Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers PA/11902/2019**
HU/12109/2019

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On the 7 June 2022	**On the 01 November 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

IT (GHANA)
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms F Anthony, Counsel, instructed by Wilson Solicitors
For the Respondent: Mr C Williams, Senior Presenting Officer

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings, or any form of publication thereof, shall directly or indirectly identify the appellant and members of his family. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

This Decision and Reasons was initially promulgated on 8 September 2022 with reference to appeal number PA/11902/2019 alone. By means of *rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008*, I correct a clerical mistake and insert reference to an additional, relevant, appeal number: HU/12109/2019.

DECISION AND REASONS

Introduction

1. The appellant's appeal on international protection and human rights grounds was initially heard by the First-tier Tribunal sitting in Birmingham on 1 March 2021. Judge of the First-tier Tribunal Athwal dismissed the appeal by a decision dated 22 March 2021.

2. The appellant was granted permission to appeal and by a decision sent to the parties on 3 December 2021 the Upper Tribunal (Mr Justice Bourne and Upper Tribunal Judge O'Callaghan) set aside the decision of the First-tier Tribunal with preserved findings of fact.

3. The issues before this Tribunal at the remaking stage are confined to:

    i) The appellant's independent claim under the 1951 UN Convention on the Status of Refugees ('the Refugee Convention') based upon his membership of a particular social group consequent to his assertion that he will suffer persecutory treatment on being perceived to be different by surrounding society: *DH (Particular Social Group: Mental Health) Afghanistan* [2020] UKUT 00223 (IAC) ['the first issue'].

    ii) The appellant's claim that he would face impoverished living conditions upon return to Ghana such as to exacerbate his mental health and so breach his rights protected by article 3 ECHR ['the second issue'].

4. The appellant is accepted to be a vulnerable adult consequent to his mental health issues. I apply the guidance identified by the Joint Presidential Guidance No.2 of 2010 on child, vulnerable adult and sensitive appellant.

Anonymity

5. By means of the panel decision dated 3 December 2021 the anonymity order issued by the First-tier Tribunal was confirmed. Neither party has sought for the order to be set aside and so it is confirmed above. I do so as it is presently in the interest of justice that the appellant is not publicly recognised as someone seeking international protection: Upper Tribunal (IAC) Guidance Note 2022 No 2: Anonymity orders and hearings in public, at [27]-[28].

Relevant Facts

6. The appellant is a national of Ghana and aged 35. He was issued with indefinite leave to enter this country to join his mother and stepfather, arriving in this country on 25 December 2005 when aged 18.

7. Following his arrival, the appellant studied English and mathematics before undertaking a university access course for twelve months. He then secured employment for a time, including working at McDonald's for two to three years, before enrolling at Aston University to study sociology. He did not achieve credit in four modules and was awarded a diploma of higher education in 2014.

8. During his time at university, he began to smoke cannabis and take ecstasy. He experienced difficulties in concentrating, suffered panic attacks and on occasion became paranoid.

9. Upon leaving university, he had several jobs, but continued to have thoughts in his head that, as he explained, 'would not stop'.

10. He had a relationship with a girlfriend for some three to four years, and their child was born in 2012. The relationship broke down and having lived at home and then with a friend the appellant found himself homeless for a period of two to three years. Whilst homeless he felt scared all the time and was anxious that someone would kill him. He slept during the day as he felt safer being awake at night. He saw fellow homeless people being attacked and was himself attacked, with his tent being burnt down.

11. Whilst homeless he was seen by the Early Intervention in Psychosis Team (EIPT), but he struggled to consistently take his medication and had intermittent contact with the team.

12. In discussion with Dr Heather Dipple, psychiatrist, in 2019 the appellant identified that on occasion he felt like killing himself. On one occasion he stood on a bridge over a road and planned to jump, but people kept walking by, and he did not want to take such action whilst they were there. He then attended a hospital and informed people as to what he was going through.

13. He described to Dr Dipple the nature of his panic attacks. He did not know what triggered them, but he would panic for a period of some seven or eight minutes and would experience pain in his legs.

14. In her report, Dr Dipple records various entries in the appellant's medical records. By January 2018 the appellant was engaged with the EIPT, who noted his assertion that he had been injected in his sleep. He detailed hearing noises and feeling as if he were in the movies. He was identified by EIPT as having some evidence of tangential thinking and his speech was difficult to follow at times. He was further identified as having poor insight into his personal circumstances.

15. The appellant's medical notes record in January 2018 that he was continuing to smoke cannabis, several times a day.

16. By February 2018 his medication adherence was identified as sporadic. His expression of various delusional beliefs and his tendency to misinterpret the identity and intentions of others were of concern as it was considered

that it placed him at risk of retaliation. He was diagnosed with psychosis, and by June 2018 he was thought disordered, speaking of a powder with which people could change skin colour, insisting that there were 'white people' pretending to be black and committing crimes.

17. By the summer of 2018 he was recorded in medical notes as confirming that he could randomly hear many voices daily, both male and female, encouraging him to commit acts. He complained that he could see the people speaking, by means of visual hallucinations. His personal hygiene was noted to be very poor, that he was disorientated as to time, quite distractive and exhibiting a derailment of thought process. He had poor insight into his condition.

18. This was his presentation at the time of the index offence.

Criminal convictions

19. On 29 February 2016 at Buckinghamshire Magistrates' Court, the appellant was convicted of possessing a bladed article in a public place and fined £200.

20. On 30 November 2017 at Buckinghamshire Magistrates' Court, he was convicted of stalking a former partner and was sentenced at the same court on 31 January 2018 to a community order, a restraining order, required to undertake rehabilitation activity and ordered to pay costs in the sum of £200.

Index offence

21. On 24 June 2018, the appellant approached a young child in a shop and asked for a high-five. He then picked up the child, before placing the child down at the request of the child's mother.

22. At the time the appellant was sleeping in a tent in an underpass. In the months leading up to the offence the appellant had been in contact with EPIT and his probation officer. He was reviewed by a doctor on 19 June 2018, where he expressed paranoid beliefs and confirmed that he had smoked cannabis the previous day. He did not collect his prescription.

