Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12729/2017

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On Tuesday 12th March 2019	**On Thursday 28th March 2019**

Before

Mr Justice Dingemans, sitting as a Judge of the Upper Tribunal
Upper Tribunal Judge Doron Blum

Between

MARK [G]
(NO ANONYMITY DIRECTION REQUESTED OR MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Lindsay (Home Office Presenting Officer)
For the Respondent: Mr M. Muirhead (Counsel)

DECISION AND REASONS

Introduction

1. This is the hearing of an appeal against the decision of Judge of the First Tier Tribunal AJ Blake ("the judge") promulgated on 26 October 2018 following a hearing on 5 October 2018. The judge had allowed an appeal by Mr Mark [G] against a decision of the Secretary of State for the Home Department to deport him and refuse

his human rights claims. This was on the basis that it would be "unduly harsh" for Mr [G]'s partner and children if he was deported.

2. The Secretary of State contends that the judge erred in his approach to the unduly harsh test and in assessing the social worker's evidence. Mr [G] accepts that the judge erred in the approach to findings relating to Mr [G]'s partner, but contends that the judge came to conclusions open on the evidence in relation to the children so that the error was immaterial and that the judge properly took account of the expert evidence.

Factual background

3. Mr [G] is a citizen of Jamaica and was born in December 1968. Mr [G] entered the UK on 20 January 2001 with leave to remain until 8 February 2001. He overstayed. In 2001 Mr [G] formed a relationship with and subsequently married in 2010 Ms [KG].

4. On 3 January 2007 Mr [G] was cautioned for possession of cannabis. It appears that, for reasons not explained on the evidence, Mr [G] used the alias of [LW].

5. In early 2007 Mr [G] and Ms [KG] had a daughter, who is now aged 12 years. On 9 December 2011 Mr [G] applied for leave to remain. This was refused on 30 March 2012 but he was granted discretionary leave to remain until 30 March 2015.

6. On 7 March 2013 Mr [G] was arrested for possession of a class A drug with intent to supply.

7. In late 2013 Mr [G] and Ms [KG] had a son who is now aged 5 years.

8. On 2 June 2014 in the Crown Court at Aylesbury Mr [G], being prosecuted in his alias name of [LW], was sentenced to 3 years' imprisonment for the offence of possession of cocaine, a class A drug, with intent to supply. The weight of the drug was just under 2 kg and it had a purity of 68 per cent. The value of the drug was over £400,000. The judge put the category as between 1 and 2 for the purposes of the sentencing guidelines. Mr [G] had a lesser role, for the purposes of the sentencing guidelines. Mr [G] had pleaded guilty and put forward a basis of plea suggesting that he thought that the drug was cannabis. The sentencing judge expressed a provisional view that the submissions were inherently incapable of belief but the judge did not shut the door to a Newton hearing to determine whether the basis of plea might be correct. Time for reflection was given and Mr [G] accepted that he did not want to pursue a Newton hearing. Mr [G], and a co-defendant, were therefore sentenced. The judge had regard to character references, some of which are in the papers before me, and sentenced Mr [G] to 3 years imprisonment.

9. It appears that Mr [G] was released 5 months early on a tag in December 2014. He remained tagged until May 2015.

10. On 26 March 2015 solicitors acting on behalf of Mr [G] made a further application for leave to remain. The letter recorded that Mr [G] was residing with his wife and 2 children. Reference was made to his conviction and it was recorded that Mr [G] had been visited by his wife and children at least once a week. There were in the papers various documents showing continuing contact between Mr [G] and Ms [KG].

11. It was recorded that Ms [KG] found it extremely difficult to cope with the children without him and obtained help from a close relative who is not now around because he has returned to her country. It was recorded that Ms [KG] was a teacher and had her own business, relying on Mr [G] to cover the lion's share of caring while she maintained a steady income.

12. The Secretary of State made a decision dated 3 September 2015, delivered on 10 September 2015, to deport Mr [G] pursuant to sections 32 and 33 of the UKBA 2007.

13. Various claims were made on behalf of Mr [G] and rejected. Mr [G] was held on occasions in immigration detention. It appears that he was detained from May 2016 to October 2016. Deportation was set for 3 June 2016. On 2 June 2016 Mr [G] applied for judicial review which was refused and certified as totally without merit. On 3 June 2016 a claim for asylum was made and removal directions were deferred.

