



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/08943/2015

**THE IMMIGRATION ACTS**

Heard at Birmingham Employment Tribunal  
On 24 July 2018

Decision and Reasons Promulgated  
On 31<sup>st</sup> July 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

DC  
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: no appearance

For the Respondent: Mr Mills – Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. At a hearing before the Upper Tribunal on 18 April 2018 the decision of the judge of the First-tier Tribunal promulgated on 23 November 2017, who allowed DC's appeal, was set aside and directions given for a Resumed hearing before the Upper Tribunal after which this tribunal shall substitute a decision to either allow or dismiss the appeal.

2. Notice of the Resumed hearing was sent to the appellant, who is a self-representing litigant, and the Presenting Officers unit on 25 June 2018. None of the notices, which set out clearly the date, time, and venue of the hearing, has been returned as not having been delivered. Notwithstanding, the appellant failed to attend the hearing.
3. Mr Mills confirmed that the appellant was released to his home address in December 2017 and that for some time has been on Immigration Officers bail which includes a reporting condition. The respondent's records note the appellant has failed to report as ordered for three months and has now been marked as an absconder. Mr Mills confirmed that the address provided as the appellants address for reporting purposes on the Sex Offenders Register is that provided as his home address where the notice of hearing was sent.
4. There is no application for an adjournment or explanation for the appellant's absence. I am satisfied it is appropriate, having considered the principle of fairness and the overriding objectives, for the matter to proceed and to be heard in the appellant's absence.

### Discussion

5. The appellant is a national of Jamaica who was born on 11 October 1979. There have been a number of hearings before the tribunal's the earliest of which is a decision by First-tier Tribunal Judge Holt promulgated on 27 March 2013.
6. The error of law decision finds that the evidence relating to the appellant's immigration history, medical history, immediate family and other relationships in the United Kingdom shall be preserved findings as they are not in issue.
7. The appellant's offending history, which has made him the subject of an order for his deportation from the United Kingdom, together with the findings of Judge Holt relating to the appellants time in the United Kingdom, mental health and HIV issues are set out in the error of law finding which is annexed to this decision – see Annex A.
8. The core finding by the First-tier Tribunal in the decision set aside leading to this hearing is that it had not been shown the appellant's circumstances in Jamaica will be better now than they would have been in the past leading to a finding his removal will breach the United Kingdom's obligations under articles 2 and 3 ECHR.
9. The evidence that has previously been provided by the appellant, including a report of Mr Sobers dated 4 March 2013, has been considered. There has been no response to the directions of the Upper Tribunal seeking further or updated evidence.
10. Mr Mills has provided further documents in support of the respondent's case; the first relating to the provision of adequate medication to treat the appellants HIV. The response from the author of the document is that the specific cocktail of medication the appellant takes that is required to control his condition is all available at the University Hospital of the West Indies in Kingston. It is therefore clearly established that the medical assistance required by the

appellant is available and it has not been made out it will not be accessible to the appellant on return.

