



Neutral Citation Number: [2021] EWCA Civ 941

Case No: C5/2020/2129

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
Upper Tribunal (Asylum and Immigration Chamber)
Upper Tribunal Judge Mandalia
RP/00132/2016

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/06/2021

Before :

LORD JUSTICE BEAN
LORD JUSTICE LEWIS
and
LADY JUSTICE ELISABETH LAING

Between :

MS (Zimbabwe)
- and -
Secretary of State for the Home Department

Appellant

Respondent

Mr Jonathan Holt (instructed by **Paragon Law**) for the **Appellant**
Miss Julia Smyth (instructed by **Government Legal Department**) for the **Respondent**

Hearing dates : 10 June 2021

Approved Judgment

Lady Justice Elisabeth Laing DBE :

Introduction

1. This is an appeal from the Upper Tribunal (Immigration and Asylum Chamber) ('the UT'). The UT decided that the Refugee Convention ('the Convention') had ceased to apply to the Appellant ('MS'). In doing so, the UT allowed the appeal of the Secretary of State for the Home Department ('the Secretary of State') from a decision of the First-tier Tribunal (Immigration and Asylum Chamber) ('the FTT'). The FTT had allowed MS's appeal from decisions of the Secretary of State to revoke his refugee status and to deport him to Zimbabwe.
2. Permission to appeal was given by Andrews LJ on 1 February 2021. There is, in effect, one ground of appeal. It is argued that the UT failed to give 'proper consideration to crucial aspects of expert evidence' about the risk faced by people who cannot show their loyalty to ZANU PF. MS elaborated this by arguing that it is not enough that the UT referred, by number, to the significant paragraphs of a report by Dr Cameron, an expert instructed on his behalf ('the Report'). The UT should have explained, in addition, how it was able to reach conclusions which contradicted those in the Report. MS relies, in particular, on paragraphs 55 and 56 of the Report.
3. On this appeal, MS was represented by Mr Holt. Miss Smyth represented the Secretary of State. We thank both counsel for their written and oral submissions.
4. Paragraph references in this judgment are to the determination of the UT promulgated on 1 October 2020, unless I say otherwise.
5. The Court indicated at the start of the hearing that MS would continue to be anonymised in this appeal.

The facts

6. Because this appeal raises a short point about the UT's approach to the evidence in the Report, it is not necessary for me to say much about the facts.
7. MS arrived in the United Kingdom in 2004, when he was 14 (see the reasons for refusal letter dated 16 September 2016). He had indefinite leave to enter to join his mother. She had been recognised as a refugee after a successful appeal against the Secretary of State's decision to refuse her claim for asylum. In its decision in this case, the FTT said that the family home was near Bulawayo. MS's mother had been recognised as a refugee because of her actual or imputed political opinion as a supporter of the Movement for Democratic Change ('the MDC'). When she applied for asylum, even low-level supporters of the MDC were at risk. MS's refugee status was linked to his mother's.
8. The UT noted that it was not clear whether a grant of refugee status had been made to MS, although it seemed that everyone had assumed that that was so. Nothing turns on that on this appeal, although the Secretary of State asked this Court to note that, in the light of *JS (Uganda) v Secretary of State for the Home Department* [2019] EWCA (Civ) 1670; [2020] 1 WLR 43, that assumption may well have been wrong. The UT was alive to this point, and referred to *JS* in paragraph 8.
9. MS has two minor convictions. However, on 11 June 2012, he was convicted, on his plea of guilty, of a count of robbery, for which he received a sentence of eight years' imprisonment. MS and an accomplice had gone to the victim's house late at night. They were armed with an extendable baton and a knife. The victim was present with two other people. The robbers asked where the safe was. The robbers took the contents of the safe. The Judge held that the robbery had been planned. Had there

- been a trial, the Judge said, the sentence would have been at least ten years' imprisonment. MS's appeal against sentence was dismissed.
10. MS's father had stayed in Zimbabwe. He died in 2012. MS went back to Zimbabwe for the burial. MS also returned for about ten days in 2015, with his two sisters, to visit their father's grave.
 11. On the appeal to the UT, the Secretary of State did not dispute that MS had a subjective fear of returning to Zimbabwe, but submitted that that fear was not well founded (paragraph 14).

