Neutral Citation Number: [2025] EWCA Civ 957

Case Nos: CA-2023-002487
CA-2023-002618
CA-2023-002620
CA-2024-000668

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
The Special Immigration Appeals Commission
Mr Justice Johnson, Upper Tribunal Judge Smith, Mr Roger Golland
SC/176-178/2020 (D5 - D7)
Mr Justice Chamberlain, Upper Tribunal Judge Rimington, Mr Neil Jacobsen
SC/173/2020 (C9)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 July 2025

Before:

LORD JUSTICE GREEN
and
LADY JUSTICE ELISABETH LAING

- -

Between:

D5, D6 and D7	**Appellants**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**
C9	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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Edward Grieves KC, Emma Fitzsimons and Isaac Ricca-Richardson
(instructed by **Duncan Lewis Solicitors**) for the **Appellants** in **D5 - D7**
Hugh Southey KC (instructed by **BHD Solicitors**) for the **Appellant** in **C9**

David Blundell KC, Naomi Parsons and William Hays
(instructed by the **Treasury Solicitor**) for the **Respondent** in **all four appeals**
Martin Goudie KC and Dominic Lewis (instructed by **the Special Advocates' Support Office**) for the **Appellants** in **D5 - D7**
Martin Goudie KC and Alex Jamieson (instructed by the **Special Advocates' Support Office**) for the **Appellant** in **C9**

Hearing dates: 13 and 14 May 2025

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Approved Judgment

This judgment was handed down remotely at 11.00 am on 24 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Elisabeth Laing:

Introduction

1. These linked appeals are, I think, the fourth case to reach this court in the wake of *R (Begum) v Special Immigration Appeals Commission* [2021] UKCSC 7; [2021] AC 765 ('*Begum*'). In *Begum* the Secretary of State decided to deprive an appellant of her nationality under section 40 of the British Nationality Act 1981 ('the BNA'). *Begum* addressed the approach which the Special Immigration Appeals Commission ('SIAC') must take to appeals under section 2B of the Special Immigration Appeals Commission Act 1997 ('the Act') against such a decision. The Supreme Court revisited that issue very recently in *U3 v Secretary of State for the Home Department* [2025] UKSC 19 ('*U3*').

2. In *Begum* and in *U3* the Secretary of State's decision was based on an assessment by the Security Service that the appellant posed a risk to national security. The legal issue in these four appeals is whether the approach described in *U3* applies when the Secretary of State has decided to deprive appellants of their British citizenship or to exclude them from the United Kingdom solely or mainly on the basis of an assessment that they are involved in serious organised crime ('SOC'), and in order to disrupt that activity.

3. Andrews LJ gave the appellants in the first appeal permission to appeal on two linked grounds. They concern, in broad terms, the approach which SIAC should take in cases like these. She gave C9 permission to rely on a similar argument, while recognising that, on the facts of that case, what the correct approach was might well make no difference. She also gave him permission to argue that he should have been given an opportunity to influence the decision in his case before it was made.

4. On these appeals, D5, D6 and D7 were represented by Mr Grieves KC, Ms Fitzsimons and Mr Ricca-Richardson. C9 was represented by Mr Southey KC. The Secretary of State was represented in all four appeals by Mr Blundell KC, Mr Hays and Ms Parsons. The Special Advocates for D5, D6 and D7 were Mr Goudie KC and Mr Lewis. The Special Advocates for C9 were Mr Goudie KC and Mr Jamieson. I thank all counsel for their written and oral submissions, which helped to clarify the issues. For convenience, I will refer to D5, D6 and D7 collectively, when that is appropriate, as 'Ds', and to all the appellants as 'the appellants'.

5. Before the hearing, all the members of the court read the CLOSED material in order to decide whether or not a CLOSED hearing was needed. The court decided that no such hearing was necessary. It was nevertheless then necessary, because we had read the CLOSED material, for the factual parts of the draft OPEN judgment to be written on a CLOSED laptop and for it to be security-checked before it could be circulated to the OPEN representatives in draft. That factor (with its associated complications) has necessarily somewhat delayed the handing down of this judgment.

6. That factor also means that I have made this judgment as short as possible. I have not described the decision-making documents, or the relevant policies, in any detail, for three further reasons. First, they were explored during the hearing, and in post-hearing

written submissions, for which I thank counsel. Second, in the light of my decision on the main legal issue, their details are not significant. A third linked reason is that it follows that SIAC's account of these matters, which I summarise, is sufficient for the purposes of this judgment.

7. After the hearing of these appeals, we were very sorry to be told that one of the members of the court which heard these appeals, William Davis LJ, had died suddenly on 7 June 2025. The Master of the Rolls then made a direction under section 43(2) of the Constitutional Reform Act 2005 that the court was duly constituted by the two surviving members of the constitution. This factor also led to some delay.

8. For reasons which I will describe, my conclusion on the issue I have described in paragraph 2, above, is that SIAC must take the same approach to all appeals to it against decisions to deprive an appellant of his British citizenship on the grounds that it is conducive to the public good, and in which the Secretary of State relies in whole or in part on material which cannot be disclosed in the public interest. There is no basis in the statutory language for distinguishing between the different facets of the public good on which the Secretary of State may rely in making such a decision. In other words, SIAC must take the same approach in cases in which appellants have been deprived of their citizenship on the ground that they have been involved in and/or are likely to continue to be involved in, SOC, as it must take in national security cases. The upshot is that SIAC did not err in law in dismissing the appellants' appeals for the reasons it gave. I would therefore dismiss all four appeals to this court.

The legal framework

9. The legislative history is described in paragraphs 11-33 of the judgment of Elisabeth Laing LJ in *U3 v Secretary of State for the Home Department* [2023] EWCA Civ 811; [2024] KB 433 ('*U3 (CA)*'). I do not repeat it here. A feature of the legislative history which is not mentioned in *U3 (CA)*, because *U3 (CA)* was a national security case, is a theme relating to decisions taken on the grounds that they are conducive to aspects of the public good other than national security.

10. Part II of the 1971 Act is headed 'Appeals'. Section 12 continued the appellate authorities which were set up under the Immigration Appeals Act 1969, that is to say, the Immigration Appeal Tribunal ('the IAT') and the adjudicators.

11. Section 13 dealt with various first instance appeals to both bodies against exclusion from the United Kingdom. Section 13(5) provided that a person could not appeal against a refusal of leave to enter, or a refusal of entry clearance, if the Secretary of State certified that directions had been given by him (and not by a person acting under his authority) for the appellant not to be given entry to the United Kingdom 'on the ground that his exclusion is conducive to the public good…'.

12. Section 14 dealt with appeals against conditions. Section 14(3) barred an appeal if the Secretary of State certified that the appellant's departure from the United Kingdom would be 'conducive to the public good as being in the interests of national security, or of the relations between the United Kingdom and any other country, or for other reasons of a political nature, or the decision questioned on the appeal was taken on that ground by the Secretary of State (and not by a person acting under his authority)'.

13. Section 15 dealt with appeals against a decision of the Secretary of State to make, or to refuse to revoke, a deportation order. Section 15(3) barred an appeal if the ground of the decision was that the appellant's deportation was 'conducive to the public good as being in the interests of national security, or of the relations between the United Kingdom and any other country, or for other reasons of a political nature'. Section 15(5) barred an appeal against a refusal to revoke a deportation order if the Secretary of State certified that the appellant's exclusion from the United Kingdom was 'conducive to the public good' or if the revocation refused was on that ground 'by the Secretary of State (and not by a person acting under his authority)'.

The British Nationality Act 1981

14. Part I of the BNA deals with the acquisition of British citizenship, Part II with the citizenship of British Overseas Territories, Part III with British Overseas citizenship, and Part IV with British subjects. Part V makes a range of miscellaneous and supplementary provision, including section 36 which enacts Schedule 2 about the reduction of statelessness.

15. Section 40 is headed 'Deprivation of citizenship'. Section 40(1) defines 'citizenship status'. The definition includes status as a 'British citizen'.

16. Section 40(2) gives the Secretary of State a power by order to deprive a person of a citizenship status 'if the Secretary of State is satisfied that deprivation is conducive to the public good'. That power is qualified by section 40(4), which bars its exercise if 'the Secretary of State is satisfied that the order would make the person stateless'. Section 40(4) is itself qualified by section 40(4A). Its effect is that the Secretary of State may exercise the section 40(2) power if the Secretary of State 'is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted himself in a manner which is seriously prejudicial to the vital interests of the United Kingdom' (among other things), and the Secretary of State 'has reasonable grounds for believing that' the person could, in short, become a citizen of a country or territory outside the United Kingdom.

17. Section 40(3) applies if a person's citizenship status is the result of registration or naturalisation, and 'the Secretary of State is satisfied that the registration or naturalisation was obtained by means of (a) fraud, (b) false representation, or (c) concealment of a material fact'. Section 40(6) makes similar provision in old cases in which the person concerned acquired his citizenship status by operation of law under an enactment having effect before the commencement of the BNA.

