Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00365/2014

THE IMMIGRATION ACTS

Heard at Field House **Determination & Reasons Promulgated**
On 29 July 2015 **On 14 October 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

KADIR ALI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Greenwood, Counsel instructed by MKM Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes back before the Upper Tribunal following a hearing on 16 March 2015, the result of which was that the First-tier Tribunal was found to have erred in law in its dismissal of the appellant's deportation appeal.

2. The error of law decision is reproduced in full as an annex to this determination and to which reference should be made for the further background to the appeal.

3. It can be seen therefore, that the appellant was subject to a decision to make a deportation order as a result of his most recent conviction, being for an offence of

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burglary for which he received a sentence of two years and ten months' imprisonment.

4. Ms Greenwood made an application to adduce further evidence in terms of the appellant's family life in the UK in the light of the fact that the original hearing before the First-tier Tribunal was now of some vintage. Mr Melvin submitted that there was very little in the new evidence in terms of the appellant's claimed relationship with his partner, or family life with his mother.

5. I decided to allow the evidence to be adduced given the time that had elapsed since the hearing before the First-tier Tribunal.

6. It is also important to record at this stage that Ms Greenwood indicated that Ringki Boshir, said to be the appellant's fiancée, had not attended the hearing as she was not fit to travel because of her health. It was specifically confirmed at the start of the hearing however, that there was no application for an adjournment. Later during the hearing there was an application for an adjournment and to which I refer below

7. At the conclusion of the hearing I reserved my decision but gave directions to the effect that no later than seven days from 29 July 2015 medical evidence was required in relation to Ms Boshir's non-attendance. Subsequent to the hearing, on 3 August 2015, the Tribunal was provided with an email from Ms Boshir dated 2 August 2015, a letter from Clare Road Medical Centre dated 30 July 2015 and a letter from University Hospital of Wales dated 26 May 2015. I refer in more detail to those documents below.

The appellant's oral evidence

8. In examination-in-chief the appellant adopted his witness statement dated 24 July 2015. As to whether he has been employed since his release from detention, he said that he was employed by the National Contract Service ("NCS") as a supervisor, to supply staff to hotels, and kitchen porters. This was arranged through a friend. They were aware that he was coming out of prison. The employment was in Slough but because of the travel and the fact that he was wearing a tag, his employment was ended about two and a half months ago.

9. He also had employment with Zyber Construction in Camden, whereby he would pick up employees from one location and drop them off at another. He had explained that he was on a tag. The job was to start between 7:30 and 8:00am but he was unable to start that early because of the tag times.

10. He lives with his mother, younger brother and two younger sisters. He looks after his mother, doing her shopping and getting her prescriptions. He takes her to hospital and to the doctor when she needs to go. She is unable to shop by herself because she is unable to walk a long distance.

11. He and Ms Boshir intend to marry. She would move to his house with his family. She has looked at work in that area. She thought it would be a good idea if he moved away from the people he grew up with.

12. As to who would look after his mother in those circumstances, ideally he would like his mother to move in with him.

13. Before he was sent to prison, he and his brother were paying the mortgage on the house, half each. The family is struggling as he is not working. At the moment they are living under one roof but if he had to go back to Bangladesh and his family had to support him they would have to pay for accommodation and he would have to start from scratch.

14. In cross-examination he said that his mother is unwell. He did not refer to her illness in his witness statement because they did not think of putting it in the statement.

15. However, she has a history of health problems. He has always looked after her except for when he has been in prison. He is certain that he spoke about her health during the 2008 hearing before the Tribunal.

16. He thinks that in the last nine years over the period of his offending he has only been away from his family for about 36 months altogether. He has been on a tag, on bail and released early. During that time his siblings looked after his mother. If he had to go back to Bangladesh they would look after her.

17. His girlfriend, Ms Boshir, made her statement about a week ago. He has read it. He does not know why it does not say anything about the time they have spent together since the last hearing. He is not able to travel to see her in Wales because of the tag times. He could not take the risk of going by public transport to Wales. She has come to visit him in the school holidays. At the weekends she has marking to do.

18. As to the suggestion that theirs does not sound like a very close relationship, the appellant said that they are close and intend to get married if he is allowed to stay in the UK. If he was not on the tag he would definitely go to Wales.

19. His girlfriend drives to work in Barry which takes about an hour. She leaves school at about 4:00pm and gets home at around 6:00pm. As to how much time he had spent with her in the last 10 months, the appellant said that since he had been out of prison, he had seen her three times. When he was in prison he had seen her at least once a month.

20. As to why she has not attended the hearing, he explained that last week she went to the hospital for an operation and thought she would be well enough to travel. Last night she told him that she was not in fact well enough. He could provide a medical certificate.

21. As to his employments, his second employment was cash in hand. In relation to his first employment, although they took his bank details, he had not actually been paid anything. Half the time he was working from home from where he did some recruitment.

22. The second employment lasted about five weeks. He could provide the contact details as to those jobs. He does not have a job offer letter from Zyber Construction but he does have one from NCS.

23. In answer to my questions the appellant explained the operation that his girlfriend had to have, saying that she was in hospital for two or maybe three days. The operation was in June and since then she has started bleeding so she had to go back. She was last in hospital last week. That was not for an operation but just for a check-up because she started bleeding again. She was in hospital for a whole day last week.

Adjournment application

24. After the appellant had given evidence Ms Greenwood sought a short adjournment in order to take instructions. She then informed me that her instructions initially were not to ask for an adjournment to secure the attendance of Ms Boshir, but that was not discussed with the appellant. Ms Boshir has important evidence to give which suggests that the appellant can come within another paragraph of the Immigration Rules. She had not in fact taken instructions properly from the appellant when he arrived.

25. Ms Greenwood said that her understanding was that her instructions were that she was not to ask for an adjournment. However, that conversation was under some "pressure" and there may have been some misunderstanding. She reiterated that her understanding had been that she was not to ask for an adjournment.

