Upper Tribunal
(Immigration and Asylum Chamber)

MS (British citizenship; EEA appeals) Belgium [2019] UKUT 00356 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 July 2019	
Further submissions: 31 July and 5 August 2019	.....

Before

THE HON. MR JUSTICE LANE, PRESIDENT

UPPER TRIBUNAL JUDGE GILL

UPPER TRIBUNAL JUDGE FINCH

Between

MS

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Mr B. Amunwa, Counsel instructed by Duncan Lewis & Co Solicitors (Harrow Office)

For the Respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

(1) If, on appeal, an issue arises as to whether the removal of a person (P) from the United Kingdom would be unlawful because P is a British citizen, the tribunal deciding the appeal must make a finding on P's citizenship; just as the tribunal must do so where the consideration of the public interest question in Part 5A of the Nationality, Immigration and Asylum Act 2002 involves finding whether another person falls within the definition of a "qualifying child" or "qualifying partner" by reason of being a British citizen.

(2) The fact that P might, in the past, have had a good case to be registered as a British citizen has no material bearing on the striking of the proportionality balance under Article 8(2) of the ECHR. The

key factor is not whether P had a good chance of becoming a British citizen, on application, at some previous time but is, rather, the nature and extent of P's life in the United Kingdom.

(3) If P is prevented by regulation 37 of the Immigration (European Economic Area) Regulations 2016 from initiating an appeal under those Regulations whilst P is in the United Kingdom, it would defeat the legislative purpose in enacting regulation 37 if P were able, through the medium of a human rights appeal brought within the United Kingdom, to advance the very challenge to the decision taken under the Regulations, which Parliament has ordained can be initiated only from abroad.

(4) In considering the public interest question in Part 5A of the 2002 Act, if P is an EEA national (or family member of an EEA national) who has no basis under the 2016 Regulations or EU law for being in the United Kingdom, P requires leave to enter or remain under the Immigration Act 1971. If P does not have such leave, P will be in the United Kingdom unlawfully for the purpose of section 117B(4) of the 2002 Act during the period in question and, likewise, will not be lawfully resident during that period for the purpose of section 117C(4)(a).

(5) The modest degree of flexibility contained in section 117A(2) of the 2002 Act, recognised by the Supreme Court in Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58, means that, depending on the facts, P may nevertheless fall to be treated as lawfully in the United Kingdom for the purpose of those provisions, during the time that P was an EU child in the United Kingdom; as in the present case, where P was under the control of his parents; was able to attend school and college without questions being asked as to P's status; and where no action was taken or even contemplated by the respondent in respect of P or his EU mother.

DECISION AND REASONS

A. PRELIMINARY

1.
This is the re-making of the appellant's appeal against the refusal of his human rights claim by the respondent.

2.
Amongst the issues that fall to be considered in deciding this human rights appeal, which turns upon Article 8 of the ECHR, are the significance of a person having had, in the past, an entitlement, on application, to be registered as a British citizen or (as in the present case) an entitlement to apply to be so registered, at the respondent's discretion; and the significance of a person being a citizen of the European Union (other than as a British citizen), particularly with regard to the operation of Part 5A of the Nationality, Immigration and Asylum Act 2002.

3.
On 26 July 2019, we heard oral evidence from the appellant and his mother. Closing submissions were subsequently made in writing by Mr Jarvis and Mr Amunwa. We also had their written skeleton arguments and Mr Amunwa's Note of 26 July 2019. We commend the quality of their respective submissions.

4.
In addition to the criminal offending described in our earlier decision, on 9 January 2019, the appellant was convicted of assault against his former partner, whom we shall call X, who was the same complainant as in the March 2017 offences committed by the appellant. In respect of the latest offence, the appellant received custodial sentences of nineteen weeks, with a post-sentence supervision order. He is also subject to a restraining order, which runs until 2021.

5.
At the hearing on 26 July, Mr Jarvis sought to introduce a witness statement of Tracy Dang, a police staff investigator at Southampton Central Police Station. This statement, dated 19 July 2019, referred to Ms Dang having recently been informed by X that the appellant had broken the terms of his restraining order by sending her letters on 9 April and 7 May 2019, as well as "numerous letters and phone calls … being sent from Winchester Prison … to my home address and my place of work".

6.
After taking instructions, Mr Amunwa informed the Tribunal that the appellant was able to address and rebut what was said in Ms Dang's statement. In the circumstances, the Tribunal admitted the statement, pursuant to Rule 15(2A) of the Tribunal Procedures (Upper Tribunal) Procedure Rules 2008.

B. THE EVIDENCE

(a) The appellant

7.
The appellant adopted two written witness statements. In the first, which he signed on 5 October 2018, he described his background and the circumstances leading to, and following, the respondent's decision to deport him from the United Kingdom.

8.
The appellant was born in Antwerp, Belgium in July 1998. He did not know his birth father. He was adopted by NS in 2003. He said he had lived in Belgium with his family for two years and nine months, before his parents, siblings and he moved to the United Kingdom. He has two sisters and three brothers. His two sisters, who featured prominently in the evidence, we shall describe as Y and Z respectively.

9.
The family moved to Grangemouth, Scotland and later to Hampshire. The appellant said he, his mother and his siblings are Belgian citizens, whilst his adoptive father is a British citizen. He said that his father's parents and relatives lived in the United Kingdom and that was one of the reasons that they came to this country.

10.
In 2007, the appellant moved back to Belgium with his family but in February 2011, they moved again to the United Kingdom. It was there that the appellant finished his schooling, before later working for various employers.

11.
In 2016, the appellant began a relationship with X. At the time of the first statement, X was pregnant with the appellant's child. Regrettably X miscarried, as she did on another occasion.

12.
The appellant's statement continued by saying that "I am going to say something that I have not mentioned to the authorities before but I feel it is very important and could help in explaining why I have acted in the way I have. I come from an abusive family, what I mean by this is physical and sexual abuse".

13.

The appellant described returning home at the age of 8 to find his adoptive father in a sexual position with Y. The appellant was aware that his mother knew of this “but nothing changed”.

14.
The appellant also described how he and his two brothers were physically beaten by their mother on “so many occasions … I can’t count”. The appellant said that this abuse “goes on now and I can see that all this background has a direct link with my offending”.

15.
The appellant in his statement admitted having fourteen criminal convictions in the UK which “mainly involved assaults, vandalisms and destruction of property”. These were committed in the years 2013 to 2015 when the appellant “was young and I had met some people I shouldn’t have”.

16.
The appellant’s conviction in 2017 occurred because he “leaked some photos of my ex-partner. I was going through a difficult period”. His ex-partner had, according to the appellant, put his life in danger by cutting his car’s brake cables and damaging its gearbox. Nevertheless, the appellant knew that he should not have done what he did and felt ashamed about it. He said: “I am a different person now”. The appellant also considered that he was in need of psychological help.

17.
The appellant said that he had suffered from depression for the past three years. This has started when he was still at school. He had contemplated seriously twice whilst in detention. He had been prescribed anti-depressants but these had not helped him.

18.
The statement recorded that the appellant had “been deported to Belgium three times so far”. His partner had assisted him financially to return to the United Kingdom. The appellant said that he did not know why the respondent wanted to deport him and that he was “a European citizen. I have lived my whole life in the UK. I could have been a British citizen since my father is one, if I wanted to”. The appellant said that “all my relatives live here in the UK” and that he “went to school here. I worked here”. By contrast, the appellant said that he had “no family ties in Belgium. I have no friends either. I know none there and I cannot even speak French or Flemish”.

19.
The appellant also adopted a second witness statement, signed and dated 8 July 2019, although he told us that he had not read it. He was therefore given time at the hearing to read it through.

20.
In this statement, the appellant gave more details about the allegation of sexual abuse and of the ill-treatment meted out to him by his mother and step-father.

21.
In 2015, the appellant said that he decided that “enough was enough and I left my house and walked to a place … and turned myself over to social services for foster care”. He also described his relationship with X. He regretted acting in anger and hurting X in 2017. He accepted that he had “hurt her and caused a lot of damage in the flat”.

22.
At paragraph 11, the appellant described how he was deported to Belgium on 3 November 2017. Since he did not “speak Dutch (sic)” the appellant could not remember much but he considered that

the respondent “might as well have just sent me to a country in Asia or Africa that I have never been to, because I feel like a complete stranger, there is no one there who I know, my family and relatives are in the UK”.

23.
The appellant described how on his first night in Belgium he slept in park and then X came to Brussels and tried to help him come back to the United Kingdom through Calais, but he was not allowed in. “However, later on I met someone who said that as I was an EEA national I could get through Ireland, so we went to Dublin, and then we got a ferry to Holyhead and that was how I came back into the UK the first time”. The appellant emphasised that he returned “because I did not have anything or know anyone in Belgium”.

24.
At paragraph 12, the appellant said that in January 2018 he was arrested by the police because he had come back to the United Kingdom in breach of his deportation order. He was removed to Belgium on 18 March 2018 but, again, with the financial help of X he headed for Scotland but was arrested when he took the ferry there. The appellant was detained again and removed on 7 May 2018.

25.
After being removed on 7 May, the appellant returned to the UK at the end of May 2018. This was because, again, he had no choice but to go sleeping in the same park, although he did manage to spend one night in “what was like a homeless shelter”. He started stealing food from local shops, in order to survive. That was how he survived in Belgium “for a few weeks before my partner … came to Belgium and helped me to get back into the UK at the end of May 2018”. The appellant was, however, arrested again in June 2018 and sent to a detention centre.

26.
The appellant’s appeal hearing was held in October 2018 and his appeal was subsequently allowed. He went to live with X and his mother and X became pregnant in May/June 2018. However, in November 2018, X had a miscarriage. The appellant held himself responsible for this “as it was because of me that she got stressed and was unwell especially when I was in detention”. After the miscarriage X turned more and more to alcohol.

27.
In January 2019 the appellant and X argued after X had been drinking. The appellant kicked down a door but X was on the other side of the door and it hit her, causing her “serious injury”. The appellant was arrested and sentenced to nineteen weeks’ imprisonment.

