SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SC/202/2022
Hearing Date: 21st February 2024
Date of Judgment: 5th June 2024

Before

THE HONOURABLE MR JUSTICE DOVE
UPPER TRIBUNAL JUDGE KEITH
MRS JILL BATTLEY

Between

G7

Appellant

and

THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

OPEN JUDGMENT

Ms Julianne Kerr Morrison (instructed by **ITN Solicitors**) appeared on behalf of the Appellant.

Ms Lisa Giovannetti KC and Mr Julian Blake (instructed by **the Government Legal Department**) appeared on behalf of the Secretary of State

Mr Martin Goudie KC (instructed by **Special Advocates' Support Office**) appeared as Special Advocate

Introduction

1. There are two applications before the Commission in this case. The first is an application to reinstate this appeal, it having been struck out. By an order dated 29th October 2020 the Commission ordered the appellant to confirm in writing that she

intended to pursue her appeal; she failed to comply with the order and so the Commission struck out her appeal by an order dated 12th November 2020. The second application only arises if the first application is successful. This second application is for an extension of time from July 2018 to 23rd October 2019 to permit the appeal to be brought out of time.

The facts

2. The circumstances of this case, so far as they are relevant to the determination of this application, are as follows. The appellant was born in Bangladesh on 27th May 1981 and came to the UK with her family in 1989. She naturalised as a British citizen in 1993. She was married in 2002, but her marriage was not a happy one as her husband was abusive towards her and he developed a gambling addiction which had a very serious impact on the family finances. The appellant's family were very resistant to her obtaining a divorce from her husband and moving away. The appellant and her husband had two children: a son born in 2006 and a daughter born in 2011.

3. The appellant was extremely unhappy with her circumstances in the UK and began to enquire on social media into the possibilities of joining the Islamic State in Syria. She made contact with people involved in Islamic State and she was provided with contact details of individuals who could help her to travel to Syria. On 14th February 2015 she left the UK with her children and travelled to Istanbul and from there she went to Syria. Shortly after she had arrived arrangements were made by the ISIL authorities for her to be married to a man with whom she had no language in common. She was married to this man from March to May 2015, but then he was killed in combat. She was instructed to remain indoors for a mourning period of four months, during which time she witnessed incidents from the conflict at first hand. She was then married again to another man whose background she did not know in September 2016. In early December 2016 this man left her and she later she heard that he had also died.

4. During 2017 the appellant and her family were moved around Syria by the ISIL authorities, and although she was desperate to leave Syria, it was not possible to discuss this and she feared if she was caught doing so, she would be imprisoned. When the appellant lodged her appeal on 23rd October 2019 it was supported by a witness statement from her and also a witness statement from her sister. In the appellant's first witness statement she explained that in about April 2017 she decided to make contact with her family as it had been over two years since she had last spoken to them. She had not spoken to them about her plan to leave, or after she had left, as she was concerned that they might try to persuade her to return to the UK. In her first witness statement the appellant explains that she called her sister at this time and the phone call lasted a few minutes and ended quickly as she did not want her family to be able to trace her whereabouts. In a witness statement from her sister lodged in support of the appeal, her sister confirms that she had a

conversation out of the blue with the appellant in April 2017. In her first witness statement the appellant says that apart from that one call "I had no contact with my family until October 2019". She had not contacted them and they had no means of contacting her as they did not have her contact details.

5. On 6th June 2017 the respondent served a notice of intention to deprive the appellant of her British citizenship. It is not disputed that this notice was properly served at the appellant's last known address where her husband still resided. In her witness statement the appellant's sister says that the appellant's husband passed this notice to her family, but they had no way of communicating what had happened to the appellant. In a similar way to the appellant, her sister says that apart from "the brief phone call I had with her in April 2017, I had no contact with [the appellant] at all until October 2019".

6. In response to the appeal the respondent provided a letter dated 8th November 2019 which noted that the appeal was over two years out of time. Any application to extend time was resisted by the respondent, in particular on the basis that it was not accepted that the appellant had only had the claimed contact with her family. The respondent set out that material had been provided in CLOSED which was gisted as follows: "MI5 assess that the Appellant has had contact with her family in the UK, above the contact that is described in her witness statement".

7. Following the lodging of the appeal the appellant did little to prosecute the appeal, and indeed it appears that during the first half of 2020 there were difficulties for the appellant's solicitors in obtaining instructions from the appellant. This problem eventually led to the appellants' solicitors reaching the view that they could no longer properly act for her. Once they had made this clear the respondent sought to have the appeal treated as abandoned, but in the event the appeal was brought to an end by means of the application of Rule 40 of the Special Immigration Appeal Commission (Procedure Rules) 2003 ("the Rules") which is set out below.

