



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01186/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 13th November 2017

Decision & Reasons Promulgated
On: 10th January 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

YH + 1
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Denholm, Counsel instructed by Wilson Solicitors LLP
For the Respondent: Mr Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Jamaica born in 1971. She appeals, on human rights and protection grounds, against the Respondent's decision to deport her from the United Kingdom. The dependent to this appeal is her son, Z, who faces deportation as her family member.
2. This is the re-made decision in the appeal. The First-tier Tribunal dismissed the Appellant's appeal in a decision dated the 13th February 2017 but following a

hearing on the 19th June 2017 I set this decision aside. My written 'error of law' decision is appended to this determination.

Anonymity

3. The Appellant is a foreign criminal who would not ordinarily benefit from any protection of her identity. This case does however turn in large part on the presence in the United Kingdom of her minor children, two of whom are the subject of orders from the Family Court. I have had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders. I am concerned that identification of the Appellant could lead to identification of her children and I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her, any member of her family, or any member of her children’s families. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and the Respondent’s Decision to Deport

4. The Appellant came to the United Kingdom in June 2000. She had leave to enter as a visitor but that soon expired and she became an overstayer. She has never had any lawful leave to remain in the United Kingdom.
5. The Appellant has committed numerous criminal offences. She has been convicted of a minor road traffic offence, a drugs possession charge, possession of an article for use in fraud and no fewer than 9 convictions for shoplifting. The convictions that brought her to the attention of the Respondent, and this Tribunal, were however altogether more serious.
6. In October 2008 she went out drinking in Manchester with her two adult sons. They were in a club when they encountered a woman with whom the Appellant had some past conflict. An argument ensued. The woman left the club, and the Appellant and her sons followed. The Appellant’s son hit the woman over the head with a bottle. The bottle fell to the floor and the Appellant picked it up. Using the bottle she attacked the woman, who sustained serious injuries to her hand trying to defend herself. The trial judge noted that the victim suffered psychological trauma following what must have been a terrifying attack. The Appellant was arrested and bailed.
7. Whilst awaiting trial she took part, in April 2010, in a two further assaults. Having again got into an altercation in a club the Appellant hit a woman in the face with a shoe and took part in a physical assault on another man with her

son. An aggravating factor in these assaults was the use by the Appellant of homophobic language against both victims.

8. On the 15th November 2010 the Appellant was sentenced to 12 months imprisonment for the unlawful wounding in October 2008, 4 months imprisonment for an assault in April 2010 and 2 months for a common assault in April 2010. All sentences were to be served consecutively. These were the terms of the index offending which led the Respondent to make a decision to deport the Appellant, in accordance with s32(5) of the UK Borders Act 2007:

32 Automatic deportation

(1) In this section “foreign criminal” means a person –

- (a) who is not a British citizen,**
- (b) who is convicted in the United Kingdom of an offence, and**
- (c) to whom Condition 1 or 2 applies.**

(2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.

(3) Condition 2 is that –

- (a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and**
- (b) the person is sentenced to a period of imprisonment.**

(4) For the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.

(5) The Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).

.....

9. The deportation order was signed on the 11th January 2016.

The Appellant’s Case

10. The Appellant accepts that she is a foreign criminal and that she has been sentenced to a period of imprisonment of a period greater than 12 months. She accepts, in accordance with s32 of the Borders Act 2007, that her deportation would be conducive to the public good. She contends, however, that she should

not in fact be deported, because two of the 'exceptions' in s33 of the 2007 Act apply in her case:

33 Exceptions

(1) **Section 32(4) and (5) –**

(a) do not apply where an exception in this section applies (subject to subsection (7) below), and

(b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).

(2) **Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach –**

(a) a person's Convention rights, or

(b) the United Kingdom's obligations under the Refugee Convention.

....

11. In respect of exception 1 (b) the Appellant maintains that she is at risk in Jamaica from the gang that she originally fled from in 2000. This gang were a powerful presence in her local area in Kingston. She was gang-raped by five members of this gang. She went to the police and offered to give evidence. This led to the arrest and prosecution of at least one gang member. The Appellant was placed in the witness protection programme for her own safety. The gang responded by targeting members of the Appellant's family. This retribution included her father's house being burned down; her aunt being attacked with acid and her nephew being murdered. The Appellant escaped Kingston to live rough in the countryside where she was forced to work as a prostitute in order to survive. The Appellant avers that her brother was murdered by this same gang in 2004, and she believes this to be connected to her decision to testify. The Appellant maintains that she would be at risk today should she be returned to her home area of Kingston. She has no reasonable internal flight alternative because she would be a single woman with no connections and no support network. She would be destitute and vulnerable to exploitation.

12. In respect of exception 1 (a) the Appellant contends that it would be a breach of Article 8 ECHR should she be deported; she places particular reliance on the presence in the United Kingdom of her three minor children:

X - female, born July 2003

Y - male, born April 2004

Z - male, born February 2006

13. The application of exception 1(a) of s33(2) is elaborated in paragraphs 398-399 of the Immigration Rules:

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 12 months; 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

....

14. The Appellant submits that she has been the primary carer for her children for much of their lives. She is presently the full time carer for Z, and spends a good deal of time with X and Y, who are both subject to Special Guardianship Orders, made in favour of two paternal aunts. She submits that the children have already suffered significant disruption in their lives and that the impact upon them of her deportation would be substantial: it would go beyond 'missing her' or being 'upset' by her absence. She relies on the assessment of their Special Guardians and an independent social worker to submit that the

detriment they would likely suffer would be severe enough to meet the high threshold of 'unduly harsh'.

15. Should the Appellant succeed in demonstrating that either or both of the s33 (2) exceptions are made out, her appeal must be allowed.

Exception 1(b): Asylum

16. On the 5th April 2002 the Appellant claimed asylum. Her claim was rejected and on the 27th August 2004 the First-tier Tribunal, sitting in Glasgow, heard the Appellant's appeal against that decision. The Tribunal's decision in the appeal is dated the 16th September 2004. The factual basis of the claim was that in 1998 the Appellant had been raped by five men who were all members of the same gang in her neighbourhood of Kingston. The Appellant had reported the incident to the police and had been placed under police protection for her own safety. The gang had sought violent retribution. Unable to reach the Appellant it turned against her family, *inter alia* murdering her nephew and badly injuring her sister by throwing acid over her. The Tribunal proceeded on the implicit basis that those facts were made out, but dismissed the appeal on the grounds that the Appellant had thereafter entered the witness protection programme: it found at paragraph 29 that although there might be difficulties faced by the police in Jamaica, there is a sufficiency of protection. She had left the witness protection scheme voluntarily and could be reasonably expected to return to it. The appeal was dismissed on that ground.
17. The factual basis of that claim has been consistently maintained by the Appellant. I note, for instance, that in 2007 the Appellant's Probation Officer recorded how she wept in relating this ordeal¹ which had left her with feelings of depression, anxiety and self-blame (the officer records being shown "considerable scarring" to the Appellant's wrists which she attributed to self-harm). I note that trial judge His Honour Judge Hamilton, in sentencing the Appellant upon her conviction for the index offence, made reference to this "difficult background".
18. In 2015 the Appellant saw, for the first time, Dr Chris Maloney, a Consultant Psychiatrist instructed at that time in connection with a civil claim that the Appellant was making against the Home Office. For his report² Dr Maloney reviewed the Appellant's medical records going back to 2002. These show her GP to have recorded a 'history of rape' in December 2003, and repeated, regular attendances seeking help for low mood, depression, anxiety, self-harm, insomnia, suicidal ideation and substance abuse. In February 2005 the Appellant's then GP made a note on file: "multiple rapes in Jamaica, still has panic attacks from this. Brother killed last year by same mob in Jamaica that

¹ Pre-sentence report prepared by Juliet Rose 7th December 2007, page 323 bundle A

² Psychiatric Report dated 10th July 2015 prepared by Dr Chris Maloney, at page 1 bundle A

raped her". The Appellant's medical records are extensive, and provide a consistent picture of someone who has been regularly seeking help for the psychological sequelae of trauma over fifteen years. Having made a detailed assessment of the Appellant the Dr Maloney concluded that she is suffering from Post-Traumatic Stress Disorder but said this: "the concept of a simply acute PTSD, however, has limited applicability for people who have been exposed to multiple successive traumas since an early age, when many of the symptoms have both become part of, and shaped their personality". Dr Maloney believes that in addition to PTSD the Appellant has 'Emotionally Unstable Personality Disorder', also known as 'Borderline Personality Disorder'.

