



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

Appeal Number: PA/02381/2017

THE IMMIGRATION ACTS

**At: Manchester Civil Justice Centre
On: 7th December 2021**

**Decision & Reasons Promulgated
On: 12th January 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**CLM
(anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Ms Wilkins, Counsel instructed by Duncan Lewis & Co

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Jamaica born in 1967. He faces 'automatic' deportation under s32 Borders Act 2007 because on the 13th May 2014 he was convicted at Manchester Crown Court of five offences, the most serious of which, possession of a Class A drug with

intent to supply, attracted a sentence of 42 months imprisonment¹. Those criminal offences mean that the Appellant's deportation is in the public interest, and that is why the Secretary of State signed a deportation order on the 20th February 2017.

2. The Appellant exercised his right of appeal before the First-tier Tribunal and on the 5th August 2019 the matter came before Judge Cruthers². The Appellant sought to resist deportation on the grounds that both of the 'exceptions' to the automatic deportation provisions set out in s33(2) of the Borders Act 2007 applied to him: he could not be deported because he was at risk of serious harm in Jamaica, and because to remove him would be a violation of the United Kingdom's obligations under Articles 8 and 3 of the European Convention on Human Rights.
3. In his decision of the 16th August 2019 Judge Cruthers dismissed the appeal on all grounds.
4. The Appellant was granted, upon renewed application, permission to appeal to this Tribunal by Upper Tribunal Judge Norton-Taylor on the 6th November 2019.
5. At a hearing before me on the 11th February 2020 Ms Wilkins on behalf of the Appellant challenged Judge Cruthers' findings in respect of each limb of the case. In my written decision of the 21st April 2020, which is appended in full hereto, I set the decision of the First-tier Tribunal aside in two respects:
 - i) I found that the Tribunal had erred in law in its approach to whether the proposed deportation would have unduly harsh consequences for the Appellant's partner and children. It had omitted to consider relevant evidence and had further erred in apparently weighing against these family members the weight of the public interest in the deportation of the Appellant, contrary to the decision of the Supreme Court in KO (Nigeria), SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550;
 - ii) I was further satisfied that in its decision on Article 3, and whether the Appellant was reasonably likely to face, upon return to Jamaica, conditions amounting to inhuman and

¹Although the consecutive sentence was a total of 54 months the Secretary of State accepted before the First-tier Tribunal that this did not render the Appellant a serious offender (ie one who had been sentenced to four years or more), since relevant legislation, s117C(6) Nationality, Immigration and Asylum Act 2002 (as amended) refers to a sentence of imprisonment in the singular: see FTT §17, Olo and Others (para 398 - "foreign criminal") [2016] UKUT 56 (IAC).

²This was in fact the Appellant's second appeal before a First-tier Tribunal Judge. The 2017 decision of Judge Lea had been set aside by consent and the matter remitted to another First-tier Tribunal judge on the 8th February 2018.

degrading treatment, the Tribunal failed to take material evidence into account.

6. I should add that in respect of both of these grounds my decision to set aside the decision of the First-tier Tribunal has been fortified by developments in the caselaw subsequent to my 'error of law' decision. In respect of Article 8 and the question of 'undue harshness' the Tribunal can be said to have erred in searching for some feature of the evidence to elevate this family's position above the "commonplace". In fact there is no such baseline of ordinariness to be applied: HA (Iraq) and RA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176, AA (Nigeria) v Secretary of State for the Home Department [2020] EWCA Civ 1296 and KB (Jamaica) v Secretary of State for the Home Department [2020] EWCA Civ 1385. In respect of the risk of destitution upon return to Jamaica, the law relating to the threshold set out in N v United Kingdom (App. No. 26565/05) [2008] Imm AR 657 has been clarified by the decisions in Paposhvili v Belgium (App No. 41738/10), [2017] Imm AR 876, AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 and Ainte (material deprivation - Art 3 - AM (Zimbabwe)) [2021] UKUT 00203 (IAC).
7. I did not, in my decision of 21st April 2020, find Ms Wilkins' grounds in respect of the protection claim to be made out. The Tribunal had given numerous sound reasons for rejecting the account advanced and no error could be established in his approach. That decision is to stand. Factual developments since then have however cast some doubt on whether Judge Cruthers' decision on that matter was however correct.
8. Since he heard the appeal the Appellant has been referred to the Competent Authority (CA) as a potential victim of trafficking. On the 16th August 2018 the CA decided that there were reasonable grounds for believing that he was; on the 21st September 2021 they reached a finding that there are 'conclusive grounds' - that is to say facts proven on a balance of probabilities - for accepting that the Appellant was trafficked for sexual exploitation whilst in Jamaica between 1981 and 1984, and indeed was trafficked again in the UK in late 2010. Those periods of sexual abuse by men with control over him were a central element of the claim before Judge Cruthers. Judge Cruthers found those factual assertions had not been proven to the lower standard of reasonable likelihood; the CA found that they were, to the normal civil standard of a balance of probabilities. Importantly, the CA did so having had regard to all of the relevant papers in this case, including full access to the Home Office records: in other words the decision maker was well aware that the Appellant's account had been challenged by the Secretary of State in the asylum context, and rejected by the First-tier Tribunal.

9. For the Secretary of State Mr McVeety conceded that the CA decision considerably changed the landscape. The finding that the Appellant was, as he has claimed, trafficked for sexual exploitation whilst living in Jamaica is a matter to be weighed in the balance when determining whether there is a real risk of the Appellant facing conditions amounting to a breach of Article 3 in Jamaica today, and to whether there are “very compelling circumstances” such that deportation would be disproportionate under Article 8.

The Hearing

10. This was not a straightforward case. The Appellant, and indeed his partner Ms C, have not always told the truth and have given confused and confusing evidence at various points over the years. Although he is not, within the scheme of Part 5A, a ‘serious offender’, his convictions are numerous and he has attracted a single sentence of 42 months – at the higher end of the ‘medium offender’ scale. Despite the terminology, any offence involving the distribution of Class A drugs is serious. He has never had leave to remain. He has lied to immigration officers and used false identities. The First-tier Tribunal disbelieved key elements of his evidence. In short, this was not an appeal with immediately obvious prospects of success. It is then a testament to the dedication of the Appellant’s legal team that his case is so clearly, and comprehensively, presented before me today. The bundles contain appropriate and pertinent medical evidence, psychology reports relating to the Appellant and family members, the views of an independent social worker, a trafficking expert, a country expert, the opinion of the probation service concerning the risk of reoffending, and the decision of the CA recognising him as a victim of trafficking. All of this has been indexed and key passages highlighted and bookmarked. It is difficult to see what more could have been done to advance the case on his behalf.
11. Against that background, the hearing before me proceeded on the basis of submissions only. Mr McVeety took the opportunity before the hearing to read of all of the 1500+ pages of evidence. Crucially this evidence included the following:
- Report by clinical psychologist Dr Kerry Davies dated 24th November 2021 about C1
 - Report by Dr Davies dated 30th October 2020 on Ms C and C2
 - Final report by Child and Adolescent Mental Health Services (CAMHS) on C2
 - All of the GP notes relating to Ms C
 - Report by Christine Brown, independent social worker, dated 2nd August 2018 (with enclosed correspondence from social workers previously allocated to the family)

- Report by Dr Graham Johnson dated 16th December 2018 confirming scarring to the Appellant (plus 'Rule 35 report' produced whilst the Appellant was in detention)
- Report by Consultant Clinical Psychologist Dr Rachel Thomas, dated the 2nd March 2019 on the Appellant
- Report by country expert Eilat Maoz, anthropologist at the University of Chicago, dated 28th May 2019
- The Competent Authority decisions
- Report by trafficking expert Dr Aidan McQuade dated 20th June 2020
- Documents relating to the Appellant's engagement with probation, prison services etc
- Newspaper articles about returns to Jamaica
- 'General Expert Report - Deportees in Jamaica' published in July 2021 by Luke de Noronha

12. Save for some strong reservations about the value of the last document, a 'generic' expert report relating to deportations generally³, Mr McVeety accepted that there was little that could usefully be said by way of criticism of the remaining evidence. He therefore invited me to accept the evidence before me at face value. Specifically he did not challenge any of the evidence of the family about their circumstances; he accepted the expertise and even-handedness of the medical evidence; he accepted that the evidence presented in respect of life in Jamaica was broadly consistent with that produced by the Respondent; although Ms Christine Brown, an independent social worker, had attended court to give evidence, she was released after Mr McVeety indicated that he had no questions for her. The Secretary of State did not seek to go behind the views of the probation service and it was accepted that the Appellant has not committed a criminal offence since 2013. That is not to say that Mr McVeety conceded the appeal. He did not. He simply acknowledged that the evidence spoke for itself and that it was a matter for me whether I found the relevant legal burdens to have been discharged: to this end he reminded me of the very substantial weight to be attached to the public interest in the deportation of a repeat offender who has never had any leave to remain in this country, and of the very high threshold to be surmounted in an Article 3 case based on health issues/material deprivation. This very realistic approach relieves me of the necessity to refer extensively to the evidence.

