Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00802/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House (remotely by Skype)	**Decision & Reasons Promulgated**
On 17 September 2020	**On 19 October 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

OLUDARE [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Z Jafferji of Counsel instructed by Oasis Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The documents were available in paper format on the court file.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Buchanan promulgated on 12 December 2019, in which the Appellant's appeal against the decision to refuse his human rights claim in

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the context of a refusal to revoke a Deportation Order dated 7 December 2018 was dismissed.

3. The Appellant is a national of Nigeria, born on 26 June 1968, who first entered the United Kingdom unlawfully in 2005. On 7 November 2005, he was convicted of having a false instrument with intent, namely a false French passport used to enter the United Kingdom, for which he was sentenced to 12 months' imprisonment. A Deportation Order was made on 14 February 2006, in the name of Charlie Davies (the name on the false French passport and name in which the Appellant was convicted) aka Oludare [K]; pursuant to which the Appellant was removed to Nigeria 1 March 2006. The Appellant sought to re-enter the United Kingdom in breach of the Deportation Order on 6 October 2006, he was arrested on arrival and removed to Nigeria the same day. On 10 March 2009, the Appellant made an application to revoke the Deportation Order, which was refused on 19 May 2010 with a right of appeal.

4. The Appellant made an application for entry clearance to the United Kingdom as the spouse of a person present and settled here 16 September 2009. That application was refused by the Respondent on the basis that the requirements of paragraph 281 the Immigration Rules were not met and although the decision referred to the Appellants conviction, there was no express reference to the Deportation Order. The Appellant's appeal against refusal was allowed in a decision of the Immigration Judge Abebrese promulgated on 13 May 2010. At that hearing, the Respondent was not present or represented and express consideration was only given to the reasons for refusal, by reference to paragraph 281 of the Immigration Rules and the Appellant's conviction. Again, there is no reference at all to the existence of a Deportation Order or, at that date, the very recent refusal of the application to revoke the same. Further to the appeal being allowed, the Appellant was granted and clearance as a spouse between 23 June 2010 and 23 September 2012.

5. In September 2012, the Appellant was stopped on re-entry to the United Kingdom on the basis of the extant Deportation Order against him.

6. The Appellant appealed to the First-tier Tribunal, resulting in a decision of First-tier Tribunal Judge Bird promulgated on 26 February 2013. It is said in that decision that the Appellant had sought to appeal against the decision of the Respondent to make a Deportation Order against him but also includes reference to the Appellant being refused leave to enter the United Kingdom in September 2012 and curtail his current leave to remain, but those decisions were not evidenced before the First-tier Tribunal, nor was it known whether there was a right of appeal against the refusal of leave to enter or curtailment. There appears to be no express conclusion by the First-tier Tribunal as to what precisely was being appealed against by the Appellant, but it was stated that it could not be an appeal against the Deportation Order (which was not provided by the Respondent at the hearing) given that it would be significantly out of time and the only fresh Immigration decision appeared to be refusal of leave to

enter in September 2012. The First-tier Tribunal considered that if there was a Deportation Order, the application made by the Appellant for entry clearance in 2009 would have acted as an application to have the Deportation Order revoked. The overall conclusion was that on the information before the First-tier Tribunal (which was clearly limited by the absence of a Respondent's bundle), the decision of the Respondent to resurrect the decision to deport taken in 2005 was not in accordance with the law and if the deportation decision was re-served, then an error had been made. The appeal was allowed to the extent that the matter was referred back to the Respondent to make appropriate immigration decision.

7. On 3 December 2012, the Appellant applied for leave to remain in the United Kingdom outside the Immigration Rules which was refused on 18 April 2013. That does not appear to be a decision taken following the appeal being allowed on 26 February 2013 and no reference is made therein to the appeal.

8. An application permission to apply for Judicial Review against the decision dated 18 April 2013 was refused and on 26 December 2013, the Appellant was removed to Nigeria.

9. The Appellant applied to revoke the Deportation Order on 1 October 2018 on the basis of family life with his British citizen wife and British citizen child born on 4 May 2012 and on the basis that 12 years had elapsed since the Deportation Order was signed on 14 February 2006.