The Report

12. I will not quote the Report in full, or summarise it at any length. Mr Holt submitted orally that the UT had failed, without explanation, to adopt the conclusions in paragraph G of the Report's 'Brief Summary of Findings'. I will quote paragraph G.

'With due consideration to the profile of [MS], the evidence available to me, and my own in-country knowledge, it is my opinion that it is plausible that [MS] will be identified as a person of adverse interest to SSF and a person with an imputed political opinion. It is my opinion that those who are identified at the airport as being of sufficient interest to merit further interrogation are at real risk of harm. As a person who has benefitted from refugee status in the UK and is the son of a political refugee, it is plausible that [MS] is at risk of persecution by the CIO on his arrival at Harare International Airport, including arbitrary arrest, detention, torture and ill-treatment as a result of his imputed political opinion and his inability to demonstrate loyalty to ZANU PF.'

13. The focus of the conclusions in this 'Brief Summary' is relevant to the ground of appeal. The focus is (a) those who have political opinions, or imputed political opinions, and (b) those who cannot show that they are loyal to ZANU PF. This focus is unsurprising, as the purpose of the Report was to support MS's claim that he had a fear of persecution on Convention grounds if he were deported to Zimbabwe. The Report has two premises: MS will have a political opinion imputed to him, and he will not be able to show that he is loyal to ZANU PF. There is no suggestion in the Report that MS could be persecuted as a person with no political profile.
14. Section 3 of the Report (paragraphs 17-58) lists a series of incidents. All, except the incidents referred to in paragraphs 56 and 57, are examples of violence (a) against people who have actual, or imputed political opinions opposed to the government, (b) against people who cannot show that they are loyal to ZANU PF, and (c) against people who have protested against the government in various ways.
15. The first two sentences of paragraph 56 say that the police were out 'in full force' in Bulawayo and Harare on 30 July 2020. They blocked streets and they did 'random searches' of commuters. Videos and photographs of police brutality are said to have been shared 'on networks of human rights defenders monitoring the situation'. As Miss Smyth pointed out in her oral submissions, no context for this incident is provided, and no checkable source. The rest of paragraph 56 deals with a different topic: the use by the government of the Covid crisis as a pretext for cracking down on its opponents. There is a footnote at the end of paragraph 56, referring to an article published in 2020. The parties to the appeal agree that this article does not support the first two sentences of paragraph 56, and that it deals with a different topic.
16. Paragraph 57 says that on 2 August 2020, an armed convoy of the police and the army drove through the Central Business District in Bulawayo, and prevented the people who lived there from buying food or using cash points. The source for this, referred to in a footnote, is 'Telephone interviews 2 August 2020 with research respondents who

are also residents of suburbs of Bulawayo'. The source for the second part of paragraph 57 is a telephone interview with a 'former Scottish police constable who is director of a charity in Zimbabwe', on 17 October 2018. That person is not identified. That source is relied on for this sweeping assertion:

'The current country conditions in Zimbabwe leave human rights campaigners, government critics, political opposition, those suspected of being members of the political opposition, or those unable to demonstrate affiliation with ZANU PF, at higher risk of state violence including torture, rape and death than was the case in 2007/2008, or, indeed, since 1999'.

