Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12100/2019 (V)

THE IMMIGRATION ACTS

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

Decision & Reasons Promulgated
On 13 August 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMMED PASHA
(ANONYMITY DIRECTION NOT MADE)

Respondent

DECISION AND REASONS

Representation:
For the Appellant: Ms. A Everett, Senior Presenting Officer
For the Respondent: Mr. Z Malik, Counsel, instructed by Advice Wise Solicitors

Introduction

1. This is an appeal by the Secretary of State. The respondent, whom I shall refer to as 'the claimant', has previously been successful on appeal before the First-tier Tribunal in challenging a decision by the Secretary of State to refuse to grant him settlement under the Immigration Rules ('the Rules') on the grounds of 10 years continuous residence.

2. The decision of Judge of the First-tier Tribunal Shore ('the Judge') was sent to the parties on 20 September 2019.

3. By a decision dated 28 January 2020 Judge of the First-tier Tribunal O'Brien granted the Secretary of State permission to appeal on all grounds.

Remote hearing

4. 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.

5. The parties agreed that all relevant documents were before the Tribunal. Mr. Malik relied upon written submissions dated 20 May 2020. 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.

6. The claimant did not remotely attend the hearing. No member of the public joined the hearing remotely or attended Field House.

Anonymity

7. The Judge did not issue an anonymity direction and no request was made by either party for such direction to be issued.

Background

8. The claimant is a national of India who is now aged 33. He entered this country in February 2008 with entry clearance as a student, valid until 30 September 2009. His leave was subsequently varied to leave to remain as a Tier 1 (Post Study Worker) Migrant and then as a Tier 1 (General) Migrant with the final variation of leave expiring on 3 July 2016.

9. He made an in-time application for indefinite leave to remain as a Tier 1 (General) Migrant on 22 June 2016 and prior to its consideration by the Secretary of State he varied his application on 17 January 2008 to one seeking indefinite leave to remain on the grounds of completing 10 years' continuous residence in this country under paragraph 276C of the Rules.

10. The Secretary of State refused the application by means of a decision letter dated 3 July 2019, concluding that the claimant did not meet the requirements of paragraph 276B(ii) and 276B(iii) of the Rules, with reference to paragraph 322(5). The Secretary of State observed, *inter alia:*

> 'When assessing your application of 17 January 2018 for indefinite leave to remain on the grounds of long residence, consideration has been given to your previous immigration history as a Tier 1 (General) Migrant and the information you provided to HMRC concerning your income and earnings in the United Kingdom.
>
> In order to assess the Tier 1 (General) indefinite leave to remain application we wrote to you on 23 March 2017 asking [you] to complete a questionnaire and provide evidence to support your earnings claimed.
>
> You submitted documents for our consideration on 19 April 2017. These documents have been considered by our department and it was concluded that you do not meet the requirements of paragraph 322(5) the Immigration Rules as detailed below.'

11. The Secretary of State noted that when the claimant applied for leave to remain in March 2011, he claimed 20 points for total earnings of £35,225.27. The Secretary of State further noted:

> 'When reviewed, it was apparent to UKVI that the earnings claimed from self-employment you had declared to HMRC for the tax year(s) 2009/10 and 2010/11 were significantly different to the information you had declared to UKVI.
>
> On 29 December 2011 you had declared to HMRC self-employed net profit earnings of £7,239.00 in the tax year 2010-11. This is £8,691.00 [less] than the figure declared to UKVI.
>
> Within the evidence you provided in support of your application you have demonstrated that there were errors in the tax returns you have previously submitted to HMRC for the year(s) 2010/11. You have also stated that you have contacted HMRC [on] 24 May 2016 to resolve these errors and that you now have an updated tax liability figure from HMRC.
>
> The updated tax returns to HMRC show:
>
> - Tax year 2010/11: you have now declared a net profit of £15,930.00 for your self-employment.
>
> Your amended tax returns to HMRC are acknowledged and it recognised you have a revised tax liability figure from HMRC.'

