



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2022-  
004680

First-tier Tribunal No: PA/01484/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 10 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**  
**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**DAMION CHRISTOPER THOMPSON**

Respondent

**Representation:**

For the Appellant: Miss Young a Senior Presenting Officer  
For the Respondent: Mr Jafferji of Counsel

**Heard at Phoenix House (Bradford) on 17 May 2023**

**DECISION AND REASONS**

1. For the purpose of continuity with the decision in the First-tier Tribunal we will hereafter refer to the Secretary of State as the Respondent and to Mr Thompson as the appellant as they were in the First-tier Tribunal.
2. The appellant is a citizen of Jamaica who was born on 26 June 1978. He appealed against the decision of the respondent, dated 18 October 2021, to refuse his fresh protection and human rights claims that were made (variously) between 27 July and 7 August 2021 (hereafter, "the decision"). He appealed upon the only statutory grounds available to him, namely, that his removal from the United Kingdom in consequence of the decision would be (a) contrary to the United Kingdom's obligations under the Refugee Convention, or in respect of persons entitled to humanitarian

protection, and/or (b) unlawful under section 6 of the Human Rights Act 1998 as being contrary to his right to (a) freedom from torture or other human or degrading treatment under Article 3, and/or (b) respect for private and/or family life under Article 8, of the European Convention of Human Rights and Fundamental Freedoms.

3. Judge Kelly dismissed the protection appeal but granted the Article 8 appeal in a decision dated 22 July 2022. There is no appeal before us in relation to the refusal of the protection appeal.

### **Permission to appeal**

4. Permission was refused by First-tier Tribunal Judge Thapar on 23 September 2022.
5. Permission was granted by Upper Tribunal Judge Pickup on 5 January 2023 for the following reasons:

“2. It is at least arguable that the reasoning at [49] of the impugned decision is insufficient to reach the threshold of being an ‘unduly harsh’ consequence of deportation. The decision does not in fact detail consequences, only the current state of the partner’s health and the extent and length of their relationship.

3. It is arguable that the ‘little weight’ consideration of s117B(4) was inadequate, the judge finding a so-called tension with s117C. It is also unclear whether weight was given to the alleged delay in removing the appellant, when it was his responsibility to leave the UK.

4. For the reasons explained above, an arguable material error of law is disclosed by the grounds. All grounds may be argued.”

### **The First-tier Tribunal decision**

6. Judge Kelly made the following article 8 findings:

“41. Given the length of time that the appellant has been resident in the United Kingdom (over 20 years), much of it on a lawful basis, together with the fact that, save for a few months whilst seeking entry clearance, he has resided with his British wife in the United Kingdom for very nearly 20 years, I find that the appellant’s removal in consequence of the refusal of his human rights claim would constitute an ‘interference’ with his right to respect for both private and family life sufficient to engage the potential operation of Article 8 of the Human Rights Convention.

42. The decision to maintain the deportation order and to refuse the appellant’s human rights claim was taken in accordance with the Rule of Law (the Immigration Acts). It is thus, to that extent, in accordance with the law.

43. The respondent’s decision was also taken pursuant to the legitimate aim of preventing crime. The remaining question is whether the consequence of that decision (removal of the appellant to Jamaica) would be proportionate to that end. In considering this question, I am obliged “to have regard” to the matters set out in section 117B and, more particularly, section 117C of the 2002 Act (see paragraph 11, above). I also take the decision of Judge Dearden as my starting point. This provides a comprehensive assessment of the appropriate balance that was to be struck at that time (2014) between the appellant’s right to respect for private and family life on the one hand, and the public interest in preventing crime on the other. Judge Dearden found that any adverse consequences of deportation for the appellant, his wife, and his children, were at that time outweighed by the strong public interest in deporting foreign criminals with a view to preventing crime. The question for me to consider is

whether the developments that have taken place in the ensuing 8 years have been (and are) sufficient to tip the balance between these competing interests in the appellant's favour.

44. Each side sought to blame the other for why, some eight years after Judge Dearden had held the appellant's deportation to be a proportionate response to offences that he had committed some two years' earlier (now, some ten years ago) the appellant was nevertheless continuing to reside with his family in the United Kingdom. I am not entirely sure that the reasons for the delay in the appellant's removal are of particular importance in this appeal given its undoubted consequences (considered below). However, so far as relevant, I consider that there is merit in Mr Hunt-Jackson's argument that much of the delay, possible most of it, is due to the series of further representations and applications for judicial review that appellant has made over the intervening period. However, I also consider that there is merit in Mr Jafferji's argument that (a) this is not a case in which the appellant has absconded whilst on bail; on the contrary, he has dutifully reported in accordance with his bail conditions throughout, and (b) there was a delay of some two years before the respondent made a decision in relation to the appellant's immigration status following the compromise of judicial review proceedings in 2019. I therefore conclude that, insofar as it is appropriate to characterise the reasons for delay in terms of culpability, there has been a measure of fault on both sides.