17. In paragraph M, the 'Brief Summary' asserts that 'having to demonstrate loyalty to ZANU PF to obtain food aid is country wide and not restricted to rural communities.' MS was said to be 'at risk of serious harm and persecution if he is unable to demonstrate loyalty to ZANU PF in exchange for food aid. This is contrary to paragraph 29 of the Home Office Notice of Decision of 13 December 2013.' This sweeping assertion is based on one example: an incident which is described in paragraph 91 of the Report when, on 10 July 2019, a ZANU PF activist demanded, before giving food aid to villagers (in one particular village) that they showed that they were loyal to ZANU PF. I have not been able to find a relevant Home Office decision dated 13 December 2013 in the papers for this case, which leads me to wonder whether this paragraph has been copied from a report in a different case. That speculation is supported by the exchange between Miss Smyth and the Court which was prompted by paragraph 47 of the Report and which I describe in the next paragraph of this judgment.
18. Paragraph 47 refers to an attack by security forces on an MDC MP in Bulawayo in August 2019 which is described in more detail in paragraph 46. That attack is said to be 'contrary to the claims of paragraph 30 of the Home Office Notice of Decision dated 13 Dec [sic] 2018, which states that "the country guidance caselaw demonstrates that even high-profile MDC members face no risk of persecution in Bulawayo. It is considered therefore that you could settle in Bulawayo and your claimed interaction with Mr Ncube six years ago would not place you at risk of persecution"'. The Court asked Miss Smyth whether there was any decision by the Secretary of State in this case dated 13 December 2018, and whether MS had ever claimed to have had an interaction with Mr Ncube. She said that the answer to both questions was 'No'. She offered the explanation that this paragraph had been cut and pasted from a report in a different case. Mr Holt did not contradict that suggested explanation in his reply.
19. Section 4 is headed 'Identification on return to Zimbabwe'. In paragraph 74, Dr Cameron cites two sources (the dates of which are not obvious in the footnotes) for a claim that:

'The CIO meet flights arriving in Harare when British Immigration officers' [sic] or their representatives shand [sic] over failed asylum seekers to their Zimbabwean counterparts. Over the past 15 years there have been reports of failed asylum seekers being victimised, including being beaten upon their arrival at Harare Airport. It is my opinion that the country situation has not changed since the reports dating back to 2002 and the CIO have continued to detain asylum deportees at Harare Airport and interrogate them'.

The reasoning in paragraph 74 seems to be the basis of Dr Cameron's view, expressed in paragraph 65 of the Report, that 'the current country conditions indicate that it is

plausible that on his return to Zimbabwe [MS] may be identified as a person with an imputed political opinion in line with that of his mother.’

The UT's determination

20. The UT had decided, at an earlier hearing, that the FTT had erred in law in its decision. The reasons why the UT held that the FTT erred in law are not challenged on this appeal and I say no more about them. The UT decided that it would re-make the FTT's decision, rather than remitting the case to the FTT. There is no challenge to that approach. The UT held a remote hearing. It seems from the determination, and from Mr Holt's answers to questions from the Court, that none of those who provided witness statements, or Dr Cameron, was cross-examined.
21. In paragraph 19, the UT summarised Dr Cameron's qualifications and experience. Her most recent fieldwork in Zimbabwe had been about a year previously, in October and November 2019. The UT alluded to the Brief Summary at the start of the Report. It observed, 'It serves no purpose to recite each of those conclusions in this decision, but I will return to some of the opinions expressed in the course of this decision.' The UT then briefly described the structure of the Report. It added, 'I stress that I have carefully considered [the Report], and the matters set out in [the Report] that lead to her conclusions and the opinions expressed by her, whether directly referred to in this decision or not. It would simply be impractical for me to set out in the course of this decision my observations in relation to each of the claims made and opinions sets out'.
22. The UT inferred that the circumstances in which MS had been recognised as a refugee were a combination of 'the general conditions in Zimbabwe and aspects of his personal profile'. The UT quoted from the determination of an Adjudicator, Ms C Pugh, promulgated in the appeal of MS's mother, on 13 September 2002. The Adjudicator accepted that MS's mother had been attacked by ZANU PF youth, but not that she was an MDC chair lady for her area. The Adjudicator considered that anyone returning to Zimbabwe from the United Kingdom in 2002 was likely to be judged to be a supporter of the MDC. Danger resulted both from actual, and from perceived, political opinion.
23. As I have said, MS did not give evidence to the UT. The UT had three witness statements from him. Nor did his mother. The UT found that there was nothing in her witness statements which caused the UT to go behind the findings of the Adjudicator in the 2002 appeal. Further, there was no evidence that MS was targeted when the family lived in Zimbabwe, or during the two years between his mother's departure from Zimbabwe and his.
24. The UT took the decision in *CM (EM country guidance: disclosure) Zimbabwe CG* [2013] UKUT 59 (IAC) ('*CM*') as its starting point. That showed that there had been some changes in the general political situation since 2004. In *CM* the UT confirmed earlier country guidance that there had been 'durable' changes since the previous country guidance, *RN (Returnees) Zimbabwe CG* [2008] UKAIT 00083. The UT cited the guidance in *CM* extensively in paragraph 32.
25. In sum, the UT decided in *CM* that there was significantly less political violence than in 2008. The mere fact that a person was returning from the United Kingdom as a failed asylum seeker, would not, if he had no significant MDC profile, expose him to a risk of having to prove his loyalty to ZANU PF. It would be otherwise if a person with no connections with ZANU PF returned to a rural area (other than Matabeleland) after a long absence in the United Kingdom. The situation was not uniform in rural areas. A person returning to Matabeleland was, in general, unlikely to face difficulty