28.
Since going to prison in January 2019, the appellant had taken courses run by a charity called “Phoenix Futures” on “Managing Anger” and a large number of other courses, including “Motivation” and “Anger and Criticism”. He also successfully completed the Young Offenders Programme, which looks at ways in which to build resilience and develop self-esteem. The appellant found these courses useful. He accepted that they would not somehow “fix” him since he realised that “there are deeper psychological problems that I need help with”. In April 2019 he described trying “to hang myself in prison, but luckily my cellmate stopped me”. The appellant said that he was “trying everything I can to change my life”.

29.

The appellant also recognised that he needed help with his mental health and had referred himself to the NHS Mental Health Team in February or March 2019. He had not, however, been able to see anyone, owing to the fact that he was still held in prison.

30.
The appellant reiterated that he could not return to Belgium since “each time I was sent back, I was destitute and sleeping rough, and it was only because of [X] that I was able to return. I have no one there, I can hardly remember any Dutch, I had to use Google Translate to try and work out where I was. My family are all in the UK, my mother, my siblings, my life is here”.

31.
Given that X was no longer there to help out the appellant, he did “not know what I would need to do to survive or how I would survive mentally, I am really really worried”.

32.
In supplementary questions in chief, the appellant was asked about Tracy Dang’s statement, regarding X. He said that he wanted to address this as he would “rather be honest”. The appellant said that he had received four letters from X, which had been printed off for him in prison. He had also received pictures from X. He had given letters and pictures to a solicitor at Duncan Lewis. X’s letters said how the appellant needed to get help and should not brood on the past.

33.
The appellant said that he was in a predicament and now realised that he had been stupid to reply to X. He had, nevertheless, done so. Asked if he had made telephone calls, the appellant said that he could not do so from prison, owing to the restrictions imposed by the prison authorities.

34.
The appellant said that each time he had been deported to Belgium he had come back the next day and “lay low”. The appellant was being honest in saying this. After the appellant was deported a second time in March 2018 he had come back in a day or two as he could not speak the language. He had gone to the local council in Belgium for help but they said that since he had been away a long time they could not assist. The longest time he had spent in Belgium after deportation was less than a week; around three or four days.

35.
The appellant said that he did not have any relatives in Belgium and had never met or known his real father.

36.
The appellant accepted that the assault which took place in January 2019 had been after he had received the decision of the First-tier Tribunal, allowing his appeal. The miscarriage of X had, however, greatly harmed the relationship.

37.
Cross-examined, the appellant was asked whether he had been involved in gang culture. He said he had not. It was put to the appellant that at D656, where there is found a Central and North-West London NHS Trust ACCT Mental Health Screening Tool, recording an interaction with a mental health nurse, following the appellant’s attempt in 2019 to hang himself, the nurse recorded the appellant as stating that ”he was involved in a lot of gang culture”.

38.

The appellant said that he was not involved in this but a lot of his friends had “passed away” and an uncle had been “murdered”. The appellant had associated with people who were involved in gangs and he was friends with them.

39.
The appellant also said that he had taken drugs a lot of the time and had seen “stuff it would take a long time to move on from”.

40.
The appellant was asked about his sisters, Y and Z. Z lived with an aunt in the United Kingdom and Y was studying abroad to be a barrister. Asked where they were in 2018, the appellant said that Z was with her aunt and Y was with her biological father in Belgium.

41.
The appellant was asked about a letter from Duncan Lewis to the respondent, dated 9 July 2018, in which it was said that the appellant “has two sisters in Belgium but no other family. His sisters do not speak to the client due to his connection with his adoptive father who was involved in a serious family incident. He cannot rely on them if he is returned”. The appellant said that he had not spoken to Y for three years and that it was “a touchy subject”. His mother, who came from Morocco, was from a background where matters of abuse tended to be “brushed under the carpet”.

42.
The appellant said his mother was aware that he had spoken of her carrying out physical abuse of the appellant.

43.
The appellant was asked whether it was the case that he had gone to school in Belgium from 2007 to 2011, where the language of instruction was, he said, Dutch and English. He had been put in a special school as he was due to return to the United Kingdom and needed to improve his English. Asked why this was so, the appellant said that it was because of his “tossing and turning” and Dutch was a tough language.

44.
The appellant was asked about his illegal return to the United Kingdom in November 2017. He said that he had tried to get back via Calais but was encountered and so he and X had gone to Ireland and then Scotland. He had been told about the possibility of entering the United Kingdom via Ireland by a person nicknamed “Stabber” who had been in the same detention centre as the appellant. Asked how it was that paragraph 11 of the second statement referred to the appellant “later on” meeting someone who had told him about entering as an EEA national via Ireland, the appellant said that it was “a bit of both”. “Stabber” had told him beforehand about this possibility.

45.
Regarding his removal in May 2018, the appellant said that he had been looking at the possibility of using a solicitor but had needed to obtain legal aid. The appellant was asked about the updated chronology of events at D641 of the bundle where, at D643, the appellant was recorded as having been removed on 7 May 2018 and as having re-entered the United Kingdom on 31 May 2018. The appellant had first said that this was incorrect but having been shown D643 he agreed that the chronology was, in fact, correct.

46.

The appellant was asked whether he had not, therefore, been in Belgium between 7 and 31 May 2018. He said that he had not in that he and his partner, X, had gone on holiday to the south of France before embarking on the trip via Dublin to the United Kingdom.

47.
The appellant said that he had lived in Belgium for a few weeks after his second deportation, not his third one. He had, as he just said, gone on holiday after his third deportation.

48.
The appellant was asked why he had made no reference in his statement to this holiday. The appellant agreed that it should have been added. Paragraph 13 of his statement, which described his having to sleep on a park bench and steal food from shops in order to survive, was not referable to the position he faced after his deportation in May 2018. After his second deportation, he had stayed in Belgium for a number of weeks.

49.
The appellant was asked about paragraph 11 of his second statement in which he said that the respondent had given him a “list of addresses” that he could use in Belgium. He said he tried both of the addresses. One was a shelter where he stayed for a day and the other one only dealt with asylum cases.

50.
The appellant was asked why in paragraphs 11 to 13 he had not mentioned going to the council, who had told him about the need to have a period of five years’ residence in order to qualify for assistance. The appellant said he had not known about the procedures but it would have been helpful if he had mentioned this. He had not mentioned it to his solicitors.

51.
The appellant was asked whether he had sought legal advice in Belgium. He said that he did not have any money to do so. It was put to the appellant that X was financing him and she could have paid for legal advice. The appellant said that she had been there the night before the appellant had arrived in Belgium.

52.
The appellant said that his family had had several days’ notice of the fact that the appellant was going to be deported. He was asked why they had not therefore sought legal advice for him. He replied that money was tight for his mother. His mother had taken him back again in order to give him a couple of weeks to get himself together. The authorities had arrested him at his mother’s house, where he was hiding in a cupboard. At the time he had been working for an alcohol company.

53.
The appellant said his suicide attempt in 2019 had been as a result of a build-up of everything that was going on.

54.
The appellant was asked why, at paragraph 27 of his first statement, there had been no mention of the appellant being destitute in Belgium. The appellant said that his previous lawyers had prepared his first statement and it had needed work. His present lawyers had had time to go into matters in more detail.

55.

In re-examination, the appellant said that he had received the letters from X in late January and February 2019. He had shared them with his solicitor on 8 July 2019.

(b) The appellant's mother

56.
The appellant's mother gave evidence. She adopted her two written statements. In the first, dated 26 July 2019, she described the appellant's birth and early life. Her partner, the appellant's step-father, had struggled in Belgium, following the family's return there from the United Kingdom. After four years, they had returned to the United Kingdom. She had separated from him in 2013.

57.
The mother said that they had "had some problems in our family that resulted in [the appellant] voluntarily going into care … I was obviously very shocked by this but there was a lot going on at home at the time and he felt that it will be best for him". She had worked night and day to support the family. Looking back, she accepted that she had not been in the house as much as she should have been. When he was in prison she had only visited him once "because I could not bear to see him in prison. It was very painful".

58.
In her second statement, dated 11 July 2019, the witness said that "on each occasion that [the appellant] was deported to Belgium in the past, I was not in a position to help him financially". She could not help him if he were to go to Belgium "as there is no family left there who could help him get on his feet, he would be completely alone with no place to stay or anyone to help him". The witness said she had been attempting to get in contact with the appellant's adoptive father, whom she believed lived in Yorkshire, but he had not returned any of her calls or messages.

59.
When the appellant was released in October 2018, he had come back to live with her, along with X, but X's miscarriage had very badly affected X's relationship with the appellant. She considered that to return the appellant to Belgium "would be a disaster".

60.
In examination in-chief, the appellant's mother said that Y lives in Belgium and that she herself had other relatives in that country but does not have contact with them. Y had lived in Belgium since birth. She was in her final year in university and her partner was Irish. Y wished to return to live in England, following her studies.

61.
Asked when she had last had contact with her other relatives in Belgium, she said it was very complex. There was no contact between the appellant and those relatives in Belgium.

62.
The witness said that she herself had contact with Y and that they did talk about the appellant. Y had found it hard that the witness had gone to the United Kingdom with the appellant. Y blamed the appellant for the fact that the witness had moved away.

63.
Cross-examined, the witness said that the appellant's adoptive father had always tried to "bring him down". Asked if there was anything going on between that individual and another child, the witness

said that she could not remember. She also said that sometimes in a moment of rage she might have physically abused the appellant but it was a long time ago and she could not remember.

64.
It was put to the witness that the appellant had said that she had been told about his pending removal a week or so beforehand and it was put to her that she would, therefore, have been in a position to help the appellant. She said she had tried but could not get help. She had gone to a solicitor and they had said that they needed information about the appellant's school in Scotland but they could not get that information. After his return following the deportation of November 2017, the appellant had lived at the witness's address. She could not remember how the authorities had known that he was there. She had tried to get legal advice for him. She had been told that she needed a solicitor in family law. Asked why this was the case, the witness replied that they had to check.

