Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001064
on appeal from HU/01683/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 July 2022	**On 28 September 2022**

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY JUDGE OF THE UPPER TRIBUNAL FROOM

Between

V R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jonathan Martin, Counsel instructed by Mansouri & Sons, Solicitors
For the Respondent: Ms Amrika Nolan, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant challenges the decision of the respondent made on 1 March 2021 to make a deportation order pursuant to section 32(5) of the UK Borders Act 2007, and on 3 March 2021 to refuse his human rights claim. He is an Iranian citizen.

2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of his family. **Failure to comply with this order could amount to a contempt of court.**

3. **Mode of hearing.** The hearing today took place face to face.

4. The appellant claims to have entered the UK clandestinely on 9 May 2002 and has never had leave to enter or remain. He has a long history of criminal offending, and is a recovering heroin addict, having recently taken himself off methadone and out of the support services provided to help him with his addiction.

5. The appellant's appeal was allowed in a decision of the First-tier Tribunal promulgated on 15 November 2021.

6. Following a hearing on 16 March 2022, the Upper Tribunal set aside the First-tier Tribunal's decision, preserving only the appellant's history of offending and the statement in the OASys report that the appellant posed a medium risk of serious re-offending within two years.

First-tier Tribunal decision

7. The following findings by the First-tier Judge were preserved:

> "7. Between 02 January 2004 and 15 July 2013, the Appellant accumulated a total of 19 convictions for 36 offences including 1 offence against the person, 1 offence against property, 20 theft and kindred offences, 1 public disorder offence, 8 offences relating to police/ courts/ prisons, 1 firearms/ shotguns/ offensive weapons offence and 4 miscellaneous offences.
>
> 8. Most of the theft and kindred offences were for shop-lifting to fund the Appellant's drug addiction to heroin and cocaine. The Claimant was sentenced to and served various short terms of imprisonment during this period.
>
> 9. From 2013 until February 2020 the Claimant was not found to have committed any crimes. During this period he engaged with drug addiction rehabilitation services and was taking prescribed methadone to help him keep off heroin.
>
> 10. In the few months prior to 13/2/2020 the Claimant rapidly and contrary to his GPs advice reduced his methadone intake, which reduction caused him to act strangely and aggressively.
>
> 11. On 13/2/2020 the Appellant launched an unprovoked physical assault on a neighbour, punching his face repeatedly, knocking him down and then kicking him. The neighbour lost 4 front teeth, had a cut to the top of his head, and was "black and blue" with bruised ribs, and had to be hospitalised. The Appellant when being arrested also kicked a police officer in the genitals.
>
> 12. As a consequence of this incident, on 16 October 2020 the

> Appellant was convicted at Basildon Crown Court for count 1 assault by beating of an emergency worker and received a 4-month prison sentence consecutive, count 2 battery and received a 1-month prison sentence concurrent, and count 3 wounding/ inflicting grievous bodily harm and received 20-month prison sentence.
>
> 13. The sentencing judge in the Crown Court recognised that the Appellant had kept out of trouble for the previous 8 years and accepted that the Appellant's crimes on 13/2/2020 were out of character and caused by his rapid reduction in methadone, which had caused a temporary mental illness, that the Appellant was remorseful and that he had pleaded guilty at the first opportunity.
>
> 14. The Appellant served half of his sentence and was then detained under Immigration laws before being bailed in April 2021. He was deemed suitable to be allowed to go back to live with his partner and children in their family home (a Council house in Essex). He remains on probation at the time of the appeal hearing. …
>
> 16. The OASys report which was compiled while the Appellant was still detained earlier this year, states that the Appellant poses a medium risk of serious re-offending within two years."

Procedural matters

8. Following a transfer order, the appeal comes before us for remaking afresh. Detailed directions were set on 4 April 2022 (by agreement with the parties) to require the appellant to file reports from social services, medical evidence about his children, confirmation of his current drug status and evidence from the children's schools. Such evidence and an updated appeal skeleton argument were to be filed and served no later than 14 days before the hearing.

