Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00605/2020
HU/00609/2020 (V)

THE IMMIGRATION ACTS

Heard by a remote hearing	**Decision & Reasons Promulgated**
On 7 July 2021	**On 18 August 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

RB and JB
(ANONYMITY DIRECTION MADE)

Appellants

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Eaton, Counsel instructed on behalf of the appellants.
For the Respondent: Mr Bates, Senior Presenting Officer.

DECISION AND REASONS

Introduction:

1. The appellants, who are citizens of Bangladesh, appeal with permission against the decision of the First-tier Tribunal (Judge Paul) (hereinafter referred to as the "FtTJ") who dismissed their human rights appeals in a decision promulgated on the 11 January 2021.

2. I am mindful that considerations arise in this matter as to the second appellant's mental health concerns. I observe Guidance Note 2013, No. 1 which is concerned with anonymity directions, and I note that the starting point for consideration of such directions in this chamber of the Upper Tribunal, as in all courts and tribunals, is open justice. Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') contains a power to make an order prohibiting the publication of information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. Rule 14(7) of the 2008 Rules contains a presumption that information about mental health cases and the names of the people concerned in such will not be disclosed in the absence of good reason. I am satisfied that in the circumstances which arise to be considered in this matter, and in particular the issue of suicide ideation, the interests of justice require that the appellants are not named in these proceedings. I therefore issue the anonymity direction detailed at the conclusion of this decision.

3. The hearing took place on 7 July 2021, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant so that she could listen and observe the hearing. There were no issues regarding sound, and no technical problems were encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The history of the appellants is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle.

5. The 1st and 2nd appellants are nationals of Bangladesh. They have a child born in the UK in 2016 who is also a national of Bangladesh.

6. The 1st appellant came to the United Kingdom on 13 September 2009 with entry clearance as a student and made various applications to extend his leave.

7. The 2nd appellant arrived in the UK on 28 January 2013 and was granted leave as the 1st appellant as his dependent. Their child was born in the UK in June 2016.

8. In or about 2015 the 1st appellant made an application for leave to remain on the basis of his family life and private life. That application was refused with a right of appeal which was exercised by the appellant, but his appeal was dismissed by the First-tier Tribunal. There is no copy of that decision, but it is referred to in the decision of Judge Paul at paragraphs 3-5 of his decision.

9. Immigration judge Oliver heard the appellants' appeal on 22 December 2016. In a decision promulgated on 25 January 2017, he set out the appellant's immigration history and the circumstances of their life in the UK which flowed from the 1st appellant's education in the UK and his visits back to Bangladesh. It is said that the 1st appellant's parents, and brother lived in Bangladesh and supporting documents had been provided that they were concerned that they would face problems if they returned Bangladesh because of attacks on the Hindu majority. There was also further evidence that the 2nd appellant's wife was 8 weeks pregnant and had iron deficiency and was suffering from anaemia. The 1st appellant had filed evidence relating to their educational achievements, financial evidence and medical evidence concerning his wife and objective evidence of the situation in Bangladesh.

10. It is recorded that an application was made on 16 December 2016 to adjourn the case on the basis of medical problems and in particular that the 2nd appellant was under medication in relation to depression.

11. Judge Oliver found that the removal of the appellants would not cause any interference their family life as they would be removed together. He found "they clearly cannot satisfy the requirements of paragraph 276ADE of the rules for the reasons given in the refusal letter. The other circumstances put forward relate the wife's medical problems which are not in themselves unusual or exceptional. They have not in any event submit evidence of private life in the UK beyond that expected of those in the UK on a temporary basis."

12. Whilst permission was granted to appeal that decision, the Upper Tribunal subsequently dismissed the appeal, and it is recorded that the High Court refused permission to appeal. The 1st and 2nd appellants were considered to be "appeal rights exhausted" by 30 October 2018.

