



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

Appeal Number: HU/16050/2019

THE IMMIGRATION ACTS

**Heard at Field House via Skype
On 2 March 2021**

**Decision & Reasons Promulgated
On 21 May 2021**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**ONEIL ORLANDO CHANNER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Williams, instructed by Genga & Co

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of the respondent made on 19 September 2019 to refuse him further leave to remain in the United Kingdom as the spouse of Mrs Hopelyn Carter-Wynter, a British citizen, and to refuse his human rights application. His appeal against that decision was dismissed by the First-tier Tribunal in a decision promulgated on 6 February 2020. For the reasons set out in my decision of 29 September 2020, that decision was set aside. A copy of that decision is annexed to this decision.

2. The appellant is a citizen of Jamaica who entered the United Kingdom with entry clearance on 24 November 2016 as a spouse of a British citizen. That leave was valid until 24 August 2019. On 26 July 2019, he applied for further leave to remain as a spouse but that application was refused on 19 September 2019 on the basis that he had failed to disclose a police caution administered to him on 5 November 2017. That caution was administered to him by the metropolitan police subsequent to him being arrested from the family home after an incidence of domestic violence between him and his wife. It is not in dispute, however, that the relationship is still subsisting despite that incident.
3. Subsequent to the appellant submitting his application for further leave to remain, with the assistance of his then solicitors, Genga & Co, the Secretary of State contacted his solicitors to query whether he had answered the declaration section on the application form correctly. They replied to the Secretary of State on 18 September 2019 to say that the answer of “no” was correct.
4. The respondent concluded as a result that the applicant did not meet the suitability requirements of the Immigration Rules, S-LTR.2.2. (b) of Appendix FM and refused to grant further leave on that basis. In doing so the respondent considered that the appellant had not met the requirements of EX.1 noting an absence of evidence that there were insurmountable obstacles that the appellant or his wife would face on continuing their family life together outside the United Kingdom which could not be overcome nor did the Secretary of State consider that the appellant met the requirements of paragraph 276ADE(1) of the Immigration Rules. She also considered that there were not in this case exceptional circumstances pursuant to paragraph GEN.3.2 of Appendix FM such that the appellant should be granted leave to remain in the United Kingdom.

The Law

5. The issue in this appeal is narrow; it is accepted by the respondent that the sole basis of which the appellant’s application for leave to remain falls to be dismissed is the failure to disclose the caution. It is not argued that no caution was administered but it is the appellant’s case that neither he nor his wife were aware that a caution had been administered.
6. The relevant provisions of the Immigration Rules provide as follows:
 - S-LTR.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-LTR.2.2. to 2.5. apply.
 - S-LTR.2.2. Whether or not to the applicant’s knowledge –
 - (a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or

(b) there has been a failure to disclose material facts in relation to the application.

- 7.** I heard evidence from the appellant and his wife; I also had before me witness statements from them, bundles produced by both parties and copies of the Ministry of Justice's guidance entitled "simple cautions for adult offenders" effective from 13 March 2015, simple caution for adult offenders, effective from 13 April 2015 and guidance from the CPS entitled "cautioning and diversion".
- 8.** The appellant adopted his witness statement and was cross-examined. He confirmed that as at September 2019 he had no recollection of having been cautioned in the previous November 2017 and that the request from the Home Office had not triggered any recollection of that. He confirmed that he had not discussed with his wife what had happened after his release. He said that he had never been detained or arrested or charged previously and despite that, that what had happened had escaped his mind. He confirmed that he had not read the document he was given to sign but was given a copy of it.
- 9.** It was put to him that under the guidance of cautions, at paragraph 80, that the police were to ensure that he understood the effect of the caution and the implications for accepting it, that he understood it and that he was to have made a clear and reliable admission of guilt. He said he did not do so that he had not confessed. He said that he had put the copy of the document he had signed in the bin when he left the police station. He said he had signed so that he could go home. I asked if the police explained to him that there would be no further investigation, he said no nor did he say that they had told him they had dropped the charges. He said that they only told him there would be no further action and he believed this is what he had signed.
- 10.** I asked if he had made a complaint to the police or try to have the caution removed, he said he did not know the process and he confirmed again that he had not taken any steps despite what had happened since to have the caution set aside nor had he asked his solicitors to press enquiries. He said he had not made a complaint against the solicitor who had attended the police station as he did not know how to proceed. He denied when it was put to him that he knew full well that he had been cautioned and had not told the truth before.
- 11.** The appellant said he had met his wife in Jamaica; that she had no family ties there and they had met at a funeral of a family member. He said he was not sure if she had ever lived there. He said that his mother lived there and they continue to live in Jamaica as do his children who are 13 and 11 and they live with their mother. He said he had worked as a baker in Jamaica and that he was not aware if his wife had made any enquiries as to whether she would be able to work in Jamaica. Asked why he would not be able to live in Jamaica if his appeal was dismissed he said that the crime rate was too high and he would be scared to go back.

