



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2018] CSIH 58  
XA82/17  
XA23/18

Lady Paton  
Lord Drummond Young  
Lord Glennie

OPINION OF THE COURT

delivered by LORD GLENNIE

in the Appeals

by

TF and MA

Appellants

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Appellants: Campbell QC, Haddow; Drummond Miller LLP  
(XA82/17 for Jain, Neil & Ruddy, Solicitors, Glasgow)  
(XA23/18 for Latta & Co, Solicitors, Glasgow)**

**Respondent: McIlvride QC, Massaro (TF), Pugh (MA); Office of the Advocate General**

30 August 2018

**Introduction**

[1] The appellants are both nationals of Iran. Their claims for asylum were rejected by the Secretary of State and their appeals to the First-tier Tribunal (“FTT”) and the Upper Tribunal (“UT”) were refused. Anonymity directions were made by the FTT in each case and confirmed by the UT. They remain in force.

[2] By the time the appeals came before the FTT and the UT, the claims for asylum advanced by each of the appellants included claims based on a well-founded fear of persecution arising out of their *sur place* conversion to Christianity, ie conversion to Christianity after their arrival in the United Kingdom. The tribunals did not believe that the conversion was genuine in either case and refused both appeals on that basis. Permission to appeal to the Court of Session was granted by this court.

[3] The appeals were heard together because they appeared to raise similar questions relating to the appropriate treatment of certain types of evidence in cases where the genuineness of the *sur place* conversion is challenged. They do in fact raise a number of overlapping questions, viz: as to the status of evidence from church leaders (or others holding positions of responsibility within a church) about the conduct of a person who has begun the process of admission into the church and as to the sincerity of his conversion to Christianity; as to the weight to be given to such evidence; and whether the usefulness of such evidence as a guide to the genuineness of the *sur place* conversion is undermined by findings that, in relation to other matters, the appellant, the applicant for asylum, has given evidence which is untrue or unreliable and/or may be said to undermine his basic credibility.

[4] We should note that it was not disputed on behalf of the Secretary of State that individuals who had converted from Islam to Christianity did face a risk of persecution if compelled to return to Iran. They would be regarded as apostates. They could not be expected to conceal their religious beliefs so as to avoid persecution: cf *HJ (Iran) v Secretary of State for the Home Department* [2011] 1 AC 596 per Lord Hope at paragraph 35 and per Lord Rodger at paragraph 82, considered in the context of religious practices in *MMY v Secretary of State for the Home Department* [2018] CSIH 16 at paragraph [30]. Hence the

importance of the question whether their conversion to Christianity was genuine; if it was not genuine they would be unlikely in Iran to act in a way which attracted attention and invited persecution. There was no suggestion in these appeals that the claim for asylum could succeed on the basis that, even if the *sur place* conversions were not genuine, the appellants would nonetheless be perceived as Christians because of their attendance at church in the UK and would, if returned to Iran, be persecuted as if they were Christians.

[5] In order to focus the issues of principle, it is useful to set out the nature of the evidence adduced by the appellant in each case to support his claim that he has undergone a *sur place* conversion to Christianity; to identify certain other claims advanced by the appellant in each case on which his evidence was not accepted and by reference to which his basic credibility was called into question; and to highlight certain aspects of the decision and reasoning of the FTT and the UT in each case which bear upon the questions to be decided by this court.

#### **TF – the relevant facts and findings**

[6] TF entered the UK legally in October 2013 on a student visa valid for five years. In July 2015 he claimed asylum on two grounds, namely his alleged *sur place* conversion to Christianity and his political activities, both in Iran and in the UK, with an anti-regime organisation known as NAMIR.

#### ***FTT's rejection of TF's account of involvement in anti-regime politics***

[7] The FTT judge rejected TF's account of his activities with NAMIR. He identified what he regarded as major inconsistencies in TF's account of distributing anti-regime leaflets in Iran in 2013 before he came to the UK; and he rejected TF's claim that he had been

arrested and tortured in Iran in connection with his leafleting activity, going so far as to conclude that a letter from a hospital relating to TF's treatment there for physical injuries and sexual harm suffered while allegedly in prison in Iran was fabricated in order to improve TF's chances of success in his asylum claim. In other words, TF's claim to have been involved in anti-regime activities leading to his arrest and torture in Iran was rejected on the grounds that his story was not credible and that his evidence in support could not be relied on. Similarly, his evidence of having attended meetings of the NAMIR organisation in the UK since his arrival here and of sending anti-regime books back to friends in Iran was disbelieved by the FTT judge, who held that his account had been fabricated. The judge found that his failure to provide full and accurate information in this regard "further damages his credibility and the credibility of his claim for asylum." The claim for asylum based upon his political activities was not insisted on before the UT or this court, no doubt because the rejection of that claim by the FTT was based on adverse findings of fact and therefore gives rise to no issues of law capable of being advanced on appeal.

*The claim based on "sur place" conversion*

[8] In support of his claim to have undergone a *sur place* conversion to Christianity since his arrival in the UK in October 2013, TF himself submitted a written statement and in addition gave oral evidence on which he was examined and cross-examined. TF claimed that he started going to church in Glasgow, at the Tron Church, in 2015. That was confirmed by Mr Taylor, who is referred to below, who confirmed that TF attended the Tron Church from 18 January 2015. TF's own account of the genuineness of his conversion was disbelieved. The FTT judge found that TF had been on a pilgrimage to Saudi Arabia in 2013, thereby undermining his claim that religion generally, and Islam in particular, did not play a

role in his life; and further undermining his contention that when he left Iran he was already planning to change his religion. The judge commented that TF had not provided full and accurate information about this and that “his failure so to do further damages his credibility and his claim for asylum in general”. The judge noted that during the period from October 2013 to October 2014, when TF was in Aberdeen, he only attended church once or twice, which did not appear to demonstrate a significant interest in Christianity. He was not impressed by the fact that TF did not know the name of the street in which the church was in Aberdeen.

*Church-based evidence in support of the claim based on ‘sur place’ conversion*

[9] TF produced supporting evidence from a number of witnesses who knew him and could speak to his involvement with Christianity and with the Tron Church in Glasgow which he attended. Amongst these was a friend (ME) who spoke to his belief that TF had converted from Islam to Christianity. ME explained that, on TF’s recommendation, he also had begun to attend the Tron Church in early 2015. The Tron Church is described by Mr Gunn (mentioned below) as being one of Scotland’s largest and most active city centre Evangelical Christian churches. It has a wide range of ministries reaching out to, amongst others, the local business community, university and international students, those with addiction issues and asylum seekers. Approximately 130-150 Iranian asylum seekers regularly attend mid-week meetings and Sunday services. It was explained to us by Mr Campbell QC, and we have no reason to doubt this, that that figure of 130-150 was numerically accurate but included both asylum seekers and those who had already been granted asylum, and it was the total of those attending the church to partake in a range of activities including, but not limited to activities designed to help them become members of the church.

[10] Evidence was given by a number of individuals involved in the Tron Church, namely Mr John S Taylor, Mr Mervyn Gunn and Mr Richard Gamble. We have already referred to Mr Taylor and Mr Gunn. All of them submitted letters on behalf of TF. Mr Taylor also gave oral evidence at the hearing before the FTT. We summarise the evidence given by these three witnesses in the following paragraphs.

[11] Mr John Taylor is a retired solicitor and missionary with OMF International. Before returning to Glasgow in August 2009, he had worked for some 34 years in Japan in cross cultural evangelism and church planting ministry. In his letter of 6 November 2015 submitted on behalf of TF he explained how he and his wife support the ministry of their home church, the Tron Church, by helping, amongst other things, the International Ministry of the Church in which, since about 2010, he has been involved with many Muslim asylum seekers from Iran and other parts of the Middle East. In the course of that involvement he has seen many people express an interest in Christianity at first, only to drift away later; while others had been sincere in searching the Bible for the truth of forgiveness of sin in Jesus. Several had come to a life changing faith in the Lord Jesus Christ. Against this background, he spoke of TF's attendance at and involvement with the Tron Church. TF first attended evening service there on 18 January 2015 and since then had attended the evening service of the church regularly. From January until the summer of that year TF also attended the Thursday evening Bible study, but those Bible study sessions had switched to a Tuesday which meant that, for a time, TF had had to stop attending because of other commitments on that day. He went on to say this:

"I have not been able to meet and talk with [TF] about faith in Christ and therefore cannot make any comment about his understanding of or commitment to the teachings of the Bible. However, his regular attendance at meetings in church at least shows a desire to learn more. For someone from a Muslim background with its teaching of dire consequences for anyone who may convert to other religions, this

seems at least to indicate a stronger declaration of intent than one might think of someone from a non-Muslim background.”

He concluded by asking, respectfully, that TF’s application to remain in the UK be treated “with the seriousness it deserves”.

[12] In a further letter dated 21 April 2016 Mr Taylor updated his information about TF. He noted that TF had soon been able to overcome earlier difficulties and make arrangements enabling him to come to the Bible study sessions on Tuesdays. TF had asked about baptism towards the end of the year and had been advised to learn more about the Christian faith by attending a “Christianity Explored” course at the church. At the beginning of March 2016 they started a seven-week Christianity Explored course which introduced the basics of the Christian faith by going through St Mark’s Gospel. The material for the course had been translated into Farsi and discussion took place with Farsi interpreters. The main Christianity Explored course took place on a Friday afternoon, with a “catch up” session on a Monday evening. The catch up session was led by Mr Taylor himself. TF, with his good level of English and his desire to serve in the church, was the interpreter for the catch up session. Mr Taylor said that he had come to know TF much better over these two months and had appreciated his desire to help others in the group (who were all former Muslims from Iran) to understand the teaching of the Bible better. He noted that as TF had done this, his (TF’s) own understanding of the Bible had increased. He would expect him to ask for baptism when baptism was next offered in the early summer. Mr Taylor added this:

“The Tron Church [...] is an evangelical church, adhering to the teaching of the Bible in all areas of life and conduct relating to Christian faith, Christian growth and evangelism. Whereas it is not possible to look into a person’s heart to ascertain whether or not a conversion to Christianity is more than just words, the church leaders look for a confirming work of the Holy Spirit in a person’s conduct. A consideration of such changes in conduct one may expect to see is in the attached document, ‘Conduct Expected of a Christian’, written by the Minister of The Tron Church ...

