



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04964/2018 (V)

THE IMMIGRATION ACTS

Heard at Field House *via Skype for Business*
On 21 December 2020

Decision & Reasons Promulgated
On 07 January 2021

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

I M
(ANONYMITY DIRECTION CONFIRMED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. D Revill, Counsel, instructed by Manchanda & Co

For the Respondent: Ms. S Cunha, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of Bangladesh and is aged 59. He appeals against a decision of the respondent not to grant him leave to remain on human rights (article 8) grounds. The respondent's decision is dated 9 February 2018.
2. The respondent intends to deport the appellant consequent to a criminal conviction.
3. The First-tier Tribunal (JFtT Herlihy) allowed the appellant's appeal by a decision dated 21 August 2019. The respondent was granted permission to appeal by JFtT Grant-Hutchison on 19 November 2019. By a decision dated 19 March 2020 this

Tribunal (UTJ Kekic) allowed the appeal to the extent that the decision of the First-tier Tribunal was set aside and it would be remade by this Tribunal. UTJ Kekic preserved several identified findings of fact made by JFtT Herlihy, which are detailed below.

Anonymity

4. The First-tier Tribunal issued an anonymity direction, though no reasons were provided for making it. UTJ Kekic did not set aside the direction.
5. I raised the issue as to the appropriateness of the direction continuing as a preliminary issue at the resumed hearing. At the time neither I, nor as I understand Ms. Revill, were aware that the appellant had stood trial for raping his wife. Ms. Revill accepted that there was no justifiable basis for the appellant to be anonymised, his criminal offending being a matter of public record, but requested that neither his wife nor his children be named in the decision.
6. I have considered the appropriateness of the anonymity direction continuing. I am mindful of Guidance Note 2013 No 1 ('Guidance Note') concerned with such directions and I observe that the starting point for consideration of anonymity directions in this Chamber of the Upper Tribunal, as in all courts and Tribunals, is open justice. Paragraph 11 of the Guidance Note confirms that an anonymity direction will not be made simply because an appellant or witness has engaged in conduct that is considered socially embarrassing to reveal. In particular, the fact that someone has committed a criminal offence will not justify the making of an anonymity direction, even if it is known that such a person has children who may be more readily identified if the details of the person are known.
7. *In re Guardian News and Media Ltd and Others* [2010] UKSC 1, [2010] 2 A.C. 697 the Supreme Court held that, where both articles 8 and 10 of the ECHR are in play, it is for the court or Tribunal to weigh the competing claims under each article. Since both article 8 and article 10 are qualified rights, the weight to be attached to the respective interests of the parties and family members will depend on the facts.
8. The appellant's circumstances are not such as to justify the overriding of article 10 rights. He has committed criminal offences which are a matter of public record.
9. I observe that the appellant's wife, who continues to reside with him, was subject to the serious assault that resulted in her husband's conviction in 2008. I am satisfied that usually the most proportionate approach would be to ensure that the appellant's wife is not named in the decision and to ensure that no detail is provided as to the region of this country in which she resides. Such step would usually be more proportionate than directing anonymity.
10. However, in the statements prepared for these proceedings there was no express reference by family witnesses to the appellant's wife being a complainant in a rape trial against her husband. Confirmation as to such event was only secured during Ms. Revill's examination of the appellant. The failure of the appellant and his

solicitors to provide adequate details as to this event within witness statements will be addressed below, but for the purpose of considering the merits of an anonymity direction such failure by the appellant's solicitors could have seriously impacted upon the Tribunal having knowledge of relevant legal rights enjoyed by the appellant's wife.

11. As I am now aware of the true state of affairs, I am mindful of sections 1 and 2 of the Sexual Offences (Amendment) Act 1992 ('the 1992 Act'), which provides:

(1)

(1) Where an allegation has been made that an offence to which this Act applies has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.

(2) Where a person is accused of an offence to which this Act applies, no matter likely to lead members of the public to identify a person as the person against whom the offence is alleged to have been committed ("the complainant") shall during the complainant's lifetime be included in any publication.

...

(4) Nothing in this section prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

(2)

(1) This Act applies to the following offences against the law of England and Wales -

(aa) rape

12. Consequent to section 1 of the 1992 Act, there is a prohibition upon the reporting of any matter which may lead to the identification of a complainant in respect of certain sexual offences, including rape. Such anonymity is for life, though there are a limited number of circumstances in which the prohibition may be lifted by order of a court. I am satisfied that such circumstances do not apply in this matter.
13. The appellant's wife therefore enjoys statutory protection as to her identity in respect of her complaint of rape and as I am required to consider this allegation in detail in my decision, I am satisfied it is proportionate in respect of articles 8 and 10 rights that the appellant's wife should enjoy anonymity in these proceedings. Further, in order

to ensure compliance with the statutory prohibition, I am satisfied that I am required to anonymise the appellant and their children.

14. The continuation of the anonymity direction is therefore proportionate and necessary. I confirm the directions at the conclusion of this decision.

Background

15. The appellant entered the United Kingdom in 1992 and married his wife in 1993. She enjoyed settled status at the time of marriage and was naturalised as a British citizen in October 2016.
16. The appellant was subsequently granted leave to remain in this country as a spouse and secured indefinite leave to remain on 11 June 1996.
17. The couple have eight children, all of whom are British citizens, and only the last child is presently a minor. At the date of this decision the children are aged: 26, 24, 23, 22, 20, 19, 18 and 15.

Criminal caution

18. The appellant has a caution in respect of common assault upon his wife, which predates the conviction detailed below.

Criminal convictions

19. The appellant was convicted at a Crown Court in 2008 on one count of assault occasioning actual bodily harm and two counts of putting people in fear of violence. He was sentenced to a total of 12 months' imprisonment, with 6 months imposed for the ABH conviction and 2 x 3 months' imprisonment consecutive in relation to the two counts of putting people in fear of violence.
20. By means of her sentencing remarks, the Crown Court Judge observed, *inter alia*:

'The fact that [the assault] was committed in a domestic situation in the context of an unhappy marriage makes the offence no less serious. In fact, the aggravating features of this offence are that it was the culmination of a disagreement between you and [the appellant's wife] during the afternoon, and what makes it particularly bad is that it occurred in the presence of your young family. They saw you wrap a cable round the neck of your wife in anger and pull it tight. That must have been a horrifying incident for children so young to witness, happening to their mother, and indeed it must have been a very frightening experience for [the appellant's wife] as she was choking before she was released from the constraint.

This is not the first time you have come to the attention of the police in a domestic violence situation. You have a previous caution in respect of a common assault upon her. The fact that your anger is prompted by money worries and stress is no excuse whatsoever.

...

However, these offences, these two offences, were committed whilst on bail in respect of the assault on [the appellant's wife] and arise out of that matter. I granted you conditional bail, and I rather recollect that it was made clear to you about those conditions, and not contacting [the appellant's wife] or going around to her address. Yet, in flagrant breach of those conditions, you did go round to her address and you threatened the children in her presence, or you threatened to hurt the children, and you also threatened to kill her uncle, and in the context of the violence you had already shown to her back in October, no doubt that was a very frightening experience for her.

Not satisfied with that, later that afternoon, you telephoned her uncle and you threatened to kill him and kidnap his children. Then an hour and 40 minutes later you threatened him again in the same terms. As I say these are very serious matters and you knew full well, or you certainly should have done, what you were doing was totally contrary to the bail you had been given, and, in the context of the previous assault, as I say, a very serious interference by way of harassment of your wife and her cousin.'

Deportation proceedings

21. On 7 July 2008 the respondent issued a 'reasons for deportation' letter and a decision to make a deportation order. The appellant appealed and his appeal was allowed by the Upper Tribunal (DIJ Wilson) to the limited extent that the respondent was to reconsider the appellant's case following the conclusion of Family Court proceedings. The decision of DIJ Wilson was dated 21 April 2010.
22. During the course of those proceedings (IA/24119/2009) the appellant and his wife gave evidence that they were in communication with each following the appellant's release from prison and were reconciled. The appellant had returned to the family home in August 2009. Social services subsequently directed that he leave the property in September 2009 and he acted upon such instruction.
23. DIJ Wilson noted at [19]-[20]:

'19. In oral evidence he told me that it was due to frustration resulting from gambling problems. He then went on to state, 'I didn't threaten my uncle. I just went there. My root cause was gambling. I have got rid of that. I will be able to save. I have not gambled since I have left the prison'. In re-examination the point was revisited, the Appellant again confirming he did not threaten his uncle. He was gently reminded that he had pleaded guilty to two counts, one of which was violence, to which he replied, 'Yes sir, I pleaded guilty actually in our culture it is different so I pleaded guilty to these offences. I said that if you do that I will kill you but I didn't mean that'. The judge's sentencing remarks were then read out to him that I have set out above, the Appellant then stating 'What it is if your uncle does it to me I think I will kill him, I meant that', the Appellant then accepted he did threaten his wife and uncle, going on to say why he had earlier said he had

not threatened, 'Actually when I was speaking it came out of my mouth now I'm saying I am pleading guilty I accept that'.

