UT Neutral citation number: [2022] UKUT 00276 (IAC)

Berdica (Deprivation of citizenship: consideration)

Upper Tribunal
(Immigration and Asylum Chamber)

Heard at Field House

THE IMMIGRATION ACTS

Heard on 5 April 2022
Promulgated on 28 June 2022

Before

THE HONOURABLE MRS. JUSTICE COLLINS RICE
(Sitting as a Judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

PAJTIM BERDICA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. P Saini, Counsel, instructed by EA Law Solicitors
For the Respondent: Mr. D Clarke, Senior Presenting Officer

1. In deprivation of citizenship appeals, consideration is to be given both to the sustainability of the original decision and also whether upon considering subsequent evidence the Secretary of State's maintenance of her decision up to and including the hearing of the appeal is also sustainable. The latter requires an appellant to establish that the Secretary of State could not now take the same view.

2. Decisions of the Upper Tribunal are binding on the First-tier Tribunal, not only in the individual case by virtue of section 12 of the Tribunal, Courts and Enforcement Act 2007, but also as a matter of precedent.

DECISION AND REASONS

Introduction

1. This appeal is concerned with the respondent's intention to deprive the appellant of his British nationality, conveyed by a decision dated 23 December 2019.

2. The appellant appeals with permission against the adverse decision of Judge of the First-Tier Tribunal Welsh ('the Judge') sent to the parties on 26 October 2021.

Background

3. The appellant is a national of Albania. He has provided this Tribunal with a birth certificate confirming that he was born in Trush, Shkoder, Albania, on 11 April 1978. He is aged 44.

4. He entered the United Kingdom on 9 March 1998, when aged 19. He sought international protection and informed the United Kingdom authorities that he was a national of the Federal Republic of Yugoslavia. He now accepts that this assertion was false.

5. He further stated that he was born in Gjakova, situated in the then autonomous province of Kosovo. He accepts this assertion was false.

6. Though he provided the domestic authorities with his correct name, he presented a false date of birth, 11 April 1982, and so asserted that he was an unaccompanied minor aged 15 at the date of his asylum application. He accepts that the assertions as to his date of birth and age were false.

7. By a decision dated 30 May 1998, the respondent recognised the appellant as a refugee, believing him to be an unaccompanied minor Kosovan national who had been truthful as to his personal history. The appellant was granted leave to remain in this country until 22 May 2002.

8. The appellant applied for indefinite leave to remain in his false identity and was granted settlement on 14 December 2000.

9. On 24 February 2005 the appellant applied to naturalise as a British citizen in his false identity and was issued with a certificate of naturalisation on 1 June 2005.

10. In 2009 the appellant sponsored the entry clearance application of his then fiancée, an Albanian national, who when making her application to the British Embassy submitted the appellant's Albanian birth certificate. The respondent was subsequently informed that the appellant had misrepresented aspects of his identity.

11. On 7 October 2009 the respondent wrote to the appellant to advise that she had reason to believe he had secured British citizenship through fraud, false representation or concealment of material facts.

12. The appellant provided written reasons to the respondent on 22 October 2009 explaining why his reliance on a false identity was not dishonest. He detailed, *inter alia*:

    (i) His parents moved from Albania to Kosovo when he was aged one, and he resided in Kosovo thereafter.

    (ii) He was never informed by his family that he is an Albanian national.

    (iii) He received no education in Kosovo.

    (iv) He only discovered his true identity in 2006. Having met his fiancée whilst on holiday in Albania he wished to sponsor an application for her to travel to the United Kingdom. He required his birth certificate and upon making inquiries was informed by the Kosovan authorities that he was not a Kosovan national. He approached authorities in Albania and secured his birth certificate. In the process he became aware of his true date of birth.

    (v) He subsequently contacted members of his father's family and was informed that his parents were fearful that if knowledge of their relocation to Kosovo came to light, family members remaining in Albania would be killed.

