



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15377/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 30 October 2019

Decision & Reasons Promulgated
On 15 November 2019

Before

UPPER TRIBUNAL JUDGE REEDS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RC

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant: Ms Brakaj, on behalf of the appellant

For the respondent: Ms Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. On 14 October 2017 the respondent made an order that the appellant is to be deported from the United Kingdom ('UK'), following her criminal convictions as it was considered that her presence in the UK was not conducive to the public good. The respondent refused the appellant's human rights claim in a decision letter dated 20th September 2017.

2. The appellant, a citizen of Jamaica, appealed this decision to the First-tier Tribunal (Judge Holmes) ('FtTJ'). In a decision sent on 24th July 2019, the FtTJ allowed her appeal on human rights grounds, and the Secretary of State has now appealed, with permission, to the Upper Tribunal.
3. Whilst this is an appeal by the Secretary of State, for ease of reference I intend to refer to the parties as they were before the First-tier Tribunal.

The decision of the FtTJ:

4. The appellant's background is set out in detailed chronological order in the FtTJ's very detailed and carefully drafted decision. The FtTJ made comprehensive findings of fact having considered in detail the appellant's history and her medical circumstances and her criminal offending in accordance with the documentation that was before the Tribunal.
5. The grounds advanced on behalf of the respondent do not seek to challenge the factual history of the appellant but seek to challenge the conclusions reached by the FtTJ that there were "very significant obstacles to her re-integration" to Jamaica or his alternative finding that "very compelling circumstances" existed for the appellant.
6. I shall therefore set out that factual history.
7. The appellant arrived in the UK on 20 June 1993 when she was 7 years old accompanied by her grandmother. The circumstances of the appellant's immigration to the UK was that at the time that there was no family member then living in Jamaica to care for her. The aunt who had cared for her in the absence of her parents was ill, (she had to all intents and purposes been abandoned by her parents) and had no other family members then living in Jamaica. The appellant was granted indefinite leave to remain ('ILR') in 1995.
8. The appellant as having been diagnosed with schizoaffective disorder in 2005 and it was in March 2005 was first detained under the Mental Health Act. The FtTJ observed that the information available to the Tribunal had been incomplete despite having convened case management hearings and having made directions for evidence to be obtained. However, he set out within the decision the factual circumstances which were accepted by the respondent. They can be set out as follows:-
 1. The appellant has been prescribed medication for her condition for a number of years;
 2. Her mental health deteriorated between the years 2005 - 2007 (at [E2]);
 3. The CMHT noted in March 2007 that her mental state was extreme fragile, she was without a fixed address so that she was extremely vulnerable to exploitation and invited the local authority to invoke its safeguarding procedures. It was not known on the evidence before the

Tribunal whether that in fact had been carried out or if it had, what success there had been.

4. The appellant had been detained under the MHA on at least two occasions (although the FtTJ had no record or chronology of her interactions with the mental of teams in the places she resided);
 5. She is recorded as having a history of drug abuse (cannabis since 2009 as set out in the GPs notes and not as the JWCI letter suggests at [K2]) and is recorded as having attempted suicide on two occasions (see paragraph 3(e) of the FtT decision).
9. The appellant has a child born in 2009. Again, the FtTJ recorded that there was little information available concerning his circumstances and there was no evidence from family members who now care for him. The FtTJ did have evidence that he was a looked after child for a period between 2010 and 2011 and the inference raised was that was one of the occasions when the appellant's mental health deteriorated had been detained. The judge inferred from the evidence that at some stage a child was placed with a family relative under what was understood to be a private fostering arrangement and that the family had always lived in a different area. There was no evidence before the Tribunal as to whether there had been any public law proceedings, or any orders made. However the judge recorded at paragraph 6 that the appellant's evidence was that she had the right to contact her son although she had not been well enough to exercise direct contact with him. She had last spoken to him approximately four months ago.
10. During her residence in United Kingdom, the appellant has a history of criminal offending.
- (i) The appellant's offending began in 2014 when she was first convicted of theft from the dwelling and received a 12-month conditional discharge, compensation and payment of the victim surcharge.
 - (ii) There were further offences of theft for which she was sentenced to in August 2014 and in 2015 which resulted in a community order. It is recorded that this was later revoked, and she received a suspended sentence of imprisonment for 14 days, suspended for six months.
 - (iii) In 2015 was convicted of shoplifting, failing to surrender custody and commission a further offending during the operational period of the suspended sentence order and was therefore sentenced to a total of 14 days imprisonment. Later in that year further offences of shoplifting and received 20 days imprisonment with a further seven days to be served consecutively.
 - (iv) In February 2016 she was convicted of possessing a class a controlled drug and was sentenced to community order with an exclusion requirement, a drug rehabilitation requirement and in rehabilitation activity requirement.

