



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/12464/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8<sup>th</sup> March 2019**

**Decision &  
Promulgated  
On 16<sup>th</sup> April 2019**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**I A**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss R Popal instructed by Barnes Harrild & Dyer Solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria born in June 1971. She appeals against the decision of First-tier Tribunal Judge Chana dismissing her appeal against removal following the refusal of her asylum claim.

**The Appellant's immigration history**

2. The Appellant entered the UK on 27 July 2016 with a visit visa valid for six months. She remained after her visa expired in January 2007 and in June 2011 was issued with notice of liability to removal as an overstayer. The

Appellant applied for leave to remain on Article 8 medical grounds. Her application was refused on 28 April 2014.

3. The Appellant claimed asylum on 27 May 2014. Her appeal against the refusal dated 9 September 2015 came before First-tier Tribunal Judge Raymond on 18 August 2016. Judge Raymond dismissed the Appellant's appeal however his decision was set aside by Upper Tribunal Judge Jackson on the ground that the judge had erred in law in failing to treat the Appellant as a vulnerable witness. The appeal was remitted to the First-tier Tribunal for hearing de novo and came before Judge Chana.

### **Grounds of appeal**

4. There are eight grounds of appeal:
  - (1) the refusal of an adjournment was unfair;
  - (2) the judge failed to take into account Home Office guidance when assessing credibility in rejecting the Appellant's claim to have been forcibly married;
  - (3) the judge failed to properly record the Appellant's oral evidence;
  - (4) the judge's findings that the Appellant came to the UK for medical treatment for HIV and as an economic migrant was not open to her on the evidence before her;
  - (5) the judge failed to take into account the risk of suicide when assessing Article 3;
  - (6) the judge failed to properly consider the expert evidence in the round and failed to give adequate reasons for attaching no weight to it;
  - (7) the decision contained a number of factual errors which cumulatively had given rise to an error of law and demonstrated a lack of anxious scrutiny; and
  - (8) the judge pressured the Appellant into giving evidence and the Appellant was deprived of a fair hearing.
5. Permission to appeal was granted by Upper Tribunal Judge McWilliam on the grounds that it was arguable that the refusal of an adjournment was unfair because the judge failed to take into account that an adjournment to obtain a psychiatric report may assist with the assessment of risk on return and the Appellant's account generally. Judge McWilliam granted permission on all grounds on 7 February 2019.

### **Rule 24 response**

6. In the Rule 24 response, the Respondent submitted that there was no request to adjourn made by the Appellant's solicitors prior to the hearing and there had been ample time for a psychiatric report to be commissioned. Further the judge was aware that the case had been remitted from the Upper Tribunal in May 2017 and the Appellant was to be treated as a vulnerable witness. The judge also noted the evidence that

legal aid funding was allowed for one expert and the Appellant's solicitors used such funding to commission a country expert report.

7. The reasons given for rejecting the Appellant's forced marriage were open to the judge on the evidence before her. The country expert evidence was considered and the judge found that it was based on the Appellant's latest evidence, which was completely at odds with her asylum interview. The judge assessed the credibility of the Appellant treating her as a vulnerable witness and found for many reasons that her claim was not credible. It was submitted that it was difficult to see how a mental health report could in any way dispel the clear inconsistencies in the evidence. In any event the Appellant could receive family support in Nigeria and the UK, and could access treatment for her medical needs.

