**SPECIAL IMMIGRATION APPEALS COMMISSION**

Appeal No: **SC/153/2018 & SC/153/2021**
Hearing Date: **29th November – 3rd December 2021**
Date of Judgment: **4th March 2022**

Before

**THE HONOURABLE MR JUSTICE CHAMBERLAIN**
**UPPER TRIBUNAL JUDGE PERKINS**
**MR PHILIP NELSON CMG**

Between

**U3**

Appellant

and

**THE SECRETARY OF STATE**
**FOR THE HOME DEPARTMENT**

Respondent

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**OPEN JUDGMENT**

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**Edward Grieves, Gemma Loughran and Helen Foot** (instructed by Wilson Solicitors LLP) appeared on behalf of the Appellant

**Neil Sheldon QC and Jennifer Thelen** (instructed by **the Government Legal Department)** appeared on behalf of the Secretary of State

**Ashley Underwood QC and Jennifer Carter-Manning QC** (instructed by **Special Advocates' Support Office**) appeared as Special Advocates

**Introduction**

1 U3 was born in the UK in 1992. She had British and Moroccan nationality. She married at the age of 18 in 2011. She had two children, to whom we shall refer as U3A and U3B, born in 2012 and 2013. On 24 June 2014, when the children were 2 and 1, she travelled with them from the UK to Turkey. Her husband joined her there. On 22 August 2014, U3 and her husband travelled with their children from Turkey to a part of Syria then controlled by the Islamic State of Iraq and the Levant, often shortened to "Islamic State" or known by its Arabic acronym "Daesh" ("ISIL"). In 2016, while still in Syria, U3 had another child, U3C. All the children are British citizens.

2 On 18 April 2017, in a letter sent to U3's last known address, the Secretary of State for the Home Department ("SSHD"), the Rt Hon. Amber Rudd MP, indicated that she had decided to make an order depriving U3 of her British citizenship under s. 40(2) of the British Nationality Act 1981 ("the 1981 Act") because she had concluded that it would be conducive to the public good to do so ("the deprivation decision"). The reason was that "it is assessed that you are a British Moroccan dual national who has travelled to Syria and is aligned with ISIL. It is assessed that your return to the United Kingdom would present a risk to the national security of the United Kingdom". The order depriving U3 of her citizenship was made on 22 April 2017.

3 On 31 May 2018, U3 appealed to this Commission ("SIAC") against the deprivation decision under s. 2B of the Special Immigration Appeals Commission Act 1997 ("the SIAC Act"). We refer to this as the "deprivation appeal".

4 In 2019, U3's children were repatriated to the UK. On 10 August 2020, U3 applied for entry clearance to come back to the UK to reunite with her children, relying on her own and her children's rights under Article 8 of the European Convention on Human Rights ("ECHR"). On 18 December 2020, SSHD, now the Rt Hon. Priti Patel MP, refused the application ("the entry clearance decision"). The reasons, communicated in a letter to U3's solicitors, were that U3's Article 8 rights were not engaged and, although those of her children were, "their separation from you is proportionate to the risk you pose to the UK's national security". The Home Secretary certified that s. 97(3) of the Nationality, Immigration and Asylum Act 2002 applied, with the effect that the appeal lay not to the First-tier Tribunal but to SIAC under s. 2 of the SIAC Act.

5 On 15 January 2021, U3 appealed to SIAC against the entry clearance decision. We refer to this as the "entry clearance appeal".

6 The oral hearings of the deprivation and the entry clearance appeals took place over one week from 29 November to 3 December 2021. After the hearing, we allowed the parties to make further written submissions supplementing those already filed, which were received on 6 December 2021 (from the special advocates), 15 December 2021 (from U3) and 11 January 2022 (from SSHD). The OPEN evidence in this case, in written form and orally, has been very substantial indeed.

**The focus of these appeals**

7 Edward Grieves made clear at the outset that it was U3's case that she does not pose a risk to the national security of the UK and SIAC should find that SSHD's contrary view was and is flawed. Both the deprivation appeal and the entry clearance appeal should succeed. In the entry clearance appeal, it is for SIAC to decide for itself whether the interference with U3's and her children's Article 8 rights is outweighed by the risk to national security, but Mr Grieves conceded that if he cannot impugn the assessment that U3 poses such a risk, he is unlikely to succeed.

8 This concession seemed to us to be realistic and, in the circumstances of this case, inevitable. The Article 8 rights of U3's children (and of U3 herself, to the extent that they are engaged) are of course important. But if SSHD assesses that U3 poses a risk to national security, and we cannot interfere with that assessment, it is likely that any interference with the family's Article 8 rights would be proportionate. This follows from a comparison with the approach in deportation cases where the person being deported has received a custodial sentence of 12 months or more, which can be seen from the Supreme Court's decision in *KO (Nigeria) v SSHD* [2018] UKSC 52, [2018] 1 WLR 5273 and the Court of Appeal's decision in *PG (Jamaica) v SSHD* [2019] EWCA Civ 1213. The public interest in refusing entry clearance to a person validly assessed to pose a risk to national security will generally be at least as weighty as the public interest in favour of the deportation of a foreign national offender.

9 Notwithstanding Mr Grieves' concession, we have made findings about the weight that should be accorded to the family's Article 8 interests, and about the best interests of the children, on the basis of the evidence before us, bearing in mind the duty imposed on SSHD by s. 55 of the Borders, Citizenship and Immigration Act 2009 to exercise her immigration and nationality functions "having regard to safeguard and promote the welfare of children who are in the United Kingdom". However, the focus of the appeal has been, rightly in our view, on the national security assessment.

10 As to that, Mr Grieves elected not to cross-examine SSHD's national security witness. Initially, he said that this was because the OPEN materials provided only the barest of outlines of the case against U3 and any cross-examination would have to be by the special advocates. We invited him to reconsider in the light of the special advocates' stance, which it was agreed could be stated in OPEN, that they also had no cross-examination for the national security witness. Mr Grieves, however, maintained his position that he did not wish to cross-examine. We shall have more to say about the consequences of this decision later on.

11 Mr Grieves explained that his positive case, both in the deprivation appeal and in the entry clearance appeal, were based on U3's written and oral evidence, the essentially unchallenged written evidence of her factual witnesses and the written and oral evidence of her expert witnesses. Taken together, these showed that, when U3 travelled to Turkey and then to Syria she was in an abusive, coercive and controlling relationship with her then husband ("O"). She travelled in the context of that relationship. She did not then know about ISIL's ideology or about the atrocities it had committed. She was not at that

time or subsequently ideologically aligned with ISIL. She did not become radicalised in Syria and does not now support ISIL or extremism more generally.

12 This brings into sharp focus the approach that SIAC should adopt when deciding appeals against deprivation and entry clearance decisions in circumstances where both decisions are based on an assessment that the appellant poses a risk to national security. Because this is the first substantive deprivation appeal since the Supreme Court's decision in *R (Begum) v SSHD* [2021] UKSC 7, [2021] AC 765 and the Court of Appeal's decision in *SSHD v P3* [2021] EWCA Civ 1642, we considered in some detail the authorities as they apply to this case.

**The law governing the powers of SIAC**

*Submissions of U3 and the Home Secretary*

13 The legal principles to be derived from *Begum* and *P3* were largely (though not completely) uncontentious as between Mr Grieves (for U3) and Mr Sheldon QC (for SSHD). The special advocates, however, differed from this near consensus in their CLOSED submissions. It is not possible, consistently with r. 4 of the SIAC (Procedure) Rules 2003 ("the Procedure Rules"), to disclose the factual context in which the special advocates' submission was made. There was, however, no reason for the content of the legal submission to remain CLOSED. We therefore directed that this be reduced to writing and disclosed to the OPEN representatives and we permitted them to respond in writing. We gave SSHD the opportunity to reply to this response, also in writing.

14 It was common ground between U3's OPEN representatives and SSHD that the following propositions could be derived from the judgment of Lord Reed (with which the other members of the court agreed) in *Begum*:

(a) By s. 40(2) of the 1981 Act, Parliament empowered SSHD, not SIAC, to decide whether it is "conducive to the public good" to deprive a person of citizenship. Parliament did not intend to confer a discretion on SIAC: *Begum,* [66]-[67].

(b) By s. 2B of the SIAC Act, there is a right of appeal against (and not merely a right to seek review of) deprivation decisions. However, the characterisation of a jurisdiction as appellate does not determine the principles of law which the appellate body must apply. The jurisdiction may have different aspects to which different principles apply. In appeals under s. 2B of the SIAC Act, the principles to be applied by SIAC in reviewing SSHD's exercise of discretion are largely the same as those applicable in judicial review. But if the question arises whether SSHD has acted incompatibly with ECHR rights, contrary to s. 6 of the Human Rights Act 1998 ("HRA"), SIAC must answer that question objectively, on the basis of its own assessment: *Begum,* [68]-[69].

(c) The exercise of the discretion conferred by s. 40(2) may involve consideration of national security and public safety. Some aspects of SSHD's national security assessment are not justiciable. Others will depend on an evaluative judgment of matters which are incapable of objectively verifiable assessment. In relation to

matters of this kind, appropriate respect should be accorded to SSHD's assessment, for reasons of institutional capacity and democratic accountability: *Begum,* [70].

(d) Nevertheless, SIAC has a number of important functions. These include (i) assessing whether SSHD has acted in a way in which no reasonable Secretary of State could have acted; (ii) considering whether SSHD erred in law, including by making findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held; (iii) determining whether the order would make the affected person stateless; and (iv) considering whether SSHD has acted in breach of any other legal principles, such as the obligation under s. 6 HRA to act compatibly with ECHR rights: *Begum,* [71], applying *SSHD v Rehman* [2001] UKHL 47, [2003] 1 AC 153, at [54].

(e) On the human rights appeal, it is for SIAC to decide for itself, giving the appropriate weight to the Home Secretary's assessment, whether the decision constituted a disproportionate interference with U3's ECHR rights: *Huang v SSHD* [2007] UKHL 11, [2007] 2 AC 167, [11]-[15]; *Begum,* [69] and [120].

15 By the end of the OPEN hearing, it was common ground between the OPEN representatives of U3 and those of SSHD that the following additional principles applied:

(a) Evidence post-dating the deprivation decision is admissible in the deprivation appeal, but only insofar as it relates to matters occurring prior to the decision: *Al-Jedda v SSHD* [2013] UKSC 62, [2014] AC 253, [30]-[32]; *Y1*, [17]; *R3*, [118].

(b) At the time of the deprivation decision, U3 and her children were all outside the jurisdiction of the UK for the purposes of Article 1 ECHR. Therefore, their Article 8 rights are not engaged in the deprivation appeal: *S1 v SSHD* [2016] EWCA Civ 560, [2016] 3 CMLR 37, [102].

(c) The SIAC Act clearly distinguishes between appeals (under s. 2B) and applications for statutory review (under ss. 2C-2E). In the former, SIAC is not confined to applying public law principles and is not limited to considering only materials which were before the Secretary of State: *P3,* [114]-[115] (Elisabeth Laing LJ).

16 The one area of dispute between Mr Grieves and Mr Sheldon concerned the question whether SIAC's role in reviewing SSHD's national security assessment was limited to the four functions mentioned by Lord Reed in [71] of his judgment in *Begum* and set out in [13(d)] above or was wider than that.

17 Mr Grieves drew attention to the last sentence of [115] of Elisabeth Laing LJ's judgment in *P3*, where she said: "...SIAC hears evidence on an appeal, which was not before the Secretary of State, and is entitled to make of that evidence what it may". Sir Stephen Irwin associated himself with that observation at [120], noting that if it were otherwise the distinction between appeal and review would be obliterated. At [124], he said that the bases on which SIAC could intervene "might be thought to go a little beyond a strict *Wednesbury* test" and cited the observation of the European Court of Human Rights ("the

Strasbourg Court") in *IR v UK* (2014) 58 EHRR SE14 that SIAC must be able to react to a national security assessment which has "no reasonable basis in the facts or reveals an interpretation of 'national security' that is unlawful or contrary to common sense (emphasis added) and arbitrary".

18 At [126], Sir Stephen returned to the theme, saying that it was SIAC's function "to scrutinise all the evidence, OPEN and CLOSED, with a critical and expert intelligence, to test the approach and the evidence bearing on the assessment, both for and against the conclusions of the Secretary of State, and then applying due deference, to decide whether the conclusions of the Secretary of State were reasonable and, adopting the phrase of the Strasbourg Court, conformed with common sense". He went on to note that in matters of high policy due deference might mean "simply acceptance", whereas at a "more granular level" SIAC would "ask questions and consider the detailed replies". This process would not involve simply "supine acceptance of the conclusions advanced by the Secretary of State". Bean LJ said at [130] that he entirely agreed with [126] of Sir Stephen's judgment.

19 Mr Sheldon, for his part, submitted that the phrase "contrary to common sense" should not be read as connoting any power to interfere in national security assessments which had a proper factual basis and were not irrational in the sense mentioned in *Rehman* (i.e. the *Wednesbury* sense). For present purposes, this meant that U3 could succeed only if she could persuade SIAC either that there was no factual basis for the national security assessment or that that assessment is one which no reasonable minister could have reached. There was no scope for going beyond that. In particular, no other public law grounds were available. Mr Sheldon accepted that, in considering whether either of these two permissible grounds of challenge was made out, we could look at evidence post-dating the decision, but submitted that the decision could not be retrospectively impugned by reference to matters which had yet to occur. Mr Sheldon added that, in discharging her functions under s. 40 of the 1981 Act, SSHD is entitled to take a preventive or precautionary approach to the assessment of future risk: *Y1*, [56].

