Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04673/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 June 2017	**On 13 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

[A T]
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Yeo of Counsel, instructed by South West London Law Centre
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This case comes before me again to remake the decision in the appeal following the 'error of law' hearing on 29 March 2017, and pursuant to Directions given at the conclusion of that hearing. I have appended the 'error of law' decision and the

Directions to this Decision for ease of reference: much of the background to this case is set out therein.

2. It may be seen from the foregoing that the Appellant - a minor born in May 2000 and a citizen of Ethiopia - arrived in the United Kingdom in June 2015 and claimed asylum shortly thereafter. His protection claim was based on his father's involvement with the Oromo Liberation Front ('OLF'), and his own involvement with the OLF. He claimed that he had been questioned by the authorities about his father's activities, and have also been briefly detained and questioned following a demonstration at his school in support of the OLF. He claimed that the trigger for leaving Ethiopia was his father's arrest in April 2014.

3. The Appellant's protection claim was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 20 April 2016. The Respondent did not dispute the Appellant's date of birth and accepted both his nationality and his ethnicity as an Oromo. The Respondent did not accept the Appellant's account of the events in Ethiopia which the Appellant claimed put him at risk if he were to be returned. However the Respondent granted the Appellant a period of discretionary leave as an unaccompanied minor.

4. In the RFRL the Respondent referred to, and offered reasons for rejecting, each of the core elements of the Appellant's claim under the following headings "*Father's Membership of OLF*", "*Harassment and Questioning from the Ethiopian Authorities*" and "*Attendance of Demonstration and Subsequent interest from Authorities*". The Respondent did not invoke section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in the RFRL notwithstanding that the Appellant's account of his journey to the UK involved the transit through a number of European countries, in particular Italy and France. Nor did the Respondent raise any issue or question in respect of the route by which the Appellant had travelled from Ethiopia to the United Kingdom, or otherwise in respect of the circumstances of his flight from his country of nationality to the place in which he ultimately sought asylum.

5. The Appellant elected not to give oral evidence before the First-tier Tribunal. It is said that this was in keeping with guidance on child and vulnerable witnesses – and indeed the Appellant has again elected not to give oral evidence in the remaking of the decision in the appeal.

6. First-tier Tribunal Judge Maxwell dismissed the Appellant's appeal for reasons given in his Decision. I set aside the decision of the First-tier Tribunal the reasons given at the conclusion of the 'error of law' hearing on 29 March 2017 (and subsequently promulgated on 19 April 2017). Thus the matter comes back before me to remake the decision in the appeal.

Response to Directions

7. Because of the nature of some of the contentious issues that informed the consideration of error of law, and in anticipation of the possibility that such matters might require further exploration in remaking the decision, I issued Directions (which are reproduced in the Appendix below). In particular: in the context of Judge Maxwell - seemingly unilaterally - having considered issues in respect of the Appellant's arrangements for travelling to the UK, the Respondent was directed to articulate in writing if any such issue was now to be relied upon; and both parties were directed to file and serve any further evidence they wished to rely upon, with written submissions, in relation to the issue of 'inherited suspicion' – see paragraphs 28-37 of the 'error of law decision (reproduced in the Appendix below).

8. The Respondent has not sought to raise any new issues in respect of the Appellant's credibility by reference to the arrangements for his journey to the UK, or otherwise. Nor has the Respondent filed any further country information or other evidence. The Respondent has, however, provided a written submission dated 2 June 2017.

9. The Appellant has also produced a written submission by way of a Supplementary Skeleton Argument, which it is said should be read with the original skeleton argument dated 3 October 2016 that was before the First-tier Tribunal.

10. The Appellant has also filed further evidence in the form of a report dated 9 May 2017 prepared by Dr S Bekalo. Mr Yeo acknowledged that in light of the Respondent's concessions in respect of the country situation and risk set out in the written submission of 2 June 2017 (see further below), this report was of limited additional value in respect of risk on return. However, he submitted that it was of value in respect of the plausibility and credibility of the Appellant's account.

11. There has also been filed on behalf of the Appellant a letter dated 8 June 2017 from a counsellor, updating an earlier letter of 22 September 2016 (Appellant's bundle before the First-tier Tribunal, pages 12-19) in respect of the Appellant's mental condition which is said to have deteriorated.

Hearing

12. The Appellant was present at the hearing, in the company of his foster carer (the 'responsible adult'), and a social worker from Lambeth social services.

13. The Appellant was not, however, called to give evidence. This was consistent with the position adopted before the First-tier Tribunal and intimated at the error of law hearing as being the likely position on remaking the decision in the appeal, subject to any new issues being raised by the Respondent. Mr Yeo emphasised that it was ultimately the Appellant's decision not to give evidence, albeit taken pursuant to advice. Mr Yeo noted that the Respondent had not advanced any further issues subsequent to the Directions, and stated that the Appellant had said what he wished to say about the Respondent's decision by way of his witness statement. My attention was also directed to the evidence of the Appellant's counsellor (see further below). I was also directed to the guidelines contained in the UNHCR Handbook (see in particular paragraph 213–219, helpfully reproduced at paragraph 6 of the Appellant's Supplementary Skeleton Argument), and the UNHCR Guidelines on International Protection, No. 8, 'Child Asylum Claims etc', and in particular those passages set out at paragraphs 7–12 of the Supplementary Skeleton Argument.

14. It was emphasised that the Appellant was still a minor at the date of the hearing, and more particularly that he was only 13 years of age at the date of the key events upon which his claim is based. As such, it was submitted, his evidence required to be approached on the basis that his understanding of events would inevitably be limited because of his age, and also because as a child he was reliant on filtered or limited information provided to him by adults.

