

IMMIGRATION APPEAL TRIBUNAL

Date: 24 November 2004
Date Determination notified:
8th February 2005

Before:

The Honourable Mr Justice Ouseley (President)
Mr P R Lane (Vice President)
Mr I W Dove QC

Between:

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Appearances:

For the Appellant: Mr Juss, instructed by Hammersmith & Fulham
Community

Law Centre

For the Respondent: Mr Davidson, Home Office Presenting Officer

DETERMINATION AND REASONS

Background

1. The Appellant is a citizen of Somalia who arrived in the United Kingdom on 18 June 2003 and claimed asylum on arrival. She appeals against the determination of an Adjudicator, Mr D A Radcliffe, who dismissed her appeal in a determination which was promulgated on 17 November 2003. That appeal was against the Respondent's refusal to grant asylum on 6 August 2003. The matter came before the Tribunal following an initial refusal of leave on 22 December 2003, which was reversed by a decision of Mr Justice McCombe dated 16 February 2004. The issues on appeal

relate to the fairness of the Adjudicator's questioning of the Appellant.

Facts

2. The essence of the Appellant's claim is set out in paragraph 3 of the Adjudicator's determination. The Appellant claims that both of her parents were from the Isaaq tribe from northern Somalia. She claims, however, to have been brought up in the Balaad area of Somalia by her grandmother who, she contends, was a member of the Ogaden tribe. She claims to have lived all her life amongst the Ogaden, pretending to be one of them. She fears that, if they find out she is in fact an Isaaq, they will kill her. She is equally concerned that she cannot relocate to northern Somalia because her Ogaden accent will be identified by the Isaaq clan members, putting her at risk of death in their hands. On this basis she claimed asylum, and also breaches of Articles 2, 3 and 8 of the ECHR were she to be returned as proposed to Somalia. She had said that her grandmother had assisted in her departure.
3. Until the hearing before the Adjudicator, there had been no suggestion that the grandmother, though ageing, was not alive, able to provide some familial support and protection to the Appellant, as she had been doing. However, at the hearing the Appellant said that her grandmother had died. The Adjudicator recounted the evidence as follows in his determination:
 - "6. She said that her grandmother died around the end of August 2003. At the time of the Asylum Interview on 24th July 2003 her grandmother was still alive. She said that she mentioned her grandmother's death in her Witness Statement dated 7th October 2003. Asked why it wasn't referred to in the Statement, she then said she wasn't sure if she had mentioned it to her solicitor, Ms Sheona York. She agreed that her grandmother's death was 'rather important' and that it was surprising that there was no reference to it in her Witness Statement. Invited by the Adjudicator to call Ms York as a witness if she wished to, she said it was possible she didn't tell her. This was because the issue was not raised. If Ms York had asked her about it she would have mentioned it. If she went back to Somalia she would have no-one to live with. If she returned to Somaliland she would have no-one to live with and there would be a 'problem' of people thinking she was from 'the Ogaden' because of her accent. There was a 'possibility' that she might be attacked. She said that she now lived with her sister Safia and Safia's four daughters and one son in Isleworth."
4. The Adjudicator concluded that there were significant discrepancies in her account and found that the Appellant was lacking in credibility over what she said about her grandmother's death. He said:

- “9. I did not find the appellant a credible witness as to whether she had been persecuted. There were significant discrepancies in her accounts. She said in evidence she feared death at the hands of the Ogaden if she returned to Balaad, and yet she said in the SEF Interview that when some Ogaden realised that she was an Isaaq nothing happened to her except verbal abuse and touching (see the answer to question 29).
10. Her story about her grandmother’s death lacked credibility. In the appellant’s witness statement which was dated 7th October 2003, there was no reference to the grandmother dying in August 2003. I have no doubt whatsoever that if the grandmother had died in August 2003 that fact would have been communicated to Ms York, the solicitor who the appellant said took her statement. The fact that it was not communicated to Ms York led me to conclude that I could not be satisfied to the lower standard of proof that the grandmother had died, nor consequently was I satisfied to the lower standard of proof that the appellant had a grandmother who was a member of the Ogaden tribe who had lived in Balaad.
11. I noted furthermore that in the Skeleton Argument dated 8th October 2003, apparently compiled by a member of the Hammersmith Law Centre, there was a reference to the grandmother ‘becoming old and ill’. If the grandmother had died at the end of August, this fact would have been mentioned because it was vital for the appellant to show that she had no-one to look after her. The death of the grandmother was known to be of seminal importance to the appellant and her failure to mention it to Ms York was of great significance in the context of her claim to be vulnerable on return. In her evidence the appellant gave conflicting accounts as to whether she had told Ms York about this event. To start with she was sure that she had told Ms York. When asked why it wasn’t in her Witness Statement she became less sure and said that she wasn’t sure that she had mentioned it at all. She agreed that it was an important part of her case and it was surprising that there was no reference to it. My invitation to Ms Brown of Counsel to call Ms York was not accepted. In all the circumstances I was not satisfied to the lower standard or proof that the appellant had told Ms York at all. I concluded that if the grandmother had really died that would have been mentioned to Ms York. The fact that it wasn’t significantly damaged the credibility not just of the grandmother’s death story but of the whole core of the grandmother’s story. There was no corroboration of the existence of a grandmother living in Balaad.”
5. The Adjudicator then rejected the value of other evidence given to suggest that the Appellant was from southern Somalia. He concluded:
- “13. Taking fully into account the objective evidence drawn to my attention by Ms Brown about the vulnerability of returning single women and balancing that against my clear adverse credibility findings, I could not be satisfied to the lower standard of proof that the appellant had fled Somalia because she feared persecution nor was I satisfied to the lower standard or proof that the story about living with her grandmother in Balaad was true. If she was a member of the Isaaq clan she was unlikely to be subjected either to

a risk of persecution by other clan members or Article 3 mistreatment.”

6. The Adjudicator then rejected the evidence of the Appellant and another witness who claimed to be her sister, and if that rejection were wrong, rejected the claim that the Appellant’s return to Somalia would be a disproportionate interference with such rights as she might have under Article 8.
7. It is clear that the evidence about the grandmother’s death was the major influence in the Adjudicator’s rejection of the Appellant’s credibility.
8. The issues arising in this appeal centre on the evidence which was adduced at the hearing and the impact on it of the way in which the Adjudicator asked questions about the grandmother’s death. We, and the parties, have been provided both with the Adjudicator’s record of proceedings and also with the notes of the proceedings taken by Counsel who represented the Appellant at the time of the hearing, Ms Grace Brown. It appears from those records that, having given evidence in respect of her case in line with what has been set out in paragraph 2, the Appellant said that her grandmother had died. Because of the lateness and importance of that evidence, the question naturally arose as to whether that was in fact so, and if so, when, and when the Appellant knew of it. Taking the matter from the Adjudicator’s record of proceedings, his note of her answers to him is as follows:

“If I went back now to the south, I would have no one to live with. My grandmother died around the end of the eighth month 2003. I don’t remember the exact date but I heard about the end of the eighth month – I know it was August. I referred to it in my statement to my solicitors of 7/10/03. I thought I had mentioned to my solicitor Sheona York. I am not sure if I did mention it. I agree it’s rather important – it’s surprising that there is no reference.”

9. In Ms Brown’s notes of the proceedings, there is a note of the Appellant saying that if she returned to the south she would have no one to live with, and then she has noted: “[Fifteen minutes on why grandmother’s death not mentioned]”.
10. There is no record in Ms Brown’s notes of the nature and extent of the questions. However, she has recorded that she made a formal objection to the questions which had been put by the Adjudicator and, further, an objection that the Appellant had not been permitted to give full answers because she and the interpreter had been continually interrupted by the Adjudicator. She records the Adjudicator in response as saying that the Appellant was free to say anything that she wished, in effect giving the Appellant the

opportunity to add anything which she felt she had not been able to say. Nothing of significance was added, according to the record. The Adjudicator makes no reference in his record of proceedings to these objections.