*Special advocates' submissions*

20 On behalf of the special advocates, Mr Underwood QC advanced submissions of law which, he accepted, were materially different from those of Mr Grieves. He submitted that the effect of *Begum* is that deprivation appeals are governed *solely* by public law principles. This had four corollaries. First, a deprivation decision could be challenged on all the grounds on which it could be challenged in judicial review proceedings (and not just the ones identified in *Begum*, by reference to [54] of *Rehman*). Second, evidence is relevant and admissible only insofar as it would be in judicial review proceedings (and to the extent that they said something different [114] and [115] of Elisabeth Laing LJ's judgment in *P3* should be regarded as *obiter* and wrong). Third, if a deprivation decision were found to be flawed applying public law principles, and would fall to be quashed in judicial review proceedings, the appeal must be allowed and the matter remitted to SSHD. Fourth, *P3* applies the latter principle to human rights appeals, with the result that, if in an Article 8 human rights appeal a national security assessment is found to be flawed and would fall to be quashed in judicial review, SIAC must strike the human rights balance having regard to all the material before it, including such parts of the national security assessment as are unaffected by the flaw.

21 As Mr Sheldon pointed out in the CLOSED session, and Mr Underwood accepted, the effect of the second of these submissions – if correct – would be that most if not all of U3's OPEN evidence would be inadmissible at least on the deprivation appeal, because it was not before the decision-maker when the deprivation decision was taken.

*Discussion*

22 In deciding what *Begum* and *P3* require, it is important to consider the deprivation and human rights appeals separately. In respect of each, there are two distinct, but inter-related questions. First, on what grounds can SIAC interfere with the decision under challenge? Second, what evidence is relevant and admissible?

23 We begin with the deprivation appeal. Section 40(2) gives the Home Secretary the power to deprive a person of his or her citizenship if satisfied that doing so would be "conducive to the public good". This is a broad discretion, which could in principle be exercised for any number of reasons, some having nothing to do with national security. *Begum* is, in our view, properly read as a decision concerning cases where the discretion is exercised for national security reasons. Its jurisprudential basis is the principle, identified in *Rehman* at [50] and cited in *Begum* at [56], that the judgment whether something is in the interests of national security is constitutionally reserved to the executive. In addition, SIAC (despite its expert membership) is not institutionally competent to substitute its judgment for that of the executive on this issue, especially where it involves an evaluation of future risk: *Rehman* at [57], cited in *Begum* at [60]-[61].

24 We read the decision in *Begum* as driven by constitutional and institutional considerations specific to national security assessments, and not only by the terms of the statutory regime. As Lord Reed pointed out at [69], the principles of law which the appellate body is to apply depends on "the nature of the decision under appeal and the relevant statutory provisions" (emphasis added). As is made clear at [70], the correct approach depends on the issue. Some assessments are not justiciable at all. An example might be the question identified in *Rehman* at [53]: "whether… the promotion of terrorism in a foreign country by a United Kingdom resident would be contrary to the interests of national security". As to that, the view of the executive is determinative. Other assessments – including those about the level and nature of the risk posed by the appellant, the effectiveness of the means available to address it, and the acceptability or otherwise of the consequent danger – are justiciable, but only on limited grounds, which reflect the constitutional considerations we have mentioned and the institutional advantages which the executive has on these issues.

25 We would therefore reject the special advocates' submission that *Begum* shows that judicial review principles apply to every aspect of the appellate jurisdiction under s. 2B of the SIAC Act. It is clear on the face of both *Rehman* (see [54]) and *Begum* (see [71]) that there is at least one matter, compliance with ECHR rights, on which SIAC is required to make its own assessment. More generally, we consider it more accurate to adopt Elisabeth Laing LJ's formulation in [114] of her judgment in *P3*: "Begum is authority for the proposition that, broadly, SIAC should take a public law approach to challenges to the Secretary of State's assessment of national security" (emphasis added). Even if that

formulation were *obiter*, we would respectfully regard it as correct. We do not, however, regard this aspect of the judgment in *P3* as *obiter*. Although it appears in a part of the judgment headed "Postscript", it is simply an encapsulation of the reasoning at [95]-[102], which explains why the reasoning in *Rehman* and *Begum* applies to national security assessments even in a case where ECHR rights are in issue – the central issue before the Court of Appeal.

26 What, then, are the grounds on which SIAC may interfere with SSHD's judgment on a deprivation appeal where the decision was taken for reasons of national security? Lord Hoffmann said at [54] of *Rehman* that there were "at least three": first, no factual basis; second, irrationality; and third, grounds lying within the exclusive province of the executive, such as whether there is a sufficient risk of a breach of rights under Article 3 ECHR. Lord Reed at [71] of *Begum* identified "a number of important functions". He referred to Lord Hoffmann's three grounds and an additional one: that the decision would render the individual stateless.

27 In our judgment, however, neither Lord Hoffmann in *Rehman* nor Lord Reed in *Begum* was purporting to set out an exhaustive list of the grounds on which a deprivation decision could be impugned. Far less was either suggesting that the public law grounds did not include the full range of grounds on which a decision could be impugned in judicial review proceedings. In our view, a national security assessment can be challenged before SIAC on any such ground. We have reached that view for these reasons:

(a) There is no reason of principle why SIAC should be able to set aside a decision which has no factual basis or is so unreasonable that no reasonable decision-maker could make it, but not one which is vitiated by (for example) an error of established fact, or a failure without good reason to follow applicable policy, or a breach of legitimate expectation, or a failure to take into account a mandatorily relevant consideration. In all of these cases, assuming the error is material, the constitutionally designated decision-maker has left something important out of account.

(b) If such a flaw is identified, and it cannot be said that the outcome would inevitably have been the same, SIAC would be left not knowing what the decision-maker would have done if the error had been pointed out. In these circumstances, the constitutional and institutional considerations which animate the approach to national security assessments in *Rehman* and *Begum* seem to us to point firmly in favour of SIAC allowing the appeal, so that the decision-maker can apply her mind properly to the matter under consideration, rather than SIAC purporting to correct the error itself.

(c) The alternative, pressed by Mr Sheldon, was that – even if SIAC finds the national security assessment vitiated by a material public law flaw – it must still dismiss the appeal if the decision has some factual basis and is one which a reasonable decision-maker could have made. This position seems to us to be contrary to principle. The reason why rationality-based review of national security assessments is appropriate is that the decision being reviewed has been taken by the constitutionally designated

decision-maker, on a correct legal basis and taking into account all and only relevant considerations. If it has not, there is no valid decision to which respect is due. The decision may be one which a reasonable decision-maker *could* have made, but that offers little comfort if the decision is flawed and but for the flaw the decision might have been different. If in those circumstances SIAC were to dismiss the appeal, it would be saying that it is satisfied that deprivation is conducive to the public good, when the statute requires that assessment to be made by SSHD. This would be to make precisely the error identified in *Begum* at [67].

(d) It has always been assumed that the right of appeal to SIAC is an adequate alternative remedy which would operate to prevent judicial review of a deprivation decision. But if Mr Sheldon were right that the permissible grounds of appeal under s. 2B of the SIAC Act were narrower than those available in judicial review, there would be a good argument that judicial review would still lie on any ground not encompassed within the statutory appeal. That could lead to the need to bring parallel appeal and judicial review proceedings, which would give rise to undesirable and unnecessary procedural complexity.

28 We therefore conclude that Mr Underwood was correct to submit that the grounds on which a deprivation decision taken for national security reasons can be impugned include all grounds which would be available in a claim for judicial review. He was also, in our view, correct that, if the national security assessment were shown to be flawed by a material public law error, and SSHD was unable to show that the outcome would inevitably have been the same irrespective of the error, the proper course would be to set the decision aside so that the assessment could be conducted again by the Home Secretary.

29 Do the permissible grounds of challenge go beyond those available in public law? Sir Stephen Irwin seems to have thought that they go "a little beyond a strict *Wednesbury* test" and encompass cases where the interpretation of "national security" is, in the language of the Strasbourg Court in *IR*, "unlawful or contrary to common sense (emphasis added) and arbitrary": *P3*, [124]. His emphasis of these last words suggest that he understood that formulation as adding something (albeit only "a little") to the usual public law grounds. Bean LJ expressly agreed with [126] of Sir Stephen's judgment.

30 We naturally tread with great caution given the eminence and experience of Sir Stephen Irwin. However, in our view Mr Sheldon was correct to submit that, notwithstanding what Sir Stephen said in *P3*, we are not entitled to interfere with a national security assessment on the ground that it "does not conform to common sense", if the assessment is not otherwise flawed on public law grounds. Our reasons are as follows:

(a) The issue before the Court of Appeal in *P3* was whether SIAC had erred in its approach to deciding P3's human rights appeal. All three members of the Court decided that it had, because the terms of the OPEN and CLOSED judgments indicated that SIAC had failed to accord proper deference or respect to SSHD's assessment: see [103]-[105] (Elisabeth Laing LJ), [127]-[128] (Sir Stephen Irwin) and [133] Bean LJ). The question whether the permitted grounds of review were limited to public law grounds, or could range slightly further, was not necessary to

the Court's decision. We therefore regard [124] and [126] of Sir Stephen's judgment as strictly *obiter*.

(b) Nothing in Elisabeth Laing LJ's judgment supports the suggestion that the permitted grounds of review range beyond the usual public law grounds. Bean LJ's concern was that SIAC should "scrutinise with a critical eye" the national security assessment, an approach which he contrasted with "obligatory acceptance of the position advanced by the Secretary of State": [134] and [135]. As we shall explain, we consider this to be consistent with an approach on which the national security assessment can be impugned only on public law grounds. Although Bean LJ endorsed [126] of Sir Stephen Irwin's judgment, there is nothing to indicate express adoption of the position that the assessment could be challenged if contrary to common sense, but not otherwise vitiated by any public law flaw.

(c) As Sir Stephen pointed out, the words "contrary to common sense" come from the judgment of the Strasbourg Court in *IR*, but they were part of a larger phrase. At [57] of its judgment in that case, the Strasbourg Court said that the national security assessment must be capable of challenge before an independent authority which can react where the assessment has "no reasonable basis in the facts or reveals an interpretation of 'national security' that is unlawful or contrary to common sense and arbitrary". The Strasbourg Court cited as authority for this proposition two of its previous decisions, which had used precisely the same words: *Al-Nashif v Bulgaria* (2003) 36 EHRR 37, [124]; and *G v Bulgaria* (2008) 47 EHRR 51, [40]. It was the interpretation of the term "national security", not the factual assessment, which had to be challengeable if it was contrary to common sense and arbitrary. This makes sense against the background of *G's* case, where the Bulgarian authorities had sought to expel a drug dealer on national security grounds. The Court observed at [43] that national security was not capable of being comprehensively defined and the executive had a large margin of appreciation in determining what was in the interests of national security, but its limits could not be "stretched beyond its natural meaning". The applicant's drug-dealing activities did not fall within any reasonable definition of the term. In context, therefore, the Strasbourg Court was saying that the independent authority which scrutinises national security assessments in cases of this kind must be capable of ensuring that the interpretation of "national security" falls within the executive's admittedly wide margin of appreciation. There is no doubt that SIAC's jurisdiction would be wide enough to enable it to do this, even if it is strictly limited to public law grounds. An interpretation of "national security" that is contrary to common sense would be challengeable in judicial review proceedings as involving an error of law. Even if the focus is on the assessment of the risk to national security in the individual case, an assessment which is both contrary to common sense and arbitrary, would be challengeable as irrational. There is therefore no need to supplement the usual public law grounds with anything extra.

(d) We therefore do not consider that the Strasbourg Court's jurisprudence contains any support for the proposition that SIAC can interfere with a national security assessment on the ground that it is "contrary to common sense" if it is not also

vitiated by a public law error. We can also envisage real difficulties in elucidating and applying a test under which SIAC is empowered to interfere with an assessment which is "contrary to common sense". As we see it, common sense is an important part of the analytic toolkit that SIAC, like every court or tribunal, must bring to its task. It is not, however, apt to describe a legal standard by which a national security assessment can meaningfully be judged: see, by analogy, the rejection of "conspicuous unfairness" as a standard of review distinct from irrationality in *Gallaher Group Ltd v Competition and Markets Authority* [2018] UKSC 25, [2019] AC 96, [31]-[41].

31 The general observations in *P3* about SIAC's role are, nonetheless, important. Even though it applies a public law standard of review to the national security assessment, SIAC is not simply the *alter ego* of the Administrative Court. Its constitution gives it special expertise both in immigration law and, pertinently here, in the assessment of intelligence. Its procedures allow for the detailed consideration of evidence, OPEN and CLOSED, including exculpatory evidence. It can and very often does hear oral evidence from a Security Service witness about the national security assessment and, as Elisabeth Laing LJ said at [115], "it is entitled to make of that evidence what it may". As Sir Stephen Irwin said at [126], SIAC can pose questions and consider the detailed replies. In this respect, the tools available to SIAC go beyond those which would be available to the Administrative Court, even in a case where closed material procedures apply.

