Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07621/2016

THE IMMIGRATION ACTS

Heard at North Shields (Kings Court)	**Decision & Reasons Promulgated**
On 29 October 2019	On 13 November 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

WS
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms Petterson, Senior Presenting Officer
For the Respondent: Mr McWatters, instructed by KK & Co Solicitors

DECISION AND REASONS

The appellant in this case is the Secretary of State for the Home Department. However, for convenience, I shall use the titles by which the parties were known before the First-tier Tribunal, with the Secretary of State referred to as "the respondent" and WS as "the appellant".

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

SCOPE OF THIS APPEAL

1. This appeal has been remitted by the Court of Appeal to the Upper Tribunal for re-hearing limited to determining whether the deportation of the appellant would be lawful, taking into account the case of *KO (Nigeria) and Others v SSHD* [2018] UKSC 53.

2. The appellant is a citizen of Pakistan where he was born in 1985. He had arrived in the United Kingdom on a Tier 4 visa in 2010. After divorcing his wife in Pakistan in 2011, he married KK, a British national, on 29 February 2012 and was granted leave to remain on the basis of that marriage as her spouse until 24 October 2014.

3. The appellant has a record of criminal offending. On 16 April 2014 he was convicted of obstructing a police officer, driving without a licence and insurance for which he received a twelve months' driving ban.

4. On 11 June 2015 he was convicted of drunk driving and received a suspended sentence of twelve weeks and was further convicted of facilitating a breach of immigration law on 19 June 2015 for which he was sentenced to 45 months' imprisonment. A pending application for further leave to remain as a spouse was received by the Secretary of State on 26 August 2015. The appellant made an asylum claim on 22 June 2016 and on 12 July that year the Secretary of State refused that claim and made a deportation order against which the appellant appealed to the First-tier Tribunal.

5. The First-tier Tribunal did not uphold the certificate by the Secretary of State pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002 on the basis that the appellant was not a danger to the community. Although accepting the appellant would be at risk if returned to his home area due to his family's murderous intentions towards him, the judge considered internal relocation would be effective and would not be unduly harsh. Turning to Article 8 the First-tier Tribunal Judge considered the case through the prism of the rules in particular paragraphs A398 to 399A and concluded that paragraph 399(B)(i) was made out (the relationship was formed when the person was in the United Kingdom unlawfully and the immigration status was not precarious) and 399(b)(ii) was also made out (it would be unduly harsh for KK to live in Pakistan). The judge also concluded that it would be unduly harsh for KK to remain in the United Kingdom without the appellant (paragraph 399(b)(iii)) and allowed the appeal under Article 8.

6. Upper Tribunal Judge Rintoul found error of law in the First-tier Tribunal decision on appeal by the Secretary of State broadly due to the failure to mention sections 117B and 117C of the 2002 Act. He re-made the decision and dismissed the appeal. By that stage the issue was confined to the application of the relevant Immigration Rules and Part 5A of the 2002 Act.

7. By consent on 25 June 2019 the Court of Appeal ordered that the appeal against the Upper Tribunal decision be allowed and that, relevant to the scope of the hearing in the Upper Tribunal:

> "The matter be remitted to the Upper Tribunal (Immigration and Asylum Chamber) for re-hearing, limited to determining whether the deportation of the appellant would be lawful, taking into account the case of *KO (Nigeria) and Others v SSHD* [2018] UKSC 53."

THE HEARING

8. Mr McWatters confirmed that the appeal stood or fell with the answer to the question whether it would be unduly harsh for the appellant's wife K to remain in the United Kingdom without him with reference to section 117C(5) of the Nationality, Immigration and Asylum Act 2002. He did not seek to make a case that if the answer is in the negative that there are very compelling circumstances over and above those described in section 117C(5) nor did he advance a case as to the impact of the appellant's deportation on K's daughter, L, who was born in August 2002. She is not currently part of the household of the appellant and K. It is accepted by the Secretary of State that it would be unduly harsh for K to go with the appellant to Pakistan.

9. The appellant and his wife adopted statements and gave oral evidence. Statements from K's mother and L have also been provided although they did not attend the hearing. In addition, reliance is placed on a psychological report by Dr Christopher Wood dated 10 October 2019 which followed an assessment of K on 7 October 2019 at Yarm Medical Centre earlier in the month.