11. A witness statement was lodged by Ms Brown affirming the truth of the grounds of appeal in accordance with directions given by the Tribunal, and a later further statement. In the first statement, she described the Adjudicator's manner as being "*overbearing*" and "*intimidating*". She reiterated her concern in relation to the interruption of the interpreter by the Adjudicator and the interruption of the Appellant's answers. In a second statement dated 24 March 2004, she attached her notes of the proceedings and reiterated her complaints about the Adjudicator's manner. Ms Brown's first statement said that the Appellant had repeatedly been prevented from giving full answers, and that the interpreter would sometimes be prevented from repeating the whole answer, by the Adjudicator putting further questions. She had specifically complained about this and asked for her complaint to be recorded. She was unable to give further details as to the questions because, as she said in her second statement, as soon as the answer began to be translated, another question was asked. This objection, as with the other complaints, related to the Adjudicator's questions about the grandmother's death.
12. The Adjudicator was provided with the grounds of appeal and the witness statements. In his comments on these dated 8 November 2004, he denied that he was overbearing or intimidatory. He stated:

"There were occasions when I asked the interpreter to ask the Appellant to give shorter answers, in order to assist the interpreter, Mr Musa Hussein, who was trying to do his best to translate answers. However because of their length, I decided that it would be much easier for Mr Hussein if the Appellant paused to enable Mr Hussein to translate the more easily."
13. He went on to say that he did not continually interrupt the interpreter.

Submissions

14. At the appeal hearing, Mr Juss identified three criticisms of the Adjudicator. Firstly, he had effectively entered the fray and had done so in an overbearing and hostile manner. There were too many questions and this, the manner in which they had been asked and the constant interruptions, had prevented the Appellant from explaining her evidence as she had wanted to. He should have asked Ms Brown to ask the questions; he should not have asked them when he did, if he were going to ask them. Secondly, he had

impeded the giving of evidence by the Appellant through his interruptions. Lastly, Mr Juss submitted that on the basis of background evidence there were good grounds to suppose that young Somali women were separated at birth from their parents, and that therefore there was a sensible foundation for the Appellant's story which the Adjudicator had not addressed.

15. The first two submissions of Mr Juss require consideration of MNM* [2000] UKIAT 00005 dealing with the Surendran guidelines which provide advice on dealing with cases where the Home Office is unrepresented. He referred to paragraph 19, which in part says:

“In Muwyinyi v Secretary of State for the Home Department (Immigration Law Update Vol 3 No 3 p. 13) the President observed that adjudicators were not bound to accept accounts at face value but could and should probe apparent improbabilities. However, they must not involve themselves directly in questioning appellants or witnesses save as was absolutely necessary to enable them to ascertain the truth and must never adopt or appear to adopt a hostile attitude. That is wholly consistent with the Surendran guidelines which show how the adjudicator should conduct such an exercise.”

16. Mr Juss also placed considerable reliance on the Tribunal decision in Oyono [2002] UKIAT 2034.

“32. When evidence is being taken from a witness and where there is representation on both sides, an Adjudicator's role is of silent listening. It may very occasionally happen that an Adjudicator is so unclear as to what he has heard that he needs to ask for something to be repeated and, of course, there may occasionally be difficulties with interpreters causing the Adjudicator's general control over the proceedings to come into play. But it is for the parties to bring out evidence in the order they think appropriate and it is for the parties to put whatever contradictions in the evidence need to be put to the witness. When the evidence has been finished, in the sense that there has been examination-in-chief and cross-examination and re-examination, it may be that the Adjudicator wishes to put matters arising out of the evidence to the witness: but the time for that is *after re-examination*. If the Adjudicator does ask the witness any questions, he must then always give an opportunity to the parties to ask any further questions which arise from his. An Adjudicator who intervenes during the course of evidence is running the risk that he will be seen to be taking the side of one party or the other.”

That case addressed the question of the role of the Adjudicator in a case where both the Appellant and the Home Office were represented. It is therefore understandable and correct that the advice given was that, in those circumstances, an Adjudicator should await the conclusion of examination-in-chief, cross-examination and re-examination before asking questions which arose out of the substance out of the evidence.