- even if he supported the MDC. A person returning to a low or medium density area in Harare was unlikely to face significant difficulties. If he returned to a high density area, in general, a person without ZANU PF connections would not face difficulties, such as a loyalty test, unless he had a significant MDC profile. A person returning to Bulawayo would face no difficulty, even if he had a significant MDC profile.
26. The UT described, by reference to paragraphs 11 and 12 of the UT's Guidance Note 2011 No 2, the circumstances in which it could depart from country guidance (paragraph 33). The UT recorded MS's submission that the background evidence and the Report were 'very strong grounds supported by cogent evidence' for departing from *CM*. Mr Holt and Miss Smyth agree, on this appeal, that the UT stated this test correctly.
27. The UT summarised the Report in paragraphs 34-42. It directly quoted from paragraphs 58, 60, 62-64, 69-70, 72, 74, 75, and 93, and referred to, or summarised, paragraphs 10, 13, 22, 17-57, 90, 91, section 4, 71, and section 5.
28. In paragraph 44, the UT accepted that Dr Cameron had expertise in 'Zimbabwean social and political matters'. It gave 'due weight' to her opinions. Her view was that the current situation was comparable to that considered in *RN (Returnees)*. Those at risk were not simply those who are seen to support the MDC, but also those who cannot show positive support for ZANU PF, or alignment with the regime. This is an accurate summary of Dr Cameron's views.
29. In paragraph 45 of the determination, the UT said:
- 'Having read [the Report], the background material cited in [the Report] and the background material relied upon by [MS] I accept that there is at least some evidence of spikes of violence around the elections and fuel protests in 2018 and 2019 and of random attacks on those without an MDC profile, but, overall, I reject the claim that the current political climate is comparable with the situation [in RN (Returnees)], and that anyone who cannot demonstrate positive support for ZANU PF or alignment with the regime is at risk in Zimbabwe'.*
30. The UT described the sequence of relevant country guidance cases in paragraph 46. It said that, in *CM*, the UT had found that there was less politically motivated violence than that described in *RN (Returnees)*. MDC supporters were the main victims of such violence. Since then, the MDC had broken into factions, and, in November 2017, President Mugabe had been replaced by President Mnangagwa. In paragraph 48, the UT accepted that there was evidence of a 'spike in violence' around the time of the 2018 elections, and of a crackdown on opposition leaders. There was, however, no evidence that the decline in violence reported in *CM* had reversed in the previous six years. Spikes in violence at election times were nothing new in Zimbabwe, and did 'not necessarily affect the overall downward trend'. They were not inconsistent with a finding of 'significant and durable change in Zimbabwe'.
31. In paragraph 49, the UT referred to Dr Cameron's view that 'state violence perpetrated against those who are perceived to be critics or opponents of the government of Zimbabwe has prevailed between 2018 and 2020'. The UT was prepared to accept that Zimbabwe 'remains a society where brutality and human rights abuses continue to take place, but a common thread to many of the incidents referred to by Dr Cameron is that the attacks were upon supporters of the political opposition, leaders, and those perceived as critics of the government'.
32. The UT referred, in paragraph 50, to paragraph 22 of Dr Cameron's report, in which she mentioned many reports, in 2017, of fear and intimidation at all levels of Zimbabwean society. The UT described some of that material, and concluded that