## **Appellant's submissions**

### Ground 1

8. Ms Popal relied on the grounds and submitted that there were serious concerns for the Appellant's mental health which were disclosed in the letter from Body & Soul dated 27 July 2018: "As a result of her traumatic past and precarious immigration status [the Appellant] suffers from severe anxiety. Our Casework Team has supported her through her asylum application in addition to the legal support she has had as [the Appellant] has been fearful of the process and the various court hearings she has had to attend. [The Appellant] has also had access to complementary therapies available at Body & Soul including Indian head massages, Reiki and Craniosacral therapy. Due to [the Appellant] suffering from depression and disturbed sleep patterns these therapies really helped her to relax, reduce her stress levels and improve her wellbeing".
9. Ms Popal submitted that there was an application for an adjournment to obtain a psychiatric report because this went to the heart of the Appellant's claim namely the risk on return following HD (trafficked women Nigeria) CG [2016] UKUT 00545 (IAC). The Appellant's solicitors had been instructed one month before the hearing and time was limited. This was a legally aid case. The judge found that a psychiatric report went to vulnerability, but failed to appreciate the risk of exploitation on return to Nigeria. The Respondent, at the hearing, did not accept the Appellant's mental health condition.
10. The judge did not refer to the Appellant's mental health condition although she accepted the Appellant was a vulnerable witness. It was the Appellant's case that she has severe depression, from the trauma she has suffered, and HIV and she was accessing counselling. The Appellant's mental health condition and her complex medical condition meant that a psychiatric report would be relevant to risk on return. In refusing to grant the adjournment the judge failed to address the delay, the solicitor's recent instructions and legal aid funding, and the risk on return. None of

the matters raised in the application for the adjournment formed part of the judge's reasons for refusing the adjournment.

11. Ms Popal relied on paragraph 5 of her grounds which stated that the Tribunal would be required to make an assessment as to whether the Appellant has any discernible characteristics of vulnerability with mental health being a discernible characteristic. A medico legal report would therefore be highly relevant when assessing the Appellant's risk on return. The judge refused the adjournment stating at paragraph 26 that "I was of the view that it would be fair to the Appellant to continue with the appeal today without a medical report. I agreed with the Home Office Presenting Officer that there is no indication as to when the funding for the medical report would be forthcoming. I was also concerned for the public interest in that this appeal has been pending for a very long time and therefore the Appellant had enough time to provide a medical report given that it is at remittal."
12. Ms Popal submitted that the reasons given did not address the matters raised by the Appellant and therefore the refusal of the adjournment was not in accordance with Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) and the Appellant had been deprived of a fair hearing.

#### Ground 2

13. Ms Popal submitted that the Appellant had failed to mention her forced marriage because she was ashamed which was directly linked to the traumas she had suffered including gang rape. The judge rejected the Appellant's claim to have been forcibly married without a basic understanding from an expert on whether the traumas had manifested themselves in the Appellant's mental health condition and whether it had affected her ability to disclose. It was necessary to have a report from an expert on how the traumas had affected the Appellant's ability to disclose her claim.
14. Further, the judge had failed to refer to the Respondent's policy guidance which states:
  - "5.5 Underlying Factors: A true account is not always detailed or consistent in every detail. Caseworkers must take into account any personal factors which may explain why a claimant's testimony might be inconsistent with other evidence, lacking detail or there has been late disclosure of evidence. These factors may include, the list is not exhaustive, age, gender, variations in the capacity of human memory, physical and mental health, emotional trauma, lack of education, social status and cultural traditions, feelings of shame, painful memories particularly those of a sexual nature."

“7.8 Gender: Gender based harm such as rape, sexual assault, domestic violence and the prospect of forced marriage, female genital mutilation or threats of honour crimes are unlikely to have documentary evidence associated with them. Greater reliance will therefore need to be placed on oral testimony and consideration of the benefit of the doubt. The shame and trauma that a person has experienced as a result of gender based violence may however result in their evidence being less than complete, coherent or consistent. It may also mean that they delay disclosure.”

15. The judge’s reasons for rejecting the forced marriage (on the grounds that the Appellant had disclosed rape by an unknown man but not rape by her husband) were irrational and failed to take account of the policy guidance.

#### Grounds 3 and 7

16. Ms submitted the judge had recorded a number of facts incorrectly. She criticised the judge at paragraph 36 in failing to properly record the Appellant’s answers in re-examination and relied on her note of the proceedings as follows:

What is the stigma with mental health?

*My father younger brother has a mental health. It is something experienced, he was locked into the room, that is the fear that I have, I don’t want to be locked too.*

Do you think the police could protect you?

*In that country no.*

Were the police able to protect your uncle?

*No, no, no they didn’t.*

How do you think you will be treated with mental health and HIV?

