**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/01055/2019 (V)

**THE IMMIGRATION ACTS**

**Heard at Field House** *via Skype for Business*
**On 4 August 2020**

**Decision & Reasons Promulgated**
**On 13th August 2020**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**K. L.**
**(ANONYMITY DIRECTION CONFIRMED)**

**Appellant**

**-and-**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**DECISION AND REASONS**

**Representation:**
For the Appellant: Mr. S Vokes, Counsel, instructed by Khan & Co Solicitors.
For the Respondent: Ms. A Everett, Senior Presenting Officer

**Introduction**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Osborne ('the Judge') issued on 6 December 2019 by which the appellant's appeal against the decision to refuse him leave to remain in this country on human rights (article 8) grounds and to deport him to Jamaica was dismissed.

**© CROWN COPYRIGHT 2020**

2. Upper Tribunal Judge Gill granted permission to appeal on all grounds by means of a decision dated 3 February 2020.

## Remote hearing

3. The hearing before me was a Skype for Business video conference hearing during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. I was addressed by the representatives in exactly the same way as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.

4. The parties agreed that all relevant documents were before the Tribunal. The audio and video links remained unbroken between the representatives and the Tribunal throughout the hearing. At the conclusion of the hearing both representatives confirmed that the hearing had been completed fairly.

5. The appellant attended the hearing remotely. No member of the public joined the hearing remotely or attended Field House.

## Anonymity

6. The Judge issued an anonymity direction and no request was made by either party for such direction to be set aside.

7. I observe that no reasons were given by the Judge for the making of the anonymity direction. I am mindful of Guidance Note 2013 No 1 concerned with the issuing of an anonymity direction and I observe that the starting point for consideration of such a direction in this Chamber of the Upper Tribunal, as in all courts and tribunals, is open justice. The principle of open justice is fundamental to the common law. The rationale for this is to protect the rights of the parties and also to maintain public confidence in the administration of justice. Revelation of the identity of the parties is an important part of open justice: *Re: Guardian News & Media Ltd* [2010] UKSC 1; [2010] 2 AC 697.

8. Paragraph 18 of the Guidance Note confirms that the identity of children whether they are appellants or the children of an appellant (or otherwise concerned with the proceedings), will not normally be disclosed nor will their school, the names of their teacher or any social worker or health professional with whom they are concerned, unless there are good reasons in the interests of justice to do so. I note that the step of not naming a wife or children and the attendant step of there being no reference made to where the family reside, the ages of the children or what school they attend, is often a suitable alternative to the making of an anonymity direction.

9. However, I observe that two of the appellant's children are subject to care orders and it is necessary to confirm this state of affairs within this decision

because of the substance of the article 8 appeal. Consequently, the identification of the appellant could well lead to the subsequent identification of children subject to care orders. In such circumstances, this is a matter where the demands of open justice do not outweigh the article 8 rights of those children and so I confirm the anonymity direction, which is detailed at the conclusion of this decision.

## **Background**

10. The appellant is a national of Jamaica and is presently aged 35. He was granted leave to enter the United Kingdom for 6 months as a visitor on 9 September 2002, when aged 18.

11. During the currency of his leave to enter, he was included as a dependent child on his mother's application for indefinite leave to remain. As he was aged over 18 at the date of application, the respondent concluded that he was not a dependent child and refused his application for settlement. A subsequent appeal against this decision was dismissed by Immigration Judge Boyd QC by means of a decision promulgated on 15 July 2005 (TH/01227/2015).

12. An application for leave to remain outside of the Immigration Rules ('the Rules') was submitted on 28 March 2008. The appellant was granted discretionary leave to remain on 20 April 2010, valid for 3 years. A subsequent application to vary leave was successful and the appellant enjoyed leave to remain in this country until 27 January 2017. A further variation of leave application was submitted on 10 January 2017.

*Family*

13. The appellant is in a relationship with a British citizen, K.S. They met in or around 2007 with their relationship commencing in or around 2011. They have six children, the elder two are children of K.S. from a previous relationship: 'K' and 'J'. K was aged 17 at the date of hearing and is now an adult. The younger four children are:'K2', 'K3,' 'R' and 'I'. K2 and K3 are presently subject to care orders and are under the care of a stepsister of K.S. The appellant is the biological father of the four youngest children.