15. In this context I have also noted the Joint Presidential Guidance Note No 2 of 2010, 'Child, vulnerable adult and sensitive appellant guidance', and the Practice Direction of 2008, which are both referred to in the following passages from the recent decision in AM (Afghanistan) [2017] EWCA Civ 1123:

"*30. To assist parties and tribunals a Practice Direction 'First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses', was issued by the Senior President, Sir Robert Carnwath, with the agreement of the Lord Chancellor on 30 October 2008. In addition, joint Presidential Guidance Note No 2 of 2010 was issued by the then President of UTIAC, Blake J and the acting President of the FtT (IAC), Judge Arfon-Jones. The directions and guidance contained in them are to be followed and for the convenience of practitioners, they are annexed to this judgment. Failure to follow them will most likely be a material error of law. They are to be found in the Annex to this judgment.*

31. The PD and the Guidance Note [Guidance] provide detailed guidance on the approach to be adopted by the tribunal to an incapacitated or vulnerable person. I agree with the Lord Chancellor's submission that there are five key features:

a. the early identification of issues of vulnerability is encouraged, if at all possible, before any substantive hearing through the use of a CMRH or pre-hearing review (Guidance [4] and [5]);

b. a person who is incapacitated or vulnerable will only need to attend as a witness to give oral evidence where the tribunal determines that "the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so" (PD [2] and Guidance [8] and [9]);

c. where an incapacitated or vulnerable person does give oral evidence, detailed provision is to be made to ensure their welfare is protected before and during the hearing (PD [6] and [7] and Guidance [10]);

d. it is necessary to give special consideration to all of the personal circumstances of an incapacitated or vulnerable person in assessing their evidence (Guidance [10.2] to [15]); and

e. relevant additional sources of guidance are identified in the Guidance including from international bodies (Guidance Annex A [22] to [27])"

16. In respect of the Appellant's election not to give evidence, Mr Yeo in substance places particular reliance upon the consideration set out at paragraph 31b above. With reference to letters from the Appellant's counsellor (see further below), it is said that giving oral evidence could be stressful and harmful to the Appellant, but would likely be of little real additional benefit to progressing his case (given the manner in which the Tribunal is obliged to approach the evidence of a minor in any event): accordingly on balance the decision not to give evidence has been reached.

17. In the circumstances the appeal proceeded by way of submissions only. Each representative amplified the written submissions. I have kept a note of the oral submissions in the record of proceedings.

18. In reaching my decision I have had regard to all that was said at the hearing, and all of the written materials. Both parties have filed bundles before the First-tier Tribunal which have also been used before the Upper Tribunal; further written submissions and evidence have been filed before the Upper Tribunal as identified above. All documents are a matter of record on file, and are known to the parties, and accordingly I do not list them further here

Consideration

19. I am grateful to the assistance the parties have afforded the Tribunal by way of both written and oral submissions.

20. During preliminary discussions, it was agreed between the parties that the core issue in the appeal was the credibility of the Appellant's account of events in Ethiopia. Mr Tarlow acknowledged that if I accepted that account the Respondent conceded that the Appellant would be at risk on return such that he was entitled to the protection

of the Refugee Convention. (This was essentially the position set out in the Respondent's written submission.) Mr Yeo conceded that if I did not accept the Appellant's account the appeal would fail - the Appellant was not pursuing Article 8 in the alternative because of the grant of discretionary leave to remain.

21. The key elements of the Appellant's case are these:

(i) The Appellant's father was involved with the OLF. The Appellant is uncertain as to whether he was a member or a supporter, and does not know the exact nature of his father's involvement.

(ii) On the instruction of his father the Appellant would deliver communications to other persons. (These communications have variously been described as leaflets or pamphlets. The Appellant has been challenge as to his apparent lack of knowledge of the contents of these documents, but has responded by saying that they were in sealed envelopes.)

(iii) Meetings were regularly held on Thursdays at the Appellant's home, hosted by his father, and the Appellant saw the people to whom he had delivered the communications attending. The Appellant was not allowed to be present at the meetings, but was permitted into the room to serve coffee to the participants. He was able to ascertain from this that money was collected at the meetings, which his mother in due course told him was money collected for the OLF.

(iv) At school the Appellant belonged to an Oromo cultural and history club, and would discuss issues in relation to the Oromo with other students.

(v) At school, from about grade 4, the Appellant was regularly interrogated by the authorities as to his father's activities. The questioning was conducted by men from outside the school who claimed to be government officials; sometimes the director of the school would be present. The Appellant's brother was also questioned in this way. The questions were about the father's activities, and also as to whether he possessed firearms. The Appellant did not reveal any information. Eventually, the Appellant was dismissed from the school; thereafter he remained at home.

(vi) Prior to his dismissal, when he was in grade 5, the Appellant participated in a demonstration at school organised by Oromo students. Afterwards, he was held for about two hours at the school and questioned – as were other students. He was released after he gave the names of the organisers. (I pause to note that in context it appears that the Appellant is not suggesting that he might be at continuing risk by reason of his participation in this demonstration. Indeed, after consideration of all of the evidence hearing, I have ultimately reached the conclusion that this incident has been referred to in part because it is an aspect of the Appellant's history, and in part because it is illustrative of the generally adverse interest taken by the authorities in Oromo activism. However, the Appellant has not suggested that he had any

continuing difficulties whilst he remained in Ethiopia by reason of this incident *simpliciter*.)

(vii) In April 2014 the Appellant's father was arrested at the family home and taken away.

(viii) The following day the Appellant's uncle came to the family home and there was discussion between him and the Appellant's mother about relocating the family. The Appellant did not wish to relocate; he did not think he would be safe anywhere in Ethiopia; he had been dismissed from school and feared he might be arrested like his father. The Appellant decided to leave Ethiopian, and in the general disquiet and 'rushing' around he left without his mother and uncle noticing. (The Appellant has described how he then crossed the border into Saddam, and in due course made his way to Libya before setting out to see where he was picked up by Italian coastguards, and thereafter having passed through Italy and France before coming to the UK. As noted above – and notwithstanding exploration of this issue in the decision of the First-tier Tribunal Judge – no adverse point in this regard has been raised by the Respondent.)

22. Additionally it is said that the Appellant has been involved in Oromo protests in London. He has produced photographic evidence in support, and as such I do not understand his attendance to be disputed. It is argued on his behalf that such activities are broadly consistent with the notion that he had OLF sympathies whilst in Ethiopia. Whilst I acknowledge that involvement in such activities is indeed consistent with such a notion, it is not inevitably so: I consider such activities in themselves to be of only the most marginal significance as an indicator of the credibility of the narrative of events in Ethiopia.