The Decision to Deport and Grounds of Appeal:

Legal Framework and My Approach

³'General Expert Report - Deportees in Jamaica' by Luke de Noronha

13. On the 13th May 2014 the Appellant was convicted at Manchester Crown Court of possession of a class A drug with intent to supply, assault on a police officer, and possession of a false identity document. The concurrent sentence imposed was one of 54 months imprisonment. The circumstances relating to the index offence were that in August 2013 the Appellant was arrested by police in Manchester. He was driving a car which had been stolen, and inside they found a quantity of drugs. He was charged and later convicted of intent to supply. He was also in possession of a driving licence bearing his photograph but in a different name. He had obtained this from someone who was providing fraudulent documents within the DVLA.

14. Under section 32 of the United Kingdom Borders Act 2007 the Appellant is, as a result of these convictions, now classed as a 'foreign criminal' whose deportation is conducive to the public good:

(1) In this section "foreign criminal" means a person—

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

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

(3) ...

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

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

...

15. Section 33 of the 2007 Act sets out seven exceptions whereby a foreign criminal may resist automatic deportation. This case is concerned only with one, falling under s33(2)(a):

(1) Section 32(4) and (5)—

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

....

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

- (a) a person's Convention rights, or
- (b) the United Kingdom's obligations under the Refugee Convention.

16. On the Appellant's behalf Ms Wilkins relies on two (Human Rights) Convention rights: Article 3 and Article 8.

17. Appeals raising Article 8 are governed by Part 5A of the Nationality, Immigration and Asylum Act 2002 (introduced by section 19 of the Immigration Act 2014). Part 5A mirrors Part 13 of the Immigration Rules, setting on a statutory footing the ‘public interest’ considerations to be taken into account when assessing proportionality in Article 8 cases. The section with particular relevance to this appeal is s117C:

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. In NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 the Court of Appeal held that this scheme requires decision makers to address a “two-part test”. First, they should consider whether either exception 1 or 2 can be met (ie apply s117C(4) and (5)). Then, they should complete the exercise by moving on to consider whether there are “very compelling circumstances over and above” those matters.

19. In this appeal the Appellant relies on 'exception 2' as set out in s117C(5). He submits that it would be 'unduly harsh' for his family if he were to be deported. In KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 the Supreme Court considered how that test was to be applied in practice, in particular in relation to children. It held that it would be an error of law to weigh against a child the crime committed by a parent. Rather the question of whether a deportation was unduly harsh was simply to be evaluated with reference to the position of the child. At his [23] Lord Carnwath said this:

"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 Page 11 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."

20. In HA (Iraq) the Court found it necessary to identify exactly what Lord Carnwath is, and is not, saying here [at §44]:

"In order to establish that the word "unduly" was not directed to the relative seriousness issue it was necessary for Lord Carnwath to say to what it was in fact directed. That is what he does in the first part of the paragraph. The effect of what he says is that "unduly" is directed to the *degree* of harshness required: some level of harshness is to be regarded as "acceptable or justifiable" in the context of the public interest in the deportation of foreign criminals, and what "unduly" does is to provide that Exception 2 will only apply where the harshness goes beyond that level. Lord Carnwath's focus is not primarily on how to define the "acceptable" level of harshness. It is true that he refers to a degree of harshness "going beyond what would necessarily be involved for any child faced with the deportation of a parent", but that cannot be read entirely literally: it is hard to see how one would define the level of harshness that would "necessarily" be suffered by "any" child

(indeed one can imagine unusual cases where the deportation of a parent would not be "harsh" for the child at all, even where there was a genuine and subsisting relationship). The underlying concept is clearly of an enhanced degree of harshness sufficient to outweigh the public interest in the deportation of foreign criminals in the medium offender category."

21. The Court went on to hold that 'exceptions' at s117C(4) and (5) are no more than "shortcuts" for claimants wishing to establish that their Article 8(1) rights outweigh the public interest. As Lord Justice Underhill explains [at 60]:

"Although the two-stage exercise described in *NA (Pakistan)* is conceptually clear, it may occasionally make the analysis unnecessarily elaborate. There may be cases where a tribunal is satisfied that there is a combination of circumstances, including but not limited to the harsh effect of the appellant's deportation on his family, which together constitute very compelling reasons sufficient to outweigh the strong public interest in deportation, but where it may be debatable whether the effect on the family *taken on its own* (as section 117C (5) requires) is unduly harsh. (An equivalent situation could arise in relation to Exception 1: there might, say, be significant obstacles to the appellant's integration in the country to which it is proposed to deport him, but it might be questionable whether they were *very significant*.) In such a case, although the tribunal will inevitably have considered whether the relevant Exception has been satisfied, it is unnecessary for it to cudgel its brains into making a definitive finding. The Exceptions are, as I have said, designed to provide a shortcut for appellants in particular cases, and it is not compulsory to take that shortcut if proceeding directly to the proportionality assessment required by article 8 produces a clear answer in the appellant's favour."

22. That being the case, the Court of Appeal hold that the proper approach is this. The guidance given in *MK (Sierra Leone) v Secretary of State for the Home Department* [2015] UKUT 223 (IAC) remains authoritative: it is approved in *KO (Nigeria)* [at §27] and in *HA (Iraq)* [at §45]. The Court concludes:

"51. The essential point is that the criterion of undue harshness sets a bar which is "elevated" and carries a "much stronger emphasis" than mere undesirability: see para. 27 of Lord Carnwath's judgment, approving the UT's self-direction in *MK (Sierra Leone)*, and para. 35. The UT's self-direction uses a battery of synonyms and antonyms: although these should not be allowed to become a substitute for the statutory language, tribunals may find them of some assistance as a reminder of the elevated nature of the test. The reason why some degree of harshness is acceptable is that there is a strong public interest in the deportation of foreign criminals (including medium offenders): see para. 23. The underlying question for tribunals

is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest.

52. However, while recognising the "elevated" nature of the statutory test, it is important not to lose sight of the fact that the hurdle which it sets is not as high as that set by the test of "very compelling circumstances" in section 117C (6). As Lord Carnwath points out in the second part of para. 23 of his judgment, disapproving *IT (Jamaica)*, if that were so the position of medium offenders and their families would be no better than that of serious offenders. It follows that the observations in the case-law to the effect that it will be rare for the test of "very compelling circumstances" to be satisfied have no application in this context (I have already made this point – see para. 34 above). The statutory intention is evidently that the hurdle representing the unacceptable impact on a partner or child should be set somewhere between the (low) level applying in the case of persons who are liable to ordinary immigration removal (see Lord Carnwath's reference to section 117B (6) at the start of para. 23) and the (very high) level applying to serious offenders."

23. And at [§56] says this:

"56. The second point focuses on what are said to be the risks of treating *KO* as establishing a touchstone of whether the degree of harshness goes beyond "that which is ordinarily expected by the deportation of a parent". Lord Carnwath does not in fact use that phrase, but a reference to "nothing out of the ordinary" appears in *UTJ Southern's* decision. I see rather more force in this submission. As explained above, the test under section 117C (5) does indeed require an appellant to establish a degree of harshness going beyond a threshold "acceptable" level. It is not necessarily wrong to describe that as an "ordinary" level of harshness, and I note that Lord Carnwath did not jibe at *UTJ Southern's* use of that term. However, I think the Appellants are right to point out that it may be misleading if used incautiously. There seem to me to be two (related) risks. First, "ordinary" is capable of being understood as meaning anything which is not exceptional, or in any event rare. That is not the correct approach: see para. 52 above. There is no reason in principle why cases of "undue" harshness may not occur quite commonly. Secondly, if tribunals treat the essential question as being "is this level of harshness out of the ordinary?" they may be tempted to find that Exception 2 does not apply simply on the basis that the situation fits into some commonly-encountered pattern. That would be dangerous. How a child will be affected by a parent's deportation will depend on an almost infinitely variable range of circumstances and it is not possible to identify a baseline of "ordinariness". Simply by way of example, the degree of harshness of the impact may be affected by the child's age; by whether the parent lives with them (NB that a divorced or separated father may still have a genuine and subsisting

relationship with a child who lives with the mother); by the degree of the child's emotional dependence on the parent; by the financial consequences of his deportation; by the availability of emotional and financial support from a remaining parent and other family members; by the practicability of maintaining a relationship with the deported parent; and of course by all the individual characteristics of the child.”