- (v) In April 2016 she was convicted of battery and was sentenced to 12 weeks imprisonment. This was shortly followed by a further conviction for shoplifting which was carried out whilst the community order was in force. She was sentenced to 8 weeks imprisonment. In July 2016 she was convicted of further shoplifting and received a sentence of 12 weeks imprisonment to be suspended for 24 months.
 - (vi) In August 2016 she was convicted of possessing a class a controlled drug but received no separate penalty.
 - (vii) In November 2016 she was convicted of burglary and theft (non-dwelling) and the commission further offences during the operational period of a suspended sentence. At the magistrates court she received a total of 24 weeks imprisonment. As the judge records, this was the longest individual term of immediate imprisonment imposed upon the appellant which followed the activation of the suspended sentence imposed upon in October 2016 in relation to theft offences for which he been convicted in July 2016.
 - (viii) In 2017 she was convicted of theft on two occasions.
11. In respect of that antecedent history, it is recorded in the FtTJ's decision that the judge had raised a number of points during case management hearings which the respondent was unable to answer. They concerned the appellant's mental health and whether that had been taken into account (in accordance with published policy) and whether the magistrates courts who had sentenced the appellant to imprisonment in 2015 and 2016 were aware of her medical condition. It is further recorded that he had requested the respondent to provide information about the offences themselves beyond that contained in the PNC and the brief extracts that were in the evidence before him. The respondent did not provide that information to the FtTJ.
 12. As a result of that antecedent history it was common ground before the FtTJ that the appellant fell within the definition of a "foreign criminal" in section 117D(c)(iii) and as a "persistent offender". By reason of her convictions, it was not suggested on behalf of the Secretary of State that she fell within any other limb of that section and therefore it was accepted on behalf of the appellant that she was liable to deportation and that section 117C (1) applied (it is in the public interest that foreign criminals should be deported from the UK).
 13. The judge recorded the position of the respondent at paragraph [13] that individually none of the appellant offences could be described as serious and it was common ground that this was "persistent petty offending" and that despite the persistence, the lack of seriousness in the individual offences had consequences for the "sliding scale" of the strength of the public interest in deportation set out in section 117C2. The FtTJ considered that the appellant did not face the enhanced public interest in deportation faced by those who would have committed more serious offences but nonetheless that did not mean that there was no public interest in her deportation, as set out in section 117C(1).

14. The FtTJ set out a summary of the appellant's case at paragraphs [20]-[22] and that the appellant pursued human rights claim based upon a breach of both her article 3 and article 8 rights.
15. In respect of article 3, it was argued that the appellant continued to pose a risk of suicide (although the judge recorded there was no evidence to support that argument) and that secondly, the combination of her circumstances and conditions in Jamaica for those perceived to be criminal deportees was such that there was a real risk that her article 3 rights be breached. This was based on the submission that she had no means of support in Jamaica and no prospects of employment. The consequences of mental health and drug addiction were that she would be unlikely to apply for a grant on her behalf and therefore could not manage in Jamaica. This would lead to destitution and she would be at risk of serious exploitation.
16. The article 8 argument advanced on behalf of the appellant was that she met the exceptions in both Exception 1 and Exception 2, or in the alternative the appellant was able to establish that there were "very compelling circumstances" (see S117C (6)) which displaced the public interest in her deportation. The basis of that argument was that the public interest arose not because of the individual seriousness of any offence, but only because of the persistence of the offending which is at the lowest end of the scale. The offending behaviour had to be viewed in its proper context, alongside the length of lawful residence, the lack of any offending behaviour prior to 2014, her mental health, her substance abuse and addiction and the lack of any clarity as to whether the appellant had ever been considered as one who should receive treatment rather than punishment. Additionally, she lived in the UK all of her life and never returned to Jamaica since her arrival as a young child in 1993 and had no friends or family to provide her with support in any event of her deportation.
17. By way of response, the respondent's case was that set out in the decision letter of 20 September 2017; that she was a persistent offender and that on the factual circumstances neither Exception 1 nor Exception 2 or the "very compelling circumstances" test applied in her case and therefore the public interest required to deportation pursuant to section 117C(3).
18. The judge observed at [22] that none of the relevant jurisprudence was referred to or provided before the Tribunal when hearing the appeal. None the less, the FtTJ directed himself in accordance with the relevant legal principles set out in the case law which he recited at [24].
19. The FtTJ set out his findings of fact and analysis of the evidence over a number of paragraphs from [25]-[84]. As I have stated, they are comprehensive and do not fail to address any of the points made by the advocates.
20. The FtTJ's decision makes reference to ss. 117A-117C of the 2002 Act and for convenience I set out the relevant extracts.

