



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

Appeal Number: HU/15896/2018

THE IMMIGRATION ACTS

**Heard at Field House
On Wednesday 24 April 2019**

**Decision & Reasons Promulgated
On Wednesday 09 May 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

PHILIP MATHEW

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Smyth, Counsel instructed by Kesar & Co

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Hodgkinson promulgated on 1 November 2018 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 26 July 2018 refusing a human rights claim. The Respondent’s decision was made following the making of a conducive deportation order against the Appellant on 22 February 2007 pursuant to sections 3(6) and 5(1) Immigration Act 1971.

2. The Judge concluded that the Appellant could not meet the Immigration Rules (“the Rules”) in relation to his family and private life nor the exceptions within Section 117C Nationality, Immigration and Asylum Act 2002 (“Section 117C”) when Article 8 ECHR was considered outside the Rules.
3. The Decision followed an earlier decision of First-tier Tribunal Judge Lal promulgated on 29 August 2018 which also dismissed the Appellant’s appeal, but which was set aside by Resident Judge Campbell on 17 September 2018 because Judge Lal had applied an incorrect provision of the Rules. That is relevant to the Appellant’s central ground of appeal as now argued.
4. The Appellant has a lengthy immigration history which I do not propose to set out. It is adequately recorded at [4] to [17] of the Decision. For present purposes, I summarise the relevant parts of his history as follows.
5. The Appellant, who is a national of Nigeria, was sentenced to thirty months’ imprisonment and nine months’ imprisonment concurrent for conspiracy to defraud and attempting to remove criminal property from England and Wales on 22 August 2006. He was deported in March 2007 and August 2007 to Nigeria but on both occasions, he returned in breach of the deportation order. He was convicted again on 2 August 2017 of possessing a controlled article for use in frauds and using a vehicle without insurance. He was sentenced to one year and three months’ imprisonment on 20 October 2017.
6. As to his human rights, the Appellant claims to have arrived in the UK in 1994 with his parents (aged then about twenty-one years) but that is disputed. He first came to the attention of the authorities in 2005 when he was arrested and served notice as an overstayer. He returned to the UK from Nigeria after March 2007 before August 2007. After his second deportation, he next came to the authorities’ attention on 3 June 2017 when he was arrested again.
7. The main focus of the Appellant’s claim is his relationship with his children. He has four children, three of whom are still minors, with his wife. At least one of the children, (E) is a British citizen and the other minor children and the Appellant’s wife have limited leave ([43] of the Decision: those findings are not challenged).

THE DECISION, GROUNDS OF APPEAL AND GRANT OF PERMISSION

8. Judge Hodgkinson did not accept that the Appellant has a genuine and subsisting parental relationship with his children. The Appellant is estranged from his wife. At the time of the hearing before Judge Hodgkinson, he had a Parental Responsibility Order in his favour, made in June 2018, in relation to the minor children. As the Judge observed, that did not grant any contact rights. Judge Hodgkinson

concluded that the best interests of the minor children were not materially affected by the Appellant's deportation and that the effect would not in any event be unduly harsh for his wife and children if the Appellant were deported and they were to remain in the UK without him. Having considered the circumstances also outside the Rules, he concluded that deportation would not have a disproportionate impact on either the Appellant's private or family life. He therefore dismissed the appeal.

9. The Appellant lodged grounds of appeal in person, those being received by the First-tier Tribunal on 5 December 2018. By a decision dated 13 December 2018, First-tier Tribunal Judge Keane granted permission to appeal in the following terms so far as still relevant:

"1. The appellant applied in-time for permission to appeal against the decision of Judge of the First-tier Tribunal Hodgkinson promulgated on 1 November 2018 in which the judge dismissed the appeal on human rights (Article 8) grounds ...

I have considered the judge's decision in order to ascertain whether it disclosed an arguable error or errors of law but for which the outcome of the appeal might have been different. The judge at paragraph 47 of his decision referred to a hearing which took place before a judge (the first judge) in August 2018. The judge referred to evidence which the appellant's sister-in-law gave at the hearing. The judge referred to a second witness who gave evidence at the hearing. The judge referred to evidence which the appellant gave at that hearing. Further, on 17 September 2018, a Resident Judge of the First-tier Tribunal reviewed the first judge's decision, and at paragraph 5 of the notice which the Resident Judge settled found that the decision, "...is unsafe and so I set it aside". The judge in taking into account proceedings which resulted in an unsafe decision arguably perpetrated a procedural irregularity which materially affected the outcome and the fairness of the proceedings before the judge. The judge's decision disclosed an arguable error of law but for which the outcome of the appeal might have been different. The application for permission is granted."