13. On 19 February 2013 the respondent served the appellant with a decision nullifying the grant of British citizenship. The appellant has not informed us that he sought to challenge the decision.

14. On 21 December 2017 the Supreme Court handed down judgment in *R (Hysaj) v. Secretary of State for the Home Department* [2017] UKSC 82, [2018] 1 W.L.R. 221,

allowing, by consent, an appeal against the respondent's decision that misrepresentations made by the applicant in his application for British citizenship made the grant of that citizenship a nullity.

15. On 8 January 2018 the respondent wrote to the appellant advising that the nullity decision of 19 February 2013 was to be reviewed in light of the Supreme Court judgment.

16. On 3 February 2018 the respondent wrote to the appellant and confirmed that she accepted that he is a British citizen under section 6(2) of the British Nationality Act 1981 ('the 1981 Act') and therefore the nullity decision of 19 February 2013 was withdrawn. However, in light of the false information provided by the appellant the respondent confirmed that she would give consideration to whether it was appropriate to deprive him of citizenship in accordance with section 40 of the 1981 Act. The appellant did not respond to this letter.

17. By a decision dated 23 December 2019 the respondent gave notice of her decision to deprive the appellant of British citizenship under section 40(3) of the 1981 Act. The respondent detailed, *inter alia*:

> 'However, at this point I should interject that according to Home Office records you did not at any point after your 07 October 2019 Annex C deprivation letter, nor for your 19/02/2013 Annex C nullity decision letter, or your most recent 17/3/2018 Annex C deprivation letter respond by naming the officials you approached in Kosovo and Albania, nor did you provide an audit trail or statements from Kosovo or Albanian officials to support your 22 October 2019 statement. With regards to your genuine 11 April 1978 Albania birth, it is not plausible or conceivable that you believed you were 4 years younger than your true age. Moreover, it is also not accepted as an innocent explanation that you were not aware that you were actually born in Albania on the 11 April 1978, if your worked in Kosovo, and went to school in Kosovo you would be able to request school attendance or employment records, or at least a letter from the Kosovo embassy; you did not provide any documentation to prove that you resided in Kosovo.'
>
> …
>
> 'Your claim that you did not realise your genuine Albanian nationality, date of birth and place of birth until 2006 when you were either 27 or 28 years of age … was not considered credible.'
>
> ...
>
> 'You had clearly and repeatedly used a different Kosovo nationality and a date of birth that led caseworkers to believe you were a minor and under 18 years at

the time of your asylum claim and circumnavigate a removal from the UK had you declared your true age and Albanian nationality.'

…

'The evidence set out previously in this notice demonstrates that you intentionally deceived the Home Office over an extended period and withheld the material fact that you were using a false identity when you entered Britain and claimed asylum as a Kosovan minor in the United Kingdom. Operative concealment has been demonstrated, as the fraud was material to your acquisition of British citizenship. It is evident from the 30 May 1998, when you were claiming to be a Kosovan under the age of 18 years when you were granted ELR, as an un-returnable minor. … Had your genuine identity and date of birth been known to the Home Office, then you would not have received ELR which subsequently allowed you to obtain ILR and Naturalisation in your fictious identity. The fraud was directly material to you obtaining ELR and ILR, as a Kosovan citizen, which in turn, this deception allowed you to appear to meet the requirements to Naturalise as a British citizen. It is not accepted that there is a plausible, innocent explanation for the misleading information that you provided and which led to the subsequent decision to grant you with British citizenship. On the balance of probabilities, this Department concludes that during your asylum claim you amended your place of birth and nationality and concocted a fictitious account of your personal history to benefit from immigration rules that were then in place for Kosovan nationals. Concealing your true Albanian nationality and presenting as a Kosovan minor was a precursor to you obtaining British citizenship, as you received ELR and ILR as a direct consequence of your false representations.'