10. The Respondent refused the application in a decision dated 7 December 2018, in which the Appellant's immigration and criminal history was set out. The Respondent considered the Appellant's claimed family life and the exceptions in paragraphs 398 and following of the Immigration Rules. The Respondent accepted that the Appellant had a British citizen daughter in the United Kingdom but there was no evidence of any subsisting relationship between her and the Appellant following his removal to Nigeria in December 2013 and it was not therefore accepted that there was a genuine subsisting parental relationship at the time of decision. In any event it was not accepted that will be unduly harsh for the Appellant's daughter to live with him in Nigeria, given her young age she could adjust to life and settled there with her parents support and access education. Further, it was not accepted that we unduly harsh for the Appellant's daughter to remain in the United Kingdom with her mother, whom she has been cared for throughout her life and for whom support is available if needed.

11. The Respondent accepted in part that the Appellant was in a genuine subsisting relationship with his wife, a British citizen living in the United Kingdom, but that there was a lack of evidence of support of a financial, emotional or physical nature to indicate a genuine subsisting relationship. The relationship was formed at a time after the Appellant had been deported from the United Kingdom. The Respondent did not accept that it

would be unduly harsh for the Appellant's wife to live in Nigeria with him if she chose to do so, given that she was born there and has spent her formative years there before coming to the United Kingdom and is already familiar with the lifestyle and culture in Nigeria. In the alternative, it was not accepted that will be unduly harsh for the Appellant's wife to remain in the United Kingdom without him, given that she is a British citizen with access to work and able to support herself and her daughter, as she has done since the Appellant's last removal.

12. Overall, the Respondent considered that the Deportation Order should be maintained, and it was in the public interest to do so, with no very compelling circumstances to outweigh that public interest.

13. First-tier Tribunal Judge Buchanan dismissed the appeal in a decision promulgated on 12 December 2019 on all grounds. The decision contains a very detailed chronology, by reference to the evidence available from the parties and sets out the various identities used by both the Appellant and his wife, and details of the Appellant's children. In summary, the First-tier Tribunal found that the grant of entry clearance in 2010 was invalid because of the extant Deportation Order. The First-tier Tribunal did not find that there was a genuine subsisting relationship between the Appellant and any of his three children and in any event it would not be unduly harsh either for them to live with the Appellant in Nigeria, or to remain in the United Kingdom without him. When considering all of the circumstances, the First-tier Tribunal found that the Appellant's relationship with his spouse developed either at a time when he had no lawful leave to be in the United Kingdom or when he was not in the United Kingdom at all, and although the Appellant was not lawfully in the United Kingdom between July 2010 and September 2013 (because his entry clearance was invalid), this was not found to be the result of any deliberate deception on his part. The Appellant had a further conviction on return to the United Kingdom for driving a motor vehicle with excess alcohol. Overall, the Appellant did not meet the requirements for revocation of the Deportation Order and its continuation was found not be a breach of Article 8 of the European Convention on Human Rights.

The appeal

14. The Appellant appeals on eight grounds, that the First-tier Tribunal materially erred in law as follows:

    (i) in wrongly applying the Immigration Rules applicable to pre-deportation revocation applications rather than the post-deportation revocation applications, resulting in the wrong test and a higher threshold being applied to the Appellant's application than should have been;

    (ii) in failing to take into account the full sentencing remarks in relation to the Appellant and the context of his offence;

    (iii) in attaching little weight to the Appellant's relationship in accordance with section 117B(4) of the Nationality, Immigration and Asylum Act

2002, without considering the power to adopt a more flexible approach;

(iv) in finding that the Appellant had not been in the United Kingdom lawfully between 2010 and 2013 following the grant of entry clearance as a spouse,

(v) in failing to take the decision of First-tier Tribunal Judge Bird in 2013 that the grant of entry clearance amounted to a decision to revoke the Deportation Order as the starting point by applying the principles in *Devaseelan*;

(vi) in failing to consider the evidence of the Appellant's relationship with his children by his wife, including that of regular contact and family holidays in Belgium;

(vii) in failing to consider that Article 8 of the European Convention on Human Rights embraces the opportunity to develop family relationships and not just maintain existing ones; and in failing to properly consider the best interests of the children;

(viii) in failing to reduce the public interest in favour of maintaining the Deportation Order for the following reasons (a) in finding that the Appellant had sought to re-enter the United Kingdom in breach of a Deportation Order in 2006, in circumstances where he was unaware of the signed Deportation Order and had an existing multi visit visa which he sought to use; (b) in circumstances where the Respondent had granted entry clearance; and (c) attaching too much weight to the minor conviction in 2010 as sufficiently significant to refuse to revoke the Deportation Order.