10. I note for completeness that in the section between the recital concerning the application made and the Judge's conclusion that permission should be granted, he dealt with the grounds put forward by the Appellant and rejected them all on the basis that they did not disclose an arguable error of law.
11. The matter comes before me to decide whether the Decision contains a material error of law and if so to either remit the appeal to the First-tier Tribunal or to re-make the decision.
12. The Respondent has filed a Rule 24 Notice on 8 January 2019 seeking to uphold the Decision in the following terms so far as relevant:

"... 3. At Paragraphs 38 and 48 of the determination the Judge of the FTT reminds himself that the previous decision was set aside

and that the findings of the previous Judge do not stand, but finds that he is entitled to take into account the evidence that was before the previous Judge and recorded in his determination.

4. The Respondent submits that the Judge of the FTT has not sought to adopt the findings of the previous Judge, accepting that they have been set aside, but that the evidence previously before the Tribunal is a matter of record and the Judge of the FTT was entitled to take it into consideration.

5. The Respondent submits that the determination therefore discloses no material error of law.”

13. The Appellant has made an application to adduce further documents under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Mr Smyth accepted that these were not relevant to my consideration of the Decision unless I find an error of law and go on to re-make the decision. However, the Appellant’s witness statement dated 18 April 2019 with that application has some relevance to an issue in relation to timeliness of the application for permission to appeal with which I deal below.

DISCUSSION

Timeliness of Application for Permission to Appeal

14. Mr Smyth very fairly drew my attention at the outset to the fact that the application made by the Appellant was out of time under the Tribunal Procedure (First-tier) (Immigration and Asylum Chamber) Rules 2014 (“the Procedure Rules”). Rule 33(2) of the Procedure Rules is to the effect that an application for permission to appeal to the Upper Tribunal must be made so that it is received within fourteen days from the date when the First-tier Tribunal’s decision is “provided”.
15. In this case, the Decision was sent on 1 November 2018. The Appellant says in his latest witness statement that he did not receive the Decision until 14 November 2018. He was in detention at the relevant time. The application was dated 28 November 2018. The Appellant has annexed to his latest witness statement a fax transmission sheet showing that documents were sent to the Tribunal on 29 November 2018. He says that he watched his application being sent in the afternoon of 28 November. He says that faxes were not sent immediately because he was in detention but he received the confirmation on the following day and it was not until he was notified of removal directions on 4 December 2018, that he became aware that the application had not been received by the Tribunal at which point he re-sent it.
16. I am prepared to accept the Appellant’s account of events and I therefore accept that the application was made on 29 November

2018. Mr Smyth sought an extension of time. The extent of the extension is fifteen days if “provided” in Rule 33(2) is to be read as “sent” or one day if it is to be read as “received”. Mr Smyth argued that I should interpret Rule 33(2) in the latter sense as the Procedure Rules use the word “sent” in other contexts and Rule 33(2) would have used that word if that was what was intended.

17. Neither party was able to direct me to authority on the meaning of the word “provided” in Rule 33(2) of the Procedure Rules. I have been unable to find any relevant authority. Speaking for myself, I would interpret that word as equivalent to “sent”. It may be that the word “provided” is used instead of “sent” in this context because, in certain circumstances, Tribunal decisions are despatched via the Respondent rather than directly. The word “provided” has the connotation of “given” and not “received” in its natural meaning.
18. However, I do not consider that I need to decide the point for three reasons. First, Judge Keane has referred to the application in the grant as being “in-time”. Whilst that may well be an error made by the Judge, it is nonetheless an indication that the application was admitted. In spite of Mr Smyth’s submission to the contrary, I do not consider it is either necessary or appropriate for me to re-visit that question. Second, even if Mr Smyth is right to say that I ought to reconstitute myself as a First-tier Tribunal Judge in order to consider the question, it is not necessary to distinguish between a delay of one day and fifteen days based on the chronology put forward by the Appellant. On either analysis, he has provided a reason for the delay which applies in either case. Third, and in any event, Mr Jarvis indicated that he did not object to the extension sought. I agree that, on the Appellant’s evidence, there is good reason for the delay. He was not made aware of the Decision until 14 November 2018 and made efforts to comply with the time limit thereafter. He was in detention and therefore would be at some disadvantage in preparing his case (although he was in person).
19. Accordingly, if I need to consider the matter (which I do not think I do), I accept that there was good reason for the delay be it of one day or fifteen days (or on the basis of date of sending and date of receipt about twenty-one days). I therefore extend time for the application so far as it is necessary to do so.