21. These fall within Part 5A of the 2002 Act, which was inserted into it, with effect from 28 July 2014, by section 19 of the Immigration Act 2014. Part 5A is headed “Article 8 of the ECHR: Public Interest Considerations” and includes the following.

“117A Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts -
 - (a) breaches a person’s right to respect for private and family life under article 8, and
 - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard -
 - (a) in all cases, to the considerations listed in section 117B ...
- (3) In subsection (2), ‘the public interest question’ means the question of whether an interference with a person’s right to respect for private and family life is justified under article 8(2).

117B Article 8: public interest considerations applicable in all cases

The maintenance of effective immigration controls is in the public interest.

...

- (4) Little weight should be given to -
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious

...”

22. S.117B is followed by this at s. 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.
23. The FtTJ reached the conclusion that Exception 1 was met. The FtTJ found that the appellant was lawfully resident in the UK for most of her life having entered the UK lawfully the day before her eighth birthday, had been granted ILR therefore she had a period of continuous lawful residence of 24 years from 1993 until the making of the deportation order in 2017 (see [37]). The respondent accepted her history and in the decision letter (page 9) also accepted that she had been lawfully resident in the UK for most of her life.
24. As to whether she was culturally and socially integrated here this was in dispute. The decision letter stated that the respondent would accept a degree of social and cultural integration but noted her offending and that she had not provided any evidence of her education in the UK or any periods of employment or voluntary work. It was stated that presence in the UK was not integration (see page 9 of the decision letter).
25. At paragraphs [38]- [43], the FTT J analysed a number of legal authorities in those paragraphs. The FtTJ
26. The grounds advanced on behalf of the respondent do not seek to challenge the FtTJ's findings that she met limb 2 and that she was socially and culturally integrated in the UK. I have set out his findings as it is relevant to the issue of very compelling circumstances which was the alternative basis upon which the FtTJ allowed the appeal.
27. The FTT also found that there would be very significant obstacles to the appellant's integration to Jamaica.
28. There are factors identified in Maslov v Austria [2008] ECHR 546 relevant to the 'pros' side of the balance sheet which prima facie increased the weight to be given to the appellant's private life: the appellant has spent the major part of her childhood in the UK, she arrived in the UK when he was 7 and spent a significant part of her childhood in the UK; she has spent the majority of her life in the UK and is closely socially and culturally integrated in the UK; she had no link to Jamaica and she faced very significant obstacles to integrating there.

The submissions of the parties:

29. Ms Petterson on behalf of the respondent relied on the written grounds.
30. I shall set out those written grounds. It is submitted that the judge erred in his consideration and finding that there were “very significant obstacles to integration” or “very compelling circumstances” existing for the appellant. The grounds go on to state:

“having accepted that the appellant is a foreign criminal with a serious risk of reoffending [35] with treatment available for her for her schizoaffective disorder the onus is on the appellant to demonstrate that she would not be able to access this treatment, it is submitted that this has not been done. At [76] the FTT J finds that the risk on return to the appellant come “if” she is unable to access or failed to regularly take her medication, however it is respectfully submitted that the FTT J has not effectively considered this and it is not made out that she is unable to access treatment. It is submitted that the evidence is not conclusive that the appellant requires assistance to access and take the treatment.

