Neutral Citation Number: [2026] EWCA Civ 807

Case No: CA-2025-001384

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/06/2026

Before:

LORD JUSTICE EDIS
(Vice-President of the Court of Appeal, Criminal Division)
LORD JUSTICE SINGH
and
LORD JUSTICE LEWIS

- -

Between :

A1	**Appellant**
- and –	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

Tom Tabori (instructed by the **Government Legal Department**) for the **Appellant**
Ali Bandegani (instructed by **Fountain Solicitors**) for the **Respondent**

Hearing date: 3 June 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 26 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Singh:

Introduction

1. The Secretary of State for the Home Department appeals against the decision of the Upper Tribunal (Immigration and Asylum Chamber) ("UT"), comprising Bourne J and UT Judge Loughran, promulgated on 17 March 2025, dismissing her appeal against the determination of the First-tier Tribunal ("FTT"), comprising FTT Judges Handler and McQuillan, dated 9 July 2024. The FTT had allowed A1's appeal against the decision of the Secretary of State, dated 8 December 2022,[1] to revoke his refugee status pursuant to section 72(2) and (6) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002").

2. In summary, the Secretary of State's grounds of appeal are that the UT erred in that (1) it failed to recognise both the errors of law committed by the FTT in its application of section 72(2) and (6) of the NIAA 2002 and the FTT's disregard of relevant considerations; (2) it failed to address all of the Secretary of State's arguments, and misstated and mischaracterised her case. In my view, it is Ground 1 which is the only substantive ground of appeal before this Court. Whether or not the UT fully addressed the Secretary of State's arguments has become academic now that the case has reached this Court. The issue for this Court is whether the FTT erred in law and it is the decision of the FTT which must be the focus of attention. As will become apparent, I have reached the conclusion that the FTT did fall into error as a matter of law.

3. If the appeal is allowed, the Secretary of State's primary submission is that this Court should remit the case to the FTT, although a secondary submission was made at the hearing, that this Court should simply dismiss A1's underlying appeal against the revocation decision because only one conclusion was reasonably open to the FTT. This secondary submission was made tentatively and, as will become apparent, I have reached the conclusion that this Court should remit the case to the FTT, as there are issues of fact that need to be determined which were never squarely addressed by the FTT.

4. An anonymity order was granted by the FTT, as the case concerns A1's protection status, and that order has been continued throughout these proceedings. Although the principle of open justice is of fundamental importance, that principle has to be balanced against other important interests, in particular the safety of A1, and it is not necessary for the public to know his identity in order to understand the issues which arise on this appeal.

5. I express the Court's gratitude to counsel for their written and oral submissions: Mr Tom Tabori appeared on behalf of the Secretary of State and Mr Ali Bandegani appeared on behalf of A1.

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[1] Both the FTT decision and the UT decision state that the revocation decision was made on 25 January 2023 but nothing in this appeal turns on that discrepancy.

Factual background

6. A1 is a national of Syria, who, it seems, arrived in the United Kingdom ("UK") on 12 February 2014 clandestinely. On 14 February 2014 he was served with illegal entry papers and claimed asylum on the same date. The background was that, while he was in Syria, his father and brother-in-law had been killed by a militant group.

7. On 22 May 2014 he was granted asylum and leave to remain in the UK for five years. He was joined by his wife and three children on family reunion visas in October 2014.

8. On 22 September 2017, at the Crown Court at Manchester, A1 pleaded guilty to two offences: distributing/circulating a terrorist publication, and of intending to/recklessly encouraging terrorism. On the same date he was sentenced by HHJ Stockdale QC to two years' imprisonment on each count, made concurrent. The details of the two counts were set out in the Judge's Sentencing Remarks ("JSR") as follows:

> "As to count 1, the offence of disseminating a terrorist publication, this related to your posting on your Facebook page on 28th June last year a 3½ minute video with the headline 'Who are the Sahawat'. This was a reference to a body opposed to the so called Islamic State. The video itself depicted images of such apparent opposition leaders or supposed leaders, also images of individuals who have been murdered or beheaded. The video also contained moving footage depicting the execution by shooting of a number of Iraqi officers. This last piece of footage was both graphic and quite shocking and I have viewed it in court today. When captured by the authorities the video had been viewed 92 times and had been liked, that is had been approved, by its audience on 3 occasions.
>
> As to count 2, on 27th January this year you posted on Facebook a still image from a video film entitled 'Knights of Bureaucracy'. This was a 38 minute video containing propaganda in support of the ISIS cause. In particular it extolled the asserted virtues of those involved in suicide bombing attacks. The still image which you posted carried this legend and I quote: 'The striking hour of carrying out a martyrdom operation'. Following the posting you engaged in online dialogue with an audience which evidently approved of your message."

9. In passing I should mention that Islamic State or ISIS is also sometimes known as Daesh. In the JSR the judge accepted that A1's support of Islamic State had stemmed from the killings of his father and brother-in-law by a rival militant group, and that this context for his offending served as "some mitigation". The judge said that: "You are not, for example, of a mindset as I find to encourage directly an act or acts of terrorism within the United Kingdom." As will become apparent later in this judgment, the use of the word "directly" is of some importance. The fact is that, whatever may have been

his subjective motivation for supporting Islamic State, A1 had posted images supporting terrorism and, further, as the judge found in the JSR, he did so with the intention of supporting terrorism and not simply recklessly.