15. At the oral hearing, Counsel for the Appellant expanded on the written grounds of appeal as follows. In relation to the first ground of appeal, it was submitted that in paragraph 23 of the decision, the First-tier Tribunal correctly identifies that paragraph 391 of the Immigration Rules deals with an application to revoke a Deportation Order after a person has been deported, however erred in paragraph 27 when stating that it is essentially the same exercise under paragraphs 390A and 391 of the Immigration Rules. However, Counsel accepted that if the Court of Appeal's decision in Section of State for the Home Department v ZP (India) [2015] EWCA Civ 1197 is correct, then there was no error of law in paragraph 27 of the First-tier Tribunal's decision.

16. In relation to the second ground of appeal, counsel submitted that there had only been limited reference to the sentencing remarks for the Appellant and that the First-tier Tribunal failed to take into account as a relative factor the positive points in relation to the Appellant's history, the circumstances of his offence and entry to the United Kingdom as part of the relevant context and background to consider. Counsel accepted that the weight to be given to this evidence was a matter for the First-tier Tribunal.

17. As to the third ground of appeal, Counsel submitted that section 117B(4)(b) of the Nationality, Immigration and Asylum Act 2002 simply does not apply to the facts of this case as the Appellant's relationship was developed over time in both Nigeria and in the United Kingdom and the reference to the relationship being developed at a time when the Appellant was not in the UK lawfully in paragraph 51 of the decision is not accurate. It was submitted that this paragraph can only be referring back to section 117B(4)(b), although it was accepted that when this provision was quoted later on in paragraph 85, there was no express application of it to the facts in this appeal.

18. As to the fourth and fifth grounds of appeal, the First-tier Tribunal makes repeated references to the Appellant not being lawfully present in the United Kingdom following the grant of entry clearance in 2010 and although finds that there was no intention by the Appellant to deceive, this period has been weighed against the Appellant, as has what is said to be entry in breach in 2006. Counsel was unable to make any legal submissions as to how, in accordance with section 5(1) of the Immigration Act 1971 or otherwise, that the entry clearance granted could have been valid or the Appellant's presence in the United Kingdom lawful when there was an extant Deportation Order; having not prepared submissions on the basis of legal principles. Counsel could only go so far as relying on the decision of First-tier Tribunal Judge Bird that the application for entry clearance was treated as an application to revoke a Deportation Order and it was therefore no longer extant, and relied on the principles in *Devaseelan* to say that this should continue to apply. The implication within the decision of First-tier Tribunal Judge Bird allowing the appeal, was that the Deportation Order had been revoked and there was no appeal by the Respondent against that decision. The more recent decision simply did not engage with the earlier findings.

19. As to the sixth ground of appeal, Counsel accepted that there was a lack of documentary evidence about the Appellant's relationship with his family and children in particular but submitted that there was written and oral evidence from the Appellant's partner about this which was not properly considered, nor were sufficient findings made on it by the First-tier Tribunal. The finding in paragraph 83 that there was no family life, even with a biological child was a stark one and an error of law, even if there was no ongoing subsisting relationship due to a lack of family contact. Further, that the First-tier Tribunal failed to consider the impact of continued separation from the Appellant on the children when assessing their best interests.

20. Finally, on behalf of the Appellant was submitted that the First-tier Tribunal failed to reduce the weight attached to the public interest in deportation in relation to three matters. First, the First-tier Tribunal failed to engage with the Appellant's explanation as to his attempts to re-enter the United Kingdom in 2006; secondly, increased the public interest in deportation due to his presence in the United Kingdom pursuant to entry clearance where the impact of this should have been the reverse; and,

thirdly, the conviction in 2010 was not a significant one, nor did it form a pattern of offending which could have increased the public interest in deportation.