14. On 9 August 2016 an asylum interview was undertaken and on 25 August 2016 removal directions were set. Removal directions were set for 7 September 2016. Further applications for judicial review were made and certified as being totally without merit. It appears that Mr [G] was not removed and challenges to his detention were made.

15. On 29 September 2016 a Child and Mental Health Service ("CAMHS") practitioner wrote to Ms [KG] stating that she had been asked by the daughter's school to contact with regard to "providing some support for your daughter".

16. On 7 October 2016 Ms [KG] wrote to Home Office and noted that "our first child was devastated when Mark was sent to prison. She suffered mentally at his absence. When he returned they was great improvement on her health". The letter noted that a reference had been made to a psychiatrist and when Mr [G] was back the daughter had quickly recovered and was very much her old self. Ms [KG] also recorded that she was greatly affected and became depressed when Mr [G] was in prison. The letter recorded that since Mr [G] had been detained things have fallen apart for their family. The daughter had relapsed and was currently referred to the mental health department as she had invented an imaginary dad. The other child was always asking about his father and sometime woke at night crying for his father. Ms [KG] recorded that she had been very affected and had lost her job as a teacher because she could not concentrate. The letter recorded that her daughter's mental health situation "calls for attention", noted that relocation to Jamaica was not realistic and that "it would be unduly harsh to deprive my children who are British citizens of the love and affection of their father when other children in the neighbourhood have their fathers around them".

17. By letter dated 7 October 2016 a CAMHS practitioner for South London and Maudsley NHS Trust recorded that the daughter "has been accepted by the CAMHS SeaDS team in order to provide her with extra support around her current emotional difficulties. She has been assessed as having situational anxiety and low mood and is struggling to function within her normal remit".

18. By letter dated 10 October 2016 Ms [KG] wrote again stating that the proposed deportation was having a damaging effect on the whole family "in particular my children who are being seriously mentally affected by it".

19. It appears that after his release in October 2016 Mr [G] was detained from January 2017 until 6 April 2017. Further removal directions were set. Further submissions were made including by letter from solicitors dated 14 February 2017. In the letter reference was made to the limited provision of mental health services for children in Jamaica. A report dated 8 February 2017 from Mrs Cynthia Kelchure-Cole was attached to the letter. She was a qualified social worker, with over 30 years' experience. She was currently working as a social work creative therapist, using the creative arts to obtain children's feeling in a safe and secure environment. Ms Kelchure-Cole confirmed that she understood and took seriously her overriding duty to the Court. The report stated that it provided a voice to the children of Mr [G], and particularly his daughter. Ms Kelchure-Cole used drawing to engage the daughter, who was described as a "bright and articulate 10 year old". Ms Kelchure-Cole interpreted the drawings as showing that the daughter was feeling extremely sad, demonstrated by her low and flat presentation and drawings. The daughter referred to feeling sad when her father was in prison, but comforted by the fact that he would return, but sad that he would leave and she would not be able to get him back. Ms Kelchure-Cole observed a warm and loving relationship with the father and noted that her professional view was that the daughter was experiencing high levels of anxiety and stress due to worrying about what would happen to her father, putting pressure on herself.

20. Ms Kelchure-Cole referred to research showing that children with fathers in their lives were able to make better life choices. Ms Kelchure-Cole also referred to research carried out by Middlesex University on behalf of the Children's Commissioner on the separation of children due to immigration rules. It was noted that children losing a parent by death were provided with support and counselling, but that children losing a parent by deportation did not have access to such services "until they develop behaviours, often during their teenage years, that bring them to the attention of professionals".

21. Ms Kelchure-Cole reported that "from my own assessment and the assessment from CAMHS it is clear that [the daughter's] anxiety levels are extremely high and that she will require ongoing support surrounding her mental well-being". The report then dealt with the son, the unrealistic expectation of the family relocating to Jamaica and the impact on relationships if Mr [G] was deported.

22. In the conclusion Ms Kelchure-Cole reported "in asking for reconsideration to allow Mr [G] to remain in the UK I have taken into account his criminal offence and conviction, with the awareness that in some circumstances the safeguarding and well-being of society can outweigh the rights of the child. However, Mr [G] does not have a long history of offending and … and he said that he has learnt from his experience".