65.
The witness said that the appellant's longest spell in Belgium, after deportation action, had not been very long. X had brought him back. He had been living on the streets in Belgium.

66.
The witness was asked about the appellant's evidence to the effect that he had gone on holiday to France with X. The appellant said she could not remember this.

67.
Whilst the appellant had been in Belgium, she had spoken to him on the telephone and had asked him to pass the phone so that the witness could speak to the lady from the council, who said that he had not been resident in Belgium for long enough to be entitled to assistance. The appellant had therefore gone to another town and they told him the same thing.

68.
The witness was asked why none of this was in her witness statements. She said that she was of the view that she would rather answer the judge directly at the hearing. She had had a nervous breakdown and had only been to see the appellant in prison once. She wanted to say what she had just said in court.

69.
The witness said that her daughter, Z, had lived in Belgium but had returned to the United Kingdom some three or four years ago. It was wrong for Duncan Lewis to have informed the respondent in 2018 that Z was then living in Belgium.

70.
The witness said that she worked as a cleaner. She was asked how much she earned. She said that she had three jobs but could not say exactly.

71.
In answer to a question from Upper Tribunal Judge Gill, the witness said that she had tried to get a lawyer in Belgium to help the appellant but she considered that she had to be in Belgium in order to get such help. Asked why she had not gone there temporarily to assist the appellant, the witness said that her other children needed her. Her other children were aged 14, 15 and 17.

72.
There was no re-examination.

C. CREDIBILITY

73.
In assessing the credibility of the appellant and his mother and in our general consideration of the weight to be given to the evidence adduced by him and on his behalf, we have had full regard to the fact that he is, and has been, in detention. Not only is this likely to cause stress and anxiety; we also accept that it may make the giving and taking of instructions more difficult.

74.
In addition (and cumulatively) we have had regard to the appellant's youth. We are also mindful of the fact that, whether or not the appellant's childhood has, in reality, been as troubled as he claimed in his evidence, it has on any view been somewhat problematic.

75.
In the second witness statement that the appellant signed on 8 July 2019, it was categorically stated that, after his removal by the respondent on 7 May 2018, he found himself homeless and needed to sleep in a park and steal food from shops in order to survive "in Belgium for a few weeks before my partner [X] came to Belgium and helped me get back into the UK at the end of May 2018". This contrasted with the appellant's oral evidence, which was that the longest period he had remained in Belgium was three or four days. It also contrasted, strikingly, with the assertion – which had not previously featured anywhere – that after his removal on 7 May 2018, the appellant and X decided to go on holiday together to the south of France (specifically, Provence), before making their way back to the United Kingdom, via Ireland.

76.
When this discrepancy was put to the appellant in cross-examination, he attempted to explain that the period of time in Belgium described in paragraph 13 of the second witness statement in fact related to the second post-removal period spent there by him. However, that does not fit with his account of time spent in Belgium on that occasion.

77.
In making our findings, we have had regard to the fact that the appellant's present solicitors are highly experienced in the field of immigration. We do not accept that they would have produced the second witness statement in such glaringly inaccurate terms, other than on the basis of what the appellant had told them. Furthermore, as we have noted, the appellant signed the witness statement even though he asserted at the hearing that he had not been able to read it through (which, again, is problematic, given the identity of his solicitors).

78.
The appellant was told "later on" by someone he met, after his first deportation removal, how it was possible to get back to the United Kingdom, as an EEA national, via Ireland. In oral evidence, by contrast, the appellant said that this information had been given to him in the detention centre in the United Kingdom by an individual nicknamed "Stabber". When the discrepancy was put to the appellant in cross-examination, he said that he had been told both before and after.

79.
We agree with Mr Jarvis that this purported explanation is unsatisfactory. Indeed, it struck us as a further incidence of the appellant making things up as he went along and saying whatever he thought might best advance his case. In the present context, it would plainly be in the appellant's interest to seek to minimise the period of time that he was in Belgium on this occasion.

80.
There is also no reference in the written evidence to the appellant's claims in oral evidence that he went to council officials in Belgium in order to seek help but was told that this was unavailable, owing to his lack of residence in that country and the fact that he was not claiming asylum in Belgium. Given the detail in the appellant's written statements, we do not find it credible that, if all this were reasonably likely to be true, he would have omitted to tell those who prepared the statements. We make that finding, bearing in mind that the appellant's mother gave evidence about speaking on the telephone to a council official. We shall have more to say about that evidence later.

81.
The appellant was asked in cross-examination about his first witness statement, signed on 4 October 2018, in which no reference was made to the appellant being destitute in Belgium. The appellant said that his previous lawyers had prepared the first statement and this had needed work. Once he got a new lawyer, there had been more time to go into detail. We note, however, that this first witness statement was made to the appellant's present solicitors.

82.
In paragraph 28 of his first witness statement, the appellant stated categorically that "all my relatives live here in the UK". That is plainly untrue. As we have noted, the appellant's sister, Y, has lived in Belgium since her birth.

83.
In the light of the appellant's first witness statement and the oral evidence given to the First-tier Tribunal, the judge of that Tribunal was satisfied "that the appellant had reasonably addressed issues of anger management, the impact of his actions on victims and how he would deal with those situations which he accepts were the cause of his previous problems". The Tribunal assessed his overall insight as "reasonable". However, it is common ground that, within a matter of weeks, the appellant again assaulted X, for which he was convicted and imprisoned. In the circumstances, we agree with Mr Jarvis that the appellant is someone who unhesitatingly will lie or dissemble, in order to get what he wants.

84.
In view of our findings, we treat with caution what the appellant told us about the circumstances in which he breached the restraining order regarding further contact with X. Given the lateness of the evidence in respect of this matter, as adduced by the respondent, we nevertheless decline to make a finding against the appellant in respect of this particular issue. The stark fact is, however, that the appellant's credibility is seriously undermined, in any event, for the reasons we have given.

85.
We did not find the appellant's mother to be a credible witness. She was markedly evasive when asked when she had last had contact with her relatives in Belgium. This evasion had no connection with the issue of whether, as the appellant claims, his mother was aware of the sexual abuse of Y and had physically abused the appellant. What did emerge from the evidence of the appellant's mother, however, which we accept, is that Y has at all material times been living in Belgium.

86.
It is also wholly unbelievable that the appellant's mother claimed not to remember how the United Kingdom authorities knew that the appellant was living at her address.

87.

The appellant's mother's evidence regarding attempts to seek legal advice on behalf of the appellant was, likewise, profoundly unsatisfactory. She could not explain why she would have been told that she needed a solicitor who was expert in family, as opposed to immigration, law.

88.
The appellant's mother gave in evidence that she had spoken on the telephone to someone from a local council in Belgium, whilst the appellant was in that country, following his deportation. When asked why this was not in her witness statements, she said that she was thinking that she would rather answer the judge directly at the hearing. That is, frankly, a bizarre and an incredible explanation. We are entirely satisfied that, even if such a conversation might have taken place, it is not reasonably likely that the council official was told anything like the truth by the appellant or his mother. In particular, we do not believe that the appellant's mother was told by anyone in Belgium that she could not receive legal advice in that country, on behalf of the appellant, because she was not in the United Kingdom. That too was not in her witness statement and is, as Mr Jarvis submitted, a lie intended to explain why nothing was done, when plainly it could have been.

89.
The appellant's mother claimed to be unable to tell us, even roughly, how much she earned from her three jobs as a cleaner. She produced no bank statements disclosing her financial position. In the circumstances, the appellant has failed to show that it is reasonably likely that his mother lacks the financial means to provide him with at least some assistance, should he be removed to Belgium. Given the problems we have with the credibility of the appellant and his mother, it is, further, not shown to be reasonably likely that Y's relationship with the appellant is such that she would be unable and unwilling to provide him with some modest assistance there.

D. RE-MAKING THE DECISION IN THE APPELLANT'S HUMAN RIGHTS APPEAL

(a) The issue of British citizenship

90.
At paragraph 64 of our error of law decision in the present case, we noted how, in the First-tier Tribunal, the Secretary of State's contention was that any resolution of the appellant's contention that he was a British citizen had to be resolved by judicial review proceedings, rather than in an appeal to the Tribunal.

91.
Before us, both Mr Amunwa and Mr Jarvis were effectively agreed that the position taken by the respondent (as she now is) before the First-tier Tribunal on the issue of nationality was incorrect. If, as was then the case, the appellant was contending that he was, in fact, a British citizen by reason of adoption, then it was necessary for the Tribunal to decide whether the respondent had the legal power to deport the appellant from the United Kingdom. In a human rights appeal, the ability of the respondent to effect removal is, plainly, of the greatest significance in determining whether removal would be a breach of section 6 of the Human Rights Act 1998, as constituting a disproportionate interference with (normally) a person's Article 8 ECHR rights: See Charles (Human rights appeal: scope) [2018] UKUT 89 (IAC).

92.
When determining an appellant's human rights appeal under Article 8 of the ECHR, it is frequently necessary to have regard to the human rights of persons other than the appellant. Part 5A of the Nationality, Immigration and Asylum Act 2002 requires regard to be had to various such scenarios, in

determining whether the appellant's removal would be a disproportionate interference with his or her Article 8 rights.

93.
In section 117B(4) little weight is to be given to a relationship formed with a qualifying partner at a time when a person was in the United Kingdom unlawfully. In section 117B(6), the public interest will not require removal of a person not subject to deportation where that person has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the United Kingdom. In the case of certain foreign criminals, section 117C(5) provides an exception to the public interest in deportation, if the person concerned has a relevant relationship with a qualifying partner or a qualifying child, and the effect of deportation on either partner or child would be unduly harsh. Section 117D defines both a qualifying child and a qualifying partner as including someone who is a British citizen.

94.
The appellant's stance in relation to his citizenship has significantly changed since the hearing in the First-tier Tribunal. As a result of Mr Amunwa's detailed and helpful analysis, as set out in his third skeleton argument (12 July 2019), it is common ground that the appellant did not acquire British citizenship by reason of the fact that he was adopted by a British citizen (namely, the person with whom the appellant's mother moved to Scotland).