The Substantive Appeal in Relation to Error of Law

20. I turn then to the Appellant’s grounds submitting that the Decision discloses an error of law. Again, very fairly, Mr Smyth did not argue the Appellant’s pleaded grounds but rather focussed on the basis of the grant of permission. The sole issue therefore is the Judge’s approach to the evidence recorded in the previous appeal decision and the impact of that in the context of the findings about the Appellant’s family life having regard to the ongoing family

proceedings referred to in the additional evidence (although I reiterate that Mr Smyth accepted that I could not have regard to the recent evidence about that when considering whether there was an error of law disclosed in the Decision).

21. Having heard Mr Jarvis' submissions and considered the case of Swash v Secretary of State for the Home Department [2006] EWCA Civ 1093 to which Mr Jarvis referred, Mr Smyth accepted that the point made in his skeleton argument that "a Tribunal Judge is not entitled to have regard to a summary of the evidence contained in a decision which has been set aside" went too far.
22. Although, as Mr Jarvis accepted, the case of Swash considered the position under the previous appeal regime where the two tiers of the Tribunal were merged, and the Tribunal was therefore reconsidering a decision, what is said by the Court of Appeal at [20] of that judgment remains relevant to the issue here:

"[20]Miss Giovannetti is correct to say that the new regime requires the Tribunal to consider the original determination. In many cases the error of law identified by the Tribunal will not invalidate all, or indeed any, of the facts found. In such circumstances, where the Tribunal transfers the proceedings to enable additional facts to be found, the Immigration Judge to whom the proceedings are transferred will need to see the original decision. I consider that it would not be satisfactory to attempt to formulate principles governing when the judge should and when he should not see the original decision. It seems to me more satisfactory that, as a general rule, a judge to whom proceedings are transferred in the course of the reconsideration of an appeal should receive the original decision. Even if the findings of fact are invalidated for a reason of law, such as the application of the wrong standard of proof, issues identified in the original decision may well be of assistance to the judge to whom the transfer has been made. In those circumstances the judge must be careful not to be influenced by the discredited findings, but that is a typical requirement of a judge and one well within a judge's capability."

23. What is said in Swash in fact goes further than it is necessary to go in this case. In that case, the Court of Appeal accepted that the Judge could consider findings of a previous Judge notwithstanding the setting aside of the previous Judge's decision. In this case, Judge Hodgkinson sought only to have regard to the evidence recorded. He was entitled to do so.
24. I begin by setting out the parts of the Decision which are relevant to my consideration of the parties' submissions as follows. First, at [48] to [50] of the Decision, the Judge said this:

"[48]I appreciate and reiterate that the Judge's findings do not stand. However, I am, of course, entitled to take into account the

evidence which was before him and recorded by him in his decision.

[49] Having considered the available relevant evidence, as set out above, I conclude that the appellant does not have a genuine and subsisting relationship with his wife and that he has failed to establish that he has, or wishes to have, any genuine or subsisting relationship with any of his children. I accept that he appears to have had some limited contact with his children, as is evidenced by the photographs to which I have referred. However, the evidence does not establish that the appellant has had any contact of any description with his children for at least the last 2-3 years.

[50] Clearly, the evidence to which I have referred, within this section of my decision, is relevant to my conclusion that there was no good reason to adjourn the appellant's appeal, with reference to his indication that his wife would have attended, had she been able to do so. I am satisfied that he is estranged from her and that he has no ongoing contact with her or, in the recent past, with the children. I conclude that the appellant was even willing to be untruthful when giving oral evidence before me, in terms of where he was living when he was arrested, I concluding that he was living at the address in Kent referred to. As noted by Mr Williams in his submissions, at a recent withdrawn bail hearing/application of the appellant, he gave his bail address as being that of, as I understand it, Ms Savage, and not his claimed home address with his wife and children."