20. I find on the evidence before me the Appellant has developed little if any awareness of the impact of his violence, primarily directed at his wife, had either on his children or on his children's uncle.'

Trial in 2013

24. The appellant stood trial in early 2013 having been charged with two counts of raping his wife. The prosecution called as witnesses to the events two of the appellant's children who were aged around 14 and 13 at the time of the trial. The Crown Court Judge accepted there was no case to answer at the conclusion of the prosecution case on the ground that the evidence of the witnesses was so contradictory and unreliable that it would not be safe to leave it to a jury to consider the verdict. A direction was made that the jury find the appellant not guilty on both counts.

Non-molestation order

25. In the late summer of 2013, the appellant's wife secured a non-molestation order under section 42 of the Family Law Act 1996 from a County Court that ran for 12 months. The appellant was forbidden, *inter alia*, from using or threatening any unlawful violence towards his wife and going within 100 metres of the family home.
26. The appellant did not apply to set aside this order.

Heart surgery

27. The appellant underwent heart surgery in 2014.

Deportation proceedings (continuing)

28. Further to the decision of DIJ Wilson the respondent was not made aware by the appellant as to the conclusion of Family Court proceedings despite a number of requests seeking information. A fresh liability to deport notice was served on the appellant on 7 June 2013. The appellant exercised his statutory right of appeal and by a decision dated 30 July 2015 the First-tier Tribunal (JFtT Meah) allowed his appeal to the limited extent that his matter was to be reconsidered by the respondent: (DA/00322/2014). By means of these proceedings the appellant confirmed that he had been reconciled with his wife and had returned to the family home.
29. The appellant submitted representations to the respondent on 6 May 2015, 3 September 2015, 25 January 2016, 21 December 2016 and 10 July 2017.
30. The respondent refused the appellant's human rights representations on 9 February 2018 and issued the appellant with a notice to deport under section 5(1) of the Immigration Act 1971.

31. It was accepted by the respondent that the appellant enjoyed a genuine and subsisting relationship with his wife. It was further accepted that it would be unduly harsh for the appellant's wife to relocate to Bangladesh as she was caring for their, then, three minor children. However, it was decided that it would not be unduly harsh for the appellant's wife and minor children to remain in this country in the absence of the appellant.
32. The appellant exercised his statutory right of appeal, which is now before this Tribunal.

Preserved findings of fact

33. UTJ Kekic set aside the decision of the First-tier Tribunal to the extent that a finding is to be made as to whether very compelling circumstances arise in this matter. She preserved the following findings of fact made by JfT Herlihy:

'29. In considering the evidence before me I did not accept that the appellant is caring for his wife in any meaningful way and I find that her primary carer is likely to be [an older child] supported by the other adult children in the family. I found that the appellant's claim that he is his wife's carer not to be supported by the medical evidence relating to the award of Personal Independence Payment to him which was made on the basis that he needed aids or supervision in providing and preparing food, washing and bathing, managing his toilet needs and dressing and undressing. If the appellant is restricted to the extent disclosed in the PIP award, I do not find it credible that he can be providing care to his wife to the extent which he claims.

30. Further I did not find the evidence of the appellant and his brother credible to the claim that they have no family connections in Bangladesh. The evidence that the appellant's mother is not living in Bangladesh was clearly contradicted by the evidence of the appellant's wife. There appeared to be a contradiction between the evidence of the appellant and his brother as to who the appellant's mother was living with in Saudi Arabia. I do not find it credible that the appellant's brother would have visited Bangladesh on two occasions in the last 5 years for a holiday to be credible and I find it likely that the appellant's mother does live in Bangladesh and that there are extended family members also living there. My findings are supported by the evidence of the wedding invitation at [page] 11 of the appeal bundle relating to [an] invitation to the wedding of the appellant's [named child] (to take place on 21 August 2019) which contains addresses in Bangladesh both for the bride and groom. It is not credible that [the] wedding invitation would contain an address in Bangladesh which is different from [the intended spouse's] address in Bangladesh if the [...] family had no connection in terms of extended family in Bangladesh.

31. In considering the claim that the deportation of the appellant would be unduly harsh for his minor children and wife, both representatives referred to the decision in *KO (Nigeria) v. SSHD* [2018] UKSC 53 and it was submitted by the respondent's representative that this was concerned solely with the

effect on individuals affected by [a] decision to deport and not on the appellant and that it went beyond more than harshness caused by separation. In *KO (Nigeria)* it was also Lord Carnwath's view that it does not suffice that the outcome is 'severe' or 'bleak' and the adverb 'unduly' must be given proper effect and so the position is quite distant from the test of 'unreasonableness' set out in section 117B(6)(b).

32. In examining the totality of the evidence it is clear that the appellant's minor children have lived apart from the appellant on two separate occasions and each time remained in the care of their mother and have at all times lived with their mother and siblings and I note that the social workers report refers to the reliance which the children have upon one another. There was no evidence before me that the two minor children suffered any educational difficulties or had any medical conditions such that removing the appellant from the home would give rise to unduly harsh consequences. The social worker found that the children were independent and supported one another.
33. If the appellant were deported, life for the appellant's wife and minor children would change and they would clearly miss their father, but I find it would however be far from being unduly harsh. The appellant's wife and children would continue to live with their family members (the older siblings) with whom they have lived all their lives, they will continue living in the family home and attending the same schools and will continue to see their older siblings who have left home and who already provide assistance and who can be expected to help the appellant's wife with the consequences of the appellant's removal. There was no evidence that [the] appellant's wife worked, and it appears that she is supported by the State and has recourse to benefits, that would not be a matter that will cause or contribute to undue harshness. The appellant's wife will be able to continue to rely on the support of her adult children following her recent stroke and the support of the health authorities and social services. I note that the social worker in the report found that the children were very protective and supportive of their mother. I do accept that reliance upon modern means of communication, such as Skype, is no substitute for physical presence and face-to-face contact. However, in the event of deportation, such face-to-face contact would be possible. The appellant's wife has made visits to Bangladesh in the past as have the three oldest adult children and the appellant's minor children have grown up in a home with both parents who are of Bangladeshi origin and I find they are not estranged from Bangladeshi culture. There is no suggestion that the family's financial circumstances were markedly better than they are at present or would likely be in the future given the appellant is not working due to ill health.
34. I find it would be possible for the Appellant to see both his wife and children in Bangladesh and find that Exception 2 does not apply ...
...
36. I did not accept the appellant was without family connections in Bangladesh but I do accept that he has not lived in Bangladesh since 1992 and his links to that country are likely to have diminished over time. I accept that the

appellant has clearly attempted to downplay his connections to Bangladesh having initially said that his brother had not visited for many years when clearly his brother had visited twice in the last 5 years and he denied having a mother in Bangladesh which was contradicted by the evidence of his wife. I did not find the appellant was acting as a carer for his wife as the claim clearly conflicts with the evidence of the PIP award. The appellant says that he relies on financial support from his children and I see no reason why this would not continue if he were to return to Bangladesh. I do not find the appellant would in any event be destitute in Bangladesh as he is likely to have extended family connections for the reasons which I have given.

37. With regard to the appellant's health there was no evidence that treatment for his diabetes and heart condition would not be possible in Bangladesh nor would his health conditions prevent his integration into that country. The appellant would be returning to Bangladesh at the age of 58, to a country he left at the age of 31 and would be returning with some health problems. It is apparent that he is clearly able to speak Bengali and his evidence is that he has worked in the United Kingdom for very many years but says that he is currently unable to work due to his health problems. The respondent noted that the award of PIP was not indefinite, and I note that the award was at the standard rate rather than the higher rate and is due to expire in August 2021.'