10. On 27 October 2021 a Notification of Intention to Revoke Refugee Status letter, dated 12 October 2021, was sent to A1, and he was given the opportunity to make representations as to why his refugee status should not be revoked. He took that opportunity and representations were made on his behalf.

11. On 8 December 2022 A1's refugee status was revoked by the Secretary of State pursuant to section 72 of the NIAA 2002, as he had been convicted of a "particularly serious crime" and was "a danger to the community of the UK".

12. A1 appealed to the FTT, which allowed his appeal on 9 July 2024. The FTT concluded that, although A1 had not rebutted the presumption that he had committed a particularly serious crime, he had rebutted the presumption that he was a danger to the community of the UK. This was based on the evidence adduced by A1, including from the police and reports by HM Probation Service and a forensic psychologist.

13. On 17 March 2025 the UT dismissed the Secretary of State's appeal, finding no material error of law in the FTT's determination.

14. On 15 December 2025 I granted the Secretary of State permission to appeal to this Court.

Legal framework

15. A1 appealed to the FTT pursuant to section 82(1)(c) of the NIAA 2002, which provides:

> "**Right of appeal to the Tribunal**
>
> (1) A person ('P') may appeal to the Tribunal where— […]
>
> (c) the Secretary of State has decided to revoke P's protection status."

16. In the FTT, counsel for A1 confirmed that the ground of appeal was effectively that set out in section 84(3)(a) of the NIAA 2002, which provides:

> "(3) An appeal under section 82(1)(c) (revocation of protection status) must be brought on one or more of the following grounds—
>
> (a) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations under the Refugee Convention;
>
> […]"

17. Article 33 of the Refugee Convention provides:

> "1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, *having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country*." (Emphasis added)

18. At the date of the revocation decision, the Immigration Rules provided as follows, in terms that reflected the provisions of section 72 of the NIAA 2002:

> "Revocation of refugee status
>
> 338A. A person's grant of refugee status under paragraph 334 must be revoked if any of paragraphs 339A, 339AA, 339AB or 339AC apply.
>
> …
>
> Danger to the United Kingdom
>
> 339AC. This paragraph applies where the Secretary of State is satisfied that Article 33(2) of the Refugee Convention applies in that:
>
> …
>
> ii) having been convicted by a final judgment of a particularly serious crime, the person constitutes a danger to the community of the United Kingdom (see section 72 of the Nationality Immigration and Asylum Act 2002)."

19. Section 38 of the Nationality and Borders Act 2022 ("NABA 2022") amended the definition of "serious crime" in section 72 of the NIAA 2002. However, section 38(13) of the NABA 2022 confirms that: "The amendments made by this section apply only in relation to a person convicted on or after the date on which this section comes into force", i.e. 28 June 2022 (section 87(5)(d) of the NABA 2022). Section 72 of the NIAA 2002 has also been amended by section 51 of the Border Security, Asylum and Immigration Act 2025: that provision amended section 72 of the NIAA 2002 so that

certain sexual offences constitute serious crimes but it is not relevant to A1's case. Therefore, in considering A1's case, the relevant version of section 72 of the NIAA 2002 is the one prior to the NABA 2022 amendments. In so far as relevant, this read as follows:

> "**Serious criminal**
>
> (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
>
> (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—
>
> (a) convicted in the United Kingdom of an offence, and
>
> (b) sentenced to a period of imprisonment of at least two years.
>
> […]
>
> (6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.
>
> […]."

20. It will be apparent from those provisions of section 72 that, first, it creates two presumptions, namely that (1) a person has committed a particularly serious crime and (2) they constitute a danger to the community of the UK; secondly, those presumptions are rebuttable, not irrebuttable; and, thirdly, the burden of rebutting those presumptions lies on the convicted person.

The FTT's decision

21. The parties agreed that the only issues in dispute before the FTT were the following:

> "(a) Has [A1] rebutted the s72 presumption that he has been convicted of a particularly serious crime? [referred to as 'the first presumption']
>
> (b) Has [A1] rebutted the s72 presumption that he constitutes a danger to the community of the UK?" [referred to as 'the second presumption'].

22. At para 7 of its judgment, the FTT noted that the parties had confirmed certain matters, including the following:

    (1) A1's right of appeal arose from section 82(1)(c) of the NIAA 2002.

    (2) The only basis of the Secretary of State's decision to revoke A1's protection status was para 339AC(ii) of the Immigration Rules.

    (3) A1's grounds of appeal were those set out in section 84(3) of the NIAA 2002.

    (4) The Secretary of State accepts that A1 is a refugee.

    (5) The issue concerned revocation of A1's protection status.

    (6) If A1 failed to rebut either of the section 72 presumptions, A1 would still be a refugee and would not be returned to Syria because this would be a breach of A1's rights under Article 3 of the European Convention on Human Rights ("ECHR").

    (7) There was no Article 8 ECHR element to the appeal.

    (8) Deportation action was not being pursued.

23. The Secretary of State had certified that the section 72 presumptions applied to the case. This meant that, under section 72(10), if the FTT agreed that the presumptions applied, it was required to dismiss the appeal. Conversely, as the Secretary of State accepted that A1 is a refugee, if the FTT found that either presumption was rebutted, his appeal fell to be allowed.

24. A1 was the only witness to give oral evidence in the FTT.

The First Presumption

25. The FTT found that A1 had not rebutted the section 72 presumption that he had been convicted of a particularly serious crime. This finding has not been appealed. However, the approach taken by the FTT to the first presumption is relevant because the Secretary of State submits that the FTT's approach to assessing whether the first presumption was rebutted was flawed and resulted in errors in its approach to the second presumption.

