

IN THE SPECIAL IMMIGRATION APPEALS COMMISSION

Sitting at Field House

Appeal Nos: **SC/195/2022; SC/001/2025; SC/94/2022; SC/196/2024**

Hearing Dates: **10-26 November 2025**

Judgment Date: **3 March 2026**

Before:

The Honourable Mr Justice Jay

Lipper Tribunal Judge Kamara

Mrs Jill Battley

Between:

G4 and G5

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

OPEN JUDGMENT:

FOR PUBLICATION

Alasdair Mackenzie, Ben Bundock and Rabah Kherbane (instructed by Duncan Lewis) for G4

David Chirico KC and Margo Munro Kerr (instructed by Birnberg Peirce) for G5

David Blundell KC, Will Hays, Naomi Parsons and Karl Laird (instructed by the Government Legal Department) for the Secretary of State for the Home Department

Martin Goudie KC and David Lerner (assisted by SASO), Special Advocates for G4

Tim Buley KC and Dominic Lewis (assisted by SASO), Special Advocates for G5

MR JUSTICE JAY

INTRODUCTION

1. G4 and G5 are both Iraqi nationals born in what is now the Kurdish Region of Iraq ("IKR") in the late 1970s. They came separately to the UK in 2001, claimed asylum at the time, and were eventually granted indefinite leave to remain ("HR") under the Legacy Programme. Later, they became British citizens.
2. In 2016-2018 G4 and G5 were investigated by the National Crime Agency ("the NCA") for alleged Organised Immigration Crime ("OIC") in an Organised Crime Group ("OCG"). The NCA assessed that they were working together. A file was then sent to the CPS for consideration. In 2019 the Crown Prosecution Service ("the CPS") decided to take no further action in relation to both of them. In 2020 the NCA decided to proceed down the different route of immigration disruption and in August 2022, whilst G4 and G5 were separately on holiday in the IKR with their families, the Secretary of State for the Home Department ("SSHD") personally decided to deprive them of their British nationality under s. 40 of the British Nationality Act 1981 ("the BNA 1981") on the ground they were still involved in OIC and such action was conducive to the public good. G4 and G5 were notified of these decisions whilst in Iraq.
3. In due course G4 and G5 returned separately to the UK. They did so as illegal entrants. In 2024 SSHD decided to deport G4 and G5 to the IKR.
4. G4 and G5 have brought separate appeals under s. 2B of the SIAC Act 1997 (against the deprivation decisions) and under s. 2(1)(a) (against the deportation decisions). The latter appeal is advanced on human rights grounds, viz. Articles 3 and 8 of the Convention; and, in G4's case alone, also under the Refugee Convention.
5. SIAC decided to hear these appeals together because they raised common issues of fact and of law. Even so, the cases of G4 and G5 are not the same and we must consider them separately.
6. The appeal hearings, in OPEN and in CLOSED, took place over 13 days in November 2025. SIAC received an unprecedented quantity of evidence and submissions. G4 gave oral evidence with the assistance of a Sorani interpreter trained in the Iraqi Kurdish dialect. His wife (whom we anonymise as "AB") also gave oral evidence over a remote link. G5 gave oral evidence with the assistance of the same interpreter who as far as we could tell discharged his duties in an exemplary fashion in difficult circumstances. SIAC received written evidence in support of G5's appeal from his wife (whom we anonymise as "CD"), his son and his eldest daughter. Dr Lucy Kralj, a psychotherapist, gave oral evidence over a remote link. SSHD's witnesses were Graeme Chisholm

("GC"), an NCA investigating officer and a former Detective Sergeant in the Durham Constabulary, LQ, an NCA officer covering the IKR, and Mr Andrew Allen KC, whose expert report was read. We will set out our impressions of the witnesses at the appropriate time. In order to avoid the possibility of mosaic identification¹, we have anonymised the names of a number of relevant persons. We have provided to the parties an unredacted version which may be used, subject to appropriate handling conditions, were these cases to be considered by the Court of Appeal.

7. Given the mass of material that we have had to read, digest and analyse, the parties may have been expecting a longer OPEN judgment. However, for the reasons which follow we have been able to take a more economical course. Much of the case against G4 and G5 is in CLOSED (how much we cannot say). G4 and G5 decided to run a cut-throat defence which in the end only served to simplify our task in the sense that their written and oral evidence has reinforced the NCA's assessment as to the involvement of both of them in OIC. Further, the respective roles of G4 and G5 is not established by the OPEN evidence: there is, accordingly, no point in our going into this. The CLOSED evidence is, in the main, unequivocal on this aspect. Finally, many of the arguments raised by G4 and G5 are precluded against them by higher authority. We can therefore deal with those arguments briskly and spend more time on the handful of arguments that have greater force.
8. The Commission will be selective in setting out the evidence necessary to explain our conclusions. We will take a similar approach to the submissions.
9. The Commission has not counted all the documents making up the three trial bundles and the authorities' bundle. There are far too many. We have only read those documents to which our attention was specifically drawn although, at Counsels' request, we have considered all of the CLOSED material.

AN ESSENTIAL CHRONOLOGY OF EVENTS: G4

10. G4 was born in Sulaymaniyah, Iraq in 1977. It is right that we record that he (as did G5) lived through the Iran/Iraq war of the 1980s, during which atrocities were committed against the Kurds; and the first Gulf War of 1991, in the aftermath of which atrocities were also committed. He came to the UK, asserted first of all that he was Iranian, and unsuccessfully claimed asylum. G4 started a relationship with AB in 2006. A son was born in [REDACTED], In March 2010 G4 was granted ILR under the Legacy Programme and he was naturalised as a British citizen in August that year' Another son was born in [REDACTED] and he is profoundly disabled. Again, to avoid any risk of jigsaw identification we need not spell out the nature and extent of his physical, intellectual and psychological difficulties, but we bear them well in mind in the context of the Article 8 claim. A third child, a daughter, was born in [REDACTED]. G4's children are all British.

¹ The Commission is extending the anonymity orders in both these cases.

11. In 2015 G4 was working in a Kurdish restaurant in the NE of England. He also worked in and/or had an interest in at least one car wash business.
12. In August 2016 G4 was identified as a subject of interest by the NCA. An investigation into his activities started under the code name Operation Dahoon, and it continued into 2017. We cannot say in OPEN exactly when it stopped although GC did confirm in OPEN evidence that this was in 2017. Formally, the investigation continued until the February 2018 inasmuch as G4 and G5 were rearrested and re-interviewed then: hence the date we have given under §2 above. Without impinging on the CLOSED evidence, we understand what GC meant in his oral evidence when he gave the 2017 date.
13. Although G4 only became a subject of interest in August 2016, an entry in the notebook (see §15 below for when and where this notebook was found) for 20 March 2016 states that there were four people/passengers on that day and the sum involved was £38,000. Given the other entries in the notebook which can only sensibly be interpreted as relating to people smuggling, it is difficult to interpret the 20 March entry in any other way.
14. Aside from G5, G4's associates in QIC included HR, based in Calais, and HH, based in Hastings. Between 27-30 October 2016 G4 travelled to Calais with HR.
15. On 13 February 2017 at about 18.45, G4, together with G5, was arrested in the outskirts of Reading along with a Romanian lorry driver, MT. The NCA seized cash in the total sum of £23,835 (NB. Other documents give a different figure, but nothing really turns on the precise amount). Over £16,000 had been paid to MT; G4 had retained £7,800. A notebook was found in the footwell on the front passenger side of the vehicle, which was being driven by G5, along with a number of phones. G4 was informed that he was being arrested on suspicion of money-laundering offences. At interview he went "no comment" to all questions asked.
16. On 2 August 2017 G4 reported G5 to the police for threats of violence. G4 named G5 using a nickname.
17. On 6 February 2018 G4 was re-arrested and re-interviewed. On this occasion he was informed that this was on suspicion of conspiracy to assist unlawful immigration. Again, G4 went "no comment".
18. It is not clear exactly when, but later in 2018 the papers were sent to the CPS for advice. In March 2019 the CPS informed the NCA that it had decided to take no further action owing to insufficiency of evidence. According to para 28 of his first witness statement, G4 was notified of this on 17 April 2019. We have, however, seen a letter which indicates that G4 was formally notified on 25 July 2020. Confusingly, the Ministerial Submission recommending deprivation suggests that G4 was notified in 2019. In the circumstances, it is difficult for us to reach any clear conclusion on this point. If the letter dated 25 July 2020 was the first instance on which G4 was informed, which we doubt, the 17-month delay is inexcusable.

19. On 4 August 2020 G4's British passport was renewed. In October 2020 the NCA's Immigration Disruption Team ("IDT") starting exploring the possibility of taking disruption action against G4. In November 2020 initial advice on disruption was communicated to the NCA. On 16 November 2021 the NCA prepared a "Subject Profile" on G4. In February 2022 the NCA started drafting the Recommendation to deprive.
20. On 2 July 2022 G4 travelled to Sulaymaniyah for a summer holiday with his family. They were booked to return on 4 September. On 2 August the NCA discovered that he was out of the country and two days later the recommendation to deprive was finalised. It was sent to the Home Office on 19 August and on 30 August SSHD made the decision to deprive him of his nationality whilst he was still abroad. SIAC is aware that SSHD's policy is to use her deprivation power when the subject is abroad, if that opportunity presents itself.
21. SSHD's decision was made on the basis of a Ministerial Submission drafted by her officials, a Recommendation drafted by the NCA, and a Mistreatment Risk Assessment drafted, we think, by officials with a different expertise. We have studied all these documents and a full citation is not required for the purposes of this judgment. However, we do set out three paras from the Ministerial Submission:

"8. The NCA assesses that in the absence of any evidence or intelligence to the contrary, G4 is highly likely to have returned to the OCG's criminal enterprise since the CPS took their decision in 2019. G4 was notified in 2019 that no further prosecutorial action would be taken against him in relation to the matters investigated. No further intelligence has been gathered since 2019. However, it is the NCA's assessment that he has no incentive to cease his involvement when his arrest in the middle of a cash handover was followed by a negative charging decision. The NCA believes that decision is likely to have emboldened him to continue operating.

9. The NCA assesses that G4 has a leadership role within an OCG, facilitating illegal migration to the UK from France.

10. The NCA assesses that if G4 is deprived of his British citizenship whilst he is abroad in Iraq, such deprivation will make it extremely difficult for him to make alternative arrangements to continue with his criminality. This is because he will have had no opportunity to put in place any succession planning for the OCG. The fact that he is abroad will also limit his access to any assets that he holds in the UK, which may have been unlawfully acquired. The NCA assesses that this will have the effect of limiting the ability of the OCG to continue to operate."

Para 8 is oddly worded: "highly likely to have returned". Read literally, that means, "stopped and then returned". However, the parties did not suggest that this literal reading should be adopted, and we leave the matter there.

22. On 26 September 2022 G4 filed his appeal in SIAC.
23. On 8 February 2023 G4 returned to the UK via Ireland, Belfast and Scotland. On 27 March 2023 he claimed asylum in person in Liverpool. He was arrested, sentenced to 10 weeks' imprisonment for illegal entry, and released on licence on 28 April 2023.
24. On 7 November 2023 the NCA recommended that G4 be deported. On 16 September 2024 the deportation decision was served on G4. His protection and human rights claims were refused by the Home Office on 27 November 2024.

AN ESSENTIAL CHRONOLOGY OF EVENTS: G5

25. G5 was born in Sulaymaniyah in 1976.
26. In January 2001 he arrived in the UK and unsuccessfully claimed asylum together with his wife, CD.
27. In [REDACTED] and [REDACTED] respectively a daughter and a son were born. They were later registered as British.
28. In January 2008 G5 and his family were granted ILR. He and his wife were naturalised as British citizens in December 2009.
29. In [REDACTED] another daughter was born. She was British at birth.
30. In September 2016 G5 received a 6-month prison sentence suspended for 12 months for the offence of fraudulently evading duty on cigarettes.
31. In November 2016 G5 became a subject of interest within Operation Dagoon.
32. On 13 February 2017 G5 was arrested in Reading together with G4. On 14 February G5 gave a full comment police interview.
33. On 6 February 2018 G5 was re-arrested on suspicion of conspiracy to assist unlawful immigration. Again, he gave a full comment police interview.
34. In March 2019 the CPS decided to take no further action in relation to Operation Dagoon. On 25 February 2020 that decision was formally conveyed to G5 although, again, the Ministerial Submission advised SSHD that G5 had been informed in 2019.
35. On 7 August 2022 G5 travelled to Sulaymaniyah with his wife and youngest daughter. They were booked to return on 17 September.

36. The NCA Recommendation to deprive G5 of his British citizenship was given on 17 August. The Ministerial Submission was dated 26 August. SSHD made the decision to deprive him of his British citizenship on 30 August 2022.

37. Key passages in the Ministerial Submission include the following:

"3. The NCA assess that due to G5's significant involvement in serious and organised immigration crime as [a senior member] of an organised crime group based in the UK, deprivation is conducive to the public good ... The NCA assess that depriving G5 of their citizenship will serve to protect the UK public from the ongoing threat that their conduct poses ...

...

8. G5 is a principal subject of Operation Dahoon, an NCA Tyneside Investigation into an OCG involved in OIC; specifically, the facilitation of migrants from France into the UK by lorry.

...

10. The NCA assess that in the absence of any evidence or intelligence to the contrary ... [same wording as para 8 of the Ministerial Submission in G4's case]"

38. On 15 September 2022 G5 returned to the UK illegally. He filed an appeal in SIAC one day out of time. On 6 December 2022 SIAC made an Order striking out the appeal but it was later reinstated in July 2024.

39. On 8 February 2023 G5 was arrested for knowingly entering the UK without leave. The route that he claimed he had taken was via Dusseldorf, Dublin and Belfast (quite similar to G4's). He was remanded in custody. On 15 September 2023 he was sentenced to 8 months' imprisonment suspended for 18 months. He was released from custody to return to his home address under Probation Supervision.

40. On 7 November 2023 the NCA made its Recommendation for deportation. Notice of decision to deport was given on 10 November and G5 was detained under immigration powers. On 12 June 2024 the First-tier Tribunal granted bail in principle.

41. On 26 June 2024 SSHD refused G5's human rights claims. He then filed an appeal in SIAC under s. 2(1) of the SIAC Act 1997.

42. On 23 July 2024 G5 was released to approved premises on electronic tag and subject to a night curfew.

43. G5 subsequently returned to the family home. A fourth child was born.

44. In light of a number of cases which are extremely well known to those with experience in the realm of national security and serious organised crime ("SOC") in the context of s. 2B of the SIAC Act 1997, we can be brief. First of all, there is no difference between national security and SOC for these purposes: see *D5, D6, D7 and C9 v SSHD* [2025] EWCA Civ 957. Secondly, an appeal under s. 2B is an appeal on the merits and not to be treated as tantamount to an application for judicial review: see *SSHD v Kolicaj* [2025] UKSC 49, per Lord Sales JSC (now DSPC) at para 51. Thirdly, as the Supreme Court explained in *Begum v SSHD* [2021] UKSC 7; [2021] AC 765 ("*Begum 1*") and repeated in *U3 v SSHD* [2025] UKSC 19; [2025] 2 WLR 1041, and the Court of Appeal summarised in *Begum v SSHD* ([2024] EWCA 152; [2024] 1 WLR 4269) ("*Begum 2*"), at para 10, the principles to be applied to the determination of an appeal under s. 2B of the SIAC 1997 will vary according to the issue under consideration, but in the context of the national security assessment (and, by parity of reasoning, the assessment that the appellant has been involved in SOC), are "largely the same as those applicable in administrative law". Fourthly, the position is different where human rights, as opposed to SSHD's extra-territorial Article 3 policy, are in play: SIAC determines the issue for itself, although in doing so recognises that the nature, characterisation and extent of an appellant's involvement in SOC is for the NCA to determine, reviewable only on the application of public law principles. That is the case both in connection with the s. 2B and s. 2(1) appeals.
45. Before *U3* was decided by the Supreme Court, it was well-established that in a s. 2B appeal SIAC determines the risk to national security as at the date of SSHD's deprivation decision. Conversely, in relation to pure human rights questions it was, and remains, well-established that SIAC assesses the position as at the date of the making of its decision on an appeal. That is also the position in relation to the deportation appeal which can only be advanced and considered on protection and human rights grounds.
46. Beyond these uncontroversial matters, there is an important divergence of submission between G4 and G5 on the one hand (Mr David Chirico KC for G5 being a late convert to G4's position) and SSHD on the other. Mr Alasdair Mackenzie for G4 strongly submitted that on a close reading of *U3* in the Supreme Court, not merely must SIAC consider the conducive to the public good issue as at the date of its (SIAC's) decision, it is incumbent on both the NCA and SSHD to reconsider the position before the SIAC hearing on the basis of all the evidence and submissions filed in the appeals. Without doing so, SIAC is unable to perform its functions properly. Mr David Blundell KC for SSHD submitted that G4's approach betokens a misreading of *U3* and the placing of too much emphasis on just one or two sentences in the judgment of Lord Reed PSC. The correct approach, he submitted, was that SIAC on a s. 2B appeal should consider "after-coming" evidence, but only to the extent that it throws light on the state of affairs that existed at the time SSHD's decision was made.
47. We continue to acknowledge that before *U3* was decided it was, or appeared to be, clear that the conducive to the public good issue was assessed as at the date of SSHD's decision. That was the approach followed by both SIAC ([SC/163/2019]) and the Court of Appeal in *Begum 2* when Ms Begum's case was considered substantively. The

reason why this approach was followed was because that was common ground between the parties in *Begum 2*, and appeared to be supported by certain passages in Lord Reed's judgment in *Begum 1*. We also acknowledge that *U3* (and indeed *Kolicaj*; see below) make it clear that subsequent decisions by the department which take into account later evidence are in the nature of being decisions which re-affirm or endorse the original decision; and it is the original decision, and not the subsequent decision(s), which remains the subject-matter of an appeal.