Hearing

The appellant

34. The appellant relies upon two supplementary witness statements, in addition to the statement relied upon before the First-tier Tribunal. The first is dated 5 March 2020. The second is undated and was adopted at the hearing.
35. I observe that there was a failure by the appellant to abide by rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') and to give notice indicating the nature of the evidence relied upon in the supplementary bundles post-dating the decision of the First-tier Tribunal. Such failure was accompanied by a failure to explain why such evidence was not submitted to the First-tier Tribunal. Further, several lengthy paragraphs of the supplementary witness statements addressed matters upon which preserved findings have been made and upon which the appellant has previously been found incredible. I am satisfied that the appellant's solicitors failed to recall relevant procedural requirements applicable to appeals in this Tribunal. I admitted the evidence to permit a holistic consideration of all available evidence.
36. By means of his supplementary witness statements, the appellant asserts that the uncertainty as to his immigration status '*has led to my partner's mental health issues deteriorating*'. He further asserts that he is '*the primary carer for our children and take care of my wife as she suffered a stroke last year which has affected the right side of her body*'. He relies upon his not having re-offended since his conviction in 2008. He further identifies his daily routine which includes waking his adult son and minor daughter up in the morning and making breakfast for them. He wakes his wife up and despite

the fact that he *'can hardly walk without getting out of breath due to ongoing health conditions'* he considers that it is important for his wife's recovery that he takes a walk with her. Upon their return, he massages *'the affected right side of my wife's body, her shoulder, arm, hands, back, leg and foot'*. He describes how he aids his wife to wash and dry herself and to get changed. He makes lunch for them and during the afternoon the couple sit down and watch television together, chatting throughout. He greets his children when they return home, and in the evening *'I usually prep all the food, cut the vegetables and clean the meat or fish, whatever we are making. Sometimes I cook myself or my eldest daughter might help me. Other days, if my wife is feeling a little better, I prep the food and she stirs the pot.'* He massages his wife's affected right side of her body in the evening to aid her recovery and they *'reflect over the day we have had and talk about or kids, etc ... When we go to bed, I sit down and spend quality time with my partner. I speak to her about her worries and anxiety and try and help calm her down. When she suffers from a panic attack, I talk to her and help her to control her breathing so she can calm down from her panicked state.'*

37. He observes that his wife is struggling with the ongoing deportation proceedings, *'It is affecting her health and the way she functions on a daily basis. As she is unable to sleep at night, she is tired during the daytime and does not have much energy to do things with the kids, especially due to her limited movement caused by her stroke. She cries to me when we [are] alone, telling me how much she loves me and needs me and that she cannot imagine life without me. She tells me she worries about the children as she does not know how they will manage without me.'*
38. He states that he undertakes grocery shopping, usually on his own but on occasion accompanied by his son and grandson.
39. At §11 of his March 2020 statement, the appellant details:

'11. I have been the backbone for my partner throughout the years we have been together, and I have always supported her emotionally and physically. But I can clearly see she is falling apart at the thought that we may be separated from each other. She would not be able to cope with looking after herself and take care of the children. In the event I was removed, she would not be able to carry out day to day tasks and would really struggle, our children are either at school, college, university or work. We do not have any family who are in the position to help, either due to them having their own kids to manage or because they live too far away from us.'

40. The appellant relies upon a deterioration in his wife's health following a stroke. In his second addendum statement he states, *inter alia*, at §6:

'6. ... I am trying to do everything possible, given my own health issues, to support her emotionally and physically (as so much as my health permits me too). I know without me she would not be able to manage. I am with her all the time and I am her backbone. I have tried to keep her as mentally strong as possible. But to remove me from my family would cause her world to come crashing down.'

41. In his evidence before me the appellant confirmed that he was on remand for five or six months before the rape trial in 2013. He explained as to the not guilty verdict that having heard the evidence it was concluded that his wife had not been truthful and that *'the judge was angry with my wife'*.
42. As to the non-molestation order issued after the trial in 2013 the appellant informed me that he did not know about it initially but found out about it later. Though he asked his solicitor to 'appeal' no steps were taken to set it aside. He detailed that he is still not aware as to why his wife secured the order. He informed me that save for what he described as 'the 2013 incident' there have been no incidents between him and his wife following his release from prison in 2008. As to the incident leading to the trial in 2013, he stated, *'it was so long ago I cannot recall it'*.
43. The appellant was asked to explain what he meant at §11 of his March 2020 statement, where he referenced being the 'backbone' for his wife throughout the years and having always supported her emotionally and physically. He responded:

'Whenever I was with my wife and children I looked after them. When I suffered my heart attack, when my children went to see me in hospital, and when they cried, I felt that they were my life. Nothing else mattered. Now that my wife is unwell, and is unable to help herself, along with the children we are the only people who can look after the family.'
44. The appellant relies upon letters from his GP, dated 30 June 2017 and 12 February 2020, confirming that he suffers from ischaemic heart disease, essential hypertension and type 2 diabetes.

The appellant's wife

45. In addition to the witness statement that the appellant's wife adopted before the First-tier Tribunal she relies upon two supplementary witness statements. The first is dated 5 March 2020. The second is undated and was adopted at the hearing.
46. Her evidence as conveyed by her statements is consistent with that advanced by her husband. She confirms by her first supplementary statement that she has suffered a stroke that has affected the right side of her body. She details, *'my husband has been there for me unconditionally and I don't know how I would have managed without him. I am suffering from depression, anxiety, hypertension and panic attacks. The appellant has been my backbone and supported me throughout. I don't know how I would have managed without him'*.
47. She details in this statement that she attended physiotherapy once a week and her husband took her to all of the appointments despite him struggling with his own health.
48. She explains that if the appellant were to be deported, she would not be able to function without him and would not be able to care for either herself or her children.

49. The appellant confirms in her March 2020 statement, at §§15-17:

‘15. I would like to explain that the appellant is the one who has kept us all together and functioning. Even when I suffer from my anxiety and panic attacks, he helps calm me down, he talks to me and helps me with my breathing. I honestly don’t know how I would manage without him. Since my health has further deteriorated, the appellant has tried to take on additional tasks with children. Honestly, without him my life would fall apart. I would not be able to afford the care for myself or to help with my children or have support from our extended family to assist with the children. The appellant is the primary carer for our children. Without him I believe that this will have a huge impact on us all mentally and physically.

16. With regards to our children, since they have found out there are issues with the appellant’s case, they have been very emotionally upset, they start crying and questioning why this is happening to us. I honestly don’t know how I will be able to take care of them and myself if he is taken away from us.

17. In terms of the appellant, I could not ask for more, as a partner and the father. He is their role model, our best friend, his love [for] them is conveyed through his actions. His whole life is based upon their upbringing, their development and bonding. We all rely on him for love, stability and support. without him I worried that I won’t mentally be able to cope and I fear having a breakdown.’

50. By her second supplementary statement the appellant’s wife confirms the physical impact of her stroke upon her. She explains that though her husband is limited as to how he can help her physically due to his own ongoing health problems, *‘he is my backbone, my second pair of eyes and gives me the emotional strength to carry on and not give up, without him I will be totally broken’*.

51. The appellant’s wife provided medical evidence to the Tribunal as to her present health condition. She suffered a stroke in June 2019, affecting her right side. She suffers depression and hypertension.

52. In evidence to me she accepted that she had supported the appellant at his deportation hearing in 2010, at a time where there were problems in the relationship. She could not recall anything about the rape trial in 2013, not even which children gave evidence against their father. She then recalled as to the trial that the children’s evidence concerned the appellant trying to hit her. On several occasions she confirmed that she could not recall accusing her husband of rape in 2012.

53. She could not recall any incidents of domestic violence occurring after the appeal hearing in 2010. Her evidence was that the last time her husband hit her was *‘a long time ago, when my children were little’*. When gently pressed on the issue she initially stated that the last occasion of domestic violence was in 2008. When reminded of her having applied for and secured a non-molestation order in 2013, she changed her evidence and stated that the last incident was in 2013, *‘when there was an argument*

with the children'. She stated that the last time her husband showed any anger towards her, or shouted at her, was in 2013

54. The appellant's wife confirmed to me that she was not presently scared of the appellant. If something happened to her in the family home, she would have the support of her children.

The appellant's son

55. The appellant's now 18-year-old son attended the hearing and gave evidence. In addition to the witness statement he relied upon before the First-tier Tribunal, he adopted a supplementary statement dated 5 March 2020. He explained that he resides at home with his parents and five of his siblings. Two other siblings reside elsewhere. He confirmed to me that as he grows up, he feels the need for his father's supportive guidance more than ever. He detailed that his father and mother advise him as to how he should live his life as a good human being. He explained his daily interaction with his father and further observed that *'when my dad goes shopping on the weekend, he takes me along with him and shows me how to shop, what to look for when [buying] fresh produce and fresh meat and fish.'*

56. He observed, at §§14-16:

'14. Life without the appellant is unimaginable; we are one beautiful family, who are emotionally and physically dependent upon each other. In my opinion I believe it would be unduly harsh to separate us from the appellant. We will be broken as a family if he was to be removed.

15. I would be heartbroken if [my] father is sent back to Bangladesh. My [siblings] and I would be devastated, and it would be detrimental to their development and mental health. My mother would have no one to provide her with the support and help to look after all of us children.

16. My father is my role model and the backbone to our family. He has guided me on the right path and kept me out of trouble and shown me the right way to live my life. Without my father's support and direction, I will be lost, and I believe our family will be broken.

57. In cross-examination the appellant's son accepted that his father had engaged in repetitive domestic violence against his mother and that it was common during his childhood for him to watch his father beat his mother. He accepted that the infliction of physical harm affects emotional stability and further accepted that such repetitive violence may be the cause of his mother's present mental health concerns.
58. When asked by Ms. Cunha as to whether his father has assumed responsibility for matters that his mother cannot undertake, he replied, *'kinda'*. He observed that whilst his mother may have required psychiatric support in the past, he does not believe that she requires it at the present time.

