Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07369/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 March 2019	**On 3 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR BIRENDRA GURUNG
(ANONYMITY DIRECTION NOT MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Shepherd, counsel instructed by N.C Brothers & Co. Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal came before the Upper Tribunal on 29 November 2018, when I found material errors of law in the decision of First-tier Tribunal Judge Eban and adjourned the appeal for a resumed hearing with directions. A copy of that decision and reasons promulgated on 22 January 2019 is appended. The directions were complied with and a short bundle of evidence was submitted on 12 March 2019 with statements from the Appellant's stepmother, Pushpa Kumari Gurung, his half-brother Joshvir Gurung as well as statements from the Appellant and his Sponsor

and father, Mr Jhamu Gurung. Also appended to those statements are previous decisions from Judge Abebrese on 2 November 2011 where he allowed the appeal under Article 8 and a decision of Judge of the First-tier Tribunal Cockrill promulgated on 8 May 2012, dismissing the appeal.

Hearing

2. Unfortunately there was no Nepali interpreter in court and after taking instructions, Mr Shepherd informed the Tribunal that the Appellant was able to give evidence in English. I therefore agreed to proceed to hear the evidence on the basis and understanding that if there were difficulties in comprehension that the appeal could be adjourned to a new date in the near future with a Nepali interpreter present.

3. The Appellant was called to give evidence where he adopted his statement dated 11 June 2018. He was cross-examined by Mr Bramble who asked if he currently worked or studied or whether he did anything for the community. The Appellant replied in the negative. Aside from his immediate family, the Appellant stated he had one cousin and when asked what he would do if he succeeded with the appeal, he said he would look after his father who has paid for him and looked after him since he arrived in the UK in 2007 and he would do that by working hard. When asked what work he would do, given that he had not worked in the UK or Nepal, the Appellant said he would do any kind of job, albeit he accepted that he had not worked in Nepal because his father looked after him financially. He accepted his father had a farm in Nepal, although he said that it did not produce enough food and that his father still owned the farm. He said no-one was looking after it. He was not able to say really how big it was and when asked why he could not work in Nepal the Appellant stated he did not study enough and it was hard to find a job there.

4. In response to my questions, the Appellant stated that he had been living in Pokhara, that he had not had contact with his mother since 2007, albeit he had been told she was still in Pokhara. There was no re-examination.

5. The appellant's father, Mr Jamhu Gurung, then gave evidence and adopted his statement dated 11 June 2018. He was asked in examination-in-chief whether when he came to the UK if he made any application for the Appellant to join him, to which he replied that at that time Gurkhas were not allowed to bring family over and if he had tried it would not have worked. The witness confirmed that he owned a farm in Nepal, which he described as a rupani. He said it was the size of a football ground and the farm grew wheat, rice, corn, vegetables and some tea. Mr Gurung stated that his ex-wife, the appellant's mother, was looking after the farm and that he did not really have contact with her because she was very bitter when the marriage ended.

6. In cross-examination, the previous decision of Judge Cockrill was put to the witness at [22] where it states that the witness gained custody of the Appellant following his divorce, which the witness agreed was correct. He agreed that his second wife was a British citizen and that he had obtained his British passport in 1992 having previously come to the UK on a six month fiancé visa and had then been granted leave to remain as a spouse. The witness said he had not sought legal advice as to

whether he could bring his son to the UK because he knew that he was not able to do this and that he had made the application in 2007 once he saw that other Gurkhas were bringing their children over.

7. When asked if the Appellant was unsuccessful what would stop him from returning to Nepal and living on the farm, the witness stated that if he went back to Nepal his mother would not want to see him and he did not think the Appellant could go and live with her, because she was not only bitter towards him but towards all the children and does not want to see them. The witness stated his other son in Nepal had a business buying and selling and doing whatever he could. When asked why the Appellant could not do this too, the witness stated that he has lived in the UK a long time, he did not think he would be happy or could manage in Nepal.

8. In respect of whether the witness would be able to continue to send funds to him, he accepted that whilst he was supporting the Appellant now because he was not allowed to work in the UK, that he had to look after his family and himself; that he had paid his British Army pension to his ex-wife and that was now hers and that he continued to work full-time at the Ministry of Defence as a civil servant. However he was going to be 70 in July of this year and would not continue to work indefinitely. There was no re-examination of the witness.