12. Consideration was given by the Secretary of State as to the explanation provided by the claimant as to the discrepancy:

> 'You have shown in the evidence submitted that errors were made on your original HMRC tax returns in calculating your expenses, profit and loss and turnover.
>
> You have stated that the errors were because of "lack of proper information (as was my first attempt at doing so)".
>
> In addition you have stated:

"Once I realised my error, I called HMRC and under their guidance, corrected quickly and started paying the difference in tax and penalties."

Consideration has been given to the explanation provided. However, it is clear that when applying for leave to remain you were able to confirm the level of profit you had made from self-employment you had received. It is not clear why, when submitting your tax returns over the same period, you would declare a different amount to HMRC. It is your responsibility to ensure that the requisite tax is paid on your self-employed [earnings] and it is questionable that you did not identify the substantial discrepancies at the time of submitting the returns. Your explanation for these errors is therefore not accepted.

Therefore, the Secretary of State is satisfied that the self-employed earnings you had declared in your previous Tier 1 (General) applications are not consistent with your declarations made to HMRC in the relevant tax period. Had you declared earnings which were consistent with your declarations HMRC, you would have has (sic) overall earnings of £26,534.27 and scored 5 points instead of 20 points for your earnings reading to an overall score of 65 points. You therefore would not have scored sufficient points under the Immigration Rules for leave to remain to be granted.

Your actions in declaring different amounts of income to HMRC and UKVI lead to the conclusion that in light of your character and conduct it would be undesirable to allow you to remain in the United Kingdom. your character and conduct with regard to declaring your income would lead to a refusal of your application under General Grounds Paragraph 322(5) of the Immigration Rules. Whilst a refusal under Paragraph 322(5) of the Immigration Rules is not a mandatory decision, it is considered your actions in declaring different income to HMRC and UKVI would mean that a refusal under Paragraph 322(5) is appropriate.

The Secretary of State has considered whether the particular circumstances of your case merit the exercise of discretion. Having considered those circumstances the Secretary of State is satisfied that the refusal remains appropriate and is not prepared to exercise discretion in your favour."

Hearing Before the FtT

13. The appeal came before the Judge sitting at Taylor House on 17 September 2019. The claimant attended the hearing and gave oral evidence. The claimant's evidence is recorded, *inter alia*, at [18], [22] of the decision:

> '18. He engaged Azza Consultancy Services to make his Tier 1 application. The Home Office acknowledgement dated 23 May 2011 of his application addressed to that company was produced at page A28. He provided details of all his employed and self-employed earnings to the company and they submitted the application. The Home Office accepted his earnings as stated (which included self-employed earnings of £15,930.00 for the period 12 August 2010 to 28 February 2011). His application was granted on 23 May 2011.

…

22. The appellant says that the stress of his work and the stress caused by his mother's ill health and his sister's failing marriage made him very stressed. He says he could not make a sane decision and decided to ask a friend with experience of business in India to help him with his tax return. He says that he and his friend did not calculate the tax due on his self-employed earnings correctly because they wrongly included personal expenses such as rent, utilities and so on as business expenses. That is why he reported his net income as only £7,239.00 for 2010/2011.'

14. The Judge concluded that the Secretary of State had not relied upon dishonesty when refusing the settlement application, at [62]-[63]:

'62. Putting to one side, for the moment, the explanation of his actions by the appellant, I make a fundamental finding of fact in this case that the decision maker made no finding that the appellant had acted dishonestly in the reasons for refusal. The reasons speak of 'significant differences' in the appellant's income as declared in his Tier 1 application and self-assessment for HMRC. The reasons also speak of inconsistency and state that 'Your actions in declaring different amounts of income to HMRC and UKVI lead to the conclusion that in the light of your character and conduct, it would be undesirable to allow you to remain in the United Kingdom.

63. In the absence of a finding of dishonesty by the respondent, the authority of *Balajigari* leads me to the inevitable conclusion that the respondent has failed to meet the burden of proof on her to justify refusal under paragraph 322(5).'