48. However, we are persuaded by Mr Mackenzie's helpful and precise submissions on this issue that both SIAC and the Court of Appeal in *Begum 2* were mistaken, although for various reasons which cannot properly be explained in OPEN that made no difference to the outcome. Although neither the appellant nor the intervener in *U3* appears to have advanced submissions to this effect, the following two paras of Lord Reed's judgment in *U3* do, with respect, make the position clear:

"84. As explained above, it is possible for the appeal to be based on evidence which was not before the Secretary of State at the time when the deprivation decision was taken, as SIAC understood. There is nothing in the statutory provisions which restricts the admissible evidence to matters which arose before the decision was taken. The question is therefore whether the evidence in question is relevant to deciding whether the appeal should be allowed. In that regard, it is important that the Secretary of State's decision is reviewed and the national security assessment is updated during the appeal proceedings, in the light of the appellant's evidence and submissions. As a result, the decision before SIAC when it decides the appeal is in reality a decision which has been re-considered and re-affirmed by the Secretary of State at the time of the appeal hearing in the light of the evidence adduced in the appeal. ***In those circumstances, it is possible that evidence relating to matters post-dating the original decision may have a bearing on whether the deprivation of citizenship remains appropriate.*** It is accordingly incorrect for SIAC to proceed on the basis that the issue it has to decide is the rationality of the decision at the time it was made, and that it cannot take account of evidence relating to matters arising subsequently.

85. However, in the circumstances of the present case, that misunderstanding had no effect on SIAC's decision. It considered the evidence in question in relation to the appeal against the refusal of entry clearance, and concluded that, even having regard to that evidence, the Secretary of State's assessment of the risk posed by the appellant to national security could not be regarded as irrational or otherwise flawed in any administrative law sense: see paras 28-30 above." (emphasis supplied)

49. Thus, according to *U3* in the Supreme Court, SIAC's mistake in that case was to consider the appellant's evidence and submissions, which were not of course before SSHD at the time her decision was made, only to the extent that they threw light on

the correctness of SSHD's decision at the time it was made. In SIAC's view, U3's evidence and submissions were not relevant to matters arising after SSHD's decision was made. However, that error mattered not because when SIAC addressed the entry clearance appeal it did so with reference to the then current position. At that point in time, SSHD assessed, on advice, that U3 was still ideologically committed to ISIL.

50. Despite Mr Blundell's valiant efforts, we have reached the conclusion that this is the only possible interpretation of Lord Reed's judgment in *U3*.
51. SIAC's judgment was already largely complete before the Supreme Court handed down its judgment in *Kolicaj*. Lord Sales' analysis has now put the position beyond possible argument: see paras 42, 53 and 70. Accordingly, no substantive changes to our draft judgment have been necessitated.
52. This analysis has a number of consequences. First, although the NCA has re-assessed the conducive issue in 2024 and possibly in 2025, SSHD has not. The case was never referred to the Home Office for reconsideration in light of all the material now available to us. That was a procedural flaw which is at least capable of invalidating the decision under challenge in the s. 2B appeal; or, put another way, the decision which ought to be under challenge in such an appeal but has never been made. Secondly, it is not entirely clear what the NCA's reassessment is. On one reading of one of GC's witness statements relevant to the position in 2024, he was using the past tense in relation to the OCG activities of G4 and G5. GC's witness evidence, and one answer he gave to the Chair's open question posed towards the end of his evidence, suggests that he still assesses it to be likely, if not highly likely, that G4 and G5 are continuing in OIC. However, G4 and G5 made the tactical decision (wrong in our view) not to cross-examine GC further on this issue. At the start of the proceedings, SIAC had acceded to G4's and G5's application to exclude parts of a late witness statement from GC dated 7 November which, read as a whole, stated that he thought that it was possible that they were still continuing their activities. Given that we know that this is GC's considered opinion, and that "possibility" is a fair reflection of SIAC's own assessment of all the OPEN and CLOSED evidence as at 2024 if not today's date, we consider that we should proceed on that basis. It is not unfair to G4 and G5. Thirdly, we do not understand the Supreme Court in *U3* to be deciding that a failure to update the national security case will necessarily invalidate the decision-making process. It *may* do so, but did not on the facts of U3's case. What Lord Reed may have had in mind is evidence showing that U3 was no longer ideologically committed to ISIL. Such evidence, had it existed, may well have called into question the appropriateness and proportionality of deprivation. However, on the facts of *U3* later evidence showed that she was still ideologically committed to ISIL. It followed that the procedural failings which existed were immaterial.
53. Fourthly, we cannot accept G4's closing submission to the effect that, given that G4's evidence given over a number of hours before us has never been considered by SSHD, SIAC is required to ignore it. Despite being an extremely unattractive submission, the fact remains that once G4 gave his evidence SIAC is bound to consider it. The tape cannot somehow be rewound. If G4, on advice, felt that there was merit in the

argument that SSHD's failure to consider the up-to-date position was fatal to the decision-making process, the correct course should have been to rest on this point of public law and not give oral evidence at all. The risks in taking that course were, however, obvious and G4 rightly decided not to run them. These risks included the possibility that SIAC would draw an adverse inference from G4's failure to give oral evidence, and/or conclude that the outcome would inevitably have been the same had this procedural failing not occurred. In any event, it must be pointed out that whether or not SSHD has followed the *U3* procedure to the letter, the position will always be that an appellant's oral evidence will not have been considered by SSHD before the hearing.

54. In our judgment, this is an appeal and an appellant's evidence must be considered with great care by SIAC even if, as here, there has been no updated assessment by SSHD (in future cases, SIAC would expect SSHD to follow the *U3* procedure). In a case where an appellant's evidence is deeply unimpressive and serves only to reinforce SSHD's assessment made some time beforehand, SIAC can properly take it into account. Equally, in a case where the evidence is strongly supportive of an appellant's case, particularly in circumstances where unbeknown to him, it assuages the concerns created by the CLOSED material, SIAC can properly take it into account and, if appropriate, allow the appeal - all the more so in a situation where SSHD has failed to follow the correct procedure. In such a case, if the parties in OPEN and CLOSED have not asked the right questions, the correct procedure would be for SIAC to put its provisional evaluation of the appellant to the respondent's witness for comment. Depending on any answer given, SIAC may be in a position to conclude that the respondent's (reconsidered) decision, made in the witness box, was irrational. We understand Mr Mackenzie's concern that this might be a penny with two tails, but the answer to that concern is not to invite SIAC to ignore an appellant's evidence once it has been given.

55. The issues we will need to address in due course are whether SSHD's failure (by which we mean the department's and not SSHD's personally) to reconsider all the evidence in light of the evidence and submissions filed, and NCA's antecedent failure clearly to state its position as to continuation of QIC activity as at the date of the deportation decision and as at the date of the hearing, makes any conceivable difference to the outcome of the deprivation and the deportation appeals. More straightforwardly in the particular circumstances of this case, we will also need to set out our assessment of G4 and G5 as witnesses and identify what impact, if any, that assessment has on the decisions under challenge.

THE *MODUS OPERANDI* OF THIS OCG

56. We are able to draw this from the NCA's Recommendation to deprive G4 and G5 as well as from the "Respondent's Note on NCA OPEN case" served shortly before Mr Blundell KC began his closing submissions.

57. The OCG's MO waste smuggle migrants into the UK from Calais and Dunkirk via Dover. These migrants were sourced from within and around the migrant camps in Northern France, including the "Jungle" in Calais. They were secreted in lorries typically driven by drivers from Eastern Europe. Migrants were concealed inside the cargo in the rear of the lorry or within the cab itself. The material in OPEN sets out varying amounts for the sums paid by the migrants, and a complete and accurate understanding of exactly how this business model operated is not possible. Certain entries in the notebook indicate a sum per migrant of about £8,000. On one occasion there is a reference to eight migrants (not a confirmed figure) paying £58,000. The maximum amount per head appears to be £9,500 although there is material in CLOSED which suggests an even higher sum.
58. The migrants were single people and families, including the very young (e.g. an 18-month old boy; a 4-month old girl) and the vulnerable (e.g. pregnant women). Although this OCG was based in Cleveland, there are references in the notebook to Glasgow, Manchester, Leeds, Hull, Sheffield, Birmingham, Coventry and London. Some of the "clients" originated in the IKR. The notebook provides some indication of the scale of these smuggling operations although a fuller picture emerges from the CLOSED evidence.
59. G4 was assessed by the NCA to have a "controlling, leadership role" in the OCG, whilst G5's was assessed to have an "organising role". The NCA assesses that it is clear that during the currency of Operation Dagoon they worked closely together to co-ordinate migrant runs and travelled to the Gravesend area and to Reading to meet lorry drivers involved in the smuggling of migrants.
60. HH, whom we have already mentioned, was involved in the recruitment of lorry drivers. Thus, he recruited the driver AJ whom G4 and G5 met in the Gravesend area on 28 January 2017. AJ was a Macedonian national.
61. HR, whom we have also already mentioned, was based in Calais. His "front", or perhaps his dayjob, was a migrant charity called "Care for Calais". The NCA assessed his role as being to bring together the lorry drivers recruited by HH with the migrant "clients" in Belgium and France.
62. Other Operation Dagoon subjects were arrested on 6 February 2018. These included Z, a Bulgarian national and a lorry driver who had contacts with other Bulgarian lorry drivers and could translate for HH when the need arose; H, an Iraqi based in Middlesbrough or Newcastle who sponsored the migration of his wife and other family members into the UK on 24 November 2016 (as particularised more fully below); and K (aka "S"), an Iraqi national based in Newcastle who sponsored the migration of four family members into the UK on 12 February 2017 (again, as more fully particularised below).
63. The material placed before SSHD covered three specific migrant "runs" which were analysed in some detail for her to consider. The various strands of OPEN evidence which enabled the full picture to be understood were (1) communications data

including calls, messages and cell-siting; (2) Automatic Number Plate Recognition ("ANPR") data; (3) admissions from the lorry driver AJ; and (4) French intercept evidence which led to the arrest of HR. France has different rules in relation to the admissibility of intercept evidence.

64. The first migrant run took place on 24 November 2016. The persons concerned were SA and BH, both Iraqi nationals and one of whom was pregnant. SA is the wife of H (see §62 above). The lorry driver involved was a Bulgarian national, VS, a contact of the Z we have previously mentioned. The illegal migration was discovered by officials of UK Border Force who searched the cargo of VS's lorry on arrival at Dover.
65. The link between these events and G4 is largely circumstantial. According to the NCA's deprivation Recommendation, on 16 November there were a number of calls involving G4, HH, HR, H and K/S. At 20:18 that day G4 called HH, after which he called H. Shortly after calling H, G4 called HR in France. Then he attempted to call HH. Taken in isolation, these calls may not prove very much, but their saliency becomes clearer when the full picture is considered.
66. It is right to say that G5 does not appear to have been involved in the 16 November communications. G4 was at the centre of them. G4's attempt during the course of his oral evidence to distance himself from K/S was deeply unimpressive.
67. On 24 November there were telephone calls and text messages between HH, Z and VS throughout the day, except when the lorry was on the ferry. UK Border Force officials stopped the lorry at 20:37. VS denied all knowledge of the migrants and was allowed to continue their journey. Later that night, there were further telephone calls between HH, Z and VS.
68. VS was arrested on 28 November 2016 and interviewed. He continued to deny any involvement in illegal migration, and was released under investigation.
69. The notebook seized on 13 February 2017 contained the following entry for 18 December 2016:

"£15.260 [illegible] France Bayan ferry/ship 11 + [illegible]."

Save that the date does not correspond, the "Bayan" could be a reference to the individual who was smuggled on 24 November.
70. G4 did not accept any involvement in the first migrant run. He claimed that the calls to H were by someone else using his phone. G5 was cross-examined by Mr Rabah Kherbane on behalf of G4 on the basis that H was his childhood friend. He denied this.
71. The second migrant run took place on 11 February 2017. It concerned the smuggling of two female migrants, [REDACTED] and [REDACTED].

72. The lorry driver involved was AJ. His lorry was stopped in the Calais ferry port, travelling towards Dover, at 17:24 on 11 February. He was arrested by French police and told them that he was recruited in September 2016 by HH, who offered £2,500-3,000 for each migrant successfully smuggled into the UK. He claimed that this was his first smuggling operation.
73. On 28 January 2017 G4 and G5 travelled to the Gravesend area to meet AJ. Earlier that day, G4 and G5 were in frequent phone contact. At 18:52 G5's black Mercedes activated ANPR cameras at Al Boroughbridge heading south. Both G4 and G5 accept that they were in the vehicle, with G5 driving. G4's phone received two messages from HH at 17:48 and 18:13 providing the postcodes of two addresses in Gravesend. At 21:42 AJ's lorry activated ANPR cameras on Springhead Road, Gravesend. At 22:12 G5's Mercedes activated the same camera. G4 and HH exchanged calls later at 22:13 and 22:31. It seems probable, as the NCA have assessed, that G4, G5 and AJ met up and discussed the smuggling run that was to take place on 11 February. It is also relevant that the official French police report dated 13 February implicated HR.
74. G4's account in his oral evidence about the events of 28 January was characteristically vague, evasive and mendacious. He accepted that it was possible that he travelled to Gravesend on 28 January to meet a lorry driver. When it was put to him that the meeting was to facilitate QIC, G4 said "I don't remember, I don't think so". When cross-examined by Ms Margo Munro Kerr on behalf of G5, G4 was asked about the two Gravesend postcodes sent to the 577 phone number attributed to him. He said, "no I don't accept it and I don't remember, it was a long time ago". He then said that G5 told him to answer and to reply to these phone calls. G5's account in cross-examination was that from early 2017 he had a suspicion that G4 was a people smuggler, and this suspicion was confirmed by K/S. However, in relation to the trip to Gravesend he said that he did not suspect that it was related to QIC. He claimed that he drove at G4's request and that it related to a family matter he was somewhat vague about. He said that somebody wanted to marry a girl from G4's family and he was not able to question G4 about his family affairs. He denied that he was making this evidence up and, to be fair to him, his third witness statement includes a statement that he understood the Gravesend trip to be about a family matter and he did not want to pry into G4's family affairs.
75. The third migrant run took place on 12 February 2017. This concerned the smuggling of K/S's relatives - two adults and two children - into the UK. The father of the family is K/S's brother.
76. The lorry driver involved was MT. He entered the country at 19:55 on 12 February on a P&O ferry. He dropped off the migrant family at Dover and was not stopped by border officials.
77. On 11 February 2017 there were telephone calls and text messages between K/S and G5, and G5 and G4. One of the messages, sent from K/S to G5, and then from G5 to G4, contained the phone number ending 313 which related to one of the migrants about to be smuggled. G5 called that number, after which he called both G4 and HR.

Later that day both G5 and G4 made and received calls to and from HR. At 18:21 G4 called G5. At 19:00 HR called G5, after which G5 called K/S.

78. On 12 February 2017 there was telephone contact between G4 and a taxi driver, SL/Z who was based in South London. The NCA has assessed that the purpose of this contact was to direct SL/Z to collect the four migrants from Ashford and drive them to London, where K/S would meet them. G4's first contact with SL/Z is at 18:44 when the latter's phone cell-sited in London. The second contact was between 20:32 and 21:01 (the first timing was approximately 30 minutes after MT's lorry arrived in the UK) when SL/Z was cell-siting in Ashford. From 01:33 to 03:01 SL/Z's phone was cell-siting in Stockwell, London. K/S's phone was cell-siting in Stockwell at the same time. During this period, K/S tried to call G4 on 35 occasions; and, when he could not get through, he called G5. ANPR activation tracked K/S on his journey from Newcastle to London and his return, having picked up his family members. Images of them appear together at Toddington Services.
79. On 13 February 2017 G4 and G5 travelled in G5's car to Newcastle where they collected a green "Asda" plastic bag full of cash provided by, on the NCA's assessment, K/S for the smuggling of his family members. This exchange was the subject of surveillance by NCA officers. G4 and G5 then travelled to Gillette Way, Reading. En route, G4's phone took a screenshot of this address and location. The screenshot provided by Google Maps is in Romanian. It is more than reasonable to infer that this was sent by MT. Events at Gillette Way were the subject of surveillance by NCA officers. G4 handed a green and white "Asda" plastic bag to MT. On our arithmetic, based on a footnote to SSHD's opening skeleton argument, the bag contained just over £16,000. SSHD now says that it contained £15,525. This discrepancy is not important. When G4 and G5 were arrested, G5 having attempted to drive away from the scene, G4 was found to have £7,800 in his jacket pocket.
80. G5's account at police interview was that they had stopped in Gillette Way by accident as he needed to use the toilets. He was just the driver. He was asked about the cash handover by G4 to MT. He said that he did not see MT or his lorry because he had closed his eyes because he was in pain and needed to go to the toilet urgently. He told police that G4 was a family man, a "breadwinner", a respected person and not a troublemaker. He is not someone who would have money illegally.
81. G4's evidence about the telephone calls on 11 February 2017 was that he could not remember if he was speaking to K/S about family members. When it was put to him by Ms Munro Kerr that the calls related to the smuggling of K/S's family, he said, "no, there is no such thing". He denied that calls from G5 were G5's efforts to reduce the price (as G5 said that they were). G4's evidence about the telephone calls on 12 February was that he did not make the calls to SL/Z. A notebook entry stated, "I gave money to MT London SL/Z". When that was put to him, G4 said that he could not remember. G4's evidence about the events of 13 February was that this whole trip was under the direction of G5. He denied that he was conducting business on the phone whilst G5 was driving. He denied that he met and greeted the two men in Newcastle (one of whom the NCA assessed to be K/S) and claimed that it was "all G5".