59. As to whether he and his siblings could aid his mother in the absence of their father he replied, *'we cannot always help'*. In respect of his minor sibling, he observed that his father helps them with schoolwork and that his mother helps *'sometimes'*. However, in response to further questioning from Ms. Cunha he conceded that his mother helps his minor sibling more often than his father does.
60. He stated that he had not seen his parents arguing since 2015 and was vague as to what caused this argument, saying no more than it related to *'a past incident'*.

Other children

61. In addition, four of the appellant's seven other children provided witness statements for the appeal proceedings in 2015. No updated evidence was filed for the hearing before me. The children are broadly consistent in asserting that it was unjust for the respondent to be seeking to deport their father. Reference is made to the family being very happy together and the children being emotionally and physically dependent upon their father and his support.
62. One child detailed, *'I am so proud of my father and the way he has changed. He no longer shout at us and he listens and talks to us and advises us properly. When I see the way he treats me and my family members it makes me realise that I'm proud to have him as my father. I love the appellant dearly. Even my mother has changed and doesn't argue with my father as in the past when they have argued it had an effect on us as kids. I realise I also hurt my father in the past because I was resentful.'*
63. The minor child has provided no witness statement to the Tribunal.
64. The appellant has provided updated school and college reports in relation to his three youngest children.

Children and Young People's Mental Health Service assessment (CYPS) October 2016

65. Filed with the Tribunal is a CYPS assessment concerned with the appellant's minor child, dated October 2016. There is no indication contained within the assessment as to a prohibition upon it being filed with the Tribunal.
66. The assessment records that in April 1997 there was a referral to social services that the appellant's wife and her first three children were victims of domestic violence perpetrated by the appellant, that such violence resulted in their fleeing the family home and that they no longer resided with the appellant. The appellant's wife and children returned to the family home thereafter. In 2002 social services was informed by a primary school that there were concerns that the children were witnessing high levels of domestic violence, with reports of possible marital rape. Further reports of domestic violence were recorded by social services in 2006 and 2007. Following the appellant's arrest in 2007, he was bailed to an address in Leeds and the appellant's wife secured an injunction preventing him from returning to the family home and also from entering identified local areas. The day after securing this injunction the

appellant returned to the family home and made threats to kill his wife and to take the children away from her.

67. Social services records evidence regular interventions in relation to the children over the years. Three of the children left the family home following allegations of physical assault upon them by their father. He is recorded as hitting them with a coat hanger. One of the children was supported in a move into foster care. Two children were subject to special guardianship orders and five others to supervision orders. The assessment identifies the family circumstances as being in a very difficult and chaotic state between 2007 and 2013.
68. The assessment records that prior to the appellant's illness the children all expressed that they did not want him to return home. However, in interview with the social worker preparing the assessment several children confirmed that they wanted their father to return home because of his illness.
69. The children observed that their parents did not argue as much upon the appellant's return to the family home late in 2014 and instead they talk things through. The appellant was observed by the children to be much calmer and more relaxed. Reference was made by the children to their parents not having 'big' fights and the appellant shouting less. The appellant's wife informed the assessor that the last act of violence inflicted upon her as being in 2013. The appellant stated that he had not hit or abused his wife for three or four years and if he feels angry, he can just walk away.
70. The assessment observes, '*Perhaps his poor health and need for someone to care for him are his main motivation for change. Certainly, it is difficult to understand why [the appellant's wife] would resume this relationship with a man who has been violent towards her for a long period of time and now she is taking care of him.*' As to this concern, the social worker opined, *inter alia*, that the appellant's wife, '*may also feel that she and the children will be more respected by the community if their father is around and they are together*'.
71. The conclusion reached was that the appellant's presence in the family home did not raise safeguarding concerns in respect of the children.

Law

Foreign criminal

72. The appellant is not a foreign criminal for the purposes of section 32 of the UK Borders Act 2007 as he was not sentenced to 12 months' imprisonment or longer for a single offence: *OLO and Others (para 398 - "foreign criminal")* [2016] UKUT 00056.
73. Ms. Revill accepts by her skeleton argument, dated 15 December 2020, that the appellant was convicted of an offence that caused serious harm and so he is a foreign criminal for the purpose of section 117D(2)(c)(ii) of the Nationality, Immigration and Asylum 2002 ('the 2002 Act'): *R (Mahmood) v. Upper Tribunal (IAC) & Others* [2020] EWCA Civ 717, [2020] 3 W.L.R. 723, at [74]. She was right to concede this point on behalf of the appellant. Actual bodily harm is by definition bodily harm that is more

than trivial. If it is sufficiently serious to require a prison sentence - 'so serious that nothing less will do' - a Tribunal will generally be entitled to conclude, without more, that it has caused serious harm for the purpose of section 117D(2)(c)(ii). In this matter the appellant wrapped a cable around his wife's throat when angry and sought to choke her, in front of children. Serious harm was caused.

74. The appellant has previously been found unable to meet the provisions of the Exceptions to deportation set out at section 117C of the 2002 Act.

Very compelling circumstances

75. Section 117C(6) of the 2002 Act provides that the public interest requires deportation unless there are very compelling circumstances, over and above those described in section 117C(4) and (5). The test is a very stringent one: NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662; [2017] 1 WLR 20.
76. The Tribunal confirmed in RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 123 (IAC); [2019] Imm. A.R. 780 that section 117C(6) applies to both categories of foreign criminals described by Lord Carnwath in paragraph 20 of KO (Nigeria) v. Secretary of State for the Home Department [2018] UKSC 53; [2018] 1 W.L.R. 5273, namely those who have not been sentenced to imprisonment of 4 years or more, and those who have.
77. The Immigration Rules replicates the very compelling circumstances test at paragraph 398, requiring an appellant to establish that there are very compelling circumstances over and above those set out in paragraphs 399 and 399A of the Rules.
78. In Secretary of State for the Home Department v. Garzon [2018] EWCA Civ 1225, at [28] McFarlane LJ, giving judgment on behalf of the Court, approved the Tribunal's self-direction:

28. In its final paragraph, the tribunal refers to the phrase "very compelling circumstances", observes that "very" indicates a very high threshold and observes that the word "compelling" means circumstances which have a powerful, irresistible, and convincing effect. It is hard to contemplate how the tribunal could have demonstrated any greater focus on the public policy factors in favour of deportation.

79. There is not a closed list of what will constitute 'very compelling circumstances' and a flexible approach is required. Sir Ernest Ryder confirmed in Akinyemi v Secretary of State for the Home Department (No. 2) [2019] EWCA Civ 2098, [2020] 1 W.L.R. 1843, at [39]:

39. The correct approach to be taken to the 'public interest' in the balance to be undertaken by a tribunal is to recognise that the public interest in the deportation of foreign criminals has a moveable rather than fixed quality. It is necessary to approach the public interest flexibly, recognising that there will be cases where the person's circumstances in the individual case reduce the legitimate and strong public interest in removal. The number of these cases

will necessarily be very few i.e., they will be exceptional having regard to the legislation and the Rules.

80. When undertaking a holistic proportionality balancing exercise, I can adopt the balance sheet approach as encouraged by Lord Thomas in *Hesham Ali v. Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 W.L.R. 4799.

Vulnerability

81. I informed the representatives that consequent to the medical evidence presented on behalf of the appellant's wife to the Tribunal, and her history of domestic violence, I consider her to be a vulnerable witness.
82. Ms. Revill made no application for the appellant to be considered a vulnerable witness.

Decision

83. I have considered all of the evidence presented in this appeal holistically whether expressly detailed in this decision or not.
84. This matter has required me to consider the various and differing forms of a 'lie' or 'untruth'; a statement made by one who does not believe it with the intention that someone else shall be led to believe it. The scope of a 'lie' is wide. It can range from a harmless or trivial untruth, told to avoid hurting someone's feelings, to a bold-faced lie. It can encompass a half-truth, a deceptive statement that includes some element of truth. A lie can be the consequence of minimization, where denial is coupled with rationalization in situations where complete denial is implausible. I also observe a blue lie, a falsehood, told on behalf of a group, promoted to strengthen bonds among the members of that group. Lies can be brazen or told to protect others. They can be the result of fear and coercion or offered to protect another. In the evidence before me, I am satisfied that I have been faced with many lies, covering the range identified above. They have mainly been crude in form, unable to sustain even gentle forensic examination. The task for me has been in identifying their form, and the rationale behind them.
85. For the reasons given below, and observing the findings of JFtT Herlihy, I am satisfied that the appellant is generally a stranger to the truth. His evidence is often riddled with lies that cannot withstand even gentle scrutiny. He is a most unimpressive witness.
86. I observe at this juncture that the telling of a lie or a series of lies, whatever their underlying rationale, does not necessarily mean that very compelling circumstances cannot arise to reduce the public interest in the deportation of foreign criminal.
87. Before engaging with the balance sheet approach, I proceed to consider the evidence presented by the appellant and his family members at the hearing.

