IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/12288/2019
HU/12289/2019

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 11th December 2020	**On 18th February 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

BISS MAYA PUN
HOM BAHADUR PUN
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellants: Mr M West, instructed by Bhattarai & Co Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellants are citizens of Nepal born on 1 January 1972 and 1 January 1977 respectively. They appeal against the decision of First-tier Tribunal Judge Seelhoff promulgated on 20 March 2020 dismissing their appeal against the refusal of entry clearance under the Ghurkha policy. The Appellants are a daughter and son of the widow of a late ex-Ghurkha soldier who served in the British Army for fifteen years with exemplary service. He died on 13 May 2005.

2. The Appellants appealed on four grounds:

   (i) The judge failed to give an opportunity to the Sponsor, the Appellants' mother and witness in the appeal, to respond to issues ultimately held against the Appellants in the decision;

   (ii) The judge misdirected himself as to the documentary evidence;

   (iii) The judge misdirected himself as to the Appellants' employment;

   (iv) The judge wrongly concluded that the historic injustice was not relevant to the assessment of proportionality because it did not apply to the widow of an ex-Ghurkha and her children.

3. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 15 June 2020 for the following reasons:

> "Although the judge understandably comments on the lack of evidence provided on a number of matters, rightly observing that it is for the Appellants to prove their case, I am satisfied that it is arguable that the First-tier Tribunal Judge formed a view adverse to the Appellants' case without affording them or their Sponsor the opportunity to address his concerns. I am also satisfied that it is arguable that the First-tier Tribunal Judge misdirected himself in law, in his assessment of whether family life existed and in the approach to be taken to Ghurkha cases".

The judge's findings

4. The judge made the following relevant findings:

> "20. It is difficult to make factual findings in a case like this when the only witness is a very elderly lady with little education who is now nearly 80 years old. The answers given were in general terms and the witness did not really engage with the question of why her children had never found work simply asserting that they had been unlucky and repeating that they were dependent on her.
>
> 21. She did not seem able to give insight into why her children had not found work before she left the country which is notable given that both of them were in their 30's at that stage and of an age where one would have expected them to be well established in work."
>
> …

"23. I have limited information about what the family circumstances were prior to the Sponsor moving to the UK. The Sponsor left Nepal in 2010 and there was no documentary evidence to confirm that the Appellants were living at home at that time. The Sponsor chose to move to the UK leaving her children behind and there was no explanation why her daughter did not apply to accompany her and why her son did not appeal the refusal of his visa.

24. It is inevitable that in assessing the nature of the relationship said to exist between the Appellant (sic) and their Sponsor that I would need to have significant knowledge of what the circumstances were when the Sponsor chose to leave Nepal. The Sponsor's witness statement does not address why she chose to leave the children behind or why she insisted on moving to the UK when they could not come with her.

25. Looking at the evidence of how family life has been maintained since, I do have copies of the Sponsor's passport which do show visits to Nepal in 2011, 2013, 2014, 2015, 2017, 2018 and 2019 with her returning to the UK in 2020, and these show the Sponsor tending to visit up to six weeks at a time. This is not a degree of contact which would necessarily maintain a relationship as closely as it was at the time the whole family were living together."

…

"27. I have bank statements covering January 2018 to February 2020. These bank statements do show the pension being paid into the Sponsor's bank account and payments being taken out by cheque primarily by the second Appellant although I note that money was also taken out by what appears to be one of the Appellants' siblings in July 2018, October 2018, November 2018 and May 2019. Again this means I have no evidence of what the financial situation and financial support was between 2010 and 2018 and no evidence about how much of the money the Appellants actually need to spend for their living expenses. I have no information about whether they are living in an owned property or a rented property and no clear information about the area in which they are living.

28. I do have call records from Viber said to show calls by the Sponsor to her children which cover September 2019 to February 2020. This is a relatively short period of time. I also have all (sic) records covering 28 August 2018 to 23 February 2019 apparently for the Appellants calling their Sponsor. These were regular lengthy calls which is indicative of closeness.