45. Given that the public interest in this case is predicated upon the legitimate objective of preventing crime, it is perhaps appropriate at this stage to mention that the appellant is currently on police bail pending an investigation into an allegation of rape. The appellant has not as yet been charged with any offence, and he may of course never be so-charged. Given the presumption that a person is 'innocent until proven guilty', I have disregarded the fact of this investigation in my assessment of the public interest, which I treat as being engaged solely by reason of the appellant's offences in 2012.

46. Given that the appellant has spent slightly less than half his life residing in the United Kingdom, and considerably less than this residing here lawfully, Mr Jafferji did not seek to argue that the private-life exception (or 'shortcut') was available to the appellant under section 117C(4). The remaining criteria of that sub-section (integration in the UK and obstacles on return to Jamaica) nevertheless remain relevant when considering the over-arching Article 8 balance (see below).

47. Mr Jafferji did however argue that the requirements of the 'family life' exception in sub-section 5 were met by the facts of this appeal. One of the consequences of the delay in removal since Judge Dearden made his decision is that Ms Rose's two children are now both over the age of 18 years and thus no longer fall to be considered as 'qualifying children' for the purposes of section 117C of the 2002 Act. There is however no dispute that Ms Rose herself continues to be a 'qualifying partner', given that she is a British citizen with whom the appellant continues to have a genuine and subsisting marital relationship. The outstanding question in her case, therefore, is whether the consequences for her of the appellant's deportation would be 'unduly harsh'. When considering matters in 2014, Judge Dearden concluded that they would not. This was essentially because (a) the appellant's relationship with his wife was formed at a time when he was in the United Kingdom unlawfully, and (b) Ms Rose would be able to remain in the United Kingdom without him (Judge Dearden does not appear to have considered the alternative scenario of her married life continuing in Jamaica).

48. There seems to me to be a tension between (a) the requirement in section 117B to place "little weight" on a relationship that is "established" at a time when the claimant is in the United Kingdom unlawfully, and (b) section 117C that exempts from deportation those who meet its requirements irrespective of the foreign criminal's circumstances when the relationship was "established". It seems to me that the provisions of section 117C must prevail over those of section 117B given that it was open to Parliament to make lawful status at the relevant time an express requirement in order to qualify for exemption under section 117C(5). I therefore hold that, on the facts of this case, the only outstanding issue under section 117C(5) is whether the consequences for Ms Rose of the appellant's deportation would be "unduly harsh". I have concluded that they would. This is for the following reasons.

49. Ms Rose does not appear to have any connection to Jamaica beyond the extremely tenuous one consequent upon her relationship with her husband. She has now been living with the uncertainty of her husband's deportation for some ten years. Whoever's fault this may be, it is not hers. Insofar as it may be relevant in this context to take account of the fact that her relationship with the appellant was established at a time when he was in the United Kingdom unlawfully, it is right also to note that he regularised his immigration status within a year of their marriage by returning to Jamaica in order successfully to apply for re-entry as her spouse. The appellant has acted throughout as the de facto father of her two children and supports them with their continuing problems in adulthood. Ms Rose has also come to rely upon the appellant to care for ailing members of her family, most recently her late father, whilst she continues to support them financially from her earnings as a senior nurse employed within the National Health Service. In addition to all her other problems in respect of which she is reliant upon the support of her husband, she has had to cope with being diagnosed and treated for cancer. All of this has unsurprisingly taken its toll upon her mental health, as evidenced by the report of Dr Raganwoola. To deprive her of her husband's support in the United Kingdom now, ten years after he was released from his prison sentence, amounts in my judgement to an 'unduly harsh' consequence of deportation.

50. I have nevertheless gone on to consider whether there are any other "very compelling circumstances" that outweigh the public interest in deportation under section 117C(6). I emphasise that I have considered this question holistically and with reference to the factors in Uner v The Netherlands [2006] ECHR 873. It will be recalled that those factors are as follows:

- the nature and seriousness of the offence committed by the appellant;
- the length of the appellant's stay in the UK;
- the time elapsed since the offence was committed and the applicant's conduct during that period; - the nationalities of the various persons concerned;
- the appellant's family situation,
- the best interests and well-being of the appellant's children, in particular the seriousness of the difficulties which they would be likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.

51. The first of these factors is reflected within section 117B(2), which enjoins the Tribunal to consider that the more serious the crime the greater is the public interest in deportation. I moreover note that the European Court of Human Rights has consistently treated crimes of violence and drug-related offences as being at the most serious end of the criminal spectrum. That said, the length of the appellant's sentence of imprisonment (two years) falls towards the bottom end of the spectrum of 12 months to four years within which the exceptions to the public interest in deportation are potentially engaged. I also accept the assessment of Lisa Davies (Chartered Forensic Psychologist) that the prospects of the appellant re-offending are 'low', and that this assessment would have been 'very low' but for the fact that he is not currently permitted to enter paid employment. That said, I also bear in mind that the deterrent effect of deporting foreign criminals is an important public policy consideration.