21. Overall it was submitted on behalf of the Appellant that since his first entry into the United Kingdom, the Appellant had a history of seeking to comply with immigration rules, he had voluntarily departed from the United Kingdom and had made appropriate applications for entry clearance and leave to remain. Further, there had been a long passage of time since his conviction and he has a partner and children in the United Kingdom. These factors are not properly been reflected in the overall balance struck by the First-tier Tribunal.

22. On behalf of the Respondent, Mr Whitwell opposed all of the grounds of appeal. On the first ground, it was submitted that the First-tier Tribunal was simply quoting binding Court of Appeal authority with no error of law in the self-direction or application of the appropriate test.

23. On the second ground of appeal as to sentencing remarks, in effect the Appellant's counsel was suggesting that positive weight should be given to the Appellant's illegal working in France and the United Kingdom and rely on brief comments about the Appellant's claimed reasons for entering the United Kingdom, in the absence of any asylum claim having ever been made.

24. In relation to the third, fourth and fifth grounds of appeal, it was submitted that the Appellant's presence in the United Kingdom between 2010 and 2013 was not lawful by application of section 5(1) of the Immigration Act 1971, whether or not the Appellant was aware of this, it could not add any positive weight in the balancing exercise in the Appellant's favour. Further, it is entirely unclear from the decision of First-tier Tribunal Judge Bird what decision the appeal was against and only went so far as to say an unspecified decision was not in accordance with the law; without any express finding that the Deportation Order had been revoked. Further, there was no specific findings by the most recent First-tier Tribunal as to the application of section 117B(4) of the Nationality, Immigration and Asylum Act 2002.

25. In relation to the sixth ground of appeal, Mr Whitwell submitted that in relation to family life, the finding was that the Appellant had simply not established to the correct burden of proof that he had a genuine and subsisting relationship with his children, for the reasons given in paragraph 48 of the decision. Further, in paragraph 48.8, there was a specific finding that the Appellant's wife's evidence could only be given minimal weight. In relation to the seventh ground of appeal, there were clear findings on the best interests of the children and on the exceptions to deportation. This was a case where there was simply a lack of evidence from the Appellant and the findings made on the limited evidence that was available were open to the First-tier Tribunal.

26. Finally, as to the last ground of appeal, it was noted that the Appellant was not suggesting that the weight being attached to various matters by the First-tier Tribunal was impermissible, only that either more or less weight should have been attached to these points. It is however trite that the weight to be attached to evidence is a matter for the First-tier Tribunal and it is clear that all factors were taken into account. The final ground of appeal amounted to no more than disagreement with the findings made.

Findings and reasons

27. The first ground of appeal which concerns whether the First-tier Tribunal identified and applied the correct test for an application to revoke a Deportation Order, after a person has been deported from the United Kingdom, has no arguable merit whatsoever. Paragraph 27 of the decision of the First-tier Tribunal summarises and then expressly quotes from the Court of Appeal's decision in ZP (India), which is binding on the First-tier Tribunal and is therefore unarguably a correct assessment and self-direction as to the applicable law and in any event follows a detailed section within the decision of the part of the Immigration Rules dealing with deportation and the different provisions in different scenarios for revocation.

28. The second ground of appeal is also without any arguable merit whatsoever. The sentencing remarks from November 2005 are very brief and at best recount the Appellant's mitigation for his use of an illegal document to both enter and work unlawfully in the United Kingdom, having already done the same in France and in the full knowledge of what he was doing. Whether or not the Appellant was a hard-working and responsible person who did not seek to deprive anybody else of anything, was irrelevant to his conviction then and wholly irrelevant to the assessment to be made by the First-tier Tribunal on appeal against the refusal to revoke the Deportation Order in 2019. The reference to the Appellant being forced to leave Nigeria through political difficulties falls very far short of any relevant context to the current appeal, particularly when the Appellant never claimed asylum and has since been living in Nigeria for many years. The First-tier Tribunal was clearly aware of the sentencing remarks but there was nothing material within them to which any significant weight could or should have been attached and there was no error of law in failing to take them into account expressly in their entirety in the circumstances.