29. There are however significant gaps in the evidence. I have no information about the Sponsor's financial position in the UK or about how much disposable income she has and how much of this is being diverted to the Appellants. I have no information about how much money the Appellants need to live on and how much of the money that goes back is going to daily living expenses. It is also clear that much of the evidence that is now available was not provided with the original application.

30. I am not satisfied having reviewed all of the evidence that the Appellants have discharged the evidential burden to prove that there is the degree of support necessary to elevate this to a case in which there can be said to be

family life between the Appellants and their mother in the Kugathas sense. I have reminded myself of the test and that all that is needed is evidence of real, committed or effective support be that financial, emotional or otherwise. I am not satisfied that the evidence before me discharges the burden of proof on the balance of probabilities to show that such support is presence (sic) in this case.

31. There is no credible reason why the Sponsor would have chosen to leave Nepal and come to the UK leaving her children behind ten years ago if the family life was as it is now claimed to be.

32. Even if I had not made the finding above, I would not be satisfied that this case ought to be regarded as being on a footing with all the other Ghurkha cases. …

33. … Because the historic injustice is not relevant I need to take into account all the public interest factors when assessing Article 8 in this case.

34. Accordingly, were I to be satisfied that there was Article 8 family life engaged by this decision, which I am not for the reasons outlined above, the question would be whether or not the interference in those family life rights would be proportionate. …

35. … There are strong public interest factors which weigh against bringing people in view of those circumstances. There is also no reason why the Sponsor cannot simply return to Nepal. There is no evidence that she has a particularly rich private life in the UK and her only stated desire to be with her family. The decision does not prevent the Sponsor spending time with her family."

Appellants' submissions

Ground 1

5. Mr West relied on his skeleton argument dated 7 October 2020 which stated the First-tier Tribunal Judge arrived at many of his findings which he held against the Appellants without providing any opportunity to the Sponsor, the only witness present, to respond to those issues. The Sponsor was not given an opportunity to comment on whether another sibling was withdrawing money from the army pension account. Mr West submitted there were seventeen pages of bank statements and none of those were referred to or challenged at the hearing. At no point was the issue about withdrawals in the bank statements put to the Sponsor and the judge's conclusion that it appeared to be one of the Appellants' siblings was wrong in fact.

6. Mr West submitted the failure to put an issue to a party in the proceedings whilst nevertheless holding that issue adversely against that party was an error of law. The same issue occurred at [29]. The judge found against the Appellants due to there being no information about the Sponsor's financial position in the UK or the Appellants' expenses in Nepal. Neither the Home Office, in cross-examination, or the

judge asked the Sponsor about her financial position in the UK or how much the Appellants spent on daily expenses.

7. The Sponsor was not asked why she had chosen to come to the UK ten years ago leaving her adult children behind. There was nothing in the case law to demonstrate that the Appellants had to provide evidence of support at a particular time. The judge only had to consider whether the support was real, effective or committed. There was ample evidence from the Sponsor and the Appellants that the Appellants were drawing from the ex-Ghurkha's pension supported by the bank statements. Since that account was not challenged, it was deemed to have been accepted. The bank statements dated back to 2018 and were sufficient to demonstrate committed support to the relevant standard, the balance of probabilities. The judge's finding in this respect was perverse and compounded by the error of fact.

Ground 2

8. In his skeleton argument, Mr West submitted the judge misdirected himself at [25] and his finding was perverse. The Appellants had provided evidence of seven trips by the Sponsor to Nepal over the period of separation since 2010. On any rational view that evidence was significant and merited proper weight. That is especially so given that the Sponsor is a pensioner with limited means and she had to travel a long distance from the UK. The judge's conclusion that evidence of frequent trips to Nepal would not necessarily maintain a relationship as closely as it was at the time the whole family was living together was irrational and the judge applied the wrong test. The judge only had to be satisfied following Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31. The issue was not whether the relationship was maintained to the same degree as it was when the family was living together but whether there was real, committed or effective support between the Appellants and the Sponsor. Evidence of frequent visits for six weeks at a time was manifestly capable of constituting, on the balance of probabilities, support in the Kugathas sense contrary to the judge's finding at [25]. The threshold of engagement for Article 8 was not an especially high one: AG (Eritrea) v Secretary of State for the Home Department [2007] EWCA Civ 80 at [28]. The judge had misdirected himself and/or placed too elevated a threshold upon the engagement of Article 8.