18. The Secretary of State must, before making an order under section 40, give the person concerned a written notice specifying (a) that the Secretary of State has decided to make the order, (b) the reasons for the order, and (c) the person's right of appeal under section 40A(1) of the BNA or under section 2B of the Act (section 40(5)). Section 40 was amended, after the dates of the deprivation notices in these cases, by section 40(5A). Section 40(5A) was inserted by section 10 of the Nationality and Borders Act 2022 (the 2022 Act). In short, it enables the Secretary of State to serve a notice to file, when the Secretary of State reasonably considers it necessary not to give notice under section 40(5), in the serious cases specified in section 40(5A)(b). Those are cases which involve the interests of national security, the investigation or prosecution of organised or serious

crime, preventing or reducing risks to personal safety, or the relationship between the United Kingdom and another country. One evident purpose of section 10 of the 2022 Act (see section 10(6) and (7)) was to overrule the decision of this court in *R (D4) v Secretary of State for the Home Department* [2022] EWCA Civ 33; [2022] QB 508; specifically its consequences for the validity of deprivation orders made, or purportedly made, before section 10(2) to (5) of the 2022 Act came into force, in circumstances where the Secretary of State had served the notice to file.

19. The right of appeal to the First-tier Tribunal ('the F-tT') against a notice under section 40(5) is conferred by section 40A(1). Before its recent amendment by the 2022 Act, section 40(1) only gave a right of appeal to a person who had been given a notice under section 40(5).

20. Section 40(1) does not apply to a decision if the Secretary of State 'certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public – (a) in the interests of national security, (b) in the interests of the relationship between the United Kingdom and another country, or (c) otherwise in the public interest' (section 40(2)). Section 2B of the Act gives a person a right of appeal to SIAC against a decision to make an order under section 40 if 'he is not entitled to appeal under section 40A(1) of [the BNA] because of a certificate under section 40A(2)' of the BNA.

21. By section 2C(1) of the Act, section 2C(2) applies if the Secretary of State directs the exclusion of a person from the United Kingdom wholly or partly on the ground that the exclusion of the person is conducive to the public good, the decision is not subject to a right of appeal, and the Secretary of State certifies that the direction was made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public in the interests of national security, in the interests of the relationship between the United Kingdom and another country, or otherwise in the public interest. Section 2C(2) gives such a person a right to apply to SIAC to 'set aside' the direction. In deciding whether or not to set the direction aside, SIAC must apply 'the principles which would be applied in judicial review proceedings' (section 2C(3)). If SIAC does decide to set the direction aside, it may 'make any such order or give any such relief, as may be made or given in judicial review proceedings' (section 2C(4)).

An outline of the statutory provisions about the National Crime Agency ('the NCA') and its role in cases such as these

22. Paragraph 59 of SIAC's judgment in Ds' appeals ('judgment 1') summarises the role of the National Crime Agency ('the NCA'). It was created by section 1(1) of the Crime and Courts Act 2013 ('the 2013 Act'). Its functions include a 'crime reduction' function (securing that there are efficient and effective activities to combat SOC) (section 1(4)) and a 'criminal intelligence function' ('gathering, storing, processing, analysing and disseminating information which is relevant', among other things, to SOC (section 1(5)). The Secretary of State is responsible for setting the NCA's strategic priorities (section 3).

23. One such priority concerns 'Organised Immigration Crime', which the Secretary of State defines as the 'movement of persons across borders without legal permission with the assistance of an organised crime group'. The Secretary of State's skeleton argument

for this court helpfully referred to six such priorities, many of which are connected with serious organised immigration crime. That skeleton argument adds that the Director General of the NCA ('the DG') is appointed by the Secretary of State. Paragraphs 6 and 7 of Schedule 4 to the 2013 Act oblige the DG to keep the Secretary of State informed about the activities of the NCA in combatting crime which relates to the Secretary of State's functions in immigration nationality or customs. It is submitted (a submission which I accept) that the DG is therefore obliged to keep the Secretary of State informed about matters which may be relevant to the exercise of the power conferred by section 40(2) of the BNA. I also accept the further submission that the NCA, as regards SOC, is in a similar, if not equivalent, position to make expert assessments of matters in the scope of its strategic priorities as is the Security Service in relation to matters of national security, and that the Secretary of State is entitled to rely on such assessments when making decisions.

The Secretary of State's relevant policy

24. In judgment 1 SIAC accurately and sufficiently summarised the policy framework in paragraphs 56-58. The guidance on the meaning of 'conducive to the public good' for this purpose is in Chapter 55 of the Nationality Instructions. It means 'depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes, or unacceptable behaviours'. SIAC specifically, and rightly, rejected, in both appeals, an argument that a submission to the Secretary of State dated 13 May 2020 and entitled 'deprivation of British citizenship', to which the Secretary of State had referred in correspondence, and in another case, was a statement of her policy (paragraphs 57 and 95-99 of judgment 1; paragraphs 32-35 of judgment 2). There is no appeal against that conclusion, because Andrews LJ refused permission to appeal on a ground which sought to challenge it.

The authorities about these provisions

25. There have been many decisions about the scope of the phrase 'conducive to the public good' in general, and, more specifically, in the context of immigration cases with a national security element. Decisions on appeals from SIAC in this area include *Secretary of State for the Home Department v Rehman* [2001] UKHL 29; [2003] 1 AC 153 ('*Rehman*'), and *Begum* (to which I have already referred). On the Monday before the first day of the hearing of these appeals, the Supreme Court handed down its judgment in a third appeal from SIAC, *U3*. *U3* was an appeal from *U3 (CA)*.

26. Mr Grieves also relied on *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6; 2025 2 WLR 386 ('*N3*'). He pointed out that *N3* was heard on the day before the start of the hearing in *U3* and by the same panel as heard *U3*. In that case, the Secretary of State decided to deprive E3 and N3 of their British nationality. They appealed to SIAC. As a result of other appeals in SIAC, the Secretary of State accepted that, contrary to her original view, the effect of the deprivation orders had been to make E3 and N3 stateless. She then withdrew the orders. E3 and N3 then applied for judicial review of the Secretary of State's later refusal to accept that E3 and N3 had been British citizens during the period between the date of the order and the date of when the Secretary of State conceded their appeals ('the relevant period'). The issue in *N3*, therefore, concerned the effect of that concession on the citizenship status of E3 and N3

during the relevant period. *N3* was an appeal, not from a decision by SIAC on an appeal under section 2B, but from a decision of the Administrative Court on N3's application for judicial review of the Secretary of State's refusal to accept that he continued to be a British citizen during the relevant period. *N3* was not, and could not have been, about the nature of an appeal from a deprivation decision. Nothing which is relevant to these appeals, still less, which would bind this court on these appeals, can be derived from the isolated passages in *N3* on which Mr Grieves relied.

27. I will therefore focus on *U3*, the most recent and most relevant decision. The issue in that appeal was the nature of an appeal to SIAC under section 2B of the Act. There was no dispute about whether the Secretary of State was entitled to treat the assessment of the risk posed to national security by U3 as potentially justifying the Secretary of State's decision to deprive U3 of her citizenship on the ground that it was 'conducive to the public good'. The issue, rather, was how SIAC was to approach such an appeal.

28. U3 had been deprived of her citizenship on the grounds that that was conducive to the public good because of the risk she would pose to national security if she returned to the United Kingdom. She then applied for, and was refused, entry clearance for similar reasons. She appealed to SIAC, which dismissed her appeals.

29. Lord Reed, giving a judgment with which the other members of the court agreed, said that the appeal was about 'the approach which [SIAC] should take to disputes about matters which are relevant to the assessment of national security' (paragraph 1). SIAC had dismissed the appeals on the ground that there was no basis in public law for interfering with the Secretary of State's assessment that U3 posed a risk to national security. This court had upheld SIAC's judgment.

30. Lord Reed said that U3's appeal was based on the proposition that SIAC should find facts about 'the central "building blocks" of the Secretary of State's national security assessment (including the assessment that [U3] had aligned with ISIL)' (paragraph 8). Or, to put it another way, U3 argued that 'SIAC should decide disputed facts concerning allegations relevant to the national security assessment for itself, on the balance of probabilities'. If SIAC decided that the decision was based on a factual assessment which was materially incorrect, it should allow the appeal and remit the case to the Secretary of State to reconsider, 'on the basis of SIAC's assessment of the evidence'. The touchstone was not whether the Secretary of State's decision was nevertheless rational, but whether, on the basis of the facts as found by SIAC, a different outcome was possible, if the decision were to be taken again (paragraph 37). The argument was that whether or not U3 was aligned with ISIL was a precedent fact which was the foundation of the Secretary of State's assessment, and which SIAC should have decided (paragraph 38).

31. Lord Reed said, in paragraph 42, that a critical issue in both the SIAC appeals and in the appeal to the Supreme Court was 'SIAC's role in relation to the Secretary of State's assessment of the risk posed by [U3] to national security'. He added, in paragraph 43, that an appeal to SIAC 'is an appeal in reality as well as in form, and is not equivalent to an application for judicial review'. SIAC was 'not necessarily confined to the application of public law principles'. That was clear from the contrast between sections 2 and 2B, and 2C, 2D and 2E of the Act. There is no provision equivalent to sections 2C(3) (see paragraph 21, above), 2D(3) and 2E(3) in section 2, or in section 2B. He

noted section 5 of the Act, which authorises the making of rules of the procedure for appeals in SIAC. Section 5 'implies that appeals' in SIAC can 'raise questions of fact as well as points of law'. That point was supported by the procedure rules (paragraph 44).

32. He then referred to three features of the procedure in SIAC which illustrated that point. They were, first, that SIAC can consider material which was not before the Secretary of State, including material which did not exist when the Secretary of State made the relevant decision (paragraph 45). Second, the Secretary of State's national security assessment is kept under review during the progress of the appeal, and SIAC usually considers an up-dated assessment. A review by officials in the Home Office was, in law, a review by the Secretary of State (*Carltona Limited v Commissioners of Works* [1943] 2 All ER 560) (paragraph 46). By the time SIAC heard an appeal, the Secretary of State would already have decided to maintain the decision, having reviewed and updated the assessment of national security in the light of the appellant's evidence and submissions (paragraph 47).

