Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: LP/00070/2021**
(PA/50173/2019)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On the 10 March 2022	**On the 13 April 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

TTMK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representatives:
For the Appellant: Mr G Olphert, instructed by Crowley & Co, Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Namibia who was born on the 27 May 1992. He arrived in the United Kingdom on 16 June 2019 and claimed asylum. He claimed that he was at risk on return to Namibia as a gay man.

3. On 6 November 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. In a decision dated 22 March 2021, the First-tier Tribunal (Judges Rhys-Davies and Mathews) ("the Panel") dismissed the appellant's appeal on all grounds. In particular, the Panel made an adverse credibility finding and rejected the appellant's account to be gay and, as a consequence, to be at risk on return to Namibia.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal to the Upper Tribunal on three grounds.

6. First, the Panel wrongly relied upon inconsistencies in the appellant's evidence which, it was said, was due to problems with the interpretation by the Tribunal-appointed interpreter (Ground 1).

7. Secondly, the Panel failed to give sufficient weight to the evidence of a witness ("ML") supporting the appellant's claim that he is gay (Ground 2).

8. Thirdly, the Panel failed to apply the correct standard of proof (Ground 3).

9. The appellant was initially refused permission to appeal by the First-tier Tribunal (Judge Ford) on 7 May 2021. However, on renewal to the Upper Tribunal, on 31 August 2021 UTJ Plimmer granted the appellant permission to appeal.

10. The appeal was initially listed on 16 December 2021 but was adjourned. Following that hearing, I issued directions that, in relation to Ground 1, the appellant's legal representatives should file with the UT a witness statement made by the appellant's representative who attended the First-tier Tribunal hearing relevant to the issues raised in Ground 1 together with any relevant contemporaneous note made by the legal representative at the hearing.

11. The appeal was listed again on 10 March 2022 at the Cardiff Civil Justice Centre. At that hearing, the appellant was represented by Mr Olphert and the respondent by Ms Rushforth.

The New Evidence

12. Prior to the hearing, on behalf of the appellant a witness statement from Mr Michael McGarvey, who was Counsel for the appellant before the First-

tier Tribunal, was filed with a typescript of his handwritten notes taken at the proceedings attached.

13. In addition, at the invitation of Mr Olphert, and without objection from Ms Rushforth, Mr McGarvey briefly gave oral evidence in which he adopted his witness statement as being accurate. In his brief oral evidence, Mr McGarvey accepted that he had not raised with the Panel any issue concerning the interpreter but, instead, the Panel had raised an issue directly with the interpreter.

Discussion

14. I will take each of the grounds in turn but, for convenience, I will do so in reverse order.

Ground 3

15. Mr Olphert, relying upon the written grounds, submitted that the Panel had erred in law by failing to state the appropriate standard of proof in determining the appellant's asylum claim.

16. Mr Olphert submitted that at para 12 the Panel had simply stated that the appellant had the burden of proving that there were "substantial grounds for believing" that the appellant met the requirements of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) but had failed to state that the standard of proof was one of "reasonable likelihood" or "real risk".

17. Mr Olphert acknowledged that at para 46, the Panel in stating its decision on the appeal in relation to the asylum grounds had stated that "we find that the appellant has not discharged the burden of proof of having a well-founded fear of being persecuted for a Convention or Qualifying [D]irective reason." But, again, no standard of proof was stated. He also accepted that the Panel had stated at para 47, in determining the humanitarian protection claim, that the appellant had not established a "real risk of suffering serious harm" but that was in the context of humanitarian protection and not asylum claim.

18. The burden and standard of proof in an international protection claim is well-established. The appellant must prove that he is a refugee falling within the terms of the Refugee Convention on the basis that there is a "reasonable degree of likelihood" or a "real risk" that he will suffer persecution for a Convention reason (see R v SSHD, ex parte Sivakumaran [1988] AC 958).

