Upper Tribunal
(Immigration and Asylum Chamber)

NA and VA (protection: Article 7(2) Qualification Directive) India [2015] UKUT 00432 (IAC)

THE IMMIGRATION ACTS

Heard at Eagle Building, Glasgow
On 29 May 2015

Determination Promulgated

Before

The President, The Hon. Mr Justice McCloskey
Deputy Upper Tribunal Judge Doyle

Between

NA
VA

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
Appellants: Ms L Irvine, Advocate, instructed by Drummond Miller LLP
Respondent: Mr J Komorowski, of Counsel, instructed by the Advocate General

The word "generally" in Article 7(2) of Council Directive 2004/83/EC (the Qualification Directive) denotes normally or in the generality of cases. Thus the operation of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and access to such system by the claimant may not, in a given case, amount to

protection. Article 7(2) is non-prescriptive in nature. It prescribes neither minima nor maxima. The duty imposed on states to take "reasonable steps" imports the concepts of margin of appreciation and proportionality.

DECISION AND DIRECTIONS

Introduction

1. The origins of these conjoined appeals lie in a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 18 January 2013, whereby it was determined that neither of the Appellants, who are of Pakistani and Indian nationality respectively and are husband and wife, qualifies for the grant of asylum or humanitarian protection. The Appellants' ensuing appeals to the First-tier Tribunal (the "*FtT*") were dismissed. Given the atypical and protracted history of these appeals, we requested that a comprehensive chronology be prepared. The response of the Appellants' representatives was prompt and efficient and the chronology thus compiled is appended to this decision.

The Protection Claims

2. Certain facts are uncontroversial, while others have been established by the findings of the FtT. It is unnecessary to rehearse all of them *in extenso*. The Appellants are married. The first Appellant, the husband, is a national of Pakistan. He was the subject of an arranged engagement to be married to his first cousin in 2000, when he was aged 13 years. In September 2010 he entered the United Kingdom in accordance with a student visa which was subsequently extended, followed by a Tier 1 Post-Study Work visa valid until 20 September 2013. His father works in the oil industry and his brother works for the Pakistani security services. One of his uncles is involved in the Pakistan Muslim League. In 2012 one of this Appellant's cousins was killed in a so-called "honour killing" because he wished to marry a girl of lower caste.

3. The second Appellant, of Indian nationality, had a similar immigration path in the United Kingdom, having entered initially in January 2009. In March 2012 the Appellants became engaged and the second Appellant converted to Islam. This occurred because the first Appellant could not contemplate marrying anyone other than of the Muslim faith. Both Appellants concealed the engagement from their respective families. They lived together from May 2012 and were married on 06 September 2012. When they informed their families of this event thereafter, a hostile reaction materialised. The second Appellant's father is a retired member of Parliament and a current political activist. Both Appellants were told by their families that they had brought dishonour upon them and, in the case of the first Appellant, dishonour upon his former fiancée also. They were warned that they would be killed in consequence.

The Impugned Decisions

4. In the refusal decisions the Secretary of State accepted that the Appellants are married to each other and have a loving, genuine and subsisting relationship. The threats by both parties to kill the Appellants were also accepted. The Secretary of State considered that the second Appellant would, as a matter of reasonable probability, be able to enter and reside in Pakistan as the Indian spouse of a Pakistani national. The next question considered was that of sufficiency of protection. The Secretary of State, having cited certain country guidance decisions of this Tribunal, noted that while there is no general insufficiency of state protection in Pakistan, the individual circumstances of the Appellants had to be considered in assessing whether there was a well founded fear of persecution. Having noted the salient elements of their protection claims, the Secretary of State concluded that the Appellants had failed to establish insufficient or inefficacious state protection in Pakistan. It was considered, in the alternative, that the Appellants could safely relocate internally within Pakistan. The prospects of the putative persecutors locating the Appellants within Pakistan were considered remote.

