



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01772/2020 (V)

**THE IMMIGRATION ACTS**

Heard at Field House via Microsoft Teams  
On 13 July 2021

Decision & Reasons Promulgated  
On 15 September 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MHMR  
[ANONYMITY DIRECTION MADE]

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms S Jegarajah, Counsel instructed by Greater London solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim, I consider it is appropriate to continue that order. 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 his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

## **BACKGROUND**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Raymond promulgated on 2 October 2020 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 4 February 2020 refusing his protection and human rights claims.
2. The Appellant is a national of Sri Lanka of Tamil ethnicity. He is married to a Sri Lankan woman, [CW]. She is a Buddhist and of Sinhalese ethnicity.
3. [CW] came to the UK on 5 October 2010 with entry clearance as a student and with the Appellant as her dependent. [CW] was then given a post study work visa in 2012 to 2014, again with the Appellant as her dependent. [CW] and the Appellant returned to Sri Lanka for a month in 2013. The Appellant’s leave was extended again in 2014 to 26 October 2015 as the dependent of [CW] who reverted to a student visa. [CW] made an in-time application to remain with the Appellant as her dependent, based on their family and private life. That was refused on 12 February 2016. [CW] and the Appellant appealed. Their appeal was dismissed on 24 April 2016. Onward appeal rights were also rejected.
4. On 14 September 2016, the Appellant claimed asylum. That claim was rejected on 16 February 2018. An appeal was dismissed on 22 May 2018. Onward appeal rights were again rejected and the Appellant’s appeal rights were exhausted on 9 August 2018.
5. Further submissions were made on 8 February 2019. Those were accepted to amount to a fresh claim but were refused leading to the decision under appeal.
6. The Appellant suffers from mental health problems which lay at the heart of the further submissions. He also submitted further evidence in relation to a claim to be at risk on return to Sri Lanka as he claimed to be suspected of being linked to the LTTE. He also claimed that he was at risk as [CW]’s uncle is in a position of power and would harm him on return as he disapproves of [CW]’s marriage to the Appellant.
7. The Decision is, as Ms Jegarajah fairly accepted, a very detailed one, running to some 213 paragraphs over 51 pages. Of course, what matters is the substance of the Decision and not its length. However, the grounds of appeal do not take issue with the substance of the Decision. The challenge is based squarely on what occurred at the hearing. I will have to deal with that in more detail below when considering the grounds of appeal. For the present, I note only that the Decision was reached on consideration of the documents, [CW] and Ms Jegarajah having withdrawn from the hearing following the Judge’s refusals to grant an adjournment. I observe also that the Respondent was not represented at the hearing.
8. The grounds of appeal are summarised as follows:

Ground one: the Respondent's review dated 8 July 2020 ("the Review") was improperly served. The Judge should therefore have adjourned "to enable [the Appellant] adequate time to deal with the matters raised in the [R]eview".

Ground two: The Review was unfair in that it raised points not taken in the Respondent's decision letter. It is said that [CW] had insufficient time in the two hours accorded to her to deal with the points raised in the Review (as to which see below) and to explain matters to the Appellant. It is asserted that the refusals to adjourn failed to take into account the Appellant's vulnerability.

Ground three: The refusals to adjourn the hearing to another date were unfair.

9. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 30 October 2020 in the following terms so far as relevant:

"..2. The grounds assert that the judge erred in failing to grant an adjournment request on the basis that the respondent had submitted late, a review following the service of a skeleton argument.

3. The above is putting matters in simple terms. It is apparent from the judge's decision and the grounds that many issues took place during the hearing. Ultimately, counsel withdrew from the proceedings; that, per se, does not make the proceedings unfair.

4. However, in my view, a lot went on during the hearing, and I think it is in the interests of justice that the issues be explored further to see if there had been unfairness to the appellant. The appellant is reminded that the burden remains on him.

5. There is an arguable error of law."

10. On 9 November 2020, the Respondent filed a Rule 24 reply in the following terms so far as relevant:

"..2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

3. The respondent submits that the first ground, in relation to whether respondent's review had been sent in time to the appellant's representatives, it appears this had been sent following the Case Management hearing. From the post hearing statement from the appellant's solicitor it is now claimed the review had been received but had been overlooked and not been sent to the senior Solicitor.