95.
Notwithstanding this, Mr Amunwa submits that the issue of British citizenship as it impacts directly on the appellant, is still relevant to the appellant's human rights appeal. Mr Amunwa points to the following provision of the British Nationality Act 1981:-

" **3. Acquisition by registration: minors**

(1) If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen."

96.
As can be seen, section 3(1) confers an entitlement to apply for registration, not an entitlement to be registered as a British citizen. It is common ground that, if the appellant had been the subject of an application under section 3(1) whilst he was a minor, the respondent would have been entitled to refuse registration on "good character" grounds.

97.
In Akinyemi v Secretary of State for the Home Department [2017] EWCA Civ 236, the court was concerned with an appeal against deportation by a Nigerian national who had been born in the United Kingdom but who had Nigerian nationality. He had lived continuously in the United Kingdom for some 30 years but had been convicted of serious criminal offences. Under the provisions of the British Nationality Act 1981 as in force at the relevant times, the court found that:-

"there was a nineteen-year window, between the ages of four and 23, when the appellant had an absolute right to acquire British citizenship. For the first fourteen years the application would have fallen to be made by his parents on his behalf and in the last five years by himself". (paragraph 22: Underhill LJ).

98.

The court held that the Upper Tribunal had misdirected itself in finding that the appellant had lived in the United Kingdom unlawfully, when applying section 117B(4) in its assessment of whether deportation would constitute a disproportionate interference with the appellant's Article 8 rights. Section 117B(4) provides as follows:-

"(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully."

99.
The court agreed with the appellant that his presence in the United Kingdom could not be described as "unlawful", given that he was in breach of no legal obligation by being here. The court noted the Immigration Directorate's Instructions of November 2009, which read:-

"This section relates to children born in the United Kingdom on or after 1 January 1983 who are not British citizens because, at the time of their birth, neither of their parents was a British citizen or settled here. Such children do not have the right of abode and are subject to immigration control. They are not here unlawfully, however, and are not required to apply for leave to remain …" (paragraph 36)

100.
At paragraph 39 of its judgment, the court distinguished the expression "unlawfully" in section 117B from the expression "lawfully" considered by the Supreme Court in R (ST) (Eritrea) v Secretary of State for the Home Department [2012] UKSC 12, which involved consideration of whether an asylum-seeker was "lawfully" in the UK. At paragraph 40 of Akinyemi , Underhill LJ said that the meaning of the language of section 117B(4) was "not to be found by following decisions on the effect of cognate, though not identical, language in other statutes". In his view, it was unnatural to describe a person's presence in the UK as "unlawful" when "there is no specific legal obligation of which they are in breach by being here and no legal right to remove them – and all the more so where they have, as the appellant did from the ages of 4 to 23, an absolute right at any time to acquire British nationality simply by making the necessary application" (paragraph 41).

101.
Mr Amunwa sought to rely upon the judgment in Akinyemi . In his submission, there was a period between 7 May 2003 and 2013 when the present appellant was a minor, without any record of offending, during which time Mr Amunwa said the appellant would have met the requirements for discretionary registration under section 3(1) of the 1981 Act, if an application had been made on his behalf. In so submitting, Mr Amunwa accepted that, unlike the position of the appellant in Akinyemi , the present appellant's entitlement "was not absolute but was simply an entitlement to be considered for discretionary registration. However, prior to [the appellant's] convictions, there would not have been any sensible policy reason/s for [the respondent] to refuse an application".

102.
Indeed, Mr Amunwa submitted that even after the appellant's convictions as a minor, none of the offences in question would have met the threshold for automatic refusal under the respondent's "good character" policy guidance. Mr Amunwa's submission on this matter ended by saying that the

appellant had been “disadvantaged and badly” by the failure of those with parental responsibility for him to make an application for his registration as a British citizen, whilst he remained a minor.

103.
We do not consider that Akinyemi affords the appellant any material assistance in advancing his human rights case by reference to the fact that he may well have been able to obtain British citizenship in the past. As can be seen from the judgment, the court was concerned with the question of whether, for the purposes of section 117B of the 2002 Act, the appellant had formed a private life and/or relevant relationship at a time when he was in the United Kingdom “unlawfully”. That was the key question and, as we shall see, it will need to be addressed in the present appellant’s case by reference to his position as an EEA national who has lived in the United Kingdom. The judgment in Akinyemi does not, however, provide any support for the proposition that, in considering a human rights appeal – particularly in respect of someone who it is proposed to deport as a foreign criminal – material weight falls to be given to an appellant who, at some point, may have had, in practice, a good (even indisputably good) case to be registered as a British citizen. In the Tribunal’s experience, very many foreign criminals who are deported would have been in that position, at some point during their time in the United Kingdom.

104.
Mr Amunwa’s categorisation of the appellant as having an entitlement to make an application under section 3(1) is no different in this regard than one made for naturalisation as a British citizen under section 6(1):-

“(1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this sub-section, he may, if he thinks fit, grant to him a Certificate of Naturalisation as such a citizen.”

105.
An application under section 6(2) is in similar terms.

106.
The key factor is not whether someone had a good chance of becoming a British citizen, on application, at some previous time or times. Rather, it is the nature and extent of the individual’s life in the United Kingdom. Thus, in the present case, the factors weighing in the appellant’s favour will include the length of time he has been in the United Kingdom, whether any part of that time involved what might be described as “formative years”; and the nature and extent of his private and family life in this country. We shall address those in due course.

107.
Before leaving the topic of British citizenship, we must deal briefly with a further case relied on by Mr Amunwa. In SF and Others (Guidance, post-2014 Act) Albania [2017] UKUT 120 (IAC), the Upper Tribunal was faced with Article 8 appeals by Albanian citizens, comprising a mother and her two children. The Upper Tribunal, noting that a further child had British citizenship, had regard to the then policy of the respondent, contained in an Immigration Directorate Instructions, which indicated that it would usually be appropriate to grant leave to the parent of a British citizen child, where it would be unreasonable to expect that child to leave the United Kingdom.

108.
The Upper Tribunal held as follows:-

“9. It appears to us inevitable that if the guidance to which Mr Wilding has drawn our attention had been applied to the present family, at any time after it was published, and on the basis that the youngest child is a British citizen, the conclusion would have been that the appellants should have been granted a period of leave in order to enable the British citizen child to remain in the United Kingdom with them. The question is then whether that guidance as guidance has any impact on the First-tier Tribunal or on us.

10. It is clear that the appellants do not have available to them a ground of appeal on the basis that the decision was not in accordance with the law such as before the amendments made to the 2002 Act by the 2014 Act they might have had. Nevertheless it appears to us that the terms of the guidance are an important source of the Secretary of State’s view of what is to be regarded as reasonable in the circumstances, and it is important in our judgement for the Tribunal at both levels to make decisions which are, as far as possible, consistent with decisions made in other areas of the process of immigration control.

11. If the Secretary of State makes a decision in a person’s favour on the basis of guidance of this sort, there can of course be no appeal, and the result will be that the decision falls below the radar of consideration by a Tribunal. It is only possible for Tribunals to make decisions on matters such as reasonableness consistently with those that are being made in favour of individuals by the Secretary of State if the Tribunal applies similar or identical processes to those employed by the Secretary of State.

12. On occasion, perhaps where it has more information than the Secretary of State had or might have had, or perhaps if a case is exceptional, the Tribunal may find a reason for departing from such guidance. But where there is clear guidance which covers a case where an assessment has to be made, and where the guidance clearly demonstrates what the outcome of the assessment would have been made by the Secretary of State, it would, we think, be the normal practice for the Tribunal to take such guidance into account and to apply it in assessing the same consideration in a case that came before it.

13. In our judgement, therefore, the way forward in this case is to conclude that, not for the reasons argued by Mr Eaton, but for those, as it happens, argued by Mr Wilding, this is a case where it would be unreasonable to expect the youngest child to leave the United Kingdom. We will therefore set aside the decision of the First-tier Tribunal and substitute a decision allowing the appeals of all three appellants on that ground. The period of leave is a matter to be determined by the Secretary of State.
“

109.
As can be seen, however, SF involved the taking into account by the Upper Tribunal of a current policy, which fell to be applied in favour of the appellants. In view of the policy, the respondent could not successfully resist the appellants’ human rights appeals by pointing to the importance of maintaining immigration control as justifying their removal.

110.
In the present case, by contrast, there is no currently applicable policy that avails the appellant. The fact that the appellant might, in the past, have been able to take advantage of the respondent’s policy guidance on applications for British citizenship under section 3(1) of the 1981 Act has no material bearing on the striking of the proportionality balance that is necessary in order to determine whether, in 2019, the appellant should be removed from the United Kingdom.

(b) The relevance of the Immigration (European Economic Area) Regulations 2016

111.
In our error of law decision, we held that the appellant could not initiate an appeal under the Immigration (European Economic Area) Regulations 2016, whilst in the United Kingdom, against the respondent's decision under those Regulations to refuse to revoke the deportation order made in respect of the appellant. If deported to Belgium, therefore, the appellant may appeal on the basis that the decision was contrary to regulation 27 (Decisions taken on grounds of public policy, public security and public health).

112.
We do not consider that the appellant is entitled to argue his case by reference to regulation 7 (or the underlying provisions of the Citizens' Rights Directive and relevant case law of the CJEU) in the present human rights appeal. Mr Amunwa relied upon R (Jonas and Lauzikas) v Secretary of State for the Home Department [2019] EWCA Civ 1168. However, that case involved the relationship between the respondent's power of removal of an EEA national and her ability to detain that national, pending removal. Lauzikas was not concerned with the respondent's ability to determine that certain EEA appeals may be initiated only from abroad.

