Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-000477
On appeal from PA/11133/2019

THE IMMIGRATION ACTS

Heard at Field House
On the 29 July 2022

Decision & Reasons Promulgated
On the 02 November 2022

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

ZZ (INDIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A. Smith, Counsel, instructed by Sutovic and Hartigan
For the Respondent: Mr C. Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Brannan ("the judge") promulgated on 22 June 2021, in which he dismissed the appellant's appeal against a decision of the Secretary of State dated 31 October 2019 to refuse his claim for asylum and humanitarian protection.

2. An anonymity order is already in force in this case, and I consider that it is appropriate to maintain that order. The appellant has made a claim for asylum which is yet to be finally determined, and which must be reconsidered by a different judge of the First-tier Tribunal. It is therefore appropriate for the anonymity order to be maintained. To reduce the risk of jigsaw identification, I have abbreviated the names of some of the persons who feature in the appellant's narrative and have omitted his initials, and other identifying features, from this decision.

Factual background

3. As the judge noted at paragraph 30, the appellant's claim is complex. The documents are voluminous, and the judge's decision is lengthy (36 pages and 176 paragraphs). I will summarise the claim and the proceedings as succinctly as I am able.

4. The appellant's case as it stood at the first hearing, on 6 October 2020, had evolved considerably by the time the judge convened two further hearings, on 16 December 2020 and 17 May 2021. An issue in the appeal to this tribunal is whether the case evolved at the behest of the appellant or the judge, and whether that amounts to an error of law. I will be convenient, therefore, first to summarise the appellant's claim for asylum as it was made to the Secretary of State, before addressing how it was summarised and assessed by the judge in his decision.

The appellant's claim

5. The appellant was born in the 1980s. He is Indian. He arrived in the UK as the dependent partner of his then spouse on 17 August 2011, valid until 29 August 2014. His claim is that shortly after his arrival in the UK he was asked by a family friend in India, Mr M, to assist with establishing before the Indian courts that the will of a wealthy Indian woman, Mrs D, who had died in 2001 while settled in the UK, related only to her assets in this jurisdiction. This was to demonstrate that Mrs D's Indian assets had been unlawfully appropriated following her death, and to return them to the Indian state. The appellant agreed to help to gather the evidence needed for Mr M's claim to succeed. Mr M had told him that his assistance would support the Indian government and, in doing so, help the appellant's future political ambitions in India. This began the appellant's involvement with Mr M which triggered the chain of events leading to his claim for asylum, which he was to make on 4 December 2017.

6. As part of his work for Mr M, in 2013 the appellant met with Mr N, a former senior official from a large Indian company who had recently been released from a sentence of imprisonment for fraud in India. Mr N, said the appellant, had the documents he needed to demonstrate that Mrs D's assets had been unlawfully appropriated, and agreed to provide the appellant with them. In part, the documents would assist with tracing the provenance of the funds used to purchase Mrs D's Indian property by a Mr G: I will call these documents "the Original Documents". Mr N also asked

the appellant to look after some other, unrelated, documents for him: I will refer to Mr N's documents as "the Additional Documents". They concern what has been referred to as a "defence scam", whereby arms and munitions that were sold to the Indian government were transacted at corruptly inflated prices. It is the appellant's case that he did not know what the Additional Documents were and that he had no involvement in the defence scam.

7. Shortly after Mr N agreed to provide the Original Documents to the appellant, the appellant heard from a Mr C that Mr M had agreed to sell those documents to the new owner of Mrs D's property and land. It turned out that Mr M was not planning to use the Original Documents to reveal the alleged testamentary fraud to the Indian authorities, but rather planned to use them to extract a significant sum of money from the new owners of Mrs D's property and land. The documents, the appellant claimed, would also prevent the apartments and other development that had been erected on Mrs D's land from being sold. In short, the Original Documents were hugely valuable to a large number of people, many of whom would (i) seek to use them as leverage to exploit their interests, and (ii) be prepared to resort to unlawful means in their reliane upon them.

8. The appellant confronted Mr M about the allegations concerning his true intentions, and said he was going to withhold the Original Documents from him. Consequently, Mr M threatened the appellant and members of his family. The appellant's family complained to the police and the appellant fled to Goa. Meanwhile, Mr M made complaints of his own against the appellant to the police, accusing him of fraud. This led to a nationwide police alert being issued against the appellant, which would have flagged his attempted departure at the border. He was detained for 15 to 18 hours at a major airport upon visiting the country in 2015, and only released when a friend paid a bribe.