23. However, I do note that in the letter from the Appellant's counsellor dated 22 September 2016 (see further below) reference is made to the Appellant's anger about how Oromo people are treated, and concerns expressed about his "*current youthful ideation*" such that "*he would want to follow in his father's steps to fight for justice for a Oromo people*"; concerns are expressed as to the risks that might arise in the Appellant's "*innocence and eagerness to help*" without balanced and wise guidance from adults. In my judgement these passages do indeed indicate a significant political ideation on the part of the Appellant such that it is unlikely that he attended demonstrations simply to be able to provide photographic evidence in support of an asylum claim. The apparent depth of his political ideation, and his anger over these issues, does, I find, lend a degree of credence to his narrative account of having personally experienced problems on account of his ethnic identity and associated political views. In this context I also accept Mr Yeo's submission that the Appellant displayed significant knowledge of the OLF during the course of his asylum interview consistent with his claimed sympathy and support, and consistent with his

diaspora activity – though it is now said that such activity has reduced because of the Appellant's mental outlook.

24. The Respondent does not accept the Appellant's account. Reasons for this are set out in the RFRL, and are essentially repeated in the written submissions before the Upper Tribunal.

25. The Respondent's written submission (prepared by Mr Melvin who appeared at the error of law hearing, and relied upon by Mr Tarlow) rehearses the background to the appeal and identifies the Respondent's key contentions in the case: it is not accepted that the Appellant's father was a supporter or member of the OLF, or that the Appellant was involved consequentially; it is not accepted that the Appellant was harassed and questioned by the Ethiopian authorities; it is not accepted that he attended a demonstration in support of the OLF and was arrested. Submissions in support of this position in respect of the credibility of the Appellant's account are set out under a number of bullet points under paragraph 20 of the written submission, and further submissions in respect of risk are set out at paragraph 26 *et seq*..

26. Extracts from the most recent Country of Information Guidance Notes are reproduced in the Respondent's written submissions: 'Policy summary (Oromos and the Oromo protests)' (paragraphs 3.1.1-3.1.7 of 'Ethiopia: Oromos and the Oromo Protests', v.1.0, December 2016); and 'Policy summary (Opposition to the government)' (paragraphs 3.1.1-3.1.8 of 'Ethiopian: Opposition to the government', v.1.0, December 2016). In light of these policy documents, the Respondent acknowledges that a person who has close family links with a person connected with the OLF may also themselves be at risk of persecution, and that accordingly the real issue in the appeal is the Appellant's credibility. The Respondent concedes "*If the Upper Tribunal finds that this appellant's father is a member of the OLF and has been arrested and that the appellant's links are sufficient to arouse the suspicion of the authorities his appeal will succeed*" (paragraph 31). However it is argued that the Tribunal should conclude that the Appellant's claim "*is incredible, implausible and full of inconsistencies*" to an extent that the appeal should fail (paragraph 32).

27. At the risk of being overly reductive, it seems to me that the Respondent's challenge to the Appellant's credibility – which is set out in more detail in the RFRL and in the written submissions – is essentially based on the following matters: the Appellant was unable to provide details of the nature of his father's involvement with the OLF; the Appellant's inability to provide details of the attendees of the regular meetings hosted by his father was inconsistent with his proximity to such meetings and his involvement as a distributor of communications to the attendees; similarly the Appellant's inability to give details as to the contents of the letters or pamphlets delivered was not credible in the circumstances; it was not considered plausible that

the Appellant would have been interrogated about his father's activities given that he was just a child; it was not plausible or credible that the Appellant would have been questioned about his father over a period of approximately two years without any apparent raid or arrest of his father until April 2014; the Appellant had not mentioned the demonstration and subsequent questioning in his initial witness statement (dated 23 November 2015), but had only raised it for the first time in his asylum interview – (for completeness I pause to note that in contrast to the assertion at paragraph 39 of the RFRL, the Appellant did mention participating in a demonstration at school, albeit he did not refer to the specific interrogation thereafter); it is implausible that the Appellant would have gone against the wishes of his family who appeared to be planning to relocate, and left home on his own and unsupported. It is also argued that the lack of interest in the Appellant is evident even on his own case because had there been any adverse interest in him the authorities had the opportunity to arrest him at the same time as they arrested his father.

28 . The Appellant seeks to meet these matters by way of his witness statement, the Skeleton Argument and Supplementary Skeleton Argument, the supporting evidence from his counsellor, and the expert opinion of Dr. Bekalo.

29. I note that in the report of Dr Bekalo dated 9 May 2017, the general observation is made that the Appellant's account is "*consistent with what goes on in the country*", and as such is "*plausible*" (paragraph 1.2). Although a careful caveat to this is offered in respect of the circumstances of the Appellant's departure (paragraph 3.1), this itself is considered in the context of the Dr Bekalo's own knowledge and experience of minors who appear to attempt migration with little or no support from agents or family (paragraph 3.2). The limited nature of the Appellant's knowledge of his father's connections and involvement with the OLF are considered consistent with local socio-cultural norms and the traditional patriarchal Oromo culture in which young children would not be fully informed about, or involved in, serious male or adult affairs – particularly in rural areas such as the Appellant's home region (paragraph 4.1–4.2).

30. I have noted and taken into account the letter of Mr Akiko Kobayashi dated 22 September 2016, and his supplementary letter dated 8 June 2017. I have done so both in the context of the potential corroborative value of such evidence, and in the context of the Appellant's decision not to give oral evidence.

31. Mr Kobayashi is a counsellor with 'Compass, Off the Record', to whom the Appellant was referred by his college tutor at the end of 2015. As of 22 September 2016 Mr Kobayashi had seen the Appellant for 21 sessions of counselling – starting off initially with an Oromo interpreter, but later as the Appellant's language skills improved,

conducted in English. In the circumstances I accept that Mr Kobayashi has considerable experience of the Appellant and is well placed to offer the information contained in his letters; this is not a case of a report based on one or two sessions arranged with an appeal hearing in contemplation, but arises because of the perceived need for counselling identified within the school environment – a need seemingly reinforced by the Appellant's presentation in the course of the counselling sessions themselves.

