IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: RP/00073/2016

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20 January 2025

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
UPPER TRIBUNAL JUDGE SHERIDAN

Between

LM (ZIMBABWE)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Khubber, Counsel, instructed by Turpin Miller LLP
For the Respondent: Mr T Melvin, Senior Presenting Officer

Heard at The Royal Courts of Justice on 11 March 2024
and Field House on 14 June 2024

ORDER REGARDING ANONYMITY

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant, his parents, his siblings and his children are granted anonymity, as is his former partner who is the mother of his two children.
No-one shall publish or reveal any information, including the name or address of the appellant, his parents, his siblings, his children and his former partner, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This appeal has an unfortunate appellate history. Its origin lies in a decision by the respondent to deport the appellant and to refuse a human rights claim, dated 23 May 2016 and served on 9 June 2016. This step was preceded by a decision of the respondent to cease the appellant's refugee status, dated 10 May 2016. The respondent signed a deportation order in respect of the appellant on 2 June 2016.

2. Following the imposition upon the appellant of a further term of imprisonment in 2023, the respondent served a supplementary decision to refuse a human rights claim and to refuse to revoke a deportation order, dated 28 July 2023. The decision erroneously applied the reduced twelve-month threshold under section 72(2) of the Nationality, Immigration and Asylum Act 2002 (as amended by section 38 of the Nationality and Borders Act 2022) in respect of the most recent conviction. The error arose as the appellant was convicted before 28 June 2022 and so the two-year threshold under section 72(2) as originally drafted was applicable. The respondent amended her position, and reaffirmed her decision, by means of a letter dated 24 August 2023.

3. This is the fourth time the appeal has been considered by the Upper Tribunal. Most recently, on 21 June 2021, the former Vice-President set aside a decision of the First-tier Tribunal in its entirety and retained the matter for this Tribunal to determine the appeal.

4. There was delay in the listing of the resumed hearing consequent to the appellant having been arrested and subsequently pleading guilty

to one count of wounding with intent to cause grievous bodily harm, contrary to section 18 of the Offences Against the Person Act 1861, and to one count of possession of an article with blade or point in a public place contrary to section 139 of the Criminal Justice Act 1988. On 12 January 2023, he was sentenced to a custodial term of five years and two months. He is required to serve two-thirds of his sentence before automatic release. Mr Melvin informed the panel that the appellant's conditional release date is 8 September 2025. The automatic release date is understood by the panel to be unamended by the Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024 as the section 18 conviction is a violent offence listed in schedule 15 to the Criminal Justice Act 2003 and the appellant's sentence is four years or more.

5. The appellant and five witnesses gave evidence at the hearing on 11 March 2024. The hearing was adjourned part-heard to permit the parties time to address whether the appellant is a refugee enjoying protection status for the purpose of section 84(3) of the 2002 Act.

6. The appellant consented through his legal representatives to not being produced at the hearing in June 2024.

7. At the outset of our decision and reasons we express our gratitude to Mr Melvin and Mr Khubber, as well as to the appellant's solicitors, Turpin Miller LLP, for their considerable aid to the panel. The submissions and accompanying consolidated bundle were of the expected high standard.

Anonymity order

8. An anonymity order was previously issued in this appeal. No party requested that the order be set aside.

9. The appellant has been convicted on several occasions, and we are mindful of the general approach that such persons do not benefit from anonymity orders: Secretary of State for the Home Department v Starkey [2021] EWCA Civ 421, at [97]-[98]. We are also aware that his recent arrest and conviction garnered local media coverage. However, he is presently recognised by the respondent as a refugee. Consequently, we consider that at the present time his protected rights under article 8 ECHR outweigh the right of the public to know his identity as a party to proceedings.

10. We confirm the order above.

11. As explained below, the panel has dismissed the appellant's appeal. He should be aware that if he is unsuccessful in any subsequent appeal, if

pursued, and becomes appeal rights exhausted, any application by a media company to set aside this order may be founded upon the decision of the Upper Tribunal in Cokaj (anonymity orders: jurisdiction and ambit) [2021] UKUT 00202 (IAC), [2021] Imm AR 1562.

Relevant facts

12. The appellant is a national of Zimbabwe and presently aged thirty-one. Subject to this appeal he has indefinite leave to remain in this country. His parents, who are separated, and his two adult siblings reside in this country. His two children are British citizens.

Appellant's father: refugee status

13. By a decision promulgated on 19 December 2006, Designated Immigration Judge Shaerf sitting in the Asylum and Immigration Tribunal found the appellant's father to possess a well-founded fear of persecution from the Zimbabwean authorities consequent to his work as a local councillor for the Movement for Democratic Change ("MDC") in Matabeleland North Province.

14. The Judge accepted that the appellant's father had been politically active, initially in the trade union movement and then with the Zimbabwe African National Union – Patriotic Front ("ZANU-PF") for whom he was a local chairman. He became disillusioned with domestic politics under ZANU-PF, resigning from the party in 1987. He joined the MDC on its formation in 1999 and later became a councillor. He earned his living running a guesthouse and as an insurance agent, but suffered harassment from the national intelligence agency, the Central Intelligence Organisation ("CIO").

15. Judge Shaerf accepted that the appellant's father was detained on four occasions for his political activity, each time for a day. He was beaten on his back with pieces of wood during one detention, verbally threatened, and on one occasion deprived of food and water. He was concerned that the police were taking steps to arrest him for a fifth time and left the country. Following his arrival in this country, he received three subpoenas to attend court. The CIO approached his wife, then residing 600 miles away in her (and her husband's) home area in Mashonaland, where she worked as a teacher, asking for his whereabouts.

16. Judge Shaerf concluded that the appellant's father was an elected local councillor who held a substantial political profile and consequently he was at real risk of persecution if returned to Zimbabwe.

Appellant: grant of refugee status

17. The respondent confirmed during these proceedings that the appellant was recognised as a refugee in his own right when granted entry clearance to join his father, a recognised refugee, in the United Kingdom. We address consequences of this recognition below. The appellant entered this country in May 2007, aged thirteen.

Conviction in 2012: Robbery

18. At the time of his first term of imprisonment, the appellant worked part-time in retail and was attending college. He informed a probation officer prior to sentence that he had been using cannabis daily for approximately four months before committing the offence in February 2012, spending in the region of £20 a day to purchase the drug. We note from risk information identified by the Probation Service in a letter dated 18 February 2022 that the appellant confirmed he commenced using cannabis when he was aged fifteen. He was aged eighteen at the time of the robbery offence.

19. On 11 July 2012, the appellant was convicted following a guilty plea before trial on one count of robbery at Aylesbury Crown Court and sentenced the next day by HHJ Sheridan, after a Newton Hearing, to twenty-seven months' imprisonment at a Young Offenders' Institute.

20. The appellant produced a knife and threatened the victim, who was required to walk with the appellant and then forced to hand over a phone. Having secured the phone, and to enable his escape, the appellant punched the victim in the stomach, causing him to double over.

21. When interviewed in custody by a probation officer, the appellant could provide no explanation as to his motivation to rob the victim, explaining that it was a spur of the moment decision, and denied using a knife.

22. Following his release the appellant completed a diploma in health and social care. He attended university in the Midlands but decided to leave and secure employment. He worked on and off in construction, securing employment through agency work. His father confirmed that when the appellant was not working, and resided with him, he would purchase items for his son. His mother also provided financial support to the appellant.

Relationship

23. The appellant was in a relationship with his former partner ("partner") from around 2016 or 2017 onwards. Their evidence diverges, and indeed is unclear in respect of both, as to when the relationship ended.

The appellant contends it was after his arrest in 2022; the partner's position is that it was at an unidentified time before the arrest. Both the appellant and the partner accept the relationship as being of an on/off nature. They both explained at the hearing that they resided together from mid-2017 to mid-2020, and then the appellant split his time between his partner's home and his father's home.

24. They have two children together. The partner has two other children, and all four children have a relationship with the appellant.

Conviction in 2017: Possessing cannabis

25. The appellant was convicted at a Magistrates' Court in March 2017 of failing to surrender to custody, possessing a controlled class B drug (cannabis or cannabis resin), causing racially or religiously aggravated intentional harassment, alarm or distress by words or writing, and being drunk and disorderly. He was fined £210 and ordered to pay £185 costs.

Conviction in August 2021: Driving with excess alcohol

26. The appellant was convicted at a Magistrates' Court of driving a motor vehicle with excess alcohol. He was fined £120, ordered to pay costs in the sum of £85, and disqualified from driving for fourteen months.

Conviction in September 2021: Driving whilst disqualified

27. The appellant was convicted at a Magistrates' Court of using a vehicle whilst uninsured and driving whilst disqualified. He was sentenced to a community order and disqualified from driving for twenty-two months.

Conviction in 2022: section 18 wounding with intent

28. At the time of the wounding, the appellant was aged twenty-eight. He pleaded guilty to individual counts of wounding with intent and possessing a bladed article. A count of attempted murder lies on file. As observed above, he was sentenced to five years and two months' imprisonment in respect of the section 18 offence, with six months' imprisonment to be served concurrently for possessing a knife.

29. We consider it appropriate to record the Recorder of Aylesbury's (HHJ Sheridan) sentencing remarks in detail:

> "On the day in question, the 29th of March 2022, in the middle of the afternoon, around 3 o'clock, the victim in the case ["the victim"], whilst the front seat passenger in a car driven by your partner.
>
> ...

You and [the victim] normally get on well and you were driven along Walton Street in Aylesbury, close to the old Crown Court in Aylesbury, and as he's [sic] driving along you lunged at him. He thought you were just being an idiot and trying to give him a hug, but that didn't last for very long because he realised you had a knife in your hand and you'd stabbed him in the neck, absolutely deliberate. And looking at the pre-sentence report, the reason is that you perceived that the victim of the offence may have touched [the partner] whilst talking to her.

I really have considered long and hard in this case as to whether or not you ought to be found dangerous. In any event, you had stabbed him in the neck, and he attempted to fight you off but was restricted by his own seatbelt and you then stabbed him again, this time in the lower abdomen. A more wicked, cruel and unjustified action it's hard to imagine. The victim was eventually able to grab the knife by the blade and cut his middle finger as a result. That wasn't enough to deter you, you then continue a different type of attack altogether, and you then bit his face – wickedly biting his face, a really serious and very hurtful injury, and you've left him with permanent scarring ...

Eventually, your victim managed to get out of the car ready to be pursued by you, still in possession of the knife. Other witnesses describe him as running for his life and I have no doubt that's correct, and that part of the chase is caught on CCTV. You then drop the knife on the pavement, but you must have gone back because, in fact, it was dropped down a nearby drain. And after all of this, you then go straight to the police station and give yourself up.

It's perfectly obvious from what you said to the police what you intended, and it's obvious that you intended to kill the man, but I will sentence for what you have pleaded guilty to, not count 1. ...

It's clear from the very first attack that you were unaware as to whether or not poor [victim] was still alive and you asked this, and it's quoted in the prosecution note, "He's alive", and I quote, "He's alive? What the fuck did I – what did I do wrong? Why the fuck is he alive? What did I do wrong?" In other words, regret that the man's still alive.