9. It is the appellant's case that five of his friends and family members have been murdered by or at the behest of Mr M, including the friend that secured his release from detention at the airport, and that he awaits a similar fate.

10. The appellant claims that he is at risk on many fronts. He is stuck between Mr M, on the one hand, and the other persons, on the other, including Mr N. Attempting to establish his innocence to Mr M would require him to reveal documents which would place him at risk from Mr N and his supporters, and *vice versa*. He cannot rely on the documents to defend himself from the police charges he wrongly faces, since that would expose him to a risk from all sides. The appellant's claim is that he has nowhere to turn. Mr M and his associates have links to very senior national politicians in India. He is perceived as being anti-government, through his attempts to expose Mr M's fraud. He faces a well-founded fear of being persecuted on account of his actual or implied political opinion and does not enjoy a sufficiency of protection or the ability internally to relocate.

The decision of the Secretary of State

11. In her decision dated 31 October 2019, the Secretary of State rejected the key planks of the appellant's claim. Mrs D's English will implied that her Indian property would be disposed of to her Indian relatives; it was not clear why the Indian government could ever properly have benefitted from her estate. There was no evidence that the deaths of the appellant's friends and relatives were attributable to Mr M. The appellant had claimed that the false criminal allegations made against him in India had led to his bank accounts being frozen, yet his Indian businesses were still running. As to the claimed ongoing interest of the authorities, the appellant's return travel to India had not resulted in him being called in for questioning. The claim that he was detained for 15 to 18 hours at the airport was "questionable", as the payment of a bribe would have to be explained to the Central Bureau of Investigation. It was not clear why the people named in the documents obtained by the appellant would want to harm him since he, the appellant, was not mentioned in any of them. As to the claim that Mr N would have handed the appellant a "plethora" of documents, that, too, was questionable, since on the appellant's case they were barely acquainted at that point. Many of the appellant's other claims were also deemed to be "questionable" and his accounts inconsistent. The timing of the appellant's claim was such that his credibility was harmed pursuant to section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

The decision of the First-tier Tribunal

12. The judge's decision is 36 pages long. It sets out the procedural history of the case, including some of his written directions and requests for the parties to obtain further information. At paragraph 10, the judge records how, at the substantive hearing on 6 October 2020, "it quickly became apparent that a number of documents located in India which were relevant to the appeal but which the appellant had not submitted in evidence would aid the making of a decision in the appeal." This was a reference to the Additional Documents, which hitherto had not featured in the appellant's case.

13. That led to the judge adjourning the hearing until 16 December 2020, by which point some of the Additional Documents had been served by the appellant. At paragraphs 13 and 14, the judge recorded how he initially rejected an invitation made by the appellant for him to conduct his own internet research into the Additional Documents, in particular in relation to the individuals depicted in them. The judge changed his mind, however, and conducted some research on 'LinkedIn' after the hearing, revealing what he considered to be points the appellant should have the opportunity to address in a post-hearing note:

> "13. During the hearing the Appellant had invited me to check the internet for details of the companies named in his Supplementary Bundle. I declined to do so at the time. However while writing my

> decision I decided it would help me if I understood the background of the only UK company named in the documents. This is Backops Limited. As far as I can tell, the only document connected with this company is at page 10 of the Supplementary Bundle. This document is dated 6 January 2009. The document is ostensibly signed by James Emmett and Andy Maguire at HSBC.
>
> 14. According to public sources (my source was Linkedin), James Emmett was not Chief Executive Officer of HSBC and Andy Maguire was not Chief Operating Officer of HSBC on 6 January 2009. James Emmett was CEO of HSBC based in London from March 2018 to February 2020. Andy Maguire was COO of HSBC from December 2014 to June 2020. This led me to a preliminary view that the document was not genuine."

14. The judge's own internet research gave rise to the following credibility concerns, which he set out at paragraph 15:

> "The Appellant also claimed to have received the document (along with many others) on 28 May 2013 from Mr [N]. I considered it to have been inconceivable that it could have been created before this date in anticipation of the appointment of James Emmett and Andy Maguire to their positions at HSBC years later. This led to a preliminary view that the Appellant has not been truthful about the receipt of the documents from Mr N."