11. In relation to the appellants mental health, he has been diagnosed as suffering bipolar disorder for which he receives a regular prescription. The documents confirm psychiatric treatment as an inpatient or outpatient day clinic basis is available at the Bellevue Hospital in Kingston which is a public facility and that the drugs the appellant has been prescribed in the United Kingdom are available at public hospitals and clinics in Jamaica free of charge. The pricelist provided showing the drugs -related costs are not the costs charged the patient but the cost paid by the hospital. It is therefore clear that the medication required by the appellant to help with his mental health issues is available and accessible within the mental health facilities provided in Jamaica.
12. It is not made out that the appellants health issues are sufficient to meet the article 3 has threshold or the test set out in *N*, having reviewed all the current relevant case law including *GS (India)* and the more recent case of *AM (Zimbabwe) v Secretary State the Home Department* [2018] EWCA. Civ 64.
13. The issue in this case has always been whether the appellant is capable of accessing the facilities available to him in light of the fact it is accepted that if such assistance and treatment is not available the appellant will deteriorate leading to an inability to cope, possible destitution, and the possible breach of article 3. The psychiatric reports for 2012 in 2016 referred to the possibility of relapse.
14. At the error of law hearing Mr Mills referred to the fact that even though the appellant is the subject of a decision for his deportation from the United Kingdom there will be liaison with the authorities in Jamaica on his return, meaning he will not be abandoned. Mr Mills spent time in the interim ascertaining whether there is a published policy to which the Upper Tribunal could be referred but was unable to provide such a document in light of each case being very fact specific.
15. Mr Mills was able to confirm that the appellant will be referred to the Complex Case Team who deal with returns for those similar to the appellant who have identified health and other needs. Mr Mills confirmed contact will be made with the authorities in Jamaica who will be aware of the issues so that when the appellant is handed over the Jamaican authorities will expect his arrival and presentation and be able to ensure that the appellant is introduced to a psychiatric facilities and available medication.
16. Although Mr Sobers in his report claims such facilities are inadequate it is not made out he has any specific knowledge of medical issues and the availability and appropriateness of the medication has not been shown not to meet the appellant's requirements.
17. Mr Mills also produced a document headed "Coming Home to Jamaica" which is a guidebook produced through the collaboration of several dedicated Jamaican charities and non-governmental organisations with the support of the British High Commission in Kingston and the Ministry of National Security. The guide provides details on all the organisations shown in an accompanying DVD, including contact details for those organisations. It provides advice on planning

for a return to Jamaica, medication, what will happen on arrival, availability of emergency accommodation both within and outside Kingston, resettlement services, a chapter on obtaining national documentation, guidance with appropriate points of contact for the health service including mental health issues together with a number of other practical guides. A directory of services is also included which names the service and provides the address, telephone numbers, email addresses or website, and a description of the service.

18. In conclusion it is not made out that the appellant is able to satisfy any of the requirements of the Immigration Rules such as to make his removal from the United Kingdom in accordance with the deportation order a breach of the United Kingdom's obligations under the ECHR.
19. The appellant fails to establish that it is unreasonable or unduly harsh that he should be returned at this stage in light of his substantial number of acts of criminal conduct, including 2002 a conviction for indecent assault on a female under the age of 16 for which the appellant was sentenced to 3 years imprisonment and put on the sex offenders register. The criminality recorded in the decision of First-tier Tribunal Judge Parkes shows the appellant is a prolific offender who has been involved in the supply of Class A drugs together with other unacceptable conduct.
20. I do not find it made out that treatment required by the appellant is not available in Jamaica or will not be accessible. I find the respondent has discharged the burden of proof upon him to the required standard to show that the appellants removal in accordance with the deportation order is a proportionate response to any interference with the appellants protected rights in the United Kingdom. The appellant will have all the assistance he requires in the United Kingdom and be introduced to the Jamaican authorities on return who will also be able to ensure he has access to medical and other facilities. It is accepted the appellant left Jamaica when he was a very young and would find it very difficult to integrate into Jamaican society but the appellant has gained qualifications and an education in the United Kingdom and it was found by previous judge in 2009 that there are family members in Jamaica. It is not made out the appellant faces a real risk of harm on return.

## Decision

21. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

22. The order for the appellants anonymity made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 shall continue until further order.

Signed.....

Upper Tribunal Judge Hanson

Dated the 24 July 2018

ANNEX A

ERROR OF LAW FINDING

Upper Tribunal  
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Representation:

For the Appellant: Mr Mills – Senior Home Office Presenting Officer

For the Respondent: no appearance.

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge Parkes, promulgated on 23 November 2017, in which the Judge allowed DC's appeal.
2. DC did not attend the appeal hearing. Although not represented I am satisfied that notice of the date, time, and place of hearing has been properly served upon DC. Such notice has not been returned. There has been no indication that the hearing would not proceed and no expectation in the mind of any parties, that

could be reasonably held, that the hearing would not go ahead. It is noted there has been a previous incident in which DC claimed that he believed a hearing had been adjourned when there was nothing to warrant such a statement - see [29 - 30] of the decision of Judge Parkes.