23. The appellant was convicted at Aylesbury Crown Court on 6 December 2018 of taking a child without lawful authority so as to remove the child from lawful control. HHJ Tulk observed in sentencing the appellant to 28 weeks' imprisonment with an attendant restraining order for five years, *inter alia*:

> 'I'm sure that now, having had so long to think about what happened on 24th June, you can see with the benefit of hindsight how utterly terrifying it must have been, both for young [Child A] but, perhaps, more so for his mum. I know it was a very, very brief incident in the shop, but every mother's worst nightmare is that their child will be taken from them, and when you first picked [Child A] up his mum had

no way of knowing that you would respond immediately – as you quite properly did – when you were told to put him down. What must have flitted through her mind in that split second, almost, was the sort of horror that one doesn't even bear to think about.

I don't know what was going through your mind on the day. I don't know whether you were actively following [Child A] and his mum, or whether it just so happened that you were following a route similar to the route that they were taking – I don't think it matters. What did happen was that when you and the family found yourselves in that shop, you went up to [Child A] and asked for a high-five – except he's very little so it was a low-five – and then, as they say, for reasons that none of us can know – I suspect you may not know yourself – you picked that young lad up. He, at the age of 5, might not actually have been that frightened immediately it happened, although he must have thought it was an odd thing to happen; but, I suppose little people are used to strangers or people they don't know particularly well picking them up. As I say, it's his mum who will have had every dreadful thought that you can possibly have come through her mind in that brief period.

It is definitely to your credit that when you were told to put him down, that's exactly what you did. You didn't leave the shop with him. I think if you had been deliberately following the family, with the deliberate intention of trying to take the child away, you wouldn't have reacted the way you did when you were challenged. If this had been a planned, concerted, deliberate effort on your part to kidnap him, you wouldn't have stopped; you'd have kept going once you'd picked him up and I think, I hope, that [Child A] gained some reassurance from that.

...

I have no desire to stop you being able to see your friends and family. Indeed I think it will be of great benefit to everybody. This occurred at a time when you were sleeping rough; you had no support. I don't know what level of medication, support in the community you were having for your mental health issues at the time but, I suspect, probably not great given that you were sleeping in a tent in an underpass. And I'm pleased to hear that you have now got somewhere to go, albeit only temporary, while you get yourself sorted out. I'm conscious that since you appeared in court on 26th June, you have been remanded in custody for over five months now in relation to this. Whilst you've been in custody, I'm pleased to see from the psychiatric report that a lot of help has been put your way, and I note that the psychiatric report says that the Mental Health In-Reach Team should consider, at the point where you are released into the community, a referral back to the community mental health team, for further follow-up and treatment with your medication.

...

Your previous record, clearly the conviction in 2016 for possession of a bladed article, that was only two years ago – two and a half years ago – it was at a time when you were told very firmly – by those of us who

> are responsible for sentencing people for offences like that – that carrying bladed articles means prison. You were fined for that offence and I think that is an indication of the level of seriousness of it. The conviction earlier this year involving your former partner we've already discussed about, and that is not something which I consider to be relevant; I don't consider either of those previous convictions to be relevant to the situation in which you find yourself now.
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> I take the view that the shortest possible term commensurate with the seriousness of what happened on 24th June would be eight months' imprisonment – 32 weeks effectively. You pleaded guilty today and on the day of trial; you're entitled to 10 percent credit because [Person A] did not have to go through the ordeal of actually giving evidence and reliving exactly what happened. That, I reduce to 28 weeks' imprisonment. You have served more than 28 weeks on remand, certainly, given that you would normally be released at the halfway stage of a 28 week sentence, you have effectively served that term whilst remanded in custody. I don't know whether the mechanics of your release involve you having to be taken back to prison – I am getting nods from the officer – so you will have to be taken back tonight to the prison, which is probably quite helpful because that will trigger the In-Reach Team arranging for you to have some help in the community. But my understanding and my intention is that the sentence which I have imposed will result in your immediate release, once the necessary paperwork has been dealt with.'

Deportation decision

24. The respondent issued a decision to deport the appellant on 7 December 2018. On 6 March 2019, the respondent refused the appellant's application for leave to remain in this country on human rights grounds.

The appellant's mental health

25. Dr Piyal Sen, consultant forensic psychiatrist, noted the appellant's engagement with several medical practitioners over a number of years in his report dated 30 January 2020. The appellant presented as paranoid on several occasions, with bizarre thought patterns.

26. Dr Sen confirmed that he agreed with much of Dr Dipple's opinion as to the appellant's mental health. He observed the appellant's reported command auditory hallucinations as being symptoms of unspecified non-organic psychosis, according to the International Classification of Mental and Behavioural Disorders, version 10 (ICD-10). Dr Sen therefore agreed with Dr Dipple's clinical opinion on that matter, observing only that they used different classification systems. He further opined that the appellant suffers from a moderate depressive episode resulting in very low mood and having frequent thoughts of suicide. Dr Sen further opined that it is not uncommon for moderate depressive episode to be accompanied by prominent anxiety symptoms, as in the case of the appellant, though such

anxiety symptoms are not of a nature or degree to qualify for a diagnosis of post-traumatic stress disorder (PTSD) as he does not display the full range of symptoms that would satisfy criteria for a diagnosis of PTSD.

27. Dr Sen opined:

> '5.2 With regard to the causes of his mental health condition, this would be multifactorial. [The appellant's] traumatic upbringing characterised by poverty, bullying behaviour of teachers as well as systemic bullying in boarding school would make him more vulnerable to developing mental health problems in adult life. He describes some early hallucinations in his teenage years, which could be seen as prodromal symptoms for his subsequent psychotic illness. He then starts using cannabis in his early 20s and soon becomes dependent on it, which would increase the risk of psychosis. This gets a lot worse when he is out of university and becomes homeless in 2016, starting to use a wide variety of drugs like cannabis, heroin and crack cocaine and this is when the symptoms of psychosis, like delusions and hallucinations, manifest in a much more florid form and he is offered treatment by the mental health services. Even though he was offered treatment, he has found it difficult to be regularly compliant with treatment and this has posed challenges for the Early Intervention in Psychosis Team. Non-compliance with medication has led to relapses of his mental health condition and has further worsened the prognosis of his illness. This has been further complicated by the stress of imprisonment and subsequent immigration detention, which has also contributed to a worsening of his mental state.
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> 5.5 With regards to [the appellant's] prognosis, I would be guarded. [The appellant] has suffered repeated relapses of his psychosis, which is complicated by irregular compliance with medication. He additionally has a diagnosis of moderate depressive episode, which complicates his recovery. There is also the risk of substance misuse, particularly cannabis, which would further complicate his prognosis ...'