15. The hearing resumed on 17 May 2021 for the parties to make submissions on the points the judge raised following the internet research he conducted into the appellant's case. The case was finally effective on the third hearing, some six months after it was first listed.

The decision of the First-tier Tribunal

16. Having directed himself concerning the structured approach to analysing the credibility of asylum claims enunciated in *KB & AH (credibility-structured approach) Pakistan* [2017] UKUT 491 (IAC) (see paragraph 47), the judge made some preliminary observations about certain features of the appellant's case. At paragraph 48, he said that the appellant's claim was "very detailed", and that the appellant gave thoughtful and detailed answers in his oral evidence, including under cross-examination. At paragraphs 52 to 55, the judge found that the appellant had "bolstered" part of his case concerning his cousin being murdered, finding that a newspaper article and YouTube video of the purported incident did nothing to demonstrate that the murder depicted in the media reports was linked to the appellant.

17. The judge turned to the documentary evidence at paragraph 56. He began this part of his analysis, which would extend to some 11 pages, by stating that:

> "…it is worth first noting how his [the appellant's] position has evolved over time…"

18. Referring to submissions made by Ms Smith, who appeared below as she did before me, on the issue of case evolving at the judge's behest, he added, also at paragraph 56:

> "[Counsel for the appellant, Ms Smith] also reminded me that it was my direction that led to the appellant disclosing the documents from Mr [N] in the first place. I acknowledge that it is me who asked for more information about the documents from Mr [N]. That was because if the risk from Mr [M] was going to be made out, the risk from Mr [N] would be material to the level of protection that the Appellant could expect from the Indian authorities…"

19. The judge commenced his operative analysis by addressing the report of a Dr Wali, a country expert. He set out a number of reasons for rejecting Dr Wali's report. His expertise was not apposite. He "appeared to lump together the whole of South Asia", and that he viewed the "whole subcontinent through a lens of culture rather than the actual issues in the present appeal" (paragraph 62). The judge found that other aspects of Dr Wali's reasoning lacked weight, such as his approach to press reports (paragraph 64), his failure to explain how the prominent families from whom the appellant claims to be at risk were linked (paragraph 65), his analysis of risks the appellant does not claim to have faced (paragraph 67), and his attribution of generic background materials concerning corruption in India as a whole to the appellant's state (paragraph 68).

20. The judge observed at paragraph 81 that the Secretary of State's credibility concerns about Mr N entrusting a range of documents with the appellant, and the appellant's response to those concerns, had been formulated in the abstract, "before the documents themselves were in evidence" (paragraph 81). It was "important", said the judge, "to look at what they show and what has been said about them". The judge's examination of the Additional Documents, concerning the defence scam, began at paragraph 82 and following. At paragraph 86 the judge said:

> "He [the appellant] emphasises that the risk he is concerned about is from [Mr M] due to the [Mrs D] property scam."

21. In the remainder of the decision, the judge examined the appellant's original claim for asylum in light of the Additional Documents, and the explanations the appellant had given in relation to them. The judge weaved his analysis of the Mrs D-based allegations into his discussion of the Mr N-based defence scam. He set out credibility concerns arising from the appellant's documents relating to Mr M; for example, see paragraph 94, which concerns the judge's analysis of a judgment of the Madras High Court, which records Mr M's involvement in disputes concerning Mrs D's estate before the appellant became involved. Elsewhere, for example at paragraph 95 and following, the judge engaged in a detailed analysis of the Mr N-based defence scam.

22. At paragraph 106, headed 'Credibility', the judge said:

> "…there is a great deal of documentary evidence supporting the appellant's dealings with Mr N regarding the investigation of Mrs D's will. The appellant has consistently explained a complex and detailed story of his dealings with Mr M. When cross-examined about these he has provided explanations which are, in my view, more than adequate."

23. He continued at paragraph 107, however, to reject the appellant's claimed reasons for his dispute with Mr M. The judge said that the appellant attributed the dispute from the refusal to disclose Mr N's documents to Mr M, yet the basis for that dispute was not mentioned in any of the documents relied upon by the appellant.