8. On 16th August 2022 the appellant made the application to reinstate the appeal that is before us, along with the application for an extension of time. In support of that application the appellant served a second witness statement ("G72"). In G72 further detail is given in relation to G7's circumstances in the UK and the difficulties which she had with her family, in particular her father and brother who were oppressive and abusive towards her, and her husband whom she had been forced to abandon her university degree to marry and who was also abusive towards her. G7 explains the financial difficulties that arose from her purchase of the family home and the need for her to support the mortgage payments. Her dissatisfaction with her circumstances in the UK led to her exploring the possibilities of moving to Syria, which she ultimately did on 14th February 2015. G7 explains the circumstances of her life in Syria when she first moved there in greater detail in G72, along with her moving to a house for widows and divorced women in Al-Kishma in Deir ez-Zour in 2018 in which she was confined with her children. She made plans to escape and she

met smugglers who enabled her to escape in late 2018 to Turkey, where she arrived in December 2018. Whilst in Turkey she lived initially in Istanbul, but her sister G3 put her in touch with a Syrian man who helped her to move to Bursa. The area in Bursa in which she lived was occupied by many people who did not have legal status in Turkey and therefore there were frequent police raids and she lived in fear of being discovered and detained. Later in September 2019 G7 moved back to Istanbul.

9. The further statement G72 is of significance in that within it G7 accepts that the evidence which she gave in her first witness statement about the contact which she had with her family was incorrect. In her first witness statement G7 had said that after she left the UK she had no contact with her family in the UK until 2017 when she decided to get in touch with them. In her first witness statement she states that in around April 2017 she had a conversation with her sister Sibling A on the telephone which did not last very long. After that she "had no contact with my family until October 2019". In G72 she accepts that is wrong. Whilst she had no contact with her family in the UK in 2015 and 2016, she did send a Facebook message to her sister in Dubai which may have been passed to her family in the UK. She also had a voice message or a call from her uncle at some point prior to May 2015 when she was in Syria. In February 2017 G7 says in G72 she contacted her sister Sibling B because she had learnt that G3 had been detained in Turkey and she wanted her family in the UK to help her get out of detention. She had two or three further calls with her, and then she was asked not to call again as there had been a visit to her sister by the Security Services.

10. In June or July 2017 G7 explains in G72 she messaged Sibling B on WhatsApp seeking an update on G3 but she received no reply. G7 further states that whilst she was in al-Kishma she contacted her mother who was at that time in Bangladesh as she was desperate to leave Syria and needed help. She also spoke to her uncle and sisters who were present with her mother. During another call that summer she was told by her mother that a decision had been taken to deprive her of her citizenship. Thus in G72 it is accepted by G7 that she was made aware of the deprivation decision in summer 2018. G7 says that she believes her son may have spoken to his father in the summer of 2018, but she had no contact with him until 2022.

11. G72 goes on to explain that G7 lost contact with her family whilst she was trying to leave Syria, and indeed she deleted all her family's contacts off her phone before she crossed the border into Turkey. G7 says that it was not then until September 2019 that she had contact with her family: she did not try to contact them and they did not, so far as she was aware, have contact details for her. G7 was unable to remain in Turkey and wanted to return to the UK and so on or around 7th October 2019 she contacted her sister Sibling A to explain this. We asked how it was that, having disposed of her family's contact details, G7 was able to contact them and Miss Kerr Morrison took instructions and explained that G7's sister in Turkey gave her the contact details of one of her nieces which then enabled her to re-establish contact. During this call her sister explained that since she had been deprived of her

citizenship she could not return to the UK without successfully appealing against this decision. This led to her decision to lodge her appeal against the deprivation decision.

12. In G72 the circumstances in which G7 was living in Istanbul at the time of lodging her appeal are set out. She and her children were living in constant fear of being arrested in accommodation that was infested with rats. In addition to the stress of this situation, she was also anxious and frightened in relation to the prospects of being prosecuted and losing her children upon her return to the UK.

13. In G72 G7 explains that in about February 2020 she had a close call with the Turkish police who called at her home. As a result she chose to move to a village in Kocaeli province. The restrictions brought about by the Covid-19 pandemic were brought in during April 2020 not long after she moved. The accommodation she was living in was very uncomfortable and infested with cockroaches. She was depressed and anxious about her situation, both in terms of her current circumstances and the danger of her being apprehended by the Turkish authorities but also her prospects upon return to the UK. She seldom left her home as a consequence of the Covid-19 restrictions and would go to the shop once a week for essentials. G7 states that as a result of her stress and anxiety caused by thinking about her return to the UK she cut off all contact with her family and her legal representatives. She destroyed their contact details and put her mobile phone in a bucket of water having cut up the SIM card. During this time she had been teaching her children English and in April 2020 a neighbour requested that she teach her children English too and G7 agreed and until August 2020 she continued to teach them.