28. By a letter dated 31 January 2020 Lena Spencer, senior practitioner, EIPT, observed that the appellant continued to exhibit symptoms of psychosis despite daily use of antipsychotic medication. He was also suffering from a depressive illness and a prescription of antidepressant medication, namely Sertraline 50mg had been commenced.

29. Ms Spencer observed that the appellant was willing to engage with approved psychological intervention and that this process should prove to be an integral part of his journey towards recovery. She expressed her strong feeling that the appellant's mental health would deteriorate further if he were to be unable to access support in the areas of cognitive behavioural therapy, family therapy, educational/ vocational/ social assistance and practical support around appropriate housing and finances.

First-tier Tribunal Decision

30. In respect of the issues to be considered by the Tribunal in this matter the following findings of fact made by Judge Athwal were preserved:

> '69. Dr Dipple prepared her report on the basis of the information provided to her, by the appellant, together with her own observations. Dr Sen was provided with the appellant's medical records and other documentation. She interviewed the appellant on 24 January 2020. The appellant's diagnosis is not in dispute, but the reports are over a year old. The most recent report is from Dr Sen, and it was written on 30 January 2020. The most recent medical note is the WDP case note of 3 April 2019. The appellant did not attend [the hearing], and his statement was signed on 27 January 2020. His mother made a statement on 27 January 2020 and was not called to give evidence. I therefore do not know what his current situation is and whether he is still taking medication and whether he is still in contact with and being supported by any mental health team in the UK. He stated that he was released from detention on 14 January 2020 and stayed with his mother for the first night. There is no evidence before me about where he is currently staying and what support, if any, he requires. His mother in her statement records that she called the appellant three times a day to ensure that he took his medication. He came to her home every day to get food which he took back to the hotel. Dr Sen made a number of recommendations in his report and there is no evidence before me that the appellant has sought the recommended treatment.
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> 70. Dr Sen states that the appellant has reported auditory hallucinations that ask him to do things such as to use drugs or visit his girlfriend, even though he knows that this is forbidden. These are prominent when he is alone. It is indicative of paranoid delusion and he also suffers from moderate Major Depressive Symptoms. Dr Sen stated that the appellant told her that he had frequent thoughts of suicide, but the report does not refer to any suicide attempt or self-harm. Dr Sen states that if the appellant was not able to access medical or social support there would be a decline in his level of functioning, loss of self-medical or social support, it would lead to a decline in his level of functioning, loss self-esteem and a risk of drifting into a peer group which used drugs and thus lead to further social decline. This in turn would increase the risk of a relapse of his psychosis and a worsening of his depression.
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> 72. ... I have considered the treatment and support available in Ghana. Dr Thomas states that medication is available at a cost of £12 a month. The appellant's mother stated that she could not afford to send funds to Ghana because she is supporting her other son who is at university, and her daughter who is at school. There is no evidence before me that this is still the case. She has been supporting her son, by buying him food on a daily basis, there is

no evidence before [me] about the cost of that. There was no evidence before [me] as to why that money, spent on the appellant in the UK could not be sent to the appellant in Ghana.

73. The skeleton argument states that the appellant is at risk of committing suicide but neither Dr Sen nor Dr Dipple refer to any suicide attempt carried out by the appellant. Dr Sen states that the appellant informed him that he had suicidal thoughts, but there is no evidence before me to establish that this is still the case and that the appellant is receiving any treatment to address the condition.

74. Dr Thomas's report was prepared on the basis that the appellant would be homeless if returned to Ghana and would have no one to care and support him. Ms Montier states at paragraph 41 that the appellant would be homeless on return to Ghana as he does not have a family to return to. This is not correct; the appellant's grandmother lives in Ghana. Evidence is silent as to whether this is the only family who lived there. There is reference to an 'Uncle Albert' who is visiting the UK, but it is not clear where he was visiting from. I am told that the grandmother is too old to care for the appellant, but as I have set out above, I do not have any evidence about the current caring provisions for the appellant. At the most, the statement indicated that he was living independently in a hotel and collected food from his mother. The appellant's mother reminded the appellant to take his medication by calling him. I have not been provided with an explanation as to why this could not continue in Ghana. I am told that the grandmother is too old to care for the appellant because she is 83 years old. I have not been told whether she has friends or family that support her and if so, why that support could not continue. The appellant states that he would not know how to access the healthcare system. His mother and sister both state that they visit Ghana, there is no explanation before me as to why they could not accompany the appellant and establish contact with healthcare professionals.

75. I turn to consider the support the appellant has in the UK. There is no evidence before me that he is currently being supported by a mental health team, or that he is still on medication. I am told that the appellant and his mother were in contact three times a day and he visited her on a daily basis to collect food. If that were still the case, I would have expected the mother to have some influence over the appellant, yet I have not been provided with an explanation as to why the appellant's mother attended the hearing but not the appellant. The appellant's failure to attend, when his mother did does not demonstrate a supportive relationship between the two individuals. The appellant has not satisfied to the lower standard that he has a support network in the UK which could not be replicated in Ghana. His mother could still call him daily to ensure that he took his medication.'

Upper Tribunal – Error of Law decision

31. The appellant relied upon three grounds of appeal:

    1) The First-tier Tribunal misdirected itself on the relevant test for a refugee appeal, conflating the test applied to article 3 with the low threshold applicable in refugee appeals.

    2) There was a failure to make a finding on the appellant's contention in respect of the refugee appeal that he will suffer persecutory treatment because he will be perceived as being different by the surrounding society: *DH (Particular Social Group: Mental Health) Afghanistan* [2020] UKUT 00223 (IAC).

    3) There was a failure to resolve conflict in the evidence.

32. An attempt by the appellant to advance an additional ground of appeal, concerned with the Judge's consideration of expert evidence in relation to the trafficking element of the refugee appeal, was rejected by the panel.

33. The respondent accepted by her rule 24 response, dated 16 September 2021, that the First-tier Tribunal erred by failing to consider the appellant's independent claim under the Refugee Convention based on his mental health and accordingly ground 2 identified a material error of law.

