Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01913/2020 (V)

THE IMMIGRATION ACTS

Heard by Skype for business	**Decision & Reasons Promulgated**
On the 17 March 2021	**On the 8 April 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

L T
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn, Counsel instructed on behalf of the appellant.
For the Respondent: Mr Avery, Senior Presenting Officer.

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Liberia, appeals with permission against the decision of the First-tier Tribunal (Judge Forster) (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 20 October 2020.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the

circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The hearing took place on 17 March 2021, by means of *Skype for Business* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant so that he could listen and observe the hearing. There were no issues regarding sound, and no technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The immigration history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle. On 14 September 2018, the appellant made an online application for a six month multi-entry business visa issued on 24 September 2018 and valid until 24 March 2019. The stated intention of the visit was to attend a training course. The appellant left Liberia on 18 November 2018 flying via Ghana where he stayed before travelling on to the UK.

5. The appellant made a claim for asylum on 10 January 2019.

6. The basis of his claim related to events that had taken place in Liberia before he left on 18 November 2018. The appellant set out that as a result of having spoken out at a press conference where he exposed mishandling of funds by the local legislative caucus, he began to receive numerous phone calls and texts from unknown individuals making threats against his life. Following this, men were observed outside of his house and in November 2018, when the appellant was not at home but attending a funeral, unknown armed men had entered the house and intimidated his 10-year-old cousin in to disclosing the appellant whereabouts. He later received threatening text messages on the 15th and 16th of November and also on 17 November five unknown armed men entered the house when he was not present and had asked his wife about the appellant's whereabouts. The appellant had contacted the police the following day on the 18th of November and then on the same day had left for the United Kingdom. Whilst in the UK on 26 December 2018, unknown individuals burn down the family home in Liberia.

7. The respondent refused his claim in a decision letter dated 12 February 2020.

8. The appellant appealed that decision to the FtT (Judge Forster) on the 7 October 2020. In a decision promulgated on 20 October 2020 he dismissed his appeal.

The FtTJ accepted the factual basis of the appellant's claim and identified at [22] that the issues that required determination was whether there would be adequate state protection for the appellant against the risks identified if returned Liberia and whether internal relocation was reasonable, could be carried out safely and without being unduly harsh.

9. Having set out those issues, the judge considered the evidence in the light of the country materials at [22]- [33] but reached the conclusion that the evidence did not demonstrate a lack of sufficient protection to the Horvath standard for the appellant. He had found on the evidence that the threats of harm described by the appellant were made by nonstate agents and that the individuals concerned were engaged in criminal activity on their own account but could not properly be characterised as "agents of the state" (at [25 – 26]). As to the issue of internal relocation, the FtTJ address this at [36 – 39] finding that whilst he might be known for his activities, he had not been prominent since 2018. The problem is the experience were localised and that he had not demonstrated that the influence of the local officials he had accused extended throughout the country. The judge found that the appellant "overstates his position as a public figure." Notwithstanding the size of Liberia (at [36]), and after considering the appellant's personal circumstances at [37] the FtTJ concluded that internal relocation would be safe, reasonable, and not unduly harsh. He therefore dismissed the appeal.

10. Permission to appeal was sought and permission was granted by DIJ Shaerf on 26 November 2020 for the following reasons:

> "The Appellant's account of what happened to him in Liberia was accepted. The Judge at paragraph 26 of his decision found the perpetrators were non-state agents. At paragraph 27 he referred to the failure of the Liberian state to implement its anti-corruption laws but arguably fails to take this into account in his finding at paragraph 29. The Judge made a finding at paragraph 29 of his decision that the external evidence shows Liberia has a functioning police force: yet at paragraph 33 he refers to background evidence that the police lack the basic but essential tools to do their job and that low pay in the public sector is an incentive for bribery and again mentions that the anti-corruption laws are not fully implemented. It is arguable that these aspects have not adequately been taken into account or addressed by the Judge in his conclusions at paragraphs 29 and 34.
>
> At paragraph 34 the Judge finds the police in Liberia lack resources and are susceptible to corruption and misconduct. He also finds the evidence does not show there is a systematic or institutional unwillingness to provide protection to the victims of non-state actors. He does not address the ability of the police to provide a sufficiency of protection. This arguably is an error of law.
>
> The grounds disclose arguable errors of law. Permission to appeal on all grounds is therefore granted."

The hearing before the Upper Tribunal:

11. In the light of the COVID-19 pandemic the Upper Tribunal issued directions inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties. I am grateful for their assistance and their clear oral submissions.

