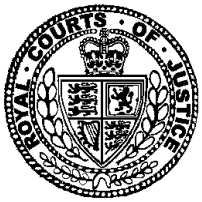

Neutral Citation Number: [2019] EWCA Civ 1162

Case No: C7/2017/3341

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT,
UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)
Upper Tribunal Judge Perkins
IA240422015

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/07/2019

Before:

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE McCOMBE
and
LORD JUSTICE HADDON-CAVE

- -

Between:

MD IQBAL KABIR	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Darryl Balroop (instructed by Diplock Solicitors) for the Appellant
Zane Malik (instructed by the Government Legal Department) for the Respondent

Hearing date: 13 June 2019

- -

Approved Judgment

Lord Justice McCombe:

(A) Introduction

1. This is the appeal of Mr Md. Iqbal Kabir ("the Appellant") from the decision of 12 July 2017 of the Upper Tribunal (Immigration and Asylum Chamber) (Upper Tribunal Judge Perkins) ("UT") dismissing his appeal from the decision of 3 November 2016 of the First-tier Tribunal (Immigration and Asylum Chamber) (First-tier Tribunal Judge Robinson) ("FTT"). The FTT had dismissed the appellant's appeal from a decision of 5 June 2015 of the Secretary of State ("the Respondent") which had refused the appellant's application, made on 12 December 2012, for further leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant.

2. The principal issue on the appeal to this court is whether the UT was wrong to refuse to admit on the appeal to it certain fresh evidence which had not been before the FTT. The underlying issue in the case before the Tribunals was as to the genuineness of certain banking documents submitted by the Appellant in support of his application for leave to remain. Subject to the "fresh evidence" question, the next issue is whether, if that evidence had been admitted, the UT should have concluded that the FTT's order was rendered erroneous in law, ex post facto, in refusing an adjournment of the hearing before it on 27 October 2016 to enable such evidence to be obtained and dismissing the Appellant's appeal.

(B) Background Facts

3. The Appellant is a citizen of Bangladesh who was born on 9 October 1980. He was granted leave to enter the UK as a student in 17 March 2009; that leave expired on 31 May 2010. He was granted further leave to remain as a student on 14 December 2010, expiring on 31 December 2012. He made the application now in issue on 12 December 2012, accompanied by a letter and bank statement, appearing on their face to have been issued by Brac Bank Limited ("the Bank") concerning an account in the name of "AKM Monirul Hoque", with a balance standing at "3,05,73,219.10" (said to be in excess of £200,000 sterling). There was also a supporting statement, apparently from the account holder, Mr Hoque, stating that he was willing to make this sum available equally to the Appellant and his intending business partner, Mr Mohammed Sayed, for the purposes of their intended restaurant business.

4. The Respondent initiated inquiries (but only in February 2015, over two years after the Appellant's application) as to the genuineness of the documents. These inquiries received a short response on 25 February 2015 from the "Associate Product Manager, Deposits & NFB…" of the Bank stating: "…attached Certificates and statements Not [sic] issued by our Branches". As a result, in the decision of 5 June 2015 the Respondent stated as the "General Grounds Reasons for Refusal",

> "In your application, you have submitted a letter and a bank statement from Brac Bank Limited.
>
> We are satisfied that these documents are false because we sought verification of those documents from Brac Bank Limited. Brac Bank Limited confirm that those documents are not genuine.

> As false documents have been submitted in relation to your application, it is refused under paragraph 322(1A) of the Immigration Rules.
>
> For the above reasons, we are also satisfied that you have used deception in this application."

5. It was further stated in the decision that the finding of the use of deception would have as its consequence that subsequent applications for entry clearance would automatically be refused under paragraph 320(7B) of the Rules, for certain set periods following departure from the UK, dependent upon whether departure from the UK had been voluntary or not and upon whether departure was at the appellant's own expense or that of the Government.