It is further submitted that the FTT J failed to consider whether her aunt and cousin who currently care for the appellant’s child would be in a position to assist with reintegration into Jamaica through visits or travelling with the appellant until she settled, only considering it [76] that there is no realistic prospect of a relative relocating to care for her.”

31. Ms Petterson also relied upon the grant of permission by UTJ Pickup on 28 August 2090 in which he stated that it was arguable that the judge gave insufficient consideration as to whether family members could assist with integration in Jamaica on a temporary basis. No further submissions were made at the hearing.
32. There was no rule 24 response on behalf of the appellant. Ms Brakaj submitted that there was no error of law in the analysis of the FtTJ and that this was a decision which had been fully reasoned.
33. She submitted that the failure to consider family members had been an issue raised in the grounds the first time whereas it had been accepted before the FtTJ that she had no assistance from family in the UK. The appellant had no contact with family members, and this was made clear in the case management hearings which had been held to determine the evidence concerning the relationship with her son. There had been no contact or any support letters from members of the family despite the enquiries that were made. The position was that as set out in the medical report at page 9 the appellant had been moved to a different area. The safeguarding minutes were silent on the issue of family support and did not acknowledged any form of family assistance which was consistent with the appellant’s witness statement. She submitted the she had struggled significantly in her accommodation and that there was no indication family help. Had there been so, it was not likely that she would have been moved from X city to another city.

Consequently, the lack of family members and her lack of contact with them was not an issue that was in dispute.

34. As to the appellant's ability to obtain treatment for herself, it was submitted that the judge gave full consideration to this at paragraph 53 and his assessment of the evidence at paragraphs 48 - 50. She submitted that nothing further and been provided by the respondent in respect of any country materials and the references in the decision of the FTT J related to the appellant's evidence. Thus there was no dispute to the background evidence, and it was difficult to see what further the FTT J could have done when considering the issues in the appeal.
35. Ms Brakaj therefore invited the Tribunal to find that there was no material error of law in the decision of the FtTJ and that it should stand. No further submissions were made by way of reply on behalf of the respondent.
36. At the end of the submissions I reserved my decision, which I now provide with reasons.

Discussion:

37. Whilst neither of the advocates addressed the Tribunal as to the legal principles relevant to this appeal, they are not in dispute and are set out in a number of decisions of the Court of Appeal and the Supreme Court.
38. The statutory provisions at s.117A-C provide a "*particularly strong statement of public policy*" - see NA (Pakistan) v SSHD [2017] 1 WLR 207 at [22], such that "*great weight*" should generally be given to it and cases in which that public interest will be outweighed, other than those specified in the statutory provisions and Rules themselves, "*are likely to be a very small minority*" (see Hesham Ali v SSHD [2016] UKSC 60 at [38], i.e. will be rare - NA (Pakistan) at [33]).
39. As set out at paragraphs [21] and [22] of KO (Nigeria) that exception 1 is "*self-contained*" and "*leaves no room for further balancing*". In other words, a foreign criminal sentenced to less than four years who is able to meet the three requirements in exception 1, is entitled to have his Article 8 appeal allowed. There is no additional obligation to conduct a balancing exercise that attaches little weight to that appellant's private life in the UK or balances private life against the public interest, including the seriousness of the offending.
40. In the alternative, the position is different where an appellant cannot meet Exception 1 or 2. The wide-ranging evaluative exercise required by s. 117C(6) necessarily includes an application of the public interest considerations in s. 117B and a balancing of the public interest, including the seriousness of the offending - see the clarification provided by Lane J in MS
41. In MS the President of the Upper Tribunal, Lane J (sitting in a panel with UTJs Gill and Coker) considered the correct approach to s. 117C(6) with the benefit of the

guidance provided in KO (Nigeria) v SSHD [2018] UKSC 53 and NA (Pakistan) (supra), and said this:

“16. By contrast, the issue of whether "there are very compelling circumstances, over and above those described in Exceptions 1 and 2" is not in any sense a hard-edged question. On the contrary, it calls for a wide-ranging evaluative exercise. As NA (Pakistan) holds, that exercise is required, in the case of all foreign criminals, in order to ensure that Part 5A of the 2002 Act produces, in each such case, a result that is compatible with the United Kingdom's obligations under Article 8 of the ECHR.