23. Mr [G] was granted bail on 5 or 6 April 2017 and was then later detained and again granted bail. On 11 May 2017 a CAMHS practitioner wrote noting that on Mr [G]'s release the daughter's mood lifted dramatically, although there remained mild anxiety about him being taken away again. Plans were made to end the sessions but Mr [G] was detained again and the effect on the daughter was reported to be dramatic as she was very distressed and barely slept and worried. The daughter was unable to attend school on several days, and her anxiety lessened only when she was able to have daily contact on the phone. The daughter's mood lifted again on Mr [G]'s return home, with anxiety on days that he had to sign on. The letter concluded that "the impact of having her father removed had a detrimental effect" the daughter's mental and physical wellbeing.

24. By letter dated 11 May 2017 to Ms [KG] from the "psychological therapies and wellbeing service" it was noted that scores had indicated that she had moderate depression and severe anxiety. The problems reported were low mood and stress.

25. Julie Meek, an independent social worker, produced a short report dated 4 April 2017. Ms Meek reported that she had been instructed to undertake an assessment into the effect on the daughter and son should Mr [G] be deported to Jamaica. Ms Meek had worked with children's services for 10 years. She had spoken with Mr [G] and interviewed the others. Mr [G] reported the children's disappointment when he had not been granted bail. Ms [KG] reported the effect of absences from nursery for the son, when she had been unable to take him, and the fact that the daughter's homework was suffering even though she remained in the top set. Mr [G] had assisted with that and there were days when the daughter did not want to go to school because she was down and upset about her dad. The daughter expressed concern that she was worried about her dad and him being deported to Jamaica. Ms Meek said "although there needs to be a full assessment undertaken to assess all of this in more detail, it is clear from the initial conversations that I have had" that Mr [G] had a close relationship with his children and they were missing him and that his absence was having an effect on their emotional well-being. Mr [G]'s absence was also having an impact on the children's education.

26. Ms Meek produced a more detailed report dated 10 May 2017 dealing with the effect on the children should be Mr [G] be deported. Information was obtained from phone calls and two home visits. Mr [G] described how he dealt with the children while his wife worked. He had also carried out the household work and had had to catch up with matters on his release. Mr [G] reported that the children had had issues with school when he was detained. Ms [KG] was reported to ask why the children had to suffer, Mr [G] had served his time and yet they were all being punished because of

Mr [G]'s immigration situation. Ms Meek noted the previous reports on the daughter and the work from CAMHS and noted a change in the daughter's behaviour with Mr [G] around. The daughter reported that everyone else had their father around even if they did not live with them whereas her father has been far away. The daughter's teacher reported a marked improvement in behaviour when her father was back. Ms Meek noted that children needed routines and stability to thrive and the fact that Mr [G] could be detained was impacting them all emotionally. The children could not live in Jamaica as they were settled in the UK. Mr [G]'s deportation would have "a significant detrimental emotional and physical impact" on the children.

27. In the report at paragraph 2.7 Ms Meek set out Mr [G]'s statement about his arrest saying that he had been asked by a friend to pick up the friend's girlfriend from the airport who, unknown to him, was carrying drugs.

28. Further submissions were made and rejected. On 14 November 2017 the Secretary of State notified Mr [G] that his protection claim had been refused and that the decision to deport him was being maintained.

Proceedings before the Judge and the decision

29. The appeal to the judge was on the basis that the Secretary of State had failed adequately to assess Mr [G]'s family and private life with his partner and two children, had failed to have regard to the best interests of the children, and had failed to consider whether Mr [G] would be subjected to inhuman and degrading treatment if returned to Jamaica. At the beginning of the appeal the asylum claim was withdrawn. This meant that the appeal concerned the deportation order and paragraphs 398 and 399A of the Immigration Rules and section 117A-D of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

30. The Judge set out the sentencing remarks and Mr [G]'s evidence. Mr [G] said that he had left Jamaica after problems between Tivoli Gardens and Wilton Gardens. Mr [G] claimed that the problems were gang and politically based. Mr [G] claimed that there was a radio broadcast which he had associated himself with after refusing attempts to recruit him. He had become a Rastafarian, and escaped from Jamaica in 2001. He had then lived in the Rastafarian community in London before meeting his wife in 2006.

31. Mr [G] said that he was a married man with two children, a daughter born in 2007 and a son born on 15 November 2013. Mr [G] said that he told his wife that he was an overstayer in 2009 and she had suggested marriage and that this might regularise his stay in the UK, see paragraph 65 of the judgment. Mr [G] admitted going to Jamaica in 2012 and 2013, as well as going to Ghana or Ethiopia. He said he had got into problems over £100 and had been made to pick up drugs. Mr [G] said he did not know there were drugs in the bag. Mr [G] said he had been railroaded. Mr [G] said that both of his children had been affected by his imprisonment. He said his removal would have a very bad effect on his wife and children.