You had been drinking alcohol, and it sounds, looking at the pre-sentence report and your own account, as though you had drunk to great excess the night before as well. In any event, you were interviewed by the police, and you say, "I deny attempted murder, I didn't intend to kill anyone."

The injuries – the poor [victim] was taken to Stoke Mandeville Hospital and he had injuries to his nose, neck, middle finger – the middle finger I've dealt with, that was when he was – caused when he was trying to get the knife off you. A CT scan revealed an

> abnormal presence of air within the soft tissues in the neck, extending into the deep structures of the neck, shows you just how hard you bit him. And the injury to the right side of the lower abdomen was sutured, with a minimum depth of 7.45 millimetres. The wound to the neck was washed out and closed with stitches, whilst the exact dept of the bite cannot be determined, it's at least 1.99 centimetres deep, and the wound track went from the front to the back and slightly towards the midline of the neck. The wound travelled within 8.9 millimetres of the main blood vessel returning to the heart, blood to the heart from the head and neck, and the wound track is 6.63 millimetres from the carotid artery, and 1.95 centimetres from the windpipe.
>
> You are so lucky that man survived. You'd have had a dreadful conviction for murder had he not."

30. For the purposes of sentencing, HHJ Sheridan concluded that the count of wounding with intent was at the top end of the Category 3 sentencing range; a starting point of five years, with a bracket of four to seven. However, he increased the starting point in light of the second wave of the attack, the biting, which formed part of the count, to one of six years' imprisonment. He noted the aggravating features: the appellant was under the influence of alcohol and cannabis, and the bite left permanent scarring. The appellant was given credit of fifteen per cent in respect of his plea to wounding with intent.

The return of the appellant's father to Zimbabwe in 2016

31. The appellant's father obtained a Zimbabwean passport in October 2015 and travelled from the United Kingdom to Zimbabwe, via South Africa, on 11 March 2016. He returned to the United Kingdom on 20 April 2016.

32. A GCID record located in the consolidated bundle references the father being encountered at London Heathrow after disembarking from a flight from Dubai, United Arab Emirates. He held his Zimbabwean passport and a travel document valid until April 2023. The latter document, issued by the respondent, indicated that the father could travel to all countries except Zimbabwe. The father explained to immigration officials that had travelled to Zimbabwe "to attend his sister's funeral" and had "stayed there for 1 month".

33. The respondent wrote a letter to the appellant's father on 5 December 2019 informing him that she was considering ceasing his refugee status. A further letter in similar terms is dated 2 December 2020. On 15 November 2020, the respondent wrote a letter to the father observing that he had not replied to the notice of intention to cease refugee status, but she accepted that he had returned to Zimbabwe on

only one occasion for compassionate reasons and consequently he still held refugee status in the United Kingdom. The father was unaware of the three letters until their disclosure at the time of the adjourned hearing in February 2022.

UNHCR

34. The respondent wrote on 20 March 2015 inviting the UNHCR to comment on her proposed intention to cease the appellant's refugee status following the first conviction. The UNCHR responded by a letter dated 14 April 2015.

35. The letter was addressed by the former Vice-President at [12] of his decision:

> "12. The UNHCR letter made some statements about the position in Zimbabwe, and it also expressed the view that cessation under the Refugee Convention could not lawfully take place unless there had been a sustained and permanent change in the situation affecting the whole of the country. That last view of the law is incorrect, as decided after Judge Cohen's decision, by the Court of Appeal in [MS (Somalia) v Secretary of State for the Home Department [2019] EWCA Civ 1345; [2020] QB 364]. The Secretary of State's specific view was that the reason why it was appropriate and lawful to revoke the appellant's refugee status was that there were safe parts of the country."

36. We observe the age of the letter, and the dates of the objective country evidence referenced within it. However, we acknowledge a central theme of the letter that this panel is to assess whether fundamental and durable changes have occurred in Zimbabwe since the grant of refugee status to the appellant in 2007.

The respondent's decisions

37. By her 2016 cessation letter the respondent concluded that the situation in Zimbabwe has changed significantly since 2007. Reliance was placed upon paragraphs 1.3.3 to 1.3.12, 2.3.1, 2.3.6, 2.3.14 to 2.3.15 and 2.30.20 to 2.3.21 of her Country Information and Guidance Note, "Zimbabwe: Political Opposition to ZANU-PF" (October 2014) and CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059.

38. In the original deportation decision of 2016, the respondent noted that the appellant had received a twenty-seven-month sentence for robbery and so fell within the automatic deportation regime. His deportation was considered conducive to the public good. She observed that the appellant's refugee status had ceased. No existing family life was

identified by the appellant. As for private life, the appellant did not meet the requirements of paragraph 399A of the Rules. No very compelling circumstances were found to exist.

39. The supplementary decision of July 2023, as clarified in August 2023, confirmed that the appellant does not have an MDC profile likely to continue to bring him to the adverse attention of the Zimbabwean authorities. It was considered that the appellant had the option of returning to urban areas such as Harare or Bulawayo. Reliance was placed upon the respondent's Country Policy and Information Note, "Zimbabwe: Opposition to the government" (September 2021).

40. As to section 72 of the 2002 Act, the length of sentence was noted as was the media coverage of the crime. The respondent observed, "you have shown by your action that you are a danger to society and somebody who may well re-offend in the same way in the future. The consequences of such actions are so great that it is maintained that there is a strong public interest in preventing crimes of this nature". The respondent certified the presumption under section 72 and additionally confirmed that the appellant was excluded from humanitarian protection under paragraph 399D of the Rules.

41. In respect of article 8, no very compelling circumstances were found to exist. The respondent concluded that the appellant had failed to present evidence as to what part he played in the lives of his partner's children. There was no evidence that he had formed part of a functioning family unit with the children or his partner. Were it accepted that there was a family unit, and observing the duty under section 55 of the Borders, Citizenship and Immigration Act 2009, very compelling circumstances were not found to arise. Consideration was given to the judgment of the Court of Appeal in LC (China) v Secretary of State for the Home Department [2014] EWCA Civ 1310; [2015] Imm AR 227.

42. In considering private life rights, the respondent observed, "you have failed to present any evidence that you have made any positive contributions to the UK, in the form of working and paying taxes, and criminals such as yourself who carry and use knives to attack other people, especially when they are friends, has a detrimental impact on the whole of the UK and often causing misery to other families who suffer, due to their family members being killed or maimed, as noted from the news articles you have left your victim with permanent scarring."

Agreed facts and issues

43. The parties filed an agreed list of facts and issues before the hearing in March 2024. The agreed facts are:

i) The appellant is a citizen of Zimbabwe born in 1993. He is presently aged thirty-one;

ii) His father fled Zimbabwe and claimed asylum in this country in May 2006;

iii) The respondent refused the father's application for international protection. He was successful on appeal to the Asylum and Immigration Tribunal in 2006 and subsequently recognised as a refugee. He was granted status in 2007;

iv) The appellant entered the United Kingdom in May 2007, aged thirteen, on a family reunion visa to join his father;

v) His father applied for indefinite leave to remain ("ILR") in January 2012, identifying the appellant as one of his dependants;

vi) The appellant was granted ILR in March 2012;

vii) On 12 July 2012, the appellant was convicted of robbery committed in February 2012, and sentenced at Aylesbury Crown Court to two years and three months imprisonment;

viii) The respondent served the appellant with notice of liability to deportation on 29 July 2012;

ix) The appellant wrote to the respondent on 14 August 2012 and asserted that removal would breach his protected rights under the Refugee Convention and the European Convention on Human Rights. He stated, in rebuttal to the section 72(2) notice that he was not a danger to the community;

x) Having received a response from the UNCHR, the respondent determined to cease the appellant's refugee status with reference to article 1C(5) of the Refugee Convention and related immigration rules on 10 May 2016;

xi) The respondent made a deportation decision on 23 May 2016, which was served on 9 June 2016. The respondent signed a deportation order under section 32(5) of the UK Borders Act 2007 on 2 June 2016;

xii) The appellant appealed both the revocation decision and the deportation decision to the First-tier Tribunal. His appeal has

been considered, at various times, by the First-tier Tribunal, the Upper Tribunal and the Court of Appeal;

xiii) By a decision sent to the parties on 21 June 2021, the Upper Tribunal set aside the decision of the First-tier Tribunal (First-tier Tribunal Judge Cohen), dated 18 October 2017, and made directions for a resumed hearing of the appeal to be heard by the Upper Tribunal;

xiv) The appeal was listed for hearing before Upper Tribunal Judges Pitt and O'Callaghan on 23 February 2022, but was adjourned on the day because neither the appellant's father nor his partner could attend;

xv) At the adjourned hearing, the respondent disclosed that letters had been written with an intention to be served upon the appellant's father regarding his refugee status. The letters were dated 2, 5 and 15 December 2020. The respondent accepted that the appellant's father had not received these letters. The content of the letters identified the respondent's acceptance that though the appellant's father had temporarily visited Zimbabwe on one occasion for compassionate reasons, this was not a basis for ceasing his refugee status and so he remained recognised as a refugee;

xvi) The resolution of the appellant's appeal was delayed as a result of the potential relevance to the extant appeal of the appellant having been charged with attempted murder and his trial having been fixed to commence at Aylesbury Crown Court on 16 May 2022;

xvii) The appellant pleaded guilty on 29 March 2022 to one count of wounding with intent to cause grievous bodily harm and one count of possessing an article with blade or point in a public place;

xviii) On 12 January 2023, the appellant was sentenced by HHJ Sheridan to a total custodial sentence of five years and two months. This development was conveyed to the Tribunal at a case management review hearing held in February 2023. The respondent indicated she would review her position and provide an update as to whether she wished to withdraw the existing decisions (made in 2016) and start afresh with new decisions or maintain and supplement the existing decisions; and

xix) The respondent issued a supplementary decision dated 28 July 2023. On 24 August 2023 the respondent clarified the section 72 notice by letter.

44. The agreed reference at (iv) above that the appellant entered on a family reunion visa was addressed by the panel at the outset of the hearing in March 2024. The panel referenced the judgment in Secretary of State for the Home Department v JS (Uganda) [2019] EWCA Civ 1670; [2020] 1 WLR 43, *per* Haddon-Cave LJ at [73]:

> "73. In my view, the plain ordinary meaning of the words of Article 1A is that the status of a Refugee Convention "refugee" is only accorded to a person who themselves have a "well-founded fear of being persecuted", i.e. an individual or personal fear of persecution, not one derived from or dependent upon another person. This is clear both from the language of Article 1A itself and when read together with Article 1C(5). The reference in Article 1C(5) to "…the circumstances in connection which he has been recognised as a refugee…" is a direct reference to the "person" who falls within the definition of "refugee" in Article 1A, namely "… any person who … owing to [his] well-founded fear of persecution…", i.e. not someone else's fear of persecution."

45. The Court of Appeal held that a person could not derive refugee status from the refugee status of another person and it followed that a person who was admitted to the United Kingdom under the respondent's family reunion policy by reason of a link to a recognised refugee did not thereby himself acquire the status of a refugee under the Refugee Convention.

