Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00273/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 June 2019	**On 24th July 2019**

Before

UPPER TRIBUNAL JUDGE MCWILLIAM
UPPER TRIBUNAL JUDGE BLUNDELL

Between

DT
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Moriarty, instructed by Lex Sterling Solicitors
For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Jamaican national who was born on 13 November 1990. He appeals against a decision which was made by the Secretary of State on 20 December 2017, refusing his claim that it would be contrary to Article 8 ECHR to deport him from the United Kingdom.

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Immigration History

2. The appellant arrived in the United Kingdom as an eleven year old child, on 20 June 2002. He accompanied his grandmother and his cousin. They sought leave to enter at Heathrow Airport. Leave to enter was refused but they were given Temporary Admission until 23 June 2002, when it was intended to return them to Jamaica. They failed to attend for that flight, however, and it was not until 14 January 2011 that the appellant was next encountered by the authorities.

3. The appellant came to light in January 2011 because he was arrested for affray. No criminal charges were pursued but it was the appellant's arrest which prompted an application to regularise his status in the UK. That application was made on 17 January 2011, and relied on the appellant's relationships in the UK. In particular, he relied on his relationships with his mother (IB), his half-brother (DB) and his then partner (DA). That application was refused on 22 February 2011.

4. The appellant appealed to the First-tier Tribunal. His appeal was heard on 7 June 2011 and allowed by Judge Paul on Article 8 ECHR grounds in a decision which was sent to the parties on 20 June 2011. In reaching that conclusion, Judge Paul attached particular significance to the fact that the appellant's mother was a single parent who had limited leave under the domestic violence concession and to whom the appellant 'clearly provides both support and sustenance'. He did not regard the appellant's criminal convictions (to which we will turn below) as significant. He noted that the appellant had spent much of his life in the UK and concluded that it would be disproportionate to return the appellant to Jamaica. He considered that the proper course would be to grant the appellant leave to remain in line with his mother. The respondent did not appeal against this decision, and the appellant was granted leave to enter from 8 July 2011 to 8 January 2012.

5. On 16 December 2011, the appellant applied for leave to remain, again on Article 8 ECHR grounds. The application was refused on 22 November 2012 but the respondent was unable to serve the decision. Having failed to do so, the respondent decided to reconsider the decision and it was reversed. On 19 December 2013, the appellant was granted leave to remain on Article 8 ECHR grounds until 18 June 2015.

6. On 10 June 2015, the appellant applied for further leave to remain. Criminal proceedings against the appellant were instigated at around that time, however, and a decision on the claim was postponed to await the outcome of those proceedings. As a result of his subsequent conviction, the appellant was served with a notice indicating that the respondent intended

to make a deportation order. His solicitors replied on 30 May 2017, submitting that his deportation would be contrary to Article 8 ECHR.

Offending History

7. The appellant received a police warning for robbery on 6 December 2004. He was convicted of robbery, following a Guilty plea, at Inner London Crown Court on 18 July 2007. He was sentenced to an intensive supervision order for 12 months and a curfew with electronic monitoring for 3 months.

8. The appellant received a caution for possessing an offensive weapon in a public place (in Leicestershire) on 28 September 2010. On 2 September 2016, at the Crown Court in Southampton, the appellant was convicted after a trial of conspiracy to supply drugs of Class A (heroin and crack cocaine) and conspiracy to blackmail. HHJ Henry sentenced the appellant to six years' imprisonment for the first offence and three years' imprisonment (concurrent) for the second. In his sentencing remarks, which are reproduced in full in the respondent's bundle, HHJ Henry explained the way in which the offences had been committed in some detail. We take what follows from those remarks.

9. A couple in the Southampton area, both of whom were drug users, were introduced to a drug dealer who was known as Mike. He was based in London. He supplied this couple with class A drugs over a period of months. The drugs were supplied 'on tick' and by April 2015 they owed an appreciable sum. On 16 April 2015, the drug dealer travelled from London to Worthing by train. He met the appellant there. The appellant was also known to the drug users, as "Max". The two men were driven from Worthing to Southampton by a woman called Jane. They went to the drug users' flat and put pressure on the male drug user to work off the debt, by dealing drugs for them and by allowing the flat to be used as a base. 'Mike' stayed there overnight and for much of the following day, whilst the appellant and Jane returned to Worthing and came back the following day. The appellant and 'Mike' then left the property in Southampton with Jane. Upon doing so, they left drugs for the users to consume and to supply to others. They did not sell any of the drugs, however, and consumed all of what had been left. They then failed to answer telephone calls from the appellant and Mike. This led the appellant to send a message to the female user, saying "You two don't want to do that, so think before you act".

10. On 21 April 2015, the appellant was driven to Southampton again by Jane. The drug users were in bed in their flat. The appellant kicked the door open and surprised them. The appellant had with him a tyre iron or wheel brace from the car which he concealed under his jacket, giving the

impression that he had a gun. He threatened to 'smoke' the female drug user and kept fiddling with the gun in order to ensure that they both understood the seriousness of their position. Whilst the appellant was in the flat, the female drug user went into the bathroom and called the police. A transcript of the call was played to the jury and HHJ Henry recorded that there was no doubt that she was 'absolutely terrified'. He went on to note that for a drug user to call the police, 'something very serious must have gone on'. The dealer known as Mike was not present but there was a point during the incident when the appellant passed a telephone to the male drug user so that 'Mike' could make further threats.

11. The appellant and 'Mike' were sentenced by HHJ Henry on the basis that they were attempting to set up 'some sort of drugs line in Southampton' and that they both had a significant role in the conspiracy. Both of them performed an operational or management function in the chain, which involved others by pressure, intimidation or reward. They were motivated by financial gain and had an awareness of the scale of the operation, which they were trying to expand. Whilst the drugs had not made their way onto the streets, that had been the intention. The appellant and his co-defendant had travelled significant distances and had gone to lengths to enforce the debt and, for the appellant's part, to threaten them with what was thought to be a firearm. Notwithstanding the mitigation advanced, which included the appellant's relationship with his mother and his half-brother DB, the least sentence which could be imposed was six years' imprisonment in respect of the drugs conspiracy and three years' concurrent imprisonment on the blackmail conspiracy. Jane, the third defendant, was accepted to be in a different position from the two male defendants and received a considerably shorter sentence of imprisonment, suspended for two years.

12. The appellant was advised in writing by trial counsel (Mr Onslow) that his conviction was sound and that the sentence was appropriate. In the event, no appeal was brought against the conviction or the sentence.

Human Rights Claim

13. In response to the respondent's notice of intention to deport the appellant, detailed representations were made by the appellant's solicitors on 30 May 2017. It was submitted that the appellant had been living with his grandparents in Jamaica and had been brought to the UK by his grandmother after his grandfather had passed away. The appellant had been left here with his mother, whilst his grandmother and his cousin both emigrated to the USA. The appellant had attended school in South East London whilst living with his mother, who was his sole carer. The appellant had no relationship with his own father but he had a close relationship with his mother's husband, EB. On 4 October 2005 (three years

after the appellant's arrival in the UK) the appellant's mother and EB had their only child together, DB. Sadly, EB dies of malaria on 12 December 2012. The bond between the appellant and DB was consequently very strong, and the latter looked to him as 'elder brother, friend, role model and father'. It was submitted that the appellant's deportation would have a significant effect on DB.

14. The representations stated that the appellant had been in a relationship with DA for ten years. DA had visited the appellant in prison on a number of occasions. They had previously lived together for some time as unmarried partners in a property situated in Leicester. It was submitted that this relationship, as well as the appellant's relationship with his mother and his half-brother should be considered under Article 8 ECHR.