26. The FTT began its analysis by stating "[w]e have taken into account in particular the comments of the UNHCR and relevant case law including *EN Serbia v SSHD* [2009] EWCA Civ 630 regarding the matters to be considered regarding whether the appellant has committed a particularly serious crime": see para 12 of the FTT decision.

27. The FTT referred to the JSR, which it stated recorded the following aggravating features of the offences: (a) this was a case of intentional rather than reckless conduct; (b) the video which was the subject of count 1 was "particularly horrifying and particularly graphic"; and (c) the Judge's statement directed at A1: "You do, in my

judgment, have a mindset which is supportive of Islamic State whatever your underlying motive may be": see para 14 of the FTT decision.

28. The FTT stated that many of the mitigating features recited in the JSR were more relevant to the second presumption because they went to A1's character. In this regard, the FTT said, at paras 15-17:

> "15. We have taken into account the mitigating features recited in the JSR. We find that many of these are more relevant to our consideration of the second presumption because they go to the character of the appellant. We take into account that the JSR include 'I accept that your support of Islamic State stems from the killings of your father and your brother-in-law by a rival militant group and that is a context for your offending which serves as some mitigation. You are not, for example, of a mindset as I find to encourage directly an act or acts of terrorism within the United Kingdom'. This we find illustrates that the mitigating features are more relevant to the second presumption and they do not address the fundamental issue which is the severity of the offences that were committed intentionally.
>
> 16. We find that this point is emphasised by a comment in the expert report of Carleen Saffrey (CS) dated 24 May 2024 (the CS Report). Regarding risk of re-offending, CS says that the appellant expresses remorse and acknowledged that his support of previous ISIS related posts could have encouraged other individuals to support the post or further fuel ideologies and CS records that the appellant told her that 'I didn't think about the people seeing the video who did not want to see it'. That we find, supports a finding that the appellant has not rebutted the first presumption. The circumstances of his offending include the mitigating circumstance of his motivation as acknowledged in the JSR. However, the appellant's own position shows that when he offended he did not have in mind significant matters that made the offending particularly serious.
>
> 17. The appellant has maintained a consistent narrative about why he offended. We accept that what the appellant experienced in Syria is consistent with his explanation as to how he came to commit the crimes that he did. The JSR give some particulars of the nature of the crimes committed and emphasize the severity of those crimes with reference to the nature of the material that the appellant disseminated on the internet. We note with concern the appellant's oral evidence that his crimes were not intentional which is contrary to the JSR that we have set out above. Further, in his witness statement, the appellant says that he was not interested in the ideologies or values of Daesh. This, we find, is inconsistent with the JSR and with the National Probation Service Extremism Risk Report (the ER Report). We find therefore that the appellant has not acknowledged the intentionality of his acts or his support of Daesh. We find that

> this undermines the basis on which he argues that this presumption has been rebutted. He has not addressed the actual circumstances and particular facts relevant to the crimes he was convicted of with sufficient reference to the fact that he was convicted of intentional acts and was found to be of a mindset supportive of Islamic State."

29. The FTT then concluded, at para 18, that A1 had not rebutted the presumption that he had been convicted of a particularly serious crime.

The Second Presumption

30. The FTT found that A1 had succeeded in rebutting the section 72 presumption that he constituted a danger to the community of the UK.

31. The FTT stated that it attached weight to the following evidence adduced by A1, which supported a finding that the second presumption had been rebutted: (1) the answers provided by PC M Downey on 18 September 2023 in response to questions by A1's representative;

    (2) the report by Carleen Saffrey (BPS Chartered Psychologist and HCPC Registered Forensic Psychologist) ("the CS Report"); and

    (3) the Extremism Risk Report ("the ER Report").

    The FTT also stated that it placed weight on the evidence of A1's NHS counsellor, Alison Mary Victor (whose name it abbreviated as "AMV"); A1's own witness statement and oral evidence; and the letters of support which had been provided.

32. The FTT noted the submission on behalf of the Secretary of State that A1's poor mental health was a factor that evidenced his continued danger to the community. The FTT recognised the "logical force" of that submission but found that it "did not withstand scrutiny" when other matters were considered holistically, including: (a) the evidence that A1 was a "committed family man" and evidence of his continued employment; and (b) the evidence that A1 had complied fully with his obligations following release from custody: see paras 30-33 of the FTT decision.

33. The FTT set out its conclusions on the second issue as follows, at paras 34-36:

> "34. We have attached weight to the evidence as referred to above and we consider that the evidence to which we have attached weight is consistent in supporting a conclusion that the appellant is at low risk of re-offending. We note in particular that the appellant has been consistent and emphatic that he did not realise that what he was doing was a crime and that he would not have done what he did if he had realised that. We find that the appellant's evidence that he does not want to be convicted of a

similar crime in the future is consistent with his actions and also with the evidence to which we have attached weight.