9. In oral submissions, Mr West referred to [34] of Pathan [2020] UKSC 41. He submitted it was clear the judge was impugning the documents and, on any fair reading, this was a finding against the Appellants. The proportion of the Sponsor's income was not relevant. The relevant evidence was at [3] of the second Appellant's witness statements:

> "We speak to her regularly, primarily, over the telephone. I, Hom Bahadur call her from my mobile. She also calls us using international calling cards. I have enclosed the call records. Although we have lived apart from her since 2010 our family unit has been maintained as both of us are dependent on her. We are not married and don't own any property. We fully rely financially and otherwise with our mother. Apart

> from each other we are completely alone in Nepal. Our other siblings live very far and they don't have means to support us. Our mother has given her authority to withdraw her widow pension to Hom Bahadur. I withdraw the pension and spend the money to cover my own and sister Bish Maya's expenses. In addition our mother also transfers money from the UK from time to time".

10. Mr West submitted the judge found that there was no information of how much money the Appellants required to live on. This was not raised in the notice of refusal and it was clear from the witness statements that the money was spent on expenses. This lack of evidence was not relevant given the unchallenged evidence of financial support. The fact that contact between the Sponsor and the Appellants was not the same as when they lived together was not relevant. There were an exceptional number of visits for up to six weeks a year. Mr West submitted there was evidence before the judge to show real, committed or effective support sufficient to satisfy the relevant test.

Ground 3

11. It was submitted, in the skeleton argument, that the judge misdirected himself on the issue of the Appellants' employment. He stated that there was an expectation in any country and in any economy that healthy adults would be able to be economically productive on some level. The judge suggested the Appellants were dependent out of choice which was not relevant. There was no authority for the proposition that support must be out of need. Article 8(1) protects the sphere of personal autonomy and individual choice. Dependency is simply a question of fact: see Gurung & Ors, R (on the application of) v Secretary of State for the Home Department [2013] EWCA Civ 8 at [42] and Singh v Secretary of State for the Home Department [2015] EWCA Civ 630 at [24]. Either the adult child is or is not dependent. What the Appellants choose to do or what they might be expected to do is simply immaterial. The judge's approach to this issue was misconceived. It was simply a question of fact and the judge therefore erred in law.

12. Mr West referred to [58] of the grounds and the case of Countryside Alliance v Her Majesty's Attorney General [2007] UKHL 52 at [11] which made it clear that Article 8 protects the sphere of personal autonomy and therefore the manner in which one chooses to live their life. He submitted that it was irrelevant whether the Appellants had chosen not to work. This was an issue of fact to be determined. The judge had approached this issue in the wrong way and held this factor against the Appellants at [21] and [22] of the decision.

Ground 4

13. In the skeleton argument, the Appellants submitted the judge's finding that the historic injustice was not relevant to the widow of an ex-Ghurkha and her children

was plainly wrong in law and in any event a finding which was unsustainable. In Padam Bahadur Ale v Secretary of State for the Home Department HU/02021/2016 at [11] Deputy Upper Tribunal Judge Eshun found:

> "I find that the judge erred in law in finding that family life in this case was not engaged because the Appellant himself was dependent on the dependant. The question of historic injustice was not just limited to the ex-Ghurkha and his dependants. It applied to all members of the family, including the widow of the Ghurkha. To that extent I find that the judge's decision at paragraph 31 disclosed an error of law".

