**UT Neutral citation number: [2023] UKUT 00046 (IAC)**

**Begum (Remaking or remittal) Bangladesh**

**Upper Tribunal**
**(Immigration and Asylum Chamber)**

**Heard at Field House**

**THE IMMIGRATION ACTS**

Heard on **25 November 2022**
Promulgated on **07 February 2023**

**Before**

**THE HON. MR JUSTICE DOVE, PRESIDENT**
**MR C M G OCKELTON, VICE PRESIDENT**

**Between**

**SUFIA BEGUM**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr Biggs and Mr West, Counsel, instructed by Barclay Solicitors.
For the Respondent: Mr Walker, Home Office Presenting Officer

*(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*

*(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.*

*(3) Applying AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512, in considering the question of whether the appeal should be retained or remitted it will be material to take account of the loss of the two-tier decision making process if the decision is retained. Not every finding of an error of law concerning unfairness will require the appeal to be remitted: the nature of the unfairness and the extent of its impact on the findings made overall will need to be evaluated as part of the decision as to whether the general principle should be departed from.*

## DECISION AND REASONS

1. The Appellant is a national of Bangladesh who was born on 2nd February 1952. She entered the UK on a visit visa on 29th January 2020 with leave to remain for six months. She did not return to Bangladesh and remained with her family in the UK, becoming an overstayer on 29th July 2020. On 30th August 2020 she made an application to remain in the UK on the basis that she qualified under Appendix FM of the Immigration Rules ("IR"). This was refused as it was concluded that she did not meet the requirements of IR paragraphs E-ECDR.2.2-2.5. The Appellant appealed against this refusal to the First-tier Tribunal (Immigration and Asylum Chamber) ("FtT"), and the appeal was heard on 23rd May 2022. At the appeal, which was a hybrid hearing, the judge was provided with what he described as a "stitched bundle" of documents and a skeleton argument from the Appellant. Whilst the judge did not specifically record receiving them, it is common ground in this appeal that the judge was emailed three letters from relatives of the Appellant, which are considered below. The judge indicated that he had "considered all of the documentation presented to me when arriving at my decision, even if a document is not specifically referred to in the written decision itself" (see [6]).

2. In his determination the judge noted that the emphasis of the Appellant's case had evolved into principally a reliance upon Article 8 and its application outside the IR, it being accepted that there were difficulties in the Appellant satisfying the requirements of paragraphs E-ECDR 2.2 and 2.3. The judge concluded that, nonetheless he would need to make findings in relation to the matters addressed in paragraphs E-ECDR 2.4 or 2.5, as these questions and findings could be relevant to the consideration

of whether any refusal under article 8 outside the IR would be proportionate. These paragraphs of the IR provide as follows:

> "E-EDCR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term care to perform everyday tasks.
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> E-EDCR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because –
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> > (a) it is not available and there is no person in that country who can reasonably provide it; or
> >
> > (b) it is not affordable."

3. At the hearing the judge heard evidence from the Appellant and two of her sons. He also received some medical evidence relating to the Appellant's clinical history and current condition. Having assessed this material the judge concluded that the suggestion made by the Appellant that she could no longer look after herself was not supported by the available evidence, and therefore she did not satisfy paragraph E-ECDR 2.4 of the IR. The judge then went on to consider paragraph 276ADE(1)(vi) of the IR, but again he was not satisfied that these provisions were satisfied and that there were obstacles to the integration of the Appellant upon return to Bangladesh. The judge observed:

> "Mr West did not spend much time on this issue, preferring to concentrate on article 8 rights outside of the rules. I think his approach was realistic. I could see no adequate basis for arguing that this lady would be an outsider upon her return to Bangladesh. She had lived there all of her life. She was familiar with the language and culture of the country and had been absent only since early 2020. She has a very large proportion of her family still living there. I did not accept that her children and their families who are present in Bangladesh are in any way disinterested in the appellant. Beyond an argument with a sister-in-law, which may have taken place 5-10 years ago, there has been no explanation as to why her family there should not be supportive and attentive. I had little doubt that she would receive both financial and emotional support upon return, whether from her family there and/or in the UK.
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> 49. Neither do I believe that the appellant's health is in any way an obstacle to her returning to Bangladesh. As I have found above, what health conditions she has do not constitute a significant impairment for the purposes of looking after herself on a day-to-day basis. On the limited medical evidence I was presented, it seemed that her health at the time of the hearing, was broadly the same as it had been when she came to the UK. She had been able to care for herself in 2019/20. There was very

> limited support for any deterioration in any of her conditions between coming to the UK, and the hearing. There was nothing to support the proposition that she had gone from a woman who could care for herself, to someone who needed 24/7 support."