35. We find it significant that although there are ongoing concerns about the appellant's mental health, he has not re-offended, has maintained a successful family life with his wife and four children and has continued to earn his living. He has been able to set up and run his own business as indicated by the P60 information provided in evidence together with his own evidence about his business. PC Downey, who was monitoring the appellant, answered questions as referred to in paragraph 20 above. We are satisfied that if PC Downey had considered there to have been signs of the appellant constituting a danger to the community of the UK this would have featured in his answers to the questions that he was asked. We find that it is to be expected that the appellant would have ongoing mental health issues, taking into account what the appellant has experienced and the delay in him accessing treatment. The significant point, we find, is that despite experiencing these issues, the appellant has not reoffended and has managed to approach his life after release from prison in a generally positive and active way. We find that his actions support what he says. His actions demonstrate the behaviours of a family man who wants to work to support his family and encourage his children in their education and lives in general. His willingness to access treatment for his mental health reflects this as does his willingness to take time off work when he needs to because of his mental health. We find that the appellant's evidence, the evidence of AMV and the letters of support for the appellant are all consistent and supportive of findings that despite mental health problems the appellant is able to live in this way and, we find, therefore that this evidence supports a conclusion that the appellant has rebutted the second presumption.

36. The evidence provided by the appellant includes evidence from PC Downey with whom he has had 25 contacts between April 2022 and September 2023, the CS Report, the ER Report, his own detailed evidence, evidence from AMV, his treating psychologist. and evidence from people who know the appellant as referred to above. For the reasons given above, we have found a high level of consistency in the evidence from these different sources. We have explained why we consider that the evidence of PC Downey, in the CS report and in the ER Report support a conclusion that the appellant has rebutted the second presumption. We have explained above why we consider that the appellant's own evidence, the evidence of AMV and the letters of support that have been provided also support this conclusion. Therefore, when we consider the evidence in the round, we find that the appellant has shown on the balance of probabilities that

> he has rebutted the presumption that he constitutes a danger to the community of the UK."

34. I will set out other parts of the FTT's decision when necessary later in this judgment.

The UT's decision

35. The UT summarised the Secretary of State's grounds of appeal as follows, at para 24 of its decision (bold in original):

> "Ground 1: **Making perverse or irrational findings on a matter or matters that were material to the outcome and making a material misdirection of law on any material matter.**
>
> When assessing whether A1 has rebutted the presumption that he constitutes a danger to the community of the UK, the panel have given "a one-sided, exclusively positive view on evidence of risk." It is arguably unclear how the panel reached the conclusion that A1 did not constitute a danger to the community.
>
> Ground 2: **Failing to give adequate reasons for findings on material matters and failing to take into account and/or resolve key conflicts of fact or opinion on material matters.**
>
> When assessing whether A1 has rebutted the presumption that he constitutes a danger to the community of the UK, the panel materially failed to take into account the wider implications of A1's offences as raised in the sentencing remarks. The decision is unclear and absent of adequate reasoning as to why the findings that A1 is "family orientated" and a "committed family man" is given considerable weight in favour of A1 given the fact that his family were present in the UK and living with A1 at the time the offences were committed."

36. The UT reminded itself of the "narrow circumstances in which an appellate Tribunal may interfere with a finding of fact": see para 32 of the UT decision. At para 33, it stated that the findings made by the FTT were neither irrational nor plainly wrong.

37. The UT then set outs its conclusions as follows, at paras 34-38:

> "34. We are not persuaded that the panel took a 'one sided' or 'exclusively positive view on the evidence on risk or that the panel failed to consider relevant evidence. We note that the panel recorded at [4]-[5] that they had considered the oral and written evidence as well as the submissions and that they had considered

> the evidence in the round before making findings of fact and reaching conclusions. The panel is not required to cite every aspect of every piece of evidence before them.
>
> 35. As outlined above … the panel addressed the evidence before them, explaining why they attached weight to it. It is clear that they considered that the majority of that evidence supported the conclusion that A1 had rebutted the presumption that he was a danger to the community of the UK.
>
> 36. We note that the panel's consideration of the sentencing remarks appears under the heading 'Has the appellant rebutted the s72 presumption that he has been convicted of a particularly serious crime.' However, we are not persuaded this indicates that the panel excluded it from its consideration of whether the second presumption was rebutted. The decision must be read as a whole.
>
> 37. Indeed, the panel said at [15] that the mitigating features cited in the sentencing remarks were more relevant to the second presumption. The panel did not repeat their consideration of those mitigating features in their consideration of the second presumption but that does not mean that they were not relevant at that point. They plainly were, especially the words 'you are not … of a mindset … to encourage directly an act or acts of terrorism within the United Kingdom' which the panel quoted at [15]. The panel clearly had in mind the sentencing remarks as a whole. We note in any event that the sentencing remarks are dated 22 September 2017 and accordingly cannot be determinative of whether A1 was a danger to the community at the date of the hearing before the panel. We are satisfied that the panel considered all the relevant evidence.
>
> 38. The reasons given by the panel for coming to their conclusion are adequate, clear and appropriately concise and focus upon the issue on which the outcome of the case turns, i.e. whether A1 has rebutted the presumption that he is a danger to the community of the UK. We are satisfied that a reader of the decision could understand why the panel came to their conclusion and that conclusion was open to the panel on the evidence before them."

Submissions on behalf of the Secretary of State

38. Before this Court the Secretary of State advances two grounds of appeal:

> "Ground 1: The UT failed to recognise the errors of law committed by the FTT in its application of s 72(2) and (6) NIAA 2002 and the FTT's disregard of relevant considerations.

Ground 2: The UT failed to address all the SSHD's arguments, and misstated and mischaracterised of the SSHD's case."