19. In October of this year the Appellant was interviewed by a Ms Natalia Dawkins MBE, an expert on human trafficking. This was in connection with the Applicant's claim to have been trafficked for the purpose of sexual exploitation in the United Kingdom. Ms Dawkins has 15 years experience in working in the voluntary sector, and specialises in advocacy and support for women and children affected by Gender Based Violence. She was a co-founder of the Poppy Project and assisted the Ministry of Justice with the development of the National Referral Mechanism (NRM). Her MBE was awarded for services to vulnerable women in London, in relating to her work on trafficking. Although not directly relevant to the trafficking claim the Appellant gave the same account of gang rape to Ms Dawkins, who records the most detailed version of the Appellant's account to date. Ms Dawkins attributes the level of detail to the particular methodology she employs in interviewing survivors of gender based violence, which she describes as "the strict ethical and safety guidance provided by the World Health Organisation". She also points out that she of Jamaican origin herself. It would seem that this has assisted her in making her positive assessment of the plausibility of the Appellant's account. She footnotes the account with matters derived from her own knowledge, for instance explaining that when the Appellant described her neighbourhood as a 'garrison' she means an area characterised by political loyalty to one of the main parties in Jamaica (either the PNP or the JLP) where "violence, corruption and criminal behaviour is prevalent". Ms Dawkins confirms that the 'Bi Bow gang', the gang that the rapists were part of, are known as a "violent posse with alleged affiliation with the People's National Party who dominated the garrison called 'the Jungle'".
20. I have considered all of the evidence relating to the Appellant's claim to have been raped by gang members in Jamaica in 1998. This account has not been materially challenged by the Respondent and I am entirely satisfied that it is true. I accept that this assault was a prolonged, perpetrated by five different men and that the Appellant was frightened for her life. I accept that she continues to suffer from the serious psychological consequences of that attack.

21. In March 2011 the Appellant was notified of the Respondent's decision to deport her and invited to make submissions as to why she should not be returned to Jamaica. She said that she was afraid to return. This was treated as a further asylum claim. The facts stated were as the Appellant had recounted in her earlier claim with the additional matter that in 2004 her brother D had been removed from the United Kingdom. He had subsequently been shot dead. She believed that he had been killed by members of the Bi Bow gang and that this was further retribution for the Appellant's decision to go to the police. She was told that by his partner. I have read the Appellant's interview record. I have read the country background evidence including that contained in the Respondent's Country Policy and Information Note *Jamaica: Fear of organised criminal gangs* (Version 2.0: March 2017), the country guidance case of AB (protection -criminal gangs-relocation) Jamaica CG [2007] UKAIT 00018. I note that the only reason that the Respondent has given for rejecting this part of the account was that the Appellant failed to produce D's death certificate. I find the Appellant's account of violent retribution being sought against her family members consistent with the background material. I note that D's death has been consistently reported by the Appellant to, for instance, her doctors, since 2004. Applying the lower standard of proof I am prepared to accept that her assessment is correct and that D was murdered by the Bi Bow gang.
22. I am satisfied, to a high standard of proof, that the Appellant has suffered very serious harm in the past.
23. Neither Respondent nor the First-tier Tribunal were satisfied that this was a claim capable of engaging the Refugee Convention. The Appellant's representative before the First-tier Tribunal tried to argue that the Convention reason was 'imputed political opinion' on the grounds that the Appellant had shown defiance to a politically-aligned garrison gang; that was rejected by the Tribunal on the grounds that the assault was motivated by nothing more than criminal intent. In her assessment of the 2011 asylum claim the Respondent rejected the claim on the grounds, *inter alia*, that 'victims of crime' are not members of a 'particular social group'. I am satisfied that the claim is one that potentially engages the Convention for two reasons. First, a key element of the assault, and the subsequent hounding of this family, has been that the Appellant is a woman. Women in Jamaica are accepted by the Respondent to be members of a 'particular social group': see 2.2.1 of the Country Policy and Information Note *Jamaica: Women Fearing Domestic Violence* (Version 2.0: March 2017). Second, the persecution she now fears is not because she is a victim of crime, it is because she has been an informant. She went to the police and she helped to secure a conviction of a member of the gang. This is not something she can ever wash away. It is an immutable characteristic; she cannot change her history. The persecution that the Appellant fears would be inflicted for reasons of her being an informer.

24. I am therefore satisfied that the Appellant has suffered persecution for a Convention reason in the past.
25. My starting point in assessing risk is the decision of the First-tier Tribunal made in 2004. The appeal was dismissed on the grounds that the Appellant left the witness protection programme voluntarily and that she would approach the police in Jamaica and ask to be readmitted to that programme. I have been shown no evidence to the contrary. In the CPIN *Jamaica: Fear of organised criminal gangs* it notes that the programme continues to exist, funded by the Ministry of National Security, and that no witness who has abided by the rules of entry has ever been killed. In his submissions Mr Denholm submitted that it was unlikely that the Appellant would today be admitted to that programme, because the events in question happened so long ago. It seems to me that it would be the Jamaican authorities who would be best placed to assess whether the Appellant still required their special protection. I do not doubt that the Appellant would continue to face a risk from the Bi Bow gang if indeed any of the men involved at that time are still alive today. I cannot see why the Jamaican authorities would reach a different conclusion. They benefitted from her willingness to testify, they offered her protection then and as the CPIN illustrates, continue to promote the witness protection programme as a means of encouraging citizens to testify against criminals in their communities: see 9.1.3. I am bound by the country guidance in AB which holds that the programme constitutes a sufficiency of protection. That accords with the finding of the First-tier Tribunal and I have been provided with no evidence that could lead me to depart from those conclusions. The asylum ground is accordingly rejected on the grounds that there would be a sufficiency of protection for the Appellant in Jamaica today.

Exception 1(a): Human Rights

26. There is no dispute that the Appellant's children X, Y and Z are 'qualifying children', that is that they have spent a continuous period of seven years or more living in the United Kingdom: see s117D (1)(b) Nationality, Immigration and Asylum Act 2002. Indeed, as Mr Duffy fairly pointed out, each child was born in this country and has now lived here for a continuous period of over ten years; as such they would all qualify to naturalise as British citizens³.
27. At the hearing before me Mr Duffy expressly conceded that the Appellant has a genuine and subsisting parental relationship with each child X, Y and Z. I am satisfied that this was a concession properly made. The consistent evidence is

³ I am told that applications for naturalisation have been made on behalf of X and Y but they have been rejected on the basis that some relevant document was missing. The children's paternal aunt K informed Peter Horrocks that she was assisting with this matter and has now sought advice in order to make fresh applications. An application for Z cannot be made unless and until these proceedings are resolved in his favour, since it is the Respondent's published guidance not to grant citizenship where an individual is subject to deportation proceedings.

that X and Y spend a considerable amount of time with their mother. Although X lives with her Special Guardian 'Aunty J' and Y with his Special Guardian 'Aunty N', both children spend each weekend with the Appellant, from Friday night until Monday morning, enjoy the occasional midweek stay and spent their entire school holidays with her. I have had regard to the evidence of Aunty N, and to the independent social worker who has interviewed Aunty J and the children themselves (for which see below) and I can find no evidence to indicate that this is anything other than a genuine parental relationship. There has never been any dispute as to the position of Z; indeed the Respondent intends to deport him with his mother.