14. In G72 it is explained that in May 2021 she was diagnosed as having very low levels of vitamin D and iron and she started to take tablets to address this. She began to feel less fatigued and dizzy and the hair loss she had been suffering reduced. In July 2021 she moved back to Istanbul but still could not face contacting her family in the UK. In September or October 2021 G7 began trying to recontact her family. She attempted to persuade her sisters to help her by providing contacts details but they refused. Eventually she was able to convince G3 to provide her with her sister Sibling B's number and through that G7 made contact with her mother and sisters in the UK. This led to the visit of her UK family to Turkey to see her in June 2022, in the course of which they tried to persuade her to permit her children, who are British citizens, to return to the UK. G7 accepted that her son, who was by this time 15 years old, should return to the UK, but considered that her daughter was too young to leave her. In July 2022 she spoke to her solicitors for the first time and arrangements were made for her husband to come and collect her son from the UK. Once this was in place, G7 gave instructions for the application to be made to reinstate her appeal.

15. On 23rd January 2024 G7 swore a third witness statement ("G73") addressing matters raised in disclosure by the respondent on 18th August 2023 and, following a Rule 38 process, on 22nd November 2023. In particular this material relies upon a

Port Intelligence Report following her sister Sibling B being stopped by Borders Officers at Heathrow on 27th February 2019 and asked questions about, amongst other matters, G7. Her sister explained to the officers that she was "still in sporadic contact with [G7] who contacts her via WhatsApp from a variety of different mobile numbers" Her sister did not know G7's whereabouts and had no means of contacting her directly, and that her last contact with her had been in November/December of 2018. In G73 it is accepted that her sister was correct when she said that G7 had contacted her on different numbers as she had no SIM card and would buy virtual numbers for a limited period of time.

16. When the officers looked at her sister's mobile phone they found three texts of interest. The first was from 2015 and G7 suggests that this could be a message from her sister to her prior to her leaving the UK relating to an occasion when G7 took her son and her sister's daughter to the fun day at the mosque. A further text from 2016 in relation to a person travelling to Syria was found, but G7 contends in G73 that this was not sent by her and indeed is related to a number which belonged to G3's solicitor. Finally there was a text received from a contact stored by her sister as "Julie Turkey" in which the sender is stating that a firm of solicitors are "the best terror solicitors in the UK". Again, G7 explains that Julie is the name given to G3 within the family and the text appears to have been sent by her.

17. G7 explains in G73 that G72 is correct in relation to her contact with her family in summer 2018, following which she remained in contact with them until she deleted all her contacts at the time she escaped to Turkey in December 2018. What was said by her sister during the port stop about the last time that they were in contact being November or December 2018 was accurate. When her sister said that she thought G7 was still in Syria was truthful as it was not until much later that her sister would have found out that G7 had managed to escape to Turkey.

18. G7 contends in G73 that she could not have brought her appeal earlier as whilst she was living in al-Kishma had she mentioned that she wished to return to the UK or reclaim her citizenship this would immediately have been reported to members of ISIL and there would have been consequences. There was a hut in which it was possible to access the internet but G7 explains that she could have been overheard, albeit that she did use the internet in the hut to speak to her family in Bengali or send them text messages. It would have been too dangerous to speak to a lawyer in English as others living there could speak and understand English.
19. G7 was unable to give evidence to us from Turkey as a result of the FCDO's guidance on this issue. No further factual witnesses were relied upon by her in support of her appeal.

<u>The Medical evidence</u>

20. In support of her applications G7 relies upon medical evidence from Dr Kemi Komolafe, a Clinical Psychologist, who examined G7 via a video conference on 1st

November 2022. She was instructed to consider G7's mental state from the beginning of 2020, and whether her mental state meant that it was impractical for her to continue with her appeal. In particular, in her report Dr Komolafe explores G7's mental health over the course of time since leaving the UK and departing for Syria. Dr Komolafe notes her opinion that it is probable that G7 would have displayed symptoms of Generalised Anxiety Disorder shortly after her arrival in Turkey and that since that time her symptoms fluctuated, most likely directly as a result of her living circumstances and ability to access a support network.

21. Dr Komolafe identifies that G7 described feeling depressed and isolated from February 2020 when she was living in Kocaeli. Speaking of that period, Dr Komolafe notes at paragraph 134 of her report:

"It is possible that whilst living in Kocaeli, G7 may have exhibited symptomology that would meet the diagnostic criteria of major depressive disorder however, this is difficult to ascertain given the lack of other medical evidence. Notwithstanding this, G7's self-report of her mental state is suggestive of a depressed mood, disrupted sleep, poor appetite, diminished interest in daily activities, and a loss of energy. This range of symptoms encompasses at least five of the nine symptoms required to meet the diagnostic criteria for Major Depressive Disorder as specified in the DSM 5."