52. With the exception of a period of six months whilst he sought entry clearance to the United Kingdom as Ms Rose's husband, the appellant has now been continuously residing in the United Kingdom for a period approaching 22 years. Although this does not qualify him to meet the exception to the public interest in deportation under section 117C(4), it is nevertheless a very significant period of residence in the United Kingdom.

53. The time that has elapsed since the appellant's offending and his conduct during that period is not a factor that falls within either of the exceptions to the public interest in deportation under section 117C of the 2002 Act. It may thus truly be said to be a factor that is "over and above" those considered under that section. It is also, in my judgement, a "very compelling" circumstance that weighs in the balance in opposition to the public interest in deportation.

54. The appellant is a citizen of Jamaica. However, his wife, child, and step-children are all British citizens. Although none of the appellant's 'children' (in the broadest sense of that word) are any longer minors, it is nevertheless clear from all that I have read that there continues to be a strong bond of love and affection between them.

55. In assessing the solidity of the appellant's social, cultural and family ties with the United Kingdom, I have attached little weight to the online 'petition', signed by supporters of his wife's campaign to prevent his deportation, given the lack of information concerning its signatories. I do however attach significant weight to those members of the local community who have taken the trouble to write a bespoke statement in support of the appellant's case. This includes a lengthy statement from Carl Gallagher, who is a solicitor and has been the appellant's neighbour for around twenty years. It is clear from this statement that the appellant is a well-respected and cherished member of the local community. By contrast, his social, cultural and family ties to Jamaica are close to non-existent given that he was "adopted" at birth by a woman ('Martha') who treated him as a slave, and that he was thereafter raised by a man who exploited him as a 'prize fighter' and has since been murdered. It is moreover clear that the appellant's last remaining social link to Jamaica, Vayon Smith with whom he holidayed for a few weeks in 2008, has since moved to the United Kingdom (see also, paragraph 35 above).

56. Having considered the above factors individually, I have weighed them in the balance and have thereby concluded that the appellant's deportation in consequence of the decision to refuse his human rights claim would be a disproportionate means of securing the legitimate public interest in preventing crime."

## **The Respondent's grounds seeking permission to appeal**

### 7. The grounds asserted that:

"1. It is submitted that the FTTJ's reasoning at [49] that the appellant's deportation would result in undue harshness for the appellant's partner does not establish that high threshold, as confirmed in HA (Iraq) (Respondent) v Secretary of State for the Home Department (Appellant) (supremecourt.uk). It is respectfully submitted that the evidence does not support the FTTJ's conclusions, there is no evidence that the circumstances in this case go beyond the established threshold as set out in the established case law.

2. It is respectfully submitted that the FTTJ has failed to make a finding on what the consequences would be for the partner. It is submitted that the determination suggests the consequences of the Appellant's deportation would merely result in inconvenience and discomfort but nothing that points towards something that is unduly harsh. It is respectfully submitted that the FTTJ's findings on this matter are devoid of any proper analysis on what the consequences of the application of the unduly harsh assessment are.

3. It is respectfully submitted that the FTTJ fails to consider that the partner now has adult children to assist her, is a British Citizen can work and is also entitled to benefits from various forms of statutory support and assistance, including schools, the NHS, Local Authority Services and social services if need be. Reliance is placed on BL Jamaica [2016] EWCA Civ 357.

4. With respect to the finding at [44], [49] and [53], it is respectfully submitted that a decision of the UKUT in respect of the public interest in deportation cases not automatically being adversely affected even in situations with egregious administrative delay, RLP (BAH revisited - expeditious justice) Jamaica [2017] UKUT 00330 (IAC) headnote (ii):

"In cases where the public interest favouring deportation of an immigrant is potent and pressing, even egregious and unjustified delay on the part of the Secretary of State in the underlying decision making process is unlikely to tip the balance in the immigrant's favour in the proportionality exercise under Article 8(2) ECHR."

Reliance is also placed on R(on the application of Shou Lin Xu)v Secretary of State for the Home Department (Legacy cases - "conclusion" issue) IJR [2014] UKUT 375(IAC), headnote (2)):

'It follows that, in the event that consideration of the relevant Immigration Rule and guidance produced a negative answer, the rationale of the Supreme Court at [25]-[35] of Patel v Secretary of State for the Home Department [2013] UKSC 72 applies, that is, the Secretary of State is entitled to proceed on the basis that those unlawfully in the UK will leave of their own accord; she is not obliged to remove an individual or issue a removal decision.'

It is submitted that there is no legal requirement for the SSHD to deport/remove a person from the UK, on the contrary the SSHD can expect that a person who is not lawfully in the UK leaves of his own accord. The appellant has remained in the UK without leave and knew that he had lost his appeals against deportation and was appeal rights exhausted as of 29 April 2015 yet remained in the UK regardless.

5. In 2014 Judge Dearden found that that any adverse consequences of deportation for the appellant, his wife, and his children, were at that time outweighed by the strong public interest in deporting foreign criminals with a view to preventing crime. It is respectfully submitted that the appellant should have left the UK of his own accord after this decision, but instead as shown at paragraph [5]-[7] the appellant has been rewarded by the FTTJ for delaying his removal from the UK.