15. The appellant was said to have been working in the building trade from 2010 and had positive references from his employer and other acquaintances. It was submitted that the appellant would not commit any further offences and that, taking into account the factors in Boultif v Switzerland [2001] ECHR 497, the appellant's deportation would be contrary to Article 8 ECHR. Particular significance was attached to the position of DB and it was submitted that the appellant deportation would be strongly contrary to his best interests. A volume of supporting evidence, including a number of documents about DB, were submitted with these representations.

The Respondent's Decision

16. The respondent set out the appellant's immigration and offending history before summarising the representations made on 30 May 2017 and the evidence submitted in support of those representations. The author of the decision analysed the propriety of the appellant's deportation against the framework provided by Part 13 of the Immigration Rules. Because the sentence for the index offence exceeded four years, he concluded that the exceptions in paragraphs 399 and 399A of those Rules could not apply to the appellant and consideration was consequently given to whether there were very compelling circumstances over and above those described in those paragraphs.

17. The respondent did not accept that the appellant enjoyed a genuine and subsisting relationship with his partner, or that she was a British citizen as claimed. Even accepting those facts, the respondent did not accept that it would be unduly harsh for the appellant's partner to remain in the UK without him, or to accompany him to Jamaica.

18. The respondent noted that much of the appellant's time in the UK had been without leave to enter or remain. It was not accepted that he was socially and culturally integrated into the United Kingdom because there was an absence of evidence to establish such integration and because the appellant had committed serious criminal offences, as demonstrated by the remarks of the sentencing judge. It was not accepted that the appellant would encounter very significant obstacles to his integration to Jamaica. English was the language spoken there and even if the appellant had no family in the country, he would be able to live independently using any skills he had acquired in the UK. A degree of hardship was to be expected but it did not reach the threshold of very significant obstacles.

19. The appellant's relationship with his mother was not one which displayed more than normal emotional ties. His younger brother had a diagnosis of adjustment disorder and had been feeling overwhelmed in the wake of his father's death but he was not in immediate need of the appellant's presence. Whilst the appellant's deportation would result in some negative emotional impact, he would remain in the UK with his mother and would receive ongoing support from the NHS. Considering the circumstances as a whole the respondent did not accept that the public interest was outweighed by very compelling circumstances over and above those in paragraphs 399 and 399A of the Rules. The appellant's human rights claim was therefore refused with a right of appeal to the First-tier Tribunal.

Appellate History

20. The appellant gave notice of his appeal on 3 January 2018. Particularised grounds were pleaded, submitting that the appellant's deportation would be contrary to Article 8 ECHR. Then, as now, the appellant submitted principally that he had lived in the UK for many years and would struggle to adjust to life in Jamaica and that his half-brother, who had already suffered bereavement and resulting problems, would be severely affected by his deportation.

21. The appellant's appeal came before Judge Feeney, sitting at Hendon Magistrates' Court, on 16 October 2018. The appellant was represented by counsel, the respondent by a Presenting Officer. Judge Feeney heard oral evidence from the appellant and his mother. In addition to the main bundles from the appellant and the respondent, Judge Feeney was presented with a report about DB from Tamara Licht, a registered Clinical Psychologist and Counselling Psychologist.

22. Judge Feeney set out summaries of the appellant's claim and the respondent's decision at [4]-[8] and [9]-[14] respectively. She set out the documents before her and the legal framework at [15]-[25]. At [26]-[38], she

set out extensive findings of fact regarding the appellant's family life and the circumstances of his half-brother DB. At [37], she expressed a number of criticisms of the report prepared by Ms Licht. At [38], she stated that her main criticism of the report was that it failed to address other possible causes of DB's presentation and whether these might have had an effect on Ms Licht's prognosis for him. Notwithstanding those concerns, she was prepared, at [42], to attach weight to Ms Licht's conclusion that DB had difficulties with his mental health and to accept her conclusion that he was at risk of acting on the suicidal thoughts he had expressed to Ms Licht.

23. At [44]-[58], the judge considered whether there would be very significant obstacles to the appellant's re-integration to Jamaica. That analysis was undertaken with reference to authority, which was cited at [44]-[45]. Notwithstanding a report from a Mr de Noronha, and although the appellant had no family in Jamaica and no home to return to, Judge Feeney considered that the appellant would be able to achieve integration within a reasonable timeframe: [48]. She considered that it might be difficult for the appellant to find work but that this was not an obstacle he could not overcome: [49]-[51]. Considering all relevant matters, including the stigma attached to deportees as recorded in Mr de Noronha's report, Judge Feeney concluded that the appellant would be capable of overcoming the difficulties he would experience on return: [58].

24. At [59]-[68], Judge Feeney undertook a 'balance sheet' assessment of whether the strong public interest in the appellant's deportation was outweighed by matters militating in his favour. Having balanced all relevant considerations, and considered a number of authorities at [63], Judge Feeney concluded that what set the case apart was DB's reaction to the appellant's potential deportation, in that Ms Licht had concluded that he would be at high risk of completed suicide: [64]. At [67], she concluded that the only very compelling circumstance in the case was the effect of the appellant's deportation on DB and, weighing that factor in the balance along with the others she had identified, Judge Feeney concluded that the appellant had demonstrated very compelling circumstances which satisfied paragraph 398 of the Immigration Rules and rendered his deportation disproportionate under Article 8 ECHR.

25. The respondent sought permission to appeal to the Upper Tribunal on 27 November 2018. Although the grounds were expressed over nine paragraphs, the gravamen was summarised at [4]. The Secretary of State there submitted that the judge had failed to explain why, despite the identified shortcomings in the Licht report, it had nevertheless provided the basis on which the judge had ultimately allowed the appeal.

26. The respondent's appeal was heard by the Upper Tribunal (Lang J and UTJ McWilliam) on 5 March 2019. On 27 March 2019, the Upper Tribunal issued a decision in which it concluded that Judge Feeney had materially erred in law as contended in the Secretary of State's grounds of appeal and set aside her decision. The decision is appended, so it suffices for present purposes to record that Lang J wrote at [43] that 'in the light of the weaknesses in Ms Licht's report, identified by the FTT Judge, the substantial reliance which the FTT Judge then placed upon her assessment of the suicide risk in his [sic] conclusions was inadequately explained and perverse.' Judge Feeney's decision having been set aside on that basis, the Upper Tribunal decided to retain the appeal and to remake the decision under s12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

Resumed Hearing

27. In preparation for the resumed hearing, the appellant's solicitors filed and served a supplementary bundle of 34 pages, comprising statements, letters and supporting material. Mr Moriarty filed and served a skeleton argument in advance of the hearing. The respondent also filed and served a skeleton (which was not settled by Mr Jarvis). Mr Moriarty adduced a single additional authority: Garzon [2018] EWCA Civ 1225. Mr Jarvis produced a bundle of authorities on the morning of the hearing without objection from Mr Moriarty.

28. We narrowed the issues with the advocates at the start of the hearing. We were anxious to ensure that we conducted a fully structured enquiry under section 117C, as required by [38] of NA (Pakistan) [2016] EWCA Civ 662; [2017] 1 WLR 207. We reminded the parties that it was still necessary to consider the statutory exceptions to deportation even though the appellant could not satisfy those exceptions as a result of his six-year sentence.