22. Dr Komolafe goes on to note that she could not establish the severity of the symptoms, but "G7 did report that the symptoms impaired her ability to function and engage in daily tasks, suggesting at least moderate levels of severity". Dr Komolafe noted the possible involvement of G7's low iron levels and vitamin deficiency in her symptoms.

23. The report addresses the relationship between G7's mental health and her ability to pursue her appeal in the following paragraphs:

"140. G7 described impaired functioning as a result of her mental and emotional state at the time of her appeal against the deprivation of her British citizenship.

141. It is likely that her mental health at this time had some bearing on her ability to engage in the appeal process and stay in communication with her instructed legal team.

142. G7 has repeatedly expressed throughout the assessment that her withdrawal from the process was primarily motivated by a sense of fear of prosecution and being separated from her children.

143. It is probable that G7's experience of poor mental health could contribute to a sense of insecurity and instability which could exacerbate a felt sense of fear and vulnerability for G7. This in turn, could magnify G7's sense of threat when considering whether to engage in the proceedings thus increasing the likelihood of her withdrawal from the appeal process.

144. One must also consider that depressive symptoms such as low motivation, poor sleep, fatigue and poor concentration could impair G7's ability to engage in conversations with her family about the SIAC appeal process. Most notably, G7 refers to her family as provoking anxiety. It is probable that whilst attempting to manage her mental health, G7's decision to cut contact with family members, may have been motivated, in part, by an attempt to minimise the level of perceived stress or anxiety already present in her daily life so that she could completely parent and provide for her family. I am aware that G7 reports strained relationships with some family members and this will also have some bearing on her decision to remain connected with her family however it is likely that her mental health (in March/April 2020) would have been a contributing factor to her decision-making process.

145. The aforementioned pervasive feelings of fear brought G7 to the decision that it would be better to withdraw from the appeal process and cut off contact with her family.

146. However, as the stressors on her daily life increased and her mental health and emotional wellbeing deteriorated, G7 sought to reconnect with her family. Upon doing so, family members encouraged G7 to reinstate her appeal and start proceedings to return to the UK with her children."

24. The overall conclusions which were reached by Dr Komolafe in respect of G7's current mental health were that she met the diagnostic criteria for a Generalised Anxiety Disorder and presented with some features of major depressive disorder. A further report was produced by Dr Komolafe in response to medical evidence being served by the respondent (see below) but the essence of that report is that her opinion was unchanged in response to this further medical opinion.

25. Dr Komolafe gave oral evidence at the hearing. She confirmed the contents of her reports and was subject to cross-examination. In cross-examination she explained that she had not been provided with G7's first witness statement at the time of undertaking her examination of her and writing her first report. She accepted that the information G7 had provided her with in relation to contact with her family was consistent with her earlier evidence that was accepted to be wrong, and therefore Dr Komolafe agreed that she could have been lied to in relation to matters which were potentially important. The tests that she had administered to G7 to assess her mental health were themselves dependent upon truthful answers being provided. It was pointed out to Dr Komolafe that on numerous occasions during the examination of G7 she refused to identify the individuals who had helped her when she was in Syria and Turkey. Dr Komolafe said that G7's alignment with ISIL could provide an explanation for why she would not wish to identify these individuals. With respect to her observations at paragraph 142 of her report above, Dr Komolafe accepted that G7's fears of prosecution and being separated from her children were based on evidence and were not delusional. She confirmed that it was not her role to provide an assessment of G7's credibility and she had not done so. Dr Komolafe accepted that there was a discrepancy between what she had been told by G7, namely that it was her family who proposed that there should be an appeal against the deprivation decision, and what G7 had said in her first witness statement when she observed that she had been the person who had wanted to instigate the appeal.

26. On behalf of the respondent, evidence was submitted from Professor Greenberg, a consultant psychiatrist who was instructed to review the evidence submitted by Dr Komolafe. Professor Greenberg did not have the opportunity to examine G7, but wrote his report based upon the evidence which was submitted to him and listed in his report and reviewed within it along with some commentary provided in footnotes. In Professor Greenberg's opinion there are a number of deficiencies in Dr Komolafe's evidence, particularly that it is almost wholly reliant upon G7's reports of her own symptoms and problems. Further Professor Greenberg notes that it is not clear from Dr Komolafe's written material whether she sought access to G7's family for further information, or whether she was provided with all of the witness statements to which Professor Greenberg had access in order to prepare his opinion. Professor Greenberg identifies several lines of further enquiry, such as G7's upbringing and background, her motivation for moving to Syria with her children and the apparent discrepancy between G7's contention that she was functionally impaired when she was in Turkey and her account of teaching English and her being able to "survive" in Turkey were not pursued as Professor Greenberg believes that they should have been.