6. A similar decision was made in the case of Mr Sayed.

(C) **Appeals to the FTT and to the UT**

7. The Appellant and Mr Sayed appealed to the FTT, supporting the appeal with a further letter (dated 11 May 2016) apparently from a Mr Ariful Islam, the branch manager at the Natun Bazar branch of the Bank (the branch that was the purported source of the bank documents produced in support of the original application) under reference "BBL/NB.Br/Dhaka/11/05/2016". This letter stated (as written):

> "In regards to the Tier 1 (entrepreneur) application of Mr Mohammed Sayed and Mr MD Iqbal Kabir, we have issued solvency letter and bank statements on 29 November 2012 to certify that Mr Hoque BDT 30573219.10 as of the day.
>
> We have been informed by our client that the Home Office alleged that bank did not issue those documents. Our client has handed over a verification report to us accordingly.
>
> We have sighted the verification report very carefully. We have found that the Home Office has contacted with Associate Product Manager in relation to the account and letters.
>
> To respond the queries, the Associate Product Manager emailed back to home office and mistakenly said that statements not issued by our branches which is not correct.
>
> However, I would like to confirm that the solvency letter and bank statements dated 29 November 2012 were issued by our branch.
>
> We further confirm that the bank letter dated 29/11/2012 and statement dated 29/11/2012 were issued by us and the contents of the letter are genuine and authentic. We also confirm you that the bank account is still existed and in operation.
>
> Should you have any further queries in relation to the bank account and then please do not hesitate to contact us."

8. On 29 June 2016, the appeal was adjourned to enable the Respondent to verify the new document of 11 May 2016. This resulted in a "Document Verification Report" ("DVR"), dated 26 July 2016 from the High Commission in Dhaka stating in conclusion that,

> "The Manager confirmed that the BRAC Bank letter bearing the reference No. [quoted] dated 11/06/2016 is non-genuine [sic]."

9. The report, leading to this conclusion, was in these terms:

> "On 25/07/2016, I along with a UKV&I colleague, met the Manager of BRAC Bank, Gulshan, Dhaka.
>
> We introduced ourselves as officials of the British High Commission Dhaka and presented a redacted copy of the letter bearing reference No. BBL/NB.Br/DHAKA/11/05/16 dated 11/05/2016.
>
> The Manager, who has been working with BRAC Bank since 2009, made a number of observations in regards to the format of the letter including:
>
> - no seal/stamp is used in the middle of the reference number
> - no address is provided at the footer of the letter
>
> The Manager further commented that their format of a solvency certificate is different to the format of this letter.
>
> Concerning the name on the letter, *Md. Ariful Islam*, the Manager advised that he knows no-one of that name. Subsequently, he contacted the Manager of the Natun Bazar branch who also confirmed that no person in the name of Md. Ariful Islam ever worked as Branch manager at Natun Bazar branch."

It will be seen that the High Commission enquiry was directed to a different branch of the Bank (the Gulshan branch) from that from which the letter of 11 May 2016 had purportedly come (the Natun Bazar branch).

10. It will be seen that the report referred to the absence of a seal over the reference number in the letter and to the absence of address in the footer to the letter. These remarks are patently incorrect in respect of the letter of 11 May 2016, which was the ostensible subject of the DVR and of its conclusion. Those comments could properly be applied to the 2012 bank documents, submitted with the initial application, and this led to speculation during the hearing before us that those documents too had been submitted to the manager at the Gulshan branch. To my mind, that was pure speculation, but (of course) nonetheless possible.

11. The DVR was apparently sent by e-mail from the Respondent's Presenting Officers' Unit to the Appellant's former solicitors (several weeks later) on 7 September 2016, but (it seems) it did not come to the attention of the person responsible within the firm.

The email did not identify the solicitors' clients, but that could have been easily remedied by looking at the attachments or by the simple expedient of further enquiry of the Respondent's Presenting Officers' Unit.

12. The adjourned appeal came on for hearing again on 27 October 2016 when the Appellant's solicitor said to the judge that the DVR had been seen by him for the first time that day. He asked for an adjournment to obtain further evidence. This was refused. The reason for the refusal was stated in the FTT's final decision in these terms:

> "6. … I did not agree to an adjournment because the Home Office record of sending the document was produced and it was clear that Hamlet Solicitors had been sent it by email attachment on the 7 September 2016. The appellants name were clearly given on the email and Mr Sayed's name is mentioned in the verification report. I took the view that the appellants had be [sic] given six weeks notice of the verification report which to provided adequate time to obtain additional evidence if they wanted to. I decided that it would not be fair or reasonable or in the interests of justice to adjourn the hearing a second time."