29. Considering s117C(4), Mr Moriarty accepted that the appellant had not been lawfully resident in the United Kingdom for most of his life, but submitted that his length of residence was nevertheless a matter for consideration under s117C(6). Mr Moriarty also indicated that he would not be inviting the Tribunal to go behind Judge Feeney's findings of fact at [44]-[58] of her decision, which related to whether or not there would be very significant obstacles to the appellant's re-integration to Jamaica. Mr Moriarty indicated that he would be inviting the Tribunal to conclude that the appellant is socially and culturally integrated into the United Kingdom. There was no finding on that question in Judge Feeney's decision. We asked him to consider the decision of the Court of Appeal in Binbuga [2019] EWCA Civ 551 in connection with that submission.

30. Mr Moriarty accepted that he was unable to submit that the appellant had a qualifying relationship with a child or a partner under s117C(5), although he indicated that it would be his submission that the appellant's relationships with family and others in the United Kingdom were critically important in the assessment of whether there existed very compelling circumstances under s117C(6).

31. Mr Jarvis indicated that he did not wish to cross-examine a number of the witnesses who were in attendance. He did not seek to cross-examine the appellant's half-brother DB, his brother AD or JL, with whom the appellant hoped to go into business. There were to be questions for the appellant, his mother and his girlfriend SD.

32. We duly heard oral evidence from these witnesses in English. We do not propose to rehearse their oral evidence in this decision. We will refer to their oral evidence insofar as we need to do so to explain our findings of fact.

Submissions

33. Mr Jarvis relied on the respondent's decision and the skeleton argument and invited us to adopt the approach required by NA (Pakistan), in considering the statutory exceptions to deportation before assessing whether there were very compelling circumstances over and above those exceptions which outweighed the public interest in deportation.

34. It was accepted by the appellant that he had not been lawfully resident in the United Kingdom for most of his life. There were periods of lawful residence, however, and these fell to be factored into the overall assessment. It would be inappropriate to hold against the appellant the periods of time when he was a child: SC (Jamaica) [2017] EWCA Civ 2112; [2018] 1 WLR 4004, at [56].

35. The appellant's offences were committed in 2015, at which stage his situation in the United Kingdom was precarious. The appellant's conduct was relevant to the extent to which his position was precarious. It was to be recalled that section 117B NIAA 2002 was relevant in such an appeal and the appellant's precarious immigration status militated against him, even though he was able to satisfy the neutral factors in s117B(2) and (3) (English language and financial independence).

36. The appellant was not socially and culturally integrated into the UK. The nature and seriousness of his offending militated against any such conclusion: Binbuga [2019] EWCA Civ 551, at [58], endorsing the approach of the Upper Tribunal in Bossade [2015] UKUT 415 (IAC); [2015] Imm AR

1281. In reality, there was little evidence of integration. The appellant had lived unlawfully in the UK for much of his stay and he had been committing criminal offences long before the index offence. The appellant had consistently denied his involvement in the index offence and his denial was further evidence of a lack of integration or rehabilitation. Whilst the appellant protested his innocence in his oral evidence, the advice he had received from trial counsel was clear about the safety of the conviction. It had been for the jury to decide whether the appellant was involved in the manner claimed and it was not for the Upper Tribunal to go behind their assessment. The appellant was a significant figure or manager in a serious conspiracy.

37. As for whether there would be very significant obstacles to the appellant's re-integration to Jamaica, that had been dealt with in detail in the FtT's decision. The appellant was in any event able to make an application to the Facilitated Returns Scheme for a grant of £750. He was ineligible for assistance in principle because of his conviction but he could be given an award nevertheless if the scheme was satisfied that he would be destitute without it. The Upper Tribunal had relied on such awards in AAW [2015] UKUT 673 (IAC) and MOJ (Somalia) CG [2014] UKUT 442 (IAC). (The parachute package to which the Upper Tribunal had referred in AS (Afghanistan) CG [2018] UKUT 118 (IAC) applied only to returns to Afghanistan) and it was the FRS scheme which continued to apply.)

38. Mr Jarvis submitted that the Tribunal should attach little weight to the report of Mr de Noronha. In AAW, the Upper Tribunal had explained the importance of there being transcripts of personal interviews conducted by expert witnesses. Without such transcripts, it was not possible to attach weight to what was said to have been the evidence of those interviewed, including various deportees. The importance of adequate sources being cited by experts had been underlined in various cases, including LP (Sri Lanka) CG [2007] UKAIT 76. That was of particular concern when Mr de Noronha had cited a report in his footnotes (entitled Rebuilding Self and Country: Deportee Reintegration in Jamaica) which actually painted a more positive picture than had been suggested by Mr de Noronha. The report suggested that there was significant support for deportees, including the Salvation Army and other NGOs.

39. The appellant was not able to satisfy the test in s117C(5). He did not have a qualifying partner and he was not in a parental relationship with DB.

40. In relation to the ultimate question of whether there were very compelling circumstances over and above those exceptions, the President of the Upper Tribunal had issued two relevant decisions in 2019: RA (Iraq) [2019] UKUT 123 (IAC) and MS (Philippines) [2019] UKUT 122 (IAC). Importantly, Mr

Jarvis submitted, the President had underlined that the assessment required by s117C(6) encompassed all factors. It was also to be noted that it had been concluded in MS that the deterrent effect of deportation remained an important consideration post Hesham Ali. Even if the appellant had rehabilitated and posed a low risk of future offending (which was not accepted in light of his denial of the offences), this was not a factor which would ordinarily bear material weight: RA (Iraq), at [31]-[33]. The public interest in the appellant's deportation was significant, particularly when the ECtHR's stance on the scourge of addictive drugs was recalled: Baghli v France [1999] ECHR 135.

41. The FtT had attached particular significance to DB's best interests in concluding that the appellant was able to satisfy s117C(6). In that connection, it was necessary to consider the evidence from CAMHS carefully. The respondent did not challenge the evidence given by the appellant's mother regarding the relationship between DB and his half-brother. It was notable, however, that the evidence given by the appellant and his mother in relation to their attendance at CAMHS was completely at odds. She said that the appellant had been to CAMHS only in the past, whereas he had said that he had been to appointments with them more recently. The reality is that DB is attached to the appellant and that he will be negatively affected by the appellant's deportation but this did not come near to outweighing the strong public interest in the appellant's deportation. It was relevant to recall that the appellant had lived in Leicester, away from DB and their mother for around three years, as confirmed in the FtT decision from 2011.

42. Ms Licht had suggested that DB would be at risk of completed suicide in the event of the appellant's removal. DB continued to receive support from CAMHS, however, and it had been this help and the appellant's mother's support which had been principally responsible for his improvement. There was no evidence of interventions over and above the CAMHS involvement. Overall, the picture was not one in which DB presented a real risk of committing suicide. Instead, he clearly felt a sense of despair at the risk of losing another member of the family. If there had been a risk of the type identified in the Licht report, there would have been greater intervention from CAMHS. DB had improved since the appellant's release but that was merely part of the reason for his improvement. Their mother had worked throughout and continued to do so whilst the appellant was in prison. It was clear that she had been under significant stress but she was resolute and tough and she continued to support DB. DB would be affected adversely by the appellant's deportation but that is what deportation does.

43. Social services and the NHS could be relied upon to do what was necessary to support DB: BL (Jamaica) [2016] EWCA Civ 357. The specific impact on

DB should be considered but was not such as to outweigh the strong public interest in deportation. In WZ (China) [2017] EWCA Civ 795, the court had held that comparable facts were not even capable in principle of amounting to very compelling circumstances.

