**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00204/2021

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 27 May 2022** | **On 15 June 2022** |

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**MARIUSZ ZAKRZEWSKI**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the appellant: Mr R Wilcox, counsel, instructed by Thompsons Solicitors
For the respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Seelhoff ("the judge") who, in a decision promulgated on 7 October 2021, dismissed the appeal of Mr Mariusz Zakrzewski ("the appellant") against the decision of the Secretary of State for the Home Department ("the respondent") dated 9 March 2021 to make a deportation order against the appellant in accordance with regulation 23(6)(b) and regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations").

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## Background

2. The appellant is a national of Poland born on 5 May 1979. He entered the United Kingdom in March 2012. The respondent accepts that the appellant, having lived in the UK and having exercised EEA treaty rights for a continuous period of five years, has acquired a permanent right of residence pursuant to regulation 15 of the 2006 regulations.

3. Between 20 February 2013 and 11 November 2020 the appellant accrued 28 convictions in respect of 46 criminal offences. This included 7 offences against the person, 2 sexual offences, 5 offences against property, 2 theft and kindred offences, 2 public order offences, 9 offences relating to police/courts/prisons, 1 offensive weapons offence and 18 miscellaneous offences. The majority of the appellant's offending was linked to his abuse of alcohol. According to the appellant he started drinking as a young man in Poland and his coming to the UK was an attempt to break the cycle of drinking.

4. As a result of the appellant's offending a deportation order was signed against him on 8 January 2018. He lodged an appeal against this decision and his appeal was allowed on 22 May 2018 by Judge of the First-tier Tribunal M A Khan. The appellant however continued to commit criminal offences. The appellant committed 2 further offences between the hearing date of his 2018 First-tier Tribunal appeal and the promulgation of Judge M A Khan's decision. There were 3 further offences in 2018 and 8 further offences in 2019. The appellant was issued with Home Office warning letters on 5 June 2019, 12 August 2019 and 30 December 2019. In September 2019 the appellant was convicted of possessing a knife or blade in a public place and received a 6-month sentence of imprisonment, suspended for 18 months. On 19 November 2019 the appellant failed to comply with the community requirements of his suspended sentence and received a 20 week sentence of imprisonment.

5. On 11 November 2020 the appellant was convicted in respect of a sexual assault offence (intentionally touch female - no penetration) and an attempted sexual assault offence (intentionally touch female - no penetration) in respect of two emergency workers. These offences occurred when a female ambulance worker was assisting the appellant because he was ill through drink, and later in respect of a female police officer at a hospital to which the appellant had been admitted. He received two consecutive 6 month prison sentences in respect of these offences. He was additionally made subject to the Sex Offenders Notice for 10 years and ordered to pay £160 compensation. These offences were committed whilst the appellant was intoxicated.

6. In light of the appellant's continuing offending the respondent made a deportation order against the appellant on 9 March 2021. The appellant appealed this decision to the First-tier Tribunal.

## The decision of the First-tier Tribunal

7. The issue before the judge below was the applicability of the 2016 Regulations to the facts of the case and in particular regulations 23(6)(b) and 27, governing protections from deportation for EEA nationals.

8. The judge had before him a bundle of documents provided by the respondent and a bundle of documents provided by the appellant's legal representatives, which included a statement from the appellant.

9. At the outset of the hearing there were discussions concerning directions that had apparently been issued by the First-tier Tribunal for the respondent to provide a copy of a probation officer's report. Neither I nor the legal representatives at the 'error of law' hearing could locate any directions specifically issued by the First-tier Tribunal requiring disclosure by the respondent of a probation officer's report. Nevertheless, it does not appear to be disputed that the First-tier Tribunal did issue such directions. At [15] of his decision the judge stated:

> "At the start of the hearing we had discussions about directions issued for the respondent provide [*sic*] a copy of a probation officer's report. The presenting officer confirmed that she had made enquiries with the criminal case work team and the probation officer who both confirmed that no written report had been provided accordingly she was not able to comply with directions. I provided the Appellant's representatives with an opportunity to take instructions and they confirmed that he wished to proceed with the hearing on the basis that the Appellant was in detention and did not want to prolong the process any further."