4. The second ground claims it was unfair for the FTT Judge to fail to adjourn the hearing. The respondent submits that the FTT gave the appellant's counsel and witness 2 hours to respond to the issues in the review. That they then decided to withdraw when the adjournment request was refused was a matter for them.

5. The respondent requests an oral hearing."

11. The matter was listed before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. I accept that if I were to find an error of law, the appropriate course would be to remit the appeal given the nature of the challenge to the Decision.

12. The hearing before me was conducted via Microsoft Teams. There were no significant technical issues affecting the conduct of the proceedings. I had before me a core bundle of documents relating to the appeal including the Respondent's bundle, the

Appellant's bundle as before the First-tier Tribunal, the skeleton argument as before the First-tier Tribunal, various items of correspondence and loose documents including the Review to which I refer above, and the witness statements annexed to the grounds of appeal. Given the nature of the challenge to the Decision, I need refer only to certain core documents, the witness statements and the Review.

## **DISCUSSION AND CONCLUSIONS**

### **Ground One: The Review**

13. I need to begin my consideration of this ground and the challenge more generally with reference to a case management review ("CMR") which took place before First-tier Tribunal Judge Froom on 16 June 2020. The following decisions were taken at that CMR:
- (1) [CW] was appointed as the Appellant's litigation friend as a result of it being accepted that the Appellant lacked litigation capacity as confirmed by a report of Dr Halari. Judge Froom noted that "[t]he appellant's partner can act fairly and competently as litigation friend and is already providing instructions to the appellant's solicitor. There is no actual or potential conflict of interest between her and the appellant.". [CW] was on that basis appointed by the Tribunal.
  - (2) The Respondent was ordered to file and serve a response to the Appellant's skeleton argument by no later than 4pm on Friday 17 July 2020. That was intended to address "in as much detail as possible the evidence submitted since the previous decision of the tribunal".
  - (3) All documents were ordered to be lodged with the Tribunal by email. I accept that the decision made at the CMR did not provide how documents were to be served as between the parties. It is to be noted however that the decision at the CMR took place against the backdrop of the first lockdown in the Covid-19 pandemic and at a time when the official guidance was that employees should work at home where possible.
14. The decision as originally sent provided for service of the Respondent's reply to the skeleton argument to be served and filed by 4pm on Friday 19 June 2020. However, at some point thereafter it appears to have been appreciated that this was either an incorrect date or allowed insufficient time for the review to take place. The decision as annexed to the notice of hearing dated 8 July 2020 provided for the 17 July date. The Review was in fact filed on 8 July 2020.
15. The Appellant's complaint that the Review was improperly served stems from the inclusion in the letterhead of the solicitor's firm of a statement that service by fax and email was not accepted. I have however pointed to the backdrop of the pandemic and first lockdown. Moreover, the Appellant's solicitors had been using email to correspond not only with the Tribunal but also with the Respondent's Presenting Officers Unit (see for example letter dated 8 June 2020 enclosing a further bundle of evidence). I do not of course criticise the Appellant's solicitors in that regard. I accept that the letters were sent also by post. However, given the circumstances pertaining at

the relevant time, it might be expected that the Respondent would also use email as a means of communication (particularly since the Respondent's offices were probably more heavily staffed in normal circumstances with therefore a potentially higher risk of infection if individuals did not follow the guidance to work from home).