25. The evidence recorded by Judge Hodgkinson is set out in the preceding paragraphs at [41] to [47] of the Decision. I do not need to record everything which is there said. The Judge refers to the Parental Responsibility Order and accepts by reference to this document that the Appellant is the father of the children ([41]). However, he finds at [44] of the Decision that "the said Parental Responsibility Order is simply that; it does not grant the appellant any contact rights in relation to any of the children. There is no evidence that he has submitted an application in relation to such contact. Indeed, the respondent's position is that the appellant simply issued the Parental Responsibility Order, in order to seek to frustrate his deportation, rather than it being for the purpose of the appellant genuinely having any interest in, or contact with, his children".

26. The main focus of the evidence upon which reliance is placed though is that dealing with the extent of the Appellant's contact with the children. That is set out at [45] to [47] of the Decision as follows:

"[45]Turning further to the said Cafcass documentation, in Cafcass' letter of 6 June 2018 (X2-3 respondent's bundle), it is noted that the appellant's wife stated that the appellant had had no regular contact with the children for several years. In Cafcass' letter of 4 June 2018 (X4-X5), it is recorded that, in 2013, the appellant's wife claimed that she had not seen the appellant since 2008; namely, for a period of 5 years between 2008 and 2013. In

the said Family Court order, it is noted therein that the appellant's wife stated that she did not wish to agree to the grant of parental responsibility to the appellant and that she opposed the making of any order, even though the relevant order was made by the Family Court.

[46] In cross-examination, Mr Williams noted with the appellant that, when he was arrested in 2017, he gave his address as being that of his brother in Kent, even though the appellant claimed, in cross-examination, that at the time of his arrest, he was living with his wife and children in Essex. The appellant acknowledged that he had given his brother's address but was unable to give any cogent explanation as to why he had done so, if he was living with his wife and children.

[47] I note that, at the hearing before the Judge in August 2018, the appellant's wife did not attend that hearing, in order to support him thereat, and that she did not provide any statement or letter in support. The Judge heard from a Ms Zoe Savage, the appellant's sister-in-law, who is one of the people who has provided a supporting letter. However, the Judge noted that the appellant's oral evidence before him was that his wife and children had not visited him whilst in prison or immigration custody. At the hearing before the Judge, Ms Savage confirmed that she had last seen the appellant's wife a year previously but that contact had since been broken off. A second witness, a Mr Akintola, whose letter is also before me, similarly stated that he had last seen the appellant's wife over a year ago. There is one further supporting letter amongst the documents before me but its content is not material to the outcome of the appeal and does not really add to the balance of available evidence."

27. I turn then to what was said about the evidence on this issue by Judge Lal and on which Judge Hodgkinson relied since that forms the foundation of the ground upon which permission was granted. At [19] and [20] of Judge Lal's decision, he records the following evidence:

"[19]The next witness to give evidence was the sister in law of the Appellant. Ms Zoe Savage who recalled the whole family living together as a family unit and she described them as close knit. She accepted that she had last seen his wife a year ago but since then contact had been broken off. She had no knowledge that the relationship was abusive as claimed by the wife in 2013.

[20] The witness to give evidence was Mr Akintola who recalled the family coming to and from church together. He had last seen the Appellant's wife over a year ago."

28. I turn then to the written evidence of Ms Savage since it was on her evidence that Mr Smyth focussed in his criticism of the way in which the Judge dealt with this issue. An e mail from her appears at [AB/129] dated 21 August 2018 and reads as follows:

"I am writing on behalf of MR PHILIP MATTHEW, to support his case.

I have known MR Philip Matthew and his wife Bose and there children for the past 18 years

I have been there when the last 3 where born and was visiting Nigeria with my husband when his son [A] was born. They are more like family to us, and my children have grown up to call them family.

Sunday has always been a day where Mr Matthew will come to my house with his family after church. His wife Bose and I will cook and we all eat together and have a family gathering.

Mr Matthew is a loving devoted father and husband to his family.