*Nobody can help me. Moreover if I disclose this to my dad I don’t think even my daughter there is no way they will accept me. The stigma is still there.*

17. Further, the judge had failed to fully set out the Appellant’s case in paragraphs 14 to 22 because she failed to mention that her family had forced her to marry after her rape. The judge referred to the Appellant’s younger brother when it was in fact her father’s younger brother. At paragraphs 37 and 38 the judge failed to appreciate that forced marriage could be a form of trafficking and the judge’s reasoning at paragraph 65, that the Appellant was an older lady with HIV nobody would want to traffic her, demonstrated this.

#### Grounds 4 and 5

18. Ms Popal submitted the judge’s conclusion at paragraph 67 that the Appellant came to the UK for medical treatment for HIV was contrary to the evidence before her. The Appellant came to the UK in 2006 and was not diagnosed with HIV until 2008. This credibility finding was particularly damaging and should not be preserved. The judge’s conclusion that the Appellant was a health tourist was perverse and demonstrated the judge

had failed to give the Appellant's claim anxious scrutiny. As a result, the Appellant's Article 3 claim was not adequately considered. Ms Popal was not able to point to the disclosure of a suicide risk and it was not relied on in the skeleton argument.

#### Ground 6

19. Ms Popal submitted that the judge erred in law in failing to attach weight to the expert report on the basis that the expert had relied on the truth of the Appellant's account and the judge had found that the Appellant's evidence of forced marriage was not credible. The judge had failed to consider all the evidence in the round and her reason for attaching no weight to the expert evidence amounted to a material error of law. Had the judge properly considered the expert report she could have come to a different conclusion.

#### Ground 8

20. The Appellant was extremely unwell on the day of the hearing. She was in remission from cervical cancer and continued to bleed heavily on a daily basis. Taking into account all her other ailments she was very vulnerable on the day of the hearing and Ms Popal did not intend to call her as a witness. However, the judge gently persuaded the Appellant to give evidence and her note reflects this friction at the hearing. The judge said: "Will you confirm that you were happy throughout, able to give evidence you were happy?" The client nodded whilst looking down and silently crying. The client was clearly distressed.
21. Ms Popal submitted that it was inappropriate for the judge to speak directly to the Appellant and the Appellant's response that she would try to give evidence conflicted with the instructions given to counsel earlier. The Appellant had not slept for three nights. She was tendered for cross-examination and questioned by the judge. The judge's question in relation to the stigma attached to HIV was inappropriate. The judge had used her position to persuade the Appellant to give evidence and then asked the Appellant questions without a full understanding of the Appellant's mental health. Although the hearing was a short one lasting only an hour, the Appellant was in tears and shaking at the end.
22. The main concern was that the Appellant had not had a fair hearing. She was a vulnerable witness and that was the reason the appeal had been remitted to the First-tier Tribunal. Ms Popal raised her concern at the hearing that the Appellant should not give evidence, which was not taken into consideration. Ms Popal accepted that there was nothing untoward in the questions asked, save for the loaded question in relation to HIV. However, without a psychiatric report, because the judge refused the adjournment to obtain one, it was not possible to judge how this had affected the Appellant's ability to give evidence. The Appellant was a very vulnerable witness and it was not appropriate to speak to her or persuade her to give evidence.
23. The Appellant's HIV was not currently treated by generic drugs and she was on a special cocktail. The judge's conclusion at paragraph 45 that there are many people with HIV in Nigeria and free drugs are given by

humanitarian organisations was not supported by the material before the judge.