It was also G5 who told him to hand the cash to MT and he did not know what it was for. G5 apparently told him that the £7,800 was for car wash materials. In his oral evidence, that was G4's explanation for the retention of the money. G4 could not explain why a substantial cash payment was being made to MT.

82. G5's account in evidence was that the calls made on 11 February 2017 were indeed made by him, but only to the extent that he was seeking to get a lower price from G4 for the smuggling of a disabled child. He denied that the sequence of calls involving K/S showed that he was "calling the shots". As for the events of 12 February, G5 said that G4 was in charge. That was why K/S tried to call G4 35 times before he tried to call G5. These calls were at around 3am. When it was put to him that he was co-ordinating the smuggling operation, G5 said that it was his habit to stay up very late, and that he was "chilling with friends" in Leeds. Any phone calls he had "were connected to one disabled child, nothing to do with smuggling ... I was trying to bring the price down to save a child". As for the events of 13 February, G5's account was that the whole trip was under the direction of G4. He did not accept that it was not credible that he would drive for ten hours only to receive £100 for his efforts. He said that G4 asked him to drive, and that he agreed, because they were friends. When cross-examined by Mr Blundell, G5 said that he knew nothing of the purpose of the trip. He was asked to comment whether, in retrospect, he accepted that the trip related to people smuggling, he said, "I cannot say that. What happened, happened".
83. The NCA's assessment that G4 had a "controlling, leadership role" is based on all the OPEN and CLOSED evidence. As for the former, reliance is placed on G4's proximity to the migrants smuggled into the UK, G4's role in co-ordinating (with others) specific migrant runs, and G4's meeting with two lorry drivers and the notebook. The latter contains 27 references, to G4, mostly relating to monies owed or owing to "[a nickname of G4]" (G4). The NCA's assessment that G5 had an "organising role" in the OCG is based on all the OPEN and CLOSED evidence. As for the former, reliance is placed on G5's role in co-ordinating (with others) specific migrant runs, his meeting with two lorry drivers and the notebook. That contains 15 references to G5, either by his nickname, [REDACTED], or by his surname. These include references to G5 providing clients for smuggling: e.g. "2 persons sea/water 800 1.2.17 [a nickname of G5]". The NCA maintains these assessments in the light of G4's and G5's oral evidence.

THE ORAL EVIDENCE OF THE APPELLANTS

General

84. G4 and G5 both ran cut-throat defences. Most of the first week of the hearing was occupied by junior counsel (Mr Kherbane for G4 and Ms Munro Kerr for G5) cross-examining G5 and G4 respectively in some considerable detail about car wash businesses, the use of borrowed identities (in the case of G5), the use of mobile phones, bank accounts and the like, in an endeavour to demonstrate that the other man was the leader and that the interlocutor (or, rather, the advocate representing his interests) had a nugatory or marginal role, or was acting under duress, or whatever.

85. It was the duty of counsel to act in accordance with their instructions. Both counsel discharged their duties admirably. However, the upshot in the circumstances of this case, as is very often the position with cut-throat defences, is that by the end of Mr Kherbane's cross-examination of G5 we were entirely satisfied that both appellants were incredible and unreliable witnesses. The Chair made that clear to the parties after all the evidence had been heard. This could not have come as any surprise to anyone but did mean that Counsels' closing submissions could be more focused.
86. Given that the position is very much clearer in CLOSED, it is both unnecessary and pointless for us to analyse the OPEN evidence and set out our assessment in OPEN of the respective roles of G4 and G5 in this OCG. Frankly, if the CLOSED evidence were notionally placed to one side, we would have concluded that both appellants were in it together but we could not say who was the leader of this egregious couple. However, what we could work out with confidence from the OPEN evidence was that there was no one above G4/G5 in the hierarchy. Although this was a lucrative activity, there was not enough money in the pot to pay anyone else.

G4

87. G4's stock tactic, whenever he was asked a difficult question, was to say that it was too long ago and he could not remember. We do not believe him. He could remember things when it suited his case.
88. G4 was asked about a conviction for an offence of dishonesty to which he pleaded guilty in 2006. Included within Mr Blundell's general attack on G4's character in his closing submissions was a reference to this issue. Mr Blundell was entitled to do that but it did not help us. G4's old conviction for an offence of dishonesty in relation to a driving licence does not throw light on whether he was involved in SOC a decade or so later. Overall, our assessment of G4 is not based on extrinsic factors but on how he gave evidence in relation to OIC and what he said. Although Mr Blundell's robust approach might have served his client well before a jury, we as an expert judicial Commission believe that we should be sedulous to avoid invitations, however attractively advanced, to treat appellants with distaste and generalised opprobrium.
89. There were numerous occasions on which the Commission simply could not believe what G4 said: too numerous for us to set them all out. We focus on a handful of highlights.
90. G4 was asked about the notebook. He flatly denied that a number of entries he was taken to related to people smuggling. We have examined copies of both the original of the notebook (in a mixture of Sorani and English) and translations. Attribution of many of the entries is difficult. "[A nickname of G4]" is G4 and "(a nickname of G5)" or "[a nickname of G5]" is G5. Unless an entry reads "I owe [a nickname of G4] £X" it is not clear whether a sentence, phrase or clause containing "[a nickname of G4]" was written by "[a nickname of G4]" himself, sometimes using the third person to describe himself, or was written by a third party, by implication G5. However, it is crystal-clear

that entries at R/192, R/194, R/205 and R/206 (to mention just four examples) must relate to people smuggling. G4 denied all of this. He did not come up with an alternative explanation and we consider that his denials were incredible. Those denials tend to suggest that he was the author of these entries. That conclusion is fortified by G4's denial that the email address [a nickname of G4²][REDACTED]@iclpud.com seen at R/192 was written by or even related to him. Here, the nickname appears as "a nickname of G4" and not as "[a nickname of G4]": that could either be a typographical error or a miswriting (for example, if the handwriting was G5's, and he was incorrectly noting down what G4 was telling him). We are unable to come to a conclusion about this. G4 said that he could not remember for sure whether the first names and birth years of two of his children mentioned in the notebook were the password (the notebook says "passport") for that email account. We disbelieve that.

91. G4 was asked about the trip to Calais in late October 2016. The evidence is that G4 and HR travelled together to Calais in G4's Toyota. G4's evidence was that he travelled on G5's instructions in order to obtain car wash materials, but spent most of his time in his hotel room. G4's oral evidence was that he took his phone with him. On 29 and 30 October one of the two phones registered to him received text messages of postcodes in Ashford as well as communications from HH. G4 claimed for the first time in oral evidence that HR may have used his phone on G5's instructions. G4's explanations cannot be accepted. It was, frankly, ridiculous for G4 to say that he travelled all that way to Calais from the NE of England, and stayed for two or three nights, in order to buy car wash materials.
92. G4 was asked by Mr Blundell about family in Iraq and the UK. He gave highly evasive answers, often prefaced by a claimed inability to remember. There is also evidence in CLOSED which bears on this topic. G4 said for the first time in oral evidence that he was an orphan. G4's wife AB said the same when she gave evidence. We have thought very carefully about these answers. It is, we accept, plausible that G4's parents died, or were killed, when he was young. There may be cultural issues in play of which we are unaware. However, we have concluded that it is not credible that G4 should give this evidence for the first time in cross-examination rather than in a witness statement. He must have known that it was highly relevant to his case because SSHD was saying that he would not be destitute if removed to Iraq. We accept Mr Mackenzie's submission that G4 could not have colluded with AB in the hiatus between the conclusion of his evidence and the start of her evidence, but that does not preclude them coming up with this agreed line before he started giving his evidence. Had we been otherwise impressed with G4 as a credible and reliable witness, we would not have made an adverse finding on this issue, but that is not our assessment of G4.
93. G4 said in answer to Mr Blundell's questions that after his family returned to the UK in September 2022, he stayed with a friend whom he named. When asked about

² It is difficult to make sense of this sentence with the redactions we have made to avoid the possibility of identification. The point is that G4's nickname has two slightly different spellings.

extended family, G4 said that "everyone has relatives", and that he must have some of these in Iraq. It was when he was asked about siblings that G4 said that he was adopted. He accepted that he did have siblings in Iraq (in context, we think he was seeking to refer to adopted siblings or individuals who see or treat him as siblings) but he could not say how many. G4 said that they all told him different stories. When asked about uncles and aunts, he said that it was "difficult for me" and that he did not see any of them. G4 added that there is no one in Iraq he would describe as an uncle or aunt. Asked about cousins, he said that he did have any. G4 was then asked about his wife AB's witness statement which stated that G4 had "a very distant relationship with his cousins". G4 repeated that he did not have any cousins in Iraq. He then said that his wife's evidence was correct (she repeated it when she gave evidence herself) and that he calls a lot of people "uncle". In answer to the question that he had many extended family members in Iraq, G4 said that there were people who might call themselves "cousins".

94. G4's evidence on these topics was, we think, particularly evasive. We are satisfied that G4 does have extended family in Iraq including siblings, uncles, aunts and cousins. Other family members are addressed in our CLOSED judgment.
95. G4 gave evidence about being intimidated and threatened by G5 on 2 August 2017, and of an assault perpetrated by G5 in March 2021. We think that G4 is probably right about G5 being the aggressor but nothing turns on this. Their relationship may well have broken down by August 2017, and we note that the police report of the incident refers to G4 and G5 having been business partners but that "fell through". The dispute was over the sharing of profits. We cannot accept Mr Mackenzie's submission that it is implausible that the leader of an OCG would make a police complaint in these terms. G4 was not saying anything which might have led the police to suspect (assuming that they had no other reason to suspect) that G4 and G5 were partners in organised crime. They had been partners of sort in relation to various car wash businesses about which we heard a plethora of evidence.
96. It was right for those representing G4 to point out that the Lloyds bank account in his name was not said by GC to relate to QIC. It was, as GC put it, the slush fund for the car wash businesses. Further, the account was run down after February 2017. G4 and G5 both gave evidence about that account as part of their overall cut-throat defence which we need not consider. We have not been given all the financial evidence in this case, and we should therefore take care before expressing conclusions about where the money (a considerable amount on the NCA's case) would or might have gone. There is evidence in CLOSED which bears on this issue. We think that by whatever means a lot of it went to Iraq.
97. G4 was asked about Iraqi estate agent cards which were found at his home address in February 2017. G4 denied that he was interested in buying a property in Sulaymaniyah. We do not believe him.
98. Finally, we have to say that G4's explanation for the long trip down to Reading on 12 February 2017 was completely incapable of belief.

99. Overall, we conclude that G4 was an incredible and unreliable witness. Given the firmness of our conclusion, this means that we are unable to accept anything he says unless it is independently corroborated. Our conclusion is based, at least in part, on the CLOSED evidence but we had already reached our adverse assessment of G4 before we had properly studied the CLOSED material with the assistance of Mr Blundell and the Special Advocates. Mr Blundell did not cross-examine G4 about his account of his experiences in the IKR between the date of his deprivation and February 2023. However, given his wholesale challenge to G4's credibility we do not think that this omission matters. We cannot accept G4's account in this regard. We regret to say that we have reached the same conclusion about G4's wife, who gave an implausible account of G5 badgering and intimidating G4 (there is CLOSED evidence relevant to this issue) and, as soon as she was asked a difficult question, used exactly the same formulaic response: "it was too long ago and I cannot remember".

G5

100. G5 was less obviously evasive than G4 but we have reached the same conclusion about his overall lack of credibility and reliability, albeit for slightly different reasons.

101. As with G4, Mr Blundell launched a wholesale attack on G5's character. G5 was, for example, cross-examined on the basis that his wife made fraudulent benefit claims and he did not declare the tax receipts from his car wash businesses to the Revenue. The latter is certainly true; the former may be true. However, we do not consider that these matters assist in connection with the issues we have to resolve, in particular whether G5 continued in QIC after the NCA investigation ceased, whenever that exactly was.

102. Inexplicably, G5 denied association with the nickname "[REDACTED]". At his February 2018 interview he claimed to be called "[REDACTED]"³. When he was confronted by police at his home address in August 2017, he denied that he known by a particular nickname, being the name G4 had used for him. In his oral evidence, G5 finally accepted that his nickname was [REDACTED].

103. Although G5 had pleaded guilty to the fraudulent evasion of duty on cigarettes, he sought in his oral evidence to downplay the level of his involvement. The link between smuggling cigarettes and smuggling human beings is not, of course, an inexorable one, but G5 was no doubt concerned that SIAC might discern a possible connection. As G4's closing submissions point out, there is an evidential link between tobacco and people smuggling through HH, who recruited drivers via the tobacco trade. G5 denied that he understood the ramifications of a suspended sentence. There is evidence in CLOSED that is relevant to this.

³ A nickname but differently spelt.

104. The notebook contains references which are only explicable as being to associates of G5. For example, the name of S, G5's car wash associate, appears in the notebook. We do not accept the submission advanced on behalf of G4 that all of the specific references to "[a nickname of G4]" are not understandable unless written by someone other than G4. However, we do agree that it is likely that the entry, "I owe [a nickname of G4] 1,000 old outstanding payment", and any other similar entries using the first person pronoun, were probably written by G5.

105. G4's legal team were right to submit that weight should be given to the fact that G5 is connected to HR as his childhood friend. He is also connected to K/S, who would meet him for coffee. G5 is also connected to HH. The latter's mobile name is saved on G5's phone as "Raswl", which means "messenger" in Sorani⁴. Mr Kherbane's proposition, as put to G5, was that HH's role in the QIC was as "messenger" for G5 in that he recruited the lorry drivers. We take Mr Kherbane's point as far as it goes, but it does not prove that HH was working under the direction of G5 rather than G4. In relation to all of these individuals, G5 denied that he was aware that they had a role in the QIC. We find that denial to be simply incredible.

106. G5 was closely cross-examined by Mr Blundell. G5 admitted that he suspected in January 2017 that G4 was involved in people smuggling. He then denied that the trip to Gravesend must have related to people smuggling. When pressed on this, he said that he still could not say. It was only when K/S told him that the latter was intent on bringing family to the UK that he was sure. We think that it is surprising that, even now, G5 was not prepared to accept that the Gravesend trip must have related to people smuggling.

107. G5 was then questioned about asking G4 to lower his price for the smuggling of K/S's family. He did not accept that the premise of his negotiation was that he must have known that the 11 February trip related to people smuggling, from which it followed that he was himself involved in people smuggling. He was then asked about the notebook and whether he thought it related to people smuggling. His answer was:

"It is obvious ... it is tricky ... I am not an expert. This is not clear. It looks like coded writing. I don't want to talk about something I am not 100% sure of".

G5 was particularly evasive when he gave this evidence.

108. G5 gave ludicrous evidence relating to the arrest on 13 February. He knew that he had been caught red-handed and tried to get away. His claim at interview (not resiled from in his oral evidence) that he did not see what was going on because his eyes were shut in pain was risible.

109. G5 was more forthcoming than was G4 about family in Iraq. He accepted that his parents were still alive, living in a village in Iraq as he put it. He did not say where,

⁴ Mr Kherbane's knowledge of Arabic stood him in good stead here.

but added that he had family and relatives there. He said that it was difficult for him to say what would happen were he to live with them: "what would be my quality of life?"

110. G5 said that the purpose of the trip in 2022 was to visit his father-in-law who had suffered a stroke. His mother-in-law had mental health difficulties. The family had stayed with them on that occasion. G5 said that he had two brothers and two sisters, although some were half-siblings. One of his sisters lives in Iraq. She lives with her husband and sometimes looks after their parents. He said that he was in contact with his sister every now and again, although he could not remember. He added that his life had fallen apart over the past three years.

111. G5 also accepted that he had extended family in Iraq, including uncles, aunts and cousins. He did not see his cousins in 2022, he said. G5 agreed that he had some relatives in the UK although "no one was too close". He has seen a nephew but not his nephew's father.

112. Overall, we conclude that G5 was an incredible and unreliable witness. Indeed, we go as far as we did with G4: so lacking in credibility or reliability that we are unable to accept anything he said unless independently corroborated. There is also CLOSED evidence which has reinforced that conclusion.

THE EVIDENCE OF GRAEME CHISHOLM

113. GC has provided a number of witness statements. It is unnecessary to summarise their contents. GC said that this was his first OIC investigation for the NCA.

114. GC was very skilfully cross-examined by Mr Kherbane. We acknowledge the care and attention to detail that Mr Kherbane demonstrated throughout this exercise. We are also grateful for the calm and measured way in which Mr Kherbane fulfilled his duties.

115. We made our own detailed notes of Mr Kherbane's cross-examination but for present purposes may rely in the main on G4's detailed closing note entitled "Evidence of Mr Graeme Chisholm". Mr Kherbane was cross-examining only on behalf of G4 but we are able to confirm that all the points he made, unless we expressly state to the contrary, apply equally to G5.