4. The observation in relation to the argument with the appellant's sister-in-law refers to the contents of a letter to which the judge alludes in [21] of his determination as follows:

> "Mr Ahmed [the appellant's son] was referred to a letter from Mr Hussain dated 28th April 2022, which was emailed to me by Mr Banham. In it, he seemed to suggest that the appellant had come to the UK motivated largely by a falling out with Mr Hussain's wife, with whom she had been living at the time. Mr Ahmed said this was an error of translation. He said the argument had occurred roughly about 10 years ago."

5. The agreed position at the hearing was that the letter referred to was one of three letters which had been emailed by both Mr West, who appeared for the appellant at the hearing, and also Mr Banham, who appeared for the Respondent before the FtT. In addition to the letter from Mr Hussain (in which he also explained that he would not be able to support his mother because as an Imam he only earned just sufficient to support himself), there were two further letters from the Appellant's daughters explaining that they were impecunious and would not be able to support their mother were she to be returned to Bangladesh. This material was relied upon by the Appellant to support the submission that it would not be proportionate for the Appellant to be removed to Bangladesh. The judge's conclusions in that regard were set out as follows:

> "However, as I have found above, there is no medical need for her to remain in the UK. This part of the application finds little support in the evidence. I find that the appellant and her family have exaggerated her medical conditions in an attempt to strengthen the application. However, the medical evidence provides only the most limited support for any care issues. I have found that she is able to live independently. I accept that there may be some challenges in the light of her age. However, there are many 69-year-olds who can care for themselves on a day-to-day basis. This is not one of these cases where the mere fact of the appellant's age is evidence of a need for care. Moreover, the appellant has many members of her family who remain in Bangladesh who would be prepared to provide either financial and/or practical support if needed. I have found that the appellant was caring for herself when she was last in Bangladesh, so their preparedness to support the appellant in this regard has not been tested. I have seen insufficient evidence that they cannot support the first appellant as and when necessary. It is difficult to understand why the circumstances pleaded on the appellant's behalf should require her to be cared for specifically by her family in the UK rather than in Bangladesh."[58]

6. The submission of the Appellant is that the failure of the judge to identify the receipt and consideration of the letters, other than the passing

reference to the letter of Mr Hussain in [21], supports the conclusion that the judge simply failed to have regard to the material parts of this key correspondence. This conclusion is materially reinforced by the contents of [48] in which the judge asserts that he had "no doubt that she would receive both financial and emotional support upon return whether from her family there and/or in the UK" and [58] where he asserted that "the appellant has many members of her family who remain in Bangladesh who would be prepared to provide either financial and/or practical support if needed." These observations and conclusions are in such stark contrast to the content of the letters on the topic of her children's unwillingness to support her upon return demonstrates the failure to have regard to the correspondence which was provided at the time of the hearing.

7. These submissions found favour with the FtT judge who considered the application for permission to appeal in this case. He granted permission on this ground and went on to observe that he considered that it might be of value for the Upper Tribunal to give guidance in relation to documents which were lodged and relied upon after the preparation of the "stitched", by which is meant the hearing, bundle. The response filed by the Respondent pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, akin to the skeleton argument filed by the Respondent for the purposes of the hearing, conceded that there was an error of law on the part of the judge. At the hearing it was clarified on behalf of the Respondent that the nature of the conceded error of law was a failure to have regard to a material consideration, namely the correspondence, in making the decision to refuse the appeal. The appellant contended that in addition to this species of error of law, there was also an error of law arising from an error of fact, in the form of the mistake that the judge made as to the existence of the correspondence. The appellant contends that this additional way in which the error of law could be characterised has ramifications which are addressed below.

8. The concession of the appeal in this case by the Respondent has given us considerable pause for thought. The judge refers in terms to one of the pieces of correspondence when setting out the evidence in the appeal in [21], so there is at the very least some evidence that this letter was received and taken into account. We accept, however, that the conclusions in [48] and [58] are in very sharp and surprising contrast with the material in the letters which makes clear that her children would not be able or prepared to support the Appellant were she to be returned to Bangladesh. We have borne in mind that the Respondent will no doubt have carefully reflected upon whether there are reasonable prospects of resisting the appeal prior to making the concession which has been made. Not without a little hesitation, and on balance, we accept that there has been an error of law by the judge in relation to the correspondence. The question which therefore arises as to whether this matter should be remitted to the FtT for redetermination, or whether it should be retained and remade in the Upper Tribunal (Immigration and Asylum Chamber) ("UTIAC"). Whilst both parties at the hearing suggested that remittal was the most appropriate result, for

the following reasons we disagree: this case should remain with the Upper Tribunal for remaking.