32. Ms [KG] gave evidence that she had met Mr [G] in 2006. She did not want to live in Jamaica because it was violent and she had no family there. The education was not good unless you could pay privately. She worked on a market stall and with a shop and Mr [G] helped her and looked after the children. The children and she had suffered because of his imprisonment. Mr [G] had looked at a property in 2013 but she had made it clear she would not go there. Mr [G] saw his daughter every day and she was worried about anxiety for her son. Ms [KG] said that her mother was selfish and had not helped.

33. The Judge set out relevant provisions of the law before turning to relevant findings of fact. The Judge recorded that Mr [G] was "44 years at the time of his first and only recorded offence". The Judge found that Mr [G] was "truly contrite for his offending and the effect it had had on his family". The Judge also recorded Mr [G]'s co-operation with the police.

34. The details of the family were set out in the judgment. The judge referred to the report from Ms Kelchure-Cole and the statement that relocation was not a realistic option. The judge recorded the separation anxiety noted in the son and the daughter's feelings of hopelessness and feeling so sad that she could hardly bear it. The judge noted the reference to the research showing that children separated by immigration rules suffered distress and high levels of anxiety over a period of time.

35. The Judge found exception 2 set out in section 117C(5) of the 2002 Act and paragraph 399 of the Immigration Rules applied. The Judge found that both wife and children were qualified under section 117D of the 2002 Act. The Judge recorded that deportation had "to be established to be unduly harsh" and referred to *MM (Uganda) v SSHD* [2016] EWCA Civ 617. The Judge recorded that seriousness "was often reflected in the severity of the sentence. I took into account that in the appellant's case his sentence had been one of 3 years. I noted that in his sentencing remarks the judge had attributed a lesser role to him in the nature of the overall offending".

36. The judge said that "what amounted to something being unduly harsh upon a qualifying individual had to be weighed against the public interest, which would include the circumstances of the offence and any aggravating features".

37. The judge accepted that his family life with his partner met the requirements set out in paragraph 399(b) of the IR. The Judge noted the genuine relationship with the wife and children, and noted that his imprisonment had had far reaching effects on both of his children, and that a reference had been made to CAMHS. The Judge found it would be unduly harsh to require the family to live in Jamaica and unduly harsh for them to remain in the UK if the appellant were to be deported. He noted the stress and anxiety and found that "removal would have far-reaching consequences on the welfare of his wife and children". The Judge concluded stating "I took into account section 117C of the 2002 Act. I noted that the Appellant had only committed one offence and that the evidence established that he was contrite."

Relevant provisions

38. Sections 32 and 33 of the UK Borders Act 2007 provide for the making of deportation orders against foreign criminals who have been sentenced to longer than 12 months imprisonment. Sections 117A-D of the Nationality, Immigration and Asylum Act 2002 deal with article 8 of the ECHR and public interest considerations. It might be noted that "in a 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 or subsisting parental relationship with a qualifying child, and (b) it would not be reasonable to expect the child to leave the UK".

39. The Immigration rules provide in relation to deportation and Article 8

> 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 ...
>
> (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 12 months; or
>
> 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.

Section 117A – C of the 2002 Act provides, so far as is relevant:

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(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 subsection (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.

40. As is apparent from the provisions set out above paragraph 398 of the Immigration Rules deals with deportation and article 8. The Rules apply whether a foreign criminal claims his deportation would be contrary to UK's obligations under article 8. In any decision affecting children the best interests of the children must be a primary (but not the paramount) consideration but they can be outweighed by the cumulative effect of other considerations, see *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 AC 166 at paragraphs 27 to 28. Paragraph 399(a) provides that, in certain circumstances if "it would be unduly harsh" for the child either to live in the country to which would be deported or to live without the person who is to be deported. It is common ground that there were 2 qualifying children in this case.

