IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: JR/3571/2019

Court 11

Field House
15-25 Breams Buildings
London
EC4A 1DZ

6 January 2020

Before:

UPPER TRIBUNAL JUDGE GLEESON

B E T W E E N:

MAGUTUZA

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

MR PHIL HAYWOOD appeared on behalf of the Applicant
MR NICHOLAS OSTROWSKI appeared on behalf of the Respondent

APPROVED JUDGMENT

UTJ GLEESON: The applicant has permission to seek judicial review of the respondent's decision on 2 July 2019 to refuse to revoke a deportation order and to refuse to treat his further submissions as a paragraph 353 fresh claim.

2. The applicant is a citizen of Zimbabwe and a long-term overstayer. The applicant has legal aid in these proceedings with effect from 14 October 2019.

3. He arrived in the United Kingdom on 5 May 2000, on a visit visa which was varied, in time, to a student visa, but has not had extant leave to remain since 30

September 2001. The applicant asserts that he claimed asylum on arrival at Gatwick Airport but thereafter he absconded, and that claim did not proceed beyond the initial screening interview.

4. Between October 2002 and August 2018, the applicant was convicted of 31 criminal offences on 16 occasions, including offences against the person, property offences, fraud and kindred offences, public disorder offences, offences relating to police, courts or prisons, and other miscellaneous offences. In April 2009, he was convicted of assault occasioning actual bodily harm, for which he was sentenced to 6 months' imprisonment.

5. On 20 September 2010, the applicant was convicted of assault occasioning grievous bodily harm with intent, for which he was sentenced to 32 months' imprisonment. The applicant is therefore a foreign criminal and sections 32 and 33 of the Borders Citizenship and Immigration Act 2009 apply to him. On 29 May 2012, the respondent made a deportation order. The applicant appealed unsuccessfully against that decision, but on 24 October 2012, his appeal against that decision was dismissed.

6. On 24 October 2012, the First-tier Tribunal sitting at Kingston Crown Court dismissed the applicant's appeal against the deportation order. The applicant's offender manager had raised the possibility that the applicant might be suffering from post-traumatic stress disorder. First-tier Judge Jhirad and Sir Jeffrey James KBE CMG (a non-legal Member) found the applicant to be an unreliable witness who had not discharged the paragraph 339L burden of establishing the facts on which he relied. No weight was placed on the offender manager's opinion as she was not a psychiatrist, psychologist, or general practitioner and had not stated how she had reached her conclusion or what tests, if any, she carried out. They were not prepared to assume in the applicant's favour that he would be unable to demonstrate loyalty to the regime in Zimbabwe, simply because the applicant asserted it.

7. In 2014, following further submissions, the respondent again refused to revoke the deportation order and refused international protection, relying on the previous finding by the 2012 Tribunal that the applicant was not a reliable witness, based on inconsistencies and contradictions in the account given in 2012, and his failure to claim asylum at the earliest opportunity.

8. The applicant appealed again to the First-tier Tribunal. First-tier Judge Landes on 2 April 2015 dismissed his appeal. The applicant did rely on having previously been arrested and tortured because of his refusal to carry out an assassination order while working for the CIO in Zimbabwe. At [34], the 2015 Tribunal noted that the applicant had been formally diagnosed with post-traumatic stress disorder, in a brief letter dated 15 February 2013 from Dr Al-Asadi at the Oxford Health NHS Foundation Trust and another letter from Dr Ashraf at the Westongrove Partnership dated 27 December 2012 confirming the diagnosis. The applicant was in the care of the Healthy Minds service, to whom he had been

referred in December 2012.

9. In addition, the applicant had produced arrest warrants from Zimbabwe and a letter from a Zimbabwe MP, Mr Chihota, saying that he was to be prosecuted; and he said that that his brother had been arrested in Zimbabwe in December 2014 because the authorities discovered that he was communicating with the applicant.

10. The Tribunal set out the discrepancies in the applicant's oral evidence and his asylum interview and found that there were 'so many inconsistencies in the account the [applicant] gave to different people at different times about his family members. Taken together it is an indication that the applicant says whatever he feels is most convenient at the time about his family members, regardless of whether it is the truth'.