15. In the alternative, at [64]-[65], the Judge reasoned that the claimant had been given inadequate opportunity to present his evidence as to events before the Secretary of State made her decision because of the required use of a questionnaire:

'64. I also find that there was no evidence before me that the appellant had been told that the Secretary of State had a suspicion that the appellant had acted dishonestly and he was not given an opportunity to respond, both as regards the conduct itself and as regards any other reasons relied upon as regards 'undesirability' and the exercise of the second-stage assessment. The appellant was simply sent a questionnaire which gave no opportunity which gave no opportunity to comment on any other reasons relied on as regards 'undesirability' and the exercise of the second-stage assessment. It follows that in the absence of such a response being offered, the respondent must have failed to take a non-existent response into account before drawing the conclusion of reprehensible conduct.

65. For these reasons alone, I find that the appellant's appeal must succeed, as the respondent concedes that he has been lawfully resident in the United Kingdom (apart for the misconduct alleged) for more than ten years.'

16. Having decided as to the procedural impropriety of the Secretary of State only providing the appellant with an inadequate questionnaire to respond to concerns the Judge allowed the appeal.

17. In the alternative, having found that the claimant succeeded on his appeal on article 8 grounds under the Rules, the Judge proceeded to consider the claimant's article 8 rights outside of the Rules. It is presumed that this course was taken as an alternative, though no express confirmation as to such approach is identified within the decision. Having considered section 117B of the Nationality, Immigration and Asylum Act 2002, the Judge concluded at [74]:

> '74. I find that the decision appealed against would cause the United Kingdom to be in breach of its obligations under article 8 of the ECHR because the appellant has shown exceptional circumstances as set out in my findings above, and refusal would result in unjustifiably harsh consequences for the appellant such that refusal of his application would not be proportionate.'

Grounds of Appeal

18. The Secretary of State filed grounds of appeal, which are detailed in full below, raising three issues (identified at paragraphs 1-3, 4-5 and 6):

> 'Making a material misdirection in law
>
> 1. The Tribunal found that the SSHD failed to meet the burden of proof on her to justify refusal under paragraph 322(5) (paragraph 63 of the determination) and the SSHD had committed a procedural impropriety by not giving the appellant the opportunity to respond to the allegation of dishonesty (paragraph 64 of the determination). It is respectfully submitted that using this approach the Tribunal misdirected itself in law and therefore reached unsustainable findings.
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> 2. The Tribunal's consideration of the 322(5) decision is based upon *Balajigari and Others v. Secretary of State for the Home Department* [2019] EWCA Civ 673. However, it is submitted that the Tribunal has applied *Baljigari* incorrectly.
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> 3. At paragraph 62 of the determination the Tribunal found that the SSHD had made no clear findings of dishonesty in this case. However, it is submitted that it is clear from paragraph 37 of *Baljigari* that the very use of 322(5) implies such a finding. Indeed, it is submitted that such an approach is self-evident. Furthermore, it is submitted that paragraph 37 of *Balajigari* sanctions the use of 322(5):
>
> > '*We would accept that a matter of principle dishonest conduct will not always and in every case reach a sufficient level of seriousness, but in the context of an earnings discrepancy case it is very hard to see how the deliberate and dishonest submission of false earnings, whether to HMRC or to the Home Office, would not do so.*'
>
> It is therefore submitted that the Tribunal's finding is not made out.
>
> 4. With regard to the point on procedural fairness, the appellant's submission was that the Home Office guidance on Tier 1 cases had not been followed (paragraph 50 of the determination). However, the decision under appeal on this case was the decision under paragraph 276B, not the Tier 1 decision.

Nevertheless, the Tribunal followed this approach and found that the appellant had been deprived of the opportunity to respond to the 322(5) allegation. It is submitted that this approach is incorrect.

5. In *Balajigari* the Court of Appeal found that there was a procedural unfairness in the way that the decisions were made because the applicants were not given a fair opportunity to refute the allegations of deception or dishonesty raised under the general grounds for refusal (paragraph 105). However, that was for Tier 1 judicial review cases. This finding does not apply to statutory appeals because if an applicant is unhappy with the decision on their claim they can appeal that decision and provide additional new evidence. Therefore, this procedural unfairness is not present in the statutory appeals system and for the Tribunal is therefore clearly wrong in this case.