6. With regard to the findings from [50] onwards under very compelling circumstances, it is submitted that for the same reasons given above there are none. In addition it is respectfully submitted that the FTTJ has failed to take into consideration their earlier finding at [28] 'significant discrepancies in the appellant's account of the murder he claims to have witnessed in Jamaica, emerging as they did during the course of his oral evidence at the hearing.' Therefore, the appellant is still prepared to bring to court a claim that is found to contain significant discrepancies and is dismissed.

7. With regard to the finding at [55] it is respectfully submitted that it is unclear whether the members of the local community whose testimonies are given great weight are aware of the appellant's criminality.

8. It is respectfully submitted that the FTTJ has failed to apply the mandatory provisions of s. 117B contrary to s. 117A of NIAA 2002. In particular it is submitted that under Section 117B(4) little weight should be given to a private life or a relationship with a qualifying partner established when the person is in the UK unlawfully. In the appeal determination dated 4 December 2014, Judge Dearden concluded;

"Furthermore, the Appellant obviously started going out with Mrs Rose and married her when he knew that his immigration status was at the least precarious and some would say his status was completely illegal. I accept that the Appellant is still married to Mrs Rose and living in the same house as her and that they have been together for twelve years...

... I accept that there have been two previous separations between the Appellant and his wife when he was in Jamaica between May and October 2006 and in prison between June 2011 and September 2012 and yet the marriage has continued by phone contact and visits...

... Mrs Rose and the child are British and of course cannot be forced or expected to leave the United Kingdom. If they choose to do so that is a matter entirely for them. Applying paragraph 390A of the Rules I do not find that there are exceptional circumstances persuading that the public interest in maintaining the deportation order is outweighed by other factors. In particular under 399A I find that it would not be unduly harsh for the child to remain in the UK without the Appellant bearing in mind that they have been separated twice previously. Under paragraph 398(b) I note the relationship was formed when the Appellant was in the UK unlawfully and for identical reasons I do not find it would be unduly harsh for Mrs Rose to remain in the UK without the Appellant. Under the Immigration Act 2014 I am statutorily obliged to note that the Appellant is not financially independent and that he formed the relationship with Mrs Rose when he was in the United Kingdom unlawfully or in a precarious situation.

It is respectfully submitted that 117B(4) has not been applied as it was in 2014 and therefore the principles of Devaseelan have also not been applied.”

### **Rule 24 notice**

8. There was no rule 24 notice.

### **Oral submissions**

9. Miss Young submitted that the unduly harsh test had not been met. There must be something more than being inconvenient or difficult. No detail has been given as to the toll on Ms Rose's mental health. The Judge did not identify which part of the psychiatric report was relevant. The children are now adults. The Judge did not expand on what support was given to them and why it would be unduly harsh upon Ms Rose if the appellant were deported.
10. She further submitted that very compelling circumstances required under section 117B had not been identified. This linked to the unduly harsh consideration and infected the balancing exercise. The Judge had not engaged with the determination by Judge Dearden on this issue. Not all factors were adequately weighed.
11. Mr Jafferji submitted that the Judge identified in [3], [20], and [26] that the majority of facts were uncontentious especially those in [8-11]. The Judge identified at [27] that he had considered all the evidence which in this case was especially voluminous. He gave a detailed assessment of the protection claim and rejected that aspect of the appeal. He gave a similarly meticulous assessment of the Article 8 claim from [40] onwards. The Judge noted at [43] that Judge Dearden’s decision from 2014 was the starting point for his consideration of the evidence. He noted at [44] the delay, attributed blame to both parties, and did not identify it as being a positive factor of any significance in favour of the appellant.
12. He submitted that the Judge was correct to consider s117B and s117C separately as they were self-contained. At [49] the Judge recited the background to the current circumstances and identified the challenges Ms Rose faced namely her cancer, family problems, children, father's death, and the toll it took on her mental health. The Judge had in mind the consequences of the removal from her support network by reference to her mental health as identified by Dr Rangawoola. He did not have to set out all the evidence. It should not be assumed that the Judge erred or did not know the law. It was clear what the Judge was referring to in the balancing exercise.
13. Ms Rose’s fragility was summarised in the skeleton argument at [16, 17] prepared on her behalf for the hearing before Judge Kelly which stated:

16. The following factors are relevant to assessing whether the impact of the Appellant’s deportation on Linda would be unduly harsh:

- i. The loss of the Appellant and the inevitable adverse impact on her emotionally, particularly because of her fears for his welfare and safety in Jamaica.
- ii. The additional stress of having to cope with Aaron's significant care needs without the Appellant's assistance
- iii. The additional stress of having to comfort Rebecca without the Appellant's assistance
- iv. The additional stress of having to cope with her mother's needs without the Appellant's assistance
- v. The inevitable impact on her mental health due to all of the above. There is a serious likelihood of significant deterioration in her mental health. Linda has already taken four months off work for stress, and has been diagnosed with mental health problems by Dr Yusuf.