12. Ms Cleghorn, who had appeared before the First-tier Tribunal appeared on behalf of the appellant and relied upon the written grounds of appeal. There was no Rule 24 response issued on behalf of the respondent. I heard oral submissions from each of the advocates are set out in the record of proceedings and to which I have had regard. I intend to consider those submissions when addressing the three grounds advanced on behalf of the appellant.

13. I am grateful for the clear and helpful submissions by both advocates.

Ground 1:

14. Dealing with ground one, it is submitted on behalf of the appellant that the FtTJ's findings at [25] and [26] on those intent on causing harm to the appellant were contradictory.

15. Those two paragraphs read as follows:

> "25. The appellants allegations of corruption and misappropriation of funds are made against individuals in the xxxxx Caucus. The respondent submits . that the appellant is unable to demonstrate that these individuals were involved in the incidents that he experienced but to the lower standard, I find that there is a connection between them and what happened to him. This is because the appellant accused them of corruption and the made against him are linked to the allegations he made.
>
> 26. The individuals concerned were engaged in criminal activity on their own account and are not agents of the state. The risk to the appellant does not come from agents of the Liberian state. The individuals named by the appellant may have influence because of their official positions but they are not agents of the state."

16. Ms Cleghorn submits that the appellant had made allegations of corruption and mismanagement of funds by individuals in the legislative caucus and that the FtTJ found at [25] that there was a connection between them and what had happened to the appellant but at [26] did not accept that they were state agents. In essence, Ms Cleghorn submits that if there is a connection between individuals in the caucus and the corruption and misappropriation of funds, it is difficult to see how the individuals are involved on their own account and not as agents of the state.

17. She further submits that even if the judge in distinguishing between state sanctioned actions and rogue actors, it does not make them any less agents of the state because they are acting in a rogue capacity.

18. Finally Ms Cleghorn submits that the issue is whether the agents can act with impunity because they are protected by the positions they hold and the connections that they have.

19. Mr Avery on behalf of the respondent submits that there is no error in the FtTJ's approach and that those concerned were acting as individuals and not as part of the state. He submits that this is demonstrated by the fact that there was no evidence of the resources of the state had been mobilised against the appellant.

20. I have given careful consideration to the submissions made on behalf of the appellant and have done so in the context of the evidence before the FtTJ.

21. The FtTJ accepted the appellant's account that following a press conference he held in October 2018, that he had received threats to his person, and it was also accepted that during the press conference the appellant had exposed the position that the caucus in the area had squandered and misappropriated funds that were meant for a development fund.

22. The incidents in relied on can be summarised as follows:

    (1) In October 2018 following the press conference, the appellant received calls and text messages from unknown people threatening his life. The appellant contacted orange GCM but found that the numbers were not registered. He made a complaint to the police but claimed that the complaint was not investigated (at para 6 w/s).

    (2) On 19 October 2018, the appellant stated that he became aware from people in the community that one individual was asking where the appellant lived (w/s para 8). The appellant was not provided with any details of the individual as they did not know them (Q 45 AI).

    (3) The appellant spent the night at a friend's home but kept the house under observation and later that night saw some men outside his house (w/s para9). They did not break in. The appellant was not able to identify the men (Q 48 AI). The appellant informed the police the next day who said they would look into the matter and took down a statement (Q 59 AI).

    (4) On 3 November 2018, whilst the appellant and his wife were away at a funeral but having left his 10-year-old cousin and 17-year-old cousin in the home (Q 82 AI) armed men broke into the house and tried to "push him or intimidate" the appellant's 10-year-old cousin to tell them where the appellant was (Q 63 AI). His cousin was not injured (Q 66) (although w/s para 11 refers to being hurt) but said that the men had said that they were continuing to look for the appellant. The appellant informed the police. It is also said that the appellant was told by some officials (identified as the pastor; Q105 AI) who advised him to leave the country.

(5) On 15 and 16 November 2018, the appellant received text messages involving threats. The appellant said he could not remember the content, but they were threatening (Q1 40 AI).

(6) On 17 November, the appellant received a call from his wife and told him not to go home because some unidentified men had broken into the home. The men had questioned her about his whereabouts (Q1 19 AI). The appellant's wife could not identify them (Q182 AI). The appellant reported the incident to the police the following day and then left Liberia via Ghana for the UK on 18 November 2018.

(7) On 26 December 2018, the appellant's house was burnt down. The appellant stated that he considered that the agents had been paid to do this by "individuals who had wanted to get rid of me because they never knew I left the country." (AI question 160).