- ‘The evidence is not necessarily indicative of ZANU PF politically motivated human rights violations against simple supporters of the opposition or MDC’.
33. The UT considered risk at the airport in paragraphs 51 and 52, by reference to *CM* and to the Report. The evidence about this in the Report dated from 2005. The UT said that Dr Cameron did not identify any more recent evidence in the Report.
 34. The UT did not accept Dr Cameron’s conclusion that those now at risk in Zimbabwe resembled those who were at risk in 2005 (paragraph 53). In paragraph 54, the UT considered the incident in July 2019, described in paragraph 91 of the Report, when only those who could show they were loyal to ZANU PF were given food aid. The UT held that ‘That in itself is not evidence of a general and widespread requirement to’ show loyalty to ZANU PF. The economic circumstances in Zimbabwe were no worse than those described in *CM* (paragraph 55).
 35. In paragraph 59, the UT said that 16 years after he had left Zimbabwe, no-one would have any particular memory of or interest in MS by reason of his relationship with his mother. He had returned to Zimbabwe in 2012, and he and his sisters, in 2015. There was no evidence that they had been targeted in any way because of an imputed political reason, or because of their relationship with their mother.
 36. Having considered the evidence, the UT concluded that the Secretary of State had discharged the burden of showing that there had been a change in circumstances such that the Convention no longer applied to MS (paragraph 60).
 37. The UT considered MS’s article 8 claim in paragraphs 62-81. The UT concluded that MS’s deportation to Zimbabwe would not breach his article 8 rights. There is no appeal against that conclusion. Miss Smyth drew attention to paragraph 76, in which, in relation to MS’s article 8 claim, the UT made findings that MS would be able to support himself in Zimbabwe.

The legal framework

38. As Mr Holt stressed at the start of his oral submissions, there is no dispute about the relevant law, which the UT had described in paragraphs 15-24 of its error of law decision, and summarised again in paragraphs 20-23 and 33 of the determination.
39. The Qualification Directive establishes a common framework for EU member states to apply the Convention.
40. Article 1A of the Convention, as amended by 1966 Protocol, defines ‘refugee’ as a person who ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country...’
41. Article 1C of the Convention provides that it ceases to apply to a person to whom article 1(A) applies if ‘He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of protection of his country of nationality; Provided that this paragraph shall not apply to a refugee falling under Article A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality’.
42. Article 1C(5) requires a decision maker to consider whether there has been a relevant change in the circumstances which led to the recognition of a person as a refugee. A durable change in the conditions in his country of nationality which leads a person no longer to have a genuine fear of persecution is a relevant change for the purposes of article 1C(5). The change need not be ‘fundamental’, although such a change will mean that a former refugee will no longer have a genuine fear of persecution (*EN*

(Serbia) v Secretary of State for the Home Department [2009] EWCA Civ 630; [2010] QB 633 at paragraphs 95-96. The onus is on the Secretary of State to show that there has been a relevant change in circumstances.

43. The effect of the country guidance in *CM*, in short, is that there had been a change in the circumstances in Zimbabwe since the grant of refugee status to MS's mother. If it applied to this case, the reasoning in *CM* would suggest that MS's refugee status had ceased. The UT may depart from country guidance if there are very strong grounds supported by cogent evidence (see paragraph 26, above, in which I refer to paragraph 33 of the UT's determination).