27. When he gave evidence orally, following the oral testimony of Dr Komolafe, Professor Greenberg indicated that the essence of his position was that in so far as G7 had a mental disorder it was mild or moderate rather than severe. The significance of that distinction is that a mild or moderate mental illness does not prevent a person participating in everyday life and activities such as work. By contrast a severe mental illness would prevent participation in everyday life. As such, Professor Greenberg's view is that G7 would have been impaired but not prevented from doing what she needed to do to live her life. In cross-examination Professor Greenberg pointed out that it was considered that around one in six people have a mental illness, but they continue to be able to cope with working, caring for their family and participating in the community. He gave his view that a moderate disorder would impair, but would not prevent, G7 from participating in her appeal and the other aspects of her daily life. In particular he emphasised that people with moderate disorders are able to undertake activities which are important to them and therefore if the appeal had been important to G7 then she would have been able to pursue it. Again, whilst her mental health could be a contributor towards her avoidance of an activity, if something was important then G7 would have been able to put all her energy into it.

The law: reinstatement

28. As set out above, the second application for an extension of time does not arise unless G7 has satisfied us that the application for the appeal to be reinstated has to be granted. The origins of the power to reinstate an appeal can be found in the Commission's decision in *R1 v Secretary of State for the Home Department* (21st May 2013). In that case Irwin J (as he then was) decided that in the absence of any specific statutory provision, the Commission did not have power to restore or reinstate an appeal that had been validly struck out in pursuance of the power to do so under the Special Immigration Appeals Commission (Procedure) Rules 2003 ("the Rules"). Irwin J identified his concern in relation to this situation as follows:

"28. I begin by recording my view that it is on balance desirable that SIAC should have such a power [to reinstate an appeal]. Hypothetical examples often tend to the extreme, but is is not impossible that an Appellant might disappear because afflicted with significant and lasting mental illness or the consequences of a significant accident, In such cases, rare as they may be in practice, it would be desirable in the interests of justice that the Commission should be able to restore an appeal. However, the fact that such a power would be desirable does not conjure it into existence."

29. By virtue of the Special Immigration Appeals Commission (Procedure)(Amendment) Rules 2013 an amendment to Rule 40 of the Rules was introduced which enabled the Commission to reinstate an appeal where it had been struck out on the basis of a failure to comply with the Rules. According to the Explanatory Memorandum to this instrument this amendment was to "ensure that no party to a SIAC proceeding can lose their right to seek redress because of circumstances that are effectively out of their control." This provision "reflects a judicial suggestion in *R1 v SSHD*". As a result of this amendment Rule 40 reads as follows:

"Failure to comply with directions

40
(1) Where a party of the special advocate fails to comply with a direction, the Commission may serve on him a notice which states:-

(a) The respect in which he has failed to comply with the direction;
(b) A time limit for complying with the direction; and
(c) That the Commission may-
(i) Proceed to determine the appeal or application for review on the material available to it if the party or special advocate fails to comply with the direction within the time specified; or
(ii) Strike out the notice of appeal, notice of application for review or the Secretary of State's reply, as the case may be.

...

(3) Where the Commission has struck out a notice of appeal, notice of application for review or the Secretary of State's reply under paragraph (1)(c)(ii), it may subsequently reinstate the notice or reply if it is satisfied that circumstances outside the control of the appellant or the Secretary of State (as the case may be) made it impracticable for the appellant or the Secretary of State to comply with the direction."

30. In the course of her submissions on behalf of G7 Ms Kerr Morrison submitted that the provisions of Rule 40(3) should be approached in a manner similar to the approach taken to applications in SIAC for an extension of time, namely an examination of what is fair and just in the circumstances of the case. In support of this submission Ms Kerr Morrison draws attention to the provisions of CPR 3.9 dealing with relief from sanctions. This provision of the CPR provides as follows:

"Relief from sanctions

3.9
(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application including the need:
(a) for litigation to be conducted efficiently and at proportionate cost; and
(b) to enforce compliance with the rules, practice direction and orders..."