24. At paragraph 114 the judge said:

> "The standard of proof is a low one. If I look at all the evidence in the round I find that the Appellant's claim is based in part on truth but in part of a fiction. The truthful part is that he is in dispute with Mr Mohan and that Mr Mohan is a dangerous person who has targeted associates of the Appellant. The part I do not accept as being reasonably likely is the reason for this dispute. The explanation of it being due to the Appellant refusing to hand over documents relating to the Meera Bai property is not reasonably likely based on the analysis above. Due to the Appellant's failure to tell the truth, he has left a lacuna in his evidence because I do not know the true reason for his dispute with Mr Mohan. It could be because the Appellant has crossed Mr Mohan in some other way, perhaps by cheating his wife. It could be something else. I will not make a speculative finding on the real reason."

25. In the remaining paragraphs, the judge addressed the appellant's risk on return. The judge appeared to accept, at paragraph 115, that Mr M had been implicated in the deaths of two of the appellant's associates and found that the appellant does face a risk on return from him. However, he found that there was no Convention Reason for the risk, rejecting Ms Smith's submissions that the risk was on account of the appellant's political or imputed political opinion: see paragraphs 117 to 121.

26. As to the risk faced by the appellant from Mr M, the judge found that he enjoys a sufficiency of protection, rejecting Dr Wali's conclusions to the contrary. The appellant was not at risk from Mr N, despite his political connections, he found; on the appellant's own case, noted the judge, the risk faced by the appellant was from Mr M and the scam involving Mrs D's property.

27. In the remainder of the decision, the judge found that the appellant could relocate internally within India (paragraphs 130 to 136), and dismissed the appeal on Article 8 grounds (paragraphs 138 to 126).

Grounds of appeal

28. There are six grounds of appeal:

1) The judge's rejection of Dr Wali's reports was irrational;

2) The judge made material errors of fact amounting to an error of law, inlcuding by erring in relation to the documents that had been before the Secretary of State, and by conflating those concerning Mr M, and the so-called defence scam, concerning Mr N;

3) The judge erred in relation to the absence of a Convention ground for persecution;

4) The judge's conclusion that the appellant enjoys a sufficiency of protection was flawed, in light of his findings of fact that Mr M "is a dangerous person who has targeted associates of the appellant" at [114];

5) The judge's reasoning concerning internal relocation was insufficient;

6) The judge's reasoning concerning Article 8 was irrational.

29. Permission to appeal was granted by Upper Tribunal Judge O'Callaghan.

Submissions

30. Ms Smith submitted that the judge reformulated the appellant's case and confused the core issues that were before the tribunal. This was a hugely complex case which the judge made even more complex. The documents relating to Mr N, which were obtained at the judge's behest, were of peripheral relevance to the appellant's primary claim for asylum, which related to Mr M. The judge conflated the defence scam involving Mr N, which was never part of the appellant's case, with his fear of being harmed at the hands of Mr M and his associates. By the time the final adjourned hearing was eventually effective, in May 2021, the issues had become convoluted, and bore little resemblance to those the parties attended the tribunal seeking to address at the initial hearing in October 2020. That clouded the judge's eventual analysis of the risk faced by the appellant from Mr M, which the judge accepted he did, in principle, face.

31. Ms Smith also submitted that the judge informed the parties at the hearing on 20 October 2020 that he had found a judgment of the Madras High Court relating to Mr M, and asked the Secretary of State if she wished to rely on it. That judgment is yet to be presented to the parties, Ms Smith submitted. That gave rise to "a procedural issue", as she put it. When the appellant was being cross-examined at the 20 October hearing, the judge interrupted the cross-examination and gave directions at that point for the further documents relating to Mr N to be obtained, leading to the hearing being adjourned.

32. For the Secretary of State, Mr Avery submitted that the judge had attempted to introduce some form of order to the proceedings through his

interventions and directions. He had not confused the issues. The judge had not made a deliberate attempt to "descend into the arena", but simply attempted to ensure that all bases were covered. The defence scam was of potential relevance to the appellant's risk on return. In any event, Mr Avery submitted, even if the judge did erroneously consider the defence scam and get distracted by irrelevant matters arising from the Additional Documents, any such error was immaterial. The judge reached legitimate findings of fact that the appellant did not face a risk of serious harm at the hands of Mr M. He was entitled to reject the expert's evidence, for the reason he gave. The appeal should be dismissed.