13. On 31 October 2018 the 1st appellant made a further application for leave to remain outside of the Immigration Rules, which he subsequently varied to an application of a limited leave to remain under the Tier 2 general migrant category, and which was eventually refused on 29 April 2019 with an administrative review. The review was lodged but the refusal decision of the original application was maintained on 13 June 2019.

14. On 25 June 2019 a further application was made for indefinite leave to remain outside of the Immigration Rules.

15. The respondent refused the application in a decision letter dated 17 December 2019.

16. The decision set out the family's immigration history as set out above. As to the issues raised by the appellant, the respondent took into account the length of residence of the 1st appellant of 10 years and 3 months but stated that it was not considered that the length of residence itself was significantly compelling for a grant of leave to remain outside of the rules. His lawful residence was 9 years

and one month from 13 September 2009 to 30 October 2018. The respondent considered that he had resided in Bangladesh for 27 years prior to entering the UK and thus had significant knowledge of the language, culture and customs in Bangladesh which could be used to reintegrate into the community.

17. The 1st appellant's qualifications and employment were taken into account and the respondent considered that he would be in a more advantageous position than other Bangladeshi nationals.

18. As to the 1st appellant's private life and social ties in the UK, his employment, education and involvement in a range of voluntary organisations, it was considered that he had not evidenced that his ties were so exceptional to warrant a grant of leave to remain in the UK. The respondent considered that he would be able to engage with employment, further education or similar volunteer opportunities in Bangladesh if he wished to do so.

19. As to family life, his wife entered the UK in January 2013 and her length of residence of 6 years and 11 months not considered to be exceptional to warrant either her or both of them to be required to remain in the UK indefinitely.

20. The respondent considered the evidence provided that his wife during 2019 had severe depression and anxiety and hypothyroidism and anaemia but that evidence available to the Home Office demonstrated that there were medical facilities available in Bangladesh although the standard of facilities was likely to be different to that in the UK and psychiatric treatment would also be available.

21. Consideration was given to the appellant's minor child aged 3 years and 6 months, but it was not considered that her length of residence was significant to warrant a grant of leave outside of the rules. It was considered that given her age her greatest tie was to her parents and not the UK and thus it was in her best interests for her to remain with her parents as a family unit. They could return as a family unit and continue family life together.

22. The decision letter made reference to the issue raised that they would be unable to return to Bangladesh to threats that they and family members had received in Bangladesh of extremist groups. The respondent considered that if they feared persecution, they could apply for leave on protection grounds (claiming asylum) could lodge an asylum claim at a screening unit.

23. The application was therefore refused under paragraph 322 (1) of the Immigration Rules that the variation of leave to enter or remain being sought for a purpose not covered by the rules.

24. Notwithstanding what was set out in the preceding paragraphs, consideration was given to whether the circumstances warranted a grant of limited leave to remain on the basis of family life under Appendix FM or under paragraph 276ADE (private life). The appellants were not eligible to apply because none of the appellants were British citizens or settled in the UK and thus the claim was

only considered under the private life route. The same assessment was set out as summarised above in relation to the 1st appellant's private life.

25. The respondent considered whether any exceptional circumstances which would render refusal a breach of article 8 of the ECHR because it would result in unjustifiably harsh consequences for the 1st appellant, another family member or relevant child. Taking into account the best interests of the child, respondent considered that the appellants had provided no information or evidence to establish there are any exceptional circumstances in the case.

26. The respondent therefore refused the application.

27. The appellants appealed that decision to the FtT on the 11 December 2020. In a decision promulgated on 11 January 2021 he dismissed the appeals.

28. The FtTJ heard evidence from the 1st appellant but not from the 2nd appellant as a result of the medical report (see paragraph [15]).

29. The FtTJ set out the immigration history of the family and at paragraphs [3] – [5] summarised the decision of Judge Oliver made in January 2017. At paragraph [6] the FtTJ set out the documents submitted on behalf of the appellants which included an expert psychiatric report in respect of the 2nd appellant and further correspondence including a letter from Dr Rahaman reflecting upon the availability of treatment and the overall situation Bangladesh versus psychiatric conditions and reports of mental health treatment condition in Bangladesh.