32. In the letter of 22 September 2016 Mr Kobayashi states that the usual quota of 6 sessions has been extended indefinitely for the Appellant "*due to his current fragile and vulnerable emotional and psychological state*", and because it was considered he was benefitting from the counselling.

33. In so far as the counselling sessions have explored the Appellant's past, it appears that he has related matters essentially consistent with the details of his asylum claim. It is opined that his "*conditions fit with the symptoms of Post-Traumatic Stress Disorder (PTSD) and severe depression*". It is said that in trying to communicate past events he seeks to report "*past events in as much detail as possible, but not how he felt then or feels now*"; it is suggested that this might be because of emotional numbness (a symptom of PTSD), or as a defence mechanism to avoid emotional and psychological pain, or because his culture forbids a male to show emotion.

34. In the supplementary letter dated 8 June 2017 it is said that the Appellant has stopped engaging in activities that he had previously enjoyed; it is opined that he is deeply depressed, find it difficult to talk about his mother, and "*feels confused and is tormented*" in thinking about his sudden departure from Ethiopia and pondering the alternatives – "*He always end up thinking he had no other choice, but this quickly becomes doubtful if he did the right thing*".

35. I note the following passage in the letter of 22 September 2016:

"*He talked about how he felt confused when the Home Office officer asked him many questions. The questions jumped from subject to subject, and quickly moved to the next question, without a chance for [the Appellant] to give details. I wondered aloud in our counselling if he felt scared being questioned by the officer, remembering how he had been interrogated by officers in Ethiopia, but he said he was not scared as the Home Office officer was not angry with him and he was not shouted at. I also asked him if he felt he should not say some aspects of his experiences due to being told by his father not to reveal certain things, but he denied this, saying his solicitor had explained to him before that he should tell the officer everything openly. He insisted he was just confused, and if he was given chance to explain what he had said, he could have made it clearer and perhaps correct some errors he had made.*"

I am impressed by this passage. The Appellant was 'offered' possible explanations for any deficiencies in his account at interview, but did not take them insisting essentially that it was no more than confusion because of the number of questions and the movement from subject to subject. The Appellant's reasoned 'rejection' of the offered explanations, and his maintenance of his own explanation has, in my judgement, a credence that reinforces his overall credibility as a young interviewee doing his best to advance a narrative account but perhaps falling short in some respects. I factor this in to my overall evaluation of the Appellant's claim.

36. I also factor in as a favourable feature what is, in my judgement, the consistency of the Appellant's narrative during counselling with the substance of his claim, and the consistency of his mental health presentation with the events recounted. In this latter regard I acknowledge that the Appellant has also related traumatic events during his journey to the UK. I also acknowledge that the uncertainty of his situation in the UK – notwithstanding the grant of discretionary leave to remain – appears to have been a matter of concern for him. As such, I acknowledge that there may be other factors that account for his vulnerability and mental health presentation; however, on balance, I do not consider that I can rule out from consideration the very real likelihood that much of his present mental health difficulties are rooted in the trauma of the events that the Appellant claims preceded his departure from Ethiopia.

37. Looking at all matters in the round I accept the Appellant's submission that much of the Respondent's case is premised on an expectation of knowledge, and that the Appellant has adequately explained why he did not have such a knowledge; accordingly the Respondent's reasoning in this regard is without adequate foundation. On balance I accept that the Appellant has attempted to recount events from actual experience in respect of his father's involvement with the OLF, albeit that there are substantial gaps in the Appellant's knowledge that are entirely understandable in the context of him having been a child at the relevant time, bearing in mind both his minority and the sociocultural patriarchal environment in which it is unlikely that he would have been informed of the details of his father's political activities.

38. I also accept the criticisms made on behalf of the Appellant of those aspects of the Respondent's reasoning that are based on an expectation of how the authorities in Ethiopia might behave. The Respondent submitted that it was implausible that the authorities in Ethiopia would not have arrested the Appellant's father at some earlier point bearing in mind that the Appellant himself had been questioned about his father from time to time over a period of approximately two years. I accept that there is no particular reason to expect the authorities in Ethiopia to have acted against the Appellant's father at any particular point in time: how they conduct their security operations is essentially a matter for them, and in my judgement it is entirely plausible that this might involve a significant passage of time pending investigation

and/or surveillance prior to an arrest - investigation and surveillance may not only lead to evidence against the individual, but may result in the collection of useful information in respect of a wider network. In the absence of anything more specific as to the methods of the authorities in Ethiopia I am not prepared to conclude that the passage of time in the Appellant's account between the initial questioning of the Appellant and his father's arrest is a matter damaging to the Appellant's credibility. Similarly, in the absence of anything more specific as to methods, I am not prepared to conclude that the authorities would not have questioned a schoolboy.

39. In this context, it is also to be noted – as identified at paragraph 14 of the Appellant's Supplementary Skeleton Argument with reference to an Amnesty International report from October 2014 - that there had been a wave of Oromo protests followed by large security sweeps between April and June 2014. It is reasonable to assume that some of those arrested might have already been the subject of interest on the part of the authorities without having previously been arrested; in other words it is plausible that protests triggered round-ups which targeted people already the subject of interest. In any event, the fact of increased arrests by the authorities at this time is consistent with the Appellant's account of his father having been arrested in April 2014.

40. Further, my attention was directed to the Human Rights Watch report of 15 June 2016, in which reference is made to protesters including secondary and primary school students, and the arrests of schoolchildren. Whilst this report is in respect of events that post-date the events at the core of the Appellant's account, I accept that it is indicative of the caution required in assuming that the methods of the authorities of oppressive regimes would not resort to the questioning of children.

41. Having carefully considered all of the evidence I do not consider that there is anything of adverse substance in the piecemeal emergence of the Appellant's claim to have been held for two hours and questioned after involvement in a demonstration at school. The Appellant did refer to such a demonstration in his initial witness statement; he has also consistently referred to being questioned at school from time to time. The significance of this demonstration and his questioning thereafter is not at the core of his claim. It did not appear on his own evidence that the Appellant was singled out for questioning on this occasion, but that many of the participants at the school were treated in the same way. I am not persuaded that there is anything sinister in the fact that the Appellant this particular incident of interrogation was omitted from the initial witness statement.