MS's argument in more detail

44. In MS's skeleton argument, Mr Holt explained that in paragraph 57 of the Report, Dr Cameron said that people who could not show their loyalty to ZANU PF were at a higher risk of state violence than in 2007/8, or, indeed, since 1999. MS recognises that, in asking the UT to accept Dr Cameron's evidence and to find that this was so, MS was asking the UT to depart from the approach in the most recent country guidance decision of the UT, *CM*, and that he therefore had to meet the agreed test which I have described in paragraphs 26 and 43, above.
45. MS submits that in paragraph 45, the UT found to the contrary, holding that there was some 'evidence of spikes in violence around the elections and fuel protests in 2018 and 2019 and of random attacks on those without an MDC profile', while rejecting the claims that the current situation in Zimbabwe is comparable to that in 2008 and that those who cannot show their loyalty to ZANU PF are at risk.
46. MS criticises the passage in paragraph 49 of the UT's determination (see paragraph 31, above) in which the UT said that 'a common thread to many of the incidents referred to in Dr Cameron's evidence is that attacks were upon supporters of the political opposition, leaders and those perceived as critics of the government'. MS argues that the UT's position, 'effectively', is that violence has been committed against 'actual MDC supporters' rather than those who cannot show their loyalty to ZANU PF. In finding this 'common thread' and in failing to give reasons for that finding, it is said, the UT erred.
47. MS submits that there is no such 'common thread' in the Report, relying, in particular, on paragraphs 56 and 57. These refer to two incidents (see paragraphs 15 and 16, above). First, in 2020, commuters were searched at random. Opposition members and journalists were arrested, so not solely members of the opposition. Second, in August 2020, convoys of police and soldiers stopped people from buying food and using cash machines. Those people were not members of the opposition.
48. The UT erred in finding that there was no risk to MS because most of the incidents were against politically active people, for two reasons.
- a. The UT failed to take into account recent incidents described by Dr Cameron which were not against politically active people.
 - b. The UT failed to give reasons for finding a 'common thread', as it was absent from the most recent incidents.
49. In his oral submissions, Mr Holt criticised the UT for rejecting 'the core conclusions' of the Report without giving adequate reasons. That approach was not open to the UT. He quoted paragraph G from the Brief Summary. Dr Cameron had given due consideration to MS's profile, to the available evidence, and had relied on her knowledge of Zimbabwe. He accepted, in answer to a question from the Court, that MS had no personal political profile, as acknowledged by Dr Cameron in paragraph 13 of the Report.

