Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/05492/2017

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 18th September 2018	**On 22 October 2018**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JRR
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Mr A Joseph instructed by Elite Solicitors Limited

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the respondent (JRR), his partner or any of his children. A failure to comply with this direction could lead to Contempt of Court proceedings.

2. Although this is an appeal by the Secretary of State against a decision of the First-tier Tribunal, I will for convenience refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The appellant is a citizen of Jamaica who was born on 10 September 1980. He came to the United Kingdom in 2002. He has a long-term partner and fiancée ("P") who is a British citizen. The appellant and P have two children, C1 aged 11 and C2 aged 7. The appellant also has another son, C3 who is 14 years of age and lives with the appellant and P. All the children are British citizens. The appellant also has another son, C4 who lives with his mother.

4. The appellant entered the United Kingdom as a visitor on 13 May 2002 with leave valid until 3 November 2002.

5. On 25 October 2002, he made an application for leave to remain on the basis of his relationship with a British citizen. That application was refused on 29 September 2003 and the appellant's appeal was subsequently dismissed on 7 April 2005 and thereafter permission to appeal refused.

6. On 12 April 2010, the appellant submitted an application for leave to remain based upon his private and family life. He was granted discretionary leave to remain until 12 November 2013.

7. On 15 October 2013, he submitted a further application based upon his private and family life but this was rejected as invalid on the basis that no fee had been paid and the incorrect form used.

8. On 2 December 2013, the appellant made a further application for leave based upon his private and family life which remained outstanding until 30 March 2017.

9. On 14 July 2014, the appellant was convicted at the Bristol Crown Court of conspiracy to supply controlled drugs in Class B. On 5 March 2015, he was sentenced to four years' imprisonment.

10. On 2 April 2015, the appellant was served with a notice of decision to deport. On 14 July 2015, representations were made on his behalf relying upon Article 8 of the ECHR seeking to bring himself within an exception to the automatic deportation provisions in the UK Borders Act 2007.

11. The appellant was released from immigration detention on bail on 29 April 2016.

12. On 30 March 2017, the Secretary of State refused the appellant's claim based upon his human rights. A deportation order was signed on 24 March 2017.

The Appeal

13. The appellant appealed to the First-tier Tribunal against the refusal of his human rights claim. Judge J Lebasci allowed his appeal under Article 8 of the ECHR. The judge found, on the basis of the impact upon C3, that there were very compelling reasons such that the public interest was outweighed and the appellant's deportation was not proportionate.

14. The Secretary of State sought permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal on 10 August 2017 but, on 22 September 2017, the Upper Tribunal (UTJ Kekić) granted the Secretary of State permission to appeal.

15. The appeal was initially listed before me on 27 March 2018. In a decision dated 11 April 2018, I concluded that the First-tier Tribunal had materially erred in law in allowing the appellant's appeal under Article 8 and I set the decision aside.

16. I directed that the appeal be re-listed in the Upper Tribunal in order for the decision under Article 8 to be re-made. The First-tier Tribunal's primary findings of fact in paras 29 to 42 were to stand.

17. The appeal was re-listed for a resumed hearing before me on 18 September 2018.

18. At that hearing, the Secretary of State was represented by Mr Howells and the appellant by Mr Joseph. A bundle of updating evidence was admitted, without objection from Mr Howells, under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

19. Both the appellant and P gave brief oral evidence before me in which they adopted their respective witness statements contained in the new bundle and dated 12 September 2018.

The Issues

20. The appellant relies exclusively upon Article 8 of the ECHR.

21. The central issues, identified by the parties in their submissions, relate to the impact upon the appellant's children, in particular his son C3 and his daughter C1, but also his long-term partner, P. In brief, Mr Joseph submitted that the appellant's deportation would not be in the public interest applying s.117C(6) of the Nationality, Immigration and Asylum Act 2002 (the "NIA Act 2002"). He submitted that the impact upon the appellant's children was such that his deportation would be "unduly harsh" within Exception 2 set out in s.117C(5) and because of the severity of that impact, s.117C(6) applied because there were "very compelling circumstances, over and above those described in [Exception 2]". The public interest is, as a consequence, outweighed by the appellant's circumstances and his deportation would breach Article 8 of the ECHR.

22. Mr Joseph relied upon the impact upon C3 which had been considered by the First-tier Judge in paras 29–40 of her determination as part of the preserved findings.

23. In addition, and in respect of matters arising since the First-tier Tribunal's decision, Mr Joseph relied upon the impact upon C1. He relied, in particular, upon the evidence concerning C1's mental health set out in a number of documents, most recently in a letter dated 3 September 2018 (at pages 20–30) from Loren Green, a Specialist Mental Health Practitioner and Social Worker who has been working with the appellant and his family since April 2011. Mr Joseph relied upon the recent history of C1 engaging in self-harm, involving attempted strangulation and the taking of overdoses, and the safety plan put in place for her. He also relied on the fact, which was not disputed before me, that on 10 September 2018 C1 was diagnosed with Autistic Spectrum Disorder ("ASD").

24. Mr Joseph also placed reliance upon the fact that P was the full-time carer for her mother who, in January 2018, was diagnosed with vascular dementia (having previously been diagnosed as bipolar).

25. Mr Joseph submitted that taken cumulatively, and having regard to the seriousness of the appellant's offending, the impact of his deportation would not only be "unduly harsh" but would be of such impact as to amount to "very compelling circumstances" over and above being simply unduly harsh.

26. Mr Howells submitted that the impact upon C1 and C3 was not "unduly harsh". He relied upon on the appellant's offending which was of a serious crime such that the public interest was very significant. That was a factor that had to be balanced against the family's circumstances following MM (Uganda) v SSHD [2016] EWCA Civ 617. He accepted that the appellant had no other convictions but the public interest was nevertheless significant given the offence's seriousness and the importance of deterring other foreign nationals from committing such crimes. Mr Howells also relied on the appellant's immigration history. He had entered the UK as a visitor with leave valid until 3 November 2002. Thereafter, the appellant had been in the UK unlawfully apart from a period of discretionary leave between 10 November 2012 and 10 November 2013.

27. Mr Howells submitted that Exception 2 required the impact to be "unduly harsh" whilst recognising that the effect of deportation may well be "harsh" that was not sufficient. He relied upon three decisions of the Court of Appeal noting that separation by deportation and the necessary impact upon a family would not usually be sufficient to outweigh the public interest (see LC (China) v SSHD [2014] EWCA Civ 1310 at [24]; SSHD v CT (Vietnam) [2016] EWCA Civ 4 at [18], [19] and [38]; and PF (Nigeria) v SSHD [2015] EWCA Civ 25 at [43]). Mr Howells submitted that whilst it might be difficult for the appellant's partner to manage the household, she had done so whilst he was in prison or detention for a period of two and a half years and C3 had not been taken into care. The evidence showed that C3's behaviour had improved. The evidence did not show that C3 would have to go into care if the appellant were deported.