### **Respondent's submissions**

24. Mr Melvin relied on the Rule 24 response and submitted that the eight grounds were a litany of a forensic examination which did not amount to a material error of law. In relation to ground 8, he submitted that the judge did not persuade the Appellant to give evidence. Ms Popal made no complaint at the hearing and it was only raised after the judge made negative credibility findings. If the Appellant sought to rely on this ground, there should be a witness statement from counsel representing her and the judge should be given an opportunity to comment. Mr Melvin submitted that I should attach little weight to this accusation.
25. Mr Melvin submitted that the judge looked at the appeal in the round. The Appellant was working in the UK and sending money to her father and daughter. The judge concluded that they would assist her on return. On those facts the case could not go very far. The Appellant came to the UK and almost immediately accepted medical treatment. This asylum claim came after an Article 3 medical claim was dismissed. This was a last-ditch attempt to remain in the UK and the Appellant's representatives were trying to build a case on Article 3 and 8 when the case could not reach that level. The Appellant had family members who could support her and she would not be at risk on return.
26. In relation to the adjournment, the legal aid board had advised the Appellant's solicitors that funding would be given for one report. They chose an expert report rather than a medical report. It could not be the case, where counsel representing the Appellant at the hearing thought the appeal would benefit from a psychiatric report, to raise it in the hope of a successful outcome. The judge had given adequate reasons for refusing the adjournment. At that time it was not known if it was possible to get funding and it was not known how it would affect the outcome of the appeal.
27. The Appellant had not previously raised the claim to have been forcibly married. The judge considered this claim and found that it did not fit in with the Appellant's earlier evidence. It was open to the judge to come to this finding and it was not suggested that this finding could not be relied upon. The factual errors identified were not material. The Home Office policy relied on by the Appellant was a policy for caseworkers in dealing with a claim. The judge was not obliged to follow it. The judge's finding in relation to trafficking at paragraphs 60 to 63 were open to her on the evidence before her.
28. Mr Melvin submitted that the Appellant had family support. She had a daughter and father in Nigeria. The judge had rejected her evidence that her ex-husband would cause her harm and this finding was not challenged in the grounds. There was no unfairness caused by the Appellant giving

evidence and the appeal would not be taken any further by expert medical evidence. In refusing the adjournment the judge considered the evidence that the Appellant was working and sending money to her family in Nigeria. She had family support. Even if an expert report, stating that the Appellant was depressed and suffered from anxiety, had been obtained the findings on the Appellant's mental health did not assist her as she would be returning to Nigeria with family support. The Appellant had chosen to submit expert country evidence and medical evidence would not make any difference to the appeal given family support. The judge found that the Appellant had ample time to obtain a psychiatric report, but in any event, it would make no difference to the outcome of the appeal.

29. Mr Melvin submitted, if there was an error of law, the appeal should remain in the Upper Tribunal. The Appellant already had the benefit of three appeals before the First-tier Tribunal. Mr Melvin submitted that the Appellant would not be called to give evidence and therefore the appeal could remain in the Upper Tribunal.

### **Appellant's response**

30. Ms Popal submitted that there was no accusation levelled at the judge, but the course adopted by the judge held led to unfairness. The Appellant was accessing medical treatment two years after her arrival in the UK. It was not open to the judge to conclude that she was a medical tourist on the material before her. Further, it was not the case that the Appellant had been trafficked to the UK but that she had been trafficked within Nigeria. There was a lack of anxious scrutiny on the part of the judge. The judge had made perverse findings and not understood the Appellant's case. The policy guidance raised in oral submissions, although not in the bundle, was published guidance and was part of the tools available to the judge and should have been considered in the judge's decision.
31. Ms Popal submitted that the Appellant did not have family support because her father had forced her into marriage. This was dealt with in the expert report and supported by the Appellant's evidence in her witness statement:
9. Because of my pregnancy my family gave me to an man to take as his wife. His name was JE. I don't know his exact age but he was older than me. He owned land and had a farm. I did not want to marry him but I was forced to. He raped me many times and made me work for him in his house and on his farm.
  10. My daughter T was born on 25 September 1989. My husband continued to treat me very badly. He beat me and forced me to have sex with him just one week after I had given birth. I tried to talk to my family about my problems but they wouldn't listen.
  11. I could not stay with my husband. I took my daughter and ran away back to Lagos. When I arrived my father was angry with me. I told him I couldn't handle the beatings and abuse any more but he said I should not have run away. He lived in just one room and he told me that I couldn't stay there with my baby."



32. There was an absence of family support and no reference to the Appellant's evidence in the judge's decision. The judge had to balance this evidence with the other evidence available and had failed to do so. Paragraph 45 was not a factual mistake but it did not chime with the other evidence before the judge. The case should be remitted to the First-tier Tribunal because there were so many errors and mistakes that it was not possible to cherry pick the findings of fact. The Appellant did not have a fair hearing and so should not be deprived of a second appeal in which she may give evidence.