116. GC confirmed that the purpose of deprivation as recorded in the Ministerial Submission assumed that G4 was involved in ongoing criminality in August 2022. GC said that there was no evidence of G4 being involved in people smuggling after February 2018. He added that there was no evidence gathered or investigation undertaken of G4 outside the Operation Dagoon period, which he said in OPEN ended in February 2017. GC said that thereafter he had not attempted to conduct any further enquiries and he had not invited others in the NCA to do so. At that point, he might have added that the arrest, interview and searches carried out in February 2018 were part of the investigation, and we do not overlook those matters.

117. GC agreed that NCA officers can hold the powers of police, customs and immigration officers. This includes powers of arrest, search and seizure on reasonable suspicion. GC said that during the period February 2018 to August 2022 no agencies, including the police, border control or any private companies (such as telecommunications companies and banks) provided any new information on G4 who was by then well known to the NCA. In particular, there was no information provided by any agencies that G4 had been involved in people smuggling.
118. When G4 was arrested in February 2018, there was no evidence of ongoing criminality seized at his home address. His mobile phone was downloaded and was found to contain nothing of interest. There were screenshots of advertisements for car washes. He had no devices connected to criminality.
119. GC accepted that the NCA did not obtain updated call data records or bank account records for the period 2018 to 2022. He said that he did not obtain a further search warrant. The statutory requirement is, of course, reasonable suspicion, and GC said that he could not have gone to Court on a whim or a hope. We would add that this use of language was in the context of applying for a search warrant and nothing else. GC also made the point that by February 2018 G4 was already aware of the NCA's interest in him, and that in the real world (our expression, not his) a law enforcement agency only has one effective bite of the cherry.
120. GC accepted that QIC was a priority and that it was the NCA's statutory duty to gather intelligence and evidence. He accepted that a negative charging decision did not logically preclude the undertaking of further investigations. GC agreed that he did not try to continue to investigate or make any request to his superiors for further steps to be undertaken. However, he added (and this is not in G4's closing note) that had he made such a request his superiors would have laughed in his face. This comment was made in the context of seeking to obtain further intelligence. There is more to say about this in CLOSED.
121. GC accepted that he had never previously mentioned resource implications as the reason for not conducting further inquiries. He also accepted that this was not an explanation given to him by his superiors.
122. GC said that he disagreed with the CPS's negative charging decision and, when prodded by the Chair, added that he was "very disappointed" by it. He accepted that he had devoted much time to the case and that he wanted a different outcome. He said that he thought that G4 and G5 considered themselves to be above the law. He said that personally he did not like that.
123. In relation to the NCA Recommendation, GC accepted that it did not state in terms that there had been no further intelligence obtained after February 2018, and that the stated activity regarding the Lloyds bank account was not thought to relate to QIC but rather the car wash businesses.

124. GC was also taken to task in cross-examination for failing to undertake further inquiries more precisely to ascertain the exact roles of G4 and G5, assuming that there was any underlying criminality. We can deal with this line of questioning very briefly indeed. In most criminal conspiracies it is sufficient for the police, the NCA, or whoever to prove the existence of a conspiracy and seek in general terms to allocate roles within the hierarchy, if that is possible. However, there are practical and resource limits to this. Furthermore, attribution of roles is much clearer from the evidence in CLOSED.
125. Mr Kherbane did make a reasonable point about the absence of cell-site evidence. However, that point only travels a certain distance. Cell-site expertise comes at a high cost. Had the CPS given the go-ahead to prosecute, we have no doubt but that a cell-site expert would have been instructed.
126. Further, GC accepted that he had not subjected the notebook to close analysis. He had obviously looked at it. He agreed that no handwriting or other forensic expertise had been applied to it. Again, we think that this point only travels a certain distance. We think that the submission was fairly made that the notebook was probably G4's although G5 had made entries in it. Thus, it was the notebook for this OCG irrespective of who physically wrote in it. We would add that it was not necessarily comprehensive.
127. In answer to the Chair's question which invited GC's attention to the oral evidence given in SIAC, GC was unable to comment on the respective roles of G4 and G5 save to state, "someone is obviously lying". G4's closing note omits what GC said next: he said, "I think that they are both lying".
128. GC did say that it was unusual for anyone so senior in an OCG to be "hands on" in matters such as handing over cash to a lorry driver. As a matter of generality, we would agree with GC about that, although - as we have already said - we do not think that there was anyone above G4 in this particular enterprise. GC might have directed his mind to whether G4 (and G5's) role in handing over cash meant that it was less likely that they would be able to operate from out of the country. The obvious answer to this non-asked question is that they probably would have been, because they would have been unlikely to have trusted the criminal associates we know about.
129. GC was also asked questions by Mr Chirico about his assessment that continuing QIC activity was "highly likely" as at August 2022. GC said that he had taken into account G4's and G5's past offending. He did not take into account what were said to be "protective factors" such as family life, and we think that it was not surprising that he did not. Put bluntly, these "protective factors" had no impact on the offending SIAC knows about. GC added that the risk of imprisonment for 20 years did not stop them. GC said that there was a pattern of offending here which did not cease on 24 November 2016 and/or 11 February 2017 when relevant arrests took place, as G4 and G5 well knew at the time. When it was put to GC that since 2022 G5 has received a high level of surveillance and monitoring, GC said that you can remove a tag whenever you want. We do not think that was a considered answer. When it was

put to him that there was no evidence since 2022, GC said that G5 "may" still be involved in SOC. He then said, "it is likely he is still involved, I have not changed my view". Given the amount of money that could be earned, "why would they cease?", GC asked rhetorically. GC then said that even six months ago it was "highly likely" they were still involved in QIC. We think that at this point in the cross-examination GC's attention should really have been drawn to what he had said in his final witness statement, the relevant parts of which had been excluded. Given that G4's and G5's legal teams had made a tactical decision about that, the Chair did not think it right to ask questions.

130. The Commission is not unanimous in its assessment of GC. We all thought that he was basically an honest witness who has worked extremely hard in public service to bring criminals to justice. He failed on this occasion through no fault of his own. We have to say that we are firmly of the view that the CPS reached the wrong conclusion in March 2019. It is not appropriate in OPEN for us to explain why, but we do so in CLOSED.

131. The Chair does not think that GC displayed any personal animus towards G4 and G5 beyond a dislike of those who commit serious criminal offences and get away with it. He considers that, at times, GC showed a lack of objectivity and gave inconsistent and sometimes ill-considered answers on the key question for our determination. Upper Tribunal Judge Kamara has no reservations about GC's evidence. Notwithstanding GC's frankly expressed disappointment with the CPS's decision not to charge G4 and G5, she finds GC to provide an account which can be relied upon. In her view, GC was fair in many respects, including in giving his assessment that the funds in the Lloyds Bank account were not derived from QIC and in accepting that there was no evidence that funds were transferred to Iraq using the Hawala system. GC's explanation for the absence of further investigations into G4 and G5 was measured and fulsome in the face of robust cross-examination. In Upper Tribunal Judge Kamara's view, it is to GC's credit that in assisting the Commission, GC was prepared to provide detailed answers which went beyond the matters set out in his witness statements, such as NCA resourcing issues and the unlikelihood of being able to obtain a further warrant to search G4's and G5's homes. Mrs Battley finds GC to be highly credible witness whose style of giving evidence sometimes came across as being dogmatic, in particular when expanding on some aspects of the OPEN material making him appear myopic, but was countered by the CLOSED material. In her view, it is unfortunate that other NCA personnel were not available to give a holistic account of the internal workings of the NCA as it related to some of the decisions. However, overall that did not detract from the content and veracity of GC's evidence.

132. This Commission proceeds on the basis of either unanimity of view or the conclusion of the majority. Often, where there is only a majority in support of a particular conclusion, it is unnecessary, and perhaps undesirable, to make that clear in an OPEN judgment. However, in this particular case the Chair considers that the Commission should be completely transparent. There is no dissent at the outcome, merely as to all the steps taken to reach it.

THE DEPRIVATION APPEALS

OVERVIEW OF G4's GROUNDS OF APPEAL: DEPRIVATION

133. G4's legal team has provided us with an extremely lengthy skeleton argument (a misnomer, we respectfully think) in connection with the deprivation appeal.
134. The key themes underlying G4's deprivation appeal are said to be as follows, (we do not intend to mention all of the themes relied on because there is an element of repetition). First, the lack of any evidence that G4 has been involved, even peripherally, in criminal activity after February 2017. Secondly, an absence of evidence that the OCG whose activities it was hoped to disrupt by the August 2022 decision was itself active in any way after February 2017. Thirdly, the absence of any evidence that G4 was a senior or leading member of the OCG. Fourthly, a failure to give proper consideration, on evidence which was or should have been known to SSHD at the time, to whether depriving G4 of his citizenship would place him at risk in the IKR. Fifthly, the failure to give proper consideration to whether depriving G4 of citizenship would cause disproportionate harm to his family, in particular his disabled son.
135. Having set the scene, it is convenient at this stage to indicate which of G4's grounds of appeal are arguable and which are not.
136. Ground 1 is that there was insufficient evidence to justify SSHD's conclusion. We think that this ground is clearly arguable in relation to what must be deemed to be SSHD's acceptance of the assessment made in the Ministerial Submission, itself reflective of the NCA's Recommendation, that it was "highly likely" that G4 was continuing in QIC in August 2022 such that it needed to be disrupted. Ground 1 is not arguable in relation to G4 being involved in QIC up to a date in 2017 and having a leading role. We have already addressed this aspect but will draw the strands together below. Further, as part of this first Ground, we will also address the submission that SSHD has failed in her procedural duty under *U3* to reconsider the case in the light of all the evidence generated by the appellate process.
137. Ground 2 is that SSHD ought to have afforded an opportunity to G4 to make representations to her before the deprivation decision was made, and failed in her duty to give reasons. Ground 2 is not arguable. There is no duty to obtain prior representations in national security cases, and given that these cases are not materially different, there is no such duty in SOC cases: see *Begum 2* in the Court of Appeal at paras 106-114; 120-121, *U3* in the Supreme Court at para 82, and *Kolicaj* at para 80. Further, the public interest usually militates against the giving of reasons in national security and SOC cases. Procedural fairness is secured by providing the appellants in the context of their appeals with as much OPEN material as possible (as has happened here) and, where not possible, to the Special Advocates in CLOSED (as has happened here).

138. Ground 2 also includes a *Tameside* ground. That aspect is arguable and will be addressed below.
139. By Ground 3, the complaint is made that SSHD has failed to have regard to all relevant considerations, including G4's responses and the effect on his children, inconsistency with previous decisions, in particular the decision to issue a passport, and failure to treat like cases alike. Save for the overall proportionality of SSHD's decision which we think does merit further consideration, these matters are either a repetition of the principal ground (Ground 1) or are not arguable. For example, it was not inconsistent, in the justiciable sense, to issue G4 with a new passport in 2020 and continue to consider deprivation action. We doubt whether it would have been lawful, still less sensible, for SSHD to refuse to issue a new passport. We also doubt whether the Passport Office, although technically part of SSHD, would have had any idea that the NCA was considering making a recommendation to deprive. Further, although a mono-national British citizen cannot be deprived because s. 40 of the BNA 1981 says so, a dual national can be. That is not inconsistent.
140. By Ground 4 it is said that the Ministerial Submission was not fair and balanced. We think that there is some merit in this ground and we address that in CLOSED. However, the slight imbalance in the Ministerial Submission had no conceivable impact on the outcome.
141. By Ground 5, it is said that the decision was disproportionate. We think that this issue has already been raised under the rubric of Ground 3, but it matters not; we will consider it.
142. By Grounds 6-8, it is said that SSHD has failed to follow her published policy on deprivation in SOC cases, alternatively has applied a secret policy. These grounds are arguable and we consider them below.
143. By Ground 9, it is said that the deprivation decision is in breach of G4's human rights under Article 8 of the ECHR. That ground is not arguable but it is more convenient to consider it below. Similar arguments are raised under the banner of Grounds 10 and 11, which we also consider below.
144. By Ground 12, it is said that the decision was in breach of SSHD's extra-territorial human rights policy. That ground is arguable and is considered below.

OVERVIEW OF G5'S GROUNDS OF APPEAL: DEPRIVATION

145. We propose to conduct a similar exercise in relation to G5's Grounds of Appeal.
146. By Ground 1, it is said that SSHD failed to appreciate the discretionary nature of the deprivation power and/or failed separately to address the exercise of

discretion. We do not think that this Ground has any merit. Para 34 of the Ministerial Submission indicates that SSHD was asked to consider whether deprivation was necessary and proportionate in view of the rights and interests of G5's family in the UK. SSHD was not advised to proceed on the basis that the public interest case meant that deprivation was automatic and that these matters could be ignored.

147. By Ground 2, it is said that SSHD acted in breach of her duty to act fairly in failing to afford to G5 the opportunity to make representations before the deprivation decision was made. We have covered this Ground in connection with G4's appeal.
148. By Ground 3, it is said that SSHD acted in violation of her policy and in breach of her *Tameside* duty. Ground 3 raises two separate matters which we have already said in the context of G4's appeal are arguable.
149. By Ground 4, it is said that the decision was made for an improper purpose because the full code test applied by the CPS was not made out. That is true, but the public interest in favour of prosecuting criminals in the Crown Court is different from the public interest in favour of deprivation. The failure or refusal of one public body to exercise its discretionary power in favour of prosecution does not preclude a different public body from exercising a different discretion under a separate statutory regime.
150. By Ground 5, it is said that the decision is unlawful because it renders G5 stateless *de jure*. We cannot agree. Although his first witness statement denies that he is Iraqi, G5 accepts that he was born in Iraq and the evidence of Mr Allen KC is that persons born in Iraq retain their Iraqi nationality even if they acquire a second nationality later. This ground was not pressed orally.
151. By Ground 6, it is said that the deprivation decision breaches Article 3 of the ECHR by causing statelessness. We do not begin to understand this Ground. The extra-territoriality policy is properly engaged by Ground 7, and we will consider the issue in that context.
152. By Ground 8, it is said that G5's *de facto* statelessness breaches Article 14 of the ECHR read in conjunction with Article 8. There is no merit in this Ground because s. 40 of the BNA is only concerned with *de jure* statelessness: see *Begum 2* in the Court of Appeal, at paras 100-102. The point made by the Court of Appeal was that SSHD did consider the ramifications of Ms Begum being unable in practice to go to Bangladesh, i.e. the issue of so-called *de facto* statelessness. The position in the present case is rather different. G5, assuming that he obtains a travel document from the Iraqi Embassy here, could travel and be admitted to the IKR unless, that is, deprivation was precluded by the application of the extra-territoriality policy we have already mentioned. It follows that Ground 8 adds nothing to Ground 7.
153. Finally, by Ground 9 it is said that the deprivation decision is a disproportionate interference with the Article 8 rights of G5 and/or his family. As with G4's similar arguments, we consider them below.

154. Buried somewhat in his other Grounds, G5 does advance the argument that the NCA's assessment reflected in the Ministerial Submission that G5 was "highly likely" still be involved in QIC in August 2022 was irrational. With respect, this ought to have been front and centre of G5's written case. Mr Chirico did an excellent job in developing this ground in his oral argument.

155. Given the obvious overlap between the Grounds of G4 and G5, it is convenient to take them together but we will label them slightly differently.

GROUND 1: IRRATIONALITY

156. Under the rubric of this Ground, we will address in relation to both appellants what are common arguments. First, that the NCA's assessment that G4 and G5 were involved in OIC at all is irrational, alternatively that the NCA could not reasonably conclude that G4 had a leading role and G5 an organising role. Secondly, that the key assessment (viz. highly likely still continuing) was irrational, and that, consequently, there is a lack of logical connection between means and ends. Thirdly, that SSHD was in breach of her procedural duties under *U3*. In relation to the first and second of these issues, we will also continue to bear in mind that G4 and G5 advance separate appeals, and that their circumstances (and the inferences to be drawn from them) must be considered individually.

The Parties' Submissions

157. For understandable forensic reasons, Mr Mackenzie did not present his oral argument in the sequence we have outlined. We have already dealt with his submissions on *U3* and have accepted that they are correct on the law. Mr Mackenzie submitted that the absence of evidence and intelligence of any continuing activity beyond February 2018 is stark. The NCA's first reason for concluding that it was highly likely that G4 was still continuing was illogical. The absence of evidence that G4 was not continuing cannot be somehow turned into an evidential basis for a conclusion that he was continuing, still less in circumstances where the NCA were not looking for evidence. Mr Mackenzie pointed out that GC was the only witness called on behalf of SSHD and he could not explain why no further investigations were carried out. He strongly submitted that if the NCA's assessment is correct ("highly likely") it would follow that G4's activities were left unchecked for several years in circumstances where the NCA held the belief that further evidence gathering would highly likely generate success. That, he submitted, "beggars belief". A public authority, he submitted, cannot turn a Nelsonian blind eye.

158. Mr Mackenzie submitted that in any event one would have expected some intelligence to come to the NCA's attention during this period, and the absence of such intelligence is a strong factor militating against the drawing of an inference of continuation. On a similar theme, he submitted that it was at least as likely that G4 would cease his criminality after his brush with the law than to have continued in it. A

related issue is that in February 2017 and February 2018 all the suspects were arrested, and would have understood the consequences of that.

159. In relation to the NCA's use of "emboldened" in the context of G4's possible mindset after he was informed of the CPS's NFA decision, Mr Mackenzie submitted that GC was not bringing any professional expertise to the table: he was merely speculating. When GC said that he thought that G4 and G5 were above the law, Mr Mackenzie submitted that he was the wrong person to make that judgment call. His assessment was not objective and was based on speculation.