10. The judge subsequently heard oral evidence from the appellant, who adopted his statement and then underwent cross-examination. The judge recorded the appellant's oral evidence at [17] to [21], and he summarised the representatives' submissions at [22] to [25].

11. In the section of his decision headed 'findings' the judge approached the earlier 2018 Tribunal decision as his starting point. The judge recorded the appellant's claim in the 2018 Tribunal decision that he understood that he could not control himself when he was drinking alcohol and that he would address behaviour. The judge noted that less than a week after the hearing the appellant was again in trouble with the police and then again before the Tribunal's decision was promulgated. At [28] the judge acknowledged that the appellant had not drunk alcohol for 13 months, but he indicated that this had to be seen in the context of the appellant's detention for the entirety of that time. In light of the appellant's repeated commission of offences following the 2018 Tribunal decision the judge did not feel able to place significant reliance on the appellant's assertions that he was reformed and would not drink again. The judge noticed that, following the appeal

decision in May 2018, the appellant received a further 18 convictions, which included an offence for possession of a bladed weapon for which received a 20 week prison sentence, and the sexual assault and attempted sexual assault convictions for which she received 6 months imprisonment for each count. The judge found that the appellant could not reasonably be trusted when he said that he was reformed and would not offend again.

12. At [31] the judge found that the appellant could not be trusted around emergency responders. At [32] the judge found that serious public policy grounds were present in this case which were reflected in the need to protect emergency responders and not just public safety generally.

13. At [33] the judge reminded himself that any decision had to be proportionate, taking into account the factors identified in regulation 27(5). At [34] the judge noted there had been an escalating level of seriousness to the appellant’s offending, and there was also a pattern of him becoming so insensible through intoxication that he simply did not know or recall what had happened. At [35] the judge noted the appellant’s claim to be reformed but considered that, as he had made similar claims to the Tribunal in the past, these claims were not well founded.

14. At [36] the judge noted that the appellant did not appear to have an effective support network in the UK, and that the bundle of documents he provided contained a single letter from a friend who did not attend the hearing or provide an explanation for her non-attendance. The judge noted that the appellant did not have a partner or children in the UK and, at [37], that there had been little advanced regarding the appellant’s private life connections in the UK beyond the fact that he worked here. No evidence had been provided by the appellant in respect of his family in the UK and no friends came to court. The appellant did not own a home and it was unclear whether he had any significant personal possessions here.

15. At [39] the judge considered the appellant’s claim that he would find it difficult to return Poland, but found that the appellant had, at that time, resided in the UK for less than 10 years, that he was still of working age and had been educated and had worked in Poland for many years when travelling around the country doing various jobs. The judge did not consider that it would be any harder for the appellant to move back to Poland to find steady work there. The judge additionally noted that the appellant did not really speak English yet and had not integrated to a significant degree.

16. Having regard again to the fact that the appellant had acquired a permanent right of residence, and was consequently entitled to a higher level of protection under the 2016 Regulations, the judge was nevertheless satisfied that serious grounds had been demonstrated

that the deportation was required on public policy grounds and the appeal was dismissed.

**The challenge to the judge's decision, the grant of permission, and further directions issued by the Upper Tribunal**

17. The original grounds of appeal contend that, in order to have properly assessed whether there were serious grounds for making the deportation order, it was crucial for the judge to have had an independent assessment of the risk posed by the appellant. Reference was made to the presenting officer's claim that no report had been produced or provided by the appellant's probation officer, but correspondence between the appellant's representative and the same probation officer confirmed that she had emailed an outline risk summary relating to the appellant to the Home Office on three separate occasions; 17 February 2021, 25 May 2021, and 24 August 2021. The grounds contend that the absence of the risk summary report was detrimental to the judge's decision as he was unable to fully consider the potential risk posed by the appellant on public grounds.

18. Permission was granted to appeal by the First-tier Tribunal on 3 November 2021. Judge of the first-tier Tribunal Komorowski found it arguable that, although the email correspondence between the probation officer and the appellant's solicitors indicated that there was no "full risk assessment", it was arguable that the outline risk summary nevertheless constituted a form of "written report" that, in accordance with the Tribunal's directions, ought to have been produced. Judge Komorowski noted that it was impossible to assess what part the risk summary would have played in the judge's reasoning without knowing its contents, and that it might indeed have reinforced the judge's views arrived at on the basis of the other evidence. Judge Komorowski could not however exclude the possibility that it may have affected the outcome and therefore permission was granted on all grounds taking a "pragmatic view".