3. In the absence of any explanation for DC's failure to attend and with there being no reason established as to why the matter should not proceed, this Tribunal concludes it is in accordance with principles of fairness and the overriding objectives for the matter to proceed in DCs absence.

## **Background**

4. DC, a citizen of Jamaica born on 11 October 1979, is subject to an order for his deportation from the United Kingdom made on 8 August 2015. The appeal before the First-tier Tribunal is against the decision of the Secretary of State not to revoke the deportation order on the basis DC's deportation will not be a breach of his human rights.
5. There have been a number of hearings by different judges in relation to DC over the years.
6. DC has a substantial criminal record.
7. DC entered the United Kingdom on 6 December 1990 and was granted leave to enter as a visitor for 6 months. On 22 May 1991 an application for further leave to remain made on his behalf was refused. On 29 November 1994 DC was granted indefinite leave to remain following further representations made on his behalf.
8. On 14 August 2002 DC was convicted at Birmingham Crown Court of indecent assault on a female for which he was sentenced to 4 years imprisonment and ordered to be placed on the Sex Offenders Register indefinitely. The prison sentence was varied on appeal on 18 March 2003 to 3 years imprisonment.
9. The sentencing remarks of His Honour Judge Alan Taylor, in relation to the offence, are in the following terms:

DLC, pleaded guilty to an offence of indecent assault. On any view of the matter this must be regarded as a particularly unpleasant and sordid piece of behaviour by you. It can only be dealt with by a substantial sentence of imprisonment.

The serious features of this case are that you, plainly, took her away from any adult company that she may have had to a quiet and filthy dirty place and knowing that she was under the influence of drink she sustained a number of unpleasant superficial injuries as well as being subjected to sordid treatment by you.

I bear in mind your guilty plea, although of course it came only at the last minute. One has to bear in mind the effect upon the victim of your behaviour and all the circumstances. I, for my part, cannot help regard this as a very serious matter.

10. On 6 May 2004 DC was convicted at Walsall Magistrate's Court of common assault and theft from person, and sentenced to 4 months imprisonment.
11. On 5 June 2006 DC was convicted at Birmingham Crown Court of putting people in fear of violence. He was sentenced on 29 September 2006 to 27 months imprisonment and made subject to a Restraining Order.

12. The sentencing remarks of His Honour Judge AW McCreath contain the following:

I now turn to the offence itself. Over a significant period of time you were violent to her, not I also accept kicking her, not threatening to kill her and not I also accept threatening her with a knife but more than once hitting her and more than once abusing her verbally. And when she plucked up the courage to report you you did your very best to get her to retract her complaint. All of this was plainly extremely distressing for her and never mind the physical pain that she suffered. So it is serious.

Sometimes somebody who behaves in this way but not very often I have to say but sometimes when somebody who behaves like this can say well I have never done anything like this before but you cannot because twice before as your record shows you behaved towards women in a way which shows no concern whatever for the harm that you had done to them. And in all of those circumstances I am bound to take a serious view of this. Of course I do not pass on you the maximum sentence available to me for this offence, of course not, there are of course even worse cases this is a bad one and the appropriate sentence for it would have been 2 ½ years' imprisonment but I promised you 10% off and you have it. And the result of that is that the sentence I now pass on you is one of 27 months.