Discussion

Preliminary observations

33. I also observe that there are a number of difficulties in the way the appellant has litigated the appeal before this tribunal. Much turns on what happened at the hearings before the judge, yet neither party (in particular the appellant, who prosecutes this appeal) applied for a copy of the judge's Record of Proceedings, or a transcript of the hearings. Ms Smith has not provided a witness statement attesting to what took place, as required by *BW (witness statements by advocates) Afghanistan* [2014] UKUT 00568 (IAC). She appeared before me as an advocate, rather than as a witness. There is no chronology setting out what the judge asked for, and when. Nor is there a skeleton argument succinctly articulating the grounds of appeal by reference to the chronology of the evolving proceedings in the First-tier Tribunal. The indexing of the papers submitted to this tribunal do not readily correspond to the indexing adopted below, e.g. in relation to the appellant's Supplementary Bundle, featuring the Additional Documents from Mr N. (Although I am now confident that I have the documents that were before the judge; it was necessary manually to determine which parts of the composite bundle before this tribunal correspond to the various descriptions of the documents adopted by the parties below (see paragraph 17 of the judge's decision)).

34. For those reasons, I will not consider Ms Smith's submissions about the judge's intervention during the appellant's cross-examination at the 20 October 2020 hearing further. Plainly, had the judge interrupted cross-examination to direct that further documents, not identified by the parties, were required, that would be a breach of the "merely supervisory" role that judges have during the taking of evidence: see *WA (Role and duties of judge) Egypt* [2020] UKUT 127 (IAC). The headnote to *WA* provides:

> "1. During the taking of evidence a judge's role is merely supervisory.
>
> 2. If something happens during a hearing that disrupts the normal course of taking evidence it is essential that the judge records what happened and why; who said what; and what decision the judge made and on what basis."

35. Since there is no evidence of what took place in a form suitable for me to consider, I will not address Ms Smith's allegations about what took place at that hearing, save to the extent what took place is clear from the decision of the judge, without having to resort to external evidence. What is clear from the judge's decision is that (i) the judge conducted his own internet-based research (as quoted above; see the judge's paragraphs 13 and 14); and (ii) adjourned the proceedings of his own motion in order for the parties to focus on evidence that they had not deemed to be necessary themselves.

36. In *AM (Fair hearing) Sudan* [2015] UKUT 656 (IAC), this tribunal held, at paragraph (1) of the Headnote:

> "Independent judicial research is inappropriate. It is not for the judge to assemble evidence. Rather, it is the duty of the judge to decide each case on the basis of the evidence presented by the parties…"

37. The following points arise.

38. First, it was inappropriate for the judge to have conducted his own research. The fact that the appellant invited him to was irrelevant. It is for the parties to assemble the evidence, not the judge. Many witnesses will often make remarks along the lines of those attributed to the appellant by the judge. A party to litigation may, through a lack of understanding of the boundaries of judicial conduct and propriety, invite a judge to do something inappropriate. Such invitations should be resisted.

39. Secondly, the task of challenging the appellant's evidence fell to the Secretary of State. Had the Secretary of State wanted to undertake even rudimentary document verification of the sort the judge embarked upon, she could have done so. There is no suggestion that she did. It is not for judges to do the job of the Secretary of State, or any party to litigation before the tribunal.

40. It was therefore inappropriate for the judge to conduct research of his own on this basis. In fairness to the judge, he informed the parties after the hearing, and gave them the opportunity to make submissions in relation to his research. However, his approach to this issue set the tone for his remaining overly interventionist approach.

Ground 2

41. I turn to ground 2. This ground challenges the findings of fact reached by a first instance judge who had the benefit of hearing and considering "the whole sea of evidence" (to adopt the terminology of *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at [114]). The need for appellate restraint when examining such challenges is well established; disagreements of fact should not be re-packaged as errors of law.

42. The position is different, however, where there has been a defect in the process by which a first instance judge reached findings of fact, or whether

the judge took into account irrelevant factors, or failed to take into account relevant factors: see *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at paragraph 9. Ms Smith also relies on *E v G* [2004] EWCA Civ 49, which states, at paragraph 91(ii), that an appeal may be brought on the basis of:

> "…unfairness resulting from 'misunderstanding or ignorance of an established and relevant fact'".