23. The basis of the appellant's claim is that he came to the adverse attention of the local caucus having spoken about the misappropriation of funds. There is no dispute that the FtTJ accepted that this had occurred.

24. The FtTJ also found that "there is a connection between them and what happened to him" and that it was a result of the appellant having accused them of corruption and that the threats made against him were linked to the allegations he made (at [25]). The FtTJ went on to find that those individuals were not agents of the state (at [26]).

25. Having considered the submission in the light of the evidence before the FtTJ, I do not consider that the FtTJ fell into any error by categorising the individuals as those who were engaging in criminal activity on their own account or acting as rogue individuals rather than as agents of the state. As the FtTJ went on to find, whilst they may have had influence in the local area due to their position in the caucus, they were not properly characterised as agents of the state given the evidence. As Mr Avery submitted, there was no evidence before the FtTJ that the individuals concerned had used or sought to use the resources or apparatus of the state against the appellant. For example, they had not directed the police to act against him or to issue an arrest warrant against him.

26. Whilst Miss Cleghorn submits that they should be characterised as "agents of the state" because they are protected by their positions and the connections they have, in my judgement that was not supported by the evidence. There was no evidence before the FtTJ that these individuals had sought to mobilise any of the resources of the state against the appellant. Furthermore, on the factual account accepted by the FtTJ, the appellant's own evidence was that after he had spoken out, those who were concerned about his comments had asked people in the community about where he lived in an effort to locate him. If they were state agents, they would have access to information such as his home address and there would have been no need to raise suspicion and pre-warn the appellant by asking people in the community about where he lived.

27. I therefore find no error of law in the FtTJ's assessment at paragraphs 25 and 26 on the basis advanced in behalf of the appellant.

Ground 2: sufficiency of protection:

28. The second ground advanced in behalf of the appellant relates to the issue of sufficiency of protection. Miss Cleghorn submits that the judge considered the background country materials and concluded at [27] that "the government did not implement the law effectively and officials often engaged in corrupt practices with impunity. The judge then referred to the "functioning police force and that there are anticorruption agencies able to investigate allegations of corruption" (at [30]). However, she submits that the judge then concluded that notwithstanding the unexplained deaths of whistle-blowers and that the appellant's account of what happened him was consistent with articles in his bundle, it did not lead the judge to conclude that there was not a lack of sufficiency protection to the "Horvath standard" (at [30] and [31]).

29. Miss Cleghorn drew the tribunal's attention to the decision at paragraph [34] and that the judge went on to accept that whilst there was a functioning police force, it lacked resources and was susceptible to corruption and mis-conduct. She submitted that the incidents relied upon by the appellant had not been disputed however the judge concluded that the evidence had not demonstrated a "systematic or institutional unwillingness to afford protection to nonstate actors (at [34]) and that it was "not ideal" but nonetheless was to the "Horvath standard" (at [35]).

30. Miss Cleghorn relied upon two points from those identified paragraphs. Firstly, that the Horvath standard would only be relevant if the individuals were not members of the caucus, that is if they were nonstate actors relying on the words of Lord Clyde as follows:

> "there must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of acting is contrary to the purposes which the Convention requires to have protected stop or importantly there must be an ability and a readiness to operate that machinery. But precisely where the line is drawn beyond that generality is necessarily a matter of the circumstances of each particular case."

31. It is further submitted that state protection should be measured by the "availability of the system for the protection of the citizen and a reasonable willingness by the state to operate it." It is therefore submitted that the state had either ignored or failed to protect whistle-blowers in the past, including the appellant, and as demonstrated the members of the caucus have the influence to ensure that protection is not available to the appellant, thus the judge erred in law. She submits that as he has been persecuted in the past, it is a strong indication of a continued fear and that on the appellant's factual account, the

persecutors are still in positions of power and have the motivation to silence him.

32. In oral submissions Miss Cleghorn submitted that the finding by the FtTJ that there was "no systematic or institutional unwillingness to afford protection" was an erroneous finding because if the appellant were targeted, it would not have to be systematic. She submitted that the judge had fallen into error by taking the wrong approach and that the appellant's case was that there would be no sufficiency of protection to the Horvath standard.