Submissions on Ground 1

39. In developing Ground 1, Mr Tabori submits that:

(1) In assessing the first presumption the FTT had regard to a number of considerations that were also applicable to the second presumption, but the FTT then failed to factor them into its assessment on the second presumption. These factors include (i) the JSR findings that this was a case of intentional conduct and that A1 has a mindset that is supportive of Islamic State; and (ii) the FTT's findings that A1 has not acknowledged the intentionality of his acts.

(2) The FTT wrongly treated the second presumption as the stage where mitigating features should be considered, contrary to the judgment of Stanley Burnton LJ in *EN (Serbia) v Secretary of State for the Home Department* [2009] EWCA Civ 630; [2010] QB 633. The UT's statement that the FTT had "focus[ed] on the issue on which the outcome of the case turns" is wrong in light of the FTT's failure to have regard to the considerations set out above. The UT also failed to have regard to the Secretary of State's submissions as to the FTT's erroneous approach to the second presumption.

(3) The FTT disregarded considerations that were each highly relevant to the question of whether A1 posed a danger to the community, in particular the following factors:

(a) Whether there was evidence addressing the specific issues relating to A1's behaviour and mindset that had been identified in the JSR. If it considered that the level of risk identified in the JSR no longer existed, the FTT was obliged to explain why it considered this to be the case.

(b) The fact that A1's family life, which the FTT found mitigated the danger posed by A1, was present in the same form at the time of the offending and sentencing.

(c) The expert evidence as to A1's mental health, particularly the report of A1's NHS counsellor dated 8 September 2023, which Mr Tabori submits is relevant to whether A1 could be trusted not to re-offend or whether there was a real risk of repetition.

(d) The "actual objective assessments" on which the CS and ER Reports adduced by A1 were based. Mr Tabori submits that the reports showed that factors relevant to risk of extremism were still present in A1. The FTT wrongly treated one of the ER Report's recommendations as being a conclusion.

(e) The FTT relied too heavily on PC Downey's answers to A1's solicitor's questions, despite the fact that (i) PC Downey's role in relation to A1 was to look for potential changes that might trigger thoughts of

reoffending, whereas the FTT should have been looking for changes that demonstrated reduction in risk; (ii) the findings in the JSR had not been put to PC Downey for comment; (iii) PC Downey's email was not an expert report and did not apply objective measures of risk of extremism; and (iv) the basis for PC Downey's reference to low risk was not set out or considered.

(4) In addressing the statutory question of whether A1 was "a danger" to the community of the UK, any danger was sufficient, so long as it was more than fanciful, following *Brown v Rwanda* [2009] EWHC 770 (Admin), at para 34. The FTT found that A1 was at "low risk of re-offending" but in this context, without more, a finding of "low risk" does not rebut the statutory presumption.

Submissions on Ground 2

40. On Ground 2, Mr Tabori submits that the UT failed to address all of the Secretary of State's submissions. The UT was wrong to state that her appeal was about "findings of fact and credibility"; this mischaracterisation meant that the UT afforded the FTT a margin of appreciation over questions of law where no such deference was owed.

Submissions on behalf of A1

Submissions on Ground 1

41. On behalf of the Respondent, A1, Mr Bandegani submits that it does not follow from *EN (Serbia)* that, where an individual has been convicted of a particularly serious crime, decision-makers are compelled to reach the conclusion that the individual poses a danger to the community, regardless of the circumstances of the case. For example, he suggests that an individual may not pose a danger to the UK (a) where several years have passed since the index offence, and (b) during that period there has been no offending of any kind, let alone offending of a serious nature.

42. Mr Bandegani submits that the effect of the Secretary of State's submissions is that the second presumption can only be rebutted by establishing that there is no risk of reoffending. He submits this is wrong in law, noting that the lowest risk category in the relevant extremism guidelines (the "ECG+22 Guidelines") is "low risk". There is no option for assessors to state that an individual poses no risk. The correct question to ask is whether the danger of further serious offending is "real".

43. Mr Bandegani submits that there is nothing in *EN (Serbia)* circumscribing which factors the FTT may consider when deciding whether someone is a danger to the community. "Mitigating factors" may be relevant both to the question whether a crime was particularly serious and also to whether the person is a real danger to the community of the UK. He submits that the FTT were entitled to distinguish between mitigating factors that were associated with the commission of the crime (which go to the first presumption) and factors that go to A1's character (which go to the second presumption).

44. Mr Bandegani submits that a decision will not be irrational by reason of a failure to consider relevant evidence if, on a fair reading of the decision, the decision-maker has explicitly or implicitly considered the evidence. There is no requirement to refer explicitly to every piece of evidence. Further, he submits that the FTT did in fact refer to every piece of relevant evidence and plainly had in mind the relevant parts of it when making its decision.

45. Mr Bandegani submits that it was perfectly legitimate for the UT to conclude that the FTT had "focus[ed] on the issue on which the outcome of the case turns": the FTT spent over 16 paragraphs on the question whether A1 was in fact a real danger to the community.

46. Mr Bandegani's fundamental submission is that the FTT did not err in law and reached a conclusion that was essentially one of fact. He points out that there is no perversity ground of appeal in this case and submits that the detailed criticisms of the FTT's decision made on behalf of the Secretary of State in essence invite this Court to engage in the sort of "island-hopping" around the evidence which has frequently been deprecated.

Submissions on Ground 2

47. Mr Bandegani submits that Ground 2 does not particularise any specific ground of appeal. The UT did not materially err in law by addressing only the arguments that were capable of materially bearing on the grounds of appeal before it or that were reasonably capable of establishing a material error of law.