Preserved findings of fact

88. I return to the preserved findings of fact. The appellant and his brother were found incredible as to their assertion that they have no family connections in Bangladesh. JfT Herlihy observed clear contradictions in the evidence presented, including the fact that a wedding invite for one of the appellant's United Kingdom-based children detailed an address for them in Bangladesh. This was strongly suggestive of relatives residing at that address. It is apparent to me that the evidence provided by the brothers was a crude effort to hide the true position as to close familial links in Bangladesh. Both brothers decided to lie to the Tribunal.
89. As to the impact of deportation upon the three younger children, who were minors at the time of the hearing before her, JfT Herlihy concluded that all of the siblings were able to secure support from one another. She observed that the children had been separated from their father on two separate occasions: for several months after his conviction in 2008 and for between five to six months whilst on remand from 2012 to 2013. Consequent to consideration of the evidence placed before me it is possible to be clearer as to the time the appellant spent away from the family home. The first period of separation ran from the time of his arrest, in October 2007, to some unidentified point in 2010 as confirmed by the children in various witness statements, with a short period of time when the appellant returned home between August and September 2009. The appellant's wife secured a non-molestation order for some period of this time. The second period of separation ran from a time in the late summer/early autumn of 2012 to 14 December 2014 and again the appellant's wife secured a non-molestation order for a period of this time.
90. Throughout the time that the appellant was absent from the family home, several of the children remained in the care of their mother, whilst others lived elsewhere. Over time, seven of the eight children again resided together at the family home.
91. JfT Herlihy determined that whilst the children will clearly miss their father upon his being deported the circumstances were far from establishing the required undue harshness. I conclude that such finding is unimpeachable. She further found that the appellant's health concerns could properly be treated in Bangladesh and that the appellant will be able to integrate upon his return as he resided in Bangladesh until the age of 31 and speaks Bengali.

Domestic violence

92. I find that contrary to the appellant's evidence he was engaged in long-term physical violence towards his wife and children over many years, accompanied by emotional abuse. By using violence, he adopted coercive and dominating behaviour to the personal detriment of his wife and children.
93. The appellant was married in 1993 and I am satisfied that it was not a happy marriage from its early days. Social services have a record of concerns as to domestic violence arising in the marriage going back to 1997. The severity of the violence in April 1997 was such as to require the appellant's wife to flee the family home

accompanied by a two-month-old baby, a thirteen-month-old toddler and her three-year-old eldest child. I find that it is more likely than not that such violence was being inflicted by the appellant upon his wife from an earlier date, with the incident in April 1997 being a crisis point on her part arising from real fears as to her safety and the safety of her children.

94. I accept the evidence of the appellant's son that his father engaged in repetitive domestic violence against his mother throughout his childhood and that it was common for him to watch his father beat his mother. I note that often physical abuse in a relationship is not simply confined to inflicting pain but also a means of establishing dominance. I am satisfied that the appellant intended the use of violence towards his wife not only to exude dominance over her, but also upon the children whom he regularly ensured were witnesses to his acts. The appellant was exercising coercive control.
95. I find, on balance, that the son has grown up in a household where the appellant was regularly violent to his wife. I am further satisfied that as such violence was observed by all of the appellant's children, they themselves would have regularly felt fear and intimidation consequent to such observation. I take judicial notice that children who observe domestic violence whilst school-aged regularly feel guilty about such abuse and blame themselves. Such self-blame is evident in the statement of one of the children, who seeks to diminish their father's actions by criticizing their own behaviour observing, *'I realise I also hurt my father in the past because I was resentful'*. This is evidence from one of the three children who left the family home consequent to physical assaults upon them by the appellant.
96. I also note that the self-esteem of children who witness domestic violence may be adversely impacted, and their school grades may suffer and they may get into trouble. I observe that by 2002, when the two elder children were aged approximately 6 and 7, they informed school authorities, no doubt as articulately as they could, that their mother was being subjected to high levels of domestic violence, including possible rape. I further observe that at later times the three eldest children would fail to return home when teenagers, two of the children were shoplifting at the age of 13 and 12, and several of the children had a poor history of school attendance and were considered not to have achieved their full potential. The personal histories of the children corroborate a dysfunctional family home.
97. As to the levels of domestic abuse inflicted within the family unit by the appellant, I find that it was of a significant level and directed toward both his wife and his children. I observe four instances that evidence this significant level of violence. Firstly, when the appellant's wife fled the family home in 1997 with three young children. She was clearly fearful of her personal safety. Secondly, in 2008 when the appellant tied a cable around the throat of his wife, tightened it and sought to choke her. This was a serious assault. Thirdly, when the appellant attended the family home contrary to bail conditions and a court order and proceeded to threatened to kill his wife. I find that the appellant's attendance and accompanying threats placed his wife in significant personal fear. Fourthly, in 2009 when three of his children disclosed that they had been subject to such physical violence that they were placed

by social services away from the family home. The appellant is identified as using significant violence in 1997, 2008 and 2009 and I am satisfied that as confirmed by the appellant's son these were not rare occasions. I find that the appellant consistently used significant violence within the family home. I further find that such violence was accompanied by emotional abuse and coercive control.

98. I find the appellant's assertion, identified at §11 of his March 2020 statement that he has been his wife's 'backbone' throughout the years they have lived together, 'always' supporting her emotionally and physically, to be a blatant lie as evidenced by his regular bouts of domestic violence. I am satisfied that he was fully aware that this was a lie when he signed his statement. When asked at the hearing to explain what he meant by such assertion I am satisfied that his answer, detailed above, clearly established that he had no insight into how a loving husband would emotionally and physically support his wife. Rather, the reply made brief reference to his always looking after his family before veering into concern for his own position. I observe how regularly the appellant's answers before me were rooted in self-absorption, exhibiting concern only as to his own position. I find that at §11 of his statement the appellant engaged in a brazen lie, one that is easily identifiable not only by reference to social services records but also by his conviction and caution.

Does the appellant possess insight into his behaviour?

99. In the CYPS assessment the appellant is recorded as stating that he learned so much from counselling that he undertook for a year and that he is a changed man. No further details are provided as to such counselling.
100. I observe that there is no reference in the CYPS assessment as to the appellant exhibiting an understanding as to why he acts violently towards others. There is no express understanding that domestic violence often flows from a desire to dominate a partner, to keep fixed an imbalance of power. There is no identification that he appreciates the coercive control that is exercised through domestic violence, seeking to promote sexual inequality, such as by consigning his wife to the default position of undertaking housework, child-care and sexual service. He took no steps in his evidence to identify how he presently manages and controls his temper, when I have found that he was unable to do from early on in his marriage in 1993 to at least 2013, a period of two decades. Rather, the appellant simply informed the assessor that he had not hit or abused his wife for three or four years. I note that he lived apart from his wife for approximately two of these years and was subject to a non-molestation order, so for periods of that time his wife was not living with him.
101. Upon considering the appellant's evidence presented over the years, before various tribunals, by means of witness statements and in his oral evidence before me I find to the requisite standard that he exhibits no true insight into both the nature of his violent behaviour towards both his wife and his children and the significance of the adverse impact such violence has upon them. There is very little, if any, contrition to be observed in the evidence before me. Throughout his evidence to me he spoke with no warmth towards his wife. He only expressed concern when ruminating upon his own position and the possibility of his returning to live in Bangladesh.

102. His silence on the issue of domestic violence in all three witness statements is stark, as is his constant refrain that it is unjust for the respondent to be pursuing his deportation. Such self-absorbed complaint wholly fails to engage with his having been sentenced to a term of imprisonment for a serious assault upon his wife. I find that the appellant significantly underplays his history of inflicting violence upon his family. Such minimization is identifiable by the reference in his 2015 statement that, 'We have had problems just like any other family'. I find that this is strongly suggestive that he perceives others to be responsible for problems within the family home and that his violent response is acceptable in society. His identified concerns before me were predicated upon his personal situation, primarily his desire to be cared for whilst suffering ill health in addition to a real concern as to deportation. He exhibits no understanding that his behaviour towards his wife and children was wrong.

Ongoing violence and emotional abuse?

103. I am satisfied that physical violence no longer plays a part in the appellant's relationship with his wife and children. I find both the appellant and his wife not to be truthful as to when such violence came to an end, the appellant suggesting 2012 and the appellant's wife struggling to coherently identify a time between 2008 and 2013. I find that there was sufficient evidence as to ongoing domestic violence and intimidation to satisfy a District Judge in September 2013 that it was appropriate to issue a non-molestation order. However, I am satisfied that social services would have acted upon any further complaint of domestic violence after the assessment conducted in October 2016. There were concerns expressed in the CYPS assessment as to the wife becoming reconciled to the appellant and though no safeguarding concerns were identified at the time, I am satisfied that social services would have acted quickly thereafter if such concerns were raised.
104. I also find that the appellant's son who attended the hearing has in recent years physically reached a size and maturity, coupled with the deterioration in the appellant's health, that he is now able to protect his mother and siblings from any violence directed to them by the appellant, and the appellant is aware of this.
105. Whilst the CYPS notes the children's observations as to there being less shouting and fewer fights between their parents in 2016, they did not state that it had ceased. Being mindful that the appellant is not being honest as to how he conducts himself toward his wife, the limited engagement with his anger problems in his evidence before the Tribunal, and his lack of understanding as to his behaviour I am satisfied that he continues to have anger issues. I find that expressions of anger would place those living with him, particularly his wife, in fear consequent to historic memories of his anger being accompanied by violence.