17. It was not said here that the Adjudicator was not entitled to reject the Appellant's credibility because of the evidence about the grandmother's death; rather, the case was that if that were to be the basis of the decision, that had to be reached fairly, which it had not been. Although Mr Juss said that the Adjudicator had placed too much weight on the evidence about the grandmother in reaching his conclusions in credibility, it is not arguable that it was an error of law for him to base his reasoning on it. Mr Juss accepted that, following what he called "*the right process*", the Adjudicator could properly reach the decision he did.
18. We note that the complaint is not of actual or apparent bias but of conduct which was unfair because it had the effect of curtailing and inhibiting the giving of the Appellant's evidence.

Conclusions

19. Prior to dealing with the substance of the submissions, we wish to draw attention to a decision which is commonly quoted to the Tribunal and which has emerged in this case at paragraph 4.3 of the Appellant's grounds of appeal. In the Tribunal decision in Guine [13868], it said:

"A decision which concentrates primarily on findings of credibility for its outcome is in general more likely to be found to be flawed ..."

This quote was added to the comments of Turner J in R v IAT ex parte Hussain [1982] Imm AR 23 to the effect that the assessment of credibility was not the true focus of an Adjudicator's task.

20. This extract from Guine, quoted out of context, puts the matter far too high and should not be cited again. Findings of credibility are one of the primary functions of the Adjudicator, since they lead to the establishment of much of the factual matrix for the determination of the Appellant's case. In some cases, but by no means all, the issue of credibility may be the fulcrum of the decision as to whether the Appellant's claim succeeds or fails. Therefore, it would be a misdirection to say that findings of credibility are not an important element upon which the Adjudicator should concentrate and for which the Adjudicator should provide appropriate reasons. Turner J was right to point out that an assessment of credibility is not the ultimate focus of an Adjudicator's determination. In an asylum or human rights case, that focus is the potential breach of either Convention which will usually involve an assessment of the nature and risk to an Appellant of his removal. An Appellant who is partly or even wholly disbelieved may still be at a real risk eg for his ethnicity. He may have lied to bolster a true case. Yet that does not remove or even undermine the need to establish, to the

appropriate standard of proof, the factual basis for the consideration of risk. The citation of what Turner J said in Hussein has been too often used as an invitation to ignore credibility and its importance.

21. We do not regard the point in the proceedings at which the Adjudicator intervened, that is during the presentation of evidence-in-chief when there was to be no cross-examination, as unfair. Where there is a Home Office Presenting Officer, any Adjudicator questions should be left till after cross-examination and re-examination. The advice in Oyono should be followed. That is very different from the situation in a case where the Home Office is unrepresented, and where the Appellant's account will not be tested through cross-examination.
22. Where the Home Office is unrepresented and therefore the appellant will only go through his or her evidence once, it may well be more sensible to raise such issues at the point in the evidence when they arise rather than waiting until the end. Indeed, to undertake all questioning after the appellant has rehearsed his or her evidence has the potential to make it appear that the Adjudicator, in the absence of the Presenting Officer, is assuming some of the Presenting Officers' cross-examination or adversarial role which is, of course, inappropriate.
23. Adjudicators are also expected to have read beforehand the most significant papers for the case. They are accordingly expected to be aware of the main aspects of the claim. Where significantly different evidence is given in chief orally for the first time, it is only to be expected that there will be an intervention for the purpose of understanding whether the evidence is now being accurately given or misunderstood by the Adjudicator.
24. The Adjudicator, it appears to us, was surprised by the new evidence, sought clarification and had no idea that the answers to him would be so changeable, each giving rise to further questions. He would have had no idea at the outset how long it would take, or that it would take more than a very few minutes, yet once embarked on it, he could properly feel that it was better to conclude the questions rather than return later to it. It is a question of judgment for the Adjudicator, where the Home Office is not represented, as to how far he asks questions at the moment when a new point arises of such apparent importance, or whether he leaves it to the end of examination in chief. The Adjudicator correctly did give Ms Brown the opportunity to ask further questions of the Appellant arising out of his own questions and we note that there do not appear to have been any further questions raised on the point, from either the Adjudicator or Miss Brown's note.