5. Next, the decision maker assessed the Appellants' claims in the separate context of risk on return to India. The first evaluative assessment made was that, being the spouse of an Indian national, the first Appellant would probably be able to enter and reside in India. Having considered certain pieces of country evidence, various developments and improvements in the Indian justice and legal system were noted. This gave rise to a conclusion that, notwithstanding deficiencies in the police forces and judiciary, the Appellants had failed to demonstrate either an inability or an unwillingness on the part of the Indian authorities to protect them. It was considered, in the alternative, that relocation within India was a reasonable option for the Appellants.

6. While it will be necessary to examine certain aspects of the determination of the FtT in a little detail in due course, it suffices to record at this juncture that, in substance, the dismissal of the Appellants' appeals entailed an endorsement of the main elements of the Secretary of State's decision.

Appeal To This Tribunal

7. The appeal to this Tribunal has two main dimensions. The first involves a question of principle relating to the correct construction of Article 7 of the Qualification Directive. The second is appeal specific, concerning certain aspects of the decision of the FtT.

The Qualification Directive Issue

8. Council Directive 2004/83/EC prescribes certain minimum standards for the qualification and status of third country nationals, or stateless persons, as refugees or otherwise in need of international protection. The key provision of the Directive in the context of this appeal is Article 7 which, under the rubric "Actors of Protection", provides

> "*1. Protection can be provided by:*
>
> *(a) the State; or*
>
> *(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.*
>
> *2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.*
>
> *3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts."*

This provision of the Directive has not been fully and faithfully transposed into domestic law by Article 4 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (the *"2006 Regulations")*, by reason of the omission of the words "*inter alia*" in regulation 4(2), which provides :

> *"Protection shall be regarded as generally provided when the actors mentioned in paragraph(1)(a) and (b) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection ".*

This gives rise to the question of law addressed below. In passing, the wording in the recast Qualification Directive (2011/95/EU) mirrors that of its predecessor, in Article 7(2).[1]

9. We summarise the rival arguments, which were of conspicuous ability, thus. On behalf of the Appellants, Ms Irvine formulated the issue of principle in terms of whether a general sufficiency of protection that includes and is limited to a system of detection, prosecution and punishment of crime is compliant with Article 7 of the Directive. She drew attention to the recognition in the UNCHR Handbook that

[1] In the recast Qualification Directive, Article 7(2) commences with the words "Protection against persecution or serious harm must be effective and of a non-temporary nature". The UK has not opted in to the recast Qualification Directive.

persecution is not confined to state actors but "…. *may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned*". Conduct of this kind constitutes persecution where the acts concerned "*… are knowingly tolerated by the authorities or if the authorities refuse, or prove unable, to offer effective protection*". Ms Irvine submitted that the measures specified in Article 7(2) of the Directive are, by virtue of the words "*inter alia*", inexhaustive. Thus it is necessary to enquire whether, in the generality, the state system under scrutiny provides any other safeguards, such as an effective witness protection programme or a womens' refuge. The operation of an effective state legal system which includes the essential elements of the detection, prosecution and punishment of crime may not equate to adequate protection in a given case. Irrespective of whether further mechanisms exist, it will still be necessary, under domestic law, to apply the "Osman" test (Osman v United Kingdom [2000] 29 EHRR 245).

10. On behalf of the Secretary of State, Mr Komorowski compared the law before and after the advent of the Qualification Directive, submitting that there is no difference in substance between the two. He further submitted that notwithstanding the omission of the words "*inter alia*" in regulation 4(2) of the 2006 Regulations, there is no material distinction between this provision and Article 7(2) of the Directive. The proper construction of regulation 4(2) is that it does not prescribe an exhaustive list of measures, by virtue of the word "*generally*", with the result that the omission of "*inter alia*" makes no difference.

11. It is appropriate to highlight some of the judicial decisions bearing on these issues. The decision in Horvath v Secretary of State for the Home Department [2001] 1 AC 489 is to the effect that there are two fundamental tests to be satisfied in order to qualify for refugee status, namely the "fear test" and the "protection test". In the present appeal, the focus is on the second of these tests. The close association between the Horvath formulation and regulation 4(2) was acknowledged by the AIT in IM (Sufficiency of Protection) Malawi [2007] UKAIT 00071, at [50], having noted the omission of the phrase "*inter alia*":

> "*The wording of this subparagraph is unmistakably defeasible. It is not stated that the taking of* [the specified steps] *will amount to provision of adequate protection in every case, although it is said that it will in the generality of cases.*"

In Haddadi v Secretary of State for the Home Department [Appeal Number 00TH02141] there is emphasis on the general circumstances/individual circumstances axis, one of the axioms of refugee law. Thus it is not sufficient to demonstrate inefficiencies or deficiencies in state protection in the abstract since these must always be related to the individual case.

