

SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SC/112/2012
Hearing Dates: 25th and 27th July 2018
Date of Judgment: 8th February 2019

Before

**THE HONOURABLE MRS JUSTICE ELISABETH LAING
Mr C. M. G OCKELTON, VICE PRESIDENT
Mr W V FELL CMG**

Between

D2

Appellant

and

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

Respondent

OPEN JUDGMENT

Mr H Southey QC and Mr E Grieves (instructed by **Wilson Solicitors LLP**) appeared on behalf of the Appellant

Mr J Glasson QC and Mr R Wastell (instructed by the **Government Legal Department**) appeared on behalf of the Secretary of State

Mr A Underwood QC and Mr M Goudie QC (instructed by **Special Advocates' Support Office**) appeared as Special Advocates

Introduction

1. This is an appeal from a decision on 20 February 2013 to refuse the Appellant's application for entry clearance. The application was based on the Appellant's article 8 rights.
2. On this appeal, the Appellant, D2, was represented by Mr Southey QC and by Mr Grieves. The Secretary of State was represented by Mr Glasson QC and Mr Wastell. The Special Advocates were Mr Underwood QC and Mr Goudie QC. We thank counsel for their oral and written submissions.
3. Because of the date of the decision which is the subject of this appeal, the old appeal provisions apply to it, that is the appeal provisions in the Immigration, Nationality and Asylum Act 2002 ('the 2002 Act') before they were amended by the Immigration Act 2014 ('the 2014 Act'); see section 2(2) of the Special Immigration Appeals Commission Act 1997, before it was amended by the 2014 Act. In short, this is an appeal on the merits. The ground of appeal, which reflects the basis of the application for entry clearance, is that the decision is unlawful because it is incompatible with the Appellant's article 8 rights. We record immediately that the Secretary of State accepts that the decision interferes with the Appellant's article 8 rights. The issue, on which the Secretary of State bears the burden of proof, is whether that interference is justified.
4. We heard evidence from the Appellant's daughter, Mr B, Mr Vatchagaev, Mr Aliyev, and NJ, a witness from the Security Service. Each of those witnesses was cross-examined. There are several witness statements from the Appellant in the bundles, and a witness statement from his wife. Neither attended the hearing in person, or remotely, for cross-examination.
5. The Commission had ordered at an earlier stage that the OPEN hearing should be in private. We explored with Mr Southey at the start of the hearing what justification, if any, there was for a private hearing. After some discussion, we decided that there was no justification for the entire hearing to be in private. We decided, instead, that the press and the public should be excluded only when two sensitive areas of the case were in issue. A press reporter, Mr Austin, was present, intermittently, during the public parts of the hearing. We also agreed that, to guard against risks to his safety, one of D2's witnesses, Mr B, should be anonymised for the purposes of the hearing. We accept Mr Southey's suggestion that when we circulate this OPEN judgment to parties in draft, he should have the opportunity to make submissions about what material should be in the OPEN judgment and what mechanism should be used for dealing with material that should not be in the public judgment.

The history of the proceedings

6. These proceedings have a long history. D2 is a Russian national from Chechnya. He was born on 17 April 1966. He was granted asylum and indefinite leave to remain ('ILR') on 30 July 2002, for reasons which, he accepts, no longer apply. He applied for naturalisation in 2007. That application has not been granted. His wife and children were naturalised on 30 October 2009. He has six children. Three are now adults. One of his adult children has a disability. There is no up-to date medical evidence about him, or evidence about any of the other children, apart from his daughter, who gave some evidence at the hearing. The family income consists of benefits and the wages earned by D2's adult daughter, about £500 per week. D2's daughter managed to save £2000 from that income to pay for flights to

Chechnya. His wife managed to save £7000 from her benefits to send to D2 in Chechnya. Nonetheless, D2 refers repeatedly in his witness statement to 'the family pool of money' without anywhere explaining its source or extent.

7. The Secretary of State excluded D2 from the United Kingdom on 11 May 2010 on the ground that his presence in the United Kingdom was not conducive to the public good because of the threat he posed to national security. His ILR was cancelled for that reason. The decision was based on an assessment by MI5. The decision was notified to D2 on 28 May 2010. He was told he could only appeal against the cancellation of his ILR from outside the United Kingdom.
8. The gisted assessment from MI5 said that Zakayev, the Chechen Prime Minister in exile, had asylum in the United Kingdom and was considered by the Russian Government to be a terrorist. The Russian authorities were dissatisfied with Zakayev's presence in the United Kingdom. They had asked for his extradition and put diplomatic pressure on the United Kingdom. The Security Service assessed that Kadyrov (the leader of the Chechen Republic) might use D2 to target Zakayev. Recently, opponents of Kadyrov outside Russia had been assassinated. Kadyrov was suspected of being responsible for at least three. D2 might have helped with one, the murder of Israilov in Austria in January 2009. The Security Service assessed that D2 had been an active participant in Kadyrov's activities since at least January 2009. OPEN source reporting from 2009 suggested that Kadyrov had a blacklist of people he wanted to be killed. Zakayev was believed to be on the list.
9. D2 appealed to the Special Immigration Appeals Commission ('the Commission'). D2 asked the Secretary of State whether she accepted that D2 was entitled to return to the United Kingdom while his appeal was pending. The Secretary of State did not. D2 applied for judicial review of that decision. D2 also applied for the hearing of his appeal to the Commission to be adjourned. The Commission dismissed the application for an adjournment on 23 March 2011. Mitting J refused the application for judicial review on 2 April 2011. The Commission dismissed D2's appeal in an OPEN judgment dated 20 April 2011, after a hearing at which D2 did not give evidence and did not put forward a positive case.
10. D2 appealed to the Court of Appeal against the refusal of the applications for an adjournment and for judicial review. The Court of Appeal allowed the appeal against the dismissal of the application for judicial review and quashed the decision notice dated 28 May 2010. D2 withdrew his other appeal.
11. MI5 provided an updated assessment on 29 February 2012. A further decision notifying D2 of the Secretary of State's decision to cancel his ILR and no longer to recognise him as a refugee was notified on 29 February 2012. D2 was given an in-country right of appeal provided he travelled to the United Kingdom in the next ten days. He would be detained on arrival. The decision was certified under section 97(3) of the 2002 Act.
12. D2 duly travelled back to the United Kingdom. He was detained. His applications for bail were refused. He eventually decided to return to Russia. He was removed on 6 October 2012, with the consequence that, by virtue of section 104(4) of the 2002 Act, his appeal was treated as abandoned. D2 then applied, on 1 November 2012, for entry clearance. That application was refused on 20 February 2013. We infer from the terms of the refusal letter that D2 submitted no evidence with the application which showed that he complied with the

relevant requirements of the Immigration Rules HC 395 as amended. The decision was certified under section 97(3) of the 2002 Act. D2 appealed to the Commission.

13. The appeal was adjourned pending a decision on an application for judicial review which D2 had issued in the meantime. Irwin J (as he then was) dismissed that application (*E v Secretary of State for the Home Department* [2014] EWHC 1010 (Admin)). D2 issued a further application for judicial review. That too, was dismissed. D2's representatives then applied for the stay on the appeal to the Commission to be lifted. Preparations were made for the eventual hearing. The appeal was first listed for October 2016, then February 2017, and then December 2017. The December 2017 hearing was adjourned at the request of the Secretary of State, after D2 served further evidence close to the hearing date. The hearing was re-listed for late July-August 2018.

The OPEN national security case in summary

14. This summary is mostly based on Mr Glasson's helpful skeleton argument.
15. The Secretary of State granted D2's application for asylum in the United Kingdom on 30 July 2002. He nonetheless re-availed himself of his Russian nationality and settled again in Chechnya. The assessment of the Security Service is that from September 2008 at the latest, D2 has been able to travel freely in Chechnya, and that he has been living there comfortably since late 2009 as an ally of Ramzan Kadyrov, the head of the Chechen government. He returned to the United Kingdom for seven months in 2012 after his appeal to the Court of Appeal. He was detained on arrival. He then returned to Chechnya and has been there ever since.
16. The Security Service's assessment is that D2 was originally aligned with the Chechen separatist movement but that by at least October 2008, he had switched his allegiance to Kadyrov. In 2008 Kadyrov began a programme to repatriate former rebels to Chechnya, using persuasion, and unlawful methods. Some of Kadyrov's opponents were murdered, including Israilov, who was murdered in Vienna in January 2009. The murders were attributed to Kadyrov.
17. In late 2008 and early 2009, D2 and Shaa Turlayev, a close associate of Kadyrov, travelled in Europe to support Kadyrov's repatriation programme. Kadyrov's methods could be violent. D2 took part in at least one attempt to return a former rebel in which violent means were used. The Security Service's assessment is that D2 had a significant role, with Turlayev, in the murder of Israilov, an operation which was ordered by Kadyrov, and that this is an insight into the extent of D2's support for Kadyrov.
18. D2 has been rewarded for his loyalty to Kadyrov and for helping the repatriation programme. He has a car with a special number plate (containing Kadyrov's initials, 'KRA'). The plates are given to people who have a position in Kadyrov's circle, it is likely, at Kadyrov's instigation. The Security Service does not accept that D2 has not been working in Chechnya, or that his only income is from his family.
19. The Security Service assesses that D2 has worked for Kadyrov since at least 2012 and is still receiving tasks from Kadyrov, and that D2 is trying to distance himself from his own role in the repatriation programme, and that he is not telling the truth about his links with Kadyrov.
20. During 2009, Kadyrov tried to get Zakayev, who is based in the United Kingdom, and is the self-styled Prime Minister of the Chechen Republic of Ichkeria, to go back to Chechnya. D2

facilitated contact between them. That attempt failed. The relationship between Kadyrov and Zakayev became worse in October 2009, after Zakayev gave an interview in a Russian newspaper. Zakayev continues to be seen by Kadyrov as a political threat. They are bitter rivals and Kadyrov continues to target him. The assessment of the Security Service is that Kadyrov is a threat to the Chechen diaspora and to Zakayev. He is still willing to use violence against opponents of his regime, and he still uses his associates, including Turlayev, to target dissidents abroad. D2 has a close relationship with Turlayev and it is possible that he continues to help Turlayev to target Chechen opponents for Kadyrov.