34. The respondent conceded before the panel that whilst not a ground of appeal, the First-tier Tribunal has failed to engage with the appellant's case that he would face impoverished living conditions upon return to Ghana which would exacerbate his mental health and so breach his protected article 3 rights.

35. Grounds 1 and 3 were dismissed, resulting in the two issues identified at [3] above being the sole matters to be considered at the resumed hearing.

Evidence

36. The appellant filed a 177 page bundle the day before the hearing, failing to identify any essential reading. The bundle was accompanied by a rule 15(2A) application. Mr Williams did not oppose my considering the contents of the bundle.

37. No updated medical evidence was filed with the Upper Tribunal.

38. The hearing proceeded to submissions, with the appellant attending the hearing but not giving evidence. He relied upon a recent witness statement, but through counsel withdrew reliance upon paragraphs 1 and 2 of the document.

39. The appellant relied upon a report by Ms. Katherina Thomas, dated 12 January 2020 ('the report'), and an addendum to the report, dated 2 June 2022 ('the addendum'). The report and addendum are considered below.

40. In submissions Mr Williams accepted that the appellant is suffering from a serious mental health illness. He accepted when considering [53] of *DH* that individuals with mental health concerns could form part of a particular social group in Ghana. He further accepted that the appellant's mental health was an immutable characteristic, though exacerbated by his addiction, as his mental health problems exist outside of his addiction. However, he identified the respondent's case in simple terms as being that there was insufficient expert and objective evidence to establish that the appellant would either suffer persecutory treatment on being perceived to be different upon return to Ghana consequent to his mental health or that he would face impoverished living conditions so as to exacerbate his mental health.

41. Mr. Williams challenged Ms Thomas's expertise in respect of the specific questions addressed in her report. Whilst providing general details as to her professional history, her time – if any – spent in Ghana is unclear and the report is unsourced. In her report she details having spoken to only one person when identifying the source of information, and no detail is given as to the source's knowledge and experience. The respondent's position is that Ms. Thomas is not expert in respect of the questions addressed in her report, she is properly to be considered as a social scientist with a qualification in social health who holds an interest in, but is not expert in, health care in West Africa generally. A further concern is the regular descent into sweeping generalisations. The respondent considers Ms. Thomas' evidence to be insufficient to permit the appellant to meet the relevant standard of proof in respect of both the Refugee Convention and human rights (article 3) appeals.

42. Mr. Williams noted objective evidence that treatment is available for the appellant in Ghana, at minimal cost, and the preserved finding that he can secure financial support from his mother. He noted Judge Athwal's finding that the appellant's mother and sister can accompany him to Ghana and secure contact with health care professionals on his behalf.

43. Ms. Anthony relied upon the appellant's health condition and the medical reports. She identified concerns that early intervention had proven unsuccessful, and that the appellant's mental health continued to fluctuate. Ms. Anthony requested that Ms. Thomas be accepted as an expert witness but provided limited aid to the Tribunal on this issue.

44. Additionally, Ms. Anthony sought to rely upon a Human Rights Watch report which was not in the appellant's bundle and was subsequently sent to the Tribunal by her instructing solicitor: '*Ghana should implement commitments on mental health issues*', (15 March 2018).

Decision and reasons

45. I confirm that I have considered the evidence filed with the Tribunal, whether expressly referred to within this decision or not.

Refugee Convention

46. A person is a refugee and is therefore entitled to asylum, in the words of article 1A of the Refugee Convention, if owing to well-founded fear of being persecuted for reasons of race, religion, nationality or membership of a particular social group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country.

47. The appellant bears the burden of proving that he satisfies the definition above, although the standard of proof is a low one. It suffices if he can demonstrate that there is a reasonable degree of likelihood or a real risk of his being persecuted: *RT (Zimbabwe) v. Secretary of State for the Home Department* [2012] UKSC 38, [2013] 1 A.C. 152, at [55]. In relation to the assessment of past events, I have reminded myself of the judgments of Brooke and Sedley LJJ in *Karanakaran v. Secretary of State for the Home Department* [2000] 3 All E.R. 449, particularly at 469f and 479d-f, and of what Sir John Dyson JSC said regarding the standard of proof at [12]-[20] of *MA (Somalia) v. Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65. I again remind myself of the guidance identified by the Joint Presidential Guidance No.2 of 2010.

48. The appellant states that he possesses a well-founded fear of persecution consequent to being a member of a particular social group perceived to be different by surrounding society. He places reliance upon the reported decision in *DH (Particular Social Group: Mental Health) Afghanistan* [2020] UKUT 00223 (IAC) where the Upper Tribunal confirmed that depending on the facts, a 'person living with disability or mental ill health' may qualify as a member of a particular social group for the purposes of article 1A(2) of the Refugee Convention either as (i) sharing an innate characteristic or a common background that cannot be changed, or (ii) because they may be perceived as being different by the surrounding society and thus have a distinct identity in their country of origin. The assessment of whether a person living with disability or mental illness constitutes a member of a particular social group is fact specific to be decided at the date of decision or hearing. The key issue is how an individual is viewed in the eyes of a potential persecutor making it possible that those suffering no, or a lesser degree of, disability or illness may also qualify as a particular social group.

49. The leading domestic judgment addressing membership of a particular social group is *Shah and Islam v. Secretary of State for the Home Department* [1999] 2 A.C. 629. The House of Lords held that a social group cannot be defined solely by persecution and that the definition of a group is not defeated simply by showing that some members of the group may not be at risk – there is no requirement for social cohesion to exist in the group.

50. In *K v. Secretary of State for the Home Department* [2006] UKHL 46, [2007] 1 A.C. 412 the House of Lords confirmed that the Guidelines on International Protection issued by the UNHCR and Council Directive

2004/83 article 10(d)(i) and (ii) provide a very accurate and helpful distillation for determining whether a person is a member of a particular social group for the purposes of article 1A(2).