42. In my judgement the Respondent has not sustainably identified anything that is inherently implausible, or significantly internally inconsistent, or significantly

inconsistent with the country situation, in respect of any aspect of the Appellant's narrative.

43. It seems to me that the most surprising element of the Appellant's account is not in respect of the claimed events in Ethiopia prompting is departure, but is rather in respect of his decision as a child not yet 14 to run away on his own. I acknowledge that this circumstance stretches the bounds of credulity – however it seems to me that it is not so unlikely that it could be characterised as inherently implausible, or that it is otherwise such as to negate the consistency and plausibility of all other aspects of his account.

44. I have given consideration to the circumstance of the Appellant electing not to give oral evidence in the appeal. I take into account what has been said about his mental health, and I accept on balance that he is a vulnerable individual. I also note that ultimately this case turns on the credibility or otherwise of an account of events experienced over a period of time, and culminating in the event of April 2014, all prior to the Appellant's 14th birthday. I consider that the points made on his behalf in respect of the Appellant's understanding and perception of events as a minor, and the likelihood that this would be incomplete in respect of the activities of his father, are well made. Bearing in mind in particular those aspects of the Respondent's refusal that are based on the plausibility of the lack of detail, it is difficult to see what further the Appellant might say about these matters in the context of oral evidence that he has not already related. In so far as the Respondent has sought to challenge other aspects of his narrative, it seems to me that these matters have been aired and addressed by way of the written materials before the Tribunal. Again it is difficult to see what further might emerge by way of oral evidence. I accept that the election not to give evidence was made pursuant to striking a balance between the potential value of oral evidence and the potential stress caused by the experience of giving oral evidence, and was not motivated by a desire to be evasive, or not to be held to scrutiny. In all the circumstances I do not accord any adverse weight to the fact that the Appellant did not give oral evidence in support of his appeal.

45. Looking at all matters in the round; having regard to the general plausibility of the Appellant's account when measured against the country situation – which is significantly, though not determinatively favourable; having regard to the consistency of his narrative account across his initial witness statement, his interview, and his appeal statement – and in respect of the matters discussed during counselling – again significantly but not determinatively favourable; having regard to his knowledge of, and commitment to the cause of the Oromo people in Ethiopia; and having rejected the Respondent's core reasoning in support of an adverse assessment of the Appellant's narrative account, I have reached the conclusion that the Appellant is to be considered a credible witness, and I accept his account in all

material respects. For the avoidance of any doubt, in my judgement he proves his case far beyond the lower standard required in an asylum appeal.

46. In circumstances where the Respondent concedes that the Appellant would be at risk if his account is credible, it is unnecessary for me to rehearse the country information that has been filed in the appeal. Suffice to say I have concluded that the Appellant: is the family member of a person who has been arrested in relation to his support and/or membership of the OLF; is reasonably likely to be perceived as having links to a supporter of the OLF by reason of such family membership; is also himself a person who has in the past attracted the attention of the authorities by reason of his family connection to the OLF; is now a champion of the OLF cause and cannot, for the purposes of evaluating his entitlement to protection, be expected to deny his political opinions if questioned upon return to Ethiopia. As such, I am satisfied that the Appellant falls within the risk categories identified in the now somewhat aged country guidance case of **MB (OLF and MTA, risk) Ethiopia CG [2007] UKAIT 00030**, and more particularly identified in the Respondent's recent policy summaries referred to above and quoted in the Respondent's written submissions. Moreover, in light of the Respondent's concession, it is unnecessary for me to consider further for the purposes of this appeal the issues in relation to 'inherited suspicion' explored in the body of the 'error of law' decision.

47. The Appellant is entitled to the international surrogate protection of the Refugee Convention as having a well-founded fear of persecution in his country of nationality by reason of actual and/or perceived political opinion combined with ethnic origin. The Appellant's removal in consequence of the Respondent's decision would also reasonably likely be unlawful under section 6 of the Human Rights Act 1998 by reason of the UK's obligations pursuant to Article 3 of the ECHR.

Notice of Decision

48. The appeal is allowed.

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

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

Signed: Date: 12 November 2017

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT:

FEE AWARD

It is unclear to me whether or not a fee has been paid in this appeal, or whether the Appellant was fee exempt. In the event that a fee has been paid I am satisfied that the Appellant should, in all the circumstances, have the benefit of a full fee award.

Signed: Date: 12 November 2017

Deputy Upper Tribunal Judge I A Lewis
(qua a Judge of the First-tier Tribunal)

APPENDIX

'ERROR OF LAW' DECISION & DIRECTIONS
(pursuant to the hearing on 29 March 2017)

1. This is an appeal against a decision of First-tier Tribunal Judge Maxwell promulgated on 27 October 2016.

2. The Appellant is a citizen of Ethiopia and a minor born in May 2000. His personal details are a matter of record on file and I do not amplify upon them here in keeping with the anonymity order that has been made herein.

3. The trigger for the Appellant leaving his home country was his father's arrest in April 2014 – an event that occurred, therefore, shortly before the Appellant's 14th birthday. Although the Appellant left Ethiopia soon thereafter, it was not until over a year later that he arrived in the United Kingdom in June 2015. Shortly after arrival he claimed asylum and in due course was interviewed on 3 February 2016.

4. The Respondent refused the Appellant's protection claim for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 20 April 2016. However, although his claim for asylum under the Refugee Convention was refused, the Respondent granted the Appellant a period of discretionary leave to remain, which I understand is due to expire on 3 November 2017.

5. The RFRL, which is a matter of record on file, indicates that the Respondent did not apparently dispute the Appellant's date of birth and accepted both his nationality and his ethnicity as an Oromo. However, the Respondent did not accept the Appellant's account of the events in Ethiopia which the Appellant claimed put him at risk if he were to be returned.

6. The Respondent has helpfully and clearly under three separate headings in the RFRL identified the core aspects of the Appellant's claim, and articulated reasons thereunder for not accepting the Appellant's narrative. Those headings are "*Father's Membership of OLF*", "*Harassment and Questioning from the Ethiopian Authorities*" and "*Attendance of Demonstration and Subsequent interest from Authorities*".