9. Nothing was filed prior to the hearing. Mr Martin was unable to explain why this had not been done, other than to say that his instructing solicitor was abroad. He told us that some documents had been served on the respondent and Ms Nolan confirmed she had received some documents the day before.

10. We put the case back to 2pm and Mr Martin agreed to ensure an indexed bundle and skeleton argument were provided for the Tribunal. We received Mr Martin's revised skeleton argument, a supplementary bundle of 18 pages and an education, health and care plan relating to the appellant's older child shortly before resuming the hearing. We are grateful to Mr Martin for his assistance in this respect.

Upper Tribunal hearing

11. The issues for determination in this appeal have been narrowed. The appellant has previously claimed asylum and had two unsuccessful appeals in respect of his protection claims. He no longer pursues them. There is no claim before us based on the appellant's health or private life.

12. The respondent accepts that it would be unduly harsh for the appellant's

partner and children to relocate to Iran. However, she maintains it would not be unduly harsh on the partner or children to remain in the United Kingdom without the appellant.

13. The appellant challenges the respondent's deportation decision, and her human rights decision, solely on article 8 family life grounds. He claims: (1) that his deportation would breach article 8 because he falls within Exception 2 provided for by section 117C(5) of the Nationality, Immigration and Asylum Act 2002 and, alternatively (2) that his deportation would be disproportionate because there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

14. The appellant bears the burden of establishing disputed matters to the civil standard of a balance of probabilities. We are required to look at the position as at today's date. We have had regard to the documents contained in the consolidated bundle of 373 pages and the additional documents served shortly before the hearing. We heard oral evidence from the appellant, his partner and his partner's mother. We reserved our decision.

15. Section 117A(2)(b) of the 2002 Act provides that, in considering the public interest question, as defined, tribunals must have regard to the considerations listed in sections 117B and 117C.

Findings of fact

16. We have noted the judge's sentencing remarks. HHJ Cohen said:

> "On the 13th of February of this year, you were suffering from an acute polymorphic psychotic episode. It had been coming on for a number of days and your partner, … , was very concerned about you because of the peculiar way in which you had been behaving.
>
> Matters came to a head on the 13th of February, first of all after becoming disruptive in your family home. You launched a kick at the head brother-in-law, … . He was coming up the stairs towards your home carrying, I think, some cans of lager, and you kicked at him from your higher position and you caught him in the head.
>
> You then went past him, down the stairs, out onto the street, where you encountered [the victim]. [The victim] was going about his business, as you know now, taking a bunch of flowers to somebody. He became aware of you shouting in the street, and you, for no apparent reason, started to attack him: you hit him in his head; you were carrying your mobile phone and you were demanding that he talk to her, presumably somebody you thought you were speaking to on the telephone. You called him a traitor.
>
> He fell to the ground after your repeated punches and then you kicked him while he was on the ground, and you caused him serious injury. He had a cut to the top of his head, you knocked his front teeth out, and he was black and blue, with painful ribs and bruising.
>
> The police had been called − I think they'd been called before your attack on [the victim] because of the way that you'd been behaving,