10. In my review of matters at the outset of the hearing, Mr McWatters explained the need to treat K as a vulnerable witness in the light of the content of Dr Wood's report. Ms Petterson explained that she had initially indicated to Mr McWatters that the appeal would proceed on the basis of submissions on the evidence, however, she explained she wished to ask some questions following my observation that Dr Wood had not referred in his report to the medical evidence before the First-tier Tribunal in 2016 of K being on a methadone programme supervised by Plummer Court in the context of a visit to the fertility clinic. On 19 May 2015 Dr M saw the appellant and K at the clinic and wrote afterwards in terms that the ideal situation would be if K is off methadone substitution before any treatment is contemplated.

11. Dr Wood refers to having access to medical records on K from 1995 to 17 September 2019 and in response to my direction, Mr McWatters arranged for his instructing solicitors to send digital copies of the medical notes and the letter of instruction to Dr

Wood before the hearing got underway. Time was given to Mr McWatters to take instructions on the issue of the medical evidence from 2016 and time also for he and Ms Patterson to examine the extensive medical notes that were being emailed in order to identify any which either party wished to rely on.

12. These preliminary matters were addressed whilst on my direction K waited outside the hearing room. I was mindful throughout of the Joint Presidential Guidance Note No. 2 of 2010 giving guidance on children, vulnerable adults and sensitive appellants and of the decision of the Court of Appeal in *AM (Afghanistan) v SSHD* [2017] EWCA Civ 1123. It appeared to me appropriate for K to wait outside until the time came for her to give evidence and when she did so I sought to place her at ease and explained in detail the context. She understood the process and was attentive during the relatively short period of questioning by Mr McWatters, Ms Petterson and myself. I also explained to her that the hearing was proceeding in camera which meant that she could be confident in giving her answers that no one would interrupt, and furthermore that because the hearing was recorded, no names would be given.

13. The letter of instruction to Dr Wood is dated 4 October 2019 and on the letterhead of the appellant's current solicitors. It does not have an addressee and explains:

> "I write further to the above-named client.
>
> I can confirm I have requested her medical records and are waiting for them to be provided. As soon as I receive them we will forward a copy to you in due course.
>
> I require an expert psychiatric report for you to assess my client's mental health as well as the potential impact upon her mental state should her husband be deported from the UK."
>
> [The letter continues with procedural matters of no relevance].

14. The medical notes were forwarded in numbered electronic attachments which were not in chronological order. I was invited by the parties to have regard to numbers 6 and 10 (as to the current position) in 2018 and 2019, and numbers 22 and 23 (as to the position in 1998 and 1999) when K was admitted to hospital for suicide attempt at the age of 19.

15. It is a matter of regret that this material had not been included in the bundle provided. As a consequence some two hours was taken up with the process of ensuring that all relevant evidence was before me.

16. In summary it is the appellant's case that the expert evidence of Dr Wood clearly indicates that the threshold of unduly harsh has been met in respect of K given that her mental health would deteriorate and there is a high risk that she would attempt to commit suicide should the appellant be deported.

THE LAW

17. Section 117C of Part 5A of the 2002 Act is in the following terms:

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

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

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

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

(4) Exception 1 applies where—

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

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

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

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

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

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

18. This provision was analysed by the Supreme Court in *KO (Nigeria & Others) v SSHD [2018] UKSC 53* and explained by Lord Carnwath at [20] to [23] as follows:

"20. Turning to section 117C the structure is not entirely easy to follow. It starts with the general rules (1) that deportation of foreign criminals is in the public interest, and (2) that the more serious the offence the greater that interest. There is however no express indication as to how or at what stage of the process those general rules are to be given effect. Instead, the remainder of the section enacts specific rules for two categories of foreign criminals, defined by reference to whether or not their sentences were of four years or more, and two precisely defined exceptions. For those sentenced to less than four years, the public interest requires deportation unless exception 1 or 2 applies. For those sentenced to four years or more, deportation is required "unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2".

21. The difficult question is whether the specific rules allow any further room for balancing of the relative seriousness of the offence, beyond the difference between the two categories. The general rule stated in subsection (2) might lead one to expect some such provision, but it could equally be read as no more than a preamble to the more specific rules. Exception 1 seems to leave no room for further balancing. It is precisely defined by reference to three factual issues: lawful residence in the UK for most of C's life, social and cultural integration into the UK, and "very significant obstacles" to integration into the country of proposed deportation. None of these turns on the seriousness of the offence; but, for a sentence of less than four years, they are enough, if they are met, to remove the public interest in deportation. For sentences of four years or more, however, it is not enough to fall within the exception, unless there are in addition "very compelling circumstances".