16. The Review was sent only by email to the Appellant's solicitor. It was however properly filed with the Tribunal at the email address given in the CMR decision. Unfortunately, it appears that the email address used by the Respondent to send the Review was that from which the 8 June 2020 letter was sent. The Respondent cannot be faulted as, since the Appellant's solicitors would not accept service by email, no general email address was provided. The email covering the 8 June letter does include the details of two other members of the Appellant's solicitor's firm and it might perhaps have been sensible for all those so named to be included in the email serving the Review.
17. The Respondent was not to know however that the sender of the 8 June 2020 email was about to go on maternity leave. That person, Ms Erampamoorthy, has signed a witness statement dated 30 September 2020 which was with the grounds challenging the Decision. In that statement, she apologises to the Tribunal for failing to action the email from the Respondent. She accepts that it was her responsibility to do so and that she did not realise that the email had arrived until she was asked about it by the solicitor, Mr Komathan, on the day of the hearing before Judge Raymond. She confirms that she was working from home by June 2020 due to her pregnancy and the pandemic. She gave birth on 2 August 2020, and it may be that she was on maternity leave by 8 July 2020. She does not confirm that this was so. It is not suggested that there was any "out of office" message placed on her email to alert senders of email correspondence that she was on maternity leave if she was. Ms Erampamoorthy herself takes responsibility for overlooking the email. She does not suggest that the Review should not have been sent in this way. That is a realistic position to take in the circumstances prevailing at that time.
18. In any event, I consider this ground to be something of a red herring. The Appellant and his representatives were provided with the Review on the day of the hearing by Judge Raymond and given time to consider it. The real issue is whether they were given sufficient time to consider it or whether the hearing should have been adjourned to another day. It appeared to be suggested by Ms Jegarajah in the course of her submissions that Judge Raymond was wrong to provide the Review and insist that the Appellant consider the issues therein. She appeared to suggest that the Judge should simply have ignored the document given its non-receipt by the Appellant particularly since the Respondent was unrepresented at the hearing. If I understood that submission correctly it is misconceived. Whether or not the Review was correctly served, it was correctly filed. The Judge could not simply ignore it.
19. For the foregoing reasons, there is no error of law disclosed by ground one. As I say, however, the real issue is the fairness of the hearing given that the Review was

received by the Appellant and his representatives (or at least only came to their attention) on the morning of the hearing.

**Ground two: Appellant's vulnerability**

20. Although, as I say above, the central issue in this appeal is the fairness of the hearing, the second ground is also by way of a preliminary consideration in that context and so I deal with it separately before coming to that issue.
21. As I have already noted, [CW] was appointed by the Tribunal as a litigation friend at the CMR. On that occasion the Respondent did not apparently object to the appointment. There is no suggestion that the Tribunal does not have the power to appoint a litigation friend nor could there be following the Tribunal's decision in R (oao JS and Others) v Secretary of State for the Home Department (litigation friend - child) [2019] UKUT 64 (IAC) ("JS").
22. The Review asserts both that the Appellant is "enhancing his medical condition for the sole purpose of bolstering his asylum claim" and that [CW] is not a suitable person to act as a litigation friend. The drafter of the Review appears to have been unaware that the Tribunal had already appointed [CW] as the Respondent sets out the process as being for the Tribunal to appoint and for the Respondent to be able to make objection to "the request". The position at that time was, as I have already noted, that [CW] had been appointed without objection from the Respondent. I observe also that the point taken about [CW]'s credibility based on what she has previously said about her father's employment is made in the context only of her suitability to act as a litigation friend.
23. There was some discussion at the hearing before me about the role of a litigation friend. For that reason, it is necessary for me to say something about that and the purpose of appointing a litigation friend.
24. The role of a litigation friend is neatly summarised in an extract from the White Book which is cited at [92] of the decision in JS as follows:

"The litigation friend is required to take all measures he or she sees fit for the benefit of the child or protected party, supplementing the want of capacity and judgement of the child or protected party, his or her function being to guard or safeguard the interests of the child or protected party for the purposes of the litigation. The discharge of that duty involves the assumption by the litigation friend of the obligation to acquaint him or herself of the nature of the action and, under proper legal advice, to take all due steps to further the interests of the child or protected party..."
25. The Tribunal goes on to refer to a case concerning the role of a litigation friend in mental health proceedings whose duties are "(i) to act competently and diligently and (ii) to act in the best interests of (and without conflict with) the party for whom he is conducting proceedings".