7. It is to be noted that the Respondent did not make any reference to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in the RFRL notwithstanding that the Appellant's account of his journey to the UK involved the transit through a number of European countries, in particular Italy and France. Nor did the Respondent raise any issue or question in respect of the route by which the Appellant had travelled from Ethiopia to the United Kingdom, or otherwise in respect of the circumstances of his flight from his country of nationality to the place in which he ultimately sought asylum.

8. Although the Appellant was granted discretionary leave to remain he nonetheless brought an appeal to the IAC against those aspects of the Respondent's decision that refused him 'protection'. The Appellant's appeal was dismissed by the First-tier Tribunal Judge for reasons set out in his Decision. The Appellant made an application for permission to appeal to the Upper Tribunal which was in the first instance refused by First-tier Tribunal Judge Chohan on 6 December 2016, but subsequently granted by Upper Tribunal Judge Canavan on 13 February 2017.

9. The Appellant essentially raises two bases of challenge to the decision of the First-tier Tribunal. He argues that the First-tier Tribunal Judge's assessment of the credibility of his account was flawed. He also argues that the First-tier Tribunal Judge's assessment of the objective risk upon return to Ethiopia was flawed. I address these two grounds in turn.

10. The Appellant elected not to give oral evidence before the First-tier Tribunal. Whilst in many cases this might be considered unusual, Mr Yeo suggested in the course of submissions before me, this stance was broadly in spirit with the Joint Presidential Guidance Note No 2 of 2010, 'Child, vulnerable adult and sensitive appellant guidance', to the effect that unless it was necessary to ensure a fair hearing it was not appropriate for such people to be required to give evidence.

11. There was some discussion before the First-tier Tribunal Judge in this regard prior to the substance of the hearing and the entertainment of submissions from the representatives: see Decision at paragraph 12. There has been some focus on this in the renewed grounds of appeal to the Upper Tribunal, bearing in mind that comments were made by Judge Chohan in respect of what was described as the Appellant's representative's decision that the Appellant not give evidence. As the renewed grounds point out, this was not a decision for the representative but the representative acted pursuant to instructions (albeit those instructions may have been informed by advice from the representative).

12. Be that as it may, ultimately those matters are marginal to the substance of issues before me. What is of note is that the Appellant did not give oral evidence before the First-tier Tribunal.

13. Somewhat confusingly in this regard, the First-tier Tribunal Judge notes at paragraph 31 that this meant that the Appellant had "*declined to explain a number of concerns that would have been put to him and therefore he does not have the benefit of any explanation to assuage such concerns*". I characterise this as 'somewhat confusing' for two reasons: it is not immediately apparent what the concerns might have been that could have been put to the Appellant in circumstances where any concerns harboured by the Respondent were set out in detail and with cogency in the RFRL and addressed in the Appellant's witness statement; further, later on in the decision the Judge indicates that the absence of oral evidence from the Appellant was not a matter that he considered adverse to the case.

14. From paragraph 32 through to paragraph 37 the First-tier Tribunal Judge considered the Appellant's evidence and made findings on credibility. Paragraph 32 explores what appear to have been discrepant statements made in respect of the origin of the Appellant's gastric problems. However, I accept, as Mr Yeo has indicated, that the Judge's exploration of these matters at paragraph 32 does not seem to 'go anywhere' beyond paragraph 32, and it is difficult to see on what basis these matters might have, or the Judge thought they might have, informed an adverse assessment of the Appellant's credibility more generally.

15. Paragraph 33 addresses the Appellant's route to the United Kingdom and this is picked up again at paragraph 36. I return to these paragraphs below.

16. At paragraph 34 the Judge considers the Appellant's account primarily, it seems, in respect of his father's activities with the OLF. The Judge says this:

> "*I accept that there has been a resurgence of activity against OLF on the part of the Ethiopian authorities and this began at about the time the Appellant's father was seized. I also accept that the Appellant's scant knowledge of his father's activities and his account own involvement are plausible. I accept the submission made by his representative to the effect that I must take account of the Appellant's tender years at the time this was taking place and that as such a young person it would be likely his father would exclude him from meetings. His explanation of his ignorance included him stating he was not interested at that time and whilst that might be regarded as somewhat at odds with the remainder of his account I find it does not undermine it to any significant degree.*"

17. I pause to note that on its face this seems to be an acceptance of the plausibility of the Appellant's account in respect of his father's activities, and to that extent a rejection of the reasoning in the RFRL at paragraphs 24-29. That said, it is to be noted that an evaluation that events described are 'plausible' is not inevitably a finding that those events actually took place.

18. At paragraph 35 the Judge accepts that the Appellant "*may well be traumatised*" but indicates that he does not think that much can be inferred from this with regard to the Appellant's account of events in Ethiopia because such trauma might have arisen for other reasons including separation from his family, being plunged into an alien environment, or the nature of the journey to reach the United Kingdom.

19. In respect of the journey the First-tier Tribunal Judge says this at paragraph 33:

> "*Although the description of the route claimed to have been taken from Ethiopia to the United Kingdom is plausible, the account given is not. He left Ethiopia in April 2014 and landed in the United Kingdom some fourteen months later. He claims the fee for this was £900, including being accommodated in Sudan for six months and then Libya for a further six months. This was a trip which engaged the services of several agents and a car trip between Sudan and Libya lasting for a month. I find this part of his account neither plausible nor credible.*"

20. As I have already indicated, immediately following this evaluation of the Appellant's account of his journey to the United Kingdom the Judge stated that the Appellant's account of events in Ethiopia, at least so far as his father was concerned, was plausible.

21. However, the Judge ultimately rejects the Appellant's account for reasons set out at paragraph 36, which picks up on the adverse assessment of his account of his journey to the United Kingdom.

> "*Against the Appellant are the wholly implausible aspects of the account of his journey. I do not accept he would just leave home without telling anyone with no plan, no funds and no support. I do not accept the claimed cost of him being smuggled out of Ethiopia, kept in Sudan and Libya for six months in each country then taken to Italy by boat comes anywhere near possible, let alone reasonably likely.*"

At paragraph 37 the Judge then states his conclusion that the Appellant "*has failed to discharge his burden*" of establishing his asylum claim.