6. Finally, at paragraph 74 the Tribunal found that the appellant's exceptional circumstances and the unjustifiably harsh consequences that would arise from removal make it disproportionate under article 8 to remove the appellant. It is respectfully submitted it is not clear what findings the Tribunal refers to here. Furthermore, the proportionality assessment quite clearly does not take account of the points above which indicate that the appellant's dishonesty is a factor to be taken into account.'

19. In granting permission to appeal JFtT O'Brien reasoned, *inter alia:*

> '3. It is arguable that, in finding that the respondent had not satisfied her burden of proof because the refusal letter did not contain an express allegation of dishonesty, the Judge erred by failing to consider whether there was evidence from which he or she could conclude that the appellant had been dishonest. The Judge, in taking into account the respondent's failure to give the appellant notice of her suspicions, arguably erred by failing to consider whether he had provided an innocent explanation at the hearing.'

Decision on Error of Law

Ground 1 – has the Secretary of State alleged dishonesty?

20. This is an 'earnings discrepancy' case in which the claimant has appealed against the refusal of indefinite leave to remain based on ten years' lawful residence under paragraph 276B of the Rules. The claimant contends that he has accumulated ten years' lawful residence under the points-based system, primarily as a Tier 1 (General) Migrant, having obtained various extensions of leave. The applications for the extensions as a Tier 1 (General) Migrant required the claimant to declare a particular level of earnings. As detailed above the reason for the refusal is not that the claimant did not meet the basic requirements of paragraph 276B, but on one of the 'General Grounds for Refusal', paragraph 322(5):

> *'Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused*
>
> ...

> 5. the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security.'

21. The Tribunal observes the conclusion of the Judge at [62]-[63] that the Secretary of State had not relied upon the claimant being dishonest when relying upon paragraph 322(5) of the Rules. The Judge expressly found at [62] that the Secretary of State had 'made no finding that the appellant had acted dishonestly', with her reasons speaking only of 'significant differences' in declared income. The finding made was that the refusal of the application, with reference to paragraph 322(5), was not founded upon 'dishonesty' and so the Secretary of State was unable to meet the burden of proof placed upon her to establish dishonesty.

22. The Judge detailed Mr. Turner's closing submissions at [50]-[59] of his decision and the Tribunal observes that there is no express reference to Mr. Turner arguing that the Secretary of State had not expressly concluded that the claimant was dishonest in her decision letter. The Tribunal has enjoyed the benefit of considering the record of proceedings and read relevant passages to the representatives at the hearing. It is observed that there is no express reference in the record to Mr. Turner having raised this argument on behalf of the appellant before the Judge. Further, the record of proceedings is consistent with the Judge's note at [15] of his decision that rather than assert from the outset that the decision letter was fatally flawed by not expressly addressing dishonesty, Mr. Turner sought to address the relevant burden and standard of proof in a dishonesty matter:

> '15. At the start of the hearing, I discussed the issues in the case with the representatives. Mr. Turner submitted that it was for the Secretary of State to establish dishonesty and referred me to the decision of the Court of Appeal in *Balajigari and Others* [2019] EWCA Civ 673. He suggested that, because of the implications of a finding of dishonesty, such an allegation requires a standard of proof 'at the higher end of the civil scale' ...

23. During her submissions before the Judge Ms. Lambert, representing the Secretary of State, expressly relied upon the decision letter and to the appellant's 'straightforward deceit'. She observes that the claimant provided 'no innocent explanation', is 'evasive' and 'defaults to blaming friends'. At no point is she recorded as addressing the purported failure by the Secretary of State to expressly declare the claimant to have exercised dishonesty in her decision letter.

24. In such circumstances, the Tribunal is satisfied that at the very least the Secretary of State was not placed on notice as to this issue before the conclusion of Ms. Lambert's submissions and is satisfied, on the balance of probabilities, that Mr. Turner did not actually raise this issue at the hearing. Consequently, the Judge's findings at [62]-[63] were made without the benefit of legal argument before him and so the approach adopted is erroneous in law. In *JK (Conduct of Hearing) Côte d'Ivoire* [2004] UKIAT 00061 Ouseley J, sitting as the President of the Immigration Appeal Tribunal, confirmed the position to be adopted by the judiciary, at [43]:

> 43. … What is important, whether or not they are raised by the other party is that the [judge] should not develop a different case from that being present by the other party or pursue his or her own theory of the case.'