11. Even having regard to the mental health evidence, and giving weight to the delay in claiming asylum, the Tribunal found that the applicant's core account lacked credibility. The Tribunal then discounted the Zimbabwean documents on the basis that the applicant had already been found not to be a credible witness. The First-tier Tribunal did not direct itself expressly as to the guidance set out in the starred decision of the Immigration Appeal Tribunal in *Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702 (*Devaseelan*). Observations at [54] may indicate that the Judge was aware of that responsibility. The applicant's account was dismissed in its entirety and the appeal failed.

12. On 7 October 2018, the applicant was detained under immigration powers at the end of a custodial sentence of 12 weeks' imprisonment for battery.

13. In November 2018, the applicant was interviewed by the Zimbabwean authorities to obtain a travel document and on 4 January 2019, the respondent served notice of arrangements for deportation. The applicant challenged that by judicial review: the respondent cancelled the deportation arrangements and agreed to consider his further representations, including new medical evidence. The further evidence was as follows:

    (i) A Rule 35 report by Dr Qusai Arsiwala dated 1 September 2014;

    (ii) A Rule 35 report by Dr G Hillman, Consultant Psychiatrist, on 15 October 2015;

    (iii) A medico-legal report by Dr Thelma Thomas of Medical Justice dated 10 December 2015;

    (iv) A psychiatric report prepared by Professor Cornelius Katona of the Helen Bamber Foundation, former Dean of the Royal College of Psychiatrists dated 4 December 2016, supplemented by an addendum psychiatric report from the same author on 24 March 2017; and

(v) The applicant's witness statement dated 14 December 2018.

14. On 17 May 2019, the respondent refused to treat the further representations as a fresh claim and declined to revoke the deportation order. That is the decision against which this judicial review claim is made.

15. Permission for judicial review was granted on the basis that the respondent had arguably erred in concluding that the new material before her was not significantly different from the evidence previously considered. On 18 September 2019, the respondent filed detailed grounds of defence offering to reconsider the application and pay the applicant's reasonable costs, arguing that the application had been rendered academic by her offer. The consent order was never sealed. It appears that two different case workers took different views on whether to defend this application: on 2 October 2019, the respondent withdrew her offer to reconsider, having concluded that 'the case can and should be defended'.

16. Both parties have assisted the Upper Tribunal with written submissions before the substantive hearing, as well as a substantial bundle of agreed documents.

The applicant's case

17. For the applicant, Mr Haywood relied on the summary of the fresh claim evidence at [1]-[38] of his 21 October 2019 skeleton argument. He argued that at the second First-tier Tribunal appeal in 2015, there was some very limited psychiatric evidence before the First-tier Judge, a short letter indicating that the applicant had a presentation consistent with post-traumatic stress disorder, but no evidence at all about the likely causation of scarring, now provided in Dr Thomas' report.

18. The First-tier Tribunal in 2015 also did not have the benefit of the evidence of Professor Katona that the applicant's psychiatric presentation might well be relevant in evaluating the manner in which he gave his evidence, and the possibility of consistency and/or omission, when credibility was assessed. The evidence of Professor Katona included an indication that the applicant might present as a risk of self-harm or suicide if returned.

19. The new evidence presented was relevant and cogent, and having regard to the modest test identified by Lord Justice Buxton (with whom Lord Justice Jonathan Parker and Lord Justice Moore-Bick agreed) in *WM (DRC) v Secretary of State for the Home Department* [2006] EWCA Civ 149, it was incumbent on the respondent's decision maker in the 17 May 2019 letter to deal with that evidence so as to demonstrate that it had been properly considered and scrutinised. At [4] in his skeleton argument, Mr Haywood set out a number of respects in which the applicant contends that this did not happen and that the respondent's refusal letter lacks anxious scrutiny.

20. Mr Haywood also contended that the respondent substituted her own views on

the merits of the new evidence, rather than considering how it might fare before an immigration judge. The respondent's views were not determinative and in treating them as such, the respondent had erred in law (see *WM (Democratic Republic of the Congo)* at [11]). Mr Haywood argued that a putative immigration judge would not be bound to reject the credibility of the applicant's evidence when considered in the context of all the evidence now available, nor to regard the applicant as a liar and place no weight on his evidence. The Rule 35 reports were prepared in circumstances of urgency, but by doctors employed by the respondent.