28. As regards C1, Mr Howells accepted there was evidence that she self-harmed but that she had not done this whilst the appellant was in detention. This had happened since his release on immigration bail. He accepted that she had been diagnosed with ASD but was receiving support.

29. Mr Howells submitted that, on those facts, the appellant's deportation would not fall within Exception 2 because it had not been shown that the impact on C1 and C3 would be "unduly harsh".

30. In any event, Mr Howells submitted that even if Exception 2 were met, that was not sufficient because of s.117C(6) requiring it to be established that there were "very compelling circumstances, over and above" those in Exception 2. Mr Howells referred me to the Court of Appeal's decision in NA (Pakistan) v SSHD [2006] EWCA Civ 662 where it was stated that, in order to satisfy that requirement the claim must be "especially strong" (see [29]); the circumstances must be "especially compelling" (see [30]) and it will only be in "rare" cases that the circumstances will be sufficiently compelling to outweigh the high public interest (see [33]). Mr Howells submitted that the threshold in s.117C(6) was a "high one" as affirmed in the Court of Appeal's decision including in NE-A (Nigeria) v SSHD [2017] EWCA Civ 239. Mr Howells submitted that that threshold was not established.

The Legal Framework

31. It was common ground that Art 8.1 is engaged in this appeal. It is clear that the appellant's deportation will seriously impact upon his private and family life in the UK with P, but more importantly with his children, in particular C1 and C3. Their Art 8 rights are also engaged (see Beoku-Betts v SSHD [2008] UKHL 39).

32. It was also common ground that the crucial issue under Art 8.2 was that of 'proportionality' and the striking of the "fair balance" between the individuals' rights and interests and the public interest (see R(Razgar) v SSHD [2004] UKHL 27 at [20] *per* Lord Bingham).

33. In that regard, Part 5A of the NIA Act 2002 applies setting out "considerations" to which the Tribunal must "have … regard" when determining the "public interest" issue under Art 8.2. Section 117B sets out generally applicable considerations; whilst s.117C sets out "additional considerations" in the context of the deportation of foreign criminals which, of course, includes the appellant.

34. Particularly relevant to the appellant's Article 8 claim are ss.117C(5) and 117C(6).

35. Section 117C(6), so far as relevant provides:

> "In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2."

36. The relevant exception is Exception 2 which is found in s.117C(5) and which, so far as relevant, provides as follows:

> "Exception 2 applies where C has … a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the … child would be unduly harsh."

37. It was accepted by Mr Howells that the appellant does have a "genuine and subsisting parental relationship" with C1 and C3 and that C1 and C3 are both a "qualifying child" as both are British citizens (see s.117D(1)).

38. In NE-A (Nigeria) v SSHD [2017] EWCA Civ 239, the Court of Appeal accepted that s.117C(6) provided a "final result compatible with Article 8 in all cases to which it applies" (at [14] *per* Sir Stephen Richards with whom McFarlane and Flaux LJJ agreed). The court rejected an argument that, as a result of the Supreme Court's decision in Hersham Ali v SSHD [2016] UKSC 60, was not the law. The Court of Appeal approved its earlier decision in Rhuppiah v SSHD [2016] EWCA Civ 803. At [14]-[15], Sir Stephen Richards said this:

> "14. …. In my judgment, the analysis of section 117C(6) in *Rhuppiah* is correct and should be followed. There is no inconsistency between that analysis and what was said in *Hesham Ali*. The focus in *Hesham Ali*, as is conceded, was on the Rules: indeed, Lord Reed noted in terms at paragraph 2 of his judgment that it was unnecessary to consider the amendments to the legislation effected by the Immigration Act 2014, i.e. the provisions of Part 5A of the 2002 Act. Moreover, integral to Lord Reed's reasoning was that the Rules "are not law … but a statement of the Secretary of State's administrative practice" and they "do not therefore possess the same degree of democratic legitimacy as legislation made by Parliament" (paragraph 17; see also paragraph 53); and that they do not govern appellate decision-making, although they are relevant to the determination of appeals (paragraph 41). Part 5A of the 2002 Act, by contrast, is primary legislation directed to tribunals and governing their decision-making in relation to Article 8 claims in the context of appeals under the Immigration Acts. I see no reason to doubt what was common ground in *Rhuppiah* and was drawn from *NA (Pakistan)*, that sections 117A-117D, taken together, are intended to provide for a structured approach to the application of Article 8 which produces in all cases a final result which is compatible with Article 8. In particular, if in working through the structured approach one gets to section 117C(6), the proper application of that provision produces a final result compatible with Article 8 in all cases to which it applies. The provision contains more than a statement of policy to which regard must be had as a relevant consideration. Parliament's assessment that "the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2" is one to which the tribunal is bound by law to give effect.
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> 15. None of this is problematic for the proper application of Article 8. That a requirement of "very compelling circumstances" in order to outweigh the public interest in the deportation of foreign criminals sentenced to at least four years' imprisonment is compatible with Article 8 was accepted in *MF*

(Nigeria) and in *Hesham Ali* itself. Of course, the provision to that effect in section 117C(6) must not be applied as if it contained some abstract statutory formula. The context is that of the balancing exercise under Article 8, and the "very compelling circumstances" required are circumstances sufficient to outweigh the strong public interest in the deportation of the foreign criminals concerned. Provided that a tribunal has that context in mind, however, a finding that "very compelling circumstances" do not exist in a case to which section 117C(6) applies will produce a final result, compatible with Article 8, that the public interest requires deportation. There is no room for any additional element in the proportionality balancing exercise under Article 8."

39. In applying s.117C(6) the Court of Appeal in NA (Pakistan) v SSHD [2016] EWCA Civ 662 gave guidance. At [28]-[33], Jackson LJ delivering the judgment of the court (Jackson, Sharp and Sales LJJ) set out the structural approach, including consideration of whether the circumstances relied upon fell within Exception 1 or 2 and, if they did, whether they were of a particularly exceptional kind to amount to "very compelling circumstances" that were "over and above" those in Exception 1 and 2:

> "28. The next question which arises concerns the meaning of "very compelling circumstances, over and above those described in Exceptions 1 and 2". The new para. 398 uses the same language as section 117C(6). It refers to "very compelling circumstances, over and above those described in paragraphs 399 and 399A." Paragraphs 399 and 399A of the 2014 rules refer to the same subject matter as Exceptions 1 and 2 in section 117C, but they do so in greater detail.
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> 29. In our view, the reasoning of the Court of Appeal in *JZ (Zambia)* applied to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that "there are very compelling circumstances, over and above those described in Exceptions 1 and 2". As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.
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> 30. In the case of a serious offender, who could point to circumstances in his own case which could be said to correspond to the circumstances described in Exceptions 1 and 2, but where he could only just succeed in such an argument, it would not be possible to describe his situation as involving very compelling circumstances, over and above those described in Exceptions 1 and 2. One might describe that as a bare case of the kind described in Exceptions 1 and 2. On the other hand, if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind in support of an Article 8 claim, going well beyond what would be necessary to make out a bare case of the kind described in

Exceptions 1 and 2, they could in principle constitute "very compelling circumstances, over and above those described in Exceptions 1 and 2", whether taken by themselves or in conjunction with other factors relevant to application of Article 8.