- 12.** I then heard evidence from the appellant's wife who adopted her witness statement. She added that the Home Office had contacted her solicitors then she was told that the Home Office were asking about whether the husband had been cautioned. She said that she told them he had not. In cross-examination Mrs Carter-Wynter said she recalled the police calling her after her husband had been arrested but they had not discussed with her if they were going to charge him and that they had not told her what was going to happen. She said she had not asked if they were going to charge him. Asked why, if she had called the police, she did not discuss with them what was going to happen, she said that they had asked her if she wanted to press charges and she had said no as she did not want to go to court. They had told her that they were going to release him. She said that he then called her and she arranged for a cab to pick him up.
- 13.** She confirmed that she had not discussed the incident after her husband had returned home and that she had no idea what the police wanted to do. I asked her if she was worried that he might then be prosecuted she said she was not sure. It was put to her that she would not just have forgotten that her husband might be prosecuted for domestic violence she said that this was so.
- 14.** Mrs Carter-Wynter said that she had lived in Jamaica for about fifteen years from when she was a child before going to live overseas. She had come to the United Kingdom in 1996 and currently works as a nursing assistant. Asked if she had Jamaican citizenship she said that she had become a British citizen. She said that all her family had now moved abroad and she had no relatives left in Jamaica.
- 15.** It was put to her that she knew full well that her husband had been cautioned and she said that that was not so. She also denied discussing with police about the caution.
- 16.** I asked why she could not settle in Jamaica with the appellant if the appeal were dismissed; she said, "I don't know".

Submissions

- 17.** Mr Clarke submitted that the Secretary of State's prima facie case had been made out. He submitted that there had been a dishonest concealment of the caution and that this was a sufficiently material matter such that S-LTR1.6 applied. He accepted that there was no direct policy guidance as to what would happen if a person admitted a caution.
- 18.** Mr Clarke submitted that the appellant and his wife's account of what had happened with respect to the caution was wholly unreliable. He submitted that it was wholly incredible that the appellant would not, having received the email have not thought back to what had happened 22 months earlier and it was wholly improbable that the catalogue of a failure to comply with any of the procedure would have occurred and it was telling that there had been no complaint against the solicitor who had attended the police

station or an attempt to have the caution overturned. He submitted it was not credible that the appellant's wife would not have known about the caution it was clear that the appellant had deliberately withheld the information about the caution.

- 19.** Mr Clarke submitted that the appellant had not shown that there were unjustifiably harsh consequences if the appellant and his wife would go back to Jamaica they had a public interest in maintaining immigration control was not outweighed.
- 20.** Miss Williams relied on the skeleton argument submitting that the guidance relating to the administrative cautions was simply that; it could be that maybe the case it had not been followed nor was there a requirement that it be followed. She submitted that the appellant's innocent explanation had been made out and the Secretary of State had not made her case. She submitted that given that the appellant had thought that there would be no further action to take that he would not have been worried and this would not have given cause for concern on his part or that of his wife to make enquiries further. She submitted it was plausible that twenty months after the event they had not recalled exactly what had happened and it had not been brought to mind.