21. Dr Thomas' report was prepared to the demanding Istanbul Protocol standard. He was not required to consider, as a likely cause that had always to be actively discounted, the possibility of self-infliction by proxy (see *KV (Sri Lanka) v Secretary of State for the Home Department* [2019] UKSC 10 at [34]-[35] in the opinion of Lord Wilson JSC, with whom Lady Hale, President of the Supreme Court, and Lady Black JSC, Lord Briggs JSC and Lord Kitchin JSC agreed. Nor was it Dr Thomas' role to try to establish why the applicant had delayed in making his asylum claim.

22. Similarly, Professor Katona's reports contained a careful evaluation of the applicant's psychiatric presentation with the Istanbul Protocol clearly in mind. He did not accept the applicant's account uncritically. The treatment in the refusal letter of the medical evidence was flawed and unsustainable.

23. The respondent's 2 September 2015 letter concerned a different issue, the maintenance of detention, and did not take account of Dr Thomas' or Professor Katona's reports. Mr Haywood submitted that overall, the respondent's refusal letter lacked anxious scrutiny and should be quashed.

24. It was not necessary to call on Mr Haywood to amplify his skeleton argument at the hearing.

The respondent's case

25. On 26 November 2019, the respondent filed amended detailed grounds of defence, with leave, which were settled by Mr Ostrowski, who has appeared throughout in this application. Mr Ostrowski reminded the Upper Tribunal of the negative credibility findings in the two previous decisions, which would form the *Devaseelan* starting point for any future immigration judge considering an appeal by this applicant. Mr Ostrowski argued that the case now advanced was essentially the same as that which the earlier decisions had considered. The respondent had been entitled to conclude that the new medical evidence did not advance the applicant's case, given the negative credibility findings in 2012 and 2015. The respondent had been entitled to have regard to her letter of 2 September 2015, of which the applicant and his solicitors were aware, which dealt with one of the Rule 35 reports in the context of whether it was appropriate to maintain detention.

26. Mr Ostrowski contended that the respondent did not err in failing to refer in the decision letter to the applicant's 19 December 2018 statement or to the element of the further submissions which related to the applicant's interview with a Zimbabwean official, nor to the 2015 First-tier Tribunal decision. Both the statement and the further submissions were 'predicated on the premise that the applicant's statements are capable of belief' and the failure to consider whether the statement or the further submission regarding the interview with a Zimbabwean official should lead to a different credibility conclusion was immaterial. The April 2015 decision was 'utterly damning to the applicant' and omitting to refer to it was neither a lack of anxious scrutiny, nor material.

27. The respondent was plainly aware of the new evidence and summarised it in her decision letter. She was entitled to conclude that the new evidence 'does not offer proof of [the applicant's] credibility' and to reject it.

28. In the alternative, if there was a failure to exercise anxious scrutiny in the respondent's decision letter, there was no evidence of its materiality. Mr Ostrowski argued that it was highly likely that the outcome for the applicant would not have been substantially different even if anxious scrutiny had been applied as the adverse credibility findings would always have been fatal to consideration of the new evidence.

29. Mr Ostrowski argued that the Upper Tribunal could not interfere unless her view that the applicant's further submissions would have no prospect of success before an immigration judge was so bad that no reasonable Secretary of State could have reached that conclusion. If the Secretary of State's view of the further submissions was not *Wednesbury* unreasonable at that level, the Upper Tribunal's reviewing function was not engaged, and the judicial review claim must fail.

30. In his skeleton argument, and in oral argument, Mr Ostrowski relied on the detailed grounds of defence. Much of his argument in the skeleton argument and oral submissions has been rehearsed above in setting out the amended detailed grounds of defence. I have had regard to the contents of that skeleton argument, and to the oral submissions which Mr Ostrowski made at the hearing.