113.
Given we have found that, in the present case, the respondent was entitled to rely upon regulation 37 (out of country appeals) of the 2016 Regulations to require the appellant to bring his appeal against the decision taken under those Regulations only once he has left the United Kingdom, it would defeat the legislative purpose in enacting regulation 37 if the appellant were able, through the medium of a human rights appeal, to advance the very challenge to the regulation 27 decision which can only be initiated from abroad. The appellant has failed to show that the scheme of the 2016 Regulations is such as to deprive the appellant of the opportunity of seeking to vindicate his rights as an EEA citizen.

(c) Part 5A of the 2002 Act as it applies to EEA nationals

114.
This does not, however, mean that the fact of the appellant's being an EEA national has no significance in the determination of his human rights appeal. On the contrary, that fact has a bearing on the application of Part 5A of the 2002 Act, which concerns the way in which the Tribunal will answer "the public interest question", as defined in section 117A(3). The fact that the appellant would be returned to an EU state is also relevant in deciding whether the situation he would face there is (taken together with all other relevant circumstances) such as to render his removal disproportionate.

115.
In Badewa (ss 117A-D and EEA Regulations) [2015] UKUT 329 (IAC), the Upper Tribunal considered the position of an appellant who appealing against a removal decision under the Immigration (European Economic Area) Regulations 2006. One of the issues was whether Part 5A of the 2002 Act had application in such an appeal. The Tribunal held that "Part 5A considerations must be relevant to any human rights grounds raised in an EEA appeal" (paragraph 19). But their relevance had particular characteristics:-

"20. … it does not follow that ss.117A-D considerations – or broader "Convention rights" (i.e. ECHR rights) considerations - per se can be applied to the task of determining whether an appellant meets the requirements of the EEA Regulations. The EEA Regulations are in this respect a self-contained set of legal rules and an appellant cannot comply with the Regulations unless able to show that those

rules are met. Not only are the two legal regimes distinct but there are significant differences between them. One example of the difference between the two legal regimes when it comes to issues of expulsion and deportation – and it is one pertinent to this appeal – is that whereas Article 8 jurisprudence permits decision-makers when weighing matters on the public interest side of the scales to have regard to matters of general prevention or deterrence (see e.g. RU (Bangladesh)) in the EU/EEA context, by regulation 21(5)(d) "matters" which relate to "considerations of general prevention do not justify the decision."

21. The above analysis does not, of course, mean that human rights have no part to play in analysis of an EEA decision. EU law also incorporates human rights guarantees in the Charter of Fundamental Rights (which is now part of primary EU law) many of whose rights are described as co-extensive with ECHR rights; and the Court of Justice of the European Union (CJEU) has long treated ECHR rights as being fundamental principles of EU law. Nevertheless, the human rights dimension of EU law is not to be elided with ECHR rights: see Opinion Pursuant to Article 218(11) TGFEU, C-2/13, December 18, 2014. It has its own autonomous scope of application as part of EU law. Likewise ECHR rights ("Convention rights"), as incorporated into UK law by the Human Rights Act 1998, have their own distinct scope of application. Whilst, therefore, Article 8 considerations may arise in the context of a determination of whether an appellant meets the requirements of the EEA Regulations or free movement provisions of EU law (in respect of which the Court of Justice has seen that Article to play a role as a general principle informing the meaning of EU provisions (see e.g. Carpenter (Freedom of establishment) [2002] EUECJ C-60/00), their application in that context is governed by EU law, not by the ECHR or the Human Rights Act or ss.117A-D.

22. We observe that in regard to what we have just set out – that ECHR considerations cannot be interpolated into decisions as to whether an appellant meets the requirements of the 2006 EEA Regulations - both parties were in agreement. Mr Tufan indeed said that the respondent accepted that the FtT had elided regulation 21 and sections 117A - 117D considerations and that it was wrong to do so, although he did not consider this was a material error. He drew our attention to paragraph 2.6 of the Immigration Directorate Instructions, Chapter 13: criminality guidance in Article 8 ECHR cases, which states:

"2.6.1 The Immigration Rules and Part 5A of the 2002 Act do not apply directly to EEA nationals. However, Article 8 applies equally to everyone, regardless of nationality, and to consider Article 8 claims from EEA nationals differently, either more or less generously than claims from non-EEA nationals, would breach the common law principle of fairness. Therefore, decisions in relation to EEA nationals must be taken consistently with Parliament's view of the public interest as set out in primary legislation."

23. For the purposes of this appeal we are prepared to accept that as an accurate rendition of the legal position that now prevails, but would emphasise that it only purports to describe "Article 8 claims from EEA nationals", not EEA claims that are subject of an EEA decision as defined in regulation 2 of the 2006 Regulations.

24. It may assist to summarise the main conclusions we have reached as to the correct approach to be applied by tribunal judges in relation to ss.117A-D in the context of EEA removal decisions. It is:

(i) first to decide if a person satisfies requirements of the Immigration (European Economic Area) Regulations 2006. In this context ss.117A-D has no application;

(ii) second where a person has raised Article 8 as a ground of appeal, ss.117A-D applies.

“Person” in (i) and (ii) above means the person appealing, whether he or she is an EEA national or is the (extended) family member of the EEA national.”

116.
In the present case, the respondent’s decision of 19 July 2018, refusing to revoke the deportation order, contained the following:-

“ **Article 8 ECHR**

59) In addition to considering your client’s position under EU law and the EEA Regulations 2016, consideration has separately been given to whether your client’s deportation would breach the United Kingdom’s obligations under the European Convention on Human Rights (ECHR).

60) Article 8(1) sets out that everyone has the right to respect for his private and family life. However, every state has the right to control the entry of non-nationals into its territory and Article 8 does not give a person an automatic right to choose to pursue their private of family life in the United Kingdom. Any interference with an individual’s private life or family life will only be unlawful if it is first established that private or family life exists and then only if the interference is not for one or more of the public interest reasons that are set out in Article 8(2) or if the interference is disproportionate to the public interest reasons.

61) The Immigration Rules at paragraph A362 and paragraphs A398 to 399D set out the practice to be followed by officials acting on behalf of the Secretary of State when considering an Article 8 claim from a person liable to deportation on the basis of criminal convictions. These rules reflect Parliament’s view of what the public interest requires for the purposes of Article 8(2). Parliament’s view is set out at sections 117A to 117D in Part 5A of the Nationality, Immigration and Asylum Act 2002 (as inserted by the Immigration Act 2014).

62) The Immigration Rules and Part 5A of the 2002 Act do not apply directly to EEA nationals. However, Article 8 applies equally to everyone, regardless of nationality, and it would not be fair to consider Article 8 claims from EEA nationals, either more or less generously than claims from non-EEA nationals. Therefore, your client’s Article 8 claim has been decided consistently with Parliament’s view of the public interest as set out in the above instruments and consideration has been given below to whether he would meet the exceptions to deportation or whether there are very compelling circumstances such that your client should not be deported.”

117.
The reason why the respondent said the Immigration Rules do not apply directly to EEA nationals is, presumably, section 7 of the Immigration Act 1988. Section 7(1) provides that a person shall not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom “in any case in which he is entitled to do so by virtue of an enforceable [EU] right or of any provision made under section 2 of the European Communities Act 1972”. Section 7(2) enables the respondent by statutory instrument to give leave to enter the United Kingdom for a limited period to any class of persons who are nationals of Member States but who are not entitled to enter, as mentioned in section 7(1).

118.
So far as Part 5A of the 2002 Act is concerned, once one has been through the process described by the Upper Tribunal in paragraph 24(i) of Badewa or (as in the present appeal) where the question of whether an individual can be deported compatibly with his or her rights under the 2016 Regulations is not in play, it is difficult to see why Part 5A cannot be said to apply directly, albeit that (as we shall

see) some of the terminology used in that Part needs to be construed on the basis that the regime of the 1971 Act is different from that which applies to EEA nationals exercising rights as such.

119.
In section 117B(2) and (3) of the 2002 Act, it is provided that “persons who seek to enter or remain in the United Kingdom” should, in the public interest, be able to speak English and be financially independent. An EEA national who is not relying upon their rights under the 2016 Regulations (or otherwise deriving from the EU treaties, as interpreted by the CJEU) plainly falls within the ambit of subsections (2) and (3).

120.
The more difficult question is in what circumstances an EEA national can be said to be in the “in the United Kingdom unlawfully” within the meaning of section 117B(4). The same question arises in section 117C(4)(a), which describes Exception 1 to the proposition that the public interest requires deportation, in the case of a foreign criminal who has not been sentenced to a period of imprisonment of four years or more. Exception 1 applies if three conditions are met, of which the first is that the person concerned “has been lawfully resident in the United Kingdom for most of” their life (section 117C(4)(a)).

121.
In Secretary of State for the Home Department v SC (Jamaica) [2017] EWCA Civ 2212, the Court of Appeal examined the analogous provision to section 117C(4), contained in paragraph 399 of the Immigration Rules. In his judgment, the Senior President of Tribunals said:-

“54. Somewhat surprisingly, there is no definition of 'lawful residence' for the purposes of paragraph 399A of the Rules. The exception in paragraph 399A to which the lawful residence condition attaches is the strength of the person's connection to the UK as compared with the strength of the person's connection with their home country where connection is their social and cultural integration. It is clearly the intention of the Secretary of State that length of stay in the UK is a proxy for strength of connection given that the exception is predicated on the temporal condition of 'most of his life'. There is an un-related definition of lawful residence in paragraph 276A(b) of the Rules for the purposes of an application for indefinite leave to remain as follows:

"lawful residence" means residence which is continuous residence pursuant to:

(i) existing leave to enter or remain; or

(ii) temporary admission within section 11 of the 1971 Act where leave to enter or remain is subsequently granted; or …"

55. The Secretary of State says that if she had intended to apply this definition to paragraph 399A of the Rules she would have said so but that simply leaves the question unanswered. It is also unhelpful to say that the definition in paragraph 276A(b) does not include lawful residence under EU law to which an applicant is entitled. What is submitted by SC is not that paragraph 276A(b) should directly apply but that an analogous interpretation of lawful residence should be applied to the wording in paragraph 399A.