33. Mr Avery in behalf of the respondent submitted that he had some difficulties with ground 2 and as to what the error of law was. He submitted that the FtTJ did consider the country materials as set out in his decision and considered the appellant's account in the light of that. Before the FtTJ there was no evidence that the appellant had been persecuted by the police or even that those he had had difficulties with were unduly influencing the police. Furthermore, when looking at the individual incidents relied upon by the appellant, it was difficult to see what the police could have done in the light of the lack of evidence or information and when applying the Horvath standard, a state cannot provide 100% protection. In essence he submitted, the grounds were simply a disagreement with the conclusion reached.

34. When considering the issue of sufficiency of protection, the FtTJ made a self-direction to the decision in Horvath v Secretary of State for the Home Department (2001) 1 AC 489 where it was held that whether protection was sufficient was a "practical standard which takes proper account of the duty which the state owes its nationals…" and that "the sufficiency of state protection is not measured by the existence of a real risk of an abuse of rights but by the availability of a system for the protection of a citizen and a reasonable willingness of the state to operate it".

35. In Horvath v Home Secretary [2001] 1 AC 489 Lord Hope said this:

> "... I consider that the obligation to afford refugee status arises only if the person's own state is unable or unwilling to discharge its own duty to protect its own nationals. I think that it follows that, in order to satisfy the fear test in a non-state agent case, the applicant for refugee status must show that the persecution which he fears consist of acts of violence or ill-treatment against which the state is unable or unwilling to provide protection. The applicant may have a well-founded fear of threats to his life due to famine or civil war or of isolated acts of violence or ill-treatment for a Convention reason which may be perpetrated against him. But the risk, however severe, and the fear, however well-founded, do not entitle him to the status of a refugee. The Convention has a more limited objective, the limits of which are identified by the list of Convention reasons and by the principle of surrogacy."

36. Lord Clyde put it in similar terms at 510f, as follows:

> "There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of acting contrary to the purposes which the Convention requires to have protected. More importantly there must be an ability and readiness to operate that machinery."

37. Lord Clyde added at 511c that " *it will require cogent evidence that the state which is able to afford protection is unwilling to do so, especially in the case of a democracy*" and also at 511 Lord Clyde held that "corruption, sympathy or weakness of some individuals in the system of justice does not mean that the state is unwilling to afford protection".

38. In general terms, a state's protection has to be wide enough to cover the ordinary needs of its citizens for protection. Protection may still be insufficient, to prevent persecution in a particular case or in a particular subcategory of cases, if an individual's (or subcategory of person's) needs for protection are out of the ordinary or exceptional. However, recognition that a person's (or subcategory of person's) individual circumstances may require "additional protection" has an important limit. As emphasised in Horvath, protection is a practical standard. In Lord Clyde's words at [60], "no-one is entitled to an absolutely guaranteed immunity. That would go beyond any realistic practical expectation". The decision should not be read as deciding that there will be a sufficiency of protection whenever the authorities in the receiving state are doing their best. If this best can be shown to be ineffective, it may be that an applicant can establish that there is an inability to provide the necessary protection. But it is clear that it is a practical standard. The fact that a system may break down because of incompetence or venality of individual officers is generally not to be regarded as establishing unwillingness or inability to provide protection.

39. The FtTJ stated at [23]:

> "As held by the House of Lords in Horvath, it is the duty of the home state to provide protection against persecution of its own nationals. If there is insufficiency of protection, international protection is available. No state can provide complete protection against isolated and random attacks. The standard to be applied is, therefore, not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state, but is rather a practical standard, which takes proper account of the duty which the state owes to all its nationals. There must be in force in the country in question a system of criminal law which does not exempt a particular class of victims from the protection of the law, makes violent by the persecutors punishable by sentences commensurate with the gravity of the crimes and demonstrates a reasonable willingness by the law enforcement agencies to detect, prosecute and punish offenders".

40. When considering the issue of sufficiency protection, the FtTJ carried out an assessment of the country evidence at paragraphs [27]-[35] taking into account both the evidence advanced on behalf of the respondent, primarily set out in the decision letter and also the material relied upon by the appellant.

41. At [27] the FtTJ referred to the evidence in the US Department of State country report on human rights practices 2018 – Liberia. The Ministry of Justice Republic of Liberia stated "the Liberia National police (LNP) is the frontline force of internal security in the fight against crimes, the protection of life and property, and in the maintenance of the rule of law, as directed by statute. Vision- provide an effective, efficient, and professional police service that is community-based and ideas to the principles of democratic policing.