31. Mr Ostrowski relied on the negative credibility findings in the previous decisions, and on *Devaseelan*. He accepted that Dr Thomas' report was prepared to the Istanbul Protocol standard and that he found the applicant's body scarring to be 'highly consistent', while Professor Katona found the applicant's post-traumatic stress disorder and depression 'congruent with' the account he gave. Mr Ostrowski continued to argue that the question was whether the Secretary of State got the balance so wrong that her decision could neither be explained nor maintained, and that the expert evidence, while strong, was not perfect. The respondent's position did not require a detailed exegesis as the findings of fact and negative credibility were so poor that no expert evidence could result in the applicant's credibility being accepted now.

Legal framework

32. I reserved judgment, which I now give. I begin by reminding myself of the test for a fresh claim in paragraph 353 of the Immigration Rules HC395 (as amended):

> "353. When a human rights or protection claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:
>
> (i) had not already been considered; and
>
> (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection. This paragraph does not apply to claims made overseas."

33. In *WM (DRC),* the parties were in broad agreement about the Secretary of State's twofold task, to identify whether the material had previously been considered, and then go on to consider paragraph 353(ii), the prospect of success being that before an immigration judge, not necessarily what the respondent herself thinks of the new material, in the context of previous decisions. The question of previous adverse credibility findings is considered at [6] in the opinion of Lord Justice Buxton:

> **"The task of the Secretary of State**
>
> 6. … To set aside one point that was said to be a matter of some concern, the Secretary of State, in assessing the reliability of new material, can of course have in mind both how the material relates to other material already found by an adjudicator to be reliable, and also have in mind, where that is relevantly probative, any finding as to the honesty or reliability of the applicant that was made by the previous adjudicator. *However, he must also bear in mind that the latter may be of little relevance when, as is alleged in both of the particular cases before us, the new material does not emanate from the applicant himself, and thus cannot be said to be automatically suspect because it comes from a tainted source. …*" [*Emphasis added*]

34. At [7] and [9]-[10], Lord Justice Buxton defined the role of the court in reviewing the respondent's decision on a fresh claim application:

> "7. The rule only imposes a somewhat modest test that the application has to meet before it becomes a fresh claim. First, the question is whether there is a realistic prospect of success in an application before an [immigration judge], but not more than that. Second, as Mr Nicol QC pertinently pointed out, the [immigration judge] himself does not have to achieve certainty, but only to think that there is a real risk of the applicant being persecuted on return. Third, and importantly, since asylum is in issue the consideration of all the decision-makers, the Secretary of State, the adjudicator and the court, must be informed by the anxious scrutiny of the material

> that is axiomatic in decisions that if made incorrectly may lead to the applicant's exposure to persecution. If authority is needed for that proposition, see per Lord Bridge of Harwich in *Bugdaycay v SSHD* [1987] AC 514 at p 531F. …
>
> **The task of the court**
>
> 9. …Accordingly, a court when reviewing a decision of the Secretary of State as to whether a fresh claim exists must address the following matters.
>
> 10. First, has the Secretary of State asked himself the correct question? *The question is not whether the Secretary of State himself thinks that the new claim is a good one or should succeed, but whether there is a realistic prospect of an adjudicator, applying the rule of anxious scrutiny, thinking that the applicant will be exposed to a real risk of persecution on return: see §7 above.* The Secretary of State of course can, and no doubt logically should, treat his own view of the merits as a starting-point for that enquiry; but it is only a starting-point in the consideration of a question that is distinctly different from the exercise of the Secretary of State making up his own mind. Second, in addressing that question, both in respect of the evaluation of the facts and in respect of the legal conclusions to be drawn from those facts, has the Secretary of State satisfied the requirement of anxious scrutiny? If the court cannot be satisfied that the answer to both of those questions is in the affirmative it will have to grant an application for review of the Secretary of State's decision." [*Emphasis added*]

Analysis

35. In this application, both the 2012 and 2015 decisions were made without proper medical evidence being placed before the Tribunals. It is right that the applicant's allegations of torture were made late, and the allegation of rape even later. If this matter were to come before an immigration judge, that Judge would have to begin his deliberations with the credibility findings of the 2015 panel as set out in *Devaseelan.* I remind myself that at guideline (6), the *Devaseelan* Tribunal said this:

> "(6) **If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator,** and proposes to support the claim by what is in essence the same evidence as that available to the Appellant at that time, **the second Adjudicator should regard the issues as settled by the first Adjudicator's determination and *make his findings in line with that determination*** rather than allowing the matter to be re-litigated. We draw attention to the phrase 'the same evidence as that *available to the Appellant*' at the time of the first determination. We have chosen this phrase not only in order to accommodate guidelines (4) and (5) above, but also because, in respect of evidence that was available to the Appellant, he must be taken to have made his choices about how it should be presented. An Appellant cannot be expected to present evidence of which he has no knowledge: but if (for example) he chooses not to give oral evidence in his first appeal, that does not mean that the issues or the available evidence in the second appeal are rendered any different by his proposal to give oral evidence (of the same facts) on this occasion."

36. In this case, the evidence of the doctors was evidence which was not before the First-tier Tribunal in 2015, although it was available to the applicant. Two of the

respondent's own doctors indicated in Rule 35 decisions that they had seen marks on the applicant's body indicative of possible torture in the past. There were three medical reports which Mr Ostrowski accepted had been made by reference to the Istanbul Protocol standard and in which Dr Thomas found that the marks on the applicant's body were 'highly consistent' with his account, while at [6.4]-[6.5] in his first report, Professor Katona said that the applicant's scarring, physical and mental health problems are 'highly consistent with the account he gave' and his responses and demeanour during the consultation were 'congruent with his account'.

37. The marks found on the applicant's body listed in Dr Thomas' opinion were numerous. Many of them the 42 scars recorded are said to be from football injuries. There are however 11 scars rated as highly consistent with being cut with a knife during ill treatment, three scars which might either be a knife or being hit with a hard edged object, two sets of scars (no 15 and no 40) which were said to be a deliberate, distinctive pattern intended to identify ex-CIO officers who had rebelled, so that they would always be recognisable if they survived, 5 scars consistent with or typical of cigarette burns, and handcuff scars on the applicant's left wrist. The applicant has flashbacks meeting the ICD 10 diagnostic criteria for post-traumatic stress disorder.

38. At [6.5] in Dr Thomas' report, she noted that he gave a mostly coherent and consistent account, but was hesitant and less clear when describing some of the more traumatic-sounding experiences. At [6.6] she noted that discrepancies in reporting sexual abuse are not uncommon, referring to research by Dr Juliet Cohen MA MB BUSINESS DipRCOG MRCGP of the Medical Foundation in 2001, entitled *Errors of Recall and Credibility: Can omissions and discrepancies in successive statements reasonably be said to undermine credibility of testimony* and a report from D Bogner and others, entitled *Impact of Sexual Violence on disclosure during Home Office interviews* published in the British Journal of Psychiatry in 2007.

39. In his main report, Professor Katona also relied on the work of Dr Cohen, and on a report by Jane Herlihy and Stuart Turner entitled *Asylum claims and Memory of Trauma: sharing our knowledge,* published in the British Journal of Psychiatry in 2007. There is no indication in the refusal letter that the respondent considered whether the applicant's mental state could have affected his evidence in the ways set out in these research reports.

40. There is no consideration at all of the applicant's 2018 statement.

41. If an immigration judge were to consider this evidence, he would err in law if he dismissed the new evidence solely by reference to the negative credibility findings in the previous decision (see *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367 at [24]-[25] in the judgment of Mr Justice Wilson, with whom Lord Justice Ward and Lord Justice Buxton agreed), without evaluating all of the evidence now before him.

42. That, however, is precisely what this respondent's refusal letter does. At [53], she says this:

> "53. Furthermore, it is noted that [the applicant] was found not to be a credible witness or a witness of truth and his account of events had contradictions and inconsistencies. The evidence provided in your submissions of 7 January 2019 does not offer proof of [the applicant's] credibility. They do not make a strong argument to negate the findings of the appeal in the First-tier determination promulgated on 24 October 2012, where the immigration judge gave full consideration to [the applicant's] torture and mental health claims and found that his claim was not credible as he was not considered a witness of truth.
>
> 54. After assessing the supporting evidence provided, [the applicant] is still not considered to be a witness of truth."