21. If D2 were allowed to return to the United Kingdom, that would give Kadyrov access to Zakayev. D2 would be well placed to organise or to facilitate an attack against Zakayev for Kadyrov. That makes him a continuing threat to national security. The Secretary of State accepts that Zakayev's influence has waned since 2010, and that that may reduce the threat to Zakayev. There is, nonetheless, still a real threat of assassination. If D2 were allowed to enter the United Kingdom, that would increase the risk. D2 poses a risk to the safety not only of Zakayev but of other Chechens in the United Kingdom.
22. D2 admitted to his current solicitor that he gave false evidence to the Commission in his 3 November 2010 witness statement, when he claimed that he feared persecution in Chechnya. He accepts making that claim because he did not want to lose his appeal. We also note that in paragraph 106 of his witness statement which was read back to him on 11 July 2012, D2 admitted that he did not want the United Kingdom to know he had a Russian passport, because he thought it would adversely affect his application for naturalisation as a British citizen. For that reason, he left that passport with his old friend Vatchagaev in Paris when he travelled to the United Kingdom. As we shall explain, Vatchagaev also gave evidence at the hearing.

Some observations on the evidence

23. We note that D2 accepts in his witness statement travelling to Belgium with Turlayev to talk to Ampukaev about his return to Chechnya, and that he also accepts having been asked by Turlayev to travel to Chechnya via Minsk in order to accompany Salamov back to Chechnya. Ampukaev and Salamov were both Chechen exiles. Both of these incidents, we consider, are examples of D2's taking part in Kadyrov's repatriation programme. D2 mentions that Yeshurkaev was with Salamov. Austrian prosecutors suspect Yeshurkaev of also being involved in the murder of Israilov.
24. We also note that the OPEN materials show the Austrian authorities prosecuted Chechens for the murder of Israilov and that three were convicted, including Ramzan Edilov, and were given long prison sentences. The materials also show that, some time before the murder, D2 travelled from Chechnya to Vienna with Turlayev. They were met at the airport by various Chechens, including Edilov. Edilov, like D2 had returned to Chechnya in September 2008. D2 accepts that the trip was funded by Sabsabi, the Chechen representative in Moscow.
25. Although D2 said in his witness statement that he had no advance notice of Edilov's visit to Chechnya in mid-November 2008, a download from D2's phone included a photograph, date-stamped 15 November 2008, of him and Edilov sitting in an aeroplane together. The Security Service 'strongly' assesses that D2 accompanied Edilov from Austria to Chechnya after D2's visit to Austria in October 2008.

The evidence at the hearing

The Appellant's daughter

26. The Appellant's daughter made a witness statement in 2011. She is now an adult. She told us that she did her best to help her family with financial and emotional support. Her mother speaks minimal English. Her mother gets a carer's allowance for caring for her brother who is autistic. Her mother's family buy tickets for her family to visit Chechnya. She asked rhetorically how her father could be wealthy when her mother has to buy socks for him. The separation of D2 from his family caused an impact. She was doing her GCSEs. She had to take time off school to help her mother. Her brother's autism did not help. He was affected psychologically and emotionally.
27. She was cross-examined by Mr Glasson. She was born in Chechnya. She goes there once a year, or 'at least once a year'. The longest they went for was four weeks. Her mother flew out there the night before the hearing, with the two youngest children and her autistic brother. She was asked whether her father was travelling outside the United Kingdom just before he was excluded. She said that as far as she could remember he was here all the time. She was reluctant to acknowledge, when pressed, that this might be wrong.
28. She was, it seemed to us, a little evasive when she was asked about a passage in her mother's witness statement which referred to rumours in Chechnya that D2 is wealthy. She said that 'I wouldn't like to say. Anyone can start a rumour', which suggests to us that she is aware of such rumours. The rumours were not true, she said. They were all gossip.
29. She told us that D2's brother has a farm and grows water melons. Her father helped, and was a driver. He did not have a stable income; just money for essentials from his family. He does not talk about politics. He expresses no views about Kadyrov. She was brought up in England. They do not talk about politics and are not interested. If she were interested in Chechnya she would be there.

Mr B

30. Mr B told us that he had changed his name. He submitted four witness statements in the proceedings; a bail statement dated 17 July 2012, and three further witness statements. He confirmed that they were accurate.
31. He said that D2 was a popular member of the Chechen community in the United Kingdom. D2 knew practically everyone in the United Kingdom. He visited them and helped them. He knew many more people than Mr B. He would know people here of whom Mr B had never heard. D2 would socialise with them.
32. He last saw D2 face to face when he visited him in prison in 2012. He last spoke to him (presumably remotely) this year or last year when he was interpreting some questions in the solicitor's office.
33. Mr B last went to Chechnya in 2000. He was granted asylum in the United Kingdom. He was not safe in Chechnya because of his involvement in the first and second Chechen wars. If things changed he hoped to go back, for example if he said things to support Putin or Kadyrov, he would be safe like D2. He was not ready to do that. D2 did express support for Kadyrov, like all those who went back to Chechnya. Mr B felt that D2 was not all that happy

in Chechnya. D2 was surprised that it was safe. He was expecting something bad when he first visited Chechnya in 2007 or 2008.

34. D2 occasionally visited Mr B's family in Chechnya but they did not visit him. He had not heard any rumours in Chechnya that D2 was wealthy. D2 had had a plan to collect sand from the river. Mr B had heard that that plan failed. He heard that D2's brother is a farmer, not a landowner, and that D2 helps him. He is not in Kadyrov's circle and is definitely not rich. Mr B had not asked D2 what D2 was doing; it was clear to him that D2 was not doing anything, so he did not ask him. Mr B was asked whether D2 was working for Kadyrov in Chechnya. He did not answer the question directly, but talked about a visit D2 made to Istanbul as Zakayev's representative. He went back with a message from Kadyrov, but Mr B's interpretation was that D2 was working for Zakayev, not for Kadyrov.
35. Kadyrov welcomed D2 in Chechnya. Mr B implied that by telling people there is no danger if they return to Chechnya, D2 is, to that extent, working for Kadyrov. D2 had talked to Mr B and to others and said 'Come back, it has changed'. Mr B was very happy that so many Chechens had gone back from Europe. It was good for Chechnya. But Mr B does not want to return because he knows that there is no freedom there. Everyone knows that Kadyrov is dangerous and unpredictable. He has absolute power. If he dislikes someone, there is no law or guarantee. He does not tolerate opponents.
36. He would partly agree that Kadyrov is a gangster. Kadyrov is careful dealing with Russia and Putin. He is clever. If you refuse to do what he wants in Chechnya, you go to prison and get killed.
37. D2 would describe Zakayev as not serious and a liar, but Mr B had not heard him say that Zakayev was a criminal. Zakayev would sometimes criticise Kadyrov and sometimes be in contact with him or help him, or his representative. Later when he criticised Kadyrov it was because he wanted attention, or to provoke. No one is interested in him since Berezovsky's death. No one asked his opinion about the Skripal case. Ten years ago he would have said that Zakayev was an opponent of Kadyrov but he was not seeing it now. Mr B was asked about an article from Radio Free Europe ('RFE') in February 2016. It was suggested that this showed that Zakayev was talking to the press. Mr B told us that the only contact Zakayev had was with his own website, Chechnya Press. He was not prepared to accept that RFE is independent of Zakayev's website, nor that in this article, Zakayev was criticising Kadyrov and Putin. Mr B said that Zakayev was not getting the attention he once did. He was repeating what others had said and did not have a big audience. Mr B did accept that Kadyrov would not like someone speaking out about the murder of Mr Nemtsov (as Zakayev did, as quoted in the RFE article).
38. He would not be surprised if Kadyrov's televised visit to Zakayev's family in Chechnya had been Zakayev's idea. He was reluctant to accept that the obvious inference from this visit is that it shows that Kadyrov was still interested in Zakayev. He did say that Kadyrov was 'provoked' to go there.
39. Mr B was asked about his evidence that D2 had gone back to Chechnya in 2008. He was asked whether D2 got Mr B an internal Russian passport or a passport for foreign travel. Mr B said that D2 'made him both', if he was willing to go back to Chechnya. D2 left them in Austria. Mr B did not know why. D2 told Mr B he could have them if he went to Austria. D2

told Mr B that he had left the documents in the flat of a man who was later arrested in connection with the murder of Israilov.