26. I decided to refuse the application for an adjournment, having regard to rules 2 and 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008, for the following reasons. The application for an adjournment was made very late, and should have been made earlier. The issue of an adjournment was canvassed at the outset of the hearing and I was informed then that there was no application for an adjournment. Furthermore, the appellant had given his evidence and had been questioned about the relationship. In those circumstances, it would not have been appropriate for the hearing to be adjourned and for Ms Boshir then to be able to give evidence with the potential that she would become aware of what the appellant had said in his evidence, thus prejudicing the respondent. I was not satisfied that the interests of justice required an adjournment, taking into account the interests of the appellant and the respondent. I was satisfied that the appeal could justly be determined without the hearing being adjourned, and taking into account that Ms Boshir had provided a witness statement.

Layli Begum's oral evidence

27. Mrs Begum adopted her witness statement in examination-in-chief. She said that she lives with her four children. The appellant looks after her because she is not well. He gives her her medicine and does shopping for her. He takes her to the doctor's and helps her in the bath and shower.

28. Her health problems are diabetes, heart problems, raised cholesterol and migraine. She has cramping in the legs and joints and finds it difficult to sit down or stand. Her body also shakes when she speaks. She has high blood pressure.

29. She is unable to walk and gets breathing problems when she tries. He has helped her around the house for around six or seven years.

30. In cross-examination she said that her health problems are not referred to in her witness statement because she did not realise that that was necessary.

31. She does not receive benefits such as carer's allowance or disability benefit.

32. When the appellant was in prison, she had even more difficulties. Her other children looked after her, but not like he did.

33. The children who live with her who are working are her second daughter, Sylvia Khatun, her fourth son, Abdul Rahim, and her youngest daughter, Sofia Rahenna Khatun, who does voluntary work. Her third daughter Shiria lives in a different house and also works.

34. She has lived in East Ham since 1990. She has met the appellant's girlfriend. She is a friend of her daughter Shiria. She is unable to remember the last time she saw the appellant's girlfriend but it was about two or three months ago. It was just before he was released from prison. She is sure about that but is unable to remember the number of days before his release that she saw Ms Boshir. She came to the Tribunal for a hearing in respect of bail.

35. As to the appellant's evidence that he had met Ms Boshir three times since he was released from prison, she said that the appellant had told her that they do meet. As to whether she visited Mrs Begum, she said that Ms Boshir works in a school and does not have any holidays. Now that she has holidays she would come to visit her.

36. She does not know where the appellant met her, given that Ms Boshir did not come to visit her. It was most probably in Cardiff. As to whether the appellant had travelled to Cardiff since his release from prison, the appellant had told her that he went once or twice to Cardiff because she was not well. She is not sure where they met. She knows that he goes to Cardiff but actually is not sure if it is Birmingham or Cardiff, then repeating that it was Cardiff.

Submissions

37. Mr Melvin relied on the reasons for deportation decision and the respondent's skeleton argument dated 29 July 2015.

38. He submitted that the only real additional evidence before the Upper Tribunal was in relation to the claimed relationship with Ms Boshir. Although it was claimed that there were occasional visits whilst he was in prison, that is not in her witness statement. The evidence as to their relationship is purely a reaction to the findings of the First-tier Judge to the effect that their relationship was not genuine and that the evidence of their relationship was scant at best.

39. The further evidence does not change that conclusion. The appellant was released from prison in March 2015. His evidence is that he has met Ms Boshir on three occasions since. However, nothing in either witness statement refers to those meetings.

40. Mrs Begum said that she had not seen Ms Boshir since the bail hearing and that the appellant had visited her in Cardiff. However, his oral evidence was that he had not travelled to Cardiff since his release.

41. The appellant's assurances before the Tribunal in 2008 as to his being a changed character have been totally undermined by events since.

42. There is no medical evidence in relation to what are said to be the health conditions of the appellant's mother and she is not apparently receiving any benefits, such as carers' allowance. That does not square with what is said about her inability to provide financial support to the appellant in Bangladesh. It was submitted that her health conditions have been grossly exaggerated in order to try to show dependency beyond ordinary emotional ties.

43. I was referred to the decision in *Bossade (ss.117A-D – interrelationship with Rules)* [2015] UKUT 00415 (IAC), in respect of which it was submitted that the facts were very similar to those of this appellant. It is difficult to see how the appellant could be said to be fully integrated into UK society. He has been sentenced to about nine years' imprisonment and has served at least three years. There is scant evidence of any work. There is some evidence of work for Asda in around 2006 but little since, apart from the letter provided today.

44. It is accepted that in terms of paragraph 399A the appellant has resided for most of his life in the UK but it was not accepted that he is socially and culturally integrated in the UK or that there would be very significant obstacles to his integration into Bangladesh.

45. I was referred to the Immigration Directorate Instructions Chapter 13: criminality guidance in Article 8 ECHR cases ("the Guidance"). The appellant had made little contribution to society and was a danger to the public given his antisocial behaviour. His last offence was for burglary.

46. Mrs Begum's evidence is that she had lived in East Ham for 25 years. Newham is the centre of the Bangladeshi community in the UK with about 20,000 Bangladeshi residents in that area. It is difficult to see how, with reference to the Guidance, the appellant could be said to have no ties, friends or relatives in Bangladesh.

47. Ms Greenwood submitted that there were very significant obstacles to the appellant's integration into Bangladesh. These include his relationship with his mother and with Ms Boshir. Ms Boshir had provided a surety of £3,000 in respect of his bail, notwithstanding that she is a teacher and does not have a high income.

48. She was too unwell to attend the hearing. Their relationship has endured for some considerable period of time despite the distance between them. It would be unduly

harsh on her for him to be deported. Her father would not approve of the relationship if the appellant was not allowed to remain in the UK. She would have to sever her relationship with her parents.