Is the appellant providing care to his wife?

106. The appellant's evidence as to his role in the family home was tainted by exaggeration and outright lies.

107. The appellant was not found by JfT Herlihy to be credible as to his providing care for his wife in any meaningful way. His wife's primary carer was established, on balance, to be an identified child, supported by other adult children. Clear and cogent reasons were given for such finding. As observed by JfT Herlihy, the appellant's evidence as to how he supports his wife was significantly at odds with the evidence of his PIP award. The award of August 2017 that was filed with the Tribunal identified standard rate payments for both daily living and mobility needs. The assessor recorded the information provided by the applicant for the assessment as follows, *inter alia*:

'You said you have difficulties preparing food, taking nutrition, washing and bathing, managing toilet needs or incontinence and dressing and undressing. I decided you need an aid to prepare or cook a simple meal, eat and drink, wash and bathe, manage your toilet needs or incontinence, and dress and undress. I decided you can plan and follow the route of a journey unaided. You said you have difficulty moving around. I decided that you can stand and then move unaided more than 20 metres but no more than 50 metres.

108. The appellant has filed no subsequent award decision detailing amendments to the assessment for daily living needs and mobility needs. There is no evidence before me that his health has improved.
109. A letter from his GP, dated 12 February 2020, details the appellant presenting with shortness of breath when walking and having restricted movement in his shoulders.
110. I observe the finding of JfT Herlihy that the appellant's wife was able to rely upon the continuing support of her adult children following her stroke as well as the support of the health authorities and social services.
111. Though the judicial finding of fact as to the appellant not providing care for his wife in any meaningful way was preserved by UTJ Kekic in her decision of March 2020, both the appellant and his wife again addressed this issue in their supplementary witness statements. I have read the statements carefully on this issue. I am satisfied that the assertion that the appellant cares for his wife in any meaningful way is false. The appellant has subjected both his wife and his children to violence over many years and has shown no indication that he understands the effect of his actions. I am satisfied that his primary purpose upon returning to the family home in 2014 was to resume his position as head of the household and to secure the care from his wife and family he believes he is entitled to. I find that he is not providing loving care to his wife, leaving others in the family to undertake that role. His evidence as to his actions is wholly inconsistent with his physical capability as detailed to his PIP assessor. I am satisfied that his wife's supportive evidence results from the coercive environment in which she resides. In the circumstances, I find that the appellant is lying as to his being the primary carer for his wife following her stroke and he has pursued this false assertion because he believes it the best way of defeating the respondent's intention to deport him to Bangladesh.

Role in the house

112. I find that the appellant is not being truthful in his evidence as to his purported role in the family home. I find that family meals are prepared by the appellant's wife and elder children with little or no involvement from the appellant, who has been assessed in relation to PIP as requiring aid in preparing a simple meal, let alone meals for the eight people who reside in the family home. I find that he does not massage his wife two times a day. The appellant is too self-absorbed, coupled with a clear lack of empathy for his wife, to undertake this task, which I find is undertaken by elder children. I find that the appellant is untruthful as to his aiding his wife when she suffers anxiety and panic attacks. I conclude that her mental health concerns are more likely than not deeply rooted in her suffering at his hands and not caused by the present deportation proceedings, which commenced over a decade ago and have been a constant for the family ever since. I find that his wife turns to her elder children for support when she experiences anxiety and panic attacks.
113. The appellant's evidence as to his undertaking the grocery shopping, usually on his own but on occasion with his son is contradicted by his son's evidence that they shop together. This is an example of the appellant seeking to exaggerate his positive actions within the family unit.
114. I further find the appellant's son to be truthful when confirming that his mother undertakes a greater role in aiding his minor sibling with their homework than the appellant.
115. I conclude that the appellant enjoys his self-identified role as head of the household and expects his family to meet his genuine, and perceived, care needs. He lacks sufficient empathy to provide such care to others. His evidence as to his acts within the house is riddled with inconsistency and consists of a mixture of exaggeration and barefaced lies.

Evidence of the wife and children

116. I am mindful that the appellant's wife and children support him in these proceedings. I have taken their evidence into account when considering the issues above. I observe that the respondent accepts that the appellant and his wife are in a genuine, subsisting relationship. I further find that several of the children were active in encouraging the appellant's return to the family home in December 2014.
117. However, there are clear concerns as to the evidence presented by the appellant's wife and children. I am satisfied that they are not being truthful on several aspects of their lives with the appellant. In seeking to support their husband and father, a number of 'blue lies' have been advanced in this matter. The children are untruthful as to the extent of their personal experiences of their father because they are united in having identified as a common goal that he be permitted to remain in this country. I am satisfied that their reasons for adopting such approach are complex.

118. I find that the children are not truthful in their assertions that they are emotionally and physically dependent upon their father. The children have lived apart from their father on two occasions, amounting to close to five years. During some of this time certain children resided away from the family home consequent to their father's acts of violence upon them. Other children were affected by the consequences of such violence upon their mother's ability to care for them, resulting in neglect. As found above, all of the children have experienced, or at the very least observed, their father's violence. All of the children have relied upon their mother at various parts of their lives, some for the majority of their lives, and as found by JfT Herlihy they have established reliance between themselves as they have grown older. Seven of the eight children are now adults. I find that the years of emotional and physical abuse have not been forgotten by the children and whilst they may be content for their father to recover his health at home, they are not dependent upon him emotionally. The children are not financially dependent upon their father. He has not worked since his heart surgery in 2014 and is in receipt of PIP. As found by JfT Herlihy, the appellant relies upon financial contributions from his children.
119. I am satisfied that several of the children were concerned as to their father's health following his heart surgery and wished for him to return to the family home. I conclude, as referenced by a number of the children in their statements, that they were horrified to see him in hospital and that knowledge of his condition aroused their compassion. However, such compassion does not by itself establish deep and enduring love and affection between a father and his children. I find that the children were not being honest when referring to their father as the 'backbone' of their lives, that they are 'proud' of him, that he is a 'friend' to them and that they would be 'heartbroken' if he were to be deported. I am satisfied that the appellant's son exhibited the emotional scars that continue to affect him as to his father's long-term violence when he gave evidence before me. His honesty on this issue was clearly observable and I find that all of his siblings are more likely than not to have similar emotional scars consequent to their personal experiences at the hands of their father.
120. I observe that the appellant's son sought to exaggerate the role the appellant occupies within the family home, though when gently pressed he proved willing to be honest as to the true situation. An example is his initial observation that his father was engaged in helping his minor sibling with homework, and that his mother only helped '*sometimes*'. He quickly accepted in answer to a question from Ms. Cunha that the true position was that his mother helps his sibling more than this father. The initial approach adopted was consistent with the 'blue lies' advanced by the children as part of a common approach in seeking to aid their father with his appeal.
121. There are instances of deflection and half-truths in the evidence of the children. One child refers in their witness statement to leaving the family home for five years because of the '*situation at home and arguments amongst the family*'. Nothing more is said as to why they left home at the age of 11 and remained away until aged 16. This evidence suggests that both mother and father had a responsibility in their departure. I have been required to consider the CYPs assessment to establish that they left the family home consequent to violence inflicted upon them by the appellant and that they were the recipient of several local authority/court

interventions before returning home. The true position was not referenced in the relevant witness statement. I am satisfied that this was because the child sought, for the common good, to aid their father with his appeal and consequently sought not to provide the full picture as to their father's role in their life.