33. Third, it followed from section 5 and the procedure rules that evidence could be admitted, and, therefore, that SIAC could make findings of fact. It did so on the balance of probabilities, as in civil proceedings. SIAC had made many findings of fact in the appeals, as it was entitled to. But not every issue in an appeal to SIAC 'can be determined by making findings of fact on the balance of probabilities' (paragraph 48). It followed from those points that SIAC could allow an appeal even if the Secretary of State had been entitled to take the decision on the basis of the material which was before the Secretary of State at the time of the decision. This was a further difference between appeals to SIAC and judicial review proceedings (paragraph 49).

34. A distinct point was that appeals to SIAC could raise different issues, to which different legal principles apply, which, in turn, could affect the approach which SIAC must take to those issues (paragraph 50). Lord Reed gave, as an example, the issue of statelessness, to which public law principles did not apply on an appeal, as SIAC was not deciding whether the Secretary of State was entitled to be satisfied at the time when the order was made, that it would not make the appellant stateless. SIAC was required to decide, instead, whether the order did make the appellant stateless (paragraphs 51 and 52). The approach to human rights issues was similar. SIAC was commonly required to make findings of fact in relation to such issues (paragraph 53).

35. Not every issue in an appeal to SIAC, however, was 'of a kind which can be determined by making findings of fact on the balance of probabilities'. In particular 'where an appeal is brought against a decision on a ground which challenges the Secretary of State's assessment that the decision is justified because the affected person poses an unacceptable risk to national security, the nature of that issue requires SIAC to take a different approach' (paragraph 54). He gave two groups of reasons for that different approach (in paragraphs 55-62 and paragraphs 63-68, respectively).

36. First, whether a decision was justified on the ground of a risk to national security is a different kind of question from whether a decision will make a person stateless. He then explained why that is so. The former decision is based on 'an evaluative judgment or assessment that an unacceptable risk exists, not on the existence of a particular fact

or the occurrence of a particular event. An understanding that a particular fact exists or that a particular event has occurred may form part of the basis of the assessment, but such assessments commonly refer, as in the present case, to suspicions or likelihoods; and…even where the assessment is based on an understanding that a particular fact exists or that a particular event has occurred, whether or not that case be proved on a balance of probabilities is not determinative' (paragraph 55). Evaluating risk is a different reasoning process from deciding the facts in issue in civil litigation; '…even the facts in issue do not need to be established by facts that have themselves been proved on the balance of probabilities'. They can be inferred from other evidence, 'not necessarily proved to be true, which make the facts in issue more or less probable' (paragraph 56).

37. A fact either happened, or it did not. If the tribunal is left in doubt, the doubt is resolved by the rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it…the fact is treated as not having happened. If he does discharge it…the fact is treated as having happened' (paragraph 57). That binary approach is not appropriate to issues about risk. In such cases, 'the material circumstances are not limited to facts which have been proved to the civil standard of proof. A risk is a possibility. The existence of a risk can therefore arise from evidence which is sufficient to establish a possibility but falls short of proof on the balance of probabilities. The evaluation of the risk then depends on such factors as the degree of risk, the possible methods of addressing the risk, and the gravity of the consequences if the risk eventuates' (paragraphs 58, 59 and 60).

38. In paragraph 61, Lord Reed explained what is often involved in the assessment of risk in a national security case. Such an assessment will often be based on several pieces of 'information or intelligence, individually disputable or inconclusive, but cumulatively giving rise to reasonable grounds for an apprehension that, for example, the person in question has been in contact with terrorists and has aligned with their objectives. Those possibilities do not have to have been proved to have occurred on a balance of probabilities in order for it to be reasonable to conclude that the person would present a risk to public safety if he or she returned to the UK, or that the risk is sufficiently serious to justify a deprivation decision…A precautionary approach is necessary in the interests of public safety. An error of judgment could have catastrophic consequences' (paragraph 61). That did not mean that the assessment need have 'no basis in objective evidence', or that the court had no role. It simply meant that SIAC's job 'in addressing those questions is not the usual judicial function of applying the law to facts found on the balance of probabilities' (paragraph 62).

39. The second group of reasons concerned institutional and constitutional factors. The assessment of the relevant risk, and the decision that the risk to national security justified a decision to deprive a person of his nationality were matters of judgment. SIAC is not the primary decision-maker. Parliament has decided that the Secretary of State is, subject to the right of appeal to SIAC. The Secretary of State is also exercising discretion. SIAC's role is 'therefore to review the Secretary of State's exercise of his or her discretion, based on an evaluative judgment of the risk to national security' (paragraph 63). Although this is an appeal, public law grounds for reviewing the exercise of a discretion applied. The court does not interfere with the exercise of a discretion just because it would have made a different decision (paragraph 64). Moreover, when reviewing the exercise of such a discretion, and in assessing its

reasonableness, 'a court or tribunal will always attach weight to the assessment made by the primary decision-maker'. That was significant in the present context, for institutional and constitutional reasons (paragraph 65).

40. Lord Reed added that the Secretary of State acted on the basis of expert advice, including from the Security Service. In paragraph 66, he described the assessment of intelligence, and the expertise which is needed to do that, an expertise which, as he explained, the court lacks, even an expert court like SIAC, and even if its panel includes those formerly involved in making such assessments. There were further reasons why 'public safety should primarily be the responsibility of a member of the government' who was democratically accountable. They included that such decisions have 'serious potential consequences for the community'. They therefore needed a legitimacy which could only be conferred by democratic accountability (paragraph 67).

41. That meant that there are institutional and constitutional reasons why SIAC 'should attach very considerable weight to the Secretary of State's evaluation' (paragraph 68). In paragraph 69 he said that his discussion of SIAC's role in appeals had been based on 'general legal principles', which he then summarised. His conclusions included that 'SIAC conducts a review of the Secretary of State's assessment of national security based on …principles of administrative law; that is a different exercise from fact-finding on a balance of probabilities; and that in carrying out the review, and especially when considering the reasonableness of the Secretary of State's decision, should attach very considerable weight to the Secretary of State's evaluation…' He said that those principles were confirmed by 'authorities…the highest level' which he then analysed (in paragraphs 70-82). Those authorities included *Rehman*, *A v Secretary of State for the Home Department* [2004] UKHL 56; [2005] 2 AC 68 (paragraph 29), *Huang v Secretary of State for the Home Department* [2007] UKHL 11; [2007] 2 AC 167 (paragraph 16) and *Begum*.

42. In paragraph 81, he accepted that *Begum* was not 'an exhaustive account of SIAC's role on an appeal under section 2'. The correct approach depended on the nature of the issue or issues which SIAC had to decide. As the correct approach would depend on the nature of the issue, there are issues which SIAC will decide by making findings of fact on the balance of probabilities, such as statelessness. Other issues could not be decided in that way, even if SIAC had heard evidence. That would be so if deciding the issue did not depend on whether, on the balance of probabilities, a fact was true or not, but on whether 'on an overall assessment of the evidence bearing on the issue, there is a proper basis for a discretionary decision to deprive a person of citizenship or refuse the person entry clearance because of a risk to national security' (paragraph 81).

43. The principles of administrative law are potentially relevant to such issues, 'except to the extent that they are inconsistent with the statutory scheme (for example, in relation to deprivation decisions, procedural fairness is secured after the decision has been taken, by means of the right of appeal to SIAC, rather than through the application of common law principles of procedural fairness to the Secretary of State's decision making process at the time when the decision is taken)' (paragraph 82).

44. A decision could be quashed if there was no evidence to support 'factual findings made or they are plainly untenable …or if the decision maker is shown to have misunderstood or been ignorant of an established and relevant fact' (also paragraph 82). Lord Reed returned to that question in paragraphs 86-92 of his judgment. He considered that in paragraphs 174, 175 and 186 of the judgment of Elisabeth Laing LJ, this court had erred in law in holding that 'if there were evidence, which SIAC accepted, that on the balance of probabilities [the appellant] had never been to Syria, and that the Secretary of State had mistaken someone else for her, SIAC's duty would be to make that finding and allow the appeal'.

45. The issue for SIAC, Lord Reed said, 'where the assessment of a risk to national security is based on an evaluation of a body of evidence', was not to decide whether 'the assessment is based on facts which had been established on the balance of probabilities'. The 'central question', rather, is whether 'the evidence, viewed as a whole, provides a rational basis for the Secretary of State's decision, applying principles of administrative law…'. He developed this thought in paragraphs 88-90. The decision would not be irrational just because the probability of the appellant's having been in Syria was less than 50%, because of the factors in play, such as the risk that the appellant might be a terrorist (paragraph 88). On the other hand, if there was 'no real possibility' that the appellant had been in Syria, the Secretary of State's decision would have no reasonable basis, 'and the appeal would be allowed'. Such a finding of fact would be unsupported by any evidence or would be based on a view of the evidence which it was not reasonable to hold. Even if the possibility that the appellant had been in Syria could not be excluded, 'SIAC would properly take account of the strength or weakness of the evidence of her presence there when considering whether the evidence as a whole provided a rational basis for the Secretary of State's decision' (paragraph 90). SIAC cannot allow an appeal against the Secretary of State's decision that deprivation of citizenship is justified by the risk which the person presents to national security by making a finding of fact on the balance of probabilities which contradicts a 'pivotal finding' on which the Secretary of State's assessment is based, such as whether an appellant went to Syria or not. The question, rather is whether the evidence as a whole is a rational basis for the decision of the Secretary of State (paragraph 92).

