suggest any ongoing contact or further support available to the Appellant from his uncle.

77. There is also fairly scant information available as to the Appellant's circumstances in the United Kingdom or how he has supported himself here; with limited references to education and employment but very little detail and no information as to whether this was sufficient for the Appellant to support himself. It is entirely unknown as to whether the Appellant has any current access to any financial resources (he was found not to be in employment at the date of the First-tier Tribunal hearing in June 2019) or financial support in the United Kingdom but I do find there is no evidence that he would be financially supported by anyone in the United Kingdom on return to Mogadishu. He may however be entitled to financial assistance from the Respondent under the Facilitated Returns Scheme which would provide at least initial support for him to re-establish himself.

78. The question then is, in accordance with the findings in MOJ, whether the Appellant would be able to access the economic opportunities that have been produced by the economic boom in Mogadishu. It is unknown whether the Appellant still speaks a local language in Mogadishu, but he is fluent in English and would be able to communicate and seek employment in that language, which is commonly spoken in Mogadishu and an advantage for employment. Although there is limited information as to his education, qualifications and employment, there is some to show that the Appellant completed his education in Mogadishu, studied in the United Kingdom, obtained vocational qualifications (with a forklift licence) and has at least some employment history. The Appellant has not given any reasons as to why he would be unable to obtain employment on return with this background and there is no information at all to suggest he is unable to work due to the injuries he sustained in 2016. To the contrary, the little evidence that is available from the Appellant in the course of this appeal refers to undertaking further training and actively seeking employment.

79. In the absence of the Appellant and only very limited evidence being available from him before the First-tier Tribunal; the assessment of whether his return to Mogadishu would be a breach of Article 3 is more difficult than it could have been if the Appellant had engaged with his appeal. However, on the basis of the information that is available, even though the Appellant would be returning after a significant absence from Mogadishu, without any significant likelihood of material support on return from family, clan members or anyone else; there is in this case no reason why

the Appellant would be unable to seek accommodation and employment on return to re-establish himself in Mogadishu, particularly with the assistance of the Facilitated Returns Scheme. He speaks English (and is likely to continue to have at least some familiarity with one other local language in Mogadishu, even if no longer as fluent as he once was) and has some education (in Somalia and in the United Kingdom), training and employment which he could use. There is nothing to establish any current ill-health, mental or physical impairment to employment. In these circumstances, there is no real risk of the Appellant ending up in an IDP camp and even if there was, this would be for economic rather than conflict reasons such that the higher threshold applies and that can not be satisfied on the facts of this case. The Appellant's appeal is therefore dismissed on Article 3 grounds.

Article 8 of the European Convention on Human Rights & deportation

80. The first question in relation to this Appellant's deportation is whether he meets the criteria for deportation at all. The Appellant is not subject to automatic deportation, instead the Respondent asserts that the Appellant is a persistent offender on the basis that he committed six offences in a short period in 2017, such that he is liable to deportation. The Appellant disputed this. The parties were invited to make more detailed submissions on this point following the hearing, but none were received.

81. In accordance with the guidance given in Chege on this issue, I consider the following factors as to whether the Appellant is currently a persistent offender. First, I take into account that the Appellant was in the United Kingdom for almost 19 years before any criminal offences were committed.

82. Secondly, the Appellant's convictions, as set out above, were only between June and November 2017, with only the last offence of possessing a blade or sharply pointed article carrying a custodial sentence. There were a number of offences committed within a relatively short period of time, the first of which were relatively minor but there was an escalation in seriousness in the last offence. The Appellant has explained his circumstances in 2017, that he had been mis-using alcohol following being the victim of a serious assault the previous year which had left him with physical injuries and a need for rehabilitation, combined with symptoms of depression and anxiety; including a fear of further attack exacerbated by having been followed twice in 2017. The early offences where theft of alcohol and the later offence, although not excused, explained at least in part by the Appellant's ongoing fear of attack. The Appellant states that his failure to surrender to custody was simply a mix up of the dates.

83. The underlying reasons for the Appellant's offending were clearly linked to his assault in 2016 and his mis-use of alcohol following it. The Appellant states that his circumstances have changed and he is turning his life around following this difficult period in his life. The Appellant had not (at least at the time of the First-tier Tribunal hearing) drunk alcohol since his imprisonment. There was supporting evidence before the First-tier Tribunal from the Appellant's housing manager that the Appellant had not been seen drinking (or drunk) and there was no evidence of

alcohol in his room which was subject to weekly unscheduled inspections; since his release from prison. I am satisfied that the primary underlying reason leading to the Appellant's offending, namely alcohol mis-use, has been addressed. Taking all of the circumstances already outlined into account, including the very lengthy period that the Appellant had been in the United Kingdom before he committed any offences; I find that the Appellant is at a very low risk of reoffending.

84. Thirdly, I take into account that the Appellant's last conviction was in November 2017; over three years ago. In considering that period, I take into account that the Appellant was in custody until 2 February 2018 and subject to probation until February 2019; and throughout he has been subject to deportation proceedings by the Respondent. Whilst these factors are likely to objectively have a bearing on a person keeping out of trouble; I find that the Appellant stopping drinking alcohol is likely to be a more important factor in his case and it is more likely than not in his case that he has reformed having seen the error of his ways during a difficult period in his life in 2016/2017.