40. He did not ask D2 how many meetings he had had with Kadyrov. He did not imagine that Kadyrov would share any secrets with D2. It was not a big deal because Mr B was not interested.
41. Mr B was asked about the murder of Israilov. His impression was that D2 was not involved. When D2 told Mr B about it he seemed surprised. He had no inside knowledge about the murder. D2 was not an intelligent or experienced criminal who would be able to hide this.
42. Kadyrov would not dare to organise a murder in Europe without the permission of the Kremlin, though he had done so elsewhere, including in Austria. Austria was in Europe but was less important than the United Kingdom. He believed that the murder of Israilov was organised by Kadyrov. Austria and the United Kingdom are not the same thing for the Kremlin. He did not think that the Chechens or Kadyrov were involved in the attack on the Skripals. That was a special case. The United Kingdom was not immune from assassinations but 'That is not the level of Kadyrov'.

Mr Vatchagaev

43. Mr Vatchagaev gave evidence over a link from Prague. Although his witness statements were in English we were told that his English was not good enough to enable him to give evidence without an interpreter. One of the issues about Vatchagaev's evidence which was raised by the Secretary of State is whether he is sufficiently impartial to give credible expert evidence in this appeal. We record three things which, in our judgment, undermine any appearance of impartiality. First, he agreed that he was D2's 'very close friend'. Second, he admitted keeping D2's travel documents for him in Paris; we infer that these were his British travel document when D2 was travelling on his Russian passport, and his Russian passport was D2 was travelling to, or from, the United Kingdom (see further, below). Third, after the end of his evidence, when he had been thanked for giving evidence, he made a spontaneous further statement, which the interpreter was good enough to translate. In short, he thanked the Commission and told us how much D2 respected the United Kingdom. He expressed his wish, and conveyed D2's wish, that the appeal resulted in a good outcome for D2.
44. Mr Vatchagaev confirmed that his two witness statements were accurate, 'as far as he could understand the English'. We are conscious of the difficulty of giving evidence through an interpreter, but as Mr Vatchagaev's evidence proceeded, we formed a clear view that he did not want to help us by giving clear and succinct answers. He seemed to us to be very uneasy when he was asked about his views of Edilov. He did not like Edilov because he was a regular official but behaved as if he was something special. Edilov wanted Mr Vatchagaev to go back to Chechnya. He seemed reluctant to tell us, when asked, that Turlayev had been part of the mission to persuade him to return to Chechnya.
45. When asked, he seemed to wish to underplay the amount of time which D2 had spent staying with him in France, but accepted, when shown a contemporaneous document, that D2 might have stayed with him for three months at a time. D2 might have also have stayed with someone else in the outskirts of Paris.
46. Mr Vatchagaev was very uneasy when he was asked about how D2 supported himself in Chechnya. D2 did tell him he had plans to be supported in Chechnya. But Mr Vatchagaev was

trying to distance himself from that. He feared that that would end up with his going back to Chechnya and he did not want that. He then gave a series of answers which suggested that he did not want to discuss Chechnya or Chechen politics within the Chechen diaspora, despite the fact that he writes regularly about Chechnya. His articles were about history, he explained. We inferred that the source of his reluctance to discuss what D2 was doing was either that he knows, or suspects, that D2 has become close to Kadyrov's regime. He told us that D2 knows that he does not want to discuss what D2 does in Chechnya, and, as a result, D2 does not do so.

47. D2 kept travel documents with Mr Vatchagaev in Paris. He kept English documents issued to enable people to travel who are not British citizens. He could not remember if there were other travel documents; eventually he said that there 'probably' were. We detected significant unease when Mr Vatchagaev answered these questions. We infer from that unease that he remembers well that he did keep other travel documents for D2. We do not accept his evidence that he did not 'quite remember which ones'. He accepted that he kept travel documents for other Chechens. He would not say more, but a later answer about a change in the law in France leads us to infer that he was helping Chechens who had been granted refugee status in France to return to Chechnya without using their French travel documents.
48. He was keen to play down the extent to which Zakayev is an opponent of Kadyrov. He was a vocal opponent but much of it was acting to a high standard (we interpreted this is a sarcastic reference to Zakayev's former profession). Zakayev was one of the most active pro-independence politicians in Europe. He was asked why Kadyrov would visit Zakayev's family in Chechnya if Zakayev was not a threat to Kadyrov. He at first said that Kadyrov would put 'some pressure' on Zakayev but then tried to backtrack. It was Kadyrov's day-to-day business to meet people on camera. It was very important for Kadyrov to get Zakayev back to Chechnya to work for him and not against him. He did not answer why Kadyrov would want this if Zakayev was not a threat to him. He accepted that Zakayev was one of the last of Maskhadov's people in Europe (Maskhadov was a Chechen separatist). He accepted that in a totalitarian society like Chechnya, no opposing view is welcomed. Kadyrov was the kind of person who believed that if people were protesting in another country, they were doing so because they had been paid to by the government of that country.
49. Mr Vatchagaev accepted that he had said in his article that Kadyrov had spoken on Chechen television and had said that he would try to identify the relatives of the protesters in Chechnya. He said that Kadyrov wanted them to be identified 'to make pressure'. When asked whether the aim of the visit to Zakayev's family was similar, he gave a long and somewhat irrelevant answer. Kadyrov had wanted, not to threaten Zakayev, but to convince Zakayev that Chechnya was safe. It was correct that Kadyrov had put pressure on Zakayev's family to criticise Zakayev's political views. 'Making pressure' was the right expression but it was not the same as making threats. When Kadyrov makes threats 'it looks much different way'. He would not speak on camera; people would just disappear.
50. It was true that Zakayev had been accused of being a terrorist. It was not news that Russia continued to accuse him of that. Those who did not back Kadyrov were accused of terrorism. As far as he knew, Russia had specifically accused Zakayev of terrorism but he had not looked into this too closely (We thought that this was an interesting reply from an 'expert'). Whatever Zakayev had been accused of was most likely made up. He could not remember exactly what the charges were. He had known Zakayev since the 1990s. He was 'a totally

mundane honest and proper person who has never been involved in anything criminal. He took part in no battles and was badly wounded at the very start of the war. He was a very public person and could not do anything under cover'. Mr Vatchagaev was absolutely convinced that the charge was put against Zakayev by Russia in order to put pressure on him to give up.

51. Kadyrov would like Zakayev to return because Zakayev was important to Kadyrov. He did not believe that Kadyrov would be physically violent. He would threaten Zakayev in other ways by putting pressure on him. Kadyrov needed Zakayev alive, not dead.

Dr Aliyev

52. Dr Aliyev gave evidence over a video link from his office in Glasgow. His written evidence consisted of answers to a series of questions posed by his solicitors. He wished to update his answer to question 6, in which he had said that Russia would be unlikely to conduct an attack in the United Kingdom. He said, 'After Salisbury, things have changed'. He was asked about an article by Mr Vatchagaev in which he had referred to a demonstration by Chechens in Austria, Norway and Finland, which had led Kadyrov to ask the Minister of the Interior to find the protesters' relations. He had found an original source for the article. He had searched Russian and English language sources to see what happened later. It seemed that Kadyrov had threatened but had not followed through. He does not now always follow through on his threats. If he had tried to persecute the relatives in 2015, it would have been all over the news, because hundreds of people would have been involved.
53. Dr Aliyev told us that he was an expert in state-sponsored violence especially in the North Caucasus. He had written several articles on Kadyrov's policies. He followed Russian violence in the Caucasus but not elsewhere. His knowledge of the Russian legal system was limited to terrorism. He is not a lawyer. He was not able to comment in detail on Russian legislation about terrorism. He was not aware that federal law provided that terrorists can be assassinated outside Russia. He said that there was no capital punishment for terrorism and that extra-judicial killing is absolutely illegal. This answer caused us to doubt Dr Aliyev's expertise in the area he professes to specialise in. The Secretary of State produced an OPEN document, after the end of the OPEN hearing (paragraph 5.4 of Chapter 2 of Report of the Litvinenko Inquiry) which shows that there is such a law.
54. Dr Aliyev had taken Mr Vatchagaev's written evidence into account. His views were not shaped by those of Mr Vatchagaev, but he did 'absolutely entirely agree' with them. Kadyrov had unlimited power in Chechnya and had eliminated his rivals. His major rivals were assassinated in Moscow in 2008 and in Dubai in 2009. Dr Aliyev did not consider that Zakayev was an opponent of Kadyrov. Zakayev did not have any significant political support. When he ran in Chechnya in 1997, even though he was well known in Chechnya, he had very little support. Most of the population in Chechnya are under 35. They have not heard of Zakayev. Only certain elements of the diaspora accept him as their leader. It was very hard to consider him as an opponent of Kadyrov. Kadyrov has the support of Putin and despite his brutality, has absolute support in Chechnya.
55. Mr Glasson suggested that there was a difference between someone who is opposed to Kadyrov and a rival. Dr Aliyev said that judging by Zakayev's rhetoric, sometimes he praised and sometimes he criticised Kadyrov. It was hard to say if he was 100% an opponent. It depended. Dr Aliyev was referred to an article from RFE dated 19 February 2016. He

accepted that at certain periods Zakayev was one of Kadyrov's staunchest critics. Dr Aliyev believed that 2016 was one of those periods. Zakayev did that regularly, actually. He was asked who Kara Murza was. Kara Murza, we should say, was an associate of Nemtsov and of Khodorkovsky. Dr Aliyev did not know. Dr Aliyev was asked what Kadyrov's likely response to the accusation that he was behind Nemtsov's murder was. Dr Aliyev said that Kadyrov denied it. Dr Aliyev agreed that Kadyrov did not tolerate opposition. Whether he tolerated criticism depended. 'If he thinks he is a threat, he will be taken care of'. Mr Glasson asked what that meant. Dr Aliyev said, 'try to assassinate'.