> and so they were on the scene very quickly − and you were apprehended. But you continued to behave in a violent and aggressive way, and when you were back at the police station, whilst you were being restrained, you kicked out and you caught [a police constable], I think full-square between the legs, causing him considerable pain.
>
> As I have indicated, the reason for your assaults has no basis in sanity really, you committed it because of your mental illness, but your mental illness was caused because you decided, contrary to medical advice, that you would reduce your methadone prescription − you're a − been a long-standing heroin addict for over a decade − and you were on a controlled, quite high dose of methadone. You discussed with your doctors earlier in the year whether you could reduce it and they encouraged you in that, and you were told that that would need to be done very carefully − it would take a while − but you decided that that wasn't quick enough, and over the course of about a month, you reduced your methadone intake to such an extent that it affected your mental condition, and you became psychotic.
>
> You have previous engagement with the court system. Almost all of your offences are related to your drug addiction: very frequently dishonesty offences in order to get money to buy drugs. You do have a previous incident of violence, in 2004, and an affray in 2012.
>
> Your last substantive offence was a theft and that was in 2012, so you'd been out of trouble for eight years before you committed this. I've read in the report that you're in a stable relationship, you have two children, one of whom is quite young, and I am satisfied that you are remorseful for what you've done. You've expressed remorse. The offences are out of character, and you have pleaded guilty at what is, in effect, the first possible opportunity.
>
> I have to consider the very serious nature of your offence, and deal with you bearing that in mind, along with all of the mitigating features that I have referenced. It's a category 1 offence − this is count 2, the section 20 matter. That has a starting point, after a trial, of three years, with a range of between two and a half and four and a half − and four.
>
> Bearing in mind your culpability and bearing in mind of the Covid regime on people who are in custody, I take the view that if you had had a trial on this matter, the sentence would have been two and a half years in custody. But you pleaded guilty and you are entitled to credit, and that reduces the sentence on count 2 to 20 months.
>
> Count 3 is your common assault of … . The sentence for that offence will be one month and it will be concurrent. The assault on [the police constable] was serious.
>
> Police officers do a very difficult job, and they are not − it is never appropriate for people that they come into contact with to lash out at them in the way that you did. It is so serious that it warrants a short, consecutive sentence, and that will be four months, consecutive. That is a total of 24 months in custody."

17. The following matters are not disputed:

    - The appellant is a "foreign criminal" because his sentence was longer

than 12 months.

- The appellant has resided in the United Kingdom since he arrived clandestinely on 9 May 2002;
- He was an unaccompanied asylum seeking minor and was a looked after child under Thurrock Children's Services;
- He was assisted by the Community Drug and Alcohol Service from March 2004;
- Between 2 January 2004 and 15 July 2013 the appellant was convicted of 36 offences;
- However, on 5 March 2014, he was granted 30 months' discretionary leave on account of his family and private life;
- The appellant has been in a relationship with his partner, who is a British citizen, since around 2004;
- The appellant and his partner have two British citizen children, born in 2005 and 2014 respectively;
- The appellant has resided with his partner since 2006 and subsequently with his children apart from the 14-month period he was on remand, serving a sentence and in immigration detention (13 February 2020 to 28 April 2021);
- The appellant committed the index offences on 13 February 2020 and was subsequently convicted of wounding/inflicting grievous bodily harm with intent, assault by beating and assault of an emergency worker for which he was sentenced to two years' imprisonment;
- The judge's sentencing remarks record that the index offences occurred while the appellant was experiencing a psychotic episode brought about as a result of the appellant reducing his methadone dose too quickly and against medical advice;
- The appellant complied with his licence conditions and the licence period ended on 13 February 2022;
- The last OASys report prepared in 2021 assessed the risk of the appellant re-offending within two years as medium but his probation officer wrote on 10 May 2022 that there were no concerns regarding further offending;
- The appellant has a long history of drug addiction, including addiction to heroin for over a decade, and was supported most recently by Inclusion Visions Thurrock, a drugs and alcohol service for adults;
- The appellant has been diagnosed with anxiety and depression but he stopped taking medication because he felt it was not helping him;
- The appellant's children were formerly subject to a children in need ("CIN") plan under section 17 of the Children Act 1989 but the case was closed on 1 October 2021 as social services no longer had any concerns;

- The children attend mainstream schools;
- The older child has special educational needs and is subject to a plan, dated 27 August 2021, under which she would receive 2½ hours per week additional teaching support;
- The older child has presented with behaviour and social interaction difficulties since 2005. She has been diagnosed with ADHD and sleep difficulties for which she takes medication;
- The younger child also has some behavioural and eating problems (not yet medically diagnosed) and, since autumn 2020, she has received SEN support at primary school;
- The appellant's partner's mother lives a short drive away but she works full-time so she has limited time available to help her daughter;
- The appellant's parents live in Iran and his sister lives in Japan.