9. The appellant's half-brother, Mr Joshvir Gurung, was briefly called to give evidence where he confirmed his statement and that he was currently 23 years of age. He said that he worked full-time as a life insurance broker. When asked if the Appellant works in the UK or what work the Appellant could do in the UK, he stated that he is a very good chef and very good in the kitchen and cooked mostly Nepali food. When asked further questions by Mr Shepherd as whether he had contact with people outside the family, the witness stated that the Appellant has friendship groups in Farnborough.

Submissions

10. In his submissions, Mr Bramble sought to rely upon the refusal letter. He submitted that the Appellant could not succeed under Appendix K of the Immigration Rules, which was a point accepted on behalf of the Appellant. Thus the issue was whether the Appellant met the requirements of Article 8 outside the Rules. His case was not based on paragraph 276ADE(vi) of the Immigration Rules and whether there were potentially very significant obstacles to his integration in Nepal.

11. Mr Bramble submitted given that this was a situation of relationships between adults and there was no evidence that there were more than mere normal emotional ties between the family members. Therefore, he would argue that this was not a family life case but a private life case due to the length of residence.

12. Mr Bramble also sought to distinguish the Appellant's case from the normal "Gurkha" cases where the case law is quite clear that where there has been historic injustice along with no poor immigration history or other issues, which was sufficient to waive the requirements in favour of the Appellant. He submitted this

case was slightly unique in that the sponsor had come to the UK to marry his second wife and did not come to the UK as a Gurkha but as a fiancé and had attained settlement and British citizenship as a spouse not a Gurkha. He submitted the other previous decisions were academic and this was not a sole responsibility case. [10] of the decision of Judge Cockrill shows that the Appellant's father had custody of him. Therefore, there was an avenue for the Sponsor to have brought the Appellant over to the UK as a child because the Sponsor was settled whilst the Appellant was still a child.

13. Mr Bramble submitted that the Appellant's status in the UK has always been precarious and that his private life was generated at a time when he was a visitor and then an overstayer. He accepted the Appellant is not dependent on the public purse, but he is financially supported by his father. He was not disputing the genuineness of the relationships with his family members in the UK, nor that the Appellant wants to get work if he attained status. However, he was a 38 year old man with no medical problems, he does have family members in Nepal and the financial support of his father. He has a limited education and skills set. Whilst he has been out of the country since 2007, Mr Bramble queried whether that was sufficient given that he can speak Nepali as well as English and to justify allowing his appeal on Article 8 grounds outside the Rules. He submitted it was not and that once the historic injustice aspect was removed, that this was an ordinary case with no compelling factors which go in the Appellant's favour.

14. In his submissions, Mr Shepherd did not seek to rely on a skeleton argument aside from the previous one before the First-tier Tribunal dated 12 June 2018. He submitted that it was manifestly important derived from the evidence of the Sponsor that he was unable to apply for his son to come to the UK when he came to the UK himself. Mr Shepherd submitted it was a unique case in the context of the Gurkha adult dependent cases because the Sponsor came as a fiancé and that did not allow him to bring his son with him. However he sought to rely on the decision in Gurung and that, but for the historic injustice, the Sponsor would have settled in the UK at a time when his dependants would have been able to accompany him under the age of 18 and he therefore would have brought his child, but for the fact that Gurkhas were not permitted to do so.

15. Mr Shepherd submitted the Appellant has formed a private life in the UK over the past eleven years, he has friends, he cooks for the family, he is in a loving and supportive nuclear family set up and has lost ties with his mother in Nepal. He submitted that had the Appellant not been prevented from coming to the UK in the first instance, this conversation and argument would not be happening. Mr Shepherd submitted that the historic injustice is a powerful aspect in the balance of proportionality and should resolve the appeal in the Appellant's favour.

Findings and Reasons

16. I begin consideration of the appeal by having regard to the previous decisions of the First tier Tribunal, as I am required to do by Devaseelan [2002] UKIAT 00702.