26. Whilst it is of course the case that the Appellant remains a party to the appeal, the litigation friend is there to give instructions. That person in effect steps into the shoes of the party who lacks capacity to deal with the case. In this case, although [CW] might have wished to explain to the Appellant what was being said by the Respondent in the Review (if and insofar as he had capacity to understand this), she was not duty bound to do so. Her duty was to advance the case in the Appellant's best interests and to provide the Appellant's legal representative with instructions.
27. The way in which ground two is advanced in relation to unfairness more generally is that the refusal to adjourn was "clearly in breach of the Presidential guidance on Vulnerable Persons". I cannot accept that assertion. It is appropriate to explain that conclusion by reference to the leading case about the treatment of vulnerable persons in the immigration context - AM (Afghanistan) v Secretary of State for the Home Department and another [2017] EWCA Civ 1123 ("AM").
28. As is said by the then Senior President at [16] of the judgment, the issue for the Tribunal Judge to consider is the needs of the individual appellant and how to ensure that the appellant has effective access to justice. AM was a case concerning a vulnerable person who gave evidence in his appeal. That does not apply in this case as it was agreed that the Appellant was unfit to give such evidence. The steps to be taken by reference to the practice direction are set out with approval at [30] and [31] of the judgment. Those do not apply here as there was no suggestion that the Appellant should give oral evidence.
29. Crucially for this case, the Senior President went on to consider the need in "a rare case" for the Tribunal to appoint a litigation friend and said this:

"44. I have come to the conclusion that there is ample flexibility in the tribunal rules to permit a tribunal to appoint a litigation friend in the rare circumstance that the child or incapacitated adult would not be able to represent him/herself and obtain effective access to justice without such a step being taken. In the alternative, even if the tribunal rules are not broad enough to confer that power, the overriding objective in the context of natural justice requires the same conclusion to be reached...."

As reflected in that passage, it is the very appointment of the litigation friend which is designed to deal with access to justice for a person in the Appellant's position. The Presidential Guidance is therefore not relevant as the Appellant was neither a witness nor in the position of needing to give instructions.

30. I will come on to the specific reasons why it is said that the Judge acted unfairly when refusing the adjournment when dealing with ground three. I deal though briefly with a suggestion made by Ms Jegarajah that the Respondent's objection to [CW]'s appointment in some way affected her ability to act as a litigation friend. If that is what Ms Jegarajah intended to suggest, it is a submission which lacks merit. As I have observed above, the drafter of the Review appears to have misunderstood the stage which the appointment process had reached. Once a litigation friend is appointed by the Tribunal it would be for the Tribunal to terminate that appointment. It could not

be done by a party to the appeal. As it was, Judge Raymond rejected the objection but that does not matter. Unless and until the Tribunal discharged the litigation friend, [CW] remained appointed and was in a position to give instructions to Ms Jegarajah.

### **Ground three: Refusals to Adjourn and Fairness of Hearing**

31. It is necessary to consider the Judge's refusals to adjourn in the round. For that reason, it is also necessary to consider what occurred at and outside the hearing as a whole. What I say below therefore takes into account the specific complaints made in ground two.
32. I consider the issue of fairness in accordance with the guidance given in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) ("Nwaigwe") as follows:

"If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."

33. I make two observations before turning to consider fairness. The first is that, if Ms Jegarajah as the advocate who appeared before Judge Raymond, had provided a witness statement in support of the grounds of appeal dealing with what occurred, it would not have been appropriate for her to represent the Appellant before me. She did not provide a witness statement. However, for that reason, I could not permit Ms Jegarajah to make submissions to me which amounted to the giving of evidence.
34. The second observation is that, in the course of her submissions, Ms Jegarajah made an assertion which appeared to suggest bias on the part of the Judge. Although it is clear from the Decision that a submission was made to Judge Raymond at the time asking him to recuse himself (as recorded at [117] of the Decision), such an allegation formed no part of the pleaded grounds of appeal against the Decision.
35. There is a reference in the witness statement of [CW] which was attached to the grounds of appeal that the Judge "was being very sarcastic" towards her and Ms Jegarajah. She makes a serious allegation about the Judge's attitude. Judge Raymond was not asked to deal with that allegation as there is no pleaded cases of bias, either actual or apparent. I cannot, as Ms Jegarajah suggested at one point, infer from the statement that the Appellant is challenging the Decision on grounds of bias. If the Appellant wished to advance that case it should have been pleaded. It is not. For that reason, I say no more about the allegations which are made by [CW] in her statement.



As I have already noted, there is no witness statement from Ms Jegarajah made in support of those allegations.