13. The FTT judge accepted the conclusions drawn from the various enquiries made by the Respondent and said,

> "I am satisfied that strong evidence is available to indicate that the documents from BRAC Bank provided by the appellants are false."

Accordingly, the FTT found that the Respondent had been justified in refusing the application for leave to remain in the UK, relying upon paragraph 322(1A) of the Rules. The judge also rejected the two appellants' claims based upon Article 8 of the European Convention on Human Rights. There was, however, no finding by the FTT that the Respondent's assertion in the refusal letter, that deception had been practised by the Appellant, was correct.

14. The FTT's decision was promulgated on 3 November 2016. The Appellant (but not Mr Sayed) applied for permission to appeal to the UT, essentially on the basis that the FTT had been wrong to refuse the adjournment to enable the Appellant to respond to the DVR. The application for permission to appeal also referred to new evidence, said to have been obtained from the Bank: (a) a letter of 13 November 2016, apparently from a Mr Mohammed Wahiduzzaman as branch manager of the Natun Bazar branch of the Bank, i.e. the same branch from which the letter of 11 May 2016 and the original 2012 documents were said to have emanated; (b) Mr Wahiduzzaman's business card; (c) a further declaration from Mr Hoque, the account holder; and (d) documentation tracking the delivery of the documents from Bangladesh. The FTT granted permission to appeal to the UT.

15. The crux of the new documentation is to be found in a paragraph in the letter of 13 November 2016, commenting upon the statements in the DVR, quoted above, concerning the latter of 11 May 2016. The paragraph said this:

> "I would like to confirm that we didn't receive any phone call from Gulshan Branch regarding the letter and account. There are few Manager working in Gulshan Branch, we don't know which person confirmed this information. We have issued a letter on 11/05/2016 not solvency certificate, so the letter format wouldn't be same as solvency certificate. BRAC Bank is one of largest bank in Bangladesh, so it not practical that one Manager may know all other Brach Manager. Also the Manager Gulshan Branch didn't make any comment that the account is existing or not and money is available or not. Every Manager can check account balance and exiting of the account." (Passage quoted as written)

The letter further confirmed an increased credit balance on the Hoque account.

16. The appeal to the UT was, as I have said, dismissed. The UT Judge dealt with the appellant's criticism of the FTT's refusal of the adjournment in two passages of his decision. At paragraph 5, he said this:

> "5. Clearly, it was the judge's view that the appellants had had an opportunity and had not done anything with it."

After referring to the FTT's conclusions on the evidence before it, the UT Judge said, at paragraph 7:

> "7. The point is that the judge considered the evidence and was impressed by the fact that a bank official making direct enquiries of the relevant bank could not trace the purported manager and could not find any reference at the branch to somebody who was supposed to have been a manager less than three months before. I can see no basis for criticising the judge's analysis of the evidence before him. Neither can I see any basis for criticising the decision not to adjourn. It is trite law that judges have a great deal of discretion about whether to adjourn cases. The judge took a view on the quality of the evidence, took a view on the opportunity of obtaining further evidence, and, I find, entirely rationally and properly decided that it was in the interests of justice to go on with the evidence that was before that Tribunal. That decision led, perhaps inevitably, to the decision to dismiss the appeals."

17. In dealing with the new evidence, in the context of the adjournment issue, the UT said that Notice of the desire to adduce new evidence had not been given in proper form and the judge said, at paragraph 9:

> "9. Admitting this evidence could lead to the hearing descending into a non-fathomable realm of allegation and rebuttal. The fact is that the Secretary of State, by officers of the High Commission, tried to examine the evidence, took a view, disclosed it to the appellants and the appellants did not take

> advantage of the opportunity to get their evidence together before the First-tier Tribunal."

The UT refused permission to appeal to this court.