12. The provision and operation of a state system for the detection, prosecution and punishment of crime is an internationally recognised norm of long standing. An informative illustration of measures extending beyond and additional to this provision is found in AB (Protection – Criminal Gangs – Internal Relocation) Jamaica CG [2007] UKAIT 00018, where the persecution under consideration related to the

activities of an organised criminal gang and the threat which this posed to the Appellant. The Tribunal stated in [153]:

> "*As far as the ability of these gangs to operate …….. is concerned …….There is a considerable section of the evidence indicating that the major criminal gangs …… do have the wherewithal to carry out revenge attacks or reprisal killings against persons whom they have a serious and specific interest in targeting. Counterposing that, however, is very strong evidence indicating that they have failed to get their way in respect of anyone who has been admitted into the state's Witness Protection Programme ……*
>
> *[155] Nevertheless, we recognise that apart from the safety net of this programme, there does appear to be a protection gap. For persons targeted by gangs who are not reasonably likely to be admitted into this programme …… the evidence ……. strongly points to them not being able to secure protection from the authorities through the range of normal protective functions carried out by the authorities – unless they can internally relocate without being at risk of detection by their persecutors.*"

Additional measures may also include relevant provisions of a state's civil law system: MacPherson v Secretary of State for the Home Department [2001] EWCA Civ 1995, where Sedley LJ stated, at [21]:

> "*What matters is that protection should be practical and effective, not that it should take a particular form. Indeed to insist on the latter might very well be to frustrate the former. What perhaps matters more is the standard of protection which the state is expected to afford. The higher the standard, the less the individual will have to establish in order to show non-compliance with it.*"

Finally, we note that in MN v Secretary of State for the Home Department [2011] CSOH121 while the deputy judge adopted the mechanism of reading the words "*inter alia*" into regulation 4(2) of the 2006 Regulations (at page 9), the specific issue which we are addressing does not appear to have arisen.

13. We consider that the distance separating the parties on the "inter alia issue" is slight. In our judgement, the effect of the inclusion of the phrase "*inter alia*" in regulation 7(2) is to lay emphasis on the word "*generally*". This word, an unpretentious member of the English language, denotes, uncontroversially, *normally* or *in the generality of cases*. Thus it contemplates that the specific measures which follow might not, in an individual case, be sufficient to constitute "*protection*". It follows that the operation of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and (our emphasis) access thereto by the applicant may not, in a given case, amount to protection. We agree with Mr Komorowski that, as a matter of construction, Article 7(2) yields this construction with or without the phrase "*inter alia*". It follows that there is no deficiency of transposition in regulation 4(2) of the 2006 Regulations.

14. Thus the central theme of the language of Article 7(2), which was doubtless chosen with care and intent following the usual process of representations, negotiations and deliberations among Member States, is that it is non-prescriptive in nature. The word "*generally*" and the phrase "*inter alia*", in tandem, have certain other effects. First, they clearly confer choice, or discretion, on the state concerned. Article 7(2) does not compel a state to devise any particular measures of protection. Second, Article 7(2) prescribes neither minima nor maxima. Thus it is conceivable that, in certain states, practical and effective protection could be provided by measures and arrangements which, viewed through the lens of an advanced first world country, do not equate to an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and access thereto by the individual. For example, a measure of pure deterrence or prevention based on fear of clan or family reprisals might have to be reckoned in a given context. This is consistent with the intrinsically individual nature of each case and the fact sensitive context to which the judicial inquiry will be directed.