The normal procedure in The Tron Church is for the candidate for baptism to be interviewed by the Minister [...] and another elder. The ceremony of baptism and admission of new members normally takes place twice annually in the church's programme.

As a person from a Moslem background, [TF's] attending church meetings openly and regularly indicates a commitment to learn about the Christian faith and he is clear about his own personal faith in Jesus."

[13] Mr Taylor wrote another letter dated 27 July 2016 in respect of TF. That letter was mainly a repetition of the earlier letter of 21 April 2016, but it added to the last paragraph quoted above in the following terms:

"As a person from a Moslem background, [TF's] attending church meetings openly and regularly indicates a commitment to learn about the Christian faith. He is clear about his own personal faith in Jesus and growing in his understanding of what that faith means in his daily life. He also helps where he can in interpreting in the small Bible Study groups so that fellow Iranians with limited English can understand more about the Christian faith.

I am convinced that this active faith in the Lord Jesus Christ would place him in danger if he were to be returned to Iran, where the authorities view conversion to Christianity as blasphemy. I would therefore request that this application for permission to remain in the UK be granted so that he may continue to live a useful life in UK society."

[14] In his letters of 21 April and 27 July 2016, Mr Taylor referred to the document "Conduct Expected of a Christian" which he attached. That is a three page document dated 28 August 2015 and signed by the Minister, bearing the subtitle: "A brief examination of the Scriptures to see the true nature of conversion to Christianity and the conduct that may be expected thereafter." It is unnecessary to quote it at length. Under reference to passages from the New Testament, the document says that when a person becomes a Christian, he will show evidence of Spiritual rebirth in a number of ways, viz.: thankfulness to God for the forgiveness of his sins; a new love for Christ and his people; a desire to know more about God from his word; prayer, as an expression of fellowship with God as Father; a

concern to tell other people about Christ and his love; and positive changes in behaviour and character as the fruit of the Holy Spirit. It goes on to say that “real faith” includes “public witness of both lips and life to the Lordship of Jesus Christ in all things”. New Christians will be encouraged “to grow in their knowledge of and relationship with God by reading the Bible, developing a habit of prayer, joining in corporate worship, having fellowship with other Christians and engaging in active service both in the community of believers and in outreach to the non-Christian world.” The document goes on to say that in the Tron Church those matters are taken seriously and all who join in the Tron Church are encouraged to do the same. It points out that whilst it is true that many claim allegiance to Christ, Jesus himself “was not taken in by false professions of faith”. Jesus urged his followers not to be naïve. After reference to the passage in Matthew 7:18-20 to the effect that a good tree cannot bear bad fruit nor a bad tree good fruit, so that “by their fruit you will recognise them”, the Minister concludes in this way: “Over the years, both previously in my medical practice as a physician and subsequently in the ordained ministry, I have learned that time, and the fruit of a person’s life, are a much more reliable guide to true spiritual status than the early witness of their lips alone.”

[15] Mr Mervyn Gunn submitted a letter dated 1 July 2016 on behalf of TF. He and his wife are active members of the Tron Church in Glasgow. He is deputy leader of the church’s Farsi Ministry, which is designed to meet the needs of Iranian asylum seekers domiciled in Glasgow. They seek to explain the gospel to those expressing an interest in Christianity. It was within that context that Mr Gunn first met TF. TF first came to the Tron Church in January 2015. He became a regular attender at the evening service and also attended a Tuesday evening Bible study conducted in English and translated into Farsi. Mr Gunn went on to say this:

“It was evident that he [TF] had been through a difficult time and was searching for new meaning in his life.

In late 2015 [TF] claimed that he had found a personal faith in Jesus Christ and enquired into baptism. We encouraged him to learn more of the Christian faith he was professing to believe. To that end he was invited to complete a ‘Christianity Explored’ course which ran for seven weeks between March and April 2016. This course was first developed by All Souls Church of England in London. It is used globally to introduce people to the key tenants (*sic*) of the Christian faith.

[TF] assisted the Course Leader by acting as interpreter. In doing so it was evident that his own understanding of the Bible significantly improved. He continues to profess faith in Jesus Christ. We expect that he will come forward for baptism when it is next offered in late summer 2016.

While in no way wanting to deprecate such a profession of faith we do not rush to administer baptism until we feel we know the person reasonably well and are confident that their profession of faith is genuine. In this we are held by our patent of generally holding just two or three services of baptism and admission to membership of the congregation per year. This gives us time to ensure adequate instruction and mentoring of individuals before they are baptised and become members of the congregation, events we see as belonging together. Due to language and cultural barriers, this process will usually take several months.

In [TF’s] case he is being mentored by John Taylor, a retired solicitor and missionary with OMF International.

When a person declares themselves to be a Christian the church looks for evidence of Spiritual new birth e.g.

- thankfulness to God for the forgiveness of his sins,
- a new love for Christ and his people,
- a desire to know more about God from his word,
- prayer, an expression of fellowship with God as Father
- a concern to tell other people about Christ and his love
- positive changes in behaviour and character as the fruit of the Holy Spirit

Based on our interactions with [TF], over the past 18 months, we are convinced that he is a genuine convert to Christianity. He continues to grow in his faith and has a clear desire to share his faith with others.”

The letter went on to say that TF was well liked and respected both by his fellow asylum seekers and by members of the church and expressing the writer’s confidence that he would make a positive contribution to the country, ending with a request that he be allowed to stay

in the UK “to avoid the persecution that he would inevitably face in Iran as a convert from Islam”.

[16] Richard Gamble describes himself as a “Ministry Apprentice” at the Tron Church in Glasgow. He wrote a reference for TF in a letter dated 3 July 2016. He first met TF in the context of the International Ministry at the Tron Church. He described him as an intelligent and polite individual who is very appreciative of all that he is involved with at the Tron Church. The relevant paragraphs in that letter read as follows:

“[TF] was considered for baptism last year but was recommended to complete Christianity Explored to help him grow in his understanding of the Christian Faith. He completed this course in April of this year and because of his competency in English was able to help others in his group serving as a translator.

I believe [TF] has a genuine Christian faith. He testifies to that himself by saying “my faith in Jesus is real and that’s not because of just getting my permission to stay in the UK”. His conversion from a Muslim background places him in great danger of persecution if he were to be refused residency in the United Kingdom. His known attendance at church and professing Christian faith would certainly attract the hostile attention of the authorities.”

*FTT's decision on the claim based on TF's 'sur place' conversion*

[17] The FTT judge stated (in para 132) that he had taken all the above evidence fully into consideration. His conclusion on the matter of TF’s claimed conversion to Christianity is set out in paras 133 – 144 of his decision. It bears quoting in full because of the discussion that follows hereafter:

“133. As already referred to in his said letter of 6 November 2015 Mr Taylor has seen many people express an interest in Christianity at first only to drift away whilst others have been sincere in researching the Bible for the truth of the forgiveness of sin in Jesus.

134. It is clear from the evidence from the Tron Church that the Appellant has been actively involved in the activities of the Tron Church since January 2015 and I have no reason to doubt the factual information provided by the representatives of the church in respect of the Appellant’s attendances at the church services and church activities.

135. As already referred to in his said letter of 21 April 2016 Mr Taylor confirms that it is not possible to look into a person's heart to ascertain whether or not the conversion to Christianity is more than just words and that the church leaders were confirming work of the Holy Spirit in a person's conduct and reference was made by Mr Taylor to the document "Conduct expected of a Christian". As I noted in terms of the letter of 1 July 2016 Mr Mervyn Gunn of the Tron Church is convinced that the Appellant is a genuine convert to Christianity and that he continues to grow in his faith and has a clear desire to share his faith with others.

136. In terms of his letter of 3 July 2016 Mr Richard Gamble of the Tron Church believes that the Appellant has a genuine Christian faith and in his last letter of 27 July 2016 Mr John S Taylor specified that he is convinced that the Appellant's active faith in the Lord Jesus Christ would place him in danger if he were to be returned to Iran where the authorities viewed conversion to Christianity as blasphemy.

137. It is my view that the said members of the Tron Church as referred to above namely Mr Mervyn Gunn, Mr Richard Gamble and Mr John S Taylor are individuals committed to the Christian faith and providing genuinely held beliefs in particular Mr Taylor who had provided oral evidence at the hearing on behalf of the Appellant.

138. Mr Taylor indicates his belief that the Appellant's conversion to Christianity is genuine and I accept the sincerity of Mr Taylor's belief in that regard.

139. Mr Taylor specified in his letter of 21 April 2016 that it is not possible to look into a person's heart to ascertain whether a conversion to Christianity is genuine or not. He also confirmed in his letter of 6 November 2015 that through his involvement with the church he has seen many people express an interest in Christianity at first only to drift away later whilst others have been sincere in researching the Bible for the truth, several having come to a life changing faith in the Lord Jesus Christ.

140. I have looked at all the evidence in the round and taken into account my other findings herein before reaching my conclusions in respect of the Appellant's claimed conversion to Christianity. As already referred to there have been certain areas where the Appellant has failed to provide honest information in his claim for asylum and I consider it reasonable to conclude that his failure to be truthful in these matters undermines his claimed conversion to Christianity.

141. I consider it appropriate to ask the question if the Appellant has been untruthful about the matters where I have already made findings about his lack of truthfulness, can I consider him to be truthful about his claimed conversion to Christianity. When he lived in Aberdeen for a period of over one year he only attended, according to his evidence, a church once or twice and could not remember where the church was in Aberdeen. As indicated I had the opportunity of observing and listening to the Appellant give evidence at the hearing and it is my conclusion

that the Appellant has not genuinely converted to Christianity and is not in the process of genuinely converting to Christianity.