17. The impact on Linda will be far more than the general impact of losing a spouse to deportation action. Linda has diagnosed mental health problems, and a poor prognosis if the Appellant were to be deported. This prognosis is supported by the evidence showing the additional stress factors that Linda will have to deal with if the Appellant were to be deported. The cumulative effect of these matters will inevitably have a seriously detrimental effect on Linda's mental health.

14. Dr Rangawoola also noted her weight loss, alcohol use, son's epilepsy, stress, low mood, chronic dysthymia and anxiety disorder, and stated that being overwhelmed by family and work needs could lead to an emergency and crisis intervention, and that it was very likely that separation from the appellant would lead to a deterioration in her mental health requiring intervention. The Judge had all this in mind at [49]. The Judge also considered the observations of the Independent Social Worker Laurence Chester regarding Ms Rose.
15. The Judge noted the uncontested evidence of the appellant's emotional and practical support and reducing her stress level. The Judge expressed himself briefly at [49] but it is clear he was referring to the consequences of the appellant's removal on Ms Rose.
16. In relation to s117, he submitted that at [50] the Judge took all relevant factors into account including the experts evidence. He noted at [51] the serious nature of the offence and that the reoffending risk was low and the deterrent effect important. At [52] he took into account the immigration background and length and quality of the residence. He noted at [53] the time lapse and conduct, and at [55] solidity of ties here and in Jamaica. The Judge placed little weight on the petition at [55] but more on the bespoke letters showing he was discerning about the weight to place on different aspects of the evidence.
17. The ground were inaccurate at [7] as the letter from Mr Gallagher at [5] shows he and neighbours were aware of the appellant having a conviction and jail sentence.
18. The Judge was concise at [55], but the background was at the forefront of the Judge's mind when considering whether there were very compelling circumstances. At [56] the Judge took everything into account cumulatively.



19. The Judge had the appellant's statement regarding his background which we extract below at [32].
20. The grounds amount to a disagreement with findings open to the Judge. It was not just inconvenience and discomfort. There were diagnosed mental health issues. The Judge recognised that since 2014, the fresh evidence established that the balance of evidence had tipped. The Judge disregarded asylum factors. His assessment should not be interfered with as explained for example in AA (Nigeria) [2020] EWCA Civ 1296 at [41].
21. Miss Young responded that the Judge did not deal with all the issues in the body of [49] or identify what parts of the evidence he was referring to when reaching the conclusion. A fair reader does not know what documentary evidence was being considered to show the elevated threshold had been reached. There still needs to be a proper analysis even with large bundles.

## **The legal framework**

22. On 6 June 2011, the appellant was convicted at Leeds Crown Court of possession of a controlled Class A drug (Crack Cocaine) and facilitating the acquisition and possession of criminal property. He was sentenced to a total of 2 years' imprisonment.
23. Judge Kelly set out the legal framework:
  18. Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms reads as follows:
    - (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
    - (ii) There shall be no interference by a public authority with the exercise of this right except such as is necessary in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.
  19. In considering whether the respondent's decision breaches the appellant's right to respect for private and family life and would consequently be unlawful under section 6 of the Human Rights Act 1998, section 117A of the Nationality, Immigration and Asylum Act 2002 requires the Tribunal to have regard to the matters set out in Part V of the Nationality, Immigration and Asylum Act 2002 (provisions that mirror those to be found in paragraphs 398, 399, and 399A of the Immigration Rules). Those matters which are relevant to the present appeal are as follows:

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

    - (1) The maintenance of effective immigration controls is in the public interest.
    - (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
      - (a) are less of a burden on taxpayers, and
      - (b) are better able to integrate into society.

- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
    - (a) are not a burden on taxpayers, and
    - (b) are better able to integrate into society.
  - (4) Little weight should be given to—
    - (a) a private life, or
    - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
  - (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- 117C Article 8: additional considerations in cases involving foreign criminals
- (1) The deportation of foreign criminals is in the public interest.
  - (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
  - (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
  - (4) Exception 1 applies where—
    - (a) C has been lawfully resident in the United Kingdom for most of C's life,
    - (b) C is socially and culturally integrated in the United Kingdom, and
    - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
  - (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
  - (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
  - (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

## Discussion

24. The grounds seek to challenge paragraph 49 of the decision and that the evidence did not reach the elevated threshold.
25. In *HA (Iraq) v SSHD* [2022] UKSC 22 the Supreme Court gave its guidance on the approach to the relevant question:

“‘unduly harsh’ does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. ‘Harsh’ in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb ‘unduly’ raises an already elevated standard still higher.”
26. The FtTJ was required to make an evaluative judgement of the effect of deportation on the appellant's partner on the particular facts and circumstances of the individual case.
27. The Judge does not have to recite every piece of evidence considered. Merely because all of the evidence is not recited expressly, the

Tribunal should be slow to infer that it was not taken into account and should exercise judicial restraint in not assuming the FtJ misdirected himself just because every step in his reasoning is not set out (see R (Jones) v First-Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 at [25]). Furthermore the basis upon which the FtJ reached his decision may be set out directly or by inference. We accept he read everything as he said he did. He did not have to recite multiple sources. He listed the key documents at [22-24] and he was discerning in his assessment of the evidence as demonstrated in his rejection of the protection appeal in its entirety and explained why at [28-36].