24. If the ‘short cut’ route is not open to an individual appellant, there must nonetheless be a final global assessment of whether the decision to deport is proportionate: s117C(6). A series of cases since NA (Pakistan) have offered further clarification of what the test at s117C(6) requires of decision makers in all cases. In Akinyemi v Secretary of State for the Home Department [2017] EWCA Civ 236 the Court of Appeal held that it is not to be read literally. “Over and above” does not necessarily mean that one of the other exceptions needs to be met and then some *additional* compelling factor identified: it simply denotes that the threshold is a high one, and that some degree of detriment ‘over and above’ is required. In Secretary of State for the Home Department v Garzon [2018] EWCA Civ 1225 the test was held to be a wide ranging and holistic one, which must properly reflect the United Kingdom’s obligations under Article 8. The rules represent a complete code which are designed in all cases to result in a conclusion compatible with Article 8: HA (Iraq) (*supra*). This means that at all stages, and at s117C(6) in particular, decision makers must apply the principles derived from Strasbourg jurisprudence: HA (Iraq), Unuane v United Kingdom (*Application no. 80343/17*).
25. In this case I am asked, in embarking on that global assessment, to take into account the Appellant’s family ties to the UK, his circumstances upon return to Jamaica and his accepted history of abuse and trafficking: CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027. It also means that I must recognise the substantial weight to be attached to the public interest in the deportation of foreign criminals: HA (Iraq), KO (Nigeria), SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550. I must further consider the fact that the Appellant has never had any leave to remain in the UK: Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60.
26. Legally distinct from these matters is the Appellant’s claim under Article 3. The basis of his claim is that upon return to Jamaica there is a real risk that he will face various challenges, the cumulative effect of which would be that his circumstances will meet the high threshold of ‘inhuman and degrading’. These challenges include:
- Homelessness
 - Unemployment

- A deterioration in his mental health, caused in part by his fear/trauma about his previous experience of trafficking in Jamaica
- The real risk of violence at the hands of street criminals
- Societal discrimination and / or violence against those perceived to be gay

27. There are three points to be made about my approach to this element of the claim.

28. The first is that, notwithstanding the negative conclusions reached by Judge Cruthers, the CA has now concluded that key elements of the Appellant's historical case have been proven. A decision that an individual has, on the balance of probabilities, been trafficked in the past, is not the same as a decision that he is in the future reasonably likely to face persecution. Whether or not a protection claim is made out, or indeed whether assertions of past fact are proven, are always a matter for the Tribunal, albeit that it must have due regard to the CA's decision and process: see DC (trafficking: protection/human rights appeals) Albania [2019] UKUT 351 (IAC). That said, in this case I need not concern myself with conducting a separate evaluation of the Appellant's historical claims, since the parties were joined in agreement in inviting me to proceed as follows. Insofar as the Appellant's experiences between approximately 1980 and 1984 are concerned, I can adopt the CA's reasoning. As I note above this was not a decision that the CA made with only a partial reading of the Appellant's evidence. It had full regard to the Home Office file, and to the history of his case overall. I can also proceed on the basis that there was no error of law in Judge Cruthers' decision to dismiss the protection appeal, specifically in respect of whether the Appellant would face a real risk of harm today from members of the Clansman gang in the Greenwich Park area of Jamaica.

29. The second matter concerns the standard of proof to be applied. The various fears expressed by the Appellant are, for the purpose of my Article 3 assessment, to be weighed in their totality, and the harm cumulatively assessed. Because of the way that the caselaw has developed, however, different fears require a me to undertake a different approach. To the fear of destitution – being homeless, scavenging on the streets, a lack of medical care – the proper approach is the modified N threshold set out in Paposhvili: see Ainte (supra). This requires me to assess whether conditions are such that there is a *real risk that the individual concerned will be exposed to intense suffering or a significant reduction in life expectancy*. The fear of direct physical violence at the hands of criminals, or the police, or homophobes, on the other hand, requires me to simply assess whether there is a *real risk* that this will occur.

30. The third matter is to simply recognise the factual overlap between the Appellant's claims under Article 3 and Article 8. Ms Wilkins submits, and Mr McVeety accepts, that even if I find that the conditions in Jamaica would not present a real risk of a violation of Article 3, they may still be relevant to my assessment of whether there are "very compelling circumstances" under s117C(6) Nationality, Immigration and Asylum Act 2002.

Article 3: Discussion and Findings

31. I begin by setting out those elements of the Appellant's evidence about his past experiences that are now agreed, having been accepted by the CA as proven. This history is submitted by Ms Wilkins to be significant to my forward looking risk assessment for two reasons: his material circumstances in the past are said to be relevant to what they might be in the future, and the ongoing psychological sequelae of his experiences inform how he will cope with return to Jamaica. I will then assess his current circumstances, and set these in the context of the country background material on Jamaica.

The Appellant's Past

32. The Appellant was born in 1967 in Greenwich Farm, Kingston. He lived with his siblings and parents. He is said to have recounted to Ms C that his early childhood was "full of love". Both his parents worked and he attended school. When he was about 12 years old however everything changed. His mother decided that she was going to come and live in the UK. The Appellant decided to stay in Jamaica with his father because his mother was strict; he also felt someone should stay and be with his father. His mother moved to the UK along with four of her children; two others went to live with aunties. The Appellant stayed in the family home with his father.

33. By the time that the Appellant was about thirteen years old his father had gone to live with a girlfriend, leaving the Appellant to live in the family home with the lodger, Barry. Barry was a paedophile. He first violently raped the Appellant when the Appellant was about 13/14; this abuse and sexual exploitation by Barry continued for approximately 4 years. I note that country expert Eilat Maoz, an anthropologist from the University of Chicago, recorded in her May 2019 report that her a contact in Kingston provided "unambiguous confirmation" of a known child molester called Barry living in the Greenwich Farm area, a man who was attacked many times for his perceived homosexuality.

34. In approximately 1984 the Appellant fled Barry and went to live in the wharf area to look for work. He obtained the occasional days of work as a stevedore but this was irregular and he was, over a period of years, very often homeless and destitute: he "bounced around". He slept on cardboard, slept rough and begged for small amounts of

food. If he was unsuccessful he would go without food. In order to wash he would fill plastic bottles with water from the wharf and throw it over him. He would beg the security guy for clean water to drink. Sometimes he was allowed to sleep in the shack of a woman who sold oranges down there - he was in that shack when it was destroyed by Hurricane Gilbert in 1988 and he nearly died. In his statement he describes the terror of that night in some detail. Later he managed to get a roof over his head by entering into a relationship with a woman and living with her; and he was also provided with shelter by a church where he had a job as the security guard/ caretaker. The Appellant states that while he was working in that church he was able to use the facilities there - a shower etc. It also had a computer that he was permitted to use, and as I set out below, this was how he came to leave Jamaica.

35. The Appellant has lived in the United Kingdom since 2010. It is now accepted by the CA that on his arrival he was in a trafficking situation. He had met a man, George, online when he was in Jamaica. This man lived in the UK, in Manchester. Whilst he was working in the church he used the computer there to enter gay chatrooms and he had started corresponding with George. George asked him to send him pictures of himself and arranged for these to be taken in a proper studio in Kingston. Having seen these pictures, and having assured the Appellant that he was coming to the UK to be with him, George facilitated his departure from Jamaica by buying a ticket, and providing false documentation, to fly to the Bahamas and from there to the UK. The Appellant entered the country using those false papers. He was picked up at Gatwick by a different man who drove him to Manchester and deposited him in a flat in Hulme, where he met George in person for the first time.
36. At first everything was OK: George treated the Appellant as if they were in a relationship. He took him out, bought him drinks and clothes. Then after a few weeks, another man came to the flat and tried to have sex with the Appellant. The Appellant refused, but George told him that he should go ahead. When the Appellant refused again George got "mad" and the Appellant became scared - there were two of them and George was really angry. It then became clear to the Appellant that George's purpose had been in bringing him to the UK: he understood that if he was to stay in the flat, he would be required to be intimate with other guys too. The Appellant left the flat the next morning, and this was when he met Ms C in the street.
37. I pause here to note that this version of the Appellant's evidence is heavily edited. Childhood abandonment by his parents, followed by prolonged sexual abuse, trafficking, homelessness and nearly losing his life in a hurricane are not the only misfortunes claimed by the Appellant to have happened to him prior to his meeting Ms C: this is just the history that has been accepted by the CA. It is also appropriate to note that whilst Judge Cruthers did not accept the

Appellant's account of being stabbed for being *gay* in Jamaica, he did accept that the Appellant has been stabbed: this was because Dr Graham Johnson, a Consultant in Accident and Emergency medicine, finds that the Appellant has a wound in his chest typical of such an attack, as well as other scars consistent with having been beaten, and defence wounds to the back of his hand.

38. Having considered all of this evidence I accept that the Appellant was exposed to serious harm whilst he was homeless in Jamaica. As the medical evidence I summarise below demonstrates, the feelings of profound hopelessness and loneliness he experienced then have contributed to the chronic mental health problems that he suffers today; he at times went without food, went without sanitation and without proper shelter nearly died during the hurricane; his stab wound establishes that during this period he experienced direct physical violence of a level sufficient to engage Article 3.