49. The appellant has family life with his mother, which was a finding made in 2008. Their relationship has continued and there is no reason to depart from that finding. The appellant provides his mother with physical and emotional support. He has always lived in her household and the relationship of family life has not ended simply because the appellant has reached his majority.

50. The Immigration Rules do not contemplate family relationships other than in the case of partners. Therefore, there are compelling circumstances to consider Article 8 outside the Rules.

51. The family do not frequently travel back and forth from Bangladesh, although they visit. That is not frequent. Family life would be broken if the appellant were removed.

52. There are in addition, very significant obstacles to the appellant's integration into Bangladesh. There is a wealth of evidence that he has integrated into the UK having been here since the age of 2. English is his first language even if it were to be found that he does have some level of Bangladeshi language. He has worked and has the capacity for employment but his employment opportunities have been restricted because of the conditions of bail.

53. There is evidence from his brother, Abdul Rahim, in his witness statement about the appellant's voluntary work and playing football. His integration is not undone by his convictions.

54. He is assessed as being at a low risk of re-offending. He has undertaken courses in prison, albeit that the time he has been in prison he has not been integrating into society in general in the UK but he was preparing for his release.

55. As to very significant obstacles, he does speak some Sylheti and has been exposed to some extent to the written language. His language skills however, fall below what would allow him to engage with society in Bangladesh.

56. Although both he and his mother say that there are some family there, they would not provide support for him. They are either unemployed or involved in subsistence farming. It is immaterial that he grew up in a Bangladeshi area of London. That would not help him to integrate and establish himself in Bangladesh. The lack of family life there is relevant.

57. He is unlikely to commit further offences and is likely to find employment in the UK.

My assessment

58. The Immigration Rules that are directly relevant to this appeal are paragraphs 398-399A. They provide as follows:

“398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported."

59. The provisions of ss.117A-117C of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") are as follows:

"117A: Application of this Part

(1) This part applies where a court or Tribunal is required to determine whether a decision made under the Immigration Act –

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under Section 6 of the Human Rights Act 1998.

(2) In considering the public interest question the court or Tribunal must (in particular) have regard –

(a) in all cases, to the considerations listed in Section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in Section 117C.

(3) In sub-Section (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B: Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

That is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C: Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with

a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

60. It can be seen that in relation to the Immigration Rules, for the appellant to succeed in his appeal he would have to establish that paragraph 399 or 399A applies, or that there are very compelling circumstances over and above those described in those two paragraphs. I bear in mind the submission on behalf of the appellant to the effect that family life between adults is not catered for within the deportation Immigration Rules and, so it was submitted, there would be a need for a full Article 8 assessment. This submission relates primarily, if not exclusively, to his relationship with his mother.

61. I consider firstly the extent to which the appellant is able to meet the requirements of paragraph 399 in terms of his relationship with Ms Boshir, although in fact I was not specifically addressed by either party in relation to paragraph 399(b). The first question to be determined however, is whether the appellant does have a genuine and subsisting relationship with her.

62. I refer above to information received after the hearing in response to the directions I gave concerning Ms Boshir's absence from the hearing. The email from Ms Boshir dated 2 August 2015 contains a detailed summary of what can be described as gynaecological problems, she having suffered from those problems since about 2009 according to her email. Suffice to say, the letter from the Clare Road Medical Centre and that from the University Hospital of Wales are sufficient to satisfy me that Ms Boshir has given a satisfactory explanation for her inability to attend the hearing before me.

63. Mr Melvin's skeleton argument contends that the finding made by Judge Jackson in terms of the appellant's relationship with Ms Boshir is a finding that should be preserved. As is made clear in the error of law decision at [40] and [44], it is evident that Judge Jackson was not satisfied as to the genuineness and subsistence of their relationship.

64. For the reasons I have explained, I allowed further evidence to be admitted in terms of their relationship. That further evidence consisted of the witness statements from the appellant and from Ms Boshir. There was also oral evidence from the appellant. In Ms Boshir's witness statement she explains that she and the appellant have been in a serious relationship "for some time" and that her parents had previously approved of her relationship with him and their intention to get married.

65. Her witness statement continues however, to state that her father has told her that if the appellant is removed from the UK he would withdraw his approval of marriage and has in fact done so, subject to her being able to show that he no longer faces removal. In the event, she has now decided that it would not be possible for her to follow him to Bangladesh. Although she intends to marry him and start a family she has had to listen to her father's advice about Bangladesh, and that he has told her that if she defies him and goes to Bangladesh with the appellant she would be disowned. Thus, she has decided that she could not follow him there.

66. She further explains that his removal would therefore mean the end of their relationship and any plans they have for marriage. She states that they intend to marry within months of his being allowed to stay in the UK. She explains what her plans are in terms of moving to London and looking for employment. Her evidence was consistent with the appellant's in terms of the long-term plan being for them to move out of London because East London is the environment in which he has committed a number of offences.

67. I am not satisfied however, that the appellant has established that he and Ms Boshir are in a genuine and subsisting relationship. I am not satisfied that the evidence before me adds significantly to that which was before Judge Jackson. Before her the evidence was of limited frequency of contact between them which included only two visits to the appellant by Ms Boshir whilst he was in prison. Those two visits occurred only after the respondent's decision to deport the appellant. The appellant had been in prison for the majority of the claimed period of their relationship. Ms Boshir had cited work reasons for not visiting the appellant more than twice but, in the words of Judge Jackson at [52] "without engaging with the fact that she works in a school and has extended holidays outside of term time".

68. Furthermore, the evidence between the appellant and his mother before me was inconsistent in terms of his contact with Ms Boshir since his release from prison. Mrs Begum said that the appellant had visited her in Cardiff since his release, but the appellant's evidence was that he had not travelled to Cardiff to see her since his release. Furthermore, neither the appellant's nor Ms Boshir's recent witness statements refer to what contact they have had since his release.