25. We also accept that the Adjudicator did give the Appellant the opportunity, following a complaint, to say what she wanted to say. We do not regard that as an opportunity lacking real substance.
26. The point at which the questions were asked was not itself a matter to which Ms Brown took exception, nor could she properly have done so. It follows that we do not accept Mr Juss' suggestion that it was unfair or an error of law for the Adjudicator to ask questions during the course of the Appellant's evidence rather than to wait until its conclusion.
27. There was no objection by Ms Brown either to the fact that it was the Adjudicator who asked these questions. It is always open to a representative to say that he or she intends to follow up the point, now or later. If that is said, Adjudicators should allow examination-in-chief by the representative to be the means whereby the issue is developed. The Adjudicator can always come back to it if necessary. There is, however, no obligation on the Adjudicator, quite contrary to Mr Juss' suggestions, to ask the representative to ask the questions. It may be wise to do so in certain instances; it may avoid misunderstandings; but it may also be too roundabout a way of obtaining answers to the real questions which the Adjudicator has. These are essentially matters for the judgment of the Adjudicator. Indeed, it is clear from the Surendran guidelines, as well as WN (DRC) [2004] UKIAT 00213, that the Adjudicator can ask questions and is under no obligation in law or fairness to invite the representative to ask them instead.
28. Mr Juss' submissions on this focussed in particular on the statement in MNM that Adjudicators must not involve themselves in direct questioning save where absolutely necessary. There is a danger that that quote could give a wholly false impression of the role of Adjudicators. The Surendran guidelines show the circumstances when direct questioning is necessary, which must now be read in the light of the Surendran guidelines and their necessary evolution in WN (DRC), in which the Tribunal said:

"38. Questions should not be asked in a hostile tone. They should not be leading questions which suggest the answer which is desired, nor should they disguise what is the point of concern so as to appear like to a trap or a closing of the net. They should be open ended questions, neutrally phrased. They can be persisted in, in order to obtain an answer; but they should not be persisted in for longer than is necessary for the Adjudicator to be clear that the question was understood, or to establish why it was not being answered, or to pursue so far as necessary the detail underlying vague answers. This will be a matter for the judgment of Adjudicators and it should not usually take more than a few questions for an Adjudicator to establish the position to his own satisfaction. An advocate should always be given the chance to ask questions arising out of what the Adjudicator has asked, which

will enable him to follow up, if he wishes, the answers given thus far. The Adjudicator can properly put, without it becoming a cross-examination, questions which trouble him or inferences from answers given which he might wish to draw adversely to a party. These questions should not be disproportionate in length to the evidence given as to the complexity of the case, and, we repeat, an Adjudicator should be careful to avoid developing his own theory of the case.

39. There is a tension, reflected in the guidelines, between fairness in enabling a party to know the points on which an Adjudicator may be minded to reach conclusions adverse to him where they have not directly otherwise been raised, and fairness in the Adjudicator not appearing to be partisan, asking questions that no-one else has thought it necessary to ask. This has proved troublesome on a number of occasions.

The tension should be resolved, so far as practicable, by recognising the following:

- (1) It is not necessary for obvious points on credibility to be put, where credibility is generally at issue in the light of the refusal letter or obviously at issue as a result of later evidence.
- (2) Where the point is important to the decision but not obvious or where the issue of credibility has not been raised or does not obviously arise on new material, or where an Appellant is unrepresented, it is generally better for the Adjudicator to raise the point if it is not otherwise raised. He can do so by direct questioning of a witness in an appropriate manner.
- (3) We have set out the way in which such question should be asked.
- (4) There is no hard and fast rule embodied in (1) and (2). It is a question in each case for a judgment as to what is fair and properly perceived as fair.

The Surendran guidelines and MNM should be read with what we have set out above.”