Mental Health

39. The Appellant has been recently assessed by Dr Rachel Thomas, Consultant Clinical Psychologist, who finds him to have severe Post-Traumatic Stress Syndrome and Major Depressive Disorder. She reaches these conclusions after having interviewed the Appellant herself and administered clinical diagnostic tools, having had access to his medical records and all of the relevant material about his case so far. She records that she specifically had regard to his conduct and demeanour during their contact. She was also provided with information from an organisation called 'Survivors Manchester' confirming that the Appellant has in the past received therapy and support with a view to recovery from sexual assault. At the time of his interview with Dr Thomas the Appellant was reporting low mood, tearfulness, depressive rumination, severe insomnia, appetite disturbance, social isolation and anger. Although Dr Davies' conclusions are unchallenged by the Secretary of State, it is worth noting that she has considered, and ruled out, the possibility that the Appellant is lying about his symptoms: "it is a common misperception that it is easy to fabricate psychiatric disorder. It is actually extremely difficult to do so across time and symptom clusters with consistency of affect".
40. As to the general impact of deportation on the Appellant's mental health Dr Thomas makes several points. First she notes that he holds very real subjective fear of return: he genuinely believes that there are people on the island who would kill him if they had the opportunity. These include people who may perceive him to be homosexual because of his association, in the community that he comes from, with Barry. Second, it is a well-documented psychological phenomenon that placing traumatised individuals at the site of the originator trauma causes significant re-traumatisation, sometimes to the point of psychiatric breakdown and/or suicide.

Given how psychiatrically unwell the Appellant is already, Dr Thomas does not consider that he is able to tolerate any further traumatising. He is at risk of suicide and/or a breakdown requiring hospitalisation. As to the potential for care in Jamaica Dr Thomas concedes that she is not an expert on what might be available, but says this: "I consider that even if suitable psychological, psychiatric and medical provision and support services were available there, that [the Appellant] is highly likely to be far too psychiatrically unwell by this time and much too frightened and re-traumatised to access them". This risk, of a swift deterioration in his mental wellbeing, also leads Dr Thomas to express concern about his ability to support himself if returned to Jamaica. In short, he does not have the psychological wherewithal to cope with relocation, in her opinion.

41. As to the specific risk of suicide, Dr Thomas notes that the Appellant credibly describes feeling suicidal in the past, when still in Jamaica. The mental process he described to Dr Thomas is diagnosed by her as disassociation. When experiencing trauma like sexual abuse, or the intense loneliness and hopelessness of being street homeless, the Appellant would create another world in his head. He would pretend to himself that he was someone else, someone smart with an office job, a family, a home. It was when he came out of these dissociative fantasies that he was most vulnerable to suicidal ideation. He details two occasions when his plans to kill himself were interrupted by someone else. Once he was going to hang himself but a man sitting up a nearby tree called to him and he ran off. Another time he was on his way to prepare for suicide when he met a woman who had known his mother who invited him for some food. Dr Thomas writes: "given this history of suicidality, I consider that [the Appellant] is at a high risk of future suicide attempts even whilst not currently suicidal. It has been reliably documented that a past history of suicidality is the single, largest, predictor of future attempts...[if returned to Jamaica]... his risk of future suicide attempt could be high". That risk is additionally much-augmented by the extent and chronicity of his current psychiatric symptoms: "there is a much higher than average likelihood of suicide in individuals with significant and chronic depressive disorders".

The Appellant's Family

42. The Appellant's unchallenged evidence about the whereabouts of his family members was as follows. His mother lives in London. She is now suffering from dementia but the Appellant has had no contact with her, nor the three sisters who are here, for a long time. One of those sisters in particular has made it known that she does not want to see the Appellant because he is a "batty boy" who has done things that mean no one in the family can return to Jamaica. One sister remains in Jamaica. She is a Rastafarian and will have nothing to do with the Appellant because of his sexuality. They have not had contact for many years. A brother who stayed in Jamaica suffers from

schizophrenia. He was the Appellant's half-brother on his father's side, and they were never close. The Appellant can recall meeting him as a child, but that's it. As far as the Appellant is aware this man is street homeless: if you are ill like that, with no one to pay for treatment in Jamaica, you end up on the streets. Apart from these two, the Appellant has no one else in Jamaica - his father died in 2009 and everyone else has emigrated to the USA or UK. Before the First-tier Tribunal there had been some suggestion that the Appellant could be accommodated by Ms C's father, who owns a house on the island. She has explained that this is not going to happen. That house is occupied by her father's wife's family, and in any event he does not like the Appellant. He has done nothing to help her in the UK, so it is very unlikely that he would help the Appellant in Jamaica.

43. I note that this evidence has been consistent throughout, and that it is further consistent with the accepted claims that the Appellant was in effect abandoned as a child, leading to trafficking and homelessness. I accept on the balance of probabilities that the Appellant does not have anyone to whom he can turn in Jamaica.

Alternative Support

44. I understood the Secretary of State to accept that there is no realistic prospect that Ms C would be in a position to provide the Appellant with money should he be returned to Jamaica. She is currently in receipt of benefits and obviously as a mother to five children they are going to be her priority. Mr McVeety did however rely on the Home Office Facilitated Returns Scheme to submit that the Appellant could be returned to Jamaica with some money. I have had regard to the relevant policy document and I see from this that because he would be making his application after completion of his custodial sentence, he would be entitled to a one-off payment of £750. I accept that it is open to the Appellant to make such an application and proceed on the basis that he would do so.
45. I was also referred to the Country Policy and Information Note *Jamaica: Medical and healthcare issues* (Version 1.0, March 2020). This explains that mental health services are provided under the auspices of the Ministry of Health. There is a large hospital in Kingston, Bellevue, which has a capacity of 700 beds and a legal duty to help the psychiatrically unwell. I note that in her 2019 report the country expert Eilat Moaz, who had at that point spent the preceding 18 months living in Kingston, wrote that Bellevue had 1000 beds and was 'at capacity'. She cites research by Georgetown University which estimates that as many as 500,000 Jamaicans suffer from mental health problems, many related to high rates of violence and victimisation. There are private practitioners but their rates are beyond the reach of the average Jamaican. Ms Moaz does note that several church organisations do offer counselling services and night shelters. There are 25 psychiatrists in Jamaica, approximately 1 for

every 100,000 people. Community health services are fragmented and scarce. I conclude from this evidence that whilst there is free healthcare available in Jamaica, accessing mental health support is unlikely to be a straightforward matter. The hospital operates at capacity, and according to Georgetown there are far more in need than are actually receiving care.

Violence and Social Conditions

46. There does not appear to be a dispute that Jamaica is a very violent place. The CPIN *Jamaica: Fear of organised criminal groups* (Version 3.0 August 2019) cites the United States' State Department's Overseas Security Advisory Council 2019 report on Jamaica as follows: "There is serious risk from crime in Kingston. Violent crime, including sexual assault, is a serious problem throughout Jamaica, particularly in Kingston and Montego Bay. Jamaica's police force is understaffed and has limited resources. Gated resorts are not immune to violent crime". It further cites Business Insider which in 2018 ranked Jamaica 10th among 20 of the most dangerous places in the world. The International Monetary Fund (IMF) recently cited crime as the number one impediment to economic growth.
47. In her report Ms Moaz describes the conditions in which such high levels of violence are perpetuated: "people tend to live in very close proximity to each other, often in very overcrowded dwellings in various states of disrepair, sometimes lacking in basic utilities such as running water and electricity, garbage removal and sanitation. The rate of unemployment is high, and many people subsist through a combination of intermittent work, informal activities, remittances and robust networks of community and kinship based on mutual aid". In these conditions, Jamaica has one of the highest rates of murder in the world. Ms Moaz writes that deportees constitute a population at higher risk of victimization, because people who have come from abroad are perceived to have accumulated wealth and /or to be in receipt of remittances. Consequently they become the target of robberies, frauds and sometimes murder. Deportees are in addition likely to face stigma and be regarded as untrustworthy.
48. Should the Appellant wish to avoid the garrison community where he was abused by Barry Ms Moaz considers that he will face considerable problems in doing so. The rent for secure lodgings is roughly the same as it is in the UK (outside of London). Low income neighbourhoods are defined by high levels of generalized violence. If you are returning to the island poor, it is important, says Ms Moaz, to know people. Unemployment rates are high - she estimates that the World Bank figure of 14% is a grave underrepresentation because it does not take into account the "many who have lost hope in finding work". Jamaica does not have a national unemployment insurance scheme, and it appears unlikely that the Appellant ever made contributions to the National Insurance Scheme. Ms Moaz reports that

there are church and other benevolent organisations to help the financially disadvantaged but that these resources are scarce and are in high demand. She specifically disagrees with the Home Office recommendation that people make contact with the National Organisation of Deported Migrants for help: this group has little to no capacity. The Appellant could present himself to the homeless shelter in Kingston, but in her experience this is a “strenuous” and dangerous option as the residents are under a constant threat of robbery and assault from gangsters from the neighbourhood.