22. Given that exception 1 is self-contained, it would be surprising to find exception 2 structured in a different way. On its face it raises a factual issue seen from the point of view of the partner or child: would the effect of C's deportation be "unduly harsh"? Although the language is perhaps less precise than that of exception 1, there is nothing to suggest that the word "unduly" is intended as a reference back to the issue of relative seriousness introduced by subsection (2). Like exception 1, and like the test of "reasonableness" under section 117B, exception 2 appears self-contained.

23. On the other hand the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in *IT (Jamaica) v Secretary of State for the Home Department* [2016] EWCA Civ 932, [2017] 1 WLR 240, paras 55, 64) can it be equated with a requirement to show "very compelling reasons". That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more. "

19. Reliance was also placed by Mr McWatters on the recent Court of Appeal decision in *SSHD v PG (Jamaica)* [2019] EWCA Civ 1213. Holroyde LJ explained at [34]:

"34. It is therefore now clear that a tribunal or court considering section 117C(5) of the 2002 Act must focus, not on the comparative seriousness of the offence or offences committed by the foreign criminal who faces deportation, but rather, on whether the effects of his deportation on a child or partner would go beyond the degree of harshness which would necessarily be involved for any child or

> partner of a foreign criminal faced with deportation. Pursuant to Rule 399, the tribunal or court must consider both whether it would be unduly harsh for the child and/or partner to live in the country to which the foreign criminal is to be deported and whether it would be unduly harsh for the child and/or partner to remain in the UK without him."

20. In his analysis of the facts of the case Holroyde LJ explained at [39]:

> "39. … I recognise of course the human realities of the situation, and I do not doubt that SAT and the three children will suffer great distress if PG is deported. Nor do I doubt that their lives will in a number of ways be made more difficult than they are at present. But those, sadly, are the likely consequences of the deportation of any foreign criminal who has a genuine and subsisting relationship with a partner and/or children in this country. ..."

THE EVIDENCE

21. The appellant's statement explains the nature of his current life with K and also the affection he has for her daughter and how he and K would love her to move back into their home, something they had discussed and are making plans to achieve. He refers to the ill health of his mother-in-law and the time he and his wife takes in caring for her which involves going over almost every weekend from Friday to Sunday. She has numerous health problems due to a previous alcohol problem and also suffers from anxiety and stress as a consequence. She is alone. They take her to hospital on a regular basis for appointments and due to mobility difficulties, she uses an electric scooter. K and the appellant take her shopping every week and take her out for days to get her out of the house.

22. The appellant refers to his wife suffering from asthma and that she is recovering from a blood clot as well as well as suffering from anxiety and depression for which she has been taking anti-depressants long term.

23. Reference is made to an incident of which I heard oral evidence that the appellant was taken into detention in May 2019 for a period of some ten days. He explains that when this happened, his wife had to go back onto anti-depressants and has been on them since then.

24. The appellant expresses concern that his wife would be unable to mentally cope without him and would be unable to survive alone. He explains the difficulty she would encounter were she to move to a new country and refers also to the loss that he would suffer were he to be deported.

25. K explains in her statement how her daughter due to issues in the wider family and for her to attend school, lives with her sister, although they are still a close family and spend a great deal of time together. She refers to her affection for the appellant and that she could not live without him now as they are really a team and do everything together. The appellant ensures that she has eaten and taken her

medication every day and were he absent she would forget to do so. Owing to her anxiety she often has days when she cannot leave the house or even get out of bed and the appellant does everything for her, including shopping and picking up L when needed. K refers to the emotional toll of spending recent time in hospital owing to a blood clot and her extreme fatigue due to an underactive thyroid. As to the incident when the appellant was taken into detention, she had to then go back onto anti-depressants and had been unable to wean off them yet due to stress and panic at the thought of her husband being taken away. She confirms also the arrangements discussed by the appellant in his statement as to the care provided for her mother.

26. A statement by L explained that she has been recently living with her aunt from where it is easier for her to get to school. She has finished High School and is looking into different college courses and is considering moving back home. She does not think that her mother would be able to cope without the appellant.

27. K's mother speaks in affectionate terms of the appellant and refers to her health issues owing to her age and her previous alcohol problems. If it were not for the appellant making sure that she left the house every week and taking her shopping she apprehends she would no longer be able to continue living in her current home on her own. She refers to her concern about K who is inconsolable, and her genuine worry about her wellbeing and mental health. She rules out the possibility of K and L going to Pakistan.