50. Mr Holt was pressed by the Court to explain how the two incidents he relied on, which were random attacks on civilians, and not, therefore connected with their actual or imputed political beliefs, could show, or support a conclusion, that MS had a well-founded fear of persecution for a Convention reason if he were returned to Zimbabwe. I did not consider that he was able to explain satisfactorily how they could. He was driven to rely on the incident in 2019 when a ZANU PF activist refused to give food aid to those who could not show their loyalty to ZANU PF, an incident which was directly linked to political affiliation (and its absence). He submitted that there was a ‘marked decline’ in the way the state deals with its citizens. He was driven to submit that the randomness of attacks did not ‘go against the grant of protection status’.
51. He accepted that it was open to the UT to find (as it had) that MS had no political profile, and that one would not be imputed to him. Mr Holt went on to submit that a premise of the Report was that A had no personal political profile, but that it showed that the state now targets all those who are not supporters of ZANU PF. That was the basis of Dr Cameron’s conclusion that MS would be at risk of state violence. He nevertheless accepted, in answer to a question from the Court, that there were two alternative routes to protection: a potential risk arising from the profile his mother had had, some 20 years previously (a route which the UT rejected) and MS’s inability to show that he was loyal to ZANU PF.
52. In a further exchange with the Court, Mr Holt submitted that MS could be at risk because he had no political profile at all. The Court suggested to Mr Holt that the incidents referred to in paragraphs 56 and 57 of the Report did not show that people were at risk because they had no political profile, as there was no causal connection between random attacks and the political views (or lack of political views) of the victims. Mr Holt agreed, but then relied on the 2019 incident referred to in paragraph 91 of the Report. He said that that showed that people with no political profile were treated worse.
53. He accepted that the second sentence of paragraph 49 was an accurate summary of the Report, but nevertheless contended that the UT’s treatment of the evidence was not open to it. In further exchanges with the Court, he appeared to be submitting that the UT had wrongly discounted the incidents described in paragraphs 56 and 57 because random attacks on those with no political profile were enough to show that a person with no political profile was at risk of persecution in Zimbabwe on a Convention ground.
54. When pressed to explain what other material in the Report, apart from paragraph 91, showed that people who could not show their loyalty to ZANU PF were at risk of ill treatment, he was driven to submit that one example was enough, and that the UT should have relied on Dr Cameron’s ‘intangible expertise’ as a reason for accepting her material conclusions, even if they were not supported by examples, or were only supported by one example. He eventually accepted, in answer to a further question, that there were three relevant groups of people at risk in Zimbabwe: (a) those who had an MDC profile (a group which does not include MS), (b) those who could be attacked randomly (and whose political profile was irrelevant) and (c) those who could not show that they were loyal to ZANU PF (and that there was only one example of ill treatment on that basis). He also accepted that the UT considered all three groups.

The Secretary of State’s response

55. Miss Smyth submitted in writing that this Court should assume, when reading the UT's reasons, that the UT knew what it was doing, and what it should take into account. MS has a 'steep hurdle to surmount to establish that the UT erred in law in rejecting the evidence of Dr Cameron'. She submitted that neither of MS's arguments showed that the UT erred in law in its approach to the Report. The UT directed itself correctly, at paragraphs 33 and 44, that it should not depart from the country guidance without strong grounds supported by cogent evidence.
56. The UT accepted that there were random attacks on people who did not have an MDC profile. Its finding that 'a common thread to many of the incidents referred to by Dr Cameron' was that the attacks were on 'supporters of the political, leaders, and those perceived as critics of the government' was a fair characterisation of the evidence, because the vast majority of attacks were on such people. There was very little evidence of attacks on people who were not political activists, journalists, or active supporters of the opposition.
57. MS had not explained how the two incidents on which he relies (described in paragraphs 56 and 57 of the Report) were, on their own, cogent evidence to justify a departure from the country guidance. Moreover, the Report did not explain how or why MS would be seen as having a political profile, or how, otherwise, he would be at risk.
58. The UT was not required to deal expressly with every paragraph of the Report. It directed itself correctly in law, considered the evidence in detail, and gave proper reasons for its decision.
59. She began her oral submissions by showing the Court passages in *CM* which showed that, at that stage, there was also some random violence against civilians by the government. She submitted that the Report did not analyse trends in violence since *CM*. It did not provide any evidence that violence had increased since *CM* to the levels which existed in 2008. Some of the incidents referred to in the Report were not supported by checkable sources, and very little context was given for them. She gave an incident described in paragraph 42 of the Report as an example. When the supporting material was read, it was clear that it was referring to the government's approach to protests; but paragraph 42, on its own, reads as a much more general allegation of widespread state violence.
60. She submitted that, overall, there was nothing in paragraphs 56 or 57 which showed that test for departing from *CM* was met. That material, far from satisfying the test, was 'very thin indeed'. The UT had approached the Report correctly. Its reasoning was 'detailed and unassailable'. Paragraph 91 of the Report was, in any event, irrelevant, as, given the UT's findings about MS's article 8 claim in paragraph 76 (see paragraph 37, above), he would not need to rely on food aid.