32 One consequence of this is that there may be cases where SIAC's constitution and procedures enable it to discern a flaw that would not have been detectable in ordinary judicial review proceedings in the Administrative Court. For want of a better metaphor, this is because it has a more powerful microscope, not because it is looking for a wider range of flaws. Thus, CLOSED questions posed by the special advocate or SIAC during the rule 38 process or the substantive hearing itself might reveal that the assessment failed to take account of, or mischaracterised the import or reliability of, a particular piece of intelligence. The failure or mischaracterisation might not have been apparent to a judge in judicial review proceedings, but the question whether it vitiates the decision is answered by applying the same legal standards as would have applied in those proceedings.

33 Another consequence of SIAC's specialised constitution and unique procedure is that there may be cases where a flaw that appears at first sight to be material can be shown not to be. A judge in judicial review proceedings who identifies a potentially significant flaw may find it difficult, given the more limited evidential materials available, to conclude that relief can be refused because the flaw is immaterial or the outcome would inevitably have been the same: see *Simplex GE (Holdings) v Secretary of State for the Environment* (1988) 57 P & CR 306, at pp. 327 and 329, as applied by SIAC in *LA v SSHD* (SN/63/2015, 24 October 2018), at [113]. Even the less stringent test under s. 31(2A) of the Senior Courts Act 1981, which applies to judicial review proceedings in the High Court, but not to appeals before SIAC, may be hard to satisfy. SIAC's more powerful microscope may enable it to see more clearly not only the potentially significant flaws but also their evidential context. This means that it may be better placed than would a judge in judicial review proceedings to conclude, once a flaw has been identified, that

it is not material or that the outcome would inevitably have been the same in any event. As before, however, the same high test (whether the outcome would inevitably have been the same) applies.

34 As we have said, the question what are the permissible grounds on which a national security assessment may be challenged is logically distinct from the question what evidence is relevant and admissible on an appeal. But the two questions are related. We can understand the force of Mr Underwood's submission that the logic of *Begum* demands that, when considering the national security assessment, SIAC should confine itself to the evidence that was before the decision-maker when the challenged decision was taken. But, if that submission were correct, the consequence in a case like the present would be extreme: at least in the deprivation appeal, none of the material relied upon by U3 explaining her reasons for her travel to Syria and what she did there, nor her oral evidence before us, nor the factual and expert evidence on which she relied, would be admissible, since none of this evidence was before the Secretary of State when she made her decision and nor did it fall into any of the exceptional categories where fresh evidence is admissible in judicial review proceedings (as to which see, for example, the *Administrative Court Judicial Review Guide* (2021), paras 22.2.2-22.2.4, and the case law cited there).

35 In most judicial review contexts, this is indeed the position. It does not lead to unfairness because the affected person had the opportunity to make representations to the decision-maker before the decision was made. However, deprivation decisions are frequently taken, as the decision in U3's case was, without giving the affected person any opportunity to make representations. If on the issue whether she is a risk to national security U3 could not adduce evidence that was not before the decision-maker, there would be no opportunity for anyone to consider her answer to the case against her, whether at the time of the decision itself or afterwards. Given that Parliament expressly conferred a right of appeal against deprivation decisions, including in cases where the decision was taken on national security grounds, we find it impossible to interpret the regime it enacted as precluding SIAC from taking into account the appellant's own evidence that she is not a risk to national security.

36 How, then, can SIAC take the appellant's evidence into account as relevant to the national security assessment, while still applying the public law approach required by *Begum*? In our view, there are at least three ways.

37 First, in a deprivation appeal, if the evidence not before SSHD is limited to that relating to matters occurring prior to the deprivation decision (as required by SIAC's decisions in *Y1* and *R3*), it might identify the significance of a matter which SSHD did not consider, but (given what was or could reasonably have been known to her at the time of her decision) ought to have considered. That might be relevant to a conventional public law ground of challenge, such as a failure to take into account relevant considerations (an aspect of *Wednesbury* review) or a failure undertake sufficient enquiries (see *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014) or an error of established fact (see *E v SSHD* [2004] EWCA Civ 49, [2004] QB 1044). In paras 18-19 of the written submissions filed after the hearing, Mr Sheldon seemed to us to accept – rightly in our view – that a failure to undertake sufficient

enquiries, at least, could in principle found an appeal if the decision as to the scope of the enquiry was one which no reasonable Minister could have taken.

38 Second, once the individual is notified of the deprivation decision, if he or she appeals, the national security assessment will invariably be updated to take account of the appellant's evidence and any material uncovered by the exculpatory review. In this way, those advising SSHD keep the basis for the deprivation decision under review during the appeal. If the appeal generates evidence which undermines or materially alters the original national security assessment, officials would be obliged to bring that evidence to the attention of SSHD. If the national security assessment is maintained, the updated assessment will in practice take the place of the original one for the purposes of the appeal, even though the updated assessment will not necessarily have been placed before the Minister. If the updated assessment is shown to be flawed in the public law sense, the appeal will be allowed. In this respect, the procedure before SIAC is different from the more austere procedure applicable in judicial review proceedings, where a "rolling" approach to challenges to successive or updated decisions has been deprecated: see e.g. *Administrative Court Judicial Review Guide* (2021), para. 7.11.4 and the case law cited there. Where what is at stake is citizenship, it would be undesirable to proceed in a "piecemeal fashion", with the decision being quashed and remitted potentially more than once. Accordingly, the appeal is designed to be a "one-stop" procedure in which the appellant either wins (with the result that her citizenship is restored) or loses (in which case it is not): see the decision of Jay J (the Chairman of SIAC) in *Shamima Begum, C8, C10, C11 and D4* (SC/163/2019, SC 172/2020, SC 174/2020, SC 175/2020 and SC 182/2020), 29 November 2021, at [32]. This can be reconciled with the public law approach in *Begum* if SSHD keeps the challenged decision under review during the appeal and SIAC treats SSHD's updated national security assessments as superseding the original ones.

39 Third, the individual may invite SSHD to take some further step, such as granting entry clearance. When taking the fresh decision, SSHD will be able to consider the individual's representations, alongside any other OPEN and CLOSED evidence available to her. The national security assessment reached for the purposes of this second decision will have to take account of whatever representations are made. The evidence adduced by the individual before SIAC on the entry clearance appeal will be relevant insofar as it shows the assessment to be flawed in public law terms. If the entry clearance decision is shown to be flawed in public law terms, and SSHD cannot show that the decision would inevitably have been the same, the appeal to SIAC will succeed.

40 SIAC is, accordingly, not debarred from considering evidence that was not before the decision-maker at the time of a decision. But there are strict limits to what it can do with such evidence when its purpose is to undermine a national security assessment. It is important that there should be clarity about those limits and their implications for a case such as the present:

(a) The present case is one where the deprivation decision turns on a national security assessment. So, in practical terms, does the entry clearance decision: if SSHD was and remains entitled to conclude that U3 poses a risk to the national security of the

UK, and we cannot interfere with that assessment, the national security risk is likely to outweigh the Article 8 interests of U3's family to be together.

(b) The statutory appeal regime, as interpreted by the higher appellate courts, does not allow SIAC, either on the deprivation appeal or on the entry clearance appeal, to reach its own view about whether U3 poses a risk to national security.

(c) This is so even though we have the advantage, which SSHD has not had, of hearing oral evidence from U3 herself and from factual and expert witnesses called on her behalf.

41 The position can be summarised as follows. The challenged decisions have an effect that is in some respects more severe than a prison sentence. Taken together, they mean that U3 cannot return to the country where she was born and grew up, and must remain separated from her children for the foreseeable future. Nonetheless, the law allowed SSHD to deprive U3 of her British citizenship on national security grounds: (i) without giving her the opportunity to show before the decision was taken that she does not pose a risk to national security; (ii) without requiring SSHD thereafter to prove, even on the balance of probabilities, that she does pose such a risk; and (iii) without affording U3 the opportunity to persuade an independent tribunal that she does not. Even when considering U3's challenge to the decision to refuse her entry clearance on national security grounds, SIAC is not empowered to decide for itself whether she poses a risk to national security. Insofar as they attack the national security assessment, both the deprivation and entry clearance appeals are restricted in scope to public law grounds. If the national security assessment cannot be impugned on public law grounds, it will be determinative of the deprivation appeal and will also make it likely that the entry clearance appeal will fail, whatever SIAC's own view about the risk to national security posed by the appellant.

42 At this stage, we should say something about assessing the extent of the risk to national security. A court or tribunal called upon to perform a balancing exercise for the purposes of Article 8 ECHR needs a notional set of scales. The weight on one side depends on the extent of the interference with the appellant's right to respect for her private and family life. The weight on the other depends on the importance of the considerations relied upon to justify the measure under challenge. There is no doubt that it is for the court or tribunal to decide for itself on which side the scales come down. But in reaching that decision, it must show the respect that is appropriate to the view of the legislative or executive branches. In the context of foreign national offenders, Parliament has provided a framework in which the balance is to be struck, requiring the courts and tribunals to apply different tests depending on the length of the sentence imposed. In the context of national security, there is no such statutory framework, but the approach required by *Begum* requires great respect to be shown to the judgment of the executive about whether a risk to national security is made out.

43 In our view the same is true of the judgment about the extent of the risk. In *P3*, the Court of Appeal allowed the appeal because SIAC had accorded insufficient respect to the judgment of SSHD as to the extent of the risk to national security posed by the appellant. Assessing the extent of any risk to national security is likely to be an imprecise evaluative

exercise. It may be very difficult to predict with any certainty what a particular individual might do if permitted to return to the UK. There are many possibilities, from direct attack planning to radicalisation of others. This is the kind of predictive assessment which the Supreme Court in *Carlile* said was, in the first instance, for the executive. The later authorities indicate that when assessing the level of risk, and judging whether it is acceptable, SIAC is required to accord great weight to the view of SSHD.

**The relevance of s. 55 of the 2009 Act and Article 8 ECHR in the entry clearance appeal**

*Submissions*

44 Section 55 of the 2009 Act required SSHD to make arrangements for ensuring that, when exercising functions in relation to immigration and nationality, those functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. It is common ground that, at the time of the deprivation decision, U3's children were not in the UK. By the time of the entry clearance decision, however, they were. The duty therefore applied when taking the latter decision. But, as is also common ground, a duty to have regard to the specified needs is not the same as a duty to give those needs precedence over other factors.

45 As to Article 8, it was agreed that, because none of U3 or her children were in the jurisdiction at the time of the deprivation decision, their Article 8 rights were not engaged. As to the entry clearance decision, there was a minor difference between Mr Grieves (for U3) and Mr Sheldon (for SSHD). Mr Grieves said that, in the entry clearance appeal, the Article 8 interests which fell to be weighed in the balance were those of the family as a whole, including U3 herself. This was because, where the right in question was the right to respect for family life, it was not possible to separate out the interests of the children in being reunited with U3 from the interest of U3 in being reunited with the children. Reliance was placed on the decision of the Court of Appeal in *Abbas v SSHD* [2017] EWCA Civ 1393, [2018] 1 WLR 533, [19].

46 Mr Sheldon submitted that, because U3 was not herself within the jurisdiction at the time of the entry clearance decision, the UK had no duty under Article 1 ECHR to secure her Article 8 rights. It followed that the only persons whose Article 8 rights were engaged at the time of that decision were the children's. He relied on *SI v SSHD* [2016] EWCA Civ 560, [2016] 3 CMLR 37, [102], *R (Sandiford) v Secretary of State for Foreign and Commonwealth Affairs* [2014] UKSC 44, [2014] 1 WLR 2697 and *Khan v UK* (2014) 58 EHRR SE15, [25]-[26].

*Discussion*

47 As we have indicated, the extent of the disagreement as to the applicability of Article 8 in the entry clearance appeal was limited. Its resolution does not affect the outcome of this case. Nonetheless, since we have heard argument on it, we conclude that the correct position is as follows:

(a) As a matter of principle, the UK is obliged by Article 1 ECHR to secure the Convention rights and freedoms only to those "within their jurisdiction". The Strasbourg Court has defined that phrase primarily by reference to territory, subject to exceptions in cases where the individual, though outside the State's territory, is nonetheless under its authority and control: *Sandiford,* [19] and following.

(b) Since U3 is not within the territory of the UK, and did not fall within any of the categories of non-territorial jurisdiction, the UK is not obliged under international law to secure her Article 8 rights, but is obliged to secure those of her children.

(c) A person seeking entry to a contracting state may be able to rely on the positive obligation imposed by Article 8 despite being outside the jurisdiction if she has a family member inside the jurisdiction. But this is because "one of the family members... is already in that contracting state and is being prevented form enjoying his or her family life with their relative because the relative has been denied entry to the contracting state": *Khan v UK*, [27], cited in *Abbas* at [17]. This seems to us to show that, in cases of this kind, the Article 8 rights engaged are, in principle, those of the family member(s) in the jurisdiction.

(d) There will be cases where the interests of the children pull in a different direction from those of the parent or parents. In such cases, the interests engaged are those of the children. However, in many cases, the family members' interests in reunification are aligned. In such cases, it is artificial to attempt to separate the part of the interest which attaches to the family members in the jurisdiction from the part which attaches to the person outside it, because a family is unitary: see *Abbas*, [19].

(e) In this case, the children's interest in reunification with U3 is for all practical purposes coterminous with the family's interest in reunification; and that interest is engaged in the entry clearance appeal because of the UK's obligation to secure the Convention rights of the children, who are in the UK.

48 The significance to be accorded to the children's best interests in the Article 8 balancing exercise, and under s. 55 of the 2009 Act, is best encapsulated in *ZH (Tanzania) v SSHD* [2011] UKSC 4, [2011] 2 AC 166, where Lady Hale said this at [33]:

> "In making the proportionality assessment under Article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations."