28. In his oral evidence, the appellant referred to the incident when he was taken into detention and that on his return she stopped taking anti-depressants although when they go out owing to their neighbours she still takes them sometimes. He confirmed that he had seen Dr Wood himself who asked him a few questions relating to their life and immigration. He was initially seated in the waiting area and after half an hour because K was crying continuously Dr Wood called him in to sit next to her and asked him a few questions. He was with the two of them for some twenty minutes when Dr Wood continued to question K. The questions Dr Wood had for him was some three or four and were about his daily life, to which he had responded that it was okay, they go out, but that people sometimes made fun of them relating to his crime. He had also been questioned about the impact of his immigration status and also about his life in Pakistan and why the appellant had come to the United Kingdom. There was a concern at one point by Mr McWatters that the appellant had not understood all the questions. On enquiry however he confirmed he had but had just been nervous.

29. K was asked whether she had ever seen a psychiatrist and explained this had been when she was 19 when she tried to commit suicide. She had been in mental hospital for a week. As to the prescription drug she was currently taking, she confirmed it was 25mg of methadone and had been over the past ten years. She could not remember the name of the anti-depressant that she received a prescription for from her doctor when asked about whether there were any other prescriptions. As to whether she had taken any other drugs in the last year she explained how she had

taken diazepam when the appellant had been taken into detention. It had not been prescribed but she had obtained them on the street in Sunderland. A friend had acquired them from somebody who sold drugs. She had stopped taking them when he came back. K confirmed however that she had been previously prescribed diazepam. Mr McWatters referred to a reference in the medical notes for October 2018 to mirtazapine. K explained that this was for depression, anxiety and panic but she did not take them because of side effects. She then recalled the drug she was currently taking for her depression being fluoxetine which was provided on prescription. She had been given numbers for referral to mental health support but did not feel like being in groups where she felt panicky, the walls closed in, and she could not breathe.

30. Ms Petterson asked about the use of diazepam following the incident in May 2019. My question for clarification related to a reference in the medical notes for that time to 60ml in the light of K's evidence that she was now taking 25mg (of methadone). K said that she might have been on 60mg in May but was coming down.

31. The report by Dr Wood includes extracts from medical notes between 22 December 2015 and 20 May 2019. He begins his report with a mental health assessment in these terms:

> "**Panic disorder** (ICD-10 code F41) is characterised by reoccurring panic attacks. These are sudden periods of intense fear that may include palpitations, sweating, shaking, shortness of breath, numbness, or a feeling that something terrible is going to happen. [K] reports that she experiences these symptoms a couple of times a day and they tend to be triggered by thoughts associated with her husband being deported or by thoughts of leaving the house and potentially being exposed to criticism or humiliation (she claims that her neighbours call her names and sometimes spit at her).
>
> **Severe depressive episode without psychotic symptoms** (ICD-10 code F32.2) is characterised by feeling sad, hopeless, or helpless, feeing guilty or worthless, anxiety, irritability or frustration, fatigue or low energy, restlessness, changes in appetite or weight; loss of interest in things once enjoyed, including hobbies and socialising; trouble concentrating or remembering; changes in sleep patterns; loss of interest in living, thoughts of death or suicide, or attempting suicide; aches or pains that do not have an obvious physical cause. These symptoms need to have been present for over two weeks in order for a diagnosis of depression to be made. [K] reported experiencing these symptoms in the severe range since around May 2019 when it was suggested that her husband may be deported from the UK."

32. Dr Wood continues:

> "[K's] description of the symptoms and the provided medical records suggests that the symptoms were in the severe range in 2015. Improving when her husband was released from prison in 2017 and then deteriorating again in the summer of 2019, following notice that her husband may be deported from the UK.
>
> [K] struggled with heroin and diazepam addiction in her twenties. She denies any current misuse of alcohol or illicit drugs."

33. As to the potential impact on K's mental state should her husband be deported, Dr Wood notes that her current mental health difficulties are currently managed by anti-depressant medication but that she does not believe this is effective. He notes also the offer of psychotherapy input by the primary mental health service but that K had been discharged in March 2016 due to non-attendance. K explained to Dr Wood that she did not believe psychotherapy input would be helpful if she believes her symptoms "are related to the fear of her husband being deported". Dr Wood also notes K's understanding that she would have to leave the house to attend such sessions and from the medical records she had failed to attend dozens of medical appointments. He had no reason to doubt her concerns that this was due to the severe anxiety that she experienced when considering leaving the house.