19. The appeal came before Upper Tribunal Judge Rimington on 4 January 2022. Having heard submissions from both parties she adjourned proceedings in order to obtain the summary assessment of risk. She issued directions requiring the probation officer to provide an electronic copy of the outline risk summary relating to the appellant to the Tribunal, the appellant's representatives and the respondent.

20. In a letter dated 14 January 2022 the probation officer provided the outline risk summary, which she stated had been provided to the Home Office (FNO Returns Command Team 19 – Criminal Caseworker) on 12 February 2021 and 17 February 2021. She indicated the she had additionally sent a copy on 25 May 2021 and 24 August 2021 to the Home Office (FNO Returns Command Team 6 – Criminal Caseworker), and 14 October 2021 (to FNO Returns Command Accommodation Team).

**The application to provide supplementary grounds and the oral submissions at the 'error of law' hearing**

21. In an email received on 24 May 2022, just 3 days before the Upper Tribunal' 'error of law' hearing, the appellant's representatives applied to rely on supplementary grounds of appeal. No explanation was provided with the application for its lateness. The appellant's representatives had received the relevant probation officer's emails setting out her outline risk summary in February 2022. Mr Wilcox could offer no explanation for the late application. Mr Kotas indicated that he was not however prejudiced by the later provision of the supplementary grounds. In these circumstances I granted permission to the appellant to rely on the supplementary grounds.

22. The first additional ground takes issue with the respondent's assertions, said to have been made on two occasions to both the Upper Tribunal and the First-tier Tribunal, that no assessment of the appellant's risk could be located. The ground submits that the outline risk summary constituted a written report and that the respondent's claimed inability to locate the report "demonstrates a clear and concerning disregard for the case of the Appellant." The ground contends, whether intentional or unintentional, that the respondent misled both Tribunals.

23. The second additional ground asserts that the probation service assessed the appellant as posing a medium risk to the public and staff, while posing a low risk to children and himself. It asserts that the outline risk summary linked the appellant's offending to a misuse of alcohol. There was said to be no evidence to suggest that the absence of alcohol would render any risk whatsoever. The appellant consequently submits that a medium risk could not constitute serious grounds of public policy and security pursuant to regulation 27(3).

24. The appellant relied on an unreported Upper Tribunal decision, Roszkowski v SSHD (IA/50828/2014) in which an Upper Tribunal judge appeared to consider that a "medium risk" assessment within a particular individuals OASys report did not preclude a judge from concluding that that individual did not pose a genuine sufficiently serious threat even if the judge had found that the individual had acquired a permanent right of residence. This unreported decision was not provided to the tribunal. Mr Wilcox did not seek to adduce or rely on this unreported decision at the 'error of law' hearing.

25. The second additional ground further contends that, as the appellant would be subject to a post-sentence supervision licence period to expire on 23 February 2022, the probation service must not have considered his risk of reoffending to be sufficiently serious to constitute imposing a lengthy licence period. It was further submitted that the 'Essa' principles (Essa (EEA: rehabilitation/integration) [2013] UKUT 00316 (IAC) and MC (Essa principles recast) Portugal [2015] UKUT 00520 (IAC)

must apply to the assessment of the appellant and it was not sufficient to expect Poland to rehabilitate its own offenders, particularly if offending began in the United Kingdom.

26. The third supplementary ground of appeal contends that, in the absence of the outline risk summary, the appellant was not given the opportunity to consider and seek an independent expert assessment.

27. In his oral submissions Mr Wilcox focused on [15] of the judge's decision and submitted that the appellant's outline risk summary, which could be considered in the various emails sent by the probation officer, should have been considered by the presenting officer at the First-tier Tribunal hearing as a "written report" and should have been presented to the judge. Mr Wilcox acknowledged the references in the emails dated 17 February 2021 and 24 August 2021 that the probation officer had not given her consent for the information to be used in a court environment. It was nevertheless submitted that there had been a failure to bring to the judge's attention information relevant to his assessment of the existence of serious grounds in support of the deportation order. Mr Wilcox submitted that, had the judge been provided with the various emails setting out the outline risk summary, he may have reached a different conclusion. Mr Wilcox submitted that there was some ambiguity within the various emails concerning whether the 'medium risk' related to a risk of reoffending or a risk of serious harm, and that this ambiguity meant that it could not be said with any certainty that the judge's conclusion would have been the same.