29. We add that Surendran and MNM should not be cited to us or to Adjudicators without WN (DRC) also being cited.
30. Questions can be unfair, both by what they ask and by the way, including tone, length and overall manner, in which they are asked. There was nothing here unfair about the information sought; the questions were directly relevant to the issues being considered including credibility.
31. The issue of the Appellant’s grandmother’s death was an entirely new issue which arose out of the blue in her evidence at the appeal. It had not been mentioned at any of the earlier stages at which her case was documented. It further appears from the record of proceedings that the questions were put by the Adjudicator in order to gain an understanding both of the circumstances of the

Appellant's learning of her grandmother's death and also how it came to be that this fact had not previously found its way into any of the documents in the case recording her evidence. That line of enquiry led to a number of questions being asked in order to establish as complete a picture as possible, it does not appear that the length of time taken (bearing in mind that the questions had to be put through an interpreter and this was an entirely fresh point) was excessive. They do not appear in style to have been asked as if in cross-examination. They are all directly and openly pertinent to what was clearly an important point which needed to be explored: the Appellant's grandmother was a central character in her case, and the point discussed in the evidence could well, and in the event did, resolve the Adjudicator's decision in respect of her credibility.

32. We accept that the questioning by the Adjudicator lasted some fifteen minutes which is quite a long time. But these questions were, to his mind, crucial. The Appellant was giving answers which changed when the obvious next question with its attendant problems were put to her. She was giving evidence through an interpreter which, as we shall come to, was giving rise to some problems itself. It also seems to us inevitable, where the answers appear to vary in such a way, that there will be an element of repetitive questioning simply to try to establish what exactly is the final answer of the witness. We do not see the length of questioning itself as being unfair or intimidatory, let alone as inhibiting such explanation as the Appellant had being provided. See also now in this context Ates v SSHD [2004] EWCA Civ 1347, Brooke LJ.
33. We turn to the way in which the questions were asked and first to the interruptions of the evidence. There appear to us to be essentially compatible versions of what was happening but viewed from different perspectives. The Adjudicator accepts in his comments on Ms Brown's statement that he intervened during the answers being given by the Appellant. It is not clear whether he is accepting interrupting the later translation by the interpreter of answers because he denies "*continually interrupting*" which suggests acceptance of some interruptions. We believe that that probably happened because of what Ms Brown says and it makes sense in the context of what the Adjudicator is saying.
34. We accept that the purpose of the Adjudicator's interruptions was, as he said in his comments, to ensure that the answers were given in shorter passages, more readily translatable. This improves the quality of the evidence. It is a common experience and problem of evidence given through an interpreter that the answers are too long for the translator to translate completely. It may be necessary to interrupt a witness' answers in order for translation to proceed. Whether that is necessary can really only be judged by the

Adjudicator. It may also be necessary to interrupt an interpreter when it is clear that the answer being translated does not respond to the question, just as it would be legitimate to interrupt the witness himself. We do not see anything in the interruptions by themselves as demonstrating that there was any unfairness.

35. We turn next to the criticism that the questions were asked in an overbearing and intimidatory manner. We also note that this allegation is made by responsible counsel, and denied by the Adjudicator, who may not be however in the best position to judge, or at any rate to judge the impact which his manner may be having on the evidence. We recognise that this allegation relates in part to the timing and duration of the Adjudicator's questions as well as to the interruptions. Taken individually those other points do not persuade us that there was any unfairness, as we have said. We think that this point has to be taken in the round with those other points in order to assess whether the hearing was fair or not.
36. We do not consider it necessary to reach a conclusion on whether the Adjudicator's manner was intimidatory or overbearing or not. We will assume, making it clear however that we are not reaching such a conclusion on the evidence, that it was. The root question remains, was the hearing unfair? The fact, as we assume it to be, that a judge may be at times overbearing or intimidatory does not of itself mean that a trial or hearing is unfair. It is necessary to see what impact that manner, seen together with the overall way in which the hearing has been conducted, has had on the fairness of the hearing. This is not to condone any such behaviour. The allegation is not one of actual or apparent bias.
37. It is not said by Ms Brown that she was prevented or inhibited from carrying out her function as counsel. The effect is said to be that the Appellant was prevented from giving her evidence fully or effectively.
38. We do not accept that at all. The Appellant was asked a number of questions about an important issue raised unexpectedly at the last minute and kept changing her answers when asked relevant questions about it. It is clear from the statement made by the Appellant for the purposes of the Statutory Review that her evidence also took Ms Brown by surprise. The Adjudicator allowed the Appellant the opportunity, following Ms Brown's objections, to say what she wanted to say. He allowed Ms Brown to ask subsequent questions but she chose, as a legitimate tactical decision, not to pursue the grandmother's death and why it had not been raised earlier.