Decision of the First-tier Tribunal

18. The appeal came before the Judge sitting at Taylor House on 10 May 2021. Consequent to the conclusion of the parties' submissions on the day of the hearing and before the promulgation of her decision, the Judge became aware of two relevant authorities: *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769; [2021] Imm. A.R. 1410 (20 May 2021) and *Ciceri (deprivation of citizenship appeals: principles*) [2021] UKUT 238, [2021] Imm AR 1909 (8 September 2021). In the latter, a Presidential panel stated the principles to be applied when considering deprivation of citizenship appeals in the Immigration and Asylum Chamber:

'30. Our reformulation is as follows.

(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the 1981 Act exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in

paragraph 71 of the judgment in *Begum*, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

(3) In so doing:

a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and

b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in *EB (Kosovo) v Secretary of State for the Home Department* [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of *EB (Kosovo)*.

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good.'

19. The Judge invited the parties to file written submissions in relation to these judgments; the parties accepted the invitation.

20. The Judge initially considered whether the relevant condition precedent exists by a review-based assessment on the evidence before the respondent at the date of decision adopting principles of public law, at [20]-[27]. Alternatively, at [28]-[30], she considered whether the respondent's maintenance of her conclusion in relation to the appellant's honesty was rational in light of the further evidence presented, such evidence being detailed at [29] of her decision:

'29. The further evidence given by the appellant at the oral hearing was, in summary, as follows:

(1) His father changed the appellant's date of birth for security reasons.

(2) His father never told him the truth about his identity in case he disclosed it to one of his friends.

(3) The appellant willingly gave his Albanian birth certificate to support his then fiancée's visa application, which is consistent with him only discovering his true identity at this point.

(4) He did not approach the Kosovan authorities for a travel document. His representative must have used [standard] wording in his application for a travel document.

(5) He did attend school in Kosovo but not frequently and only until he was about eight or nine years old. None of his teachers found it strange that he was being taught with children who would have appeared younger than the appellant.

(6) His only memory of life before he came to the UK is, 'looking after the cows to earn a living. That is all I can remember about Kosovo. Just helping my family.'

(7) He agreed that, once he had a travel document, he travelled to Albania. He stated that he went there to look for his parents. They had not told him they would go to Albania but when he left Kosovo everybody was talking about leaving Kosovo.

(8) He travelled to Albania again in 2008 because, by this time, he had found out that his parents were in Albania. A man living in England had told him that he knew where the appellant's parents were and gave him a telephone number which could be used to contact them.

(9) He has three brothers and one sister. One of his brothers lives in Albania but the only sibling with whom he is in contact is his sister, who lives in Italy.

(10) It is difficult for him to obtain evidence about his life in Kosovo because:

(i) He has lost contact with his old school friends as they all fled Kosovo during the war.

(ii) Very few photographs were taken in Kosovo because the family did not own a camera and the cost of developing prints was very high.

(iii) He has not been able to travel in the past eight years and so has not been able to go to Kosovo to try to obtain documentary evidence.

(iv) He has asked his parents to provide witness statements, firstly in 2017 and then again in 2019. However, his parents are unwell. His father has said he would be willing to speak to people on the telephone to confirm the appellant's account.'

21. In her review of the decision and the evidence before the respondent at the date of decision the Judge concluded that the respondent considered the appellant's explanation provided by his letter of October 2009 and that the reasons given by the respondent were supported by the evidence. The conclusion reached, namely that the appellant was dishonest in his assertion that he was a Kosovan national, was one that was reasonably open to the respondent.

22. In the alternative, the Judge concluded upon considering the entirety of the evidence placed before her at the hearing:

'30. In my view, this further evidence is not such that the Secretary of State maintaining her decision could be considered unreasonable because it does not undermine, to any significant degree, the reasons given by the Secretary of State for being satisfied that citizenship was obtained by means of fraud. I reach this conclusion because:

(1) The appellant's account of his life in Kosovo is so vague as to be inconsistent with him ever having lived in that country.

(2) The appellant's explanation for why he had no witness statements or documentary evidence from his parents is implausible.