## **Discussion and conclusions**

### **Ground 1 - refusal of the adjournment**

33. I find that the refusal of an adjournment was not unfair for the following reasons. Judge Chana took into account that the Appellant had only instructed solicitors a month before the hearing and her claim was legally aided. There had therefore been limited time to obtain a medical report. At paragraph 23 the judge set out Ms Popal's reasons for applying for an adjournment including a letter from a specialist consultant that the Appellant suffered from severe depression and was a victim of rape. The judge was well aware of the serious concerns and the effect the Appellant's mental health may have on her ability to give evidence.
34. There was no indication when funding for a medical report would be forthcoming and the Appellant had ample opportunity to obtain a medical report when the case was remitted. Her solicitors had chosen to obtain a country expert report instead. This report dealt with the effect of the Appellant's mental health on her ability to talk about her experiences and the risk on return. A further report was not necessary to enable the judge to deal fairly and justly with Appellant's claim. I find that the judge did take into account the Appellant's reasons for applying for an adjournment and properly directed herself following Nwaigwe at paragraph 25.
35. The judge's failure to mention that one of the reasons given for obtaining a medical report was to assess risk on return following HD was not material because the judge treated the Appellant as a vulnerable witness throughout and accepted the evidence in the letter that she suffered from severe depression and anxiety. Applying the country guidance case of HD, the Appellant's vulnerability would not put her at risk because she had the support of her father and her daughter. The Appellant accepted she was still in contact with them and was sending them money. Accordingly, I find that the refusal of an adjournment was not unfair and the judge's reasons given for refusing it were adequate.

### **Ground 2 - failure to apply policy in assessing credibility**

36. The judge treated the Appellant as a vulnerable witness and the questions asked complied with relevant guidance. It was not suggested that the

judge had failed to treat the Appellant as a vulnerable witness during the hearing. It was apparent from Ms Popal's own note of the proceedings that the questions asked complied with the guidance and the Appellant was not re-traumatised. Save for the stigma attached to HIV, Ms Popal did not criticise the form of the questions asked.

37. Instead Ms Popal submitted that the judge failed to have regard to the entirety of the Appellant's claim in failing to apply Home Office guidance when assessing the Appellant's failure to disclose her forced marriage and abuse in her asylum interview. The Appellant relied on this in her statement dated 26 July 2018. The Appellant's explanation was that she was ashamed because the person who interviewed her was a man.
38. It was clear from the previous decision of First-tier Tribunal of Judge Raymond dated 16 December 2016 that the Appellant raised this issue prior to that hearing. The Appellant had ample opportunity and the benefit of legal representation to explain why she failed to mention this in her asylum interview. The judge considered her explanation and rejected it with adequate reasons. The Appellant had given full answers to all the questions put to her in her screening interview and her asylum interview but failed to mention her forced marriage and rape by her husband. The Appellant was able to raise rape by an unknown person and therefore it was not credible, even given her vulnerability, that she would fail to mention her forced marriage and abuse within that marriage. The judge's rejection of the Appellant's claim to have been forcibly married was open to the judge on the evidence before her. The failure to specifically refer to Home Office policy did not amount to an error of law and the judge had not acted unfairly in assessing the Appellant's credibility.

Grounds 3 and 7 - failure to accurately record evidence and factual errors.

39. I am not satisfied that the judge's record of the evidence was so incorrect that it disclosed a misunderstanding of the Appellant's claim. It is apparent from reading the decision as a whole that the judge was well aware seeing her father's younger brother locked in a room on account of his mental illness had traumatised the Appellant. The judge's reference to the Appellant's younger brother was not material. The judge appreciated the effect this had on the Appellant and her fear on return. The judge did note, however, that the Appellant's evidence in her asylum interview was that her father had left money for his younger brother to obtain treatment for his mental illness. Her father had not abandoned him.
40. In addition, the Appellant's father had not ill-treated her mother because of her HIV. The evidence before the judge showed that the Appellant's father would not ill-treat the Appellant on account of her mental illness or her HIV condition. The Appellant's daughter was now 26 years old and could also provide support. The fact that her daughter had dropped out of school rather than finished her education was not material. The Appellant's evidence was that she had a close relationship with her father. She was in contact with her family and was sending them money from the UK.