31. An interpretation of the relevant phrase to exclude this possibility would lead to violation of Article 8 in some cases, which plainly was not Parliament's intention. In terms of relevance and weight for a proportionality analysis under Article 8, the factors singled out for description in Exceptions 1 and 2 will apply with greater or lesser force depending on the specific facts of a particular case. To take a simple example in relation to the requirement in section 117C(4)(a) for Exception 1, the offender in question may be someone aged 37 who came to the UK aged 18 and hence satisfies that requirement; but his claim under Article 8 is likely to be very much weaker than the claim of an offender now aged 80 who came to the UK aged 6 months, who by dint of those facts satisfies that requirement. The circumstances in the latter case might well be highly relevant to whether it would be disproportionate and breach of Article 8 to deport the offender, having regard to the guidance given by the ECtHR in *Maslov v Austria* [2009] INLR 47, and hence highly relevant to whether there are "very compelling circumstances, over and above those described in Exceptions 1 and 2.

32. Similarly, in the case of a medium offender, if all he could advance in support of his Article 8 claim was a "near miss" case in which he fell short of bringing himself within Exception 1 or Exception 2, it would not be possible to say that he had shown that there were "very compelling circumstances, over and above those described in Exceptions 1 and 2". He would need to have a far stronger case than that by reference to the interests protected by Article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling within the factors described in Exception 1 and 2. That decision maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation.

33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as aging parents in poor health or the natural love between parents and children, will not be sufficient."

40. At [37], Jackson LJ added this:

"37. In relation to a serious offender, it will often be sensible first to see whether his case involves circumstances of the kind described in Exceptions 1 and 2, both because the circumstances so described set out particularly significant factors bearing upon respect for private life (Exception 1) and respect for

> family life (Exception 2) and because that may provide a helpful basis on which an assessment can be made whether there are "very compelling circumstances, over and above those described in Exceptions 1 and 2" as is required under Section 117C(6). It will then be necessary to look to see whether any of the factors falling within Exceptions 1 and 2 are of such force, whether by themselves or taken in conjunction with any other relevant factors not covered by the circumstances described in Exceptions 1 and 2, as to satisfy the test in Section 117C(6)."

41. In addition, there are a number of matters relevant to the public interest set out in s.117B of the NIA Act 2002.

42. First, s.117B(1) states that the: "maintenance of effective immigration controls is in the public interest". Second, s.117B(2) states, in effect, that it is in the public interest that an individual speaks the English language. Third, s.117B(3) states that it is in the public interest, in effect, that an individual is "financially independent". Fourth, s.117B(4) states that "little weight" should be given to an individual's "private life" or a relationship formed with a "qualifying partner" when the individual was in the UK unlawfully. Fifth, s.117B(5) also states that "little weight" should be given to an individual's private life established at a time when the individual's immigration status in the UK was "precarious".

43. Although Mr Howell made reference to the appellant's immigration status, which has been largely unlawful since 2002 apart from twelve months' discretionary leave, the weight of argument in this appeal has not been focused upon the appellant's relationship with his partner, P. It has, instead, focused upon the impact of his deportation upon his family, in particular C1 and C3.

44. Therefore, I accept that the appellant's removal is in the public interest. Although he speaks English, he is not as I understand it "financially independent" since he cannot work and relies upon P who, in turn, relies at least in part upon state support. To the extent that weight should be given to his private life in the UK (which Mr Joseph did not seek to pursue in his submissions) or his relationship with P (which again Mr Joseph did not rely on in his submissions), I accept that "little weight" should be given to them.

45. It was common ground before me that the crucial issue in this appeal is that of proportionality under Art 8.2 and, in particular, the application of s.117C(6) (read with s.117C(5)) of the NIA Act 2002 which formed the focus of both representatives' submissions.

46. In approaching s.117C(6), I must first decide whether the impact upon C1 and/or C3 would be "unduly harsh" (Exception 2 in s.117C(5)) and then secondly, if it is, whether the circumstances which make the impact on C1 and/or C3 "unduly harsh" taken alone, or together with other factors, are of sufficient severity to amount to "very compelling circumstances" which are "over and above" those which make the impact of the appellant's deportation upon them "unduly harsh". The application of

s.117C(6) produces "a final result" compatible with Article 8 (see, NE-A (Nigeria) at [15]).

47. In assessing what is "unduly harsh" and, then, whether the circumstances are "very compelling" over and above that, the public interest must be weighed against the impact on C1 and C3 (see, MM (Uganda)).

48. Section 117C(1) states that:

> "the deportation of foreign criminals is in the public interest".

49. Further, s.117C(2) states that:

> "the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal".

50. I accept that the appellant's offence of conspiring to supply controlled drugs in Class B, for which he was sentenced to four years' imprisonment, is a very serious offence indeed. The appellant has been assessed as a "low risk" of re-offending and of harm to the public. The public interest, as identified in OH (Serbia) v SSHD [2008] EWCA Civ 694 as explained in Hersham Ali at [70] *per* Lord Wilson), is highly significant and of such weight that only a "very strong" case will give rise to "very compelling circumstances" sufficient to outweigh that public interest.

51. In accordance with the Court of Appeal's observations in NA (Pakistan) at [33] I accept that:

> "the common place incidence of family life, such as aging parents in poor health or the natural love between parents and children, will not be sufficient".

52. Further, I accept, as the Court of Appeal pointed out in PF (Nigeria) at [43], that even where there is "a real and damaging impact" on a partner and children:

> "That is a common consequence of deportation of a person who has children in this country. Deportation will normally be appropriate in cases such as the present, even though the children will be affected and the interests of the children are a primary consideration".

53. In other words, the separation of a deportee from his partner and children will not, in itself, be sufficient to outweigh the public interest (see also CT (Vietnam) at [38] and LC (China) at [24]).

54. In respect of Exception 2, the circumstances must be of some considerable strength and weight,, having regard to the public interest weighed against them, to be properly characterised as "unduly harsh". Further, since the appellant can only succeed if he is able to bring himself within s.117C(6), the circumstances must be even more weighty so as to be "very compelling" and are "over and above" those which are sufficient to make the impact "unduly harsh" within Exception 2 in s.117C(5).

55. With those matters of law in mind, I turn to the evidence and make relevant factual findings in relation to the issues.