31. This provision of the CPR has been the subject of judicial scrutiny in a number of cases, including in particular *Denton and others v TH White Limited* [2014] 1 WLR 3926; [2014] EWCA Civ 906. In that case the Court of Appeal confirmed the three stage process which is involved in considering relief from sanctions in a case to which the CPR applies. The first stage is to analyse the seriousness of the failure to comply with the rule, practice direction or order in question. The second stage is to investigate the reason why the default occurred. The final stage is to evaluate all the circumstances of the case, so as to enable the court to deal justly with the application. Whilst all the factors that would be relevant to this assessment at the third stage will vary from case to case, the majority in the Court of Appeal (Lord Dyson MR and Vos LJ) emphasised that particular weight needed to be given to the factors identified by the rule at sub-paragraphs (a) and (b). Ms Kerr Morrison contended that by way of analogy this approach should be extended to the consideration of an application under Rule 40(3) of the Rules.

32. Finally, in her submissions on the correct approach to Rule 40(3) Ms Kerr Morrison drew attention to the observations of McCombe LJ in the case of *L1 v Secretary of State for the Home Department* [2013] EWCA Civ 906, in which he noted when considering the approach taken by the Commission in that case to an application for an extension of time that the subject matter of cases of this kind, namely the appellant's entitlement to citizenship, was a matter of fundamental importance to the appellant and his personal status. That importance should be reflected in the approach taken by the Commission.

33. In her submissions on behalf of the respondent in relation to the correct interpretation of Rule 40(3) Ms Giovannetti disputes the relevance of CPR 3.9 and its associated caselaw. In her submission Rule 40(3) is a bespoke provision with its roots in the decision of the Commission in *R1*. The key considerations when applying Rule 40(3) are whether the matters relied upon by the party applying were outside their control and whether they rendered compliance impracticable.

34. In our view the construction of Rule 40(3) is not assisted by an examination of CPR 3.9. These are two quite different rules addressing different types of application and, therefore, using different parameters for their application. The language of Rule 40(3) is quite specific as to the threshold which needs to be established before the Commission could exercise its discretion to reinstate. By contrast, the language of CPR 3.9 is necessarily general, bearing in mind the breadth of the potential circumstances in which it may need to be applied. Those specific criteria identified in Rule 40(3), namely that the Commission are satisfied that circumstances outside the control of the applicant made compliance with the direction impractical, not only have their origin in the case of *R1*, but are as a result specifically designed for the purpose of considering whether the discretion to reinstate should be exercised. The

relevant considerations in applying CPR 3.9 are, no doubt for good reason, identified very broadly. It would therefore be inappropriate to interpret the far more focussed language of Rule 40(3) by reference to CPR 3.9 and its associated caselaw.

35. A further point of detailed context which supports our approach to the construction of Rule 40(3) is to note in contrast Rule 8(5) of the Rules set out below. The drafting of that rule makes specific reference to the Commission being satisfied that it would be "unjust" not to extend time. That is language which was not selected for the drafting of Rule 40(3), and we can see no warrant for the specific statutory parameters to be re-written by means of reference to CPR 3.9. What is a just outcome of an application to reinstate will be judged by reference to the specific considerations identified by the drafting of Rule 40(3). Further, in applying the provisions of Rule 40(3) we accept the submission of Ms Kerr Morrison that a very important part of the context is that a decision in relation to deprivation is one which is of fundamental importance to the individual concerned as noted in *L1*. That has been a key part of the context of our decision in relation to the merits of the application which are set out below.

The law: extension of time

36. The relevant approach to an application for an extension of time in this jurisdiction is the subject of far less controversy in this case. The starting point is Rule 8 of the Rules. By virtue of Rule 8(1)(b)(ii) of the Rules an appellant who like G7 is outside the UK has 28 days from the date of service of the decision to serve their notice of appeal. Rule 8(5) provides as follows:

    "8(5) The Commission may extend the time limits in this rule if satisfied that by reason of special circumstances it would be unjust not to do so."

37. As the Commission explained in its decision in *C11 v SSHD* (14th April 2021) at paragraphs 25 to 30, the onus of establishing that an extension of time is merited is on the applicant, in this case G7. Relevant factors for consideration in the exercise of the Commission's discretion are the length of any delay and the reasons for it together the extent of any prejudice to the respondent were the extension to be granted. On the basis that we do not have all of the material bearing upon the merits of the appeal before us, and that it would be impractical to embark upon detailed scrutiny of the parties' cases, we proceed upon the basis that G7 has an arguable case. The issues in relation to national security do not arise at this stage of the proceedings. The importance of the issue to G7, in accordance with the observations in *L1* set out above, also need to be taken into account.

