



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-005436**  
**First-tier Tribunal No:**  
**HU/04011/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 10 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**KEITH ZILHELO DUBE**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person (Remote from HMP Liverpool)

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 1 July 2024**

**DECISION AND REASONS**

1. Following a hearing at Manchester Civil Justice Centre on 8 April 2024 it was found a Judge of the First-tier Tribunal made a material error of law in relation to only one of the grounds upon which that decision was challenged, namely the assessment of the proportionality of any interference with a protected right the Appellant has in the UK under Article 8 ECHR.
2. The challenge to the First-tier Tribunal's refusal to adjourn, which the Appellant claims prevented him obtaining relevant medical evidence, was refused, as was the challenge to other aspects of the First-tier decision, for the reasons set out in the determination of the Upper Tribunal.
3. It is not disputed the Appellant is a citizen of Zimbabwe born on 1 September 1983 who on the 28 December 2004 was granted leave valid to 5 December 2007 to join his parents in the UK.
4. An application for Indefinite Leave to Remain (ILR) made on 24 August 2015 was rejected as being invalid but a further application made on 9 August 2018 was granted on 5 November 2018. The Appellant's ILR is invalidated as a result of the deportation order being made against him.

5. The specific finding of the First-tier Tribunal that the Appellant had not established very significant obstacles to his integration into Zimbabwe was not challenged in the application seeking permission to appeal and is a preserved finding.
6. The reasons for that finding are set out at [89] - [94] of the First-tier determination as follows:
  89. I have considered the country expert report provided by John Birchall, dated 14th December 2021. The report was criticised by the respondent during the hearing due to its age, being some 18 months old now. I do not consider this to be a factor that detracts from the contents of the report. The report was commissioned as part of these proceedings. The proceedings have been ongoing since this time. The respondent has not raised this issue prior to the hearing and it would have been open to the respondent to seek to have Mr Birchall called as a witness or to put further questions to him in writing if required. This has not been done.
  90. I have considered the contents of the report. I accept that there will inevitably be some obstacles to the appellant returning to Zimbabwe, a country that he left over seventeen years ago when he was a child. However, I do not find that either individually or cumulatively, those obstacles can be said to be very significant or very compelling. The appellant's mother and father were both connected to the MDC. His mother was granted asylum in the UK, presumably on account of such issues although that is not certain in the evidence before me. The appellant's grandmother was granted asylum in the USA and refers to difficulties with Zanu-PF as a result of her membership and involvement with MDC. The report indicates that if the appellant were to be recognised or associated with the MDC, or as someone who has expressed opposition to Zanu-PF, then he would be at risk of being detained at the airport or apprehended or followed later. There is no evidence at all in this appeal of the appellant being involved in any political activities either in person or online. There is no basis upon which it could be concluded that his own activities have led to him being identified and associated as being a member of MDC.
  91. There is no evidence of any ongoing activities that may result in the appellant being connected to the MDC or being identified as a person who has expressed opposition to Zanu-PF. Further, although the appellant's mother and grandmother were previously so connected, and appear to have been granted asylum on that basis, the evidence received during the hearing is that they have both been able to enter Zimbabwe without difficulty in the recent past. I conclude therefore that it is more likely than not that the appellant would also be able to enter Zimbabwe without barrier.
  92. There may be difficulties in obtaining employment. The appellant is clearly capable of employment and has been working in the UK prior to serving his sentence. He possesses the necessary skills to be able to access employment. The Zimbabwean economy is in difficulties. The appellant may need to find employment within the informal sector, rather than formal employment sector. There may be difficulties in starting a business or accessing grants or funding within the informal sector. However, the appellant is no different a position to any other person in Zimbabwe in the same position. He would, I find, have the backing of his family from afar. His mother has previously provided financial remittances to her own mother in the United States. She would be able to provide financial remittances to the appellant in the same manner. This will enable the appellant to establish himself in the short to medium term and provide him with the security needed to reintegrate into Zimbabwe.
  93. The appellant may be viewed as an outsider in Zimbabwe. It may be that he is viewed with suspicion or ignored. This may be a factor in his seeking to gain employment. However, these obstacles are not very compelling. I accept that he does not speak the Shona. This is likely to be a significant obstacle to his reintegration. That will take time to overcome. However, he does speak

English, one of the official languages of the country. He is said to have a superficial understanding of Ndebele, one of Zimbabwe's minority languages. He will return with a criminal record which may inhibit his ability to gain employment. Again, this is not something that cannot be overcome. He will have a lack of awareness of how the country has changed since he left, and his understanding of his time there was gathered when he was a child. He has no experience of how Zimbabwe works for adults within the society. He will return alone and without an immediate support group in Zimbabwe. These are all matters which may cause hardship to the appellant. But they are all factors which may be overcome given the appellant's ability to work, to be employed, to be supported financially from afar and some limited knowledge of the culture of Zimbabwe. I do not find that it is likely that the appellant would become destitute on account of the positive factors that I have found would assist him in reintegrating into Zimbabwe. Although there are obstacles to be overcome by the appellant in returning to Zimbabwe that may cause him hardship, they are not, in my view, matters which amount to very compelling circumstances, either individually or cumulatively.

94. I further find that the appellant has not wholly cut his ties with his country of origin. It is clear that he has had close contact with his mother throughout his time in the United Kingdom. I have no doubt that elements of life in Zimbabwe will have been retained within the day-to-day living with his mother.

7. There was nothing in the evidence before me, the current country guidance, or situation in Zimbabwe, to warrant my going behind this finding, which shall stand.

The index offence leading to the deportation decision.

8. It is not disputed the Appellant is a foreign national offender as he has been convicted in the UK and sentenced to a period of imprisonment of more than 12 months.

9. The Appellant was sentenced by His Honour Judge Smith sitting at the Crown Court at Manchester on 13 January 2021. In his sentencing remarks Judge Smith stated:

You are a 27 year old man. You had a relationship with Kate Maxwell. That relationship began in the summer of 2019. It was ended in November 2019 with violence that you inflicted upon her in November 2019 that led to your ultimate conviction and sentence by the Magistrates Court on 10th February of this year.

It also led to the granting of a non-molestation order by the Manchester Family Court. That order prohibited you from threatening violence, threatening, or using violence towards her and prohibited you from communicating with her in any way; or intimidating, harassing, or pestering her again in any way. On 10<sup>th</sup> February, the Magistrates Court imposed a restraining order prohibiting you from contacting her.

It is an unfortunate position that women in a relationship with an abuser often turn back to that very abuser, notwithstanding the terms and orders that are designed for their protection, and this is what happened in this case because in July of this year it would seem from her own statement that she had been contacting you, had been meeting you and staying with you at your house.

There was an arrangement to meet up again on 21<sup>st</sup> July. That arrangement it would seem followed on from text communications passing between you and her. I make no particular comment in relation to those text exchanges.

The position that then followed later that night at your house on your return seemingly prompted by a complaint made by a neighbour which was challenged by Ms Maxwell, but it led to a course of abusive violent conduct on your behalf.

It is a clear example of somebody as an abuser who is looking to control and exercise bullying control and aggression over somebody in a considerably weaker state than themselves, and I am satisfied that this is a culmination of other conduct on your part, if nothing else from the very fact that you were convicted of an assault on her in November of last year.

The assault that you embarked upon can only be described as a sustained assault, peppered with abuse and insulting words towards her designed to cause maximum emotional upset along with the physical pain that you were inflicting. Grabbing her by the neck, pulling her, dragging her down a corridor, telling her that she was a bitch, that she always caused shit, saying that she was going to be killed, "you're dead, you're really dead, you little bitch".