28. Mr Kotas submitted that the arguments advanced in respect of ambiguity within the probation officers emails was not contained in any of the grounds of appeal. The solicitors in any event had ample opportunity to seek clarification from the probation officer. The email should be taken at face value and, in so doing, it was unarguable that they demonstrated anything other than the appellant posed a high risk of reoffending. It was consequently inevitable, even if the outline risk summary had been provided to the judge, that he would have reached the same conclusion. Any error in failing to provide the outline risk summary was therefore immaterial.

29. I reserved my decision.

**Discussion**

30. The respondent's decision was made under regulations which take effect pursuant to the UK's obligations under EU Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. Three levels of protection from deportation exist for EEA nationals. Any EEA national with the right to reside in the UK may only be removed on grounds of public policy or public security (regulation 23(6)(b)). A decision to

deport may not be taken to serve economic ends (regulation 27(2)) and it must be proportionate; see regulation 27(5)(6) where other requirements are also set out. These provisions encapsulate the lowest level of protection. Where an EEA national has resided in the UK “for a continuous period of five years” a right of permanent residence is acquired (regulation 15(1)), which brings with it the protection of regulation 27(3). This “serious grounds protection” is the medium level afforded to an EEA national and requires the respondent to show that serious grounds of public policy and public security exist in order to justify a removal. The 2016 Regulations have now been repealed but no issue arises in this case on that fact.

31. Having considered the all the written grounds and the oral submissions from Mr Wilcox, it appears to me that the first issue in this case is whether there had been a failure by the presenting officer in the First-tier Tribunal to inform the judge about the outline risk summary contained in various emails sent by the probation officer, and to provide to the judge with that outline risk summary, and whether any such failure amounted either to procedural unfairness or prevented the judge from taking into account relevant evidence.

32. I have considered the emails sent by the probation officer to various departments of the respondent on 12 February 2021, 17 February 2021, 25 May 2021, 24 August 2021, and 14 October 2021. I have additionally considered the email correspondence between the probation officer and the appellant’s legal representatives from 5 to 7 October 2021. I note at the outset that in the emails sent to the respondent on 17 February 2021 and 24 August 2021 the probation officer stated “… as I have not completed a full risk assessment on Mr Zakrzewski, I do not give my consent for the information below to be used in a court environment.” I am able to consider these emails as they were provided under specific direction by Judge Remington for use by the Upper Tribunal. The other emails sent by the probation officer to the respondent, dated 12 February 2021, 25 May 2021, and 14 October 2021, do not make any reference either way to consent being given or withheld in relation to court proceedings.

33. The appellant contends that the emails constituted a “written report” prepared by the probation service, as detailed in the information provided by the presenting officer to the judge concerning her inquiries with both the Criminal Casework Team and the probation officer (at [15]). There was, and still is, no full probation report. The probation officer’s emails make clear that a full risk assessment had not been completed. Mr Kotas informed me that whilst there was an (uncontroversial) minute prepared by the presenting officer after the First-tier Tribunal hearing, there were no details of her inquiries.

34. I am not persuaded that the presenting officer intentionally misled the First-tier Tribunal as to the existence of a ‘written report’. This is a serious allegation and the information relating to the details of the

presenting officer's inquiries are unclear. It is quite possible that the presenting officer may have considered the term 'written report' to relate only to a full report. I additionally note that in at least two of the emails that constitute the outline risk summary the probation officer did not give her consent to the information being disclosed to a court. It is not clear whether the presenting officer knew about or had access to these emails, but if she did then she did not appear to have authority to disclose that information to the First-tier Tribunal.

35. I am nevertheless prepared to proceed on a basis that is most advantageous to the appellant and to therefore continue my assessment on the basis that the emails that constitute the outline risk summary should have been provided to the judge. These emails are clearly relevant to an assessment of whether there were serious grounds of public policy capable of supporting the making of the deportation order.