There is many times where we will go together to buy clothes for his children, and when it was his wife's birthday he will ask me to join him to pick presents for her. He always makes sure his children are clothed and I remember in many occasions where he will buy there school uniforms a few weeks before they are dew to return back to school, he always does his best to provide for them and make them happy.

Mr Mathew and his family have always been close and happy, yes they have there ups and downs like any couple would, but he always puts his family first.

Sometimes Mr Matthew would invite my husband and I to there church, where we did his last born, [E]'s naming ceremony. Mr Mathew would do all he can to provide for his wife and children and sending him back to his country of birth will effect his children in many ways, which it has been since he has been in the immigration centre.

Mr Mathew is a kind and loving man who makes every one smile with his beautiful spirit.

Sending him back will not benefit him or his children.

Please can you kindly give him the opportunity to be there while his children are growing up.

They need each other more than one can imagine."

29. The reference to the Appellant's family being like family to Ms Savage is somewhat odd since I understood (as apparently did Judges Hodgkinson and Lal) that she is in fact related to the Appellant by her marriage to his brother. It is also notable that, despite having known the Appellant for eighteen years, she makes no reference to his deportation back to Nigeria on not one but two occasions. However, the more notable omission and that which caught Judge Hodgkinson's attention is the failure to mention that Ms Savage had not seen the Appellant's wife for a year prior to the hearing before Judge Lal and therefore from mid-2017. The Appellant himself accepts that he has not seen his wife and children since he was detained in June 2017.

30. Turning then to the statement of Mr Akintola ([AB/132]), that is by way of a letter which is undated. It reads as follows:

“This is to testify that I know PHILIP MATTHEW, otherwise known as OLUSEYI ADELAJA since 2015.

I know him, his wife and children. He is a doting father to his children and a good husband to his wife.

I am ready and willing to offer more information on his behalf. You can contact me [~] if necessary.

Your cooperation would be highly appreciated, please.”

Although the letter is undated, it was apparently produced for the hearing before Judge Lal. Again, the omission of any mention of the Appellant not having seen his wife for a year is notable.

31. In fact, as Mr Smyth’s submissions developed, it became apparent that the focus was on the Judge’s reference to the Appellant not wanting to have contact with his children at [49] of the Decision when that is considered in the context of what is said about Ms Savage’s evidence in particular at [47] of the Decision when that is also compared with what she says in her e mail and by Judge Lal. In essence, Mr Smyth argues that the Judge was not entitled to find that the Appellant did not wish to have contact with his children based on Ms Savage’s written evidence as summarised by Judge Lal, that the Appellant has a “close-knit” relationship with his wife and children. Reliance was also placed on the Appellant’s obtaining of a Parental Responsibility Order as evidence that his relationship with his children was genuine and subsisting and that he did wish to reinstate that contact.
32. I am unable to accept Mr Smyth’s submission. In relation to the Parental Responsibility Order, as noted by the Judge at [44] of the Decision, the Respondent’s position was that this had been obtained only in order to frustrate deportation. In any event, as the Judge there observes, it does not grant the Appellant contact with his children.
33. In relation to the evidence of the witnesses, particularly that of Ms Savage, her description of the closeness of the Appellant’s family has to be read (as Judge Hodgkinson did) in the context of her admission in previous oral evidence that she had not seen the Appellant’s wife for a year previously (a fact not mentioned in her e- mail) and the Appellant’s own evidence that his wife and children had not visited him whilst he was in prison or immigration custody.
34. The Judge was bound to consider the issue of the relationship between the Appellant and his wife and children as at the date of the hearing before him. At that date and based on all the evidence as recorded by the Judge, there is no error of law in his finding that the

relationship was not a genuine and subsisting one. As it happens, the Appellant has, since the hearing before Judge Hodgkinson, initiated contact proceedings but he had not done so at that time and the Judge was therefore entitled to the finding he reached about the Appellant's intentions.