25. Mr. Malik acknowledged the contents of the record of proceedings but submitted that such error was not material. He asserted that there can be no implied finding or allegation of dishonesty in this case and the Secretary of State must find and allege dishonesty 'in terms'. He submitted that the Court of Appeal confirmed at [211] and [212] of its judgment in *Balajigari* that there must be 'a positive finding of dishonesty' in the decision letter and that it is 'important that it be quite clear that such a finding has indeed been made'. Mr. Malik asserted that any doubt as to the matter goes to the claimant and in this matter the Judge, in the absence of any finding or allegation of dishonesty, was 'obliged' to allow the claimant's appeal.

26. Both representatives agreed that as to 'materiality' in circumstances where the Judge considered an argument not advanced before him, the Tribunal was to be satisfied that Mr. Malik's argument was a 'knock-out blow', namely that no reasonable Judge could come to any other conclusion.

27. In *Balajigari*, at [4]-[6], the Court of Appeal records the Secretary of State's practice as to her reliance upon paragraph 322(5) of the Rules in earnings discrepancy cases. Underhill LJ noted at [6]:

> 6. It is the Secretary of State's case that his policy and practice is only to rely on *Balajigari* paragraph 322 (5) where he believes that an earnings discrepancy is the result of deliberate misrepresentation either to HMRC or to the Home Office, in other words only where it is the result of dishonesty. But a large number of migrants have claimed that in their cases errors which were the result only of carelessness or ignorance have wrongly been treated as dishonest, and that the Home Office has been too ready to find dishonesty without an adequate evidential basis or a fair procedure ?."

28. In the decision letter the Secretary of State refers to 'considerable discrepancies', 'significantly different' and 'not consistent'. Upon initial consideration, there may be merit to Mr. Malik's submission, but I note Ms. Everett's perceptive observation that the claimant's legal representatives, and the claimant himself, prepared for the appeal on the basis that dishonesty was alleged, and Mr. Turner did not seek to argue otherwise at the hearing, both as a preliminary observation or in submissions. Mr. Malik conceded that in considering as to whether a 'knock-out blow' was established the Tribunal was entitled to take into account the fact the appellant's counsel before the First-tier Tribunal had not considered that this issue arose.

29. In the circumstances, I am satisfied that the claimant is not capable of establishing, in circumstances where there was no argument on the issue before the Judge, that he has a knock-out blow such that the Judge's error was not material and the decision should stand. Whilst acknowledging that the Secretary of State did not expressly refer to dishonesty within her decision letter there is sufficient detail upon which the Secretary of State can reasonably seek to persuade a judge that the concerns of the

Court of Appeal in *Balajigari*, at [211]-[212], are not replicated in this matter. I further note [213] of the Court of Appeal judgment and observe that I did not hear full argument on the point at the error of law hearing. Consequently, I am satisfied that the Judge made a material error of law.

Ground 2 – Failure to give appellant notice of concerns

30. As an alternative to his conclusion that the Secretary of State had not found that the claimant had exercised dishonesty, the Judge found that the claimant had not been given an opportunity to respond to the Secretary of State's concerns as the questionnaire was an inadequate means of addressing such concerns. The Judge concluded at [64]:

> 64. … The appellant was simply sent a questionnaire which gave no opportunity which gave no opportunity to comment on any other reasons relied on as regards 'undesirability' and the exercise of the second-stage assessment. It follows that in the absence of such a response being offered, the respondent must have failed to take a non-existent response into account before drawing the conclusion of reprehensible conduct.

31. Mr. Malik accepted on behalf of the claimant that the Judge's reasoning on this issue was defective, noting that it was contrary to two reported decisions of this Tribunal concerned with the appeal process correcting the defects of justice identified by the Court of Appeal in *Balajigari*.

32. Firstly, in *R (Mansoor) v. Secretary of State for the Home Department (Balajigari - effect of judge's decision)* [2020] UKUT 00126 (IAC) the Tribunal confirmed that the process required by the Court of Appeal in *Balajigari* can be carried out by the Tribunal in effect applying that guidance, such that the Secretary of State's failure is rendered immaterial.