*Criminal convictions*

14. The appellant has 10 criminal convictions concerning 20 offences, with the first conviction occurring in 2004 when he was aged 19. Several convictions relate to theft, assault, criminal damage and possession of class B drugs (cannabis). The convictions were dealt with by non-custodial sentences until December 2013 when he received a 3 months custodial sentence, suspended for 12 months, for depositing controlled waste without an environmental permit contrary to section 33(1)(a) of the Environmental Protection Act 1990. In April 2017 he was imprisoned for 8 weeks for possessing a bladed article in a public place.

15. The appellant was arrested by police officers on 18 February 2017. He was found to be in possession of 50 wraps of class A drugs, namely crack cocaine and heroin. He sought to conceal the items when apprehended.

16. On 17 August 2017 the appellant was convicted by a jury at Bristol Crown Court on 3 counts: (i) possessing a controlled class A drug (heroin) with intent to supply; (ii) possessing a class A drug (crack cocaine) with intent to supply and (iii) a criminal property offence.

17. On 18 August 2017, Mr. Recorder Parroy QC sentenced the appellant to 4 years and 6 months imprisonment for counts (i) and (ii) concurrently and to a concurrent sentence of 12 months' imprisonment for count (iii). For the purposes of sentencing Mr. Recorder Parroy QC identified the appellant as having a significant role in the street supply of drugs:

> 'As a drug user yourself you know perfectly well the pernicious effect that class A drugs have. You were standing on that corner in Hepburn Road with 50 wraps of class A drugs, crack cocaine and heroin, selling to anyone who was prepared to buy and you were arrested and we know about your attempts to conceal what you had been doing and prevent the police from recovering the necessary evidence ...
>
> ... I accept that this is a case where, within the guidelines which I must follow, you had a significant role, being motivated by financial advantage with, obviously, inevitably an understanding of the scale of operation and you were street dealing which makes this a category 3 case ...'

18. The respondent signed a deportation order on 22 December 2018 and on 7 January 2019 she issued a decision refusing the appellant leave to remain in this country on human rights grounds.

**Hearing before the First-tier Tribunal**

19. The appeal came before the Judge sitting at Newport on 25 November 2019. As to the core of the appellant's appeal, the Judge noted, at [20]:

> '20. At the outset of the appeal hearing Miss Wallace [Home Office Presenting Officer] and Mr. Fracyzk [Counsel for the appellant] were good enough to confirm that the core issue to be determined in this appeal is the issue of 'unduly harsh' and 'very compelling circumstances' over and above those described in Exceptions 1 and 2 as set out in section 117C(4) and (5) and mirrored in the Immigration Rules ... In that way Miss Wallace confirmed most helpfully that the appellant has an established family life with [K.S] (his partner), her two natural children [K and J], and the appellant's own four natural children [K2 and K3] (the subject of care orders) and [R and I] (who are also the natural children of [K.S.].'

20. The appellant attended the hearing from detention and was represented. He gave oral evidence as did K.S. The Judge found the appellant to be an unimpressive witness and K.S. to be a plausible and honest witness. However, the Judge accepted in his decision that the appellant 'should not

be categorised as a fundamentally dishonest person', at [27], and acknowledged that he was an enhanced prisoner, at [28].

21. The Judge considered the OASys assessment filed with the Tribunal, observing at [30]:

> '30. Ultimately, the OASys assessment reports that the appellant is a medium risk to the public in the community; a medium risk to known adults in the community; a medium risk to staff in the community but a low risk to children in the community. Whilst he remains in custody, the OASys assessment records that the appellant is a low risk in all those categories. For the most part the OASys report is an impressively compiled document. The author Nadine Lawrance provides cogent reasons for her assessment. At page 41 of the report Ms Lawrance states,
>
> > 'I would assess that his offending behaviour demonstrates that he believes he is justified in offending that meets his needs, e.g. to support himself financially, avoid arrest, seek revenge or he feels aggrieved or treated unfairly. His behaviour also indicates he holds beliefs that support the use of violence to achieve his goals.'
>
> Miss Lawrance confirms that the appellant takes responsibility for his current offences and admits his drug use and dealing. The appellant presented as motivated not to reoffend and complies well with the prison regime. However, Miss Lawrance reported that the appellant does not want to engage with any offence focused interventions and refused to be assessed for TSP [Thinking Skills Programme] or be referred to the Behaviour Change or Better Man Courses. He also refused support with his drug use saying that he is now clean and needs no further input. Having heard the appellant give specific evidence upon these specific issues raised in the OASys assessment, I find that there may well have developed (at least to some extent) a misunderstanding between the appellant and Ms. Lawrance in the preparation of her report. The appellant asserted with some force that he has never refused to engage in any aspect of prison life and has never refused the opportunity of improving himself whilst in prison. He asserted that if he had failed to act appropriately, he would not have remained an enhanced prisoner. The appellant treated this area of potential dispute with mature reflection and deep thought. He genuinely tried to remember whether he had refused any opportunities that were put to him. I was impressed by this part of the appellant's evidence and I take it fully into account in my consideration of the evidence as a whole.