Discussion and Findings

56. The appellant, P and C1, C2 and C3 live together as a family. P is not the biological mother of C3 but, by court order dated 20 July 2016, pursuant to a child arrangement order C3 lives with the appellant and P. The evidence before me was that C3 has no contact with his mother who is not allowed to see him. P is, for all intents and purposes, fulfilling the role of C3's mother.

57. The First-tier Tribunal Judge dealt with C3's circumstances on the evidence before her following a hearing on 16 June 2017. The judge's findings at paragraphs 29–40 of her determination were not challenged in these proceedings and are preserved. I set them out in full as follows:

> "29. The circumstances relating to [C3] require separate consideration. [C3] has a very troubled history and the Appellant has provided a significant amount of evidence in relation to this.
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> 30. [C3] was removed from his mother's care when he was just two years old. He then lived with his mother's sister and two cousins until he was 7 years old (November 2011) when [C3] and both his cousins were placed on a Child Protection Plan under the category of "neglect", although in the social care reports there are suggestions of drugs and violence in his aunt's home. In March 2012 [C3] was placed with [the appellant] who was assessed as a loving and protective figure.
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> 31. The Appellant relies on a PACT letter written by Ms Bayandor, a Family Engagement Worker at HMP Bristol. She had known the Appellant for around 18 months when she wrote this letter and during this time she says she has come to know his family. She states the Appellant applied and successfully gained a place on every family day that was held during his time at HMP Bristol. These visits were attended by [P], [C3], [C1] and [C2]. Places awarded are a reflection of permissions gained by prison staff based on security and safety checks. Ms Bayandour describes this as "further evidence of [the appellant's] positive reputation and actions within prison". As a result of the particular difficulties [C3] was having extra visitation was organised due to these exceptional circumstances, this was arranged and supported by Dr Flynn, [C3's] therapist. "These visits were encouraged and supported with [C3's] class teacher, the Head Teacher and the prisoner Governor; who deemed the visits so imperative that extra staff were deployed to be able to facilitate them. Ms Bayandor believes "the deportation of [the appellant] would have an irretrievably damaging impact on his son [C3]".
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> 32. There is a letter, dated 5 December 2016, from Bernardo's who were asked to support the family by [P] who was finding it difficult to manage [C3's] behaviour. [C3] was described as being aggressive towards the other students and he was banned from travelling on school transport due to his behaviour. This letter says the Appellant "welcomed Barnardo's support and became an integral part of the Team around the Family. Bernardo's

believes that a major contributory factor to [C3's] dramatic turnaround is having his dad, [the appellant], back in his life".

33. The Appellant has provided a letter from Dr Simon Flynn, Child and Adolescent Psychotherapist, dated 16 February 2016. [C3] was referred to the Child & Adolescent Service in November 2014 due to concerns about his soiling. He has a history of family disruption, neglect and possible sexual abuse. Dr Flynn states "The deportation of [the appellant] would, I believe, be a disastrous event for [C3]. As a young boy who has a history of broken attachments and a significant period of his life when he was neglected and possibly abused…In my clinical Judgment, the prognosis for [C3], without normal daily contact with the father, is likely to make him vulnerable to develop wither more severe mental and emotional problems in adolescence and/or follow his father into the criminal justice system".

34. Dr Flynn has provided a further letter dated 17 May 2017. In this letter he says he cannot stress too much the importance of [the appellant] joining in the sessions with [C3]. He describes [C3] as still "extremely fragile emotionally and it is very likely that he will need further support from CAMHS in the future. If that is the case, the chances of a positive outcome would be minimum without the steady and caring presence of his father beside him".

35. Dr Ifeoma Ameke, Consultant Child Psychiatrist, has written a letter dated 31 May 2017. In that letter the conclusion is "there is no doubt that the positive relationship between [the appellant] and [C3] has been instrumental in [C3's] recovery and continued wellbeing. Should [C3] suffer a catastrophic loss of his father if he were to be deported to Jamaica it is highly likely that [C3] will relapse and his symptoms become more resistant to treatment".

36. A letter dated 19 May 2017 written by the SENDCo, Joanne Blair, at [C3's] school, refers to the extreme difficulties [C3] had in managing his behaviour at school. She says that since [the appellant's] return home he has been supporting [C3] and there has been a significant improvement in [C3's] behaviour. Ms Blair has provided support plans generated by the school to evidence her letter.

37. The Respondent's only challenge to the evidence relied on by the Appellant concerning [C3] is to say it is not accepted there would be any serious irreversible harm to [C3] as a result of the Appellant's deportation. I find the evidence does not support such a conclusion. It is clear [C3] has been significantly affected by the care he received before he lived with the Appellant and [P]. His behaviour both at home and at school was very challenging and significant intervention was required to help him. The Appellant played a very important role in that intervention and is regarded by the experts as being pivotal in achieving the improvement in [C3's] behaviour.

38. The professionals, including [C3's] Consultant Psychiatrist and his Psychologist, with the best knowledge of [C3] and the Appellant's role in his wellbeing are essentially in agreement about the likely impact on [C3] of his father's deportation. I accept this evidence. I find, if [C3] were unable to have normal daily contact with his father this would likely result

in a relapse in his behaviour, he would be vulnerable to develop more severe mental and emotional problems which would be more resistant to treatment.

39. It is unclear what would happen to [C3] if his father were deported. The Respondent says he could continue to live with [P]. Her evidence is that she cannot go back to the way things were with [C3]. I find she has grounds for expressing significant concern about this. [C3] was aggressive towards her and his sisters. She says there were times when the situation was so bad she put the girls in the car to provide them with protection. Her evidence about [C3's] anger is corroborated by the evidence from the school and the evidence from the experts involved with [C3's] treatment. There is also evidence which indicates [C3's] behaviour towards his sisters was at times sexually inappropriate. For these reasons [P] felt unable to leave her daughter's with him unsupervised. Given the evidence of the impact the deportation would have on [C3's] mental health it is likely his behaviour would deteriorate and in these circumstances there is a real risk [P] would decide she was unable to care for him, given her need to ensure the wellbeing and safety of her daughters. If [C3] were to lose his home this would also have a significant negative impact on his health and behaviour.

40. Given the likely need for further specialist support and his fragile emotional condition I find it would not be in [C3's] best interests to accompany his father to Jamaica. This would result in significant upheaval and change for him, all aspects of his life would be affected. [C3] was born in the UK and has lived his whole life here, a move to Jamaica would involve the need to adjust to a new culture a different schooling system at the same time as being removed from significant members of his family including his sisters and [P]. I find that such upheaval would result in deterioration in [C3's] health and behaviour".

58. The more up-to-date evidence concerning C3 was given by the appellant and P and most recently in Loren Green's letter dated 3 September 2018 dealing with both C3 and C1. I will return to that letter, which intermingles the consideration of C1 and C3's circumstances, shortly when I deal with C1.