'Expert' evidence

51. A preliminary question I am required to consider is the weight to be given to Ms. Thomas' evidence. Is she an expert on some or all the questions she has been asked to opine upon, or is she not an expert on those issues but a witness providing her own observations on issues of personal interest? The several questions she has been requested by the appellant to address cover a range of matters; the availability of risperidone, olanzapine and related anti-psychotic drugs in Ghana, their cost, the cost of cognitive-behavioural therapy, the provision of support services to support those with psychosis taking their medicine, government support for those unable to work and whether the appellant will be exploited on return to Ghana consequent to his poor mental health. She was also requested to address the two issues presently before the Upper Tribunal.

52. The First-tier Tribunal and the Upper Tribunal are often required to consider evidence from a range of sources, including those put forward by parties as experts on the situation in particular countries. Evidence from experienced professionals who have first-hand experience of life in a country, or an established research interest on a particular issue, will often provide important evidence that may assist a tribunal in reaching its decision. The Upper Tribunal has accepted that a journalist may be capable of providing expert opinion: *OA (Somalia) Somalia CG* [2022] UKUT 00033 (IAC), at [193]-[194].

53. The Practice Direction for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal amended by the Senor President of Tribunals on 18 December 2018 gives guidance on the duties of experts and the way in which expert evidence should be prepared and presented. It makes clear that an expert's primary duty is to the tribunal, that they should provide an objective, unbiased opinion on matters within their expertise, and should not assume the role of an advocate. An expert should consider all material facts, including those which might detract from their opinion. An expert should also make clear when they are unable to reach a definite opinion, for example, because of insufficient information, or if a question or issue falls outside their expertise. The latter duty is of importance.

54. The Practice Direction is consistent with the judgment of Mr Justice Mostyn in *R (AB) v Secretary of State for the Home Departmen*t [2013] EWHC 3453 (Admin), at [67]:

> '67. … Experts should be very careful not to go beyond the remit of their expertise. If they do it is inevitable that they are regarded as little better than mercenaries on behalf of their clients. In my opinion experts would be well advised to keep in mind the vivid

metaphor of Thorpe LJ in *Vernon v Bosley (Expert Evidence)* [1998] 1 FLR 297 at 302C:

> "'The area of expertise in any case may be likened to a broad street with the plaintiff walking on one pavement and the defendant walking on the opposite one. Somehow the expert must be ever-mindful of the need to walk straight down the middle of the road and to resist the temptation to join the party from whom his instructions come on the pavement."'

55. I observe the guidance of Cresswell J on an expert's duties in *The Ikarian Reefer* [1993] 2 Lloyd's Rep 68, at pp 81–82, in particular:

> 'B. The Duties and Responsibilities of Expert Witnesses
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> The duties and responsibilities of expert witnesses in civil cases include the following:
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> 1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation: *Whitehouse v. Jordan* [1981] 1 W.L.R. 246 at 256, per Lord Wilberforce.
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> 2. An expert witness should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise: *Polivitte Ltd. v. Commercial Union Assurance Co. plc* [1987] 1 Lloyd's Rep. 379 at 386, Garland J. and *Re J* [1990] F.C.R. 19, Cazalet J. An expert witness in the High Court should never assume the role of an advocate.
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> 3. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion (*Re J*, supra).
>
> 4. An expert witness should make it clear when a particular question or issue falls outside his expertise.
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> ...'

56. It is well-established that it is for a court or tribunal to consider what weight should properly be placed upon evidence, and the approach to expert evidence is no different. It is a judicial decision as to whether opinion evidence can properly be considered 'expert'. The Supreme Court in *Kennedy v. Cordia (Services) LLP (Scotland)* [2016] UKSC 6; [2016] 1 WLR 597, at [43]-[44], approved a section of the South Australian Supreme Court decision in *R v. Bonython* (1984) 38 SASR 45, from which it distilled four key considerations which govern the admissibility of expert evidence (which in Scots law is known as "skilled evidence").

    (i) whether the proposed skilled evidence will assist the court in its task;

(ii) whether the witness has the necessary knowledge and experience;

(iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and

(iv) whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

57. The Court stated at [48]:

> 48. An expert must explain the basis of his or her evidence when it is not personal observation or sensation; mere assertion or "bare ipse dixit" carries little weight, as the Lord President (Cooper) famously stated in *Davie v Magistrates of Edinburgh* 1953 SC 34, 40. If anything, the suggestion that an unsubstantiated ipse dixit carries little weight is understated; in our view such evidence is worthless. Wessels JA stated the matter well in the Supreme Court of South Africa (Appellate Division) in *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH* 1976 (3) SA 352, 371:
>
> > "[A]n expert's opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert's bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert."
>
> As Lord Prosser pithily stated in *Dingley v Chief Constable, Strathclyde Police* 1998 SC 548, 604: "As with judicial or other opinions, what carries weight is the reasoning, not the conclusion."

58. The intention at [48] of *Kennedy v Cordia* is to make clear that unless the matter is one of personal observation, an expert has to explain the basis for their conclusion: *Griffiths v TUI (UK) Ltd* [2021] EWCA Civ 1442, [2022] 1 W.L.R. 973.

59. In respect of (i) above, assisting a court or tribunal is a test of necessity and not preference.

60. As to (ii) above, Lord Reed and Lord Hodge giving judgment for the Court held at [50]:

> '50. The skilled witness must demonstrate to the court that he or she has relevant knowledge and experience to give either factual evidence, which is not based exclusively on personal observation or sensation, or opinion evidence. Where the skilled witness establishes such knowledge and experience, he or she can draw on the general body of knowledge and understanding of the

> relevant expertise: *Myers, Brangman and Cox* [[2015] UKPC 40, [2016] A.C. 314] at para 63.'

61. When considering expertise, a court or tribunal will often be able to test techniques applied by an 'expert' against the acknowledged methods of their profession to ensure that their conclusions have been drawn in a proper and reliable way. Their work can, in effect, be peer reviewed and assessed for quality.

62. The Upper Tribunal confirmed in *MH (review; slip rule; church witnesses)* [2020] UKUT 125; [2020] Imm. A.R. 983, at [39] that whilst no question of admissibility arises in the Immigration and Asylum Chamber these criteria are nevertheless relevant in deciding whether evidence is properly described as 'expert evidence'.

63. I am satisfied that in respect of the first issue before this Tribunal the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible.

64. The second question is whether Ms. Thomas has acquired by study or experience sufficient knowledge of the subject to render her opinion of value in resolving the issues before me.