42. The respondent relied upon the US Department of State report and the section under the heading "role of the police and security apparatus" set out at paragraph [63]. It stated as follows:

> "The Ministry of Justice has responsibility for enforcing laws and maintaining order through supervision of the NNP and the other law enforcement agencies. The Armed Forces, under the Ministry of National defence, provide external security would also have some domestic security responsibilities, specifically coastal patrolling by the coastguard.
>
> Civilian authorities generally maintained effective control over the security forces, although lapses occurred. The government has mechanisms to investigate and punish abuse. The INC HR reported that violent police action and harassment during arrests with the most common complaint of misconduct. The LNP's professional standards division (PSD) is responsible for investigating allegations of police misconduct and referring cases for prosecution. There were instances during the year in which civilian security forces acted with impunity. A 2016 police act mandates establishment of a civilian complaint review Board to improve accountability and oversight, but as of December, the board had not been constituted….."

43. The FtTJ at [27] then went on to refer to Section 4 "corruption and lack of transparency in government". The FtTJ did not cite the whole of the paragraph but made reference to, "the law calls for integrity in government service and immune rates multiple offences related to corrupt acts by officials". However, I note that the section continues, stating that "the government did not implement the law effectively, and officials often engage in corrupt practices with impunity." The FtTJ did however state that the full section had been reproduced in the decision letter. The country material cited went on to refer to the Liberia Anti -Corruption Commission (LACC) which the judge had made reference to at [28]. This was to prevent, investigate and prosecute cases of corruption among public officials. There was reference to the LACC Commissioner accusing the LACC chairman of financial impropriety and mismanagement of funds who denied the allegations and that it was unclear if the allegations had been investigated. The Centre for transparency and accountability in Liberia (CENTAL) the president appointed heads of the Liberia extractive industries transparency initiative and the internal audit agency without the required recruitment and vetting processes and suggested

that direct presidential appointments outside established procedures undermined the independence of those anticorruption agencies.

44. Further on in the material, reference was made to action taken by the LACC. It was recorded that "the government dismissed or in some instances suspended officials for alleged corruption and recommended others for prosecution. The government generally failed to charge higher ranking officials of corruption and tend to recommend prosecution against low-level civil servants but there were some exceptions. In February, the River Crest County Court circuit found Senator Teahjay guilty of misappropriating development funds during his 2009 – 2014 tenure as superintendent of Sinoe county. The court ordered the Senator to pay $50,000 in restitution within nine months or face imprisonment, the LAC C confirmed that he paid. Prosecutors expressed concern that the judge should not rule on more serious crimes in the senator's indictment, including charges of economic sabotage, criminal conspiracy et cetera. In November, the government arrested and filed charges against senior officials at the National Housing authority for allegedly extorting money from a company. As of December court date had not yet been set. Further reference was made to a report calling on the government investigate former and current officials involved in the hundred and hundred and $20 million purchase of an oil block. The President established a special Presidential Review Committee to investigate the allegations which was endorsed by the House of Representatives. In September it was unknown if any of the committee's recommendations had been followed.

45. Further reference was made to "police corruption remained a problem. The LNP investigated reports of police misconduct or corruption, and authorities suspended or dismissed several NNP officers. The most prevalent form of police corruption was the solicitation of "on the spot" finds at roadblocks for traffic offences. The PSD reported cases of bribery for traffic offences, and authorities suspended or dismissed several NNP officers for misconduct. On April 10, the NNP dismissed an NNP officer that tampering with a criminal investigation into the death of a woman. The NNP officer allegedly investigated the case without authority and the detained and extorted money from suspects in the case."

46. The FtTJ also addressed the evidence relied upon by the appellant (see [30]-[33]). The FtTJ took into account the appellant's own experiences as evidence of the state's inability to provide protection and also the content of articles that were provided by the appellant which were described by the judge as follows " about a central bank official disappeared after the publication of reports of "shady dealings" at the bank, about unexplained deaths of people connected to financial irregularities, and about the death of a whistle-blower involved in the investigation of a public official" (at [30]).

47. At [32] the FtTJ set out the US Department of State report of 2019, noting that the respondent had cited the 2018 report. Again, the FtTJ cited section 4 dealing with corruption and lack of transparency in government. But the FtTJ recorded

that "it is recorded that in June 2019 sitting legislature representatives were indicted on corruption charges following an investigation by the Liberia anticorruption commission (LACC). The officials concerned were accused of embezzling development funds. The former speaker of the house were implicated in the allegations. Whilst the FtTJ did not expressly say so, that evidence provided later support for the earlier evidence from 2018.