However, the decision of First tier Tribunal Abebrese, which was promulgated on 2.11.11 and at which the Appellant was neither present nor respresented, appears to contain findings relating to a different Appellant and was subsequently overturned by the Upper Tribunal, albeit the decision and reasons are not available. Thus I place no weight on that decision.

17. The appeal, which was against a decision by the Respondent dated May 2008 refusing to grant ILR, then came before First tier Tribunal Judge Cockrill for hearing on 27 April 2012. There was no appearance by or on behalf of the Appellant. The Judge proceeded to determine the appeal with reference to paragraph 317 of the Immigration Rules and dismissed it. There was no reference to the arguments currently before me as to the particular position of Gurkhas and historic injustice. Thus I do not derive particular assistance from this decision, apart from the finding that the Appellant did not qualify for leave to remain in the UK pursuant to paragraph 317 of the Rules.

18. The extant appeal relates to an application for leave to remain on human rights grounds, which was made on 15 September 2016. This application was refused in a decision dated 6 June 2017 on the basis that the Appellant did not fall within the Home Office policy set out at Annex K of the Immigration Rules in respect of the children of former Gurkhas; the Appellant had not shown that he met the requirements of paragraph 276ADE(vi) of the Rules and it was not accepted that the historic injustice caselaw is applicable and there were no exceptional circumstances justifying a grant of leave outside the Rules.

19. The Respondent's position in both the refusal and before me is that the historic injustice caselaw is not applicable to this Appellant's case. This is because his father and Sponsor was discharged from the British army in 1987 and came to the UK the same year as a fiancé and not pursuant to any of the Gurkha policies which came into force from 2004 onwards, initially only with regard to those who had retired within the previous two years. Thus the primary question I need to decide is whether or not the historic injustice caselaw does apply on the facts of this case.

20. In Ghising and others (Ghurkhas/BOCs: historic wrong; weight) [2013] UKUT 00567 (IAC) the Upper Tribunal held *inter alia* as follows:

> *"59. …where Article 8 is held to be engaged and the fact that but for the historic wrong the Appellant would have been settled in the UK long ago is established, this will ordinarily determine the outcome of the proportionality assessment; and determine it in an Appellant's favour. The explanation for this is to be found, not in any concept of new or additional "burdens" but, rather, in the weight to be afforded to the historic wrong/settlement issue in a proportionality balancing exercise. That, we consider, is the proper interpretation of what the Court of Appeal were saying when they referred to the historic injustice as being such an important factor to be taken into account in the balancing exercise. What was crucial, the Court said, was the consequence of the historic injustice, which was that Gurkhas and BOCs:*

> ***"were prevented from settling in the U.K. That is why the historic injustice is such an important factor to be taken into account in the balancing exercise and why the applicant dependent child of a Gurkha who is settled in the UK has such a strong claim to have his article 8(1) right vindicated, notwithstanding the potency of the countervailing public interest in maintaining of a firm immigration policy***". *[41]*
>
> *In other words, the historic injustice issue will carry significant weight, on the Appellant's side of the balance, and is likely to outweigh the matters relied on by the Respondent, where these consist solely of the public interest just described.*
>
> *60. Once this point is grasped, it can immediately be appreciated that there may be cases where Appellants in Gurkha cases will not succeed, even though their family life engages Article 8(1) and the evidence shows they would have come to the United Kingdom with their father, but for the injustice that prevented the latter from settling here on completion of his military service. If the Respondent can point to matters over and above the "public interest in maintaining of a firm immigration policy", which argue in favour of removal or the refusal of leave to enter, these must be given appropriate weight in the balance in the Respondent's favour. Thus, a bad immigration history and/or criminal behaviour may still be sufficient to outweigh the powerful factors bearing on the Appellant's side. Being an adult child of a UK settled Gurkha ex-serviceman is, therefore, not a "trump card", in the sense that not every application by such a person will inevitably succeed. But, if the Respondent is relying only upon the public interest described by the Court of Appeal at paragraph 41 of Gurung, then the weight to be given to the historic injustice will normally require a decision in the Appellant's favour."*

21. The Sponsor's evidence as set out in his witness statement dated 11 June 2018 at [5] is that when he left the British army in 1987, the Appellant was only 6 years old and would have been able to settle in the UK as his dependent if he had been allowed to settle. However, he was not allowed to and he would have done if he had been permitted because he held a senior position in the British Army and was well qualified for employment in the UK and so would have been able to provide his family with all the support they needed and they would have been able to grow up in safety and with modern education and health services available to them. In his oral evidence, the Sponsor stated that because he knew he was not permitted to bring the Appellant to the UK he only did so in 2007 once other Gurkhas began bringing their children over.