19. Likewise, the burden of proof in a humanitarian protection claim in establishing the requirements of para 339C of the Immigration Rules (HC 395) lies upon the appellant to establish, to the same standard as in an asylum claim, that there is a "real risk" of the individual suffering serious harm. Both para 339C and the Qualification Directive express that requirement as being that: "substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, … would face a real risk of suffering serious harm …" (see Art 2(e)

of the Qualification Directive). Precisely the same burden and standard of proof applies to Art 3 of the ECHR (see Kacaj v SSHD [2001] INLR 354).

20. It is uncontroversial to state that the standard of proof in an asylum case is identical to that in a humanitarian protection case or where a claim under Art 3 is made. Of course, what has to be established on the basis of a "reasonable likelihood" or "real risk" differs depending upon the claim itself.

21. In this appeal, the Panel's self-direction in para 12 refers to "substantial grounds for believing" that the appellant meets the requirements of, in effect, the Refugee Convention but did not spell out explicitly that the standard of proof was that of "reasonable likelihood" or, as it is more commonly put, a "real risk". Likewise, there is no explicit reference to the standard of proof in para 46 where the Panel states that the appellant had not discharged the burden of proof of establishing a "well-founded fear of being persecuted for a Convention reason", i.e that it is objectively established.

22. However, when reaching its decision in relation to the subsidiary protection claim at para 47 the Panel says this:

> "The appellant's representative submitted that the appellant, if removed from the United Kingdom, would face a real risk of suffering serious harm. For reasons identical to those set out above we do not find any adequate evidential basis for any such risk. In the light of our findings we are not satisfied that the appellant, if removed, would be at real risk of suffering serious harm and the appellant is not entitled to humanitarian protection."

23. That, of course, is an impeccably correct self-direction on the burden and standard of proof in relation to the appellant's humanitarian protection claim.

24. A Tribunal's failure to apply the correct burden and standard of proof is likely to amount to a material error of law. It is a fundamental starting point in assessing whether an appellant has established his or her claim whether based upon asylum grounds, humanitarian protection grounds or under Art 3 of the ECHR. However, the error of law lies in a failure to *apply* the correct burden and standard of proof, not simply failing to state it. The error, if any, is one of substance and not merely form. I do not consider that he Panel did fall into that error.

25. First, the Panel clearly applied the correct burden of proof placing it clearly upon the appellant.

26. Second, there is no suggestion that the Panel applied a higher standard of proof than the "reasonable likelihood" or "real risk" standard. Mr Olphert did not direct my attention to any part of the Panel's reasoning where, for example, the Panel fell into the error of determining the appeal on the civil standard of proof.

27. Third, in rejecting the appellant's claim for humanitarian protection the Panel explicitly applied the correct "real risk" standard and noted that it reached its adverse conclusion on the humanitarian protection grounds for

"reasons identical to those set out above we do not find any adequate evidential basis for any such risk". That, in my judgment, shows that the Panel plainly applied in relation to the asylum claim ("above"), the same standard of proof as it had in rejecting the humanitarian protection claim, namely that of a "real risk", which was the correct standard of proof in respect of the appellant's asylum claim.

28. Reading the Panel's decision as a whole, I am satisfied that it applied the correct, lower standard of proof applicable in international protection claims not only to the appellant's humanitarian protection claim but also to his claim based upon the Refugee Convention. For those reasons, it did not err in law by failing to apply the correct standard of proof. Consequently, Ground 3 is not made out.

Ground 2

29. Mr Olphert did not seek to make any oral submissions in relation to Ground 2. That ground contends that the Panel failed to give sufficient weight to the evidence of a witness, "ML" that he had met the appellant on a number of occasions and had had at least nine separate face-to-face meetings alone with him. In addition, ML's evidence was that the appellant had told him, during those meetings, that his father had beaten the appellant with a stick and had been very violent towards him when he had learnt that he was gay.