48. At [33] the FtTJ referred to a further document relied upon by the appellant "U4 anticorruption helpdesk, Liberia published September 2019 reporting on the extent of corruption in Liberia, the legislative framework and anticorruption institutions. The FtTJ noted that "corruption is a serious problem in the Liberian government. It is stated that the police and criminal justice system does not enjoy high levels of public trust. The police lacked the basic but essential tools to do their job. Low pay in the public sector is an incentive for bribery. Civil and criminal justice system scores poorly, 97 out of 135 countries. Against that background it is recorded that the Liberian legislative framework calls for integrity in government service and enumerates multiple offences related to corrupt acts by officials, including bribery, intimidation, and abuse of office. There are criminal penalties for mismanagement of public funds and bribery. There is an anticorruption policy and strategy to combat corruption. Reference is made to the Liberia Anti- Corruption Commission (LACC) which was established to investigate and prosecute cases of corruption. The US State Department's 2018 report is cited as saying the written laws of Liberia are not fully implemented and officials often engage in corrupt practices with impunity.

49. Against that evidential background, I do not consider that the FtTJ was an error in reaching the view that the objective material demonstrated that Liberia had a functioning police force and that there are anticorruption agencies able to investigate allegations of corruption. Nor was the judge in error for reaching the conclusion that the background material did not in his view demonstrate a systemic (rather than systematic) or institutional unwillingness to afford protection to the victims of nonstate actors. He went on to observe that "Liberia has a system of criminal law which does not discriminate against particular classes of victims and demonstrates a reasonable willingness by law enforcement agencies to detect, prosecute and punish offenders" (see [29] and at [34]and 35]).

50. Furthermore, whilst there was evidence that the police were susceptible to corruption, the material identified that the most prevalent form of police corruption was the solicitation of "on the spot" finds at roadblocks to traffic offences. However the material set out that the LNP investigated reports of police misconduct or corruption and that authorities have suspended or dismissed several NNP officers. The evidence before the judge demonstrated that in respect of the police, Liberia had an independent and active body (LMP and PSD, as well as disciplinary board which investigated allegations of misconduct by the police and army personnel. Additionally, Liberia also had an

anticorruption commission. The FtTJ at [28] accepted the submission made by the presenting officer that the LACC which was tasked to investigate and prosecute cases of corruption amongst public officials (which was the allegation made by the appellant about the caucus) was an avenue open to the appellant so that he could report his complaints of corruption to the body. I observe that there was no evidence before the tribunal that the appellant had taken the step to report any complaints of corruption to this body who were tasked to expressly investigate and prosecute such cases.

51. It is also clear that the FtTJ did not only consider the material relied upon by the respondent but also that of the appellant and did not simply consider generalised evidence of the sufficiency and ability of the state to offer protection (in the general sense) but also against the background of the appellant's own experiences as evidence of the state's inability to provide protection (see [30]-][33]).

52. As Ms Cleghorn submitted the judge had been directed to articles in the appellant's bundle which referred to those in the position as "whistle-blowers". She submitted that the articles demonstrated that the state had failed to protect such individuals and in the context of the appellant's claim, demonstrated that the members of the caucus at the influence to ensure protection would not be available to the appellant.

53. I find no error in the FtTJ's approach when he considered the evidence in those documents alongside the other evidence and against the appellant's account (see reference by the FtTJ at [31]). However it is important to consider the content of those articles. In respect of the article concerning the bank official, it refers to him releasing a report concerning missing billions and that he was found "mysteriously dead" in an alleged hit-and-run accident. However the article does not conclude that this was a murder also the article refers to the police having taken action where it was reported that "five persons were picked up over the weekend by the police". Other articles refer to incidents where action was taken by the police and were recorded as being "actively investigated" (see incident referring to the journalist, documented at A 33, A 34, and A 25 where a suspects were arrested.

54. In the light of the content of the material, it was open to the FtTJ to reach the conclusion that the appellant's account was consistent with the articles in that this was evidence of criminal activity but that it did not lead him to conclude that there was necessarily a lack of sufficiency of protection to the standards set out in Horvath, as notwithstanding evidence as to corruption, the police were seen as actively investigating such incidents.

55. I do not accept the submission made by Ms Cleghorn that the state has ignored or failed to protect those referred to in the material. When reading the contents of the report as I have set out above, it demonstrated the police and other agencies were involved in investigating, arresting, and apprehending those

concerned and demonstrates not only a willingness but also an ability to take action.