56. It appears to be common ground that a person is granted temporary admission from the date of their application to be a refugee. Temporary admission for an adult is a precarious status. Such a person cannot work and by the very nature of it being precarious, social and cultural integration cannot be established. It is only once the asylum claim is granted that the person can start to build a

life in the UK. On this basis, a rational basis for lawful residence would be a date from which a person has a valid right to remain. That is the submission of the Secretary of State. On the other hand, 'lawful' ordinarily has the meaning 'permitted by law' and if a person is permitted to remain by temporary leave that should be sufficient. That would at least provide internal consistency to the different usages of the same phrase in the Rules and would also reflect the fact that the concept of precarious status is not relevant to a child, and hence to SC, for part of the time under consideration on the facts of this case.

57. Of the two possible interpretations put to this court, I prefer that which is internally consistent and which provides for the circumstances of both adult and children ie that lawful residence for the purposes of paragraph 399A(a) runs from the date of application for refugee status. On that basis the FtT took an appropriate date from which to determine lawful residence."

122.
In his judgment, Davis LJ held:-

"73. However, for the (specific) purposes of the provisions in the Immigration Rules relating to long residence, "lawful residence" includes continuous residence pursuant to temporary admission where leave to enter or remain is subsequently granted: paragraph 276A (b). I fully accept that it does not follow that that is also necessarily then so for the purposes of paragraph 399A. But it at least shows that Parliament was accepting that temporary admission is not entirely and always to be excluded from notions of "lawful residence": although of course in many contexts it may be so excluded (cf. R (ST (Eritrea) v SSHD [2012] UKSC 12). At all events, a person is not necessarily "unlawfully" present in the United Kingdom simply because he has no vested right of residence: see cf. Akinyemi v SSHD [2017] EWCA Civ 236 . Moreover, in a case such as the present the grant of leave to remain will have been on the footing of acknowledging a pre-existing status. It thus makes some sense for the lawful residence at least to relate back to the date of the application for asylum: at which date (as was accepted before us on this appeal) temporary admission was to be deemed to be granted. Overall, albeit with some hesitation, I consider that the approach taken in paragraph 276A (b) can and should be applied by analogy to the present context. If this does not represent the wishes of the Government the remedy is to provide a definition of the phrase for the specific purposes of Rule 399A."

123.
We have already looked at the judgment of Underhill LJ in Akinyemi in the context of the British citizenship issue. But Mr Amunwa also relies upon that judgment and those in SC (Jamaica) to take issue with what he describes as the "somewhat equivocal view" of the respondent's policy guidance "Long residence – version 15.0 (3 April 2017) that only a person exercising Treaty rights can be treated for the purposes for paragraph 276A of the Rules as being "lawfully resident" in the United Kingdom; and only then if the respondent exercises discretion to treat time spent in the United Kingdom in that capacity as lawful residence for the purpose of paragraph 276A (which deals with long residence).

124.
As we have seen from section 7 of the 1988 Act, a person is not subject to the requirements of the 1971 Act to have leave to enter or remain in the United Kingdom whilst that person is entitled to do so by virtue of "an enforceable [EU] right" or of any provision made under section 2(2) of the 1972 Act. The problem is that, whilst it is relatively straightforward to ascertain whether a person, who is not an EEA national and therefore requires 1971 Act leave at all relevant times, has had or did not have such leave at any point in time, it may often be difficult to look back at the immigration history of an EEA

national and ascertain at what points in time he or she was entitled to be in the United Kingdom by virtue of an enforceable right of the kind described in section 7(1) of the 1988 Act. For example, in the case of a “qualified person”, a glance at regulation 6 of the 2016 Regulations (which defines “qualified person”) highlights the difficulty, particularly where (as here) the Tribunal is looking back over a considerable period of time and where there may well have been no official pronouncement by the respondent regarding the period or periods during which the person in question was or was not a qualified person and thus entitled to remain under EU law.

125.
A similar point arises in relation to the concept of a “family member” under regulation 7. The issue is exacerbated by the fact that residence documentation under the 2016 Regulations is merely declaratory of the underlying right of the EEA national, in contrast with the position under the 1971 Act, where a person only has leave to enter or remain if he or she has been given it by the respondent in a document of which there should be a record.

126.
The position of the present appellant is a good illustration of the difficulties just described. The appellant moved as a child with his mother and her then British citizen partner from Belgium to the United Kingdom in 2003. There has never been any formal determination regarding the basis upon which the appellant lived in the United Kingdom from 2003 to 2007, when the family returned to Belgium. One might reasonably assume that the appellant was the family member of his mother during this time, although the position is complicated by the British citizen status of the appellant’s step-father. After the family’s return to the United Kingdom, the appellant was studying, whilst still a minor. In the circumstances, it seems unlikely that the appellant met the requirements of regulation 4 to be treated as a student.

127.
In the case of an appeal under the 2016 Regulations, the ascertainment of the “level” of protection under regulation 27 will depend upon whether the person concerned has acquired a permanent right of residence under regulation 15. If so, the decision can only be taken on “serious grounds of public policy and public security”. To that extent, in such an appeal, the Tribunal will have to make a specific finding, applying the requisite burden of proof, by reference to the evidence regarding the person’s position at all relevant points in time.

128.
For this reason, paragraphs 18 to 29 of the respondent’s decision in the appellant’s case dealt expressly with the issue of whether the appellant had acquired a permanent right of residence. In this regard, the respondent did not, however, appear to have turned her mind specifically to whether the appellant was a family member. Instead, she primarily considered whether the appellant had acquired the right of permanent residence by reason of being a qualified person under the heading of “student”. The respondent concluded that the appellant had not shown that he fell to be treated as a person who had acquired a permanent right of residence.

129.
We are not here deciding the appellant’s appeal under the 2016 Regulations because, for the reasons we have given, no such appeal has yet been validly made. It is not, however, possible to side-step the question of what is meant by “unlawfully” in section 117B(4)(b) and “lawfully resident” in section 117C(4)(a) in the case of an EEA national, whether or not the human rights appeal is to be determined alongside the appeal under the 2016 Regulations.

130.
At paragraph 41 of Akinyemi , Underhill LJ pointed out that “unlawful” presence in the United Kingdom was not necessarily the same as it not being “lawful”. What, then, does it mean for an EEA national to be “in the United Kingdom unlawfully”? Such a person who is not exercising relevant rights requires leave to be in the United Kingdom. Unlike, however, the position of a non-EEA national section 24 of the Immigration Act 1971 (illegal entry and similar offences) would not seem to criminalise a person who becomes, by reason of section 7 of the 1998 Act, subject to a requirement to have leave to remain in the United Kingdom, at some point after entering pursuant to the EEA Regulations. In a paradigm case, the EEA national would have entered initially pursuant to regulation 13 of the 2016 Regulations (initial right of residence) and so would not have entered the United Kingdom “without leave”, contrary to section 24(1)(a). Nor, by remaining in the United Kingdom once he or she had ceased to have a right to do so under EEA Regulations, etc would that person become an overstayer, and so would not commit a criminal offence under section 24(1)(b).

131.
In paragraph 41 of Akinyemi , Underhill LJ stressed that, in that case, there was “no specific legal obligation of which [the appellant was] in breach by being here and no legal right to remove them”. In the scenario just described, however, the legal obligation stems from the interaction of section 7 of the 1988 Act and the 1971 Act, which requires a person to have leave, once he or she has ceased to be entitled to be here under the EEA Regulations, etc. Furthermore, unlike the appellant in Akinyemi , the EEA national becomes subject to a power of removal under regulation 23(6)(a), specifically by reason of ceasing to have a right to reside under the Regulations.

132.
Accordingly, we do not consider that the appellant can draw any material assistance from the judgment in Akinyemi . Nor does SC (Jamaica) assist him. As we have seen, at paragraph 55, the Senior President of Tribunals rejected as “unhelpful” the respondent’s submission that the definition of “lawful residence” in paragraph 276A(b) of the Immigration Rules “does not include lawful residence under EU law to which an applicant is entitled”.

133.
Whilst we entirely accept that a person who is resident in accordance with the 2016 Regulations, etc. is in the United Kingdom lawfully, if he or she is not so present and has no other basis to be here, then the person is, we find, “in the United Kingdom unlawfully” for the purposes of section 117B(4)(b). The fact that he or she may not be guilty of a criminal offence under the 1971 Act is not determinative of the matter for the purpose of construing part 5A of the 2002 Act. It must have been Parliament’s intention, in enacting Part 5A, to treat someone as unlawfully resident in the United Kingdom, who had entered pursuant to the initial right of admission in regulation 11, but who thereafter remained without ever being a jobseeker, worker, student etc and who has, therefore, never been a qualified person. To find otherwise would be to discriminate in favour of EU nationals in a way that has no justification by reference to EU law.

134.
A fortiori, when one turns to section 117C(4)(a) and the concept of being “lawfully resident in the United Kingdom”, a person who has no basis under the 2016 Regulations/EU law to be in the United Kingdom, or any other legal entitlement to be here, cannot be described as “lawfully resident”. The fact that the respondent may not have taken action under the EEA Regulations to have the person removed cannot be said to render that person’s residence lawful. Here too, there is no coherent distinction to be drawn between EU nationals and others. The fact that the respondent may not have

taken enforcement action against non-EEA nationals present in the United Kingdom without leave has never, to our knowledge, been advanced as an argument for describing them as being lawfully present. Manifestly, they are not.

135.
We accordingly find that the respondent's stated policy, referred to in the decision letter, of considering Article 8 claims from EEA nationals neither more nor less generously than claims from non-EEA nationals, is not only correct but also that it requires the interpretation of Part 5A that we have just described.

136.
We return to our earlier discussion about the practical problems that may arise, in connection with a historic analysis of whether an EEA national has, at any point in time, been present in the United Kingdom in accordance with the EEA Regulations, etc. We have noted that the difficulties which may be encountered in this regard can be significant, the appellant's own immigration history being a good exemplar.