30. The Panel set out the evidence of ML at paras 23–24 as follows:

> "23. [ML] has helpfully provided both a letter and oral evidence setting out his evidence. On the basis of that evidence we accept and find that he is the founder and organiser of the LGBT support organisation 'Hoops and Loops'.
>
> 24. We find from his evidence, the appellant's own account and photographs that the appellant has attended the support group and pre-lockdown has attended several events with other members of the group. We note that the [appellant] has been a regular participant in the group's activities over the course of lockdown. We have given great respect to the conclusion of [ML] when he explained to us that he would not come to give evidence in support of such an appeal without having conducted his own assessment as to whether the appellant was genuine or not, we accept that [ML] accepts the account that he has been given by this appellant. However we observe that that is not a definitive answer in our judgement but is a matter to which we must give [due] regard and attention in reaching our own judgement."

31. Plainly, therefore, the Panel had well in mind ML's supportive evidence concerning the appellant's sexual orientation and that ML genuinely believed that the appellant is gay. At para 30, the Panel stated:

> "We do keep in mind that he told [ML] that his father reacted with violence."

32. ML's evidence was not ignored by the Tribunal and whether "sufficient weight" was given to it requires the appellant to establish that the weight given was Wednesbury unreasonable or irrational. That is because the weight which a fact-finder, such as the Panel in this appeal, should give to

evidence is primarily a matter for that fact-finder subject to the long-stop of Wednesbury unreasonableness or irrationality. In this appeal, the Panel gave detailed reasons, taking into account an expert report, the evidence of ML and the appellant's own evidence and a letter from the traditional Counsel, for not accepting that the appellant's account was credible. Apart from the point raised in Ground 1, those reasons are not challenged in these grounds. In reaching its findings, the Panel found inconsistencies in the appellant's evidence including his account concerning the violence, he claimed, he received at the hands of his father. Reading the decision overall, it is not sustainable that the Panel gave "insufficient weight" in the sense of Wednesbury unreasonable or irrational weight to ML's evidence which related to what the appellant had told ML and ML's opinion as to the appellant's sexual orientation. For these reasons, I also reject Ground 2.

Ground 1

33. Central to the appellant's case that he is gay was his evidence concerning a relationship that he had with a male friend, "D", in Namibia before coming to the UK in 2019. One of the issues, in relation to that relationship, concerned its duration and how the appellant and D behaved during that time.

34. The appellant's evidence in his asylum interview and witness statement was that he had known D through school and sports activities from 2011 until 2017. The Panel dealt with this at paras 25–28 as follows:

> "25. The central feature of the appellant's case is his assertion that he is a gay man and that he began his first and only gay relationship at the age of 17 with a man called [D].
>
> 26. In considering this assertion we note that in his asylum interview and witness statement he said that he had known [D] through school and sports activities from 2011 until 2017, when they then began a romantic relationship. However in cross-examination, when asked how often he saw [D] from 2011 to 2017, the appellant replied that during that period he and [D] were hiding their relationship.
>
> 27. The asserted relationship and need for secrecy because of risk, is at the heart of this claim and is said by this man to have required him to leave his home state. It is very surprising that he should describe having to hide the relationship over a six year period 2011 to 2017 in which he is otherwise clear in interview and his witness statement, that there was no romantic relationship with [D].
>
> 28. The appellant sought subsequently to correct his answer when the discrepancy was put to him, but he gave a clear and unambiguous answer that contradicted a central feature of his account.
>
> 29. The appellant has consistently stated that once a romantic relationship had begun with [D], they had to be secretive because of the risks faced by members of the LGBT community ..."

35. Then at para 32 the Panel also said this:

> "We note that the appellant when asked in interview at Q78 as to the length of his relationship with [D] spoke of a period of three years, yet in his accounts before us they began their relationship in 2017, it was discovered in October

> of that that year and the appellant within a very few weeks of that date had moved to his uncle. By June 2019 the appellant was in the United Kingdom and he has not contacted [D] since his arrival. The relationship cannot have been for a period of three years as claimed. That is a salient inconsistency on the length of the single relationship said to be central to this claim."

36. There are, as can be seen, two related issues being raised, and relied upon, by the Panel in assessing the appellant's credibility. First, there is the issue of when, and for how long, the appellant's claimed relationship with D was. Secondly, there is the issue of the appellant's evidence that during that relationship he and D hid the relationship because of the risks faced by members of the LGBT community in Namibia.