46. Prior to the resumed hearing in June 2024, the respondent informed the panel that the appellant had been recognised as a refugee in his own right in 2007 and was not to be considered a person admitted to this country under the policy solely by reason of a link to a recognised refugee. No explanation was provided as to the factual basis upon which the respondent founded her decision. The panel is content to accept that the information provided is accurate.

47. The agreed issues before the Upper Tribunal:

i) Is the appellant excluded from protection under the Refugee Convention on the basis that he is danger to the community having been convicted of a particularly serious crime: Article 33(2) of the Refugee Convention / section 72 of the 2002 Act?

ii) Is the appellant not entitled to protection under the Refugee Convention because the respondent has established that the

cessation provisions of the Refugee Convention (Article 1C(5)) apply in his circumstances? The appellant's case is that the respondent has not established that the cessation provisions apply so as to deprive him of his Refugee Status.

iii) If the appellant is excluded from the Refugee Convention under section 72 of the 2002 Act would removal breach his rights under article 3 ECHR?

iv) If the appellant is not excluded from the Refugee Convention under section 72 but the cessation provisions apply would removal of the appellant breach his rights under article 3?

v) Is the appellant's deportation contrary to his and his family's rights under article 8 ECHR?

Oral and documentary evidence

48. We confirm that we have read and carefully considered the documents filed in the consolidated bundle, which runs to five hundred and twenty-seven (527) pages, as well documents provided by the parties in advance of, and soon after, the hearing.

49. The appellant, his mother and father, his two brothers and his former partner attended the hearing in March 2024. They all relied upon witness statements and gave oral evidence. We have considered their evidence in the round, along with the documentary evidence filed with the Tribunal.

The appellant

50. The appellant relies upon various witness statements. He explains by his statement of August 2016 that after his GSCEs he dropped out of Sixth Form and spent time with young people in his area with whom he commenced smoking cannabis. He now considers this group of friends to have been a bad influence on him. However, he stated that he took full responsibility for the robbery offence, having committed it when he was "young and stupid".

51. By his statement of February 2024, he accepts that as a teenager he lost his way and made poor choices, which he regrets. In this statement he addresses the offence in March 2022. He was sitting in the back seat of the car, and his partner was driving. The victim "kept reaching over" to touch his partner. The victim "had made advances to her before" and the appellant "snapped". As they were going to a barbecue there "was a knife in the car next to me". He accepts that his reaction was "excessive", and that it was not the right thing to do. He

handed himself into the police. He is now sorry for his act and is seeking to work on his rehabilitation and to understand the impact of drinking alcohol.

52. He states that he was fully involved in the lives of his children before going to prison in 2022. He would look after them whenever his partner requested and had them stay over at weekends. They would go for walks, go to the park and play. When he was able to work, he would contribute financially. He is aware that the children do not understand where he is, because of their age, but the elder child became more withdrawn and emotional at school. The children visit him in prison twice a month, and they engage in video calls four times a month.

53. He is emotionally supported by his family and knows that he can turn to his brothers for support.

54. In his February 2024 statement he confirms that the main reason he cannot return to Zimbabwe is his children as they are his whole life. He does not believe he can maintain his relationship with them from Zimbabwe. Additionally, he has not resided in Zimbabwe since the age of thirteen and has no idea how to live in the country. He is entirely accustomed to his life in the United Kingdom. He does not know his distant family in Zimbabwe, and they will not be able to support him because they do not have the means.

55. As to the family home in Zimbabwe, “after we all left the UK, the ZANU-PF youths came to our old house [in Mashonaland] and told the people that currently live there that if a member of the family returns back to the house, there will be trouble. The people currently living in my grandma’s old house got in touch with my mum to warn her about what the youths had said. This only increases my fear of going back to Zimbabwe”.

56. In examination-in-chief the appellant informed Mr Khubber that on release from prison he would be law abiding. He has obtained certificates in personal training and would like to work in this field on release. The wounding offence was in the moment and out of character. He is taking prison courses to address his behaviour, and he has several certificates in relation to completing courses such as conflict resolution and victim awareness. He has worked with the prison drug and alcohol rehabilitation team and learned about the effects of alcohol.

57. He is now at a prison some distance from his family, so has not had physical visits for a time, but he has videocalls four times a month and speaks daily to family members by phone. Previously, when serving at a different prison, he was visited by his partner and children once a

month and engaged in a six-hour family day every two months. He described his relationship with his children as good. He talks to them about school/nursery and their friends.

58. He explained that he has no-one to turn to in Zimbabwe and there is no property available for him. He would be devasted if deported.

59. In cross-examination, he confirmed that he was in a relationship with his partner at the time of the offence in March 2022. He was sometimes living with his partner and sometimes living with his father. When asked where he permanently resided, he confirmed that he had his own place when working and would spend time with his partner. He did not pay rent or council tax at his partner's property but was willing to help.

60. Mr Melvin asked whether there were previous incidents of people touching his partner or talking to her in a way he did not agree with. The appellant said "yes" but confirmed that he had not reacted in the same way.

61. The appellant explained that he was carrying a knife as the group were going to a park where they would set up a barbeque. They had meat and food in the car, as well as cutlery. The weapon used in the attack was a kitchen knife, intended for use to cut meat and vegetables.

62. He confirmed that he did not warn the victim before stabbing him, though he had on previous occasions warned the victim as to how he behaved with the partner. He was asked by Mr Melvin as to whether the victim would have been surprised to be stabbed and replied, "I can't say how he'd feel, but if I'd done what he was doing it would not have been a shock". He then explained that he was not trying to excuse his behaviour but added that he was intoxicated at the time.

63. The panel asked the appellant why he reacted in such an extreme manner when the victim, his friend, touched his partner. He replied that when the victim put his hand on his partner's thigh, he "felt anger, betrayal and jealousy". The victim had done this twice previously, and he had not reacted. He had previously spoken to the victim about the way he interacted with his partner. He was also under the influence of alcohol. He "just snapped immediately". The knife was in an open cooler box to his side. He went into the box and pulled it out with his right hand, holding it in the middle with the point facing upwards, whilst sitting in the middle of the back seat. Everything then happened very quickly, and the incident lasted a minute at most.

64. When asked by Mr Melvin whether he chased the victim down the street, he said "yes", but "for a brief moment". He was not aware as to

whether there were members of the public or children watching the chase. He was asked about disposing the knife down a drain, and stated that he told the police where it was located when he handed himself in.

65. At the time of the wounding, he was residing with his father who was supporting him between jobs. His mother was also financially supporting him. He confirmed that he has a Level 1 qualification in bricklaying.

66. He is not a member of any Zimbabwean political organisation in the United Kingdom and seeks to stay away from politics.

67. He stated that he had no contact with his father's relatives in Zimbabwe.

68. When asked what his worries were if returned to Zimbabwe, he was clear in terms: "Everything I have is in the UK, my family, work opportunities. I have nothing there and do not know where to begin".

69. In re-examination, Mr Khubber took the appellant to paragraph 32 of his February 2024 witness statement where he referenced ZANU-PF youths coming to the family home after the family left in 2007 and the people living in the family home informing his family that the youths said if the family returned home there would be trouble. Mr Khubber led as to this identifying the appellant's fear of members of the ZANU-PF. The appellant replied, "Yes, that is correct" and confirmed that it remained a reason for his fear of return.

The partner

70. We refer to the "partner" simply as a convenient means of not identifying her by name, though we acknowledge that the relationship has come to an end.

71. The partner is a British citizen. She is presently a university student. She confirmed by her January 2024 statement that she has a very good relationship with the appellant, and that their children are very close to him. The appellant "always has the children's best interests at heart and will always want to do the best for them rather than the bare minimum. He will always want to go above and beyond for them". Before he went to prison in 2022, the appellant would see the children whenever he could and was usually at her home helping with all four of her children. When he was not at her home, he would phone and facetime the children. He would see the children most days of the week when he was not working. When he was working, he would see them after work and at the weekends.

72. The family dynamic changed following the appellant's return to prison. She has found it difficult raising sons without a role model. Her eldest child, who has a different father, has ADHD and the appellant helped in regulating the effects. Since the appellant's imprisonment, this child has experienced challenging times. The couple's elder child has become withdrawn and more emotional.

73. She visited the appellant in prison twice a month, with the children. However, he has moved to an establishment further away from her home. They all talk to the appellant every day, often for an hour or over. She believes that the children would be devasted if their father was deported.

74. In answer to a question from Mr Khubber she confirmed that she could not relocate to Zimbabwe with the children. She has two other children, and she has no connection with the country. Their children believe the appellant is at work making equipment for the police. She believes that upon his release, he will make positive changes to his life and will adopt a reformed approach.

75. In cross-examination, she accepted that the relationship was on/off in nature. Before the wounding, the appellant was at her place all the time but residing between her home and his father's home. He was not registered for council tax at her property, but they were living together from mid-2017 to mid-2020. He then split his time between his father's home and her home, though he would visit the children every day. When asked specifically whether they were in a relationship on the day of the wounding, she replied that it was on/off, but they went away as a family a short time before the attack. We note that though given an opportunity on two occasions during her oral evidence, she did not confirm that she was in a relationship with the appellant on the day of the wounding.

76. Mr Melvin asked as to what the cause of events in the car was. She replied that she was "not sure", as she was driving. She stated that she "could not answer", as she was driving on a main road and her "view was on the road". There was an altercation, but she did not know what it was about, and she was unsure if the victim did anything to create a reaction from the appellant. She could not recall the appellant biting the victim, nor could she recall either man leaving the car. She stated that the men "are like family".

The appellant's father

77. The appellant's father is a British citizen.

78. He stated in his oral evidence that he continues to speak regularly with the appellant; once or twice a fortnight, usually for twenty minutes. They speak in Shona and English. He explained that his son has had problems with alcohol but is making efforts to address his problems.

79. The father stated that his son lived with him, on and off, before his second custodial term.

80. He explained that he returned to Zimbabwe in 2016 to visit a school project he was supporting in his home area of Mashonaland, and to attend the funeral of a sister. He was informed by a nephew, a member of ZANU-PF, that he was not safe and should leave the country. He detailed in his September 2017 witness statement that he was “very careful” when in Zimbabwe, and “did not stay in one place for too long”.

81. In his witness statement, dated 31 January 2024, the father explained that there would be no-one to support his son in Zimbabwe because though he himself has a brother and two sisters who continue to reside there, he has no relationship with them and consequently has no contact with them. In examination-in-chief he again stated that he had no family in Zimbabwe who could aid the appellant, who would be in trouble with the authorities because of his father’s political activity. In cross-examination he explained that he lost contact with his siblings because they had grown apart, they are older than him and have their own lives. He accepted that he has his siblings’ contact details and will be in contact if there is a death in the family. However, his siblings could not aid his son as his sisters are elderly and his brother is struggling. His brother works as a driver. His siblings have no relationship with the appellant. In answer to a question from the panel, the father confirmed that he last spoke to his brother six months previously in respect of a family issue. By the end of cross-examination, he amended his position to having contact with his siblings once in a while, if an important family issue comes up. He accepted that if his son was deported, he would discuss matters with his brother in Zimbabwe, but he considered that his brother would be unable to financially aid the appellant.