36. I deal then with what occurred at the hearing. I do not need to set out much of the detail of the interaction as between the Appellant (or more accurately [CW]) and Ms Jegarajah on the one hand and the Judge on the other as this is set out in some detail at [106] to [123] of the Decision. In short summary of what is there said, the hearing had a fixed start time of 11.30am. The Respondent was not present. The Appellant was in attendance but was not to be called due to his lack of capacity.
37. As I have noted in relation to ground one, the Appellant did not at this stage have the Review, but the Judge provided it to Ms Jegarajah and [CW] in the short adjournment which he permitted to allow Ms Jegarajah to ensure that she had all the necessary documents. The Appellant (or more accurately [CW]) was given two hours to check with his solicitors whether the Review had been received. At [111] to [115], the Judge refers to the submissions made to him following the two hours' adjournment. The submissions made were, in effect, that the Review had not previously been received and that it raised new challenges as regards the appointment of [CW] as the Appellant's litigation friend.
38. The Judge refused the adjournment at that point in time. Ms Jegarajah then said that she would need further time to take a statement from [CW]. She was given a further hour. Following the second adjournment, Ms Jegarajah asked the Judge to recuse himself based on the allegation of an appearance of bias. The Judge declined and refused to adjourn. [CW] and Ms Jegarajah then withdrew from the hearing. The Judge has set out his reasons for refusing to recuse himself at [120] of the Decision and has recorded the complaint made by Ms Jegarajah to the IAC President about the Judge at [122] of the Decision.
39. In accordance with the guidance in Nwaigwe, I accept that the issue for me is whether the hearing was unfair rather than whether Judge Raymond's decision to refuse an adjournment was reasonable. However, it is appropriate to record the summary of his reasons for refusing the adjournment at [121] of the Decision as follows:
- "In refusing the applications to adjourn I took the view that there was no unfairness to the appellant's only witness, his wife, who was represented by counsel, in expecting that the review could be addressed in the three hours I had provided for this to be done, between 12:00 and 14:00, and then between 14:30 and 15:30. The review raised issues that flowed naturally from the core asylum claim, and even if by some internal administrative mishap in the running of the offices of instructing solicitors it had been overlooked, there was ample opportunity to address the review. But instead that time was taken up in drafting a complaint against the presiding Judge."
40. It is next necessary for me to record in summary what is said by [CW] in her statement attached to the grounds of appeal. In short summary, [CW] says that it was difficult for her to deal with the hearing at the same time as caring for the Appellant. She explains in some detail what she had to do to look after him during the day. What is

said about the Appellant being asked to give evidence at [4] of the statement, however, is inconsistent with the Judge's record of what occurred which was that the Appellant was introduced but then asked to wait outside ([106] of the Decision). [CW] considered that, by producing the Review, the Judge stepped into the shoes of the Respondent. As I have already noted, the Respondent had filed the Review and sent it to the Appellant's solicitors who had received it albeit overlooked it. Whether or not that was proper service, there could have been no reason to object to the Judge giving it to the Appellant's side. No doubt, Ms Jegarajah would have informed [CW] that this was not overstepping the mark.

41. The focus of ground three as pleaded is that the Review had not been received by the Appellant's side prior to the hearing, it raised new matters and there was not time to deal with it as well as dealing with a vulnerable "client". It is said that Judge Raymond should have permitted an adjournment to allow sufficient time to deal with the new matters.
42. In light of the way in which the ground is pleaded, I turn to look at the Review. I begin with the list of issues identified by the Respondent at the outset (which are taken from the Appellant's skeleton argument before the First-tier Tribunal at the time of the CMR). Those are as follows:
  - "(i) Is the A a vulnerable person?
  - (ii) Should the FTT grant permission to appoint the A's wife as his litigant in person [sic]?
  - (iii) What weight should be attached to the findings of FTTJ Gaskell in the decision dated 5<sup>th</sup> April 2018 applying the principles in Devaseelan 2002?
  - (iv) Does the A face persecutory risk as a perceived member of the LTTE and one who breached bail in respect of an offence relating to the LTTE?
  - (v) Does the A's wife face persecutory risk as a PSG, women? In particular, an identifiable woman Buddhist convert to Islam, an observant Muslim woman who wears clothes that mark her out as an observant Muslim, and as a woman at risk of FGM and forced marriage?
  - (vi) Will removal place the R in breach of Article 3 ECHR?"

Issue (v) is then identified as a "new matter".