29. The third ground of appeal concerns the First-tier Tribunal's application of section 117B(4)(b) of the Nationality, Immigration and Asylum Act 2002, that little weight should be given to a relationship formed with a qualifying person that is established by a person at a time when the person is in the United Kingdom unlawfully. Whilst in paragraph 51 of the decision, it is stated that the Appellant developed his relationship with a wife during a time when he was not in the UK lawfully, that was not an express application of section 117B(4)(b), nor did it contain any finding on the weight to be attached to that relationship. That sentence in paragraph 51

was no more than a statement of fact that the relationship was developed in part when the Appellant was in Nigeria and in part in the United Kingdom between 2010 and 2013 when his entry clearance was invalid and he was not therefore here lawfully.

30. In paragraphs 85 and following of the decision of the First-tier Tribunal, there is express consideration of sections 117A to 117D of the Nationality, Immigration and Asylum Act 2002, but no finding at all that little weight was given to the Appellant's relationship with his wife pursuant to section 117B(4)(b). There is no error of law identified by the third ground of appeal, it purports to be a challenge against a finding or application of the provision which was not actually made by the First-tier Tribunal.

31. The fourth and fifth grounds of appeal concern the question of whether the Deportation Order remains in force against the Appellant and the impact, or otherwise of the grant of entry clearance to the Appellant as a spouse in 2010. In accordance with section 5(1) of the Immigration Act 1971, any leave to enter given while the Deportation Order is in force is invalid and further, an application for entry clearance cannot be regarded as an application to revoke a Deportation Order because of the wording and application of the same provisions. This finding was supported by it being clear in the Immigration Rules that the revocation of a Deportation Order is a prerequisite for an application for entry clearance, as a separate application and without which, a grant of entry clearance cannot be an implicit revocation of a deportation order.

32. The Appellant does not challenge the lawfulness of this conclusion of the First-tier Tribunal by reference to any legal provisions or the construction of section 5 of the Immigration Act 1971, nor by reference to any of the supporting Immigration Rules, but seeks only to rely on the earlier decision of First-tier Tribunal Judge Bird. That decision is far from clear as to what was actually the subject of the appeal and proceeded in the absence of any evidence of the Deportation Order having been revoked; without any reference to the then very recent refusal of an express application to revoke, shortly before the application for entry clearance and in any event does not expressly find that the Deportation Order had in fact been revoked.

33. The decision of First-tier Tribunal Judge Bird also provides no reasoning for the suggestion that an application for entry clearance could by inference be treated as an application to revoke, contrary to the express provisions of the Immigration Rules; nor is there any evidence, reasoning or explanation for the view that the Respondent was seeking to re-serve or revive a past Deportation Order. Even if the decision of First-tier Tribunal Judge Bird expressly found what the Appellant now relies on it to say, it would have been clearly wrong in law and in those circumstances there can be no application of the principles in *Devaseelan* to perpetuate such an error.

34. Further, neither the Appellant nor the Respondent appeared to understand the decision of First-tier Tribunal Judge Bird in the way now relied upon by the Appellant, given that all parties continues to proceed on the basis that there was an extant Deportation Order against the Appellant. If the Appellant had understood from the earlier Tribunal decision that his Deportation Order had been impliedly revoked by the grant of his entry clearance, there is no rational basis for him remaining in Nigeria and waiting until 2018 to make an application to revoke the Deportation Order. The Respondent's decision on 13 April 2013 similarly proceeded on the basis of an extant Deportation Order. For these reasons, the claimed lack of engagement by the First-tier Tribunal with the decision of First-tier Tribunal Judge Bird failing to consider this as the starting point is wholly immaterial when it is beyond doubt that the Appellant's entry clearance in 2010 was invalid by virtue of section 5(1) of the Immigration Act 1971.