22. I find that the Sponsor is entirely credible witness. His military conduct is described in his certificate of service by his Commanding Officer as exemplary ie. the highest level. There was no attempt by Mr Bramble to impugn his evidence, which was that he would have brought the Appellant to settle with him in the UK had he been permitted so to do. I have concluded in light of the judgments in *Ghising (op cit)* and Gurung [2013] EWCA Civ 8 that the Sponsor was prevented from settling in the UK as a retired Gurkha, which would have enabled him to settle with his family members. The fact that he married a British citizen and so obtained settlement via a

different immigration route is irrelevant and does not detract from his entitlement to rely on the historic injustice argument.

23. I find that the Appellant has established close ties with his half brother and stepmother during this time, as they attest in their witness statements and the oral evidence of Joshbir Gurung, who was 12 at the time the Appellant came to live with the family and has no other siblings. I find, in light of the judgment in *Rai v ECO* [2017] EWCA Civ 320 at [18]-[20] that the Appellant has been living in a family unit with his father, stepmother and half brother for the past 11 and a half years and the relationship between them can properly be described as constituting family life.

24. In respect of the statutory public interest considerations set out in section 117B of the NIAA 2002, I find that, having given evidence competently in English that the Appellant does speak English and that, although he is not permitted to work, his presence has not impacted on the public purse as he has been financially supported throughout his 11 and a half years in the UK by his father, who is employed by the Ministry of Defence.

25. It is clear from [60] of the judgment in *Ghising* that, absent factors such as criminality or a bad immigration history, the weight to be given to the historic injustice will normally require a decision in the Appellant's favour. Mr Bramble submitted, correctly, that the Appellant's status in the UK has always been precarious and that his private life was generated at a time when he was a visitor and then an overstayer.

26. The Appellant's immigration history is that he obtained a 6 month visit visa and arrived in the United Kingdom on 16 September 2007. He made an in time application for ILR, pursuant to paragraph 317 of the Rules on 19 February 2008, which was refused in a decision dated 14 May 2008. He was neither present nor represented at the appeal hearings before the Tribunals, which ultimately resulted in the decision and reasons of Judge Cockrill dismissing his appeal. On 28 April 2016, the Appellant wrote to the Respondent enquiring as to the progress of his application. Thus it appears for unknown reasons that the refusal decision of 14 May 2008 had not been served. On 22 June 2016 he was informed that his appeal had been dismissed and copies of the decision and reasons were sent to him. On 15 September 2016, he made an application for leave to remain as the adult children of a former Gurkha, which led to the decision of 6 June 2017, which is the subject of the extant appeal.

27. The question is whether this outweighs the historic injustice and renders the Appellant's removal proportionate. I find that this is not a case where the Appellant has gone to ground but rather that the Appellant does not appear to have received the appeal decisions, otherwise he would not have written on 28 April 2016, asking for progress in his application. Following receipt of the appeal decision and reasons on 22 June 2016, he instructed solicitors to make the application current under appeal. The application form and the Appellant and Sponsor's statements are dated 23 August 2016. Thus whilst his immigration history cannot be described as good, I

find that there are reasons why the Appellant became an inadvertent overstayer and that he and his father acted in a reasonably prompt manner to remedy the situation.

28. I have concluded on the particular facts of the case, for the reasons set out above, having full regard to the public interest and the historic injustice element balanced against the Appellant's established family and private life in the United Kingdom, that removal of the Appellant would not be proportionate

Notice of Decision

The appeal is allowed on human rights grounds.

No anonymity direction is made.