22. It may be seen that the Judge has placed seemingly determinative reliance upon his evaluation of the Appellant's account of the circumstances of the 'mechanics' of his departure from Ethiopia and his journey to the United Kingdom. This, as I have already indicated, was not a matter raised in the Respondent's RFRL. Nor was it a matter anywhere else adverted to as a likely issue. In those circumstances the Judge has essentially relied upon an entirely new matter to which the Appellant was not alerted, and upon which he therefore had no opportunity to comment.

23. I do not consider that the matter is 'rescued' by any suggestion that had he given oral evidence the Appellant would have had a chance to explain "*a number of concerns*". If it was likely that the route to the United Kingdom, and the Appellant's account in respect of the arrangements made for him to come to the United Kingdom, was going to be an issue that troubled anybody it was something of which he should have been given due notice, particularly bearing in mind that he was a minor, so that his advisers could consider the best way to advise him as to how to address it and whether that would involve the filing of some form of documentary evidence as to the typical nature of such journeys, or the filing of further written evidence by way of a statement from the Appellant, or indeed advising him to take a different view as to his decision on giving oral evidence.

24. I am satisfied in those circumstances that the assessment of the Appellant's overall credibility was flawed to an extent that it amounted to an error of law. I should note in this regard that Mr Melvin on behalf of the Secretary of State very properly acknowledged that the First-tier Tribunal Judge had indeed appeared to focus upon an issue that had not been raised at that time by the Secretary of State, or at all – albeit with the caveat that the Secretary of State may now yet wish to raise such an issue in light of the Judge's observations (see further below).

25. I have in setting out the foregoing analysis observed that an evaluation that a circumstance might be plausible does not inevitably equate to an acceptance of an account. To that extent it seems to me that this is not a case where the flaw in the First-tier Tribunal Judge's reasoning in respect of the Appellant's credibility and the findings in respect of his account can simply be reversed: if the adverse assessment of the Appellant's account of his journey is disregarded what remains is the evaluation that the Appellant's account in respect of his father was 'plausible'. This is an insufficient basis upon which to remake the decision in the appeal. 'Plausibility' does not equate to a clear finding of fact; moreover there were other aspects of the Appellant's credibility that the First-tier Tribunal Judge quite simply did not address. Those include the further two matters identified in the RFRL in respect of the Appellant's own harassment and questioning from the Ethiopian authorities, and his account of a demonstration and his arrest and detention in Ethiopia.

26. Although I have concluded that the credibility assessment is flawed and that it is not possible simply to substitute an alternative credibility assessment, these matters are not ultimately significant if it might be said that the First-tier Tribunal Judge has adequately assessed the risk on return in the alternative scenario of the Appellant's account being accepted as true. Indeed, this is what the Judge purports to do from paragraph 38 onwards. Paragraph 38 states in terms: "*Even if I am wrong and the Appellant's account be accepted, I find, for reasons given below, the Appellant has not proved he is at risk.*"

27. In the following paragraphs the Judge sets out an evaluation of risk to the Appellant by reference to the Appellant's own account. Complaint is made on behalf of the Appellant before this Tribunal that the Judge's evaluation in this regard fails to engage with, or otherwise take account of, relevant background country information that, it is said, was 'on point'.

28. In this regard my attention is directed to the contents of the Skeleton Argument that was before the First-tier Tribunal, in particular at paragraphs 16 and 17. Paragraph 16 of the Skeleton Argument refers the reader to the Appellant's bundle at pages 74-77, which is said to be "*on treatment of family members of OLF suspects and 'inherited suspicion'*" adding "*There have been 'dozens of reports of extrajudicial executions, including of family members of suspects'.*" Paragraph 17 of the Skeleton Argument then summarises the Appellant's case in this way:

> "*the combination of the current atmosphere in Ethiopia, his father's activities, his own history of involvement and questioning at school, his activities in the UK and his genuinely held beliefs about the relationship between the Ethiopian state and the Oromo people mean that the Appellant has a well-founded fear of persecution.*"

29. The substance of those grounds are in fact repeated in the context of the grounds of challenge to this Tribunal, although additionally a point is made in respect of the principle in **HJ (Iran)** to the effect that were the Appellant to be questioned he could not be expected to deny his own political interests, allegiances, and beliefs.

30. The pages identified in the Appellant's Skeleton Argument appear in a document from the Asylum Research Consultancy (Appellant's bundle pages 38-97). The document is dated 7 September 2016 and is said to provide country information up to 27 August 2016. It is headed "*Ethiopia COI Query Responses: the Master Plan; OLF Members and their Family Members; Ill-treatment by State Agents of Oromo Persons who are not politically active*".

31. The particular passages referred to use as their principal source an Amnesty International Report from October 2014. My attention has also been directed to a footnote at page 76, (footnote 181), which is a reference to a Human Rights Watch Report dated June 2016. Mr Yeo suggests in consequence that there are two authoritative human rights organisations providing similar evidence.

32. I pause to note that without the opportunity of looking at the source documents in any more detail, it is not immediately clear whether the later report is simply making reference and reporting incidents referred to in the earlier report, or whether it is providing examples and illustrations of further occurrences. However, for the moment that is not a matter material to a consideration of the approach of the First-tier Tribunal Judge - albeit it is a matter that may in due course require some further consideration.

33. The passages particularly relied upon by the Appellant come under the heading "*Treatment of OLF Family Members*". The October 2014 Amnesty International Report is quoted at some length and for present purposes I simply refer to the following.

    (i) At page 74 of the Appellant's bundle there is a reference to "*over a dozen people reported to Amnesty International. They had fallen under suspicion which led to harassment or arrest and detention based on previous activities or the actual or suspected political opinions of family members.*"

    (ii) The report coins the phrase "*inherited suspicion*", and says this: "*In many of these cases this inherited suspicion was reported to manifest when other incidents occurred*". It is also said: "*In several cases reported to Amnesty International multiple members of the same family were arrested based on inherited suspicion*".