(D) Appeal to this Court

18. The application for permission to appeal was then made directly to this court. Longmore LJ refused permission in respect of three of the four proposed grounds of appeal. However, he granted permission to appeal on ground 4. That ground is expressed as follows:

> "**Ground 4**
>
> 13. The Appellant argues that he has served proper notice to include new evidence with the Upper Tribunal. The grounds for permission to Appeal at paragraph 8 clearly gave notice to include new evidence: "*It is argued that had the F-tTJ had the advantage of the documents listed under paragraph 6 his view would have been different, in this circumstance, in the interest of Justice a permission to appeal be granted for the new evidence to be properly considered which was not available at the hearing*."
>
> 14. In addition to above notice, the grounds for permission to Appeal consists of a separate ground in relation to new evidence in following heading: "*There are Material New Document Evidence which were not available Grounds for permission to Appeal*."
>
> 15. The strength of the new evidence supports the position of the Appellant and significantly challenges the discrepancies and weaknesses of the Respondent's DVR. An original copy of the Bank Manager's business card and an affidavit from the account holder were particularly important as to the genuineness of the bank account.
>
> 16. Considering the above listed flaws in the Respondent's DVR, and the grave consequence on the Appellant due to the allegation of deception, the Judge should have considered the new evidence in the hearing for the interest of Justice and to seek the truth." (Grounds quoted as written)

As to that ground, Longmore LJ said:

> "… it is arguable that, once the further evidence sought to be adduced in response to the Document Verification report was before the Upper Tribunal (even if only informally), it ought to have been considered rather than being dismissed because it "could lead to the hearing descending into a non-fathomable realm of allegation and rebuttal". On the face of it, Mr

> Wahiduzzaman's letter of 13th November 2016 carries some conviction."

19. On the present appeal, Mr Balroop for the Appellant argues that the UT was wrong not to admit the new evidence and, having erred in that respect, the UT also erred in not finding that such evidence should have led to the conclusion that the FTT had been wrong not to permit an adjournment for the purpose of allowing the Appellant to respond to the DVR.

20. Mr Malik for the Respondent submits that there was no error of law in the UT's decision not to admit the new evidence or in its assessment of the FTT's refusal to grant the adjournment sought by the Appellant.

21. In a Respondent's Notice, Mr Malik adopts the reasoning of the UT decision and relies upon three further grounds: (1) the fresh evidence did not meet the requirements for being admitted on an appeal, either pursuant to the principles in *Ladd v Marshall* [1954] 1 WLR 1489 or those appearing in *E and R v Secretary of State* [2004] EWCA Civ 49; (2) the fresh evidence application did not comply with the procedure required by Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Procedure Rules"); (3) even if the new evidence had been admitted, on the findings made by the FTT, that Tribunal would still have dismissed the appeal.

22. For convenience, I have set out the relevant procedural rules in an Appendix to this judgment.

(E) **The Appeal and my conclusions**

23. As can be seen from Rule 15(2A) of the Procedure Rules, a party wishing to adduce new evidence in an appeal to the UT "*must* send or deliver a notice to the [UT] and any other party" (emphasis added) stating the nature of the evidence and explaining why it was not submitted to the FTT. We are told that the proper practice is to use the standard application notice (Form T484) for this purpose. In this case, the Appellant's solicitors failed to issue any such application notice and merely stated the desire to adduce the new evidence in the grounds of appeal, appending copies of the new documents to those grounds.

24. Mr Malik for the Respondent argues that the UT was right not to admit the new evidence in view of the failure to comply with the procedural requirements. He points to the use of the word "must" in Rule 15(2A). He has also referred us to the Senior President's Practice Direction of 10 February 2010 (as amended from time to time) dealing with this rule and saying that "UT rule 15(2A) imposes important procedural requirements…. [which] must be complied with in every case…".

25. Mr Balroop for the Appellant argues that the Grounds of Appeal and the known procedural history gave to the Respondent all the necessary information which a formal notice would have given and that the UT should have used its powers under rules 2 and 7 of the Procedure Rules to avoid undue inflexibility and a resultant miscarriage of justice. The reasons why the new material was not adduced before the FTT was explained sufficiently in the grounds and those reasons were well known to the Respondent. There was, he argues, no conceivable prejudice to the Respondent who

had had the material for some eight months before the appeal came on for hearing on 27 June 2017.