Discussion

- 21.** I am satisfied that the Secretary of State was, prima facie, entitled to conclude that the appellant had been dishonest. It is not in dispute that a caution had been administered nor that he had completed the application form stating that he had never received one. Further, it is accepted that the solicitors were contacted and the information was given to them confirming that the appellant had not received a caution.
- 22.** The innocent explanation is that the appellant had not been aware of the caution being administered and thus had not had it dishonestly.
- 23.** I have only the appellant's word for it that the police ignored the guidance set out in paragraph 80 of the MOJ's Guidance on Simple Cautions for Adult Offenders, in force from April 2015. That guidance provides at paragraph 80:
 - '80. At the point the simple caution is administered the police officer must:
 - Ensure that the offender understands that they do not have to make an immediate decision on whether to accept the simple caution but can consider the matter and, if need be, take independent legal advice;
 - Ensure the offender understands that they have the right to legal advice at any time during the process;
 - Ensure that the offender understands the effect of the simple caution and the implications of accepting it as set out in paragraphs 65-76 above;

- Ensure that the offender has made a clear and reliable admission of guilt in respect of the offence or offences for which the simple caution is being administered;
- Confirm that the offender consents to receiving a simple caution;
- Ask the offender to sign a form setting out the implications of the simple caution (“the simple caution form”);
- Sign the simple caution form themselves and provide the offender with a copy to take away.’

- 24.** I bear in mind also that at the material time the appellant was assisted by a duty solicitor in the police station. If what the appellant says is true then not only was there a wholesale failure to follow the relevant guidance but equally that his solicitor did not advise him of what was happening or make sure that he understood what was happening. This again would have been a wholesale failure on the part of a duty solicitor. The appellant’s evidence is not that he forgot advice that he was given but that he was not given advice or told by the police what was happening. Yet there is no material put before me from the duty solicitor who is not named, and there has been apparently no attempt to make any complaint about what would, in the circumstances, have been a serious professional negligence.
- 25.** Further, I note that the police did not tell the appellant’s wife, who was after all the victim, that the appellant had been cautioned. I accept that that telephone conversation may have taken place before the caution and that she had said that she did not want any further action to be taken and did not wish to press charges in which case it is unclear why the appellant would admit the offence and then be cautioned.
- 26.** In summary, if the appellant’s unsupported evidence is to be believed, then the police ignored almost wholesale the relevant guidance, and the duty solicitor took no action to remedy that; and, failed in his duty to advise his client of what was happening and the consequences of accepting a caution.
- 27.** I am not satisfied by their evidence that the couple would not at any time have discussed what had happened to the police station after he returned given that on his own evidence he had never been arrested and detained before. And, this had come about because of a telephone call the appellant’s wife had made about his behaviour.
- 28.** Further, given that the appellant had never been arrested or detained before, I did not find it credible that, when asked about whether he had been cautioned before, neither he nor his wife recalled this incident in 2017 or could have by then forgotten a caution. I find that the appellant could not have remembered being arrested or detained and it is equally difficult to consider that the question about whether he had been cautioned or not did not cause him to think that perhaps something had occurred that he had not understood.