28. Those prerequisites having been fulfilled, it is for the Appellant to demonstrate, on a balance of probabilities, that it would be 'unduly harsh' for one or more of those children to a) remain in the United Kingdom without her **and** b) go to Jamaica with her. Both limbs must be met. The proper approach to the 'unduly harsh' test has been considered by the Court of Appeal in MM (Uganda) v Secretary of State for the Home Department [2016] EWCA Civ 617:

22. I turn to the interpretation of the phrase "unduly harsh". Plainly it means the same in section 117C(5) as in Rule 399. "Unduly harsh" is an ordinary English expression. As so often, its meaning is coloured by its context. Authority is hardly needed for such a proposition but is anyway provided, for example by VIA Rail Canada [2000] 193 DLR (4th) 357 at paragraphs 35 to 37.

23. The context in these cases invites emphasis on two factors, (1) the public interest in the removal of foreign criminals and (2) the need for a proportionate assessment of any interference with Article 8 rights. In my judgment, with respect, the approach of the Upper Tribunal in MAB ignores this combination of factors. The first of them, the public interest in the removal of foreign criminals, is expressly vouched by Parliament in section 117C(1). Section 117C(2) then provides (I repeat the provision for convenience):

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

24. This steers the tribunals and the court towards a proportionate assessment of the criminal's deportation in any given case. Accordingly the more pressing the public interest in his removal, the harder it will be to show that the effect on his child or partner will be unduly harsh. Any other approach in my judgment dislocates the "unduly harsh" provisions from their context. It would mean that the question of undue hardship would be decided wholly without regard to the force of the public interest in deportation in the particular case. But in that case the term "unduly" is mistaken for "excessive" which imports a different idea. What is due or undue depends on all the circumstances, not merely the impact on the child or partner in the given case. In the present context relevant circumstances certainly include the criminal's immigration and criminal history.

29. The Respondent accepts that the Appellant's deportation will have a harsh impact upon the children. In applying the principle in the Rule I am required to assess whether the impact of deportation on X,Y and/or Z would be *inordinately*

or *excessively* harsh, that is to say so detrimental that it outweighs the very substantial public interest in their mother's removal from this country. With that high test in mind, I assess the evidence before me.

30. The principle evidence in respect of the children comes from Mr Peter Horrocks, independent social worker, who has extensively interviewed the relevant actors for two reports, dated 7th December 2016 and 5th October 2017. He has, on two occasions, spoken to both Special Guardians, the Appellant, and all three children. For his most recent report he has also spoken to a third paternal aunty, Aunty K. The Respondent takes no issue with Mr Horrocks' objectivity or expertise. I have further had regard to the written statements of Z's father Mr F (dated 25th January 2017), the Appellant herself (24th January 2017), the Appellant's adult son D (30th January 2017), Aunty N⁴ (30th October 2017) evidence from the children's schools/local authority education services, social services and the family courts. I have not found it necessary to summarise all of the 1200+ pages of evidence I have been given, but the parties can be assured that I have read it all. I assess the evidence in respect of each member of the family individually.

Child X

31. Child X was born in the UK on the 6th July 2003. She is the Appellant's only daughter, coming 4th in a line of her 6 children. Of these brothers, one is a full blood brother: Y. Their father is a Jamaican national currently serving a sentence of imprisonment in the Netherlands. When X was born she lived in a house in Glasgow with her mother, father and three elder brothers. The social services records reveal, and the Appellant acknowledges, that soon after X's birth she and her brothers were placed on the child protection register because of concerns about neglect. X's father was deported from the UK in 2004. When X was 2 years old the family moved to Manchester. The Appellant describes her life during this period as "spiralling out of control". She formed a relationship with another man, who was a violent drunk. He knew the Appellant from 'back home' and would abuse her about her past. He would beat her and call her a prostitute. The Appellant candidly admits that her daughter witnessed these scenes. This man was Mr F, the father of Child Z. The Appellant explains that during this period she herself began to drink and take drugs in order to kill the psychological (and presumably physical) pain she was experiencing. She admits to being withdrawn and failing to meet her children's "basic needs".
32. Child X lived with her mother until the 6th September 2010 when the Appellant was convicted. Her mother was immediately taken into custody. Child X

⁴ I note that Aunty N did attend court to give oral evidence but was called away because her granddaughter was sick and she had to collect her. Mr Duffy indicated that he had not intended to challenge any of her evidence in any event.

remained living in the family home with Mr F and her brothers. A female friend of the family moved in to the house in order to look after the children but at some point this arrangement came to an end because Mr F was evicted from the property. The Appellant's sister J stepped in to look after X and Y. She lives in Bromley, Kent. The children briefly returned to live with their mother in 2011-2012 but when she was recalled to prison⁵ they were placed in foster care. They continued to visit her regularly.

33. In March 2013 X was placed in the care of her paternal aunt, Aunty J, who lives in Haringey, London. At that time X was 9 years old. She joined a family consisting of Aunty J, and four cousins. Aunty J reports that when X first arrived she had very bad memories of being in foster care and was very negative about how she had been treated in care. She missed her Mum a lot and one occasion packed clothes and announced that she was going to live with her Mum in prison. Aunty J describes X's relationship with her mother as "very close" and she acknowledges that she would like to live with her full time. Since her mother was released from detention and moved to London X has had staying visits with her mother every weekend. She stays with her throughout the holiday periods and only returns to Aunty J's if there is a special family event happening. Aunty J states that X has found the threat of deportation hanging over her mother very difficult to deal with. The day she found out about it she had a nightmare. She can become very withdrawn. Aunty J told Mr Horrocks that X is "desperate" to live with her mother. Aunty J's main concern is that if the Appellant were to be deported, X would "bottle things up". She would be emotionally traumatised. X is currently in year 10 at a girls' school in North London. She is "doing great" but is very focussed on spending more time with her mother, who lives in South London. It is as if she "lives for one weekend to the next". The main concern that Aunty J has about any potential separation between X and the Appellant is that X would become withdrawn. When X is worried about her situation she shuts herself off and no-one can talk to her. She shuts herself in her room and goes without food. Aunty J expressed concern that X could "look for love elsewhere" ie by becoming prematurely sexually active. She does not elaborate on why she has identified that particular behaviour, but I note that earlier social workers reports make comment to similar effect.

34. Mr Horrocks interviewed X on the 7th December 2016 when she was 13. She was then in year 9 at secondary school. She told him that she is doing reasonably well at school and that she would like to be a lawyer. X told Mr Horrocks that she likes living with her Aunty J and her children but that she "feels different"

⁵ In November 2011 the Appellant was released on licence. In breach of her licence conditions the Appellant contacted her adult son D (who had been a co-defendant to the charges) and asked him to bring the children back from London to the hostel where she was living in Wigan. The children lived with their mother until April 2012 when she was recalled because of the breach, and for a failure to attend an appointment with immigration services.

to them; at school other girls talk about their mums whilst she has to talk about her aunt. X believes that no one can give you love like your mum. Because she is the only girl in the family she and her mum have a special bond. Her mum encourages her to do well and work hard and achieve her dreams. They do girlie things together, a bit like sisters as well as mother and daughter. X describes the period when she was taken away from her mother and placed in foster care as "terrible". Even when she was placed with Aunty J she was still having nightmares that social workers would come to take her away in the night and she would wake up crying. When they were reunited it was "excellent" and very emotional – they just kept hugging and kissing each other. X never wants to be separated from her mother again. Now that Aunty J has reassured her that she can see her mum whenever she wants it has put her mind at rest. Asked by Mr Horrocks how she would feel if her mother was deported, X explained that she is someone who does not like to express her emotions. Although her aunt and teachers have told her it is good to talk she can't – she just shuts herself off and withdraws. When her mum went away last time she was upset (she was initially told that her mum had gone on holiday) and she just stopped talking. The difference is that that time she knew that she would come back, that they would be together again. This time round it would be different. X said that she would do anything to be with her mum. She told Mr Horrocks that she lost her oyster card (and so couldn't take the tube) she still went to see her – she had to get four buses and it took one and half hours. More than anything she would like to live with her Mum again. Her Mum means everything to her.