Conclusions

49. My starting point is that the Appellant would be going back to Jamaica with £750 and considerable experience of navigating life in that country. Although he has been away for a long time, he is, I am satisfied, enough of an “insider” to be able to successfully reintegrate, all other things being equal.
50. The difficulty is that not all things are equal. The Appellant faces significant difficulties from the outset.
51. I am satisfied that he does not have any one in Jamaica to whom he can turn for emotional or material support. Upon arrival his options, in terms of accommodation, are very limited. He could spend the £750 on getting a cheap hotel somewhere, but that is not going to last him long, once subsistence and his onward travel expenses within Jamaica have been taken into account. Alternatively he could try and gain access to the ‘night shelter’ in Kingston described by Ms Moaz as being subject to “constant” attacks by gangs from the local area – I note in this regard the evidence that deportees are considered to be particularly good targets for robbery, since it is assumed – rightly in this case – that they would have returned with some money. If this is not possible, or safe, there are the churches and charities that can offer some assistance, but as Ms Moaz makes clear, these services are in very high demand and supply is scarce. She thinks it very unlikely, for instance, that he would receive any meaningful support from the National Organisation of Deported Migrants. That being the case it is reasonably likely that the Appellant will, quite quickly after he arrives in Jamaica, find himself without a stable roof over his head.
52. Even if I am wrong about that, and he did for instance have the good fortune to get into a shelter, his real problem is his lack of mental resilience. On the one hand, the Appellant is today far more mature than the child who was left to fend for himself back in the 1980s/90s. He has a better understanding of the predatory behaviour of men like Barry and George. He is more experienced. In those circumstances it might be said that he would be better equipped to navigate daily life without encountering dangerous situations. It is also relevant to note, however, that when his connections with Jamaica were far more proximate, in that he must have still known

people in Greenwich Farm – such as his mother’s friend who offered him a meal – he was trafficked and then homeless. Those were the consequences *then* of disconnection from his family.

53. Today he is someone Dr Thomas finds to be extremely unwell. His PTSD is classed as “severe”, and given his now accepted personal history this is perhaps to be expected. His current symptoms, in the relative security of the UK, are listed as low mood, tearfulness, depressive rumination, severe insomnia, appetite disturbance, social isolation and anger. Dr Thomas expresses several concerns about what would happen to the Appellant’s mental health if he were to be returned to Jamaica. His strong subjective fear, coupled with exposure to the scene of his original trauma would in her opinion be likely to lead to a “significant re-traumatisation”. She does not believe that the Appellant could tolerate this. The import of her evidence is that he would spiral downward at a rate which would mean that he would be unable to physically get himself in front of a doctor. She does not believe that he has the “psychological wherewithal to cope” with deportation.
54. In those circumstances it is difficult to see how the Appellant will be able to hold down any kind of regular employment, even if such employment were to be readily available. Without a stable home, employment or social connections he would be easy prey for criminals in what is one of the most violent societies in the world. His mental health issues, coupled with the fact that he is a deportee, would make him stand out in any close knit community. Apart from the fact that he is now older, there is little to differentiate the Appellant of today from the Appellant of yesterday, who suffered repeated violations of his Article 3 rights living on the streets in Kingston. I would accordingly allow the appeal on the grounds that there is a real risk of serious harm arising from, cumulatively, the Appellant’s destitution, mental health deterioration, and vulnerability to violence.
55. In the alternative I consider whether there is a real risk of suicide here. Dr Thomas identified three factors leading to her conclusion that if returned to Jamaica the risk of the Appellant attempting suicide could be “high”. First his accepted history of extreme trauma, and the clinical expectation of re-traumatisation upon return to the scene of the crime. Second, the credible history given by the Appellant of previous suicide attempts while he was in Jamaica. She writes that it has been reliably documented that a past history of suicidality is the single, largest, predictor of future attempts. Third is his presently poor mental health: “there is a much higher than average likelihood of suicide in individuals with significant and chronic depressive disorders”.
56. In MY (Suicide risk after Paposhvili) [2021] UKUT 232 (IAC) the Upper Tribunal held that the approach to potential suicide cases must remain the tests set out in J v Secretary of State [2005] EWCA Civ 629

as reformulated in Y (Sri Lanka) [2009] EWCA Civ 362. The severity of the treatment feared is, I am satisfied, sufficient to reach the threshold: if the Appellant kills himself, or attempts to do so, that would amount to 'serious harm'. I am satisfied that there would be a causal link between such an attempt and the fact that the Appellant has been deported: he has not reported any suicide attempts in the UK and as Dr Thomas makes clear, her opinion is based on a projected worsening of his condition. This is a foreign case and as such the threshold remains a high one, albeit it modified by the decision in AM (Zimbabwe). There is no dispute that in principle an Article 3 claim can succeed in a suicide case. There is here an independent basis for concluding that the Appellant would be terrified of return to Jamaica. As the Court of Appeal put it in Y:

"15. ... The corollary of the final sentence of §30 of *J* is that in the absence of an objective foundation for the fear some independent basis for it must be established if weight is to be given to it. Such an independent basis may lie in trauma inflicted in the past on the appellant in (or, as here, by) the receiving state: someone who has been tortured and raped by his or her captors may be terrified of returning to the place where it happened, especially if the same authorities are in charge, notwithstanding that the objective risk of recurrence has gone.

57. Finally I must consider whether there is in Jamaica an effective mechanism to reduce the risk of suicide. The evidence on mental health provision was not, it must be said, universally bleak. It is clear from the evidence of both Ms Moaz and the CPIN that there is a psychiatric hospital in Kingston, and that there are a number of drugs, including anti-depressants, available there. The likelihood of the Appellant being able to access them, so as to effectively prevent his suicide, appears to me to be remote. The background evidence makes clear that demand far outstrips supply. These services are scarce and in the absence of a family member to advocate on his behalf it is unlikely that the Appellant would manage to get past the 'queue' of the many thousands of other Jamaicans already trying to access help. In the assessment of Dr Thomas he will, paradoxically, lack the psychological wherewithal to secure care for himself. Accordingly I would also allow, in the alternative, the appeal on Article 3 suicide grounds.

Article 8: Discussion and Findings

58. The Secretary of State has accepted that it would be unduly harsh for Ms C and her British children to be expected to relocate themselves: the only question remaining is whether the impact on them staying here without him would meet the high threshold required by s117C(5). I bear in mind that the term *undue* imports a much stronger emphasis than mere undesirability, but on the facts of this case I find it to be a test that is certainly met.

The Appellant's Partner

59. It is the unchallenged evidence of the Appellant's partner Ms C that she has had an extremely challenging life herself. The relationship that she shares with the Appellant, and the family life that they have together with the children, is, I hope I do her no disservice in putting it like this, the best thing that has ever happened to her.
60. Ms C experienced multiple challenges and traumas growing up. She was born in 1987 to Jamaican parents in Manchester. She is one of three children from that relationship, but both her parents also had numerous children with other partners - she believes her father to have 14 other children. She felt neglected and unloved as a young child, and her teenage years can properly be described as chaotic.
61. Her mother was both physically and mentally abusive. She was incapable of showing love to Ms C - Ms C attributes this to the abuse her mother suffered herself when she was growing up in care. When interviewed by clinical psychologist Dr Kerry Davies, Ms C said that she can recall always having puffy eyes as a child, because she was always crying. She characterises her mother as manipulative and divisive: asked by Dr Davies to describe her mother in five words she chose 'negative', 'un-emotional', 'harsh', 'mentally sick' and 'thinks she is always right, stubborn, Miss Trunchbull'. She has caused many problems between Ms C and her siblings and Ms C does not today have a meaningful relationship with her.
62. Her relationship with her father was far more positive. When she was a younger child she felt loved by him and always tried to spend time with him but all that changed when she was about 13. He met a new woman who "did not take to" Ms C and since then "everything has been about her". Today Ms C and her father are very distant. Although he lives in Manchester he has never, in the 9 years that Ms C has had her home in the same area, visited her or his grandchildren. She sees him about once per year, usually at his birthday.
63. Social services were involved with the family and when Ms C was about 13 they told her that she could either go and live with an older stepsister, or be taken into care. She chose to live with the stepsister. This was in the main a positive relationship, but it faced considerable challenges when this stepsister's boyfriend began sexually abusing Ms C. After Ms C disclosed the abuse, her stepsister in turns supported her, but also refused to believe her. The boyfriend remained in the home and continued abusing Ms C for some time after she had told her stepsister what was going on. Despite these challenges Ms C has managed to maintain a relationship with her stepsister, who lives in Manchester. She does not however see much of her today as she has two children with challenging special educational needs such as Asperger's and autism.