29. I bear in mind also that no complaint has been made to the police or any attempt made to overturn the caution if, if what the appellant says is true, then it was not properly administered and he had made no admission of guilt.
30. I noted the evidence that the appellant says he encountered no problems when applying for jobs and not disclosing his caution. Again, I have only his word for that; he has not provided copies of any applications. Further, under the Rehabilitation of Offenders Act 1974, simple cautions become “spent” as soon as they are administered and so there would have been no requirement to disclose them if asked.
31. Taking all these factors into account I consider that the Secretary of State has disproved the appellant’s innocent explanation and has demonstrated that the appellant misled the Secretary of State in stating that he had not received a caution when he had done so.
32. I am satisfied also that the deception or failure to disclose the caution was a failure to disclose a material matter. That is because although there is no guidance of Rule relevant to whether or not somebody has a caution should be refused leave, it is clearly a matter which the Secretary of State would wish to bear in mind, given the circumstances of any caution in considering whether the person in question was a fit person to be granted further leave to remain in the United Kingdom. It was clearly a factor that would be taken into account.
33. The respondent did, I accept, have a discretion within the Immigration Rules as to whether to refuse on the basis of this non-disclosure. Looking at all the factors in this case, I am not satisfied by the explanation for the non-disclosure, nor am I satisfied that discretion ought on the facts of this case to be exercised in the appellant’s favour.
34. Accordingly, for these reasons, I am satisfied that the Secretary of State’s decision with regard to the Immigration Rules suitability requirements was correct.
35. Given the finding that the appellant does not meet the requirements of the suitability Rules, he cannot meet the requirements of EX.1 in any event.
36. Turning then as to whether, despite not meeting the requirements of the Immigration Rules, removal of the appellant would be disproportionate, I have regard to paragraph GEN 3.2. I also bear in mind that in In R (on the application of Agyarko and others v Secretary of State for the Home Department [2017] UKSC 11 the Supreme Court held
37. *“The critical issue will generally be whether, giving due weight to the strength of the public interest in the removal of the person in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control.”*

38. In considering Article 8, I am required by section 117A of the Nationality, Immigration and Asylum Act 2002, when considering the issue of proportionality, to have regard to those factors set out at section 117B. Section 117A (3) confirms that the Tribunal is required to carry out a balancing exercise setting the gravity of the interference against the requirements of the public aims sought to be achieved.
39. The starting point is that the Secretary of State is entitled to control the entry of foreign nationals into the territory and that significant weight is to be attached to the maintenance of effective immigration control.
40. I adopt a balance sheet approach to Article 8 ECHR in accordance with Hesham Ali [2016] UKSC 60. I must strike a fair balance between competing public and private interests in accordance with the principles in Agyarko.
41. In this case, significant weight has to be attached to the public interest in removing those who do not meet the requirements of the Immigration Rules.
42. I accept that the appellant speaks English and is, through his wife's earnings, financially self supporting but those factors are neutral
43. In favour of the appellant is the family life he has established here while with leave to remain but equally the appellant is from Jamaica, has family there, and lived there until relatively recently. His wife when asked could not say why she could not go there to live with him.
44. In the circumstances, I am not satisfied on the facts of this case that the effect of removal would be unjustifiably harsh.
45. Taking all of these factors into account, I conclude that on the facts of this case, removal would not, bearing in mind the significant weight to be attached to the public interest, be disproportionate.
46. I therefore dismiss the appeal as removal would not be in breach of the appellant's article 8 rights.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the appeal by dismissing the appeal on all grounds
3. No anonymity direction is made.

Signed

Date 19 March 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX - ERROR OF LAW DECISION



IAC-AH-SAR-V1

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

Appeal Number: HU/16050/2019

THE IMMIGRATION ACTS

**Decided under Rule 34 Without a Hearing
At Field House
On 29 September 2020** **Decision & Reasons Promulgated**
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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**ONEIL ORLANDO CHANNER
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge D A Baker promulgated on 6 February 2020. I have removed the anonymity direction recorded as being made in the title of that decision. That appears, as the appellant acknowledged, to be an error and contrary to the judge's decision at [1].
2. The appellant is a citizen of Jamaica who entered the United Kingdom with entry clearance on 24 November 2016 with leave to enter as a spouse. That leave was valid until 24 August 2019. On 26 July 2019 he applied for further leave to remain as a spouse. That application was refused on 19 September 2019 on the basis that he had failed to disclose a police

caution administered to him in 2017 and so, he could not meet the suitability requirements set out in the immigration rules.