28. The Judge summarised the evidence accurately in [4-11] and identified some of the sources. The finding of support for Ms Rose he made in [49] was based on unchallenged evidence and did not need to be repeated. This included that:

- (1) her son Aaron has epilepsy and a number of other health issues in respect of which the appellant provides him with support [8],
- (2) Ms Rose works full-time as a mental health nurse and has worked for the NHS for 35 years [9],
- (3) The appellant maintains contact with his son Akeem who it is suspected is on the autistic spectrum [10], and
- (4) The appellant has a close relationship with Ms Rose's mother who is 78 and lost her husband in March 2021 and provides her with emotional and physical support [11].

29. We were referred to Ms Rose's uncontested statement that:

"34. Damion's support reduces my stress levels. He takes charge of a number of things in our household and my mums. Life has very difficult recently. Since my father passed away I tend to take each day as it comes. I have never felt as bad as I do now.

35. I have been incredibly stressed with work, grief and Aaron's illness. Damion has been there to support me emotionally and practically. He always tells me about the day he has had with my mum- what she has said that has made him laugh or what mission she is on to buy more plants for her precious garden. It's an extra special smile when he finds the east Indian mangoes she loves in the shops. We used to laugh how she would hide them from my dad when he was alive if Damion brought 2 of them to the house as she would still want them both."

30. We note that Dr Rangaloolwa had reported that Ms Rose:

"has a close and intimate relationship with Mr. Thompson and this relationship has grown over the years. They share a similar sense of humour and outlook to life in general. She has been struggling with the strain and thoughts of Mr. Thompson being deported. She worries how he would cope with this on his own. She can't see a life for him in Jamaica and for herself in UK without him. She was tearful whilst talking about her thoughts and feelings.

Mrs Rose is a registered mental health nurse and currently working as Head of Nursing for the Local NHS trust in the region. She has been struggling at work and at home due the current circumstances and fears that her family will be broken and destroyed. She lacks motivation at work and has had 4 months off work due to stress.

She was diagnosed with stage 3 breast cancer at the same time when Mr. Thompson went to prison. Rebecca her daughter was young at that time, and she struggled to care for her as a single parent whilst battling with cancer. She had chemotherapy, radiotherapy and surgery. She has recovered from this and is in remission.

When she visited Jamaica recently, she happened to go to the places around where Mr. Thompson lived and grew up. She felt that there is so much violence and killings there that Mr. Thompson is likely to struggle for his safety and welfare. The area was in a state of emergency. Linda feels that if she relocates with Mr. Thompson, she is likely to be unable to cope given her secured life in UK with her family. She has never lived there and is likely to struggle to immigrate and acclimatise there. She feels that a divorce is being forced upon them as a long-distance relationship will not work for her. Her daughter also shares the same sentiments.

Mrs Rose has suffered the loss of her father recently. She continues to grieve his loss. Mr. Thompson has been very supportive to the family, and he is her main support and confidant. She struggles with low mood due to this. She has not sought any help for this, but her line manager regularly checks up on her at work. She struggles with poor sleep and anxiety and feels on the edge all the time. She feels sometimes that she is going to explode due to the stress. She feels Mr. Thompson suffers from Hypertension secondary due to the mental stress he is experiencing. She has suffered from weight loss (six pounds) the last 3 months. She drinks up to 3 glasses of wine every night as a distraction to cope with her stress. She does not think this is a problem but long term alcohol consumption can cause worsening of her mood and lead to depression.

Her son has been diagnosed with epilepsy and this has been difficult for the family to deal with. He needs his family to support him through the illness as it has only been recently diagnosed and he needs assistance. He needs direct supervision and support, and this has been stressful for the family.

She feels like she is living inside a prison everyday with Mr. Thompson. She also fears early morning times in the kitchen as that was the time when UK Border force had come to take Mr. Thompson away. She suffers with anxiety due to this on a daily basis. Her daughter has also found the whole experience stressful and fearful.

Linda appears to be suffering from anxiety and low mood related to the stress and fear of Mr Thompson being deported from the country. She suffers from a psychiatric condition Chronic Dysthymia with separation anxiety disorder. Dysthymic disorder is characterised by a persistent depressive mood (i.e., lasting 2 years or more), for most of the day, for more days than not. The depressed mood in her situation is accompanied by additional symptoms such as markedly diminished interest or pleasure in activities, reduced concentration and attention or indecisiveness, hopelessness about the future, disturbed sleep, diminished appetite, low energy and fatigue. Her anxiety symptoms consist of signs of panic in the morning, fear that something bad is going to happen. She gets thoughts of harm or untoward events befalling on Mr. Thompson. Recurrent excessive distress upon fears of separation and recurrent nightmares about separation.