22. The judge was therefore able to make positive findings as to some aspects of the appellant's evidence.

23. Having reminded himself of the Court of Appeal judgments in *N (Kenya) v. Secretary of State for the Home Department* [2004] EWCA Civ 1094; [2004] I.N.L.R. 612 and *OH (Serbia) v. Secretary of State for the Home Department*

[2008] EWCA Civ 694; [2009] I.N.L.R. 109 the Judge observed, at [23] and [24]:

> '23. … Having considered all the evidence I have heard in this appeal, I find that the expression of society's revulsion at the particular crimes committed by this appellant and the building of public confidence in the treatment of foreign citizens who commit serious crimes is a relevant feature of this appeal.
>
> 24. Assessing proportionality in an appeal such as this is an exercise in taking all relevant matters into consideration and appropriately balancing them. It is a most delicate matter. I find most definitely that society is entitled to express its revulsion against the appellant's criminal reoffending.'

24. As to article 8 the judge noted that K2 and K3 are the subject of care orders and reside outside the family home. Neither child has had direct contact with the appellant since his imprisonment and there was no indication that either child had been particularly affected by the absence of their father.

25. The judge considered the position of K.S. at [43]:

> '43. In respect of [K.S.], even upon her own account, given thoughtfully and carefully in her oral evidence, she is just about managing. [K.S.] Has now been without the appellant in the family home for more than two years. She has shown herself to be capable of making sensible judgements in the best interests of the children. There is no challenge to the quality of her parenting. There is no suggestion that [K.S.] is proving to be anything other than a wholly appropriate mother and carer for all of the four children in her care. The consequences of the appellant's deportation will for her be harsh. She will have the responsibility of caring for all four children throughout their minorities. However, she is a capable mother who is managing and is providing the children with commendable stability. The consequences of the appellant's deportation will not be unduly harsh for [K.S.].'

26. As to K, I and J, the Judge found at [42]:

> '42. Insofar as [K, I and J] are concerned, I am far from satisfied on the basis of all the evidence presented in this appeal that the consequences for them of the deportation of the appellant would be unduly harsh. Having said that, in no way do I underestimate the effect upon them of the appellant's deportation to Jamaica. That will be a significant event in their lives. It might properly be described as having 'harsh' consequences for them in that it will present them with significant difficulties in continuing the sort of relationship with the appellant that they have previously enjoyed. Objectively, [I and K] appear to have not been particularly affected by the absence of the appellant, [J] has missed the appellant and his behaviour has become more challenging. That is to be expected. One of the main functions of any parent is to provide stability for any child of the family. I am satisfied that to some extent the appellant, despite his

criminal offending, provided the family home with a degree of stability. He is and was a father figure to whom the children look for stability. In the absence of the appellant, whilst he is in prison/detention, and during his period of deportation, that stability will largely be absent. It is the sort of disruption to family life that families can reasonably be expected to manage, albeit that some members of some families will find it more difficult than others. Additionally, I find that the appellant has by his behaviour also been responsible for introducing into his family home a considerable degree of instability. The appellant's absence from the home during his period of imprisonment is his responsibility. It follows that it is the appellant's behaviour/offending which has led to [J] and [R] suffering emotional/behavioural difficulties. Medium risk of reoffending which the appellant represents, suggests that his presence in the family home will increase the risk of further instability in the future. It is likely that the children will suffer from any such instability.

27. The Judge considered the position of R, at [44]-[45]:

'44. [R] seems to be the person who has been affected and is affected most by the continued absence of the appellant. Due to the sensible and child focused disclosure by [K.S.] whilst discussing [R's] difficulties with the school, supportive counselling has been put in place for [R]. He is benefiting from that. I find that the destabilising effect of the appellant's absence is more profound in the case of [R] than any of the other members of the family. I am satisfied that [K.S.] and all the other children will have suffered and will perhaps in the future suffer effects to their life which can be described (per *MA (Pakistan)* [2016] EWCA Civ 662, [33]) as the commonplace incidents of family life.