56. Dr Aliyev was asked about the reference in Mr Vatchagaev's article to a visit by Kadyrov to Zakayev's family in Chechnya, and to the fact that Zakayev's tribe had been encouraged to curse him. Did that suggest that Kadyrov was concerned with Zakayev? Dr Aliyev said that, 'absolutely', Kadyrov wanted Zakayev to return to Chechnya. He said that two of Zakayev's brothers work in Kadyrov's administration. There is no persecution. He wants Zakayev to go back and work in his government. He considers that Zakayev is a very talented actor and that is what Kadyrov wants. He accepted that the visit was certainly a demonstration of power.
57. Kadyrov's concern about the demonstrations in Vienna, Oslo and Helsinki was a concern about his image abroad. The demonstrations did not affect his relationship with the Kremlin or his position in Chechnya. Dr Aliyev was pretty sure that the authorities in Chechnya know where the demonstrators' relatives are and to the best of his knowledge they had done nothing. It was very typical of Kadyrov to go on television and make threats. He threatens very often. It is part of his personality. Whether he would try to harm anyone is a different case. It would depend on how important to him they were, and on whether they would harm him. He agreed with Mr Vatchagaev that the Chechen authorities do not tolerate speaking out against Kadyrov.
58. The next topic was an article dated 22 March 2017 and entitled, 'Britain go-to-place for Russian Criminals' from 'Russia Today', a state-sponsored television station. It contained a picture of Zakayev and Vanessa Redgrave. It said that the British government sheltered Zakayev, who was a terrorist linked to the killing of four BT engineers in Chechnya. Dr Aliyev was asked whether this showed that Russia as well as Kadyrov was interested in Zakayev. Dr Aliyev said that there were still terrorism charges in Russia against Zakayev. Kadyrov offered to negotiate with Putin. Whether Russia was interested in eliminating Zakayev was a very different matter. Zakayev was very marginal, old school, 1990s. There was no interest in him from the Russian government at the moment. Dr Aliyev was pressed with the point that Zakayev was interesting enough to be named in a report from state-sponsored television. His (to our minds, unconvincing) reply was that, yes, he assumed that the media source was interested.
59. He was asked about a report dated 18 June 2018 from NTV. It was a transcript of a programme on Russia Today about a terrorist attack in Budyonnosvsk in 1995. The article said that only one person who had been involved was still living and had avoided punishment for terrorism, Zakayev, but 'Who would envy his fate?'. It referred to attempts to extradite him. We say more about this report below (paragraphs 147-8). Dr Aliyev did not know who Anatoliy Kulikov was, 'honestly'. We also found this surprising, as Mr Kulikov is described in the report as a former head of the Ministry of Internal Affairs of the Russian Federation. Dr Aliyev was asked if this article showed interest and concern by Russia. It showed some level of concern. They were 'well aware' that Zakayev had not been involved in that attack. He negotiated with the Russian state. They were well aware that he was not

involved. The article showed concern that he was at large and criticising Russia and 'occasionally' Kadyrov. Mr Glasson asked whether the reference to Zakayev's being the 'last living' person implied a threat. It seemed to us that Dr Aliyev did not really answer that question. He said that there was concern that Zakayev was still in the West. He would not say that they were concerned that he was a political figure. He was pressed, if that was so, to explain why the article had been written, and why the threat had been made. His (to our minds, unconvincing) reply was that certain mass media would pick up on any stories. He had not seen any indication that this was from the Russian government. He had not been aware of this recent article before the proceedings. He was not sure how much it related to the Russian government. There was lots of propaganda.

60. Dr Aliyev had referred to the Skripal case. He had expressed an opinion that Skripal was targeted because of his access to classified material. Mr Glasson suggested that this was speculation. He agreed, 'Absolutely'.

NJ

61. NJ made four corrections to the national security statements. She was asked for her assessment of the Appellant's reasons for not giving oral evidence at the hearing. This was that the Appellant was not at risk in Chechnya, that he had lived there safely for several years, and that he was an associate of Kadyrov.
62. The decision to exclude the Appellant had been made because the Appellant was seen as a risk to Zakayev. The decision was based on the perceived risk to Zakayev from Kadyrov, with specific reference to the Appellant; but there were other elements to the threat. Zakayev was a potential alternative viewpoint to Kadyrov. Kadyrov had made threats to him. NJ accepted that Kadyrov did not blame Zakayev for the death of his father. The replacement of Kadyrov was not the threat potentially posed by Zakayev. Zakayev did not need to be a replacement. Kadyrov could not control or eliminate this strand of opinion. That in itself was a threat to Kadyrov's position, which depends on uniting all Chechens. Zakayev was a constant reminder that Kadyrov had not succeeded in doing that. Over the years Kadyrov had used a range of strategies to undermine Zakayev. Threats was one strategy. She accepted that there was no specific example of a threat for about eight years. But the Security Service interpreted Kadyrov's visit to Zakayev's family in Chechnya as a threat. Zakayev had said that there had been pressure on his family to condemn his views, and there was an implicit threat in that. She accepted that Zakayev was the only source of that information and that that was his interpretation of what happened. She did not know whether any of his family are in Kadyrov's administration.
63. She was asked whether Kadyrov had taken any action to implement his threat in October 2010 that all terrorists would be punished. The two others to whom Kadyrov had referred had been killed. She could not answer fully in OPEN. Kadyrov and the Russian state take a long-term view. The fact that Zakayev was still alive eight years on did not change the threat Zakayev presented to Kadyrov and to the Russian state. She would not accept that Zakayev is not now a serious threat to the authority of Kadyrov. He was an element outside Kadyrov's control and a rallying point for dissident voices, especially in Europe. He has a credibility with Western governments and the media which Kadyrov does not have. He is seen in the West as a legitimate moderate figure. That made him a threat to Kadyrov's position. Zakayev's influence was waning but that did not remove the threat to Zakayev. He continued to do things which Kadyrov considered threatening or provocative. Young people in the diaspora

know about him. Of those in the diaspora, he has the highest profile. Exerting control was a key part of Kadyrov's power and that makes Zakayev such a thorn in his side and a threat to his position. NJ was asked whether Kadyrov had the strong support of the Russian state. Her answer was 'Of Putin, yes'

64. NJ accepted that Kadyrov has a solid power base and that Zakayev was no threat to his power. But Kadyrov did not tolerate opposition or criticism. Zakayev was not a replacement for him. Kadyrov's image as a strong man is important to him. In the West Zakayev would be seen as an irritant. But someone like Kadyrov does not dismiss and ignore such people. He takes action against them. NJ accepted that to take action against Zakayev, Kadyrov would need at least the tacit approval of Putin, and that any action in the United Kingdom would have very significant implications for the relationship between Russia and the United Kingdom. In so far as it is possible to understand the relevant decision-making structure, it was likely that Putin would have to indicate that he would tolerate action.
65. NJ was asked whether there was any evidence that Putin had expressed an opinion about Zakayev. She said that the Russian state under Putin had described him as a terrorist and had sought his extradition. The tone of the state under Putin had been very critical of Zakayev. He was to be brought to justice. Russia had sought his extradition from the United Kingdom some time ago, and more recently, from Poland, in 2010.
66. She was asked about the document at p 730(8) of the Secretary of State's bundle, a press release headed from the Russian Embassy headed, 'Why are Fugitives from Justice Welcome in the United Kingdom'. The list of 22 people does not include Zakayev. It was suggested to her that this showed that the Russian state was not interested in Zakayev. NJ's response was that she did not consider that the list was an exhaustive list. Most of the people on the list had been accused of financial crimes. None had been accused of terrorism. Not too much should be read into a person's omission from the list.
67. NJ accepted that there may well have been contacts between associates of Kadyrov and Zakayev's family. It was not the Secretary of State's case that the Appellant was Kadyrov's only source of information about Zakayev. The Security Service would expect Kadyrov to use a range of sources. That would not make the Appellant redundant. She did not accept that if Kadyrov had wanted to move against Zakayev he would have done so by now. A long view was taken of rivalries. Kadyrov had many strategies. A long period of inaction did not mean that he was not planning an attack. The mere fact that Zakayev was still alive was not a reasonable basis for inferring that there was no threat against him.
68. It was difficult to speculate about the balance of considerations for Kadyrov in deciding whether to carry out an attack outside Chechnya. There were political risks but the big advantage was sending a clear message to those who have fled that they are not safe. Mr Southey asked whether apart from Israilov and Yamadaev, who had been killed in 2009, other deaths outside Chechnya were attributed to Kadyrov. NJ said that other Chechens had been killed abroad since then and it was not clear whether their deaths could be attributed to Kadyrov. It was suggested that Kadyrov had stopped trying to kill his opponents. She said that she did not have a full picture about that. That was interpretation. Kadyrov's high profile opponents had been killed in other theatres or had taken roles in the regime.
69. It was suggested by Mr Southey to NJ that D2's long absence from the United Kingdom and the publicity attracted by his case reduced his capacity to help in an attack. She said that the

long time which D2 had spent in Chechnya only reinforced his association with Kadyrov. The Security Service did not suggest that D2 would physically attack Zakayev. He could do something useful, for example, by getting information from the Chechen diaspora. The fact of his alignment with Kadyrov would put him in a position to imply or to make a threat in order to get people to co-operate. It was possible that any one close to Zakayev would view D2 with suspicion but it would not mean that D2 would not be able to persuade or to coerce people to co-operate.