14. The historic injustice applied to an ex-Ghurkha and his widow. R (on the application of Limbu) & Ors v Secretary of State for the Home Department [2008] EWHC 2261 dealt with the family as a whole in historic justice cases. The Sponsor was granted settlement on the basis of her marriage to a former Ghurkha. The ex-Ghurkha died before the Sponsor obtained her settlement visa in August 2009 under the discretionary arrangement for widows of an ex-Ghurkha discharged prior to 1 July 1997. The Respondent at that point had clearly recognised that the historic injustice applied in the Sponsor's case as she was granted indefinite leave to remain some four years after the ex-Ghurkha's death. The judge's finding that the historic injustice was not relevant in the Appellants' appeal was plainly wrong in law.

15. Mr West submitted that the historic injustice applied to the whole family because the Sponsor had obtained her indefinite leave to remain after the death of her Ghurkha husband. The judge had in the back of his mind that the Appellants could not succeed under Article 8(2) because the historic injustice did not apply. The Gurkha policy applied and the judge's error vitiated the whole assessment of Article 8. The Appellants' father had an exemplary military record and it was important to grasp the importance of the historic injustice. The Appellants would have been British if their father had been allowed to settle in the UK on discharge from the army. Mr West submitted the judge's finding and reasons were perverse.

Respondent's submissions

16. In her Rule 24 response, the Respondent did not accept the judge formed a view adverse to the Appellants. The judge had been asked to accept the Appellants had never worked their entire adult lives and they were reliant on the Sponsor with little or no evidence to support this assertion. The Sponsor was cross-examined by the Respondent and the judge also asked a number of questions to obtain further information of the situation in Nepal but further information was not forthcoming. The judge only had evidence of money transfers from the time of the application to date and nothing from the period 2010 to 2018. There was no evidence to show how the Appellants were supported in those years. In the circumstances, the judge was entitled to reach the conclusion that there was no family life between the Sponsor and the Appellants having first directed himself following Kugathas and Rai [2017] EWCA Civ 320. In the alternative, given the length of time between the Sponsor

leaving Nepal to come to the UK and the applications for entry clearance, the Respondent's decision was proportionate.

17. In oral submissions, Mr Jarvis accepted the Gurkha policy applied to the Appellants if they established that, but for the historic injustice, they would have settled in the UK. There was nothing in the judge's reasoning to suggest that, because the historic injustice did not apply, this was relevant to his assessment of Article 8(1).

18. Mr Jarvis submitted the Appellants were 48 and 43 years old at the date of hearing. Their mother came to the UK in 2010 after being granted indefinite leave to remain in 2009. At that time the second Appellant applied to accompany her but his application was refused and there was no appeal. It was not until 2019 that there was an application to enter the UK under the Ghurkha policy. The judge had to try and understand the circumstances of two adults in their 40's who had done very little in their adult life and who claimed to have been supported by their mother after she left Nepal and came to the UK ten years ago. This was an unusual situation and one would expect to see a detailed explanation of what happened in the intervening ten years.

19. In Gurung [2013] EWCA Civ at [50], the Court of Appeal concluded that there had to be sufficient emotional dependence to establish family life. This was more than normal emotional bonds in order to engage Article 8(1). The case of AG related to the test for interference with family life in which the threshold was not particularly high. Whether the Appellants have established family life protected by Article 8 is not a low threshold and was more than the care and attention of a family member.

20. Mr Jarvis submitted the judge was not assisted by the evidence before him. The Sponsor was not able to give great detail in her oral evidence and the judge found that she had no insight into why the Appellants had not worked. There was no reason why an application for settlement had not been made earlier or why the second Appellant did not appeal the previous refusal. The judge's findings were not adverse credibility points which were not put to the Appellants. This was not a case where there were inconsistencies in the account given. The judge was looking at the burden on the Appellants and applying the balance of probabilities. The vast majority of points made by the judge were because of a lack of evidence to inform him of what was going on. The Appellants claim that nothing has changed since the Sponsor left Nepal but there was no evidence of what was happening during that intervening period. It was open to the judge to find that there was not enough evidence. The judge's approach in this case was in line with all Article 8(1) authorities. The procedural points fell away.