34. After recording aspects of K's current social life (she has lost contact with friends and the way in which the family provides support for her mother) Dr Wood concludes:

> "[K's] mental health would deteriorate if her husband were deported from the UK. [K] is unlikely to make use of mental health services or social support as she has little faith in them and is reluctant to leave the house or to meet new people. She could perhaps obtain some support from her mother but this would be insufficient to meet her mental health needs. [K] has expressed that she would jump off a nearby bridge or take a paracetamol overdose if her husband were deported. There is a high risk that [K] would act on these ideas as she is extremely depressed and feels hopeless. [K] also has a past history of a suicide attempt (overdoes of opiates, mefenamic acid and paracetamols age 20), which is a risk factor for future attempts. Her mother and daughter are protective factors against suicide, but may not be sufficient to prevent an attempt."

SUBMISSIONS

35. Ms Petterson maintained the Secretary of State's decision. It was clear from the medical notes extracted by Dr Wood that K was distressed when the appellant was detained by immigration and in her submission that had been a reaction to the unexpected. Noting Dr Wood's view of the impact on deportation and K not engaging with psychotherapy, Ms Petterson observed this was a domestic case and that there were systems in place to protect K. She is known to the community and with a history of some mental health difficulties, there was no reason why she could not seek support. She contended that the report by Dr Wood was not indicative that K would be likely to self-harm should the appellant be deported and accordingly the impact on K's mental health was not sufficient for that deportation to be unduly harsh.

36. In the course of his submissions Mr McWatters urged the need for a holistic assessment. He accepted that Dr Wood had not referred to or explained how he had taken account of K's methadone treatment. He appeared qualified and should not be criticised for "cherry picking" having based his assessments of risk according to the Beck Depression and Beck Anxiety Inventories appended to her statement.

37. I asked him to consider what the right approach was under section 117C(5) and where someone has a mental health condition and refuses to take treatment for it. He explained that K was unlikely to use the services because of what she is, and it was not unreasonable of Dr Wood to conclude as he has. In his contention were I to accept the evidence by Dr Wood that K is at high risk of suicide the threshold must be met as it goes beyond the common place. He argued that all the evidence suggested that Dr Wood is correct in his conclusion.

ANALYSIS

38. The starting point is Dr Wood's assessment since I consider this critical to a gauging of the impact on K of the appellant's deportation. A section in his report is headed "Mental health description for medical records" which is accompanied by a note that "***** equals anonymised entries". This comes prior to the next section which is the "Mental Health Assessment" set out in [33]*ff* above. Eight extracts from K's medical notes are reproduced covering a period 22 December 2015 and 20 May 2019.

39. The chronological context is useful. The appellant was convicted on a plea of guilty in November 2014. On 12 July 2016 the deportation order was made. This followed a letter from the Secretary of State dated 27 July 2015 when the appellant was still in prison to indicate that a deportation order was being considered. On 15 May 2017 Judge Ince's decision (allowing the appeal) was sent to the parties. Permission to appeal that decision was refused on 2 June 2017 by the First-tier Tribunal but granted on 21 September 2017 by the First-tier Tribunal but granted on 21 September 2017 by the Upper Tribunal. Thus there was a six-month window during which K might have thought the concerns were over although the appellant's advisers might have indicated to him that permission to appeal was being sought.

40. The most recent extracts of the eight reproduced are for 8 August 2018 and 20 May 2019. The August extract is incomplete stopping at the word 'benefit' (marked with an asterisk). In full, the general practitioner's notes for 8 August are as follows (preserving the syntax and abbreviations):

> "Cigarette consumption 15 cigarettes/day
> Mixed anxiety and repressive disorder
> Flashbacks
> ***** thoughts
>
> History
> Things going through the change as mood swings. Tearful, ***** thoughts (1BD1) but no plans or intentions. Flashbacks (X75yW) of childhood memories for which she blames herself. has a 16 yr old ***** who is protective, ***** attempt at age 19, was admitted to MH hospital then. No MH probs since but has been trying antidepressant meds every year since 2014 – tries for 2-4 weeks then stops as doesn't see any benefit*. On 75ml ***** daily. Plummer ***** Takes 5mg diazepam every night – buys off the street. Down from 100mg daily a couple of years ago. Cigarette consumption (Ub1tl) 15 cigarettes/day – very keen to stop smoking. Adv given re stop smoking clinic – will attend. Lives with ***** periods regular, does not need *****, no hot sweats etc.