82. He confirmed that he has a council house in his home area in Mashonaland but then stated that his son could not live there because “I don’t think it’s available at the moment”. He confirmed that the house was in his name. When asked by Mr Melvin as to whether appropriate steps could be taken to permit the appellant to reside at the house, the father replied that tenure is uncertain in Zimbabwe, it could be repossessed and so it was not possible for his son to reside there.

83. The father denied that his wife was in the United Kingdom at the time of his asylum appeal hearing, though this fact is recorded by Judge Shaerf at paragraph 1 of his decision and was later confirmed by his wife in her evidence.

The appellant's mother

84. The appellant's mother is a British citizen. She has been separated from her husband for some time.

85. She visits her son in prison, accompanied at least once a month by the appellant's children. She believes the appellant wants to stay in the lives of his children. When he is released, he wants to have a normal life and provide for his children.

86. Between 2017 and 2022 the appellant moved between the home of his partner and his father; he was "here and there". He sometimes stayed with her as well, but not for long periods. When he stayed with her, she would support him financially. Prior to the wounding, he was living with his partner but would sometimes stay with his father.

87. The mother confirmed that the appellant loves his children. Prior to his latest custodial sentence, the children would stay with him at weekends, and he would stay at his partner's house on other weekends.

88. She informed us that the appellant cannot return to Zimbabwe as there is no-one there to support him; "there would be no one to teach him how to live there or stand up for him when he needs help". The appellant left Zimbabwe at a very young age and would certainly have trouble merging back into society. She considered it near impossible that he would secure employment.

89. She confirmed that there were "very distant" relatives on her side of the family in Zimbabwe, but they could not help her son. Her sister resides in the United Kingdom, and she has no close family in Zimbabwe. She is aware that her husband has family in Zimbabwe, who reside on a farm, but they are struggling. She does not communicate with her husband about his family.

90. She was in the United Kingdom at the time of her husband's appeal hearing and following the successful outcome of the appeal she returned to Zimbabwe to collect two of the children, including the appellant, from boarding school and they travelled together to this country. The eldest child was already studying in the United Kingdom.

The appellant's eldest brother

91. The appellant's eldest brother is a British citizen.

92. He speaks to the appellant monthly. He considered his brother to have been seeking to improve himself before the recent offence, with his children giving him more responsibility and something to focus-on.

93. He confirmed that if the appellant were deported, he would seek to assist him financially, though he would have to consider a budget. In answer to Mr Melvin, he accepted that the provision of £50 a month would be feasible.

The appellant's elder brother

94. The appellant's elder brother is a Zimbabwean citizen who possesses indefinite leave to remain in the United Kingdom.

95. He speaks once or twice a month with his brother. He considers his brother to be deep down a good guy, and to have matured and grown as a person in recent years. His children have given him a new purpose.

96. In his oral evidence he confirmed that he does not have any contact with his aunts and uncle in Zimbabwe. He would not be able to financially support the appellant if he were deported because he is self-employed and has two children to support.

Expert: Hazel Cameron

97. The appellant relies upon a report authored by Dr Hazel Cameron, dated 14 February 2024. In addition, Dr Cameron prepared an addendum to her report, dated 4 March 2024, and a supplement, dated 6 March 2024.

98. Dr Cameron is a criminologist and a lecturer of Peace and Conflict Studies within the School of International Relations, University of St Andrews. She identifies her area of academic expertise as being social and political matters in Rwanda, Uganda and Zimbabwe. She confirms in her report that she has undertaken study of Zimbabwean affairs since 1999, including field work such as visiting hidden communities of survivors of the Matabeleland Massacres and ethnographic studies within the cities of Harare and Bulawayo.

99. Mr Melvin observed the guidance provided by the Supreme Court in Kennedy v Cordia (Services) Ltd [2016] UKSC 6; [2016] 1 WLR 597, at [38]-[61], and confirmed on behalf of the respondent that Dr Cameron was properly to be considered an expert on country issues arising in this matter but observed previous criticism by the Upper Tribunal.

Considering that criticism, the panel was asked to place no weight upon her opinion evidence.

100. By means of her supplement, Dr Cameron noted the observation of the Presidential panel in PS (cessation principles) Zimbabwe, at [39]:

> "39. We found some of Dr Cameron's evidence to contain unsourced opinions drafted in wide and undifferentiated terms. There was a tendency to entirely disregard the CG cases and to adhere to her own entrenched views, even where those views were inconsistent with the carefully considered CG and in circumstances where in there was no updated cogent evidence to call those conclusions into question. We therefore considered Dr Cameron's evidence to be unhelpful in some respects, particularly her generalised views regarding risk at the airport and her claim that the situation in Zimbabwe had reverted to RN levels of targeting. Where her evidence was broadly consistent with human rights reports or the evidence of Dr Chitiyo, we found her evidence more helpful. By contrast, we found Dr Chitiyo to provide more measured evidence. We have therefore found it more helpful in the main to refer to his evidence when making our findings."

101. We observe Dr Cameron's confirmation:

> "I have carefully considered the observations of the Upper Tribunal in PS (cessation principles) Zimbabwe [2021] UKUT 282 (IAC). The opinions that I expressed were based on facts within my own knowledge, which I believed were true. The opinions I expressed represented my true and complete professional opinion. There were occasions where my opinions were contrary to CM (Zimbabwe). Subsequent to PS, when preparing an expert witness report for the court [sic], including my expert report of 14 February for the Appellant in this case, I take the utmost care to provide sufficient analytical detail and adequate sources to substantiate my opinions. Should any of my views depart from conclusions in previous Country Guidance cases, I am rigorous in setting out the evidence that in my opinion justifies such a departure."

102. We address Dr Cameron's opinion below.

Additional evidence

103. We have considered with care additional evidence, including letters from various probation officers and a recovery worker, the latter confirming in February 2022 that the appellant had shown improvement in his attitude towards alcohol use and continued to work towards maintaining abstinence. This letter was written a month before

the appellant attacked the victim under the influence of alcohol, as referenced in HHJ Sheridan's sentencing remarks.

104. A probation officer wrote a "relevant risk information" letter in February 2022, again a month before the wounding. The appellant was on an eighteen-month community order for being in charge of a motor vehicle and failing without reasonable excuse to provide a specimen for a lab test/analysis. The offence was committed in August 2021. The assessment records the appellant as appearing "motivated to address his alcohol use, and reports he is currently not drinking". The letter details the appellant's confirmation that he had been using cannabis since the age of fifteen, though he was not using it at the present time. The assessment details that the appellant was of no fixed abode, having lost his previous accommodation due to financial issues. He was identified as engaging well with probation and being compliant with instructions. No current concerns were noted.

Submissions

Respondent

105. Mr Melvin relied upon his skeleton argument, dated 6 March 2024. We confirm that we have read the contents of this document.

106. Reliance was placed upon the appellant having committed a particularly serious crime evidencing an escalation in violence, and he constitutes a danger to the community. There is no assessed finding that he is a low risk of re-offending.

107. In addition, Mr Melvin submitted that the respondent met the burden placed upon her in respect of cessation. As to the events on the day of the wounding, the victim was left with facial scarring. The partner's evidence that she saw nothing during the attack could not be accepted. There was evidence placed before the Crown Court that children in the street witnessed the attack.

108. The situation has greatly improved in Zimbabwe since 2007, and the appellant has not engaged politically in this country. The relatives remaining in Zimbabwe have not been involved in anti-government activity. Though the father won his appeal in 2006, he subsequently returned to Zimbabwe for a visit. The August 2023 election passed relatively peacefully.

109. As to article 8, no very compassionate circumstances arose. There is some evidence of contact with his children, but they are so young as to not understand that he is in prison, and they reside with the partner who is proving capable of looking after them.

Appellant

110. Mr Khubber relied upon his detailed skeleton argument, dated 1 March 2024, and an annexed document addressing the relevant legal framework. The two documents together run to thirty-seven pages. They have been considered with care as has his oral submission on law and fact.

111. He asked us to find that the appellant was consistent and credible as to his offending, his future conduct, his fear of returning to Zimbabwe and the lack of contact he has with family members in Zimbabwe.

112. The wounding was the result of a rash, impulsive act which was uncharacteristic, and the appellant was shocked by his reaction. He assisted the police and led them to the weapon. The victim has forgiven him.

113. It is accepted that the appellant has no political profile with the MDC. His acceptance of this fact is evidence that he has not sought to embellish his case.

114. The partner was honest and credible. She was clear in her evidence as to the appellant having a strong bond with his children, who are suffering in his absence. She is struggling in the present circumstances. The respondent does not submit that the partner can relocate to Zimbabwe with the children, so this is a “stay” case.

115. Mr Khubber acknowledged that the panel could be concerned as to the father’s evidence in respect of the house in Zimbabwe. The father has accepted his family links in the country, but the appellant has limited links. Whilst the family in Zimbabwe have not said that they are having problems with the authorities, the father experienced them on his return in 2016.

116. We observe that no complaint was made by Mr Khubber to the limited number of questions asked by the panel to the appellant and witnesses during the hearing.

Analysis

117. Firstly, we proceed by assessing the evidence of the witnesses, being mindful to consider all relevant evidence presented to us in the round.

118. We commence with the appellant’s father and note the evidence of Dr Cameron as to the situation on the ground in Zimbabwe. We found the father to be an unreliable witness. On several occasions he was an untruthful witness. We proceed as our starting point with the findings

made by Judge Shaerf that the father possessed a well-founded fear of persecution in Zimbabwe in 2006 consequent to his substantial political profile. We accept his evidence that he has for several years provided his son with accommodation, when requested, and provided him with material support.

119. Having heard the father's evidence as to his present contact with his family in Zimbabwe, which changed on several occasions during his oral evidence, we conclude that he was deliberately untruthful, most likely to discount the availability of support to his son on return. We note his clear assertion in his written evidence and at the outset of his oral evidence that he has "no relationship" with his siblings in Zimbabwe. This position softened to having lost contact with them consequent to age, then further softened to having some contact if important events occurred within the family, such as a death, until finally the relationship was identified before us as one where he would talk to his brother on family issues. He accepted that if his son were deported, this was a family issue he would discuss with his brother. We are satisfied, on balance, that the father sought to hide the true extent of his contact with his siblings, which is more regular, and loving than he sought to persuade us was the reality. The appellant's mother identified the siblings as living close to each other, on a farm, and the brother, at least, has a telephone. We find that the siblings reside in the father's home area, and close to the appellant's family home in Mashonaland. We conclude that the father was untruthful as to the true circumstances because he is aware that his siblings, and their families, can offer the appellant support on his return to Zimbabwe, both emotionally and by helping him integrate into the local and wider community. We note the economic situation in Zimbabwe, but for the reasons detailed below we are satisfied that the family in the United Kingdom can provide the appellant with sufficient economic funds to aid him as he sets himself up in Zimbabwe, and the wider family can provide additional funds if and when required.