13. On 25 May 2006 DC was issued with a notice of decision to make a deportation order and reasons for deportation letter. DC's appeal against the decision was dismissed on 23 August 2006, in relation to which he sought reconsideration which was granted on 19 September 2006.
14. On 18 April 2008 DC was convicted at Birmingham Magistrates Court of failing to comply with notification requirements under the Sexual Offences Act 2003 and fined £200.
15. On 8 August 2008 DC was convicted at Birmingham Crown Court of 2 counts of common assault and sentenced to 4 months imprisonment on 15 August 2008.
16. On 18 August 2008 DC was served with notice of a decision to make a deportation order. Reasons for the deportation order were served on 13 November 2008 against which DC appealed, raising articles 3 and 8 ECHR and paragraph 364 the Immigration Rules. The appeal was dismissed on 29 January 2009 against which DC sought reconsideration, for which permission was granted on 26 February 2009.
17. On 22 July 2009 DC was arrested on suspicion of a serious criminal offence and was remanded in custody until 15 January 2010 when he was acquitted.
18. On 12 December 2010 DC was arrested for possession of a Class A controlled drug with intent to supply and on suspicion of rape. On 13 December 2010 DC was remanded in custody.
19. DC became appeal rights exhausted on 5 May 2011 when permission to appeal to the Court of Appeal, refused by the tribunal, was refused by that Court.
20. On 25 July 2011 DC was convicted of possession of a controlled drug Class A with intent to supply, but the rape charge was dropped. He was sentenced to 15 months imprisonment although due to time held on remand he became due for release on 29 July 2011, after which he was detained under immigration powers.



21. On 15 August 2011 DC was convicted at Birmingham Magistrates Court of battery and sentenced to 84 days imprisonment and transferred back into custodial detention.
22. On 15 August 2011 DC was made the subject of a sign deportation order which was served upon 16 August 2011.
23. On 16 August 2011, in response to the Deportation Order, DC claimed that his deportation would be unfair as he was suffering from a serious medical condition and that he had a fiancée and 6 children.
24. On 17 August 2011 letter sent to DC requested completion of medical consent for and requesting details of the claimed fiancée and 6 children. On 15 October 2011 a copy of a letter from Worcestershire Health and Care NHS Trust, dated 24 August 2011, was received stating DC was diagnosed with retroviral illness (HIV) in 2010 and that his most recent laboratory tests had indicated that he should be on anti-viral treatment which he had started.
25. On 31 August 2011 a witness statement was received, via HMP Hewell, from LR dated 1 August 2011. No address was provided for LR but in statement she claims she met DC in August 2009 in a bar in Birmingham and that she has 4 children in United Kingdom who she has to care for, two being her biological children and the other two her brother's children and that DC had become part of the family and that she and the children all refer to him as [anonymized].
26. On 1 September 2011 UKBA wrote to Dr McGanty, a Consultant Forensic Psychiatrist, for a report on DC's medical conditions.
27. Correspondence was then received from DCs representative indicating that they were in the process of seeking to obtain the psychiatric report and would endeavour to provide details of his fiancée and 6 children.
28. On 28 October 2011 a letter was received from the appellants representatives advising UKBA the specialist could not complete the psychiatric report before the second or third week of November and asking that no decision be made without the report.
29. On 15 November 2011 UKBA were advised that DC had been arrested upon release from prison for making threats to kill, which had been made following a grant of bail. On the same date UKBA were notified that following his successful bail application an urgent MAPPA meeting had been arranged at which DC's MAPPA levels were increased from level 1 to 2, following an assessment that DC posed a risk of harm to the public.
30. On 16 November 2011 DC was convicted of threats to kill and sentenced to 18 weeks imprisonment.
31. On 12 December 2011 a letter was received from DCs representatives enclosing the further psychiatric report, dated 8 December 2011, which confirmed the diagnosis found in a previous report. A further report was received on 25 May 2012 updating the content of the previous report following complaints made on DC's behalf to the report writer.
32. The representations from DCs representative were treated as an application to revoke the Deportation Order. A decision to refuse the application to revoke the deportation order was made on 12 October 2012 and served on 23 October 2012.