Signed *Rebecca Chapman* Date 29 March 2019

Deputy Upper Tribunal Judge Chapman

IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07369/2017

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Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR BIRENDRA GURUNG
(ANONYMITY DIRECTION NOT MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A O'Callaghan, Counsel instructed by N.C. Brothers & Co. solicitors
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nepal born on 5 February 1981. He arrived in the UK on 16 September 2007 with a visit visa and subsequently made unsuccessful applications for indefinite leave to remain as the dependant of a relative present and settled in the UK. He appealed against that decision. His appeal was allowed but then set aside by the Upper Tribunal and subsequently dismissed. On 15 September 2016, the Appellant applied for leave to remain on the basis he is the adult child of a

former Gurkha who had been discharged prior to 1 July 1997. On 6 June 2017 the Respondent refused the application. The Appellant appealed and his appeal came before First-tier Tribunal Judge Eban for hearing on 13 June 2018.

2. In a decision and reasons promulgated on 27 June 2018, the appeal was dismissed, the judge finding at [24] that the Appellant's father would not have come with the Appellant upon discharge from the British Army because by that time the family unit had already broken down and he was in a new relationship. She noted that the Appellant's father came to the UK to marry the year he ceased service as a Gurkha and she proceeded to find that it would not be unjustifiably harsh for the Appellant to return to Nepal.

3. Permission to appeal was sought, in time, on the basis that the judge had erred materially in law: firstly in finding that the test of proportionality does not involve the requirement of exceptionality in light of the decision in ZB *(Pakistan)* [2009] EWCA Civ 834. She submitted the judge further had erred in failing to apply the judgment in *Gurung* [2013] EWCA Civ 8:

> *"If a Gurkha can show that but for the historic injustice he would have settled in the UK at a time when his dependant (now adult child) would have been able to accompany him as a child under the age of 18, that is a strong reason for holding that it is proportionate to permit the adult child to join the family now" [42]*

4. The grounds submitted that the relevant finding is what the Gurkha can show in relation to his settlement in the UK at a time when the Appellant would have been able to accompany him. It does not state that the Gurkha needs to show that he would have applied for the child to accompany him. The grounds sought to rely on [5] of the Sponsor's statement:

> *"When I left the British Army in 1987 Birendra was only 6 years old and so would have been able to settle in the UK as my dependant if I had been allowed to settle. Birendra would have undoubtedly been able to settle as my dependent child."*

5. Permission to appeal was granted in a decision dated 2 October 2018 by First-tier Tribunal Judge P J M Hollingworth, on the basis that the matters relied upon in the permission application at [7] and [8] have been accorded insufficient weight and that it was arguable at [9] that the judge has applied too high a test in the assessment of proportionality.

Hearing

6. At the hearing before the Upper Tribunal, Ms O'Callaghan on behalf of the Appellant sought to rely on the issue of historic injustice. She noted at [19] the judge accepted that the Appellant had established private life in the UK and accepted that the Sponsor would have applied to come to the UK, however, not with the Appellant as he had formed a new relationship and came to the UK to marry the year he ceased service as a Gurkha. In respect of the Sponsor, while she acknowledged he was not present at the hearing before the First tier Tribunal, the issue of whether or not he would have applied for his son to come to the UK with him at the time of his

discharge was not raised at any point in the refusal decision or at the hearing and it was not an issue that was challenged. She submitted that the finding by the judge that due to a family breakdown the Sponsor would not have applied for his son to join him is contrary to the evidence in his statement. She submitted that it was never a live issue in the case until after the hearing, when it became one in light of the judge's findings. Ms O'Callaghan submitted that the separation of the parents did not in and of itself mean that the Sponsor would not have applied for the Appellant to come to the UK at the time, that no weight had been attached to the Sponsor's statement and no finding made as to the evidence the Sponsor did give.

7. She further submitted that no weight had been placed on the different nature of the policy from the Rules and the fact, for example, there is no requirement to meet the language requirements. The point was whether the Appellant *could* have accompanied the Sponsor rather than whether he *would* have accompanied him and that the judge had failed to apply the correct test as set out in *Gurung*. In any event and in the alternative, the judge's findings were not based on the evidence before her. She submitted that there were no factors such as criminality or a bad immigration history by the Sponsor or the Appellant that would outweigh the historic wrong and that weight should have been attached to this as part of the proportionality exercise.