37. At paras 26-28, the Panel stated that the appellant's evidence in his asylum and witness statement was that he had known D between 2011 and 2017 but that his romantic relationship only began in 2017. That was inconsistent, it is said, with what the appellant said in cross-examination that he and D hid their relationship between 2011 and 2017 when, on the appellant's previous evidence, the relationship had not begun at that time.

38. Then, at para 32, taking the appellant's evidence as being that the relationship began in 2017, the Panel treats as a "salient inconsistency" that the appellant said the relationship lasted for three years when, in fact, the appellant came to the UK in 2019 and so the relationship could only have lasted for two years.

39. In his submissions, Mr Olphert, relying on the grounds, submitted that there had been difficulties with the interpreter, whom it was clear, for example, was interpreting the evidence from the appellant in the third person stating, for example, "they were hiding" when the appellant, no doubt, said "we" were hiding. Mr Olphert submitted that the Panel could not sustainably rely upon what the appellant was said to have said in his oral evidence, given the problems with the interpreter.

40. Further, it was incorrect to state in para 28 that the appellant had given a "clear and unambiguous answer" that he was in a relationship between 2011 and 2017 that contradicted "a central feature of his account".

41. Finally, Mr Olphert submitted that, as regards the Panel's reasoning in para 32, the appellant had corrected at Q78 of his interview, when he had initially said that the relationship lasted "for three year(s)", that he had come to the UK in 2019, that "yes two years" was the length of the relationship with D.

42. Ms Rushforth relied upon the Tribunal's decision in TS (interpreters) Eritrea [2019] UKUT 352 (IAC) as to the correct approach that should be adopted by the UT in the case of claimed problems with interpretation at a hearing before the First-tier Tribunal.

43. The UT in TS set out the following helpful guidance in the headnote at paras (1)-(6) and (8)-(9) (there is no para (7)) as follows:

> "(1) An appellate tribunal will usually be slow to overturn a judge's decision on the basis of alleged errors in, or other problems with,

interpretation at the hearing before that judge (Perera v Secretary of State for the Home Department [2004] EWCA Civ 1002). Weight will be given to the judge's own assessment of whether the interpreter and the appellant or witness understood each other.

(2) Such an assessment by the judge should normally be undertaken at the outset of the hearing by the judge (a) putting questions to the appellant/witness and (b) considering the replies. Although he or she may not be able to speak the language of the appellant/witness, an experienced judge will usually be able to detect difficulties; for example, an unexpected or vague reply to a specific question that lies within the area of knowledge of the appellant/witness or a suspiciously terse translation of what has plainly been a much longer reply given to the interpreter by the appellant/witness. Non-verbal reactions may also be factored into the judge's overall assessment.

(3) Where an issue regarding interpretation arises at the hearing, the matter should be raised with the judge at the hearing so that it can be addressed there and then. Even if the representatives do not do so, the judge should act on his or her own initiative, if satisfied that an issue concerning interpretation needs to be addressed.

(4) In many cases, the issue will be capable of swift resolution, with the judge relying upon the duty of the parties under rule 2(4) of the Procedure Rules of both of the Immigration and Asylum Chambers to help the Tribunal to further the overriding objective of dealing with the case fairly and justly.

(5) A challenge by a representative to the competence of a Tribunal-appointed interpreter must not be made lightly. If made, it is a matter for the judge to address, as an aspect of the judge's overall duty to ensure a fair hearing. Amongst the matters to be considered will be whether the challenge appears to be motivated by a desire to have the hearing aborted, rather than by any genuine material concern over the standard of interpretation.

(6) It will be for the judge to decide whether a challenge to the quality of interpretation necessitates a check being made with a member of the Tribunal's administrative staff who has responsibility for the booking of interpreters. Under the current arrangements for the provision of interpreters, it may be possible for appropriate enquiries to be made by the administrative staff of the Language Shop (a quality assurance service run by the London Borough of Newham in respect of the Ministry of Justice's language contract), as to whether the interpreter is on the register and whether there is any current disclosable issue regarding the interpreter. The initiation of any such enquiries during a hearing is, however, a matter for the judge. In practice, it is unlikely that it would be necessary or appropriate to take such action. In most cases, if the standard of interpretation is such as seriously to raise an issue that needs investigating, the point will probably already have been reached where the hearing will have to be adjourned and re-heard by a different judge (using a different interpreter).