65. A range of factors may be relevant in assessing what weight can properly be placed on expert evidence in the context of a particular case. The qualifications and experience of the expert, the length of time that they have spent in the country, how current their experience is, the nature of their area of specialist research or experience, whether their knowledge is direct or primarily sourced from academic or public resources, whether their sources of information are clearly referenced, the nature of those sources, the overall clarity of the report, and whether the report is well-balanced, might influence the weight given to expert country evidence.

66. Ms. Thomas self-identifies her professional experience at §1 of her report:

> 'I am … an independent global health journalist and researcher with more than ten years' experience living and working in West Africa, where I covered public health and medicine. I studied at the University of Warwick, the University of London in Paris, and trained on the foreign desk of The Independent newspaper and at the London School of Hygiene and Tropical Medicine. I am writer-in-residence at the Broad Institute of Harvard University and Massachusetts Institute of Technology. I was the founding editor of Ebola Deeply, a Rockefeller Foundation-supported platform that covered West Africa's 2014/16 Ebola Virus Disease outbreak, and I have been a member of the Ebola outbreak international response in West Africa and the Democratic Republic of Congo. I have taught health journalism and global health narratives in more than ten African countries, including on behalf of Johns Hopkins University, Thomson Reuters Foundation, the London School of Hygiene and Tropical Medicine.'

67. Ms. Thomas provides limited detail as to her educational qualifications in her report. She confirms in her addendum that she was awarded a Master of Science in Public Health. Her present professional field is identified as global health researcher and health journalist. Neither her report nor her addendum provide any additional detail as to the scope and nature of her work beyond that concerned with the Ebola virus. She does not detail whether her work as a journalist has encompassed the questions upon which she has been asked to opine. There is no explanation as to what her teaching of 'global health narratives' entails, and its relevance to the questions addressed. No detail is provided as to her research interests. Ms. Anthony was unable to illuminate me upon Ms. Thomas' work beyond the general introduction to the report and the brief detail provided as to methodology at §2 of the report:

> 'This report is based on my professional and personal knowledge of the health system and social context in Ghana, a country I have reported from extensively over the course of my ten-year career as a journalist and global health researcher in West Africa. This report also relies on some reports from academic and public health organisations, and on conversations with health workers in Ghana, carried out specifically for this report.'

68. Save for the general assertion that she has reported extensively 'from' Ghana during her ten-year career - and the use of 'from' is opaque as to residence or external reporting - Ms. Thomas provides no detail as to whether she has resided in Ghana or spent time working as a researcher and/or journalist in Ghana. Both her report and her addendum are silent as to the substance of any research or journalism, if any, undertaken in Ghana.

69. There are no hard and fast rules and principles relating to the credentials required for an expert witness. Only a court or tribunal can confer that accolade. The common law tradition consistently entails paying close attention to the inter-related questions of whether a person truly is an expert in the relevant field, and whether the purpose for which it was sought to adduce the evidence requires specialist knowledge.

70. In respect of the first issue, Ms. Thomas has provided little, if any, information as to her expertise in respect of mentally ill persons being perceived to be different by surrounding society. Indeed, she has provided little, if any, information that she has sufficient knowledge and experience in respect of the mentally ill in Ghana. I conclude that she not satisfactorily identified that she has the necessary knowledge and experience to be considered an expert on the first issue.

Decision as to Refugee Convention appeal

71. Turning to Ms. Thomas' non-expert evidence, she was asked to address the first issue in this appeal in her addendum. Question c) posed by the appellant's solicitors was:

> 'Please confirm whether in your opinion persons with poor mental health form a particular social group (as per the Refugee Convention) in Ghana with regard to the case of DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223 (IAC), i.e. whether they are perceived as different by the surrounding society.'

72. I note question d) which covers similar ground to the first issue:

> 'Please confirm whether you consider the appellant will be at risk of persecution and/or inhumane [sic] or degrading treatment due to his poor mental health including stigmatisation etc'

73. Ms. Anthony appropriately accepted that the framing of these instructions went beyond that which is permissible, namely incorporating mixed fact and law, the latter being the preserve of the tribunal considering the appeal. It is not the role of a witness, expert or not, to determine whether a person meets the criteria for recognition as a refugee by assessing as to whether they possess a well-founded fear of persecution, nor as to whether a person or a cohort of persons establish a particular social group for the purpose of the Refugee Convention. They are ultimately matters of law, undertaken by a tribunal assessing the facts in the round.

74. It is of significant concern that Ms. Thomas appeared unaware of her role by proceeding to consider the mixed fact and law question at c) of her addendum:

> 'In my opinion, persons with poor mental health form a particular social group (as per the Refugee Convention) in Ghana with regard to the case of *DH (Particular Social Group: Mental Health) Afghanistan* [2020] UKUT 00223 (IAC). They have a distinct identity in Ghanian society and are widely perceived as belonging to a marginalised social group that is viewed as innately flawed, feared and inferior because of their poor mental health. Their identity is more visible in Ghana than in the UK, because the warm climate and interdependent societal structure means that daily life takes place outdoors and persons who belong to this social group are thus rapidly perceived as different by the rest of society. The name associated with this particular social group is 'adodamfo' which translates as made people in the Twi language.'

75. With no sources cited, Ms. Thomas' evidence strays significantly into personal observation that is generalised in nature and so provides insufficient reasoning to establish on its own to the requisite standard that persons with mental health concerns such as the appellant are at real risk of persecution in Ghana by the community at large.