59. In his written statement, the appellant deals with C3's circumstances acknowledging that he is now making progress in his behaviour and at school as follows:

> "My son [C3] has always been a difficult child to manage, he had previously suffered from neglect, family disruption and possible sex abuse as a child. He was first referred to the CAMHS Team in November 2014 by his GP. He has been working with Dr Simon Flynn of the Child and Adolescent Psychotherapist Team (CAMHS) since February 2015. There has always been ongoing concerns about [C3's] behaviour, vulnerability and his development due to the experiences he has had in the past. Since my release from custody [C3] no longer sees a CAMHS worker. He is still on CAHMS records but currently does not have a need for regular appointments. His school work and behaviour has improved from what it had been before my release. His Tutor, [Mr W] has identified that [C3] presents more positive behaviour points than negative since September 2017 **(Exhibit JR/6)**. Since that last report [C3] has had very positive and encouraging

> reports from his school teachers all of whom have identified [C3] is making good and stead progress. **(Exhibit JR/7)**.
>
> We continue to have meetings with the school regarding his disruptive behaviour and support plans are in place to help monitor his behaviour. [C3] has been described as having a fragile, mental and emotional health, it is believed by many professionals that this is probably the cause of his behavioural problems. As such, [P] and I continue to care and provide support to him".

60. In his oral evidence, the appellant accepted that C3 was progressing according to a therapy plan. He did not, however, think that his partner could manage C3 if he were deported as she could not handle him when he was detained. He told me that there had been extra staff provided to facilitate visits to the prison by C3. He told me that, whilst he was in prison, there had been signs of sexual misconduct between C3 and C1. He said that C3 had smashed windows and was out of control and one of his "mates" had come to help P and calm C3 down.

61. In her oral evidence P also acknowledged that C3 was progressing. She accepted that at present, she had not approached Social Services for any support, as it was not needed.

62. In his written statement the appellant also states that

> "… there is no way possible if I am deported that I would be able to leave [C3] in [P's] care. There is also no guarantee [C3] would continue to behave. If I go back to Jamaica I would have no place to take him. I would have limited income and therefore I would not be able to provide him with things that he is used to and we would have no other supporting family. I currently have no surviving family members who reside in Jamaica".

63. There is now evidence concerning the impact on C1 if the appellant is deported. That is evidence of self-harming, including attempted strangulation and the taking of overdoses. C1 has also been diagnosed with ASD. In his written statement, the appellant deals with C1 and her problems which led to her referral to the Child and Adolescent Mental Health Services ("CAMHS") in February 2018. The appellant says this:

> "Whilst my family have been focusing mainly on [C3], it has become very clear recently that our oldest daughter [C1] has been traumatised by my separation from the family whilst I had been in prison. Over the last few months [C1] has tried to self harm on a number of occasions. We have had cause to take her to the Children's Hospital several times when she has either tried to harm herself or threatened to do so and we have felt we cannot protect her against herself. She has since been diagnosed as suffering from mental health issues and having an Autistic Spectrum Disorder. We will now be working with her school and CAMHS to try to get her help. She has a Mental Health Practitioner Loren Green who works with our entire family in helping to manage her behaviour. **(Exhibit JR/8)** Ms Green will continue to meet with [C1], [P] and I to support us all during this difficult time. [C1] also sees Gwen Jenkins who is a Student Nurse and she discusses issues with [C1] that she may not wish to discuss with us. [C1's] behaviour has been very sudden and her behaviour very erratic, and for us it can

> be very scary because of how unpredictable she can be. [C1] has had to endure a lot of traumatic events during her short life which included me being taken away from her which had left her very vulnerable. [C1] had told her mother and I that whilst I was away her brother ([C3]) had forced her to perform a sexual act **(Exhibit JR/9)**. Whilst this had never happened again, and [C3] had received counselling for this incident. I know that the thought of me being taken away again, makes [C1] think she could find herself in a situation where [C3] could take advantage of her again and this scares her very much. I believe that [C1] is displaying these risk taking behaviours because she is scared I may be taken away again. She knows that I have to go back to court soon and you can tell by her recent quietness she is worried about what this may mean".

64. In his oral evidence, the appellant said that C1 had started self-harming in September last year. He accepted that she had not self-harmed whilst he was in prison but had suffered from sleepless nights and crying. He accepted that she had stopped self-harming by April of this year but that was because they had a safety plan in place and they had locked away all the knives and there were no instruments for her to use to self-harm. He told me that they had taken the doors off her bedroom to stop her barricading herself in. He said the last time she had self-harmed was in August. She was still subject to a safety plan.

65. In her written statement the appellant's partner, P, described C1's circumstances as follows:

> "Since [the appellant's] last appeal our family is still together and although we had thought the children were settling, especially [C3], unfortunately it has been [C1] who has caused us concerns recently. [C1] is a very smart child academically and continues to perform well at school as per her school reports **(Exhibit CG/7)** however she has shown a real dramatic increase in risk taking behaviour. On several occasions over the past few months [the appellant] and I have found [C1] trying to take her own life, by either tying ligatures around her neck or taking overdoses, she has also been self harming via cutting her legs and arms. We have had cause to take her to the children hospital no less than 4 times in five months after [C1] had tried to harm herself.
>
> [C1's] school are very supportive and gave us an initial emergency referral to Child and Adolescent Mental Health Service (CAMHS) in February 2018. As a result our family work very closely with Loren Green, she is a Specialist Mental Health Practitioner/Social Worker at CAMHS and will also be seeing a Student Nurse/Clinical Psychologist Gwen Jenkins. We have been having family meetings with [C1] and Loren, as regularly as necessary whilst [C1] has one to one sessions with Gwen. **(Exhibit CG/8)** Through our meeting we are trying to learn as a family ways to protect and manage [C1's] behavioural problems. We have been advised to take caution with her and we have removed locks from all the rooms in the house, hidden all medication and sharp objects. All chords and ligatures have also been removed. We have also removed [C1's] bedroom door to prevent her from locking us out if we feel she is at risk to herself.
>
> We have direct access to the relevant services both in and out of working hours. We are still within the early stages of the diagnosis of [C1's] problems but has only on Monday 10th September 2018 of this week had an assessment done on [C1] wherein it was confirmed that she has an Autistic Spectrum Disorder. It is a