You took her by the neck having grabbed her in the way that I have described and again using her neck as a point of contact you pushed her to the floor, and then started to kick her in the back. That would seem to be when you had shoes on. You then took your shoe off and then stamped on her back. Fortunately, the injuries to her back are limited to soft tissue injuries, grazing and abrasions but no doubt in part caused by not only your kicking but also your dragging of her in the way that I have described and will go on to describe.

You threatened her: "Do you want me to bite your face off?" She reacted in a clearly terrified way, putting her face in a pillow concerned that you would do this to her because she says that you had done it to her before and you said again to her words that suggested that something had happened in the past: "What I did last time was nothing".

She tried to contact a friend of hers using your phone. Again, that prompted further violence by you to her. She was pleading effectively to go, pleading with you not to do anything more to her. You ignored that. You at one point pushed her face against the door of the bedroom as she was trying to go, that caused her nose to bleed. Your reaction: "You better not get the blood on the bed". That was all as a result of your own physical aggression.

I am quite sure that happened. Photographs show dried blood on her nose and blood on her clothing. You also complained about what she had done to your hand, that she had broken it. It is said that you have an injury to your hand, you directed this at her, clearly she had done nothing to you to cause any injury to your hand, but you insisted that she bandage it up. You were not satisfied with the way she was doing it, you were again abusive to her, slapping her about the head.

It is not surprising that she genuinely feared for her own safety and her own life by the threats you were making to her and the behaviour you were exercising towards her. As she was leaving and as she managed to leave the house she heard you saying: "I'm going to fucking leather her", again further threats which she was rightly concerned would be put into action by you.

She managed to contact a friend of hers, she had left in fear the suitcase behind in your own house. She needed to collect it. You were again abusive to her, you told her you had left it outside. When she and her friend arrived, you attacked the vehicle using a metal bar saying: "I fucking told you I would get you" as you smashed the windows to the vehicle.

When she was seen by the police they noted physical injuries to her. I have seen the photographs. She attended at hospital and few days later, still with some difficulty and discomfort in movement, with the bruising, skin abrasions to the back of her chest and

flank; tenderness over her ribs. It is as I say fortunate that the injuries were not more severe given the nature of your assault upon her.

You then protested after arrest that you were with somebody else and could not have been with her. That was clearly a lie, a lie that you used also to try and get other people to sustain and support that lie. That was not possible, they did not support you...

10. The Appellant pleaded guilty to the charges on 7 January, shortly before the trial was due to take place as a result of which the credit that he could be given for the guilty plea was limited to 15% by the Sentencing Judge.
11. In imposing the actual sentence Judge Smith stated:

You are as I say 27, you are still relatively young but the facts that I have outlined today in relation to Ms Maxwell indicates somebody who is prepared to use violence in the context of an abusive relationship causing maximum pain, distress, and that is abundantly clear from the Victim Personal Statement that has been read to the Court this morning as to the particular impact that your behaviour has had upon her.

I take into account the fact that for anybody who is now serving a term in custody in a prison environment is undergoing a very different and difficult experience given the terms of the current pandemic but it is right to note in your case that the very offence that you committed here was committed during the course of that pandemic, in the middle of the pandemic in July of last year when anybody would have been aware of the consequences for somebody committing offences would be much more serious if they chose to do and that is what you chose to do. Nevertheless, I do take into account in considering the appropriate sentence.

In relation to Count 2 on the indictment, the Section 47 assault, I am satisfied that it is a category 1 offence, starting point for anybody is one of 18 months. It is in that category because I do consider that your victim in the particular circumstances here, given the background and the relationship you had, was one who was particularly vulnerable; that this was a sustained and repeated assault by you; that you did use your foot which was shod in the initial stages. I am satisfied given the repeated sustained nature of the assault together with threats which in themselves amount to threats to kill are equally consistent with your desire to cause further harm than was in fact inflicted.

There was degradation and humiliation upon your victim, in many ways you seem to have been enjoying the abuse that you were subjecting her to. It has had as I say a significant impact and effect upon your victim aggravated also by the fact that she was, this was the second time that you committed offences upon her and also by the very breach of the restraining orders that were in place at the time.

In my view it is right to sentence on that, using that is the principal and index offence. In doing so and taking into account all the matters that I have indicated, the starting point after a trial in normal circumstances would have been in my view one of three years and four months imprisonment to reflect your total criminality in relation to this case.

12. As a result of what the Judge referred to as the current pandemic situation, and taking account of the guilty plea, the sentence was reduced on Count 2 to 31 months, namely two years and seven months imprisonment. No separate penalty was handed down in relation to Count 3, the offence of criminal damage. In relation to Counts 4 and 5 the sentence was reduced to 5 months on each of the counts to run concurrent with the sentence on Count 2, meaning the total period of imprisonment was two years and seven months.
13. The Appellant was also made the subject of a Restraining Order prohibiting him from contacting Kate Maxwell in any way whatsoever or instructing or encouraging any other person to do so, and the appropriate victim surcharge.

14. The Notice of Decision to refuse the Appellant's human rights claim, dated 28 July 2021, refers to a warning letter being sent to the Appellant as a result of earlier criminality and a further conviction on 21 April 2021 at Greater Manchester Magistrates Court of assault occasioning actual bodily harm for which he was sentenced to 26 weeks imprisonment and ordered to pay £122 compensation.
15. I have also seen within the appeal bundle a decision of the Parole Board dated 5 December 2022 following an oral hearing on 9 November 2022. That was the first consideration by the Parole Board of the Appellant's situation since his recall to prison.
16. In relation to the Appellant's offending behaviour, it is written:

REASONS

1. Analysis of offending behaviour (the past)

- 1.1 Mr Dube's offending history began at the age of 17 in 2010 when he was convicted of assaulting a constable. He committed a similar offence in 2014. There was another offence of violence in 2019 (battery) which involved grabbing his partner (KM) by the hair in an attempt to get her back into the property. Then, 3 months before the index offences, he served a short prison sentence for his second burglary offence.
- 1.2 In April 2021, while serving his sentence for the index offence, Mr Dube received a further 6 months imprisonment for ABH on 22/02/20 when he punched a man in Eccles town centre, who appeared to have been a friend, causing suspected fractures of the nose and jaw.
- 1.3 His partner KM was also the victim of the index offence with whom he had been in an intimate relationship for about a year. She was at Mr Dube's home on 21/07/20 when a woman knocked on the door accusing her of verbally abusing her child. Mr Dube responded by grabbing KM by the neck and dragging her into the kitchen. He then pushed her to the floor and kicked and stamped on her. He forced her upstairs where he pushed her face into a pillow. When she tried to contact a friend, he twisted her arm, then grabbed the back of her head and punched her face into a door. KM managed to leave the address with a friend that returned a short time later when he damaged a friend's car with a metal bar.
- 1.4 Mr Dube had a 4 year intimate relationship with BR (who he knew as RR) with whom he had 2 children. There were 4 police callouts between 2012 and 2014 relating to him making threats, assaulting BR, and breach of bail conditions.
- 1.5 There have been a number of police callouts involving Mr Dube and his mother dating from 2021 and 2019 relating to his loss of temper, lifestyle and refusal to leave the property.
- 1.6 Mr Dube has demonstrated unhealthy attitudes within an intimate relationship. He has shown poor emotional responses and excessive aggression. Other risk factors making it more likely he might reoffend included drug and alcohol abuse; attitudes supportive of violence; problems with intimate or family relationships; poor consequential thinking skills; poor decision making; poor problem solving skills; lack of emotional and temper control; overreacting when feeling wronged or disrespected especially by current or former intimate partners; and poor victim empathy.
- 1.7 The panel concluded that, when the above factors are present in Mr Dube's life, alone or in combination, they may increase the motivation he has to reoffend, the frequency or likelihood that he might reoffend, and they may affect the impact his offending has on others.
- 1.8 Protective factors which should operate to reduce Mr Dube's risk of reoffending include abstaining from alcohol and drugs; sustaining a healthy intimate relationship; and completing interventions around healthy relationships and anger management. External protective factors include

undertaking directed offending behaviour work; being honest and open with his supervising officer and comply with licence conditions and the Restraining Order.