142. It is my view that the Appellant is claiming to have converted to Christianity or claiming that he is converting to Christianity because it would assist him in his claim for asylum in the UK.

143. I do not accept that the Appellant's claimed conversion to Christianity is genuine.

144. It is my view that if the Appellant is returned to Iran he would not be of interest to the authorities, in particular I do not accept that if the Appellant is returned to Iran he would continue to practice the Christian religion."

### *Appeal to the UT*

[18] It is unnecessary to set out at any length the brief reasons given by the UT in dismissing the appeal. The UT judge first referred to the issue about whether TF had taken part in a pilgrimage in Saudi Arabia and concluded that the FTT had been correct in its decision on this point. Of more critical importance is the reasoning in paragraph 4 of the decision which we quote in full:

"4. The appellant was found to be an unsatisfactory witness about past political involvement. He now says that this chapter of evidence should have been held as immaterial to his present claim. However, there is no error of law in finding that the appellant's failure to provide honest information on another aspect "undermines his claimed conversion to Christianity" (paragraph 140). That is a rational approach to finding the facts."

The UT judge went on (in para 5) to dismiss an argument by the appellant that there were no good grounds on which the evidence from church witnesses that TF "engaged with the Christian faith and was a committed believer" should have been rejected. He said that far from rejecting the evidence of those witnesses the FTT judge found them "utterly sincere". But that "did not dictate his conclusion on whether the conversion was genuine or simply assumed to manufacture a claim".

## **MA – the relevant facts and findings**

[19] MA entered the UK illegally in about October 2015. He claimed asylum when he was encountered by police in Kent. His original claim for asylum rested on the claim that he was perceived to be a homosexual and therefore at risk of persecution if returned to Iran. That claim was rejected by the Secretary of State. When the matter came before the FTT the claim was presented also on the basis of his alleged *sur place* conversion to Christianity since his arrival in the UK, which had not been raised before the Secretary of State. The FTT judge disbelieved the appellant on each ground. He expressed himself in robust terms in para 2 of his Decision, which formed part of the Introduction:

“2. At the time the application for asylum was made it rested on a claim that he was perceived to be a homosexual but by the time matters came before me there was now also a claim of conversion to Christianity. The respondent [i.e. the Secretary of State] did not believe the appellant’s account and neither did I. I consider the appellant’s account to be a multi-layered contrivance. He is not a genuine asylum seeker and should be removed from the United Kingdom on that basis.”

### ***FTT’s rejection of asylum claim based on perception that MA was a homosexual***

[20] MA’s case before the FTT was that he had been the subject of an unwanted sexual advance from a person of the same sex (“P”) which might in a country such as Iran give rise to the perception that he was homosexual. This account was rejected by the FTT judge who found his account of passively remaining seated and making no attempt to leave while unwanted advances were made highly improbable, inconsistent in the details given on different occasions, and at odds with what MA had subsequently told Mr Taylor (of the Tron Church) about having been in a homosexual relationship with P. He concluded that “either the appellant did not tell me the truth or he did not tell Mr Taylor the truth”. He concluded that the account of having a homosexual encounter with P was “simply a

fabrication” and “casts very serious doubt on the credibility of the appellant’s claims as a whole”.

[21] The judge made the following comments about how his assessment of MA’s credibility in relation to the alleged homosexual encounter might impact upon MA’s claim that he had converted to Christianity:

“26. ... Equally where that claim [i.e. the claim to asylum based upon a perception that he might be homosexual] forms the basis of a wider asylum claim including a subsequent claimed conversion to Christianity, credibility issues surrounding that claim must be a factor in consideration of that wider claim.

37. ... Furthermore it [the fabrication of the story about an alleged homosexual encounter] appeared to me to indicate that the appellant is someone who is prepared to contrive an account to suit his purposes and to go to elaborate lengths to do so. It is very likely that someone with this level of intelligence and ingenuity could also contrive a claim that they had converted to Christianity.”

As with TF’s claim for asylum based upon involvement in anti-regime political activities, MA’s claim for asylum based upon his homosexual encounter with P was not insisted upon before the UT and has not been revived before this court, no doubt for similar reasons, namely that it gives rise to no question of law but turns entirely upon the findings of fact on this point made by the FTT judge.

#### *The claim based on ‘sur place’ conversion*

[22] MA claimed to have undergone a *sur place* conversion after his arrival in the UK in October 2015. He was baptised at the Tron Church during the Evening Service on Sunday, 23 October 2016. This claim to *sur place* conversion had not been raised when MA first made his asylum claim. When he was interviewed on behalf of the Secretary of State in January 2016 he made no mention whatsoever of his interest in Christianity or his involvement with the Tron Church. The FTT judge found this surprising, given that on MA’s own case he had

been involved with that church since October 2015. That suggested to the FTT judge that the claim of conversion to Christianity was being kept “in reserve” as a “Plan B”, to be deployed if the initial claim based on perceived homosexual orientation should fail.

[23] MA called evidence from a number of individuals in or with connections to Iran and/or the Tron Church in Glasgow. There was evidence, probably in the form of a statement, from a Mr D, who was in Iran and to whom MA had allegedly sent emails with translated verses from the Bible. The FTT judge rejected this as “simply a contrivance”. He expressed doubt as to whether Mr D even existed and concluded that: “if this man exists I consider he is simply part of an elaborate deception, whether or not an unwitting one.”

There was evidence also from Ms F, who said that her husband had known MA in Iran, and spoke of MA having assisted her with learning about the Bible. She said that for child care reasons she had moved from the Tron Church to a different “House Church” in Glasgow. Others who claimed to know MA indicated that he had had difficulties in Iran but did not appear to know the precise nature of those difficulties. The FTT judge approached all this evidence with caution and, in effect, rejected it all. There is no challenge to these findings of fact – they give rise to no question of law.

*Church-based evidence in support of the claim based on ‘sur place’ conversion*

[24] MA also produced supporting evidence from the following individuals connected to the Tron Church in Glasgow: John S Taylor, David Woodier, Mervyn Gunn and Alan Clark. It is this evidence which is important for present purposes. We refer to the evidence of each of them in turn.

[25] We have already described Mr Taylor’s position and role within the Tron Church. He wrote a letter dated 19 November 2016 in support of MA’s application. The introductory

part of that letter was to the same effect as the passages summarised from his letter of 6 November 2015 in support of TF (see para [11] above). It referred to his work in the International Ministry at The Tron Church over the previous seven years also and his observations, in some cases, of people drifting away after initial enthusiasm, in other cases of people sincerely searching for the truth, and in some cases of people pursuing their new faith and coming to a life-changing faith in Christ. The letter went on to refer more specifically to MA. It is in the following terms:

“[MA] is one who has come to a faith that is real and shows in his life. He first attended the evening service at The Tron Church in November or December 2015. He came not looking to change his religion but to find Iranian friends. As he continued to attend, he was reminded of reading a book about Jesus before. He was worried about many things when he came to church but found the teaching surprisingly relevant (Matthew 6:25 – “Do not worry”!). He attended the Tuesday evening Bible study for Iranians where he was in a group led by David Woodier. [MA] still attends the Sunday worship services and the Bible study which has now been moved to a Friday evening. Both the Sunday evening services and the mid-week Bible studies are translated into Farsi for Iranians who have difficulty understanding English.

When [MA] first came to church, a Christianity Explored course was in progress. He attended a couple of the sessions, but then enrolled for the full course in March – April 2016. This course was also translated into Farsi. Christianity Explored introduces the basics of the Christian faith, and we advise all who have an interest in learning more about Christianity to attend this course. [MA] seems to understand all that he learns in the various Bible studies and has an appetite for more. He asked for baptism on confession of his faith in the Lord Jesus Christ in September 2016. He was interviewed by leaders of the church and the Iranian Ministry and was baptised and admitted to membership of The Tron Church on October 23 at the Sunday evening service in our Kelvingrove building.”

Mr Taylor then described The Tron Church as an evangelical church and repeated the point made in his letter in respect of TF about it not being possible to look into a person’s heart to ascertain whether or not a conversion to Christianity is more than just words, and how church leaders look for a confirming work of the Holy Spirit in a person’s conduct. He referred to a document, which he attached to his statement, entitled “Christian Baptism:

General Practice Guidelines at The Tron Church” written by the Minister of the church, and then said this:

“[MA’s] Christian baptism and regular attendance at meetings in the church presents him with a problem. For someone who was born into a Moslem family, conversion to Christianity is regarded as apostasy and his behaviour, including his willingness to talk to others of his faith in the Lord Jesus Christ is regarded as blasphemy by the Moslem majority and raises the very real probability of him being persecuted if he were to be sent back to Iran.”

He ended the letter with a plea that MA’s application to remain in the UK be treated with the seriousness it deserved.

[26] David Woodier is a member of the Tron Church in Glasgow. He has been teaching Bible studies for over 20 years. He is also a teacher employed by North Lanarkshire Council.

He wrote a letter dated 21 November 2016 in support of MA. In that letter he said this:

“I can confirm that [MA] has been attending my weekly Bible study since November 2015 and regularly attends our Sunday evening services. He participates in the Bible study and asks questions that indicate a desire to know more about the Christian faith and how to live as a Christian. He also has near perfect attendance.

I have seen [MA] demonstrate a personal commitment to the Christian faith in the following ways:

He contacts me each week and asked me to send him a Bible study from the Gospel of John. He then translates this Bible study into the Farsi language and sends it to his friend in Iran. This is something that [MA] initiated. If I forget to do this, he always reminds me.

[MA] was insistent in asking the Tron church to baptise him. He was baptised on 23 October 2016.

The desire to witness about his Christian faith is a hallmark of genuine faith in Christ and not only marks [MA] out as a follower of Christ but also would make him a target of persecution, if he was returned to Iran.”