26. Mr Balroop acknowledges the role of the *Ladd v Marshall* principles as a "starting point" in considering whether new evidence should be admitted on the appeal. However, he says that they are just that, a "starting point" and they can be departed from exceptionally where the interests of justice so require. For this proposition he relies upon certain passages in the judgment in this court, delivered by Carnwath LJ (as he then was) in *E and R* (supra).

27. In that case, the court drew comparisons between the "fresh evidence" principles in Tribunal appeals and judicial review appeals and said this (at paragraphs 81 and 82):

> "81. … It would be wrong to say that the Ladd v Marshall principles have not been treated as applicable at all in judicial review: see e g *R v West Sussex Quarter Sessions, Ex p Albert and Maud Johnson Trust Ltd* [1974] QB 24, cited with approval by the House of Lords in *Ex p Al-Mehdawi* [1999] [sic: [1990] 1 AC 876] 1 AC 876, 899. It is clear, however, that some flexibility has been allowed where the "interests of justice" so require. That as we understand it is the effect of Sir John Donaldson MR's comment in *R v Secretary of State for the Home Department, Ex p Momin Ali* [1984] 1 WLR 663. Although he said that *Ladd v Marshall* principles "as such" were not applicable, he gave no direct authority for that statement. His reasons for excluding the evidence in that case appear to be have been based in effect on *Ladd v Marshall* principles. He said, at p 670:
>
> > "This fresh evidence was clearly available and should have been placed before Webster J. It is not the function of this court, as an appellate court, to retry an originating application on different and better evidence. We are concerned to decide whether the trial judge's decision was right on the materials available to him, unless the new evidence could not have been made available to him by the exercise of reasonable diligence or there is some other exceptional circumstance which justifies its admission and consideration by this court."
>
> Fox LJ also accepted that there was a "wider discretion" to admit new evidence than in ordinary civil litigation, but agreed, at p 673G–H, with the result; Stephen Brown LJ said, at p 674A, that *Ladd v Marshall* principles should apply.
>
> 82. We would respectfully accept the statement of Sir John Donaldson MR quoted in the previous paragraph as accurately reflecting the law applicable in a case of this kind (whether it takes the form of a direct appeal from the IAT to the Court of Appeal, or comes by way of judicial review of the IAT's refusal of leave to appeal). However, we would not regard it as showing that *Ladd v Marshall* principles have "no place" in public law.

> Rather it shows that they remain the starting-point, but there is a discretion to depart from them in exceptional circumstances."

In conclusion on this point, Carnwath LJ said (at paragraph 91):

> "91. In summary, we have concluded in relation to the powers of this court: (i) an appeal to this court on a question of law is confined to reviewing a particular decision of the tribunal, and does not encompass a wider power to review the subsequent conduct of the Secretary of State; (ii) such an appeal may be made on the basis of unfairness resulting from "misunderstanding or ignorance of an established and relevant fact" (as explained by Lord Slynn in the *Criminal Injuries Compensation Board* [1999] 2 AC 330 and *Alconbury* cases [2003] 2 AC 295); (iii) the admission of new evidence on such an appeal is subject to *Ladd v Marshall* principles, which may be departed from in exceptional circumstances where the interests of justice require."

28. Mr Balroop submits that the facts of this case should have led the UT to act flexibly to admit the evidence, notwithstanding the failure to comply precisely with the procedural requirements. He argues that the interests of justice require the evidence to be admitted to avoid the potentially serious adverse consequences for the Appellant of the Respondent's initial finding/assertion of deception.

29. Mr Balroop further argues that in declining to take account of the fresh evidence, in a rigid and formulaic manner, the UT disabled itself from assessing the factual misapprehension under which the FTT was acting when it refused the adjournment to enable that evidence to be obtained.

30. He referred us to this court's decision in *ML (Nigeria) v Secretary of State* [2013] EWCA Civ 844 in which it was stated that a material error of fact, which is material to a Tribunal's conclusion, will constitute an error of law: per Moses and Stanley Burnton LJJ at paragraphs 10 and 16 (with whom Maurice Kay LJ agreed). It has to be recognised, however, that that case involved a series of "egregious errors" (per Stanley Burnton LJ at paragraph 17). In contrast, this case would not have been conclusively resolved on its facts by the admission of the new material, which the respondent would have inevitably asked to verify by further enquiries in Bangladesh.