**SSHD's OPEN case**

*The basis for the deprivation decision*

49 The deprivation decision was taken on the basis of a submission made by officials. The OPEN summary of the submission includes, in the Introduction, the following:

"2. The Security Service (MI5) assesses that UK-linked individuals who travel to Syria or Iraq to align with ISIL represent a serious and credible threat to UK national security as a result of being in ISIL-controlled territory. This applies whether they fulfil combatant or non-combatant roles. Any individual who has been with ISIL in its self-declared caliphate is likely to have been radicalised, has contributed to the continuation of ISIL as an entity, and may have received military training, fought with ISIL or taken part in terrorist attacks. Individuals who remain in theatre are likely to pose a continuing threat to the UK, but we assess the threat would be significantly higher if they returned to the UK."

50 Further detail is provided in section C:

"9. MI5 assesses that individuals who have travelled to ISIL-controlled territory since the formation of the so-called caliphate, and those who travelled before June 2014 and have remained with ISIL, will have been radicalised and exposed to ISIL's extremism and violence. We further assess that, if these individuals return from ISIL-controlled territory, they will present a national security threat to the UK."

51 At para. 13, there is a summary of the sentencing guidance given by the Court of Appeal in *R v Kahar* [2016] EWCA Crim 568, [2016] 1 WLR 3156 for offences contrary to s. 5 of the Terrorism Act 2006. Level 4 (where the sentence is between 10 and 20 years) covers those who join or otherwise support a terrorist organisation usually engaged in conflict overseas, and either participate on the periphery of actual combat or train for combat. Level 5 (5-10 years) covers those who attempt to join a terrorist organisation but are unsuccessful (for example because they are prevented from transiting into Syria by Turkish border authorities). Level 6 (21 months to 5 years) covers those who intend to travel to join a terrorist organisation but never set out, or set out but do so in circumstances where it is unlikely they would progress very far, or otherwise return without having travelled very far towards their destination. At para. 14, SSHD notes that "[t]he seriousness with which the criminal courts view an individual's travel to join ISIL is, in the view of MI5, an accurate reflection of the seriousness of the threat posed by such individuals".

52 Para. 22 contains the assessment that "anyone who has travelled voluntarily to ISIL-controlled territory to align with ISIL since the declaration of the caliphate in June 2014, or who travelled beforehand and remained there voluntarily, is aware of the ideology and aims of ISIL and the attacks and atrocities it has carried out". At para. 29 it was said that the formation of the so-called caliphate was a "key cornerstone of the group's rhetoric and propaganda, as well as its ideological appeal". Examples are given of open source reporting of statements by the leaders of ISIL about the caliphate, beginning on 1 July 2014 with the reporting of a speech by Al-Baghdadi in which he said that it was the duty of Muslims to make *hijrah* by travelling to and supporting the caliphate (appealing in the language of religious obligation).

53 Under the heading "Radicalisation in theatre", this was said:

> "33... we assess that all individuals are exposed to routine acts of extreme violence in ISIL-controlled territory. This includes, but is not limited to, armed conflict between ISIL fighters and those of opposing factions, crimes against civilian populations carried out by invading fighters (genocide, ethnic cleansing, mass rape, looting), air strikes against civilian targets, and public executions and corporal punishment administered by ISIL. We assess that this is likely to have the effect of desensitising individuals to acts of brutality, and encourage them to view violent terrorist activity in the UK or against UK interests as an acceptable and legitimate course of action. To that extent, we assess that even individuals who have travelled to ISIL-controlled territory *involuntarily* (for example, as minors taken there by their parents) are likely to have been radicalised during their time in theatre, due to their daily exposure to ISIL indoctrination and extreme violence." (Emphasis in original.)

54 The assessment went on to deal in detail with the ways in which individuals who have spent time in ISIL-controlled territory may pose a threat to national security. There are five headings: (a) involvement in ISIL-directed attack planning; (b) involvement in ISIL-enabled attack planning; (c) radicalising and recruiting UK-based initiatives; (d) providing support to ISIL operatives; (e) posing a threat to UK national security.

55 Under heading (b), at para. 46, reference was made to the al-Khansaa Brigade, an all-female group which was said to police the conduct of female civilians in Raqqa. The assessment continued:

> "50. We assess that any individual, male or female, who returns to the UK having spent a prolonged period of time in ISIL-controlled territory is likely to have developed the capability to carry out an attack independently, regardless of whether or not they have had contact with ISIL's external operations section. We judge that the risk of an ISIL-enabled attack occurring in the UK will increase if individuals who have been in ISIL-controlled territory return to the UK."

56 Under heading (e), this was said:

> "53. It is possible that some individuals who return to the UK from ISIL-controlled territory in the future may not become involved in any of the above activities, at least not immediately on their return. However, we assess that they will nevertheless present a potential threat to UK national security.
>
> 54. Furthermore, in view of the fact that these individuals would have already shown a demonstrable commitment to living under extremist rule, there is every possibility that, if the same circumstances were to arise again, they would look to travel to another area of conflict in answer to a call for violent jihad. The individuals would therefore continue to present a threat to the national security of the UK for all of the reasons set out in this statement."

57 The submission to SSHD contained, at Annex D, a summary of the matters specific to U3. The OPEN version reads as follows:

> "Key assessment
>
> The Security Service (MI5) assesses that [U3] travelled to Syria and aligned with ISIL.
>
> Summary
>
> Police reporting indicates that [U3] travelled from London to Istanbul via Zurich on 24 June 2014 with her two children.
>
> The same police reporting further indicates that, in October 2014, [U3] contacted her younger UK-based sister via Skype. According to her sister, [U3] stared that she was 'okay' and in Turkey, and that she was not returning to the UK.
>
> The police report further indicates that, in July 2015, members of [U3's] UK-based family were contacted by [U3] via Facebook. During this contact, [U3] reportedly stated that she was living in Istanbul, Turkey with her two children. She added that, although she was still married, her husband spent most of his time working abroad and she rarely saw him.
>
> We assess that [U3] was not in Istanbul (as she had stated to her family). We assess that [U3] was in Syria at the time of this contact.
>
> We assess that [U3] travelled to Syria and aligned with ISIL."

58 Mr Sheldon points out that there was no information available at the time of the deprivation decision which suggested that U3 was coerced into travelling to Syria. Indeed, SSHD notes that U3 does not say she was. In her first, self-drafted statement, she said that she travelled in order to get away from O. In her subsequent statements, she says that she travelled in order to prevent O from going to Syria with another woman. Either way, SSHD says, "she went willingly and independently".

59 Mr Sheldon further submits that there is no evidence of U3 seeking to contact any relevant authority in respect of O's coercive behaviour and no evidence of any attempt to contact the UK authorities in the approximately three years between her arrival in Syria and the date of the deprivation decision. On the contrary, she lied to her family and friends about where she was, pretending that she was in Turkey. Nor, SSHD says, was there anything to indicate that, despite relocating to Raqqa, U3 did not support ISIL or its ideology.

60 Mr Sheldon says that SSHD was entitled to, and did, adopt a preventive and precautionary approach to the potential future risk posed by U3. It was not necessary to reach findings on the balance of probabilities or otherwise as to precisely what U3 had been doing in Syria, or her state of mind as far as support for ISIL was concerned. Her task was, rather, to take account of all the material, OPEN and CLOSED, generic and specific, and reach "an overview" as to the national security risk posed.

61 Finally, Mr Sheldon notes that the national security assessment was reconsidered but maintained in the light of U3's second witness statement in these proceedings. This accepts that U3 had a "difficult relationship with [O]", but continues to assess that U3 "travelled to Syria and aligned with ISIL" and was "an active and willing participant in her and [O's] travel to Syria". In that regard, the assessment in SSHD's second national statement remains that it is "highly likely considering the level of media coverage of ISIL (including social media, television documentaries and YouTube channels); [U3's] intention to travel to Syria; and her interest in the situation in Syria, that she would have been aware of some of the atrocities committed by ISIL, and regardless chose to travel to ISIL-controlled territory in Syria". Evidence of reporting of ISIL atrocities is given in the statement of Siobhan Coward, who has collated the various reports in the relevant period.

**U3's factual evidence**

62 The Appellant's OPEN case rests, broadly, on two propositions: first, she did not go to Syria with the intention of aligning with ISIL and was not radicalised thereafter; and second, it is in the best interests of her children that she be allowed to join them in the United Kingdom.

63 The first source of U3's evidence is a statement which she drafted herself in 2018. The second source are her four witness statements made for these proceedings on 7 August 2020, 22 November 2020, 5 March 2021 and 11 October 2021. The statements made for these proceedings in particular provide an extremely detailed account of U3's life in the UK with O, his violence towards her and his control of her life, her travel to Turkey and Syria and her life there.

64 There were also factual statements from U3's brother and sister-in law; from her current partner M; from another individual who met U3 in Syria; from U3's friend SM; from U3's mother; and from two of her solicitors. We have read those statements carefully but do not summarise them here. In key respects, they corroborate the account given by U3, but it was obviously not possible for any of the CLOSED evidence upon which SSHD relied to be put to any of these witnesses in cross-examination.

*U3's self-drafted statement*

65 In her self-drafted statement, U3 says that she was a "normal teenager", interested in fashion and music. Her father was not part of her life. She did not get on with her mother.

66 She got to know the man who became her first husband, "O", when she was studying for A levels. Initially, he treated her with respect and became her confidant. Her mother did not approve of the relationship. U3 described herself as a "stroppy teen" and rejected her mother's advice to complete her education, preferring instead to live with O at his shared home so that her mother, aunt and other well-intending adults were less able to interfere. After living with O for about three weeks they married at a religious ceremony in a mosque. Neither of her parents attended.

67 Although raised in the Islamic tradition, U3 and O did not consider themselves practising Muslims but "turned to God" because of financial difficulties and attended prayers daily during Ramadan.

68 O continued to attend the mosque and became friendly with YC, who was an immigrant from Algeria. As his friendship with YC developed, O's attitude to U3 changed. U3 was never allowed to socialise or have friends or leave the house. She was given a basic telephone (not a smart phone). U3 said: "It's hard for me to explain but he manipulated me into believing there was something wrong with me. That I was a problem! And I believed it."

69 U3 came to understand that her husband had twice been caught trying to travel to Syria and was banned from entering Turkey for ten years. Without warning, he left the family home for three weeks, taking U3's bank card with him. She learned that he had married another woman without telling her. She said: "He had taken my money and just left me here, dumped the kids and pissed off. It was as if I never existed, I was emotionally unstable, and it was a big shock for me, I took it bad. I couldn't go to my mum because she would make things worse. She would just keep going on at me and say I told you not to get married and I had already put her through so much."

70 U3 was supported by a woman at the mosque and resolved to travel to Turkey, believing that O could not reach her there. She stayed with a family known to O in Istanbul. She had no intention of travelling to Syria.

71 O did join her in Turkey after about 3½ months. She said: "Again, he manipulated me into entering Syria with him. He made me believe that he loved me so much and he came all this way to Turkey for me illegally and that anything could have happened to me. He made me believe him. I don't know why I couldn't say no. I wanted him to leave me. I wanted him to treat me well. That was a stupid thing to have done."

72 U3 described the journey to Syria. They joined people with similar plans from many countries near to Syria where they waited for an opportune time to cross the border. Arrangements were made for the men to travel first. U3 followed with other women and families under the direction of people smugglers.

73 U3 gave a detailed account of struggling to carry U3A and U3B and their luggage as they ran in the dark through a forest, of being separated from and reunited with one of her children, of climbing a wire fence and cutting herself and, eventually, meeting a bus in ISIL-controlled territory that took her and her children to a safe house in "Slouk". She was not allowed any contact with her husband but he was allowed a very short visit after he protested. She had no friends and was alarmed at the signs of stress shown by some of the other travellers.

74 Living conditions were poor and prison-like. Eventually the men and women were reunited and removed to Raqqa, but conditions were no better there. The Appellant chose to sleep outside to avoid overcrowding and disease. A promised visit from the men, including her husband, did not happen and U3 "went mad".

75 After three weeks O joined them. U3 understood that he had done the theoretical part of his ISIL training, but not the practical part.

76 After a time living in an old house without sanitation O was able to buy a cheap car that served as a place to live. He was given a job as a court clerk and was then able to rent a modest but respectable house.

77 While living there, U3 became aware of two unconnected British citizens living nearby. One, A, was seeking a divorce. Untypically, because he discouraged socialising, O brought her to their house because he was sorry for her. The other, R, was single and wanted to leave.

78 U3 was disillusioned with ISIL to point of hating it. She had heard too many horror stories and knew that she had made a mistake travelling to Syria. U3 could not leave because she would not be permitted to travel without O's permission. O continued to abuse her and the Appellant found no one to offer consolation. O hated his job but used her as a punching bag to relieve his anger. O lost his job and was imprisoned briefly. They had to find alternative accommodation because they had no means of paying the rent.

79 O then found a job that required him to travel frequently. The arrangement suited U3 because O was often away from home. She was able to develop a friendship with a close neighbour who, with her husband, owned an internet café. The friend gave U3 a great deal of emotional and practical support particularly during her pregnancy and when her third child was born.

80 U3's husband lost his job again and decided that he hated ISIL. This encouraged U3. She thought that he now understood what she felt and would help her return. However, they could not neither afford nor trust a smuggler and knew of no safe way to leave with the children.