17. Viewed in this light, it can readily be seen that the ascertainment of what constitute "very compelling circumstances", such as to defeat the public interest, requires a case-specific analysis of the nature of the public interest. The strength of the public interest, in any particular case, determines the weight that must then be found to lie on the foreign criminal's side of the balance in order for the circumstances to be properly categorised as very compelling. It would, frankly, be remarkable if a person sentenced to four years' imprisonment for fraud had to demonstrate the same circumstances as a person sentenced to life imprisonment for multiple murders.

18. To say this is not to seek to introduce a "balancing exercise" into Exceptions 1 and 2 and the test of "unduly harsh". The words "over and above", as interpreted by Jackson LJ in NA (Pakistan), underscore the difference in the tasks demanded by, on the one hand, section 117C(4) and (5) and, on the other, section 117C(6).

19. Furthermore, as Mr Pilgerstorfer pointed out, the effect of the judgment in NA (Pakistan), in bringing all foreign criminals within the ambit of section 117C(6), means that it is difficult to see how the test of very compelling circumstances can operate differently, depending upon whether the foreign criminal has, or has not, been sentenced to imprisonment of at least 4 years. In order for it to do so, yet further words would have to be assumed to be written into the section, over and above those mandated by the Court of Appeal's judgment.

20. For these reasons, despite Ms Patyna's elegant submissions, we find the effect of section 117C is that a court or tribunal, in determining whether there are very compelling circumstances, as required by subsection (6), must take into account the seriousness of the particular offence for which the foreign criminal was convicted, together with any other relevant public interest considerations. Nothing in KO (Nigeria) demands a contrary conclusion.”

42. The wide-ranging evaluative exercise required under s. 117C(6) clearly includes an application of the principles in the Strasbourg authorities. As NA (Pakistan) holds, the s. 117C(6) exercise is required to ensure compatibility with the UK's obligations under Article 8 of the ECHR. In addition, the judgment in NA (Pakistan), given by Jackson LJ, reads:

“29. ... The phrase used in section 117C (6), in para. 398 of the 2014 ... does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that 'there are very

compelling circumstances, over and above those described in Exceptions 1 and 2'. ... [A] foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.

30. In the case of a serious offender who could point to circumstances in his own case which could be said to correspond to the circumstances described in Exceptions 1 and 2, but where he could only just succeed in such an argument, it would not be possible to describe his situation as involving very compelling circumstances, over and above those described in Exceptions 1 and 2. One might describe that as a bare case of the kind described in Exceptions 1 or 2. On the other hand, if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind in support of an Article 8 claim, going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute 'very compelling circumstances, over and above those described in Exceptions 1 and 2', whether taken by themselves or in conjunction with other factors relevant to application of Article 8."

43. In Maslov (supra), the Grand Chamber said this:

"71. In a case like the present one, where the person to be expelled is a young adult who has not yet founded a family of his own, the relevant criteria are:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- the solidity of social, cultural and family ties with the host country and with the country of destination.

72. The Court would also clarify that the age of the person concerned can play a role when applying some of the above criteria. For instance, when assessing the nature and seriousness of the offences committed by an applicant, it has to be taken into account whether he or she committed them as a juvenile or as an adult (see, for instance, *Moustaquim v. Belgium*, judgment of 18 February 1991, Series A no. 193, p. 19, § 44, and *Radovanovic v. Austria*, no. 42703/98, § 35, 22 April 2004).

73. In turn, when assessing the length of the applicant's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. This tendency is also reflected in various Council of Europe instruments, in particular in Committee of Ministers Recommendations Rec (2001)15 and Rec (2002)4 (see paragraphs 34-35 above).

74. Although Article 8 provides no absolute protection against expulsion for any category of aliens (see *Üner*, cited above, § 55), including those who were

born in the host country or moved there in their early childhood, the Court has already found that regard is to be had to the special situation of aliens who have spent most, if not all, their childhood in the host country, were brought up there and received their education there (see *Üner*, § 58 *in fine*).