The main authorities

48. Although a large number of authorities was placed before this Court and some of them were referred to both in the parties' skeleton arguments and in their oral submissions, there are two cases on which particular emphasis has been placed. It is necessary therefore to refer to those two authorities in some detail: *EN (Serbia)* and *KD v Secretary of State for the Home Department* [2026] EWCA Civ 349. It is important to note that both of those decisions were deportation cases, which the present case is not. Nevertheless, both judgments made observations on issues which do have potential relevance to the present case.

49. In *EN (Serbia)*, in two separate cases the claimants had entered the UK and made unsuccessful asylum claims before eventually being granted leave to remain, in the first case as a refugee. Subsequently, that claimant was convicted on three counts of burglary and one count of possession of an offensive weapon, for which he was sentenced to a total of 12 months' detention in a young offenders' institution. The main judgment was given by Stanley Burnton LJ. At para 45, he said that, so far as the phrase "danger to the community" in Article 33(2) of the Refugee Convention is concerned, "the danger must be real, but if a person is convicted of a particularly serious crime, and there is a real risk of its repetition, he is likely to constitute a danger to the community".

50. At para 66, Stanley Burnton LJ said:

> ".. in practice, once the State has established that a person has been convicted of what is on the face of it a particularly serious crime it will be for him to show either that it was not in fact particularly serious, because of mitigating factors associated with its commission, or that because there is no danger of its repetition he does not constitute a danger to the community."

51. It is also important to note in passing what had been said by the Divisional Court (Laws and Sullivan LJJ) in *Brown v Government of Rwanda* [2009] EWHC 770 (Admin), at para 34:

> "'Real risk' does not mean proof on the balance of probabilities. It means a risk which is substantial and not merely fanciful; and it may be established by something less than proof of a 51% probability."

52. This is consistent with what has been said in many other cases, including in the context of national security risks.

53. On behalf of the Secretary of State Mr Tabori placed particular reliance on the recent judgment of this Court in *KD*, which post-dates the judgments below. Nevertheless, he submits that it is of relevance to the way in which the FTT ought to have determined the present case also.

54. In *KD* the main judgment was given by Peter Jackson LJ. This too was a deportation case. The claimant had claimed but been refused asylum by the Secretary of State. Subsequently, the claimant was convicted of the murder of his wife. He was sentenced to life imprisonment with a minimum term of 12 years. He made fresh asylum and human rights claims, which were refused by the Secretary of State. One ground for refusal was that the crime he had committed was particularly serious and that therefore he was excluded from protection pursuant to Article 33(2) of the Refugee Convention and the relevant provisions of the Immigration Rules. The FTT allowed KD's appeal. It found that he had rebutted the statutory presumption that he constituted a danger to the community.

55. Peter Jackson LJ addressed the issue of danger to the community at paras 34-52 of his judgment. Having referred to *EM (Serbia)* and *MA (Pakistan)*, a permission decision, which Peter Jackson LJ said (at para 50) illustrated the correct approach to risk assessment, this Court concluded that the statutory presumption had not been displaced and KD was therefore not eligible for the protection of the Refugee Convention.

56. In my view, the judgment in *KD* is of limited assistance in the present appeal, although I would accept that what is said at the level of generality is relevant in other cases. In particular, at para 47, Peter Jackson LJ said:

> "The assessment of whether a person who has committed a particularly serious crime constitutes a danger to the community involves consideration of the nature of the crime, the likelihood of further serious offending, and the level of harm that might result."

57. I would accept, therefore, the submission for the Secretary of State before us that, in the context of terrorism offending, the level of harm can be so serious that even a relatively low risk of further serious offending may lead to the conclusion that the statutory presumption has not been rebutted and a person remains a danger to the community.

58. The reason why the decision in *KD* itself is of limited assistance in the present appeal is that the ultimate conclusion of the court was that the decision of the FTT "was not one that a reasonable decision-maker could have come to": see para 46. As I have already mentioned, in the present case it is not a ground of appeal that the conclusion reached by the FtT was perverse, in other words one that a reasonable decision-maker could not have come to. Furthermore, phrases used by Peter Jackson LJ in *KD* need to be read in their proper context. For example, reliance was placed by Mr Tabori on para 49: "… the community should not be expected to tolerate a real likelihood of serious harm from individuals who qualify for deportation, and in this context a low likelihood of serious harm is a real likelihood, in that it cannot be said to be fanciful." In my view, Peter Jackson LJ was not there suggesting that, when phrases like "a low likelihood" of harm are used in (for example) a probation report, that automatically means as a matter of law that there is a real risk and so a person continues to be a danger to the community of the UK. As Peter Jackson LJ himself said at para 51: "All assessments of dangerousness depend on their facts." As he went on to say in the same paragraph, it was by reference to that particular case that he concluded that:

> "in order to displace the statutory presumption, KD would have had to show that the likelihood of future serious offending was so low that it could effectively be discounted. The FTT did not reach that conclusion and the evidence came nowhere near to supporting it. Its decision on this issue was not reasonably open to it and it was, in the legal sense, perverse."

59. Accordingly, as I have indicated, I find the judgment of this court in *KD* to be of limited assistance in resolving the present appeal. It was a decision on its own facts.

60. It is also necessary briefly to refer to two other decisions of this Court which emphasise the limited role of an appellate court or tribunal in cases of this type.