30. The FtTJ summarised the evidence from the appellants ([8]-[12]), the psychiatric evidence (at [13]-[16]) and the submissions of the advocates at [17]-[22]. The FtTJ's analysis and factual findings are set out at paragraphs [23]- [27]. They can be summarised as follows.

31. The FtTJ noted that the submissions made on behalf of the appellants focused primarily on the "psychiatric evidence and that the daughter of the family although still under 5 years old to be treated as having been fully integrated into the UK".

32. The FtTJ found that the only significant feature that distinguished the appeal from the previous appeal was that the "psychiatric evidence is now available whereas previously there was just medical evidence that pointed towards the 2nd appellant been depressed following the birth of the child " (at [23]).

33. The FtTJ considered that there was no evidence advanced or developed in relation to the 2nd appellant's family circumstances in Bangladesh and that whilst there was an assertion she would be treated as a "mad person" that was not evidenced either from the 2nd appellant's family and he rejected the assertion that she would be ostracised as a result of suffering depression. The judge also considered that on the evidence of the relevant child had not

suffered as a result of her mother's ill health and that they were a "fully functioning family" and that this could be continued in Bangladesh. In addition the judge did not accept the 1st appellant's evidence in relation to his own family on the basis that he had significant support and achieved good educational qualifications.

34. At [26] he did not accept the medical evidence showed that there was an Article 3 risk nor that her medical condition was such engage Article 8. At [27] the judge observed that he was not taken to the background evidence as to medical facilities available in Bangladesh, but that medical attention could be obtained in that country and that as to the "core issue in the appeal" it had not been demonstrated that there were "insurmountable obstacles to the family reintegrating in Bangladesh." The judge concluded that the appellants "could not strengthen their case by reliance on section 117B and the private life provisions of 276AE are dealt with in the context of my decision about the insurmountable obstacles relating to the appellant's wife." He therefore dismissed the appeal.

35. Permission to appeal was sought and permission was refused by FtTJ Chohan but on renewal was granted by Upper Tribunal Grubb on 19 March 2021 for the following reasons;

> "In reaching adverse findings against both appellants under paragraph 276 ADE(1) (vi), the judge arguably erred in law by applying the wrong test, namely whether there are "insurmountable obstacles" to their reintegration in Bangladesh rather than the correct test of "very significant obstacles" integration. The materiality of any error will need to be established. Permission is granted generally."

The hearing before the Upper Tribunal:

36. In the light of the COVID-19 pandemic the Upper Tribunal issued directions inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via Microsoft teams. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties. I am grateful for their assistance and their clear oral submissions.

37. Mr Eaton of Counsel appeared on behalf of the appellant and relied upon the written grounds of appeal and the written submissions.

38. In his oral submissions, he relied upon paragraphs 2 – 4 of the written grounds where it was argued that the appeal had been brought on the grounds that the removal of the appellants would breach Article 8 of the ECHR and that a critical issue that the judge was required to determine was whether "there would be very significant obstacles to the appellant's integration into the country to which they would have to go required to leave the UK (paragraph 276 ADE (1) (vi)). However the FtTJ failed to determine that issue and dismissed the appeal

on the basis that it had not been demonstrated that there were insurmountable obstacles to the family reintegrating in Bangladesh (see paragraph [27]) of the decision.

39. Mr Eaton therefore submitted that the judge erred in law by applying the wrong test of "insurmountable obstacles" which is a more demanding test than the one he was required to and did not apply the test of "very significant obstacles". He submitted that given the words used by the judge at paragraph 27 of his decision, it was plainly the position that the judge erred in law and that he applied the wrong test.

40. He submitted that they were 2 separate tests and that the Immigration Rules used a different test when considering different rules. The test of "insurmountable obstacles" is that used under EX1 and EX 2 and sets out a heightened test. By reference to the decision in Lal v SSHD, he submitted that "insurmountable obstacles" had been defined as "very significant difficulties and those which are literally impossible to overcome.