122. Another child who gave evidence against the appellant in the rape trial makes no reference to such action. Rather, reference is simply made to the appellant being wrongly accused and '*remanded due to some allegations my mother made*' and '*the charges were unfounded*'. No explanation is given as to why they were willing to present evidence against their father at a criminal trial. Again, a half-truth is utilized in evidence so as to aid the appellant.
123. I further find that the children are not being truthful when asserting that the decision of the respondent to seek to deport their father is 'unjust'. They are mature enough to understand that the attack upon their mother in 2008 was serious. I find that they are simply repeating their father's personal view in support of his claim, without considering the requirement that they provide truthful evidence to this Tribunal.
124. The most significant use of deflection and half-truth in the hearing before me was that all of the witnesses glossed over the 2013 trial save for a consistent reference to the charges being unfounded and the appellant being found not guilty. The charges themselves were not referred to. During pre-hearing reading, I noted reference within the COYS assessment to an incident where the appellant forced himself upon his wife, leading to a trial where the appellant was released but not permitted to return home. It was not made clear as to whether the trial concerned an allegation of assault. As detailed above, I only became aware that the appellant has stood trial in relation to two counts of marital rape during Ms. Revill's examination of the appellant.
125. The representatives addressed this matter in examination which led to the appellant informing me that the Crown Court judge was 'angry' with his wife at the conclusion of the no case to answer decision. His wife's evidence was that she had no recall of the trial, not even the charges, nor as to which of her children attended to give evidence in support of her. I find that it would be very unusual for a Crown Court judge to express annoyance at a rape complainant. The very limited documentary evidence before me as to the trial itself, provided by Ms. Revill upon its receipt from her instructing solicitors during the course of the hearing, establishes that the no case to answer decision was reached consequent to contradictory and unreliable evidence, not upon the allegation being clearly false from the outset. I find that the Crown Court Judge did not direct anger towards the appellant's wife. This is an example of the appellant's disparaging attitude to his wife. He is perfectly happy to lie in order to denigrate his wife at a time when she is supporting him in his appeal.
126. I am satisfied that the family members, including the appellant's wife, intentionally decided to avoid giving relevant details on this issue in their witness statements and in their oral evidence. I have considered whether the decision was underpinned by shame and embarrassment, though I observe that the trial was addressed in the COYS assessment and both parents spoke to the assessor about it. Upon careful

consideration I find that the appellant, his wife and the five children who prepared witness statements decided to seek to present the appellant in as good a light as possible for the purpose of his deportation appeal and in doing so were prepared to engage in half-truths and deflection.

127. A combined decision by members of the family not to present the true situation is further evidenced by the silence as to the non-molestation order secured by the appellant's wife in September 2013, several months after the trial. The appellant claims even now not to know the basis upon which his wife sought the order. I find that he is fully aware as to the basis on which it was secured. I am satisfied that he has presented half-truths as to having moved into a relative's house in London in January 2014 and having lived there until returning to the family home in December 2014. He has done so to avoid having to engage with his wife securing the non-molestation order in September 2013. I find that he deliberately failed to detail within his evidence the fact that he resided with a relative in Leeds following his release from custody early in 2013. He was deliberately vague as to his movements at this time before me, as he sought to establish that he was not aware as to the reasons upon which the non-molestation order was granted. I find that his wife knew where he was living when the order was applied for and the order was served upon him at the correct address. He is untruthful as to such events. I find therefore that he was aware of the nature and contents of the order very soon after it was issued, and he has been untruthful on this matter before me. He seeks to hide the reasons as to why the order was granted in favour of his wife.
128. The appellant's wife has presented herself as having virtually no recollection of seeking and securing the order, beyond her reference to their *'there having been an argument with the children'*. This suggests, but no more, that the appellant's anger was directed towards his children. However, she is named in the order and the appellant was prohibited by the order against using or threatening violence towards her. Being mindful that she pursued the application and instructed legal representation, I find that she is not truthful as to now having no recollection of the grounds on which the non-molestation order was sought and secured. The order was issued some eight or nine months after the conclusion of the rape trial and the County Court must have been satisfied as to the existence of a risk of significant harm to the appellant's wife, attributable to the conduct of the appellant, if the order was not made immediately. I am satisfied that by the end of 2013 there continued to be a real threat of violence, whether through threats or harassment, even though the appellant was not residing with his family. I conclude that the appellant's wife has lied as to her recollection of events in order to support the appellant. Both have sought to prevent me from understanding the reason for the order being sought and the evidence presented to the County Court.
129. I find that the family's witness statements are an effort to whitewash the years of domestic violence and emotional abuse, the fracturing of the family unit for several years and the appellant's continuing anger. They read as hagiographies, with no engagement with the true circumstances.

130. I am satisfied that both the appellant's wife and the children have decided to act as best as they can to keep the family unit together and to prevent the appellant's deportation. However, I bear in mind that members of the family have experienced considerable violence at the hands of the appellant. The social services records make unpleasant reading as to the fractured nature of the family unit. In addition to the long-term domestic violence endured by the appellant's wife, which the children observed, the appellant subjected his children to significant violence. This led to minor instances of criminality by some of the children, and occasions when at least three of the children were reported missing from home. Interim care orders were issued in respect of three children and interim supervision orders made in respect of the others. The local authority involvement with the children occurred over several years. During such time concerns were raised as to the neglect of the children by their mother. I am satisfied that her son before me accurately identified that his mother was suffering mental health concerns because of the regular violence inflicted upon her by the appellant. I am satisfied to the requisite standard that the appellant's wife and children, having seen and experienced violence at his hands, being aware of his ongoing anger issues, seek to aid the appellant in preventing his deportation, as it brings short-term benefit to their own well-being in the family home.

Balance sheet assessment

131. Sir Ernest Ryder confirmed in *TZ (Pakistan) v. Secretary of State for the Home Department* [2018] EWCA Civ 1109; [2018] Imm. A.R. 1301 that although there is no obligation for a Tribunal to structure its decision-making in any particular way, the use of a structure is to be endorsed. After the Tribunal has found the facts it should set out, in the form of a balance sheet, those factors that weigh in favour of immigration control against those weighing in favour of family and private life. It should use that balance sheet to set out a reasoned conclusion within the framework of the tests being applied within or outside the Rules. The factors are not equally weighted, and the Tribunal must, in its reasoning, articulate the weight to be attached to each factor.
132. When considering the public interest, an assessment as to the seriousness of the appellant's offending is to be undertaken. The appellant relies upon the judgment of Underhill LJ in *HA (Iraq) v. Secretary of State for the Home Department* [2020] EWCA Civ 1176, [2020] H.R.L.R. 21, at [146] - [149], in particular [148]:
146. There is, however, another criticism of the UT's reasoning as regards the seriousness of the offence which emerged during the oral argument. It says at para. 62 that it gives due weight to the fact that RA's sentence "is at the bottom of the range covered by section 117C (3) ". It was right to do so: see para. 92 above. But it then notes as countervailing factors (a) that the Judge gave credit for a guilty plea and (b) that "as the sentencing judge pointed out, the offence was a serious one". It was submitted that it was wrong to treat those points as diminishing such weight as RA could otherwise put on the shortness of the sentence.
147. As to (a), I appreciate the logic of the UT's point. If the importance of the sentence is as an indicator of the seriousness of the offence, then that is more

accurately reflected in the level of sentence pre-discount. On the other hand, the statutory provisions themselves make no distinction between discounted and undiscounted sentences, which suggests that this degree of refinement is rather out of place. It might also be thought wrong that the fact that RA had acted responsibly and acknowledged his guilt was not allowed to be put into the proportionality balance. I think the UT should have proceeded without qualification on the basis that his sentence was at the very bottom of the relevant range.

148. As to (b), I think that the observation that the offence was "serious" was inappropriate for the reasons given at para. 94 above: of course offences of this kind are serious, but the authoritative measure of the degree of seriousness is the sentence imposed. I would add that the Tribunal was also wrong to say that the sentencing judge had himself described the offence as serious. We have seen the sentencing remarks, in which he says simply that an immediate custodial sentence is appropriate because travelling on false documents undermines "the immigration and travel pillars upon which this country is to a certain extent built". He added that the offence was not particularly sophisticated in its commission.

149. Again, I do not wish to be understood as saying that the fact that RA's sentence was at the very bottom of the relevant range is capable by itself of outweighing the strong public interest in the deportation of foreign criminals. I say only that it is, as indeed the UT recognised, a material consideration in striking the relevant proportionality balance.

133. I place into the assessment the fact that the appellant received a 12-month custodial sentence in 2008, and that he was found not guilty at the trial held in 2013.
134. However, I am also permitted to place into the assessment my findings that the appellant regularly assaulted his wife and children over many years to levels that would have attracted criminal prosecution. I am satisfied having heard the evidence of the appellant's son that several assaults would have been established to the criminal standard. I therefore place into my assessment that the appellant inflicted significant levels of violence and threats of violence upon his wife from a date soon after their marriage in 1993 and subsequently upon his children until at least September 2013 when a non-molestation order was issued.
135. The appellant can rely upon his having lived lawfully in this country since 30 December 1992, a period of 28 years. He has enjoyed settled status since June 1996. However, he has not been lawfully present in this country for half of his life and there is no operation of 'a near miss' in relation to section 117C(4) of the 2002 Act.
136. I find that much of the delay in these proceedings rests with the appellant. Various Family Court proceedings concerning his children ultimately arose because of his violence. Further, he failed to keep the respondent notified as to the progress of such proceedings and I conclude that the burden was upon him to take this step, rather than there being a burden placed upon the respondent to constantly liaise with the Family Court. Whilst acknowledging that the respondent took time to consider further representations between Autumn 2015 and Spring 2018, I am satisfied that

the appellant cannot rely upon this period of delay in circumstances where he has known for many years that the respondent seeks to deport him, and previous appeals were concluded in his favour on the narrow ground that the respondent was required to consider relevant Family Court decisions. In any event, for the reasons detailed in this decision, the appellant has not developed closer ties and deeper roots in this country. He continues not to have insight into his long-standing offending behaviour and exhibits little if any empathy to his wife and children. His outlook is a selfish one, requiring personal attention from those around him. He is unemployed, is medically unfit to work and so on his own evidence has limited interaction with his community beyond sometimes shopping and his attendance at a mosque.