SIAC's judgments

D5, D6 and D7

46. SIAC recorded, in paragraph 1 of judgment 1, that Ds are all nationals of Afghanistan. D6 and D7 are brothers. D5 is their paternal uncle. They came to the United Kingdom between 2001 and 2007. They each claimed asylum and D5 and D6 were later naturalised as British citizens. On 3 September 2020 when D7 was outside the United Kingdom, the Secretary of State decided to exclude D7 from the United Kingdom on the grounds that it would be conducive to the public good ('decision 1'). On 30 November 2020, when D5 and D6 were outside the United Kingdom, the Secretary of State decided to deprive them of their nationality on the grounds that that would be conducive to the public good, because of their involvement in SOC ('decision 2'). The Secretary of State certified that she had taken each of those decisions in reliance on material which, in her opinion, should not, in the public interest, be made public

(paragraph 2). The effect of those certificates was that any right to challenge the decisions would be heard by SIAC.

47. D7 applied to SIAC for a review of decision 1 under section 2C(2) of the Act. The principles which apply on an application for judicial review explicitly apply to such an application (section 2C(3) of the Act). D5 and D6 appealed against the decision 2 under section 2B of the Act.

48. SIAC heard evidence from D5, D6, N (D5's wife), and six other relations of the Ds, of varying degrees of proximity to Ds. Those witnesses were cross-examined. SIAC also had witness statements from five other relations of Ds, a person who worked for D7, and a chartered legal executive, Bahar Ata. SIAC took that evidence into account. SIAC next observed, in paragraph 5, 'For the reasons we set out below [and with the exception of Ms Ata] we are satisfied that D5 and D6, and the witnesses they called to give oral evidence, lied on material issues. Their witness evidence (except where subject to credible independent support) is not reliable. No reliance can be placed on their evidence that they were not involved in the conduct which is alleged against them'.

49. D5 is from a big family. When he arrived in the United Kingdom in 2001, his wife and children stayed in Afghanistan. He claimed asylum. He told a lie in the course of making that claim. His wife said that he began to send her £500 a month soon after he arrived, and before he had any permission to work. She could not explain where it came from (paragraph 9). D6 arrived in the United Kingdom in 2004. D5 involved D6 (and his other nephews) in his business, and helped them to set up their own. D5 and D6 were close. D7 was encountered by Home Office on 13 February 2007. He claimed to have entered the United Kingdom clandestinely three days earlier. He claimed that he was at risk from the Taliban in Afghanistan. He was given discretionary leave to remain on 12 October 2011. He was given indefinite leave to remain in July 2018. D7's wife and children are in Afghanistan. He applied in November 2019 for entry clearance for his wife and children. The Secretary of State refused that application on the grounds that D7's wife had not sat the necessary examination in English, but a proxy had done it in her place, and D7 had exaggerated his earnings. The Secretary of State's assessment is that D7 left the United Kingdom in January 2020 and might be in Finland.

50. In paragraphs 12-20 of judgment 1, SIAC listed nine relations of Ds who all arrived unlawfully in the United Kingdom when they were teenage boys, or 12 years old (in two cases). In short, most, if not all of them, then worked for Ds.

51. In a section of judgment 1 headed 'The lies of D5 and D6', SIAC described lies which D5 and D6 admitted telling in the course of their asylum claims. SIAC did not accept their evidence that the lies were the fault of interpreters. SIAC found that D5 had 'helped to orchestrate the untruthful accounts' that were given by others. The fact that the lies were told did not mean that Ds were engaged in the conduct alleged by the Secretary of State, but it did affect their credibility (paragraphs 21-24).

52. In paragraphs 25-41, SIAC summarised the evidence about the execution of search warrants on 9 July 2018, a police stop of K and O on 27 September 2019, what emerged from social services records, a visit by police and officers from the social services department of the local authority to five shops associated with Ds, an interim sexual

risk order made in May 2020, an undercover operation by the NCA in 2020, and the departure of D5 and D6 to Kabul via Dubai on 8 November 2020.

53. I will describe some of the salient features of that account. When police executed the search warrants at D5's and D6's homes and at two shops, they made nine arrests for immigration offences, and one for the possession of drugs with intent to supply. They seized £12,000 in cash and 30 mobile phones. K and O, two of the relations who were listed in paragraphs 12-20 of judgment 1, were arrested for offences relating to indecent images of children (paragraph 27). SIAC then summarised K's explanation for what was found on his mobile phone (also paragraph 27).

54. When K and O were stopped, O tried to hide a number of bank cards and about £800 in cash. He also had receipts for money transfers to the family. More than £4000 had been transferred in one week in August 2019. The largest individual transfer was of £2850. K had a letter which he said he was sending to someone to 'come and collect his money at the prison'. When K was arrested, about £250 was taken from him. He did not know how to get it back when he was released from prison. Eventually he arranged for a 16-year old boy to collect the money, who was later prosecuted for paying cash to smuggle people into the United Kingdom. O gave various accounts about the £800 which was found on him. K did not know that O had that sum with him. He eventually said that his brother gave him the money when he went to Afghanistan, and would take it back when he returned. He did not remember the reason for the transfer of £2850.

55. Social services records showed that there were 'persistent suspicions' that D5 and D6 were exploiting the children who were associated with them, 'potentially including sexual abuse'. Officers from that department kept a close eye on D5 and D6 for years. None of the children who were looked after by D5 and D6 made any complaint that they had been sexually abused by anyone. Despite the extent of that monitoring, there was no OPEN evidence that D5 or D6 was involved in sexual abuse (paragraph 33).

56. When the police raided the shops, they found F using a broom in a shop run by D5. F was one of the children listed in paragraphs 12-20. He had arrived unlawfully in 2019 when he was 14. He was 14 in February 2020. He said he did not know D5 and denied working in the shop, or that anyone had forced him to work there. In paragraph 80, SIAC rejected F's account as 'incredible'.

57. A telephone 'attributed' to A, another of those listed in paragraphs 12-20, was seized by the police. They found one indecent image on it. A was arrested and the police seized another device. They found an indecent video of a child. An interim sexual risk order was sought and granted. After further investigation the image could not be found, possibly because it was stored, not in the device, but in the cloud. The order was withdrawn.

58. The undercover operation was between February and November 2020. Two undercover officers, Mark and George, posed as international lorry drivers. After four preliminary meetings, they met D5 and D6 on 24 September 2020. On 8 October 2020, D6 told George that he wanted George to smuggle people from Europe into the United Kingdom: one to three people on each run, with two to three runs a month. £2500 would be paid per person. Albanians would be paying. D6 would meet the immigrants off the lorry and would pay George himself. D6 told George that he was making good money.

There were further meetings in October 2020. A plan was made for the first trip on 9 November 2020. D6 then cancelled the plan on the grounds that he had not been paid up front.

59. In paragraph 40, SIAC said that, in his evidence, D5 'simply would not accept that D6 was responsible for the criminal conduct that resulted in a 8 year custodial sentence'. D5 said 'someone had put him in a dream and they gave him an injection and they say whatever coming out of his mouth'. SIAC recorded D6's evidence that George had first raised the question of people smuggling. 'That was not something that he had raised before, either in his written statement or (so far as we can tell) in the Crown Court proceedings. It was just another lie' (paragraph 41).

60. D5 and D6 left the United Kingdom for Kabul on 8 November 2020. They were due to come back on 3 and 24 December 2020, respectively.

61. In paragraphs 43-47, SIAC described the process leading up to decision 1 and decision 2. On 19 August 2020 the NCA sent a submission to the Home Office explaining that D7 was involved in SOC, that his presence in the United Kingdom was not conducive to the public good and that his exclusion was justified on the grounds of criminality. SIAC gave three particulars of that conduct. The first was trafficking for labour exploitation. D7 was a member of an organised crime group ('OCG'), which was trafficking young and vulnerable people into the United Kingdom for labour exploitation. The OCG used child labour in its businesses. The second was that it was assessed that the OCG was involved in trafficking for sexual exploitation and abuse. The third was that the OCG was involved in money laundering. The submission referred to the activities on 9 July 2018 and on 12 February 2020.

62. The NCA also prepared a submission recommending that D5 and D6 be deprived of their British nationality. The allegations were similar to the allegations about D7. The submission referred to the undercover police operation including the events of 24 September 2020.

63. Officials then made a submission to the Secretary of State about D7. It said that he was involved in 'organised immigration crime such as trafficking and smuggling vulnerable people and children to the UK for modern slavery and sexual exploitation'. On 3 September 2020, the Secretary of State decided to exclude D7 from the United Kingdom. The decision letter, dated 3 September 2020, said that the Secretary of State had decided personally to direct D7's exclusion from the United Kingdom 'on the grounds that your presence here would not be conducive to the public good'. No further reasons were given. The letter said that the Secretary of State had certified the decision and that any review of the decision would be by SIAC.

64. On 30 November 2020, SIAC said, 'orders were made under section 40(2) [of the BNA] depriving D5 and D6 of their British citizenship "on the grounds of conduciveness to the public good". No further explanation was given, save that the Secretary of State was satisfied that the orders would not make D5 and D6 stateless' (paragraph 48).

65. D5 and D6 nevertheless returned to the United Kingdom clandestinely in June and September of 2021, having made (D6) two or one (D5) earlier failed attempts to enter.