Evidence before the Upper Tribunal

18. We were impressed by the oral evidence of the appellant's partner and her mother. They have both confirmed that the children were happy that their father returned home and that the children's behavioural problems have become more manageable since his return. We accept that the appellant is committed to his children and that he assists his partner with their care.

19. We have noted the opinion of Chris Gannicott, a social worker, expressed in a letter dated 24 February 2022, that the children need their father in their lives to sustain this positive change and that his presence in the family will have a positive impact on the children's emotional wellbeing.

20. We have also noted the letter of I Dobson, inclusion manager at the school attended by one of the appellant's children, dated 24 February 2022, that the children reported that they enjoyed living with their father. There were ups and downs while the family settled back to having both parents present in the family home and to the appellant taking back parenting responsibility. However, the family had worked hard and the appellant's partner appeared much less stressed since she had been able to share home responsibilities.

Findings of fact and credibility

21. On the basis of the evidence adduced by the appellant and his representatives, we make the following findings of fact and credibility. As regards the appellant's daughters' health and education, we accept that both children have challenges. We accept that their behaviour can at times present their parents with difficulties. We accept that being a single parent during the time of the appellant's detention would have been stressful for the appellant's partner. It is clear that the older child has been seen by paediatricians for several years and she has established diagnoses of ADHD and sleep problems, for which she is medicated.

22. The direction to produce medical evidence has been complied with, but the only detailed letter from a paediatrician dates from August 2019, which was before the appellant's arrest. It records that the appellant's older child was responding well to her ADHD medication. There was to be a review in 9 months' time. There is a letter from April 2021 following a telephone consultation, which we assume was the only means of holding a such consultation during the pandemic. It records that medication was helping the appellant's older daughter to focus well and she was doing well at school.

23. We note that the April 2021 consultation occurred before the appellant was released, when the appellant's partner told us the children were particularly unsettled due to the uncertainty over whether their father would be released. We consider that any worsening in the older daughter's difficulties would have been reported to the specialist and referred to in the letter. The appellant's partner confirmed in cross-examination that her older daughter was still responding well to her ADHD medication. We conclude that the evidence does not show that the older child's behaviour was as seriously affected by the appellant's absence as asserted, and that she continues to respond well to medical management of her condition.

24. As for the younger daughter, we have no medical evidence despite a direction being made for this to be provided. We recognise that she may be too young to have received a firm diagnosis. However, when asked in cross-examination whether she had sought medical help for younger daughter, the appellant's partner told us that she had done her best to but it took time. She took her to A&E. She had been advised on strategies to keep her daughter calm. The appellant's partner clarified that the only help or treatment which the younger daughter is receiving is help at school to control her feelings and with learning. We infer from the absence of any medical intervention or evidence that the challenges presented by the younger daughter are also less significant than the appellant asserted.

25. The appellant's mother in law's evidence to us was that she provided emotional support to her daughter during the time the appellant was away in prison and that she saw her grandchildren "regularly". However, this was not quite consistent with her daughter's evidence, which was that her mother was really too busy at work to come round to help her, although she did her best. We prefer the appellant's partner's evidence because she pointed out to us it was the time of the pandemic and her mother also conceded that she had not formed a "bubble" with her daughter and grandchildren because of her own husband's vulnerability.

26. Of course, we accept that the partner's mother was willing to help to her utmost, but we find that she was prevented by circumstances from helping very much and therefore the appellant's partner managed alone. We accept that there is evidence referring to the partner being stressed, but no medical evidence has been provided to suggest that she did not cope with looking after the children.

27. We recognise that the appellant's incarceration coincided with the pandemic which made visiting medical professionals extremely difficult. However, the reality is that, despite clear directions being issued, we have been provided with no up to date medical evidence to support the claim by the appellant's partner that his being away had a "huge impact" on their daughters. Of course it would have had some impact but, we find, not as great as has been presented to us.

28. We accept that the appellant has stopped taking methadone, although he struggled to tell us precisely when he stopped. He told us he takes steps to prevent relapse by choosing a healthy lifestyle, going to the gym and spending more time with the family. We accept that evidence, as far as it goes.