76. Ms. Thomas further addressed question d) in detail, again unaware as to the mixed law and fact nature of the question:

> 'Generally, mental health literacy at the population level in Ghana is low, despite growing efforts from mental health advocacy groups to reverse the tide. Ghanian society strongly associates mental illness with witchcraft and individuals who suffer poor mental health are subject to pervasive blame for their illness. As I wrote in my report of

> January 2020, stigma towards the mentally ill is pervasive and endemic and 'continues to be a barrier to help-seeking', as per the WHO [reference to cited document]. Sufferers of conditions ranging from severe depression to psychosis are typically shunned by their families and communities, actively discriminated against by employers, and publicly mocked, verbally abused or physically abused. There is a widespread collected belief that people suffering from mental illness deserve punishment. The appellant risks receiving inhumane, degrading and abusive treatment in public if he returns to Ghana as a person suffering from serious mental illness.
>
> In everyday society, from the market to healthcare centres, I would unfortunately expect the appellant to encounter widespread beliefs that persons like himself are 'possessed by bad spirits' [reference to cited document]. As I describe in my report of January 2020, it is common to encounter verbal and or physical attacks in the street, in markets, in community settings such as healthcare facilities and even in many churches. There are numerous documented instances of persons suffering from mental illness being chained or removed from society and taken against their will to 'prayer camps'. At some of these prayer camps, human rights abuses are the norm and people experience being '*chained, beaten, starved and prevented from leaving'*, as cited by an article in The Lancet medical journal in 2014 [reference to cited document] and a BBC news segment from 2018 {reference to cited document].
>
> The most recent WHO resource of mental health services in Ghana, published in 2022, say 'Human rights challenges have been well documented within the faith-based treatment systems and persist despite governmental efforts to eliminate practices such as chaining.' [reference to cited document]
>
> ...
>
> I confirm that the information cited in sections 30-39 of my original report remains accurate.'

77. Ms. Anthony did not diminish her reliance upon Ms. Thomas' report and addendum at the hearing, though she acknowledged the limited information provided as to Ms. Thomas' relevant academic and professional experience. She took me to various objective evidence relied upon by Ms. Thomas and placed in the appellant's bundle which she submitted should be considered in the round with Ms. Thomas' evidence.

78. Ms. Anthony relied upon faith-based and traditional healing centres in Ghana holding people with real or perceived mental health conditions in chains, despite a 2017 ban on such treatment. My attention was taken to two Human Rights Watch reports: '*Ghana should implement commitments on mental health issues*', (15 March 2018) and '*Ghana: Faith healers defy ban on chaining'* (27 November 2019). I also note the Human Rights Watch report, '*Ghana breaks the chains on mental health*' (October 2017) referenced by Ms. Thomas. During discussion, Ms. Anthony accepted that she was unable to identify from the objective evidence the entry point at

which the appellant would find himself at a faith-based and traditional healing centre. She acknowledged that Judge Athwal had found that the appellant's mother and sister could travel to Ghana with him and establish contact with healthcare professionals. Additionally, the appellant's United Kingdom-based support network would continue to provide support to him in Ghana, he would enjoy the accommodation and support provided to his grandmother and his mother could meet the costs of required medication.

79. Having considered the documentary evidence in the round, including those not expressly relied upon by Ms. Anthony at the hearing, and noting its limited nature, I conclude that the appellant is unable to establish to the required standard that he is a member of particular social group who would suffer persecutory treatment on return to Ghana consequent to being perceived to be different by surrounding society. Ultimately the information provided by Ms. Thomas in her report and addendum, is general in substance, punctuated by unsubstantiated assertions such as 'widespread collected belief' and 'widespread stigma'. The appellant is not aided by the dearth of cogent objective evidence capable of establishing that a person living with mental ill health may qualify as a member of a particular social group in Ghana.

80. The appellant's Refugee Convention appeal is dismissed.

Article 3 ECHR

81. The appellant states that he would face impoverished living conditions upon his return to Ghana such as to exacerbate his mental health and so breach his article 3 rights. It was said on his behalf that even with family support in the United Kingdom, he has suffered mental health concerns, to the extent that at times he did not recognise his own family. He has negligible employment history in recent years consequent to his health condition and so would not be able to secure employment in Ghana.

82. Ms. Anthony relied upon the decision in *Ainte (material deprivation – Art 3 – AM (Zimbabwe))* [2021] UKUT 00203 (IAC), [2021] Imm. A.R. 1583 as establishing that article 3 can be engaged by conditions of extreme material deprivation. Factors to be considered include the location where the harm arises, and whether it results from deliberate action or omission. In cases where the material deprivation is not intentionally caused by the State the threshold is the modified *N* test set out in *AM (Zimbabwe) v. Secretary of State for the Home Department* [2020] UKSC 17, [2021] A.C. 633. The question is whether conditions are such that there is a real risk that the appellant will be exposed to intense suffering or a significant reduction in life expectancy.

Expert

83. The appellant again relies upon Ms. Thomas' expertise. I observe Ms. Thomas' stated interest in public health, namely public or private measures preventing disease, promoting health, and prolonging life

among the population. However, she is silent as to any work undertaken or experience gained in respect of the second issue. She has provided no detail as to her expertise in respect of Ghanian living conditions, particularly relating to the mentally ill, and identified no article or paper prepared on this topic that would permit the Tribunal to assess the quality of her purported expertise. The same failings arise as identified in respect of her evidence as to the first issue. I conclude that she has not satisfactorily identified that she has the necessary knowledge and experience to be considered an expert on the second issue.

Decision as to article 3 ECHR appeal

84. In answer to question d) in her addendum, Ms. Thomas opines as a non-expert:

> 'In addition, I would expect the appellant to encounter severe challenges to finding employment, given the widespread stigma associated with mental illness in Ghana, and any resulting homelessness, poverty or destitution would probably render him more vulnerable to exploitation. I would also expect him to experience significant challenges accessing healthcare – as detailed in my original report – from navigating sole the complexities of the healthcare system to frequent medical shortages and stockouts, to poor availability of psychotherapy (according to most recent published study available, Ghana has 39 practising psychiatrists nationwide, for a population of 31 million people [reference to cited document]).'

85. A difficulty for the appellant who places considerable reliance upon Ms. Thomas' evidence is that her report unhelpfully commences on the assumption that the appellant would be homeless whilst in Ghana and that he would 'not have any living friends or family in Ghana'. The same is repeated in the addendum. It is unclear as to whether Ms. Thomas was aware at the time of writing her addendum as to the preserved findings of fact made by Judge Athwal. Paragraphs 74 and 75 of the Judge's decision are concerned with the appellant's return to Ghana. With the burden of proof resting upon the appellant the Judge concluded that he had not provided evidence as to why he could not benefit from the accommodation and support enjoyed by his grandmother on his return. The appellant's assertion advanced by his June 2022 witness statement that he does not have any contact with his grandmother was withdrawn at the hearing. As to accessing healthcare in Ghana, the Judge found that the costs of the appellant's prescriptions for mental health medication in Ghana could be met by his family in the United Kingdom. The Judge noted that no explanation was provided as to why the appellant's mother and sister could not accompany him to Ghana and establish contact with healthcare professionals. The starting point for Ms. Thomas is therefore flawed, and her subsequent observations are primarily rooted in her flawed understanding of the circumstances existing for the appellant upon return to Ghana.