61. The first is *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201; [2024] 1 WLR 4055. As Green LJ emphasised at para 26 of his judgment, sections 11 and 12 of the Tribunals, Courts and Enforcement Act 2007 restrict the jurisdiction of the UT to errors of law. Further, as he set out in six sub-paragraphs, which do not need to be set out in full here:

(1) The FTT is a specialist fact-finding tribunal and the UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts, referring to the judgment of the House of Lords in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] AC 678, at para 30 (Baroness Hale of Richmond).

(2) Where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account.

(3) When it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself not just because not every step in its reasoning was fully set out.

(4) The issues for decision and the basis upon which the FTT reaches its decision on them may be set out directly or by inference.

(5) Judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them.

(6) It is in the nature of assessment that different tribunals may reach different conclusions on the same case and the mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error.

62. The other case is not an immigration case but, nevertheless, has relevance because of the general observations made in it: *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, in which the main judgment was given by Lewison LJ. That was an appeal on a pure question of fact, so is not directly relevant to the present appeal. Nevertheless, in his general observations at para 2, Lewison LJ said that certain principles are well-settled. In particular, at sub-para (vi), Lewison LJ observed that the reasons for a judgment will always be capable having been better expressed. An appeal court should not subject a judgment to an overly textual analysis. Nor should it be picked over or construed as if it were a piece of legislation or a contract. Further, as he observed at sub-para (iii), an appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that it was overlooked.

Analysis

63. I am very conscious that an appeal to the UT from the FTT lies only on a point of law. I am also conscious that the FTT is a specialist tribunal in the field of immigration and asylum law, and on well-established authority, appellate courts and tribunals should be slow to interfere with the judgments of that tribunal.

64. Many of the criticisms which have been made on behalf of the Secretary of State of the FTT's reasoning in the present case do not, in my view, amount to errors of law. To an extent I agree with the UT that the Secretary of State's criticisms in effect amount to a

disagreement with the FTT's conclusions on matters of facts and evaluation. Yet there is no perversity challenge to those conclusions before this court.

65. Nevertheless, I am persuaded that the central thrust of the submissions for the Secretary of State is well-founded. In my view, the FTT did fall into error as a matter of law, primarily on the ground that there is a logical inconsistency between its findings on the first issue before it and its findings on the second issue. Having found that A1 had failed to rebut the presumption on the first issue, the FTT failed to return to crucial aspects of its findings on that issue when it addressed the second issue.

66. In particular, at para 17 of its judgment, which I have set out above but bears repetition here, the FTT said the following:

> "… we note with concern the Appellant's oral evidence that his crimes were not intentional which is contrary to the JSR that we have set out above. Further, in his witness statement the appellant says that he was not interested in the ideologies or values of Daesh. This, we find, is inconsistent with the JSR and with the national probation service extremism risk report (the ER report). We find therefore that the Appellant has not acknowledged the intentionality of his acts or his support of Daesh. We find that this undermines the basis on which he argues that this presumption has been rebutted. He has not addressed the actual circumstances and particular facts relevant to the crimes he was convicted of with sufficient reference to the fact that he was convicted of intentional acts and was found to be of a mindset supportive of Islamic State."

67. When it then came to address the second issue at paras 19-36 of its judgment, the FTT never in express terms returned to the question of whether he (still by the time of the hearing) supported Daesh (or Islamic State) and, if not, on what evidence that conclusion had been reached.

68. On behalf of A1 before this Court Mr Bandegani accepted that this was not expressly addressed in the judgment of the FTT but submitted that it was to be found in its reasoning by necessary implication. In particular, he relied on what was said at para 26 of the FTT's decision:

> "We attach weight to the appellant's evidence for the following reasons. The appellant has provided a very detailed witness statement. We find that his witness statement is consistent with other evidence in that he has provided a consistent narrative to third parties (CS, those writing the ER Report) about what happened in Syria and the effect that this had on him in terms of it leading to his committing the offences. We note consistency going back to what Dr Alachkar, consultant psychiatrist, reported the appellant said in his report dated 20 August 2017. In terms of his family life, the appellant's evidence is consistent with the evidence from other sources regarding his wife, children

> and employment history. We found the appellant's oral evidence to reflect his written evidence. On many occasions, he repeated his narrative rather than answering the question that he had been asked. It was explained to him that he should focus on the question asked and the appellant did do this with some success for many of the questions he was asked. At times the appellant's oral evidence displayed a fixed position as to his motivation to offend and we have taken this into account, noting its significance in respect of the first presumption as set out above. The appellant's oral evidence included that he was still experiencing problems with his mental health and he had to take time off work because of his mental health. On average he said this was perhaps two days per month and he would spend time with his family when he had time off. There was no challenge to this evidence which we accepted."

69. In my view, there are several difficulties with this submission based on para 26 of the FTT's decision. First, nowhere does the FTT expressly address the issue whether A1 still supports Daesh to any extent. Secondly, the reasoning of the FTT, even at para 26, acknowledges that there were aspects of A1's oral evidence which were unsatisfactory. Furthermore, as the FTT had noted at para 17, some aspects of his written evidence were inconsistent with other evidence in the case, in particular the JSR. Thirdly, at para 26, the FTT appears to have considered that the unsatisfactory aspects of A1's oral evidence had already been taken into account in addressing the first issue. However, I accept the submission made on behalf of the Secretary of State that aspects of that evidence were still relevant on the second issue as well. In particular, as I have indicated, the crucial question was whether A1 still supports Daesh. That was never clearly addressed by the FTT at para 26 or anywhere else in its judgment.