120. We find the father to be untruthful as to the family home in Zimbabwe. He acknowledged the existence of the house, but we find the father to not be truthful when asserting that he did not think the property was available "at the moment". It is the family property, and no cogent explanation was provided as to why the father did not know who was presently residing in it, or whether it was empty. In seeking to explain why the appellant could not reside at the property, the father became very vague, and disingenuous, in his subsequent answers: "it could be repossessed", "tenure is uncertain". The home has been in the family since at the very least 2006, and we observe that before Judge Shaerf the father's evidence was that he had arranged for his wife and two younger sons to relocate to a home and agricultural land they owned

in Mashonaland sometime after 2003. We find that the father sought to deny the availability of the family home to the appellant because by doing so he believed he was aiding his son in these proceedings. We conclude, on balance, that the appellant will have suitable accommodation at the family home upon his return to Zimbabwe.

121. We observe that despite raising several implausible reasons as to why his son could not return and live at the family home, the father (as well as the appellant's mother) made no mention of the property having been visited by ZANU-PF youths soon after the last of family left in 2007 with attendant threats to any member of the family returning to the property.

122. Turning to the father's return to Zimbabwe in 2016, we do not accept most of the father's evidence as to events once he was in the country. It is uncontested that he approached the Zimbabwean authorities to secure a passport, and that he travelled through immigration control without any difficulty using this passport when entering and leaving Zimbabwe. It is also uncontested that he attended a family funeral. We accept that the driving force behind the journey was a desire to attend the funeral of a sister and he took the opportunity to visit a school supported by a charity he set up in the United Kingdom. However, we note the unchallenged GCID record of the father's conversation with an immigration official on return to Heathrow airport in April 2016, where he confirmed he had travelled to Zimbabwe to attend his sister's funeral and had spent a month in the country. We place significance on the fact that having been placed in a controlled waiting room for a period of time, he made no mention of being given warnings as to his personal safety when in Zimbabwe, or to having to move around to keep himself safe. No mention was made when he was issued with a Form IS81 – written notice requiring him to submit to further examination - and again no mention was made when given reasons for his travel document being impounded.

123. The father states that he was informed shortly after he arrived in the country by the head of the village that a planned meeting with parents at the school was cancelled because permission had been refused by the CIO and police, which added to the tense atmosphere he was experiencing. He asserts that he received a warning from a nephew who was a member of ZANU-PF that he "must leave straight away" and believed himself not to be safe. He informed the panel that he was "very careful" and "did not stay in one place for too long". The only stated reasons for his return were to attend the funeral and visit the school. Once these events were either concluded, or denied, and observing that he previously fled the country in fear of an imminent arrest, we conclude that there was no reason for him to remain in the

country for several more weeks, living in a clandestine manner. He identified no cogent reason to us as to why he remained in the country at a time when he felt unsafe. On balance we are satisfied that the father was untruthful as to his circumstances when returning to Zimbabwe in 2016, as he was aware that the visit could undermine his son's appeal. We find that the father returned to Zimbabwe, resided at the family home, attended the funeral, visited the school, spent time with his family and overall enjoyed a holiday in which he experienced no difficulties with the CIO, the police or any other arm of the Zimbabwean government, who permitted him to enter and leave the country without hindrance.

124. We note the father's denial that the appellant's mother was present in the United Kingdom at the time of his asylum hearing in 2006. It was conspicuous that he continued to deny her presence in this country when informed that it was recorded by Judge Shaerf in paragraph 1 of his decision. We observe the mother's confirmation of the same in her oral evidence. It is not a point of direct relevance to his son's appeal, and we do not understand why the father adopted this position, but it reinforces our view as to his unreliability.

125. We consider the evidence of the appellant and his partner together. We find them to be unreliable witnesses, and on various occasions to be untruthful. We accept their evidence, and the evidence of the wider family generally, that the appellant has a loving relationship with his children, and a good relationship with his partner's other children. It has been very difficult to identify with precision the course of their relationship, because of varying evidence, but on balance we find they resided together at the partner's home from mid-2017 to mid-2020 and from then onwards the appellant primarily resided with either his father or mother whilst also spending time at the partner's home. We accept he was a regular visitor to his partner's home to see the children, particularly when he was not employed through agency work, and that the children would visit him on various weekends when he was working.

126. We do not accept that they were in a relationship at the time of the wounding in March 2022. We found the partner to be honest in her evidence that the two of them would spend time as a "family" with the children to the extent of parents and children enjoying a holiday together but note her unwillingness to confirm that they were in a relationship by March 2022. We find that the relationship had been in the process of mutating into one where they were working together for their children since at least mid-2020, and whilst the relationship may have been going through its on/off nature for a time thereafter, they were not a couple during the later stages. We observe the appellant's

insistence that the relationship was ongoing and conclude for reasons addressed below that his position ties in with elements of jealously and controlling behaviour that are clear from the evidence before us, and particularly from his oral evidence.

127. We do not find the appellant to be truthful as to events surrounding the robbery in 2012. He sought at the time, and in subsequent discussion with a probation officer, to diminish his actions. He denied using a knife, even after conviction, despite the clear evidence of the victim and the conclusion of the Newton Hearing. He still provides no cogent explanation for conducting a knife-point robbery, as is noticeable in his statements of August 2016 and February 2024. He alludes to being adversely influenced by a group of friends who introduced him to cannabis in or around October 2011 when he was aged eighteen, but he has accepted elsewhere in discussion with the Probation Service that he started using cannabis when aged fifteen. No member of this group of friends was with him when the robbery was committed. He has provided us with no explanation as to how these friends influenced his decision to commit the robbery. We consider the appellant continues to exhibit a lack of insight into his behaviour, the use of violence and the use of knives, all of which arise in the 2022 wounding.

128. Turning to the wounding, we commence with the evidence of the partner. We accept her to be a truthful witness as to the appellant's role in the lives of her children, and as to the timeline of her relationship with the appellant, but we do not accept her to be truthful as to her recollection of events in the car. She was within a very short distance of what HHJ Sheridan concluded to be a wicked and near murderous physical attack upon the man sitting next to her. It was an extreme event, and one we conclude she has never seen before and will never see again. The partner clearly seeks to support the appellant in his appeal, but the appellant is serving a long custodial sentence for his acts in the car. We consider it appropriate to note our joint observation that the partner gave evidence in a warm, friendly manner, regularly looking across the court room to the appellant who was sitting in the dock area of the courtroom. However, when recounting events in the car, she looked straight ahead of her, not looking at anyone including Mr Melvin who asking her questions on this issue. She appeared to us to be distinctly uncomfortable in providing this element of her evidence. We do not accept her as being truthful when she informed us that she was "not sure" of what caused events in the car because her "view was on the road', that she was not aware as to what the alteration was about, and that she was unsure what the victim had done for the appellant to react in the manner he did. We do not accept that she has no recollection of the appellant placing his

head around the front passenger seat to bite the victim, or that both men left the car with one running for his life and the other chasing with a knife.

129. We are mindful of two separate elements of evidence before us. HHJ Sheridan observes in his 2022 sentencing remarks that the pre-sentence report identifies the appellant as being “erratic” when interviewed by a probation officer, “at times aggressive and shouting and at other times expressing remorse”. We also observe the striking, and very concerning, response by the appellant to the question from Mr Melvin as to whether the victim would have been surprised to be stabbed: “I can’t say how he’d feel, but if I’d done what he was doing it would not have been a shock”. We find that this is an admission that the appellant considers a high level of violence to be a permissible response when a male places their hand, even for a brief period, upon a woman whom the appellant believes he is in a relationship with. We consider this strongly suggests that the appellant believes violence to be appropriate in identified circumstances and strongly suggests a controlling element to his relationships with women and their interaction with others.

130. We do not accept that the appellant simply “snapped” when the victim reached over and touched his partner. HHJ Sheridan had the prosecution papers before him and makes no reference to the appellant snapping. Rather, HHJ Sheridan noted that the victim believed the appellant was trying to give a hug when, in reality, he was stabbing him. This strongly suggests that no outward expression of anger accompanied the attack, which was conducted when there was a good mood in the vehicle. We find that the appellant was controlling towards his partner, at least to the extent of her interaction with others, and unilaterally decided what others could and could not do in her presence. His resentment as to the victim’s familiarity towards the partner, who we observe was a friend of the victim, was clearly, on the appellant’s own evidence, a matter he had raised on at least one previous occasion with the victim. We find that rather than snapping, the appellant believed the physical attack was justified because the victim had failed to abide by previous instruction as to permitted behaviour towards the partner. This is a reasonable conclusion from the appellant’s own evidence before us.

131. We also find the appellant to be manipulative. A letter from an organisation engaged in alcohol addiction, dated 3 February 2022 identifies the appellant having used the service for approximately four months, and showing “improvements in his attitude towards alcohol use and continues to work towards maintaining abstinence”. The Probation Service relevant risk information letter, dated 18 February

2022, details that the appellant "currently … states he is not using alcohol and has no intention of doing so". The wounding took place on 29 March 2022, and HHJ Sheridan observes in his sentencing remarks that the appellant "had drunk to great excess the night before" and was drinking alcohol on the day. HHJ Sheridan concluded that the appellant had "blatantly ignored" an alcohol treatment requirement. It was not the appellant's mitigation before the Crown Court, nor his case before this panel, that the excessive consumption of alcohol leading up to the wounding was a one-off, in the sense of falling off the wagon. We are satisfied, on balance, that the appellant was not being truthful to the Probation Service or to the addiction organisation, as to his efforts to abstain from alcohol. Rather, his reference to making such efforts in interview with professionals was a means of securing his primary aim of being accepted as complying with his alcohol treatment programme.

132. We acknowledge that the appellant has some insight into his very concerning behaviour on the day, which he detailed as flowing from "anger, betrayal and jealousy". We conclude that these emotions flow, in part, from a distorted understanding not only of the then state of his relationship, which we find from his partner's evidence was at this time platonic, but also a distorted understanding of the role of a man in a relationship. Such distorted thinking was exhibited before us in his response that a rational approach to a man briefly touching the thigh of a (former) partner was to use such excessive force with a weapon as to be 8.9 millimeters from cutting a main blood vessel returning to the heart (superior vena cava or inferior vena cava), and so millimeters from potentially committing murder. We do not accept the appellant's contention that the wounding was in the moment, and out of character. He identifies violence as a permitted response to what society would properly consider relatively low-level social interaction.

133. We acknowledge that the appellant turned himself into the police. However, as the victim of the wounding was a close friend and conducted in the presence of the partner, the mother of his children, he must have been aware that his only realistic options were to hand himself in, or to flee and not see his children. We agree with the sentencing judge that though he directed the police to the knife, he had initially returned to it and sought to dispose of it down a drain, in an attempt to hide evidence.

134. Turning to the appellant's evidence as to events in Zimbabwe, we do not accept that the family home was visited by ZANU-PF youths soon after the last members of the family left for the United Kingdom in 2007. Nor do we accept that subsequent threats were made to any member of the family returning to the family home. No other witness

mentioned these events, and we have found above his father resided at the home when he returned to Zimbabwe in 2016. We find that the real reason as to why he did not identify these two events when asked by Mr Melvin as to his concerns on return, which primarily relied on contact with his children, was that he knew these purported events were not true.