69. In addition, I do not find satisfactory the appellant's explanation for not having seen Ms Boshir at weekends in terms of her having marking to do. The appellant said that he had seen her three times since he had been released but Mrs Begum does not appear to have hosted any such visits and thought that they had met in Cardiff. That is what he apparently told her. That is inconsistent with his evidence.

70. I also note that in Ms Boshir's email about her hospital admission on 20 May 2015 when she had surgery performed under general anaesthetic, she said that she was discharged several hours later. Indeed she describes being admitted to the day surgery at Llandough Hospital. In answer to my questions the appellant knew something of the nature of her operation. However, he said that she was in hospital for two days definitely, and maybe even three. His apparent lack of knowledge in

relation to her hospital admission is inconsistent with a person who claims to be in a genuine and subsisting relationship with his partner.

71. So far as concerns his relationship with his mother, and whether that amounts to family life, of course the appellant has to establish that his relationship with her extends beyond ordinary emotional ties given that he is an adult. The relationship of family life between an adult child and parent could amount to family life, for example, if the parent is in some way dependent on the child, or indeed vice versa.

72. In this case the appellant relies on the assertion that he provides assistance to her in terms of shopping, helping her with her medication and personal domestic needs, and his living in her household.

73. In 2008, as noted in the error of law decision at [45], it was found that the appellant does have family life with his mother and siblings. I observe in passing, that there was no argument before me in terms of family life with his siblings. The focus for the argument in terms of family life was in relation to his relationship with his mother.

74. Although in 2008 it was found by the First-tier Tribunal that the appellant has family life with his mother (and siblings), at that time he was aged 22. He is now aged 29. In the meantime, he has been sentenced to a further four years' imprisonment, the most recent offence of burglary resulting in a sentence of two years and ten months' imprisonment.

75. It could not realistically be said that the appellant is in any way dependent on his mother in terms of any need for emotional support. Although he lives in her household, at his age his is capable of being financially, emotionally and socially independent. The fact that he has continued to offend notwithstanding his relationship with his mother, indicates a lack of influence on her part over him, and his independence of thought and action.

76. Whilst I am prepared to accept that the appellant's mother may have some health conditions, what was said in evidence about her health in unsupported by any medical evidence. I do not accept that her health is as poor as has been suggested. Apart from the lack of any supporting medical evidence, there is no reference to her ill-health in the witness statements. I do not accept the explanation for that omission. If her health was as poor as has been suggested, and that she is thus dependent on the appellant, it is reasonable to assume that there would have been some reference to her health conditions in the witness statements.

77. Furthermore, the appellant is not the only child of his mother living at home. The evidence is that when the appellant has been in prison the appellant's mother has been assisted by the other siblings. I do not accept the evidence that the appellant provides particular assistance to his mother beyond that of the other siblings, given the appellant's apparent lack of commitment to her in terms of his offending and that there are other siblings at home who, unlike the appellant, have not apparently made the choice of excluding themselves from the opportunity to care for their mother by committing offences which have the potential to result in imprisonment.

78. I am not satisfied that the evidence establishes that the appellant's relationship with his mother (or with his siblings) amounts to more than ordinary emotional ties. Accordingly, I am not satisfied that he has family life with his mother.

79. The relevance of that conclusion is in terms of whether there are "very compelling circumstances" over and above those described in paragraphs 399 and 399A, requiring a more detailed, or further, Article 8 assessment. This is a matter to which I shall return presently.

80. In terms of paragraph 399A(a), the appellant has been lawfully resident in the UK for most of his life. It is not however, accepted on behalf of the respondent that he is socially and culturally integrated in the UK. In summary, the respondent relies on his criminal offending, suggesting a lack of integration. It is said in the respondent's skeleton argument that there is no evidence of any positive contribution by the appellant to UK society; on the contrary. Furthermore, there is little evidence it is said that he has ever worked in the UK during his adult life. I was referred to the Guidance in terms of the question of integration.

81. Whilst not disagreeing with the respondent's submissions in terms of the fact of the appellant's convictions and the limited evidence of his employment, it does seem to me that the appellant having arrived in the UK when he was just 2 years of age, it is likely that notwithstanding his offending he is socially and culturally integrated in the UK. He was educated here and will have become integrated before having started his offending when he was 20 years of age.

82. The real question it seems to me is whether under paragraph 399A(c) it could be said that there would be "very significant obstacles to his integration into the country to which it is proposed he is deported", namely Bangladesh.

83. It is important in this respect to have regard to the findings of Judge Jackson who heard his appeal on 15 July 2014. The error of law decision from [24] sets out Judge Jackson's findings. These included that the appellant's mother is fluent in Sylheti and has family in Bangladesh, albeit that her parents have now passed away. She concluded that the appellant retains linguistic ties with Bangladesh with spoken Sylheti at least and that there is no reason why he would not be able to improve his language skills on return. At [58] there is further reference to the appellant's cultural connection with Bangladesh in terms of having been brought up in a family household where his parents' origins are in Bangladesh. He lived in Bangladesh in 2004 and visited in 2000 and 2011. He has met family members there. He saw three uncles as recently as 2011 at his sister's wedding. She concluded that there is no reason why contact could not or would not be re-established on return.

84. At [59] it was concluded that the appellant has ties there which go far beyond his nationality, and remain in spite of the fact that he has resided in the UK since he was 2 years old.

85. Although the appellant's and his mother's witness statements provided for the hearing before me seek to re-open the question of the appellant's ties with Bangladesh, there is no basis upon which to do so, there having been no error of law

in Judge Jackson's factual assessment in this respect, as is clear from the error of law decision. In any event, nothing in those witness statements undermines Judge Jackson's conclusions. In particular in relation to Mrs Begum's parents having died, that was information that was before Judge Jackson who referred to it in the determination.