44. In the event that the Tribunal considered it necessary to assess whether the appellant's deportation would give rise to undue harshness for DB, it was relevant to recall that this was a high threshold, as demonstrated by the application of the law to the facts in KO (Nigeria).

45. Mr Moriarty relied on his skeleton argument and the skeleton prepared by Ms Daykin of counsel for the FtT hearing. When we stated that we did not have the latter skeleton, he indicated that he would incorporate those written submissions into his oral submissions. He submitted that there were two legal propositions to be made at the outset. Firstly, that every case was to be considered on its own facts and that cases such as WZ (China) and MK (Sierra Leone) were of little assistance because they were not binding on the facts. Secondly, what was required under s117C(6) was a broad evaluative judgment taking all relevant facts into account.

46. It was clear that there was a strong public interest in the appellant's deportation. Even though he was unable to rely on the statutory exceptions in s117C, it was still relevant to recall in the context of the necessarily holistic enquiry that the appellant had arrived as a child of eleven years old, which was held to be of significance in Garzon [2018] EWCA Civ 1225. The core of the appellant's case, however, was the emotional and psychological consequences of his deportation on DB. The appellant is not his primary carer or his de facto father. Their mother would continue to help DB in the event of the appellant's deportation and she would wish to do so. There would however be a huge impact on DB if the appellant was deported. That was clear from the totality of the material before the Tribunal, which showed how badly he had been affected by the loss of his father and by the appellant's imprisonment. The written evidence showed that DB had been excluded from school temporarily during the appellant's incarceration. It had been their mother's evidence that DB had improved since the appellant's release because he had something to cling onto, in the form of hope that his brother would remain in the UK. The report from CAMHS showed that DB had experienced the loss of his father in 2012 as a kind of rejection. His behaviour had improved from 2014 to 2015 but had declined markedly after the appellant went to prison.

47. It was appropriate to consider Ms Licht's report notwithstanding the criticisms levelled at it in Judge Feeney's judgment and in the decision to set her judgment aside. Much of that report was untainted by those criticisms. It was clear that DB suffers from Adjustment Disorder and that

he did deteriorate whilst the appellant was imprisoned. He had a picture of the appellant in his room and he suffered disturbed sleep and feelings of anger and upset at that time. Ms Licht had undertaken a number of tests with DB. It was clear from those tests that he was at the severe end of the spectrum. He was more significantly affected by the prospect of the appellant's deportation than an ordinary child. He had been hugely impacted by his father's death and the appellant's incarceration but he had improved considerably since the appellant's release. His situation was not analogous to the cases cited by the respondent. The impact on DB amounted to very compelling circumstances. His own letters, which appeared in the bundle presented to the FtT were powerfully supportive of that submission. It was also relevant to recall, as part of the overall exercise, that the appellant had spent a great deal of his life in the UK, even though much of that was unlawful. The respondent had been correct to submit that the appellant could not be blamed for his precarious immigration status as a child.

48. There was little that militated against the appellant under section 117B NIAA 2002. If it was accepted under s117C that there were very compelling circumstances, the factors in s117B would make no difference to the assessment. The appellant was engaging positively with the Probation Service and there was evidence of rehabilitation, although it was accepted in light of the authorities cited by Mr Jarvis that this carried little weight.

49. The appellant had gone to the property in Southampton with a tyre iron. He accepted that, although he emphasised that he had not been carrying a fire arm. It was accepted on his behalf that it would be wrong to ask the Tribunal to go behind the basis on which the appellant was sentenced. The letters in the Upper Tribunal bundle showed that the appellant would be a loss to his local community if he was deported, however. These were relevant matters to consider, as was the stark reality of life for a returnee to Jamaica. The respondent's criticism of the de Noronha report were accepted but there were very recent reports of attacks on those returned to Jamaica. (Mr Moriarty accepted, in response to our question, that no such reports were before the Tribunal). It would be very dangerous for him to return, even if he was able to avail himself of the FRS package. The provision of £750 would do little to mitigate the risks to the appellant, who had no support network in Jamaica and would be easily identified as a deportee.

50. It was relevant to consider Garzon, submitted Mr Moriarty. He too had arrived in the UK at the age of 11 and had been granted leave to remain. He had committed numerous offences and was a persistent offender. He had visited Colombia. He did not meet the statutory exceptions to deportation. There was evidence of integration and he had spent his

formative years in the UK. It was clear that the court had accepted, notwithstanding the attempt of the Secretary of State to submit otherwise, that the factors relevant to the exceptions were still to be considered under s117C(6). There had been no child in that case but the FtT had still been entitled to conclude that there were very compelling circumstances. The appellant presented an altogether stronger case than Garzon's when it was recalled that the impact of the appellant's deportation on DB would be huge. In response to a question from Mr Jarvis, Mr Moriarty confirmed that he did not submit that the appellant's removal would be contrary to the Refugee Convention or Article 3 ECHR.

51. We reserved our decision for postal delivery.

Statutory Framework

52. Part 5A of the Nationality, Immigration and Asylum Act 2002 applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8 ECHR. In considering the public interest, the court or tribunal must have regard in all cases to the public interest considerations in section 117B, which provides as follows:

    (1) The maintenance of effective immigration controls is in the public interest.

    (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
    (a) are less of a burden on taxpayers, and
    (b) are better able to integrate into society.

    (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
    (a) are not a burden on taxpayers, and
    (b) are better able to integrate into society.

    (4) Little weight should be given to—
    (a) a private life, or
    (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
(a) the person has a genuine and subsisting parental relationship with a qualifying child, and
(b) it would not be reasonable to expect the child to leave the United Kingdom.

53. In cases concerning the deportation of foreign criminals (as defined in s117D(2)), a court or tribunal must also have regard to the additional considerations in section 117C, which provides as follows:

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—
(a) C has been lawfully resident in the United Kingdom for most of C's life,
(b) C is socially and culturally integrated in the United Kingdom, and
(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

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

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision

was the offence or offences for which the criminal has been convicted.

Discussion

54. Part 5A of the 2002 Act, as inserted by s19 of the Immigration Act 2014, provides for a structured approach for the determination of Article 8 ECHR claims in the context of deportation: NE-A (Nigeria) [2017] EWCA Civ 239; [2017] Imm AR 1077. It is consequently necessary to consider the statutory exceptions to deportation even if the appellant cannot, due to the length of his sentence, hope to avail himself of those exceptions: NA (Pakistan) [2016] EWCA Civ 662; [2017] 1 WLR 207, at [37].

55. The appellant could not satisfy Exception 1 even if it was available to him. As to s117C(4)(a), although the appellant has been resident in the UK for most of his life, having arrived at the age of eleven and remained since, most of his residence has not been lawful. The appellant was initially given temporary admission for three days and he held leave to remain for approximately four years from 2011 to 2015. The remainder of his residence has been without leave. Mr Moriarty accepted that to be the case, although he submitted that it would be relevant to consider under section 117C(6) that much of the appellant's unlawful residence was as a child.

56. As to s117C(4)(b), we note that there was no finding made by Judge Feeney in this regard. We do not consider the appellant to be socially and culturally integrated into the UK. He arrived as a child and he received some education in this country, although the letter from Walworth School at page L51 of the respondent's bundle demonstrates that the appellant's attendance and compliance was sporadic. We note that he has a circle of friends and family in this country and that he has worked in the building trade. As the Court of Appeal explained in Binbuga [2019] EWCA Civ 551, however, such factors represent only part of the enquiry when considering whether a foreign criminal is socially and culturally integrated in the UK. Endorsing the approach of the Upper Tribunal in Bossade [2015] UKUT 415 (IAC); [2015] Imm AR 1281, Hamblen LJ (with whom Floyd LJ agreed) held that social and cultural integration connotes integration as law-abiding citizen; that breaking the law may involve discontinuity in integration; and that being part of a pro-criminal gang is manifestly anti-social: [49]-[62].

