Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/10055/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 July 2016	**On 20 July 2016**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

EVAN GRANT
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr P. Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica who was born on 14 May 1974. He is now aged 42. He appeals against the determination of First-tier Tribunal Judge Keane promulgated on 7 August 2015 dismissing the appellant's appeal against the decision made by the Secretary of State on 31 October 2014 to make a deportation order against him as a result of his criminal offending.

2. The appellant arrived in the United Kingdom on 11 October 1981, having been granted indefinite leave to enter in order to join his mother. Over the years, the appellant has acquired 10 convictions for 26 offences stretching over the period October 1989 to 20 November 2013.

3. The conviction that triggered his appeal consisted of seven breaches of a non-molestation order prohibiting him contacting his former partner, N. He was sentenced to 26 weeks imprisonment. It followed a long history of offending including a conviction at the Central Criminal Court on 26 September 1997 where he was sentenced to 4 years imprisonment for armed robbery committed in June 1996. The offence involved stealing cash from a female victim having threatened her with a sawn-off shotgun. Concurrent sentences were imposed for possession of a firearm. On 23 May 2009 he was involved in the attempted murder and robbery of two elderly females.

4. The appellant did not attend the hearing of his appeal at Taylor House on 22 July 2015, nor did he instruct a representative to appear on his behalf. The Judge had before him information relating to his history of offending. He also had information that the appellant has six children in the United Kingdom whose ages range from 6 to 18. He claimed that he was bisexual by orientation.

5. In the course of the hearing, Detective Constable Burton characterised the appellant as an exceptionally dangerous individual prepared to act violently and to prey upon the weak and vulnerable. He gave graphic details of offending which took place in the course of a single day in which he and an accomplice robbed four individuals in four separate incidents.

6. Unsurprisingly, the First-tier Tribunal Judge concluded that the appellant was a particularly dangerous criminal and likely to commit serious crimes given the liberty to do so. No evidence was provided as to be circumstances of his relationship with his many children, nor any attendant risk by reason of his unsubstantiated clam to be bisexual.. There was an overwhelming public interest in deporting the appellant and that has not diminished by anything that has since intervened. Indeed, his cynical attempts to play the system as I shall later describe render it even more expedient to remove him.

7. The appellant instructed Ansah Solicitors to act for him in an appeal to the Upper Tribunal. It is hardly conceivable that there might be a viable appeal against the merits of his deportation because the history of offending could only result in his removal. However, it was asserted in the grounds of appeal that the applicant was not aware of the hearing date and that he did not receive any notification from the Tribunal in respect of hearing from his representative, JCWI. His fresh solicitors relied upon a letter written by JCWI which appeared to support the assertion. The appellant had provided no personal address for service. Documents were served on his representative, JCWI. They had sent letters to the appellant including the notice of hearing which had been returned by Royal Mail marked ‘not called for’. It was claimed that the appellant had provided the immigration services with his new address as he was reporting regularly. It is also said he forwarded his new address to the previous representatives and they did nothing with it.

The allegations contained in the grounds of appeal were that the appellant was the unfortunate victim of serious dereliction of duty both on the part of the Home Office and JCWI.

8. Lawful service of a notice of hearing upon an appellant who faces deportation is fundamental to the rule of law. The right to attend a hearing is so basic that, even if it appears the appeal has no merit, a determination made unlawfully in the absence of the appellant will be, or is likely to be, set aside.

9. I therefore gave directions that JCWI were to answer the allegations that have been made against them.

10. Three witness statements have been provided to explain events. Ms Nicola Burgess, employed as the supervising Solicitor of JCWI, described how she attended on the appellant at his place of detention in October 2014 at which time the appellant was eligible for legal aid. He was then granted bail and was requested to provide proof of means in order to confirm his financial eligibility of the legal aid. An appointment was made which the appellant failed to attend. Following the decision to deport him, however, he attended their offices and instructed that an appeal was launched without, at that time, the appellant having confirmed his means. JCWI attended a hearing on 15 December 2014 on the appellant's promise that he would provide proof of means. There then followed a series of missed appointments such that by 20 May 2015 on the hearing of the case management review, JCWI felt compelled to attend in order to safeguard the appellant's position. There then followed other failed appointments. The appellant failed to provide the requested proof of means.

11. The matter was set down for hearing on 22-23 July 2015. The appellant was contacted at an address some six weeks before the hearing but the appellant failed to respond or provide proof of means. Understandably, JCWI were unable to continue to represent the appellant. Furthermore, he failed to notify JCWI that his uncle was no longer supporting him and that he had changed address. JCWI did as best as they could by seeking to notify the appellant at the latest address provided to them by the respondent. As there was no response, JCWI could do no other than cease to act for the appellant. They wrote to that effect to the appellant in the most emphatic terms set out in paragraph 14 of Ms Burgess' witness statement. JCWI notified the Tribunal that they were no longer acting. An attempt was made to deliver a letter by special delivery prior to the hearing.

12. On 12 February 2016 JCWI wrote to Ansah Solicitors:

> While we do have a file of your client's papers, he was not formally a client of ours as he did not provide us with either proof of means or instructions. We forwarded all documentation to the address he provided by recorded delivery. This was returned to us by Royal Mail marked 'not called for'.

13. Thereafter Ms Burgess explains that notwithstanding numerous attempts to seek from the appellant proof of means, the appellant failed to comply. The two attendances before the Tribunal were conducted without payment but in order to safeguard the appellant's position. Until they had secured legal aid, they were not and could not formally act on his behalf. I had thought that the special delivery package sent to the appellant in time for him to respond had been returned 'not called for' prior to the hearing. Ms Burgess however tells me that this was not until 5 September 2015 as confirmed by markings on the envelope. Hence, JCWI were in no position to inform the Tribunal prior to the hearing that there had been no effective service. I am quite satisfied that the blame for the appellant's failure to attend the hearing was not the result of improper conduct on the part of JCWI.

14. I caused a copy of the witness statements from JCWI and their attachments to be sent to the appellant and Ansah Solicitors. Neither has responded to their contents. The grounds of appeal are without any foundation. I directed that a letter be sent to JCWI indicating that I no longer required their attendance at the hearing.

15. The hearing on 11 July 2016, was, unusually, to be an oral hearing to determine the application in the Upper Tribunal for permission to appeal and (if granted) the substantive hearing of the appeal – a 'rolled-up' hearing. I was satisfied that the appellant's solicitors were served by first class post on 10 June 2016. They did not attend. I am also satisfied that the appellant himself was notified of the hearing by first class post on the same day.

16. The grounds of appeal are simply untrue. There was no procedural unfairness. This is the only ground of appeal relied upon. There was not, and there could not be, a viable challenge to the substance of the appeal.

DECISION

(a) I refuse permission to appeal to the Upper Tribunal.
(b) Had I decided to grant permission, I would have dismissed the appeal for the reasons given. The Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
15 July 2016