64. The stepsister's boyfriend was one of three men who sexually assaulted Ms C when she was a teenager. She was sexually assaulted by a boyfriend, and when she was 14 she was violently raped by a local DJ who subsequently fled to Jamaica to avoid arrest. Ms C was left with a sexually transmitted disease, and both short, and long, term psychological trauma.
65. All of this meant that by the time she was 15, Ms C had dropped out of school and was living on her own. She managed to get the money for a deposit on a flat by stealing it from her stepsister's abusive partner and fleeing their home. She tried to get a job and got the odd bit of money from her mum but after a while it became clear that she could not afford to pay the rent. It was around about this time that she met the boy who was to become the father of her first two children.
66. He is of Nigerian origin and also from Manchester. When they got together they initially moved in with his family but his mother and sisters were extremely hostile to the relationship. They were really nasty and often it ended up that Ms C and her boyfriend went hungry because they would not provide food for them. On a couple of occasions they ended up shoplifting food just to eat. When tensions in the house reached breaking point they left, and ended up street homeless, sleeping in Platt Fields Park. They were subsequently helped out by friends, and by Ms C's stepsister, but that relationship continued to be extremely strained because of the allegations Ms C had made about her partner, who had by then been detained with a view to deportation. Ms C was pregnant at this time, and so they were placed in emergency accommodation by the council. The house they were given was in a very bad and insecure condition - the front door wasn't even a proper door it was a door for a bedroom that didn't fit properly. It became clear that she could not have a baby in those conditions and eventually they were forced to move back in with his mother.
67. Shortly after C1 was born Ms C's partner secured a university place in London, and the three of them moved down there. Initially it was OK but then his behaviour changed. Ms C became aware that he had started using drugs. He became abusive towards her. When she was pregnant with their second child he was arrested. As far as she knows he was convicted for his part in a robbery, and he received a further 6 months imprisonment for domestic violence towards her. He also diagnosed with bi-polar disorder and sectioned under the Mental Health Act. She left London and moved back to Manchester. After he served his sentence he faced removal to Nigeria and he and his mother tried to use the children as leverage in his case, making applications to the Family Court and reporting Ms C to social services. These attempts were unsuccessful and he was deported.

68. This had been Ms C's life until the point that she met the Appellant. Neglect, physical abuse by her mother, sexual assault, rape, leaving school before her GCSEs, homelessness, domestic violence and rejection. She was only 22 years old; C1 was then aged 4, and C2 was a baby.
69. The day that she met the Appellant Ms C and her children were living with her mother at the time. She had gone out to go to Asda and seen him standing in the street in Hulme - she had noticed him because he was not wearing a coat and it was very cold. After she had done the shopping and was on her way home she saw that he was still standing there. She asked him if he was OK. He said that he had been thrown out of a flat by a friend, and that he didn't know anyone else in Manchester. In fact, as she was later to discover, this 'friend' was a man who was attempting to traffick the Appellant for the purposes of sexual exploitation, as accepted by the CA. She invited him back to her mother's house where he spent some months sleeping on the sofa. Slowly their relationship developed and they have been together ever since.
70. Ms C states that the Appellant has been an immense support for her. He has never distinguished between his stepchildren C1 and C2 and the children that they have had together. He has always been an active "hands-on" father to all of them, providing her with practical assistance but also with emotional support. She suffers from chronic back pain relating to when she had an epidural during childbirth and congenital problems with her feet so she sometimes has difficulty walking. It is therefore very often the Appellant who takes the children to and from school, attends things like sports day or parents evening and does things around the house.
71. In addition to these physical problems Ms C has also suffered from poor mental ill health over the years. Her GP records show a long history of engagement with mental health services going back as far as 2003 when she reported the sexual assault. Over the years she has reported symptoms including headache, stress, low mood, memory/concentration impairment, self-harm, suicidal ideation, sleeplessness, anxiety and hallucinations; she had post-natal depression after the births of C2 and C3 and in 2017 she was investigated for suspected bipolar schizophrenia. In the past she has self-medicated by taking prescription painkillers, drinking excessively and smoking cannabis. In October 2020 these records were reviewed by Dr Davies as background to her interviewing Ms C in person and with a view to preparing a report for the Tribunal. Dr Davies interviewed Ms C for four hours and thereafter had two further consultations with her by telephone. She administered five separate clinical measures. She concluded at Ms C presented with moderate depression, low self-esteem and insecure attachment pattern. In Dr Davies' opinion her vulnerability to these conditions stems from her experience of being parented by an abusive parent. In addition she

meets the diagnostic criteria for Post-Traumatic Stress Disorder, experiencing intrusive memories and thoughts, difficulties with intimacy and hypervigilance. Ms C herself directly connects her ongoing mental health issues with her past. For instance she says that when she had post-natal depression it “wasn’t just hormones” – it was because she was constantly plagued with feelings of worthlessness, feeling that she was a bad person.

72. Ms C told Dr Davies that since her rape she has generally found relationships with men very difficult but the Appellant has been different. He is extremely kind, loving and tolerant: he accepts her anger and even, in the past, her violence towards him. Once she chased him down the street with a knife but he remained patient and “naturally caring”. He knows how to calm her down, and reassure her. He tells her he loves her “about 100 times a day”. She has found peace with the Appellant, and the family life that the seven of them share is markedly different from her life before she met him.

73. Perhaps more significantly, for the purpose of my decision, are the problems that Ms C faces today in being a parent. She told Dr Davies that she has become a “replica of her mother” who was not a loving person to her children. She makes efforts to break that chain of behaviour but feels trapped by her own childhood experience – for instance she knows that she should hug her children, but when she does it still feels “alien” to her. She knows that C2 in particular is conscious that she is uncomfortable, because since she was small she has always looked to the Appellant for affection rather than Ms C. When they were small Ms C used to slap the children – the Appellant has stopped her doing that. He is good at bringing out her “chilled side”. He has helped Ms C to be more positive for her children – now she encourages them to do their school work and learn new things; she tried to build them up rather than be harsh and negative like her own mother was to her. She does however find that very challenging. She and the Appellant have however over the years found a good model – he is “nurture” and she is “discipline”. In her submissions Ms Wilkins emphasised that social services have in the past investigated Ms C’s parenting, and that the spectre of their further involvement in the family is ever present. The report prepared by Ms Brown confirms this. Social work intervention was required in the years 2014-2016 when the Appellant was in prison but those welfare concerns are now however allayed, since the Appellant has been back in the family home. Ms Brown writes that she cannot envisage what measures the local authority could realistically take to support Ms C if she were left on her own with five kids, other than to take some or all of those kids into care.

74. Having reviewed Ms C’s extensive medical records, Dr Davies identifies that her depressive episodes, when she is at her most vulnerable and finds parenting the most difficult, appear to be triggered by stressful life events. For instance when the Appellant

was detained she describes herself going into a state of shock, unable to function or even feed the children. She cried all the time and suffered from severe stress headaches. If it wasn't for her sister and friend stepping in and looking after the children she does not know what would have happened. Although these women helped her then, their own lives have moved on. Her sister now has two children with special educational needs and the friend who helped her then has also had children of her own and they have grown apart. For the reasons I allude to above, Ms C is unable to look to her parents for support. It really is just the two of them. All of this leads Dr Davies to conclude that the Appellant's presence is "crucial" in maintaining Ms C's current mental stability. She expresses concern that Ms C minimises her mental health needs due to an ongoing fear of social services intervention.

75. Having taken all of that into account I am wholly satisfied that the elevated test is met and that it would be unduly harsh for Ms C if she were to be separated from the Appellant. There is, as HA (Iraq) makes clear, no 'baseline' against which a family's life together can be judged. Everyone is different. What is apparent here however, is that Ms C has had a life very much out of the ordinary. As a young person she faced multiple, harrowing challenges. When she met the Appellant by chance in the street in Hulme 11 years ago, she met a kindred spirit. He is able to relate to and understand her traumas, and to help her deal with them. Although he himself has evidently caused her distress and harm - by his offending behaviour, imprisonment, and now exposing her to the stress of these proceedings - I accept her evidence that she has forgiven him for this, that she loves him and that she very much needs him to stay with her and the children.
76. All of the evidence indicates that this a family which is strongly cohesive. Both parents contribute to the upbringing of the children - always a challenging task, but where five are concerned, particularly demanding. Ms C and the Appellant present as a strong team, who are determined to give their children a secure, safe and loving home. In this they are no different from many other parents. What however sets them apart is that this joint dedication to their children's welfare is in many respects a reaction to their own difficult childhoods. They have both faced terrible neglect, emotional loss, sexual and physical violence. Their respective abilities to 'break the chain' of that abuse appears very strongly to turn on their dependency upon, and support for, each other.
77. If the Appellant were to be deported all the evidence points to there being a strong likelihood of Ms C's mental health deteriorating, exposing her and the children to the prospect of further social services involvement: it does not seem at all likely that Ms C would be able to effectively parent all five children alone. This is, I am satisfied, an extreme outcome which cannot have been envisaged by

parliament to be an acceptable consequence of the deportation of medium offenders. Seeing their mother's mental health deteriorate would be strongly contrary to the children's best interests, being deeply damaging for them. Should social services be required to step in, as they have in the past, this would to my mind be plainly contrary to the public interest, not just in the immediate cost to the taxpayer, but in the long term social and developmental consequences to these children. This would in turn be devastating to Ms C, someone who has already suffered so much in her life.