75. In short, the Court considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.”

44. Following Rhuppiah (supra), those with anything less than ILR, have a “precarious” immigration status for the purposes of s. 117B(5). It is therefore fully acknowledged on the respondent’s behalf that her immigration status in the UK has been lawful.
45. The FtTJ reached the conclusion that the three requirements for Exception 1 to apply were met. The first two relate to private life in the UK. As I have set out it was not in dispute that the appellant had lawfully resided in the UK for most of her life. Whilst the decision letter did not wholly accept that she was socially and culturally integrated here, it is clear from reading the decision as a whole, that the FtTJ considered the appellant to be socially and culturally integrated to the UK, notwithstanding those short periods of imprisonment and gave sustainable reasons supported by his analysis of her factual circumstances for reaching that view. I have set out his full findings earlier. It is sufficient to note that the respondent has not sought to challenge the FtTJ’s assessment of that in the grounds advanced before the Upper Tribunal.
46. The third requirement in exception 1 focuses upon the appellant’s likely private life in Jamaica and whether there were very significant obstacles to her reintegration to Jamaica. The FtTJ made reference to the relevant legal principles at [80]).
47. The FtTJ addressed the circumstances for this appellant in Jamaica in detail at paragraphs [44]-[55] and [76]-[84].
48. The respondent challenges this aspect of the FtTJ’s decision but does so by reference only to two specific findings made; firstly, that the onus was on the appellant to demonstrate that she could not access treatment for her condition in Jamaica and that the evidence is not “conclusive” that the appellant requires assistance to access and take the necessary treatment. Secondly, that the FtTJ failed to consider whether the aunt or her cousin would be in a position to assist with her reintegration to Jamaica through visits or travelling with the appellant (at [76]). No other issues are identified, and no further argument has been advanced beyond that.
49. It is plain from reading the decision of the FtTJ that he was critical that evidence had not been made available to the Tribunal despite holding case management hearings in order to establish the particular factual circumstances of the appellant.

At [45] the judge observed that neither party had offered him any expert evidence upon the appellant's ability to integrate into Jamaican culture and at [45] the respondent had gone no further than the reasons given for the refusal set out at M10-11 and that the respondent relied upon the existence of mental health inpatient and outpatient facilities, suitably qualified professionals and medication although the respondent offered no source for the statistics quoted and no evidence to support the assertions that were made despite case management over a period of 18 months. It had been argued on behalf of the respondent that the appellant's condition was stable and that she was neither delusional nor psychotic and that she was compliant with her medication. It is also recorded that whilst the presenting officer sought to argue that nothing had changed since that assessment made by the respondent, she reflected on that position having accepted that the content of the medical notes and the safeguarding minute meetings indicated that the picture was far from so simple.

50. The judge accepted that there was mental health treatment system in Jamaica but one that was "severely overstretched" (ss [48]). In reaching that conclusion the FtTJ had analysed the material relied upon by the appellant at [47] which consisted of an extract from the WHO report on the mental health system in Jamaica of 4/8/09 (AB 117]). The judge recorded that whilst it was not a contemporary report," it is the most cogent available evidence; indeed it may be the source of the statistics relied upon by the respondent". The report recorded the dearth of professionals working in the field of publicly funded mental health due to the poor rates of pay. He noted that the lack of social services support and the need to de-institutionalised the mental hospital to free up beds and the fact that 91 - 95% of all admissions were involuntary. In addition, from that report only 1% of persons with mental disability in Jamaica received social welfare benefits. He did not accept the material referred to at [49] relied upon by the appellant. In addition, he placed weight on the letter dated 11 June 2019 and the minutes of the safeguarding strategy meetings held with the appellant in every 2019 in March 2090. He recorded that those minuted remarks were of concern and were "elicited how the appellant has reached the positions she now finds herself in." He concluded at [51] when read together the documents presented a picture of a woman whose ability to cope with managing money, with her own care, fluctuated significantly. He questioned the consistency of her insight and set out relevant issues concerning her vulnerability and that the drug and alcohol abuse clearly continued for the reasons set out at [51]. At paragraphs 53 - 54, the FtTJ further analysed those safeguarding minutes.
51. His conclusions on this issue began at [76]. The FtTJ stated that in his judgement, the appellant circumstances in the event of deportation to Jamaica were very likely to be similar to those thought likely to be faced by the appellant in KE (Nigeria) and that the appellant had no relatives or friends in Jamaica, and there was no realistic prospect of any relative relocating to Jamaica to care for her or to ensure that she took a medication. He found that if she was unable to access or fail to regularly take her medication that her schizoaffective disorder would relapse. He found interruption to her methadone (which had been referred to in his factual