## 2. Analysis of Evidence of Change (The Present)

- 2.1. Mr Dube was released on licence on 07/12/21 but recalled on 11/03/22. His engagement with supervision was reported as mixed. While he attended most appointments, his behaviour could be challenging, and he received a number of warnings over his behaviour at the approved premises. Those included alcohol use, curfew breach, failing to attend appointments, and spending the night away from his address without permission. On 04/01/22 it was agreed that he could live at his stepfather's address.
- 2.2. Recall was triggered when Mr Dube was arrested for threatening behaviour, arising from his actions at a hotel in Salford on 09/03/22 where he was to stay as a guest. He was reported to have been abusive to hotel staff in the reception area in the vicinity of members of the public. He was still shouting at staff when the police arrived. He was described by arresting officers as being under the influence of alcohol, possibly also drugs, and was obstructive. He was arrested when he refused to give his details.
- 2.3. Following his arrest, it was discovered that he had met his ex-partner (KM), the victim of the index offence, at the hotel. Mr Dube was subject to both a non-contact licence condition and a Restraining Order not to contact or harass her.
- 2.4. The police took no further action because KM refused to make a statement. She did tell the police that they had spent the night together on 08/03/22 at the hotel and there were no issues. She said she reserved the room for the next night but they had a heated argument.
- 2.5. Since his return to custody, Mr Dube has not engaged with any interventions. He is unemployed. He told his COM he was not willing to work for "pennies" whilst in custody. He is a standard prisoner under the Incentives and Earned Privileges Scheme. He had an adjudication in April 2022 for being under the influence of spice. Mr Dube maintained he was found guilty even though he had never been drug tested. He refuted the need to engage with substance relapse services as he does not consider his drug and alcohol misuse to be an issue for him. In July 2022 he was assaulted over a drug debt.
- 2.6. In evidence to the panel, Mr Dube said he had been living with his stepfather. He said KM kept texting him over a period of 2 weeks wanting to meet. His father told him she was looking for him so he checked into a hotel for the night to avoid her. He was drinking all day alone in his room but was not drunk. [The police officer thought otherwise].
- 2.7. He said KM arrived at the hotel without invitation and there was an argument in his room and outside the hotel.
- 2.8. He "kicked off" when he went to collect his room key from reception to find that KM had changed the reservation and the key into her name. He insisted he did not know she was there. [This contrasts with the account KM is reported to have told the police that she had stayed the night with him].
- 2.9. Mr Dube hoped to return to live with his stepfather on release and to work at the garage as a mechanic where he was previously employed.

17. Having analysed the risk factors at [3] the panel sets out its conclusions at [4] in the following terms:

### 4 Conclusion

- 4.1. The panel carefully considered all the written and oral evidence. It took into account closing submissions from the legal representative.

- 4.2. Mr Dube's former partner (KM) has suffered violence at his hands and a previous relationship has attracted police attention, as historically have disturbances with his mother.
- 4.3. There are also instances of general violence, such as the ABH conviction in 2020 when he was assaulted and injured a friend.
- 4.4. The panel is satisfied that recall was appropriate. Although there are conflicting versions of the extent of his contact with KM at the hotel, he knew he should not be seeing her, whatever she may have wanted, and he should have walked away, knowing he was prohibited by both court order and licence condition. The panel's impression was that Mr Dube was economical with the truth in his evidence about the extent of his contact with KM at the hotel and the amount of alcohol he consumed. Also, on his own admission, he committed a public order offence which, for some reason, the police chose not to prosecute.
- 4.5. The panel considers that Mr Dube's risks need to be addressed by undertaking interventions around healthy relationships, anger management, and issues of power and control. He currently lacks insight into his risks (for example declining to engage with substance relapse services in prison) and so his tendency to over react to situations with violence indicates this is work which needs to be completed in custody.
- 4.6. Having shown little respect for restrictions, the panel is not satisfied that he would comply with licence conditions or that you could abstain from using alcohol and drugs, which are both risk factors.
- 4.7. The risk to former and potential intimate partners and to anyone with whom he comes into conflict is so high and unpredictable that, having undertaken an independent and robust risk assessment, the panel concluded that it was necessary for Mr Dube to remain confined for protection of the public and so did not direct his release.

18. Mr Dube was eventually released from prison and attended in person at the earlier error of law hearing accompanied by a female who was clearly supportive of his desire to remain in the United Kingdom.

19. Shortly before the resumed hearing it came to the notice of the Upper Tribunal that Mr Dube had in fact been detained again and was at HMP Liverpool. When asked about this in his oral evidence he indicated that he was on remand although stated it was in relation to a matter for which there was no evidence. Mr Bates in his submissions indicated that the Secretary of State was not relying upon that in relation to the deportation appeal, as Mr Dube is entitled to be treated as an innocent individual unless proven guilty, although the fact he has been remanded during a time when the pressure on places within the prison estate is critical does indicate that if convicted a custodial sentence is more than likely.

### The OASys report

20. I have also seen within the evidence an OASys Assessment dated 13 May 2023.

21. A summary of the more serious offences committed by Mr Dube appears in section 2.1 in the following terms:

1. Mr Dube appeared before Manchester Magistrates Court on 06/05/2001 for the offensive Assaults occasioning actual bodily harm. He was sentenced to ORA Adult Custody (26 weeks). The details of the offence are as follows:

On 22/02/2020 at 00:15 Police were called to reports of an unconscious male in Eccles Town Centre, near to the bus stop opposite Cash Converters. Two informants had called the police stating that a male had been assaulted and that a black male wearing dark clothing was seen shouting near to the unconscious male and is possibly the offender. When Police arrived at the scene the victim, Mr Doyle, was



conscious and in an ambulance with 2 paramedics. Mr Doyle stated that he could not recollect anything and following initial checks by paramedics he was believed to have a potential broken jaw, broken nose and two gold (sic) ball sized swellings to the side of his head and a potential broken nose. Once at hospital the victim was unable to recollect much of what happened and appeared confused, partially due to head injury sustained and ADHD and learning difficulties.

Mr Doyle later provided an account whereby he identified Mr Dube as the offender. Mr Doyle states that he had been out with Mr Dube and few friends in the Eccles area and that Mr Dube had been making Mr Doyle feel stupid and tried to embarrass him all night in front of his friends in which Mr Doyle has decided to leave the pub and go home. Mr Doyle has left the pub and Mr Dube has followed him outside where Mr Doyle has asked Mr Dube why he has been kicking off and making him feel stupid all night. Mr Doyle states that Mr Dube did not respond to him and instead punched him to the right eye, following this Mr Doyle was unable to recollect anything. Mr Doyle further informed Police Officers that Mr Dube is known for carrying an imitation firearm and that Mr Dube had threatened to go round to Mr Doyle's mum's house in Eccles and cause 'havoc'.

Mr Dube was later arrested and intoxicated, having broken into his previous accommodation.