> very big relief to know her diagnosis but it also a very scary and frustrating time for us all. It is believed her behaviour stems from anxiety and panic, but we do not know what is triggering her to behave this way. [The appellant] and I think it has a lot to do with there being a chance that [the appellant] may have to leave us again, as she suffered very badly when he was away last time and it is strange that her behaviour has come on so suddenly over the last few months, after we learned about the Home Office were seeking to appeal against the initial decision of the First Tier Tribunal. We think she is scared if he leaves her again I will only focus on [C3] and there will be no one there to protect and look after her. The last time [the appellant] was away [C3] hurt her and [C1] did not tell us until a long time after. I think she feels only her dad can protect her and so she is worried if he is gone she will be alone.
>
> I am uncertain as to how I would be able to cope if [the appellant] is forced to leave the UK. If he is deported it is very unlikely that he would be unable to return to the UK. It is my honest view that I could not continue caring for [C3], my mother, [C1] and [C2] alone. [C3's] behaviour could return at anytime of [the appellant] isn't here to control him. I do not know what is happening to [C1] and so I have yet to begin to understand her needs and to tp it all off my mother's health continues to worsen. If [the appellant] has to leave I will have no choice but to put [C3] into care as I would not be able to cope with him and all of our other issues.
>
> [C3], the girls and I have never been to Jamaica and [the appellant] has not been for several years. If forced to leave we could not go with him, especially due to the commitments I have to my mother and because of the children's needs.
>
> If [the appellant] is forced to leave the UK, it is very unlikely that he would never return. It is very likely in those circumstances our relationship would have to end. Even if I wanted to join [the appellant], I could not do so due to my mother. Therefore there is no prospect of our relationship continuing for an indefinite period of time by phone call or video messaging.
>
> We are an unusually close family as a result of situations we have had to overcome. If my family is forced to be broken up, the effects on all of us would be quiet devastating".

66. In her oral evidence, P accepted that C1 had not self-harmed whilst the appellant was in prison. She was asked about C1's reasons for self-harming and she said that C1 speaks "clearly about fear of her father not being there".

67. In addition to the evidence of the appellant and P, there is in the new bundle of documents a number of letters written by health professionals/social workers concerning the circumstances of C3 and C1. These cover the period 9 February 2018 (when C1 was first referred to CAMHS) to 3 September 2018.

68. It is not necessary to set out all the evidence which was not in substance challenged by Mr Howells. Mr Joseph placed particular emphasis upon the most recent letter of 3 September 2018 which, in effect, summarises the evolving circumstances of C1 and C3 and provides the most up-to-date evidence in relation to them. Apart, that is from the fact that it is now accepted that on 10 September 2018 C1 was diagnosed with ASD. The letter focuses substantially upon the position of C1 but, as will be

clear shortly, summarises the position of the family as a whole including C3. The letter is written by Loren Green, a Specialist Mental Health Practitioner and Child Social Worker, who has been working with the family since April 2018 after the urgent referral in February 2018 to CAMHS. The letter is important and I should set it out in some detail:

> "**Presenting issues:**
>
> [C1] was referred to CAMHS due to an escalating pattern of risk taking behaviours such as tying ligatures, attempted strangulation, self harming via cutting her arms and legs and taking overdoses. Over a period of assessment it became clear that [C1] was struggling with numerous difficulties including; generalized anxiety and suicidal ideation and behaviours alongside an unusual neurodevelopmental profile which has led to her being assessed for Autism.
>
> We have offered a series of interventions to [C1] as an individual, [P] and [the appellant] as parents and the family as a whole. [C1] is seen weekly by myself and the family are attending Family Therapy. The whole family attend appointments and engage well with professional support. In the past [C3], [C1's] brother was also seen by our team for a period of time.
>
> **Mental health:**
>
> [C1] has reported an increase in anxiety since her father, [the appellant] was removed from the family home by Police one morning, arrested and then went to prison for three years. This was observed at [school], where [C1] has had regular sessions with the school counsellor, but also at home by [P], who noted a marked increase in her ritualised behaviours/routines and her sleeplessness.
>
> [C1] has since suffered from intrusive thoughts that people will leave and never come back, or that they will die, or that bad things will happen. These are pre-occupying and occur on a daily basis. This has been exacerbated by the fact that she and her siblings are aware that their father is facing deportation. [C1] will ask a lot of checking questions about this and want to know details about if/when Dad will be leaving and when they will know for certain. [C1] struggles to manage uncertainty or change and needs to know the families (*sic*) routine as well as her own daily one. Small unexpected incidents, such as a change of ingredient in her favourite meal or someone moving objects on her bedroom shelf can cause real distress and make it hard for [C1] to manage her emotions, often throwing things, self harming or shouting at parents.
>
> Whilst [C1] is clear that she loves her family and her friends and has lots of goals for her future, she struggles when day-to-day difficulties become overwhelming and this causes her to feel momentarily that life is not worth living, or to try and demonstrate her distress by harming herself. Parents have worked hard with CAMHS to put in place a risk management/crisis plan, however this has had to be extremely rigorous as [C1] can react unexpectedly and with no visible trigger. As part of our advice to [the appellant] and [P] in order to keep [C1] safe, they have had to supervise her extremely closely. On the occasions when this has relaxed, [C1] has sought out hidden tablets and stored them in a pillow case, and has grabbed a knife from the kitchen cabinet, amongst other things. [C1] has presented at [hospital] four times in the past five months, having attempted to harm herself or because she is unable to be kept safe at home. [C1] is unable to have a bedroom door because she will barricade herself inside and parents are

unable to intervene to keep her safe if she uses a ligature or other means of self harm. [P] reports that she can "fall apart" with worry in these crisis moments. It has often been [the appellant] who has had to intervene to talk [C1] down when she is holding a knife or to remove the cord from her and then to encourage her to come to appointments at CAMHS.

[C1] struggles to manage any unstructured time, such as school holidays. She requires continual parental input to reassure her about activities, needing to know exactly what is happening throughout the day and at what time. She has a number of routines and rituals which cause considerable distress to her if she is unable to follow them. This means she can become very angry with her siblings and parents are required to constantly navigate her relationships with her brother and sister.

[C1] also has many traits in keeping with someone with a high function Autistic Spectrum condition.

Family history/context:

[C1] lives at home with her mother, [P], father, [the appellant], sister [C2] (age 6) and paternal half brother [C3] (13 years). [P] was employed until recently, but has had to stop work in order to care for [C1] and her siblings and is a carer for her mother who has Dementia. There is depression in [P's] side of the family.

[C1] is by her own definition "a daddy's girl". Growing up she has described how she and [the appellant] were incredibly close. She said she would always choose to go to him with her problems, she felt he understood her the best and that he could keep her safe from anything. [The appellant] and [P] have told me that [the appellant] did a lot of care for [C1] as a baby and young child, particularly when [P] suffered a severe depressive episode when [C1] was five years old and had to be away, or in bed for an extended period of time. I have observed the close attachment between [the appellant] and [C1] in the room on numerous occasions.

[C3], [the appellant's] son, was removed from the care of his mother, having experienced emotional and physical abuse in her care, and came to live with the family when [C1] was still a young child. He had very challenging behaviour and emotional needs, in keeping with his traumatic past. [The appellant] and [P] had to work hard with the support of Social Services and Mental Health Services ([C3] was seen by our team for a number of years), to enable [C3] to manage his difficulties. [The appellant] and [P] worked really well with services at the time, and [C3] was able to engage in education and leisure activities again and to start to make friends. When [the appellant] was in prison, [C3's] behaviour escalated again and [P] describes at times having to put [C2] and [C1] in the car in order to escape his aggressive behaviour.