41. Whilst the test of "very significant obstacles" is also a heightened threshold it is a lower threshold to that of "insurmountable obstacles". The test of "very significant obstacles" refers to obstacles which are very significant but through a degree of hardship could be overcome. He therefore submitted it was plain that there was a different test, but the judge had not drawn any distinction nor addressed the correct test and thus he had misdirected himself in law.

42. Whilst the UTJ granting permission had stated that the materiality of any error had to be established, Mr Eaton submitted that given his misdirection in law this must be a material error and therefore the decision should be set aside on this basis.

43. Paragraph 5 of the written grounds refers to the psychiatric report and that the removal of the 2nd appellant would cause a "serious deterioration in her mental health" and would increase the risk of committing suicide (15.2). The opinion was not dependent upon treatment in Bangladesh being inadequate or unavailable, but it was said that this constituted a "very significant obstacle to their integration". The judge was obliged to give reasons addressing that contention but erred in law by failing to do so.

44. Mr Eaton submitted that the judge had assumed a level of support would be available in Bangladesh but should have applied the decision in Savran v Denmark (2019) ECHR.

45. Mr Eaton submitted that the FtTJ erred in law by looking at the situation now rather than addressing the psychiatric evidence as to the position in Bangladesh upon return. The skeleton argument provided by counsel for the hearing at paragraph 13 set out the "very significant obstacles to their integration" which included the real risk of suicide, the real risk that the 2nd appellant mental health with seriously deteriorate if removed and at (c) that "discrimination

towards people with mental illness is that she is likely to suffer from her family, the 1st appellant's family and society more widely". Thus the issue had been raised of stigma and evidence had been provided of this (see report of Dr Rahman at [p.93AB]). In that report the doctor relied upon his own experience and had a level of expertise. The key point is that on return there would be a marked deterioration in the 2nd appellant's condition including the risk of suicide therefore there would be "very significant obstacles to integration "to Bangladesh. Mr Eaton submitted that the evidence of the psychiatrist was based on a deterioration in the 2nd appellant's medical condition upon return to Bangladesh and that the prognosis was made irrespective of whether there was medical provision, and it will be made available. The FtTJ erred in law because he looked at the situation as it was rather than on the basis of how it would be with the family returning to Bangladesh.

46. Mr Eaton made reference to paragraph 7 of the grounds and the FtTJ's assessment of the minor child at [24] that she had "clearly not suffered as a result of her mother's ill-health". It is submitted that there was no evidential basis for that finding and even if that was a finding reasonably open to the judge, it did not answer the material issue which was the effect upon the child of the appellants being removed to Bangladesh. Mr Eaton submitted that it had been argued before the judge that there would be an impact upon the child if they were returned to Bangladesh and thus was not considered in any section 55 consideration.

47. At [24] the judge found "this is a fully functioning family, as appears to be at the forefront of their cases staying in the UK, and there is no reason to believe that it cannot be continued in Bangladesh". In light of the psychiatric evidence about the impact on the 2nd appellant's mental health if removed to Bangladesh and the implications for that for her capacity to parent a child, this finding was inadequately reasoned or irrational. The judge was duty-bound to explain how we arrived at the finding at [24] the light of the psychiatric evidence which constituted a reason for believing they could not continue as a "fully functioning family" in Bangladesh.

48. It was submitted that the appellants 'evidence was that the 1st appellant's family would not accept his continuing relationship with his wife on account of her mental illness and had exerted pressure on him to separate from her. The judge reject that evidence because at [25] he stated, "the 1st appellant's evidence in relation to his own family, is, in my view, tainted by the fact that he has clearly had significant support and indeed has achieved good education qualifications, and there is no reason to believe that his own family would not provide the necessary support." It is submitted on behalf of the appellant that that was not a reasonable basis for rejecting the evidence about the 1st appellant's family.