21. Mr Jarvis submitted that, in the skeleton argument, the Appellants relied on Maheshwaran [2002] EWCA Civ 173 at [5] which dealt with the duties of the judge and the credibility of the parties. If there were inconsistencies in the Appellants' account there was a manifest problem and it was a matter for the representative to either deal with those inconsistencies or remain silent. No unfairness would arise if the judge did not put the issue to the Appellants. The point raised by the judge was a

failure to meet the evidential burden rather than inconsistencies in the Appellants' account. The judge did raise one point with Counsel and there was nothing procedurally unfair in the decision or in the conduct of the appeal hearing. The system is an adversarial one and the judge was entitled to consider how the case was put. There were holes in the Appellants' evidence. It was not a case where there were overt points of credibility. Even if the judge had put the points to the Sponsor it would not have made any difference to the judge's understanding of the case for the reasons given at [20] and [21] of the decision.

22. Mr Jarvis submitted the Appellants' reference to Pathan was not relevant because it addressed the question of whether there was procedural unfairness and substantive unfairness by the Secretary of State where the appellant did not know of the circumstances. In this case, the Appellants were well aware of the case against them on appeal. The Appellants knew why they had been refused entry clearance and they had an appeal to argue their case but failed to provide adequate evidence.

23. Mr Jarvis submitted the Presenting Officer did challenge the Appellants' case. There was a fundamental lack of credibility in an assertion that someone in their 40's would never have been able to find work in their country of origin. There was no credible reason why other relatives would not be assisting the Appellants and no evidence of long term dependency. It was not necessary to cross-examine the Sponsor about every document to challenge the core of the Appellants' claim.

24. Mr Jarvis submitted the judge found the Appellants had failed to provide sufficient evidence to reach the burden and standard of proof. The judge highlighted the obvious deficiencies in the evidence and there was no misdirection in law. The nature of the relationships between the parties was such that it was not unusual for the Sponsor to visit Nepal given her length of residence there.

25. Mr Jarvis submitted the judge did not misunderstand or ignore evidence. He highlighted what he should have seen for a case to be made out and the Appellants had not produced that evidence. The visits did not establish an emotional connection sufficient to satisfy the test required in the relevant authorities. The absence of evidence elsewhere meant that there was little information about what was going on when the Sponsor came to the UK and this was relevant to the assessment of what was going on at the date of hearing.

Appellant's response

26. Mr West submitted the issue in this appeal was whether the legal test was properly applied. The Sponsor made visits almost every year and this amounted to more than normal emotional ties. The judge accepted this was contact but not to the degree that would maintain the relationships as close as it was. This was not a correct application of the test. If there was no family life between the Sponsor and the Appellants one would not expect to see an 80 year old visit every year. On any view, the judge's

finding was perverse. Her visits to Nepal showed that there was emotional support and dependence.

27. Mr West submitted it was clear in the witness statements that the Appellants and the Sponsor were living together in 2010. The visits were clear evidence that family life was maintained following Rai. It existed then and it does now. The army pension statement was a crucial document and had not been challenged. It was clear that the army pension statement met the threshold of financial support on the balance of probabilities. The judge failed to put matters to the Sponsor. It was apparent from the attendance note attached to the grounds of appeal that there was sufficient evidence before the judge to show that there was real, committed and effective support. It was not about the ancillary issues raised by the judge. There was sufficient documentary evidence to satisfy the threshold.

28. Mr West submitted the judge took into account irrelevant circumstances and failed to give the Sponsor a chance to respond. The matters relied on by the judge were not in the refusal notice. There was no issue taken with the proportion of income sent to the Appellants or the expenses they incurred in Nepal. Those issues were held against the Appellants and should have been put to the Sponsor in her oral evidence. No questions were asked about the bank statements. The issue of whether family life existed was not time dependent. The bank statements from 2018, the authority to withdraw money from the Sponsor's bank account and the frequent visits were sufficient to establish family life. The visits and the unchallenged financial evidence met the threshold test. Mr West submitted that if I found there was an error of law the matter should be remitted to the First-tier Tribunal for rehearing.