57. The nature and seriousness of the appellant's offending is plainly relevant to the question of whether he is socially and culturally integrated to the UK. He was not simply involved in a conspiracy to supply drugs of Class A. He was attempting, as the sentencing remarks of HHJ Henry show, to set up a 'County Lines' operation on the south coast of the country, thereby increasing the proliferation of drug addiction for his own financial gain.

That conspiracy also involved an attempt to force vulnerable drug users to allow their home as the base for the operation, often described by the term 'cuckooing'. It is apparent that the drug users were terrified by the appellant's threats to 'smoke' them and his pretence that he had a firearm under his jacket, to the extent that one of them chose to call the police from the bathroom whilst the appellant was on the premises. Involvement in such activity is manifestly anti-social and contrary to the values of the United Kingdom. It indicated that the appellant was not socially and culturally integrated at the time that he took part in the conspiracy.

58. We consider Mr Jarvis to have made a cogent submission about the degree to which the appellant can be said to be culturally and socially integrated at present. He continues to deny responsibility for the index offence. Before us, he said that he had no involvement with drugs and that he maintained his innocence, although he seemingly accepted that he had threatened the drug users with a tyre iron. He said that he had wanted to appeal but that there had been difficulties in securing alternative legal representation after he had been given negative advice on appeal by trial counsel, Richard Onslow. We obviously proceed on the basis that the decision reached in Southampton Crown Court stands unless it is overturned. We consider the appellant's ongoing protestations that he was not involved in the drugs conspiracy to indicate an ongoing lack of respect for the rule of law in this country and an ongoing lack of adherence to the values of the United Kingdom. Whilst he has been in the UK for seventeen years and has ties to this country, we consider his offending and his refusal to accept responsibility for that course of conduct to indicate that he is not socially and culturally integrated. In fairness to Mr Moriarty, he indicated at the outset of the hearing that he would be inviting us to find for the appellant under s117C(4)(b) but, having considered Binbuga and the submissions made by Mr Jarvis, he did not seek to suggest in closing that the appellant was socially and culturally integrated to the UK.

59. As to s117C(4)(c), Judge Feeney made a finding that the appellant would not experience very significant obstacles to re-integration to Jamaica. Mr Moriarty accepted at the start of the hearing that those findings should stand but that he would invite us to consider the obstacles to integration as part of the holistic assessment under s117C(6). We consider that to be an appropriate way to proceed, and will return to the difficulties which would face the appellant on return to Jamaica as part of our assessment of whether there are very compelling circumstances over and above the statutory exceptions which outweigh the public interest in the appellant's deportation. It suffices for present purposes to record that the appellant accepts the decision of the First-tier, reached with reference to authority including Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152, that there will not be very significant obstacles to his integration.

60. It follows that the appellant would not be able to satisfy the first statutory exception to deportation even if he was a 'medium offender' who had access to that provision.

61. We can deal with the second statutory exception more shortly. The appellant does not have a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child. Mr Moriarty did not seek to suggest otherwise and the appellant could not avail himself of the protection of the second exception even if he was a medium offender. We need not consider whether the effect of the appellant's deportation on DB would be unduly harsh since that exercise is only appropriate when the foreign criminal has a genuine and subsisting parental relationship with a qualifying child; those who do not have a qualifying relationship fall outwith the protection of the exception.

62. Having considered the statutory exceptions, we turn to the ultimate question in this case, of whether there are very compelling circumstances over and above those exceptions which outweigh the public interest in the appellant's deportation. In considering that question, it is appropriate to consider the best interests of DB first. We remind ourselves that his best interests are a primary consideration, that is a consideration of substantial importance: SS (Nigeria) [2013] EWCA Civ 550; [2014] 1 WLR 998, at [44]. It is important to have a clear idea of the child's circumstances and of what is in their best interests before asking whether those interests are outweighed by the force of other considerations: Zoumbas [2013] UKSC 74; [2013] 1 WLR 3690, at [10].

63. It is necessary to recall the history of the appellant's relationship with DB before turning to the present situation. The appellant entered the UK with his grandmother, who left this country for the USA shortly thereafter. The appellant then lived with his mother and his step-father, EB. The appellant's mother and EB had their only son, DB, in October 2005 and they lived together as a family for a short period until the appellant moved to Leicester to live with his then girlfriend.

64. The appellant gave evidence before us that he did not live in Leicester but this contradicts the evidence he and his then girlfriend gave to Judge Paul in the appeal which was heard in June 2011. The appellant's statement for that appeal (IA/09257/2011) is before us and states that he and his then girlfriend had 'lived together as unmarried partners in Leicester': [4]. Judge Paul found that the appellant had lived with his then girlfriend in Leicester for at least three years, from about 2007 onwards: [17]. A letter from the appellant's current solicitors records at page L3 of the respondent's bundle that the appellant and his then girlfriend 'lived together for some time as

unmarried partners in a property situated in Leicester'. We consider that to be the true position, and do not accept the appellant's evidence that he was merely travelling up to Leicester to visit his girlfriend regularly. By the date of the hearing before Judge Paul, however, the appellant had returned to London to live with his mother and DB. It seems that his step-father had left the family home by that stage, since Judge Paul recounted at [6] of his decision that the appellant's mother had leave to remain as a result of domestic violence suffered at the hands of DB's father.

65. The appellant continued to live with his mother and DB from about 2010 until his arrest for the index offence. He told us that he was released on an electronic tag following his arrest and that he was remanded into custody on 27 July 2016, as a result of an unspecified incident. He was convicted on 2 September 2016 and was released from custody on 3 January 2019, whereupon he resumed living with his mother and DB.

66. There is no suggestion in the papers before us that DB was anything other than a healthy and happy child until the death of his father in 2012. The suggestion in [13] of the appellant's first witness statement (in these proceedings) that DB had counselling from 2009 seems to be in error; there is no such suggestion in any of the other papers and the appellant's mother's statement makes reference to DB receiving counselling from the age of nine, which corresponds with the other material. EB passed away at King's College Hospital on 12 December 2012. A report from South London and Maudsley NHS Trust dated 16 October 2014 documents what happened thereafter.

67. The report was written by Nicholas Messing, a Clinical Specialist at the Southwark Child and Family Service. It was addressed to Karen Sylvester, the Special Educational Needs Co-ordinator at DB's Primary School, and copied to DB's mother and the family GP. DB had been referred to the service by Ms Sylvester's predecessor, Nicola Frazer. DB and his mother were seen for a first assessment on 30 June 2014. The report was delayed somewhat because the appellant's mother had been unable to attend planned assessments in July, which took place in August and September instead. The report spans nearly six pages. We have considered it in its entirety but we consider the following to be particularly relevant. DB had been given a diagnosis of Adjustment Disorder, which was defined as a person experiencing, in response to a significant life change, a level of distress which interfered with their social functioning. Mr Messing stated that DB had been overwhelmed by and was struggling to make sense of the loss of his father. He was attempting to 'parcel away painful emotion' and was struggling to manage external situations, resulting in frustration with his school work and anger in regard to his peers. He had felt rejected by his father in death and found it difficult that his mother was withdrawn at

times, as a result of her own grief. He was acutely sensitive to situations at school in which he felt overlooked by adults.