(3) The appellant did not provide an explanation for the absence of any written evidence from his sister with whom, on his own account, he is in contact.

(4) Even if it is the case that the appellant is not in contact with his brother who lives in Albania, no explanation was given as to why his parents

would not be able to contact his brother and request a written statement on the appellant's behalf.

(5) The appellant's explanation for travelling to Albania rather than Kosovo to locate his parents is not credible given, on his account, their last known location was Kosovo.

(6) The appellant's account about the application for the travel document is not inherently implausible but it is only one of a number of factors taken into account by the respondent when concluding that the appellant had acted dishonestly and therefore not of such importance as to render the decision irrational.'

23. Turning to the appellant's human rights (article 8) appeal, the Judge conducted a merits-based assessment, at [31]-[48]. She accepted that the appellant enjoys a family life with his Latvian partner and their two minor British children. She observed that to date the respondent has not issued a decision to remove the appellant from the United Kingdom as a result of the decision to deprive him of British citizenship. She was informed by the respondent that a deprivation order would be made within four weeks of the appellant becoming appeal rights exhausted and within a further eight weeks, subject to any representations by the appellant, a decision would be made whether to remove him from the United Kingdom or to issue him with some form of leave to remain.

24. The Judge concluded, at [36], that removal was not a reasonably foreseeable consequence of deprivation because there were several factors the respondent would have to weigh favourably for the appellant in the balancing assessment:

(1) The appellant's partner enjoys indefinite leave to remain in this country

(2) The appellant's partner has never lived in Albania

(3) The appellant has two British citizen children with his partner

(4) The length of the appellant's residence in the United Kingdom; some twenty-three years at the date of hearing.

25. The Judge concluded, at [38]-[40], that whilst there would be a period of uncertainty for the appellant and his family, and the appellant would lose the right to work and access State support, such concerns enjoyed little weight in the proportionality assessment as the appellant acquired rights as a result of his own dishonesty and his partner was aware that the appellant was facing deprivation proceedings when they commenced their relationship. Such an approach is consistent with the guidance in *Hysaj*, at [110], approved by the Court of Appeal in *Laci*, at [80].

Grounds of Appeal

26. The appellant's grounds of appeal run to forty-four paragraphs over eleven pages. The challenge advanced can properly be identified as follows:

    1) The First-tier Tribunal erred by failing to consider departing from, or distinguishing, the reported decision of *Ciceri*: [Ground 1]

    2) The First-tier Tribunal's assessment of the condition precedent for deprivation was perverse: [Ground 2]

    3) The First-tier Tribunal's assessment of the appellant's evidence presented in cross-examination was perverse [Ground 3(a)]

    4) The First-tier Tribunal failed to adequately consider the impact of delay in promulgating its decision [Ground 3(b)]

    5) The First-tier Tribunal erred in its consideration of the public interest in its article 8 assessment [Ground 4]

Decision

27. We consider, first, the challenges made to the Judge's decision-making in purported application of the approach set out in *Ciceri*, before turning finally to consider Ground 1 of this appeal, which challenges the Judge's decision to proceed by reference to that case in the first place.

I. The Substantive Challenges

(a) Perverse assessment of the condition precedent for deprivation (Ground 2)

28. The appellant submitted that the Judge erred in confirming that the condition precedent for establishing falsity was properly satisfied, and that it was not properly open to her to make that finding. His case was that the condition precedent was not met as there was no evidence that either his age or his nationality had any bearing on the respondent's decision to grant him citizenship, and further he had not acted dishonestly in accordance with the principles established in *Ivey v. Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67; [2018] A.C. 391 at [74].

29. Before us, Mr. Saini acknowledged that the respondent expressly detailed in her decision letter that "the decision to grant [the appellant] four years Exceptional Leave to Remain was clearly predicated on the caseworker's belief that [the appellant was] an unaccompanied minor". We are satisfied that the appellant's age and nationality had at the very least a significant bearing on the recognition of refugee status and the grant of leave to remain. There is no reasonable basis for a

grant of such status to an adult Albanian national who could, at the relevant time, return to Albania, a country to which he expressed no fear of persecution. This challenge enjoys no merits.