15. There is a further effect of the language used which is also worthy of comment. Article 7(2) speaks of "*the actors mentioned in paragraph 1*". These are not confined to state agencies. In principle, it seems unlikely that in many countries of the world the measures following the words "*inter alia*" will be devised or provided by "*parties*" or "*organisations*" of the kind envisaged. As a result, measures which may appear unfamiliar, unconventional or unorthodox in developed states may, in principle, constitute, or contribute to, effective protection against persecution. This is illustrated in the recent decision of the Upper Tribunal in MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) where, in considering the issue of sufficiency of protection, the Tribunal identified what it described as an "*apparatus of protection*" for civilians, composed of assorted elements: the armed forces, the police force, the district police composed mainly of dominant clan members, the "*nuclear family*", armed private guards and a functioning central government: see [358]–[363]. This is consistent with the UNHCR Handbook, at [65]. Thus, to instance another illustration, the availability of womens' shelters in Pakistan guarded by armed bodyguards should be considered in assessing the overall system of protection.

16. The further feature of Article 7(2) of the Qualification Directive worth highlighting in the present context is the standard of "*reasonable steps*". This imports the familiar concepts of margin of appreciation and proportionality (cf Re Officer L, *infra*). Moreover, it forges a direct link between this measure of EU law and the ECHR, specifically Article 2 of the latter and the "Osman" principle (*infra*).

17. The "*reasonable steps*" required to provide effective protection could, in principle, embrace a broad array of measures. Thus, while in the present case the emphasis is on the need for an efficacious witness protection model, other measures may be required, depending on the individual context: for example, home security; enhanced police protection; simple warnings and security advice to the person concerned; the grant of a firearms licence; or, *in extremis*, what has come to be known in the United Kingdom as a comprehensive "relocation" package, which may involve a change of identity, accompanied by appropriate financial and logistical support. In law, context

is everything: per Lord Steyn in R (Daly) v Secretary of State for the Home Department [2001] 2 AC 532. Furthermore, we would highlight the related principle that the claimant must provide clear and convincing evidence of the inability of his home state to provide efficacious protection to its citizen. This stems from the underlying rationale of international protection as a surrogate, coming into operation as a last resort: see Canada (Attorney General) v Ward [1993] 2 SCR 689.

The Osman Test

18. It is common case that where the persecution asserted is a threat to life, the Osman test must, as a matter of domestic law, be applied, given that Article 2 ECHR is one of the Convention rights protected by the Human Rights Act 1998. The decision of the ECtHR in Osman concerned the positive duty on state authorities to protect life derived from Article 2. There was no dispute that this obligation extends beyond the state's primary duty to secure the right to life by devising effective criminal law provisions and appropriate law enforcement machinery for the prevention, suppression and punishment of offences. The Court's starting point was that:

> "….. *Article 2 of the Convention may also imply in certain well defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.*"

See [115]. The Court continued, in [116]:

> "*For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.*"

The Court then framed the principle, or test, of reasonableness:

> "*In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (see paragraph 115 above), it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The Court does not accept the Government's view*

that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must be tantamount to gross negligence or wilful disregard of the duty to protect life (see paragraph 107 above). Such a rigid standard must be considered to be incompatible with the requirements of Article 1 of the Convention and the obligations of Contracting States under that Article to secure the practical and effective protection of the rights and freedoms laid down therein, including Article 2 (see, mutatis mutandis, the above-mentioned McCann and Others judgment, p. 45, § 146). For the Court, and having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case."

The duty to take case sensitive and specific preventive/protective measures arises only where two conditions are satisfied. The first is that there must be a real and immediate risk to the life of an identified person or persons from the criminal acts of a third party. The second is that the relevant state agencies knew or ought to have known of this risk.

19. While the Osman test has been considered at the highest judicial level in the United Kingdom and the jurisprudence has developed, *inter alia*, in the definition of what constitutes "*a real and immediate risk*" – see Re Officer L (Northern Ireland) [2007] UKHL 36, which also examined the state's common law duty to protect a witness – it is unnecessary to elaborate on these decisions in the present context. The Osman question raises no point of novel principle in this appeal. Rather, it is confined to the consideration of whether the decision at first instance is vitiated by a material error of law. To this we shall now turn.