35. Mr Horrocks has seen X again more recently. She is now 14 and has started her GCSEs. As well as the core subjects her options are Spanish, History, Drama and separate (ie triple) science. It's a lot of work, but she still goes every weekend to see her mum. She stays over from Friday to Monday – she gets up at 5.30am on a Monday so that she can get to school on time. She spends all the holidays with her. X said that she would find it very hard to focus on her studies if her mum were to be sent to Jamaica – she knows she would just spend all of her time thinking about her. X also expressed concern about how the deportation might affect her brothers – she thought that Y would become violent and Z would be really upset.
36. As well as his interviews with Aunty J and X Mr Horrocks also spoke to the Appellant, Aunty N and another paternal aunt, Aunty K. His opinion is that X is a child who internalises her emotional distress and trauma. If her mother were to be removed she would see this very differently from the earlier separation because she is old enough to understand that it would be permanent. There is a high likelihood that she would become socially withdrawn. This type of self-management of trauma brings with it a very high risk of self-harming behaviour, and the risk of long-term mental health problems. Mr Horrocks endorses Aunty J's assessment that X may also "look for love elsewhere", becoming prematurely sexually active. As she put it, she

missed her mother's love for those years and so compensates for it – when she was younger she did this by playing mum herself in a computer game that required her to look after 'babies'.

Child Y

37. By the time that Y was born in Glasgow in July 2004 his father had already been deported. The family consisted of mum, sister X and three older half-brothers. They moved to Manchester when Y was still an infant. As the Appellant has reported in respect of X, family life when Y was a young child was chaotic. In Manchester she was living with Mr F, who was regularly subjecting her to verbal and physical abuse. She began drinking and habitually taking drugs at this time, and by her own estimation was not looking after the children properly.
38. When the Appellant was sent to prison in September 2010 Y was 6 years old. He initially remained living in the family home with his siblings, and was cared for by Z's father and a family friend. He and his sister were placed in foster care for some time and then in March 2013 he moved to London to live with Aunty N. Aunty N told Mr Horrocks that when Y arrived he was very violent and aggressive. She described him as "quite disturbed". Within six weeks of starting primary school he had been permanently excluded. He would swear at people and ran away on a regular basis. On three occasions she had to call the police to look for him. He continued to be very aggressive throughout the period that his mother was in prison; Aunty N had to cope with this extreme behaviour for approximately two years. Once his mother was released, and he started to see her regularly, he gradually calmed down. Whereas at one time Aunty N was being called into school as many as three times per week, now he is settled down. He started to receive therapy. Aunty N attributes Y's problems to a lack of stability in the past. He knows that she is his aunt and that she loves and cares for him, but she cannot replace his mother. In her statement she writes "my opinion is that [Y]'s difficult behaviour is always linked to his feelings of separation from his mother".
39. Aunty N told Mr Horrocks that as long as Y is seeing his mother regularly, she can manage his behaviour. If the Appellant were to be returned to Jamaica "there would be a deterioration in his behaviour and she doubts that she could continue to care for him. In addition he is likely to be once again permanently excluded from school and will be aggressive at home as well". Y spends every weekend with his mother, from Friday to Monday and sees her in the holidays. At one point Aunty N tried to control him seeing his mother as a means of disciplining him – preventing him from visiting if he had behaved badly at school – but that just made things worse. She understands that Y needs to see his mother and that those visits have a positive influence on him. She told Mr Horrocks that Y loves his mother very much. Both he and his sister would live

by the side of the road in a box if they could be with her. Even if Aunty N had a mansion, Y would rather be in that box with his mother.

40. As to the present situation Aunty N reports that she and the Appellant are co-parenting and that this is a situation that is working well for Y. She gives him stability, safety and security and his mother gives him nurturing. He continues to receive therapy at CAMHS and looks forward to these sessions. She told Mr Horrocks and she and Aunty J are currently providing the Appellant with support as well, and that this is something that they would be happy to continue to do. Aunty N believes that if his mother were to be deported Y's behaviour would "immediately deteriorate". When he was told about the threat of deportation he had an episode of extreme aggression - worse than before - which was resolved by Aunty N, school and CAMHS, who explained it was only a letter. Aunty N is strongly of the view that if the Appellant were to be removed there would be a "high risk of placement breakdown"; Aunty N anticipates a high risk of Y running away, being excluded from school, fighting and becoming involved in criminality. She is particularly concerned about the attraction of gangs, drugs and alcohol. She believes strongly that he would end up in prison. He is trying to work out how to deal with authority: if the authorities were to remove his mother his trust in them would be undermined. He is getting bigger and if he reverts to being aggressive she does not believe that she - or her sons - would be able to tolerate him being violent towards her. She knows that he loses control of his emotions when he is upset and that he does not mean to hurt her but a 'red mist' descends. Conversely if things remain stable for Y he has a bright future. Aunty N states that he is a very intelligent child with a lot of potential: he could have a really positive future.
41. Mr Horrocks has twice interviewed Y. The first time was in November 2016 when he was 12. He said that he really likes living with Aunty N and that she is "really funny", but that he would rather be with his mum. He recalled that after he was taken away from his mother he used to cry every night, and that he stopped crying when he saw her again. Not having her made him feel angry. If people spoke about her he would get angry and smash things up, or even hurt the person. Y told Mr Horrocks that if his mother were to be sent to Jamaica he does not believe that he would be able to control himself. He does not know what kind of state he would get into. He would be devastated. But when she is here he feels happy and calm - he loves being with her and his sister. He would ideally like to transfer to a school near his mum and live with her.
42. In his more recent interview with Mr Horrocks, on the 2nd October 2017, Y reported that he is now in year 9. He is doing OK but got excluded again this year for fighting. He says he is trying hard but some of the boys said things about his mum and he got angry. He goes to CAMHS every Friday and that helps. He is choosing his GCSE's this year. He would like to do electrical engineering when he is older. He has a good group of friends now at school and has a best friend there. He continues to see his mum from Fridays to

Mondays and the whole holidays. He also sees Y and Z, and their older brother when he comes down from Manchester. He would like it if his mum would move to North London so he could see her more – so he could easily call in after school. He knows that the authorities would like his mother to leave the UK because she went to prison. Of this he says that his mother is not a bad person, its just she wasn't thinking straight. He says that she is a good person and a good mother. He joked that she is the second best mum in the world because she tells rubbish jokes which let her down. Y says that his mum is the person that he trusts most in the world.

43. As well as his interviews with Aunty N and Y Mr Horrocks also spoke to the Appellant, Aunty J and another paternal aunt, Aunty K. He finds that Y is the opposite to his sister. Where she internalises, Y lashes out. He concurs with Aunty N's view that there is a very high risk that Y could become involved with gangs, crime, violence and drugs if he faces further trauma. There is a very high risk of placement breakdown, and of permanent exclusion from mainstream schooling, if his mother is deported. His behaviour would become "unmanageable".