49. Mr Bates, in his oral submissions relied upon the Rule 24 response which stated that whilst the judge referred to "insurmountable obstacles" at paragraph 27,

this was likely a typographical cut-and-paste error. Even if that were not the case, it is difficult to see that this would have been a material error in light of the findings of fact. The response submits that the judge clearly gave the medical evidence very careful consideration and that his conclusions with respect to reintegration were properly reasoned.

50. In his oral submissions Mr Bates submitted that the reference to "insurmountable obstacles" was in the context of the family at paragraph 27 and therefore the judge was mindful of the fact that it was a family unit.

51. In any event there was no material difference between the 2 tests and that it would be generally expected to see the strongest case to be that relating to family life rather than private life in the context where a family unit returning to their country of nationality alongside familiarity with the culture and language and family support available.

52. Mr Bates submitted that the judge was not satisfied with the arguments concerning the ostracism of the family as a result of her mental health as set out at paragraph [24] where the judge observed that it was a "really curious feature of the case" that "no evidence has been advanced and developed in relation to the 2nd appellant's family circumstances in Bangladesh". The judge also was not satisfied that a husband's family would ostracise her in the way claimed. The judge formed the view that this was "far-fetched and fanciful". Whilst the judge accepted the medical evidence of the depression, there was no evidence that their child was suffering from any behavioural difficulties or not developing at school.

53. Mr Bates submitted that the judge considered the argument put forward concerning social stigma that was not satisfied that it was made out and that he had no evidence of the 2nd appellant's own family had treated this way.

54. As to the 2 different tests, any mistake made by the judge was in terminology rather than the way the judge had assessed or applied the evidence. He submitted that it was unfortunate that the judge had used the term "insurmountable obstacles" but if the judgement was read as a whole, the judge did apply the correct test.

55. As to the 1st appellant's wife's mental health and the issue of section 55 (best interests of the child), the starting point with the best interests child were to be with both parents and based on the FtTJ's finding that there was extended family available this would provide support and would be in the best interests of the relevant child. The appellant's child was not a "qualifying child".

56. As to the impact on the 2nd appellant's mental health, whilst it was argued that it was not a matter of accessing treatment but the issue of a potential decline, the judge had stated that the appellant had a supportive husband and was not satisfied that family support would not be available.

57. Therefore when looked at holistically, even if the correct test was applied, the factual findings made by the judge that she would have family support from both sides therefore make this a sustainable decision.

58. Mr Eaton by way of reply submitted that the 2 tests were different tests in law and that the judge had therefore misdirected himself. "Insurmountable obstacles" under EX1 and EX 2 are premised on the basis of the appellant and child have residence in the UK and where 1 of the parties has a right to remain. This was not the position with both of these appellants.

59. As to family support in Bangladesh, the judge misunderstood the evidence. The 1st appellant's family had previously provided support but that was now no longer available because the family had relinquished that support due to his wife's mental health.

60. Mr Eaton submitted that the key point related to the impact upon the child in the light of the mother's deterioration in this would have a serious impact upon the child's welfare.

61. At the conclusion of the submissions I reserved my decision which I now give.

Decision on error of law:

62. I have had the opportunity to consider the respective submissions of the advocates as summarised above. Having done so I am satisfied that the judge made a material misdirection in law by applying the wrong test of "insurmountable obstacles" rather than those relevant to whether there were "very significant obstacles" to the appellants reintegration to Bangladesh.

63. It is accepted on behalf of the respondent that the judge did appear to apply the wrong test as can be seen by the references made at paragraph [27] of the decision. Whilst it is submitted on behalf of the respondent that this was most likely a typographical error, the terminology used of "insurmountable obstacles" is repeated within the short concluding paragraph at [27] which indicates in my judgement that it was not a typographical error but that this was the test that was being applied.

64. EX 2 defines "insurmountable obstacles" for the purposes of EX1(b) as "the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

65. There is no dispute between the parties as to the relevant law that was applicable when considering the issue of whether there are "very significant obstacles".