- Removal directions were scheduled 28 November 2012 but deferred due to an out of time appeal lodged on 27 November 2012.
33. DCs offending continued from September 2013 resulting in a sentence on 7 October 2013 for drink-driving, driving without insurance and driving whilst disqualified, for which he received a five-year driving ban with a combination of a number of orders including a suspended sentence of 18 weeks for 12 months.
  34. In October 2013 DC received a suspended sentence for possessing heroin.
  35. In March 2015, at South East Staffordshire Magistrates Court, DC was sentenced to 18 weeks imprisonment and banned from driving.
  36. In June 2015 DC was sentenced at Stafford Crown Court to 18 months in prison for possession of criminal property, possession of crack cocaine with intent to supply, and possessing heroin.
  37. On 7 August 2017 DC pleaded guilty to driving with excess alcohol, driving while disqualified and without insurance for which he was sent to prison for 18 weeks on 18 August 2017 and further disqualified from driving.
  38. First-tier Tribunal Judge Parkes refers to an earlier decision First-tier Tribunal Judge Holt, promulgated on 27 March 2013, in which that judge allowed DC's appeal on human rights grounds against the decision to deport DC from the United Kingdom.
  39. Judge Holt finds that DC at that time had been in the United Kingdom for 18 years and 7 months (having spent 3 years and 3 months in custody). Judge Holt was satisfied that DC has no family in Jamaica as he lost contact with his relatives there when he was a young child. Judge Holt was satisfied the only family DC has are in the United Kingdom. Judge Holt records the appellant claiming in his witness statement to have fathered two children in the UK, DR and KNKT. DC told Judge Holt that he was not in contact with DR as the child's mother would not facilitate contact and that although he has no contact with KNKT, DC claimed to have made contact with a solicitor regarding family related matters.
  40. Judge Holt was satisfied DCs suffers from HIV and has access to antiretroviral drugs. Judge Holt finds that should DC not be able to take his medication his physical health will declined very quickly. Judge Holt had regard to the letter from a Dr Karunaratne, a Consultant Physician, with the Gloucestershire NHS Trust. In relation to mental health issues, Judge Holt refers to reports written by a Dr Maganty, dated 6 September 2011, 20 January 2012, 17 May 2012 and 7 March 2013, in which the doctor concludes DC is suffering from a paranoid personality disorder which is a long-term condition. Judge Holt finds it is unlikely DC will recover from his paranoid personality disorder, psychotic symptoms and the disruption that it causes to him and those around him if untreated. Judge Holt notes the doctors view that DC is being treated with antipsychotic medication which has moderated the paranoid personality disorder and prevented psychotic episodes. Psychotropic drugs combined with the treatment for HIV are bringing about a general improvement in DCs physical health. Judge Holt also notes the doctor describing DCs mental disorder as being due to "deep-rooted" abuse that he suffered as a child.