2. Mr Dube appeared at Manchester Crown Court on 13/01/20021 for the offense of Assaults occasioning actual bodily harm. He was sentenced to ORA Adult Custody (not PSS) (31 months) the details are as follows:

The victim, Ms Maxwell, partner at the time, attended Mr Dube's address on Tuesday, 21 July 2020 at 10:30. Shortly after attending the address an unknown female has knocked on the door accusing Ms Maxwell of verbally abusing her child. Mr Dube has then responded to this by grabbing Ms Maxwell by the neck and dragging her into the kitchen, he has then pushed her to the floor and proceeded to kick and stamp on her in the back. Mr Dube has prevented the Ms Maxwell from leaving the address and has forced her upstairs where he has then threatened to bite her face. Ms Maxwell has then proceeded to push her face into a pillow through fear that Mr Dube would bite her face. Ms Maxwell disclosed that Mr Dube had bitten her face a week earlier. She attempted to contact a friend however, Mr Dube has observed this as he re-entered the room, and he has then proceeded to twist her arm causing her to scream so loud that a neighbour knocked on the address to see if everything was all right. Ms Maxwell has signalled that everything was not all right and this was observed by Mr Dube who pushed her hand away from her mouth. Mr Dube has then grabbed the back of her head and punched her face into a door. Ms Maxwell managed to leave the address with a friend and then returned a short time later where Mr Dube then proceeded to damage the friend's car with a metal bar. It is of note that within the CPS documents Ms Maxwell provides an account of being forced into sexual intercourse by Mr Dube despite her refusal although he was not convicted of this matter.

22. In relation to the offence in Eccles town centre it is recorded at 2.11 that Mr Dube minimised the extent of his actions when discussing the details of the fight claiming he punched the victim to the face once and that it was over in a matter of seconds, but that it was of concern Mr Dube did not view this offence as serious or appear to show any insight into the impact of his actions upon the victim, and that he minimised the extent of his actions and had sought to place the blame on the victim.

23. Section 2.12 is reference to the pattern of offending behaviour in which the author of the report writes:

Mr Dube has 5 convictions for 8 offences dating back to 2010. Mr Dube earliest conviction relates to a caution for Possession of controlled drug - Class B. Mr Dube

offending behaviour escalated to violence from 2010 when he was convicted of Assault Police Constable and again in 2014 with a further conviction of Resist or Obstruct Constable. Following a 5 year period where Mr Dube has not offended his behaviour has further escalated in violence in 2019 whereby he was convicted of Battery and Using Threatening behaviour with fear or provocation of violence. There are two acquisitive based convictions from 2020 relating to burglary.

24. At section 2.14 identifying the offence analysis issues contributing to risks of offending and harm, including any positive factors, it is written:

Mr Dube offending behaviour demonstrates a willingness to use aggressive and violent behaviour, including the use of a weapon, when he feels challenged. This behaviour is heightened at times when Mr Dube is under the influence of alcohol. Mr Dube has a history of domestic violence which he has some convictions for, and he has demonstrated a willingness to inflict physical, psychological and emotional harm towards partners and ex-partners.

The index offence is indicative of serious harm and through his behaviour in the current matter the victim sustained serious facial injuries which required hospital treatment. It is of concern that Mr Dube does not appear to view his offending as serious and shows limited insight into the potential impact of his offending behaviour on his victims.

Due to the level of offending behaviour evidenced by Mr Dube use of violence as a means to achieve control and assertion over others, his use of violence towards partners in the home and in front of children and his previous non-compliance with restrictive conditions and a lack of protective factors when in the community it is assessed that Mr Dube poses a High risk of serious harm.

25. In section 4.10, dealing with education, training, and employability issues contributing to risk of offending and harm, including positive factors it is written:

Prior to his incarceration Mr Dube states that he was employed as a landscape gardener in the summer months and then working the winters in a recycling warehouse as well as been employed as a subcontractor delivering and installing appliances for Hotpoint. He states that he has been completing this type of work since the age of 17. Mr Dube reports that he left college with qualifications in English maths and science and he attended a Mechanics course at Trafford Technology College.

Mr Dube has expressed a strong work ethic however is frustrated by the Home Office restrictions that prevent him from working and he sees this as a barrier to him obtaining a legitimate income stream for himself. On 24/12/2021 and 30/12/2021 Mr Dube states he has attended the Job Centre and has been advised to work and that he is also eligible to claim benefits. The Home Office have confirmed on 11/02/2022 that Mr Dube does not have the right to work or access to public funds.

This information is yet to be verified and checks remain ongoing with the Home Office to verify if he is now in fact eligible to work and access public funds.

Mr Dube states that whilst he has been incarcerated, he has applied for a job in Workshop A and expressed his wish to engage in vocational courses in construction work.

26. In relation to financial management issues it is recorded at section 5.6:

Mr Dube stated in interview that he had only ever earned money cash in hand and states that he does not have a bank account to manage his financial affairs. When

discussing his financial management Mr Dube states that he spends everything that he earns and that he was in arrears with his rent, to an unknown sum.

There is no evidence to suggest that Mr Dube has illegal earnings as a source of income. However since his release he has had some Home Office restrictions imposed on him which prevent him from working and he is now reliant on his mother and stepfather for financial support.

In supervision Mr Dube has not been forthcoming with where he is obtaining his current finances and when asked about his situation he states it is sorted after implying he has had money from associates however he would not disclose how he was obtaining this money.

27. The issue of relationships has clearly been identified as a cause for concern and in section 6.11 which relates to relationship issues contributing to risks of offending and harm, including any positive factors, it is written:

Mr Dube is currently single and not in a relationship. He is currently subject to additional licence conditions which require him to disclose developing relationships with females. This condition has been discussed with Mr Dube in supervision following him disclosing that he has spent time away from his approved address meeting females for sex in hotels. Mr Dube has been evasive when providing details of who he has been staying with.

Of further concern Mr Dube was arrested on 09/03/2022 at the Ibis Hotel Salford Quays for Use threatening words/behaviour to cause harassment alarm or distress. Mr Dube was residing at the hotel at the time of the offence and it is of further concern that the hotel was booked under the name of Kate. Mr Dube has refused to confirm if he has been staying with Kate Maxwell at the time of his arrest.

He states that he was in a relationship with the victim of the Common Assault in 2020 and ABH in 2021, Kate Maxwell. Mr Dube states that he has not spoken to Ms Maxwell since January 2021 and he described their relationship as being on and off for 3 years. Mr Dube described the relationship as volatile and indicated that he wanted to end this on a number of occasions however he states that Ms Maxwell makes it difficult for him to leave and that at times she is reliant upon him for support and indicated that she is alcohol dependent and drinks on a regular basis. Given the nature of the violent assaults perpetrated against Ms Maxwell by Mr Dube there will be concerns if the relationship were to resume and this will be further exasperated should Mr Dube attempt to reside with her.

When discussing previous relationships in interview Mr Dube stated he was in a relationship with Romana Ridgeley for 4 years, however information obtained from the Police indicates that her name is Bronwyne Ridgeley. There have been four Police callouts involving Mr Dube and Ms Ridgeley between 2012 and 2014 relating to him making threats, assaulting Ms Ridgeley and breach of bail conditions.

It is of note that Mr Dube has previously denied any incidents of Domestic Violence in his PSR interview in February 2020 and it is possible that he has sought to cover this up from Probation staff through denial and the provision of inaccurate information to prevent the above information coming to light.

Mr Dube did state in interview that he has two children with Ms Ridgeley and provided details for Dakota Dube (DOB 13.01.2014) and Tyrese Dube (DOB 12.04.2015). He states he has minimal contact with the family and that this is due to Bronwyn's partners acting in a jealous manner towards him.

Mr Dube states he has family in the Salford area and is supported by his Mum and Stepfather and his brother Daniel Diamond Dube (DOB 06.03.2013). There have

been a number of Police callouts involving Mr Dube and his mother dating from 2012 and 2019, namely relating towards Mr Dube loss of temper, lifestyle and refusal to leave the property.

Relationships are assessed as being linked to RoSH and to Offending behaviour.

28. In relation to lifestyle issues contributing to the risk of offending and harm at section 7.5, in relation to the event in Eccles town centre, it is written:

Mr Dube regular activities appear to be centred around various employment opportunities and socialising with peers. He states that his socialising with male peers would usually involve spending time sat with friends in public houses consuming alcohol.