56. Furthermore I do not accept the submission made by Ms Cleghorn that the evidence in the articles when seen against the appellant's account shows that the caucus have the influence to ensure protection is not given to the appellant. Such a submission is not supported by the evidence relating to the appellant's own account and the ability of the police to provide protection. As Mr Avery submitted, there was no evidence that the caucus has used any alleged influence against the appellant nor is there any evidence that they had been able to unduly influence the police or any other agency of the state. This is supported by the lack of evidence that they had used agencies such as the police to either arrest or silence him. The appellant was able to leave the country using his own passport with no difficulty. There was no suggestion that he had ever been arrested himself at the behest of the individuals he feared.

57. I also accept the submission made by Mr Avery that when considering the factual basis of the incidents relied upon by the appellant, that it is difficult to see what the police could have done other than that reported by the appellant. The appellant on his own account was not able to provide very much evidence to the police. He could not describe the individuals asking about him on 19 October 2018 (Q 41), nor could his wife provide any identification evidence. Whilst the appellant made a complaint to the police, the appellant could not provide specific details or additional information to assist the police in locating the individuals. Furthermore the willingness and the ability of the state to investigate the individuals concerned rely upon the assistance of the person making the complaint. Following the incident on 17 November and the report made to the police, the appellant left Liberia the following day and did not stay and assist the police in any investigation that was to take place. In fact the written evidence before the tribunal also demonstrated that the police did take active action. At page 68 in relation to the incident in December 2018 the report refers to an investigation having been conducted by the police and that they were attempting to identify, locate and apprehend the perpetrators (see supporting document six).

58. As the FtTJ identified at [28] there was also a further revenue open to the appellant which expressly dealt with the investigation and prosecution of cases of corruption amongst public officials but that the appellant had not sought to utilise that avenue of complaint by making a report to them. There was no evidence from the tribunal that he did so.

59. The sake of completeness, I should also deal with paragraph 9 of the grounds. It is submitted there that the Horvath standard would only be relevant if the individuals were not members of the caucus, that is if they were non-state actors. However in the decision of *Svazas v SSHD* EWCA Civ 74 **(**a case which concerned persecution by state agents and the level of protection required to meet this), Stuart-Smith LJ said that what was necessary was a practical standard of protection. The more senior the police officers involved in the

actions against the appellant, the more it was necessary for the state to demonstrate that its procedures were adequate and enforced as far as possible. There is also a series of gradations between abuse by state agents, which is tolerated or authorised by the state, and rogue officials, who from time to time abuse their positions. Stuart Smith LJ and Simon Browne LJ both said that the same criteria for an insufficiency of protection as outlined in **Horvath** applied 'provided it is borne in mind that where the police are concerned a higher standard of protection is required'. Therefore the "Horvath standard is relevant to both nonstate actors and state actors.

60. In summary, I find there to be no error in the assessment made by the FtTJ on the evidence was before him and the conclusions reached on that evidence that the material did not demonstrate a lack of sufficiency of protection for the appellant taking into account his own individual circumstances was open to the FtTJ to make.

Ground 3: Internal relocation:

61. The third ground advanced on behalf of the appellant challenges the assessment of internal relocation. Ms. Cleghorn on behalf of the appellant submits that the FtTJ at [38] made a finding that although the appellant may well "be known and recognised for his activities… He has not been prominent since 2018." The FtTJ did not accept the appellant's account that there was nowhere for him to "hide" in Liberia but that the evidence established that Liberia had a population of around 4.8 million, the size of the police forces only 4000 strong in the size of the army is only 2000. Thus, she submitted while there may be "no geographical or legal restrictions on the appellant's ability to relocate internally within Liberia" (as found by the judge at [33]), he failed to take into account that when taking out of account Monrovia and xxx, there are only a few areas in which he could relocate. Given the size of the police force and the army, any corrupt members of the caucus would be in a position to use their influence to find the appellant by using the police and army given that he was known for his activities and a profile. Thus, she submits, following the guidance in the decision of Januzi, it would be unduly harsh for someone with the appellant's past experience and profile to relocate within a country with such a small population. She submits that "word will travel quickly" and that his persecutors would be able to find and locate him.

Legal framework:

62. Applications for asylum and humanitarian protection are addressed in part 11 of the Immigration Rules. Rule 339O, which is included in part 11, deals with the possibility of "Internal relocation". It states:

> "(i) The Secretary of State will not make:
>
> (a) a grant of refugee status if in part of the country of origin a person would not have a well-founded fear of being persecuted, and

the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

63. The House of Lords gave guidance as to the test to be applied in *Januzi v Home Secretary* [2006] UKHL 5, [2006] 2 AC 426. Lord Bingham, with whom the other members of the House agreed, said at paragraph 21:

> "The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."