68. Mr Messing stated that DB had become anxious about his mother and had wanted to be near her after EB's death. He had difficulties with two particular children at school and had been involved in physical altercations with them. His mother had struggled with her own grief, having lost her father in 2010 and her partner in 2012 but she explained that DB and her comforted each other. DB had had a good relationship with his father and had rarely talked about him since his death, although he sometimes asked why his father had left and whether he had loved him. There had been significant difficulties reported by the SENCO, Ms Frazer, since the start of the school year. DB had found it difficult when he was not receiving the teacher's attention and would go underneath a table, throw chairs or hit other children, causing him to be restrained on occasion. He expressed concern about his mother to teachers, did not eat as much as his mother felt he should eat, and felt that it was hard to be at school except during play time. Mr Messing concluded that a suitable treatment plan would involve a therapeutic space in which DB could communicate his emotions using art. His mother was referred to Southwark Psychological Therapies Service to assist with her grief, and to the debt management service as there appeared to be issues in that area also.

69. DB then underwent therapy in 2015 and Mr Messing reported in a letter dated 27 January 2016 that DB had engaged positively with that therapy; that his behaviour at school had improved; and that he no longer had any concerns about him.

70. There are then eight letters from Bacon's College, recording various actions taken in respect of DB for behavioural problems in the period 5 March 2018 to 11 July 2018. He had been sent to the 'RAP room' on a number of occasions because he had been disruptive in lessons and he had been temporarily excluded from school twice. On the first occasion, this was because he and his friends had left the school premises and gone to a primary school 'where they were verbally abusive towards very young children in the playground'. On the second occasion, this was because he had caused physical harm to another student, stabbing two girls in the back with a compass when they would not allow him to jump the queue for the water fountain. The final letter from the school, which was not in either of the appellant's bundles, is dated 28 September 2018 and records that the appellant's mother had been invited for a meeting with the school's Educational Psychologist on 30 October 2018.

71. The material from Mr Messing, which was written before the appellant went to prison for the index offence, makes no reference to the appellant.

Nor do any of the other materials to which we have referred in the preceding four paragraphs.

72. Then there is the report of Tamara Licht, which was prepared for these proceedings and is dated 15 October 2018. Ms Licht is an accredited Clinical Psychologist and Counselling Psychologist who works with children and adults inside the NHS and on a private basis. She has a Bachelors degree in Clinical Psychology and an Masters degree in Clinical and Health Psychology. In order to prepare the report, she was provided with the Messing report from 2014, the letters from Bacon College and DB's mother's response thereto, the respondent's decision and the grounds of appeal and some 'email correspondence containing some background facts regarding [the appellant's] family history'. Ms Licht was asked to conside the precise impact of the consequences of the appellant's deportation on DB. Ms Licht interviewed DB and his mother on 2 October 2018 and also asked each of them to complete self-assessment scales. At paragraph 1.03, she summarised her conclusions in the following way:

> "This report will conclude that in my professional opinion [DB] presents with separation anxiety disorder as a consequence of [the appellant] facing possible deportation to Jamaica. Furthermore, this report will conclude that if [the appellant] were to be removed from the UK, [DB's] separation anxiety disorder is likely to further deteriorate his overall wellbeing. The present report will conclude that there is a high risk of [DB] acting on his suicidal thoughts and ideation, should his step-brother be removed from the UK.
>
> This report will explain that it is likely that due to [DB's] age and considering that he appears to depend mostly on his immediate family, any situation that may distress his family environment has the potential to have a negative impact on his mental health.
>
> The report will also conclude that it is my opinion that if [DB] was to be separated from [the appellant], his overall quality of life would be additionally and significantly affected since [his mother] is facing woth low mood *[sic]* after the loss of important family members and this may stop her from being emotionally available to attend to [DB's] psychological needs.
>
> From a risk assessment perspective, this report will conclude that scores obtained from psychometric scales recorded in this assessment and from my interview with [DB] and his mother, it

> is possible to suggest that because of [DB's] age and gender, the risk of him acting on suicidal thoughts and ideation is high.
>
> Finally, this report will conclude that, in the long term, [DB would benefit from receiving psychological therapy to assist him in expressing thoughts and emotions in order to reinforce his self-confidence and thus, better regulate emotions when facing situations that he may perceive to be distressful."

73. We have recorded at [26] above that Judge Feeney considered there to be a number of serious shortcomings in this report, and that the Upper Tribunal set aside Judge Feeney's decision because it was not possible to reconcile the extensive criticism of that report with the decision to attach weight to it in allowing the appeal. We consider that each of the observations expressed by Judge Feeney at [37] of her report was well made. In particular, it is clear that Ms Licht failed to undertake her assessment in the context provided by the material from Mr Messing and she failed, therefore, to consider the extent to which DB's presentation in 2018 could be attributed to his father's death and his subsequent diagnosis of Adjustment Disrorder. She failed, as Judge Feeney observed, to consider other possible causes for DB's presentation and she did not explain why she settled on Separation Anxiety Disorder as distinct from other mental health conditions. She also failed to consider the support available to DB and his mother from other family members.

74. We consider there to be additional difficulties with Ms Licht's report. As an expert, she obviously provided her opinion based on the evidence she was given and the meeting she had with DB and his mother. She is not to be criticised for that. The weight which can be attached to her opinion is necessarily reduced, however, given that she was demonstrably not given access to DB's remaining medical records. She knew that he had undergone treatment in 2015 for Adjustment Disorder and she knew that he had started to develop behavioural problems again in or around 2018 but she was not able to consider his GP records and make an informed assessment of the picture for these three years. These three years were, on any proper view, critical to her assessment. The appellant was arrested in 2015 but he was remanded in custody in July 2016. Given that DB's behavioural problems appear to have resurfaced in 2018, it is a serious deficiency in the report that it fails to consider alternative causes for DB's presentation. If those problems are attributable to DB's separation from the appellant, why did they take the best part of two years to come to the fore, and what, if anything, occurred during the first two years of the appellant's imprisonment?

75. Ms Licht also considered DB to present with an extant risk of suicide, which would be increased in the event that the appellant was to be deported. There was no attempt on her part, however, to consider the absence of any such concern from any other medical source. There is nothing in the correspondence from Mr Messing to indicate that suicide risk was a concern. There was nothing to indicate that this had ever been raised by DB's mother, whether with the family GP or any other agency, including CAMHS. Ms Licht did not consider why such a risk might exist upon the appellant being deported when DB had, by that stage, been separated from the appellant (by imprisonment) for more than two years and had not made an attempt on his life or threatened to do so. Equally, Ms Licht expressed serious concerns about DB's mother's ability to cope without the appellant without any consideration to the fact that she had been coping, by that stage, for two years.

76. Unlike Judge Feeney, we do not feel able to attach weight to Ms Licht's conclusions notwithstanding the obvious shortcomings in her report. Judge Feeney attached particular significance, in severing the problems from the conclusions, to the self-assessment questionnaires completed by DB and his mother, which suggested severe mental health problems of various types. We are unable to adopt the same approach. The assessment which a mental health expert must conduct is a holistic one, and the self-reported symptoms do not justify a conclusion in themselves; it remains for the expert to assess what is reported and to reach conclusions based on the picture as a whole. Where the expert is not provided with relevant material, and where the reasoning process in the report is defective, the ultimate conclusion is necessarily undermined. We do not consider it appropriate to attach weight to Ms Licht's conclusion that DB currently presents a suicide risk or that the risk would increase in the event that the appellant was removed. Those conclusions have no proper foundation and do not withstand scrutiny. Considering her report in the round and in the context of all the other evidence in the appeal, we are not prepared to attach any weight to it.