135. The appellant has provided certificates of courses evidencing his rehabilitation work in prison. They include a facing up to conflict course (after undertaking work with an in-cell workbook); Naxolene training to aid an opioid overdose; victim awareness (after undertaking work with an in-cell workbook); relapse prevention; triggers and cravings; managing emotions, enhancing self-esteem; Level 2 certificate in gym instructing; Level 1 certificate in construction skills; and Level 1 award in cycle mechanics. He has also provided a letter addressing his engagement with DART (Prison Based Treatment Services) confirming in 2023 that he was working towards certificates in alcohol awareness and peer support. Whilst establishing that the appellant is engaging in prison programmes, it was not said on his behalf that they address the significant underlying concerns arising from the use of weapons, anger, controlling behaviour and jealousy. We were not provided with a recent OASys assessment or evidence from the prison authorities as to reduction in risk.

136. We found the appellant's mother to be a reliable witness to the extent that she loves her son and thinks the best of him. She has provided financial support to him when required and continues to visit him in prison. We accept that she has minimal family connections in Zimbabwe and having separated from her husband for some time she has little, if any, knowledge as to the present situation of his siblings and family in the country. We find that she would be willing to provide the appellant with regular funds on his return to Zimbabwe, consistent with her approach to him over recent years.

137. We find that both brothers have a good relationship with the appellant. We consider the eldest brother to be truthful as to being willing to provide the appellant with £50 per month on his return to Zimbabwe. Whilst acknowledging that for many finances are presently tight, we do not accept the elder brother's evidence that he could not afford to remit money to the appellant in Zimbabwe. There is no cogent evidence before us that he would not aid the appellant in a manner akin to the eldest brother by remitting in the region of £50 a month.

138. The appellant can therefore properly expect to be financially supported by all four members of his close family on return to Zimbabwe, and to

reside at the family home. He can secure additional support from extended family on his return.

139. We now proceed to address the issues as agreed by the parties. We observe at the outset that the respondent seeks to deport the appellant under the automatic deportation provisions of the UK Borders Act 2007.

140. Section 32 of the 2007 Act defines a foreign criminal: a person not a British citizen who is convicted in the United Kingdom of an offence and, *inter alia*, sentenced to a period of imprisonment of at least 12 months.

141. Section 32(4) establishes that deportation of a foreign criminal is conducive to the public good. That is a statement of public policy enacted by the legislature, which the courts and tribunals are obliged to respect.

142. Section 32(5) requires the respondent to make a deportation order in respect of every foreign criminal, subject to the exceptions set out in section 33 which provides, insofar as is relevant:

> "(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–
>
> (a) a person's Convention rights, or
>
> (b) the United Kingdom's obligations under the Refugee Convention.
>
> ...
>
> (7) The application of an exception—
>
> (a) does not prevent the making of a deportation order;
>
> (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good; but section 32(4) applies despite the application of Exception 1 or 4.".

i. "Convicted ... of a particularly serious crime": exclusion from protection under the Refugee Convention.

143. Article 33 of the Refugee Convention is concerned with protection against expulsion of refugees. Article 33(2):

> '2. The benefits of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for

> regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.'

144. The norm established by article 33(2) simply authorises the receiving State to divest itself of its particular protective responsibilities. The individual does not cease to be a refugee. Observing article 31(1) of the Vienna Convention on the Law of Treaties, article 33(2) of the Refugee Convention must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in light of its object and purpose.

145. The function of article 33(2) is mainly to prevent the enjoyment of protection under the 1951 Convention by refugees who, given their individual behaviour, pose a fundamental threat to the receiving State. In EN (Serbia) v Secretary of State for the Home Department [2009] EWCA Civ 630, [2010] 3 WLR 182, at [40], the Court of Appeal confirmed that "a particularly serious crime" enjoys an autonomous international meaning, but what amounts to such crime does not have to be the same in every member state; it must be applied to what is a crime under the domestic law of the member state when the question of refoulement arises.

146. The use of the wording "particularly serious crime" is indicative that the loss of protective responsibility, or even refoulement, is only warranted when account has been taken of all mitigating and other circumstances surrounding the commission of the offence. The wording restricts drastically the offences to which the article applies: EN (Serbia), at [45]

147. "Danger" is properly assessed as the requirement that there be serious danger, i.e., a risk of future danger for the community from comparable crimes being committed by the offender. The danger therefore must be real and can be demonstrated by a particularly serious crime and the risk of reoccurrence of a similar offence: EN (Serbia), at [45]. The wording of article 33(2) does not require a causal connection between the two requirements, at [46].

148. In assessing such danger, it is appropriate to consider the circumstances of the individual case as well as the personal circumstances of the offender.

149. Article 33 is reflected in domestic legislation by section 72 of the 2002 Act. This statutory provision provides for a rebuttable presumption that someone who has been convicted of an offence and sentenced to at least two years imprisonment (1) has been convicted of a particularly

serious offence, and (2) constitutes a danger to the community of the United Kingdom. Section 72(6) provides that a presumption under section 72 that a person constitutes a danger to the community is rebuttable by that person.

150. Where section 72 is engaged, a tribunal must begin its deliberation by considering whether the presumption applies and then reach a decision as to whether the rebuttable presumption has in fact been rebutted.

151. The appellant, through Mr Khubber, accepts that he has been convicted of a particularly serious crime. He contends that he is not a danger to the community permitting him to be excluded from refoulement protection.

152. Mr Khubber properly appreciated before us that there is no assessed finding that the appellant is a low risk of future offending, and that he has a history of offending which has recently escalated with his most recent convictions. Mr Khubber contends on behalf of the appellant that these features are not themselves determinative of the issue.

153. As confirmed above, we do not accept the contention that the physical assault leading to wounding was isolated in nature, and unlikely ever to be repeated. The appellant expressed to us in evidence a justification for the use of excessive violence in circumstances where someone oversteps the boundary of what he unilaterally considers appropriate in respect of women to whom he is connected. He showed no insight to us as to his approval of violence in such circumstances, nor as to his controlling and manipulative behaviour. We have explained our agreed conclusion that he did not snap just prior to the wounding, rather his explanation reinforces our concern that he believed the victim to be deserving of violent assault. If, as he claims, the victim has forgiven him that does not positively address our concern. Both the victim and the partner have seen the level of extreme violence that the appellant can unleash in a moment, even when they consider the situation to be relaxed and enjoyable. Without the victim’s own evidence before us, we cannot properly discount that he is fearful of the appellant, and vigilant as to when the appellant returns back to the community. Whilst the appellant acknowledges the seriousness of his conduct and the harm he caused, the evidence before us comes nowhere close to establishing that he has sufficient insight and means to address the significant concerns arising from his attitudes to violence and relationships.

154. We do not agree with Mr Khubber that we are to place positive weight on the offending not being at the most serious end of the scale. We are required to consider whether the appellant is a danger to the

community and observe HHJ Sheridan's concern that the victim was lucky to survive the assault, and the appellant would "have had a dreadful conviction for murder had he not". We do not agree with Mr Khubber's submission that HHJ Sheridan's sentencing remarks can be read as exhibiting a judicial conclusion that the wounding arose out of the appellant's rash actions at a particular time. As explained above, we do not consider the act to have been impetuous. The appellant had given no indication to anyone else in the car that he was angry before he acted, or that he lost his temper. The subsequent use of biting and the chase down the road are strongly suggestive of more than a rash act, as was the deliberate return to dispose of the dropped knife. The clear conclusion of HHJ Sheridan was that the appellant intended to seriously injure the victim.

155. The appellant relies upon rehabilitation within the prison estate. His conduct in prison has been positive; he has pursued and obtained certificates including those relating to relapse prevention and victim awareness. We draw upon by analogy the approach adopted to the weight to be given to rehabilitation in deportation proceedings. In Jallow v Secretary of State for the Home Department [2021] EWCA Civ 788; [2021] Imm AR 1437 the Court of Appeal confirmed that it would rarely be a "game-changing" aspect of the factual matrix in an appeal. In this matter, we have been provided with certificates and awards, but we have found that the appellant has a history of manipulation when engaging with those engaged in managing his risk. We have been provided with no up-to-date risk assessment, and the appellant's evidence before us strongly suggests that at the present time he has not taken on board some of the limited skills he has been taught in respect of violence and victim awareness. We remain concerned as to his distorted thinking in respect of violence and relationships which underpin the wounding.

156. In the circumstances, we conclude the appellant has not rebutted the presumption that he is a danger to the community. He is therefore excluded from the protection of the Refugee Convention.

ii. Is the appellant entitled to protection under the Refugee Convention because the respondent has failed to establish that the cessation provisions of the Refugee Convention apply in the circumstances?

157. We consider issue ii) in the alternative to issue i).

158. The Refugee Convention makes no provision for the revocation of refugee status. Article 1C simply provides that the Convention no longer applies when the circumstances set out in those articles are met.

159. Where a person has been recognised as a refugee as set out in article 1A of the Refugee Convention, that status can only be lost in accordance with article 1C of the Convention.

160. Article 1C(5) of the Refugee Convention provides that the Convention "shall cease to apply to any persons falling under the terms of section A if: ... (5) He can no longer, because of the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality."

161. Mr Khubber relies upon paragraph 339A of the Immigration Rules as reflecting the cessation provisions of the Refugee Convention, as in force at the time of the respondent's decision. Though this paragraph of the Rules was substituted on 28 June 2022, the substitution is subject to savings for applications made before that date.

162. The Upper Tribunal gave guidance in respect of the cessation principles in PS (cessation principles) Zimbabwe [2021] UKUT 00283 (IAC); [2022] Imm AR 49. The panel observes the headnote to the Presidential decision.

163. The onus is on the respondent to show that there has been a change in circumstances such that the Refugee Convention ceases to apply to the appellant. We must consider whether the respondent has established that the appellant can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

164. Stanley Burnton LJ confirmed in EN (Serbia), at [96], that a fundamental requirement of Article 1C(5) is that a durable change in conditions in a country of nationality be that a refugee has no genuine fear of persecution on their return.

165. We note that the appellant was granted refugee status in his own right in 2007, as was his father earlier the same year. Country guidance at the time was established by SM and Others (MDC – internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100, which was relied upon by Judge Shaerf. The guidance provided, at [51], *inter alia:*

> "a) There does continue to be a real risk of persecution for those who are or are perceived to be politically active in opposition to and for this reason of serious adverse interest to the present regime. This can potentially include the categories identified in paragraph 43 but none of these factors by itself is determinative. Each case must be looked at on its own

individual facts. Some categories are more likely to be at risk than others such as MDC activists and campaigners rather than supporters but we do not exclude the possibility that in exceptional cases those with very limited political involvement could in their particular circumstances find themselves at real risk.

b) The risk to political opponents is increased both before and immediately after elections but this fact is of limited importance and is only likely to have any material bearing in borderline cases.