29. Of great concern to us is the fact that the appellant appears to have stopped receiving assistance from Inclusion Visions Thurrock somewhat abruptly. There is no evidence from any that organisation or any other drugs service, despite the tribunal setting a specific direction for it to be filed.

30. The letter from the Probation Services, dated 10 May 2022, refers to the appellant completing his methadone treatment but declining any further ongoing support. There were negative drug test results on 18 May 2021, 25 May 2021 and 7 October 2021. However, on 9 September 2021, he tested positive for cannabis. The appellant told us the reason he declined support was that he felt he did not need it. He said he had not used cannabis again, and his partner supported his account on this point.

31. We note the progress the appellant is making in tackling his addiction. However, given the length of time the appellant was using drugs, the lapse discovered in September last year and the fact there are no test results since October last year, we consider it would be naïve to conclude that he is likely to be able to stay "clean" without support.

32. We noted that the appellant's evidence that he felt he no longer needed support contained an echo of the circumstances which led to the index offences, which the sentencing judge described as the appellant reducing his methadone dose by himself too quickly and against medical advice. The appellant's witness statement made for the appeal in the First-tier Tribunal, but which he adopted again at the hearing before us, contains a different version of events. The appellant makes no reference to being advised against lowering his dose quickly and he claims he had been given a methadone alternative to which he was not accustomed.

Analysis

33. We now turn to the law. We have adopted a structured approach to the various relevant statutory provisions in Part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended) and section 55 of the Borders, Citizenship and Immigration Act 2009, as well as Article 8 ECHR

outwith the Rules. In each case, we have had regard to the submissions on the appellant's behalf by Mr Martin, which we set out under each heading.

Sections 117C(1) and (2)

34. We are required to give significant weight to the public interest in the deportation of foreign national offenders. The public interest in the deportation of foreign criminals is not only to protect the public against the risk of further offending. It is also to deter others and to maintain the public's confidence in the effective treatment of foreign criminals (OH (Serbia) v SSHD [2008] EWCA Civ 694). However, the public interest is not fixed. It is flexible or moveable according to the factors in the case, as shown by section 117C(2).

35. The respondent sets out the appellant's criminal history in her deportation decision and states that this is the reason the appellant's deportation is deemed conducive to the public good. The appellant's 39 convictions include offences against the person, theft and public disorder offences. We do note that the respondent was prepared to grant the appellant discretionary leave notwithstanding his lengthy criminal record prior to 2014. We have therefore mainly focused on the index offences when assessing the public interest in deportation.

36. There is no dispute that the index offences were serious for the purposes of section 117C, applying the test set out by the Supreme Court in the recent case of HA (Iraq) & Ors v SSHD [2022] UKSC 22, at [66]-[67].

37. We see that the judge did give the appellant some discount for his guilty plea, which is not a matter bearing on the seriousness of the offence. We conclude that the assaults committed by the appellant were very serious and the weight to be given to the public interest in the appellant's deportation is substantial.

Sections 117C(5)

38. As said, the appellant's partner and children are British so are 'qualifying' for these purposes. The genuineness and subsistence of the relationships is not challenged.

39. The Supreme Court gave guidance on the 'unduly harsh' test in HA (Iraq) & Ors v SSHD [2022] UKSC 22 at [41] in the judgment of Lord Hamblen (with whom Lord Reed, Lord Leggatt, Lord Stephens and Lord Lloyd-Jones agreed):

> "41. Having rejected the Secretary of State's case on the unduly harsh test it is necessary to consider what is the appropriate way to interpret and apply the test. I consider that the best approach is to follow the guidance which was stated to be "authoritative" in KO (Nigeria)[1], namely the MK[2] self-direction:

[1] KO (Nigeria) v SSHD [2018] UKSC 53; [2018] 1 WLR 5273
[2] MK (Sierra Leone) v SSHD [2015] INLR 563