66. D5 and D6 were prosecuted for immigration offences as a result of the undercover operation. Count 1 charged D6 with a conspiracy to assist unlawful immigration. The prosecution relied on the conversations between D6 and George and Mark in 2020; in other words, with conduct before the decision of the Secretary of State. Count 2 charged D6 with a conspiracy to assist D5's unlawful entry. Count 3 charged D5 with illegal entry. Counts 2 and 3 related to conduct after the Secretary of State's decision. D5 and D6 were convicted.

67. In paragraph 52, SIAC quoted what the sentencing judge said about count 1. She described the 'enterprise' as 'sophisticated'. The exact numbers were not known; nor was the amount of the profit made by D6; but each migrant had paid between £8000-£9000, about £2,500 of which was paid to the lorry driver. The entry was for strangers, not family members. The period of the indictment was about 6 weeks. The intention was to use burner phones to conceal what was going on and to destroy any evidence. D6 was sentenced to eight years' imprisonment on count 1, and received a consecutive sentence of two years on count 2. D5 was sentenced to five years' imprisonment.

68. SIAC described the legal framework in paragraphs 54-55, and the policy framework in paragraphs 56-58. It summarised the statutory provisions about the NCA in paragraph 59 and those about trafficking in paragraphs 60-61.

69. It recorded that it had received extensive submissions about its jurisdiction, and referred to the relevant cases, and summarised them in paragraphs 62-66. It recorded Mr Grieves's submission that *Rehman* and *Begum* were national security cases and could be distinguished in a case about SOC. Whether Ds had been involved in SOC related to past events, and not to future risk. SIAC disagreed with that submission and explained why in ten points, which it listed in paragraph 67. They included that all the relevant decisions were made because they were conducive to the public good and the statutory scheme did not distinguish between different facets of the public good, either as respects the Secretary of State or an appeal to SIAC. The ultimate question for the Secretary of State was whether deprivation was conducive to the public good in every such case. The facets of the public good were not 'disjunctive or mutually exclusive'. SIAC's limited role derived from the fact that the decision about conduciveness was entrusted to the Secretary of State and not to SIAC, and from the principles of democratic accountability and institutional capacity. Those principles applied just as much to SOC as to national security. On the first, SIAC referred to the Secretary of State's role in deciding the strategic priorities of the NCA, and her supervision of the operation of the NCA; on the second, it referred to the functions of the NCA, and its relationship with the Secretary of State. There was, in any event, no sharp distinction between the different facets of the public good which might be engaged in a deprivation decision. In SOC cases, just as much as in national security cases, 'future risks are likely to be assessed in the light of information relating to past events. The nature of the risks is similar in both cases. The nature of the information is also similar in both cases, as is the process of the collection of the information and its assessment'.

70. Those factors led SIAC to reject the submission that the Secretary of State must prove the facts on the balance of probabilities. 'What is at issue is a holistic assessment as to whether action would be conducive to the public good. That assessment falls to be reviewed on public law grounds in order to determine whether it was outside the range of assessments that a reasonable decision-maker could make…' (paragraph 68). It did

not follow from the fact that the relevant decisions were all national security cases that the approach taken in those authorities did not also apply in other conduciveness cases, for the reasons already given (paragraph 69).

71. In paragraph 74, SIAC held that the OPEN material was a 'sufficient basis' for the assessment that Ds were all 'members of an OCG that was engaged in smuggling people into the United Kingdom in breach of immigration rules'. It gave three broad reasons for that conclusion in paragraph 74 of judgment 1. Those included that D6's conviction, which post-dated the decision, but related to conduct before the decision, and established 'to the criminal standard of proof, that he was involved in a criminal and commercial conspiracy to smuggle people into the UK', and D5's presence when some of the conversations between D6 and George and Mark took place, leading to an assessment that he played a 'subordinate role in the conspiracy'. There was also an inference that each of the Ds was involved in the unlawful smuggling of people into the United Kingdom in the light of 'the sheer number of people with connections to the appellants who have come to the UK unlawfully', the number of lies told by those people which fitted with lies told by the appellants, the fact that many of those people lived with, or near, the appellants, and the fact that many of them ended up working for in shops which were owned or controlled by D5.

72. SIAC did not need to make a finding about the 100 suitcases, but the finding of a large number of suitcases (whether 35 or 100) was not inconsistent with people smuggling (paragraph 75). The evidence 'convincingly demonstrates' involvement by the appellants and their associates in organised immigration crime'. That was not sufficient to justify the Secretary of State's ultimate decisions, because the gravamen of the submissions to the Secretary of State was that they were involved in 'trafficking and smuggling vulnerable people and children to the UK for modern slavery and sexual exploitation'. If there was 'no sufficient basis' to support those allegations, SIAC could not uphold the decisions of the Secretary of State, making it necessary to quash the exclusion decision in D7's case, and to allow the appeals of D5 and D6, so that the Secretary of State could reconsider their cases (paragraph 76).

73. For those reasons, it was not necessary separately to consider the allegations of money laundering, which were supported by the OPEN materials (paragraphs 77 and 78).

74. In paragraphs 79 and 80, SIAC explained why the OPEN evidence did not support such assessments, despite the inferences to which that evidence did give rise. The OPEN material gave grounds to suspect that F and others were subjected to labour exploitation, but no more than that. SIAC took into account the 'powerful arguments' relied on by Ds to support the submission that the people who had been smuggled in had, nevertheless, not been exploited for either purpose (paragraph 81). SIAC also took into account 'the inherent difficulties in investigating suspicions of trafficking' (paragraph 82). If the CLOSED material was taken into account, however, the material as a whole provided 'a sufficient basis on which the Secretary of State was entitled to reach the central assessments that formed the basis of the deprivation and exclusion decisions' (paragraph 83).

75. In paragraphs 88-94, SIAC gave reasons for rejecting the argument that decisions were unlawful because the appellants were not given the opportunity to make representations before they were made. It also rejected a submission that Ds could simply have been

arrested instead of being deprived of their citizenship or excluded. That submission had 'no merit'. For a start, they were outside the United Kingdom and could not have been arrested. The Secretary of State relied on material which could not be disclosed in the public interest. 'Arrest would have been no answer at all'. Nor was further investigation necessary (paragraph 91).

76. In paragraphs 95-99 SIAC rejected an argument that a comment in a submission to the Secretary of State dated 13 May 2020 was a statement of the Secretary of State's policy. Andrews LJ refused permission to appeal to raise that argument and I say no more about it.

77. The Appellants' third ground of challenge was that the factual case presented to the Secretary of State was materially flawed. For example, a 'key factual assertion', that none of the children who were trafficked to the United Kingdom was related to the Appellants, was demonstrably wrong. SIAC described other related arguments in paragraph 101. SIAC considered those arguments in paragraphs 103-107. The legal test required the Appellants to show that there was a public law error in the decisions. While SIAC rejected part of the Secretary of State's answer to the submission (paragraphs 102 and 103) it nevertheless held, on the basis of the reasoning in its CLOSED judgment, that the Secretary of State was entitled to reach the relevant conclusions. The errors asserted by the Appellants did not, individually, or collectively, 'invalidate' the Secretary of State's decisions. The core mistake (that the children were not related to the Appellants) was 'not material to the assessment'. The 'central element' of the assessment 'did not depend in any way on the question of whether or not the children were or were not related to' the Appellants (paragraph 105). The Secretary of State could have been given more details of the various investigations, but there was a 'balance to be struck'. The material before the Secretary of State was 'sufficient', and did not give a 'skewed or unfair' account of the material which mattered. The Secretary of State was 'aware that a local authority Children's Services had been involved, that trafficking concerns had arisen, but that no action had ever been taken to prevent the appellants from fostering children'. SIAC held that there was no need for the Secretary of State to know about various other points (paragraph 106).

78. In paragraphs 113-115, SIAC considered the parties' written submissions about the judgment of this court in *U3 (CA)*, which had been handed down after SIAC had prepared its judgment in draft and before it handed it down. It rejected a submission that *U3 (CA)* showed that the approach in *Begum* only applies in national security cases. It rightly said that this court had not addressed that question, because it was not before it. SIAC had, in accordance with *U3 (CA)*, made findings of fact to the extent that they were appropriate. Apart from a couple of changes, SIAC had not found it necessary to revise judgment 1 in the light of *U3 (CA)*.

C9

79. I will refer to SIAC's OPEN judgment in C9's case as 'judgment 2'. C9 was born in Albania. He entered the United Kingdom unlawfully in December 1999. He gave a false name to the police, and then claimed asylum in a second false name. He claimed, falsely, to be Kosovan. The Secretary of State refused his claim, but he appealed successfully, and was given indefinite leave to remain in February 2002. He applied

successfully to be naturalised as British citizen. He became a British citizen in 2007. He and his wife have four children who were all born in the United Kingdom and are British citizens. His true identity came to light when his mother applied for a family visa. The Home Office wrote to him in 2018 to say that they were considering depriving him of his nationality under section 40(3) of the BNA. He replied, and no further action was taken.

80. On 23 September 2020, when the Secretary of State knew that C9 was outside the United Kingdom, the Secretary of State sent C9 a notice of her intention to deprive him of his nationality, on the grounds that that was conducive to the public good. The reason for the decision was that 'it is assessed that you are a British/Albanian dual national who is involved in [SOC], operating from within the UK'. The Secretary of State certified that the decision was taken in part on reliance on information which should not be made public in the interest of national security and because the disclosure would be contrary to the public interest. A deprivation order was made and served on the same day.