70. She was asked about the Salisbury attack. She was not able to comment on that.
71. It was suggested that it was unlikely that Russia would want to involve a person who was already identified as a suspect for an attack on Zakayev. She said that it can be very difficult to prove involvement as a facilitator or intelligence gatherer. He could still be used, despite being a known quantity. It is often known that people are a threat to national security. The fact that they are known (and, we understood, that they know that they are known) does not stop them from being such a threat. She agreed that other people associated with Kadyrov could help with intelligence gathering. She was asked whether the Secretary of State had taken steps to cancel the immigration status of such people. She said that she was aware that the Secretary of State had previously taken such action against such people. She did not know about the person referred to in Mr B's statement. She could not answer in OPEN whether action had been taken against people who might provide information about Zakayev.
72. Mr Southey asked NJ about the relationship between D2 and Kadyrov. The Secretary of State's case was that D2 had been aligned with Kadyrov since the autumn of 2008. She agreed that the relationship between Kadyrov and Zakayev deteriorated in October 2009 and that before that, there had been negotiations between them. She was asked why, if the relationship between Kadyrov and Zakayev improved in 2008, D2 needed to keep his allegiance to Kadyrov quiet. Her answer was that the Security Service's assessment was that D2 was doing things for Kadyrov of which other Chechens, especially Zakayev, would disapprove.
73. There were conflicting accounts of the negotiations between Zakayev and Kadyrov. D2 said that he first thought of going back to Chechnya in 2004. D2 was involved in the negotiations because he was known to have links to both sides. The connections between D2 and Turlayev were well known. The key point is that D2 was close to Turlayev and Turlayev was close to Kadyrov. NJ accepted that D2 had a good personal reason to return to Chechnya when he did (his father had had a stroke). It was significant that after his return, he did things for Kadyrov. One example was a Youtube clip of a round-table discussion involving a hundred people.
74. The assessment of the Security Service was that D2 had done things for Kadyrov, such as taking part in the repatriation programme. Israilov was the only example of the use of violence in that programme but there were other instances of D2 being involved in discussions about the return of Chechens from Europe.
75. The Youtube clip was evidence that Kadyrov claimed credit for D2's return to Chechnya. There was a number of such statements. NJ was asked whether it would undermine Kadyrov's image if D2 did not go to meetings such as that. She considered her answer and at length agreed that it could be seen in that way. She did not know how many of those at the

meetings had returned from Europe. Mr Southey suggested that not much could be inferred from attendance at the meeting. NJ accepted that point but said that attendance at the meeting was only one strand in the assessment. Part of the case was that he had lived in Chechnya since 2010 and that showed that he was not at risk from Kadyrov and could live there peacefully. Living in Chechnya on its own was not enough to show loyalty to Kadyrov. It was a factor which could point to loyalty. Others were that, given his past activities, he could live there safely. D2 had been active on behalf of Maskhadov; that suggested that he had reached an accommodation with Kadyrov, and that he was aligned to Kadyrov. She accepted that another possible interpretation was that if Kadyrov wanted to persuade people to return to Chechnya, he could not harm D2.

76. Mr Southey suggested that given his immigration status and his poverty, D2 had little choice but to live in Chechnya. NJ said that it was clear from D2's statement that he had chosen to live there. That could be why he had lived there for so long.
77. Mr Southey suggested that D2's explanation for his use of his travel documents was that it might undermine his application for citizenship if he had been seen to return to Russia. NJ accepted that D2's reasons for being less than truthful were connected with his immigration status, but they indicated a lack of openness when dealing with the authorities. Mr Southey suggested that the reference to discrepancies was just the view of one officer. NJ said that such officers had experience in interviewing people and that the Security Service gave weight to their views because of their expertise. Mr Southey suggested that the port stop happened while there was litigation about D2's immigration status, which would make him cautious about giving evidence. NJ accepted that those were the circumstances of the port stop, but that it was part of a pattern.
78. Mr Southey then said he was going to ask questions on the assumption that the Security Service had relevant information from an informer. He asked NJ whether the nature of the Chechen community was such that people would make false allegations. NJ replied that in evaluating any human source of information, Chechen or otherwise, the Security Service assesses the information in the round, by reference to a range of contextual factors. The Security Service then judges the reliability of the reporting. It was possible that false allegations had been made against D2, but the Security Service is alive to that possibility, and has robust procedures to address it.
79. It was suggested that it was in Zakayev's interest to talk up any threat to him. Her response was that the threat to Zakayev was assessed independently and that the Security Service had independently assessed that Zakayev was at risk. She could see how this argument could be made. The point, however, was that he did not need to exaggerate the threat against him, as it was genuine.
80. There was nothing wrong in principle with telling exiles that Chechnya is a nice place, and encouraging them to return. The Security Service, however, assessed that the programme used threats and, at worst, extreme violence. The Security Service assessed that D2 played a role in the murder of Israilov. NJ was asked whether the time stamp on the picture of D2 and Edilov found on Edilov's phone (15 November 2008) might be inaccurate, because electronic dates can reflect the storage date. She replied that the assessment of the date of the photograph, which was based on analysis of the data associated with the photograph, was that it was likely that the photograph was taken on 15 November 2008.

81. NJ was questioned at some length about the Austrian criminal proceedings about Israilov's murder. She accepted that D2 was not named as a defendant, and that there was no evidence that the Austrian authorities ever issued an arrest warrant for D2, or that they had sought to question him. She knew that there was a request to interview Kadyrov. She was unable to say anything about the decisions of the Austrian prosecutor. The Security Service's assessment was that D2 and Turlayev were acting together. The Austrian authorities may have had no evidence, or have thought that their case was better served by interviewing those they did interview. The picture was that the Austrian authorities considered that D2's role was less important than Turlayev's.
82. Mr Southey asked whether the Security Service had any more information than the information the Austrian prosecutor had. NJ said that it was significant that D2 went back to Chechnya in November with Edilov and that he helped Yeshurkaev to return to Chechnya after the murder. Mr Southey asked whether one reason that Turlayev was especially significant, on the Austrian prosecutor's case, was that there was a phone call after the murder. NJ said that that did not affect the Security Service's assessment that D2 was involved.
83. She was asked whether there was 'any actual evidence' that D2 knew about the plan. Her reply was that the Security Service assessed that he did know about it. D2 said in his statement that he knew that Turlayev was working for Kadyrov. He is very close to, and trusted by, Turlayev. In October 2008 it was well known that Kadyrov would resort to violence to get what he wanted. D2 also knew of the funding from Sabsabi and Kadyrov.
84. Mr Southey suggested that, on the Security Service's case, D2 had only just switched sides to Kadyrov. NJ accepted that this was a sensitive mission. Mr Southey then asked whether it was surprising that such a recent ally of Kadyrov should be entrusted with such sensitive information. NJ replied that Edilov, too, had only recently returned to Chechnya and that he was found guilty of the murder. D2's long and close association with Turlayev was important. Turlayev's recommendation went a long way. D2 had also been involved in the attempted rapprochement between Zakayev and Kadyrov, and there was an association between D2 and Kadyrov going back to the first Chechen War. Those factors meant that it was not surprising that D2 was entrusted with the plot.
85. NJ was asked whether the open arrival of D2 and Turlayev in Austria, when they were met by many people, indicated that they had nothing to hide. NJ said that Turlayev was a significant figure. He was welcomed to Austria. The pretext of his visit was that he needed medical treatment. He had no need to hide his visit because he had a pretext for it. NJ did not dispute that Turlayev needed medical treatment but she did not agree that that was the only reason for his visit. It was suggested that D2 had known Turlayev for a long time and that his actions, as described in the Austrian indictment, were consistent with helping an old friend. NJ accepted that that argument could be made on the face of it. Given the purpose of the visit, and that Turlayev needed help getting around, however, it was unlikely that the person with him did not know the purpose of the visit. D2 knew who was paying and that the purpose of Turlayev's visit was to get Chechens to return. There was no secret that Kadyrov's methods could involve violence.
86. NJ accepted that there was a difference between knowing that Turlayev was looking to persuade people to return and using violence. She repeated that Kadyrov's methods were well known and it was unlikely that violence would not be used. She accepted that no

Chechen had been killed in Europe before Israilov, but said that it was known that Kadyrov used violence against his opponents and that he had made threats to Chechens in Europe, including Zakayev.