[27] We have already referred to Mervyn Gunn in the context of his evidence in support of TF. He wrote a letter dated 30 August 2016 in support of MA. Having explained that he first met MA in his role as deputy leader of the church’s Farsi Ministry, Mr Gunn said this:

“[MA] first came to the Tron Church in November 2015. He became a regular attender at our evening service and also attended a Tuesday evening Bible study conducted in English and translated into Farsi.

In addition to the above he completed a ‘Christianity Explored’ course in March 2016. This course, first developed by All Souls Church of England in London, is used to introduce people to the key tenants (*sic*) of the Christian faith.

It was evident that he had been through a difficult time and was searching for new meaning in his life. He asks good questions in our Bible studies and appears to be moving forward in exploring the Christian faith.

We are always mindful what a huge leap it is for them to come to a church from an Islamic background and we do not underestimate the pressures they are put under from the local Islamic community and their families in Iran.”

He asked that those matters be taken into consideration in reviewing MA’s request for asylum.

[28] Alan Clark is a mathematics teacher at a school in Glasgow where he has taught for 36 years. He was for a long time a member of North Kelvinside Parish Church of Scotland in Glasgow until it closed in December 2011. While there he served in various positions within the congregation, including acting as session clerk for nearly 20 years. He and his wife became members of the Tron Church in Glasgow in April 2012 and he now co-leads a Bible Study group for Iranian men on Friday evenings. He wrote a letter dated 29 November 2016 in support of MA’s asylum claim. In the letter he said this:

“I became involved in this Bible Study group in September of this year, and since then, [MA] has been in attendance every week. The study is conducted in English and translated into Farsi, and consists of reading a specified passage of the Bible each week, and looking at some discussion questions to try to get to the meaning of the passage. I have been impressed by [MA’s] enthusiasm, and particularly in his willingness to admit to not previously understanding something which has come out of the study. He regularly contributes to the discussions and does not hesitate to ask for clarification if he doesn’t understand a question.

[MA] was baptised and admitted to membership in the Tron Church on 23 October of this year, a service at which I was privileged to be in attendance. He is a valued member of our Congregation, and is eager to improve his knowledge of the Bible and his relationship with the living Lord Jesus.”

[29] Of these witnesses from the Tron Church, only Mr Taylor gave oral evidence in the course of which he was both examined in chief and cross-examined. The evidence from the others was adduced simply in the form of their letters. The FTT judge noted (at para 51) that because these other witnesses did not attend “they were not in a position to be cross-examined and their evidence tested”, which, he said, “weakened their evidence”. Since he did not challenge the honesty of those witnesses or question the reliability of their evidence so far as it went, it is difficult to know what he meant by this comment.

*FTT's decision on the claim based on MA's 'sur place' conversion*

[30] The FTT judge dealt with this part of the case under two headings. First he addressed the question of how to go about assessing a claim by an asylum seeker that he is a Christian convert. Under this heading he said this:

*“Claim to be a Christian Convert*

38. In approaching an assessment of someone who claims to be a Christian, regard must of course be had to evidence of those who come from what on the face of it at least are *bona fide* religious institutions or organisations. I am prepared to accept that at face value at least that officials in the Tron Church are in a position to express a view on whether someone is genuine or not. That view is not determinative but is entitled to respect and like any evidence falls to be weighed in the round.

39. Equally I accept that in assessing someone’s conversion one must have regard as to how long they claim to have had an interest in Christianity for and to assess their knowledge or lack of it in light of that. Equally I accept that not all churches place weight on the ability to learn passages from the Bible or to recite stories from the Bible. Some denominations place more weight on such abilities, others on other aspects of Christianity.

40. Equally care has to be taken in assessing the claim as a whole particularly having regard to the account of how someone came to be interested in Christianity in the first place. If that account is not capable of being believed on an objective basis then that must, as was accepted by Mr Latta [who appeared for MA], have a material bearing on whether the subjective claim of someone that they have converted ought to be accepted. Even Mr Taylor conceded in cross-examination that it is not possible

for anyone in the Tron Church to “look into the heart” of someone who claims to be a genuine convert.

41. There were a number of real difficulties with aspects of the evidence. I noted that the appellant’s claim that he was interested in Christianity and that he subsequently converted to it was only raised with the respondent, after his claim for asylum based on perceived homosexuality was refused. While it is not impossible that one could develop an interest in Christianity at any point, the expression of that interest and in particular conversion against the background I have described is a cause of further concern and went to the weight I could give the appellant’s evidence and that of the others who gave evidence. I will come back to this.”

We shall come back to these passages in the context of the arguments advanced in this case.

We should, however, express our concern about what appears to be a mean-spirited approach to some of the evidence. Two examples emerge from the passage just quoted.

First, in para 38, the FTT judge clearly refers to the Tron Church as an example of organisations which “on the face of it at least are *bona fide* religious institutions or organisations”. The use of the expression “on the face of it at least” appears to imply some doubt as to whether or not it is a *bona fide* religious organisation. If that is what he is saying he should say so clearly and give his reasons. If he has no good reason to doubt its *bona fides* then he should refrain from this insinuating reference. Second, he refers to Mr Taylor as having “conceded in cross-examination” that it is not possible for anyone to “look into the heart” of someone who claims to be a genuine convert. Certainly that is what Mr Taylor said, but he said it in his letter in support of MA and in no way was it a “concession” conceded in cross-examination, a word which carries the clear implication that he said it reluctantly and contrary to his initial position. It would have been surprising if Mr Taylor had claimed that it was possible for him to divine the innermost thoughts of a member of his church or indeed any church.

[31] The FTT judge then turned to consider the evidence from the witnesses connected with the Tron Church. Under this heading he said this:

*“Evidence from the Tron Church*

42. I noted the body of evidence from the Tron Church but I also took into account that it was apparent to me that either the appellant lied to me or did not tell the truth to Mr Taylor about [P]. There was a very strong possibility that he had not told the truth to Mr Taylor.

43. Much of the material from the Tron Church was of a type that I have seen before. It takes the form of fairly generic letters indicating that a particular appellant has attended a Christianity Explored course and has ultimately been baptised.

44. The same can be said of the reference to the document “Conduct expected of a Christian”. It was said that the appellant shows this conduct but it is a generic document and nothing was done in terms of showing me specific and concrete examples of how in specific terms Mr Taylor and his colleagues considered that the appellant meets the Conduct standards. No examples were given of how, where and when it could be shown that he met the standards.

45. Mr Taylor explained that he had seen real changes in the appellant on the course. However he did not know the appellant before he started attending this Church nor did he know how the appellant led his life outside of the Church. I could not see how there was an adequate basis for the view that the appellant had changed his life in a material way. He had no knowledge of how the appellant led his life outside of the Church. In my judgment he offered no adequate explanation as to how he could say the appellant, who was effectively a stranger to him, and with whom his only contact was in church, had shown significant changes in his life over the time that he took the course.

46. Although he said this assessment also involves being aware of the appellant attending Church beyond the classes, if anything, this just raised the same issue. Mr Taylor has no idea what life the appellant led before coming to Church and has no idea how he lives his life outside of the Church. Insofar as the appellant told him anything about his life before conversion, his account of the extent of his relationship with [P] was materially inconsistent. That is not a reliable starting point for the claim that his life has changed. It has foundations of sand.

47. Other letters were of little value. For example the letter from David Woodier who is said to be a member of this Church says that a personal commitment to the Christian faith was shown by weekly contact in which the appellant asked him from Bible study [for] the gospel of John to be translated into Farsi to send to his friends in Iran. Indeed one passage in John appears in the messages between the appellant and his Iranian contact. This seemed to me to be a fairly limited exercise. Asking for passages from the Bible to send on to someone in my view could not really be regarded as substantial commitment to the faith. I say this taking into account that this is a sincere view of Mr Woodier but nevertheless it seemed to me to be a very limited basis upon which to make that claim. It is also entirely consistent with seeking to evidence, in bad faith, a claim to be a convert who seeks to convert others in Iran. This inference fitted rather better with other evidence in the appeal as I will

come to when I deal with other witnesses who gave oral evidence, particularly the witness [F].

48. Likewise the letter from Mervyn Gunn who bears to be a member of the Church and a deputy leader in the Farsi ministry was of limited value. Like Mr Taylor, Mr Gunn appears to have accepted the appellant's account at face value that he had been 'through a difficult time'. There was no specification and nothing to show that he gave Mr Gunn an account of life in Iran in which I could have any confidence. Beyond that, the letter simply read as a narrative of activities the appellant was involved in with the Church. I took that into account as a factor in favour of the appellant but when considered in the round in my view this is more likely to be an attempt, in bad faith, to create evidence for apparent adherence to this faith.

49. The letter of 29 November 2016 from Mr Clark, again spoke to the interest of the appellant in Christianity and his enthusiasm and willingness to ask questions. Equally all of that is consistent with a desire to learn about Christianity with a view to persuading others in the Church that his conversion was genuine when it is not.

50. To work out any journey in life, including any change in direction, one might reasonably suppose that part of the process employed by a Church might involve establishing just what the life of the putative convert was and their reasons for changing direction and that life, before one can form any adequate basis for the view that someone had 'changed' their life. None of these letters and none of the witnesses [who] appeared before me were in a position to indicate in what ways they could compare the appellant's life before attending the Church with his life after attending the Church. It was difficult therefore to give credence to any claim that the appellant's life had turned round. If anything what he appears to have told Mr Taylor was simply not consistent with what I was told. That is a very shaky start for an assessment that the appellant has made a commitment to change his life.

51. Apart from Mr Taylor none of the others who spoke to the appellant's Christianity from the Tron Church attended to give evidence and accordingly they were not in a position to be cross-examined and their evidence tested. That weakened their evidence."