36. I must now determine whether any procedural impropriety and/or a failure to consider relevant evidence, as identified above, could, in light of the content of the emails containing the outline risk summary, have entitled the judge to have reached a different conclusion. It is the respondent's case that even if the judge had seen the outline risk summary, it could not have made any material difference to his decision. The test for immateriality is a high one. It is only if the decision would inevitably have been the same could it be said that any legal error was immaterial.

37. I consider the emails that constitute the outline risk summary. In the email dated 12 February 2021 the probation officer set out what would happen to the appellant upon release. He would need to attend a police station to sign onto the Sexual Offences Register, and his licence would expire on 24 August 2021. He would then be subjected to a post-sentence supervision commencing on 24 August 2021 and expiring on 23 February 2022. He would also be subject to a 10 years Sexual Harm Prevention Order. He was a MAPPA case, managed at category one, level I. He was assessed as posing "a medium risk of harm." Information was then provided in respect of the appellant's pattern of offending, the possibility of accommodation, and information in respect of substance abuse. It was indicated that a referral to Change, Grow and Live would be completed to support the appellant from his alcohol misuse.

38. In her email dated 17 February 2021 the probation officer indicated that, as she had not completed her full risk assessment, she did not give her consent to the information she provided being used in a court environment. The probation officer did however confirm that the appellant fell into the group classed as "**high risk** of re-conviction for a sexual crime" (original emphasis). Using a Risk of Serious Recidivism (RSR) tool (an actuarial tool that estimates the likelihood of an offender committing a further seriously harmful offence within the next two

years) there was a 4.6% risk of the appellant committing a further serious harmful offence, which suggested a ‘**medium risk**’ (original emphasis). The Offender Group Reconviction Scale (OGRS3) was another actuarial tool that estimated the probability of an offender committing a further similar offence based on his age, number of offences, age at first contact with the police and other static risk factors. Using this the probation officer miscalculated there was an 85% chance of the appellant is being reconvicted within a two-year period which suggested a ‘**high risk**’ (original emphasis). The overall risk of the appellant re-offending was high.

39. In my judgement it is readily apparent from this email that the probation officer was considering the risk of recidivism. The appellant was identified at being at high risk of reconviction for a sexual crime. This email did not consider the risk of serious harm were the appellant to commit a further offence.

40. In the email of 25 May 2021 the appellant was assessed by the probation officer as posing ‘a medium risk of harm’. The probation officer referred to her earlier emails of 12 February 2021 and 17 February 2021 “regarding risk and reoffending.” It is readily apparent from this email that the ‘medium risk’ related to the level of harm that it was anticipated could be caused were the appellant to offend again. It did not relate to his risk of reoffending.

41. In the email dated 24 August 2021 the probation officer indicated that, as she had not completed a full risk assessment, she did not give her consent for the information below to be used in a court environment. However she confirmed that the appellant still fell within the group classed as “**high risk** of reconviction for a sexual crime” (original emphasis). She indicated that the appellant’s “risk of harm or re-offending has not changed since the last update I provided.”

42. In the email from the probation officer dated 14 October 2021, in relation to an application by the appellant for section 4 support (of the Immigration and Asylum Act 1999), the probation officer provided the respondent with a further outline of the appellant’s risk summary, indicating that a full assessment would be completed upon his release. This email indicated that the appellant fell into a group classed as “**high risk** of reconviction for a sexual crime”(original emphasis). The email stated that the appellant was “**assessed as Medium risk to the Public, Staff. However, he is assessed as low risk to children and self**” (original emphasis). The email then considered the ‘Nature of risk’. In respect of ‘the public’, specifically vulnerable females, the risk of harm was through sexual touching and inappropriate sexual comments when the appellant was under the influence of alcohol. It was said that this was likely to cause serious harm and distress to a victim. There was also a risk to the general public when the appellant was under the influence of alcohol that he would be aggressive or spit. A similar assessment was set out in respect of ‘staff’, particularly

female ambulance service staff and police officers. The medium risk the appellant posed to female ambulance service staff and police officers also existed in relation to bus drivers or security guards.