81 U3 and O had to leave their house in Raqqa. They lodged for a while in Mayadene before finding a house there that they could afford. During this time her husband was stressed and "as usual I was his punching bag". They worked out an elaborate escape route but abandoned the plans when they found themselves close to artillery attacks.

82 Eventually her husband found a way for the Appellant and their children to escape. U3's account of it is detailed. Importantly, she was arrested by the Syrian authorities, tried for belonging to ISIL and acquitted. She was eventually taken to a camp. She was told that her husband was detained in Turkey and she would be sent to Turkey. The camp was overcrowded and conditions were very challenging but a chance meeting with a person connected to a charity she had met while detained by the Syrian authorities initiated a considerable improvement in her circumstances.

83 Eventually she was allowed to telephone her mother, who was permitted to send money. She was interviewed by Turkish Intelligence and assisted them and was given permission to leave the camp but chose to return and found that conditions had improved greatly. She

finished her statement saying "I never had any bad intentions, nor did I participate in any kind of criminal acts, neither did I radicalise anyone. I'm very normal, I am just focussing on what's best for my children and I would love to have opportunity to come home."

*U3's statements for these appeals*

84 U3 says that, at school, she was interested in social issues and had serious plans to be a journalist. When she was about 14 or 15 she was involved with community projects in North London. She was also interested in acting.

85 U3 lived with her aunt for a time and at this time covered her hair and wore long dresses. She did this out of the respect for her aunt rather than any religious reason. She did quite well in her GCSEs and her aunt treated her to a holiday in Morocco. She developed a close friendship with SM and together they had many friends who came from the wide spectrum of religious backgrounds that is common in London.

86 U3 started to study for A-levels but a busy social life proved more attractive and her studies suffered. She and SM were not "big drinkers" but they did sometimes drink alcohol. For seven months, U3 had a boyfriend. She did not take her exams at the end of the first year of her A-levels and the next year she transferred to another college to study different subjects.

87 This all led to tension with her mother and she looked for accommodation where she could live on her own. She developed other friendships and this led to her being introduced to O. He was clearly interested in her and she enjoyed his attention. Their relationship developed quickly and she soon spent time with him that she should have given to her education. She said: "we were in our own little bubble".

88 U3 and O began to talk of marriage. At the same time, he started to become jealous. He wanted to know the names of her friends and of people she had spoken with, the passwords for her social media and email accounts and details of her past life. She recalled an occasion when he had met her at a railway station and he sent her home to change into less revealing clothes. At this stage, she found his attitude romantic and viewed his jealousy and possessiveness as a measure of his love for her.

89 U3's mother and brother disapproved of their marriage plans. U3's mother established that O had no "papers" and so little prospect of earning enough to support themselves. Her mother said she would approve of the marriage when he had a good job. This led to a heated argument and her mother told her to leave the family home. She went to live with O but they did not sleep together. He insisted on sleeping on the living room floor.

90 After about two weeks, they married at Finsbury Park mosque in April 2011. U3 was 18 years old. As they were leaving the mosque following their wedding her husband told her that she would have to stop dressing in jeans or trousers. O's view was that, upon marriage, a woman becomes her husband's property. U3 found this romantic.

91 O began to be violent on the day of their marriage. He punched U3 in the face when she found it difficult to consummate the marriage. He ordered her not to leave the flat for 5 days. Against her wishes, they did not use contraception, because O wanted her to get pregnant. She was initially pleased when O took control of her bank cards as she saw it as taking responsibility. She was expected to clean and keep the house.

92 In 2011, Ramadan fell between 31 July and 29 August. During that time O started to attend a mosque in Turnpike Lane. He made friends there and brought them home but U3 was not allowed to sit with them. O started to man a Dawah (outreach) table, which was stocked with Islamic tracts that promoted or explained aspects of Islam. O usually wore the khamis (white robe) and hat when he left the house. He said that if he ever obtained a valid travel document he would visit a conservative Muslim country. He prayed regularly. U3 was required to pray too and said: "I remember him hitting me a few times when I didn't pray on time or when I said that I didn't want to."

93 Sometime during Ramadan in 2011, U3 says that her husband spent less time at the mosque and more time looking for a job. He would hit her across the face with a shoe or slipper. At his request, she started to wear the jilbab, which she described as an "all-in-one cover for the head and body", but O then complained that this left her face uncovered. There were times when he accosted people in the street because they were looking at her.

94 O forbade U3 to listen to music and deleted music files from their laptop. She restored them when he went out and re-deleted them before he returned. O also forbade U3 to watch TV or movies and slapped her when she defied him. O went through her Facebook account and required her to remove all photos taken before they met and to "unfriend" anyone male. He did not give her access to his Facebook page.

95 U3 says she had little understanding of Islamic ideas. O told her that certain behaviour was required but he did not justify his views. He did not like being challenged. U3 learned to acquiesce to avoid violence.

96 O was happy when U3 fell pregnant but U3 felt that she was too young and they were too poor. Nonetheless, she had no doubt that she wanted the baby.

97 O supervised all U3's hospital appointments and insisted that she was not examined by a male practitioner or technician. Contrary to her wishes, he said that they were not to be told the sex of the baby. At O's insistence he and U3 had a civil marriage ceremony in September 2011. U3 thinks her husband had been advised that marriage would help him to obtain leave to remain in the UK.

98 When she was about 5 months pregnant, at her father's suggestion, she reconciled with her mother. She enjoyed her mother's support and being able to listen to music and watch TV at her house. Her mother did not like O escorting U3 to her home and did not like U3 wearing the jilbab. U3's mother's concern for her strained her relationship with O. On one occasion U3 went to her mother's home unescorted. He husband realised what she had done and collected her. When they returned home, he beat her, even though she was heavily pregnant.

99 U3's mother and O attended her when U3 gave birth to U3A. They had a heated argument in the hospital ward. O was kinder to U3 immediately after the birth but soon required her to resume her role as house keeper and insisted on resuming sexual activity before she was ready. At O's insistence, and in an effort to please him, U3 started to wear the niqab.

100 U3 was frustrated that O did not permit her to socialise after U3A's birth. U3 was not allowed to visit her mother as often as she wished.

101 O was given leave to remain soon after U3A's birth but showed no interest in getting a job to support the family. O's violence towards U3 increased. He would punch her, kick her and strike her with a shoe or any improvised weapon. Afterwards he apologised. Often he would get emotional and cry. U3 says: "he seemed so genuine when he apologised".

102 O sought to impose his idea of Muslim dress standards on people who visited their home. He discouraged contact with U3's mother. He expressed frustration that it was not possible to practise Islam properly in the United Kingdom and feared for children growing up in the United Kingdom, where there was too much freedom and too much government intervention in family matters.

103 U3 says that, although she did want sexual relations with her husband, she was required to have sex far more than she wanted and feared violence if she resisted. She became pregnant with U3B after only about 4 months.

104 The Appellant became aware of O having contact with YC and S by Skype. Contact increased in January or February 2013 and U3 came to understand that YC was in Syria. O was clearly impressed by YC.

105 U3 says that she was not aware of what was happening in Syria, though she knew that there was a civil war there. She was worried when O hinted that he wanted to fight but she did not want arguments. O said that it was U3's duty as a Muslim wife to travel with him. U3 said that she would not travel to a country where there was a civil war when she had a young child and was expecting another.

106 U3 looked for an Islamic scholar who she hoped would discourage O from travel to Syria. She contacted someone who said that going to Syria was wrong and she should try to stop O from going and should not go herself.

107 U3 became aware of the humanitarian crisis in Syria and made clear that she did not want to go. However, O said that she should go and that if she did not he might take the children and marry another wife.

108 O became more distant and impervious to U3's efforts to make herself attractive to him. U3 was convinced that he had found another woman. U3 demanded to know the identity of this woman. O beat her until she fainted. She was six months pregnant.

109 O bullied U3 emotionally. O said that U3 had been little better than a prostitute when they first met. U3 discovered that O had created a profile with a Muslim dating agency and had explained that as a Muslim he was allowed another wife.

110 U3's and O's son U3B was born in May 2013. O added to the stress of the birth by insisting that only female clinicians were involved. After the birth they enjoyed a period of relative happiness. In July 2013, when U3B was about 6 weeks old, O travelled to Algeria. O was allowed a "brick phone" (i.e. a basic mobile phone without internet connections) to keep in touch. Their relationship was "OK" when he returned.

111 From about October 2013 U3 yielded to O's request that she wear gloves and cover her eyes in public. She did this to please her husband. She was frightened of losing him. She was permitted to attend Friday prayers and made some friends. One, SA, was divorced from a controlling husband and empathised with U3.

112 O created a Facebook account. U3 thought this was so he could meet other women. In January 2014 O prevented U3 from attending the wedding of her good friend SM. Her mother and sister and other friends attended. U3 did not understand why she was not allowed to go.

113 The humanitarian crisis in Syria became a conversation topic. The mosque encouraged fund-raising. With O's approval U3 involved herself in it, something which enhanced O's prestige.

114 At the end of January 2014, O went to Saudi Arabia on "umrah". He returned "fixated" on going to Syria and was insistent that U3 should go with him. In early 2014, U3 attended her mother's house without O's consent. There was a violent argument in front of U3's parents. U3 sided with O. This is the last time U3 saw her mother.

115 O became more demanding and exacting and determined that U3 should travel to Syria. Eventually she agreed to follow him there. She was, in part, frightened that he would just take the children.

116 O left the country but returned a few weeks later saying that he had been deported to Algeria from Turkey, banned from returning to Turkey for 10 years and interviewed by MI5. After a month or so, O tried to leave the country again but was prevented from doing so.

117 In April 2014, O pushed U3 out of their flat. She used Facebook at an internet café to contact a friend and later O used the same account to warn her not to be in touch. Her second statement contains a detailed account of arguing with her husband, calling the police, looking to the mosque for help but not finding any and learning that O was intending to marry another woman.

118 U3 contacted O's mother, who initially sided with her son but also told her firmly not to go to Syria. U3 asked O's friend YC for help. He said that she should go home. The Appellant said: "I wanted nothing more to do with him, but then I still wanted him and

couldn't bear thinking of him with someone else. It was like I had an obsession with him, like a sickness."

119 O did not return home and YC said that the only way for U3 to win O round was to make him think that she would go to Syria. YC suggested that U3 join him in Turkey as a stepping stone to Syria. U3 booked an indirect flight to Turkey, intending to stay with YC. O was thrilled by the plans and U3 and O reconciled. She felt "a huge relief".

120 U3 travelled to Turkey with her children and was met by YC. YC's wife was encouraging about life in Syria.

121 O arrived in Turkey after about 6 weeks, on 9 or 10 of August 2014. U3 and O were pleased to see each other. It was clear that her willingness to travel to Syria meant much to O.

122 On the night of 20 August U3 told her husband that she did not want to go to Syria. He did. He also told her that he had been stopped by someone from the Security Service, who expressed concern for the children. If they returned to the UK, she may have problems keeping the children. He could not stay in Turkey as he was banned for 10 years. Before she could stop him, O destroyed the children's passports by ripping them up in front of her. O became violent towards U3 and YC's wife came to help her.

123 O was emotional but assured U3 that he would have no other women if they went to Syria. She agreed to go. She insisted that she did so solely for the sake of her marriage. She did not subscribe to extremist values. As a young person she had promoted human rights. She knew "next to nothing" about ISIL and had no wish to align with them.

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124 U3 gave a detailed account of leaving Turkey and entering Syria and of the conditions she found, of the increasing restrictions on personal liberty, especially for woman, of her astonishment that there were slaves in Syria and the discomfort she experienced living in a society that allowed stoning and beheading.

125 In February 2015, O married a second wife. When she remonstrated with O he beat her with a metal rod designed for cleaning his gun. The beating was severe and left her bruised for many weeks. O divorced the women after a few weeks.

126 U3 found this a pivotal moment in their relationship. She had sacrificed much for the sake of their marriage. She could not accept that he was entitled to more than one wife. She came to realise that she no longer loved O.

127 In July 2015, U3 was able to contact her mother and brother. She was particularly worried that in the event her death her children would be brought up in an ISIL orphanage; she found that a "terrifying thought". However, she told her mother, untruthfully, that she was in Turkey. She told her brother that she was in Syria and hoped that he would tell her mother.

128 She gave details of continuing violence at the hands of O including an occasion when he cracked a bone in her leg. U3 looked for ways to leave but was advised that it would be difficult to leave without documentation because ISIL officials would disapprove of her leaving and Kurdish officials would assume that she was aligned with ISIL.

129 In January 2016, U3 stopped contacting her mother. This was in part because O did not have a phone, in part because the internet was too unreliable and in part because she was depressed.

130 In March 2016, U3 realised that she was pregnant. O had demanded sex and she had been afraid to refuse. She was "devastated" to be pregnant, mainly because she was concerned about the child. She had no idea if the child would be entitled to enter the United Kingdom.

131 U3 was appalled at news of ISIL attacks in Europe. She began to think more about leaving and was encouraged as O seemed to know the "going rate" charged by smugglers for returning people. She resumed contact with her mother using internet cafés. There was no privacy there, but she was able to tell her mother that she wanted money because she was pregnant. Her mother explained that she would get herself into trouble if she sent money to Syria. She would help if U3 could get to Turkey.

132 In the final trimester of her pregnancy with her third child, U3 found a crèche for her children. She did not want to leave them there and accepted an offer of being allowed to remain subject to assisting with the children and doing some cleaning. The other parents were well informed about the war and particularly territorial losses or gains. U3 felt out of place.