Discussion

61. It is trite that a tribunal of fact is not bound to accept expert evidence if it disagrees with that evidence. That is so even if the expert witness is not cross-examined. The tribunal of fact is entitled, and obliged, to examine the analysis and reasoning in the expert's report. It is obliged to reach its own conclusions on any questions of fact, or mixed questions of fact and law, which it must decide in order to determine a case. It may accept guidance from an expert on those questions, but is not obliged to accept it.
62. I would reject any suggestion that the UT was obliged to accept the conclusions in paragraph G of the Brief Summary, just because they were the conclusions of an experienced expert. The UT was entitled, and obliged, to ask itself whether those conclusions were rational conclusions, and whether, and if so, to what extent, they

- were supported by the material cited in the Report. The more inscrutable an expert's conclusion is, the less likely it is that a tribunal of fact will be obliged to accept it.
63. For example, the conclusions in paragraph G were partly based on Dr Cameron's views about what would happen at Harare Airport. Those views, in turn, were explicitly based on reports which pre-dated *CM*. The UT was entitled to decide that old reports which pre-dated *CM* did not amount to cogent evidence enabling it to depart from *CM*. The UT explained its approach to this issue in paragraphs 51 and 52. It was plainly entitled to reject paragraph G, to the extent that it suggested that MS would be identified at Harare Airport as a person with an MDC profile. There is, rightly, no appeal against the UT's approach to this issue.
64. Paragraph G also relies, in part, on MS's supposed inability to show his loyalty to ZANU PF. The UT was entitled, and obliged, to ask itself what material in the Report supported a general proposition that a person generally who cannot show that he is loyal to ZANU PF, or a person who, in particular, needs food aid, and who cannot show that he is loyal to ZANU PF, is at risk of ill treatment in Zimbabwe. It accordingly asked itself that question. On analysis, paragraph 91 of the Report is the only material which supports that proposition. The UT was entitled to conclude that that material did not support the general proposition that a person who cannot show his loyalty to ZANU PF is at risk of ill treatment in Zimbabwe (see paragraph 54). Again, and again rightly, there is no appeal against that conclusion.
65. It is clear to me that an unstated premise of the Report, and of the UT's determination, is that MS does not need the protection of the Convention if he would not be at risk of persecution in Zimbabwe on a Convention ground. Because this is a Convention case, that premise is so obvious as not to require to be stated expressly. Consequently, there is, rightly, no suggestion in the Report that MS would be entitled to the protection of the Convention if the only risk he would be exposed to in Zimbabwe would be a risk of random state violence which was not connected with, or caused by, his political profile (either, an MDC profile, or an inability to show, when required, his loyalty to ZANU PF). Ill treatment which is meted out randomly is not connected with, or caused by, a particular political profile, or by the absence of political profile. It is simply not related to the political profile of its victims in any way.
66. That is the context in which paragraphs 56 and 57 of the Report must be read. They are not capable of supporting a claim that MS would be at risk of ill treatment on a Convention ground on his return to Zimbabwe, and, in fairness to Dr Cameron, she did not suggest that they were. In my judgment, the UT dealt accurately and perfectly adequately with those paragraphs of the Report in paragraphs 45 and 49. The UT recognised that there were examples of random attacks, and was, it follows, entitled, and right, to say that 'a common thread to many of the incidents referred to by Dr Cameron is that the attacks were upon supporters of the political opposition, leaders, and those perceived as critics of the government'. Paragraphs 56 and 57 of the Report do not, in my judgment, have any significance for a claim to protection under the Convention, and the UT was not obliged to give them any more prominence than it did. Indeed, it could not be criticised if it had ignored them.
67. Paragraphs 56 and 57 of the Report were the foundation for MS's argument that the UT was obliged to depart from *CM*. I accept Miss Smyth's submission that this material does not meet the relevant test. It is not cogent, because it is wholly irrelevant to the question whether or not MS continues to need the protection of the Convention. If, as I have held, the UT was not obliged as a matter of law to depart from *CM*, this appeal must fail.

Conclusion

68. For those reasons, I would dismiss this appeal.

Lord Justice Lewis

69. I agree.

Lord Justice Bean

70. I also agree.