9. We do not propose to give guidance in relation to the issue of documentation received after the FtT has prepared the hearing bundle. Suffice to say that in our view the issue can be perfectly well addressed conventionally by the use of directions and the discipline of ensuring that any additional late documentation is specifically recorded as having been taken into account in the terms of the determination reporting the FtT Judge's decision.

10. The powers of the UT on an appeal from the FtT are set out in section 12 of the Tribunals Courts and Enforcement Act 2000. This section empowers the UT to set aside the decision of the FtT if it has involved the making of an error on a point of law and provides by way of section 12(2)(b) that in such an event the UT must either admit the case to the FtT with directions for its reconsideration or remake the decision. In remaking the decision, the UT may make any decision which would have been open to the FtT were it remaking the decision and may make such findings of fact as it considers appropriate.

11. In order to guide the exercise of this discretion there are Practice Directions and Practice Statements. These were fully set out in the recent decision of the Court of Appeal in the case of *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512 at [6] and [7] as follows.

> "6. Part 3 of the current Practice Directions deals with the procedure to be followed on an appeal to the UT. Paragraph 3.1 provides:
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> Where permission to appeal to the Upper Tribunal has been granted, then, unless and to the extent that they are directed otherwise, for the purposes of preparing for a hearing in the Upper Tribunal the parties should assume that:
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> (a) the Upper Tribunal will decide whether the making of the decision of the First-tier Tribunal involved the making of an error on a point of law, such that the decision should be set aside under section 12(2)(a) of the 2007 Act;
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> (b) except as specified in Practice Statement 7.2 (disposal of appeals by Upper Tribunal), the Upper Tribunal will proceed to re-make the decision under section 12(2)(b)(ii), if satisfied that the original decision should be set aside; and
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> (c) in that event, the Upper Tribunal will consider whether to remake the decision by reference to the First-tier Tribunal's findings of fact and any new documentary evidence submitted under UT rule 15(2A) which it is reasonably practicable to adduce for consideration at that hearing.
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> 7. Paragraph 7 of the current Practice Statements provides:
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> **Disposal of appeals in Upper Tribunal**

> 7.1 Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).
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> 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
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> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
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> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
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> 7.3 Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."

12. The circumstances of the case of *AEB* were as follows. Before the FtT an application to adjourn the proceedings was refused. The application was based upon the need for expert evidence from an independent social worker in respect of the impact on the Appellant's children of his separation from them and the impact of his removal upon their best interests. In the UT it was held that this decision was procedurally unfair, firstly in circumstances where the consequences of the separation of the Appellant from his children was central to the determination of the appeal and the evidence would have been readily available and, secondly, because of the implication of the refusal of the adjournment that there was no subsisting paternal parental relationship between the Appellant and his children. The UT Judge decided to retain the remaking of the decision in the UT and proceeded to make a determination of the appeal. Before the Court of Appeal, it was accepted that the UT Judge's decision was in error in its application of paragraph 7.2 of the Practice Statement by failing to have regard to paragraph 7.2(a) of the Practice Statement and, on the basis that he was departing from it, it was incumbent on the judge to provide reasons for his approach. The absence of reasons led to the concession that the judge had erred by failing to consider paragraph 7.2(a) and by solely referring to paragraph 7.2(b) when the UT Judge concluded "that it was appropriate to retain remaking in the [UT], given the narrowness of the scope of the issues as they had developed since the respondent's initial refusal".

13. Whilst the Respondent sought to uphold the decision on the basis that the loss of the normal two-tier approach to decision making was insufficient to

require the remittal of the case Stuart-Smith LJ was unwilling to accept that proposition. He concluded as follows:

> "47. It seems to me to be illogical and wrong to accept the rationale for the exception in paragraph 7.2(a) as expressed in *MM (unfairness) Sudan* and yet to assert that the loss of an uncontaminated two-tier decision-making process (with the possibility of a second appeal thereafter) is not a material consequence of the UT's failure to remit. If, which I do not accept, there is a tension between what was said in *JD (Congo)* and in *MM (unfairness) Sudan*, that tension should be resolved in favour of ensuring that parties in general, and AEB in particular, should have had and should now have a two-tier process that is fair throughout. That, in my judgment, is the very purpose that lies behind paragraph 7.2(a). It does not mean that *all* cases where the hearing before the FtT have been unfair will necessarily fall to be remitted: but reasons for not doing so must be both cogent and expressed. Here there are none.
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> 48. Put slightly differently, the admitted error by the UT has deprived AEB of (a) a fair hearing before the FtT; (b) the first appeal "standard" error of law test in respect of the range of factual findings and evaluative judgments which would have been made by the FtT; and (c) the opportunity to appeal against an adverse finding on a point of law which does not have to meet the second appeal test. Since the point of the paragraph 7.2(a) exception is to avoid those consequences, all of which flow from the unfairness of the original FtT hearing, these are losses that are substantial and which render the UT's error material."