43. It is often said that a judge must not "descend into the arena". The phrase is said to find its origins in this context in *Yuill v Yuill* [1945] P. 15, 20 per Lord Greene MR. Denning LJ said in *Jones v National Coal Board* [1957] 2 QB 55, at page 65:

> "If a judge, said Lord Greene, should himself conduct the examination of witnesses, he, so to speak, descends into the arena and '*is liable to have his vision clouded by the dust of conflict*'." (emphasis added)

44. The phenomenon of judicial vision being "clouded by the dust of conflict" was illustrated in *London Borough of Southwark v Kofi-Adu* [2006] EWCA Civ 281. The focus of the court concerned the judge's descent into the arena through extensive participation in cross-examination, which impaired his ability to perform his role properly. The court found that certain of the judge's findings were irrational. He failed to take into account the oral evidence that had been given, despite his own extensive participation in cross-examination, and had based his findings almost entirely on the written evidence, with minimal if any regard for what had happened during the trial. At [146], Jonathan Parker LJ identified the consequences from a judge falling into such error in these terms:

> "It is, we think, important to appreciate that the risk identified by Lord Greene MR in *Yuill v. Yuill* does not depend on appearances, or on what an objective observer of the process might think of it. Rather, the risk is that the judge's descent into the arena (to adopt Lord Greene MR's description) may so hamper his ability properly to evaluate and weigh the evidence before him as to impair his judgment, and may *for that reason* render the trial unfair…" (emphasis supplied)

45. In my judgment, the judge began his descent into the arena by conducting his own internet research, albeit at the behest of the appellant (not, it seems, Ms Smith), and through his evident motivation to get to the bottom of what took place. However, the judge's descent into the arena continued through directing the appellant to procure documents relating not to his case concerning Mr M, but in relation to peripheral matters involving Mr N. His decision was replete with references either to Ms Smith reminding him of his own role in the evolution of the appellant's case (see, for example, paragraph 56), or the appellant's own emphasis as to what his case, properly understood, was (see, for example, paragraph 86), yet the judge focussed his findings on Mr N and the defence scam. Those were not the issues before the tribunal.

46. Bearing in mind the anxious scrutiny with which claims for international protection should be approached, I accept Ms Smith's submissions that the judge's interventionist approach led to the issues before the tribunal being confused, in a judgment that was ultimately far longer and more complex than it should have been, and that addressed irrelevant matters at the expense of relevant matters. I accept Ms Smith's submissions that the extent of the judge's focus on Mr N was an irrelevant consideration and came at the expense of his focus on the core issues. The judge's own research, and directions for the appellant to pursue different lines of enquiry, as it were, regrettably led to his focus lying with matters other than those he should have addressed.

47. I reject Mr Avery's submission that the judge was merely seeking to marshal the issues; his interventionist approach led to the tribunal redefining the issues in a way that was at odds with the actual case advanced by the appellant, as he (and Ms Smith) are recorded in the decision as having sought to emphasise to the judge several times. The judge's focus on Mr N distracted the tribunal from the core issues; I find that the judge took irrelevant considerations into consideration, pursuant to a process whereby he inappropriately conducted his own research and directed the parties to assemble the evidence in a way that he, the judge, thought was appropriate, which they had not identified for themselves. By doing so, the judge descended into the arena and his vision was "clouded by the dust of conflict".

48. Mr Avery's submission that the appellant's submissions are no more than a disagreement with legitimate findings of fact is therefore misplaced. Where the process by which those findings of fact was reached was flawed, those findings cannot be sustained, and the deference ordinarily enjoyed by first instance trial judges does not apply. As the Supreme Court put it in *In the matter of H-W (Children)* [2022 UKSC 17 at paragraph 51:

> "On this appeal the real issue is not whether the appellate court is satisfied that the judge reached a conclusion which was wrong. The question is rather concerned with the adequacy of the judge's process of reasoning in reaching his conclusion."

49. This ground succeeds. It follows that the appeal must be allowed on this ground.

50. It is not necessary to consider the remaining grounds.

51. I set aside the judge's decision with no findings of fact preserved. I remit the decision to the First-tier Tribunal to be reheard by a different judge.

Notice of Decision

The appeal of the appellant is allowed.

The decision of Judge Brannan involved the making of an error of law such that it must be set aside. I set aside the decision and remit it to be reheard by a different judge.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Stephen H Smith Date 7 October 2022

Upper Tribunal Judge Stephen Smith