This Appeal

20. There is, regrettably, some uncertainty about the scope of this appeal. This is attributable at least in part to its unusual history, rehearsed in the Appendix hereto. The materials bearing particularly on this issue include the "Variation of Grounds of Appeal" document, the interlocutor of Lord McEwan dated 08 January 2014, the incorporation in the latter of the "Robinson" principle, the grounds of appeal to the First-tier Tribunal (the "*FtT*"), the grounds of appeal to this Tribunal and the grant of permission to appeal. In the unusual circumstances enveloping these proceedings we are inclined to adopt a broad approach to this issue.

21. The main thrust of the submission of Ms Irvine was that the FtT erred in law in its treatment of the sufficiency of protection and internal relocation issues which, in the present context, merge to a significant extent. We review the decision of the FtT bearing in mind the Appellant's core contention, namely that state protection in both India and Pakistan is ineffective in the absence of an efficacious witness protection scheme and internal relocation does not provide a solution.

22. The most recent Home Office "Country Information and Guidance" relating to Pakistan, published in October 2014, contains the following passage (at 2.8.18):

> "*The US Department of State reported that the judiciary was often subject to intimidation from outside influences, such as fear of reprisal in terrorism or blasphemy cases …….. the same report also noted reports persisting about corruption in the judicial system …….*
>
> *Lower Court Judges lacked independence …….*
>
> *Lower Courts remained corrupt, inefficient and subject to pressure from prominent wealthy, religious and political figures. Government involvement in judicial appointments increased the Government's control over the Court system. According to reporting by the United States Institute for Peace 'the witness protection system in Pakistan is almost non existent. Consequently, those who testify against powerful criminals and militants in Court receive no security'".*

The FtT considered the alternative scenarios of the Appellants returning to and settling in either Pakistan or India.

23. As regards the scenario of returning to and/or settling in India, our analysis of the determination of the FtT is as follows:

(a) The Judge specifically acknowledged certain evidence of the shortcomings and obstacles in the attempts of the Indian authorities to prosecute the perpetrators of honour killings and their accomplices.

(b) The Judge also acknowledged deficiencies in the Indian police force, attributable mainly to inadequate infrastructure, lack of training, insufficient resources and "*rampant corruption*".

(c) The Judge was undoubtedly correct to identify these shortcomings in the state system. However, having done so, the Judge placed emphasis on the factors of determination to improve and political will. In doing so, no consideration was given to the question of whether these factors counterbalanced the acknowledged deficiencies in state protection to any extent. While the Judge found that state protection is adequate, we consider this to be insufficiently reasoned, given the deficiencies identified. Furthermore, while there is some emphasis in the Judge's assessment on prosecution, no consideration is given to the related issues of detection and punishment. Furthermore, the Judge does not engage at all with the question of whether some additional measure or measures may be required in the particular circumstances.

(d) Moreover, it is not clear whether the Judge was assessing the issue of a reasonable degree of likelihood of harm or that of sufficiency of state protection.

Based on our analysis above, we conclude that there are errors of law in the FtT's consideration of the Appellants' persecution claim in the context of the return to/settlement in India scenario.

24. As regards the alternative scenario of returning to/settling in Pakistan, our analysis of the determination of the FtT is as follows:

(a) On the issue of sufficiency of state protection, the Judge, founding exclusively on the country guidance decision of KA and Others (Domestic Violence – Risk on Return) Pakistan CG [2010] UKUT 216 (IAC), at [212], stated:

> "*From that, I conclude that there is a willingness by the Pakistani authorities against honour killings and action is taken by them.*"

[sic]

The passage in question documents improvements in the Pakistani system in the specific areas of legislation, prosecution and punishment.

(b) However, the Judge considered only the "*willingness*" of the Pakistani authorities to take appropriate action. No consideration is given to either the efficacy of the available measures or, as required by Article 7(2) of the Directive, the access which the Appellants would have thereto. Nor is any consideration given to the key question of protection of the Appellants and, in this context, the decision fails to engage with the country evidence quoted in [18] above.

(c) In addition, while the Judge gives some consideration to the individual circumstances of the Appellants, there is no assessment of the nature of the threats to them.