137. The appellant can appropriately rely upon it being in the minor child's best interests that they reside with both parents. The appellant has been a continuous presence in the family home since December 2014, and so the minor child has lived with their father for approximately ten of their fifteen years. Further, reliance can be placed upon social services having identified in 2016 that no safeguarding concerns arose in relation to the appellant's return to the family home.
138. I have no written evidence from the minor child as to the relationship with their father. I am satisfied that it is more likely than not that if such evidence had been filed it would have been consistent with the evidence relied upon by their siblings, and so would not have presented a frank and complete picture of life in the family home. It is a preserved finding that the siblings secure support from each other, and I find that the minor child secures significant support from their mother and siblings, with their father a peripheral figure in their day-to-day life. I further find that the minor child is shielded from their father's anger and efforts to dominate within the family home by elder siblings.
139. Upon considering the individual circumstances of the minor child, at their highest, I observe as well-founded JFtT Herlihy's preserved finding that whilst they would miss their father, the personal circumstances in being separated from him would be far from being unduly harsh and I find that they come no-where close to establishing very compelling circumstances, either on their own or taken holistically. The minor child has close, protective support from elder siblings, and it is this support, coupled with that of their mother, which is of importance to their emotional and educational development.
140. Consequently, the appellant enjoys limited weight in the assessment as to it being in the best interests of his minor child that he remains in this country.
141. The respondent has accepted, as do I, that the appellant is in a genuine and subsisting marriage to his wife. She may miss him if he were to be deported and may feel personal anguish as being known in the local community to have been separated from her husband through deportation. However, she has lived apart from her husband for several years and whilst I find that she invited him to return to the family home in 2014, I am satisfied that this decision was predicated upon the wishes of some of her children. Her care needs are primarily met by her elder children and her son confirmed to me that her elder children can accompany her to visit her GP.

142. I do not accept, to the requisite standard, that her depression and hypertension have deteriorated due to the anxiety and stress caused by the ongoing deportation proceedings. Such proceedings have been running for over a decade, and for several of those years she did not reside with the appellant. I find that it is more likely than not that her present mental health concerns are rooted in the long-term domestic violence to which she was subjected and her continuing need not to exacerbate her husband's anger.
143. Consequently, the wish of the appellant's wife that her husband remains in this country enjoys some weight in the overall assessment, but it amounts to limited weight.
144. No positive weight can be placed in the assessment upon the appellant's health condition. His present medical treatment is primarily limited to attending his GP. Appropriate care can be secured in Bangladesh, as confirmed by the relevant preserved finding of fact.
145. Ms. Revill submitted on the appellant's behalf that he is rehabilitated. Reliance was placed upon the applicant having only been convicted on three counts in 2008. I place into my assessment that the offences in 2008 were serious ones. The assault upon his wife involved the use of a cable to choke her, and the appellant subsequently disregarded both bail conditions and a court order secured by his wife when visiting the family home and making threats to kill. The threats made to a relative of his wife that he would kidnap their children must have been frightening.
146. Whilst giving some weight to the appellant as to the passage of time since 2008, I have found that the appellant has no insight into his violent behaviour, and underplays his current issues of anger. Whilst I am satisfied that the appellant has not committed domestic violence in recent years, I am not satisfied that it is unlikely that he will offend in the future. He remains indifferent to his anger and his coercive control, as well as to his belief in his primacy within the home in relation to both his wife and his children. I find that he has not rehabilitated, simply that his health condition and the maturity of his son impacts upon his ability to use violence to dominate those around him. I find that he is capable of using other forms of coercion, being mindful that his wife and his children are fearful of future violence.
147. I give weight to the appellant's significant and long-term history of violence towards his wife and children. I also give some weight to the considerable number of lies the appellant has given to this Tribunal, which is strongly suggestive that he possesses little inclination to be truthful to the authorities. I have found that he is a man who is generally a stranger to the truth.
148. Contrary to the submission of Ms. Revill, I do not find that the appellant provides ongoing, real, effective or committed support to his adult children. He is reliant upon financial contributions from his children, and I have further found that all of the children have been affected by the years of violence that they have observed and suffered. I find the true circumstances are that the appellant returned to the family

home desirous of being personally cared for whilst in ill-health and his primary interest remains in the provision of such care by his family.

149. The children, both adult and minor, have a strong interdependent relationships and whilst they may miss their father upon his return to Bangladesh, they will not be denied substantive support. Their emotional connection to their father can be satisfied by telephone and other means of communication.
150. Further, I do not accept Ms. Revill's submission that the children will lose the benefit of their father acting as a role model. I am satisfied that the children are well aware of their father's violence and temper and I find that they do not genuinely believe him to be a role-model. He has been a long-standing source of considerable pain to each member of the family, and whilst the violent outbursts may have diminished, those who have experienced his behaviour over many years could not consider him a role model.
151. Upon considering the evidence in the round I find that the public interest in deportation has been clearly established and that the appellant's circumstances come nowhere close to meeting the high threshold of establishing very compelling circumstances outweighing the public interest under paragraph 117C(6) of the 2002 Act.
152. I conclude by observing the aid I received from both representatives in this matter. It is appropriate that I observe the skill with which Ms. Revill represented the appellant, and I note the considerable effort that went into her very helpful skeleton argument.

Postscript

153. The failings by the appellant's solicitors ultimately extended the resumed hearing by approximately an hour as further information as to the rape trial was sought from them as well as time being required to examine the appellant and his wife as to the trial. I observe that neither the representatives nor the Tribunal were aware as to the precise charges advanced at the criminal trial until after the hearing of this matter commenced. The examination of victims of domestic violence requires appropriate pre-hearing preparation, and the requirement is the same in respect of rape complainants, as the discussion of violence, both physical and sexual, can be a traumatic experience. The failure of the appellant's solicitors to clearly address events at the 2013 trial by means of the witness statements is significant. At the hearing I was mindful that I may have had to adjourn the hearing to ensure that the representatives had adequate time to prepare careful examination. However, both representatives, and in particular Ms. Cunha, handled examination of this issue with great care and sensitivity. I note my gratitude in respect of their skillful examination. I further observe that the solicitors' failures as to this issue were significant. Not only did their failure result in the appellant's wife, a supporting witness for their client, being cross-examined on a sensitive matter by the representatives who enjoyed no prior warning, but they failed to provide adequate instructions to their counsel

which resulted in a failure to address at the hearing the statutory protection enjoyed by the appellant's wife under the 1992 Act.

154. I am further concerned as to the actions of the appellant's solicitors consequent to their failure to abide by rule 15(2A) of the 2008 Rules and, in particular, the introduction of evidence on issues upon which the appellant had already been found incredible and in relation to which there were preserved findings. In the absence of a rule 15(2A) notice, there was no effort within the witness statement to clearly indicate what evidence post-dated the First-tier Tribunal's decision in August 2019. Ms. Revill wisely did not seek to rely in her submissions upon new evidence concerned with the appellant's purported care of his wife at home.
155. A decision was taken by the appellant and his solicitors for the hearing of this appeal to be conducted remotely at the appellant's home, not at the representatives' office. Such decision resulted in the possibility that the appellant's wife would be examined as to her history of domestic violence and her rape complaint in the presence of her husband and son. I am grateful to Ms. Revill who agreed to the appellant and the son being requested to leave the room when the appellant's wife gave evidence. I am satisfied that by leaving the issue of the rape trial to be addressed in oral examination at the hearing and by no steps being taken prior to the hearing to ensure that the appellant's wife gave evidence away from her husband, preferably in the presence of a lawyer or a person able to provide support, the solicitors wholly failed to have regard to her vulnerability.
156. The appellant's solicitors are reminded as to the Tribunal's inherent jurisdiction to govern proceedings before it and to hold to account the behaviour of lawyers whose conduct of litigation falls below the minimum professional standards: *R. (on the application of Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin). The Tribunal does not expect such failings on the part of the Manchanda & Co to arise again in future proceedings.

Notice of decision

157. By means of a decision dated 19 March 2020 this Tribunal set aside a decision of the First-tier Tribunal promulgated on 14 October 2019 on one issue alone, namely as to whether very compelling circumstances arose reducing the public interest in the appellant's deportation, so that his deportation would be a disproportionate interference with his protected article 8 rights. The decision on this one issue was set aside pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.
158. The decision on the appellant's appeal on this issue is re-made, and the appeal is dismissed.
159. The anonymity direction is confirmed.

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

160. 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, his wife and their children. 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: 28 December 2020

To the Respondent
Fee Award

As the appellant's appeal has been dismissed, there can be no fee award.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan
Date: 28 December 2020