81. In paragraphs 4-7, SIAC summarised the grounds for the decision. It was based on a submission from the NCA. The OPEN version said that Albania OCGs operate 'highly efficient, reliable and ruthless co-operative "cells" which are involved in a range of criminal activities, including organised immigration crime…and class A drug trafficking. These generate considerable cash proceeds which are smuggled or transferred out of the UK'. It was assessed that C9 was involved in arranging and facilitating organised immigration crime from the near continent to the United Kingdom in heavy goods vehicles ('HGVs') and small boats. C9 was said to have taken control of planned crossings. He was also assessed to have been involved in money laundering, dealing and brokering deals for illegal drugs, and that he might have access to firearms. He had been convicted in Germany, in 2015, of causing grievous bodily harm to an unknown person in 2014. He was given an eight-month sentence of imprisonment, suspended for three years.

82. The NCA's assessment was that C9 was 'a significant criminal facilitator' with access to a range of criminal associates'. He had 'a wide reach across a number of serious organised crime areas' and was 'known to use violence'. By facilitating the entry of illegal migrants into the United Kingdom, he 'exploits the vulnerabilities of illegal migrants, risking their lives for his own profit, undermining the UK's immigration laws and policy and threatening national security'.

83. On 24 August 2020, the NCA wrote to the Secretary of State, inviting her to wait until C9 left the United Kingdom before depriving him of his British citizenship 'to ensure maximum operational effectiveness is achieved from the immigration disruption'.

84. SIAC summarised C9's four grounds of appeal which were advanced, as it happens, by Mr Grieves. They were that the Secretary of State had acted unfairly in not giving C9 an opportunity to influence the decision before it was made (1), had acted unlawfully by not publishing a particular document as a policy (2), had taken into account irrelevant considerations (3), and had reached a decision which was unreasonable, irrational, disproportionate, arbitrary and contrary to articles 6, 8 of, and article 1 of Protocol 1 to, the European Convention on Human Rights ('the ECHR') (4). SIAC detected, and considered, two further grounds of appeal: that the Secretary of State had

unlawfully failed to consider whether the allegations against C9 were established on the balance of probabilities (5), and that the Secretary of State had failed to consider whether or not to get a serious crime prevention order ('SCPO') against C9 under the Serious Crime Act 2007, and the reasons why Kent Police had decided, after a 15-month investigation, to take no action in relation to cash seized in May 2020 (6).

85. SIAC heard evidence from C9 by video link from Albania. He was cross-examined 'at some length'. SIAC had witness statements from three members of his family and from an associate, but they all decided, for medical reasons, not to give evidence at the hearing. The weight which SIAC could therefore give those statements was reduced by the fact that their makers had not given oral evidence. SIAC described its impression of C9, and why it had formed that impression, with graphic examples, in paragraph 12 of judgment 2. He was 'an unimpressive witness whose evidence could not be regarded as reliable'. SIAC's view was that C9 'was someone who would say whatever he thought would be most immediately useful to him. Having observed and assessed [his] answers in cross-examination, we concluded that we should place no weight at all on [his] evidence save where it was corroborated by other reliable evidence'.

86. The Secretary of State called two witnesses, the first of whom was not cross-examined. An NCA witness, XZ, was cross-examined in OPEN and in CLOSED. She 'gave detailed and helpful answers, properly indicating the extent of the NCA's confidence on particular points. We formed the view that she had a very good understanding of the evidence and the conclusions she drew from it were balanced, well-reasoned and fully supported by the OPEN and CLOSED documents' (paragraph 13 of judgment 2).

87. SIAC observed, correctly, that section 40(2) does not require the Secretary of State to make specific findings of fact before depriving a person of his British nationality. The question of what is 'conducive to the public good' is, in the first instance, for the Secretary of State. SIAC referred to the guidance for caseworkers, which said that 'the power will be used in cases of "terrorism, espionage, serious organised crime, war crimes or other unacceptable behaviours' (judgment 2, paragraph 14).

88. SIAC referred to the authorities in paragraphs 15 and 16. The authorities gave no guidance about the approach which SIAC should take to assessments of involvement in SOC. This had been a subject of argument. That dispute had been resolved 'at least at this level' in Ds' case, which SIAC considered that it should follow. In any event, SIAC agreed with that analysis (paragraph 18).

89. The legal dispute did not matter on the facts, as SIAC was able to make findings of fact on the balance of probabilities about key aspects of the Secretary of State's case, and SIAC considered that it was appropriate to do that. Those findings confirmed the Secretary of State's assessment. That meant that C9's challenge failed, regardless which was the correct legal approach (paragraph 19).

90. SIAC made those findings in paragraphs 20-24. Even if the CLOSED material was left out of account, C9's answer to the Secretary of State's case was 'implausible in the extreme'. SIAC explained why in paragraphs 21 and 22 of judgment 2. The findings on the OPEN material were 'bolstered' by the CLOSED material. Even when SIAC took account of the general limitations of CLOSED evidence, it, coupled with the OPEN evidence, enabled SIAC to make, 'with a high degree of confidence', eight findings of

fact which it listed in paragraph 23 of judgment 2. The details of the supporting evidence, SIAC said, were set out in its CLOSED judgment.

1. C9 was head of his own SOC group.
2. The group's 'primary focus' was organised immigration crime: the transport of migrants from the near continent to the United Kingdom using HGVs and small boats.
3. C9 was 'personally responsible' for planning crossings and procuring transport.
4. He was also personally involved in 'dealing and brokering deals' for Class A and Class B drugs.
5. He made a lot of money from SOC.
6. He laundered that money through various businesses.
7. He had access to firearms.
8. He had used violence in the past and was prepared to use it in the context of SOC.

91. SIAC considered whether C9 should have been given an opportunity to make representations in paragraphs 25-30 of judgment 2. Mr Grieves had made no submissions on this issue, SIAC noted, presumably because it had already been considered by SIAC in other cases.

92. SIAC referred to *Al Jedda v Secretary of State for the Home Department* (SC/662008), and to *B4 v Secretary of State for the Home Department* (SC/159/2018) in which SIAC had held that there was no such right in this statutory scheme. SIAC had retreated somewhat from the reasoning in those decisions, in the light of *Begum*, in *Begum v Secretary of State for the Home Department (No 2)* (SC/163/2019). SIAC also referred to the reasoning in *D5-7 v Secretary of State for the Home Department*. It described SIAC's reasons in that case as being based on two factors. First, giving the appellants an opportunity to make representations would 'directly increase the risk that deprivation was designed to reduce, namely that [they] would return to the UK and continue [their] involvement in [SOC]'. Second, it would have been pointless, as the 'basis for the main case' against the appellants 'could only be stated in CLOSED'.

93. SIAC's conclusions, in paragraph 30 of judgment 2, were, first, that, unless convinced that it was wrong, it should follow SIAC in *B4*, and hold that the right to make representations was not excluded by section 40(5) of the BNA. SIAC was not convinced that *B4* was wrong. SIAC's conclusion on this point reflected its interpretation of the reasoning in *Begum*; that is, in essence, that an appeal to SIAC in a deprivation case is not an appeal on the merits. Second, the Secretary of State was, nevertheless, entitled to wait until a person was outside the United Kingdom before making a decision under section 40 (*L1 v Secretary of State for the Home Department* [2015] EWCA Civ 1410). In such a case, third, it would often be contrary to the interests of national security to allow a person to make representations, since that might precipitate his return to the United Kingdom. Fourth, there was no reason of principle why there should be a different approach in cases involving national security and cases involving SOC. In both cases, the reason for the decision is likely to be that it will promote the public interest by making it more difficult for the person to come into, or stay in, the United Kingdom. This case could not be distinguished from *D5-7*. The Secretary of State had been specifically advised to not to make the decision until C9 was outside the United

Kingdom. If she had given him advance notice of her intentions, it was likely, either, that he would not have left the United Kingdom in the first place, or that he would have returned to the United Kingdom. The public interest was against giving C9 such a right, and natural justice did not therefore require it.

94. SIAC considered grounds (3) and (4) (see paragraph 84, above) in paragraphs 36-42 of judgment 2. The OPEN and CLOSED evidence, taken together, showed 'not only that there was an adequate factual basis' for the Secretary of State's conclusions, 'but also that those conclusions were correct on the balance of probabilities'. Those findings 'supply a strongly compelling public interest reason for depriving [C9] of his citizenship'. Deprivation was 'in line with' the Secretary of State's published policy. There was no common law requirement that the decision be 'proportionate'. Even if there were 'the decision in this case would comfortably reach that requirement' (paragraph 36).

95. SIAC acknowledged that there was a mistake in the NCA's submission, because it did not refer to C9's two middle daughters. SIAC could 'nonetheless safely conclude that the result would inevitably have been the same', if the Secretary of State had been told about those two children, for the three reasons SIAC gave in paragraphs 38-40.

96. SIAC said that the approach to jurisdiction was settled in paragraphs 103-105 of *R3 v Secretary of State for the Home Department* [2023] EWCA Civ 169; [2023] Imm AR 683. Because C9 was not in the United Kingdom when the decision was made, he could not rely on any rights under the ECHR. The fact that the Secretary of State waited until he was outside the United Kingdom before making the decision made no difference (*L1*). The deprivation decision did not determine the article 8 rights of C9's family, because it did not stop him from returning to the United Kingdom; rather, it stopped him returning without leave to enter.