87. She accepted that it was possible, from D2's point of view, he might have known that Turlayev wanted to persuade Israilov to return but would not have known that there was a history of violence if there was no co-operation. She did not think, however, that D2 believed that he was taking part in a lawful trip. He returned before Turlayev and took the opportunity to visit his family in London. That did not mean that he did not know the purpose of the trip.
88. The Security Service's assessment was that the visit of Turlayev and D2 was significant. The purpose of the visit was to set up an attack on Israilov. D2 was a willing participant in the repatriation programme. D2 had met those who were convicted of the murder in Austria and was likely to have been present at their discussions. There was no evidence but that was the Security Service's assessment. He knew what was going on and was likely to have been involved in discussions about it. D2 and Turlayev were in Austria as Kadyrov's associates to provide direction to Edilov and others about the murder. She could not point to any specific evidence. As well as the Austrian indictment there was D2's later association with Edilov and the repatriation of Yeshurkaev after the murder.
89. Mr Southey then asked NJ about the KRA plates. NJ said that even if Kana had given them to D2, Kana was closely tied to Kadyrov and it was unlikely that D2 would get this privilege without Kadyrov's approval. The Security Service's assessment was that it was a reward from Kadyrov; a privilege given to those who are loyal to Kadyrov. There was a photograph of the car in D2's bundle. Mr Southey suggested to NJ that the car did not look very smart. NJ did not know much about cars. She accepted that the car was not a luxury sedan. She did not dispute that there were better cars with KRA plates. However it was not the car, but the plates which were significant. Prestige came with them, and the ability to disobey traffic regulations, and they were a reward. The car and the plates were a step beyond anything which could be attributed to Kadyrov's desire to show that D2 was safe in Chechnya, having returned there.
90. NJ did not dispute, either, that D2's family sent him money. She agreed that they were not rich. She was not able to speak with assurance about the family's financial arrangements, but the Security Service's assessment was that D2 had been materially rewarded, and that car showed that. That, she said, was all that she could say in OPEN.
91. Mr Southey asked NJ about D2's travel, and the Secretary of State's case that D2 had not given a true account of his movements. She said that D2 had done a significant amount of travel on his Russian passport, rather than on his British travel document. The Security Service could not verify travel on a Russian passport and D2 had taken deliberate steps to obfuscate knowledge of his movements. Mr Southey asked her whether there was any evidence to contradict the account of his travels which D2 gave in his witness statement. NJ paused. She replied that the Security Service's assessment was that there was travel on the Russian passport which D2 had not revealed. She did not think that there was any OPEN evidence to support that assessment.
92. She did not dispute D2's evidence about the situation of his family in the United Kingdom. Mr Southey suggested that D2 had a strong incentive to avoid criminal conduct in the United

Kingdom. NJ's answer was that it was the Security Service's assessment that in the relatively short period during 2009 when D2 was in the United Kingdom before he was excluded, he had been involved in criminal activity, that is, the repatriation programme, that he had re-availed himself of his Russian nationality and lied. The fact that he had been allowed to be in the United Kingdom had not deterred him from doing things which might jeopardise his position. Nor would the fact that he would now be a 'watched person' (Mr Southey's phrase) necessarily deter him. Provided he took steps to hide what he was doing, the fact that he was known to the authorities would not prevent him from acting against the interests of national security.

93. In our judgment, NJ gave her evidence in a thoughtful and considered way. On several occasions, there were long pauses before she answered Mr Southey's questions. We interpreted those, in their various contexts, as pauses in which NJ either reviewed the available evidence, at times checking the underlying documents, or during which she considered whether or not she could refer to material in OPEN. We bear in mind that she was not the original national security witness for this case and that she has had to master the material in a relatively short time. Our overall assessment is that NJ was not defensive, or unbalanced, that she answered questions straightforwardly and that she made appropriate concessions. In particular, we were not impressed by Mr Southey's primary attack on her balance, which related to what could properly be inferred about D2's travel from the use by him of two Russian passports. In this context we note the material referred to in paragraph 20 of the fifth re-amended OPEN national security statement.

The law

The relationship between article 8, the relevant domestic legislation, and the requirements of the Immigration Rules

94. One of the alternative grounds for refusing D2's application for entry clearance was that D2 had not even supplied evidence that he satisfied the relevant relationship requirements, financial requirements and English language requirements of the relevant provisions of Appendix FM of the Immigration Rules HC 395 as amended ('the Rules'). We will not lengthen this judgment further by setting those out. It is a striking feature of this appeal that D2 has not provided evidence to fill this gap. We infer that that must be because he does not meet the relevant requirements; but we do not know by how much. Mr Southey did not suggest that D2 did meet the relevant requirements of Appendix FM.
95. Part VA was inserted in the 2002 Act by the 2014 Act. It applies when a court or tribunal has to decide whether a decision made under the Immigration Acts breaches a person's article 8 rights. A court must have regard in all cases to the factors listed in section 117B (section 117B(2)). The factors listed in section 117B include that effective immigration control is in the public interest, that it is in the public interest that those seeking to enter or remain in the United Kingdom can speak English, and that they are financially independent. Section 117B(6) provides that the public interest does not require a person's removal if they have a genuine and subsisting relationship with a qualifying child (that is, a child who is a British citizen and has lived in the United Kingdom for a continuous period of seven years or more), and it would not be reasonable to require the child to leave the United Kingdom. There is no equivalent provision about refusal of entry to such a person.

96. The facts of the appeals in *Agyarko v Secretary of State for the Home Department* 2017 [UKSC] 11; [2017] 1 WLR 823 were apparently different from this case in that the appellants had both developed their family life here with their British citizen partners while they were in the United Kingdom unlawfully (although we say more about D2's refugee status and ILR below). The facts of the appeals pre-dated the enactment of Part VA of the 2002 Act. One of the issues of principle which was considered by the Supreme Court is relevant in this case. It is, in short, what role the Rules play in an article 8 assessment. At paragraph 46, Lord Reed, giving the judgment of the Court, said that the Rules are designed to operate on the basis that decisions taken in accordance with them will be compatible with article 8 in all but exceptional cases. The authorities responsible for deciding immigration policy, within the margin of appreciation, are Parliament and the Secretary of State. It is for the courts independently to decide, on the facts of any particular case, whether a decision applying the Rules is incompatible with article 8.
97. The statement that a claim outside the Rules will only succeed in exceptional circumstances is a statement which reflects the strength of claim which will normally be required in order to outweigh the interest of a contracting state in immigration control. The ultimate question for the court is whether removal (in that case; refusal of leave to enter in this) is proportionate (paragraphs 55 and 56). The Supreme Court rejected an argument that it was not lawful for the Secretary of State to have a requirement in the Rules that a claim which did not meet the requirements of the Rules could only succeed in 'exceptional circumstances'. Properly understood, what such a provision in the Rules meant, as defined, was that leave could be granted outside the Rules when, in the circumstances, refusal would result in unjustifiably harsh consequences for the individual such that refusal would not be proportionate (paragraph 60).
98. The partners of the appellants in *Agyarko* were British citizens. The Supreme Court also considered the impact of the law of the European Union ('the EU') on the appellant's claims. The Court concluded that there was no breach of EU law if the refusal of leave to the appellants did not require their British citizen partners to leave the territory of the EU. As in *Dereci v Bundesministerium für Inneres* (Case C-256/11) [2011] ECR I-11315, the British citizens were able to stay in the territory of the United Kingdom (and thus of the EU) without the appellants (paragraphs 61-67).

Exclusion on the grounds that a person's presence is not conducive to the public good

99. We have some sympathy with the Secretary of State's initial written submission that the lawfulness of the exclusion decision was not in issue in this appeal. Mr Glasson submitted that D2 had no right of appeal against that decision and that the time for applying for judicial review has passed. Moreover, the factual basis of the cancellation of D2's ILR was that D2's presence in the United Kingdom was not conducive to the public good. D2 did have a right of appeal against that decision. He did appeal, but the appeal lapsed when he left the United Kingdom. Nonetheless, in our judgment, and as the Secretary of State's skeleton argument seems to recognise, we are required to grapple, at least to some extent, with the Secretary of State's objections to D2's presence in the United Kingdom, as those objections are, at the very least, potentially relevant to the article 8 proportionality balance.
100. Mr Southey reserves his position about the lawfulness of the exercise (or, he would argue, purported exercise) of the power to exclude in this case. In paragraphs 24-56 of its OPEN judgment in *T2 v Secretary of State for the Home Department* SN 129/2016 the Commission

considered and rejected arguments that the Secretary of State's Policy Guidance on exclusion ('the Guidance') was required to be in the Rules and that the Secretary of State had no power to direct, consistently with the statutory scheme, the exclusion of a person from the United Kingdom on the grounds that his presence was not conducive to the public good.