[32] We shall come back to consider some of these passages in the context of our discussion of the main issue in the case. It will already be apparent that the FTT judge has formed an adverse view of MA's credibility and indeed formed the view that MA was the sort of person who was prepared to "contrive an account to suit his purposes and to go to elaborate lengths to do so" (see eg para 37 of the decision). What he appears to have done in a number of places in the passage immediately quoted is to take this assessment of MA and

apply it to all the evidence which could, on one view, be in favour of MA's claim to be a genuine convert to Christianity, so that that evidence simply becomes a further example of MA manufacturing evidence in bad faith in order to support his appeal (see eg paras 47 and 48 and, in relation to MA's different accounts of the homosexual encounter referred to earlier, paras 46 and 50).

[33] We should also note at this stage that the remarks of the FTT judge in paragraph 47 show that he has misunderstood what David Woodier was saying in his statement. The FTT judge seems to have thought that this was an example of MA wanting Mr Woodier to provide him with passages from St John's Gospel already translated into Farsi, whereas what Mr Woodier was saying was that MA was asking for passages from the gospel which he himself would then translate into Farsi and then send to a friend in Iran. The difference, i.e. as to who was to do the translation, may not seem very great, but it could make a real difference in an assessment of whether the activity showed a substantial commitment by MA to his new faith.

[34] Finally in this section we should explain the reference to "the witness [F]" at the end of paragraph 47 of the decision. Ms [F] gave evidence that her husband had known MA in Iran but could not say how they had met. The FTT judge disbelieved her; she was "covering because she well knew that the appellant had not known her husband in Iran." As a result he approached her evidence that MA had helped her with learning about the Bible with caution. He found her evidence that she had moved from the Tron Church to a House Church because of childcare arrangements "odd" because of other evidence that the Tron Church has facilities for children. No witnesses from the House Church appeared to give evidence and the FTT judge approached their claims to have attended church with "real caution". Ms [F] and others claimed to know the appellant and to be aware of difficulties

faced by the appellant in Iran but gave no indication that they knew the precise nature of those difficulties: "For that reason alone their evidence was devalued." The FTT judge held that insofar as the appellant had given any known and verifiable account of the problems he had had in Iran, it was materially inconsistent. Overall the FTT judge concluded, in relation to this chapter of evidence, that he could not be confident that MA had told these people the truth and "there was a real concern that if these people were genuine (and I express no view on that) he had simply misled them". He then commented about the evidence of a number of the witnesses being remarkably similar and noted that he held the witness [F] to be "unreliable if not incredible for the reasons I have given." The claim that MA had evangelised her had to be approached with considerable caution.

### *Appeal to the UT*

[35] The UT dismissed MA's appeal. Although the UT judge recognised that some of the differences in the evidence upon which the FTT had relied were "rather minute" he considered that the resolution of these matters was the function of the FTT judge and disclosed no error of law. He rejected the submission that the FTT judge had, in effect, decided the matter against MA on credibility grounds and then simply applied those findings adverse to his claim to be a genuine convert to Christianity. He said this (at para 21):

"A fair reading of the decision does not bear out that the credibility of the conversion claim was decided only by the prior assessment [i.e. of his conduct in Iran] and not by the evidence supporting it. The judge states his overall conclusion at the outset of this decision at [2] ... He says at [30] that evidence from the church witnesses is entitled to respect, but like any evidence is to be weighed in the round. He makes a reasoned assessment of the evidence from the church at [42]-[51]. Although he finds the evidence generic rather than specific to the appellant (a properly explained view) he does not find that the witnesses are not genuine, rather that the appellant has misled them – [60]. The appellant has not identified anything in the decision to show

that the judge failed to consider the evidence in the round, as he directed himself to do, or that he pre-judged, based on the failure of the original claim. He gave his findings thereon no more weight than was within his rational scope. This ground resolves into no more than another heading for disagreement with a factual conclusion properly reached.”

### **The issue in these appeals**

[36] It is clear from the above summary of and quotations from the reasons given by the FTT judge in each case that both TF and MA were found to be lacking in credibility. In the case of TF, his claim to have participated in anti-regime activities was found by the FTT judge to have been “fabricated” in many respects so as to damage his credibility and the credibility of his claim for asylum. In the case of MA, his claim to have had a homosexual encounter with P was dismissed as “simply a fabrication” which casts “very serious doubt on the credibility of [his] claims as a whole.” In each case it is clear that the FTT judge formed his adverse view of the appellant’s credibility on the basis of specific findings that the appellant had given inconsistent accounts of a particular matter or had so failed to provide full and accurate information about a particular activity that his claim fell to be disbelieved. In the case of MA, these findings in relation to his claimed homosexual encounter were supplemented by findings that he had not told the truth about his pilgrimage to Saudi Arabia in 2013, before coming to the United Kingdom; or about his forming of an intention while still in Iran to change his religion, or in respect of having sent translated verses from the Bible to a friend or friends in Iran. In the opinion of the FTT and UT judges, this last activity, if it took place at all and involved communication with a person who actually existed, was simply a “contrivance”, part of an “elaborate deception”. In short, in so far as there was anything capable of being disbelieved in the account of either appellant, the FTT judges in each case disbelieved it.

[37] Such an approach in the decisions of the FTT on asylum or human rights claims which eventually find their way to this court is by no means uncommon. To some extent it is prompted by the nature of the evidence which it is possible to adduce in support of a claim of this sort and, indeed, where contradictory evidence is also in short supply. And, subject to what we say below, it is justified, to some extent, on that basis. As was observed by the UT judge in the case of TF, at para 4, for a FTT judge to find that the appellant's failure to provide honest information on one aspect undermines his evidence on another aspect "is a rational approach to finding the facts".

[38] But there are limits to this approach which the judges hearing these appeals, whether in the FTT or the UT, must be careful to observe. Juries in a criminal trial are commonly directed that the fact that an individual may have lied about one point does not necessarily mean that he is lying about other matters, and the same words of caution should be taken to heart by tribunal judges hearing evidence in immigration and asylum appeals. People have different reasons for not telling the truth, or the whole truth, about particular matters. They may not wish to get someone else into trouble, or to reveal something about themselves. People may not think that it matters if they omit to give certain details about a particular event or series of events – but that does not mean that they are necessarily lying or have a propensity to lie about everything. Nor is it necessarily suggestive of dishonesty if they fail to give every detail on the first occasion they are asked about it but only come to give the full story on the second or subsequent occasion; or if they only give the full story to someone else other than those formally questioning them in the context of an asylum interview; or if their accounts of what has happened are inconsistent in some of the details. Questions of sexuality, at issue in the case of MA, illustrate one aspect of the point: a person coming from a country where authority is feared and where homosexuality is illegal and homosexuals are

persecuted may be hesitant in answering questions about his sexuality from a person in authority, even in a country where, so he is told, homosexuality is both lawful and socially acceptable. He may not give a full account of his activities even where these activities form an essential part of his claim for asylum, though in a different context to different people he may be more forthcoming. Even if an appellant is found to be generally incredible, it does not mean that his claim must necessarily fail. At worst, it is only his evidence and evidence derived from what he has said and done which is potentially undermined. Other evidence may put the appellant's evidence in a better light and may enable his claim to succeed. As the AIT put it in para 105 of its decision in *MA (Somalia) v Secretary of State for the Home Department*, in a passage quoted in para [38] of the judgment of the Supreme Court in that case given by Sir John Dyson (reported at [2011] 2 All ER 65) and referred to in para [46] of that judgment as a "clear and impeccable self-direction" by the AIT:

"105. The tribunal is not unfamiliar with the difficulties created by appellants who have not been truthful but who still may be at risk. This was considered by the Court of Appeal in *GM (Eritrea) v Secretary of State for the Home Department* [2008] EWCA Civ 833. We must be very careful not to dismiss an appeal just because an appellant has told lies. Even if very large parts of his story have been disbelieved it is still possible that the appellant has shown that he would be at risk on return. An appellant's own evidence has to be considered in the round with other evidence and that can include unimpeachable evidence from expert reports or country guidance cases or other evidence about the general state of affairs in that country."

See *MA (Somalia) v Secretary of State for the Home Department* reported at [2011] 2 All ER 65.

[39] As that passage makes clear, the appellant's case has to be considered in the round, not only on the basis of the appellant's own evidence, which may or may not be accepted as credible, but also on the basis of other evidence that may be available. It does not follow from the fact that the appellant himself is disbelieved, even on very large parts of his story, that other evidence in support of his case cannot be relied upon. Much will depend, of course, on what that other evidence is. If, for example, that other evidence comes from some

wholly independent source and is, on the face of it, impartial and objective, it is difficult to see how a finding that the appellant himself is dishonest can materially affect the weight to be attached to it. If, on the other hand, the third party evidence simply comprises information based entirely upon what the appellant has previously told the witness, then in assessing what weight to give to that third party evidence it may be legitimate for the tribunal to take account of its findings about the credibility of the appellant, on the basis that it has found the appellant to be a liar and capable of making up a story, fabricating an account and spreading that account amongst others as part of a web of deception. But much would depend on the time and circumstances in which the third party witness was given that information by the appellant, as well as the credibility of the third party witness himself – and it would not be right for a tribunal to dismiss that evidence as having no weight simply on the basis that it amounted to a repetition of what the appellant had said without having regard to those other considerations.

[40] The present cases each concern evidence from individuals in positions of responsibility within the Tron Church which is based in part upon what the appellant has said directly to those individuals, partly from his conduct as observed by them and partly from the knowledge and understanding which those individuals have about the traditions and processes of the church and the context in which the actions of the appellant can be understood. The FTT judges approached the matter, as we read their decisions, on the basis that if the appellants were shown to be dishonest and capable of fabricating a web of deceit, then the tribunal could, in effect, discount the evidence from these church leaders – the church leaders could not give evidence about the sincerity of the appellants, and insofar as they gave evidence about what the appellants had said or done then that was of no independent value since it was subject to the same adverse assessment of the appellants'

credibility. That approach was expressly approved by the UT judge in the case of TF and was, as we understood it, effectively the approach taken in these appeals on behalf of the Secretary of State. The argument for the two appellants in these appeals was that the assessment by the tribunal judges required to be rather more nuanced. That is the argument at the heart of these appeals.