When discussing the current matter with Mr Dube his account of the offence differs from that of the CPS papers. He states that he was the victim in this matter and that he was repeatedly racially abused throughout the course of the victim during the evening. He states that the victim asked him for the fight, and he agreed to this. The commission of the offence demonstrates reckless risk-taking behaviour by Mr Dube.

Lifestyle and associated are assessed as linked to both offending behaviour and risk of serious harm.

29. In relation to the question of drug misuse contributing to the risk of offending and harm, including any positive factors, it is noted at section 8.9 of the report:

Mr Dube states he used to use cannabis from the age of 11 - 17 however he states he gave this up as he found it too expensive.

Following his conviction for this current offence Mr Dube was found to be under the influence of New Psychoactive substances whilst in custody on 02/07/21 and he also refused a mandatory drugs test on 21/09/2021.

Since his return to custody following recall Mr Dube has further been found to be under the influence of New Psychoactive substances whilst in custody on 13/04/2022.

On 30/12/2021 Mr Dube was asked to provide a drug test during supervision which after some initial reluctance he agreed to complete however prior to the test he disclosed that the test would return positive for cannabis. Mr Dube states that he is using cannabis to assist him with sleeping.

30. In relation to whether Mr Dube's thinking/behavioural issues contribute to the risk of offending and harm, including positive factors, it is written at section 11.10 of the report:

Mr Dube engaged in the interview and demonstrated an appropriate level of interpersonal skills and was polite throughout. The current matter would suggest that Mr Dube has issues with problem solving, conflict resolution and consequential thinking.

With regards to his offending behaviour Mr Dube has demonstrated impulsivity in this offence, without considering the consequences of his actions. He is able to demonstrate a limited insight into how his actions have caused serious harm towards the victim and maintains the view that it is he who was the victim in this matter. He asserts that it was he who was the victim in this matter and that he experienced racial slurs throughout the course of the evening from the victim. Mr Dube further maintains that he did not follow the victim outside and that it was the

other way round where he was followed as he attempted to leave the establishment and move elsewhere.

Mr Dube's account of the index offence does appear to place a significant amount of the blame for the offence on the victim and this behaviour was also evident from Mr Dube when discussing his previous offences against his ex-partner. When discussing his previous offensive ABH Mr Dube demonstrated victim blaming throughout the discussion and again describe himself as the victim in a volatile relationship where he states he had to put up with the victims substance misuse. It is clear when discussing his offending behaviour Mr Dube is more concerned with regards to the impact the offences have on himself and I assessed that you would benefit from undertaking work to look at healthy relationships and consequential thinking and victim empathy.

On his release Mr Dube was directed to reside at Whittington Road Approved Premises from 10/12/2021 to 05/01/2022. Whilst Mr Dube has completed his AP placement there have been a number of issues with regards to his compliance with the rules, he has had cans of alcohol removed from his room on 10/12/2021 and also asked to leave another residents room. There have been times violations in regards to his 23:00 curfew which he attended 30 minutes late for on 13/12/2021 and he failed to attend his 1 PM signing on 17/12/2021 which he was issued a warning for. Mr Dube has also made a number of complaints in regards to the food on offer at the AP and attempted to order late night takeaways when the doors have been locked.

Mr Dube has been issued with a decision not to recall warning following the disclosure that he was meeting females and residing away from his address without disclosing details of his whereabouts to his Offender Managers or disclosing the developing relationships.

Of further concern Mr Dube was arrested on 09/03/2022 at the Ibis Hotel Salford Quays for Use threatening words/behaviour to cause harassment alarm or distress. Mr Dube was residing at the hotel at the time of the offence and it is of further concern that the hotel was booked under the name Kate. Mr Dube has refused to confirm if he was staying with Kate Maxwell at the time of his arrest. Mr Dube's recent behaviour in the community evidences his lack of motivation and willingness to comply with the conditions of his licence.

Thinking and Behaviour is assessed as being linked to offending behaviour and the risk of serious harm.

31. In section 12.9, identifying issues about attitudes contributing to the risk of offending and harm, including any positive factors, it is written:

Mr Dube offending behaviour appears to indicate that he holds some pro-criminal attitudes and is supportive of the use of violence as a means to address conflict and assert himself over others as demonstrated through his willingness to fight the victim in this current matter in public. There are no known concerns in relation to his attitude towards Police. When discussing his injuries sustained at reception in HMP Hull Mr Dube did add his grievances towards those prison officers who were dealing with him at the time.

When speaking with Mr Dube during interview he was evasive in our discussions around the details of his offending behaviour and his actions leading up to the commission of this offence and when discussing his experiences of past relationships. It is also of concern that when discussing past relationships and domestic abuse Mr Dube provided inaccurate information for his ex-partner and also sought to deny this in his PSR interview in February 2020.

Mr Dube current offence indicates a poor attitude towards the community, this offence was committed in public whereby he left the victim lying unconscious on the floor and was observed by witnesses stood over the victim shouting at him which is possible to have caused some emotional harm.

Following his recall to custody Mr Dube has demonstrated a challenging attitude towards staff. He has been confrontational with his Offender Manager during a prison visit on 21/03/2022 and on three occasions asked that they leave the visit area. Mr Dube disputes the circumstances that led to his recall to custody and states that he was only detained by Police because he was on Tag and claims the offices knew that this would get him recalled to custody.

Mr Dube has expressed in a video link with his OM on 08/09/2022 that he felt that there are no benefits to him engaging with his OM and that he would rather spend the remainder of his sentence in custody so as to be released without any further involvement with the Probation Service at SED.

Attitudes are assessed as links to offending behaviour and risk of serious harm.

32. At section 7.1, in relation to risk to identifiable children, it was noted Mr Dube's six-year-old brother was present at the time of the first assault against Kate Maxwell and that the family are known to Children's Services but not current. It also states that checks with Social Services indicates that Mr Dube's two children from his previous relationship were known to Children's Services.

33. In the section entitled Risk of Serious Harm Summary (Layer 3) it is written in the section setting out who is at risk:

1. General Public - Mr Dube is assessed as posing a HIGH risk of serious harm towards the general public when intoxicated through alcohol misuse. Mr Dube poses a risk to adult male peers or friends of partners who attempt to help Mr Dube partner leave an address during confrontation situations.
2. General Public - Mr Dube is assessed as posing a HIGH risk of serious harm towards future partners who are at risk of domestic violence, both physical, emotional, psychological and sexual abuse.
3. Known Adult - Mr Dube assessed as posing a HIGH risk of serious harm towards ex-partners Kate Maxwell and Bronwyne Ridgeley.
4. Children - Mr Dube is assessed as posing a MEDIUM Risk of serious harm towards children, namely his younger brother or children of future partners.
5. Staff - Mr Dube is assessed as posing a HIGH risk of serious harm towards staff in custody, in particular HOIE staff however, the potential threat to any staff member cannot be discounted. It is therefore assessed as a MEDIUM risk of harm to staff in the community.

34. In relation to the nature of future risk, in section 10.2, it is written:

1. General Public - the nature of the risk is of physical or psychological harm from being subject to violent assaults from Mr Dube. This can include threats of harm which also include threats of a weapon, threatening behaviour, and physical assault through punching. It is assessed that the impact of this behaviour crosses the serious harm threshold in regard to the potential for serious harm to be caused due to the propensity to resort to violence as a means of resolving conflict or asserting himself over others.
2. General Public - Future Partners: the nature of the risk is of domestically abusive behaviour when in an intimate relationship or at the breakdown of an intimate relationship with Mr Dube, including; physical harm from punching and from threats of violence, intimidation and malicious communications. It is assessed that this behaviour crosses the Risk of serious harm threshold based on the potential for physical, psychological, emotional and sexual harm and the cumulative impact of

this behaviour if it is ongoing within an intimate relationship and following the breakdown of intimate relationships as evidenced by past behaviour.