...

d) Records are kept by various groups and authorities including the CIO, local police and Zanu-PF party organisations and the war veterans but the existence of these records does not materially add to the assessment of the risk of persecution in an individual case which depends on the applicant's profile and background. It seems to us unlikely that someone who has been caught up in random and intimidatory violence would without more be regarded as of continuing interest to the authorities. However, the fact that these records exist may indicate that an applicant found to be at risk is unlikely to be able to relocate in safety. In this context it will also be important to take into account whether the risk is from the authorities or from a local branch of Zanu-PF or locally based war veterans.

e) The current atmosphere of hostility to the return of failed asylum seekers does not of itself put at risk those who would otherwise not be at real risk but does serve to reinforce the fact that asylum claims must be considered with care and where there is any uncertainty, any doubts must be resolved in the applicant's favour.

...

g) Where an applicant is at risk in his home area, the assessment of internal relocation must take into account the fact that there is a network of information available to the authorities, ZANU PF and war veterans. An applicant who is regarded as an active political opponent in his home area may not to be able to relocate in safety but this is a question of fact to be assessed in the circumstances of each case.

..."

166. As explained above, the respondent has not informed us as to the basis upon which she recognised the appellant as a refugee in his own

right. The appellant was at the time a thirteen-year-old student at boarding school who was not engaged in political activity, and so we proceed on the basis that the appellant was accepted to have a well-founded fear of persecution as a member of a particular social group as the family member of his father: K v Secretary of State for the Home Department [2006] UKHL 46; [2007] 1 A.C. 412.

167. We turn to the father's visit to Zimbabwe in 2016. We are not required to conclude that as the return did not amount to a voluntary re-establishment by the father in Zimbabwe, we cannot properly take relevant events it into account. The letter addressed to the father in December 2020 confirms that the father continues to enjoy refugee status after his return to this country because the respondent exercised discretion having considered the particular circumstances provided to her, namely a compassionate return to attend the funeral of a sibling.

168. Mr Melvin could properly rely upon the father having been issued with a Zimbabwean passport in 2015, having been permitted to enter and leave Zimbabwe without hindrance, and having experienced no difficulties throughout the month he spent in the country. The father exhibited by his stay in Zimbabwe that he was of no interest to the authorities.

169. Mr Khubber submitted that the return of the appellant's father does not impact upon the appellant's continuing refugee status and the requirement that the respondent establish the conditions contained in article 1C(5) in order for cessation to be lawfully permissible. He drew our attention to Dr Cameron's report and submitted that the basis for the appellant having refugee status has become enhanced rather than reduced over time.

170. We observe CM (Zimbabwe) the latest country guidance decision which remains applicable in this matter, in which the Upper Tribunal accepted that there had been some changes in the general political situation since CM left the country, and concluded that there had been durable change since country guidance was given in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083. Both decisions post-date country guidance in SM and Others. The extant guidance is as follows:

> "(2) The Country Guidance given by the Tribunal in EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) on the position in Zimbabwe as at the end of January 2011 was not vitiated in any respect by the use made of anonymous evidence from certain sources in the Secretary of State's Fact Finding Mission report of 2010. The Tribunal was entitled to find that there had

been a durable change since RN (Returnees) Zimbabwe CG [2008] UKAIT 00083….

(3) The only change to the EM Country Guidance that it is necessary to make as regards the position as at the end of January 2011 arises from the judgments in RT (Zimbabwe) [2012] UKSC 38. The EM Country Guidance is, accordingly, re-stated as follows (with the change underlined in paragraph (5) below):

(1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.

(2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).

(3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.

(4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is

one that, unusually, is under the sway of a ZANU-PF chief, or the like.

(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.

(6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.

(7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.

(8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.

(9) The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a

> large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.
>
> (10) As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.
>
> (11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/ or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN … and remains valid.

171. We are alert to the guidance of the Court of Appeal in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940; [2013] 1 WLR 41 as considered in Roba (OLF members and sympathisers) Ethiopia CG [2022] UKUT 1 (IAC).

172. It is well-established that a tribunal is not bound to accept expert evidence even if the expert is not cross-examined: MS (Zimbabwe) v Secretary of State for the Home Department [2021] EWCA Civ 941, at [61]-[62]. Mr Khubber did not contend to the contrary.

173. Dr Cameron opines:

i. Post-coup political violence in Zimbabwe is not random, but it is a highly organised strategy of terror that targets those with and without political profiles, orchestrated by a militarised regime with the aim of decimating civil space and all opposition to ensure the securocrat government holds onto power indefinitely;

ii. The State's treatment of the opposition and potential/perceived opposition in contemporary Zimbabwe indicates that the circumstances through which the appellant's father was recognised as a refugee have not ceased to exist;

iii. If the appellant is deported as a person who fled Zimbabwe – he did not flee, he secured entry clearance – and benefited from indefinite leave to remain in the United Kingdom on the basis of his father's refugee status, he will be given an imputed political opinion by the State, and he may be at some risk of attracting the adverse attention of the State security forces,

who routinely subject members of the opposition as well as potential or perceived members of the opposition to organised violence and torture;

iv. The appellant's application for asylum in the United Kingdom on political grounds leaves him at some risk of being identified as an opponent of the government in terms of the Patriotic Bill 2021;

v. The profile of the appellant indicates that he is at some risk of arbitrary arrest/detention at the airport on his return due to the newly enacted Criminal Law (Codification and Reform) Amendment Bill 2022;

vi. Should the appellant be criminalised on his arrival in Zimbabwe in terms of the 2022 Bill, there is a real risk that he will face detention in harsh and life-threatening prison conditions, potentially for the rest of his life;

vii. Without employment, there is a real risk that the appellant will be unable to maintain relationships with close family members or friends in the United Kingdom by any modern means of communication.

174. We have addressed vii above. The appellant will be accommodated on his return and will have financial support from his family in the United Kingdom. He will have additional support from his extended family in Zimbabwe. Before purchasing his own phone, he will be able to communicate with his family from his uncle's phone, which is presently used by his uncle when contacting the appellant's father. With the provision of familial financial support, the appellant will be able to maintain his familial relationships in the United Kingdom.

175. When considering Dr Cameron's report, we are mindful that we have to assess whether there has been a change in circumstances such that the Refugee Convention ceases to apply to the appellant. This requires not only consideration of the country situation, but also an assessment of the appellant's personal circumstances. We remind ourselves that on his own evidence the appellant has not engaged in Zimbabwean politics, either in Zimbabwe or in the United Kingdom. He was a thirteen-year-old boarding school student when he entered this country and secured refugee status. His father has not engaged in MDC-related politics to any extent during the eighteen years he has been resident in this country and was content to travel to Zimbabwe for a month in 2016, without arousing the interests of the authorities and security services on entry, whilst present in the country, and upon leaving. The circumstances of the father's return strongly suggest, in light of Dr

Cameron's first point above as to the organised nature of the militarised regime and its state security apparatus, that the father was in 2016, and remains at this time, of no interest to the authorities. Consequently, we are satisfied that the appellant would not attract persecutory attention from the authorities consequent to being a member of his father's family. We are satisfied that he will not be assessed by the authorities to be a potential or perceived member of the opposition.

176. We observe the chronology provided, which identifies the appellant as having claimed asylum on 22 May 2013 when providing reasons as to why he should not be deported. He was interviewed in July 2013. The respondent concluded that as the appellant was a recognised refugee, cessation of refugee status should be considered. We have read the interview record. The appellant solely relies upon the political activities of his father in Zimbabwe and primarily discusses his concern at being separated from his family. We note that at Q25 he confirms that his mother travelled to Zimbabwe in 2012 to attend the funeral of a close family member and remained in the country for approximately two weeks. There is no reference to his mother having any concerns as to her safety during her visit.

177. Dr Cameron confirms that the instituting of proceedings under the Patriotic Bill is discretionary. Mr Khubber did not draw our attention to prosecutions having been brought in respect of overseas asylum claims. We are satisfied that consequent to the authorities having no ongoing interest in either the appellant or his father, or indeed his family as whole when noting his mother's return to Zimbabwe in 2012, there is no real risk of the appellant being detained and prosecuted on this ground. The lack of interest additionally leads to our conclusion that there is no real risk of arrest and detention under the 2022 Amendment Bill as the appellant has no profile.

178. In the circumstances, and noting extant country guidance, we conclude that the respondent has met the burden placed upon her. She has established the circumstances in which status was granted to the appellant have ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention.

iii. If the appellant is excluded from the Refugee Convention would his removal breach his protected rights under article 3 ECHR?

iv. If the appellant is not excluded from the Refugee Convention but the cessation provisions apply would his removal breach his protected rights under article 3?

179. The appellant contends that adverse conclusions in respect of exclusion and/or cessation does not preclude him from protection under article 3 ECHR, though Mr Khubber accepted that an article 3 consideration was tied to the reasons advanced in respect of entitlement to protection status. For the reasons detailed in our consideration above, the appellant comes nowhere close to establishing that his protected article 3 rights are at risk upon return to Zimbabwe.

180. We observe that Dr Cameron's conclusion that if the appellant could find shelter in an informal settlement he would be at real risk of disease, for example, cholera, was raised by Mr Khubber in brief terms in his skeleton by not expressly pursued in oral submissions. Our finding as to the availability of accommodation and support of family members must properly lead to our concluding that Dr Cameron's opinion on this issue does not aid us.

v. Is the appellant's deportation contrary to his and his family's rights under article 8 ECHR?

181. Section 117C(1) and (2) of the 2002 Act establish that the deportation of foreign criminals is in the public interest and the more serious the offence committed by a foreign criminal, the greater the public interest in deportation of the criminal. The latter is established by Parliament differentiating in section 117C between those sentenced to a custodial term of under four years, and those sentenced to four years and over.

182. In respect of the wounding offence, the appellant was sentenced to a custodial term of over four years. He is therefore required by section 117C(6) to establish that there are very compelling circumstances, over and above those described in Exceptions 1 and 2 of section 117C(4), outweighing the public interest in his deportation.

183. Though he cannot directly rely upon Exceptions 1 and 2, he can rely upon them support his case under article 8: NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662; [2017] 1 WLR 207, at [29].

Exception 1

184. Exception 1 applies where (a) a foreign criminal has been lawfully resident in the United Kingdom for most of their life; (b) they are socially and culturally integrated in the United Kingdom; and (c) there would be very significant obstacles to their integration into the country to which they are proposed to be deported.

185. The appellant relies on his having resided lawfully in this country since May 2007, a period of over half of his life: Secretary of State for the Home Department v SC (Jamaica) [2017] EWCA Civ 1284; [2017] EWCA Civ 2112; [2018] 1 WLR 4004, at [53]. He meets this requirement. We are also satisfied that he is socially and culturally integrated in this country. Though time in prison can weaken integrative links, we do not double count his custodial punishment in this matter. We are satisfied that he meets (a) and (b) of Exception 1.

186. We find that the appellant does not satisfy the requirement of Exception 1 (c). He spent the first thirteen years of his life in Zimbabwe and attended school in that country. He is a young man with a history of employment in the construction industry, is in good health, and continues to speak Shona within his family. He will have accommodation and the support of family both inside and outside of Zimbabwe upon return, the former being capable of providing adequate aid and support to enable him expeditiously to become enough of an insider to form a meaningful private life in that country: Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152, at [14]. We conclude that there are no very serious obstacles to his integration on return to Zimbabwe.