33. The Tribunal has further confirmed in *Ashfaq (Balajigari: appeals)* [2020] UKUT 00226 (IAC), at [10]-[12]:

> 10. In these appeals Mr Govan for the Secretary of State argues that the appeals process itself gives an opportunity to put all relevant facts before a judge, and that the procedural difficulties faced by the Secretary of State in the Balajigari cases do not arise. Subject to one important reservation, I agree. The landscape of appeal is very different from that of judicial review. The appeal is for most purposes limited to human rights grounds, but there needs to be an examination of whether the appellant ought to have succeeded under the Rules. Thus there is room for a factual investigation of the appellant's acts and motives and whether paragraph 322(5) was applicable to him. There is also a full opportunity for evidence to be adduced and considered, whether or not it has been deployed previously, on both the underlying events and any present factors going to article 8. What is more, there is no free-standing ground of appeal that the decision was not in accordance with the law.
>
> 11. These points make it clear that where there is an appealable decision, the role of the Tribunal will be to undertake an examination of the evidence and

> decide whether the refusal should be upheld or reversed, not on the grounds applicable in judicial review, but on determination of all the relevant facts. The appeal process fills both the gaps identified by the Court in Balajigari - the procedural fairness gap because the appeal gives the relevant opportunity, and the article 8 gap because the appeal encompasses such human rights issues as are raised. By the end of an appeal process the appellant has had every opportunity to put his case.
>
> 12. I note, of course, what the Court said in Balajigari at paragraphs [59]-[61], that the opportunity to make submissions only after a decision has been made will usually be insufficient to meet the requirements of procedural fairness. But, for a number of reasons, I do not think that those observations can be taken as applying to appeals of this sort. First, they were specifically made in the context of judicial review, by reference to leading authorities on judicial review and procedural fairness, and including observations about the limited role of statutory administrative review, which is available only where there is no right of appeal. Secondly, it is not easy to detect any reservations of this sort in the Court's consideration of the possibility of affording a right of appeal in part C of its decision at [95]-[106], where the scope of its observations would appear to be severely limited if the underlying decision on the merits were to be considered as potentially unlawful even within the context of an appeal. Thirdly, and most important, although judicial review is a remedy lying outside any specific statutory regime, the statutory regime itself includes the right of appeal. Where an appealable decision is made the entire process, including the notification of the decision to the individual, envisages the possibility of the correction of the decision by an appeal. In this sense, the decision is not finally 'taken' until any appeal is over; and indeed, judicial review can have virtually no role until an appellant has exhausted his right to have the decision set aside on appeal.

34. The identified exception at [13] of the decision in *Ashfaq*, namely where the was a judicial restriction imposed as to a presumption of dishonesty, does not arise in this matter.

35. Consequently, the failure of the Judge to incorporate into his consideration the ability of the First-tier Tribunal to remedy any failure, if such failure arose, to provide the claimant with the means of explaining the circumstances results in there being a material error of law.

Ground 3 – article 8 outside of the Rules, failure to identify 'exceptional circumstances'

36. Mr. Malik accepted on behalf of the claimant that if the Judge materially erred as to his considerations subjected to examination under grounds 1 and 2, his short conclusions as to the claimant's article 8 rights outside of the Rules could not stand because the exceptional circumstances found to exist were based upon flawed reasoning. The Tribunal confirms that Mr. Malik was correct to make this concession.

Remaking the Decision

37. Mr. Malik requested that this matter be remitted to the First-tier Tribunal. Ms. Everett confirmed the respondent to be neutral on the issue. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. I am satisfied that the effect of the material errors identified above has been to deprive both parties of a fair hearing before the First-tier Tribunal and so it would be just to remit the matter to the First-tier Tribunal: paragraph 7.2(a) of the Joint Practice Statement.

Notice of Decision

38. The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 20 September 2019 pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

39. The matter is remitted to the First-tier Tribunal for a fresh hearing before any judge other than Judge of the First-tier Tribunal Shore.

40. No findings of fact are preserved.

Signed: *D. O'Callaghan*
Upper Tribunal Judge O'Callaghan
Dated: 7 August 2020