(d) Finally, the Osman test does not feature anywhere in the decision.

Given our analysis above, we conclude that there are errors of law in relation to the FtT's consideration of the return to Pakistan scenario.

25. We cannot be confident that a dismissal of the Appellants' appeals to the FtT would have resulted irrespective of the errors of law identified above. In our estimation they are clearly material.

Conclusion

26. On the grounds and for the reasons elaborated above:

(a) We set aside the decision of the FtT.

(b) While it appears appropriate for the Upper Tribunal to remake the decision, consideration will be given to the parties' submissions, to be received within 14 days of promulgation hereof, relating to this discrete issue, coupled with the

mechanics of the remaking exercise and, in particular, the need for a further hearing.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 12 June 2015

APPENDIX

CHRONOLOGY

16 September 2008	The First Appellant applies for a student visa to travel to the UK. This is refused. The First Appellant appeals to the First-tier Tribunal.
31 December 2008	The Second Appellant applies for a student visa to travel to the UK. This is granted.
January 2009	The Second Appellant arrives in the United Kingdom on a visa valid from 2 January 2009. Her leave is subsequently extended.
4 May 2009	The First Appellant's appeal against the Respondent's refusal of Entry Clearance as a student is dismissed by Immigration Judge Wood (Appeal Reference OA/78073/2008).
20 July 2009	The First Appellant re-applies for a student visa to travel to the UK. This is granted.
August 2009	The First Appellant arrives in the United Kingdom on a visa valid from 9 August 2009. His leave to remain is subsequently extended.
21 December 2012	The Appellants both claim asylum. Both have extant leave at the time.
18 January 2013	The Appellants' asylum claims are refused.
	The Appellants' lodge an appeal against the refusal of leave to remain.

11 March 2013	Determination of First-tier Tribunal ("**FtT**") Judge Mozolowski dismissing the Appellants' appeals.
15 March 2013	The Appellants submit an application to the FtT for permission to appeal.
16 April 2013	The Appellant's application for permission to appeal is refused by FtT Judge Frankish.
13 May 2013	The Appellants submit an application to the Upper Tribunal ("**UT**") for permission to appeal. The grounds argued in the application to the FtT are renewed.
22 May 2013	The Appellant's application for permission to appeal is refused by UT Judge Spencer.
11 June 2013	A pre-action letter is sent by Gray & Co. to the Respondent's Litigation Unit. Proceedings for judicial review of the decision of the UT refusing permission to appeal are raised.
4 January 2014	The Second Appellant discovers she is pregnant.
8 January 2014	The procedural first hearing on the petition takes place at which the 'Eba' test is addressed. Lord McEwan finds the petition raises an important point of principle and appoints the petition to a substantive first hearing.
13 February 2014	A hearing takes place before Lord Glennie on the petitioner's opposed motion for transfer of the case to the Upper Tribunal in terms of s.20(1)(b) of the Tribunals, Courts and Enforcement Act 2007 and RCS 58.11. The motion is granted and the decision reported as NA, VA, Petitioners [2014] CSOH 27.
27 September 2014	The Appellants' daughter Amaira is born.
24 October 2014	A hearing before Deputy President Ockleton and UT Judge Deans on the transfer of the case to the UT

takes place. The UT is not satisfied it should determine the question of reduction of its own decision, and considers that the matter of reduction should be dealt with by the Court of Session before the case could proceed to a substantive hearing on the appeal.

2 December 2014 A motion is enrolled for the prayer of the petition seeking reduction of the UT decision of 22 May 2013 to be granted.

9 December 2014 The interlocutor of 13 February is recalled and the prayer of the petition is granted reducing the decision of the UT of 22 May 2013. The matter is subsequently appointed to a substantive hearing before the UT for 29 May 2015.

22 December 2014 A letter is sent by Drummond Miller to the UT enclosing certain paperwork relative to the Court of Session proceedings and a paper apart entitled "variation of grounds to appeal".

9 January 2015 Permission to appeal is granted by Deputy President Ockleton "in light of the note of the Lord Ordinary". The amended grounds are permitted to be argued.