77. It is nevertheless demonstrably the case that DB is a 14 year old boy with behavioural problems which have led to his exclusion from school and to the school arranging further intervention. The appellant's mother gave evidence about the appointments which she and DB currently attend. We were shown a letter dated 28 September 2018 which indicated that a further referral to an Educational Psychologist had been made. We accept that DB is currently receiving therapy from CAMHS, although we have been provided with no up-to-date material about the impact it may have had on his behaviour at school. Since we have decided to attach no weight to Ms Licht's assessment, we consider for ourselves the impact of the appellant's deportation on DB.

78. In doing so, we must reach a view on the current relationship between the appellant and his half-brother. Matters have moved on since Judge Feeney heard the appeal at first instance. The appellant was still in prison at that stage but he was released in January this year and we must make an assessment of the current relationship. In doing so, we have taken careful account of the material in the supplementary bundle, and in particular the statements made by the appellant, his mother and DB. The appellant's statement makes no reference to his current involvement in DB's life. He explains his plans for the future and how he felt to be reunited with his mother and DB after his imprisonment but says nothing about how he and his half-brother have rekindled their relationship after such an absence.

79. The appellant's mother says that DB has changed for the better since the appellant was released from prison and that the appellant has been a role model for DB, who is now 'getting his head down more with his studies'. In his own statement, DB says that he has previously written two supporting letters (we have also read those) and that he was excited when the appellant was released. He states that the appellant is his mentor and his best friend and that he is loving, caring and thoughtful. He suggests that the appellant is like the father he lost in 2012. He explains that the appellant has taught him proper values and the consequences of taking the wrong path in life. He says that he cannot afford any more disappointment; he is now in a happy place and that they are all together as a family.

80. The appellant was asked a number of questions at the hearing about his current involvement in DB's life. This critical evidence did not appear in the recent witness statements and it was necessary for us to ask a number of clarificatory questions in order to make a properly informed assessment of DB's best interests. It is clear that the appellant lives with his mother and DB but it is equally clear to us that he sought to mislead us about his involvement in DB's life, and in particular his mental health treatment. The appellant stated that DB had had 'little meetings' about his mental health and that he (the appellant) had attended one or two of these meetings with DB and his mother in 2019. He initially stated that he had been to only one such meeting, although he could not remember where it was or the name of the professional with whom they met. He then said that he had merely travelled there with his mother and DB, and had not been into the meeting itself. He then said that he had taken DB and his mother to another such meeting. On the first occasion, they had taken a taxi and on the second occasion he had arranged for a friend to drive them. He said that the meeting was somewhere in Croydon. He then said that there were other 'little meetings' with the people who had referred DB to a psychiatrist and that there had also been two of these meetings since he had been released from prison. These meetings took place in Bermondsey. He said that he

had been to these meetings as well. As with the other meetings, he did not actually go inside and was there to 'support'. He did not know the name of the professionals involved and was not sure who was in the meeting. He then changed his evidence, stating that he did not go to these meetings at all and that he was there to support his mother and DB when they returned.

81. The appellant's mother gave a very different version of events. She said that she had been to see the Educational Psychologist in October 2018 and had then been to see the family GP for a referral to CAMHS. The GP is in Rotherhithe and DB had been referred to CAMHS in Camberwell Green. DB had been to CAMHS three times in 2019, with the last appointment taking place on Monday 10 June 2019. She said that the appellant had not attended any of these sessions since his release. We find that the appellant gave evidence which was inconsistent with his mother's about this subject because he wanted to overstate his involvement in his brother's life. The truth, as his mother stated, is that the appellant has not attended any of these meetings with DB. We consider that he was actually rather dismissive of the CAMHS appointments, referring to them as 'little meetings' throughout. Whilst he lives with DB, it is quite apparent that he has taken little interest in the ongoing attempts to address DB's behavioural difficulties in the six months after his release.

82. Having heard from the appellant and his mother at some length, we considered him to be a thoroughly unsatisfactory witness. He sought to tailor his evidence in order to portray a closer relationship between himself and DB than exists in reality. Taking a step back and considering the evidence as a whole, we consider the reality to be as follows. The appellant lived with DB from his birth in 2005 to a point in 2007 when he moved to Leicester with his then partner. He lived with her for three years or so, at which point he returned to the family home. DB would have been around five years old at the time.

83. The appellant was living with his mother and DB when DB's father passed away in 2012. The appellant and DB became closer in the period between DB's father's death and the appellant's imprisonment in 2016. Letters and statements made by family and friends speak to the relationship during that period and record that the appellant cared for DB whilst their mother was at work. DB nevertheless suffered Adjustment Disorder during this period and it was DB's mother who secured assistance from CAMHS and ensured that DB received appropriate support.

84. The appellant was imprisoned in 2016 but DB's behavioural issues at school manifested themselves in 2018. We cannot be certain of the cause of those issues because Ms Licht's report is not deserving of weight and because there is no further evidence from CAMHS, the school or the family GP in

which the cause of the problems is explored. Because we doubt that the appellant and DB are as close as has been suggested and in light of the considerable delay between the appellant's imprisonment and the behavioural problems coming to the fore, we doubt that the appellant's absence from the family home was the dominant cause. We also note, in that regard, that DB continues to receive support some months after the appellant's release. Whilst the appellant's mother and his Probation Officer report that DB's behaviour has improved, there is no evidence from a medical professional or from the school, whether to confirm that improvement or the causes of it.

85. On balance, we consider it to be in DB's best interests for the appellant to remain in the family home but we do not consider that to be overwhelmingly so. DB has suffered bereavement in the past and he has a relationship with his brother but the claim that his behaviour deteriorated dramatically in 2018 because of the appellant's imprisonment is not borne out. Nor is the claim that he would harm himself in the appellant's deportation. We take into account that DB was diagnosed with Adjustment Disorder following the death of his father and this may exacerbate the adverse effects of deportation; however, his mother is demonstrably responsible and caring. She has done all that she could in the past to ensure that he is properly cared for and she will continue to engage with CAMHS and other agencies in order to ensure that DB is able to make the most of his education.

86. There are other matters which must weigh in the appellant's favour in the balance sheet assessment required by s117C(6) of the 2002 Act. Whilst these are matters to which reference is made in the statutory exceptions to deportation, it is well established that they are not 'ring-fenced' thereafter when considering whether there are very compelling circumstances over and above those exceptions which outweigh the public interest: JZ (Zambia) [2016] EWCA Civ 116; [2016] Imm AR 781. We heed the guidance in the Strasbourg authorities, as we are required to do by [38] of NA (Pakistan).

87. The first matter is the appellant's length of residence in the UK and his ties to this country. He arrived in the UK as a child and received most of his education here. He has worked and he has had relationships in the UK. At [31] of JO & JT [2010] EWCA Civ 10; [2010] 1 WLR 1607, Richards LJ (with whom Toulson and Mummery LJJ agreed) said that, although the Maslov [2009] INLR 47 principle did not apply in terms to a migrant who had not been *lawfully* present since childhood, such presence is nevertheless a weighty consideration in the balancing exercise.

88. The second matter is the difficulty the appellant will experience on return to Jamaica. As we have recorded above, Mr Moriarty did not seek to dispute

the assessment made by the FtT in this regard, which was that there would be a number of difficulties but not the very significant obstacles required by the statutory exceptions. The appellant has no family there. He has no support network. He has no familiarity with the way in which adults carry on their lives in that country, having left as a boy. Judge Feeney was presented with a report by Luke de Noronha regarding the difficulties generally faced by deportees from the UK who have been outside Jamaica for many years. For the detailed reasons she gave at [46]-[58], she accepted what was said by Mr de Noronha about the general difficulties encountered by such individuals but she did not accept that this particular appellant would be unable to find employment and accommodation, bearing in mind the life experience and skills on which he would be able to draw.