160. Mr Mackenzie placed reliance on GC's use of the phrase "a whim and a hope". However, as we have already suggested, we think that was limited to the context of an application for a further search warrant in circumstances where an experienced police officer would know that a criminal would not leave incriminating evidence in his home having been raided twice already.

161. Mr Mackenzie submitted that there was a lack of logical connection between means and ends. The deprivation of G4's citizenship was based on the contention that his criminal activity was continuing and needed to be disrupted. In our view, this is simply another way of advancing the principal submission that the assessment of "highly likely" lacked evidence and was irrational. Mr Mackenzie took the submission one step further by reminding us that there is no evidence that G4 has assets stashed away in the UK, no evidence that he was living beyond his means, and that the stated reasons for disruption - to prevent succession planning and access to UK assets - were either fanciful (succession planning could be carried out from Iraq) or wholly lacking in evidential foundation.

162. Mr Mackenzie made a number of submissions directed to the NCA's assessment that G4 was involved in QIC in 2016 and 2017 in a leadership role. We have considered those submissions but it is not necessary to set them out here.

163. We recognise that Mr Mackenzie made some powerful points. Mr Chirico was able to adopt them although he advanced some further arguments relevant in the main to the circumstances of his client, G5.

164. Mr Chirico submitted that G4 and G5 may be telling the truth about some things, and that their evidence should not be rejected wholesale. It was a highly relevant factor that the business relationship between G4 and G5 had broken down. If QIC was continuing, it was not likely to be in the form of the same OCG. Mr Chirico submitted that G5 did try and answer the questions put to him, and he did give frank answers about the existence of family in Iraq. He has given an account of his movements and phone calls in the period 11-13 February 2017. If this was a self-contained OCG, it was small and unprofessional.

165. In relation to the NCA's assessment of continuation being "highly likely", Mr Chirico strongly submitted that there is no evidence of collective decision-making by

the NCA. GC did not say that there was. There is no evidence either of methodology, Mr Chirico submitted.

166. Mr Chirico's submissions ended on a Friday afternoon, and we made it clear to Mr Blundell that he would have his work cut out over the forthcoming weekend. Although he must have realised that the Commission was satisfied that the NCA had advanced a strong case in relation to the period of known QIC activity (in the sense that there was direct evidence for it), and that the Commission had not been impressed by G4 and G5 as witnesses of truth, he also must have understood where the real battle lines lay.

167. Mr Blundell submitted that this was not a criminal trial, that the NCA were carrying out an exercise of evaluation that should be submitted to critique only on a standard *Begum/U3* basis, and that the inference as to continuation was perfectly proper in all the circumstances. He reminded us that Lord Slynn in *Rehman* had spoken of a precautionary approach. (We might add, as we did in 84, that Lord Bingham in the control order case of A had used the same language). Mr Blundell submitted that it was telling that G4 and G5 have denied everything. The inference of continuation falls to be judged on the basis that they have continuously lied, including to this Commission.

168. In relation to GC, Mr Blundell submitted that he had served the public well and diligently for many years, and had not exaggerated anything. Given that GC has maintained his assessment, SIAC is still reviewing that on a *Begum/U3* basis. GC could not say where the money had gone, although one distinct possibility is that it had been "squirrelled away" in Iraq.

169. Mr Blundell submitted that the relevant legal focus must be on the NCA's assessment of the position as at August 2022. If, contrary to his submissions on the law, the correct analysis of *U3* is that the position must be re-assessed as at the date of the hearing, Mr Blundell submitted that there is a powerful inference that this conduct continued. Alternatively, should the application of *Simplex* be relevant, Mr Blundell submitted that past conduct was sufficient to justify deprivation, that hard proof is very difficult to come by, that the absence of credibility has to be relevant, and that a precautionary approach remains appropriate.

170. Mr Blundell invited us to consider G4 and G5's persistence in the face of knowledge that people had been arrested. VS was arrested on 24 November 2016. AJ was arrested on 11 February 2017. Both lorry drivers were caught red-handed. Mr Blundell further submitted that the NCA showed its hand on 13 February 2017. In answer to the suggestion that G4 and G5 would have been unwise to return to criminality, Mr Blundell submitted that "they were just more careful". He relied on the fact that there was not a treasure trove of material found at their homes (we would add that there is no evidence that anything of interest was found at G5's home).

171. Mr Blundell submitted that the CPS's NFA decision would have emboldened them. The lack of evidence, he submitted, was not surprising. G4 in particular must

have started his activities in OIC before "the audit trail begins", as Mr Blundell put it. Thus, the same sort of inference that permits the conclusion that this OCG started before August 2017 applies to the later period.

172. In short, Mr Blundell submitted that the inference of continuation was properly drawn from all the evidential threads that are visible to the Commission, including G4's and G5's total denials, their continuation after the police involvement in November 2016, the cash handover of February 2017 (specifically referenced in the Ministerial Submission), the impact of the CPS NFA decision on their motivation, and the obvious financial incentives. In the alternative, Mr Blundell relied on *Simplex*, even if the premise must be that the only reasonable inference that could be drawn is that it was possible that G4 and G5 were still involved in August 2022.

173. Mr Blundell accepted that the passage of time after 2022 weakens the inference. However, he argued that they had been successful for so long and that both had contacts. As for G4, Mr Blundell submitted that in relation to the period July 2022 to February 2023, when he was in the IKR, there would have been "less hands-on involvement". As for G5, once he returned from the UK and was released from custody, he had no permission to work and had every incentive to return to OIC.

174. Mr Blundell addressed the use of the past tense - "held a leadership role" - in para 3 of GC's second witness statement. He said that the context should be understood: that GC was simply responding to the case that G4 had put. When the Chair put to Mr Blundell what GC had said at paras 8-11 of his witness statement dated 7 November 2025, backed by a statement of truth, he did not strongly submit that the assessment of *possible* continuation is incorrect. What he submitted in terms was that "*Simplex* is more promising if [the assessment made in] 2022 is correct but the degree of confidence weakens over time".

Discussion and Conclusions

175. As for the first of the issues we have identified (see §156 above), the Commission has already covered virtually all of the relevant terrain. There is much direct and circumstantial evidence, both in OPEN and CLOSED, that G4 and G5 were jointly involved in OIC in 2016 and 2017, G4 in a leading role and G5 in an organising role. Both G4 and G5 have systematically lied to the Commission about this. Although the assessment is for the NCA to make and not this Commission, we would have reached exactly the same conclusion on all the available evidence and material.

176. The second issue is more difficult because we acknowledge the force of some of the appellants' arguments. The NCA advances an inferential case because there is no direct evidence of continuing involvement that they can put forward. Inferential or circumstantial cases are not inherently weak cases, but care must be taken in ensuring that the individual pieces of evidence that might be deployed to enable an apparently solid inference to be drawn do indeed have that effect. We have in mind the sort of direction that is given to juries about circumstantial evidence in criminal trials. Furthermore, we agree with the appellants that the absence of evidence that they

have not continued cannot, without more, be turned into the affirmative proposition that they have continued. The appellants' submission is all the stronger when one factors into the balance the fact that the NCA were not investigating. To be fair, Mr Blundell did not seek to support the logic of that assertion; he could not. Instead, he submitted that the appellants' inveterate lies, including their lies to SIAC, are supportive of the inference. Their blanket denial of any involvement properly enables/d the NCA to reach the conclusion that they were probably continuing.

177. In oral argument and when pressed on this issue by the Chair, Mr Chirico submitted in reply that he simply did not understand Mr Blundell's submission. We have reflected on Mr Blundell's submission and do, we think, understand it - provided that it is carefully separated and kept distinct from the language of the NCA Recommendation which cannot be supported. G4's and G5's blanket denial of any involvement covers not just the period they were giving detailed evidence about (ending in 2017) but also the period 2017-2025. This is because they have said that they have never been involved in QIC. That denial is not, therefore, notionally confined to the period of the NCA's investigation.

178. For example, para 47 of G4's first witness statement provides:

"On 30 August 2022, I was deprived of my nationality, based on allegations now eight years ago. I am told that the NCA acknowledge that there is no suggestion that I am currently involved in the activities mentioned, or was involved in them at the time of the deprivation decision [G4's information is incorrect about this]. ***The reason for this is that I was not involved in this criminality, and I am not involved in this criminality.***" [emphasis supplied]

179. And G5 in para 3 of his third witness statement, directed to what he understood to be SSHD's case that he was and still is involved in QIC, said this:

"I have never been involved in people smuggling or any type of organised immigration crime in the UK, Iraq, Kurdistan or anywhere else."

180. In these circumstances, we consider that Mr Blundell's submission is well-founded. G4 and G5 are separately advancing positive cases that at no stage have they ever been involved in QIC. SIAC is entitled to deploy its general adverse findings as to G4's and G5's overall lack of credibility and reliability as a factor in evaluating these denials. Maybe this was not the strongest point in Mr Blundell's overall armoury of submissions, but we consider that it is one that has some force. It falls to be weighed in the balance when it comes to assessing the overall strength of the adverse inference that Mr Blundell invites us to draw.

181. Mr Blundell did not of course relinquish his submission that SIAC must apply a ***Begum*** approach to the NCA's assessment. At this stage we are considering the

position as at August 2022 and not subsequently. But not all Mr Blundell's submissions (including in particular the one that we have just been addressing), although directed in support of the overarching assessment of "highly likely", were the same as those recorded in the Ministerial Submission. To what extent is SIAC permitted to accede to Mr Blundell's invitation to follow a different approach? Mr Mackenzie, in the different context of the assessment of continuation as at 2025, submitted that SIAC was not.

182. The answer to the question we have posed is to be found in the recognition that SIAC applies administrative law principles to an appeal where post-decision evidence is received, and some of it is heard for the first time, and tested, at the hearing itself. SIAC is not entitled to re-take the decision, nor should it in our view come metaphorically to the rescue of the NCA and SSHD in accepting a submission advanced by counsel that does not reflect anything in the NCA Recommendation and the Ministerial Submission, and/or in the subsequent evidence filed on behalf of SSHD, and/or in the oral evidence of the NCA's witness. The point we are making is that GC in his oral evidence did not put forward the contention advanced by Mr Blundell and which we have accepted. We heard it for the first time in Mr Blundell's closing submissions.

183. In our judgment, Mr Blundell could not properly have advanced an entirely new point *without* SSHD having set it out in a witness statement filed sufficiently in advance of the hearing to enable the appellants to deal with it, or at the very least GC having given the evidence orally.

184. Even so, Mr Blundell's submission was not in our view a new point. It was merely a better way of expressing the first clause of para 8 of the Ministerial Submission in G4's case (see §21 above) and para 10 of the Ministerial Submission in G5's case (see §37 above). In those circumstances, we consider that there are no obstacles to our considering it.

185. The next question is the basis on which we should be considering this variant of the Ministerial Submission. Given that Mr Blundell's submission did not, as it were, emerge from the mouth of GC, how does the *Begum* approach operate? How do we apply administrative law principles to a submission made by counsel, even if we must assume that he advanced it on instructions?

186. Mr Blundell's submissions did not assist us in answering these conundrums. In a slightly different context, he referred in passing to observations made by two members of the Supreme Court in a case in which he appeared, instructed by SSHD (*Kolicaj*). Those observations are not in fact reflected in Lord Sales' judgment. We think that the right analysis is that it is permissible for SIAC to accept a submission by counsel that invites the Commission to consider an existing point in a slightly different way provided that SIAC is confident that no reasonable SSHD, if asked, would conclude other than it would be fair to proceed in that fashion.

187. In our judgment, there is no unfairness to G4 and G5 here. It was their decision to prosecute this appeal on the basis of a blanket denial and a positive assertion that

they have never been involved in OIC. Logically, their evidence could not have been considered by SSHD in August 2022 because it did not exist. Now that it exists, G4 and G5 have been given every opportunity to advance their respective cases both orally and in writing. Were SSHD to be told that G4 and G5 were extremely unimpressive witnesses and that counsel was proposing to advance a submission that differed slightly from the Ministerial Submissions, we do not think it remotely plausible that the outcome would have been any different.

188. In any case, Mr Blundell's submission was just part of the overall inferential picture. We have rejected his submission that G4's and G5's lies in other respects (e.g. the offence in 2006 for G4; the absence of tax returns for G5) are relevant to the issue of continuation. However, the inference of continuation is based on multiple strands of evidence including the scale and persistence of the OCG, the length of time over which it operated, appropriate inferences as to their motivation, their brazenness and attitude to risk, and the absence of a positive case advanced by G4 and G5 as to what they were in fact doing between 2017 and 2022. The OPEN evidence in relation to some of these inferences does not tell the full picture. However, it is telling in our view that G4 and G5 did not advance a positive case, beyond generalised assertions that they may have continued in the cash-dependent business of car washing, after the NCA's investigation ended. Perhaps it would have been difficult to provide accounts and tax returns (that difficulty is entirely of their own making), but G4's and G5's witness statements could have taken the opportunity presented by the forensic process in seeking to build up a picture of legitimate employment or business activity that might have been inconsistent with continued illegal activity.

189. It is a fair point that the OPEN evidence suggests a rift between G4 and G5 which was not drawn to the attention of SSHD. However, there is material in CLOSED which indicates that had G4's and G5's ways parted, they would have been able to continue in a separate way of business.

190. It is also an entirely fair point that there has been considerable delay in this case which has been somewhat glossed over. The CPS took time, it is unclear how long, to reach a decision. The IDT of the NCA was first involved in 2020 but a decision-making process that ought to have taken weeks extended to months and years. It took the news that G4 and G5 were out of the country to set the wheels into more rapid revolution. There is at least a suspicion, not explored with GC in cross-examination, that the August 2022 assessment was not updated from previous drafts. Overall, the very considerable delay engenders a sense of unease, but it does not in and of itself create a public law issue.

191. We consider that the inference of continuation weakens over time, as Mr Blundell appeared to concede in relation to the post-decision period. GC's view was that there was no reason for G4 and G5 to stop, that the motivational factors remained constant, that they persisted in the likely knowledge that there had been arrests, and that - on the assumption that they were continuing in 2019 - they would have been emboldened by the CPS's NFA decision. On these topics, a *Begum* approach must be applied to GC's evaluation, based as it was on many years of experience of the criminal

mind, provided of course that SIAC concluded that GC's evidence should be accepted as objective and fair-minded. We put the matter in those terms because we accept Mr Chirico's submission that there is no evidence of any NCA input beyond GC's. In the real world there is likely to have been, but it was incumbent on the NCA to adduce evidence about that and we cannot properly infer it.

192. On the key question of continuation, as we have already prefigured, SIAC's assessment is not unanimous. The Chair has not concluded that GC is not fair-minded to such an extent that GC's assessment must be treated for these purposes as undermined; and, consequently, that the constraints of *Begum* should not apply to it. However, the Chair has concluded that, at times, GC's evidence lacked objectivity, that some of his evidence was over-stated, and that he came across, at times, as slightly dogmatic. The majority of the panel (which includes a highly-experienced Upper Tribunal judge and a lay member with vast experience in the police, including police intelligence) take a more favourable view.

193. In short, the Chair's assessment is that "highly likely" to have continued goes too far. A more rational formulation reflecting all the evidence in the case, both OPEN and CLOSED, would be "more likely than not". The assessment of the majority is that "highly likely" is supportable applying administrative law principles to the exercise. The conclusion of the majority prevails, but even if the minority view were to be preferred, it makes no possible difference to the outcome. SSHD would inevitably have deprived these appellants on the Chair's lesser formulation.

194. It is opportune at this stage to address Mr Mackenzie's submission as to there being a mismatch between means and ends. The decision was taken in August 2022 specifically to disrupt a continuing activity. The reasons given in the Ministerial Submission - to disrupt succession planning, and to deny access to assets in the UK - are not particularly compelling. It would have been far simpler, and more compelling, to have said something along the lines that with G4 and G5 stuck in Iraq, assuming that they did not make their way back to the UK, it would have been more difficult for them to continue the activities of this OGC. As we have said, it is a reasonably solid inference that G4 and G5 would not have trusted others to pay MT over £15,000 in cash. This was not a large OCG in terms of the number of conspirators known to have been involved in it, and G4 and G5 needed to be hands-on. Had SSHD been given this simpler and more straightforward explanation, the outcome would of course have been the same.

195. Mr Blundell did submit in OPEN that the outcome would inevitably have been the same had the assessment been only that it was *possible* that G4 and G5 were still involved in August 2022. On any view, such a possibility cannot be ruled out, although the term covers a range of degrees of confidence. We are sure that Mr Blundell did not have in mind a remote possibility, and we will proceed on the basis of "real" or "distinct" possibility. Terminology of this sort is reasonable. Mr Blundell did not develop this submission in OPEN but he took the opportunity afforded to him in CLOSED to do so. We bear in mind that the decision taken in August 2022 was to disrupt an activity that was continuing. It would not be right for us to conclude,

applying *Simplex*, that the outcome would inevitably have been the same had the decision been taken when G4 and G5 were in the UK. However, a *Simplex* analysis predicated on a real and distinct possibility of continuation in relation to a decision made when they were outside the UK does not of course face that difficulty. We have thought very carefully about this, not least because we would not wish to be interpreted as giving the NCA a *carte blanche* to use this draconian power in many cases; but overall we have reached the conclusion, explained more fully below and also in CLOSED, that the outcome would inevitably have been the same had the terms of the Ministerial Submission been "possible" rather than "highly likely" or "more likely than not".