Examination
Tearful, intermittent eye contact, appears *****

Diagnosis
Major, mixed ***** and depressive disorder (New Episode)

Plan
All Ads, she has tried so far interact with ***** including mirtazapine putting her ***** ***** of arrythmias – understands and accepts risks. Will stop diazepam as Mirtazapine likely to help sleep. Rv 2w prn meantime. Will do self referral for counselling."

I pause to note that the detail after "benefit" not included by Dr Wood appears to relate to the methadone treatment which as noted by Dr Moorby is administered by Plummer Court as well as K's diazepam use and its illegal source. Furthermore there is refence to K's depressive disorder and a redacted mixed condition both described as a new episode. This is followed by a plan which is medicine based (mirtazapine).

41. The medical notes reveal that between 8 August 2018 and 20 May 2019, K attended the surgery and Accident and Emergency on numerous occasions. On 11 October 2018 the GP noted the following comments in relation to K's mental health as follows:

"History
Mood – fees got worse when tried to come off diazepam, nightmares about childhood *****also ***** twice, ***** under ***** of deportation also has ***** but lives with ***** tearful often, self ***** thoughts of ***** but no plan to take at present, didn't take mirtazapine regularly, thought was just for sleep, thinks would benefit from talking to someone about experiences – can't really talk to ***** about events, stable on ***** from Plummer ***** no other ***** except diazepam, no alcohol, denies DV.

Plan
Explained mirtazapine won't help for mood if not take regularly – will try, needs to try to cut down diazepam again, number for talking helps given review re-mood 1/12.

42. On 6 February 2019 the GP recorded the following notes:

"History
Diazepam 20 - 70 mg – buying off street. Taking every day until Oct/Nov/Alcohol intake (136..) 60 Units/Week ***** thoughts (1BD1) – Worse since coming off diazepam – longstanding – protective factors as prev. Legs feel like they are burning/things crawling. Feels really paranoid. Sometimes carries a knife to protect herself against perceived threats. No thoughts of ***** to self or specific others re knife. Still on ***** Still seeing Plummer ***** Note in past has worked w CGL.

Plan
Suggest reduce alcohol – she says will not be a problem – suggest if more difficult than she hoped could approach COL again. Seeing Plummer ***** 12/2 – suggest mention

problems w mood and etoh. Advised against carrying weapons. R/v mood here as needed if not improving w reduced etoh."

43. On 17 May 2019 (whilst the appellant was in detention) the GP recorded the following notes:

"History
1.***** has been taking away by the ***** for arranging marriage, she is now being targeted and having bricks thrown at windows etc but neighbours and randoms. Suffers with ***** and asking for something to help her with this. Is under Plummer ***** on methadone. Denies having any street ***** and states is off alcohol. Always has ***** thoughts. Hasn't made any plans and not storing medications. ***** and family are her protective factors but ***** back in ***** again. She is well supported with her inhaler as using it 5-6 times a day for week. Still using clenil bd. Breathless with light chest and cough all day every day for weeks but she isn't sure whether ***** or infection causing the symptoms. Green spulum, no chest pains, no haemoplysis.

Examination
Looks under the influence of ***** alcohol. Carrying bottle of coke. Good eye contact, reasonably presented, is tearful, asking for something to help with ***** Chest – widespread coarse crackles with occasional inspiratory wheeze. Oxygen saturation at periphery (X770D) 99% (New Episode). Peak flow rate abnormal (XM1Ub) 300. O/E – pulse rate (242..) 90 bpm O/E – temperature normal (2E31.)36.4

Diagnosis
Infection of lower respiratory tract (X1004) Major. ***** state NOS (E200z)

Plan
Offered GP appointment within 1hr but refused as going to mams. Happy to wait until Monday. Advise to ring crisis team if any ***** ideation."

44. The 20 May 2019 notes reproduced by Dr Wood are also incomplete; the extract stops at the end of the passage headed 'History'

45. The full notes explain:

"History
Low mood ***** Getting ***** of feeling panicky, shakey, heart racing about twice a day. Says neighbours harassing her, shouting ***** ***** has been taken away by immigration and not been granted ***** Lives alone, no kids at home. Her family all in Sunderland. Is on 60ml ***** a day and on daily pick up. Denies any alcohol or other drug use. Fleeting thoughts of ending her life but denies any firm plans of ***** or self *****

Examination
Tearful at start but settled. Calm after that. Appropriate speech. Good eye contact.

Plan

Start fluoxetine for depression/***** Review in 2/52, or prn in meantime if feeling worse. Number given for Crisis Team. Encouraged her to go to the council/police about housing and neighbours."