30. The appellant's reliance upon the judgment in *Ivey* is misplaced. The respondent gave detailed reasons for not accepting the appellant to be credible as to his failure to detail his true identity from the outset, and the Judge found that decision to be rational. This ground is dismissed.

(b) Perverse assessment of evidence (Ground 3(a))

31. Mr. Saini acknowledged at the hearing before us that this ground proceeds upon a misreading of the decision. The challenge asserted that findings made at [27] of the decision were inadequate because there was a failure to consider oral evidence given by the appellant at the hearing. But as noted above, the Judge proceeded on alternative bases – one limited to review of the respondent's decision, and one by way of considering new evidence. We observe that [27] is directed to assessment of the evidence that was before the respondent at the date of decision, and the oral evidence was considered in the alternative assessment. This ground of challenge is misconceived.

(c) Failure to consider impact of delay (Ground 3(b))

32. The appellant submitted that the purported error detailed in ground 3(a) could have arisen because of the passage of some five months between the conclusion of the hearing and the drafting of the decision. Before us, Mr. Saini relied upon the contention detailed in his skeleton argument that "the failure to take the appellant's positive evidence into account could have occurred owing to the passage of 5 months between the hearing and the drafting of the FTTJ's Decision; and it is likely (if not certain) that, having heard numerous other appeals in the interim, the FTTJ would not vividly recall the appellant's evidence in order to make a credibility assessment and in any event, unless the FTTJ checked the record of evidence before making her findings, this could explain why these matters were unaddressed and not discussed before findings were made against the appellant."

33. For the reason given above, ground 3(a) does not disclose an error of law. However, we make the following observations as to the ground advanced.

34. The impact of delay in promulgating decisions in the Immigration and Asylum Chamber and its predecessors has been subject on occasion to clear guidance from the Court of Appeal that the party placing reliance upon delay is required to show some nexus between the delay and the safety of the decision: *RK (Algeria) v. Secretary of State for the Home Department* [2007] EWCA Civ 868, at [22], and *R (SS) v. Secretary of State for the Home Department* [2018] EWCA Civ 1391; [2018] Imm AR 1348, at [29].

35. The Court of Appeal in *SS* approved the approach established by the Privy Council in *Cobham v. Frett* [2001] 1 WLR 1775 that an appeal should not be allowed on the basis of excessive delay unless the judgment below contains errors probably, or possibly, attributable to such delay sufficient to satisfy the appellate court or tribunal that the judgment was unsafe and that to allow it to stand would be unfair to the party complaining of the delay, at [27].

36. We find that the substance of this ground relies on no more than speculation and enjoys no merits. In addition, it is parasitic upon the misconceived challenge advanced by ground 3(a). We conclude that the delay was not excessive, and the Judge was fully aware of the evidence presented when preparing her decision. The appellant comes nowhere close to establishing that the decision is unsafe. This ground is dismissed.

(d) Erroneous consideration of the public interest (Ground 4)

37. Mr. Saini contended that in respect of the proportionality assessment, the Judge erred as to the weight given to the delay arising in the respondent's decision to deprive, which denied the appellant the opportunity to rely upon a now withdrawn policy.

38. The appellant entered the United Kingdom on 9 March 1998 and by 9 March 2012 he had been present in this country for 14 years. The relevant instructions under Chapter 55 of the Nationality Instructions stated on the latter date:

> '55.7 Caseworker Decisions – Completing the Deprivation Questionnaire
>
> 55.7.1 Following receipt of any information requested from the deprivation subject the caseworker, in order to deprive of citizenship, must be satisfied that the fraud, false representation or concealment of material fact was material to the acquisition of citizenship (55.7.2) and that the fraud was deliberate (55.7.3) ……55.7.2.5 In general the Secretary of State will not deprive of British citizenship in the following circumstances:
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> …
>
> • **If a person has been resident in the United Kingdom for more than 14 years we will not normally deprive of citizenship**
>
> …
>
> **However, where it is in the public interest to deprive despite the presence of these factors they will not prevent deprivation**.'
>
> [emphasis added]

39. The appellant's case was that the respondent took ten years to deprive him of nationality, having given him notice of such intention in 2009, and so caused him to be deprived of the benefit of the policy detailed above.