41. The meaning of "unduly harsh" has been considered in a number of authorities. In *MK Sierra Leone* [2015] UKUT 00223 (IAC) it was noted at paragraph 46 that "unduly harsh" does not equate with uncomfortable, inconvenient or merely difficult … "harsh" in this context, denotes something severe, or bleak … the addition of the adverb "unduly" raises an already elevated standard still higher. In *Secretary of State for the Home Department v AJ* [2016] EWCA Civ 1012; [2017] Imm AR 442 it was noted at paragraph 17 that "it will be rare for the best interests of the children to outweigh the strong public interest in deporting foreign criminals". This was approved in *KO(Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53; [2018] 1 WLR

5273. At paragraph 23 it was noted that the judge needed to look for a degree of harshness going beyond that what would necessarily be involved for any child faced with the deportation of a parent. This is because the regime suggests that there is "a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent". It is not necessary to establish "very compelling reasons" which applies in certain other situations.

Error of law in relation to the partner

42. It is common ground that the judge made an error in paragraph 128 of the decision in finding that Mr [G]'s relationship with his partner was a qualifying relationship. This is because Mr [G]'s immigration status was at all material times precarious. However it was also common ground that if there was no error made by the judge in relation to the decision in relation to the children the error about Mr [G]'s partner would not affect the case. This is because Mr [G]'s deportation would still not be permissible under the relevant rules.

43. It is right to note that the judge appeared to balance interests between the public interest in deportation and article 8 rights in paragraph 130 of the judgment. For the reasons explained in *KO* at paragraph 12 the rules, as now amended, attempt to provide for that balance and for consistency. There are differences in approach to balancing the interests of society in deporting foreign criminals and the interests of qualifying family members, depending on whether the relevant person has been sentenced to less than a year, 12 months to 4 years, and over 4 years. For those sentenced to over 12 months but less than 4 years, as was Mr [G], the bar is set at unduly harsh either on a qualifying partner or the children. Following the approach set out in the rules should avoid the need to enter into the balancing exercise.

44. In undertaking the analysis of the respective balance the judge minimised the scale of Mr [G]'s offending. This was because he said that Mr [G] had committed only one offence in paragraph 120 of the decision when he had a caution for possession of cannabis. On its own this would not have been a material error. However the judge went on to find that Mr [G] was truly contrite for his offending in paragraph 121 of the decision. The difficulty with this approach is that the judge appeared to have accepted Mr [G]'s evidence that he did not know that there were drugs in the bag and had been told to plead guilty because he had the bag in his possession without confronting whether Mr [G] was given such advice, how this could be reconciled with Mr [G]'s initial basis of plea that he thought the drugs were cannabis and not cocaine, and Mr [G]'s subsequent acceptance that that was not a sustainable basis of plea by withdrawing it before a Newton hearing was ordered.

45. Further the judge appeared at paragraph 132 of the judgment to suggest that because the offence had occurred late in Mr [G]'s life and had been committed because of financial pressure it was less serious. This ignored the fact that this was a very serious offence of possession with intent to supply class A drugs. The proper question for the judge to approach was whether removal would be unduly harsh for the children.

46. In that respect the judge asserted that removal would be unduly harsh but did not take any detailed analysis of why that would be. There was no consideration of what made this case more than "harsh" which, as has been pointed out in previous decisions, is a permissible interference with Mr [G] and his family's article 8 rights. It seemed to us that the judge's approach was similar to the impermissible approach identified in *AJ* at paragraph 49 in concentrating on article 8 rights and not on the what would be "unduly harsh".

Disposal

47. During part of the appeal we considered whether to allow the appeal and re-make the decision that deportation would not be unduly harsh and therefore permissible. However we were persuaded that there is in this case some suggestion that there may be mental disorders suffered by the children which might, depending on the nature and extent of the mental disorders, mean that it would be unduly harsh to remove Mr [G]. We noted that the reports by the social workers were out of date, and that there was no expert medical evidence about the mental disorders. We should state that it seemed to us proper expert medical evidence was likely to be required if reliance were to be placed on any evidence of a mental disorder. Given this conclusion it seemed to us right to allow the appeal and to remit the decision to the First Tier Tribunal so that the matter can be fairly determined on the evidence then available.

48. We should say that the parties should liaise and co-operate, in accordance with their duties under the Tribunal Rules, and identify what expert evidence is required to be adduced on one or both sides. It may be necessary for the parties to agree directions to provide for such evidence.

Notice of Decision

The appeal is allowed.

The case is remitted to the First Tier Tribunal to be redetermined.

Signed *J. Dingemans* Date 22 March 2019

Mr Justice Dingemans, sitting as an Upper Tribunal Judge.