46. On 19 June 2019 the GP recorded the following notes:

"History
Says lost script for fluoxteine so didn't start – still keen to give this a go **** is back at home now, feels better like this, denies DV or any other problems with own safety at home – is in process of appealing his status trying to reduce alcohol – today has had only 1 can, normally up to 2 cans still on ***** 60mls – wanting to eventually reduce this denies any other ***** drug use says ***** ideation 'not a problem' now

Examination
Casually dressed, normal speech, eye contact

Diagnosis
Depression interim review"

47. On 3 July 2019 the GP recorded the following notes:

"History
DNA'd today's appt – forgot says hasn't started taking medication yet – has prescription still, wants to start, not much change in mood or situation.

Plan
Encourages to start f/u booked with me, if struggling in meantime can book on that day/appt."

48. Dr Wood does not explain the methodology for his selection from the medical notes regarding K's mental health and if he did not consider the above extracts relevant why this was so. It is unexplained why the extract reproduced for 8 August leaves out the reference to methadone and diazepam. Whilst it may be that Dr Wood did not consider these aspects significant, the absence of any reference to methadone and diazepam use in his report which features in the intervening notes that have not been reproduced is surprising. The issue of fact that arises is whether being a long-term methadone user coupled with a history of the unprescribed taking of diazepam has had any impact on K's ability to give a reliable account of her mood and intentions and her behavioural presentation which Dr Wood considered met the relevant criteria. Whilst the methadone treatment is prescribed, K's explanations to her general practitioners clearly shows the diazepam she has been taking is not. Given her pattern of diazepam use, K's denial to Dr Wood that she has any current misuse of illicit drugs will have required careful consideration and probing. The account given by K to her GPs of the sourcing of the diazepam is not consistent with the evidence she gave at the hearing which was that she had only taken diazepam on prescription whilst the appellant was in detention. Her answer was confusing as she subsequently referred to obtaining the diazepam on the streets through a friend. Either way the fact is that her use of this drug was not confined to the period of

detention of the appellant in May 2019. There is no evidence before me that assists in the consideration whether the methadone/diazepam use was capable of being an influencing factor in the psychometric scoring logged in Dr Wood's report. And if so whether such use could have the effect of skewing the results.

49. I also have difficulty in reconciling Dr Wood's statement that K is unlikely to make use of mental health services or social support as she has little faith in them with the picture painted by the medical notes is of someone who sees her GPs on a very regular basis and also attends Accident and Emergency. Dr Wood's observation that K "could perhaps obtain some support from her mother but this would be insufficient to meet her mental health needs" is not well explained. The extracts cited above from the notes for 17 May 2019 demonstrate that whilst the appellant was in detention K went to see her GP who was satisfied that she was "well supported" with her mother and was going back to stay with her. Dr Wood's reference to a past history of a suicide attempt was one that took place in 1999 and I was taken to no other passage in the medical notes which indicates a recurrence.

50. I also consider it significant that there is no indication in the GPs' notes that K's mental health was an aspect that required a referral to a specialist mental heath team in the period covering the notes have been reproduced above. Instead it appears that the doctors have considered that medication would be an adequate treatment. Dr Wood observed that K considers that fluoxetine is not effective. It will be seen from the notes that K reported a loss of the script on 19 June 2019 and on 3 July that she had not started taking the medication but still wanted to. A feature of the August 2019 entries is a failure to keep appointments and there is no medical entry indicting whether the course of fluoxetine has been started and continued or started but ceased. Dr Wood does not comment on whether this medication is suitable for the treatment of the depression he diagnosed but I accept that such an evaluation might be outside his competence and expertise. He appears to have accepted K's assertion as to the poor efficacy of fluoxetine. K's judgement on the effectiveness of the medication can have a number of explanations ranging from a belief that they are not needed to an unwillingness to give the medication the chance to take effect. Her evidence at the hearing was that she was taking fluoxetine but the evidence does not establish how long she has been taking this drug. There is no independent evidence gauging the effectiveness of the course of fluoxetine but it is significant that there is no evidence that K has made an complaint to her GP or sought an alternative treatment or medication. There is also no analysis on how the course of methadone and use of diazepam could impact on the taking of the antidepressant medication or whether in combination the combined use has an ameliorative impact on K's depression. It appears from the notes in particular those of 8 August 2018 that in the past K has not taken the anti-depressant medication for a sufficient period for it to produce results. The position regarding the current medication is unclear. K's observation to Dr Wood that she believes her symptons are related to the fear of the appellant being deported also appears to have been accepted by Dr Wood and there is no indication that he gave consideration to the possibility that K's mental health difficulties may exist independent of the deportation concerns. I also do not accept K's evidence at the hearing that the diazepam use was confined to the period of the