Conclusion and reasons

29. The Appellants were represented at the hearing before the First-tier Tribunal by Mr West. There was no obligation on the judge to ask questions or cross-examine the witness. The burden was on the Appellants to provide sufficient evidence to show that family life existed and that the refusal of entry clearance interfered with their family life. The judge's comment at [27] that money was also being taken out by what appeared to be one of the Appellants' siblings was not material to the judge's finding in the same paragraph that "I have no evidence of what the financial situation and financial support was between 2010 and 2018 and no evidence about how much of the money the Appellants needed to spend on their living expenses."

30. The judge did not make adverse findings which he failed to put to the Appellants. It is apparent from the attendance note attached to the grounds of appeal that the judge asked the Sponsor why the Appellants had not worked and why there were no money transfers before 2019. The judge's findings at [20] and [21] demonstrated the Sponsor's inability to assist the Tribunal with the 'gaps' in the evidence.

31. The existence of family life in 2010 at the time the Sponsor left Nepal was relevant to the assessment of whether Article 8 was engaged because the Appellants claimed

that the situation had not changed since the Sponsor came to the UK ten years ago. The judge found that there was insufficient evidence to show the nature of the family life that existed prior to the Sponsor coming to the UK. The judge considered the evidence of how family life had been maintained since 2010. He concluded that financial support from January 2018 to February 2020, telephone calls from September 2019 to February 2020 and seven visits to Nepal were insufficient to demonstrate a degree of support necessary to satisfy the test in Kugathas.

32. The judge found there was insufficient evidence to discharge the evidential burden on the Appellants. There was no obligation on the judge to put matters to the Appellants because the onus was on the Appellants to provide sufficient evidence to show that family life existed. On the evidence before the judge, they had failed to do so. The judge's finding that the Appellants had failed to establish family life was open to him on the evidence before him. I find that the judge took into account all relevant matters and it is clear from [30] of the decision that he applied the correct test to the assessment of family life.

33. I find that there was no procedural unfairness in the conduct of the appeal hearing. The Appellants were represented and aware of the case they had to answer from the refusal notice. The Appellants failed to provide sufficient evidence to show that, as adult children in their 40's, they had established family life with their 80 year old mother who came to the UK ten years ago. I am not persuaded that the judge made adverse credibility findings or held issues against the Appellants. The judge merely commented on the state of the evidence and explained in his reasoning why the evidence was lacking.

34. There was no error of law in the judge's approach to the documentary evidence or misdirection in relation to the Appellants' employment. The judge found that there was a lack of evidence from 2010 to 2018 to show that the Appellants were financially dependent on the Sponsor such that the support she provided was real, committed or effective. The judge was asked to believe that the Appellants had never worked and were dependant on the Sponsor on the basis of assertions in their witness statements.

35. Any error of law in relation to the historic injustice was not material because, on the facts of this case, the Appellants failed to establish family life sufficient to engage Article 8. The judge's findings on proportionality were in the alternative and had not affected the judge's assessment under Article 8(1).

36. The evidence of financial support (drawings from the Sponsor's bank account into which the army pension was paid from 2018 to 2020 and money transfers from 2019), the telephone calls in 2019/2020 and the visits almost every year for six weeks were not sufficient to establish family life. The judge's conclusion in that respect was not perverse as submitted by Mr West. The judge looked at the totality of the evidence and his findings were open to him on the evidence before him.

37. Accordingly, I find there was no error of law in the decision of 20 March 2020 and I dismiss the Appellants' appeals.

Notice of decision

Appeals dismissed

No anonymity direction is made.

J Frances

Signed Date: 29 January 2021

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed Date: 29 January 2021

Upper Tribunal Judge Frances

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