86. In answer to question e) - would the appellant be able to access risperidone and olanzapine in Ghana – Ms. Thomas states:

> 'In my original report I referenced an ongoing problem of frequent pharmaceutical stockouts in Ghana. I confirm that these do continue. The appellant's return would come with risk of not being able to consistently access the antipsychotic medications that he takes in the UK. According to a 2016 qualitative study among mental health clinicians published in the International Journal of Mental Health Systems, '*to some [medication] shortages were seen to be rife all year round while others acknowledged shortages as a seasoned occurrence. These shortages were in relation to the absence or infrequent supply of some common medications. In such case, patients were either asked to purchase medications themselves, were switched to alternative medications or were completely starved of medications until a supply arrived.'* The same study also references the challenge of expired medications circulating in Ghana, potentially reducing effectiveness or risking negatively impacting patient's health.
>
> (i) Risperidone, the medication that the appellant was taking in the UK in 2020, was available at Accra Psychiatric Hospital at the time of my call. Risperidone is on Ghana's NHIS list of essential medication, as referenced in section 23 of my original report, meaning that it is available with no cost to the patient. Since my 2020 report, the NHIS has widened its exemption criteria to include people with a mental disorder.
>
> On 27th May [2022], I was informed that the appellant is now taking olanzapine. Olanzapine is not on Ghana's NHIS list of essential medicines and is therefore not available free of charge in Ghana. I was unable to reach Accra Psychiatric Hospital on 27 May to confirm if olanzapine is in stock at the moment. I enquired at AP Pharma, one of the most well-stocked pharmacies in Accra where the on-duty pharmacist told me that olanzapine is usually available. It was not in stock at the time of my call but I was informed that it should be restocked within the next 5 days. I subsequently enquired at another popular Accra pharmacy, Top-Up Pharmacy in Osu, and was told that Olanzapine 5mg and 10mg was available. The price for 10mg/box of 28 tablets at the time of my phone call was 53 cedis (£5.40). I found it difficult to find a pharmacy that stocked it and it took me several hours of research. Before eventually speaking with a pharmacy that had it in stock, I called two other pharmacies in Accra that did not have it available at the time. I would expect the appellant to encounter similar challenges, which could be more challenging for someone experiencing poor mental health.'

87. The appellant has provided no explanation as to why his medication changed from Risperidone to Olanzapine. It was open to him to file relevant medical evidence prior to the hearing. Additionally, he did not advance a case that he could not return to Risperidone, medication said to be available at Accra Psychiatric Hospital.

88. Ms Thomas does not explain why it took her several hours of research to locate four pharmacies in Accra, though this is suggestive as to a lack of local knowledge. Of the four pharmacies contacted in respect of Olanzapine, one had the relevant medication in stock, it was usually available in another and whilst not in stock in the other two, no information was given as to whether it was usually in stock. The expectation flowing from her limited personal investigation is that the appellant could reasonably expect to secure his prescribed medication at two popular pharmacies in Accra. This element of Ms. Thomas' report does not aid the appellant.

89. Turning to the objective evidence relied upon by the appellant much of it is of some age and directed primarily to the first issue, in particular prayer camps and shackling.

90. The appellant has historically struggled on occasion to remain in contact with healthcare professionals, which has in turn impacted upon his appropriately taking his medication. However, he confirms in his witness statement of 6 June 2022 that he is engaging in his treatment and is aided by the support he secures. He has identified sufficient understanding as to his condition to contact his care co-ordinator when he has difficulties. Ms. Anthony did not direct my attention to any document in the objective evidence bundle establishing that such care could not be secured in Ghana, either through the appellant's efforts or those of his family.

91. The medical evidence establishes that the appellant is a seriously ill person consequent to his mental health diagnosis. However, I conclude that he has not adduced evidence capable of demonstrating that substantial grounds have been shown for believing that as a seriously ill person he would face a real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment of being exposed either to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering, or to a significant reduction in life expectancy. Nor has the appellant established to the required standard that on the facts established in this appeal his article 3 rights will be breached by conditions of extreme material deprivation.

92. It has been found that he will have access to required medication, the cost of which can be met by his family in the United Kingdom, who can also aid his initial engagement with health care professionals in Ghana. He has accommodation with his grandmother, and so will not be destitute and sleeping on the streets. He is presently exercising understanding into his condition, being capable of contacting health care professionals when experiencing mental health difficulty. At the present time he has proven capable of addressing prior deterioration in his mental health. Access to health care and accommodation in Ghana will mean that he is not required to seek the support of faith-based and traditional healing centres. The appellant's inability to secure employment has historically been at times when he has been unable to control his mental health. Returning to Ghana will be a strong imperative to seek and secure employment. He has a

history of employment that he can fall back upon when well, but in any event as found by Judge Athwal he can secure accommodation, personal support and medical drugs through his family, and so is not reliant upon employment. In time he will start to make his own connections and build a private life.

93. Ultimately, in light of the acceptance by the respondent as to the serious nature of the appellant's illness, this appeal turns on the quality of expert evidence, supported by suitable objective evidence. The evidence presented was not capable of being sufficient for its task.

94. The appellant's human rights (article 3) appeal is dismissed.

Notice of Decision

95. By a decision of the Upper Tribunal sent to the parties on 3 December 2021, the decision of the First-tier Tribunal dated 22 March 2021 was set aside on two issues alone:

    i) The appellant's independent claim under the Refugee Convention based on his membership of a particular social group consequent to his assertion that he will suffer persecutory treatment on being perceived to be different by the surrounding society: *DH (Particular Social Group: Mental Health) Afghanistan* [2020] UKUT 00223 (IAC).

    ii) The appellant's claim that he would face impoverished living conditions upon return to Ghana such as to exacerbate his mental health and so breach his article 3 rights.

96. The findings of fact made by the First-tier Tribunal were preserved.

97. The decision on these two issues is remade. The appeal is dismissed.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: ~~19 August 2022~~ 25 October 2022

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: ~~19 August 2022~~ 25 October 2022