Submissions and conclusions: reinstatement

38. We have set out above the submissions and our conclusions in relation to the appropriate construction of Rule 40(3). In her submissions Ms Kerr Morrison subdivided the time between 6th June 2017 when the deprivation notice was served and the present into a number of separate periods. In connection with this application she concentrated, correctly in our view, not simply on the time when G7 was in default of directions shortly prior to the case being struck out on 12th

November 2020, but also on events earlier in 2020 which provide the context for the direction that was given and the Commission's decision to strike the case out. The essence of Ms Kerr Morrison's submissions were that, as a result of G7's poor environment and conditions in Turkey and her mental health, it was simply impractical for her to continue with the proceedings and pursue her appeal. It is submitted that at this time G7 disengaged from a number of the factors which were causing stress to her mentally, in particular her family and the appeal proceedings. The problems with her mental health were supported by the expert evidence of Dr Komolafe, and the diagnosis of Generalised Anxiety Disorder together with some symptoms of major depressive disorder. These were factors outside her control and rendered it impractical for her to comply with the order that the Commission made and as a result the application should be granted.

39. On behalf of the respondent it is submitted that the application should be refused for a number of reasons. Firstly, it is submitted by Ms Giovannetti that to the extent that G7 relies upon her precarious and debilitating circumstances in Turkey these were not matters which were outside her control but were rather matters that were brought about by her own decision to leave the UK and travel to Syria. Secondly, it is clear from Dr Komolafe's report that G7 repeatedly asserted that G7's "withdrawal from the process was primarily motivated by a sense of fear of prosecution and being separated from her children". This was an entirely rational concern, unrelated to any mental health diagnosis, which was not a circumstance which engaged with the criteria in Rule 40(3).

40. Further, Ms Giovannetti relies upon the fact that G7 has repeatedly lied to the Commission in the evidence which she has provided in support of her appeal. G7 now accepts that her first witness statement was untrue in relation to when she became aware of the deprivation notice, and the contents of G72 are materially different in relation to these key facts. Ms Giovannetti submits that it is no coincidence that this new version of events emerges after the respondent made clear on 8th November 2019 that there was CLOSED material supporting the contention that G7 had had contact with her family in excess of that described in her first witness statement. Again, Ms Giovannetti draws attention to the lack of candour in G72 which is demonstrated by the further information, for instance in relation to the extent of contact between G7 and her family which about which new details are provided as to continual contact in the autumn of 2018, and the ability to access the internet from a hut when G7 was in al-Kishma. Building on her submissions about the evolution of G7's evidence and the lies she has told the Commission in her evidence Ms Giovannetti also points out the evidence of Dr Komolafe is dependent on G7 being truthful in relation to the account which she gives of her symptoms, and therefore in the circumstances little weight can be given to this medical evidence.

41. In resolving the questions which arise in relation to the application it is necessary to start with identifying the part of the chronology of this case which is pertinent to the assessment of the merits. In our view this is, as Miss Kerr Morrison submitted and as was implicitly accepted in the substance of Ms Giovannetti's submissions, not simply the period immediately prior to the strike out when the direction was to be complied with but rather a longer period which provides the context for this period and ranges

from the latter part of 2019 and through 2020 to the point when the Commission brought the appeal to an end. In this period it appears undisputed that G7 was in contact with her family in the autumn of 2019 whilst in Turkey since she accepts that in September 2019 she was in contact with her sister and this led to her decision to give instructions to lodge the appeal in October 2019. Thereafter she moved within Turkey and contact with her family and her solicitors died out.

42. In order to pursue her appeal, and avoid the consequences of being in breach of any direction which could potentially lead to sanctions, it was obviously necessary for G7 to remain in contact with her solicitors, or alternatively her family so that via them she could provide instructions to her solicitors in relation to the appeal. It is clear that she had been in contact in order to lodge the appeal and understood how to go about providing her solicitors with instructions. In February 2020 G7 states that she moved to a village in the Kocaeli province and her accommodation and circumstances were very unsatisfactory and this caused a deterioration in her mental health and well-being such that it impacted on her day to day living and ability to give instructions in respect of her appeal. This situation was coupled with the restrictions which came into force in Turkey in relation to Covid-19 and her fears of coming to the attention of the Turkish authorities. It is these matters that are relied upon by her to justify the conclusion that due to circumstances beyond her control it was impracticable for her to comply with the direction in relation to notifying the Commission that she intended to pursue her appeal.

43. At the outset we have to observe that there are serious concerns in relation to the credibility of G7 and the evidence which she has thus far provided in her appeal. In particular, the clear and obvious inconsistencies between her first witness statement and G72 are stark and serious. Whilst G7 has apologised for not being candid and telling the truth in her first witness statement the explanations for the differences which she has provided are far from compelling. We accept the submission of the respondent that it does appear that over the course of time, and in response to the respondent pointing out that there is CLOSED material which suggests she had greater contact with her family, G7's account has evolved and developed. In our view, therefore, there are serious concerns in relation to the reliability of the account which she has given. This has the potential to affect the medical evidence she relies upon to the extent that it is based upon her account. In our view these concerns, which as set out above were heavily relied upon in Ms Giovanetti's submissions, justify the conclusion that G7 has not provided a credible account and reliable evidence to satisfy the requirements of Rule 40(3). This would be sufficient to dispose of the application.