196. There is no material difference between "highly likely to be continuing" and "more likely than not to be continuing". It is inconceivable that any reasonable SSHD would have done other than to deprive G4 and G5 of their nationality on this less robust formulation.

197. Mr Blundell strongly submitted in CLOSED that it was inevitable that SSHD would have reached the same decision in August 2022 even if she had been advised that continuation was only possible. We are unable to refer to the detail of those submissions in this OPEN judgment.

198. Mr Buley made equally forceful submissions the other way. He argued that there is a large difference between "highly likely still involved" and "possible still involved" (we paraphrase). He emphasised that SSHD was being invited to deprive G4 and G5 in late August 2022 on the specific and express basis that it was conducive to the public good to disrupt (again, we paraphrase) an activity that was continuing at a time when they were out of the country. Had the assessment been expressed in less forthright terms, assuming that the matter was brought to her attention at all, SSHD's response to this different evaluative predicate might have been different. *Simplex*, he submitted, placed a very high burden of persuasion on those representing SSHD, and should be envisaged as the obverse of the burden placed on claimants in public law proceedings to demonstrate, where outcome *Wednesbury* unreasonableness is in issue, a stark error in evaluation.

199. We have reflected carefully on these arguments. Mr Buley's submissions had considerable force. The *Simplex* test at common law is reflected in such stringent and onerous terms because the Court cannot readily second-guess what a reasonable SSHD might do. If there is any room for a different decision by a hypothetical decision-maker with these attributes, the Court must decline to accede to any beguiling invitation by SSHD's Counsel to take the decision for itself.

200. Ultimately, we have reached the conclusion that Mr Blundell's submissions are correct and that it is inevitable in the particular circumstances of this case, or these two cases, that no reasonable SSHD would have done other than exercise the deprivation power against G4 and G5 in August 2022 even if the advice had been based on a possibility of continuation. In short, if SSHD had been told that it was possible that this sort of activity was still continuing, and that would have been on the

premise that it was possible (with varying degrees of confidence as time elapsed) that it had continued over nearly six years, the same public interest considerations would have applied and we think that it is inevitable that the outcome in these cases would have been the same.

201. Finally, we should make it clear that we reject Mr Blundell's submission that the NCA was entitled to apply a precautionary approach in this case. The NCA may have been entitled to do so on a different factual scenario, but the approach that it *did* adopt was far from precautionary. It assessed that it was "highly likely" that G4 and G5 were still involved. A precautionary approach has some relevance, we do accept, to the *Simplex* analysis based on possibility.
202. This brings us to a consideration of the third issue that falls to be addressed under the overarching rubric of irrationality, viz. SSHD's failure to reconsider the appellants' evidence and submissions in light of *U3*. This third issue must be addressed on the premise that SSHD has persuaded us that her decision as at August 2022 withstands challenge. On any different premise the *U3* issue would not arise for consideration at all.
203. The inference of continuation weakens quite considerably over the period 2022-25, particularly in relation to G5. As we have said, Mr Blundell came close to accepting that "possible" is a better word to characterise the position as at today's date, although he did not concede this. There remains a difference of view, perhaps more of emphasis, within the Commission as to the correct epithet to apply in late 2025, but for present purposes we may proceed on the premise of "possible" rather than "likely". In our judgment, the key factor here that is that there is nothing to indicate a change of heart or of mind on the part of G4 and G5 (continuing to look at their cases separately), or any acknowledgement on their part that they were involved in extremely serious criminal activity. Instead, SIAC was treated to frankly absurd explanations from both men as to what they were doing and thinking when caught in the act on 12 February 2017. The only matters that have changed is that three more years have elapsed (between 2022 and 2025), and practical factors alone militate against the inference of continuation.
204. These things having been said, it was the correct procedure for the NCA to have reassessed the likelihood of continuation in a formal documentation for consideration by SSHD's officials, and for a witness statement to have been filed by someone within the department with authority to speak for SSHD in a case of this importance. There can be no hard-and-fast rule as to when that ought to have been done, but we would suggest approximately 3-4 months before the hearing. If anything changed thereafter, we see no reason why an update could not be given from the witness box.
205. If this procedure had been adopted, we consider that SSHD would and should have been told that over a number of months (we cannot specify in OPEN how long) G4 and G5 were clearly involved in OIC, that for about five years thereafter (plus or minus, we cannot be more precise in OPEN) they are highly likely or likely to have

continued in that involvement, and that for the past three years it is assessed that this likelihood, however expressed, has dwindled to the possible, albeit there is no evidence of any repudiation of their criminal mindset. On such a premise, we do not believe for one moment that SSHD's decision would have been any different. It would still have been conducive to the public good to have taken deprivation action.

206. The present case is very different from the hypothetical case Lord Reed was, we think, addressing in *U3*. If *U3* had demonstrated an ideological shift in the period between deprivation and the hearing, that would have been relevant. A predilection for organised crime is not ideological, but some criminals are rehabilitated and others are not. G4 and G5 have done nothing to show that they fall into the first category.

207. For all these reasons, we are quite unable to accept Mr Mackenzie's submission that the NCA's and SSHD's procedural deficiencies must compel us to allow G4's appeal.

208. *U3* does not explain how SSHD's reconsideration should take place in light of the oral evidence heard by and tested before an expert panel. We emphasise that there is no difficulty in situations where, as here, the appellate process has served simply to confirm and underscore the correctness of the NCA's assessment. GC said, and we agree, that he had heard the oral evidence and had concluded that G4 and G5 were both lying. The difficulty arises in situations where SIAC forms a different view of witness credibility and reliability. SIAC would like to think that it has an important role in such situations, as and when they arise, and that its sole *raison d'etre* is not to act as a form of rubber-stamp through metaphorically gritted teeth. We repeat what was said in the case of *C2 v SSHD* (SC/166/2019), promulgated before *U3* in the Supreme Court, at para 111:

"Had the Commission taken a different view of C2's evidence, and decided for example that he was a highly compelling witness of credibility, reliability and integrity, we do think that uncomfortable issues would have arisen in light of *U3* [in the Court of Appeal]. Those advising SSHD are experts in the assessment of intelligence, but the making of human judgments are quintessentially for a judicial tribunal. This is particularly so in a case where those advising SSHD did not see C2 give evidence and be cross-examined at length until after the hearing started. Fortunately, these uncomfortable issues lie in the realm of the academic and the hypothetical in the circumstances of C2's case."

At §54 above, we have suggested the procedure that should be adopted in situations where a real issue arises on the oral evidence given by an appellant.

TAMESIDE

209. The *Tameside* hurdle is always a high one and in our experience it is rarely surmounted. The short answer to the *Tameside* challenge is that any further

investigation would have needed to be intelligence-led. It was in this context that GC said that his superiors would have "laughed at" any request he made for further investigative steps to be taken. We address this further in CLOSED.

FAILING TO FOLLOW PUBLISHED POLICY

210. In *Kolicaj v SSHD* [2025] EWCA Crim 10, at para 9(i), the Court of Appeal (Edis LJ giving the sole reasoned judgment) recorded:

"On 13 May 2020 Fiona Johnstone, a Home Office official, wrote the Ministerial Submission to the Secretary of State entitled "Deprivation of British Citizenship" which recommended that the Home Office should "use the deprivation power [under s. 40(2)] against people guilty of serious organised crime but limit its use to the most serious and high-profile cases". Until this point, although Ch 5 of the published Home Office Nationality Instructions issued by the Secretary of State as a guide to decision-makers had defined "conduciveness to the public good" as "depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours", we understand that this power has not in practice been regularly used in cases of serious organised crime. The facts in *Aziz v SSHD* [2019] 1 WLR 266, show that the Secretary of State in 2015 gave a notice relying on "serious and/or organised crime", see [9], per Sales U. No doubt Ms Johnstone's advice was designed to extend the use of the published policy to more cases of serious organised crime. The Secretary of State accepted the advice given, which meant that thereafter the previously published policy would be applied in such cases, although only in the most serious and high-profile cases."

211. Thus, the Court of Appeal in *Kolicaj* proceeded on the basis that the Ministerial Submission prepared by Ms Johnstone, and accepted by SSHD, was the operative policy that she would adopt in cases of SOC. *Kolicaj* runs counter to two previous decisions of SIAC which take a different view. Mr Blundell submitted that we should follow those previous SIAC decisions.

212. Before we saw para 82 of the judgment of Lord Sales in *Kolicaj*, we had already reached the firm conclusion, subject always to the better view of the Supreme Court, that SSHD's acceptance of Ms Johnstone's Ministerial Submission amounted to a narrowing of Ch 5 of the Home Office Nationality Instructions. The correctness of that conclusion has now been confirmed. We are not surprised that SSHD has been advised to exercise the deprivation power only in the most serious cases. This is because the deprivation of citizenship is such a draconian power interfering with a fundamental constitutional right. It would usually be disproportionate to exercise it in less than a most serious case.

213. There are, however, difficulties in interpretation and application in relation to a policy expressed in these loose terms. "Most serious" is fine enough insofar as it goes, but it is capable of encompassing a comparative rather than an absolute judgment. That is difficult to carry out without evidence enabling such a comparison to be conducted. The Rotherham cases, where the deprivation power has been exercised, were certainly high-profile, but that is an inherently fluid concept. The instant cases would be high-profile if the CLOSED material could enter the public domain without damaging the public interest. Furthermore, the policy is silent as to whether the criminality at issue has to be continuing.
214. The Ministerial Submission in the instant case did not remind SSHD that the power should be used only in the most serious and high-profile cases. That omission opens the window of opportunity very slightly for G4 and G5.
215. Our approach to this issue in the particular circumstances of the instant cases can be straightforward. We proceed on the premise that the conducive power should only be exercised in very serious cases (or the "most serious cases", provided that this does not import a relative judgment). Having regard to the CLOSED material, the present cases undeniably meet that standard. Further, on any interpretation of the policy, if it is highly likely that the conduct in question is continuing, the objectives of the policy are met by deprivation.
216. This analysis also disposes of the appellants' argument that the use of the deprivation power is disproportionate. In a situation where the public interest in favour of deprivation is strong, because the conduct at issue is at the very serious end of the spectrum and it is highly likely that it is continuing, we struggle to understand why, other things being equal, it would be other than proportionate to take the draconian step of deprivation.
217. Nor, as we have already said, does the exercise of the deprivation power somehow undermine or fly in the face of the CPS's decision to take no further action. SSHD exercises different powers and applies a different standard of proof. SSHD was made aware that CPS had decided to take NFA in these cases. She was also made aware, more by implication we think, that the NCA disagreed with the CPS's decision. We would have been slightly uncomfortable with GC's evidence on this topic were it not for the fact that we also disagree with the CPS's decision.

PROPORTIONALITY: ARTICLE 8

218. It is well-established that Article 8 does not apply to deprivation cases when the subject is outside the jurisdiction of the ECHR: see *R3 v SSHD* [2023] EWCA Civ 169 (per Elisabeth Laing LJ at paras 107-110) and *E5 v SSHD* (SC/184/2021), at paras 55-63. In *Begum 2*, SIAC considered that Article 8 had only a very limited sphere of application, and one which did not avail Ms Begum and would not avail these appellants, even though they have family in the UK: see paras 400-406.

219. E5 addressed what it called the proleptic application of Article 8 to an entry clearance application, and held that this had no relevance to the deprivation decision. It is well-established that Article 8 may have a role in relation to entry clearance applications: see *R(Ali)vSSH D* [2024] EWCA Civ 372; [2024] 1 WLR 5097, and the very recent decision of the Court of Appeal in *IA and others vSSH D* [2025] EWCA Civ 1516, at para 100.

220. Entry clearance operates in a wholly different context from deprivation. If a subject is within the UK when the deprivation decision is made, or happens to be on a day trip to Calais for whatever reason, Article 8 of the Convention applies and SSHD must consider the proportionality of deprivation action within that framework. If the subject is outside the jurisdiction of the ECHR, by definition Article 8 does not apply and that is the end of the issue. Instead, the issue of proportionality falls to be considered in general terms and without regard to Article 8 - as happened in the present case, because SSHD was made aware of family in the UK. Indeed, in G4's case the Ministerial Submission proceeded on the basis, wrongly in our opinion, that Article 8 was directly applicable, but that family life was outweighed by the public interest in favour of deprivation. On the other hand, if G4 and G5, having been removed to Iraq, were to apply for an entry clearance to re-enter the UK, their Article 8 rights might be relevant at that point.

EXTRA-TERRITORIAL POLICY: ARTICLE 3

221. Article 3 of the ECHR has no direct application to the IKR where both G4 and G5 were situated at the time the deprivation decisions were made. However, SSHD has a policy only to exercise the deprivation power where there is no real risk that the subject would suffer conduct that would be a violation of Article 3, were it to apply directly. The role of SIAC in such cases is not to assess the risk for itself but to review SSHD's application of the policy to the facts of a particular case on public law grounds. That review must be undertaken on the basis of the facts that existed in August 2022 and on the footing that both G4 and G5 were in Iraq.

222. SSHD was advised in the Ministerial Submission that the Iraqi authorities would not be informed of the deprivation decision or of the reasons for the making of it. This suggests that, were they to become aware of G4's and G5's involvement in QIC, that could lead to their detention and the potential for a breach of Article 3.

223. Further:

"Open source reporting demonstrates that the risk of mistreatment during detention (pre- or post-conviction) and denial of the right to a fair trial are high in the IKR ... ***The NCA and FCDO assess that there is no reason to believe that the fact of an individual's British citizenship will have any bearing on their treatment in Iraq, beyond the fact that a British citizen will have the right to make representations to the***

Consulate in the event if their mistreatment." (emphasis supplied)

224. In the Mistreatment Risk Assessment which was Annex D to the Ministerial Submission, it was stated that the IKR authorities were not aware of the subjects' offending in England and France, that the NCA/FCDO would not inform the IKR authorities of the deprivation decision or of the reasons underlying it, and that it was assessed that they would be treated in broadly the same way in IKR detention whether they were British or not. This last point was intended to address the causation issue identified by SIAC in ***X2 v SSHD*** (SC/132/2016).

225. As for the possible interest in G4 as a SOC threat:

"It is likely that the IKR authorities would be interested in G4 as part of a SOC threat, if they became aware of [his] criminal activity. The NCA engages with law enforcement partner agencies to combat the OIC threat ... IKR groups and nationals are assessed to be significant players within OIC organised crime groups that use this method. It is therefore critical that the NCA and wider government works with authorities to successfully reduce the cross-Channel OIC small boat OIC threat ..."

226. Later in the Mistreatment Risk Assessment it is said that "OIC is treated as a SOC offence in the IKR". That assessment was not accepted by LQ (whose evidence is summarised below), and we consider may be regarded as superseded. OIC is not, without more, treated as a SOC offence in the IKR.

227. Mr Ben Bundock on behalf of G4 and whose submissions on this issue were adopted by G5, relied on "process irrationality" (a well understood sub-division of ***Wednesbury*** irrationality which it is unnecessary for us to explain). He submitted that the Kurdish authorities would suspect that G4 had been deprived of his British nationality on account of his unexplained presence in the country after his family had returned to the UK. Further, he argued that the passage we have highlighted at §223 above is irrational. It was predicated on British nationality providing a modicum of protection, and that had no relevance to G4's case (ex ***hypothesi***, he will have been deprived of his British nationality).

228. We cannot accept these submissions. As we have said, we are reviewing SSHD's decision-making; we are not taking the decision for ourselves. Strictly speaking, the risks must be considered as at August 2022 and what happened, or did not happen, to G4 and G5 when in Iraq thereafter is irrelevant. In any event, G4's account of the difficulties he apparently experienced whilst in Iraq over several months cannot be accepted. We do not think that as at late August 2022 there was a real risk that the IKR would suspect that G4 and G5 were present in Iraq because they had been deprived of their British citizenship. That is entirely speculative. Moreover, for the reasons we explain in relation to the deportation appeal, we consider that it would

have been open to G4 and G5 to obtain necessary documentation in the IKR to regularise their presence. Finally, although we accept that the presence of the highlighted passage is difficult to understand, because G4 and G5 would not be able to rely on Consulate assistance were they to be detained, ultimately this is a neutral factor. All that this passage is saying is that, British or not, the risks to G4 and G5 if detention were to eventuate would be similar. It is made clear elsewhere in the Mistreatment Risk Assessment that the risk would not be acceptable were detention to happen.

229. Mr Bundock did not make anything of para 17 of the Ministerial Submission in G4's (and G5's) case. This provided:

"It is the NCA's assessment that [G4] is highly likely to hold an Iraqi passport that he used to gain admission to Iraq. ... [I]n order to be issued a passport the applicant must present identity documents, including a national ID card, nationality certificate and a certificate of residence. On that basis the NCA assess that G4 is documented and as such, the validity otherwise of his British passport will not affect the position."

230. There is no evidence that either G4 and G5 hold an Iraqi passport. In G4's case, for example, it is far more likely that he entered Iraq on the basis of his British passport that had been renewed in 2020. The real point that matters for our purposes is whether G4 and G5 hold Iraqi identity documents which would facilitate entry to Iraq, access to services in that country, and obviate the difficulties that might arise if confronted by officialdom in that country. We will be addressing these issues in the context of the deportation appeals.

231. In any event, as Mr Bundock did not seek to assail this particular paragraph, whether orally or in writing, SSHD has not been given the opportunity to respond. We therefore need say no more about it in the context of the deprivation appeal, and we propose to ignore it in the context of the deportation appeal.