3. Known Adult - Ex Partners: the nature of the risk is of physically abusive behaviour when in an intimate relationship or at the breakdown of an intimate relationship with Mr Dube, including: physical harm from punching and the psychological harm from threats of violence, intimidation and malicious communications. It is assessed that this behaviour crosses the Risk of serious harm threshold based on the potential for physical, psychological, and emotional harm and the cumulative impact of this behaviour if it is ongoing with an intimate relationship and following the breakdown of intimate relationships as evidenced by past behaviour.
4. Known Adult - Kiaron Doyle - the nature of the risk is of physical or psychological harm from being subject to violent assaults from Mr Dube. It is assessed that this behaviour crosses the Risk of serious harm threshold based on the potential for physical and psychological harm to be caused. There is no evidence to suggest that Mr Dube would re-target the victim at this time.
5. Children - the nature of the risk is of witnessing domestically abusive behaviour perpetuated by Mr Dube against ex/current partners within the home. There is also the risk that children could be caught in the crossfire of any violent behaviour. It is assessed that this behaviour crosses the risk of serious harm threshold due to repeat victimisation of ex/current partners and the cumulative impact of witnessing his behaviour on the children's emotional and psychological development.
6. Staff - the nature of the risk is the potential for physical assault currently directed towards immigration staff in custody however, the potential threat to any staff member cannot be discounted. Mr Dube has made a number of threats to physically assault HOIE staff and he has a tendency to become aggressive and threatening if he is told something he does not like or does not agree with. Risk to staff in custody is therefore currently assessed as high and risk to staff in community is currently assessed as medium.

35. At section 10.3 setting out when the risk is likely to be greatest it is written:

1. General Public - the risk to General Public is assessed as High. The risk is greatest when Mr Dube perceives conflict with others, this can resort to the use of weapons particularly towards those that may assist an ex/current partner leave an address as he attempts to prevent this.
2. General Public - Future Partners: the risk to future partners is assessed as High. The risk is greatest when Mr Dube experiences difficulties in his intimate relationships and seeks to assert himself over his partner. The risk is further increased when Mr Dube fails to disclose developing intimate relationships as per the conditions of his licence.
3. Known Adult - Ex partners: the risk to adult is assessed as High. The risk is greatest when Mr Dube experiences difficulties in his intimate relationships. The risk is greatest at times when Mr Dube perceives that he has been disrespected or perceived his ex-partner to be creating problems for him. This can result in violent assaults as evidenced by previous behaviour. The risk is further increased should Mr Dube be under the influence of alcohol. The risk towards Ex partners is further increased when Mr Dube disregards the restrictive conditions of his licence and RO.
4. Known Adult - Kieron Doyle. The risk to Known Adult is assessed as Medium. The risk is greater should Mr Doyle return to socialise amongst same peer group as the victim and this will be further exasperated should he be under the influence of alcohol.
5. Children - the risk of Children is assessed as Medium. The risk is greatest when Mr Dube is experiencing difficulties in his relationships and is under the influence of alcohol.
6. Staff - the risk to staff in custody is currently assessed as High due to a number of threats Mr Dube has made to physically assault HOIE staff. However, the potential threat to any staff member cannot be discounted. Risk to staff in the community at this time is assessed as Medium. The risk is likely to be the greatest if Mr Dube finds

that his behaviour is being challenged or he has been told something he does not like or does not agree with.

### The Appellants evidence.

36. Mr Dube's evidence comes from various sources. I have read the witness statements filed by his mother Sibonokuhule Dube dated 21 September 2021 and her evidence relating to the support she has given her son and why she believes he should not be deported.
37. I have also read the statements by his grandmother Ommie Ncube who lives in the United States of America, dated 12<sup>th</sup> and 14 December 2021.
38. I have also read the other documentary evidence provided in the appeal bundle from other family members and elsewhere, together with all the evidence relied upon by Mr Dube, which has been taken into account even if not specifically referred to in this determination. The thrust of all that evidence is that family members do not believe that Mr Dube should be deported to Zimbabwe.
39. Nobody attended on Mr Dube's behalf to give oral evidence to support his claim. The only oral evidence I had was from Mr Dube who answered questions from Mr Bates specifically in reference to his medical evidence. Mr Dube was asked why had not provided medical evidence of the complaints he raises. Although he claimed he had faced difficulties and could not get the evidence I do not find it made out that it was unreasonable or impractical to have expected him to have done so. The reality of the situation is, however, as noted earlier by the First-tier Tribunal, that despite having had the opportunity to do so detailed medical evidence was not provided by Mr Dube.
40. In addition to answering questions put by Mr Bates, Mr Dube was able to hear submissions made by Mr Bates and to reply to them in his own submissions. The thrust of those submissions that is that he disagrees with the Secretary of State's decision to deport him to Zimbabwe, refers to the fact his home is in the UK with no ties to Zimbabwe, that he disagrees with the assessment of the risk he poses, and that he should not be deported.

### Discussion and analysis

41. The legitimate aim relied upon by the Secretary of State is the protection of the public from further acts of violence and offending undertaken by Mr Dube.
42. He was asked by me whether he agreed with the assessment contained in the OASys report but stated he did not. To my mind that demonstrates a lack of insight into his actions and causation of the same, and highlights a point raised within the report itself in relation to his attitude towards his offending and consequences of the same.
43. The OASys report at section 10.4 identified circumstances likely to increase the risk which divides into three sections. The first section, 'Triggers', states it is poor thinking skills and problem solving, when employing distorted attitudes to justify offending, when under the influence of alcohol, when in confrontation with others, when ex/current partners attempt to leave, when he perceives ex/current partners have wronged him or he feels disrespected. The second section, 'Situations', states continued denial/minimisation of the impact of his offending behaviour, justification of his offending behaviour and maintaining attitude supportive of violence, failing to disclose his offences to new partners, use of alcohol, non-compliance of restrictive conditions, residing with female partners or family members, unwillingness to work with Probation Service. The third heading entitled 'People', states resuming past relationships, entering into



- new intimate relationships and not disclosing offences, friends of intimate partners or ex partners.
44. At section 10.5 are the factors likely to reduce the risk which include capacity to engage in offence focused work, assistance for alcohol misuse, gaining insight into his own offending behaviour and taking responsibility for his own actions, completing interventions around healthy relationships, addressing anger management and issues with power and control, engagement with services to address drug and alcohol misuse, engagement with ETE services to further employability skills, engagement with accommodation providers to obtain own accommodation, the presence of the Restraining Order, Mr Dube demonstrating a willingness to comply with Licence Conditions, residence at approved premises, currently in custody for current offence, non-contact with children without a CSC assessment.
  45. Mr Dube was asked what work he has undertaken to deal with the matters that have been identified in the report, but he failed to give sufficient information or evidence to show that he had undertaken any meaningful work to address the underlying causes of his criminal conduct.
  46. I find on the evidence that there is nothing made out to warrant finding that the risk posed by Mr Dube is anything other than that assessed in the OASys report following a detailed and comprehensive assessment of the issues by the author.
  47. As Mr Dube has been sentenced to a period of imprisonment of more than 12 months but less than four years it is important to consider section 117 of the Nationality, Immigration Asylum Act 2002.
  48. Section 117A states that part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts, which includes a decision to deport, breaches a person's right to respect for his or her private and family life under Article 8 ECHR as a result of which it will be unlawful under section 6 of the Human Rights Act 1998.
  49. Section 117A(2) states that in considering the public interest question the court or tribunal must (in particular) have regard (a) in all cases to the considerations listed in section 117B, and (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
  50. Looking at section 117B first, section 117 B (1) states the maintenance of effective immigration controls is in the public interest. That is not disputed.
  51. In relating to section 117B(2), Mr Dube speaks English and in relation to section 117B(3) it is not made out that he will be a burden on the taxpayer if he is able to work in the United Kingdom as he has done previously. These are therefore neutral issues.
  52. Section 117B(4) relates to the weight to be given to a protected right established at a time the person has been in the UK unlawfully. Mr Dube's immigration history is set out above and it is clear that the private life that he has formed during the time he was in the UK lawfully. The 'little weight' provision in section 117B(5) in relation to private life is not therefore apply on the facts.
  53. Section 117B(6) is not applicable as Mr Dube is liable to deportation.
  54. Considering section 117C, it is noted at section 117C(1) that the deportation of foreign criminals is in the public interest. That is not disputed before me.
  55. Section 117 C (2) states that the more serious the offence committed by a foreign criminal the greater is the public interest in deportation of the criminal. I set out above the remarks of the Sentencing Judge and the sentence imposed upon Mr Dube. He has committed a serious violent offence. Domestic violence is a matter in relation to which a lot of time and resources are being committed within the UK to deal with this issue. There is a strong public interest in