45. Missing a parent to the extent that one needs the support of a counsellor should not properly be termed the commonplace incidents of family life. Insofar as [R] is concerned I find the consequences of his father's deportation will have unduly harsh consequences. However, those consequences can, and I am sure with the assistance of [K.S] will be, ameliorated and appropriately treated by the caring services that are available in this country. To that extent, the consequences of the appellant's deportation for [R] do not and will not amount to very compelling circumstances above those set out in Exception 2.

28. The Judge concluded at [50]-[52]

50. Pursuant to the judgment in *Hesham Ali* [2016] UKSC 16 I have conducted the above structured approach to proportionality on the basis of the facts as I have found them to be on the evidence in this particular appeal, the law as established by statute, and case law. Ultimately, I have to decide whether deportation is proportionate in this particular appeal. I have balanced the strength of the public interest in the deportation of the appellant against the impact upon the private and family life not only of the appellant but of the five other present members of his immediate family. Having given due

> weight to the strength of the public interest and the deportation of the appellant in this matter, and having also given due weight to the private and family lives of [K.S.] all members of her household together with [K2 and K3], I find that the article 8 appeal is not sufficiently strong to outweigh the public interest in the appellant's deportation. That is why I find in all the circumstances of this appeal the appellant's appeal must fail.
>
> 51. It was no part of the respondent's case that [K.S.] and the children will accompany the appellant to live with him in Jamaica. At no time did Ms Wallace put to [K.S.] that she could relocate to Jamaica.
>
> 52. The appellant is aged 35 years. He arrived in the UK in September 2002 and so has been in this country for 17 years. He is young enough to adapt to life in this home country. The appellant is a mature adult who has an aptitude for work. His positive attitude to work will stand him in good stead in finding employment wherever he lives. The appellant has provided no documentary evidence to suggest that he would unduly suffer difficulties in obtaining employment in Jamaica. For these and for all the other reasons I have set out above, the respondent's decision to deport the appellant is in all the circumstances proportionate in a democratic society to the legitimate aim to be achieved.

## Grounds of Appeal

29. Mr. Fracyzk, who represented the appellant before the First-tier Tribunal, advanced with his usual clarity two grounds of challenge on issues of law:

    (i) The FtT erred by taking into account the concept of public revulsion in the balancing exercise.

    (ii) The FtT erred by not weighing the seriousness of the criminal offence when assessing as to whether there are very compelling circumstances.

30. As accepted by Mr. Vokes at the oral hearing, the grounds are narrow in scope.

31. By way of her decision to grant permission to appeal, UTJ Gill reasoned:

> 'Judge of the First-tier Tribunal N J Osborne may have erred in taking into account public revulsion at foreign nationals committing offences as increasing the weight of the public interest.
>
> It may well be that the error is not material, given the high threshold applicable in relation to whether there are very compelling circumstances over and above the exceptions. Nevertheless, in view of the positive findings that the judge made in relation to whether deportation would be unduly harsh on the appellant's children, it is at least arguable that the error is material.'

## Decision on Error of Law

32. The first ground of appeal details:

> ‘The FTTJ has taken into account, in the balancing exercise, the concept of public revulsion [FTTD/para23-24]. This amounts to an error because the Supreme Court has rejected this concept as part of the balancing exercise under article 8 ECHR, because it is too emotive (*Hesham Ali* [2016] UKSC 60, para. 23)
>
> Further, it cannot be assumed that the decision would have been the same had the Judge not fallen into this error of law, given that: (1) the Judge concluded that deportation would be unduly harsh (in respect of [R]) [FTTD/para 45]; (2) the Judge made various positive findings in respect of the appellant [FTTD/para 27-28/30]; and (3) the Judge concluded that the decision has caused, and will continue to cause, suffering for the family as a whole [FTTD/para 44].’.

33. On behalf of the respondent Ms. Everett accepted that the Judge had erred in placing weight upon public revulsion in the proportionality balancing exercise. However, she submitted that the error was not material.