97. SIAC considered ground (5) in paragraphs 43-48 of judgment 2. Mr Grieves argued that the Secretary of State had to be satisfied on the balance of probabilities that the 'core allegations' against C9 were made out. The documents did not specify that standard, but referred, instead, to 'assessments', beliefs and suspicions. SIAC rejected that argument for four reasons.

    1. The Secretary of State did not have to be satisfied about any facts before exercising the power conferred by section 40(2) (cf section 40(3)). The broad terms of section 40(2) were inconsistent with the suggestion that the Secretary of State had to be satisfied of anything on the balance of probabilities.
    2. While the submission was not specific on this point, anyone reading it would think that the NCA was saying that it considered that it was more likely than not that the assessments were true. SIAC gave paragraph 4 of the OPEN version of the initial assessment by the NCA as an example.
    3. XZ's understanding, elicited in cross-examination, was that the allegations did have to be, and were, proved on the balance of probabilities. If the decision were quashed and sent back to the NCA, it would simply confirm that that was the position, and the Secretary of State would make the same decision.

4. In any event, SIAC had made its own findings on the balance of probabilities. It was not 'realistic' to think that the Secretary of State would reach a different decision in the light of those findings. If the NCA had failed properly to articulate the test, that was not, on the facts, a reason for allowing the appeal.

98. SIAC considered the availability of a SCPO in paragraphs 49-55. It noted that this ground had not been pleaded or referred to in C9's skeleton argument. Counsel for the Secretary of State cited paragraph 108 of *Begum* which approved a statement by SIAC in *U2 v Secretary of State for the Home Department* (SC/130/2016) to the effect that no domestic measure (such as a TPIM) 'can achieve the assurance of knowing that' the subject is 'outside the UK permanently'. Lord Reed added that that statement was not confined to people like U2 who presented the same level of risk. SIAC also quoted paragraph 81 of *B4*, in which SIAC made similar observation, and concluded that the making of an order was more effective than any other option, and that 'generally speaking…the making of the order in such circumstances will be necessary and proportionate'.

99. When *Begum* and SIAC'S decision in *B4* were taken into account, it was 'unlikely that the possibility of action in the UK short of criminal prosecution will fall into the category of considerations "so obviously material" that failure to have regard to them will make a decision unlawful'. Those were national security cases, but there was no reason why SOC cases should be any different. The restrictions imposed by a SCPO 'would require highly resource-intensive monitoring and would in general not provide the same level of assurance as permanent exclusion from the UK'. It was also not clear from the statutory provisions whether an application for a SCPO could be based on CLOSED material.

100. SIAC did not need to, and did not, decide whether the availability of SCPO could conceivably be a mandatory relevant consideration. It decided, on the facts, that this was not a case in which that availability was such a consideration. The NCA's OPEN assessment dated 24 August 2020 was that if C9 continued to be a British citizen and to live in the United Kingdom, he would 'continue to facilitate illegal immigration, profiting from this and from his engagement in other associated criminality'. Deprivation would be a 'visible disruption, which will discredit his position and provide a clear message to his criminal associates that the UK will not tolerate [SOC] and will use immigration disruption measures to prevent further harm to the UK'. Those passages, taken with the advice that the decision should be taken while C9 was outside the United Kingdom 'to maximise the operational effectiveness of the decision, make it clear that, in the absence of a realistic prospect of prosecution, the NCA regarded exclusion from the UK as necessary to achieve their primary aims'. That being so, 'rationality did not require them – the Home Secretary – expressly to consider an option which would fail to achieve that result, even if (contrary to the fact) that option were straightforward in legal and practical terms' (paragraph 55).

Discussion
The legal issues: issues of principle

101. The provisions of the 1971 Act which I have summarised above illustrate four points. First, even as early as in the 1971 Act, Parliament was aware that decisions were or would be taken by the Secretary of State on the ground of conduciveness to the public good. Second, Parliament was also aware both that that the phrase covered a potentially wide general field (sections 13(5) and 15(5)), and that it also included three more specific areas (sections 14(3) and 15(3)). Third, the Secretary of State was personally involved in such decisions. Fourth, at that early stage in the development of the immigration appellate system, statutory appeals against these decisions made on those grounds were explicitly barred.

102. Section 40(2) of the BNA gives the Secretary of State power to deprive a person of his citizenship status if 'the Secretary of State is satisfied that deprivation is conducive to the public good'. Parliament can be taken to have been aware of the width and nature of concept of what is 'conducive to the public good'. Parliament entrusted a discretion to the Secretary of State both to decide what is conducive to the public good in the individual case, and to decide whether, in the light of that view, a person should be deprived of his citizenship. Unlike sections 14(3) and 15(3) of the 1971 Act, section 40(2) is not explicit about what might be included in the concept of 'conducive to the public good'. It is, however, necessary to read section 40(2) with section 40A(2). If a decision is taken wholly or partly on the basis information of the kinds listed in section 40A(2), it is to be inferred that such a decision (that deprivation is conducive to the public good) is based on one or other or a mixture of the interests referred to in section 40A(2). Section 40A(2) therefore shows both that Parliament was aware that some deprivation decisions would be taken 'wholly or partly in reliance on information which in his opinion should not made public in the interests of' the three matters which are listed in section 40A(2)(a)-(c), and has authorised the Secretary of State to take such decisions.

103. Further, two features of the new scheme are significant in comparison with the scheme in the 1971 Act. The first is that people who are deprived of their citizenship on the ground that deprivation is conducive to the public good now have a right of appeal, in all such cases, even when (in short), the Secretary of State makes the decision on the basis of (what will, in any appeal) be CLOSED material. The second is that Parliament's express description of the three interests which may be involved in such decisions has changed. The third such interest is no longer '…for other reasons of a political nature' but 'or otherwise in the public interest'. In other words, Parliament has expressly permitted the Secretary of State to make a much broader judgment in the third category of case, which is not based merely on 'reasons of a political nature', but on the Secretary of State's conception of the wider 'public interest', that is, the public interest beyond the interests of national security and international relations.

104. The first question, in the light of these features of the statutory scheme, is what principle, if any, distinguishes cases in which the reason for the deprivation is not an assessment that the appellant is a risk to national security but an assessment that he is involved in SOC.

105. One premise of the Appellants' argument is that the relevant cases in the House of Lords or the Supreme Court are all about how SIAC should approach national security cases. That is true, as far as it goes, as Judge 1 noted. As he also noted, that premise does not entail the conclusion, however, that because those cases were all national security cases,

the approach does not or cannot apply when other facets of the public interest are engaged. In none of those cases did the relevant court make any such pronouncement; perhaps for the very good reason that any such statement would not have been necessary to the decision, and would therefore not have bound a later court. The Supreme Court tends to avoid opining in that way, for good reason. Neither the House of Lords nor the Supreme Court has decided a case about deprivations on other conducive grounds: and they have therefore said nothing about such cases. The question for a court on an appeal, therefore, is what the underlying principles may be, as SIAC recognised in judgment 1.

106. The primary source of those principles is sections 40 and 40A of the BNA. There is no warrant in the words of those provisions for a construction which could lead to the application of different principles to SIAC's review of a deprivation decision, depending on whether the deprivation was based wholly or mainly on national security, or on the other facets of conduciveness to the public good which Parliament has explicitly entrusted to the Secretary of State in the first instance and to SIAC on an appeal. The three aspects of conduciveness to the public good are linked in the statutory scheme; all appellants are exposed to the risk of deprivation on those grounds, and have the same rights of appeal which are subject to certification into SIAC. Further, in all such cases, Parliament has given the Secretary of State a wide discretion both to decide what is conducive to the public good in the particular case, and to decide whether, in the light of that factor, deprivation is appropriate. There is no rational basis on which this court could decide that the reasoning in *U3* only applies to national security cases, on the sole ground that *U3* is a national security case, not a SOC case. Such a statutory scheme would be incoherent. I reject that construction of the BNA, as did SIAC in judgments 1 and 2.

107. A second, related question, is whether there is any contextual or practical reason, in a SOC case, not to apply (by analogy), the reasoning in *U3*. With minor necessary changes, that reasoning can be readily (and persuasively) transferred to SOC cases. There are at least five reasons why.

108. First, there are similar reasons why SIAC should, in SOC cases, defer to the Secretary of State's judgment of what is conducive to the public good in an individual case, not only because the BNA makes the Secretary of State the primary decision-maker about that, but for reasons of democratic accountability and institutional competence. Second, what is at issue in both types of cases is SIAC's role in relation to an expert assessment done for the Secretary of State by the Security Service or by the NCA, as the case may be. Third, that expert assessment involves, at least in part, both an evaluation of intelligence, and an evaluation of the risk which is posed to the public interest by the possible or likely activities of a person, rather than the proof of facts on the balance of probabilities. Fourth, a precautionary approach to public safety is necessary; the human misery exploited and caused by people trafficking is a different threat to public safety from the threat of a mass casualty attack, but it may be well be more likely to materialise, and may sometimes therefore be just as pressing. Fifth, the relevant categories of potential harm to the public interest are not hermetically sealed from one another. For example, serious immigration crime is a vehicle for the unvetted entry into the United Kingdom of people who may well be a threat to national security in its narrow sense, or to the wider public interest.

109. SIAC lucidly explained, in paragraphs 67-69 of judgment 1, why the same approach must apply in all cases in which a decision is made to deprive a person of his nationality on the grounds that it is conducive to the public good. In judgment 2, SIAC gave its own reasons for rejecting a related submission that the Secretary of State had to make findings of fact on the balance of probabilities. SIAC was right in both cases to conclude, that, in principle, the same legal approach must apply to all appeals which involve deprivations in reliance on any aspect of the public good which is referred to in section 40(1) of the BNA, and second, that involvement in SOC could amount to, and did, in these cases, amount to a justification for the deprivation decisions and for the exclusion decision.