[C1] and [P] have told me that [C1] could not eat or sleep for several months after [the appellant] was removed from the home. [C1] still talks about the day her Dad left as very significant for her. [C1] coped whilst [the appellant] was away by commencing a series of ritual/behaviours which she has to complete in order to get on with her day or daily activities. She struggled to understand why [the appellant] could not come back as he had promised (this is in keeping with a child on the Autistic Spectrum). She continually sought reassurance from [P], but [P] found it very difficult to manage the emotional needs of all three children – [C2] was very young, [C3] had very complex emotional needs and so [P] reports

that [C1] had to cope by herself and did not get the input she needed, in her father's absence.

While [the appellant] was in prison [C1] also disclosed that her brother, [C3] had asked her to perform a sexual act on him. All agencies were involved a[t] the time and support was offered.

When [the appellant] returned from prison, family life resumed. [C3's] school reported at a recent multi-agency meeting (July 2018) that he has made significant progress this year as a result, and his attendance is now 100%. His behaviour is no longer a concern at home or at school and he told my colleagues in Family Therapy that he feels quite settled when Dad is home. However, he is likely to have significant ongoing emotional/behavioural needs throughout his life due to his traumatic childhood and the abuse he experienced. It was evident from meeting the family that [C3] relies on [the appellant] to provide this sense of safety as he sits right next to dad in the room, leaving almost no gap, and does not like to engage in family life or family therapy unless [the appellant] is present.

Education:

[C1] is a very bright girl who is already covering aspects of GCSE curriculum at the age of 11. She has just transitioned from [primary school] and is beginning Secondary School at []. She had friends and made good use of the support offered by the counsellor there.

Social life/hobbies:

[C1] plays for a girls Football team where [the appellant] volunteers to assist with coaching. [C1] told me that she particularly enjoys the car rides to and from football with her Dad as they listen to music, she can ask him questions and they have time to talk just the two of them. [C1] loves Art and this has been her main hobby since she was a very small child".

69. The letter then goes on to summarise C1's circumstances and Ms Green's concerns about the impact on the family if the appellant is deported as follows:

"**Summary:**

[C1] is a young lady with a complex family history, an unusual developmental history and a high level of mental health needs, particularly given her young age. She is likely to require intensive support for the foreseeable future, from services and most importantly from both her parents. It is clear from working with [C1] that [the appellant's] absence whilst he was in prison has had a very detrimental impact on her anxiety levels, playing a big part in much of the current risk-taking behaviour. [C1's] neurodevelopmental difficulties means that she struggles to make sense of and regulate her emotions, so things which are distressing will result in her harming herself. Some of these incidents have been extremely serious. The stress to the family system of [the appellant] facing deportation is evident and impacts on all of them – it places financial strain on the family as [the appellant] is unable to work, it makes them unable to plan for the future beyond the immediate one, and unable for the children to relax and enjoy their father being at home with them without wondering how long they have got him there for.

My concerns about the impact on the family should their father be forced to leave this country are summarised as follows:

- [C3] will be left with no legal guardian. [P] has stated she would struggle to manage him alone and he would therefore likely be taken into the care of the state. There is clear evidence that the care system is detrimental to the outcomes of children, as well as incredibly costly to the state. [C3] has been observed to have a clear and secure attachment to his father, and [the appellant] has been actively involved in supporting his son and working with services to give him the best chance.

- [C1's] anxiety is likely to continue to grow and her needs become more complex as she gets older. Without her father she will lose one of her biggest attachment relationships. He has been the person who she has turned to for reassurance, safety and security throughout her very early life, particularly when [P] was unwell. When [the appellant] was in prison, [C1's] mental health worsened considerably and she is unable to make further progress in coming to terms with this trauma, whilst the threat remains that her father will be taken from her again. She needs a safe place at home in order to be able to access the therapeutic support she needs to move forwards. I am concerned that without her father at home, [C1's] risks will increase and it will be much harder to keep her safe.

- [P] will be left as a single parent of three children, two of whom have very complex needs. [P] has a history of depression and has spoken openly with CAMHS about how difficult she found the three years when [the appellant] was away. She is also currently caring for her mother with Dementia – without [the appellant] at home to take care of the children she will be unable to do this, leading to further emotional and financial pressure for the family.

- [The appellant] engages very well with services and takes his role as a father extremely seriously. He researches and puts into practice actions discussed in meetings and is honest about any challenges he faces. [The appellant] has shown himself to be dedicated to his children's wellbeing. He and [P] have had to work as a team to ensure [C1] is unable to continue taking risks with her own life, and this has involved 24/7 supervision and support, something that would be very challenging for [P] to do by herself, particularly when her relationship with [C1] can be difficult and [C1] can refuse to listen or to follow through on boundaries set by [P]".

70. In addition to the impact upon C1 and C3, the evidence also confirms P's role as the carer for her mother who was diagnosed in January 2018 with vascular dementia and in respect of whom P has in place a lasting power of attorney in relation to her mother's health, welfare, property and financial affairs. In her witness statement, P says this:

> "Due to my care commitments to my mother and our children, in particular our eldest daughter [C1], I am unable to work. **(Exhibit CG/4)** Last July I was granted lasting power of attorney for my mother for health and welfare, as well as her property and financial affairs **(Exhibit CG/5)**. It was only in January 2018 we had the final diagnosis that my mother has vascular dementia. With this

> diagnosis it is expected her health will continue to decline as a result of her disease. **Exhibit GC/6)**.
>
> As her full time carer, I have to go to my mother's home daily; every morning, during the day for lunch and every evening. I should have a support worker who will work and support us once a week to help me understand her needs but that is not yet arranged. My brothers and sisters are still unable to help with her care. My oldest brother is addicted and misuses drugs.
>
> My older brother is currently serving a prison sentence in custody and he has an extended licence sentence attached to his sentence, as yet there is no indication as to when he would be released. My sister who lives in Devon is unable to have my mother live with her as she foster's children. My other sister who lives in Bristol has learning difficulties and is herself in need of support. As my mother's health is deteriorating it will inevitability be the case that we will have to merge our homes into a bigger and more suitable accommodation where she can live with my family and I".

71. As I have already set out, P (perhaps not unexpectedly), states in her witness statement that it would not be possible for her to go to Jamaica with the appellant not least because of her care commitments to her mother.

72. The evidence of P and the appellant as to their family situation is heart-rending. The evidence of Ms Green is measured, informed and persuasive. I state at this juncture that I accept the evidence before me which was not subject to any real challenge by Mr Howells.

73. Dealing first with C3, Judge Lebasci, on the evidence before her at the hearing on 16 June 2017, concluded that it would not be in his best interests to accompany his father to Jamaica and, if his father were deported, there would be a "significant negative impact on his health and behaviour". The further evidence before me reinforces that conclusion. It would not be in C3's best interests to accompany his father. In the UK, I accept that P would struggle to look after him given his previous behavioural problems. It is clear to me that the presence of the appellant has provided stability and, with the other support provided, allowed C3's behaviour to improve. There is, in my judgment, a very real risk that C3 would have to be taken into care if the appellant were removed as a stabilising force in the family.