39. The Appellant has produced no evidence as to what she was inhibited from explaining though she has said that she felt intimidated and Ms Brown says that she thought that the Appellant was *“unduly daunted”* by the Adjudicator’s manner. The Appellant’s statement for the purposes of Statutory Review says (paragraph 10) that she only became scared at the point where the Adjudicator asked her about her grandmother’s death. She says that this was *“because in truth I wasn’t sure about it ... after I heard the first news that she might have died, I think I felt emotionally that she was no longer alive, even though I did not know for certain”*. This is her explanation for becoming scared, not evidence as to what she was inhibited from saying. But it is easy to see why she would be scared; she admits that she was saying something which she did not know to be true and not saying what the truth was and she was being questioned about the late change of evidence in that respect. There is no evidence at all that she was inhibited from putting this, if it was indeed the explanation for her late, uncertain and variable evidence. We do not find it difficult to imagine an element of exasperation at the quality of the evidence.
40. In her Statutory Review statement, the Appellant says that her solicitor asked her, after the hearing, why she had not told her that her grandmother was dead. She says that she told the solicitor that she did not do so because she did not know if it was true. This is essentially the same as the reason she now gives for becoming scared when the judge asked her questions. Yet there is no reason for her to be scared, or to feel inhibited about telling her solicitor beforehand exactly what she thought and how she was uncertain about her grandmother. She does not suggest that she was.
41. It is difficult to see how the Adjudicator could have scared her or inhibited her into not saying something which she had been equally unwilling not long beforehand to reveal to her solicitor, preferring instead to say something which she admits she did not know to be true. It could not have assisted her case to have provided that explanation for her evidence, or to have stated that was her current understanding of what had happened to her grandmother.
42. We accordingly find no evidence of any actual unfairness. In reality, the problems stems from a surprise last-minute change in the evidence which the Appellant could not explain in any satisfactory way at all. She had plenty of opportunities to do so. The Adjudicator was entitled to find as he did.
43. It is right to observe that the Appellant’s statement in the Statutory Review contains material which represents the Appellant’s latest understanding of the grandmother’s position. This could not have been before the Adjudicator, but it does not show an error of law,

nor is there any material error of law such as would entitle us to look at it. It follows that the way in which the Adjudicator dealt with this issue in the circumstances of this case satisfied the requirements of the Surendran guidelines and MNM as considered and explained in WN (DRC).

44. Turning to Mr Juss's last point, we do not consider that there is any substance in the suggestion that the Adjudicator made a finding in respect of the Appellant's credibility that failed to have proper regard to its context in the objective evidence. It is clear from paragraphs 9 and 13 of the determination that the Adjudicator was alive to the context of the objective evidence, and that he made his findings with respect to credibility conscious of those matters. Mr Juss also accepted that the Adjudicator was entitled to reach the conclusion he did on the material before him.
45. Mr Juss submitted that it was an error on the part of the Adjudicator not to have noted Ms Brown's objections either in the record of proceedings nor in his determination. Such objections, and the grounds of them, should be recorded. But the failure to do so does not amount to an error of law. Nor has that caused any difficulty in resolving the appeal.
46. The appeal is dismissed. It is reported for what we say about the way in which Adjudicators ask questions.

MR JUSTICE OUSELEY
PRESIDENT