(8) On an appeal against a judge's decision, even if it is established that there was or may have been inadequate interpretation at the hearing before the judge, the appeal will be unlikely to succeed if there is nothing to suggest the outcome was adversely affected by the inadequate interpretation. This will be the position where the judge has made adverse findings regarding the appellant, which do not depend on the oral evidence (Perera , paragraphs 24 and 34).

(9) is important that Tribunal-appointed interpreters are able to discharge their functions, to the best of their abilities. It is part of the judicial function to enable an interpreter to do this by, for instance, preventing a party or representative from behaving in an intimidating or oppressive way towards the interpreter. By the same token, the Tribunal and the parties are entitled to expect that the interpreter will interpret accurately, regardless of what he or she personally thinks of the evidence they are being required to translate."

44. Based on TS, Ms Rushforth submitted that the judge's role was merely supervisory and if there was a problem with the interpreter then it was a matter for the legal representatives to draw that to the judge's attention. In this case, the appellant's (then) legal representative had accepted that he had not drawn any difficulties with the interpretation to the attention of the Panel. She submitted that, in those circumstances, and given that the Panel had raised an issue with the interpreter, it was entitled to give such weight as it had in paras 27-28 to the evidence of the appellant and to identify the inconsistencies in that evidence.

45. However, Ms Rushforth accepted that in para 32, there was an error in that at Q78 of the interview the appellant had immediately corrected his evidence that he had been in a relationship with D for three years but rather for two years. That was not, however, she submitted a material error.

46. It is clear that there were some issues with the interpretation in this appeal. Mr McGarvey's typed record of proceedings, which was not questioned as being other than accurate, notes that the judge chairing the Panel intervened and advised the interpreter to "just interpret Q & A". There does appear to be a translation issue in the interpreter moving from the first to the third person. However, in itself, I do not see how that makes what was said, in the circumstances of this case, any less reliable.

47. What, however, is problematic concerns the time when the appellant was saying he was in a relationship with D and that they had to hide that relationship.

48. Taken from Mr McGarvey's record of the evidence, which as I have said has not been called into question before me, the following exchange took place in cross-examination:

"Question: Relationship started in 2017. Correct?

Answer: Yes true.

Question: 2011 – 2017 how often saw [D]?

Answer: Can's say exactly – met every so often every two months played football. They were hiding couldn't get a chance to meet all the time.

Question: Between 2011 – 2017 you weren't in a relationship. What were you hiding?

Answer: I think he is saying is what he has answered is wrongly it is from 2017. Not 2011 – 2017.

Question: Between 2011 – 2017, before relationship how often see [D]?

Answer: Used to meet at football. Not in a relationship. Didn't meet up before relationship started in 2017."

49. As the Panel noted in para 26, in his asylum interview and witness statement the appellant said that he had known D through school and sports activities from 2011 until 2017 and it was only at that latter date that a romantic relationship began. Taking the appellant's evidence in cross-examination, the Panel stated that the appellant's evidence was that between 2011 and 2017 he and D were hiding their relationship which, on the appellant's evidence, was inconsistent with the relationship only beginning in 2017. The Panel stated at para 28 that, although the appellant subsequently corrected his answer, he had given a "clear and unambiguous answer that contradicted the central feature of his account."