34. The concept of suspicion is expressly recognised in the country guidance of **MB (OLF and MTA, risk) Ethiopia CG [2007] UKAIT 00030** where persons perceived to be OLF members or sympathisers are identified as individuals of potential risk if returned to Ethiopia. To that extent the information to which Mr Yeo has referred me does not, as it were, create an entirely new category of potential successful asylum applicants. Rather, this information potentially assists in the evaluation of who might be considered to be suspected of involvement with the OLF.

35. There are other passages in the pages referred to that identify different types of reasons why family members might come to the adverse attention of the authorities in Ethiopia:

(i) An individual might be arrested in lieu of family members. (That is not a situation which would apparently pertain to the Appellant on the basis of the way he has put his case.)

(ii) Reference is also made to the detention of family members of persons who are either wanted or already detained, in order to have the family member reveal the principal person's whereabouts or to hand over documents that it is believed might be available to incriminate the principal. (Again, on the face of it, with the passage of time, these are not matters that appear to relate to the Appellant.)

36. The Human Rights Watch Report – in respect of which there is little more than a footnote - refers more generally to "*individuals with perceived family ties with the OLF*" being at risk of detention.

37. In the absence of the source document, it is perhaps not immediately clear whether Amnesty International's identification of a category of person who might be at risk by reason of so-called 'inherited suspicion' is intended to encompass exhaustively those persons who would be arrested in lieu and/or to reveal whereabouts or hand over documents, or whether this is intended to be a further distinct category. It seems to me these matters require careful consideration/investigation.

38. What is clear in my judgment, however, is that the First-tier Tribunal Judge did not essay any analysis of these passages in the materials expressly drawn to his attention. Mr Melvin submits that the First-tier Tribunal Judge has nonetheless considered what risk might relate to the Appellant by reason of his connection with his father, but it seems to me that the Judge has done that entirely in the context of the circumstances that pertained immediately after his father's arrest - at a time when the Appellant was 13 years old. I accept that so far as it goes the Judge's analysis is careful and cogent. However, in my judgement the Judge does not go far enough: no consideration was given to the country information expressly relied upon, and nor was any risk by reason of family connection looked at from the perspective of the Appellant no longer being a young boy of some 13 or 14 years old but a young adult of over 16 years old. If there is such a thing as 'inherited suspicion', a relevant factor may well be the age at which a family member is considered worthy of suspicion as possibly being sympathetic and/or active in a political organisation.

39. For these reasons I conclude that the evaluation of risk on return is not one that has been made properly addressing all matters put to the First-tier Tribunal: it is flawed to an extent that it amounts to an error of law.

40. The combined errors of approach to credibility and 'country information' are such that in my judgment the decision of First-tier Tribunal Judge Maxwell must be set aside and requires to be remade.

Remaking the Decision; Directions

41. Mr Yeo indicated that absent any new matters being raised by the Respondent it presently remained the case that the Appellant did not wish to give evidence in the appeal. Mr Melvin suggested that there were a number of areas where a Tribunal would likely be assisted by oral evidence from the Appellant; however, ultimately, it is not for the Respondent to decide whether or not the Appellant should give evidence. (This is not to deny the Respondent the opportunity of making submissions in due course as to how any written testimony should be evaluated in the absence of oral evidence, bearing in mind all of the evidence and circumstances, and the contents of the Joint Presidential guidance.) Mr Melvin also indicated that the Respondent might now wish to raise a further credibility issue in respect of the Appellant's arrangements for travelling to the UK – but was not in a position to indicate definitively if that was the case. If the Respondent wishes to do so this will require to be articulated in writing so that the Appellant and his advisers may have a proper opportunity to consider it, and in doing so consider how best to respond.

42. Accordingly, as things stand, the Tribunal is presented with a case in which the Appellant does not propose to give further evidence but to proceed by way of submissions only. In so far as country information requires to be considered beyond the existing country guidance the potential issue is that of 'inherited suspicion', which will require analysis of the two source documents cited in the Asylum Research Consultancy document. Mr Yeo was uncertain as to whether or not further expert evidence might be obtained on this issue. Mr Melvin suggested that if expert evidence was to be obtained the Respondent would require considerable time to respond. However, I do not see any reason why in the first instance the Respondent cannot formulate her position on 'inherited suspicion' irrespective of the filing of evidence by the Appellant; providing there is an opportunity to file further evidence in response there will be no unfairness.

43. Accordingly, after very considerable discussion, I determined that it was appropriate to retain the appeal in the Upper Tribunal for the decision to be remade pursuant to the following Directions. Given that some of these matters are essentially contingent upon the position that might be adopted by the other party, or the evidence that might be filed by the other party, I have included in the Directions a reminder that either party is at liberty to apply for variation in the timetable.

44. Moreover, for the avoidance of any doubt I made it clear to the parties that the Directions – which were given orally at the hearing – should be considered to run from the date of the hearing and not from the date of the promulgation of this Decision.

Directions

(1) Within 14 days (i.e. by 12 April 2017) the Respondent shall indicate to the Appellant in writing with reasons any further issues in the appeal, and is also to file and serve any supporting evidence in this regard.

(2) Within 21 days (i.e. by 19 April 2017) the Appellant is to notify the Tribunal and the Respondent if any expert is to be commissioned.

(3) Within 28 days (i.e. by 26 April 2017) the Appellant is to file and serve any response to any new matters raised by the Respondent pursuant to (1) above, to include an indication as to whether or not it is proposed that the Appellant give oral evidence. (The Appellant is also to notify the Tribunal of any interpreter requirements.)

(4) Within 42 days (i.e. by 10 May 2017) both parties are to file and serve any further evidence they wish to rely upon with written submissions in relation to the issue of 'inherited suspicion'. Such submissions should at the very least address those matters I have outlined in my brief exploration of the materials above.

(5) Within 56 days (i.e. by 24 May 2017) both parties are to file and serve any response to the evidence and submissions filed pursuant to (4) above.

(6) The case is retained in the Upper Tribunal to be listed for hearing on the first available date after 31 May 2017.

(7) Both parties are at liberty to apply for variation in the above timetable. Any application should be supported by reasons and evidence so far as appropriate and available.

Notice of Decision

45. The Decision of the First-tier-Tribunal contained material errors of law and is set aside.

46. The decision in the appeal is to be remade by the Upper Tribunal pursuant to the Directions herein.

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

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