101. The most significant decision about the exclusion power is *Rehman v Secretary of State for the Home Department* [2001] UKHL 47; [2003] 1AC 153. *Rehman* was an appeal from the Commission. Like the appeal in this case, it was an appeal on the merits. At paragraph 26, Lord Slynn said that even though the Commission could review the facts, and the exercise of his discretion by the Secretary of State, the Commission had to give 'due weight to the assessment and conclusions of the Secretary of State, in the light of such factors as Government policy, and his means of being informed of and understanding the problems involved'. He was 'undoubtedly in the best position to judge what national security requires even if his decision is open to review'.
102. The Commission had decided in that case that the Secretary of State had to satisfy it "to a high civil balance of probabilities" that the deportation of the appellant was made out in public good grounds because he had engaged in conduct which endangered the national security of the United Kingdom (paragraph 21, per Lord Slynn).
103. Three members of the Appellate Committee, Lords Slynn, Steyn and Hoffmann, expressly adopted the reasoning of the Court of Appeal in paragraph 44 of the judgment delivered by Lord Woolf MR. Lord Clyde agreed with Lord Hoffmann's reasons. Lord Hutton agreed with Lords Slynn, Steyn and Hoffmann that the appeal should be dismissed on two grounds. The second was that he agreed that the Secretary of State was 'concerned to assess the extent of future risk and that he was entitled to make a decision to deport on the ground that the individual is a danger to national security, viewing the case against him as a whole, although it cannot be proved to a high degree of probability that he carried out any individual act which would justify the conclusion that he is a danger'.
104. In paragraph 44 of the judgment of the Court of Appeal, Lord Woolf had said that in a national security case, the Secretary of State is entitled to make a decision to deport a person 'not only on the basis that the individual has in fact endangered national security but that he is a *danger* to national security. When the case is being put in this way, it is necessary not to look only at the individual allegation and ask whether it has been proved. It is necessary to examine the case as a whole against an individual and then ask whether on a global approach, that individual is a danger to national security, taking into account the executive's policy with regard to national security. When this is done, the cumulative effect may establish that the individual is to be treated as a danger, although it cannot be proved to a high degree of probability that he has performed any individual act which would justify this conclusion...He is not in the same position as a British Citizen. He has not been charged with a specific criminal offence. It is the danger which he constitutes to national security which is to be balanced against his own personal interests...'
105. Lord Slynn said, at paragraph 22, that where 'specific acts which have already occurred are relied on, fairness requires that they should be proved to the civil standard of proof. But that is not the whole exercise. He [sc the Secretary of State]... is entitled to have regard to all the information in his possession about the actual and potential activities and connections of the person concerned. He is entitled to have regard to precautionary and preventative principles

rather than to wait until directly harmful activities have taken place, the individual in the meantime remaining in the country. In doing so he is not merely finding facts but forming an executive judgment or assessment. There must be material on which proportionately and reasonably he can conclude that there is a real possibility of activities harmful to national security but he does not have to be satisfied, nor on appeal to show, that all the material before him is proved, and his conclusion justified, to a "high civil degree of probability". Establishing a degree of probability does not seem relevant to the reaching of a conclusion that there should be a deportation for the public good'. At paragraph 23, he said that 'specific acts must be proved, and an assessment made of the whole picture and then the discretion exercised as to whether there should be a decision to deport...'

106. Lord Steyn dismissed the appeal for the reasons given by the Court of Appeal, the reasons given by Lord Slynn and 'for my own brief reasons' (paragraph 32). At paragraph 29, he said that the premise of the appellants' submission that the civil standard of proof applied to the Secretary of State and to the Commission was that 'even if the Secretary of State is fully entitled to be satisfied on the materials before him that the person concerned *may* be a real threat to national security, the Secretary of State may not deport him'. He said, 'That cannot be right. The task of the Secretary of State is to evaluate risks in respect of the interests of national security'. He then quoted paragraph 44 of the judgment of the Court of Appeal. He added that 'the tragic events of 11 September 2001 in New York reinforce compellingly that no other approach is possible'.
107. Lord Hoffmann summarised, at paragraphs 46-48, the three errors of law which the Court of Appeal detected in the approach of the Commission. At paragraph 49, he said that on each, the Court of Appeal was right. In paragraph 48, he described the third error. This was that it was wrong to treat the Secretary of State's reasons as 'counts on an indictment and to ask whether each had been established to an appropriate standard of proof...'. The question was not simply what the appellant had done, but whether the Home Secretary was entitled to consider, on the basis of the case against him as a whole, that his presence in the United Kingdom was a danger to national security. When one is concerned simply with a fact-finding exercise concerning past conduct such as might be undertaken by a jury, the notion of standard of proof is appropriate. But the Home Secretary and the Commission do not only have to form a view about what the appellant has been doing. The final decision is evaluative, looking at the evidence as whole, and predictive, looking to future danger'. He then quoted part of paragraph 44 of the judgment of the Court of Appeal.
108. The Commission's full jurisdiction to decide questions of fact and law had to accommodate 'certain inherent limitations in their power and within the appellate process' (paragraph 49). The Commission was not entitled to differ from the opinion of Secretary of State on the question whether an activity would be contrary to the interests of national security (paragraph 53). The Commission had three important functions. First, the factual basis for the executive's opinion must be established by evidence, although the Commission's ability to differ from the Secretary of State's evaluation might be limited by 'considerations inherent in the appellate process'. Second, the Commission could hold that the Secretary of State's opinion was irrational. Third, an appeal might turn on an issue, such as article 3 risk on return, which is not in the exclusive province of the executive (paragraph 54).

Submissions

109. Mr Southey submitted that the Secretary of State had not discharged the burden of showing that the admitted interference with D2's article 8 rights was justified. The key national security allegations had not been substantiated. The Austrian indictment in the Israilov case made no allegations against D2. There was 'no real evidence' that D2 knew about the plan to kill Israilov. D2 had recently switched sides in October 2008. He had a legitimate reason for visiting Austria, to look after Turlayev, who needed treatment. The Austrians had investigated carefully. They did not want D2 as a witness. It was speculative to conclude that D2 knew about the plot. According to the Austrian indictment, the planning did not begin until 15 December 2008, which was after D2 had left Austria.
110. Even if D2 was involved in the murder of Israilov, it did not follow that there was any real risk to Zakayev. On the Secretary of State's case, the relationship between Kadyrov and Zakayev deteriorated in 2009. Nothing had happened since then. NJ had accepted that others could be used to provide information about Zakayev. If Kadyrov had really wanted to take action he would have done so by now. It was, again, speculative to say that the authorities take a long view. There was an obvious political cost to action in the United Kingdom and it would only be taken if there were a pressing need. Zakayev was not a threat to Kadyrov and Kadyrov needed him to return safely to Chechnya, to show that he could unite the Chechen people. The Secretary of State accepted that Zakayev's influence was waning. He was yesterday's man. The youthful population of Chechnya had never heard of Zakayev.
111. Kadyrov was secure because he had shown his value to Putin. There was no evidence of recent threats to Zakayev. It was unlikely that Putin would permit an attack on Zakayev in the United Kingdom. Even if that was wrong, there was nothing to suggest that D2 would personally be involved in any violence. D2 had been identified in the Russian media as the appellant E1. That publicity made it unlikely that he would be involved in anything untoward. Those close to Zakayev would be cautious about him. The last person Zakayev would want near him would be D2. If Kadyrov wanted to attack Zakayev he would be foolish to use a person who had been identified as Kadyrov's agent
112. Mr Southey urged us to accept that D2's evidence in his various witness statements had been full and frank, and included material which could be used against him. He had been open about his contacts with Kadyrov. He accepted in paragraph 56 of his statement that Kadyrov had told him to kill Zakayev; albeit that he did not take that seriously. If he did so, that supported his credibility. He had been open about his travel to Chechnya, his association with Edilov, his travel with Salamov, and his false claims in his first appeal. The fact that he had not given evidence should not be held against him. D2's failure to give evidence could not prove the Secretary of State's case. He also urged us to accept the evidence of Dr Aliyev and of Vatchagaev. Zakayev was a forgotten man, and no real threat to Kadyrov. Kadyrov had invited him back to Chechnya.
113. By contrast, he submitted that NJ's evidence should be given little weight. Her evidence was not balanced. He suggested that this was shown by NJ's insistence, despite not being able to point to any 'real evidence' to that effect, that D2's account of his movements in 2009 was not complete. There was also a real problem in the Secretary of State's case about Israilov, if the Austrian indictment was the only material. The Austrian prosecutor was not interested in D2, but the Secretary of State assumed that D2 knew about the plot. The Secretary of State's evidence was not expert evidence and it lacked balance. The Secretary of State's working theory did not make sense, whereas D2's account did. There was very little to support the

Secretary of State's case that D2 had had any material benefit. The car was not a luxury car, and D2's family were sending him money from the United Kingdom.