74. I emphasise, in reaching my findings, that I am satisfied on all the evidence that the appellant and P form a stable couple mutually supporting each other in raising their children. They face, however, significant family problems arising out of the behavioural and mental health problems of both C3 and C1.

75. In relation to C1, the evidence undisputably demonstrates that she has mental health problems and has been diagnosed with ASD. As a couple, the appellant and P have struggled together, again with outside agencies' support since February 2018, to provide a safe environment for C1. In my judgment, she clearly continues to need that safe environment in order to sustain any improvement in her mental health. I accept the evidence that her last act of self-harming was in August – just over a month ago. There is in place a safety plan which, in effect, seeks to minimise her

opportunities to engage in self-harm. The danger and risk of that nevertheless exists. I accept the evidence that C1 is concerned about the appellant's deportation. Whether or not there is a real risk of C3 acting "sexually inappropriately", I accept that that is a very real fear of C1. If the appellant is removed from the family context, as I have already noted, C3's behaviour and mental health problems are likely to deteriorate.

76. The conclusions of Ms Green, who has been actively involved with the family since April 2018, clearly support my conclusion that it is not in the best interests of either C3 or C1 to be deprived of the support of the appellant.

77. Of course, that the appellant's deportation is not in their best interests is only a primary consideration, it has to be determined first whether his deportation would have an "unduly harsh" impact upon C1 and C3.

78. In my judgment, I am satisfied that would be the impact upon both C3 and C1. The appellant and P, as I have already said, function as a mutually supportive couple bringing up their children and dealing, in particular, with the problems raised in bringing up C3 and C1. Whilst P managed to an extent, when the appellant was imprisoned, C1's problems were not then as they are now. Stripped of the support of the appellant, the burden upon P will increase. She will also, and I accept this evidence, have the responsibilities of the primary carer of her mother who suffers from vascular dementia. Although that does not directly impact upon C1 and C3, it does so indirectly. P will, if the appellant is deported, be the children's sole carer and her ability to do so will necessarily be indirectly impacted by the time and care she must devote to her mother. I entirely accept that P is a conscientious mother and carer. But, in the real world, I accept that she will face serious difficulties and hurdles in carrying the burden of being the sole carer of the children and her mother. I accept her evidence that none of her siblings are in a position to provide support to P's mother.

79. In my judgment, left to bring up the children alone because the appellant has been deported, is likely to have a serious detrimental effect upon both C1 and C3's mental health and behaviour. Their need for support is constant. In particular, C1's mental health is precarious. The future care she requires because of her recently diagnosed ASD is yet to be resolved. She will, undoubtedly, have support needs. In addition, there are her mental health needs which can only be exacerbated, as the evidence from Ms Green makes plain, if the appellant is taken away from the family context.

80. I find that it is likely that if the appellant is deported there will be such a deterioration in the mental health of both C1 and C3 that C3 is likely to return to a situation where his behaviour is very difficult to manage and, without the appellant, it is likely that his behaviour will be impossible to control or modify. Likewise, in relation to C1 I am satisfied that she is likely to suffer a heightened state of anxiety that is likely to lead her, despite the best efforts of a safety plan, to attempt self-harming of the sort she previously engaged in, including cutting, attempted strangulation and taking of overdoses.

81. The impact upon C1 and C3, if the appellant is deported, goes well beyond the impact upon children necessarily following from the deportation of their father. This is simply not such a case. The impact upon them is likely to be severe, not transitory and (in the case of C1) potentially life threatening.

82. I take fully into account the seriousness of the appellant's offending and I adopt, without repeating, what I set out above at paras 48-50. I have full regard to the sentencing judge's comments in respect of the appellant's offending. He played a "significant" role in a very serious drugs offence. The public interest in his deportation, having been convicted of the very serious offence of conspiracy to supply Class B drugs with a custodial sentence of four years, is great and is entitled to considerable weight. The appellant is assessed as a 'low risk' of re-offending and of harm to the public. This is his only conviction and he has not re-offended since release from detention.

83. Carrying out the balancing exercise, and having regard to all the circumstances, I am satisfied that in relation to both C1 and C3 the appellant's deportation would be "unduly harsh". I find that in respect of both C1 and C2, Exception 2 is established.

84. Of course, that is not sufficient for the appellant to succeed because he must establish that he falls within s.117C(6) on the basis that there are "very compelling circumstances, over and above" those in Exception 2.

85. In considering that issue, I take fully into account the impact upon C1 and C3 that I have set out above which is likely if the appellant is deported. I acknowledge, as the Court of Appeal has made plain, that it will be "rare" for an individual to succeed in establishing that their deportation is not in the public interest by virtue of s.117C(6). I am, however, satisfied that this is one of those "rare" cases where the circumstances are "very compelling". The appellant's case is, in my judgment, "very strong". Despite the very serious nature of the appellant's offending which I take fully into account together with the need to deter other foreign nationals from committing offences and the "low risk" posed by the appellant of future offending, I am satisfied that the disastrous consequences that are likely to follow for this family if the appellant is deported amount to "very compelling circumstances" that are "over and above" simply being "unduly harsh". The future of both C1 and C3, without the appellant as part of the supportive family with P, and despite P's undoubted commitment and willingness to care for their children, is likely to be dire and riddled with real and tangible dangers to the mental health and wellbeing of C1 and C3. The public interest does not, in my judgment, despite its great weight in this case, outweigh the impact upon the children if, as will be the case, they are left to be cared by P alone in the UK. The impact upon P, and indeed potentially upon her mother whose care may well also suffer if P is 'dragged between pillar and post' by the severe stresses and strains of looking after C1 and C3 alone, is a relevant matter that I take into account in having regard to whether there are very compelling circumstances "over and above" those described in Exception 2.

86. For these reasons, therefore, I am satisfied that the appellant falls within s.117C(6) in that there are established "very compelling circumstances, over and above" (and I emphasis those words) the circumstances described in Exception 2. As a result of the application of s.117C(6), the public interest is outweighed and does not require his deportation.

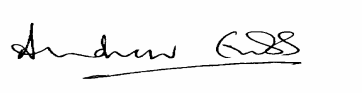
87. Consequently, I am satisfied that the appellant's deportation would be disproportionate and a breach of Article 8 of the ECHR.

Decision

88. For the reasons set out in my decision dated 11 April 2018, the First-tier Tribunal's decision to allow the appellant's appeal under Article 8 involved the making of an error of law. The First-tier Tribunal's decision was, accordingly, set aside.

89. I re-make the decision allowing the appeal under Article 8 of the ECHR.

Signed



A Grubb
Judge of the Upper Tribunal
11 October 2018