70. I would emphasise that this defect in the reasoning of the FTT is not simply a point about inadequacy of reasons. It is more fundamental than that: in my view, it discloses an error of law which was material to the judgment of the FTT. In other words, the FTT failed to address a central question of fact which needed to be addressed and determined. This is particularly so bearing in mind that the burden of proof lay on A1, because it was incumbent upon him to rebut the statutory presumption on the second issue (that he constitutes a danger to the community of the UK).

71. In this context, Mr Bandegani drew our attention to aspects of the evidence which was before the FTT, including the evidence of PC Downey. In particular, reliance was placed on PC Downey's answer to question 7: "Are you able to provide a view as to whether there have been any indications of involvement with or sympathy for any extremist groups of ideologies since release?" PC Downey's answer was: "No indication of involvement of extremist views or radical ideologies." The difficulty with this line of argument is that the FTT itself did not set this out in its reasoning.

72. I am very conscious that, on well-established authority, it is inappropriate for an appellant court to "island hop" in the evidence, all of which will have been before the FTT. Nevertheless, there are features of the evidence which bear comment by this court.

73. First, the extremism risk report. This said, at section 5, which was headed 'Assessing risk, conclusions and recommendations':

> "… it is fair to presume that [A1] underestimated the importance of monitoring social media usage in the UK, which explains his open expressions of support for Daesh. However, he had resided in the UK for approximately 18 months prior to committing his crimes, which is sufficient time to understand the effect Daesh inspired terrorism had on this country. He also fully understood that all of his friends on Facebook were Syrians, but this had no effect on him despite Daesh having cause significant pain and misery to many individuals in his country. These factors did not deter [A1], whose main aim was revenge.
>
> …
>
> There is no evidence that [A1] has any motivation to cause harm based on an ideology, cause or extremist group. He used his support for Daesh as a platform to meet his needs and did this via social media rather than committing actual acts of violence. There are a number of protective factors, such as employment, presence in the family home and financial security that are currently unavailable to [A1] upon release. Therefore, he will require other methods of acclimatising to ensure he remains settled in his surrounding community and to reduce the possibility of further criminal offending."

74. Although the parties were unable to tell us the precise date on which that report had been compiled, it is clear from its terms that it was prepared while A1 was still in prison. As he was sentenced in 2017, and would not have served the entirety of the two year sentence passed on him in prison, it is reasonable to infer that the report must have been written several years before the date of the hearing before the FTT. What was required of the FTT was careful consideration of the question of whether, in the light of A1's past support for Daesh, the protective factors had sufficiently addressed the concerns expressed in that report so that it could be said that the statutory presumption that he remained a danger to the community of the UK had been rebutted by A1.

75. In this context, it is important to observe that, even if it might be the case that A1 himself did not have any motivation to cause harm to be done in the UK, the fact remained that he had been prepared to publish material on the internet which might well be seen by people who did not have the same reasons as him to be limited in where they wished to see terrorist activity take place. This is one of the real dangers of posting material supporting terrorism on the internet. It can inspire others to commit acts of terrorism in this country even if that is not the intention of the person who publishes the material.

76. The next relevant piece of evidence in this context is the JSR. The sentencing judge noted that A1's social media accounts contained clear evidence of approval of extremist activity. As the judge noted, A1 had engaged in dialogue or posted comments which demonstrated clearly that he had an extremist mindset, that is a mindset supportive of

Islamic State. Later in his sentencing remarks the judge accepted that A1's support of Islamic State stemmed from the killings of his father and brother-in-law by a rival militant group and that was the context for his offending, which served as some mitigation. The judge said: "You are not, for example, of a mindset as I find to encourage directly an act or acts of terrorism within the United Kingdom."

77. In my view, there is some significance to be attached to the use of the word "directly" in that passage. As I have already said, what is important is that a person is prepared to post such material on the internet and it may well be seen by others who do not share his reluctance to encourage acts of terrorism within the UK. They may well act on the inspiration given to them by viewing such material on the internet. This again reinforces the fundamental defect in the FTT's reasoning, which is that it never addressed head on the crucial question of whether A1 had done enough since the time of his conviction and sentence, a time when he clearly did support Daesh, to rebut the presumption that he still posed a danger to the community in the UK. In particular, the crucial question which needed to be addressed and displaced on the basis of evidence was whether he still supports Daesh.

78. Accordingly, I have reached the conclusion that the Secretary of State's appeal to this Court must be allowed. Since there are crucial matters of fact which still need to be investigated by the fact-finding tribunal in this context, I would accept the Secretary of State's primary submission as to the appropriate remedy that should follow: Mr Tabori's primary submission was that this Court should remit the case to the FTT for redetermination in accordance with the judgments of this Court. He did tentatively make a secondary submission, that this Court should substitute its own decision for that of the FTT and dismiss A1's underlying appeal against the revocation decision, but I do not consider that this Court is in a position to do that: as I have mentioned, the fundamental defect in the FTT's decision is that it failed to address crucial issues of fact that it needed to determine and the proper course is, therefore, to remit to the FTT so that exercise can be performed.

Conclusion

79. For the reasons I have given, I would allow the Secretary of State's appeal and remit this case to the FTT for redetermination in accordance with the judgments of this Court.

Lord Justice Lewis:

80. I agree.

Lord Justice Edis:

81. I also agree.