137.
As will now be evident, the present case is somewhat unusual in being confined to a human rights appeal. Although involving an EU national, it is not an appeal that involves the substantive adjudication of the appellant's ability to resist removal under regulation 23. In most cases, the position will be otherwise; with the result that the Tribunal can expect there to be evidence before it going to show whether the appellant has acquired a permanent right of residence under regulation 15, so as to be removable only on "serious grounds of public policy and public security" (regulation 27(3)); or that he or she meets to criteria in regulation 27(4) so as to be removable only "on imperative grounds of public security".

138.
In such cases, the Tribunal will be able to reach conclusions, on the evidence, which will not only inform its decision under the 2016 Regulations but also, if necessary, enable it to make findings as to the appellant's lawful/unlawful residence for the purposes of Part 5A of the 2002 Act. On the basis of our interpretation of the relevant expressions in Part 5A, as they affect EU nationals, there can, for example, be no question of an adult being treated as lawfully in the United Kingdom during a period when the evidence shows on balance that he was not a qualified person or relevant family member.

139.
However, as the present case shows, an EU national who came as a child to the United Kingdom may have profound difficulties in showing that his or her residence during their minority was in accordance with EU law, compared with an adult who makes the conscious decision to come here in order to exercise the right of free movement of a worker. A child will be unable directly to regularise their status, even if it were to become apparent that it might be necessary to do so. In such a case, for the purposes of looking at Article 8 through the lens of Part 5A, the Tribunal needs to appreciate this difficulty.

140.
For the reasons we have earlier given, the answer to the difficulty does not lie in construing the relevant terminology in Part 5A in a way that confers an unwarranted advantage upon all EEA nationals, irrespective of age, treating them as lawfully resident etc, regardless of whether they have any right to be in the United Kingdom under EU law. Rather, the answer lies in appreciating that section 117A(2) contains a modest degree of flexibility, to be resorted to in exceptional cases:

Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58, per Lord Wilson at paragraph 49.

141.
Although other cases may, on their facts, still demand a different outcome, we consider that, despite our adverse credibility findings regarding the appellant and his mother, it would be wrong to categorise the appellant's time as an EU child in the United Kingdom as not being lawful time for the purposes of Part 5A, given that he was under the control of his adoptive father and his mother; that he was able to attend school and college without any questions being asked about his status; and that no action was taken or even contemplated by the respondent in respect of him or his mother. Indeed, to do so would risk a result that is incompatible with the United Kingdom's obligations under Article 8 of the ECHR.

(d) Deportation as a foreign criminal

142.
In the analysis we have just undertaken, we have assumed that section 117C applies to the appellant. In order for that to be so, he must meet the definition of a "foreign criminal" in section 117D(2). In the present case, the respondent contends that the appellant falls within the definition because he has been convicted of offences that have "caused serious harm" and that the appellant is a "persistent offender".

143.
We have earlier referred to the appellant's criminal history. It is, however, convenient at this stage to summarise it.

144.
In 2013 and 2014, the appellant received criminal cautions for, respectively, assault and battery. In June 2014, when he was aged 16, the appellant was convicted of destroying or damaging property and battery. He was in due course sentenced to a youth rehabilitation order.

145.
In July 2014, aged 16, the appellant was convicted of destroying or damaging property and using threatening/abusive words/behaviour or disorderly behaviour likely to cause harassment/alarm. He was, again, eventually sentenced to a youth rehabilitation order.

146.
In August 2014, aged 16, the appellant was convicted of two counts of battery. He was sentenced to a referral order and a youth rehabilitation order.

147.
In March 2015, aged 16, the appellant was convicted of two counts of battery. He again received a youth rehabilitation order as well as being ordered to pay a victim surcharge.

148.
In 2017, aged 18, the appellant was convicted of disclosing private sexual photographs and films with intent to cause distress, four counts of battery, assaulting a constable and failing to surrender to custody at the appointed time. The appellant was subsequently sentenced to nine months in a young offenders institution and ordered to pay a victim surcharge. The offence of battery committed on 3 May 2017 had been whilst the appellant was on bail.

149.
It was in the light of those convictions that, on 5 July 2017, the appellant was served with a notice of liability to deportation. A deportation decision was made in September 2017, which the appellant did not appeal. We were referred to the sentencing remarks of His Honour Judge P. Henry, sitting at Southampton Crown Court, on 19 June 2017. The judge referred to the incident in September 2016, in which the appellant assault Female 1 in a park, after she told him that their relationship was over. He grabbed her around the throat until she felt she had passed out. When the police came to arrest the appellant, he assaulted an officer. In January 2017, the appellant put a number of embarrassing photographs for Female 1 on a Facebook chat group. This was done in order to embarrass and humiliate her.

150.
The appellant then started a relationship with X. He assaulted her in February 2017 as well as damaging the flat. She had to be taken to hospital.

151.
In March 2017, X was assaulted by the appellant after she indicated she did not want him to meet one of his friends. The appellant slammed X into a bathroom mirror, trapped her foot in the door, causing her pain, and pinned her onto the floor of the bedroom with his hands around her throat so that “she thought she was going to die”. The appellant then put a blanket or similar around X’s face and neck. The judge said that “what you did to her was incredibly dangerous”.

152.
The judge noted the pre-sentence report, which stated that the appellant was “considered to be at high risk of causing serious harm to women”. The judge expressed the hope that X would “take note of it”. He agreed with the description in the pre-sentence report of the form of violence as including “strangulation, aggressive, controlling behaviour and willingness to place private sexual photographs”. The sentencing judge’s warning to X was, as we have seen, well made. In January 2019, the appellant kicked down a door, causing X serious injury, to use his own words from his second witness statement. He received a prison sentence of nineteen weeks, together with a post-sentence supervision order.

153.
Mr Amunwa submits that the offences committed whilst the appellant was under the age of 18 should not fall for consideration, in determining whether the appellant is a persistent offender. However, as Mr Jarvis submits, the definition of “foreign criminal” in section 117D contains nothing to suggest that Parliament intended such offences to be excluded.

154.
Any weight that falls to be attached to the fact that criminal offences were committed whilst the appellant was a child is, we find, to be dealt with in the general Article 8 assessment in respect of foreign criminals, that must be undertaken pursuant to section 117C(6), in order to determine whether there are “very compelling circumstances”, such as to make deportation of the foreign criminal a disproportionate interference with his or her Article 8 rights. Notwithstanding the wording of section 117C(6) which, on its face, applies only to those sentenced to imprisonment of at least four years, the fact that section 117C(6) covers all foreign criminals was conceded by the respondent to the Court of Appeal in NA (Pakistan) and Another v Secretary of State for the Home Department [2016] EWCA Civ 662: see RA (s117C: “unduly harsh”; offence: seriousness (Iraq) [2019] UKUT 123 (IAC).

155.
Viewing the appellant's criminal history as a whole, it is manifest that he is a persistent offender. He is clearly someone who "keeps breaking the law": Chege ("is a persistent offender") [2016] UKUT 187 (IAC). His offences show a pattern of behaviour comprising the physical abuse of women.

156.
Furthermore and in any event, we find that the appellant falls to be treated as foreign criminal by reason of the fact that, as an adult, he has been convicted of offences that have "caused serious harm". That is the view taken by the respondent in the decision, with which we agree. In accordance with LT (Kosovo) v Secretary of State for the Home Department [2016] EWCA Civ 1246, we have given significant weight to that view.

157.
We accept that there is a difference between someone being a "high risk" of causing serious harm to women and having actually caused serious harm. The fact is, however, that he plainly caused serious physical and psychological harm to Female 1, as well as assaulting X on a number of occasions, necessitating her hospitalisation (at least on one such occasion).

(e) Taking stock

158.
It is time to take stock of the position we have reached:

(a) The appellant's human rights appeal falls to be determined on the basis that he is a person who has not established his private life in the United Kingdom at a time when he was here unlawfully.

(b) The appellant is a foreign criminal, for the purposes of section 117C, by reason of having been convicted of offences that have caused serious harm and/or because he is a persistent offender.

(c) In deciding whether Exception 1 in section 117C(4) applies to the appellant, as a person who has not been sentenced to a prison sentence of four years or more, the appellant was legally resident in the United Kingdom between 2003 and 2007 and between 2011 and 2016, when he ceased to be a child. Thereafter, until the point at which the deportation order was made in respect of his criminal offending, there is nothing to indicate the appellant has been a person who could have been removed from the United Kingdom pursuant to regulation 23(6)(a), as a result of not having a right to reside under the Regulations, etc.

(d) As a result, we approach Exception 1 in section 117C(4) on the basis that, perhaps giving the appellant the benefit of the doubt, he satisfies the requirement in paragraph (a) to have been lawfully resident in the United Kingdom for most (i.e. the majority) of his life. This calculation is based upon the updated chronology of events at D641 to D643. Erring on the side of the appellant, where it has not been possible to provide exact dates, the total time spent by the appellant in the United Kingdom up to when the deportation order was signed (and he ceased to have any legal basis for being here) is approximately eleven years. The appellant was, at the date of the hearing on 26 July 2019, four days short of his 21 st birthday. He has therefore spent the majority of his life in the United Kingdom.

(f) Exception 1: section 117C(4)

159.
We look first at section 117C(4) because, if Exception 1 is satisfied, then section 117C(3) tells us the public interest does not require the appellant's deportation on human rights grounds.

160.
As we have just found, the appellant has shown, albeit barely, that he has been lawfully resident in the United Kingdom for most of his life. The second requirement of Exception 1 is that the appellant must be "socially and culturally integrated in the United Kingdom". On this issue, Mr Amunwa took exception to Mr Jarvis's submission that the appellant's involvement in gang culture was such as to preclude him from showing that he was socially and culturally integrated. There is no hard and fast rule, whereby a person who is involved with gangs must, as a result, be unable to show social and cultural integration in the United Kingdom. The real point is that, if and to the extent that a person's life is governed by adherence to the anti-social and criminal behaviour of a gang, the person will, to that extent, find it very difficult to show social and cultural integration in the sense intended by Parliament in section 117C(4)(b).