41. There were no significant errors of fact which would give rise to an error of law even if taken cumulatively. Many of the alleged errors set out at paragraph 37 of the grounds were not factual errors but criticisms of the judge's conclusions.

#### Ground 4 - medical treatment

42. The judge's finding that the Appellant came to the UK for medical treatment comes at the end of her assessment of the Appellant's evidence in relation to her asylum claim. This finding was not material to the judge's conclusions that the Appellant had not been subjected to forced marriage and, applying the country guidance in HD, she would not be at risk on return to Nigeria.

#### Ground 5 - suicide risk and Article 3

43. On the facts, the Appellant's medical condition did not reach the high threshold of Article 3. The Appellant's evidence was that she felt suicidal on arriving in the UK and prior to the last appeal hearing before 2014. Ms Popal was unable to point to evidence which would support her submission that the judge had erred in law in failing to consider suicide.
44. Dr Nwogu accepted at paragraph 131 of the country expert report that: "As I have noted at the overview section, while [sic] ARV drugs for HIV positive persons (amongst other things) is supposed to be free. However, access is limited by poor management, poor maintenance facilities, poor record keeping and corruption since most of these services elude the people for whom they were designed for." Therefore, the evidence that the Appellant would have access to HIV treatment comes from her own expert report, although it was accepted that those who needed treatment were not always receiving it. The submission was made that the Appellant is on a special cocktail of drugs but there was nothing before the judge to show that because she would be unable to obtain such drugs she would be at risk of treatment in breach of Article 3 on return to Nigeria.

#### Ground 6 - expert report

45. The expert, Dr Nwogu, was asked, *inter alia*, to give an opinion on whether the Appellant's account of forced marriage was supported by the objective evidence. The judge gave adequate reasons for why she attached little weight to this opinion and why she rejected that part of the Appellant's claim. In opining on risk on return, the expert proceeds on the basis that the Appellant would be returning to Nigeria without any family support. The judge was entitled to attach little weight to this opinion given that it was the Appellant's evidence that she was still in contact with her family and was sending money to them. The judge's finding that the Appellant had the support of her family was open to the judge on the evidence before her.

46. There was no misapplication of Mibanga. The judge considered the expert report in the light of the Appellant's evidence. The majority of the expert report did not support the initial account given by the Appellant in her asylum interview.
47. The judge's finding that the Appellant was not trafficked into the UK because she came as a visitor was not a misunderstanding of the Appellant's claim. The Appellant's claim to have been trafficked was based on her forced marriage. Having rejected the Appellant's claim to have been forcibly married, the judge was entitled to find that there was no evidence that the Appellant had been trafficked in the past and no reason to think that she would be trafficked in the future. The Appellant could return to her 26 year old daughter who could provide her with the necessary support.

#### Ground 8 - unfairness

48. It was a matter for counsel whether the Appellant was called to give evidence notwithstanding the judge's opinion that it would assist her. The Appellant was not obliged to give evidence and it would have been open to Ms Popal not to call her. The fact that the Appellant did give evidence did not amount to an error of law. The oral evidence did not give rise to any further inconsistencies upon which the judge relied. I appreciate that the Appellant found it very distressing, but it was a matter for counsel whether she was called and tendered for cross-examination.

#### Summary of conclusions

49. Accordingly, I find that there was no material error of law in the judge's decision of 6 September 2018. The judge's finding that the Appellant would have family support on return to Nigeria was open to her on the evidence before her. Applying country guidance the Appellant would not be at risk on return. A further medical report would not have affected the outcome of the appeal. Any vulnerability caused by severe depression and anxiety would not put the Appellant at risk because she could return to her father and her daughter. The judge considered all relevant matters and her findings were open to her on the evidence before her. There was no material error of law in and I dismiss the Appellant's appeal.

#### **Notice of Decision**

#### **Appeal is dismissed**

#### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to**

**comply with this direction could lead to contempt of court proceedings.**

**J Frances**

Signed

Date: 8 April 2019

Upper Tribunal Judge Frances

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

**J Frances**

Signed

Date: 8 April 2019

Upper Tribunal Judge Frances