40. There is no merit to this ground. We observe that the respondent took steps in this matter in 2013 by issuing her nullity decision, which was not challenged by the appellant. Whilst the respondent erred in acting on nullity grounds, she was entitled to act upon legal advice based upon the law as it was then understood: *Hysaj*, at [61].

41. The appellant sought to distinguish his case from the conclusion reached in *Hysaj* that the time requirement established by the policy was disapplied consequent to the imposition of a custodial term. He relied upon not having accrued a criminal conviction. However, as the decision confirms, Mr. Hysaj could not succeed on the other arguments advanced in respect of the policy even if he could meet the relevant time requirement. The appellant enjoyed no legitimate expectation that he would succeed under the policy, which is discretionary - "will not normally deprive" - and clearly confirms "where it is in the public interest to deprive despite the presence of these factors, they will not prevent deprivation." Nor did the appellant suffer any historic injustice or substantive unfairness. This ground is dismissed.

II. The Challenge to Reliance on *Ciceri* (Ground 1)

42. The appellant advanced two complaints. The first was that the Judge erred at [16] of her decision in concluding that the decision of *Ciceri* is 'binding authority' upon the First-tier Tribunal.

43. The judge did not materially err in law by stating that she was bound to follow *Ciceri*. "As a superior court of record, the Upper Tribunal's decisions are binding on the First-tier Tribunal, not only in the individual case by virtue of section 12 [of the Tribunal, Courts and Enforcement Act 2007], but also as a matter of precedent" (Jacobs, *Tribunal Practice and Procedure*, Fifth Edition, 13.66, citing *R (Cart) v Upper Tribunal* [2010] 1 All ER 908). This is compatible with section 107(3) of the Nationality, Immigration and Asylum Act 2002 and the Practice Directions of the First-tier Tribunal and the Upper Tribunal, which provide for starred cases to be authoritative in respect of the Upper Tribunal, as well as the First-tier Tribunal. In any event, as Jacobs says: "In practice, it may not matter whether or not there is a formal rule of precedent. If the Upper Tribunal will set aside a decision that differs in law from one of its decisions, that is precedent in all but name".

44. We note, finally, Mr. Saini's second complaint on this ground: namely that *Ciceri* ought to have been decided differently, that the logic of *Begum* should properly be regarded as confined to appeals under section 40(2) of the 1981 Act, and that the

correct approach in deprivation appeals under section 40(3) should remain the merits-based assessment espoused by Leggatt LJ in *KV (Sri Lanka)*, at [6].

45. The complaint fails to engage with the approach adopted by the Judge, who proceeded on a cumulative basis in reaching her decision, considering the respondent's decision both from the point of view of reviewing that decision on a strictly public law basis – that is on the material originally before the respondent - and also through the prism of the new evidence that was placed before her on appeal. So she considered both the sustainability of the original decision and also whether upon considering subsequent evidence the respondent's maintenance of her decision up to and including the hearing of the appeal was also sustainable. The latter required the appellant to establish that the respondent could not now take the same view. The Judge came to the same decision on each basis. The new evidence has been taken fully into account. This ground is dismissed accordingly.

Notice of Decision

46. The making of the decision of the First-tier Tribunal promulgated on 26 October 2021 did not involve the making of a material error of law.

47. The appellant's appeal is dismissed.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 20 June 2022

TO THE RESPONDENT
FEE AWARD

The appellant's appeal is dismissed. No fee award is made.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 20 June 2022