- deporting a person who is active in the manner that Mr Dube has, as demonstrated in the evidence considered as a whole.
56. Section 117 C (3) states that in the case of a foreign criminal who has not been sentenced to a period of imprisonment of four years or more, the public interest requires that person is deportation unless Exception 1 or Exception 2 applies. These provisions apply to Mr Dube.
57. Section 117 C (4) states:
- (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 into United Kingdom, and
    - (c) there will be very significant obstacles to C's integration into the country to which C is proposed to be deported.
58. It is now established, with any confusion having been resolved in Mr Dube's favour, that he has been lawfully resident in the United Kingdom for most of his life.
59. The question of whether Mr Dube is socially and culturally integrated into the United Kingdom requires consideration of not only the length of time that he has lived in this country but also his conduct and behaviour during that time, and whether that demonstrates a lack of respect for societal norms and the way a person is expected to behave in accordance with the laws and expectations of the UK.
60. I have given this aspect careful consideration but find in light of the time Mr Dube has been in the UK, whilst his level of social integration is reduced as a result of his attitude and offending, it cannot be found that he is not socially and culturally integrated into the UK, although it was found by the First-tier Tribunal Judge he has maintained contacts with the culture of Zimbabwe which is a preserved finding.
61. Mr Dube fails under section 117C(4) on the basis of the preserved finding of the First-tier Tribunal that there will not be very significant obstacles to his integration into Zimbabwe, the country to which he is to be deported. As noted above, this finding was not challenged in the application permission to appeal to the Upper Tribunal nor has it been shown to be an unsafe finding which warrants being revisited on the facts. It is accepted that deportation to Zimbabwe will be difficult for Mr Dube and that he may indeed face significant obstacles to integration into that country, but the test is of very significant obstacles which was not made out on the facts.
62. I therefore find Mr Dube has not shown on the evidence that he is able to benefit from Exception 1.
63. Exception 2 reads:
- (5) Exception 2 applies where C is 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.
64. I accept those with whom Mr Dube has had a relationship may satisfy the definition of a qualifying partner at the date of this hearing although there is insufficient evidence to establish that he is in a genuine and subsisting relationship with a qualifying partner. It was recorded in the OASys report that Mr Dube has not been forthcoming about his relationships and in light of his domestic violence and domestic abuse any relationships he may have had in the past have not been shown to be genuine and subsisting in the present.

65. In relation to his children, Mr Dube has two children from a previous relationship who if they are British citizens will be qualifying children. There is insufficient evidence, however, to find there is a subsisting parental relationship with those children. Mr Dube refers in his evidence to not being able to see the children and blames the partners of their mother for being jealous of him, which it could be said indicates a further distorted pattern of thinking, when it is more likely that the reason he is unable to see the children is as a result of his own violent and abusive conduct towards their mother in the past.
66. Whether a subsisting parental relationship exists is a question of fact. On the evidence before this tribunal it has not been made out on the facts that any such relationship exists, notwithstanding Mr Dube's biological relationship with the children.
67. Even if there had been a genuine subsisting relationship with a qualifying partner or a genuine and subsisting parental relationship with a qualifying child, which my primary finding is there is not, it was not made out on the evidence that the effect of Mr Dube's deportation on the partner or the child would be unduly harsh. There was no evidence to show this would be the case.
68. I therefore find Mr Dube has not shown on the evidence that he is able to benefit from Exception 2.
69. Even though Mr Dube is not able to benefit by either Exception it is still necessary to go on to consider whether there are very compelling circumstances over and above those described in Exception 1 Exception 2 that would make his deportation disproportionate. This is because the decision must be compliant with Article 8 ECHR - see HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22. I also accept that the term 'very compelling circumstances over and above' just means there are circumstances that are more compelling than the existing exceptions - see Akinyemi v Secretary of State for the Home Department [2017] EWCA Civ 236.
70. It is not made out Mr Dube has a relationship with the required element of dependency to show that family life recognised by Article 8 ECHR exists with any member of his own biological family in the UK, a partner, or, beyond the fact he is the father of the two children named above, with those children. I do not find Mr Dube has established a family life recognised by Article 8 (1) exists on the facts.
71. Mr Dube's relationship with his family will, however, form part of his private life as will his friendship groups, home life, and work he has undertaken. The evidence of the same was, as with other matters, not particularly detailed. Whilst length of time in the UK does not itself warrant a finding that private life exists, it is clear that Mr Dube has been in the UK for a substantial period of time and has, in reality, been educated and lived here in a similar way to a UK national, with the exception of his criminal conduct. I therefore find that private life recognised by Article 8 (1) exist in the UK.
72. It was not disputed that the issue before the tribunal is the proportionality of the interference in that private life if he is deported.
73. The Supreme Court in HA (Iraq) endorsed the approach taken in Unuane v United Kingdom (App. No 80343/17) at [72] that following Boultiif and Uner the relevant factors will include:
- The nature and seriousness of the offence committed by the applicant.
  - The length of the applicant's stay in the country from which he or she is to be expelled.
  - Time elapsed since the offence was committed in the applicant's conduct during that period.
  - The nationalities of the various persons concerned.

- The applicants family situation, such as length of the marriage, and other factors expressing the effectiveness of a couples family life.
- Whether the spouse knew of the offence at the time when he or she entered into a family relationship.
- Whether there are children of the marriage, and if so, their age
- seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled
- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled
- the solidity of social, cultural and family ties with the host country and with the country of destination

74. It was also accepted in HA (Iraq) that the weight to be given to the relevant factors falls within the margin of appreciation of the national authorities. It is for that reason when assessing these factors the Secretary of State concluded it was proportionate that Mr Dube should be deported to Zimbabwe.