8. In her submissions, Ms Pal submitted at [17] that the judge found that there was no family life established between the Appellant and his father. They re-met when the Appellant was 26, having been separated for twenty years. The judge did find at [19] that the Appellant had a private life in the UK by virtue of being in the UK for almost eleven years. At [20] to [21] the judge considered whether there would be an interference with his private life and at [22] onwards, considered the proportionality exercise. She submitted that the judge did accept at [24] that the Appellant's father may have applied to settle upon discharge, if that had been open to him at the time rather than come to the UK as a fiancé. However the judge also found that had the Sponsor made that application he would not have applied to come with the Appellant as, by that time, the family unit had broken down and the Appellant's father was in a new relationship. The judge further found that the year the Sponsor's service ceased as a Gurkha was the year he came to the UK to marry.

9. Ms Pal submitted that the judge further found there was no evidence that the Sponsor sought to bring the Appellant over whilst he was still a minor, although this was possible between April 1989 and February 1999 and the Sponsor made no attempt to facilitate entry at a time when he could have done so. She submitted that the historic injustice arguments do not assist the Appellant in light of the findings at [24] and the finding there was no family life between the Appellant and the Sponsor. She submitted that the judge was entitled to make those findings of fact. The judge at [25] considered the factors as to why the Respondent's decision was proportionate, noting that the Appellant did not speak English and at [10] that he had been in the UK for eleven years without leave and thus his private life was precarious. Ms Pal submitted that the judge did not materially err in law and that her decision should stand.

10. In reply, Ms O'Callaghan submitted that the family life point was not a relevant consideration for the purposes of the appeal given that the judge found that private life existed and Article 8(2) was engaged, see *Ghising* at [54] where reference is made to both family and private life. She submitted the judge has erred in placing no weight on the Sponsor's evidence in terms of not applying for the Appellant to come to the UK. She submitted that historic injustice should be given substantial weight over and above the other factors at [56] of *Ghising* and what would outweigh those factors. She invited the Upper Tribunal to allow the appeal and if it was considered there was sufficient evidence, to remake the decision.

Findings and reasons

11. I find material errors of law in the decision of First tier Tribunal Judge Eban. Whilst the Judge did not have the benefit of oral evidence from the Appellant's Sponsor and father as he was unable to attend due to prior work commitments, the Judge failed to take account of material evidence *viz* [5] of the Sponsor's witness statement, where he sets out in terms that if he had been eligible to settle in the UK when he left the British army in 1987 the Appellant would undoubtedly have been able to settle in the UK. Whilst the Judge was entitled to find that there was no evidence that the Sponsor had applied for the Appellant to settle in the UK as his dependent under the Rules whilst he was still a minor, I find she further failed to take into consideration the fact that settlement under the Rules is much more onerous than that pursuant to the Home Office policy in relation to Gurkhas and that, given that the Appellant's mother is alive, it would have been necessary to show that the Sponsor had sole responsibility for him or that there were exceptional or compelling circumstances rendering his exclusion from the UK undesirable.

12. I further find that these errors materially impacted on the Judge's decision that there were no exceptional circumstances justifying consideration of Article 8 outside the rules and the proportionality assessment, such that her conclusions in this respect are unsustainable.

Notice of decision

13. For the reasons set out above, I set aside the decision of the First tier Tribunal Judge and adjourn the appeal for a hearing *de novo* before the Upper Tribunal.

14. I make the following directions:

DIRECTIONS

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1. The appeal is to be listed for 2 hours on the first available date.

2. Witness statements from the Appellant and Sponsor, his stepmother and stepbrother to stand as evidence in chief, which should be served on all parties 5 working days before the hearing.

3. If a Nepali interpreter will be required the Appellant's representatives must inform the Upper Tribunal in advance of the re-listed hearing.

4. The parties are to use their best endeavours to obtain copies of the decisions of the Tribunal dated 11.11.11, 8.12.11 and 27.4.12 to be served on all parties in advance of the re-listed hearing.

Signed *Rebecca Chapman* Date 13 December 2018

Deputy Upper Tribunal Judge Chapman