14. Stuart-Smith LJ went on to conclude that the respondent was correct to concede that had the Upper Tribunal Judge addressed the issues properly it may have been that the case would have been remitted to the FtT.

15. In the present case, as set out above, it is submitted on behalf of the Appellant that the error of law can be characterised in two ways. Firstly, as conceded by the Respondent, it can be characterised as the failure to have regard to material considerations, namely the contents of the letters which bore upon one of the matters which the Judge had to consider, namely the question of whether the Appellant would be able to be supported upon return to Bangladesh. The Appellant contends that the same error of law can also be characterised as a material mistake of fact.

16. The jurisdiction in relation to material errors of fact was established in the case of *E v Secretary of State for the Home Department* [2004] EWCA Civ 49 in which at paragraph 66 Carnwath LJ (as he then was) recognised that mistake of fact was capable of giving rise to a separate head of challenge in an appeal on a point of law. He expressed his conclusions as follows:

> "66. In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without

> seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of *CICB*. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not been have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."

17. The Appellant submits, correctly, that the jurisdiction arising in relation to a mistake of fact is a species of unfairness. Further, the Appellant submits that in the present case there was a mistake of fact arising on behalf of the FtT Judge in relation to the existence of the letters left out of account in his consideration of the issue relating to proportionality and the aspect of that assessment related to whether or not the Appellant would have support upon return to Bangladesh. There was a mistake as to the availability of evidence on that matter and it is uncontentious that the letters were made available to the judge. Since the Appellant's representative was, along with the Respondent's representative, involved in the provision of the letters, they cannot be held responsible for the judge's mistake, and that material would have played a part in the judge's assessment.

18. The Appellant also draws attention to the decision of the Upper Tribunal in *MM (Unfairness; ER) Sudan* [2014] UKUT 00105 (IAC). This case concerned a claim for asylum based upon the Appellant's religious convictions as a Coptic Christian which had led to her being arrested and detained on account of her inappropriate clothing and thereafter her rape by police officers. Her claim was that she had been arbitrarily arrested on other occasions and indeed that the same police officers had attempted to rape her after detaining her some years after the first incident of rape. Her claim to asylum was rejected by the Secretary of State on the basis that it was unworthy of belief. The findings adverse to her credibility were based upon specific inconsistencies and discrepancies in her account. Further, it was suggested that it was not the Sudanese authorities but rogue officials who were in truth the cause of her fear and that she could in any event avoid them by relocating to another part of that country. After she had been interviewed by the Secretary of State's officials her solicitors wrote to them reporting the Appellant's complaints about the accuracy of the interpretation during the interview, and submitted no less than 21 clarifications of her answers including clarifications related to her answers in respect of the Christian faith. The Secretary of State did not reply to the solicitor's letter prior to reaching a decision on the asylum claim, nor was a copy of that letter provided in the evidence of either party appearing before the FtT.

19. The case turned exclusively upon the credibility of the Appellant. In her evidence before the FtT the Appellant explained that the interview record was wrong, and she was then challenged as to why neither she nor her

solicitors had contacted the Secretary of State's officials to inform them that the record was wrong, and she pointed out that she had discussed this with her solicitor who said that a letter would be sent to the Home Office pointing out the mistake. The Judge concluded that the fact that the Appellant's solicitors did not write to the Home Office pointing out the error in the interview record damaged her credibility. The FtT Judge found the claimant to be lacking in credibility and dismissed the appeal.

20. In reaching its decision the UT based its conclusion that there was an error of law in the FtT decision on firstly, the principles of procedural fairness generally, and secondly, the species of unfairness based upon a material error of fact, in this case the mistake of fact being the erroneous belief that the Appellant had not provided instructions to her solicitor in relation to the inaccuracies in the interview record and no letter had been written as a result of those instructions to the Home Office. This was a material error of law and the UT observed that there was "a fairly strong general rule, where a first instance decision is set aside on the basis of an error of law involving the deprivation of the appellant's right to a fair hearing the appropriate course will be to remit to a new constituted First Tier Tribunal for a fresh hearing". In the final decision the UT set aside the decision of the FtT and remitted it to the FtT with no findings of fact preserved, no doubt because since credibility was at the heart of that appeal none of the findings of fact could properly stand.