34. The Judge’s statement at [23] as to the applicable legal principles, namely as to the ‘expression of society’s revulsion’, may on initial consideration be considered to offend against the judgment of Lord Kerr in *Hesham Ali v. Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 W.L.R. 4799, at [168]:

> ‘168. Expression of societal revulsion, the third of the factors applied in *OH (Serbia)*, should no longer be seen as a component of the public interest in deportation. It is not rationally connected to, nor does it serve, the aim of preventing crime and disorder. Societal disapproval of any form of criminal offending should be expressed through the imposition of an appropriate penalty. There is no rational basis for expressing additional revulsion on account of the nationality of the offender, and indeed to do so would be contrary to the spirit of the Convention.’

35. In considering as to whether such offence, or error of law, arises I observe Lord Wilson’s partial retraction in *Hesham Ali,* at [70], of previous comments he made in the Court of Appeal case of *OH (Serbia)* as to public revulsion and the deterrent effect of deportation:

> ‘70. In the Court of Appeal in OH (Serbia) v Secretary of State for the Home Department [2008] EWCA Civ 694, [2009] INLR 109, I stated, at para 15(c):
>
> > "A further important facet [of the public interest in deportation] is the role of a deportation order as an expression of society's revulsion at serious crimes and in building public confidence in the treatment of foreign citizens who have committed serious crimes."
>
> By his counsel, the appellant mounts a sustained objection to my statement and I am constrained to agree with part of it. I regret

> my reference there to society's revulsion at serious crimes and I accept Lord Kerr's criticism of it at para 168 below. Society's undoubted revulsion at certain crimes is, on reflection, too emotive a concept to figure in this analysis. But I maintain that I was entitled to refer to the importance of public confidence in our determination of these issues. I believe that we should be sensitive to the public concern in the UK about the facility for a foreign criminal's rights under article 8 to preclude his deportation. Even though, for the purposes of the present appeal, we must ignore section 19 of the Immigration Act 2014 , the depth of public concern had earlier been made manifest not only in section 32(4) of the 2007 Act but also in the amendments to the immigration rules introduced on 9 July 2012 to which I will turn in the next paragraph. Laws serve society more effectively if they carry public support. Unless it lacks rational foundation (in which case the courts should not pander to it), the very fact of public concern about an area of the law, subjective though that is, can in my view add to a court's objective analysis of where the public interest lies: in this context it can strengthen the case for concluding that interference with a person's rights under article 8 by reason of his deportation is justified by a pressing social need.'

36. I observe that at [23] of his decision the Judge identifies public revulsion as being considered in his proportionality assessment together with 'the building of public confidence in the treatment of foreign citizens who commit serious crimes'. He refers to them both as 'a relevant factor', rather than 'relevant factors', which is suggestive of the Judge having sought to adopt the approach of Lord Wilson, though in a manner that could fairly be considered clumsy. However, the Judge then proceeds to refer to public revulsion again, without more, at [24]. I am satisfied that the reference to 'public revulsion' has no part to play in the proportionality exercise to be undertaken in a deportation appeal, but as observed by UTJ Gill when granting the appellant permission to appeal, the materiality of the error has to be considered consequent to the high threshold applicable in relation to whether there are very compelling circumstances over and above the exceptions established by section 117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'). I note Law LJ's dicta in *SS (Nigeria) v. Secretary of State for the Home Department* [2013] EWCA Civ 550; [2014] 1 W.L.R. 998, at [54], that the public interest in deportation can only be outweighed 'by a very strong claim indeed'. In the circumstances of this matter, the incorporation of a public revulsion consideration into the proportionality exercise without more is not by itself capable of establishing a material error of law in circumstances where several other relevant factors, both positive and adverse to the appellant, have also been placed into the judicial consideration.

37. I am aided in such assessment by Mr Vokes acceptance before me that ground 1 alone was insufficient to establish a material error of law and that ground 2 should be read in conjunction as it established the required materiality. The core to the challenge advanced by ground 2 is identified within the grounds of appeal as:

> 'The FTTJ failed to take into account material factors when considering whether there were very compelling circumstances beyond undue harshness [FTTD/para 45]. The Judge has not weighed the seriousness of the offence, for which the appellant was convicted, as part of the test whether there are very compelling circumstances (which is a requirement as per *MS (s.117C(6): 'very compelling circumstances") Philippines* [2019] UKUT 122, para 20)
>
> Further, this is a ground that cannot be rejected, on immateriality, on the basis that 'on any view it is obvious that distribution of class A drugs is a serious matter' (should such a point be taken). The issue of very compelling circumstances requires an assessment of fact and degree given the array of interest factors at stake, and that is especially so when the Judge has accepted that deportation would be unduly harsh in respect of a young child convicted, as part of the test of whether there are very compelling circumstances (which is a requirement, as per *MS (s.117C(6): 'very compelling circumstances") Philippines* [2019] UKUT 122, para 20).'