Child Z

44. Child Z is the son of the Appellant and Mr F. He was born in Manchester in February 2006 and spent the first years of his life living with his mother, father and siblings. As I note above in respect of X and Y, these years were characterised by his father being abusive towards his mother, and her increasing dependence on drugs and alcohol. She was sent to prison when Z was four years and seven months old. He then spent 14 months living with his father and a female family friend. The Appellant was released from prison in November 2011 and Z returned to live with her. She was recalled to prison approximately five months later and spent a further 15 months inside, including immigration detention. Z has lived with his mother since her release in July 2013. They initially lived in a hostel and then with her sister and mother in London before she was given her own accommodation in October 2015.
45. In his assessment of Z Mr Horrocks spoke with the Appellant and Z himself on two occasions. At the date of the first report he was 10. He is described by his mother as a shy child to struggled to adjust to school at first. Now he is settled and likes it. She said that she knows that Z worries about her. His misses his brother and sister and is "desperate" for them to come and live with him. She is extremely concerned at how Z might cope if he were removed to Jamaica. He has grown up here and doesn't know anything about that culture or environment. The Appellant said that she has not really discussed the possibility of him coming to Jamaica. She says he is a sensitive boy and she is worried about how the life in Jamaica would affect him. She is worried that he would see things there that he is not really able to cope with. He would find it very distressing and she expressed concern about his mental health. As for the

possibility that Z could remain in the United Kingdom with his father, the Appellant said that this is not possible. Z has told her that there is domestic violence in the relationship between his father and his current partner. His half-sister on his father's side is prevented from going there by her mother because of it. At the date of the second interview Z had turned 11 and had started secondary school. He had adapted well and was getting extra help. He is no longer withdrawn and engages well with people. Outside of school he enjoys playing football with his friends and looks forward to the weekend when X and Y come.

46. In the first interview Z told Mr Horrocks that he likes living with his mum. They play games and have fun, she is the best cook and he sleeps in her bed. He looks forward to his brother and sister visiting. He does not want to go to Jamaica because it is "not a nice place to go". When he lived with his father he used to cry for his mum and missed her all the time. He still sees his father regularly and enjoys spending time with his four sisters on that side. In the more recent interview he said that he likes living with his mum but that she tells embarrassing jokes. He has things to do at her home – he has toys and they go out and can see his friends. He only sees his father occasionally now, during the holidays. He still expresses an unwillingness to go to Jamaica. He has heard bad things about and wouldn't want his mum going there either.
47. Mr Horrocks believes that if he is removed to Jamaica, Z would suffer "great distress and trauma". The deportation would remove him from everything familiar in his life, his father, siblings, friends, and school. Removing him from everything he has known since birth would have an "overwhelming" effect on his ability to manage change. He has nothing but negative feelings about Jamaica and returning him to a country that he believes to be dangerous would likely result in emotional harm. He would be obviously different and would stand out in terms of his behaviour and accent, leaving him vulnerable to being picked on. Mr Horrocks believes that moving to live with his father would have a "fundamental impact" upon Z. He would struggle to settle and would have difficulties in adapting to a new school and home. There would likely be harm to his educational development.
48. I have also been provided with a statement by Mr F, signed on the 25th January 2017. Mr F confirms that he was granted indefinite leave to remain in 2002. In addition to Z he has seven other children, all of whom are in the UK bar his eldest who lives in Jamaica. At the time of writing his statement Mr F had regular weekend contact with the five of his children who live with their mothers in London. The other two live in Manchester so he only sees them in the holidays. Mr F says that Z is close to his siblings on that side, and is particularly close to his younger sister who was born when Z was living with his dad. He is really good with her. Mr F says that he and his children would be "devastated" if Z were to be removed from the United Kingdom. When he found out that the deportation order had been extended to cover Z he resolved

that he would refuse to let him go. He says he was “broken” and could not sleep for days because he could not stop thinking about what might happen to him if he were removed. Mr F explained that he and the Appellant are from the same area in Kingston. It is not a nice place. It is not an easy place to grow up as a young man. There is a lot of gun violence. Mr F would worry about Z being out playing on the street in a place where boys can get killed in the crossfire – it’s something that happens all the time there. It is Mr F’s strong opinion that it would be in Z’s best interests to remain with his mother in the UK. Although he would be willing to look after him he works long hours and does not have a lot of time. He said that it would be really hard on Z if he were to live with him: “every child needs their mum, the relationship that [Z] has with his mum is a different relationship to the one I have with him; you can’t compare it. I can’t give [Z] that kind of relationship”.

The Appellant

49. At least some of the Appellant’s account of events in Jamaica is set out above in the context of the asylum appeal. As significant as it is, the attack by the gang was not the only event that shaped her life. It is her case that she was sexually abused by an uncle from a very young age. She estimates that he first penetrated her when she was about nine years old. This incestuous abuse continued well into her teens. This uncle (now deceased) was the father of her eldest children, her twin sons. The Appellant states that once she tried to tell her mum what was happening but her mum got angry with her and beat her. This is when, in the Appellant’s words, she began to “go off the rails”. After her sons were born ‘word got around’ about who their father was and she experienced discrimination and abuse. Facing destitution and ostracization the Appellant moved to another part of Jamaica, Ocho Rios, where she was forced into prostitution in order to support herself.
50. By her evidence, the Appellant’s life did not improve after she arrived in the United Kingdom. The concise version is that she was offered help in Ocho Rios by a man who told her that he would get her to safety in this country, where she would get work. He turned out to be a liar, and a people trafficker. The Appellant ended up imprisoned in a brothel in North London where she was subjected to a prolonged period of beating, sexual assault and rape. I mean no disrespect to the Appellant in truncating this part of her account. I do so partly because it is the only element of her account that is still in issue, the Competent Authority having found no ‘conclusive grounds’ that she was in fact trafficked⁶; I do so mainly because it is not directly material to my decision. I have found as fact that the Appellant was subjected to high levels of serious harm whilst in Jamaica. I have before me evidence from numerous independent sources including clinicians, social workers and probation officers that in the years since

⁶ That decision is the subject of an application for judicial review, based inter alia on the Respondent’s failure to have regard to the report produced by Natalia Dawkins (see above)

she arrived in this country her life has been marred by domestic violence, substance abuse and self-harm. The picture is therefore clear. I am able to find that the Appellant has had an extremely harrowing life without needing to stray into contested areas of evidence.

51. The Appellant has twice been assessed by Consultant Psychiatrist Dr Chris Maloney, who has written two detailed and lengthy reports, in addition to another, produced in conjunction with Home Office expert witness Dr Ravi Mehotra. He has taken account of a vast number of documents in relation to the Appellant's case, including her entire medical history going back to 2002, her court, prison and probation service records, the assessments made by social services and the evidence relating to the trafficking claim. No issue is taken with Dr Maloney's expertise or objectivity, and the Respondent does not challenge any of his conclusions. The reports are dated 13th July 2015, 30th August 2015, and the 9th August 2017. The key findings of Dr Maloney (and Dr Mehotra) are as follows:

- The Appellant has Post Traumatic Stress Disorder, exhibiting symptoms including recurrent and involuntary intrusive distressing memories, persistent self-blame, persistent anger and shame, reckless and self-destructive behaviour, hyper vigilance, sleep disturbance and problems with concentration.
- Her presentation is complicated by the fact that she had suffered multiple successive traumas from an early age. In those circumstances such symptoms become part of, and shape, the individual's personality. Dr Maloney finds that the personality disorder that best fits the Appellant's presentation is 'Emotionally Unstable Personality Disorder' (also known as 'Borderline Personality Order'). One of the features of this is a difficulty in controlling anger, which can sometimes lead to violence. Other markers of diagnostic significance include recurrent suicidal gestures and threats including self-mutilation, chronic feelings of emptiness, impulsivity, and her having had a succession of relationships with men who abuse her.
- Dr Ravi Mehotra⁷ found the Appellant to have moderate to severe PTSD and severe depression. He recorded *inter alia* a medical note in 2004 that the Appellant was using cocaine and heroin. In 2010 she told a doctor in prison that she had in the past used cannabis and crack cocaine. At paragraph 10.1.10 he notes that there does appear to have been a history of excessive use of alcohol, but that she has not been drinking excessively since her release from detention. He does not consider that she has ever been alcohol dependent. At paragraph 10.1.11 he records that the

⁷ Report dated 5th August 2015, prepared upon instructions from the Government Legal Department.

Appellant is abstinent from poly-substance usage, and that her “recent use of cannabis has reduced to recreational use”.