66. In the decision of SSHD v Kamara [2016] EWCA Civ 813, Lord Justice Sales in considering a foreign criminal's "integration" into the country where he is to be deported, stated at [14] that the idea "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

67. Whilst I consider Mr Bates is correct in his submission that both tests require a heightened threshold, for the reasons set out in the grounds and the oral submissions, the test to be applied were 2 different tests contained in 2 different legal rules and also had to be considered in the context of the particular factual claim advanced on behalf of the appellants.

68. In my judgement the issue is one of materiality; a legal misdirection would not render the decision to be in error based on the assessment of the evidence made by the judge if it provided a sound basis on a proper application of the law.

69. One of the issues before the FtTJ related the circumstances of the 2nd appellant and her mental health and this was said to constitute a "very significant obstacle" to her integration. Not in terms as to whether there would be adequate treatment available which the judge referred to at [27] but that the medical evidence relied upon (set out in the report of Dr Duhmad) was that the removal of the 2nd appellant would cause severe deterioration in her mental health and increase the risk of suicide and it was this which would constitute a "very significant obstacle".

70. Whilst the FtTJ stated at [26] that he did not consider that the 2nd appellant's medical condition was such to engage Article 8, that did not dispose of the issue as to whether it constituted a very significant obstacle to reintegration. In this context, I accept Mr Eaton's submission that the FtTJ approached the factual circumstances, and the situation is it was now rather than considering the position as it would be in Bangladesh upon return.

71. Whilst Mr Bates makes the valid point that the judge made a finding that the extended family would provide support for the appellant's wife, the argument made in the grounds is that the first appellant's evidence was that his family would not accept the continuing relationship with his wife on account of her mental illness and had exerted pressure on him to separate from her. I do not follow the reasoning set out at [25] that the appellant's evidence was tainted by the fact that he had "significant support and achieved good educational qualifications". On the appellant's evidence his account was that the family had provided support in the past but that they had ended the support given previously as a result of his wife's mental illness and therefore there appears to have been a misunderstanding of the evidence and the fact that they had

previously supported him did not provide a basis for rejecting the evidence that they were not presently hostile to him.

72. As to the issue of stigmatisation of mental health conditions in Bangladesh, whilst the FtTJ dismissed this as "far-fetched and fanciful" at [24], there was evidence set out in a report from a physician in Bangladesh which provided some evidential support for this. There is no reference to that in the assessment as to whether the issue of such stigmatisation applied to the appellant circumstances.

73. Mr Bates submitted that the error was not material because the fact-finding made by the judge was to the effect that the 2nd appellant would have family support from both sides. At [24] the judge referred to there being no evidence advanced to show that she would be treated as a "mad person" or from the family. The evidence from the appellant's wife was that her fear in this regard was based on the circumstances of her aunt and how she was treated and therefore there was some factual basis for this alongside the general evidence set out in the physicians letter.

74. For all of these reasons I consider that the grounds are made out and that the decision reached discloses material errors of law requiring the judge's decision to be set aside.

75. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

76. I have considered the further consideration of the appeal in the light of the practice statement recited above and by reference to the history of the appeal. Both advocates agree that the appropriate course is to remit the appeal to the First-tier Tribunal for a rehearing. It will be necessary for oral evidence to be given to deal with the evidential issues, and therefore further fact-finding will be necessary and in the light of the relevant documentary evidence, and in my

judgement the best course and consistent with the overriding objective is for it to be remitted for a hearing before the FtT.

77. It is not necessary to make any further directions as they are likely to be dealt with by the First-tier Tribunal in the light of the case management powers. However, as the appeal centres upon the mental health of the 2nd appellant, it is likely that an updated report will be required.

Notice of Decision.

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT shall be set aside and remitted to the First-tier Tribunal for a hearing.

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

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or their family members. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*

Dated 29/7/ 2021