43. The Respondent then sets out her position in what is termed a "Counter Schedule". As I have already observed, the Review in relation to issues (i) and (ii) is misconceived. The Tribunal had already determined that the Appellant lacked capacity and required a litigation friend and that [CW] should be appointed his litigation friend. The Appellant complains of new points being raised within those issues about the extent of the Appellant's medical condition and [CW]'s credibility but, to all intents and purposes, those were irrelevant as the issue regarding the appointment of a litigation friend had already been determined.
44. Even if those points were still relevant, it is difficult to identify what it was which created the need for an adjournment. In relation to issue (i), the Respondent inferred that "the appellant is enhancing his medical condition for the sole purpose of bolstering his Asylum claim". It is clear from the decision under appeal that the

Respondent did not accept that the Appellant's medical condition met the necessary threshold of severity. The Appellant had produced medical evidence which it was for the Judge to consider. Ms Jegarajah would obviously have been familiar with that evidence since it was produced by those instructing her. She would undoubtedly have been in a position to marshal that evidence and direct the Judge's attention to that which supported the extent of the Appellant's condition.

45. In relation to issue (ii), the Respondent referred to an application as a visitor ("VAF") made by [CW]'s father in which he stated that he was "a Medical Lab Technician" whereas [CW]'s evidence was that he "used to work as a Biomedical Scientist in the Sri Lankan Army". I accept that the VAF was new evidence. However, there are two reasons why I am unable to understand how this created problems for the Appellant. First, the point raised is a very short one. There might have been a plausible explanation for the inconsistency (perhaps regarding the timing of [CW]'s father's employment positions). In any event, [CW] could have provided instructions to Ms Jegarajah very shortly. The facts were in [CW]'s knowledge and did not involve a need to take instructions or evidence from the Appellant himself.
46. Moreover, although I had initially understood this evidence to be relevant to the underlying asylum claim as to risk on return, the only relevance placed on it by the Respondent is as to the credibility of [CW] and therefore her suitability to act as a litigation friend. As I have already noted, the issue had already been determined by the Tribunal. As such, the evidence was largely irrelevant. Although the credibility of both the Appellant and [CW] was at issue (including because of the findings of the Judge in the previous appeal determination), if it was necessary for [CW] to rebut this new point made by the Respondent, she could have done so in her oral evidence. It is not clear why any further witness statement was needed. Even if it was, it would have required a few sentences at most.
47. It is also appropriate to consider what the Judge made of the Review in relation to those two issues. Those are dealt with briefly at [103] and [104] of the Decision as follows:
- "103. I consider, however, that the observations of Dr Turner could be seen as giving some credence to the view of the respondent in their review of 08.07.20, that it can be inferred the appellant is enhancing his medical condition for the sole purpose of bolstering his asylum claim, because the medical records show that he did not mention his mental health difficulties to his doctors in 2017 [§3].
104. I find that this is an issue raised by the respondent which falls to be addressed in my conclusions that will follow, in the light of the whole of the evidence in this appeal, and without it bringing into question the appropriateness of his wife acting as his litigation friend and giving evidence in his appeal, when he could not do so because of serious mental health problems, on matters in which both are claimed to have been intimately connected since 1998."
48. Judge Raymond did not therefore discharge [CW] as the Appellant's litigation friend. [CW] having been appointed by the Tribunal in that capacity it would have required a

direction of the Tribunal to discharge her. Ms Jegarajah could therefore be assured that she was able to take instructions from [CW] unless and until a Tribunal Judge reached a different conclusion. No doubt if Judge Raymond had considered it appropriate to discharge [CW] as the Appellant's litigation friend, he would have given an adjournment, but he did not do so. As he also said and as I have already pointed out, the issues regarding the extent of the Appellant's mental health problems and [CW]'s credibility had to be considered against all the evidence.