The appellants' main arguments
Institutional competence

110. The Appellants argue that it is only, or primarily, the police and courts which have the institutional competence to deal with crime, so that it is in some way inappropriate for the Secretary of State to use the section 40(2) power in such cases. They are primarily responsible for prosecuting some 1.3m crimes a year. The Secretary of State is not, therefore, in effect, constitutionally responsible, or democratically accountable, for criminal matters in the same way as she is for national security.

111. It is of course true that the police may investigate such cases, and that such offenders may be prosecuted, tried, convicted, and imprisoned, as were D5 and D6. That does not make it inappropriate for the Secretary of State, who unlike the police, is democratically accountable for effects of, and public concern at, for example, the Ds' type of SOC, to use a different method of dealing with it, if she (and it is her decision, not primarily that of the courts) decides that deprivation is a more effective, available, and less expensive use of the resources of the United Kingdom than criminal investigation, prosecution, and lengthy imprisonment would be.

Does the reasoning in U3 only apply to assessments of risk?

112. For completeness, in deference to some of the Appellants' arguments, and in case it is thought to raise a legally distinct issue, I will consider a further potential stage in the analysis. The issue here is, I think, best described as being whether the broad subject matter of these decisions (a facet of conduciveness to the public good) intrinsically entails the broad characteristics of the decision-making by the Secretary of State in *U3* and in these cases respectively, or whether there is a legally relevant distinction, based on a granular analysis of the actual issue in an appeal, between the Secretary of State's actual approaches to the decisions in *U3*, on the one hand, and in these cases, on the other. In other words, is it enough for the Secretary of State to show that the decision is about an aspect of conduciveness to the public good, or is it also necessary for the Secretary of State to show, as the Appellants submit, that the Secretary of State's decision also depends on an assessment of risk?

113. This argument is a refinement of an argument I have already rejected. I have held that different rules cannot in principle apply to the Secretary of State and to SIAC in deprivation cases, depending on which facet or facets of the public interest the Secretary of State relies on in making a deprivation order. It must follow that the rules which

apply cannot vary, in such deprivation cases, according to whether a decision is based on an assessment, based on the evaluation of intelligence, that a person has in the past been involved in an activity which is not conducive to the public good, or on an assessment that there is a risk that he might be involved in such an activity in the future (or both). Any such distinction would be irrational. The facts of these cases also show that any such distinction is, in any event, theoretical rather than real. In practice, in SOC cases as well as national security cases, the relevant assessment usually, if not always, has two parts: an assessment of what the subject has done so far, and an assessment of the risk that he will do something in the future.

The burden of proof

114. I accept the submission of Mr Grieves that in the cases of D5 and D6, SIAC did not make express findings of fact that, on the balance of probabilities, D5 and D6 had been involved in SOC as described in the assessment of the NCA and in the submission to the Secretary of State. On the other hand, the appellant bears, on any appeal, whatever its exact nature, the burden of displacing the findings of the decision-maker from whose decision he appeals. SIAC's finding, in the last sentence of paragraph 5 of judgment 1, that 'No reliance can be placed on their evidence that they were not involved in the conduct which is alleged against them' disposes of their appeals, whatever the right legal approach to their appeal was. That is so because the effect of that sentence is that D5 and D6 had failed, in SIAC's view, to discharge that fundamental burden, because their evidence that they were not involved in the conduct alleged against them could not be believed. If therefore, contrary to my clear view, SIAC was obliged to make clear findings of fact on these questions, and erred in law in failing to do so, any such error of law would be immaterial.

Findings of fact on the balance of probabilities

115. In deference to the vigour of Mr Grieves's submissions, I should nevertheless expressly decide a further issue of principle which his argument raises. That issue is whether, as Mr Grieves submits, the Secretary of State and SIAC should have made findings of fact on the balance of probabilities that D5 and D6 were involved in SOC, rather than, in the case of the Secretary of State, relying on assessments to that effect which were made by the NCA and by officials, and, in SIAC's case, reviewing the Secretary of State's decision by reference to public law principles.

116. SIAC's reasoning in judgment 2 on the question whether the Secretary of State is obliged to make findings of fact on the balance of probabilities (see paragraph 97, above) is cogent, and I adopt it. In short, there is no warrant in the language of section 40(2) for the proposition that the Secretary of State is obliged to make any such findings in order to make a deprivation decision. The question whether SIAC is permitted to make such findings is answered by *U3.* For this purpose, a finding on the balance of probabilities that Ds were involved in SOC is a 'pivotal fact' of the sort to which this court erroneously referred in *U3 (CA)*. Lord Reed's criticisms of the approach of this court in *U3 (CA)* to such 'pivotal facts' applies with equal force to the submission that, in this case, SIAC was obliged to find, on the balance of probabilities, whether or not D5 and D6 were involved in SOC. I therefore reject the submission that SIAC erred in

law in not making findings of fact on the balance of probabilities about whether or not D5 and D6 were involved in SOC.

Proportionality/intensity of review

117. There are two initial points. First, proportionality under the ECHR is irrelevant, for the reasons given in judgment 2 (see paragraph 96, above). C9 was refused permission to appeal against that conclusion. Second, if and to the extent that general references to proportionality include the so-called 'nutcracker principle', SIAC convincingly explained why there was no less intrusive measure which would have been as effective as deprivation in achieving the Secretary of State's legitimate aims (see paragraph 98-100, above).

118. SIAC explained and Mr Southey accepted that there was a potential factual overlap between a national security case and a criminal case. He nevertheless submitted that they are distinct legal categories and that this was clearly a criminal case. It followed from the Secretary of State's lack of relative institutional competence in criminal matters that the intensity of any review which is required by SIAC in a SOC case is greater than the intensity of any review in a national security case. SIAC erred in law in reviewing C9's case with an intensity which is appropriate in a national security case, but which was not enough in a SOC case. SIAC had not addressed the critical question in this case, which was whether, even if its findings of fact were correct, the decision was 'reasonable and/or proportionate'. That submission was based, in part, on dicta in *Pham v Secretary of State for the Home Department* [2015] UKSC 19; [2015] 1 WLR 1591 which stress the importance to an appellant of his British citizenship.

119. I have summarised SIAC's reasoning on this topic (see paragraph 94, above). The submission is hopeless in the light of SIAC's clear view that there was 'a strongly compelling public interest reason' for the decision, that there is no common law requirement of proportionality, but, if there were, 'the decision in this case would comfortably meet that requirement'. Three points are especially relevant to this submission. First, SIAC is an expert court familiar with the basic legal principles, second, SIAC, in the course of its reasoning on the appeal, made relevant, cogent (and damning) findings of fact, which are not challenged, and third, on an appeal on a point of law, this court should defer to SIAC's (conditional) assessment of proportionality.

Procedure

120. Mr Southey argued that C9 should have been given an opportunity to make representations before the Secretary of State deprived him of his citizenship. He relied on paragraph 60 of *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673; [2019] 1 WLR 4647 and *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39; [2014] AC 700. He accepted that statute could exclude the common law right to make representations expressly or by implication but submitted that there was no such exclusion here.

121. If, as I consider it should, SIAC must take a similar general approach to all deprivation decisions made on the ground that deprivation is conducive to the public good, then, regardless of the particular facet of the public good which is engaged, the Supreme

Court's reasoning about procedural fairness in paragraph 82 of *U3* (see paragraph 43, above) is relevant. It is obiter, because there was no issue about procedure in that case, but it is strongly persuasive. For what it is worth, I also consider that it is right. That reasoning is explicitly based, not on the precise nature of the issue which SIAC is considering in the appellant's appeal, but on the schematic feature that, where there is an appeal to SIAC against a deprivation decision on conducive grounds, procedural fairness is ensured, after the event, by the statutory right of appeal to SIAC, in and of itself. That reasoning is supported by the reasoning of this court in paragraph 112 of *Begum v Secretary of State for the Home Department* [2023] EWCA Civ 152; [2024] 1 WLR 4269 that SIAC's role on an appeal (in a national security case) excludes 'the right to prior consultation'. There was some debate on this appeal about whether that reasoning is obiter. Whether or not it is obiter, it is, again, strongly persuasive, and, in my view, right.

122. I also consider that SIAC's reasoning on this point in judgments 1 and 2 is compelling on the facts of these cases (see paragraph 75 above, the last three sentences of paragraph 92, above, and the second, third and fourth reasons in paragraph 93). Whether or not this court is bound to hold that there is no right to make representations in a section 40(2) case, I would hold that SIAC was right, for the reasons it gave in judgments 1 and 2, to decide that it was not unlawful to make the decisions in these cases without giving the appellants a chance to make representations. I would also hold that there is no such right in a section 40(2) case which is certified, so that any appeal is to SIAC.

D7

123. For completeness, I should say something about the appeal of D7. D7 did not appeal to SIAC, but applied to SIAC for a review of his exclusion from the United Kingdom. The Act is clear that the principles which apply on an application for judicial review apply to such a review. His appeal does not, therefore, directly raise the questions which are raised by the other appeals. My reasons for dismissing those appeals apply with greater force to his appeal.

Conclusions

124. For those reasons I would dismiss the appeals in all these cases.

125. I should add that there is nothing in the CLOSED material in these cases which affects that conclusion in any way.

Lord Justice Green

126. I agree.