## Discussion

[41] In his Note of Argument Mr Campbell QC, who appeared for the appellants in both appeals, articulated five propositions which, he said, set out the proper legal context for decisions of this kind. It is helpful to set them out *verbatim*, omitting proposition 4 which simply states that there is authority supporting propositions 1-3:

Proposition 1: the approach of tribunal decision-makers to the assessment of evidence must be informed by careful consideration of the nature of the findings to be made; and to the nature and quality of the supporting evidence.

Proposition 2: claims of religious identity have particular features and, if true, are likely to be evidenced by independent witnesses; such claims require an approach that is distinct from that taken to claims that a past event or events occurred.

Proposition 3: the opinion evidence of witnesses in positions of religious leadership is apt to be treated as a species of expert evidence.

...

Proposition 5: where independent evidence is available, this limits the role of the decision-maker's assessment of the credibility of the person; other factors become more important."

[42] These propositions usefully summarise the appellants' contentions in this appeal and provide a framework for the discussion that follows. Proposition 1 is self-evidently correct. The remaining propositions call for rather fuller consideration. Rather than seek to shape our consideration of these appeals precisely along the lines indicated by these propositions, answering the points directly, we shall approach the matter from first principles and discuss the points that arise sequentially.

[43] The question whether a religious conversion is or is not “genuine” involves an assessment of the state of mind of the person claiming to have undergone such a conversion. Expressing the matter in that way immediately gives rise to difficulties, since for many the very essence of religious belief is not a matter for the mind so much as for the heart, the soul or the spirit. While recognising the force of that point, we shall for short refer to the mind as a convenient shorthand. It is also right to accept that asking the question in terms of whether a conversion is or is not genuine suggests a binary choice more appropriate to an instantaneous (or “Damascene”) conversion whereas for many, perhaps most, the process of gaining a religious belief in adulthood may be more gradual, so that at any one point it may not be possible to say whether the “conversion” is complete, let alone “genuine”. But these questions need not trouble us for present purposes.

[44] The only direct evidence as to the state of mind of the person claiming to have undergone a religious conversion is the evidence of that person himself. But that evidence may not be available or, if it is, its truthfulness may be challenged. It is now recognised that it is not possible to “open windows into men’s souls” (an expression usually attributed to Elizabeth 1 of England) to test the sincerity of his belief. Juries in Scotland are habitually directed that intention or belief is a state of mind, to be inferred or deduced from what has been proved to have been said or done by the person whose state of mind is in issue. That applies equally to a case such as the present. This point was well made by HH Judge Gilbert QC, sitting as a deputy High Court Judge in *SA (Iran) v Secretary of State for the Home*

*Department* [2012] EWHC 2575 (Admin) at paragraph 24:

“... What appears to have impressed the immigration judge, and then the Home Secretary, is that the Claimant’s conversion to Christianity was not regarded by him as genuine, and had been manufactured to assist her asylum claim. It is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman’s soul to assess whether a professed faith is genuinely held, and especially

not when it was and is agreed that she was and is a frequent participant in church services. It is a type of judicial exercise very popular some centuries ago in some fora, but rather rarely exercised today. I am also uneasy when a judge, even with the knowledge one gains judicially in a city as diverse as Manchester, is bold enough to seek to reach firm conclusions about a professed conversion, made by a woman raised in another culture, from the version of Islam practised therein, to an evangelical church in Bolton within one strand of Christianity. I am at a loss to understand how that is to be tested by anything other than considering whether she is an active participant in the new church."

*In Dorodian (Ali) v Secretary of State for the Home Department* (2001) 01/TH/01537 (unreported)

the Immigration Appeal Tribunal (IAT) referred to a letter from the pastor of the relevant church confirming the fact that for the previous six months the asylum seeker "has been regularly attending the activities of the Iranian Christian Fellowship and is in the process of being prepared for baptism"; and commented that since that letter was accepted (i.e. as truthful) "we take the appellant as a committed Christian". In *SJ (Christian Apostates – Evidence) Iran* [2003] UKIAT 00158 at para 22 the IAT stressed the importance to be attached to evidence of the appellant's continuous adherence to the church's principles during the relevant period in order that the tribunal can "satisfy himself that the claim to adhere to the Christian faith is not a transient claim brought into existence purely for the purposes of pursuing an asylum claim". The important point is that evidence of how the appellant has engaged with the church is regarded as critical to this exercise. Mr John Taylor of the Tron Church was making the same point in his letters in support of both appellants when he said that "it is not possible to look into a person's heart to ascertain whether or not a conversion to Christianity is more than just words", implying that all he could do was to judge the genuineness of their conversion by their actions. We do not understand Judge Gilbert or the IAT, in the passages quoted above, to be saying that active participation in a Christian church is conclusive evidence of the genuineness of a conversion. If they were meaning to say that, we respectfully disagree. But it is likely to be a very powerful consideration, to be

assessed alongside any other evidence pointing to the sincerity or otherwise of the claimed conversion to Christianity.

[45] In the present cases the FTT judges placed a great deal of reliance upon the fact that the appellants had been found to be dishonest in other matters underpinning their claims for asylum. In the case of TF, the FTT judge found that his claim to have been involved in anti-regime activities, including his account of being sent to prison and ending up in hospital, was fabricated; and that this dishonesty undermined his evidence about his claimed conversion to Christianity (see eg paras 140-141 of the FTT decision). He also concluded that, contrary to his denials, TF had been on a pilgrimage to Saudi Arabia just before coming to the UK and, on his arrival here, only attended church in Aberdeen twice during his first year there; and that these matters cast doubt on the genuineness of his conversion within a year or so after that. In the case of MA, the FTT judge concluded that MA's claim of having had a homosexual encounter was "simply a fabrication" which cast doubt on the credibility of the whole of his claim for asylum, including his claim based upon his alleged conversion to Christianity. In each case the FTT, having formed a view on credibility adverse to the appellant, appears to have paid little attention to the other evidence available to it, particularly the evidence from the witnesses from the Tron Church, accepting its honesty but giving it little or no weight. In MA's case the FTT judge appears to have proceeded on the basis that the churchgoing activities spoken to by the witnesses from the church are likely to have been a contrivance, an act put on by the appellant in an attempt by him in bad faith to create evidence supporting his claimed conversion (see eg para 48 of the decision in MA's appeal). It may be that a similar approach was taken by the judge in the case of TF, but such reasoning as he gives does not disclose whether this is so or not.

[46] The exercise of testing the appellant's credibility and applying that assessment to other aspects of the appellant's evidence is, of course, a legitimate exercise for any court or tribunal tasked with making findings of fact. The FTT is the fact-finding tribunal. In order to make findings of fact it is likely to have to make findings on the credibility and/or reliability of all the witnesses, and particularly the appellant. Absent some error of law, it is not for this court to interfere with those findings. But before arriving at such findings on credibility and reliability the FTT should have regard to all the material before it which may be relevant to the point. It is far from clear that the FTT has done this in either case.

[47] There are three points of importance to be made at this stage. They overlap, but we discuss them separately.

[48] The first point is that already mentioned in paragraph [38] above. Any court or tribunal must be very careful not to dismiss an appeal just because an appellant has told lies. For reasons we have already set out, the judge should not jump too readily to the conclusion that because the appellant has told lies about some matters then his credibility on all matters is fatally undermined.

[49] The second point is that even if the FTT judge concludes that the witness's evidence on the critical matters is undermined by a finding that he is generally incredible and not to be relied on, that has the limited effect that the appellant's (disbelieved) evidence is disregarded or put to one side: it does not somehow become evidence to the opposite effect, to be used against the appellant in contradiction of other independent evidence on which he relies. That again reflects the standard direction in criminal cases in Scotland and applies in civil cases too, including cases before tribunals. The judge should not allow his adverse finding about the credibility of the appellant to sway his assessment of the credibility and relevance of other independent evidence bearing upon the issue before him. So here, where

the FTT judges have disbelieved the appellants' evidence that they are genuine converts to Christianity, their evidence to that effect will be put to one side, given no weight. But the rejection of their evidence on this point does not become evidence that their conversion is not genuine, to be set against other, independent, evidence from which the genuineness of their conversion can be inferred. That other evidence requires to be assessed on its merits, without any *a priori* assumption derived from the complainer's own false evidence that it is in some way suspect or of little value.

[50] The third point is very familiar in this type of case. It is wrong in principle to form a concluded view of the probable veracity of particular items of evidence and then, from that fixed point, to allow that view to govern the assessment of other evidence in the case. The proper approach is to adopt what is sometimes called an "holistic" approach, considering all the evidence "in the round" before arriving at any concluded view on the facts. The authority usually cited for this proposition is the judgment of Sedley LJ in *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449 at 477 (para 16 of his judgment):

"... a civil judge will not make a discrete assessment of the probable veracity of each item of the evidence; he or she will reach a conclusion on the probable factuality of an alleged event by evaluating *all* the evidence about it *for what it is worth*. Some will be so unreliable as to be worthless; some will amount to no more than straws in the wind; some will be indicative but not, by itself, probative; some may be compelling but contra-indicated by other evidence. It is only at the end-point that, for want of a better yardstick, a probabilistic test is applied. ..."

In paragraph 140 of his decision in the TF appeal, the FTT judge pays lip service to this approach. He says that he has "looked at all the evidence in the round and taken into account my other findings herein before reaching my conclusions in respect of the Appellant's claimed conversion to Christianity". But when one looks at his reasons, he does no such thing. He has taken into account all the material showing, to his mind, that the appellant was not a truthful witness; and he has then carried that finding through in his

discussion of the other evidence adduced by the appellant, including the evidence from the Tron Church witnesses, so as to reach a conclusion that the appellant is not telling the truth about being a genuine convert. What he ought to have done was to look at all the evidence in the case, including the evidence from the Tron Church witnesses, on its own merits before forming a concluded view as to the veracity of the appellant. We cannot say what conclusion he would have reached had he done this, but it is not beyond the bounds of possibility that a consideration of the evidence from the church, carried out on its merits and without any *a priori* assumption about the appellant's lack of credibility, might have led him to form a different view of the appellant. Even if he had remained of the view that the appellant's own evidence was not to be believed, he might nonetheless have accepted that the independent evidence from the church witnesses pointed to the conversion being genuine. For what it is worth, it is not clear that the FTT judge in MA had regard to this principle at all.