31. Mr Malik made four points for the respondent in his oral submissions: (1) the refusal to admit the new evidence was a case management decision of the UT which was not wrong in principle and which should not, therefore, be disturbed; (2) the criteria for the admission of new evidence on an appeal set out in *Ladd v Marshall* (as modified by the decision in *E and R*) were not satisfied; (3) the Appellant had failed to comply with the Procedure Rules; and (4) even with the new evidence, it could not be demonstrated that the decision of the FTT on the facts was not open to it.

32. In my judgment, having considered these various arguments carefully, I find that it is impossible to criticise the FTT's decision to refuse the Appellant's request for adjournment on the material then available to it. There had been one previous adjournment and the Appellant's solicitors had not taken the opportunity to seek out

further evidence in the period that was open before the date of the appeal hearing. It was well within the proper exercise of the FTT's wide discretion to grant or refuse adjournments to refuse the application in this case. There was no error of law in that decision.

33. When it came to the application to admit the fresh evidence, the UT also had a wide discretion. This was not a case in which the new material inevitably resolved the factual issue in the Appellant's favour; it presented similar factual questions to the initial evidence: it was not a case of clear misapprehension of established and relevant fact: see paragraph 91 of the judgment in *E and R* quoted above. Nor was it a case of the character of *ML (Nigeria)*. The UT was, in my view, entitled to refuse the application in view of the failure to follow the correct procedure and to take into account the *Ladd v Marshall* principle that this new evidence could, with reasonable diligence, have been made available to the FTT on the initial appeal. I discern no error of law, therefore, on the UT's part in the decision that the judge made in declining to admit the fresh evidence.

34. In the result, therefore, I would dismiss the appeal. That is not to say that I accept Mr Malik's fourth submission and there is obvious force in what Longmore LJ said about Mr Wahiduzzaman's letter carrying "some conviction" in the reasons given for the grant of permission to bring this appeal (quoted in paragraph 18 above).

35. As Mr Malik fairly acknowledged, neither Tribunal endorsed the Respondent's assertion that the Appellant had practised deception in the making of his application for leave to remain and, as Mr Malik also acknowledged, while no doubt the Respondent would have the original decision record on the file, it would be open to the Appellant on any future application for entry clearance to contest any further reliance upon alleged "deception" in answer to a refusal of leave to enter and it would be incumbent upon the Respondent fairly to assess afresh the evidence presented on the issue.

(F) Result

36. For my part, I am grateful to both counsel for their extremely careful and succinct arguments. For the reasons given, as already indicated, I would dismiss this appeal.

Lord Justice Haddon-Cave:

37. I agree.

Lord Justice Underhill (Vice-President of the Court of Appeal (Civil Division)):

38. I too agree. The DVR report on which the Respondent relied in the FTT did not present an open-and-shut case that the Appellant's documents were false, for the reasons given by McCombe LJ in paras. 9 and 10 of his judgment. But it called for an answer, and the Appellant did not take the opportunity to answer it in the FTT; and the UT was entitled to hold that it was too late to try to do so for the first time on appeal. However, as McCombe LJ says at para. 35, and as Mr Malik properly acknowledged, the fact that the documents belatedly produced by the Appellant have not been considered by the Tribunals means that they (and any other relevant fresh material) would have to be fairly assessed by the Respondent if he were considering refusing any future application on the basis of deception.

APPENDIX

Overriding objective and parties' obligation to co-operate with the Upper Tribunal

2.—(1) The overriding objective of these Rules is to enable the Upper Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Upper Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Upper Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction. …

Failure to comply with rules etc.

7.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Upper Tribunal may take such action as it considers just, which may include—

(a) waiving the requirement;

(b) requiring the failure to be remedied;

(c) exercising its power under rule 8 (striking out a party's case); or

(d) except in mental health cases, restricting a party's participation in the proceedings. …

Evidence and submissions

15. …

… (2A) In an asylum case or an immigration case—

(a) if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal, that party must send or deliver a notice to the Upper Tribunal and any other party—

(i) indicating the nature of the evidence; and

(ii) explaining why it was not submitted to the First-tier Tribunal; and

(b) when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal must have regard to whether there has been unreasonable delay in producing that evidence.