The Children

78. If I am wrong about Ms C, I am nonetheless satisfied that it would be unduly harsh for the children were the Appellant to be deported.
79. I recall that this is a higher test than one simply of 'reasonableness' (cf 117B(6) Nationality, Immigration and Asylum Act 2002) or even desirability. Whilst it is not possible to identify a baseline of "ordinariness" against which the harm to these children can be measured, there are a number of factors that I can take into account in assessing the impact upon them of the Appellant's removal. The more of these factors that weigh against deportation being proportionate, the more likely it is that the consequence of deportation can be said to be 'unduly' harsh.
80. The five children in this family are today aged 15 (C1), 12 (C2), 9 (C3) and 4 (twins C4 and C5). With the possible exception of C1 none has known a father other than the Appellant. Apart from the three years that he was absent from the family home when imprisoned or subject to immigration detention, the Appellant has always lived with them. It is the accepted evidence that he is a "hands on" father who plays a very active role in the household. In her observations social worker Ms Brown found the family relationships to be characterised by "ease and cohesiveness". Letters from schools confirm his active involvement in their care. The Appellant undertakes practical tasks, particularly when Ms C is suffering from her chronic back pain, but she and the children all confirm that his primary role is providing constant and meaningful emotional support for the children. This is to be distinguished from the position of a father who does not live with the qualifying child in question, and whose parental relationship is conducted only through visits.
81. Obviously C1 will be the first to reach adulthood and move out of the family home. If he chooses to do that sooner rather than later, the time remaining for him to be living under the same roof as the Appellant is fast running out. The same cannot be said for the remaining children. The youngest, the twins, are only 4 years old today. If this deportation proceeds that will mean that they will spend the remaining 14 years of their minority without their father. In view of their very young age it is in my view unlikely that they will retain

any meaningful memories or benefits from him being in their lives. This is to be distinguished from the position of a qualifying child such as their elder brother, for whom the interference, at least while they remain a child, is going to be limited in length. The interference for them – the harshness – is going to be prolonged and cover their formative years: Azimi-Moeyed [2013] UKUT 197 (IAC).

82. The evidence before me placed considerable emphasis on the extent of the children's emotional dependence upon the Appellant, and that of the elder children in particular.

83. In the weeks before the final hearing Dr Davies was asked to undertake an assessment of C1, because of concerns that he could be on the autism spectrum. Dr Davies' conclusions – described by Mr McVeety as “balanced and fair” – were that although he did not appear to meet the criteria for that formal diagnosis, he should be referred for multi-disciplinary assessment. It is her view that C1 is an emotionally vulnerable young person who lacks confidence, experiences anxiety and struggles with anger. When she asked him what would happen if the Appellant were to be deported, he said this:

“I will be a very angry and sad person, because I will only have to go to Mum. I won't be able to talk to him about physical stuff, and going to Mum for that just won't feel right. It will make my Mum stressed and not be able to look after us properly. She needs him, the kids are smaller, they will need a father figure. I would have to be that for them. ... Mum might get depressed, while he was gone she wasn't the same, she was more sad and angry inside. It was hard for me, I couldn't go to him. She left us to do most things, I worry about that. Having to do things on my own, I had to do things myself. He won't be able to see me grow up and graduate from school. It is not going to feel right because he won't be there to see me and he was there from the start and is the one who helps with my goals”.

84. Asked if he could see any positives from the situation if the Appellant were to be deported, C1 remarked that he would have to grow up – become the man of the house and help his mother with cooking, looking after his siblings etc. Dr Davies' overall assessment of the family was that this assessment was probably correct, although she does not see that as a positive. In her view Ms C's:

“emotional wellbeing and functioning as a parent appears to benefit greatly from [the Appellant] being part of the family, and it is likely that his removal from the country will have a detrimental effect. It is likely [C1]'s responsibilities within the household will shift into a parental and protective role that he is not developmentally prepared for. Taking on this

role prematurely will impact on [his] ability to focus on his own emotional needs, his education, and his future goals”.

85. In this regard Dr Davies also notes that as a father figure the Appellant functions as a bulwark against anti-social behaviour in their area: in his absence C1 could become overly reliant on his peers and potentially negative influences in the community in order to gain a sense of safety and belonging. C1 acknowledged having witnessed violence and anti-social behaviour and this is certainly a fear expressed by Ms C, who is very conscious of teenagers in that area being exposed to violence on the streets – she recounts how a seventeen-year old was stabbed to death very close to where they live.
86. Dr Davies also had an opportunity to assess C2, who is 12. C2 was referred CAMHS in 2016 and has been diagnosed as Autistic Spectrum Disorder with Speech and Language Difficulties. Reviewing the paperwork on the various interventions relating to C2 over the years Dr Davies notes that in 2017 a Child Protection Social Worker, Sarah Sutherland, recorded “a deterioration in the children’s behaviour and emotional health” whilst the Appellant was in immigration detention. Similar historical concerns are recorded by the independent social worker, Ms Brown. Both Ms Sutherland and Ms Brown observe that when he is in the family home, it is a stable, loving and happy environment.
87. Today C2 describes the Appellant as “kind, adventurous, imaginative, funny and sporty”. It is clear from the evidence relating to C2 that she and the Appellant share a particularly ‘magical’ relationship. She told Dr Davies that every morning the whole family see a “giant star...we’ve all got superpowers. We shoot people with beams of light to make them happy”. She relates how the Appellant recently turned empty cardboard boxes into a rocketship and explained what happens when she is upset:

“[I] Go to my Dad. My Mum’s mainly busy. He would come into my room and he meditates with me. We sit and cross our legs and it calms me. He says to imagine two mountains and then we go through the middle to paradise. We wake up and then have a drink of water and I feel better. If I worry then I go to Mum, she knows what to do to fix things, a way out of the worry. If my Dad’s not there I would struggle because everyone is busy”

When interviewed by social worker Ms Brown Ms C described her daughter as being very close to the Appellant, and said that she is “not good with change, other worldly in another realm, always dancing with the fairies”. In Ms C’s opinion C2 will stay with her and the Appellant for the long term: she cannot imagine her living independently.

88. Whilst C2 also speaks to Dr Davies in a warm and loving way about her mother, the clinical tool used to measure family relations for children (the Family Relations Test) suggested “a greater emotional involvement with her father than other members of her family, including her mother. The results suggest that she experiences the strongest loving feelings towards her father and she experiences and perceives her father as the person who demonstrates the strongest loving feelings towards her. There were no negative feelings expressed to, or from, her father. Furthermore, the results demonstrated a strong bias towards her father as opposed to her mother”.
89. I note, as does Dr Davies, that this accords with the perception of Ms C. Ms C attributes her challenges in her relationship with C2 to the difficulties she faced as a young mother when C2 was a baby. She had suffered post-natal depression and initially felt that she did not want her. When the child came to her for affection she had pushed her away: it was therefore the Appellant that the child went to, and he tells the children that he loves them all the time. These difficulties have been compounded by the birth of the younger children who C2 sees as having ‘pushed her out’. Ms C states that C2 is “defiant” towards her and she lets the Appellant “deal with it”. He manages to calm her down, gets her to do her homework. Ms C told Dr Davies candidly that she does not know how she will cope with C2 if the Appellant were to be removed from the home. He tells her that all C2 needs is love, but Ms C tells him that she does not know how to do that.
90. Social worker Ms Brown also observed this dynamic within the family, recording that C2 has rejected Ms C’s instruction about her biological parentage: she refuses to accept that her father is actually Nigerian. She refers to her paternal grandmother as “the African woman”. She does not accept that anyone other than the Appellant is her father. Ms Brown recorded the family’s perception that the Appellant is capable of remaining very calm with C2, and that he is the best person at calming her down. There are lots of things that make her stressed: she likes the house to be ordered in a certain way, she cannot tolerate the taste or texture of toothpaste in the mouth, she only likes certain smells. When she becomes agitated if things aren’t right it is the Appellant who soothes her. Similarly if she is asked to do anything she does not want to, like maths homework, it is always the Appellant who will help and encourage her to complete that task.
91. Dr Davies noted that C2 could not seem to grasp the context of the assessment and what it was about. Ms C tried to explain it was about the possibility of Dad leaving the country but gave up because it became too distressing. Dr Davies opines that if the Appellant is actually deported it will be a shock for C2 who will struggle to understand what has happened and why. She will experience a

significant loss, and there is a concern that she will internalise this, and in some way feel responsible for him going.