86. I am not satisfied that the appellant has established that there would be very significant obstacles to his integration into Bangladesh. I accept that there would be some obstacles to his integration there, but I do not accept that they would be very significant in the light of the established facts.

87. In these circumstances, the appellant is not able to meet all of the requirements of paragraph 399A. Thus, he is not able to establish that in terms of the Immigration Rules an exception to the automatic deportation provisions applies in terms of Article 8.

88. Furthermore, the evidence does not establish that there are "very compelling circumstances" over and above those described in paragraph 399A, that assessment being informed by the factors set out in s.117B-C of the 2002 Act. As I have already found, the appellant does not have a relationship of family life with anyone in the UK, in particular his mother or siblings. There is no other basis from which to conclude that there are any such very compelling circumstances. Indeed, not only are there no "circumstances" over and above 399A, there are no "compelling" circumstances and still less no "very" compelling circumstances.

89. Even if a full or further Article 8 assessment is required, applying the *Razgar* [2004] UKHL 27 criteria, and incorporating ss.117A-C of the 2002 Act, the outcome of the appeal would be the same. Indeed, the potency of the public interest arguably makes the case for the appellant's removal all the more emphatic when these statutory criteria are considered.

90. In summary, the appellant has not established that the respondent's decision would amount to a breach of his Article 8 rights in any respect.

Decision

91. The decision of the First-tier Tribunal involved the making of an error on a point of law. That decision having been set aside, the decision is re-made, dismissing the appeal.

Upper Tribunal Judge Kopieczek 8/10/15

ANNEX

DECISION AND DIRECTIONS

1. The appellant is a citizen of Bangladesh born on 6 May 1986. He arrived in the UK on 4 June 1988 with his mother, Layli Begum, on what is described as a "family visa". He was subsequently granted indefinite leave to remain.

2. The appellant has a number of criminal convictions which, aside from bringing him before the criminal courts has brought him before the immigration tribunals.

3. The Secretary of State decided to make a deportation order against the appellant for an offence of possession of a controlled drug with intent to supply for which he received a sentence of two years' imprisonment on 28 November 2007. His appeal against that decision was heard in 2008 by the then Asylum and Immigration Tribunal whereby his appeal was allowed.

4. Subsequent convictions resulted in a decision dated 26 February 2014 to deport him under the automatic deportation provisions of the UK Borders Act 2007. The particular offence which prompted that decision was one of burglary of which he was convicted on 15 August 2013 and which resulted in a sentence of two years and ten months' imprisonment.

5. His appeal against the decision to make a deportation order came before First-tier Tribunal Judge Jackson on 15 July 2014 whereby he dismissed the appeal in a determination promulgated on 6 August 2014.

6. Permission to appeal was given by Upper Tribunal Judge Reeds on 20 October 2014. The specific ground on which permission was granted relates to the changes introduced to the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") by Section 19 of the Immigration Act 2014, as well as corresponding changes to the Immigration Rules. All these changes were introduced subsequent to the hearing before Judge Jackson but prior to the promulgation of his determination.

The grounds of appeal and submissions

7. The first ground before the Upper Tribunal, in summary, is to the effect that Judge Jackson erred in law in failing to apply the primary legislative and Immigration Rules changes introduced by the Immigration Act 2014 and HC 532 on 28 July 2014. Although those changes were not in force at the date of the hearing, it was nevertheless submitted that Judge Jackson should have directed a further hearing or invited written submissions from the parties.

8. Grounds 2 and 3 relate to the judge's conclusions on certain factual matters, it being contended that those conclusions were inconsistent with the findings that had been made in the earlier determination of the deportation appeal in 2008.

9. So far as the first ground is concerned, Mr Duffy conceded that there was an error of law in Judge Jackson's decision but it was submitted that that error of law was not such as to require the decision to be set aside, it not being material to the outcome.

10. Ms Greenwood relied on the skeleton argument before the Upper Tribunal. In essence, she submitted that the test to be applied as a result of the changes that were introduced is a different test. Formerly, the appellant was required to establish that he has "no ties" with Bangladesh. Now, amongst other things, he must establish that there would be "very significant obstacles" to his integration into Bangladesh (both under the Immigration Rules and under Section 117C of the 2002 Act). It was submitted that, for example, findings would need to have been made in relation to matters such as the appellant's ability to find employment and the level of cultural understanding that would be needed for him to integrate. Similarly, there was no finding in relation to whether his family in Bangladesh would be willing or able to assist him in integrating.

11. Furthermore, in terms of the new statutory regime, it was submitted that Judge Jackson did not explicitly find that there was no genuine relationship between the appellant and Ringki Boshir, the appellant's partner. The appeal was determined, it was argued, on the basis that there were no insurmountable obstacles to preventing family life between them continuing outside the UK. However, a "key question" under the new Immigration Rules is whether it would be 'unduly harsh' to require her to leave the UK with the appellant or to remain here without him.

12. It as submitted that Judge Jackson's findings in terms of the appellant's ability to speak, read and write Sylheti are inconsistent with those of Immigration Judge Herlihy who heard the appeal by the appellant in 2008. Judge Herlihy found that the appellant "does not read or write Bengali" and that Bengali is only spoken by him and his siblings to his mother. However, Judge Jackson concluded that the appellant speaks Sylheti and although accepting that he does not read or write the language fluently, he is likely to have had some experience of reading and writing Sylheti during the nine months he spent with his family members in 2004, at a time when he attended school in Bangladesh. Judge Jackson further found that the appellant's spoken fluency is greater than he and his mother had claimed in the appeal.

13. In addition, it was submitted that Judge Jackson had not made a specific finding in terms of whether there was family life between the appellant and his mother and siblings in the UK. Judge Herlihy had found that there was such family life and there was no good reason for Judge Jackson to have departed from that finding.