May detention of the appellant in the light of the conflict between her evidence and the medical notes. I also find that K mislead Dr Wood when denying any current misuse of drugs as it is clear that she has continued to use diazepam well after her twenties during which he notes K had struggled with addition to this drug and heroin. All these factors reduce the weight I am able to give to Dr Wood's diagnosis of severe depression and panic disorder and his prognosis of a high risk of suicide in the event of the appellant's deportation. The suicide ideation is not explored in any detail in the report. I am satisfied that K's depression is real but also that it is treatable should she permit it. These factors point to a manageable mental health condition with K's cooperation.

51. In gauging the impact the appellant's deportation may have on K, it is also necessary to see the extent to which he may been a stabilising influence in her life in the light of her long history of drug dependency and her mental health problems. This aspect is not addressed to any great extent by Dr Wood in his mental health assessment. He acknowledges the practical assistance that the appellant provides. Given the length of time that K acknowledges she has been a methadone user and the length of the relationship (since 2012) it is significant that the appellant's presence in her life has not resulted in K ceasing to require this heroine substitute or manage the uncontrolled use of diazepam. The medical evidence points to K continuing to have problems with drug and alcohol abuse. Her statement to Dr Wood that these have been addressed is in my judgment not reliable. Dr Wood refers to K having failed to attend dozens of medical appointments in the context of K's explanation that she would have to leave the house to attend therapy sessions. There are a number of non-attendances noted throughout 2019 but these do not appear to have been in relation to psychotherapy groups but instead in respect of attendances at the surgery and the Newcastle Chronic Disease Monitoring Service Surgery. Dr Wood appears to have downplayed the positive help provided by K's mother during the period of the appellant's detention despite her own health difficulties recorded in her statement. Furthermore, it is clear that K is quite able to get out herself without assistance in order to see her GP when needed and furthermore there is evidence of attendance at Plummer Court for supervised methadone provision.

52. Dr Wood explains that K requested the appellant join the meeting after 30 minutes. The appellant himself indicates that he was with his wife and Dr Wood for some twenty minutes or so. Dr Wood is not a case treating psychiatrist or psychologist and if which appears to be the case the overall session lasted for some 45 minutes it is questionable whether this was sufficient time given the complexity of K's medical history to arrive at a reliable diagnosis. Given the request in the instruction letter for a psychiatric report and the evident need of K requiring medication for her depression it is unexplained why the opinion of a psychiatrist was not sought or why Dr Wood refers to instructions to undertake a psychological assessment. Dr Wood is imprecise in his diagnoses of K in referring to her meeting the criteria of severe depressive episode in the opening passage of his report which he elevates to "extremely depressed" in the concluding paragraph but does not explain if the diagnosis is the same. The methodology used for the diagnosis by Dr Wood is well respected but it remains uncertain whether the same diagnosis would flow had the

long term methadone use been factored in as well as the unapproved use of diazepam when account was taken of K's reported responses.

53. For the above reasons, I can only give limited weight to Dr Woods conclusions. I am not persuaded that in the event of the appellant being deported, the evidence demonstrates that K is at high risk of suicide. I readily accept that she has mental health difficulties expressed in part by a depressive state for which medication is available and on her own evidence is being taken. I have no doubt that the deportation of the appellant would be greatly distressing for K and for a period at least she is likely to struggle to cope but there are support structures in place that she has and can access including the NHS and her family. The appellant has been a part of K's life for the past seven years and I have no doubt that the couple are fond of one another and provide each other with mutual support. The effect of his deportation would undoubtedly be harsh and seen as such by K but I am not persuaded on the evidence that it would be unduly harsh as any decline by K can be managed and the evidence does not show that it can only be resolved by deportation being deferred. I am not satisfied that reliable evidence has been provided that such decline would result in suicide. Mr McWatters accepted that there were not compelling circumstances over and above these captured by consideration of the factors whether it would be unduly harsh and accordingly there is no further issue in this case that requires to be addressed. The appellant has resisted deportation on the basis that the effect on his wife would be unduly harsh and for the reasons I have given above I am satisfied it would not.

54. Accordingly, this appeal is dismissed.

Signed Date 7 November 2019

UTJ Dawson

Upper Tribunal Judge Dawson