85. Overall, I do not find that the Appellant is currently a persistent offender, nor do I find that he poses any significant risk of reoffending, nor any significant risk to the public. As the Appellant is not a persistent offender, his deportation is not deemed to be conducive to the public good and he is not be liable to deportation under section 3(5) of the Immigration Act 1971 or paragraph 398 of the Immigration Rules. In these circumstances, the outcome of the Article 8 balancing exercise must fall in the Appellant's favour as there can be no legal basis or public interest in his deportation and I allow his appeal on human rights grounds for that reason alone.

86. The Appellant accepted before the First-tier Tribunal that he could not meet either of the exceptions to deportation on the basis of private or family life. However, this is a case where, even if there was a legal basis for deportation, I would in any event have allowed the Appellant's appeal on Article 8 grounds on the basis that there were very compelling circumstances to outweigh the public interest in deportation for the following reasons.

87. First, as above, the nature of the Appellant's offending was for a very brief period and the majority of which were very minor offences resulting in a fine, or a fine and rehabilitation order; were in the context of the Appellant mis-using alcohol following being the victim of an assault which caused him significant injury and where I find that there is a very low risk of reoffending. The Appellant has been in the United Kingdom lawfully since 1998 without any convictions in the first 18 years and without any further convictions following his release from custody in February 2018. Whilst I am required to give weight to the public interest in the deportation of foreign criminals pursuant to section 117C(1) of the Nationality, Immigration and Asylum Act 2002 (even assuming that the Appellant were a persistent offender liable to deportation), the public interest in deporting him is relatively low given the nature of his offending and overall circumstances. The more serious the offence committed, the greater the public interest in deportation pursuant to section 117C(2) but conversely, the Appellant's offences were very far from the higher end of seriousness

– they did not involve drugs or violence, and only one resulted in a custodial sentence which was significantly less than the threshold for automatic deportation.

88. Secondly, although the Appellant has no family life established in the United Kingdom and there is a lack of evidence of significant private life; it is accepted that he has lived in the United Kingdom lawfully now for over 21 years and during that time has studied and worked such that he has inevitably built up private life during that period, with social and other contacts. The Appellant speaks English, although it seems unlikely that he is financially independent (at least that was the finding in mid-2019 by the First-tier Tribunal and there is lack of evidence to update the position since then).

89. Thirdly, although the Appellant's circumstances on return to Mogadishu would not breach Article 3 of the European Convention on Human Rights, I find that there would, for the reasons already given above, be very significant obstacles to his reintegration on return there considering the factors set out by the Court of Appeal in Kamara v Secretary of State for the Home Department [2016] EWCA Civ 81. The Appellant left Somalia in 1992/93; some 27 or 28 years ago when he was a young adult and the country was in the grip of civil war. He has not had any contact with any family members there since 2016 and has no other connections with the country; nor could he expect any family or clan support on return. Whilst there is no particular reason that he would not be able to obtain accommodation and employment to sustain himself; I do not find that he would be enough of an insider in all of the circumstances to be able to reintegrate in society within a reasonable period of time.

90. Overall, whilst the Appellant's side of the scales in the balancing exercise is not heavily weighted, I find that it would be, in all of the circumstances found, enough to amount to very compelling circumstances to outweigh the relatively low level of public interest in deportation of this Appellant, even if he was a persistent offender liable to deportation in the first place.

Conclusion

91. In accordance with sections 82 and 84 of the Nationality, Immigration and Asylum Act 2002, the Appellant can only appeal against the Respondent's decision to revoke his protection status and to refuse his protection and human rights claim dated 11 September 2018 on the grounds that the removal of the Appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention or its obligations to persons eligible for a grant of humanitarian protection; and/or that the removal of the Appellant would be unlawful under section 6 of the Human Rights Act 1998.

92. For the reasons given above, the Appellant's appeal on the basis that his removal would breach the United Kingdom's obligations under the Refugee Convention and its obligations to persons eligible for a grant of humanitarian protection is dismissed.

93. The Appellant's appeal is allowed on the basis that his removal would breach Article 8 of the European Convention on Human Rights (and therefore unlawful under section 6 of the Human Rights Act); primarily because the Respondent has not established that the Appellant is a persistent offender to deem his deportation conducive to the public good and in any event, because there are very compelling circumstances to outweigh the public interest in deportation.

94. I have no power to make any directions to the Respondent further to my findings on this appeal and it is a matter for her as to the appropriate implementation of the decision. However, I end by noting that in circumstances where I have found that the Respondent has not established the basis for deportation as the Appellant is not a persistent offender, the concerns raised by the UNHCR as to the reasons for the Respondent's review of the Appellant's Refugee Status (deportation action following a criminal offence) have more significant force. There is nothing to indicate that there would have been any review of the Appellant's Refugee Status in the absence of a criminal conviction and deportation action being pursued and in circumstances where the Appellant can not be deported, there is perhaps a basis upon which the Respondent should consider whether revocation of Refugee Status remains appropriate, even where the appeal has been dismissed on protection grounds.

Notice of Decision

The decision of Upper Tribunal Judge Grubb found that the making of the decision of the First-tier Tribunal did involve the making of a material error of law and as such it was necessary to set aside the decision.

The decision of the First-tier Tribunal is set aside and re-made as follows:

The appeal against revocation of refugee status, on asylum grounds, is dismissed.
The appeal on humanitarian protection grounds is dismissed.
The appeal on human rights grounds is allowed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *G Jackson* Date 27th February 2021

Upper Tribunal Judge Jackson