41. Judge Holt notes Dr Maganty's opinion at [5] of his most recent report, that in the absence of his current treatment and medication regime DC will suffer a deterioration in his mental disorder and be unlikely to engage with his treatment for his HIV infection, as a result of which there will be a deterioration in his physical health. There was a possibility DC could develop AIDS. If he did the consequences could be fatal for him.
42. Judge Holt had a report from a Mr Sobers regarding the conditions in Jamaica DC would face on return, leading to a finding DC would have overwhelming problems as he will be unlikely to be offered employment, have nowhere to live, live at risk of discrimination and violence, and be at risk of incarceration with no treatment for his mental health problems as the state-sponsored welfare facilities in Jamaica are wholly inadequate, and that DC would have difficulties accessing shelter and care upon arrival in Jamaica. DC would have no relief from destitution and will be unable to pay for his medication without assistance and would not be able to access the mental health services that he requires to survive.
43. Judge Holt finds that it is not appropriate or practical for DC to rely on support from relatives in the United Kingdom as there was no evidence that family in the United Kingdom that they will be able to support DC financially from this country.
44. At [47] of his decision, Judge Holt finds: *"I find that if Appellant was returned to Jamaica he would be homeless and without any family support. He has no friends or associates there. He does not know a soul in Jamaica. In the light of the evidence above, I find that the Appellant would not be able to afford to buy medication to control either his mental health condition or his HIV, so his health would very quickly deteriorate. He would be extremely vulnerable. I am not satisfied that the Appellant will be able to access the very limited hostel accommodation and other very limited resources in Jamaica.*
45. Judge Holt found that returning DC to Jamaica would cause the United Kingdom to be in breach of Article 3 ECHR.
46. Mr Mills advised that the Secretary of State sought to challenge this decision but without success.
47. First-tier Tribunal Judge Parkes found that the decision of Judge Holt was the starting point for considering the appeal before him and that so far as DC's circumstances in the UK were concerned there had been further offending since the decision of Judge Holt, as noted above, leading Judge Parkes to find DC is a persistent offender and that the imposition of a range of disposals and the earlier threat of deportation had not acted as a brake on his offending. Judge Parkes finds DC is a persistent offender and that he is a danger to members of the public.
48. Judge Parkes makes the following findings at [45 - 49] of the decision under challenge:
  45. The Home Office have not provided any evidence to show that the situation in Jamaica now would be any better than it was in 2013 when it was accepted that the Appellant could not be deported for health reasons. The Appellant cannot rely on paragraph 399 of the Immigration Rules, there is no evidence of a subsisting family

relationship with either a child or adult in the UK. Whatever relationships he may have had in the past appear to have broken down, the absence of any supporting evidence in the Appellants bundle despite the time allowed and his having had lawyers speaks for itself.

46. In any event there is no evidence from any source, the Home Office included, to show that the Appellants circumstances in Jamaica would be any better now than they would have been in 2013. In other words the evidence remains that his removal would place the UK in breach of its obligations under articles 2 and 3 of the ECHR and there is no evidence that would justify departing from the decision of Judge Holt.
  47. It is easy to see why the Home Office wish to deport the Appellant and that is a view many would have sympathy with. Aside from being a danger to others as well as possibly himself the Appellant has repeatedly failed to cooperate with his solicitors and has sought, with some success, to delay the hearing of this appeal. That would suggest the Appellant has more understanding of what is going on but could also be symptomatic of other difficulties with his mental health and related treatment.
  48. However the Appellants deportation can only be justified if the conditions in the Immigration Rules are met and that includes his position under the ECHR. Whatever other findings are justified the basic position is that the evidence still shows that the Appellant will be extremely vulnerable if returned to Jamaica, that without support he would not be in a position to access the medical support and services that he needs.
  49. The decision of Judge Holt remains the starting point for the consideration of this appeal as noted above and there is no evidence that would justify departing from the findings made in 2013. The fact that the Appellant has continued to commit the offences outlined above when given a further chance is something which is of great concern and aggravates his situation but as the law stands he cannot be deported because of the circumstances he would face in Jamaica. If that were not the case his appeal would have no merit but the evidence has to be followed fairly.
49. On the above basis Judge Parkes allowed the appeal.
  50. The Secretary of State sought permission to appeal asserting that Judge Parkes in the findings at [45 - 46] sought to reverse the burden of proof from the appellant to show that he is an exception to deportation due to his removal from the UK breaching his rights under the EHCR. It is submitted in the grounds that requiring the Secretary of State to provide information to show that DCs deportation would not breach his human rights is Judge Parkes effectively reversing the burden of proof as a result of which, it is submitted, the Judge has materially erred in law.
  51. The Secretary of State also submits the Judge erred in failing to consider the findings of the Court of Appeal in *GS (India) & Ors v Secretary State the Home Department* [2015] EWCA Civ 40 when finding there was no reason to depart from the previous findings of Judge Holt. The findings of the earlier Judge predated clarification by the Court of Appeal in *GS (India)* that the availability of treatment or comparable levels of treatment in the country of origin would not lead to a breach of article 3 due to the “no obligation to treat principles”. The grounds also submit that in *GS (India)* it was confirmed and appellant can only

succeed on article 3 grounds if they meet the *D* threshold of exceptionality. The Secretary of State submits in her grounds that it was not demonstrated that DCs HIV or mental health issues were at the level to meet the exceptionality threshold in *N* and *D* and that he could not therefore succeed on article 3 grounds simply because of his medical condition. The Secretary of State argues that the finding there was no good reason to depart from the previous findings of Judge Holt are infected by arguable legal error having regard to the Court of Appeal findings and amounted to an incorrect application of the *Devaseelan* principles.