232. At para 183 of G4's skeleton argument, a submission is made that G4 would be at risk of detention on the ground of being a suspected ISIL fighter. It is convenient to deal with that submission in the context of G4's deportation appeal. As we will explain, we do not think that the point has any real force.

233. For all the foregoing reasons, the deprivation appeals of G4 and G5 must be dismissed.

THE DEPORTATION APPEALS

INTRODUCTION

234. The deportation decisions were made on conducive grounds under s. 3(5)(b) of the Immigration Act 1971. Subsequently, SSHD refused the human rights and Refugee Convention applications. It is against those second set of decisions that the present appeals are brought. G4 advances four Grounds of Appeal. By Ground 1, it is said that deportation to Iraq would breach his rights under the Refugee Convention. By Ground 2 a similar argument is raised in relation to his rights under Article 3 of the ECHR on the basis that there would be a real risk of inhuman and degrading treatment at the hands of the IKR regime. Ground 3 is a variant of Ground 2 although the Article 3 breach is advanced on the basis that G4 would be destitute in the IKR. Finally, by Ground 4 reliance is placed on a violation of Article 8.

235. G5 raises the same grounds as G4 save he does not rely on a breach of the Refugee Convention.

236. In relation to all of these grounds, SIAC must take the decision for itself and consider the position as at today's date. As for Grounds 1-3, the question to be answered is whether there is "a real as opposed to a fanciful risk" of violation of the relevant obligation: see *MAH (Egypt) v SSHD* [2022] EWCA Civ 216; [2021] Imm AR 713, at paras 50-52. As for Ground 4, SIAC must perform the necessary balancing exercise for itself on the premise that both G4 and G5 were highly likely involved in QIC up to August 2022, with that likelihood diminishing over time until it reaches the level of possibility as at today's date. Given that SIAC's shares SSHD's view as to the importance and pertinence of the public interest factors pertaining to QIC, no issue arises as to whether SIAC should be deferring in any way to SSHD's evaluation that very considerable weight should be attached to these public interest factors. We will provide our own explanation of the position at the appropriate stage in this judgment.

GROUND 1: REFUGEE CONVENTION

237. Under s. 32(2) of the Nationality and Borders Act 2022, there are two questions to be answered on the facts of G4's case. The first is whether he has a genuinely held subjective fear of persecution. SSHD has not put that in issue. The second is whether G4 faces a real risk of persecution in the IKR on grounds of imputed political opinion because he would be perceived to be a supporter of ISIL.

238. It is not in dispute that G4 would be security screened on arrival at Sulaymaniyah airport. It is also not in dispute that the IKR are particularly interested in those who might be involved in ISIL. If G4 were arrested and detained because he was suspected to be an ISIL supporter, we think that it is clear that he would face an unacceptable risk of ill-treatment, either during the process of interrogation, or owing to the conditions of detention. Mr Bundock drew our attention to the FCDO's most recent assessment dated June 2025 and to SSHD's recently updated CPIN dated September 2025, "Iraq, Actors of Protection".

239. Mr Bundock's submissions proceeded along the following pathway. First, he submitted that there is a real risk that the IKR authorities would become aware of G4's

deprivation of citizenship. They would then make the connection between SSHD's exercise of her deprivation powers and suspected terrorism, in particular terrorism related to ISIL activity. SSHD does not dispute that there would be a risk if the IKR found out that G4 had been deprived, hence the advice in the Ministerial Submission stating that HMG did not intend to inform the IKR of that fact. Secondly, Mr Bundock relied on the well-known line of authority which establishes that a person in G4's position cannot be expected to lie (see, for example, the decision of the Supreme Court in *RT (Zimbabwe) v SSHD* [2012] UKSC 38; [2013] 1 AC 152, at paras 42 and 71-72). Further, he submitted that if G4 were to lie, there is a real risk that the IKR authorities would see through that (see, for an example of a case on not wholly dissimilar facts where SIAC reached that very conclusion, *D8 v SSHD* (SC/179/2020)). Thirdly, he submitted that G4's absence of a Civil Status Identity Card ("CSIC") or, its replacement, the Iraqi National Identity Card ("INID") would result in increased scrutiny of G4's identity and background. Finally, Mr Bundock submitted that even were G4 to get through security screening unscathed, suspicions about him would increase the longer he lived in the community.

240. Mr Blundell submitted that these risks are illusory. Although G4 cannot be returned on the basis that he should be expected to lie, the position here is that G4 is not connected to ISIL in any way, and there is no basis for supposing that the IKR authorities would or might suspect that he had been deprived of his British citizenship. G4 would not be lying if he denied that he was associated with ISIL. Mr Blundell relied on the expert opinion of the Justice and Home Affairs Team in the British Embassy in Baghdad: they are not aware of any instances of men being returned from the UK or anywhere else being arrested or detained solely on the basis of their being single or of fighting age. Mr Blundell relied in particular on paras 30-31 of the decision of the Upper Tribunal in *SMO & KSP (Civil status documentation: article 15) Iraq CG* [2022] UKUT 110 (SAC). When it came to Article 3 (Ground 2), Mr Blundell made the submission that the IKR were particularly interested in association with ISIL and not SOC, still less QIC. We bear that submission in mind in the present context.

241. We will address G4's absence of documentation in more detail when we come to analyse Ground 2 and the Article 3 case. For present purposes we proceed on the basis that G4 would be deported directly to Sulaymaniyah airport on the back of a UK letter and a *laissez passer* issued by the Iraqi Embassy in London. If, as the Chair pointed out during oral argument, the Iraqi authorities were to decline to provide such a travel document, that would be the end of the matter because G4, and for that matter G5, simply could not be deported at all. The IKR would not be informed of G4's deprivation or his suspected involvement in QIC. However, they would be informed of his conviction for illegal entry in 2023. Finally, although G4 would not have an INID at the time of his deportation, he could readily obtain one subsequently. He would need such a document because, as was pointed out in *SMO & KSP*, *laissez passer* documents are confiscated on arrival.

242. We think that the key question here is the purely practical one of what would or might happen at Sulaymaniyah airport to a 48- or 49-year-old single man who has no ISIL associations whatsoever arriving without documentation, save for a *laissez*

passer issued by the Iraqi Embassy in London and other documentation, including a UK letter, blandly stating that G4 has a 2023 conviction for illegal entry in 2022.

243. We agree with Mr Bundock that the weight that should otherwise be given to the expert opinion of the Justice and Home Affairs Team in the British Embassy in Baghdad is somewhat undermined by the use of the adverb "solely". We are not convinced that the Embassy were asked to focus their attention on the issue of what questions would or might be asked of G4 on arrival in the IKR in the particular circumstances of his case.

244. We do not consider that there is a real risk that the IKR authorities would discover that G4 has been deprived of his British citizenship. It is unsurprising that the British Embassy in Baghdad do not have data on this. SIAC has had some Iraqi ISIL-related cases but not many, accepting of course that not all deprivations are appealed to SIAC. Although we do not lose sight of the fact that G4 is a poor liar in a forensic setting, we consider that the risk of the IKR finding out that G4 has been deprived is very low. G4 would not volunteer that he has been deprived and our assessment is predicated on the footing that he would not be asked about this, and/or that he would not answer any questions asked in a way that might lead to him giving an answer which disclosed the fact of his deprivation.

245. We think that paras 30-31 of the headnote of the Upper Tribunal's judgment in *SMO & KSP* are particularly relevant. These need to be considered in full:

"30. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of three IKR Governorates⁵ for Kurds.

31. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL; (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory."

246. Now, G4 does not claim to hail from a family with a known ISIL connection or to be coming from (or, indeed, that he would be travelling to) an area associated with ISIL. It follows that he has to rely on category (iii), being one which *may* increase the risk. It must be highly debateable whether he falls within that category at all. On arrival, G4 would not find it difficult to explain to an IKR official how and why he is not

⁵ In fact, we believe that there are four: Erbil; Sulaymaniyah; Duhok; Halbja (established in 2014). This is relevant to LQ's evidence although we can only deal with it in CLOSED.

and has never been associated with ISIL. Even taking into account that he would be arriving without an INID, but bearing in mind too that he could readily obtain one shortly after arrival in the IKR with the assistance of a family member (a procedure which would be understood by IKR officials on arrival) *and* that the IKR authorities would know that he had not come from ISIL territory, we do not consider that there is a real risk in his case that he might be arrested or detained on the basis of imputed association with ISIL.

247. It follows that Ground 1 must be dismissed.

GROUND 2: ARTICLE 3 AND HUMANITARIAN PROTECTION

248. Both appellants argue that they would face a real risk of arrest and detention in unacceptable conditions in the IKR owing to their involvement in OIC, about which they could not be expected to lie. That risk is said to be particularly acute in G5's case in light of a letter LQ wrote to the IKR in May 2024.

249. The real risk may be seen as arising on the appellants' cases at two stages. The first stage is an arrival at Sulaymaniyah airport, and in the context of the questions that might be asked during security screening. The second stage is at all material times thereafter: suspicions about the appellants would inevitably be fomented in view of their unexpected and unexplained continued presence in the IKR, with their families known to be in the UK. That risk would largely evaporate were the appellants' families to travel with them. However, for the purposes both of the Article 3 cases presently under consideration, and the Article 8 cases to which we will be coming, we do not think either that this would happen in practice, or that it is reasonable to proceed on the premise that it should happen. We accept the evidence of G4 and G5, and their wives, that it would not be feasible for children whose knowledge of the written language is poor and in G4's son's case has significant disabilities to relocate in this way.

250. Furthermore, we also accept one of the premises of Mr Bundock's submissions: that were the appellants to be detained for whatever reason, they would face an unacceptable risk of prison or detention conditions which would violate Article 3.

251. Before we examine this limb of the Article 3 case in more detail, it is necessary to return to the issue of the appellants' documents. Much has been made in writing about Iraqi passports, family books and identity cards. G4 and G5 were not cross-examined on these matters. If SSHD wished to seek to persuade us to reach findings adverse to the appellants on these matters, it was we think incumbent on Mr Blundell to ask relevant questions. We do not think that he can rely simply on more general submissions about the appellants' overall lack of credibility.

252. It follows that we do not accept that we can proceed on the basis that G4 and G5 have Iraqi passports or identity cards, or that they can remember their family book numbers. Moreover, the lack of these documents is hardly surprising because they first arrived in the UK in 2001 and in our experience people seeking refugee status are frequently undocumented.

253. G4 and G5 would be returned on the back of UK letters and the *laissez passers* from the Iraqi Embassy in London, which documents we have already mentioned. According to the expert report of Mr Andrew Allen KC, since October 2024 the Iraqi Embassy has been dealing with INID applications here. If that evidence were right, it would follow that the appellants could obtain an INID before arriving at Sulaymaniyah airport, and that if they sought to be obstructive that would not in and of itself impede deportation. However, para 3.7.9 of the CPIN dated September 2025 states that INIDs cannot be obtained in person in the UK. It is possible that the CPIN has not been updated to reflect information available on the Iraqi Embassy website: Mr Allen has provided a hyperlink to the relevant webpage. Even so, we consider that neither G4 nor G5 would be able to provide the documents listed on this webpage, even with the assistance of family members here.

254. So, we proceed on the basis that G4 and G5 would lack an INID on arrival at Sulaymaniyah airport. According to the Justice and Home Affairs Team in the British Embassy, Baghdad, "we have a consistent track record of KRG authorities providing Iraqi Kurdish deportees with new documentation on arrival". Depending on what is meant by "on arrival", we think that this assertion, expressed as it is in somewhat general and anodyne terms, is not borne out by relevant authority and expert evidence.

255. As for authority, we return to the headnote of the judgment of the Upper Tribunal in *SMO & KSP*:

"15. ... All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.

...

16. In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans..."

256. As for expert evidence, para 5.1.3 of the CPIN updated in October 2023 contains far more detail. According to Dr Fateh, an expert witness on the Middle East:

"If a failed asylum seeker [that would also cover G4 and G5 in our view, because they would be returned as illegal entrants and there is no material difference] is returned to Iraq without an ID document, they will be detained at the airport.

- (a) The returnee will then be interviewed to give some indication of whether they are from their claimed governorate or region (through dialect, accent etc.). From the returnee's Kurdish or Arabic dialect, the officer will be able to tell whether the returnee is from Iraq or not.
- (b) At this time, the returnee's claimed name will also be cross-checked against suspect names in possession of the security services.
- (c) Next, the returnee will be asked to phone their immediate family to bring their ID.
- (d) If they claim to have no immediate family, the returnee will be asked to contact a paternal uncle or cousin for their ID.
- (e) If this is negative too, another relative will come to the airport with their own IDs to act as a guarantor for the returnee. This will allow the returnee a seven-day residency period pending proof of identity.
- (f) During this period, the returnee needs to obtain their own ID or provide evidence that they are in the process of obtaining an ID ...
- (g) If the returnee has no such luck, they must find a local Mukhtar by the seventh day who can provide a letter in exchange for a small fee which states that the person is who they say that they are, that they are from the claimed neighbourhood, and that they are in the process of obtaining an ID.
- (h) If the Mukhtar cannot identify the returnee, they will need two witnesses to come forward who know them and can provide evidence of their identity.
- (i) The returnee then needs to apply in writing to the nationality department. Here, they will be interviewed by the chief and the witnesses will need to give evidence under oath ..."

257. Counsel did not draw our attention to sub-para (b) above, although we have not overlooked this and will come back to it. In our judgment, it is clear that from this document that the absence of an INID would not in and of itself give rise to questioning, and that - provided that G4 and G5 have family in Iraq who can assist - it would not be difficult to obtain an INID. Having regard to both the OPEN and CLOSED evidence, we conclude that sub-paras (c) and (d) are fulfilled in both their cases. It follows that we can properly proceed on the basis that both G4 and G5 would obtain INIDs shortly after arrival in the IKR.

258. Mr Bundock and Mr Chirico submitted that their clients would face an unacceptable risk at the airport of being interrogated about the reasons for their return to Iraq after so many years away, and that during the course of such an interrogation their suspected involvement in QIC would or might emerge. They both remind us that in 2022 SSHD was being advised that the IKR would not be informed of their involvement in QIC because that could lead to their detention.

259. The issue for us is whether the situation has changed since 2022. LQ, who is currently an NCA Grade 3 International Liaison Officer and started in that role in 2023, has considerable experience of sharing intelligence with IKR partners, whom he described on many occasions as "trusted partners". The use of that epithet did grate somewhat the more that he used it, but it needs to be considered in the context of LQ's evidence as a whole. LQ's evidence is that in 2022, when the NCA Mistreatment Risk Assessment was prepared for the purposes of the deprivation decision, the relevant guidance was the "Overseas Security and Justice Assistance" Guidance of 2022 ("the OSJA of 2022"). We have seen the full version in CLOSED and we think that LQ's summary of it in his OPEN witness statement is fair. The position in 2022 was, according to LQ, as follows:

"At that stage, whilst the NCA's scoping activities in the KRI continued, the NCA's confidence in the capabilities and working practices of individual partners was limited, because of our nascent relationship. As such, in accordance with OSJA Guidance [of 2022] the NCA assessed that its activity might contribute to a human rights violation occurring in the KRI."

260. By 2023, the situation had significantly improved. It was recognised that there remained an unacceptable risk of Article 3 violations in detention, which risks could not be mitigated. However, the relationship with the NCA's partners in the IKR had improved to the extent that some intelligence sharing was appropriate in relation to individuals involved in SOC provided that the assessment was made in the circumstances of the particular case that the "information provided is unlikely to lead to detention".

261. LQ informed us that on 12 May 2024 he wrote a letter to the Kurdish authorities requesting confirmation of G5's nationality and copies of all Iraqi nationality documentation. The letter did reference G5's involvement in Organised Immigration Crime. In LQ's assessment, this would not provoke the independent interest of the IKR authorities or any human rights concerns. The letter also contained "handling conditions", which LQ described as "assurances", which limited the use to which the letter could be put. It must not be used to instigate the arrest of an individual or "to support the interview of detainees or suspects".

262. According to his witness statement, he has "absolute confidence that those prohibitions will be adhered to".

263. LQ was taken by Mr Chirico to the emails relating to the sending of the letter dated 12 May 2024 (there was some concern about this during the hearing, but LQ's OPEN witness statement gave the exact date). The letter was generated by a request for information made by the IDT of the NCA. LQ said that he was able to share this information with his trusted partners. He agreed that he had not taken into account the "robust plans" referred to in the NCA's Mistreatment Risk Assessment dated 2022 to ensure that IKR authorities should not be made aware of the deprivation decision. He did not assess whether these robust plans should be dropped. Rather, his focus

was on what he could share with his trusted partners. LQ said he was not aware of the position the NCA had taken in 2022. He might have added in his oral evidence that that position reflected the OSJA of 2022 whereas his witness statement had explained that the OSJA of 2023 contained different guidance.

264. LQ agreed what was said in a letter sent by the Government Legal Department to Birnberg Peirce on 17 April 2025: that the issue of risk on return was not for LQ but for the FCDO and the Home Office.

265. LQ said that in late 2024 the IDT requested a copy of the May 2024 letter. In January he understood that there was a concern about the letter and he was asked to take the matter no further. By then, save for a request for clarification, he had heard nothing from the IKR.

266. LQ was asked about the handling conditions attached to the letter. He said that these were important assurances which had been set out both in Sorani and in English. LQ did not accept that there was a real risk that these handling conditions might not be honoured.

267. LQ added that QIC is not a criminal offence in the KRI. Some further element would be required to make it such: e-g- human trafficking.