75. Dealing with the above factors together with additional matters such as those identified in Jeunesse, I find as follows:

- In relation to the nature and seriousness of the offence committed by the applicant: The nature and seriousness of the offences committed by Mr Dube is clearly demonstrated above. There is a pattern of criminality indicating a propensity to use violence, intimidation, coercion, both physical and psychological means to inflict harm upon individuals, either those he is in a relationship with, has been in a relationship with, or cross him, or he takes offence against, even if unjustified.
- The length of the applicant's stay in the country from which he or she is to be expelled: Mr Dube's immigration history is set out above. He has lived in the UK for a substantial period of time.
- Time elapsed since the offence was committed and the applicant's conduct during that period: the date the offences were committed is set out above and it is clear that since the offence for which he was sentenced, and which led to the decision to deport him, Mr Dube's behaviour has not improved as demonstrated by his being recalled to prison and the concerns outlined in the report from the Parole Board. There is also insufficient evidence to show Mr Dube has done anything meaningful to deal with the identified causes of his offending behaviour.
- The nationalities of the various persons concerned: Mr Dube is a citizen of Zimbabwe.
- The applicants family situation, such as length of the marriage, and other factors expressing the effectiveness of a couples family life: Mr Dube is a single individual. He is not married, has not shown he is in a subsisting and effective relationship, and has no family life recognised by Article 8 ECHR in the UK.
- Whether the spouse knew of the offence at the time when he or she entered into a family relationship: Mr Dube is not married and has no spouse.
- Whether there are children of the marriage, and if so, their age: Mr Dube has no children of a subsisting marriage. Details of his children from a previous relationship are set out above. There was insufficient evidence of a genuine and subsisting parental relationship with these children. The children will remain living with their mother if Mr Dube is deported. There

is no evidence of any adverse effect upon the children, pursuant to section 55, if Mr Dube is deported.

- seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled: This is not applicable as Mr Dube does not have a spouse and no family member will be removed with him.
- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled: the best interests and well-being of the children of Mr Dube are to remain in the UK with their mother. She has been their main carer. There is no evidence that the children will be removed to Zimbabwe and are therefore not likely to encounter difficulties in Zimbabwe as a result of the deportation decision. There is insufficient evidence of any adverse impact upon them as a result of Mr Dube's deportation. There is a strong argument that it is in the best interests of any children not to be exposed to the type of behaviour to which Mr Dube has subjected their mothers, as recognised in the evidence.
- the solidity of social, cultural and family ties with the host country and with the country of destination: it is a preserved finding of the First-tier Tribunal that Mr Dube has preserved knowledge of life in Zimbabwe although it must be accepted that there is no evidence that he has strong family ties with Zimbabwe. It is a preserved finding, however, that there are no insurmountable obstacles made out to his re-establishing a life in Zimbabwe.

In relation to the additional matters identified in Jeunesse:

- whether there are insurmountable obstacles or major impediments in the way of the family living in the country of origin of the alien concerned: Mr Dube has no family life and will not be deported with any member of his birth family. It was not made out there are insurmountable obstacles to his living in Zimbabwe.
- Whether there are factors of immigration control, such as a history of breaches of immigration law: Mr Dube's immigration history is set out above. That shows that he has lived in the UK lawfully for most of his life with no evidence of breaches of immigration law although there is a substantial volume of evidence of breaches of criminal law and expected social norms.
- Whether the family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host state would from the outset be precarious: this is not applicable as Mr Dube has no family life in the UK recognised by Article 8 ECHR.

76. Mr Bates submissions in relation to the issue of proportionality focused upon the assessment of the risk posed by Mr Dube to society and in particular partners and ex-partners and others.

77. Although Mr Dube is subject to an indefinite restraining order, that appears to have had very little effect on him in the past. I find there is merit in the submission that Mr Dube blames everybody other than himself for the predicament that he has found himself in and for his offending. That highlights the concerns in relation to avoidance of responsibility and lack of insight identified in the evidence.

78. Mr Bates submitted that Mr Dube had failed to show that there are any barriers to his deportation.
79. When asked to comment upon the submissions Mr Dube stated that it was wrong to remove him as a result of the time he had spent in the UK and that he did not know about life in Zimbabwe. He stated that his family live in the UK and claims that his life will be at risk in Zimbabwe, a statement not made out on either his own evidence, his expert report, the country situation, and country guidance caselaw provided by the Upper Tribunal. In particular it is not made out that he will have any adverse profile such to create a real risk in Zimbabwe as a result of his political affiliations or otherwise.
80. Mr Dube claimed that his family are in the UK and he will have no money although it is a preserved finding by the First-tier Tribunal that it was not established there was any reason why he would not be able to receive remittances from family members in the UK as they have helped others in the past. It is not made out on the evidence that even though he may find it difficult, Mr Dube would not be able to secure accommodation or that he is likely to become destitute.
81. In relation to the OASys report, Mr Dube was asked by me to comment upon the fact he had been assessed as posing a high risk to individuals in that report, in reply to which he claimed the report is wrong. He submitted that although things that happened in the past it would not happen in the future, but the difficulty with this submission is that there was no evidential basis that allows me to conclude that he had adequately dealt with the issues that led to his offending in the past.
82. Mr Dube stated that he wanted to go back home but he has been remanded in custody as a result of further acts of criminality, although details of the same are not known at this stage.
83. Had Mr Dube not offend as he had in the past, it is likely he would have been able to continue to live and work in the UK as he had. He, however, chose to act in an unacceptably violent manner as recorded in the evidence.
84. When asked whether he had undertaken any work in prison dealing with anger management and other issues his evidence indicated he had not undertaken sufficient work. There is insufficient evidence to show he had engaged with the Probation Services or sought any other form of assistance voluntarily, properly because he believes there is no need for such assistance. That is, in anybody's view, a misguided assessment and is of concern in relation to the risk of future harm.
85. Having undertaken the required balancing exercise there are a number of strong factors on Mr Dube's side of the equation. Strongest is perhaps the length of time he has been in the UK and length of time outside Zimbabwe, and the private life he has formed during that time, which includes the presence of his family in the UK including a younger brother. Mr Dube has worked and no doubt paid taxes in the past and states he will work in the future, although that work ethic is equally applicable in both the UK and Zimbabwe.
86. In relation to medical issues, the error of law finding and determination of the First-tier Tribunal refer to concerns relating to medical matters that need to be read. This demonstrates that despite ample opportunity having been given to Mr Dube to produce medical evidence he failed to do so. The medical evidence that was available did not establish anything concerning Mr Dube's health that would indicate that he should not be deported from the UK pursuant to Article 3 ECHR on medical grounds.
87. I have considered within the OASys report reference to mental health issues but the report clearly shows that despite an assessment being undertaken, and a recognition that at times Mr Dube has described his feeling low, it has not

identified there is any real risk of suicide or suicidal ideation, or any issues relating to Mr Dube's mental health that would give rise to a valid claim pursuant to Article 3 ECHR when considering the relevant case law, including AM (Zimbabwe) [2020] UKSC 17.

88. In relation to the medical evidence produced by Mr Dube at the hearing, which we were able to read as he held it against the camera, I accept that the document refers to hepatitis B and is dated 28 June 2024, but it does not show there is any current medical issue in relation to the same and refers to historic matters with no evidence of any ongoing issues, ongoing treatment.
89. It has also not been shown on the evidence that if there was any need for any medical interventions treatment would not be available or would not be accessible for Mr Dube within Zimbabwe.
90. I find having undertaken the necessary balancing exercise that the factors in favour of the Secretary of State are far stronger and not outweighed by those matters relied upon by Mr Dube. There is clear evidence that as a result of his personality are other issues he is a violent individual. It is demonstrated that he will resort to violence against those who cross him or disrespect him or who he seems to take offence against. Mr Dube has not provided sufficient evidence to show that the risk assessment undertaken in the OASys report is inaccurate. He presents a high risk of undertaking further criminal offences in the future which are more likely than not to involve acts of violence against the victim. There is also a real risk that if Mr Dube forms a relationship with another female in the UK, that he is not likely to disclose his past offending as he has not done in the past, or to be open about the nature of any such relationship on the evidence in accordance with the terms of the orders made against him. I find there is a real risk of serious harm to others, and that the Secretary of State has made out that the protection of the public requires Mr Dube's deportation from the United Kingdom. I therefore find decision to deport has been shown to be proportionate when balanced against the impact upon the identified protected right of Mr Dube's private life.

**Notice of Decision.**

91. Appeal dismissed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**8 July 2024**