92. The evidence before me has focused on C1 and C2, no doubt because they are the eldest and the ones with the most developed relationships with the Appellant, but also because they are two children for whom special consideration is warranted. Their infancy was characterised by high levels of stress and discord in the family, but this dissipated very quickly once the Appellant came into their lives. This is not simply a situation where children are to be expected to adjust to living only with their mum, or to not seeing their dad any more. This is a situation where the central figure of stability and 'nurture' in their family unit is to be removed.
93. I accept the assessment made by Dr Davies (and supported in large measure by the evidence of Ms Brown) that C1 will feel the need to fill his dad's shoes if the deportation proceeds. He is old enough to recall his mother's mental health crisis when his father went to prison, and understands very well that there is a real chance of this happening again. This time around there are even more children, more responsibilities, to deal with. I am satisfied that it would be unduly harsh for him to have to undertake this role. He is not, as Dr Davies makes clear, emotionally developed enough to become a carer for his siblings, much less his mother. He needs his father to remain in the family home to undertake that role, for them and for him. That pressure upon C1 feeds in to the other concern expressed by Dr Davies, Ms C and in fact C1 himself. As a black male teenager he is already statistically very vulnerable to street violence. It is not fanciful to suggest, as Dr Davies does, that there is a risk of C1 being drawn into risky situations if the Appellant is to be removed from the home: C1 predicts that he will feel isolation, anger and sadness if his father goes, and I accept that this is a wholly credible prediction.
94. I accept the assessment made by Dr Davies, and everyone concerned with the care of C2 - including social services, CAMHS and her parents - that C2 is an extremely vulnerable child with special educational needs who looks to the Appellant as her central attachment figure. I have no doubt that both her parents play a very important role in her life but the evidence was consistent: it is the Appellant that she looks to for love and support, but also for help in managing her own emotions. The relationship that she shares with him is evidently centrally important to her. It is not one that could be replaced by family friends, aunts or professional carers. It is at the centre of her family life. It would be strongly contrary to the best interests of C2, and I find unduly harsh, if the Appellant were to be removed from the family home.
95. I make clear that in reaching these findings I have considered the extent to which the family relationship could be maintained by telephone, video calls etc. Assuming that such contact could take

place on a regular basis I do not regard it as an acceptable or adequate replacement – given the particular circumstances of this family – for the Appellant being in the home. C2 in particular would not understand why he was not there, and the loss she would suffer in his physical absence would be immeasurable. I would also allow the appeal on the grounds that it will be unduly harsh for the Appellant's children should he be removed from the country.

Proportionality: Very Compelling Circumstances

96. I have already found that it would be unduly harsh for the Appellant's family if he were to be deported. He has therefore taken a 'short-cut' to demonstrating that the decision to deport him is disproportionate. I have also found that the Appellant would face a real risk of the Appellant facing serious harm contrary to Article 3 ECHR if returned to Jamaica. There is therefore limited utility in me proceeding to consider whether there are 'very compelling circumstances' in this case. On the facts that I have found, particularly in regard to Article 3, this test would plainly be met. I therefore proceed, briefly, to address s117C(6) on the alternative basis that it is wrong to find that the harms feared in Jamaica engage Article 3, or that the harshness encountered by his family will be "unduly" so.
97. In his submissions Mr McVeety pointed out that any offence relating to the distribution of Class A drugs is to be considered serious. I wholly accept that. Class A drugs are rightly described by sentencing judges as a scourge upon society. They can do terrible harm to the addicts that use them; this in turn places a heavy burden on the NHS, social services and the police who must investigate the secondary crimes, such as fraud and robbery, committed in order that the addict can purchase yet more drugs. Even where used 'recreationally' by customers who do not regard themselves as addicts, these drugs leave behind them a trail of destruction. The poor farmers who are trafficked into production; the couriers who bring the raw narcotics across borders; the customs officials drawn into corruption; the huge profits which end up funding other criminal or terrorist enterprises; the street dealers whose areas of operation are defended by fear and intimidation; the children who are trafficked for use as 'runners': the entire chain is infected by exploitation and extreme violence. Having received a single sentence of 42 months the Appellant is formally categorised as a 'medium' offender under the Part 5A scheme but I entirely accept the Secretary of State's submission that this sentence places him at the higher end of that scale. The public interest is to be weighed accordingly.
98. The Appellant's witness statements go into some detail about how he came to be in circumstances that led to him being convicted of assaulting a police officer (the officer was strangling him), being in a stolen vehicle (someone lent it to him to pick the kids up from school),

containing class A drugs (which weren't his). I have therefore found it difficult to square his evidence about the offending with the view expressed by all of the professionals from the criminal jurisdiction that he has expressed "shame and deep remorse at finding himself before the criminal justice system". As far as I can tell the only offence which the Appellant completely accepts responsibility for is his possession of a driving licence, bearing his photograph, to which he was not entitled, never having passed a driving test in his life. None of that goes to his credit. I do however accept the conclusion of the probation service that "the conviction and subsequent sentence has been a salutary learning experience, one which he says he has no intention of repeating. [The Appellant] has disassociated himself from any form of negativity in order to avoid jeopardising his liberty". I accept that, because as the Secretary of State also accepts, the Appellant has not been in any further trouble since his arrest in November 2012. I also accept that he understands very well the stress that these proceedings, and his imprisonment, placed upon his family. I accept that the Appellant poses a low risk of reconviction. That is however a matter that attracts little, if any weight in my overall balancing exercise.

99. I have already set out the harms that his family members will suffer if he were to be deported. I need not repeat them in any detail here save to say that if I am wrong in finding that these difficulties meet the enhanced threshold of 'undue harshness' the uncontested evidence nevertheless all points to the fact that Ms C and the children will really suffer if the Appellant is removed from the family home. Dr Davies finds there to be a real risk that Ms C's mental health will deteriorate, as it has demonstrably and consistently done so during other periods of stress in her life. Set against the background of Ms C's very difficult youth this is wholly understandable. She will find it difficult to cope with the children and to compensate for the absence of their 'nurturing' parent. The children will therefore not only suffer the loss of their father but the loss of their active mother. That is a serious consequence for the family that attracts a considerable amount of weight in my assessment. One aspect of the evidence about the family that did not feature in my assessment above are the very strongly held subjective fears that Ms C holds about the Appellant's safety should he be returned to Jamaica. She explains that she has heard numerous stories about deportees being attacked or left homeless. A man she knew - her sister's former boyfriend - was deported there and was shot in the head. I accept that this is a matter likely to cause her considerable distress and I attach some weight to that.

100. Similarly, if I am wrong in finding that the consequences of deportation for the Appellant will be of sufficient severity to engage Article 3, they are nevertheless likely to be grim. The conclusions of Dr Thomas about his likely deterioration in mental health are entirely consistent with the findings of the CA and all of the other evidence.

He is likely, if nothing else, to face a catastrophic blow to his mental wellbeing if returned to the place where he suffered so many horrendous abuses in the past: dislocation from his family, repeated rape, homelessness, destitution, near death in a hurricane and being stabbed amongst them. The statute asks decision makers to look for some “compelling” feature of the evidence, and this history surely merits use of that term. This is a factor that attracts considerable weight in the balancing exercise.

101. I am further prepared to attach some weight to the CA’s conclusions that the Appellant potentially a victim of trafficking in this country, although given his defiance of George, and subsequent escape, it is not something I have attached any great weight to.

102. I make it clear that those features of the evidence that I have briefly summarised here are not the sum of the case: that I have set out above in my summary of the unchallenged evidence. In short, this is an Appellant who has committed a serious crime – a number of serious crimes – and the public interest obviously weighs heavily in favour of his deportation. This is however also a couple who have already, individually and collectively, endured quite extraordinary hardship. Having done so they have come through that to build a stable and loving home for their children, who are for one reason or another, vulnerable. The removal of the Appellant from that home will, I am satisfied, undo all of that work. Standing back and assessing the evidence in the round I am not satisfied that the public interest demands that. I therefore also allow the appeal with reference to s117C(6).

Anonymity Order

103. The Appellant is a victim of trafficking. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that I must make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

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

Decisions and Directions

104. The decision of the First-tier Tribunal has been set aside.

105. The decision in the appeal is remade as follows: the appeal is allowed.

106. There is an order for anonymity.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, stylized font.

Upper Tribunal Judge Bruce
21st December 2021