133 In October 2016, O told U3 that he had married someone else. He said things calculated to hurt U3 and left her for a week or so. U3C was born in December 2016. U3 continued to look for ways to leave.

134 O became disillusioned with ISIL, changed jobs and found another house. O took two further wives and they all lived together. She described the arrangement as "constant and complete humiliation". Eventually, O divorced the other two wives and told U3 that he was planning for them to leave.

135 In October 2017, O announced that he had found a smuggler. It was arranged that she and O would travel separately. He was very emotional when they parted and she has never seen him since. She travelled to Az'az, where she was tried as an ISIL supporter and acquitted. She tried to contact O because she believed that he was her best hope to get out of Syria. She has had no contact with him since December 2017.

136 In January 2018 U3 was advised by a worker from the Lucie Blackman Trust to contact the United Kingdom authorities with a view to repatriating the children. In the spring of 2008, U3 was contacted by Lauren and Matt, from the Security Service. U3 cooperated with Lauren, telling her all that she could about her experiences and answering questions, some quite searching, about people she had met in Syria. She did not want to contact O

in case he tried to exercise rights over the children, which she thought he might have in Syria. U3 drew up a statement (the self-drafted statement), which she sent to Matt and to Lauren, but it was drawn in difficult circumstances and parts of it required correction.

137 In April or May 2018, Matt told U3 that she had been deprived of her (British) citizenship and offered her help. At the end of May 2018, she contacted her present solicitors who agreed to help her appeal the deprivation decision and to remind the Foreign and Commonwealth Office that they were responsible for the Appellant's three British children. In June 2018, U3 left the camp but found accommodation nearby and remained registered as a camp resident with access to basic food.

138 The Appellant was particularly worried about her daughter's health. Eventually, with assistance from the Foreign and Commonwealth Office, the children all left for the United Kingdom in March 2019.

139 By this time, U3 had become friendly with a man, M, whom she found very understanding and supportive. They started to live together on 5 April 2019. She remained involved remotely in the lives of her children. She left M in an effort to flee to Turkey but failed and she and M reconciled.

140 U3 then applied for and was refused permission to enter the United Kingdom.

141 U3's third statement is dated 5 March 2021. In it, she gives further details about the intensity of the beatings she endured from O. She recalled one occasion when her whole face was swollen, red and blue, and her eyes were bloodshot. O beat her with a broom and an electric cable and put his fingers round her throat.

142 U3 said that she had never looked for ISIL videos, but has seen recordings of executions on O's phone when looking for other things. U3 denied being aware of atrocities committed by ISIL when she left the United Kingdom for Turkey.

143 U3's fourth statement is dated 12 October 2021. In it, she repeats her assertion that she did not align with ISIL. She assumed that, in Syria, she would live in a stricter society under Sharia law in line with O's conservative ideas. She did not know anything about the atrocities committed by ISIL. She disagreed with SSHD's contention that it was "likely" that she was aware of events in Syria and "highly unlikely that [she] would hold no interest in the motives for Osama's travel". She was aware of a humanitarian crisis but that was the extent of her knowledge. O made it very difficult for her to access electronic media and she did not read serious newspapers.

144 U3 did not accept that, by performing her duties as a housewife and mother, she was supporting ISIL. She was not an ISIL supporter.

*U3's oral evidence*

145 U3 gave evidence before us. She adopted her statements and was cross-examined. She was reminded that she had accepted that she knew that O had gone to Syria for "jihad to

defend Muslims in Syria". She claimed not to understand the phrase precisely but she knew that it was to do with fighting. She accepted that she had said that O "wanted to go and fight" but had not asked what he meant. She accepted that she had asked a Muslim cleric for advice and had been told to stop O from travelling. She said that she was scared of her husband finding out that she had asked a cleric for advice.

146 U3 admitted that she knew that there was a humanitarian crisis in Syria. She accepted that if O had been successful in his first attempt to get to Syria she would have joined him and taken their children.

147 It was put to U3 that if, as she suggested in her statement, she sometimes wanted to be rid of O, it made no sense to follow him to Syria, especially as she had considered herself "OK" when he left for Algeria. She said: "part of me wanted to follow him".

148 U3 understood that it was against the law to travel to Syria from the United Kingdom but she agreed that on both occasions O had tried to get to Syria she had agreed for join him there. However, when his first attempt failed and he said that it would have been easier if they had gone as a family she had refused to go with him to Syria.

149 U3 said that she and her husband had a "very up and down" relationship. Sometimes she wanted rid of him and other times she wanted her marriage to work. She felt a strong obligation to support her husband despite his ill-treatment of her.

150 U3 accepted that there was a marked contrast between the account in the original, self-drafted statement and her later, professionally drawn statements. In the former, she had said that she went to Turkey with no intention of travelling to Syria, believing that O (being banned from entering Turkey) could not reach her there. In the latter, she had said that she went to Turkey hoping that O would join her there and expecting to travel to Syria. She insisted that she had always endeavoured to tell the truth but that she did not know how to tell her story. She said that she was very embarrassed about what had happened to her.

151 It was put to U3 that that her friend SM had said that U3 had told her that she was going to Turkey for a break to get away from O and that she wanted a divorce from him, but in U3's own statement she had described using an internet café in Turkey to send O a message making clear that she was missing him and wanted sex with him. U3 denied that she went to Syria in the hope and expectation of travelling with O to Turkey.

152 Asked about staying with YC in Turkey, U3 accepted that he worked for ISIL and said that he spent his time working as a taxi driver but she claimed to have no idea of the identity of his customers. U3 denied that going to stay with YC in Turkey was a step on a planned journey to travel to Syria to support ISIL.

153 U3 was reminded that, in her evidence she had admitted that O had told her that he had been stopped by the British security personnel on his way to Germany and had been told that they did not care about him or his wife but they did care about their children. Even so, following a violent argument with O, she had promised to take the children to Syria

so that the family could stay together. She did not accept that she was an extremist who chose to expose her children to extremist ideas.

154 U3 accepted she had asked YC's wife about life in Syria and the journey there. YC's wife assured her that there was sufficient food and that there were schools for children and told her that it was not true that people in Syria were eating cats, as had been alleged on TV.

155 U3 confirmed she had started to study A-level Law. She was reminded that she had said that YC's wife told her about the declaration of the Caliphate, showed her a clip on the internet from the declaration by Baghdadi, and told her that there would be an Islamic State that applied Sharia law that would protect Muslims. U3 continued to deny any significant research before agreeing to travel to Syria with O and the children.

156 U3 was asked about her Twitter account. She had said in her statement that it had been created on O's phone using her Skype profile. She assumed that she had set up the account but said that O had access to it. Many of the tweets from that account concerned the importance of modest dress but she accepted that she had tweeted or retweeted this: "Whoever dies without having fought or having resolved to fight has died following one of the branches of hypocrisy." U3 claimed not to have a detailed recollection of how it was sent but denied that it represented her views. She sent it, or let O send it, to please O.

157 U3 said that she had "liked" tweets in order to impress O, including one that read: "And whoever his sins are plenty then his greatest remedy is Jihad". This originated from a scholar whom O respected. It appeared in Arabic script which at that time U3 could not read. She had sent it to please O.

158 U3 had liked a tweet that read: "When liberating your land, store ten bullets into your gun, one for the enemy and nine for the Traitors." Again, she had done this to please O.

159 U3 was asked about her relationship with two individuals. She identified them as "Dawlah fanatics". She denied that they had found in her someone who shared their ideas. Her dealings with them were prompted by politeness. Nevertheless, she remained in contact with them.

**The evidence of Dr Roxane Agnew-Davies**

160 Dr Roxane Agnew-Davies gave evidence before us and adopted her reports dated 3 February 2021 and 30 September 2021. Dr Agnew-Davies has worked as a clinical psychologist since 1986. She has a particular interest in the impact of trauma, especially in the context of domestic and sexual violence. She has an impressive CV, including considerable clinical experience as well as academic research and teaching and an extensive list of publications in her subject area. She is a member of the Department of Health Task Force on Violence Against Women and Children and was specialist advisor to that Department's Victims of Violence and Abuse Prevention Programme.

161 Having heard her cross-examined, we found her to be a balanced and thoughtful witness who had good familiarity with the relevant evidence in this case. Her answers to questions were considered and nuanced. She fully understood her duties as an expert.

162 In her first report, at para. 4.5.27, Dr Agnew-Davies concluded that O's behaviour towards U3 "amounted to a very severe, extensive coercive control through a number of dimensions including but not limited to:

- Various injuries she sustained after physical assaults by [O] including to her back and a fractured ankle… and sexual violence… that traumatised her
- Intimidation and threats…
- Unpredictable mood swings and behaviours…
- Instilling fear of abandonment, divorce, separation and infidelity…
- Forcing her by various means to submit to his beliefs and views, especially about her role…
- Surveillance and enforced isolation that acted to increase her entrapment and dependency on him…
- Degradation and psychological abuse that led to her subservience, lack of independence and destruction of self-worth…
- Micro-regulation and control of most facets of her life that cut off possibilities for her to resist…
- Changes in and use of multiple tactics to overcome resistance especially with regards to her refusal to go to Syria…"

163 Dr Agnew-Davies explained that in her view U3 was not "thinking freely" when she went to Turkey (para. 4.6.38). She referred to U3's "desperation and remnants of hope that [O] would change, that [U3 and O] would reconcile and that she may not have to go to Syria at all (para. 4.6.38). U3 was so "subject to coercive control" that she was led to "an all-encompassing, overwhelming desperation to reclaim him so that she could think of nothing else" and that "her behaviours were a product of instinctive drives and subconscious forces so strong that it seemed as if her very existence depended on it" (para. 4.6.39).

164 The thrust of Dr Agnew-Davies' reports was that O, by his extreme and sustained coercive and controlling behaviour, had so affected U3's thought processes that the desire to please O and win him back was a dominant reason for many of her actions, particularly travelling to Turkey and, eventually, Syria. Any views she might hold about ISIL were peripheral as explanations for her behaviour.

165 It was pointed out in cross-examination that, at a time when Dr Agnew-Davies described U3 as isolated and vulnerable, she had contact with her friend SM. Dr Agnew-Davies was aware of this, having read SM's statement. She had referred in her report (at para. 4.6.34) to U3's "fleeting conscious wishes to escape from or divorce" O, but remained firmly of the view that U3 was controlled by her husband. Occasional contact with other people did not undermine or diminish his power over her. Dr Agnew-Davies was satisfied that the signs of trauma caused by O's conduct towards U3 were present before U3 went to Syria but that the trauma persisted while she was there.

166 Dr Agnew Davies was not, of course, able to take into account the CLOSED evidence in reaching her conclusions.

**The evidence of Nic Newman and Siobhan Coward**

167 Nic Newman is a Senior Research Associate at the Reuters Institute for the Study of Journalism at the University of Oxford. For the last decade, he had been lead author of the *Digital News Report*, which he describes as "the world's largest ongoing study of news consumption". Before that, he spent 25 years covering international news for the BBC. He produced three reports, dated 4 March 2021, 5 October 2021 and 24 November 2021, on media coverage of ISIL atrocities prior to 24 June 2014, the date when U3 travelled to Istanbul.

168 In the conclusion to his first report, Mr Newman said this: "Taken as a whole, stories of ISIL atrocities in the British media were rare prior to 24 June 2014: (a) there were a limited number of such reported upon up to 24 June 2014 and (b) the BBC and others were cautious about exposing their audience to shocking images and there would also have been concerns about playing into ISIS propaganda without having independent journalistic verification on the ground due to the security situation."

169 SSHD's team responded to this statement by filing evidence of its own from Siobhan Coward. Ms Coward's team used Google and YouTube and entered terms such as "ISIS", "ISIL", "Islamic State" and "Daesh" to find out what was being reported on free-to-access sites about ISIL's activities at relevant times. Full details are given in her statement. Ms Coward's team found 94 reports published in the UK and international media before 24 June 2014 relating to atrocities committed by ISIL and 10 media videos. There were 12 articles in the UK media reporting on a massacre of some 1700 Iraqi soldiers near Tikrit on or around 12 June 2014. Many of the reports identified were on mainstream sites, such as those of Channel 4, The Independent, The Daily Express, the BBC, The Daily Mail and The Guardian. Some include graphic images depicting beheadings, crucifixions and other gruesome killings; others included detailed descriptions of such images. Of the 94 articles identified, 76 were published in the three weeks prior to 24 June 2014.

170 Mr Newman's second report responds to these findings. In cross-examination, he accepted that there had been some reports which he had not identified in his first report, but maintained the view that the reporting of ISIL's atrocities was relatively sparse.

**The evidence of Professor Andrew Silke and Dr Katherine Brown**

171 Professor Andrew Silke and Dr Katherine Brown were described as "radicalisation experts". Professor Silke is an expert in terrorism and terrorist psychology. Dr Brown has particular expertise in jihad and counterterrorism and has been a senior lecturer in Islamic studies. They produced a joint report dated 15 March 2021, which they adopted. Professor Silke attended by video link. Dr Brown attended in person. They were called together and they agreed between themselves which of them was best suited to respond to cross-examination as various topics were reached. The procedural rules are not restrictive and we were satisfied that this approach best enabled them to assist us.

172 Prof. Silke and Dr Brown based their opinion not only on the evidence they had read but also on a detailed interview with U3, conducted using video-conferencing technology, a transcript and video recording of which we have seen. Their conclusion was that "[b]ased on the evidence that we have seen, we do not assess [U3] as currently radicalised". Furthermore: "It is not clear that [U3] was radicalised prior to her departure from the UK and there are instead indications that she did not support the move to Syria to that extent that her husband did. There is more consistent evidence that the decision to travel related to domestic abuse dynamics rather than radicalisation." There was "no evidence that [U3] attempted to foster or facilitate radicalisation of her children while in Islamic State-controlled territory".