44. Notwithstanding these concerns, for the purposes of this application if we were prepared to accept that her conditions in Turkey in the first part of 2020 were poor and precarious and that this gave rise to a deterioration in her mental health at that time we still do not accept that the application is made out. The extent of the deterioration in her mental health is hard to gauge, and indeed Dr Komolafe was unable to definitively indicate its severity. Our assessment of the medical evidence taking it at face value is that G7's symptoms were at no time severe, and we accept the analysis of Professor Greenberg that on the basis the symptoms were not severe they did not prevent G7 from undertaking activities such as providing instructions to

her solicitor either directly or via her family to her solicitors in relation to progressing her appeal. We have set out above the conclusions of Dr Komolafe at some length and whilst this material suggests that G7 may not have found providing instructions easy, it does not justify a conclusion that providing them would have been impractical. If, therefore, it were to be accepted that the condition was a circumstance out of her control, in accordance with the medical evidence that her condition was at most moderate but not severe, we have reached the conclusion that this did not make it impractical for her to comply with the direction. We accept the evidence of Professor Greenberg that had the appeal been regarded by G7 as a priority she was not prevented by her mental health from giving the necessary instructions.

45. We are not persuaded that her circumstances in Turkey assist her case. There is force in the submission made by the respondent that finding herself in those circumstances was as a result of her own decision to leave the UK and travel to Syria. However, leaving to one side the breadth of that submission, the evidence makes clear that whilst G7 was in Kocaeli province, and indeed since October 2019 when this appeal was lodged, G7 had the means to contact her solicitors and her family but it appears that she chose not to do so. Indeed, in her statement she makes clear that around this time in 2020 she chose to destroy both the contact details that she had and also her mobile phone and SIM card. In our view it is clear that this severing of all contact was not a circumstance beyond G7's control, but was a conscious decision by her and very much within her control. Whilst it may have been affected by the deterioration in her mental health we repeat the conclusion which we have set out above. Our conclusion in relation to the medical evidence is that whilst it is likely the deterioration her mental health caused some impairment it was not sufficient to prevent her from taking the steps necessary to comply with the direction.

46. For these reasons we do not consider that G7 has established the grounds to justify the reinstatement of her appeal pursuant to Rule 40(3). Our conclusions in the CLOSED judgment reinforce this conclusion. In reaching our conclusions we have borne in mind the seriousness for G7 of her application being refused, but notwithstanding this for the reasons we have given her application for reinstatement must be dismissed.

Submissions and conclusions: extension of time

47. Both parties accepted that if we reached the conclusion that the application for reinstatement was rejected then the application for an extension of time within which to bring the appeal could not arise. It follows from our earlier conclusion that this application must also be dismissed. Notwithstanding this, and stating our conclusions briefly in the circumstances, even if we had been convinced that this appeal should be reinstated we would not have granted the application for an extension of time.

48. The extension would be required for the period between the summer of 2018 when G7 says in G72 that she was first told by her family that the decision had been taken to deprive her of her citizenship and 23rd October 2019 when the appeal was lodged.

It is submitted on her behalf that it would be just and equitable for an extension of time to be granted on the basis that at the time she learned of the decision and up until December 2018 she was in a war zone in Syria. Thereafter she was in a very precarious situation in Turkey having deleted her family's contacts from her phone. It is submitted, therefore, that her evidence supports the justification for the extension of time given her circumstances.

49. In response the respondent submits that G7 has not provided, even taking her evidence at face value, an adequate justification for extending time. Furthermore, the respondent points out that in addition to other family contact G7 was on her own evidence in contact with her sister G3 shortly after her arrival in Istanbul who could have provided further support for her.

50. We are not satisfied that G7's evidence provides any adequate basis to justify the very extensive extension of time which is sought in this case. Notwithstanding the difficulties of her circumstances in Syria it is clear that prior to her leaving at the end of 2018 she was in communication with her family and, as the respondent points out, her appeal could have been commenced and if necessary stayed. The material in paragraphs 50 and 51 of G72 do not provide any explanation or justification for why the instruction to her family to commence the appeal could not have been given earlier than it was. We are not satisfied that G7 has provided the evidence which would be necessary to show that it is just and equitable in this case for an extension of time to be granted. Thus, even had we been persuaded that it was appropriate for the appeal to be reinstated, we would have refused G7's application for an extension of time. This decision is supported by conclusions which we have reached in the CLOSED judgment.

Conclusion

51. The application to reinstate this appeal is refused and as a result the appeal remains struck out.