52. Permission to appeal was granted by another judge of the First-tier Tribunal who found the Secretary of States grounds arguable.

### **Error of law**

53. Before the Upper Tribunal Mr Mills submitted that the evidence before the Judge did not show that DC met the *N* test. It was submitted that due to DCs ongoing offending the Secretary State was entitled to say the public interest is in his deportation and the Judges failures, as identified in the grounds, warrants the matter being considered further.
54. Mr Mills submitted that the decision of the Court of Appeal in *GS (India)* is relevant and that attempts by representatives to water down the test in *N* was dealt with by the Court of Appeal.
55. Mr Mills submitted that Judge Holt did not consider this to be a deathbed case and submits that the Judge was not entitled to allow the appeal as an article 3 health case.
56. Mr Mills submitted Judge Parkes was entitled to take as a starting point the findings of Judge Holt but was thereafter required to apply the correct legal principles set out in *GS (India)* but failed to do so. The *Devaseelan* principle required Judge Parkes to consider whether there was anything that had arisen since the earlier decision such as to warrant departing from the earlier judicial findings. In this appeal it is clear that Judge Holt at [41] made his decision on the basis of refusal of treatment that was available.
57. Mr Mills submitted that in relation to Jamaica arrangements will be made regarding deportation to Jamaica to ensure that DC was known to the Jamaican authorities and that care could be arranged to assist and that there were a number of NGOs available to provide assistance. Mr Mills confirmed that the Secretary of State will contact the Jamaican authorities regarding the same. This was the situation that existed before Judge Holt and Judge Parkes.
58. I find having considered the submissions made, case law referred to by Mr Mills, evidence and the procedural history of DC including earlier decisions, that Mr Mills has establish the existence of arguable legal error material to the decision to allow the appeal.
59. The decision of Judge Park shall be set aside. DCs immigration history, medical history, and immediate family and other relationships in the United Kingdom are not in issue and shall be preserved findings.
60. The following directions shall apply to the next hearing of this appeal:

- a. List for a Resumed hearing before Upper Tribunal Judge Hanson on the first available date after 1 July 2018. Time estimate 3 hours.
- b. DC shall file a consolidated, indexed, and paginated bundle containing all the evidence he seeks to rely on in support of his appeal. It would assist the Upper Tribunal if within that bundle DC provided up-to-date reports from his medical experts in relation to his HIV and mental health issues. It is for DC to consider whether he needs to provide an updated report from Mr Sobers relating to country conditions. Witness statements in the bundle shall stand as the evidence in chief of the maker who shall be tendered for the purposes of cross examination and re-examination only. The bundle is to be filed with the Upper Tribunal and send to the Home Office Presenting Officers unit no later than 4.00pm 15 June 2018.
- c. The Secretary of State shall have leave to file and serve any evidence she intends to rely upon by way of a response or in support of her position provided the same is filed and served no later than 4 PM 30 June 2018.
- d. No interpreter shall be provided by the Upper Tribunal, it not appearing there is any need for the same although if DC disagrees he is to contact the Upper Tribunal listing team at Field House in London without delay confirming the language and dialect of any interpreter requires.

**Decision**

**61. The First-tier Judge materially erred in law. I set aside the decision of that Judge. The appeal shall be case managed in accordance with the directions set out above to enable the Upper Tribunal to substitute a decision to either allow or dismiss DCs appeal.**

Anonymity.

62. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 17 May 2018