21. The question which arises in light of the conclusion that there has been an error of law in the present case is the proper application of the Practice Directions and, in particular, paragraph 7 of the Practice Statement in relation to disposal of appeals in the UT. It is submitted on behalf of the Appellant that this is a case to which paragraph 7.2(a) applies as an exception to the likely remaking of the decision in the UT contemplated by paragraph 7.2. It is submitted that because one way of describing the error of law is a species of fairness paragraph 7.2(a) applies and therefore the matter should be remitted to the FtT. As was accepted during the course of argument by Mr Biggs, paragraph 7.2 (a) is not an absolute rule in the sense that all cases involving some species of unfairness must be remitted to the FtT. That concession is consistent with the conclusions of Stuart-Smith LJ in [47] of *AEB*. However, as he points out, if a case in which unfairness has been found is not to be remitted there must be reasons for doing so in order to enable an understanding of how the provisions of 7.2 have been applied.

22. We have concluded that this case should follow the general procedure and be remade in the UT and not treated as an exception under paragraph 7.2(a) or (b). Firstly, whilst we accept one way of characterising the error of law in this case is to describe it as an error of fact it is equally, if not more, apposite to describe it as a failure to have regard to a material consideration, namely the letters, when that consideration was so obviously material that it ought to have been part of the FtT decision. This is a case, therefore, where the error of law is effectively a hybrid, and the error of law can be equally described at least equally as a breach of

*Wednesbury* principles as much as a mistake of fact on the particular circumstances of the case before us.

23. Secondly, in exercising the discretion and applying paragraph 7.2 it is appropriate in this case to consider the extent to which the hearing before the FtT was affected by unfairness of the kind which has been conceded. This is not a case like *MM* where the unfairness was wholly dispositive of the issues in the appeal to the extent that the hearing before the FtT was of no value to the parties at all. The fact of the overlooking of the letters by the Judge solely impacted on a discreet strand of the proportionality assessment undertaken by the Judge; other strands of that proportionality assessment were fairly and effectively considered and resolved by him. This consideration bears upon both paragraph 7.2(a) and paragraph 7.2(b). No complaint is made, nor could it be made, in relation to the Judge's assessment of the evidence in relation to the circumstances of the Appellant in the UK, her current medical condition, and the impact of her medical condition upon her ability to care for herself and her requirement for support and attendance. Those findings were soundly made and would stand in any remaking of this decision. The single discreet issue to be resolved, and the impact of that resolution fed into the proportionality assessment, is the extent to which in the light of the correspondence the Appellant can anticipate being supported were she to have to return to Bangladesh.

24. In reaching our conclusions we have had regard to the argument that remaking the decision in the UT has the effect of depriving the Appellant of the two-stage decision making process, and confining any appeal from the UT to a second appeals test. That is a factor which is to be weighed in the balance in the context of the exercise of discretion and the importance of the right to a fair hearing which was reflected by what was said by the UT in *MM* that remittal in cases of unfairness was "a fairly strong general rule". Nonetheless in exercising the discretion under paragraph 7.2, which reflects that "fairly strong general rule" and does not provide an absolute requirement, it is appropriate to carefully scrutinise the nature of the error of law, the effect of the unfairness on the decision as a whole along with its nature and extent as part and parcel of the exercise of discretion. In relation to all the issues save the question of the availability of support for the Appellant in Bangladesh in reality a two stage appeal has been available to the Appellant. Having reflected upon the impact on the opportunity for the Appellant to have a two stage appeal process available to her we remain satisfied that in this case the appropriate disposal is as we propose.

25. To conclude, the error of law, which is conceded, and which can be characterised both as a failure to take account of the material considerations as well as a mistake of fact leading to unfairness, impacts upon a single discreet issue in the decision under challenge, and many of the conclusions reached by the FtT Judge were arrived at following a fair and effective adjudication. Taking those matters into account we are satisfied that as an exercise of the UT's discretion in the particular

circumstances of the present case set out above the appropriate approach to the disposal of this appeal is for it to be retained in the UT and remade preserving the conclusions of fact which FtT Judge made in relation to the circumstances of the Appellant and her family in the UK, her medical condition and the impact of her medical condition on her ability to self-care and her requirement for support and assistance.

**Notice of Decision**

The decision of the First-tier Tribunal is set aside for error of law and we direct that the appeal be re-determined in the Upper Tribunal.

Signed Sir Ian Dove Date 12th January 2023

The Hon. Mr Justice Dove
President of the Upper Tribunal
Immigration and Asylum Chamber