Her symptoms are persistent and are sufficiently severe to result in significant distress & cause impairment in personal, family, social, occupational, or other important areas of functioning.

She feels overwhelmed by the pressures of work and family needs. This has worsened since her son has been diagnosed with epilepsy his caring needs have increased. She would struggle without the support given by Mr Thompson currently as a husband and stepfather to her children. She is unlikely to recover from this

should Mr Thompson be deported. She could end up unable to care for her children. She could end up with emergency and crisis services if she were to have a crisis point. The course of her illness would end up being chronic and relapsing in nature.

Should she be separated from her husband she would struggle to cope on her own and she would become a single parent with a full-time job. She would very likely deteriorate in her mental health, and there is a risk that this could lead to a mental health crisis, requiring intervention from mental health services. This is preventable if her family unit remains intact. If Mr Thompson's immigration situation becomes settled so that there is no longer the threat of deportation and separation hanging over her head, there is likely to be an improvement, or at least a stabilisation, in her mental health.

Given her diagnosis and symptoms it is advisable that she seeks help for local NHS services. She could benefit from some psychological and medicinal interventions. She is a proud individual and reluctant to seek help for herself. She feels that she would be a burden on the already pressured NHS services. She is an essential worker and given her role as a Head of Nursing she feels that she must try to work and carry on as much as she can. She feels that any intervention might make her go off work and this could lead to further pressure on the NHS services. She fears that she would be removed from the role of an essential worker and feels that she should persevere with her pressures and stress.

31. We further note the Independent Social Worker Laurence Chester stated that Ms Rose:

“was tearful and presented as overwhelmed when asked to consider the implications of Mr Thompson being deported” and  
“it is reasonable to assume that Ms Rose will be significantly emotionally impacted by Mr Thompson's deportation.”

32. The Judge did not have to repeat any of the uncontested extracts of the evidence extracts referred to in [26-28] above. He said he had read them and a fair reading of the Judge's decision establishes that he had.

33. Dr Rangalwoola's assessment noted the consequences for Ms Rose of the appellant's removal (see above [12] and the decision of Judge Kelly at [49]), the limited support she could get from her adult children and the reason that statutory support would be inadequate, and he plainly had it in mind.

34. The grounds seek to challenge paragraph 50 of the decision and whether there are any other “very compelling circumstances” that outweigh the public interest in deportation under section 117C(6). The grounds assert there were none and that the appellant is still prepared to bring to court a claim that is found to contain significant discrepancies and is dismissed.

35. However, as part of his assessment the FtJ assessed the solidity of the appellant's cultural, social and family ties in the UK (see [55]). The grounds wrongly assert that it was not known whether those who wrote written testimonies were aware of the appellant having conviction and custodial sentence as the Judge noted and plainly had in mind the uncontested evidence of Carl Gallagher who had stated:

“ I am aware of the fact that Damion was convicted of a criminal offence some time ago, and he served a custodial sentence in relation to that offence. This information is known in the local neighbourhood. Indeed, I first became aware of the situation at the time of his arrest, when another of my neighbours informed me that the police had attended at Damion’s home. I was subsequently made aware of the fact that he had received a custodial sentence.”

36. The Judge also had the appellant’s uncontested statement regarding his background which we referred to above in [19] and which he did not have to recite as a fair reading of the decision identifies that he plainly had it in mind and summarised it at [55].

“4. I was raised from a child by a woman called Martha. I don’t know if she knew my parents, I don’t know if we were related or not. I just know that I was taken in by her and lived in her house. I don’t know when I started living there, I might have been 2 or 3 years old, or I might have been 5 or 6 years old. I just know that I lived there with other children, Martha’s children, but I was not treated like one of her children.

5. I was a servant or slave in the house, I would be made to help with the household chores, I would sweep the yard, clean out the pig pen, wash the dishes, go for water and help with any jobs around the house. Because I did not know anything different, I just thought that this was the way life was. I did not complain really because I was fed and had somewhere to sleep.

6. I did not have a bed, I would sleep on the floor, but it was better than living on the street. I never went to school or had an education. I did not learn how to read or write properly until I came to the UK.

7. If I did not behave or did not do a job well, I would be punished. Martha would beat me and I still have these scars. Martha would not treat the other children in this way. At the time I could not understand the reason for why she would do this but as I grew up and reflected back, I wondered perhaps if it was because I was not her child. I felt broken as a child because I had no one to love me and no one to keep me safe. For this reason, I would endure any treatment by those who gave me a place to stay because I believed I should be grateful. However, I was not grateful for the abuse I endured.

8. Martha beat me regularly. She once used a machete and hit my left foot and my left thigh. I still have the scars from this and when I look at them it upsets me greatly and I feel devastated for myself and what I had gone through.

9. I soon realised my place with Martha. She was abusive and caused me many injuries. I felt that she only gave me a place to stay because she could then take advantage of me and exploit me for manual labour. I felt like a slave. I had no chance to get way from this abuse. I had no other connections, no idea about my family and nowhere to run away to. I just had to endure it.”