35. The sixth ground of appeal concerns the First-tier Tribunal's consideration of the evidence before it about the Appellant's relationship with his children. The Appellant accepts that there was little, if any documentary evidence about the relationship and relies solely on the written and oral evidence from the Appellant's wife on this. The Appellant's written statement refers to his family and arranging family holidays to Belgium a few days during school breaks and not being able to attend school or be involved in the day-to-day lives of his children, nor attend special events. There is no description or detail as to what, if any involvement the Appellant has with his children, not even a summary of how frequent their contact is. The Appellants wife's written statement is similarly lacking in detail about the relationship between the Appellant and the children, only one of whom is his biological child, although the Appellant is said to have played an immense role in the lives of his stepchildren, recognised by the change of their names. The Appellant's wife said that the Appellant is in daily contact on the phone with his children and provides financial support but that his physical presence is needed within the family home.

36. The written evidence from the Appellant and his wife is recorded in paragraphs 44 and 45 of the decision, with paragraph 46 setting out the oral evidence from the Appellant's wife. This was primarily in relation to the Appellant's wife and children living in Nigeria for year between 2017 and 2018. There is later reference to the oral evidence of the Appellant's wife about the family meeting up once a year in Belgium in the past. The First-tier Tribunal notes that there was no supporting documentary evidence about the Appellant's relationship with his children, no evidence to show the Appellant spending any time with them in Belgium or Nigeria and nothing to show the Appellant's involvement or input into the children's lives.

37. Taking the very limited evidence before the First-tier Tribunal about the Appellant's relationship with children, including the evidence from the Appellant's wife, it was entirely open to the First-tier Tribunal to makes

findings that it did that there was no genuine and subsisting relationship between the Appellant and any of his children. This is not a case where the First-tier Tribunal has failed to take into account the Appellants wife's evidence, which was incredibly limited, lacking in detail and wholly unsupported by any documentary evidence. This is simply a case where the Appellant has failed to establish his claim in this regard and the burden was on him to do so.

38. The seventh ground of appeal is that the First-tier Tribunal failed to properly assess the best interests of the children in accordance with section 55 of the Borders, Citizenship and Immigration Act 2009 and that family life includes the opportunity to further develop a relationship between a parent and minor child. The First-tier Tribunal makes detailed findings in relation to each of the three children between paragraphs 48 and 50 of the decision (broken down into multiple subparagraphs), dealing in detail in particular with the medical evidence and time living in Nigeria but also refers significantly to the absence of relevant evidence in relation to each child as to the parental relationship and in relation to each of the children's own current circumstances. On the extremely limited, almost non-existent evidence about each of the children before the First-tier Tribunal, the only conclusion rationally open to the First-tier Tribunal about the best interests of the children, was for them to remain with their mother, as they had throughout their lives. This is again simply a case where the Appellant has failed to submit to the First-tier Tribunal, sufficient relevant evidence which could have led to any other findings than those made.

39. The final ground of appeal amounts to no more than disagreement with the findings made by the First-tier Tribunal when making a holistic assessment of all of the circumstances as to the public interest in maintaining the Deportation Order and the Appellant's right to respect for his family life. It is trite that the weight to be attached to evidence and elements of an appeal is primarily a matter for the First-tier Tribunal and there is no suggestion in this case that either matters were not expressly taken into account at all, or that there was any irrationality or perversity in the First-tier Tribunal's assessment of the public interest in all of the Appellant's circumstances. The First-tier Tribunal was entitled to take into account the Appellant's attempted re-entry to the United Kingdom in breach of the Deportation Order in October 2006, the unlawful period in the United Kingdom between 2010 and 2013 (as a matter of law, albeit with an express finding that there was no intention to deceive by the Appellant when making his application for entry clearance), and the Appellant's conviction in 2010, however minor, was similar to a previous conviction in 2005 (not the index offence for the purposes of the Deportation Order). None of these are matters which could possibly have reduced the public interest in maintaining the Deportation Order and it was open to the First-tier Tribunal to find that the combination of these matters, in addition to the reasons for deportation itself, gave rise to strong public policy reasons for refusing to revoke the Deportation Order. There is no error of law on this final ground of appeal.

40. For all of these reasons, I do not find any material error of law in the decision of the First-tier Tribunal on any of the grounds of appeal identified by the Appellant, many of which were wholly unarguable, based on incorrect facts or law, or amounted to no more than disagreement with the cogent and detailed findings made by the First-tier Tribunal in this case.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed G Jackson Date 5th October 2020

Upper Tribunal Judge Jackson