43. In my judgement, having carefully considered all of the emails summarised above, there is no doubt, and no room for ambiguity, that the appellant was assessed as posing a high risk of reconviction for a sexual crime, although he posed a medium risk of harm to the public and staff should he commit a further offence. The reference in the email of 12 February 2021 to the appellant posing a "medium risk of harm" is consistent with the use of the term "medium risk" in the other emails and strongly indicates that the reference to "medium risk" is of harm to the public and not of recidivism. This is also consistent with the email from the probation officer dated 25 May 2021, which again indicates that the appellant was currently assessed as posing "a medium risk of harm." In that email the probation officer referred to her earlier emails "on the 12th and 17th of February 2021 regarding risk and reoffending." This further supports the distinction between risk of harm to the public and risk of reoffending. It is abundantly and overwhelmingly clear that the probation officer assessed the appellant at being of high risk of reconviction for a sexual crime.

44. Were the judge to have considered the outline risk summary he would, in my judgement, have inevitably have reached the same conclusion as to the existence of serious grounds of public policy supporting the appellant's deportation. The combination of the appellant being assessed as being at high risk of reconviction for a sexual crime, together with him being assessed as posing a medium risk of serious harm should he re-offend, reinforced the assessment of the judge had already made that he could not rely on the appellant's word that he was reformed and would not drink again. On no rational view could the information contained in the outline risk summary have altered the judge's overall assessment, which included finding that there was an escalating level of seriousness to the appellant's offending and to the fact that he did not have an effective support network in the UK. I therefore find that any error of law in providing the judge with the outline risk summary would not have been material.

45. To his credit Mr Wilcox did not pursue the other elements of the second ground of appeal relating to the issue of rehabilitation and that the fact that the appellant would be subject to a post-sentence supervision licence. The amended Grounds of appeal are wholly speculative in their assertion that "… the probation service must not have considered [the appellant's] risk of reoffending to be sufficiently serious to constitute imposing a lengthy licence period." There was no evidential basis to support an assertion that the length of the licence period reflected a view of the probation service that there was not a sufficiently serious risk of the appellant reoffending. The judge was mindful of the fact that the appellant would be offered a program on his release and that he had been sober throughout the 30 month period of

his detention, as was the probation officer. The judge was however fully entitled to take into account the fact that the appellant had previously continued to abuse alcohol and to commit offences even after his appeal in 2018. I note by way of observation that the appellant had previously been the subject of drug/alcohol treatment rehabilitation activity requirements and alcohol treatment (in respect of his convictions on 21 October 2016 and 4 January 2017). These orders seemingly made no difference because the appellant continued to commit offences based on his abuse of alcohol. The appellant also breached his rehabilitation activity requirements of a community order issued against him in respect of conviction on 11 March 2019.

46. The second ground of appeal makes only passing reference to **Essa** and fails to explain how the principles in **Essa**, applied to the appellant's particular circumstances, could have led to any other conclusion. The judge found that the appellant had little by way of private life in the UK. He had lived in this country for less then 10 years, he had no partner or children and the judge found that the appellant did not appear to have an effective support network. Whilst the appellant had worked in this country he was educated in Poland, where he lived for most of his life and where he had also worked. There was no evidence that the appellant had any family or other significant private life ties or responsibilities in the UK, there was no evidence that he was an active member of the community, and there was no evidence that rehabilitation programs for alcohol abuse were not available in Poland. In these circumstances there was simply no basis upon which the principles established in **Essa** would have entitled a judge to conclude that the appellant's rehabilitation would be better served in this country rather than Poland.

47. Mr Wilcox did not pursue the third supplementary ground of appeal in his oral submissions. This brief ground contends that the appellant "… was not given the opportunity to consider and seek the prospect of an independent expert assessment, which may have swayed the judges consideration of risk and rehabilitation in his favour." It was however open to the appellant to have obtained an independent expert report in respect of his risk of recidivism and the risk of harm that he posed to the public if he offended again for his First-tier Tribunal hearing. Moreover the judge specifically referred to an opportunity being given to the appellant's representative to take instructions in relation to the absence of any probation officers report, and they confirmed that they wanted to proceed with the hearing. No application was made by the appellant to adjourn the hearing in order to obtain his own independent report. This disposes entirely of this additional ground of appeal.

48. For the reasons given above I find that the decision of the First-tier Tribunal does not contain any error of law requiring it to be set aside.

## Notice of Decision

**The appellant's appeal is dismissed**

D.Blum

Signed

Upper Tribunal Judge Blum   Date   30 May 2022