173 Prof. Silke and Dr Brown were cross-examined. It is not necessary to set out the cross-examination in detail. One important topic was the interpretation to be placed on the tweets from U3's Twitter account, which on their face appeared to be supportive of ISIL. On this topic, Prof. Silke and Dr Brown considered that the tweets could be properly explained without concluding that U3 was herself radicalised or ideologically aligned with ISIL.

**The evidence as to U3's children**

174 U3's children are currently in the care of U3's brother and his wife, pursuant to a special guardianship order. U3's brother and sister-in-law produced written statements which we have read. There is also a detailed report on their well-being and the impact on them of separation from their mother by Peter Horrocks, an independent social worker. Mr Horrocks was cross-examined.

175 We summarise the evidence as follows:

(a) U3A is 9 years old. While in Syria, she witnessed bombing, the arrest and detention of her mother (and herself and her siblings) and violence against her mother. She has been exposed to the deprivations of life in a refugee camp. She has been separated from her father since 2017 and from her mother since March 2019, when arrangements were made for her to come to the UK. Until that point, she had never had any formal education. Her health deteriorated over a long period in Syria and she suffered a stroke before her repatriation. She began in a special needs class at

school but has made huge progress and has returned to a mainstream class. Her confidence has returned. She has daily contact with her mother using video-conferencing facilities and an age-appropriate understanding of the situation facing her mother.

(b) U3B is 8 years old. His experiences in Syria were similar to those of U3A. On his return to the UK he was initially placed with a group of younger children but is now ready to go into a class of children of his own age and is excelling academically. He is the leader of his group of friends and is increasing in confidence. He maintains a significant relationship with his mother. He loves her and misses her and wishes she would return.

(c) U3C is 5 years old. He did well in nursery and is doing well in reception. He is bright and a fast learner. He understands U3 is his mother but also refers to U3's sister-in-law as his mother in front of friends. U3 continues to play a significant role in his life.

(d) Mr Horrocks' view is that "the protective framework for the children meets many of their needs in terms of ensuring the ongoing attachment between the children and their mother, as well as providing them with a high degree of practical and emotional care, which meets their current needs for security, stability and continuity". However, he expressed concerns about their well-being in the future, and in particular in processing the traumas they have experienced, if they are not reunited with their mother in the future. He does not consider that the current level of remote interaction is sustainable.

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**What we draw from U3's OPEN evidence**

176 The evidence we have read and heard satisfies us that, on many occasions while in the UK, O subjected U3 to serious and sustained violence. The violence occurred so often that it was the dominant feature of the relationship. U3's evidence on this point was not subject to any significant challenge. Having heard her give evidence, and having found that evidence corroborated in significant respects, we accept what she said on this point as true. We summarise the main incidents of violence:

(a) On their wedding night in April 2011, O punched U3 in the face, kicked her and violently penetrated her. The account is corroborated by SM, who explains that U3 told her about it (in general terms) at the time.

(b) There was a further incident of violence during Ramadan in August 2011 in which O hit U3 in the face with a slipper and punched her.

(c) Thereafter, U3 learned that O was likely to be violent towards her if she expressed disagreement with him on matters touching on religion.

(d) In April or May 2012, when she was heavily pregnant with S, O beat U3 after she had gone to her mother's house without O's permission.

(e) In the period up to July 2012, the violence worsened. When O attacked her, U3 would put her hands across her face to defend herself and turn away from him. O would punch and kick U3 in the back and hit her with shoes or other items that were to hand. He would then get emotional, cry and apologise. U3 would threaten or pretend to call the police to make him stop.

(f) In February 2013, when U3 was six months' pregnant and anaemic, U3 discovered text messages between O and another woman on O's phone. When O came home, she confronted him about this and refused to open the door of the flat to him. He pushed the door open, trapping her behind it, pulled her by the hair into the living room and beat her all over her body to the point where she fainted, an ambulance was called and she was taken to hospital.

(g) In January or February 2014, after an argument between with O, U3 went to her mother's house, but then called O to bring her back home. He did so, but U3's mother and father came to U3's home to confront O. An argument ensued and O beat U3 in front of her mother and father, before physically removing U3's mother from the flat. This account is broadly corroborated by U3's mother.

(h) There was a further incident on 30 March 2014, after U3 refused to go to Syria with O, when O was violent towards U3. After going to the mosque, U3 told O (falsely) that she was bleeding as a result of his violence towards her. O called an ambulance and she was taken to A&E.

(i) On 10 June 2014, U3 confronted O when he returned to the flat to get clothes. He pushed her, pulled her hair, said "Never step up to me" and started hitting her really hard. U3 thinks he punched her in the legs. U3 called the police. The call appears in police records.

(j) At some time between 10 and 14 June 2014, O came back to the flat when U3 was with SM. O kicked and punched and pushed U3 on the floor. He said he would go to Syria with his new wife. U3 threatened to call the police if O did not leave. She started to do so using SM's phone and put it on speakerphone so O could hear it ringing. She did not intend to let the call connect. In her evidence, SM corroborates this account. She also says that U3 told her about O's repeated violence towards her.

177 The evidence about the violence suffered by U3 after she left the UK, in Turkey and Syria, comes largely from U3 herself, but is consistent with the picture which emerges of the nature of the relationship between O and U3 in the UK. Accounts of O's violence towards U3 are powerfully corroborated by things said by the children to U3's mother and brother when they were looking after them. In particular:

(a) On 20 August 2014, when U3 told O that she would not go to Syria with him, he shoved her really hard into the wall and stormed out of the room. On the following day, 21 August 2014, when U3 reiterated that she did not want to go to Syria, he

threw U3's passport at her and started to rip up the children's passports. He then started to hit U3. He punched U3 and when she fell back kicked her to the neck and back. He said U3 could leave if she wanted but he was taking the children to Syria. U3 said she was taking the children. O said she could not do that.

(b) In February 2015, after O had married another woman, U3 and O argued. O took out a metal rod used to clean his Kalashnikov and started beating U3 on the back with it. He beat her so badly that she lay on the floor and could not move. Her back was a bluish green colour and she was bruised and tender for what seemed like weeks afterwards. On the next morning, she realised that O had locked her into the house where they were living after beating her.

(c) In around July or August 2015, O and U3 argued before he left to travel for work. O beat U3 badly. She injured her ankle. She went to the hospital and was told she had broken her ankle. It was bandaged and she was told not to put too much pressure on it.

(d) Other examples of mistreatment by O were described in U3's interview with Dr Agnew-Davies. These included being locked in the bedroom several times, being slapped a couple of times per week, being raped several times, being assaulted with weapons, being kicked or hit with fists a couple of times per month and being beaten up once or twice per week.

178 The evidence we have seen and heard goes further than merely establishing that U3 was the victim of sustained and repeated violence by O. It establishes that she was also subject to the following behaviours, which in our view were summarised accurately by Dr Agnew-Davies in her report: threats, surveillance, degradation, shaming, isolation from family and friends, false imprisonment, control of her means of escape, control of her finances, control of almost every aspect of her personal and social life, conduct designed to make her doubt her own sanity ("gaslighting") and micro-regulation of her dress and behaviour. U3's description of O's behaviour also included unpredictable mood swings in which he would at times be cold and distant and at other times effusive in his expressions of love for her. This was described by Dr Agnew-Davies as "pathological bonding", a known marker of coercive control. We have considered carefully whether U3 might have been exaggerating the extent or severity of these behaviours. We conclude that she was not. Her descriptions were extremely detailed, largely unchallenged and corroborated in key respects. The same is true of Dr Agnew-Davies' analysis of them.

179 As to whether U3's return would be in the best interests of the children, we conclude as follows:

(a) All the children are currently well cared for and thriving.

(b) U3 plays an important part in the lives of all the children. U3A and U3B in particular are very emotionally attached to U3.

(c) However, the current levels of contact between U3 and the children are likely to be difficult to sustain, both because children's lives tend to become busier as they grow up and because it will be emotionally difficult to maintain such an intense relationship with someone with whom contact is necessarily remote.

(d) All the children, but especially U3A and U3B, are likely to be anxious about U3 if she cannot return to UK. If U3 were allowed to return to the UK, one understandable source of anxiety for the children would be addressed. We also accept that there is a significant risk that the children's mental health will in the future be affected by the trauma they suffered in Syria; and that they would be assisted in addressing and processing this trauma if their mother were permitted to return.

(e) However, it is important to be clear-eyed about the uncertainties that would ensue if U3 did return to the UK. She may face criminal prosecution, with the possibility of a substantial period on remand and/or a custodial sentence. If she did, the level and quality of contact with the children might well decrease, rather than increase, and that would itself be likely to generate anxiety on the part of the children. In any event, it cannot be assumed that U3 would simply resume her role as primary carer on return. There would have to be further family proceedings to determine the kind and degree of contact that is appropriate. Those proceedings would have to take all the circumstances into account, including the fact that U3 had chosen to take U3A and U3B abroad into a situation of great peril, where they suffered significant harm.

(f) On balance, we accept that U3's return to the UK would be in the best interests of the children. However, under the present arrangements, the children are well cared-for and maintain contact with their mother, which may decrease in frequency and intensity over time. This situation, while not optimal, does provide a substantial degree of protection for the interests of the children.

180 In written submissions provided after the hearing, Mr Grieves identified nine factual issues and submitted that SIAC had "institutional competence" to determine all of them. We address these factual issues one by one.

*(i) What impact did U3's ex-husband's serious and prolonged abusive, controlling and coercive behaviour (including serious violence) have upon U3?*

181 In our view, there is only one answer to this question. The impact of this behaviour on U3 was severe. SSHD did not suggest the contrary. O's treatment of U3 had a major impact on the way she made decisions for herself and her children.

*(ii) What motivated U3 to decide to leave the UK for Turkey around 20/21 June 2014? Did she leave the UK as a result of her abusive relationship with her husband (i.e. to prevent him leaving for another woman) or to "align with ISIL" as a radicalised person?*

182 In our view, the framing of this question is flawed insofar as it posits a binary choice between two mutually exclusive explanations for U3's behaviour. There is no doubt that

U3's experience of violence and coercive and controlling behaviour by O contributed materially to her decision to leave the UK to travel to Turkey.

183 How that experience affected U3 is slightly less clear. There is a discrepancy between the evidence in U3's self-drafted statement and that contained in her statements for these proceedings. In the former, U3 said that she had left the UK for Turkey to get away from O, believing that he would not be able to join her there because he was banned from entering the country. In her statements in these proceedings, and in her evidence before us, she said that she had gone in order to prevent him from going to Syria with another woman, although part of her hoped that he would be unable to join them. The first of these explanations was, we find, false. It was proffered in support of a narrative that she had never wanted to go to Syria and had done so because she had been forced to do so by O.

184 In our view, the explanation given in U3's witness statements for these proceedings is closer to the truth. We consider that U3's motivation for travelling to Turkey was mixed. Part of her motivation was to convince O that she was prepared to go to Syria and thereby dissuade him from going there with another woman. We consider it likely that the knowledge that O was banned from Turkey also played a part. It meant that there was a chance that U3 would be able to demonstrate her commitment to O and he would be unable to join her. We found compelling Dr Agnew-Davies's evidence that such conflicted motivation was common in those subject to controlling and coercive behaviour.

185 But this seems to us to leave out of account one important element in the process of reasoning which led U3 to decide to travel, with her two children, from the UK to Turkey. We use the word "decide" deliberately. Although U3 was undoubtedly affected by her experience of mistreatment by O, she was still able to make reasoned decisions for herself and her children. Travelling to Turkey would demonstrate her commitment to O only because, and insofar as, Turkey was a stepping stone to Syria. When she left the UK to travel to Turkey, U3 must have recognised – and in our view, on the evidence, did recognise – that she and her children *might* end up going to Syria and was prepared to take them there if necessary. In other words, when she left the UK, she had the contingent intention to travel to Syria with her children if O managed to enter Turkey. There is no doubt that she knew that O's intention in travelling to Syria was to align with ISIL. She therefore intended, contingently, to offer support to him in that end, at least as his wife and as the mother of his children.

186 The fact that a large part of U3's motivation was to prevent O from going to Syria with another woman does not determine what we perceive to be the key question facing SSHD: the extent, if any, of U3's ideological alignment or support for ISIL. Even given the evidence we have described about the extent of violence, coercion and control in the relationship between U3 and O, it remains possible that an ideological commitment to, alignment with or sympathy for ISIL played a part, even if not the major part, in U3's decision to leave the UK for Turkey. Deciding whether it did or not required SSHD to make an assessment taking into account all the evidence, OPEN and CLOSED. On this point, the authorities we have referred to indicate unequivocally that the relevant

judgment is, in the first instance, for SSHD. Only if that judgment can be shown to be vitiated by a public law error can we interfere with it.

187 Before we consider whether it was vitiated by any such error, we address the other factual questions which Mr Grieves says arise.