35. The Judge went on in any event to consider the best interests of the children and whether it would be unduly harsh for the children if they were to remain in the UK without him if he were deported to Nigeria. The Judge provides reasons for finding that the best interests of the children favour remaining with their mother and that it would not be unduly harsh for them to remain with her in the UK if the Appellant were deported, at [54] and [55] of the Decision as follows:

“[54]As there are children involved in the present instance, namely the appellant's three minor children, I have also considered carefully their best interests, as being a primary consideration, as part of the relevant balancing exercise...Based upon my findings of fact, I concluded that the appellant's removal from the UK would have no material adverse effect upon any of the children, as I find that he has not enjoyed any regular contact with his children for some time. There has clearly been no contact with them since he has been incarcerated and I conclude that their best interests lie in them remaining with their mother, whether it be in the UK or Nigeria. [S] is, of course, now an adult and I know nothing further about him.

[55] I conclude that the appellant's absence from the UK, with his children remaining in the UK, would not be unduly harsh in terms of his children's interests ([399(b)]), it clearly not being an option to expect the appellant's wife and children to leave the UK, in order to return to Nigeria, one of those children at least being a qualified British child and the remaining children quite conceivably being qualified children.”

36. Mr Smyth says that what is there said is tainted by the finding at [49] of the Decision about the subsistence of the relationship, the Judge having taken into account his earlier factual findings. However, what is said at [54] of the Decision refers only to actual contact and the lack thereof for some time (which the Appellant accepts is as a matter of fact correct). The Judge's assessment of the children's best interests and whether it would be unduly harsh for them to remain in the UK without the Appellant therefore turns on a factually accurate position and does not factor in whether the Appellant may wish in the future to resume contact.
37. For those reasons, I find that there is no error of law in the Judge's findings, reasoning or conclusion regarding the issue of the Appellant's contact with his children. It follows that I find there is no error of law in the Judge's assessment of the Appellant's family life claim and therefore his human rights claim (his family life and not his private life being the subject of the appeal before me).

38. Mr Jarvis also submitted that the outcome of the appeal would not be any different even if the Judge erred in his conclusion that the Appellant did not intend to resume contact at some point and had taken that into account at [54] and [55] of the Decision. He relied on the Court of Appeal's judgment in Mohan v Secretary of State for the Home Department [2012] EWCA Civ 1363 and the guidance given at [18] of the judgment by reference to the Tribunal's decision in RS (immigration and family court proceedings) India [2012] UKUT 00218 (IAC) as follows:

"[18]The material parts of that guidance are to be found in the following extracts:

"43. In our judgment, when a judge sitting in an immigration appeal has to consider whether a person with a criminal record or adverse immigration history should be removed or deported when there are family proceedings contemplated by the judge should consider the following questions:

(i) Is the outcome of the contemplated family proceedings likely to be material to the immigration decision?

(ii) Are there compelling public interest reasons to exclude the claimant from the United Kingdom irrespective of the outcome of the family proceedings or the best interests of the child?

(iii) In the case of contact proceedings initiated by an appellant in an immigration appeal, is there any reason to believe that the family proceedings have been instituted to delay or frustrate removal and not to promote the child's welfare?

(iv) In assessing the above questions, the judge will normally want to consider: the degree of the claimant's previous interest in and contact with the child, the timing of the contact proceedings and the commitment with which they have been progressed, when a decision is likely to be reached, what materials (if any) are already available or can be made available to identify pointers to where the child's welfare lies?"

39. As Mr Jarvis submitted and I accept, a Judge following that guidance would have to consider the timing of the contact proceedings, brought as they now have been, after the Appellant's appeal had been dismissed, the findings as to the children's best interests (which are not predicated on any wrong assumption in relation to the relationship between the Appellant and his children even if the earlier finding regarding intention is a wrong assumption) and the strength of the public interest in this case which involves not only the Appellant's criminal offending but also his entry into the UK in breach of a deportation order on not one but two occasions. Mr Jarvis submitted that a Judge considering those questions would be bound to answer them against the Appellant. Mr Smyth submitted though that I should

not decide the case by reference to materiality in this way because it will be for the Family Court to decide what is in the children's best interests when considering the contact proceedings and that Court's views would have to be taken into account when assessing the proportionality of deportation. I do not need to decide the case in this way in any event due to my above conclusions that there is no error or law in the Decision.

Conclusion

40. For all of the above reasons, I am satisfied that the Decision does not contain an error of law. Accordingly, I uphold the Decision.

DECISION

I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge Hodgkinson promulgated on 1 November 2018 with the consequence that the Appellant's appeal stands dismissed



Signed
Upper Tribunal Judge Smith

Dated: 2 May 2019