50. In my judgment, the Panel has unreasonably read the appellant's evidence that I have set out above. In that passage, the appellant begins by stating that the relationship began in 2017. He was then asked how often he had seen D prior to that between 2011 and 2017. The appellant said he could not say exactly but they had played football and so met about every two months. He then said (apparently inconsistently) that they were in hiding and did not get a chance to meet. In the immediate succeeding question, the obvious inconsistency in that was put to the appellant. The interpreter, albeit in terms of stating what he thought the appellant was saying, said that the appellant had answered that wrongly because "it is from 2017. Not 2011 - 2017". The next question again begins on the basis that the relationship had not begun between 2011 and 2017 and the appellant answers that during that time they used to meet at football but were not in a relationship which only started in 2017. The appellant's clarification is immediate and entirely consistent with what he had immediately previously said about when his relationship began (i.e. 2017) and with the question that immediately followed his correction. The Panel's error was not, in my judgment, derived from any misinterpretation of the appellant's evidence but rather in regarding what the appellant said by way of correction, immediately and clearly, as being sufficient to identify a relevant discrepancy because the appellant had given a "clear and unambiguous answer". The reasoning fails, in my judgment, to have sufficient and adequate regard to the fact that the appellant's account, throughout his evidence both prior to the hearing and at the outset of the relevant part of his cross-examination, was that his relationship began in 2017 and that he and D hid their relationship during its existence.

51. The Panel's approach to this evidence, perhaps, contrasts with Ms Rushforth's acceptance that the Panel was in error in para 32 to identify a discrepancy in the appellant's evidence at Q78 of his interview where, somewhat similarly, when a discrepancy as to the length of his claimed relationship with D was pointed out to him, the appellant immediately corrected that to the non-discrepant period of "two years".

52. Whilst discrepancies can, undoubtedly, be relevant in assessing the credibility of an appellant's account and whether a fact-finder believes the appellant's evidence, any discrepancies must be seen in the context of an

individual's evidence (or other evidence in the appeal) as a whole. The context of when, and in what circumstances, the evidence was given may be important. Here, the discrepancy had to be seen in the context of the whole of the appellant's evidence given in cross-examination in the passage I have set out above. A quick and immediate correction of an individual's evidence is less likely to be a real discrepancy than where the evidence emanates from two different individuals or over an extended period of time. Individuals, in the context of giving evidence in appeals, may say something which, on immediate reflection, was not what they intended to say or, if there are interpretation problems, was in fact not what they said.

53. In this appeal, two of the essential reasons why the core of the appellant's claim to be gay was doubted by the Panel, based upon his claimed relationship with D in Namibia, relied on 'discrepancies' in the appellant's evidence although those 'discrepancies' would disappear if the immediate correction of the appellant's evidence was accepted. In my view, even bearing in mind the primary role of a fact-finder to assess the evidence, the approach to the appellant's evidence in regard to these two 'discrepancies' – one of which is accepted by Ms Rushforth – was Wednesbury unreasonable and irrational.

54. Ms Rushforth contended that any error was not material. I do not accept that submission for two reasons.

55. First, the appellant's relationship with D was a central part of his case to establish that he is gay. The two inconsistencies were significant in the Panel's rejection of the evidence that that relationship had ever occurred.

56. Secondly, in para 41 of its decision, the Panel said this:

> "We have viewed all evidence in the round. We find that the inconsistencies set out above, when viewed collectively, are such that we do not find the appellant to be a credible or reliable witness of fact on the issue of his sexuality. Individually the observations above may not entirely undermine this man's credibility but in our judgement when they are taken together and viewed in the round we are driven to the conclusion that this man has no credibility as a reliable witness of fact. His account was not accepted by us."

57. The Panel itself regarded the inconsistencies identified by it – two of which are not sustainable – as being collectively and cumulatively undermining the appellant's credibility. It is simply not possible, therefore, to untangle the Panel's reasoning and to be confident that it's finding that the appellant was not credible (and to reject his claim to be gay) would have been the same had those inconsistencies not been erroneously identified and relied upon by the Panel. Their error was, therefore, material to their adverse credibility finding.

58. Although I have rejected Grounds 2 and 3, I am satisfied on the basis of Ground 1 that the First-tier Tribunal materially erred in law in reaching its adverse credibility finding and in rejecting the appellant's claim based upon his sexual orientation as a gay man.

Decision

59. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

60. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge (other than Judges Rhys-Davies and Mathews). None of the Panel's findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
16 March 2022