14. The written grounds themselves, in terms of grounds 2 and 3, take issue with the judge's conclusions in terms of whether the appellant has ties to Bangladesh, those conclusions it is said being inconsistent with findings made at the earlier appeal.

15. Mr Duffy, although accepting that there was an error of law in the decision of the First-tier Tribunal in failing to take into account the legislative changes and the changes to the Immigration Rules prior to promulgation of the decision, submitted that that error of law is not material to the outcome. We were referred to the Immigration Directorate Instructions entitled "Chapter 13: Criminality Guidance in Article 8 ECHR Cases" ("IDIs"), versions 4.0 dated 8 May 2013 and 5.0 of 28 July 2014. With reference to the question of 'no ties (including social, cultural or family)' it was submitted that the IDIs in relation to that former manifestation of the rules referred to the same sorts of factors as the IDIs for July 2014 refer to in the assessment of "very significant obstacles" to reintegration. Indeed, it was submitted that this was a more difficult test for the appellant to meet. Thus, in terms of the decision in Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC), if somebody has been found to have ties to the country of removal, it would be impossible for that person to show very significant obstacles to reintegration. Even if there is a difference in the two tests, it is not sufficiently different to produce a different result and accordingly the error of law by the judge in this respect is not material.

16. As regards the other grounds, the only difference between Judge Jackson's findings and those of Judge Herlihy at the appeal in 2008, concerns the question of the appellant's ability to read and write Bengali. In any event, there is no difference in the determinations in terms of the appellant's ability to speak Bengali.

17. Furthermore, Judge Herlihy was not aware that the appellant would later go to Bangladesh for a wedding in 2011. Judge Jackson was entitled to use new information to make further findings of fact. The judge had applied the decision in Devaseelan [2002] UKIAT 00702 and had taken into account the passage of time since Judge Herlihy's decision.

18. Permission to appeal was refused by First-tier Tribunal Judge Levin and Mr Duffy relied on his reasons for doing so.

19. In reply Ms Greenwood submitted that the IDIs are only guidance but in any event they assist the arguments advanced on behalf of the appellant.

Our assessment

20. In the appeal heard in 2008, so far as material to the present proceedings, the Panel made a number of findings. It was concluded that the appellant had family life with his mother and siblings in the UK with reference to the "considerable evidence" presented to the panel of the extent of that family life. It was found that following the recent death of the appellant's father there was a "degree of dependency" by the appellant's mother on the appellant, as the oldest son in the family.

21. At [64] it was found that although the appellant at that time did have grandparents, aunts and uncles in Bangladesh, it was accepted that he does not read or write Bengali and that at home the language spoken amongst the appellant and his siblings is English, and that Bengali is only spoken by him and his siblings to his mother.

22. At [72] it was noted that the appellant, if deported, would be returning to Bangladesh having left there when he was 2 years of age. It was found that although he does have family in Bangladesh, namely grandparents, uncles and aunts, all his formative life has been spent in the UK where he has been educated. The Panel further concluded that although the appellant's mother has contact with Bangladesh as does his older sister, the decision to deport him was not proportionate. At [74] it was decided that there is "very strong evidence of family life by the Appellant and his mother and siblings".

23. It is worth noting that the panel in 2008 was considering the appeal with reference to paragraph 364 of the Immigration Rules which included a presumption in favour of deportation where a person was liable to deportation. Paragraph 364 was subject to human rights considerations.

24. The material findings of Judge Jackson were as follows. He concluded that the appellant was not able to meet the requirements of the Immigration Rules. In particular, he concluded that he was not able to meet the requirements in terms of paragraph 399 with reference to Ms Boshir, said to be his partner. Even if they were in a genuine and subsisting relationship it was decided that there were no insurmountable obstacles preventing family life continuing outside the UK.

25. In terms of whether the appellant has no ties to Bangladesh, she referred to the decision in Ogundimu. Reference was made to the appellant's life in the UK whereby at [56] it was stated that "it is undisputed that he has family, private life and cultural ties to the United Kingdom (as was found in 2008 by Judge Herlihy)". It was found that the appellant's mother is fluent in Sylheti and has family in Bangladesh, albeit that her parents have now passed away, and noting that the appellant's mother says that since then she has even less or not contact with her siblings.

26. At [57] Judge Jackson stated as follows:

> "The Appellant speaks Sylheti and whilst I accept that he does not read or write the language fluently (I would find that he is likely to have had some experience of reading and writing Sylheti during the nine months he spent without his UK family members in 2004 during which time he attended school in Bangladesh), I find that his spoken fluency is greater than he and his mother have claimed in this appeal. The Appellant's mother does not speak English at all to the Appellant and her evidence in the last appeal and in the written statements is that she has a close relationship with the Appellant and currently that they speak regularly since he has been in prison. Her oral evidence that they only speak briefly because they do not understand each other and that one of her daughter's explains what the Appellant has said later is inconsistent with the nature and detail of the close relationship of dependence claimed. It is also inconsistent with the Appellant's evidence in his previous appeal that his younger sister (the one said to do the interpreting for his mother) only spoke about 10% Bengali. I find that the Appellant retains linguistic ties with Bangladesh with spoken Sylheti at least and there is no reason why he would not be able to improve his language skills further on return."

27. Further, at [58] as to social and family ties, Judge Jackson referred to the appellant having been brought up in a family household where his parents' origins are in

Bangladesh and from whom he can be expected to have at least some cultural connection with Bangladesh. There is reference to his having some experience of living in Bangladesh, in 2004 and visiting in 2000 and 2011. She referred to his having family members there who he has met. She also referred to the appellant's three uncles who the appellant had direct contact and links with and whom he saw as recently as 2011 at his sister's wedding. It was concluded that whether or not the appellant's mother remains in contact with her siblings, the appellant had in the past his own direct family ties to Bangladesh and even if there has not been very recent contact there is no reason why contact could not or would not be re-established on his return.