268. In answer to Mr Mackenzie's questions, LQ said that the intelligence being shared was "building block". If LQ had believed that the sharing of this intelligence would have resulted in detention, he would not have acted without Ministerial authority.

269. On the basis of LQ's evidence, Mr Chirico submitted that LQ had been instructed to communicate with the IKR without knowing all the facts, including the assessments made in 2022. He submitted that the handling conditions were unilaterally imposed requirements which did not amount to bilateral assurances. Even if they did, it was for this Commission to assess their effectiveness: see *R (AAA (Syria) and others v SSHD* [2023] UKSC 42; [2023] 1 WLR 4433, at para 52ff. The Court must make its own assessment about the reliability of assurances but will attach weight to the Government's view. Furthermore, there was a real risk that G5 would be interrogated at the airport on the basis of what the letter said. The IKR authorities would deduce from the UK letter that G5 was not a British citizen. There was a real risk that the IKR authorities would be interested in G5's alleged activities in the UK, and that a foreseeable line of questioning would or might result in their discovering that he had been deprived of his citizenship. Further, G5 could not be expected to lie, and there was also a real risk that G5's known suspected involvement in QIC could lead to this detention.

270. Mr Mackenzie submitted that G4 could also benefit from the May 2024 letter to this extent: that G5, if interrogated about his involvement in QIC, would pursue the same cut-throat defence that the Commission heard over a number of days. We do

not believe that there is a real risk of that. We conclude that the LQ letter is only relevant to G5.

271. We have reflected carefully on this aspect of the case. From LQ's perspective, there was no reason to doubt or question his tasking by the IDT. He did nothing wrong, although he recognised that he is the sole NCA witness speaking to this issue and (by implication) that others may have been remiss. We have heard nothing from the FCDO and/or the Home Office to explain why concerns were expressed in late 2024 leading to different instructions being given in January 2025. There is always a tendency in these circumstances for *ex post facto* justifications to be deployed even if the individual making them is not personally blameworthy.
272. Nonetheless, we consider that LQ was a good witness who gave his evidence in a clear and straightforward manner. Had the OSJA of 2022 still applied, the May 2024 letter would not have been written. However, the position had moved on since then, and as LQ explained the OSJA of 2023 did permit the sharing of intelligence provided that an individuated assessment was made. LQ's opinion was that this was "building block" assessment and nothing more. It could be shared with the IKR authorities because it was not likely to lead to detention. He also had, and has, no doubt but that the handling conditions would not be dishonoured. That is part and parcel of his assessment that the IKR are "trusted partners". On this last aspect, whether or not "assurance" is the correct label, we agree with LQ and do conclude that the IKR will have honoured, and will continue to honour, the terms on which the intelligence was being shared.
273. In our view, Mr Chirico might have submitted that LQ's answer that the intelligence sharing was *unlikely* to lead to detention did not address the test under Article 3, viz. real risk. However, the Special Advocates did pick up on this point in CLOSED following a question by the Chair (to be fair, they had more material to work with). That issue has been fully considered in CLOSED.
274. It is also open to question how the IKR will interpret the handling conditions which we have concluded they will respect. The three conditions imposed by LQ on the sharing of this intelligence would preclude the May 2024 being deployed as the sole basis for detention. However, it does not necessarily preclude the asking of questions which, depending on G5's answers, could place him in difficulty. Again, this is an issue which is also addressed in CLOSED.
275. In our judgment, in order for us to assess for ourselves whether there is a real risk of G5 being detained on the basis of his suspected involvement in QIC, the following issues need to be addressed. First, whether the May 2024 letter would ever make its way to Sulaymaniyah airport or into the IKR's systems, whatever they may be. Secondly, and connectedly, whether the IKR's systems at the airport are digital. Thirdly, and only on the footing that the airport authorities would be aware of the contents of the May 2024 letter, whether they would be interested in G5's involvement in QIC which, by inference, they would know was carried out from the UK. Fourthly, whether any realistic line of questioning would or might reveal that G5

had been deprived of his British citizenship on the basis of his involvement in OIC. Fifthly, how G5 would or might respond to questioning and what assessment would or might be made of his credibility.

276. In connection with these issues, Mr Blundell made two overarching submissions. The first was that the IKR operate a largely paper-based system. The family registration book is, for example, entirely in manuscript. Given that these books have their origins in Ottoman bureaucracy, that is not surprising and in any event is not relevant. The old CSID was entirely paper-based but the INID is digital. Mr Blundell submitted that the system at the airport is predominantly paper-based. That was a bare assertion. We frankly doubt that Iraqi passports, particularly more recently-issued ones, are not on some sort of centralised system to which officials would have remote access at the airport. However, if that is right, *the laissez passer* issued to G5 (and also to G4) would be on that system, and that in itself does not create an Article 3 issue. Mr Blundell's first overarching point is more usefully directed to the issue of whether the May 2024 letter, particularly if it was not scanned onto a digitalised system, would ever find its way to the airport. In evaluating that point, we take into account LQ's evidence in CLOSED as well as sub-para (b) of Dr Fateh's evidence (see §251 above) referring as it does to records of suspect names. It must be doubtful that these records are contained in physical ledgers, albeit far less doubtful that G5 would be regarded as a suspect. Given that there was no cross-examination or submissions on this narrow issue, we cannot take it any further.

277. Mr Blundell's second overarching point was that G5 (and for that matter G4) would not admit that they were involved in OIC. They have flatly denied it during the course of these appeals. We consider that the issue is not as black-and-white as Mr Blundell paints it because, if the IKR authorities used the letter as the platform for asking questions, they would know that, at the very least, G5 was suspected of being involved in OIC in the UK. G5's denial would not necessarily help him.

278. In reaching our conclusion on this issue, we have made a global assessment of whether there is a real risk of detention in G5's case taking into account all the matters we have identified in §275 above. We have also taken into account evidence bearing on these matters in CLOSED. That assessment reflects amongst other things our evaluation of the chances of the May 2024 letter coming to the attention of the IKR authorities at Sulaymaniyah airport (unlikely but possible), the level of IKR's interest in OIC committed in the UK (it is unlikely that the IKR would have any interest, but the possibility cannot be discounted), and how we think G5 would respond to any questioning at the airport. As for the latter, there is evidence in CLOSED which is relevant to this. We think that there is a considerable difference between G5 being cross-examined in a forensic setting through an interpreter and G5 being asked questions, admittedly by perhaps a less than friendly official, at Sulaymaniyah airport. We reiterate that our assessment must be a global one. Overall, we have come to the conclusion that there is not a real risk that G5 would be detained on arrival at Sulaymaniyah airport.

279. The same conclusion applies to G4, although - without the letter - his case is necessarily weaker. On arrival at the airport, all that the IKR authorities would know is that G4 was being removed as an illegal entrant. We doubt whether he would be asked any questions that might begin to place him in difficulty.

280. The next question that we must address is whether, G4 and G5 having entered the IKR and obtaining an INID in due course with the assistance of family members, there is any real risk of subsequent detention on the basis that they might attract suspicion having been away for so long. The evidence about this was extremely vague and amounted to little more than an assertion. The appellants did not draw our attention to any Country Guidance case in the Upper Tribunal which could throw light on this issue. We have, however, considered what the Upper Tribunal had to say about the non-ISIL related risks in para 5 of the headnote of its decision in *SMO & KSP*. G4 and G5 do not fall within any of the categories of higher risk. We accept that people in G4's and G5's communities would or might be aware that they had been away from the country for many years, but we are being asked to evaluate the risk of someone, not friend or family, reporting them to the authorities because of their suspected involvement in QIC in the UK and/or of their deprivation of citizenship, matters that would not of course be publicised by G4 and G5. In our judgment, G4 and G5 ought to have adduced more evidence on this topic beyond asking us to apply our intuition. On all the available evidence, including the inferences to be drawn from it, we are unable to conclude that there is a real risk that G4 and G5, having safely entered the IKR and obtained their INIDs, would be detained for anything connected with their deprivation of British citizenship and subsequent deportation.

GROUND 3: ARTICLE 3 - DESTITUTION

281. This Ground has no merit, for three reasons. First, both G4 and G5 have family in the IKR who would accommodate them should the need arise: see para 32 of the headnote in *SMO & KMP*, reflected in para 3.8.13 of the recent CPIN. Secondly, G4 and G5 will be able to obtain an INID shortly after arrival. Thirdly, we have concluded that certainly G4 and probably G5 have financial resources in the IKR which they would be able to utilise.

GROUND 4 -ARTICLE 8

282. We recognise that G4 and G5 have strong Article 8.1 claims which should be placed in the balance.

283. As for G4, he has three children, one of whom is now 18. One child has significant physical, behavioural and cognitive disabilities. He is now in his teenage years and G4's wife would find it difficult to manage on her own. AB has herself been unwell and has undergone extensive treatment. Her evidence, and we are able to accept it on this topic, is that G4 has been running the household and that his presence has a stabilising effect on the children. In short:

"[G4] is not involved in any criminal activity. He is a loving and caring husband and father who his family desperately needs."

284. At the conclusion of her oral evidence, G4's wife thanked the Commission for the respect we had shown her, and effectively made a plea for mercy. In his closing submissions, Mr Chirico suggested that G4's wife would say anything to help her husband. We did not interpret her evidence at all in that way.

285. As for G5, he has two adult children whose interests carry little weight. His daughter is now of school age and there is evidence that her performance at school has deteriorated in the last academic year. There are likely to be several reasons for that which we need not go into, but we proceed on the basis that the emotional development of G5's elder daughter would suffer were he to be deported. Another child was born after return to the family home. G5's wife has significant mental health difficulties. We accept the evidence of Dr Lucy Kralj to the extent that G5's deportation would likely exacerbate those difficulties and that she is vulnerable to the risk of post-natal depression.

286. Dr Kralj also gave evidence in private. We have prepared a short confidential annex to this judgment which covers that evidence to the limited extent necessary.

287. We will be addressing the public interest in favour of deportation shortly, but first we should refer to six authorities. First, in *Razgar v SSHD* [2024] UKHL 27; [2024] 2 AC 368, the House of Lords established a five-stage test which applies to cases of proposed removal or deportation. In essence, SIAC must balance the Article 8.1 interests of the appellants and their families against the public interest in favour of deportation under Article 8.2. The key questions are whether the proposed interference is necessary in a democratic society for the prevention of disorder and crime; and, if so, whether it is proportionate to the legitimate public end sought to be achieved. Secondly, a similar structured approach to proportionality was adopted by the House of Lords in *Huang v SSHD* [2007] UKHL 11; [2017] 2 AC 167. In that case, Lord Bingham of Cornhill said at para 6 that the immigration rule under which the appellant failed to qualify for leave to remain was unobjectionable, but that her failure to qualify under the rules was the point at which to begin, and not to end, consideration of her claim under Article 8. Thirdly, family life is indivisible: see *Beoku-Betts v SSHD* [2008] UKHL 39; [2009] 1 AC 115. Fourthly, the interests of children are a primary consideration which must always be given significant weight: see *ZH (Tanzania) v SSHD* [2011] UKSC 4; [2011] 2 AC 166. Fifthly, G4 has relied on the decision of the Supreme Court in *Hesham Ali v SSHD* [2016] UKSC 60; [2016] 1 WLR 4799. However, the passages they cite are relevant only to settled migrants.

288. Sixthly, in *Agyarko v SSHD* [2017] UKSC 11; [2017] 1 WLR 823, footnoted in G4's skeleton argument for a different proposition but not in the voluminous bundle of authorities, the Supreme Court considered the application of Appendix FM to the Immigration Rules to individuals who did not have an extant leave to remain in the UK. The Supreme Court upheld Appendix FM as, in effect, Article 8 compliant. At para 60 of his judgment, Lord Reed JSC, as he then was, emphasised that the ultimate

question was always whether a fair balance had been struck, and that the use of the adjective "exceptional" did not amount to the imposition of a test.

289. No authority has considered circumstances such as the present, where SSHD seeks to deport individuals who have strong family life claims but who have been lawfully deprived of their British citizenship for involvement in OIC and then returned to the UK as illegal entrants. How should the public interest be weighed in these circumstances?

290. Given that the s. 2B appeals have failed, the starting point is that the appellants have been lawfully deprived of their British citizenship. G4's written submissions suggest on the basis of *BAH ((EO Turkey)-liability to deport)* [2012] UKUT 00196 (IAC) that SIAC would need to be satisfied of proven past conduct (i.e. conduct proven on the balance of probabilities) before it could properly form the basis of a deportation decision. We do not think that this submission accurately reflects the law on s. 2B appeals in light of *D5 and others*⁶, but in the circumstances of the present case it matters not because we are able to conclude for ourselves on the balance of probabilities that, having regard to all the evidence in OPEN and CLOSED, both appellants were heavily involved in OIC during the NCA's period of active investigation. Next, over the following five years or so, SIAC has upheld the NCA's assessment that G4 and G5 were highly likely involved in OIC and were still involved in August 2022. Finally, over the period between then and the SIAC hearing, the degree of confidence in continuation has diminished. The position now is that G4 and G5 are possibly still involved.

291. The gravity of this case needs to be understood in light of these findings. G4 and G5's involvement was not transient: it was long-lasting. Extrapolating from the notebook and, even more tellingly, the CLOSED material, large numbers of illegal migrants were brought to this country over a lengthy period.

292. The weight to be given to Article 8.2 considerations varies according to the context. Recently, the Supreme Court has explained that in the context of extradition the public interest typically outweighs Article 8.1 family rights, and that Article 8 arguments will rarely prosper, particularly in the context of serious crime: see *Andrysiewicz v Circuit Court in Lodz* (Poland) [2025] UKSC 23. It is well-established in extradition law that the Article 8.2 factors weigh more heavily (or the Article 8.1 factors less heavily) where the individual is a fugitive. These public interest considerations apply *a fortiori* to illegal entrants who returned to the UK in the knowledge that they had been deprived of their British citizenship on conducive grounds. Our approach must be to continue to acknowledge that the Article 8.1 factors in the circumstances of these cases are cogent. Although the automatic deportation provisions do not apply (see s. 117 of the Nationality, Immigration and Asylum Appeals Act 2002), the flexibility of Article 8.2 means that in the circumstances of this case the public interest in favour of deportation is particularly powerful.

⁶ In this context, Mr Blundell made a submission about the "*Bocherereau* exception" in immigration cases which we do not think it is necessary to address.

293. Furthermore, SIAC wholly endorses SSHD's view, spanning the period 2022-2025 and the change of administration during that period, that OIC is a particularly corrosive and pernicious form of criminal activity. It flies in the face of the firm and fair immigration control which is the bulwark of any modern democracy operating without sealed borders. Illegal migration in defiance of the rules that the State is entitled to impose for reasons of its economic interests, public confidence and national security undermines the rule of law and risks weakening the public interest militating in favour of such legal migration that the State wishes to encourage. The answer to damaging public confidence is not to be found in the consideration that many illegal entrants claim asylum and some of these claims succeed. That does not excuse OIC. Moreover, SIAC recognises how difficult it is in practice for SSHD to remove those whose asylum or humanitarian claims have failed. Furthermore, in relation to the IKR, our assessment is that life for the vast majority is safe. It may well be unsafe for ISIL supporters but this country would not of course welcome those. Although there is no evidence that any of the single men whose illegal entry was facilitated by this OIC were ISIL supporters, that possibility cannot be excluded. G4 and G5 did not care about the credentials of those whose illegal entry they facilitated.

294. G4 and G5 had no regard whatsoever for anyone or anything other than themselves: they simply wanted to make considerable sums of money which they falsely claim have never existed. They were not motivated by a desire to help asylum seekers on some sort of high-minded basis, and they acted in defiance of the public interests we have ventured to explain. Had they been prosecuted, as they ought to have been, we concur with GC that they would have faced substantial prison sentences. Although it is certainly not the role of this Commission to impose punishments that the criminal justice system ought to have meted out, we are justified, as we have said, in according very considerable weight to the public interest in combating OIC.

295. Furthermore, this powerful public interest has to be evaluated not on the basis that the appellants have been here for nearly 25 years, as G4 and G5 would have it, but on the footing that they were lawfully deprived of their British citizenship and then re-entered the UK unlawfully. They are here as illegal entrants and their previous lawful residence in the UK over many years cannot avail them. We reject Mr Chirico's submission that SIAC would somehow be punishing the appellants twice by deporting them. We understand Mr Chirico to mean that the appellants' conduct has already been deployed against them once, as the basis for deprivation, and cannot therefore be redeployed, as the basis for deportation. But there has been no double-counting and SSHD is not acting punitively. The need for deportation only arises because the appellants circumvented immigration controls in circumstances where they knew that they had no right to come to the UK, because they had lost their right of abode. These appellants cannot be placed in a better position than they would have been in had they applied for entry clearance from outside the UK. What Mr Chirico's submission really comes down to is an attempt to invite us to treat G5 as if he were legally in the UK; or, at the very least, as someone with nearly 25 years' residence here.

296. Although we are not applying a test of exceptionality, and we are not holding that G4's and G5's families should travel with them to the IKR, in the circumstances of these cases we are according very considerable weight to the public interest in favour of deportation. In all the circumstances of G4's and G5's cases, that public interest outweighs the family life considerations that we have anxiously considered. We also bear in mind that G4's and G5's families will have recourse to State benefits in their absence, and that occasional visits to the IKR will be feasible.

297. For all these reasons, the s. 2(1) appeals must be dismissed.

DISPOSAL

298. These appeals are dismissed.