> "… 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."
>
> 42. This direction has been cited and applied in many tribunal decisions. It recognises that the level of harshness which is "acceptable" or "justifiable" in the context of the public interest in the deportation of foreign criminals involves an "elevated" threshold or standard. It further recognises that "unduly" raises that elevated standard "still higher" - i.e. it involves a highly elevated threshold or standard. As Underhill LJ observed at para 52, it is nevertheless not as high as that set by the "very compelling circumstances" test in section 117C(6).
>
> …
>
> 44. Having given that self-direction, and recognised that it involves an appropriately elevated standard, it is for the tribunal to make an informed assessment of the effect of deportation on the qualifying child or partner and to make an evaluative judgment as to whether that elevated standard has been met on the facts and circumstances of the case before it."

40. For the appellant, Mr Martin argued that the threshold was reached on the facts of this case. He argued the evidence was "clear" regarding the appellant's partner's difficulty managing the children while he was in prison and also that the children were doing "much better" since his release. He highlighted the evidence of the appellant's partner as to the uncertainty at the end of the appellant's sentence and how this impacted on the children. Deportation would lead to open-ended separation and would accordingly be much worse. The appellant's partner could not cope on her own.

41. Despite the difficulties which the appellant's partner and his daughters will undoubtedly experience if he is removed, we are unable to find that the elevated standard imposed by the statutory test described by the Supreme Court has been reached on the facts we have found. We have been unable to accept all that we were told about the impact of the appellant's absence on the children and his partner's ability to cope in his absence. We accept that the children have behavioural issues and that the older child has a medical diagnosis. However, her conditions are treatable and she is responding well.

42. We have noted the opinions expressed by Chris Gannicott and I Dobson. They have an independent perspective and they wrote their letters in a professional capacity. Their opinions are entitled to respect. However, even taking them as the high point of the appellant's case, we do not consider it has been shown that the appellant's absence from the household would create a situation which will be severe or bleak or even worse. At best it shows that the family faced difficulties while the appellant was in prison

and the situation has improved since he was released. That is not enough to show the statutory test is met.

Section 117C(6)

43. The application of this section requires us to conduct a full proportionality balancing exercise.

44. On the public interest side of the scales is the seriousness of the offences which the appellant committed. We have addressed this issue above and we shall not repeat ourselves by setting it out again here. The scales are clearly heavily weighted in favour of deportation and a very strong claim must be shown in order to succeed (Hesham Ali v SSHD [2016] UKSC 60; [2016] 1 WLR 4799 at [38]).

45. In HA (Iraq) the Supreme Court also gave guidance on the very compelling circumstances test and explained that the relevant factors to be taken into account will include those identified by the ECtHR, most recently in Unuane v United Kingdom (2021) 72 EHRR 24.

46. We have noted that the appellant came to this country as a minor and was under the care of the local authority in his early years here. However, he embarked upon a self-destructive lifestyle which led to his committing a huge number of offences over a prolonged period. This will have caused much harm and detriment to the community. The appellant was only able to establish a right to remain in March 2014, almost 12 years after his arrival. His leave was brought to an end by the deportation order made on 3 March 2021. The majority of his time in the United Kingdom has been spent without leave.

47. We accept that the appellant has not committed any further offences since he left detention on 28 April 2021 but that is only a period of 15 months, which is very short when compared to the extent of his criminal record. We have noted the assessment of risk in the OASys report in 2021 and also the opinion of his offender manager earlier this year. However, we continue to have concerns about the appellant's ability to remain “clean” if he refuses to accept support or medical advice. There remains a risk of further offending.

48. The appellant is very much integrated into a British way of life.

49. We accept that the appellant's relationship with his partner is longstanding and we acknowledge that she stood by him, despite his long-term addiction, his difficulties with rehabilitation and his offending. The appellant’s partner and her mother supported his appeal whole-heartedly. Family life as between the appellant and his partner is undoubtedly established, although it must have been created at a time the appellant was in the UK either precariously or unlawfully, and as such can be given little weight.