64. The House of Lords returned to the subject of internal relocation in *AH (Sudan) v Home Secretary* [2007] UKHL 49, [2008] 1 AC 678. It stressed that the test quoted in the previous paragraph provided the correct approach to the problem of internal relocation, and Lord Bingham observed in paragraph 5:

> "The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is."

65. For her part, Baroness Hale explained at paragraph 21:

> "By definition, if the claimant had a well-founded fear of persecution, not only in the place from which he has fled, but also in the place to which he might be returned, there can be no question of internal relocation. The question presupposes that there is some place within his country of origin to which he could be returned without fear of persecution. It asks whether, in all the circumstances, it would be unduly harsh to expect him to go there. If it is reasonable to expect him to go there, then he can no longer claim to be outside his country of origin because of his well-founded fear of persecution."

66. In *SC (Jamaica) v Home Secretary* [2017] EWCA Civ 2112, [2018] 1 WLR 4004, Ryder LJ noted (at paragraph 36) that:

> "the evaluative exercise is intended to be holistic and … no burden or standard of proof arises in relation to the overall issue of whether it is reasonable to internally relocate".

67. The assessment of internal relocation has to be seen in the light of the FtTJ's earlier assessment that it was the behaviour of rogue individuals and that it was not state assisted. There was no evidence before the FtTJ that the individuals concerned had used any apparatus of the state to influence or otherwise harm the appellant. Consequently, the submission made that the appellant's persecutors would be able to find him wherever he located to has to be seen against that background.

68. The FtTJ when addressing this issue properly took into account the size of Liberia as "relatively small" with a population of 4.8 million (at [36]). However at [38] the judge expressly addressed the argument that he had a profile which would bring him to the attention of those he claimed were intent on causing him harm. The FtTJ accepted that he might be recognised was entitled to take into account that the appellant had not been prominent in any activity since 2018. Furthermore, the judge was also entitled to place weight on the fact that the appellant had failed to demonstrate that the influence of the local officials he had accused extended throughout the country, however small. The judge found from the evidence at [38] that:

> "the appellant has not demonstrated that the influence of the local officials he accused of corruption extends throughout the country. I find the appellant overstate his position as a public figure and I do not accept a statement that there is nowhere for him to hide in Liberia."

69. This finding is consistent with the evidence before the tribunal that the individuals concerned were not able to exert influence in the home area by the use of the police in arresting or otherwise detaining the appellant or preventing him from continuing in his employment or to stop him from leaving the country. It is also consistent with the evidence from the appellant's own account that those who are seeking him were not able to locate him when he was in a different area. The appellant's evidence was that in November when in old Congo town, unknown individuals were asking about his whereabouts when he was only 20 minutes away from his home.

70. I accept the submission made by Mr Avery on behalf of the respondent that notwithstanding the size of the country, there was no evidence that the individuals that the appellant was having difficulties with had any influence outside of the local area nor that they had any inclination to pursue him outside the area after such a lapse of time.

71. At paragraphs [36 – 37] the FtTJ properly addressed the issue of internal relocation in accordance with the law and based on the appellant's personal profile and characteristics. The FtTJ took into account the appellant's age and his health and that there were no geographical restrictions or legal restrictions to prevent his ability to relocate, and that he spoke the language and dialect (at

[36]). The FtTJ took into account the nature of his qualifications and his previous employment history and that he travelled around the country to do his job previously. The judge considered the objective material in the US State Department report and reach the conclusion that the appellant had "skills and experience to find employment on return". He took into account that the financial support that had been provided for him whilst in the UK would be likely to continue to assist him in re-establishing himself and that whilst he would face some practical difficulties starting life in a new area, the appellant had not adduced evidence to demonstrate his ability to lead a relatively normal life judged by the standards in Liberia (at [37]).

72. Consequently, based on the factual findings that he made concerning the events and those whom the FtTJ considered were not agents of the state, the FtTJ carried out a full assessment and evaluation of the alternative of internal relocation and gave adequate and sustainable reasons for reaching the conclusion that based on his profile, the lapse of time and the lack of any evidence to demonstrate that the individuals concerned had influence outside of their local area or any inclination to pursue him further, led to the conclusion that he would be able to live safely in another part of Liberia.

73. For those reasons, I am not satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision of the FtTJ should stand.

Notice of Decision.

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT shall stand.

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. 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 *Upper Tribunal Judge Reeds*
Dated 26 March 2021