161.
In the present case, we find that Mr Jarvis, in cross-examination, did squarely put to the appellant that he had been significantly involved in gang culture. The appellant was specifically referred to the document from Central and North West London NHS at D656, which describes the appellant himself as saying "he has seen family and friends who have taken their lives and been murdered. He states he was involved in a lot of gang culture". At paragraph 16 of his first witness statement, the appellant described himself as having fourteen criminal convictions in the United Kingdom mainly involving "assaults, vandalisms and destruction of property for the years 2013 to 2015. I was young and I had met some people I shouldn't have". In oral evidence, we find that the appellant unpersuasively attempted to qualify these statements, telling us that he had merely "associated with people who were involved" with gangs and that he was "friends of theirs".

162.
The pattern of the appellant's teenage criminal offending also strongly suggests that what he is recorded in the NHS document as saying was true and that much of his time was spent with people who cannot rationally be said to have facilitated his social and cultural integration.

163.
On the other hand, the appellant has spent a good deal of time in the education system in this country. He has been able to form relationships with women who, so far as we are aware, are ordinary members of society.

164.
Although the appellant has produced some evidence of being employed in the United Kingdom, we find this to be somewhat exiguous in nature.

165.
Overall we consider that the appellant has shown that he satisfies section 117C(4)(b), albeit by the barest of margins.

166.
The third and final requirement of Exception 1 is that "(c) there would be very significant obstacles to [the appellant's] integration into the country to which [the appellant] is proposed to be deported".

167.
Having considered all the evidence and the submissions, and in the light of our credibility findings regarding the appellant and his mother, we firmly find that the requirement in section 117C(4)(c) is not satisfied. The appellant is a citizen of Belgium by birth. He lived in that country for the first five

years of his life and for over three years, from the age of 9, during which time he went to school. The evidence about whether the appellant learned Dutch/Flemish during that time was, we found, evasive and incoherent. We do not accept it is likely the appellant has no knowledge of this language, particularly in the light of the fact that the appellant's mother apparently speaks it.

168.
In any event, the appellant can use English whilst he improves his Dutch/Flemish. He is still of an age when it would be possible to hone his linguistic skills. In this regard, we note the appellant's keenness to take training courses, whilst he has been in prison and detention.

169.
The appellant's (at least superficially) engaging character, as observed at the hearing, together with his fluency in English would put him in a good position, when it came to seeking employment in Belgium.

170.
What we have said is independent of any contact with and assistance from Y, which the appellant might obtain. Given our problems with credibility, we do not consider that we have been told the truth about Y's relationship with the appellant.

171.
We note that, as held in AS v Secretary of State for the Home Department [2017] EWCA Civ 1284, the "integration test" requires consideration of "all relevant factors, some of which might be described as generic, such as a person's ability to adapt to the culture, their health, employability and level of education" (paragraphs 58 and 59). We also note that at paragraph 60, the court pointed out that persons such as friends or relatives might be able to assist an individual with integration. In other words, such "ties" do not have to be direct.

172.
Overall, looking at all the relevant matters, it is in our view manifest that the appellant would face no real obstacles (let alone significant ones) in integrating in Belgium. The social and cultural differences between Belgium and the United Kingdom are, of course, less pronounced than between the United Kingdom and at least some of the countries of, say, Africa or Asia.

We have had regard to the appellant's health issues in making our finding regarding section 117C(1)(c). We note that the recommendations from the appellant's mental health support team include that he "would benefit from continued substance misuse rehabilitation work in the community" and "will benefit from psychological support when he returns to the community". We do not consider that the appellant's issues in this regard pose any obstacle to his integration in Belgium. There is a complete absence of evidence to suggest that similar support would not be given by Belgium to one of its citizens, compared with what may be available to the appellant in the United Kingdom.

(g) The overarching question: "Very compelling circumstances ..."

173.
Since Exception 1 is not made out, we turn to the overarching question, as identified by the Court of Appeal in NA (Pakistan) ; namely, whether there are very compelling circumstances which would make the appellant's deportation a violation of his Article 8 rights.

174.
We look first at the factors weighing in favour of the appellant.

175.
We reiterate the findings we have made in respect of the appellant's length of lawful residence in the United Kingdom and that his private life was established at a time when the evidence does not show he was in the United Kingdom unlawfully, within the meaning of section 117B(4)(b).

176.
We also reiterate our finding that the appellant is socially and culturally integrated into the United Kingdom.

177.
As we indicated we would, we take account of the fact that many of the appellant's criminal offences were committed whilst he was a child. As is apparent from Maslov v Austria [2008] ECHR 546, when assessing the nature and seriousness of offences committed by an individual, in the context of proposed removal from a jurisdiction, account has to be taken of whether that person committed the offences as a juvenile or as an adult.

178.
In this regard, we have also taken account of the appellant's family history. Despite our concerns regarding the credibility of the appellant and his mother, it is clear that their family has experienced difficulties and that these have directly impacted on the appellant, to the point where he entered into the care of a local authority.

179.
The appellant says that he has made serious attempts to address his offending, in particular his propensity for violence towards women. We take account of this and the various courses that the appellant has undertaken whilst he has been deprived of his liberty, which were designed to facilitate his rehabilitation.

180.
The appellant points to his alleged experiences in Belgium, following three removals to that country pursuant to the deportation order. Whilst we have not accepted that any difficulties he encountered at that time arose despite his reasonable efforts to secure appropriate assistance, we accept that there will be challenges in him re-establishing himself in Belgium.

181.
The factors weighing in favour of the respondent's interests in removing the appellant from the United Kingdom are as follows.

182.
The appellant's time in the United Kingdom, albeit considerable, falls to be set against the fact that over eight years of his childhood have been spent in Belgium. As we have already explained, even on the most favourable analysis of the available evidence, the appellant has been lawfully resident in the United Kingdom only barely for the majority of his life.

183.
As we have also explained, the appellant's degree of social and cultural integration is such as only barely to enable him to satisfy section 117C(4)(b). He has, by his own admission, been heavily involved with anti-social elements in this country.

184.

That brings us to the criminal offending undertaken whilst the appellant was under the age of 18. Whilst we take account of the judgment of the CJEU in Maslov , we observe that in R (Akpinar) v Upper Tribunal/Secretary of State for the Home Department AV DRC [2014] EWCA Civ 937, the Court of Appeal held that the CJEU's reference to the requirement of "very serious reasons" for deporting "a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country" is not to be read as if the phrase "very serious reasons" meant "very serious offending" (paragraph 30). Furthermore, as a general matter, the court in Akpinar did not consider that the binding domestic case law suggested that Maslov had "made any significant change to the law, which continues to require the proportionality exercise mandated by the House of Lords in Huang " (paragraph 53).

185.
The significance of the offences committed whilst the appellant was a child are, firstly, that the rehabilitative sentences he received obviously made no difference to his anti-social attitude and that, secondly, they can now be seen as a pattern that extended into the appellant's adulthood, when he has committed serious offences against women.

186.
Whilst we take account of the fact that the appellant's background was problematic, the same can be said of very many of those who criminally offend. It would, in our view, be wrong to give very significant weight to this aspect of the appellant's case for resisting deportation.

187.
Whilst the appellant has, we find, established a private life at a time when he was in the United Kingdom lawfully, that private life has little to say for itself. There is scant evidence of the appellant having worked or having made any other contribution to society.

188.
So far as family life is concerned, there is plainly very little between the appellant and his mother and his United Kingdom siblings; certainly, nothing to cause material weight to be afforded to that family life.

189.
The appellant claims to have seen the error of his ways. He points to the courses which he has undertaken in prison and detention. As we have found, however, these claims are plainly hollow. The same general assertions were being made at the time of the First-tier Tribunal hearing, only to be followed by the assault on X in January 2019. We consider the appellant's motivation has been to undertake as many courses as humanly possible, so that their sheer number would impress us. It does not.

190.
We consider that the appellant remains as he was assessed in 2017; namely, that he poses a serious risk to women.

191.
We reject the assertion that the appellant would be destitute in Belgium, if returned there. We bear in mind, in particular, the strenuous efforts made by Mr Amunwa, in his post-hearing submissions, to persuade us that the appellant's evidence, and that of his mother, was in general plausible. The plain fact of the matter is that during none of his sojourns in Belgium, following his enforced removal, did the appellant make a serious effort to accommodate and maintain himself. Each time, his intention

was, plainly, to get back to the United Kingdom, by whatever means possible. Instead of using financial assistance from X to help him in this regard, the appellant brazenly decided to go with her on holiday to Provence. Although we accept the appellant and his mother might have had an interaction with a council official in Belgium, we are not persuaded that it is reasonably likely the official was presented with the true position regarding the appellant. The evidence of the appellant's mother, that she was told legal assistance could not be provided for the appellant since his mother was outside Belgium, is entirely unbelievable.

192.
In short, neither the appellant nor his mother (or anyone else involved) ever had any intention of making any genuine effort to engage the assistance of the relevant Belgian authorities. Were the appellant to do so now, we are in no doubt that those authorities would be able to provide a level of support that would not only preclude the appellant from becoming destitute but also would lead to him re-establishing himself in Belgium. We are here dealing with a Western European nation that is a member of the European Union. The appellant has not begun to show that Belgium would decline to offer him the assistance that is due to one of its citizens.

193.
In considering the proportionality of deportation, in terms of Article 8, it is not only the appellant's criminality that is relevant. It is also necessary to take account of the egregious defiance of the law of the United Kingdom, which the appellant has exhibited in returning unlawfully to the United Kingdom on no fewer than three occasions after he has been lawfully removed. For this reason alone, there is a pressing public interest in deportation.

194.
Having set out the matters weighing in favour of the appellant and those weighing in favour of the respondent, representing the public interest, we firmly find that the latter outweigh the former, by a considerable margin.

DECISION

The appellant's appeal is dismissed on human rights grounds.

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

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

Signed Dated:

The Hon. Mr Justice Lane

President of the Upper Tribunal

Immigration and Asylum Chamber