Exception 2

187. Exception 2 applies where a foreign criminal has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of their deportation on the partner or child would be unduly harsh. A qualifying child is defined at section 117D(1) as a person under the age of eighteen and who is a British citizen or has lived in the United Kingdom for a continuous period of seven years or more.

188. We have found that though the appellant is not in a relationship with his partner, he continues to have a close relationship with his two children, as well as a non-familial relationship with his partner's other children, which is supported by regular phone calls and videocalls from prison. His two children have visited him in prison, though they are of a young age and do not understand the notion of imprisonment. We observe that the partner makes considerable efforts to ensure that the appellant remains a part of their children's lives. We find that the appellant has a genuine and subsisting relationship with his two children, and they are British citizens.

189. Consequent to careful consideration, and assessing the evidence as a whole, we do not find that the appellant's deportation would be unduly

harsh upon the children. In reaching this conclusion, we do not place any weight on the appellant's criminality as to do so would offend against the seventh principal in Zoumbas v Secretary of State for the Home Department [2013] UKSC 74; [2013] 1 WLR 3690, at [10], namely that a child cannot be blamed for matters for which they were not responsible.

190. This is a matter where only the "stay" scenario is under consideration; the respondent does not expect the partner and the appellant's two children to accompany him to Zimbabwe.

191. We observe the Supreme Court judgments in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53; [2018] 1 WLR 5273 and HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22; [2022] 1 WLR 3784. Unduly harsh does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb "unduly" raises an already elevated standard still higher. We observe that though it is a highly elevated threshold, it is nevertheless not as high as that set by the very compelling circumstances test in section 117C(6).

192. We consider in our assessment that the best interests of the children are that they spend time with their parents in this country on a basis agreed between the appellant and his partner. However, we note their respective ages and that for much of their lives to date their father has been in prison, an institution they do not understand. He has been absent from their home lives since March 2022, and at that time was not permanently living with them. They are used to communicating with their father predominantly by telephone, and the appellant has produced no evidence that modern means of communication will not be available to him in Zimbabwe. Their mother is their primary carer and has for several years ensured that they are loved and well cared for. We note that one of the appellant's children became withdrawn after their father's arrest. However, the appellant has been absent from the family home for approaching three years, and the evidence before us is that the child engages well and is happy to talk to their father by telephone and video call, as is the second child. In the circumstances, the appellant is unable to meet the threshold of unduly harsh for the purposes of Exception 2.

Very compelling circumstances

193. At its core, section 117C(6) and the requirement of very compelling circumstances necessitates a full assessment as to the proportionality of the appellant's deportation. We are required to undertake this

assessment against the background of all of our findings in respect of the Exceptions. We are not required mechanically to list our conclusion as to the Exceptions in order to show that we have done so.

194. When assessing very compelling circumstances under section 117C(6) we do not consider “compelling” literally; it simply means that circumstances are to be more compelling than Exceptions 1 and 2. It is necessary that there be something substantially more than the minimum that would be necessary to qualify for the relevant Exceptions. Consequently, it is a demanding test, requiring a wide-ranging exercise so as to ensure that Part 5A of the 2002 Act produces a result compatible with article 8. This requires a holistic evaluation of all relevant factors including those which might have already been assessed in the context of the Exceptions. When undertaking this evaluative exercise below, we confirm that we have applied the principles of relevant Strasbourg authorities.

195. The higher threshold, identified by Jackson LJ in NA (Pakistan), at [29], as “especially strong”, can be reached either because the circumstance in question is present to a degree "well beyond" what is sufficient to establish a "bare case", or because it is complemented by other relevant circumstances, or because of a combination of both: Yalcin v Secretary of State for the Home Department [2024] EWCA Civ 74; [2024] 1 WLR 1626, *per* Underhill LJ at [57].

196. We adopt the balancing sheet approach to the assessment of proportionality as encouraged by the Supreme Court in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60; [2016] 1 WLR 4799.

197. Our starting point must be the very great weight which must be given to Parliament’s intention that absent very compelling circumstances it is very much in the public interest to deport foreign criminals. This is placed on the respondent’s side of the balancing exercise. Underhill LJ confirmed in Zulfiqar v Secretary of State for the Home Department [2022] EWCA Civ 492; [2022] 1 WLR 3339, at [38]-[44], that case law has identified three reasons why deportation of foreign criminals who commit serious offences is in the public interest: (1) the risk of re-offending; (2) the need to deter foreign nationals from committing serious crimes; and (3) maintaining public confidence in the system. These are all factors which must be given considerable weight in any assessment of proportionality.

198. Underhill LJ said, at [44]:

> “44 ... the public takes the view that non-UK nationals who have committed serious offences should generally not be permitted

> to continue to live here (following their release from prison); and that it is in the interests of maintaining public confidence in the system, and thus in the public interest, that that view should be given effect to. It does not of course follow that foreign criminals should be deported in every case. It remains necessary to consider whether, on the facts of the particular case, the public interest (including that component of it) is outweighed by the interference with their private and family lives which deportation would entail, taking the approach prescribed by section 117C."

199. Though the Supreme Court observed in Hesham Ali, at [46], that the public interest "almost always" outweighs countervailing considerations of private or family life in a case involving a serious offender, we proceed on the basis that the public interest is not a monolith and so we must approach it flexibly, recognising that there will be cases where a person's circumstances outweigh the strong public interest in removal.

200. Additional factors weighing against the appellant and in favour of deportation:

    i. Having previously been convicted of a robbery offence involving violence and a weapon, the appellant was convicted in 2022 of a serious offence and received a sentence of imprisonment of four years or more; and

    ii. The more serious the offence committed, the greater is the public interest in deportation.

201. Observing section 117C(2), we note the nature and seriousness of the offences committed by the appellant identified by the sentencing remarks. The sentence is the touchstone of seriousness, except where it was clear that factors unrelated to the seriousness of the offence had influenced the sentence. An example of a factor unrelated to the seriousness of the offence is a guilty plea which has served to reduce a sentence. In respect of the 2012 sentence, the Judge adjusted the sentence to reflect that though the appellant was aged eighteen, his level of maturity was more akin to a youth than an adult. The credit of fifteen percent is clear in the 2022 sentencing, and we take the guilty plea into account when assessing seriousness: Gadinala v Secretary of State for the Home Department [2024] EWCA Civ 1410.

202. We acknowledge that the appellant was not long an adult at the time of the 2012 robbery, being aged eighteen years and four months old at the time of the offence, and his sentence was consequently adjusted. HHJ Sheridan identified the starting point for an adult as a four-year sentence, with a range of two to seven years. For a youth, the starting

point was three years, with a range of one to six years. The judge gave some credit for the guilty plea, but on the face of the judgment it was significantly lessened consequent to the "very late plea". We note that this offence was over a decade ago, and whilst we do not diminish its seriousness and the consequences for the victim, we agree with the representatives whose focus was primarily directed to the latest conviction. The appellant was aged twenty-eight at the time of the 2022 wounding and consequently we are not required to consider the impact of any reduction for youth.

203. Although the 2002 Act does not expressly require consideration of the circumstances of the offending it is necessary to do so in order to consider whether there are very compelling circumstances outside the exception which make it disproportionate to deport. The sentencing remarks for both the robbery and wounding convictions provide a clear understanding of the offences, and the appellant's actions. In respect of the robbery, HHJ Sheridan concluded that the carrying of a knife made it a very serious robbery, but it was not pre-planned. A vulnerable victim was targeted. As to the wounding, we observe that the knife punctured the victim's neck millimeters from cutting a major blood vessel connected to the heart. The victim was left with permanent scarring. HHJ Sheridan sentenced the wounding conviction on the basis that the appellant intended to seriously injure the victim.

204. We consider it beyond argument that street robbery with a knife, and wounding with intent to cause grievous bodily harm are very serious offences: the use of violence and a weapon, and in the wounding the additional biting of the victim's face and the chasing of him down a street with knife in hand. The sentencing for both offences indicated their seriousness, and the circumstances and sentence for the wounding are such as to fall within section 117C(2).

205. We are mindful of the guidance of the Supreme Court in HA (Iraq), at [60]-[71], and the need to take account of factors beyond the length of sentence where that information is available. Though we consider the nature and circumstances of the offences, we are alert to avoid double counting of factors which could have been taken into account in arriving at the sentence.

206. The following factors weigh in favour of the appellant:

    i. He arrived in the United Kingdom in 2007 at the age of thirteen and has resided here lawfully for approaching eighteen years;

    ii. In that time, he has not returned to Zimbabwe;

    iii. His parents and siblings reside in the United Kingdom;

iv. He is socially and culturally integrated in the United Kingdom;

v. He has a genuine and subsisting parental relationship with his British citizen children, and his deportation to Zimbabwe will have a detrimental effect on the parent/child relationship;

vi. The best interests of the children is that the appellant resides in this country, and he regularly visits them/ they stay with him;

vii. He has expressed some remorse during the course of proceedings, and is engaging with prison authorities;

viii. He speaks English, has achieved qualifications and has work experience in the United Kingdom;

ix. He is undertaking rehabilitative courses in prison;

x. He satisfies some of the requirements of Exception 1; and

xi. He satisfies some of the requirements of Exception 2.

207. In respect of ix, we observe our conclusion as to the appellant's submission as to rehabilitation above. While we can give some weight to evidence of positive rehabilitation which reduces the risk of re-offending, such evidence would "rarely" be "great". We are satisfied that the limited evidence before us provides little if any true indication as to positive rehabilitation consequent to our concerns as to the appellant's distorted thinking towards violence, his controlling approach to women and his history of seeking to manipulate professionals. As a factor it is of very limited weight on the facts of this matter.

208. As to x and xi, we have considered whether the Exception-related requirements satisfied by the appellant will when added together result in "something more" to meet the higher threshold, with reference to Underhill LJ observation in Yalcin, at [57]. We have placed the length of lawful leave in the country into the balancing exercise, as well as his social and cultural integration in the United Kingdom and the genuine and subsisting relationship he has with his children.

209. For the reasons above, we do not accept Mr Khubber's submission that the appellant has a lack of meaningful ties with Zimbabwe. He resided there until the age of thirteen and he has extended family who we have found will support him, to some extent, on return. He has sufficient skills and qualifications in the construction industry, and speaks Shona, so can be expected to find employment on return. His

family, including his father who is a British citizen, can visit him on holiday. At other times, he is able to remain in contact with them by modern means of communication.

210. Given the nature of the public interest in its multiple facets, we are satisfied that on the particular facts of this case, that although the appellant has resided lawfully in this country for many years and there will be an adverse effect upon the children and other members of his family residing in the United Kingdom in not being able to physically spend time with him whenever they wish - and we recognise the family bonds that exist between the appellant and his children - the seriousness of his offending is such that the harm caused is proportionate to the public interest. Accordingly, we are not satisfied that on the particular facts of this case the public interest in deportation is outweighed by very compelling circumstances such that deportation would not be a disproportionate interference with article 8 rights. We dismiss the appellant's article 8 appeal.

Notice of Decision

211. The decision of the First-tier Tribunal dated 18 October 2017 involved the making of an error on a point of law and was set aside on 21 June 2021 pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

212. We remake the decision. The appellant's appeal is dismissed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 January 2025