89. Mr Jarvis made various criticisms of Mr de Noronha's report. In particular, he submitted that he had failed to provide transcripts of the interviews he had carried out with deportees and others. Whilst that appears to be correct, the report is otherwise well researched and logical. Mr Jarvis did not attempt to suggest that it would be easy for the appellant to readjust to life in Jamaica after such a long absence and we consider that the conclusions reached by Judge Feeney in this regard are balanced and considered. Without a support structure, the appellant will necessarily struggle. He is eligible to apply for a small amount of financial assistance from the respondent, which Mr Jarvis said would be £750 if it was granted. We do not consider it appropriate to attach weight to this submission because we were told that there was no certainty that the support would be provided. In fact, Mr Jarvis stated that the appellant would be prima facie ineligible due to his offending but that a discretion was nevertheless available to the respondent. Due to the uncertainty of the award, the safest course is to discount it from our assessment and simply to state that we endorse the conclusions reached by Judge Feeney in relation to the extent of the appellant's difficulties upon return.

90. We note that the appellant has committed no further offences since he was released from prison. Although he is currently assessed to present a medium risk of reoffending, his Offender Manager considers it likely that this will be decreased to a low risk at his next assessment. As Mr Jarvis submitted, however, rehabilitation does not ordinarily bear material weight in favour of a foreign criminal in this context: RA (Iraq) [2019] UKUT 123 (IAC), at [32]-[33]. Mr Moriarty accepted that to be correct.

91. Against these factors, all of which militate in the appellant's favour under s117C(6), we consider the factors in favour of the appellant's deportation. We can consider s117B comparatively briefly, since Mr Jarvis accepted that the appellant can speak English and that there was no reason to doubt that the appellant (who is dependent upon his mother) was financially

independent in the Rhuppiah [2018] UKSC 58; [2018] 1 WLR 5536 sense. These are the therefore neutral matters. The potentially relevant aspects of s117B are sub sections (1), (4) and (5). The latter two subsections require us to have regard to the principles that little weight should be given to a private life acquired whilst an individual's status is precarious and to a family life acquired when an individual is unlawfully present in the UK. We have regard to those principles. Of greater significance in this appeal, to our mind, is s117B(1), which states that the maintenance of effective immigration control is in the public interest. This appellant has no leave to remain at present and cannot conceivably meet the Immigration Rules. It was for this reason that Mr Jarvis submitted – and we accept – that the appellant's deportation pursues what Richards LJ described as a 'double aim' in JO & JT (op cit).

92. S117C(2) requires us to consider the seriousness of the index offence, because the more serious the offence, the greater the public interest in deportation. We have set out a detailed account of the appellant's conspiracies above. The seriousness of those offences is primarily to be gauged by the sentence imposed but the ultimate conclusion is for the court or Tribunal at this stage: Barry [2018] EWCA Civ 790, cited at [29]-[30] of RA (Iraq). In our view, the imposition of a sentence of six years' imprisonment reflects a very serious offence, as do the sentencing remarks of HHJ Henry. The appellant was part of a type of criminality which brings addictive drugs and all of their associated suffering to communities which were previously less affected by that scourge. He was prepared to enforce his demands with threats of extreme violence which terrified a vulnerable woman. He continues to deny his involvement in the drug-dealing aspect of the conspiracy. The Strasbourg Court has explained on more than one occasion that it views the supply of drugs particularly seriously by foreign nationals particularly seriously: Baghli v France [1999] ECHR 135, for example.

93. The authorities which underline the weighty public interest in the deportation of a serious offender are legion. In MF (Nigeria) [2013] EWCA Civ 1192; [2014] 1 WLR 1192, Lord Dyson MR stated that the scales are heavily weighted in favour of deportation for this category of offender. That approach was approved in Hesham Ali [2016] UKSC 60; [2016] 1 WLR 4799, the continuing relevance of which (following the introduction of Part 5A NIAA 2002) was recently explained in JG (Jamaica) [2019] EWCA Civ 982. That public interest is particularly high when the appellant's offence was so serious and when there is plainly a need to recognise the deterrent effect of deportation in cases of this nature: MS (Phillipines) [2019] UKUT 122 (IAC), analysing the continuing application of OH (Serbia) [2008] EWCA Civ 694 post Hesham Ali.

94. Both representatives took us to authorities in which the Court of Appeal had or had not endorsed the conclusions of the Tribunals below on the facts of the cases before them. Mr Jarvis took us to WZ (China) [2017] EWCA Civ 795, in which Sir Stanley Burnton (with whom Flaux and Linblom LJJ agreed) stated that the facts in that case were incapable of overcoming the public interest in the deportation of the particular appellant, who was a medium offender. He said that deportation necessarily results in the break-up of the offender's family if they stay in the United Kingdom: [14]. For his part, Mr Moriarty took us to Garzon [2018] EWCA Civ 1225, in which the Court of Appeal upheld a decision of UTJ Frances, who had herself upheld a decision of the First-tier Tribunal that there were very compelling circumstances which engaged paragraph 398 of the Immigration Rules. Counsel conceded that the Secretary of State's challenge to the decision of the FtT was one of perversity. McFarlane LJ (with whom Sales LJ agreed) held that the Tribunal had not erred in its approach to the appeal; that the decision was one that was open to it on the facts of that case; and that the perversity challenge was not made out.

95. We derive little assistance from these decisions because they turn on the facts of the individual cases before the court. Even if, as Mr Moriarty submitted, the facts in Garzon bear some resemblance to the facts in this appeal, the balancing exercise in each case is intensely fact specific and all the court confirmed was that it was open to the FtT to reach the conclusion that it did on the fact of that (medium offender's) case. The court did not purport to establish any point of principle.

96. We have already referred to another authority which came to our attention shortly after the hearing: JG (Jamaica). That case also concerned a serious offender whose principal submission was that his deportation was so clearly contrary to his son's best interests that there were very compelling circumstances which outweighed the public interest in deportation. Again, however, the decision turns on its own facts, and we note in particular that the appellant was the primary carer of the child in question.

97. Ultimately, therefore, we come to a balancing exercise, taking into account the findings of fact we have made and the legal principles we have set out at some length. Balancing those matters which militate in the appellant's favour against those which militate in favour of deportation, we find the latter to prevail by a considerable margin. We accept that the appellant's deportation will be contrary to his half-brother best interests, but not to the extent suggested. We do not accept that DB's current problems were caused by the appellant's imprisonment or that they will be significantly worsened by the appellant's deportation. He will remain in the UK with his primary carer and will receive appropriate support for his behavioural difficulties, both from CAMHS and the school, with whom his mother is

able and willing to engage. The appellant will find it difficult to adjust to life in Jamaica but he will be able to surmount those problems. There is nothing on the facts of this case which approaches the very compelling circumstances required in order to outweigh the public interest in the appellant's deportation, which is rendered all the weightier by the nature and seriousness of his offence.

Notice of Decision

The appeal is dismissed on human rights grounds.

Signed Date: 19 July 2019

Mark Blundell
Judge of the Upper Tribunal.

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 him or any member of their 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.

Signed Date: 19 July 2019

Mark Blundell
Judge of the Upper Tribunal.