3. The appellant's case is that he was not aware that a caution had been administered when he had been arrested on 5 November 2017 and so had not been dishonest when he had failed to declare it.
4. The judge heard evidence from the appellant and his wife. In her decision she set out at from [36] onwards what was in dispute, setting out three relevant issues:
 - (a) Is the PNC evidence reliable evidence that a caution was administered to the appellant in 2017 by the Metropolitan police
 - (b) If it was, was the appellant aware of it
 - (c) The appellant says that he did not know of the caution.
5. The judge concluded that the PNC was sufficient to establish that a caution had been administered. She then went on to consider the submission from the respondent [40] that the police would have advised him of it; the duty solicitor would have explained it to him; that he would have read it before he signed it and she had telephoned the reps to check the answer whether the appellant had a caution or not was correct, and that they had confirmed it was correct.
6. The judge then summarised at [41] the appellant and his wife's evidence as to what had occurred, noting that the appellant accepted he had signed something but had not known what it was and had not signed it, nor had he been advised that he had been cautioned. The judge rejected the appellant's explanations and at [49] concluded that the respondent had shown that the appellant did know that he had been cautioned and that his failure to reveal it was dishonest.
7. The judge also concluded, in respect of suitability, that discretion ought not to be exercised in the appellant's favour as he had compounded the original deceit [60] in maintaining at the hearing the lie as to his knowledge of the caution.
8. The judge concluded that removing the appellant would not amount to a breach of his article 8 rights, finding [53] that the appellant would not face problems in Jamaica and that his wife could go there to live with him permanently [54]; and, that he could go back to Jamaica and make an application for Entry Clearance [55]. She also concluded [62] that the appellant's deception was too grave to allow him to remain.
9. The appellant sought permission to appeal on 4 grounds:
 - (i) In mistakenly considering the appellant's case to be that no caution had been administered;
 - (ii) In rejecting on the sole basis of implausibility the appellant's account that he had not been advised by the duty solicitor or the police that he was signing and receiving a caution, yet rejecting the

clear and consistent evidence of the appellant and his wife to the contrary, this assessment being insufficient to meet the balance of probabilities, it being possible that the appellant had not been aware of the consequences of signing a document, the point taken against the wife at [46] not being put to her;

- (iii) In conflating the exercise of discretion in making the proportionality assessment under Article 8 with whether or not the appellant met the requirements of the Immigration Rules;
- (iv) In failing to give adequate reasons for the findings at [61] as to proportionality, the failure to meet the Immigration Rules not being sufficiently serious to render the decision proportionate.

10. On 15 May 2020 First-tier Tribunal Judge O'Garro granted permission to appeal.

11. Subsequent to the grant of permission, Upper Tribunal Judge Kopieczek also made directions in this case stating:

1. I have reviewed the file in this case. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so
 - (b) whether that decision should be set aside.
2. I therefore make the following DIRECTIONS:
 - (i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);
 - (ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;
 - (iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file and serve a reply no later than **28 days after this notice is sent out**.
 - (iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.
3. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

reasons for that view no later than **21 days after this notice is sent out** and they will be taken into account by the Tribunal. The directions in paragraph 2 above must be complied with in every case.

4. If this Tribunal decides to set aside the decision of the First-tier Tribunal for error of law, further directions will accompany the notice of that decision.
 5. Documents and submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.
12. The appellant made submissions to the Upper Tribunal on 12 August 2020 but these contain no objection to the matter being dealt with without a hearing. The respondent replied under cover of a letter dated 19 August 2020 expressed to be a response to grounds pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
 13. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. Given that no objection to this course of action has been raised, and bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly, I am satisfied that in the particular circumstances of this case where no objection to a decision being made in the absence of a hearing that it would be right to do so.
 14. Grounds (i) and (ii) fall to be considered together. For the reasons set out below it is not necessary to address grounds (iii) or (iv).
 15. As averred in the grounds, the judge's approach at [37] does appear to proceed on the basis that the appellant's case was that no caution had been received. That is an error, as it is evident from the skeleton argument in particular at [11] and the appellant's witness statement that it was not suggested that no caution had been administered, rather that he did not recall it being made. The observation that no copy had been seen is simply that; not a submission that the caution did not exist.
 16. Given it was accepted it exists and that it had not been declared, the issue was properly, was there an innocent explanation for that.
 17. In considering this issue, I bear in mind what was said in Muhandiramge (section S-LTR.1.7) [2015] UKUT 675 (IAC)
 - "10. One of the more recent reported decisions belonging to this stable is that of Shen (Paper Appeals: Proving Dishonesty) [2014] UKUT 236 (IAC). This decision is illustrative of the moderately complex exercise required of tribunals from time to time. Here the Upper