28. In concluding at [59] that the appellant had not established that he has no ties to Bangladesh, she concluded that he has ties there "which go far beyond his nationality and remain in spite of the fact that he has resided in the United Kingdom since he was two years old."

29. Judge Jackson referred to the extent to which the appellant has connections with the UK, and to which we shall refer in more detail in due course. With reference to his connections with Bangladesh, at [67] she reiterated that he has ties remaining in Bangladesh, and at [68] that his family in the UK have visited Bangladesh on numerous occasions. She concluded that there is no reason to think that they would not do so again in the future to have contact with the appellant. She also referred to their being able to maintain contact with him by other means.

30. Whereas under the former paragraph 399A(a) the appellant needed to establish that he had "no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK", under the amended paragraph 399A he needs to establish that "there would be very significant obstacles to his integration into the country to which it is proposed he is deported." As already indicated, it is accepted on behalf of the respondent that the judge erred in law in applying the former version of the rules. Similarly, it is accepted that Judge Jackson erred by failing to apply Section 117C(4)(c) which again requires him to meet the 'very significant obstacles' test. We agree that the First-tier Judge did err in law in this respect.

31. Where we part company with Mr Duffy however, is in relation to whether the error of law is material, or put another way, whether it is an error of law that requires the decision to be set aside. In our judgement it is such an error. Whilst we accept that in many, perhaps even in most, cases the conclusion that an individual has ties to the country of return would mean that there are not very significant obstacles to the person's integration there, that in our view would not always be the case. Whilst the IDIs to which we were referred in relation to both 'tests' contain factors that undoubtedly overlap, the IDIs are not of course to be regarded as a checklist of factors that dictate the outcome of the enquiry in terms of whether the very significant obstacles threshold has been met. In any event, even with reference to some of the factors set out in version 5.0 which deals with the amendments to the Immigration Rules, it can be seen that the answer in terms of the enquiry into 'no ties' and 'very significant obstacles' will not always be the same. Thus, at 5.4.6 one of

the considerations said to be relevant would include whether the foreign criminal has previously demonstrated an ability to integrate in a new place, for example if he came to the UK as an adult.

32. Furthermore, it is possible to envisage circumstances in which an individual has ties of one sort or another to a particular country, for example linguistic or cultural ties, but where there would nevertheless be very significant obstacles to integration if, for example, the individual would not be accepted into society there and would have to live a solitary or isolated life.

33. Of course, although we bear in mind the submissions on behalf of the respondent to the effect that on the particular facts the outcome for this appellant would be the same, we are not prepared at this stage to come to that view. It may be that in the light of such findings by Judge Jackson as are to be preserved, the outcome will in the event turn out to be the same, but that is not a matter that can be resolved without further enquiry. In addition, we are loathe to conclude that a failure to apply a relevant statute, by design introduced presumably to reflect what is regarded by the Secretary of State as a new and qualitatively different test, is nevertheless to be regarded as immaterial to the outcome.

34. Thus, we are satisfied that the decision of the First-tier Tribunal is to be set aside.

35. It is however important for the future conduct of the appeal to resolve the other grounds advanced on behalf of the appellant.

36. In terms of the complaint in the grounds that Judge Jackson impermissibly made findings contrary to those of Judge Herlihy in terms of the question of 'no ties', we reject that contention. In the first place, Judge Herlihy was not concerned with the issue of whether there were no ties to Bangladesh, that not having been a formal legal test that needed to be assessed or evaluated. Furthermore, Judge Herlihy herself found that the appellant would have family in Bangladesh, at that time being grandparents, aunts and uncles. To suggest as the grounds do that Judge Herlihy's findings "clearly amount" to findings of no ties to Bangladesh is quite simply wrong. Judge Jackson's enquiry <u>was</u> focused in part on the question of "ties", and included reference to evidence that the appellant had visited Bangladesh, including in 2011, having contact with relatives there.

37. We are entirely satisfied that her findings on this issue are findings that are sustainable on the evidence and not impermissibly inconsistent with those of Judge Herlihy.

38. As to ground 3, which in effect contends that because Judge Herlihy found in 2008 that it would be disproportionate to remove the appellant, Judge Jackson should have come to the same view, again, we disagree with that suggestion. Apart from anything else, as Judge Jackson pointed out at [61] the passage of time since Judge Herlihy's decision included two further convictions, despite the appellant's assurances during the course of the appeal before Judge Herlihy that he would not re-offend.

39. To some extent, the skeleton argument submitted on behalf of the appellant re-fashions the grounds of appeal to include specific complaints about particular factual findings. These relate to the appellant's claimed relationship with Ms Boshir, said to be his partner, the question of the appellant's language skills, and the issue of family life in the UK.

40. It is suggested at [28] of the skeleton argument that Judge Jackson did not explicitly find that the relationship between the appellant and Ms Boshir was not genuine, but rather determined that aspect of the appeal on the basis that there were no insurmountable obstacles to preventing family life continuing outside the UK. However, in our view it is clear that Judge Jackson did not accept that the appellant was in a genuine and subsisting relationship with Ms Boshir. As the skeleton argument points out, at [52] it was found that "The evidence of a genuine and subsisting relationship between the Appellant and Ms Boshir is scant at best." There then follows examples of features of the evidence which cast doubt on that relationship, including the limited frequency of contact which itself included only two visits to the appellant by Ms Boshir whilst he was in prison. It was noted that those two visits only occurred after the respondent's decision to deport the appellant. Furthermore, at [53] Judge Jackson stated as follows: "In any event, even if there was a genuine and subsisting relationship between them, there are no insurmountable obstacles preventing family life continuing outside the United Kingdom." The phrase "even if" makes it plain that she did not accept that there was a genuine and subsisting relationship between them. In addition, at [68] the same phraseology is used "even if they are in a genuine and subsisting relationship".