49. I accept that the Judge, at [161] and again at [202] of the Decision did reach the conclusion that the Appellant was exaggerating his condition. However, he reached those conclusions only after detailed consideration of all the evidence in that regard. The very detailed credibility findings at [127] to [208] which include the findings about the Appellant's medical condition do include at [176] of the Decision reference to the inconsistency arising from the VAF but this is a minor point among many.
50. Although issues (i) and (ii) are said at [14] of the grounds to be those which caused difficulties to the Appellant and led to the need for an adjournment, I consider for completeness the remaining parts of the Review.
51. There can be no complaint about the impact of the findings of the previous Judge. As is pointed out at [5] of the Review, this was also dealt with in the decision letter under appeal.
52. Likewise, issues (iv) and (vi) had been dealt with in the decision under appeal ([6] and [8] of the Review).
53. I accept that what is said in response to issue (v) at [7] of the Review is not cross-referenced to the decision under appeal. It could not have been dealt with previously, however, as this is identified as a "new matter". The facts as relied upon in the Review were however the subject of findings in the previous appeal and the only reference to new (background) evidence appears to be in relation to FGM. As I have already noted, the grounds challenging the Decision do not identify this issue as being one with which the Appellant was unable to deal.
54. I sought to ascertain from Ms Jegarajah during the hearing before me why the Review gave rise to the need for an adjournment and therefore why the refusals to adjourn were unfair. Although that is the way in which her grounds are formulated, she appeared reluctant to engage with those issues. Instead, her primary submission made orally appeared to be that there was no prejudice occasioned by an adjournment because the Respondent was unrepresented and therefore the Judge should have granted the adjournment sought.
55. Whilst I accept that lack of prejudice may be a relevant consideration, it cannot be right that a party is entitled to an adjournment for that reason, simply because that party wants an adjournment and without more. In any event, prejudice is not restricted to detriment to either party but also to the Tribunal's procedures. Here, a day had been set aside for the hearing. If the hearing had been adjourned on the day, that would

have meant that another case which might have been listed instead was not heard. It would mean devoting another day of Tribunal time to the hearing of this case when, on the Judge's view, the hearing could go ahead without prejudice to the Appellant. The Tribunal is of course required to have regard to the overriding objective to decide cases justly and fairly but also to avoid delay so far as compatible with proper consideration of the evidence.

56. I have carefully considered whether it can be said that the Appellant did not have a fair hearing due to the Judge's refusals to adjourn. Whether a hearing is unfair depends on context in all the circumstances. I have considered the Appellant's position as a vulnerable person and the challenges which that brings. However, his vulnerability was dealt with by the appointment of [CW] as his litigation friend. I accept that the Appellant was at court with her and might have required her attention alongside her role as the person providing instructions and as a witness. However, if the Appellant was to attend the tribunal hearing with [CW] (as he did), it would always have been the case that arrangements would need to be made for his care whilst [CW] was giving evidence and dealing with the case. It was for [CW] to ensure that suitable arrangements were in place.
57. The position was not changed by the late receipt of the Review. The Review raised new points but only in relation to issues which had already been resolved by the Tribunal. Even if those new points needed to be dealt with other than by way of submissions from counsel (which I do not accept in any event), they did not require any more than minimal instructions and evidence. [CW] was given ample time to provide instructions on those very limited points. She had the benefit of experienced Counsel who was very familiar with the case and had all the evidence with the limited exception of the VAF produced with the Review which had been filed well before the hearing (albeit I accept not seen by the Appellant's side until the morning of the hearing).
58. On the face of [CW]'s witness statement which accompanied the grounds, it appears that [CW] had made up her mind that she did not want the case to be dealt with by this particular Judge from the moment that she went into the hearing because she considered him to have made up his mind that the Appellant would lose. As I have already noted, there is no pleaded challenge to the Decision based on bias and I do not therefore need to deal with those allegations. The challenge to the Decision is on the basis that the hearing should have been adjourned because [CW] did not have sufficient time to deal with matters.
59. Having considered all the circumstances in accordance with the guidance given in Nwaigwe, and based on the Appellant's grounds as pleaded, for the reasons I have given, the hearing before Judge Raymond was not procedurally unfair. He accorded the Appellant, and more importantly [CW] short adjournments which were of sufficient length to deal with the very limited new issues raised in the Review (insofar as those required a response at all).

60. For the foregoing reasons, there is no error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

**DECISION**

**The Decision of First-tier Tribunal Judge Raymond promulgated on 2 October 2020 does not involve the making of an error on a point of law. I therefore uphold that decision with the consequence that the Appellant's appeal remains dismissed.**

Signed: *L K Smith*

**Upper Tribunal Judge Smith**

Dated: 4 August 2021