- In his initial report Dr Maloney⁸ noted past episodes of substance abuse, but did not consider that these had dominated the clinical picture: the use of cannabis and alcohol had been coping strategies used when the Appellant was facing difficulties with violent and abusive relationships. In his more recent report he records the Appellant’s evidence that she has not used recreational drugs since her release from prison, save for the occasional social use of cannabis. Dr Maloney underlined his view that substance abuse is not a significant issue for the Appellant.
- Dr Maloney concludes that the Appellant has complex mental health conditions which require co-ordinated specialist psychological and psychosocial interventions. The treatment can broadly be categorised as ‘containment’ and ‘change’. In respect of containment Dr Maloney recommends that individual symptoms are reactively treated, and that the Appellant is given emotional support to get through the day-to-day. In respect of change, he writes that the individual concerned must recognise their capacity to behave in ways that are self-defeating and inappropriate. He notes that the Appellant responded well to short-term change-orientated interventions when she was in prison; he recommends that in the long term both elements of the treatment are undertaken by a multi-disciplinary team of mental health professionals.
- The Appellant’s medical records make repeated reference to self-harm, low mood, depression, anxiety and increasing reports of migraine. The notes indicate that in 2016 her GP referred her to a psychiatrist and neurologist for assessment, and that she has been receiving support from mental health crisis services in Bromley. She has now been referred to ‘ADAPT’, an organisation providing focused therapeutic interventions to adults suffering from ‘Anxiety, Depression, Affective Disorders, Personality Disorders and Trauma’. Dr Maloney recommends that this referral be pursued, since interventions to date have been ‘crisis led’.

52. In respect of the Appellant’s offending behaviour the Appellant admitted to Dr Maloney that on two occasions since she was released from prison she has shoplifted, both times in 2015. She did it because she had no money, and because “sometimes it makes her feel better if she takes something”. She did it because she felt “desperate”. She admitted that on another occasion she had gone to a shop with the intention of stealing but had stopped herself because she knew it was wrong and she didn’t want to get into trouble. That was in June 2017 when Auntie J and Auntie N went on holiday leaving her with all three children for a month. She had no money and was extremely concerned

⁸ Report dated 10th July 2015, prepared upon instructions of the Appellant’s solicitors.

about how she was going to provide for them (her income is limited to emergency support for herself and Z). She became distressed during the consultation and said that she just wanted to be able to work like a normal mother. She felt like she had been put in a box and the key thrown away. Dr Maloney considered the Appellant's exercise of self-control in this instance as a good prognostic sign, as is her continued abstinence from alcohol and drugs.

53. Dr Maloney has been asked to comment on the impact of deportation on the Appellant's mental health. Applying the relevant clinical guidance Dr Maloney identifies 16 risk factors in the Appellant's case which would, taken cumulatively alongside the diagnoses of Borderline Personality Disorder, lead to a 'high' risk of suicide. The only protective factors that he is able to identify are the fact that in this country she is able to access mental health services, and that she has responsibility for her children. He writes: "caring for her children appeals to be the only element of her life that has meaning at present". These protective factors, coupled with her own motivation to abstain from self-harm and substance abuse, and to avoid abusive situations, has lowered the current overall risk to 'moderate'. As to how that might change if the Appellant were to be removed, Dr Maloney writes:

"If her situation deteriorates, and particularly if she is separated from her children, her risk will increase significantly. A crucial protective factor (ongoing responsibility for children) will be removed, and instead she will have intense feelings of loss. This will be particularly difficult for her, as she does not appear to have anything else that gives meaning to her life.

[The Appellant] fears return to Jamaica, which she describes vividly as 'that dirty wicked gunshot-killing place'. Family members have been killed there, including her brother, and she herself suffered extensive abuse when living there, as detailed in the original Psychiatric Report. She fears return, and if she were to face deportation she is likely to become more anxious and unstable, due to her fear of return, and due to the prospect of separation from her other two non-adult children [X and Y]. She speaks particularly of her distress at the prospect of being separated from her only daughter X.

If she were to face deportation, and then actually be deported, problems are likely to increase in all her symptom domains. Her mood is highly likely to deteriorate, with more distress and instability. Her depressive symptoms are likely to become more pervasive, with impairments of energy levels, and higher order skills such as concentration, thinking memory organisation and initiation of tasks, in addition to subjective distress. Instability of mood also impairs capacity to relate to others, and thus impedes social

integration and the pursuit of ones interest within society. Obvious distress and neediness may well lead to further exploitation of her vulnerability if she does not have access to material and emotional support. She has had to resort to sex work in the past, and this remains a risk if she is alone and unsupported: there is also risk that she may return to self-harm and/or substance abuse. All these factors would in turn increase her suicide risk, which is likely to become high”

54. Dr Maloney expresses concern about how the Appellant is likely to be able to continue to care for Z in the face of such adversity. As the stressors upon her increase, the less potent the protective factor of his presence will become.

55. I have had regard to the OASys report produced by the Probation Service in May 2012.

Other Family Members

56. In addition to X, Y and Z the Appellant has three older sons. The twins are now aged 27. One of them lives in Manchester. He has been recognised as a refugee on the grounds that he has a well-founded fear of persecution in Jamaica for reasons of his membership of a particular social group (he is homosexual). The Appellant, X, Y and Z have a good relationship with him and he regularly visits them in London. His twin was deported from the United Kingdom in 2011. The Appellant has intermittent contact with that son. She has no means of calling him because he is of no fixed abode in Jamaica. He has told her that he is living hand-to-mouth and has had to sleep on the streets. He occasionally manages to call her, for instance most recently on her birthday. The third son is now aged 24. He is also living in Jamaica, having been removed from the United Kingdom. The Appellant speaks to him more regularly. He is living with relatives on his father’s side (his father was killed by gunshot wound when he was a toddler). His paternal aunt and grandmother are living in the United States and they pay for him to attend college. He lives with relatives in his grandmother’s house. He has very minimal contact with his brother. He recently told the Appellant that he has not heard from him for “ages”. Asked why she cannot live with this son if returned to Jamaica the Appellant explained that his family are not hers: they will not keep her. Money is tight and the house is full. Those people have no reason to support or help her and Z.

Undue Harshness

57. The parties agreed that the test in paragraph 399 is, in essence, a proportionality balancing exercise. I must weigh all relevant factors in the balance to determine whether it would be unduly harsh to expect these children to remain in the United Kingdom without their mother, and whether it would be unduly harsh to expect them to go with her to Jamaica.

58. First among those factors is the very powerful public interest in deporting a violent criminal who has never had any valid leave to remain in the entire time that she has lived in this country. Although that sentence gives some indication of the magnitude of the case against the Appellant, it hardly does justice to the profoundly anti-social behaviours that she has exhibited since her arrival in June 2000:

- i) Even if the period to February 2005 is discounted (because she claims to have been trafficked and then claimed asylum) it is clear that since that date (when her appeal rights were exhausted) the Appellant has chosen to remain in this country knowing full well that she had no permission to be here.
- ii) She has, at last count, eleven convictions for shoplifting/fraud offences, including two (in 2015) since her release from prison. By her own admission she has regularly used shoplifting as a means to support herself and her children. When assessed by probation services she indicated that it had never occurred to her that these were crimes which have an impact on anyone (whether on the shops involved, or on society as a whole, because of increased prices).
- iii) She has used hard street drugs including crack cocaine and heroin. I have no doubt that her use of these drugs exacerbated her tendency to commit crime such as shoplifting and fraud in order to pay for her habit. Nor am I in any doubt that her use of narcotics had a devastating impact on her children.
- iv) Her past inability to look after her children has resulted in extensive social services involvement and considerable public expense. The deeply troubled nature of the children's past has resulted in significant recourse to public funds. For example: Y has been provided with support by specialised mental health clinicians (CAMHS) on a weekly basis for the past three years and it is envisaged that this will have to continue well into his early adulthood.
- v) She has herself benefitted from extensive NHS services to which she has never been entitled. Her medical notes make clear that, for instance, she has regularly seen the GP for a variety of physical and mental ailments.
- vi) In October 2008 the Appellant committed a horrendous assault on a woman outside a club in Manchester, using a weapon, namely a glass bottle. The interviews conducted with probation

services at the time indicate that the Appellant showed minimal insight and little remorse for her part in that attack⁹. She sought to justify it variously on the grounds that there was an ongoing dispute, that she was provoked, that the woman had attacked her first, and that she was drunk. Whatever happened inside the club the plain fact is that the Appellant was convicted on the basis of CCTV footage: she followed the woman outside, and as the woman was walking away, she hit her with a bottle. It is summarised by probation services as follows: "This was a predatory assault and involved a repeated and sustained attack on [the victim] which was aggravated by the use of a weapon. That she has committed this offence in tandem with her son, on the female victim, who was attempting to retreat from the scene and with scant regard to the injuries she may have caused causes grave concern. It was fortunate that the injuries were not more serious, which would likely have occurred had the victim not had the forethought to put up her hand to protect herself".

- vii) Somewhat incredibly, whilst on bail awaiting trial for the assault summarised above, the Appellant took part in a further attack on two other individuals, in April 2010. The probation report¹⁰ sets out the circumstances. The victims were one adult male and one adult female. The man at least was known to the Appellant and her son (I am told that the man was a former partner of the Appellant's son who had made adverse comments about him on social media). Following a social event the Appellant and her son approached the victims and subjected them to threats and homophobic abuse. The Appellant hit the woman with her shoe and participated in an assault on the man by hitting and punching him. Again, probation services noted the Appellant's unwillingness to accept responsibility for her part in what must have been a terrifying assault, although I do note that she did in fact plead guilty to these charges.

59. Even if statute did not mandate it, I am satisfied that it would be in the public interest to deport the Appellant. She has committed a series of crimes, including the index offences which were of a disturbing and violent nature, and has done so when she had no right to remain in this country. It is in the public interest to remove persons who do not abide by the law, not just to deter others from similar behaviour but to protect the public and reflect public revulsion at such offending.

⁹ Report by National Probation Service 9th August 2010

¹⁰ Report by National Probation Service 4th November 2010

60. Against these matters I must balance the remaining factors, including the impact on the children and the circumstances of the Appellant herself. I need not make a separate analysis of where the best interests of X,Y and Z might lie, because having heard the evidence himself Mr Duffy was able to concede that this would quite obviously be with them and their mother remaining in the UK. He further agreed that the Appellant's removal would have harsh consequences for her children. Those concessions (which I am satisfied are properly made) go nowhere in diluting the public interest in their mother's removal. That is because in deportation cases the scales tip heavily in favour of the Secretary of State, to an extent that they can only be outweighed by some very compelling feature in the opposing case. I have been conscious throughout my evaluation of the evidence that this is my starting point, and that the burden lies on the Appellant to identify and prove that compelling, or exceptional, feature in order to demonstrate that the harsh impact upon her children would be "undue".
61. I begin with some preliminary observations about this family and their history. It is clear from the Appellant's own candid evidence that she has not been a great mother in the past. X, Y and Z were in their early years exposed to what might broadly be deemed "chaotic" lifestyles. In the years from birth until September 2010 when the Appellant was sent to prison, the children lived in extreme poverty in houses where drug abuse and alcohol consumption were commonplace and where they witnessed repeated scenes of domestic violence against their mother. Had that been the position today, I would have found it very difficult to accept the Secretary of State's concession that it would be in the children's best interests to remain in contact with her. The picture today is however altogether different. Having heard from the Appellant and having read all of the evidence before me I am in no doubt about the efforts that she has made since her release from immigration detention in July 2013. She has abstained from substance abuse. She has sought help for her complex mental health needs. Apart from her relapse into shoplifting in 2015 she has not committed any further offences, and she has made efforts to avoid offending behaviour. She has avoided entering into any further relationships with abusive partners. She has shown a willingness to work constructively with other family members to provide the best possible outcomes, in the circumstances, for the children. She has, in the past few years, managed to revert from chaos to some level of stability. The chronology makes it clear that the catalyst for that change was the period of imprisonment (extended by immigration detention) between 2010 and 2013.
62. Against that background I apply the test in paragraph 399.
63. In doing so I note that the Secretary of State has made one more important concession. It is not the Secretary of State's case that it would be appropriate to remove X and Y to Jamaica. Her case is confined to an assertion that it would not be unduly harsh to expect them to remain in the United Kingdom without their mother. The centrepiece of that case is the existence of the Special

Guardianship Orders in favour of Aunty J and Aunty N. These women have provided the children with stable and loving homes, and it is contended that they could continue to do so after the Appellant was deported.

64. X clearly loves her mother above all others and has repeatedly emphasised to Aunty J and the Appellant that she would like to live with her full time. Both women have expressed concern about how upset X would be to be separated from her on a permanent basis. Whilst I do not doubt that evidence to be true, ditto similar evidence in respect of Y and Z, it is not in itself a factor capable of swinging the balance in the Appellant's favour. The vast majority of children love their mothers and want to be with them. The vast majority of children would be upset if their mothers were deported. The fact that X, Y and Z would be upset does not elevate this case out of the ordinary.
65. What separates these children from the commonplace is their history, and the significant detriment that they would likely suffer in the future if further dislocated from their mother and siblings, notwithstanding the commitment and dedication exhibited by their aunts.
66. X is a child who has already suffered considerable hurt and loss. She has grown up without a father, and in those circumstances it is natural that her primary attachment figure is the Appellant. Notwithstanding the Appellant's own damning assessment of her parenting abilities prior to her incarceration it is the evidence of Aunty J that X did not share that view. X has consistently expressed nothing but love for her mother and a desire to be with her. When her mother was sent to prison X did not have another parent to care for her. The three years that followed that event were extremely disruptive for her. She was first left in the care of Mr F, an arrangement that appeared to be based on nothing other than the maintenance of the status quo. That arrangement came to an end when the family were evicted. A period in foster care followed, during which, it is reported, X was extremely withdrawn and distressed. She describes it herself as "terrible". There was then a short period of residence in London with a maternal aunt before she was reunited with her mother and siblings back in Manchester. The Appellant was recalled to prison soon after and X was sent back to London, this time to live with Aunty J, a paternal aunt whom she barely knew. In the years that followed Aunty J and her children have provided X with a stable and happy home environment, albeit one coloured by her constant desire to be with her mother.
67. That is the context in which Aunty J's evidence, and Mr Horrocks' conclusions, must be read. It forms the background to their observations about X's current personality and ability to cope with further change in her life. Those observations are these. That X is a child who finds it difficult to express her emotions. She keeps things "bottled up" and this is a trait which increases the likelihood of emotional harm; in the past at moments of crisis she has been unwilling to talk (for instance to Aunty J) and as Mr Horrocks puts it, has

“internalised her trauma and distress”. He concludes from this that there is a significant risk that permanent separation from her mother would result in self-harming behaviour, long-term mental health problems and in the short term, detriment to her education. He also posits that X could “look for love” elsewhere, leading to a risk of premature sexual activity and the attendant dangers that holds for vulnerable young people. I was initially sceptical about the evidential basis for that latter suggestion but having read the record of interview with Aunty J I see that it is a fear that she has expressed, based on her own observations of X’s behaviour. What I have no reason to doubt is that the Appellant’s deportation would have a profound impact upon X over and above the ‘commonplace’ level of distress that a child might suffer when a parent is deported.