50. It is more difficult to reach firm conclusions about the relationships

between the appellant and his daughters: these must, realistically, have been impacted to a degree by the appellant's drug use, rehabilitation and imprisonment. His parenting must have been very significantly impacted, particularly during the early years of the older child's life when he was addicted to heroin and was funding his habit through crime. However, we accept there are bonds of love and affection between them.

51. It seems probable that the appellant's partner would have been aware of the risky lifestyle adopted by the appellant when she formed a relationship with him, although she would have been young at the time. In relation to the index offences, we note from the sentencing remarks that she recognised the signs of a problem and was concerned about the appellant's behaviour. However, the violent acts committed by the appellant were unpredictable, spontaneous and not in practice constrained by his relationship with his partner.

52. The children are now aged 16 and 8 years respectively. The older child has greater experience of her father and, despite her difficulties, will inevitably have greater maturity to assist her to adapt to life without the appellant. The younger child has less experience of living with her father, particularly when the 14 months he spent in detention are taken into account. His removal from the household will be less easy for her to understand.

53. The appellant's partner is not expected to accompany him to Iran. We accept that she is unlikely to be able to afford regular visits to a third country in order to take the children to meet him. We proceed on the basis that the appellant's physical presence in the family unit will be impossible until such time as he may be able to have the deportation order revoked. By that time the older child will have been a young adult for some years and the younger child will have been without her father for the majority of her childhood years.

54. We remind ourselves that the best interests of the children are a primary consideration, but not a trump card. We accept that it is in the best interests of the children to grow up knowing both parents. That conclusion is supported by the fact Social Services have closed the case file. We have looked at the individual circumstances of the children insofar as we have been able to despite the paucity of up to date medical evidence. We have also looked at the additional stress which the appellant's absence might well place on his partner. Overall, we are satisfied that the appellant's partner will manage as she has done before and that she will be able to continue to care for the children. The best interests of the children in this case do not carry determinative weight.

55. The weight to be given to evidence of rehabilitation was another issue considered by the Supreme Court in HA (Iraq). It said:

> "58. … In a case where the only evidence of rehabilitation is the fact that no further offences have been committed then, in general, that is likely to be of little or no material weight in the proportionality balance. If, on the other hand, there is evidence of positive rehabilitation which

> reduces the risk of further offending then that may have some weight as it bears on one element of the public interest in deportation, namely the protection of the public from further offending. ...”

56. It is right that in the relatively short period since he was released, the appellant has not committed any further offences. We accept that he has taken some parenting classes and that his love for his partner and children is a motivating factor. However, the evidence of what courses he has undertaken to address his offending behaviour, if any, is extremely vague. Moreover, unless he accepts that he will require support to continue to manage the effects of long-term addiction, we remain sceptical that he will be able to sustain his rehabilitation.

57. Mr Martin made a submission that the very circumstances of the index offences demonstrated the appellant was “desperate to get off methadone”. However, our reading of the circumstances is that the appellant failed to listen to medical advice, with catastrophic consequences. It is correct that when he committed those offences he had not been in trouble since 2013, a period of over seven years. However, it is clear that he struggled to complete his methadone treatment and we cannot overlook the seriousness of the offending which resulted from his rejection of medical advice.

58. Surveying the evidence as a whole, we have kept in mind that the ‘over and above’ approach set out in section 117C(6) should not be interpreted as meaning a successful applicant must show that the Exceptions are met and there are additional new circumstances over and above those. That would create a mismatch between the legislation and what is required by article 8 (Akinyemi v SSHD [2017] EWCA Civ 236). However, the reality is that we see little on the appellant's side of the balance which has not already been considered and deemed insufficient to reach the threshold of unduly harsh. Still less then can it properly be said that the appellant's deportation will cause very compelling circumstances over and above Exception 2.

59. The public interest in deportation outweighs the appellant's interests in maintaining his family life in the United Kingdom and the appeal is dismissed on article 8 grounds.

Notice of Decision

The decision of the First-tier Tribunal is set aside. The following decision is substituted:

The appeal is dismissed.

Signed Date 15 August 2022

Deputy Upper Tribunal Judge Froom