38. Mr. Vokes initially sought to advance a separate challenge, namely that the Judge erred in his assessment as to both insurmountable obstacles and as to the appellant's removal causing further instability within the family unit but upon being reminded by the Tribunal as to the operation of procedural rigour identified by Singh LJ in *R (Talpada) v. Secretary of State for the Home Department* [2018] EWCA Civ 841, at [67]-[69], he withdrew these submissions acknowledging that ground 2 was narrow in scope and did not encompass the argument he wished to advance.

39. The Tribunal confirmed in *MS (s.117C(6): 'very compelling circumstances") Philippines* [2019] UKUT 122 that in determining pursuant to section 117C(6) of the 2002 Act whether there are very compelling circumstances over and above those described in Exceptions 1 and 2 in subsections (4) and (5), such as to outweigh the public interest in the deportation of a foreign criminal, the Tribunal must take into account, together with any other relevant public interest considerations, the seriousness of the particular offence of which the foreign criminal was convicted; not merely whether the foreign criminal was or was not sentenced to imprisonment for more than 4 years.

40. Section 117C(6) calls for a wide-ranging exercise. The effect of the Court of Appeal judgment in *NA (Pakistan) v. Secretary of State for the Home Department* [2016] EWCA Civ 662; [2017] 1 W.L.R. 207 is that the test of 'very compelling circumstances', which applies to all foreign criminals regardless as to sentence, does not operate differently between those sentenced to under 4 years imprisonment and those sentenced to at least 4 years. Consequently, as confirmed in *MS*, at [17], the ascertaining of what constitutes 'very compelling circumstances', such as to defeat the public interest, requires a case-specific analysis of the nature of the public interest:

> "17. … 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."

41. As observed above, the Judge noted at [20] of his decision the parties' agreement that ultimately the issue before him was whether very compelling circumstances arose so as to outweigh the public interest in the appellant's deportation. I am satisfied that the Judge assessed the seriousness of the appellant's offending at [25]; indeed, he expressly states that he undertook the task. Such consideration was sufficient for the purposes of section 117C(6). In such circumstances ground 2, which is founded upon a failure to weigh the seriousness of the offence, has no merit.

42. In any event, even if the Judge had erred in the manner asserted by the appellant, the grounds are silent as what factors should properly have been drawn in favour of the appellant as to the assessment of the seriousness of the offence in the proportionality exercise. When asked to identify specific factors Mr. Vokes accepted that he was unable to do so. Considering the matter in the round, the argument advanced before the Judge, as detailed at [15(iii)] of Counsel's skeleton argument dated 24 November 2019, is that though the distribution of class A drugs was accepted to be a significant offence, it did not itself involve violence or sexual offending. However, when considering the weight to be given to seriousness, I observe that there is no challenge to the finding that the appellant chose to deal in drugs for profit. The sentencing judge identified the appellant as having a significant role in the street dealing of drugs, possessing an understanding of the scale of the operation in which he was involved and being in possession of 50 wraps of class A drugs when arrested. This was an offence which by its nature has an adverse impact upon society, particularly upon vulnerable persons. It is a serious offence in which the appellant knowingly engaged. It is further noted that the appellant's witness statement dated 4 July 2019 provides no detail as to why the appellant undertook such offending. Nor did he seek to explain such activity in his oral evidence. He does not assert duress or very recent involvement in drug supply. I am satisfied that no reasonable judge considering the facts arising in this matter could conclude that the offence was not serious and so would enjoy little or no adverse weight in the proportionality exercise. In such circumstances, if the Judge had erred in the manner asserted by ground 2, such error would not be material.

43. Consequently, though the Judge did erroneously place weight upon public revulsion it was not a material error when considered in conjunction with the other findings made in this matter which are of such nature that no reasonable judge could find that very compelling circumstances arise under section 117C(6) of the 2002 Act. The appeal is therefore dismissed.

## Notice of Decision

44. The decision of the First-tier Tribunal, dated 6 December 2019, did not involve the making of a material error of law and is therefore upheld. The appellant's appeal is dismissed.

## Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

45. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant and members of his family. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D O'Callaghan

**Upper Tribunal Judge O'Callaghan**

Date: 7 August 2020