37. The weight the Judge attached to each piece of evidence was a matter for him. For example he placed no weight on the delay simply noting there was fault on both sides ([44]), and little weight and on the petition but more weight on the written testimonies ([55]). The Judge was entitled to find that the evidence that developed in 8 year gap since the 2014 decision created a different factual matrix.

38. The Judge carried out the proportionality balance and listed the factors identified in Uner (see [50] of the Judge’s decision), and the public interest considerations (see [51-55] of the Judge’s decision). These were summarised in [22] of the Appeal skeleton argument filed on the Appellant’s behalf in the FtT.

- i. The lack of any family or other social support infrastructure for the Appellant upon return to Jamaica.
- ii. The general conditions he will face in Jamaica as a deportee- see Luke de Noronha's report.
- iii. The Appellant's subjective fear of return.
- iv. The background of abuse suffered by the Appellant in Jamaica as a child.
- v. The impact on the Appellant's mental health of all the above factors- see Dr Yusuf's report.
- vi. The low risk of reoffending.
- vii. The Appellant's conduct since his release from prison. He has clearly become a valued member of the community that he lives in, and has provided help and support to many people outside of his family. The support he provided to his late father-in-law; the support he continues to provide to his mother-in-law; the support for Linda, Rebecca, Akeem and now Aaron is conduct that is clearly positive, and shows comprehensive rehabilitation.
- viii. The impact on Linda's welfare.
- ix. The impact on Linda's ability to keep working as a senior mental health nurse. Nursing is a shortage occupation, particularly at this level of seniority and length of service. There would be a serious and significant negative impact on the public interest if Linda's ability to perform her role was adversely affected (which it inevitably will be), or she had to give her work up entirely.
- x. The impact on Rebecca's welfare. Although she is now an adult, she is clearly very close to the Appellant and his deportation would have a serious impact on her emotionally. The impact on Linda and Aaron would also have an adverse effect on her.
- xi. The impact on Akeem's welfare. He is clearly vulnerable, potentially on the autistic spectrum. The social worker assesses that Akeem's "mental health would be deeply impacted" by the Appellant's deportation.
- xii. The impact on Aaron's welfare. He is clearly in need of regular and extensive support. That support is provided by the Appellant at present. If that support is removed, there is a likelihood that Aaron will need support from the NHS or the local authority- in any event, a likely impact on public funds, and thus a detriment to the public interest.
- xiii. The impact on Fredrica Rose. In light of her recent bereavement, her physical health issues, her age, and the close bond that she has developed with the Appellant, there would be a significant impact upon Fredrica.
- xiv. The impact on the local community overall. It is clear from the witness evidence that the Appellant is a popular member of the local community whose presence would be missed. Further, the petition that Linda began last August when the Appellant was facing removal by charter flight has been signed by 51,912 people. This also shows the strength of feeling in the community regarding the Appellant's presence in the UK, and is a factor that must also be considered."

39. We are satisfied that in his consideration of s117B, the Judge was aware that the relationship commenced when the appellant's status was precarious and unlawful. However the relationship and the ensuing family life developed after the appellant left the United Kingdom and applied for and was granted a visa to pursue and develop that relationship which by the date of the decision was very nearly 20 years (see [4] and [41] of the decision). It was just one of the factors considered by the Judge and he had regard to it as required and the Judge clearly had in mind the findings of Judge Dearden from 2014 as he noted he was taking this as his starting point (see [43] of the decision). The Judge was correct to note that it is separate to the additional considerations identified in Exception 2 to s117C that applies where he was found to have a genuine and subsisting relationship with a qualifying partner, and he identified at [47] why the s117C criteria were relevant.

40. This was also a factor addressed by the FtTJ when considering S 117C(6) in the alternative to S117C(5) at paragraph 5.
41. The grounds amount to a disagreement with findings open to the Judge which are summarised with commendable clarity and succinctness at [41-56].
42. A fair reader is one who was aware of all the evidence in the case and not just someone sat at the back of the court who hears oral evidence and argument, or one who reads the papers but does not hear what was said in court. The Respondent knew what documentary evidence was being considered to show the elevated threshold had been reached. The fair reader would reach the conclusion that the Judge had identified the most salient points in an appeal where there was 1,000+ pages of evidence, much of it of an expert nature, picked out and summarised accurately the most salient points, and distilled that into a manageable but complete readable decision.
43. As a specialist fact-finding tribunal, the court should not rush to find an error of law in the decision of a tribunal simply where it might have reached a different decision on the facts (see AH (Sudan) v SSHD [2007] UKHL 49 at [30])
44. Accordingly, the Judge was entitled to find on the facts as found and on the evidence available that the unduly harsh test was met, or in the alternative identified that there were on the particular facts very compelling circumstances that outweigh the public interest in deportation under section 117C(6).

### **Notice of Decision**

45. There was no material error of law in the decision of First-tier Tribunal Judge Kelly whose decision dismissing the protection appeal but allowing the appeal on article 8 grounds shall stand.

*Laurence Saffer*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
21 June 2023

### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:



2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is “sent” is that appearing on the covering letter or covering email.**