findings at [52]), would be likely to cause to return into crime and that given her vulnerability she would face a real risk of a breach of article 3. He found there was no real prospect of finding employment in Jamaica or being able to support or house herself from any earnings.

52. As to family support, he found at [77] there was no prospect of any family support from family members living in the UK; her parents abandoned her when she was very young and there is no evidence that a wider family would be willing or able to take up that burden again. He considered whether a grant of money might in theory be available to the appellant from the Secretary of State to assist her in her reintegration, but he was not satisfied that the appellant herself would be able to access it on her own behalf. He further consider this issue on the basis of the material before him that even if it were successfully made, then the evidence pointed to the likelihood of her being unable to manage the money that she would be awarded. He found that it would be dissipated by her or for her by those who would seek to exploit her upon arrival. Thus he concluded that she would be perceived as vulnerable and open to exploitation upon arrival (see [77]).
53. He concluded at [84] that the difficulties likely to be phased in Jamaica by the appellant were to be “formidable”.
54. I have set out the FtTJ’s findings and analysis at length because it demonstrates in my judgment that the respondent’s grounds are wholly lacking in merit. The FtTJ had regard to the limited evidence provided on behalf of the respondent and the limited acceptance made by the presenting officer which he set out at paragraph 46, that the assertions made in the decision letter were not adequately reflected in the evidence set out in the medical notes and the safeguarding minutes. He also analysed the evidence on behalf of the appellant, and it is plain when considering paragraph 49 that the judge did not accept all of that evidence. The submissions made on behalf of the respondent offer no real criticism of the FtTJ’s analysis of the evidence and makes no reference to the material that was before the FtTJ. The ground simply assert that there was treatment available for her schizoaffective disorder and that she would have to demonstrate she could not access this treatment.
55. When reading the decision of the FtTJ, it is plain in my judgement that the FtTJ carried out a full analysis of the evidence before him and taking into account the particular circumstances in relation to this appellant. He set out the country materials which made reference to this severely overstretched mental health treatment in Jamaica. However whilst he accepted there was such a treatment system (see 47-49), the FtTJ was entitled to take into account the particular circumstances of this appellant as outlined in the evidence and in particular the safeguarding minutes and the medical notes. He made reference to her vulnerability, her fluctuating compliance with the medication and to limited insight into her illness. Therefore even if the medication and medical facilities were available, overstretched as they were, he had given adequate and sustainable reasons as to why the appellant would not be able to avail herself of it.

Furthermore at [76], his analysis of the circumstances in Jamaica for her should she not be able to access or fail to take a medication set out a dire picture. The only submission made about those findings is that the judge did not “effectively consider” the risks. That is plainly not the position and I am satisfied that the judge did adequately reason his assessment in dealing with the medical evidence.