43. The respondent has not addressed the observation in *WM (DRC)* that the reliability of the applicant as a witness of truth 'may be of little relevance when, as is alleged in both of the particular cases before us, the new material does not emanate from the applicant himself, and thus cannot be said to be automatically suspect because it comes from a tainted source'. The new material here is not so tainted: there are two reports from the respondent's own doctors, and three prepared with the demanding Istanbul Protocol standard in mind, the reliability of which Mr Ostrowski does not challenge.

44. If an immigration judge were to consider the medical evidence reports, and the applicant's latest statement, properly directing himself with reference to *Devaseelan,* it cannot be said that there is no realistic prospect that the immigration judge would diverge from the decision of the 2015 Tribunal, which had only one rather vague report before it.

Order

45. The parties having reached agreement on all ancillary matters on Friday 17 January 2020, the Upper Tribunal ORDERS that:

    (1) The respondent's decision of 2 July 2019 is quashed.

    (2) The respondent shall reconsider whether the applicant's further representations constitute a fresh claim, pursuant to paragraph 353 of the Immigration Rules HC395 (as amended), and whether it is appropriate to revoke the deportation order in force against him.

    (3) The respondent shall issue a fresh decision letter, not later than 3 months from the sealing of the Upper Tribunal's order in this application.

    (4) The applicant is legally aided with effect from 14 October 2019. It is unnecessary to make an order under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, because the respondent has agreed to pay his costs in these proceedings.

(5) The respondent will pay the applicant's reasonable costs of these proceedings, to be subject to detailed assessment if not agreed. This order includes the direction given at the November 2019 hearing that the respondent pay the costs of that hearing.

Appeal

46. Neither party has made an application for permission to appeal to the Court of Appeal. In the absence of any such application, and with reference to paragraph 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), I have considered whether I should give or refuse permission to appeal.

47. I refuse permission to appeal because I am not satisfied that there is any arguable error of law in the judgment I have given.

UTIJR6

JR/3571/2020

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of **MAGUTUZA**

Applicant

v

Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge Gleeson

Application for judicial review: substantive decision

Having considered all documents lodged and having heard the parties' respective representatives, Mr Phil Haywood of Counsel, instructed by Haris Ali Solicitors, on behalf of the Applicant and Mr Nicholas Ostrowski, of Counsel, instructed by the Government Legal Department, on behalf of the Respondent, at a hearing at Field House, London on 6 January 2020.

Decision: the application for judicial review is granted

(1) The applicant has permission to seek judicial review of the respondent's decision on 2 July 2019 to refuse to revoke a deportation order and to refuse to treat his further submissions as a paragraph 353 fresh claim. He is a citizen of Zimbabwe.

(2) For the reasons set out in my judgment, I have quashed the respondent's decision. The applicant's further submissions and application to revoke the deportation order remain before the respondent for a lawful decision.

Order

(3) I therefore make an Order quashing the Respondent's decision dated 2 July 2019.

(4) The respondent shall reconsider whether the applicant's further representations and supporting evidence constitute a fresh claim, pursuant to paragraph 353 of the Immigration Rules HC395 (as amended), and whether it is appropriate to revoke the deportation order in force against him.

Permission to appeal to the Court of Appeal

(5) There was no application for permission to appeal. Pursuant to paragraph 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), I have considered whether to grant permission to appeal to the Court of Appeal.

(6) I refuse permission to appeal to the Court of Appeal because I am not satisfied that there is any error of law in my judgment.

Costs

(7) The applicant is legally aided with effect from 14 October 2019. It is unnecessary to make an order under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, because the respondent has agreed to pay his costs in these proceedings.

(8) The respondent will pay the applicant's reasonable costs of these proceedings, to be subject to detailed assessment if not agreed.

Judith A J C Gleeson

Signed: Upper Tribunal Judge Gleeson Dated: 20 January 2020

Home Office Ref: **Decision(s) sent to above parties on:**

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was given (Civil Procedure Rules Practice Direction 52D 3.3(2)).