68. Like his sister, Y is a child who has suffered profound disturbance in his upbringing, has built a good relationship with his Special Guardian, but has consistently expressed a desire to live with his mother. The evidence about the potential impact upon him of the proposed deportation is however altogether more stark. When Aunty N took custody of X he was “quite disturbed”. Within six weeks of starting primary school he had been permanently excluded because of violent outbursts in the classroom. Aunty N had to deal with extreme levels of aggressive behaviour throughout the period that the Appellant was in prison. She is very clear in her evidence that he only started to calm down, with a marked improvement in his behaviour and well-being, once his mother had been released and he resumed regular staying contact with her. Aunty N records in her statement very challenging incidents where Y would become distressed at being separated from his mother, or get upset about not being able to see her, but now that he knows that he will see her at the weekends he is much happier. That routine has resulted in such improvements in his behaviour that he has been able to return to mainstream school after two years in a special unit. She is in regular contact with the Appellant and together they have formulated a good care plan that is working well. Aunty N emphasises that the level of contact that Y has with his mother has been approved by social services. Aunty N acknowledges the role that long-term therapy has played for Y, but maintains that it is his regular staying contact with his mother that is underpinning his progress.
69. Aunty N is also clear in her opinion that the gains that have been made in terms of Y’s behaviour and happiness would be lost if the deportation is carried out. She strongly believes that the current placement will break down if Y’s mother is removed from the equation. He is also aware that this is a real risk: Aunty N recounts how he is finding it very difficult to cope with the uncertainty and how in moments of anger and fear he says things like “what’s the point, my mum will go and I will go back into care”. Aunty N expresses fear that Y would lash out at authority if his mother were to be removed. Mr Horrocks agrees that this is a “very high” risk. They both articulate that risk to be one of placement breakdown, permanent exclusion from school, involvement in gangs

(with the attendant risk of violence and criminality) and drug/alcohol misuse. His behaviour would become “unmanageable”. There is nothing in the evidence before me to indicate that this might be an overly pessimistic assessment, and I place substantial weight on their combined evidence. Mr Horrocks is a professional who has produced a detailed and comprehensive assessment; Aunty N is a witness who knows the child well. I note that their views are entirely consistent with Y’s own view, as expressed to Mr Horrocks. Y told him that if his mother were to be sent to Jamaica he does not believe that he would be able to control himself. He does not know what kind of state he would get into. He would be devastated. When she is here he is happy: Y says that his mum is the person that he trusts most in the world.

70. I am satisfied that the evidence concerning X and Y is such that it goes well beyond the ‘commonplace’ distress that any child would experience when being separated from a parent. These are both children who have already suffered significant disruption in their lives. I am satisfied that in respect of X there is a real risk that she would “internalise” her loss, leading to social withdrawal, a short-term but profound detriment to her education, and long-term mental health difficulties as a result of the emotional trauma she would feel at being separated from her primary attachment figure. In respect of X I have very substantial concerns about his future should his mother be removed. Aunty N has coped admirably with his extremely challenging behaviour to date, but she herself is at pains to stress that the stability that he now enjoys could not have been achieved without the Appellant’s input. She repeatedly stresses her strong belief that he would become “unmanageable” if the deportation goes ahead.
71. Before I conduct my final balancing exercise in respect of X and Y, there is one more facet of the evidence that requires consideration. That is the evidence concerning the Appellant herself. I need not repeat here the brutal detail of her life, save to note that on the *accepted* facts it has included rape, prostitution, the murder of numerous family members and acquaintances, extreme poverty, class A substance abuse and domestic violence. To that dreadful list one might add trafficking and incestuous child abuse. It may seem obvious, but it is worth saying: a hard life is no excuse for violently attacking people with bottles and shoes. Why then is the Appellant’s personal history relevant?
72. First because it must be understood in order to properly contextualise the evidence about the children. The Appellant is a profoundly damaged person, who has suffered in ways unimaginable to most of us, and yet she has, at least in the period since she emerged from detention, worked hard to be there for her children and to be a good mother. That much is evident not just from the assessments of the professionals involved with the family, and the evidence of Aunties J and N, but from the powerful devotion that her children have in her.

73. Second, because it must be understood in order to evaluate the nature of her offending, and the likelihood of such violent offending reoccurring. I am satisfied, having had regard to the reports from the probation services, Dr Maloney and Mr Horrocks that there has been a significant change in the Appellant. She had, in her own words, “spiralled out of control” before she was sent to prison; she showed few signs of consequential thinking and had little insight into her offending: her personal history goes some way to explaining why. I am satisfied that today, the Appellant does have an understanding not just about how her past has affected her and her children, but of how her behaviour impacts upon others. She is seeking help, and I am satisfied that she has at least started the difficult process of turning her life around.
74. Third, it is to be hoped that the revulsion that the public justifiably have for her behaviour might be diminished, if only in some small way, were the details of her personal history to be known.
75. I have been conscious throughout my evaluation of the evidence of the public interest in removing the Appellant, but that evidence has led me to an inescapable conclusion: that the severity of the detriment to these children would be huge, and well beyond the ordinary run of cases where children face separation from a criminal parent. It cannot adequately be described in terms of ‘upset’ or ‘distress’. It would likely lead to profound psychological consequences which would have a very serious impact on their lives, as well as upon society as a whole. For those reasons I am satisfied that the Appellant’s appeal must be allowed on the grounds that her deportation would be unduly harsh for her children X and Y.
76. It follows that I need not go into any great detail in considering the case of Z, whom the Respondent intends to deport with his mother, implicitly accepting that it would be unduly harsh to separate him from her now. For the reasons I now explain, that is fortunate.
77. The case put to me at hearing was that Z would suffer profoundly, not just because of the separation from his siblings and father, but because of his terror at being sent to live in Jamaica, a place about which he has – quite understandably – an exceptionally bleak perspective. His father echoes this fear in his statement, writing of his concern about the Appellant taking Z with her back to the garrison town that they two had grown up in, with its poverty, crime and violence.
78. What I was not told at the hearing is that there is nothing inevitable about the Appellant and Z having to go back to settle in a garrison. That is because in April 2016 the Appellant reached a settlement with the Home Office arising from her claim for damages for unlawful detention. The long and short of it is that if she agreed to make a voluntary return to Jamaica (that is to say prior to enforced removal) she would be awarded the sum of £20,000, on top of £10,000

that she had already been given whilst still in the UK. I was informed about this matter by email on the 8th December 2017, some weeks after the hearing. Since Mr Denholm did not, for some unfathomable reason, think it necessary to mention this matter during the course of the hearing, I did not have the benefit of oral submissions on how this money might have improved Z's life upon arrival in Jamaica, or how it might have assisted his mother to cope, for instance by using it to obtain accommodation or mental health support. Nor was Mr Denholm in a position to advise me about how much of the settlement, if any, would have been clawed back by the legal aid agency. Mr Duffy was put in the very difficult position of having to return to a case that had long since left his desk in order to make further submissions. In his email Mr Denholm suggests that it would have been "preferable if this matter had been addressed in terms at the hearing". He is right.

79. As a result of this unsatisfactory state of affairs I am faced with the prospect of making my assessment of Z's deportation without a complete picture of the facts. I have no idea how much the Appellant might have left out of the money once legal fees have been recouped, or how far that kind of sum would take her in Jamaica. Nor do I know whether it would help her to pay for satisfactory mental health support – a particularly egregious omission given that one of the planks of Mr Denholm's case was the real danger of a deterioration in her mental state and her attendant ability to cope with parenting Z. As a result I do not consider it appropriate to make any findings in respect of Z. In order to have done so the hearing would need to be reconvened and in the event the appeal is allowed on other grounds that is not necessary. Should this matter continue to be litigated beyond this Tribunal the matter of Z will have to be considered afresh, in light of all of the relevant information.

Decisions

80. The decision of the First-tier Tribunal contains errors of law and it is set aside.
81. The decision is remade as follows: "the appeal is allowed on human rights grounds. The appeal is dismissed on protection grounds".
82. There is an order for anonymity.

Upper Tribunal Judge Bruce
5th January 2018