56. The second point relied upon by the respondent is that the judge failed to consider whether her aunt and cousin are currently caring for the appellant’s child and would be in a position to assist with her reintegration to Jamaica. The circumstances of the appellant were considered with evident care by the FtTJ. He had held a number of case management hearings in order to obtain evidence particularly in relation to the appellant’s son. He recorded at a number of places within the decision that it had been difficult for the evidence he requested to be made available. What is clear from his decision is that she had no relationship with any family members in the United Kingdom. As Ms Brakaj submits, the appellant’s history demonstrates that she was moved to different places within the United Kingdom to live but none involved any placement or indeed any type of relationship with a family member. The judge had no evidence from the family members who were caring for the appellants son (see [58] and [66]) and there was no evidence of any visits made by the appellant to her son since 2016 since her release from prison. It was therefore open to the judge to reach the conclusion that he did at [77] that there was no evidence that a wider family would be willing or able to take up the burden of providing her with any form of support. The respondent’s submission in the grounds/grant of permission was made on the basis that this family contact could provide her with “temporary help” to reintegrate. However the judge also considered at [77] whether other forms of assistance as a temporary measure would be available and reference made to whether she could access a grant but for the reasons given at [77] it was open to him on the evidence and in the light of the particular characteristics of the appellant, that she would not be able to access it on her own behalf and even if she could, the money would be dissipated by her or for her by others seeking her exploitation.
57. Consequently, I am satisfied that the limited grounds advanced before the Upper Tribunal concerning Exception 1 are not made out. That being the case, it is not necessary to consider the arguments advanced that relate to the FtTJ’s alternative finding that there were “very compelling circumstances” because they rely on the same factual issues.
58. However, even if the FtTJ had been in error in his assessment (although that has not been otherwise explained by the respondent in any written or oral submissions), I am further satisfied that the FtTJ applied the correct test. In his analysis he undertook the wide-ranging evaluative exercise required under s117C(6) which clearly included an application of the principles in the Strasbourg authorities. When assessing whether private life contains strong features, it is unlikely that any one factor is determinative, rather private life must be viewed holistically and each case will turn on its facts. This includes private life that was

developed in the UK as a child as on the facts of this appeal. Here, her length of lawful residence was for a period of 24 years from the date of 1993 until the deportation order was made in October 2017. The judge found that between entry to the UK until mid-2014, there was no dispute that she was socially and culturally integrated in the UK having been educated since the age of eight and that any difficulties with social integration prior to her first conviction was a feature of her mental ill-health (see paragraph 43). Whilst he found that the passage of time had not led to the formation of significant friendships, she had established a private life which “lies at the correct end of the continuum to count in her favour” (see [66]). He weighed in the balance her right to British citizenship (at [63]), and his assessment of the circumstances upon return to Jamaica for her (set out at [76]-[77] and at [84], which he described as “formidable”).

59. I would accept that in a s. 117C(6) case, there is a requirement to the seriousness of the particular offence and to balance the strong public interest in support of deportation against the circumstances over and above exceptions 1 and 2 – see MS (supra). I am satisfied that this is precisely what the FtTJ did.
60. The FtTJ set out his analysis the seriousness of the offence at paragraphs [32- 36]. He took into account that there were 30 offences of theft, two offences of drugs possessions and a further 10 offences relating to failures to answer bail and offending was the subject of a suspended sentence on bail. His summary of her offences have not been in dispute and the theft offences could properly be described as shoplifting and petty criminality. As the judge recorded at paragraph 13, the presenting officer on behalf the respondent accepted that individually none of the offences could be described as serious. The judge also recorded at the same paragraph that “it is common ground that this was persistent petty offending, and despite the persistence, the lack of seriousness in the individual offences has consequences for the “sliding scale” of the strength of the public interest in deportation provided for by section 117C(9)”).
61. In his analysis, the FtTJ properly directed himself as to the need to consider all matters collectively to determine whether the public interest in deportation could be displaced. The FtTJ regarded it as sufficient in the particular appeal to measure the seriousness of the offending history by reference to when her offending began, that is in 2014 (see [33]), and that this post-dated by 9 years her diagnosis and significantly post-dated the drug addiction that she was recorded to have had in 2013. The evidence of drug addiction predated the first conviction. That said, the FtTJ made it plain that he did not lose sight of the fact that the drug addiction must necessarily involve the commission of criminal offences, even though they were never the subject of convictions (at [34]).
62. The respondent offered no argument by reference to any legal principles or by any reference to the FtTJ’s decision beyond that in the grounds which related to the availability of treatment for her in Jamaica and whether she would have assistance from family members. In my judgment, the decision of the FtTJ properly assessed and analysed those issues within the legal framework and gave sustainable

reasons as to why he reached the decision he did in a properly analysed, detailed and comprehensive judgement.

Decision

63. The decision of the FtTJ does not involve the making of an error on a point of law. The appeal by the Secretary of State is dismissed and the decision of the FtT shall stand.

Signed Upper Tribunal Judge Reeds

Dated: 12/11/19