Tribunal held, in harmony with established principle, that in certain contexts the evidential pendulum swings three times and in three different directions:

- (a) First, where the Secretary of State alleges that an applicant has practised dishonesty or deception in an application for leave to remain, there is an evidential burden on the Secretary of State. This requires that sufficient evidence be adduced to raise an issue as to the existence or non-existence of a fact in issue: for example, by producing the completed application which is prima facie deceitful in some material fashion.
- (b) The spotlight thereby switches to the applicant. If he discharges the burden - again, an evidential one - of raising an innocent explanation, namely an account which satisfies the minimum level of plausibility, a further transfer of the burden of proof occurs.
- (c) Where (b) is satisfied, the burden rests on the Secretary of State to establish, on the balance of probabilities, that the Appellant's prima facie innocent explanation is to be rejected."

18. The judge, although not expressly following the three-stage process, proceeded to consider the "innocent explanation" offered and to reject it. But the basis of that rejection is on the basis of evidence as to what would be expected to happen and the rejection of the wife's evidence at [45] and is, I consider, flawed in that the point held against her was not put to her and again, the rejection is based on what ought to have happened. Similarly, the rejection of the evidence at [46] does not take into account the context of how the appellant was on his return. Equally, it follows that the wife did know of the caution, it begs the question of why she would as appears to be the case, not have told the truth when the point was raised by the respondent - see the decision also at [59].
19. I observe that it is unclear whether the points as to the plausibility of the accounts given by the appellant and his wife were put to them for them to answer.
20. Contrary to what the respondent submits, I do not consider that the grounds of challenge are simply a disagreement. What the judge has done is to make assumptions about what would have been done, what the appellant in a fraught situation would have thought was going on, and what he understood had happened.
21. I conclude that, for the reasons set out above, the core finding as to dishonesty is not sustainable. Given that the entirety of the decision is predicated on that finding, it is material, and it follows that the decision must for that reason be set aside. In the circumstances, it is unnecessary for me to consider grounds (iii) and (iv) as the findings as to proportionality and discretion were predicated on the dishonesty findings.

22. Accordingly, for these reasons, I conclude that the decision of the First-tier Tribunal involved the making of an error of law as claimed. I therefore set it aside to be remade in the Upper Tribunal. None of the findings of the First-tier are preserved save as to the matters which are not in dispute.

Notice of Decision

- 1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I direct that the decision be remade in the Upper Tribunal on a date to be fixed.
- 3 Any party wishing to adduce further evidence must make an application pursuant to rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 at least 10 working days before the hearing.

Signed
Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

Date: 29 September 2020

DIRECTIONS

1. In the circumstances, and having regard to the Pilot Practice Direction and the UTIAC Guidance Note No 1 of 2020, the Upper Tribunal is provisionally of the view that the forthcoming hearing in this appeal can and should be held remotely, by Skype for Business on a date to be fixed within the period 10 October to 20 December 2020.
2. No later than 7 days after these directions are sent by the Upper Tribunal:
 - a. the parties shall file and serve by email any objection to the hearing being a remote hearing at all/by the proposed means; in either case giving reasons; and,
 - b. without prejudice to the Tribunal's consideration of any such objections, the parties shall also file and serve:
 - (i) contact/join-in details, were the hearing is to take place remotely by the means currently proposed; and
 - (ii) in that event, dates to avoid in the period specified.
3. The Tribunal will then give further directions, which will either be:

- a. to list the date and time of the remote hearing, confirming the join-in details etc and directing the electronic filing and service of documents in connection with the hearing; or
- b. to give directions with respect to a face-to-face hearing.

Signed
Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

Date: 29 September 2020