[51] The decision of the Inner House in *AR v Secretary of State for the Home Department* [2017] CSIH 52 provides a useful illustration of how these principles should be applied. In that case a Pakistani national sought asylum on grounds of his homosexuality. His claim to be homosexual was supported by other evidence including evidence from supporting witnesses and a number of documents, including what appeared to be a police record of his detention in Pakistan following an allegation of sodomy and a Pakistani newspaper article concerning the same matter. The case had a complicated procedural history which it is unnecessary to rehearse but ultimately the FTT and the UT disbelieved his evidence as to his sexuality, more or less ignored the evidence of the supporting witnesses, and dismissed the documents as unreliable, all apparently on the basis of doubts about the veracity of the appellant's own account. Lord Malcolm, delivering the Opinion of the Court, said this:

[32] It is a recent feature of the various judges' consideration of the case that the evidence of the supporting witness, and that from the proprietor of the gay club, are more or less ignored on the way to a dismissal of the appeal. This failure has been criticised on more than one occasion ... More recently First-tier Tribunal Judge Peart observed, correctly in our view, that in a case where a Pakistani is attempting to establish his homosexuality, there is a limit to the extent to which this can be determined against him on the basis of general issues concerning his credibility and disregard for immigration laws. This is all the more so in the face of independent evidence which supports his account. ...

[34] The submission is that the First-tier Tribunal Judge did not set out any good reason for dismissing the documents as unreliable. We agree with that submission. ... One cannot simply rely on doubts as to the veracity of the account given by the claimant as a reason for rejecting the documents when, on their face, they support his asylum claim. The "holistic" approach endorsed by judge Macleman would require the overall assessment to be made after all of the evidence has been considered and assessed. In other words, and by way of example, one might ask – do the documents support the claim? If yes, is there any reason arising from the documents themselves to reject their authenticity? If no, how does this affect, if it does affect, doubts that have arisen as to the claimant's account? In our view, if those doubts are used as an *a priori* reason to undermine and reject the documents, there is an obvious risk that supportive evidence is being wrongly excluded from the overall assessment.

[35] We remind ourselves of the need to examine the facts with care (sometimes referred to as 'anxious scrutiny'), and of the low standard of proof applicable in cases of this nature. We are persuaded that these factors have been given insufficient weight and attention in the more recent decisions. ... The decision-maker should stand back and view all the evidence in the round before deciding which evidence to accept and which to reject, and on the proper disposal of the appeal."

That same approach is appropriate to cases such as those before us now, where the question at issue is not the truth of the appellant's claim to be homosexual but the genuineness of his claimed conversion to Christianity.

[52] We have already set out in some detail the evidence from the witnesses at the Tron Church. That evidence falls into three categories. At the basic level (which for convenience we shall call "Category 1"), it consists of factual evidence about what the appellants themselves did and said in relation to their attendance at the Tron Church and courses organised by the church. At the second level ("Category 2"), it consists of evidence explaining the practices of the Tron Church itself, providing a context or framework within

which what the appellants are reported to have done or said may be more fully understood. And at the third level (“Category 3”), it consists of opinion evidence given by individuals in positions of responsibility within the Tron Church who have observed the appellants in their activities at the church and expressed the belief that they are both genuine in their conversion to Christianity.

[53] There was some discussion before us as to the status of this evidence and whether it fell to be regarded as expert evidence and was admissible as such. This question does not arise in respect of the evidence falling within Category 1 above. That is simply factual evidence of the sort which can be given by anyone who has witnessed the appellants’ activities. It is clearly relevant and admissible and does not need to be given by anyone with any particular qualifications.

[54] We have no doubt that evidence within Categories 2 and 3 above is expert evidence of the type described in *Kennedy v Cordia (Services) LLP* 2016 SC (UKSC) 59 at paragraphs [39]-[41]. Evidence in Category 2 describes the mission of the Tron Church, its structures, its approach to individuals from other traditions who come to the church to learn more about Christianity with a view to baptism, and its Bible study groups and other courses designed to assist such individuals in their progress towards baptism and full membership of the church. In *Kennedy v Cordia* at paragraph [41] this was described as “expert evidence of fact”. As is pointed out in that passage, evidence of this type can cover a wide range of subject matter, from practice in dog coursing to the configuration and operation of an item of machinery. In cases where the court does not have sufficient knowledge of its own – and despite what is said about judicial notice in *Dorodian (Ali) v Secretary of State for the Home Department* (*supra*) at para 8(d) it might not always be possible for a judge to be confident that he knows and understands all the relevant detail of what

happens at a particular church or within a particular tradition – such evidence can help “to illuminate the court’s understanding of matters [which may be] outwith its knowledge”:

*Daniel Kaizer v The Scottish Ministers* [2018] CSIH 36 (per LP Carloway, delivering the Opinion of the Court at para [27]). Such evidence is useful in cases such as these to flesh out what it is that the appellants have been participating in, and for how long and with what regularity; the intensity of that participation and the commitment required of an individual if he is to participate to that extent; and the extent to which such participation tests the developing faith of the appellants. It also provides an understanding of the circumstances in which the various church witnesses have come to know and understand the appellants so as to be able to be in a position to offer their opinion as to the sincerity of their conversion.

[55] No issue is taken, as we understand it, with the factual evidence given by these witnesses, by which we include both the non-expert evidence of what the appellants did or said, their attendance at courses, etc, and the expert evidence of fact (Categories 1 and 2). There is an issue, however, as to the opinion evidence (Category 3) given by these witnesses to the effect that they believe the conversion in each case to be genuine. We have already set out the passages in the evidence bearing upon the question, but it is convenient to summarise it here, while keeping firmly in mind that it is based in each case on the interaction between the appellant and the individual from the church expressing the opinion. In the case of TF, Mr Taylor gives evidence about TF’s activities indicating “a commitment to learn about the Christian faith” and of TF’s “own personal faith in Jesus”. Mr Gunn gives his opinion, based on his interactions with TF over a period of some 18 months, that TF “is a genuine convert to Christianity” who continues to grow in his faith and has a clear desire to share his faith with others. Richard Gamble expresses his belief that TF “has a genuine Christian faith”. So far as concerns MA, Mr Taylor described him as “one

who has come to a faith that is real and shows in his life". It will be recalled that MA was baptised in October 2016, having been interviewed as part of the process leading to baptism by leaders of the church. Mr Woodier expressed the view that MA's desire to witness about his Christian faith was "a hallmark of genuine faith in Christ" marking him out "as a follower of Christ". Mr Gunn described MA as "searching for new meaning in his life". He appeared to be "moving forward in exploring the Christian faith". Mr Clark described MA as "eager to improve his knowledge of the Bible and his relationship with the living Lord Jesus". All of these statements, in their different ways, amount to confirmation that in the opinion of the individual giving evidence on the matter both TF and MA are genuine in their claimed conversion to Christianity. That confirmation of the genuineness of the conversion is derived not simply from having seen the two appellants, TF and MA, but from having seen many others passing through the same process with varying degrees of success – this is the point made by Mr Taylor when he says that in the course of his involvement with the International Ministry of the Church he has seen many people express an interest in Christianity at first only to drift away later, while others had been sincere in searching for the truth and several had come to "a life changing faith". The ability of these witnesses to give expert evidence about the genuineness of the belief of TF and MA is therefore based not only on their personal knowledge of those two individuals but also upon their knowledge of what is involved and their experience of others in the same position setting off down the same path.

[56] Two separate questions arise in respect of such opinion evidence. First, there is the question of its admissibility. Second, there is the question as to what weight ought to be afforded to it. We consider each in turn, dealing first with the question of admissibility.

[57] At paras [43]-[44] of their judgment in *Kennedy v Cordia (supra)*, Lords Reed and Hodge JJSC cited with approval the judgment of King CJ in *R v Bonython* (1984) 38 SASR 45 as to the admissibility of expert opinion evidence and went on to identify four considerations governing that question. They said this:

“[43] Counsel agreed that the South Australian case of *R v Bonython* gave relevant guidance on admissibility of expert opinion evidence. We agree. In that case King CJ stated (pp 46, 47):

‘Before admitting the opinion of a witness into evidence as expert testimony, the judge must consider and decide two questions. The first is whether the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible. This first question may be divided into two parts: (a) whether the subject matter of the opinion is such that a person without instruction or experience in the area of knowledge or human experience would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area, and (b) whether the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion of assistance to the court. The second question is whether the witness has acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issues before the court.’

[44] In *R v Bonython* the court was addressing opinion evidence. As we have said, a skilled person can give expert factual evidence either by itself or in combination with opinion evidence. There are in our view four considerations which govern the admissibility of skilled evidence: (i) whether the proposed skilled evidence will assist the court in its task; (ii) whether the witness has the necessary knowledge and experience; (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and (iv) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence. All four considerations apply to opinion evidence, although, as we state below, when the first consideration is applied to opinion evidence the threshold is the necessity of such evidence. ...”