*(iii) What did U3 know of ISIL as at 20/21 June 2014 (and if anything, what was the relevance of such knowledge in the context of (i) and (ii)?)*

188 On this topic, U3 relied on the evidence of Mr Newman. We did not find that evidence at all persuasive. His initial view was based on the premise that there was little reporting of ISIL atrocities in the period before 20/21 June 2014. We are satisfied that this premise was shown by Ms Coward's team's internet searches to be false. These searches revealed a large number of reports of ISIL atrocities in the period before, and especially in the few weeks before, 20/21 June 2014. A person of average intelligence with access to the internet who was interested in finding out about what kind of organisation ISIL was, and what kind of conduct it engaged in, could and would have discovered these reports with ease.

189 U3 was at one stage studying for A-levels in Media Studies and Law. Having heard her give evidence, we find that she is an intelligent woman. We considered carefully whether the fact that O had isolated U3 and restricted her access to the internet meant that she did not have the means to do research into the ideology and conduct of ISIL. We do not consider the evidence supports that proposition. Whilst there is clear evidence that O restricted her access to internet-enabled mobile phones, there is also evidence that U3 could and did access the internet at her mother's house and elsewhere. We also considered whether it had been shown that O's violent, coercive and controlling behaviour had so overborne her will that she had no desire to conduct any kind of research into the group which she knew O intended to join in Syria. The difficulty with this suggestion, in our view, is that U3 did conduct internet searches at earlier stages. We find it unlikely that she would have conducted no research at all into the activities or ideology of ISIL before leaving the UK, particularly given that, as we have found, she left with the contingent intention of taking her two young children to territory under the control of that group.

*(iv) What motivated U3 to decide to leave Turkey for Syria on 22 August 2014? Did she leave for Syria as a result of her abusive relationship with her husband or "to align with ISIL" as a radicalised person?*

190 The framing of this question seems to us to suffer from the same flaw we identified in respect of question (ii). It suggests that the two explanations posited are mutually exclusive. To our mind, there is strong evidence that O's violent outburst on the eve of her setting off for Syria, O's destruction of the children's passports and threats to take the children himself if she did not accompany them all played a part in U3's decision to travel to Syria. However, the key question for SSHD was whether, and to what extent, she was ideologically aligned with ISIL when she did so.

191 As to this, the OPEN and CLOSED evidence includes a number of elements which *could* suggest such alignment. The principal evidence in this regard consists of:

(a) U3's own evidence that she "went to Syria without being forced to do so" (para. 3 of her second witness statement). This seems to us to be an important starting point for any analysis of the degree of risk which U3 poses to the UK's national security, to be considered alongside the other evidence in the case.

(b) The social media posts from U3's Skype and Twitter accounts, which she accepts she made herself. These included quotations from extremists and supporters of ISIL. We have carefully considered U3's explanation that she did not have a full understanding of the views of those she quoted and that she posted as she did in order to please O. We remind ourselves that it is not our function to decide what significance to give to these posts, though we do not accept that U3 knew as little as she said about the ideology and activities of ISIL at this time. What matters for present purposes is whether SSHD could properly take into account the social media posts, together with the other evidence in the case, as suggesting an ideological alignment to ISIL. We consider that she could. What weight to give them in the overall assessment was for SSHD.

(c) CLOSED evidence, which cannot be referred to here, but which, in our view, SSHD could properly regard as containing elements suggestive of alignment with ISIL at the time when U3 left Turkey for Syria.

192 As we have emphasised, the question is *not* to what extent *we* consider U3 was ideologically aligned with ISIL when she left Turkey for Syria, but whether it was open to SSHD to assess that U3 was so aligned.

*(v) Did U3 remain voluntarily in ISIL territory for the duration she was there?*

193 U3's own evidence provides a strong basis for her case that she was very quickly disillusioned with ISIL; that there was no practical way for her to leave its territory safely with her children; and that she would have done so if she could. However, the CLOSED evidence contains elements which SSHD could properly consider cast doubt on that evidence. Again, the question is not what *we* conclude, but whether it was open to SSHD to conclude that she remained voluntarily.

*(vi) Did U3 pose a risk to UK national security when she was deprived of her British nationality on 17 April 2017?*

194 Mr Grieves accepts that this question is one where "the appropriate respect slider is moved in favour of SSHD/security services and such conclusions afforded more weight" but submits that "in this case, it will depend, potentially decisively in U3's favour, on SIAC's view of (i-v) above and (vii-viii) below".

195 In our view, Mr Grieves was right to say that this question (which is fundamental to the deprivation appeal) is one on which we are obliged to accord great respect to SSHD's

assessment. This is what the authorities, and in particular *Begum*, require. We do not consider, however, that Mr Grieves can be correct to say that the assessment depends on SIAC's view on questions (i)-(v) above (let alone questions (vii) and (viii), which deal with things occurring after the date of the deprivation decision). Questions (i)-(v) are the building blocks on which the national security assessment is based. In each case, the process of arriving at an answer involves an exercise in the assessment of OPEN and CLOSED evidence. If the lawfulness of the national security assessment depended on SIAC's assessment of the key factual elements underlying it, SIAC would in effect be substituting its own judgment for that of SSHD. If after, considering the evidence (including the oral evidence) for ourselves, we conclude that SSHD's assessment leaves out of account something material, or is vitiated by some other public law flaw, then the appeal will succeed. If not, it will fail.

*(vii) Was U3 radicalised when she emerged from ISIL territory in the autumn of 2017?*

196 Mr Grieves submitted that this was an issue on which SIAC has institutional competence to determine and that SIAC "no particular degree of respect to the security services or the SSHD's approach/conclusions, other than to carefully weigh them". Applying *P3*, however, we cannot accept Mr Grieves' submission. For the reasons we have given, we consider that our task is limited to assessing whether the conclusion drawn by SSHD on this issue was vitiated by a public law error.

197 SSHD's view that U3 remained ideologically aligned with ISIL when she emerged from ISIL territory in Autumn 2017 was based on a number of cumulative strands of reasoning:

(a) The specific assessment, based on CLOSED evidence, that U3 had sought to minimise her involvement with ISIL while in Syria.

(b) The fact that U3 had lied to her family, telling them she was in Turkey when in fact she was in Syria.

(c) The generic assessment that those who spent time in ISIL-controlled territory, even if their activity is limited to domestic duties, were contributing to its legitimacy as a state and were likely to be radicalised by exposure to its ideology and to its acts of violence.

(d) The fact that U3 left ISIL-controlled territory at a time when ISIL's military power was waning.

(e) The assessment that the Az'az court documents relied upon by U3 do not supply reliable evidence that she does not pose a risk to national security, because the court's decision is largely based on U3's own evidence.

198 We doubt whether strands (b)-(e) would be sufficient to provide a rational basis for the conclusion that U3 remained ideologically aligned with ISIL when she left its territory in the autumn of 2017. However, strand (a) is of some importance. The task for SSHD was to assess the evidence holistically. The question was whether, taken together and viewed

against the background of SSHD's view that she was ideologically aligned with ISIL when she entered its territory, these strands supplied a rational basis for concluding that U3 remained ideologically aligned when she left ISIL-controlled territory. In our view, they did.

*(viii) Was U3 radicalised at the date of the appeal hearing?*

199 Mr Grieves submitted that this too was a matter on which we could determine without showing any particular degree of respect to the view of SSHD. Again, and for the same reasons, we reject the submission.

200 The question for us is whether, as at the date of the appeal hearing, SSHD was entitled to reach the view that U3 remained aligned with Islamist extremism.

201 We bear in mind that U3 has had very frequent remote contact with her children and that there is no evidence at all of her seeking to radicalise any of them. We doubt, however, that much can be drawn from this, because it must be obvious to U3 that if any such attempt were made (even in conversations which are not overheard by other family members), there would be a significant risk that the children would reveal what U3 had said, whether intentionally or otherwise.

202 SSHD has adopted an avowedly precautionary approach to the assessment of U3's current ideological alignment. The authorities indicate that she is entitled to do so. The assessment builds on the logically prior assessments of the matters in (ii)-(vii) above and the generic assessment about the likely alignment of individuals who have spent time in ISIL-controlled territory. We are unable to stigmatise as irrational, or as otherwise flawed in the public law sense, SSHD's assessment that U3 remains ideologically aligned with Islamist extremism.

*(ix) Does U3 pose a risk to the UK/to national security as at the date of the hearing?*

203 Mr Grieves accepts that this question "might be one where the appropriate respect slider is moved in favour of the security services/SSHD and such conclusions afforded more weight" but submits that "in a case such as this it will depend, potentially decisively in U3's favour, upon SIAC's view of (i-viii) above".

204 Applying *Begum* and *P3*, the question whether U3 poses a risk to national security is one with which we can interfere only on public law grounds. But the purpose of leaving the ultimate national security assessment to SSHD, subject to review for public law error, would be entirely undermined if, as Mr Grieves suggests, the question could depend (whether decisively or not) on SIAC's view on the key factual inputs to the assessment. Each of those inputs was itself a matter for SSHD, subject to review on public law grounds. Only if the overall decision is one which no reasonable decision-maker could take – or was otherwise flawed on public law grounds – can SIAC interfere.

**Our conclusion on the deprivation appeal**

205 We have reviewed SSHD's assessment that, on 17 April 2017, U3 posed a risk to the national security of the UK on the basis we have explained.

206 The aspect that concerned us most was whether SSHD had properly taken account of the strong and essentially uncontroverted evidence that, at material times, U3 was subject to repeated and serious violence at the hands of O, who controlled and coerced her in the ways we have documented. In SSHD's second national security statement for this appeal, paragraph 6 was made OPEN as a result of the rule 38 process. It reads as follows: "We do not dispute that [U3] had a difficult relationship with her husband [O]".

207 Mr Grieves submitted to us that this was a wholly inadequate description of the extent of the violence, coercion and control to which O subjected U3. If SSHD based her assessment on the view that the relationship was merely "difficult", it follows that she made her assessment on a false basis, leaving something critical out of account.

208 For our part, we agree that the word "difficult" does not fairly or adequately capture the relationship between U3 and O, which is described in U3's statements in terms we accept as broadly accurate. Many couples have relationships that can be described, to varying extents, as "difficult". Thankfully, very few relationships are dominated, as was the relationship between U3 and O, by repeated, serious violence, humiliation, degradation and control.

209 We do not consider, however, that the description of U3's and O's relationship as "difficult" amounts to a public law error, for three reasons.

210 First, SSHD's second national security statement makes in para. 1 clear that the author was responding to U3's second witness statement in these proceedings (which contains the substance of her case). There is nothing to suggest the contents of the statement have been left out of account. The structure of the second national security statement makes clear that, despite U3's evidence, SSHD continued to assess that U3 was ideologically aligned with ISIL when she left for Turkey.

211 Second, as we have shown, an acceptance of U3's evidence about the violence, coercion and control she suffered at the hands of O did not determine the question whether U3 was ideologically aligned with ISIL when she left the UK for Turkey, or thereafter. That was the central question. The structure of the second national security statement makes it clear that SSHD regarded it as such. As is clear from para. 12, SSHD assessed that U3 had sought to minimise her own alignment with ISIL. That conclusion was not inconsistent with the acceptance of U3's evidence about the nature of her relationship with O, given her own evidence that she had chosen to leave for Turkey of her own accord.

212 Third, in those circumstances, the precise description given to the nature of the relationship between U3 and O did not matter. Read as a whole, SSHD's assessment was that, despite U3's evidence about the nature of the relationship, she was assessed to be ideologically aligned with ISIL when she left the UK and thereafter. That assessment was

based in part on SSHD's rejection of U3's evidence that she did not at that stage know about ISIL's ideology or atrocities. We also reject U3's evidence in that regard.

213 These points would have been enough on their own to convince us that there was no public law error in SSHD's the description of the relationship as "difficult". We would add, however, that it seemed to us to be of some significance that SSHD's national security witness attended the hearing and was tendered for cross-examination in OPEN and CLOSED. Mr Grieves did not cross-examine him and, as we have indicated, nor did Mr Underwood. The suggestion could easily have been put to the witness that SSHD's assessment did not take account of U3's evidence about the nature of her relationship with O. If that suggestion had been put, it could have been answered.

214 In the light of the conclusions we have reached on factual questions (ii)-(v) above, and on the basis of the OPEN and CLOSED evidence as a whole, we conclude that SSHD could rationally assess, in April 2017, that U3 was ideologically aligned with ISIL when she left for Turkey and continued to be so aligned thereafter. On that basis, SSHD could rationally assess that U3 posed a risk to the national security of the UK. In those circumstances, it does not matter whether we ourselves agree with that view. The deprivation decision was not vitiated by any public law flaw.

215 The deprivation appeal is therefore dismissed.

**The entry clearance appeal**

216 For the reasons we have given when considering Mr Grieves' questions (vii) and (viii), ~~we have concluded, that it was rationally open to SSHD, having considered all of the~~ OPEN CLOSED material, to assess that U3 continued to pose a danger to national security at the date of the entry clearance decision and at the date of the appeal hearing. We must balance this assessment, rather than any that we might undertake ourselves, against the Article 8 rights of U3's children, giving appropriate weight to SSHD's own view about where the balance lies.

217 As we have noted, it would be in U3's children's best interests for her to be permitted to return to the UK. We bear that in mind as a primary consideration. However, in this case U3's children's interests – protected by Article 8 ECHR – are firmly outweighed by SSHD's assessment that U3 poses a risk to the national security of the UK. Our conclusion would be the same even if, contrary to our view, U3's own Article 8 rights were also engaged.

218 We are fortified in that conclusion by our assessment that the current arrangements for the care of U3's children, though not optimal from their perspective, nonetheless provide a substantial degree of protection for their interests.

219 The entry clearance appeal is therefore dismissed.