41. It is suggested that where at [57] Judge Jackson made findings in relation to the appellant's ability to use the Sylheti language, she made findings contrary to those of Judge Herlihy in her determination at [64]. Judge Herlihy said at [64] that "we accept his evidence that he does not read or write Bengali and that at home the language spoken amongst the Appellant and his siblings is English and that Bengali is only spoken by him and his siblings to his mother." It is submitted that without reference to the decision of the panel in 2008, Judge Jackson impermissibly came to a different view.

42. However, Judge Jackson did accept that the appellant "does not read or write the language fluently" but concluded that he is likely to have had some experience of reading and writing Sylheti during the nine months he spent without his UK family members in 2004 during which time he attended school in Bangladesh. That is not a matter that is referred to by Judge Herlihy but again it is important to bear in mind what the focus for the enquiry of the respective judges was. Judge Jackson was specifically here making an enquiry into the question of what ties the appellant has to Bangladesh. In fact, the only difference in terms of the reading or writing issue is Judge Jackson's addition of the word "fluently". The difference in our judgement is not material to the issues in any event.

43. So far as his spoken ability is concerned, the panel in 2008 expressly found that the appellant spoke to his mother in Bengali. Judge Jackson's conclusion that the appellant speaks Sylheti is even on that minimum basis a sustainable finding. The

conclusion that his spoken fluency is greater than he and his mother had claimed in the appeal before her, is supported by the matters referred to by Judge Jackson at [57]. Thus, she referred to evidence given in the earlier appeal which was inconsistent in some respects with the evidence before her. In any event, she was entitled to conclude that there is no reason why he would not be able to improve his spoken Sylheti on return to Bangladesh.

44. Again, in relation to the appellant's relationship with Ms Boshir, having stated that "The evidence of a genuine and subsisting relationship between the Appellant and Ms Boshir is scant at best", it is plain that Judge Jackson was not satisfied that they did have a genuine and subsisting relationship. Referring to the evidence as "scant at best", can only mean that she was not satisfied as to the relationship.

45. We have already noted that the panel in 2008 concluded that the appellant does have family life with his mother and siblings. The contention on behalf of the appellant as expressed in the skeleton argument is that Judge Jackson did not properly address the question of whether the appellant has family life with his mother and siblings, and impermissibly departed from the findings of the panel in 2008. In our judgement there is merit in that contention. Our analysis in this respect can conveniently start at [61] of Judge Jackson's determination. There she referred to the decision in Devaseelan and its application to the facts of the appeal before her. She noted that Judge Herlihy found that there was strong evidence of family life with the appellant's mother and siblings in the UK and that the appellant had spent all of his formative life in the UK. She noted that it was found that the decision to deport him would be a disproportionate interference with his right to family and private life. She correctly stated that the earlier determination was only the starting point and pointed out that it was important to recognise that the previous appeal was not in relation to the automatic deportation provisions under the UK Borders Act 2007, but under paragraph 364 of the Immigration Rules.

46. She went on to state as follows:

> "and that the passage of time since that decision has included two further convictions (despite the evidence given and assurances in the last appeal that the Appellant would not offend again) and, I find, a change in the previous elements of dependency by the Appellant's mother. In particular, the Appellant's brother's evidence was that he was financially supporting his mother and sisters and in practical terms, the Appellant cannot be doing so as well whilst in prison. In undertaking the assessment of exceptional circumstances in this appeal, I therefore take into account the previous findings as a starting point but also consider the Appellant's current circumstances."

47. There is to be found the conclusion that there is a change in the previous elements of dependency by the appellant's mother. However, the only explanation for that view of the change in elements of dependency by the appellant's mother is the financial support now being provided by the appellant's brother, rather than the appellant. We cannot find in the determination any other reasoned basis for concluding that the appellant no longer has family life with his mother and siblings.

48. In addition, Judge Jackson's earlier findings in terms of the appellant's family life are in our judgement inconsistent with what follows. For example, at [67] it is stated that the appellant's "social, culture and family ties are strongest in the United Kingdom". At [69], finding that the appellant's deportation was proportionate, she stated that this was notwithstanding the length of time he has been in the UK since the age of 2 and "his family and private life in the United Kingdom".

49. Whilst it may be that Judge Jackson would have been entitled to find on the evidence before her that the appellant did not have family life with his mother and siblings, the reasons for coming to that view, and for departing from the findings of Judge Herlihy, albeit that they were made in 2008, would have to have been given. We are satisfied that in this respect Judge Jackson also erred in law. Whether that is an error of law which in itself would have required the decision to be set aside is academic in our view but for the reasons already expressed the decision does need to be set aside.

50. The decision will therefore, have to be re-made. We have taken into account the submissions of the parties in terms of whether that re-making should be done in the Upper Tribunal or whether the appeal should be remitted to the First-tier Tribunal. Having regard to the Practice Statement at 7.2, we are of the view that it is not appropriate for the appeal to be remitted to the First-tier Tribunal. It is not a case where the matter is to be heard de novo and the majority of findings of fact are not infected by the error of law. In these circumstances the appropriate forum for the re-making of the decision is the Upper Tribunal. To that end, a further hearing will be listed in due course.

51. The parties are to take note of the directions below.

DIRECTIONS

1. If either party wishes to rely on further evidence, that party must comply with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

2. In relation to any witness whom it is proposed should give oral evidence, there must be a witness statement drawn in sufficient detail to stand as evidence-in-chief such that there is no need for further examination-in-chief.

3. The parties must be in a position to make submissions, if required, in relation to what findings of fact made by First-tier Tribunal Judge Jackson are to be preserved. In principle, the findings of fact made by Judge Jackson except as infected by the error of law are to stand.