No question of partiality or independence is raised in this case. It is clear from the decisions that both FTT judges accepted that the witnesses from the Tron Church were expressing opinions which they genuinely believed to be true. Nor do we consider that there is any difficulty in meeting the requirement that the proposed evidence will assist the court or

tribunal in its task. Just as the court will be assisted by evidence as to the way in which the Tron Church works and as to the avenues open to a would-be convert to participate in its activities (see para [54] above), so too will the court be assisted by evidence from those involved in the church as to conclusions that they would draw from their observations of the individuals in question in so far as they interact with them in the course of such activities. Just as the court does not have full knowledge of the practices of the particular church, so too it has no knowledge of the ways in which people engage in such practices; and it is therefore not able to draw its own conclusions without some assistance from those who have experience. The individuals mentioned all have, in our view, the necessary knowledge and experience to give evidence based on what they have seen and what they typically see in the course of carrying out their ministry and helping to run the courses which the appellants attended. And we consider that there is a reliable body of knowledge and experience to underpin their evidence. As to this last point, while the traditions of different churches will vary widely, what is at issue here is the claim by the two appellants that they have engaged with the activities of the Tron Church in Glasgow with a view to becoming members of the church; and therefore it is the knowledge and experience of those involved in the evangelical ministry of the Tron Church which is directly relevant here.

[58] It was suggested in *Dorodian (Ali) v Secretary of State for the Home Department (supra)* at paragraph 8(a) that no one should be regarded as a committed Christian who is not vouched for as such “by a minister of some church established in this country”. We would respectfully disagree. While it would no doubt be desirable that the individual concerned be vouched for by someone in a position of leadership within the relevant church, it is more important that the evidence be given by someone who has knowledge of the individual whose commitment is in question. We are conscious that churches in Scotland follow a

number of different traditions. In those circumstances it would be wrong for this court to insist that any relevant evidence be given from someone at a particular level within the hierarchy (if any) of any particular church. What matters is that they have sufficient knowledge of the practices of the church of which they are a member; sufficient experience of observing and interacting with those seeking to become members of the church; sufficient knowledge and experience of others who have gone through similar processes of engagement in church activities with a view to becoming members of the church; and, in cases such as these, sufficient knowledge of the individuals concerned and of the manner in which they have thrown themselves into church activities. By this yardstick all of the members of the Tron Church who have submitted evidence on behalf of the appellants are qualified to give the evidence that they have given. They are each involved in running or helping to run courses for those wishing to learn more about Christianity with a view to joining the church; they have each become familiar with the appellants (TF or MA, as the case may be) in that role; and they have each been in a position to observe the appellants in the course of leading such activities.

[59] Accordingly, we have no doubt that expert evidence – both opinion evidence and expert evidence of fact – is admissible on these matters and can be given by the individuals we have mentioned. However, there is a separate question as to the weight to be attached to such evidence. It is trite law that an expert witness must explain the basis of his or her evidence; mere assertion or “bare *ipse dixit*” is worthless: *Kennedy v Cordia (supra)* at paragraph [48]. But, as was recognised in the first sentence of that paragraph, there is a certain type of expert evidence – expert evidence based on personal observation or sensation – which is difficult to substantiate in this way. Such evidence may relate to questions of quality of goods or materials, or the quality of workmanship, or the artistic or literary merits

of a work of art, a book or a play. In such circumstances it may be that all the expert can do is give his opinion based upon his long and varied experience. That, in our opinion, is the type of evidence that we are concerned with in cases such as this. The witnesses have observed many people undertaking courses with a view to baptism and becoming members of the church. They have seen some succeed and some fail. They will have been able to assess individuals over time as a result of those individuals taking part in activities within the church. They will have seen the intensity of their participation and will have heard the questions they ask and the interest in understanding that they show as matters are explained. Their evidence will be of the impression that that individual has made on them. They will be able to say that, in their opinion, based on their experience of this individual and many others, the individual in question is or appears to be genuine (or in other cases they are not satisfied, or not yet satisfied, of the genuineness of their self-proclaimed faith). This, in our opinion, is admissible opinion evidence which is entitled to respect. Of course it remains for the court or tribunal to make the final decision, and nothing in the expert evidence can take that away from the court or tribunal. To this extent it is legitimate to question the experts on their opinions and as to the basis upon which they have reached those opinions. In some cases it may be appropriate to question the objectivity of the assessment made by the witness, or to suggest that there may be an element of wishful thinking given the evangelical mission of the particular church. But, as we have already made clear, that exercise should not start with any predisposition to reject the evidence because it does not fit in with some *a priori* view formed as to the credibility of the appellant. The evidence should be considered on its merits and without any preconception, based upon an assessment of the individual appellants, that it is suspect or otherwise falls to be disregarded.

[60] In a case where the tribunal has formed a view, albeit only a provisional view, that the appellant has been dishonest in certain aspects of his claim for asylum or in other material respects, it is legitimate for the tribunal to regard with suspicion evidence from church witnesses which is based entirely upon what the appellant has told them. But save in a clear case, that exercise is not legitimate when the evidence from the church witnesses is based in substantial part on their observations of the appellant when he has been engaging with the activities of the church. In the case of MA, the FTT judge on a number of occasions says, in effect, that he has discounted evidence given by church witnesses because of the probability, in his view, that the appellant's participation in church activities on which their assessment was based (as more fully described by the witnesses) was carried through by the appellant in "an attempt, in bad faith, to create evidence for apparent adherence to this faith". That passage is from para 48 of the decision in that case, but comments to a like effect are to be found in paragraphs 47 and 49. The problem with this approach is that it makes a leap from a finding, on the one hand, that, on certain other matters, the appellant has told lies, to a finding, on the other hand, that he has not only done that but has in effect lived a lie, i.e. created a false persona and lived a false lifestyle, over a protracted period, and has successfully duped the witnesses from the Tron Church into believing that his new faith was genuine when it was not. Of course it is not impossible that someone could do this. But to reach this conclusion there must be some evidence which points to it. Nothing is put forward apart from the fact (so the FTT judge has found) that the appellant has been dishonest about things that he has said in support of other aspects of his asylum claim. There is a world of difference between telling one or more lies, however serious, and being able to live a lie over a protracted period and to do so without detection. There is no hint in the decision in MA (or indeed in TF) that the FTT judge appreciates this. Given the

experience of the witnesses from the Tron Church in dealing with a large number of people in the position of the appellant, and given that they have worked closely with the appellant in different courses over an extended period, there ought at least to have been a question as to whether the appellant could have maintained his dishonest facade over such a period without being discovered or, at least, without some doubts being raised as to the genuineness of his interest in and conversion to Christianity. But again there is no hint in the decision of the FTT judge that he has given any thought to this. The decision gives the appearance of starting from a position where the FTT judge disbelieves the appellant's account and proceeds from that point to dismiss without adequate consideration the independent evidence from church witnesses as to his conduct over a lengthy period and their belief in the sincerity of his conversion.

[61] In other passages in his decision in relation to MA, the FTT judge refers to the evidence from Mr Taylor that he had seen "real changes" in the appellant on the course undertaken at the church. He then goes on to dismiss this evidence (in paras 45 and 50) on the basis that Mr Taylor did not know the appellant before he started attending the Tron Church, nor did he know how the appellant had led his life outside the church. But it is not apparent to us that Mr Taylor was referring to changes in the appellant's life outwith the church so much as changes in the appellant's mental or spiritual attitude within the church environment. Of course we recognise that this is a matter for the fact finder, but it seems to us that in his findings, in his wholesale dismissal of the relevance of the evidence from the church witnesses, the FTT judge has made the mistake of working backwards from his *a priori* conclusion that the appellant's version of events was a fabrication.

[62] The reasoning in the case of TF on this aspect is relatively brief. The FTT judge has no reason to doubt the factual information as to the appellant's attendances and

participation in church activities (para 134). Mr Gunn, Mr Gamble and Mr Taylor are all genuinely convinced that the appellant is a genuine convert to Christianity (paras 135-138). However, the appellant had not been honest in respect of other information relative to his claim for asylum and that “undermines his claimed conversion to Christianity” (para 140). At para 141 he asked the rhetorical question: “if the Appellant has been untruthful about the matters where I have already made findings about his lack of truthfulness, can I consider him to be truthful about his claimed conversion to Christianity?”. Having seen and heard the appellant give evidence, he concluded that the appellant had not genuinely converted to Christianity and was not in the process of a genuine conversion. He was claiming to have converted because it would assist him in his claim for asylum in the UK (para 142). He did not accept that the claimed conversion to Christianity was genuine (para 143). Nowhere in this reasoning is there any attempt to give any objective consideration to the evidence from the witnesses from the Tron Church. Nowhere does the FTT judge grapple with the problem of there being independent evidence supporting the appellant’s claim to have converted to Christianity. Nowhere does the FTT judge even attempt to consider what this would have involved in terms of the lifestyle which the appellant would have had to lead and the fact that, if it was just a pretence, he managed to pull the wool over the eyes of those who were in the best position to assess his sincerity.

[63] We have focused on the decisions made by the FTT and what we regard as deficiencies in their approach to the independent evidence from church witnesses and the lack of any adequate reasoning supporting their conclusions. These appeals, however, are formally appeals against the decisions of the UT. We have already summarised the reasoning of the UT in each case. The UT concluded, in each case, that there was no error of

law in the decision of the FTT and no lack of adequate reasoning. For the reasons set out above we disagree with that view. It follows that the UT erred in law in refusing the appeal.

[64] We should add, in fairness to the respondent, that at an earlier stage there had been an offer by the Secretary of State to concede the appeal in the case of TF and remit the question of the genuineness of the conversion to the FTT. That offer was not accepted, both because of the desire to obtain guidance on the approach to such evidence and because, at that time, it was not known whether leave to appeal would be granted in the case of MA. No criticism is to be attached to either party for this approach. The hearing of both appeals together has been helpful and has not unduly extended the hearing.

### **Disposal**

[65] For the reasons set out at some length in this Opinion, we have concluded that the FTT and the UT have erred in law in both cases. They have failed properly to take account of the independent evidence relating to the genuineness of the appellants' conversions to Christianity. And they have failed to give adequate reasons for, in effect, disregarding such evidence. We shall therefore allow the appeal in each case, set aside the decisions of the FTT and the UT and remit the appeals against the decisions of the Secretary of State to the FTT for a rehearing in each case before a differently constituted tribunal, i.e. a tribunal whose member or members have not so far been involved in either appeal. We reserve all questions of expenses.