114. If the Secretary of State's case was based on the evidence of an informer and that informer was Zakayev, it should be treated with great caution.
115. We pressed Mr Southey about his article 8 case. In summary, it was that the United Kingdom was the base of D2's family, who all have settled status in the United Kingdom. They have lived here for years. D2 had travelled to and from that base. That pattern had been brought to an end when the Secretary of State decided to exclude D2 from the United Kingdom. If that decision was based on a flawed national security case, the appeal should succeed, as it was not proportionate to exclude D2, and thus to interrupt the pattern of his family life before he was excluded. The eight months or so which D2 had spent in detention in the United Kingdom showed his commitment to his family.
116. D2 had been extremely frank in his recent witness statements.
117. Mr Glasson relied on *Rehman*. The Secretary of State was entitled to take a preventive and precautionary approach. The test was not the present risk to national security, but the future risk. The Secretary of State was entitled to take the material as a whole, and form an overall view. The Secretary of State was not required to show that D2 had damaged national security. NJ had given balanced evidence. Mr Southey's first example of lack of balance was unfair as NJ had made it clear that there were limits on what she could say in OPEN.
118. D2 could not be trusted and was not credible. He had admitted attempting to deceive the Commission in support of his previous appeal. The assessment of the officer who interviewed him during the port stop on 7 March 2012 was that D2 was not being candid. There was a consistent pattern of selective information to the authorities. In any event, it was obvious that his links to Kadyrov would enable Kadyrov to put pressure on him. He had worked for Kadyrov in the past in support of Kadyrov's brutal repatriation programme. He was likely to accept tasks in the future. He would pose a risk to national security and to other Chechens. It was significant that neither Mr B nor Vatchagaev had asked D2 what he is now doing in Chechnya.
119. D2 had lied repeatedly to the immigration authorities and to the Commission. In 2010 he had denied, to both, that he had been to Chechnya. Mr Glasson gave examples of lies from D2's witness statement. He had lied about a visit to a girlfriend in Paris. He had failed to declare income to the benefits agency. He travelled by an indirect route to prevent the United Kingdom authorities from knowing that he had a Russian passport. He may well have had Kadyrov's phone number (see the text message that he apparently sent to Kadyrov in 2009; a matter about which we have no doubt that he would have been cross-examined had he given evidence), and his own account of calls between him and Kadyrov in 2004 and 2005).
120. Mr Glasson invited us to reject D2's reasons for not giving evidence. D2 had been given permission to engage in the appeal. His refusal to be cross-examined was a self-serving attempt to avoid scrutiny. He did not invite us to draw an adverse inference from D2's decision not to give evidence, but submitted that it was relevant to the weight we should give the material in his witness statements.

121. Mr Glasson submitted that the materials, including passages from the evidence of Vatchagaev and Mr B, showed that Zakayev was still a potent political figure, and that Kadyrov did not tolerate opposition of any kind. He pointed to an article in 2016, which reported a threat by Kadyrov to get the Minister for the Interior to find all the relations of those who had protested against him in Europe. He relied on a televised visit by Kadyrov to Zakayev's relatives in Chechnya. He also drew our attention to the hour-long programme by NTV and the article published by RFE.
122. Zakayev, by not being under Kadyrov's control, and by being an alternative viewpoint in the Chechen diaspora, was a threat to Kadyrov precisely because he showed that Kadyrov had not succeeded in uniting all the Chechens. Zakayev was a rallying point for dissident voices, especially in Europe. If there was a risk to Zakayev from Kadyrov, it must be higher if D2 were in the United Kingdom.
123. The article 8 claim was weak. D2's own witness statements showed that he had chosen to go to Chechnya and wanted to establish himself there, and that his family should visit him there. He had spent limited time in the United Kingdom before he was excluded. His family visited him in Chechnya at least once a year for four weeks at a time. He preferred life in Chechnya to life on benefits in the United Kingdom. He wanted to put down roots in Chechnya. There were so many opportunities in Chechnya. It was only in 2010, when he realised that his children would be at a disadvantage in Chechnya and his business had failed, that he had an apparent change of heart, which happened to coincide with his exclusion. The Security Service assessed that he was not being truthful about his financial position in Chechnya. It was striking that both his wife and daughter had heard rumours when they were in Chechnya that D2 was rich. On D2's own case, the interference with family life was not significant.
124. D2 did not meet the requirements of the Rules. Even if there were no national security case, there was no special feature of this case which made it appropriate for leave to be given on article 8 grounds outside the Rules.
125. If the proportionality balance was relevant, the interests of national security should be given great weight. They displaced the limited interference with D2's article 8 rights. It was clearly contrary to public interest to admit an undeclared henchman of Kadyrov to the United Kingdom. The refusal of entry clearance was the best and most appropriate way to contain the risk.

Discussion

126. We have set out the materials and submissions at some length. We can state our conclusions succinctly.
127. It is common ground that D2 does not meet the requirements of the Rules which were in force when he applied for entry clearance. In *Agyarko* the Supreme Court noted that the Rules are drafted on the assumption that decisions taken in accordance with them will be compatible with article 8 in all but exceptional cases, and, it seems to us, accepted that that assumption was correct. The first question for us is whether there is any exceptional feature of this case which shows the refusal of entry clearance results in such unjustifiably harsh consequences for D2 that the refusal of entry clearance was not proportionate. We leave out of account the national security case at this stage. In approaching that question we consider that the first issue is the extent of any interference. We accept Mr Southey's

submission that the greater the interference with article 8 rights, the weightier any justification for it must be.

128. We consider that the best evidence of the extent to which D2 wished to enjoy family life in the United Kingdom is the pattern of life he adopted before his exclusion. He travelled outside the United Kingdom a good deal, wished to put down roots in Chechnya, and, in 2009, spent a total of 70 days in the United Kingdom. It is clear that despite their apparently straitened financial circumstances, D2's family are able to visit him for at least four weeks a year in Chechnya. We explored with Mr Southey, in the course of his reply, whether D2's family have Russian passports. We infer, on the balance of probabilities, that they do.
129. On that basis, D2's exclusion from the United Kingdom, which in part underpins the refusal of entry clearance, has caused some interference with his preferred model of family life. But that interference is limited. It is against that interference that we balance, in the first instance, the public interest factors which have been relied on by the Secretary of State.
130. There are various factors, apart from the national security case, which weigh against D2 in the proportionality balance. The starting point is that D2 did not meet the relevant requirements of Appendix FM, which represents the Secretary of State's policy assessment, to which we should defer, of where the line should be drawn, compatibly with article 8, in the general run of cases. Second, in order to succeed outside the Rules, an article 8 application must be based on clear, credible and up-to-date evidence about the situation of the family in question, without which no tribunal can assess the proportionality of any interference. There is very little such evidence here. Three of D2's children are no longer under 18. We know nothing about the three children who are under 18, apart from their names and ages. We heard submissions about D2's disabled son. But there is no up-to-date medical, or other professional, evidence about him. There is thus no independent expert evidence about his physical and intellectual difficulties, leaving us in some doubt about whether those difficulties were being accurately described by D2's daughter. We have no evidence on which to base any assessment of the effect of D2's exclusion on members of his family, other than the evidence of his daughter, about which we had reservations (see paragraphs 27 and 28, above). Third, if the Secretary of State had known the true facts, she would have been entitled to revoke D2's ILR and refugee status sooner than she did. He now admits that he lied to the Commission in his witness statement of 3 November 2010 when he said he feared persecution in Chechnya. It is clear that D2 had re-availed himself of his Russian nationality, at the latest by September 2008, by using his Russian passport to travel, and that he no longer had any fear of being in Chechnya. Moreover, it is also clear, on his own admission, that he used indirect travel routes in order to conceal from the United Kingdom authorities his use of his Russian passport, and the fact that he was safe in Chechnya, because he feared those factors might affect his application for naturalisation. We therefore consider that the parallel with the facts of *Agyarko* is greater than might appear at first glance. For some time before the decision excluding him from the United Kingdom, D2's ILR and refugee status were based on a false premise, and it seems to us, his immigration status was, in reality, precarious.
131. We are bound to consider, also, the factors listed in section 117B of the 2002 Act. D2's duplicitous actions have undermined effective immigration control. D2 speaks 'hesitant, faltering English' (see paragraph 4 of the statement of Anita Vasisht of 5 December 2017), such that he needed an interpreter to be present when his solicitor went to Moscow to take instructions from him in June 2016. This supports the Secretary of State's conclusion (based

on the lack of evidence from D2 that he did so) that D2 did not meet the English language requirement of Appendix FM of the Rules. On his own case he is very badly off, with few visible means of support; any resources which he does have appear to come from Kadyrov, on the Secretary of State's case, and to depend on Kadyrov's favour. He is not, on any view, financially independent. This supports the equivalent conclusion in the refusal of entry clearance, again based on the fact that D2 had supplied no relevant evidence.

132. We do not consider, taking these factors together, that the consequences of the refusal of entry clearance are unjustifiably harsh for D2. The evidence is wholly insufficient to show, in the circumstances of this case, that the separation of the family is a disproportionate interference with D2's, or with his family's, article 8 rights. He is not seeing as much of his family as he did before he was excluded. But that is partly a result of two choices: his to settle back in Chechnya and theirs not to return to Chechnya. As we have mentioned, there is no up-to-date material about D2's children in the bundle, but it is clear from such old documents as there are that they were brought up speaking Chechen and Russian. We infer that D2's family, as they are quite entitled to, prefer life in the United Kingdom without him to life in Chechnya with him. We reject the submission that the mere separation of D2 from his family is a disproportionate interference with his, or with their, article 8 rights.
133. This conclusion means that we do not need to consider whether the OPEN national security case would have enabled the Secretary of State to show that the refusal of entry clearance was proportionate, if we were to assume, contrary to this conclusion, that the materials relied on by D2 might have enabled us to reach a provisional view that the interference with D2's article 8 rights was such as to require greater justification than could be provided by the factors to which we have referred above. In case our decision on this issue is wrong, and because considerable attention was directed towards it during the hearing, we will now examine the national security case.
134. The starting point is the decision in *Rehman*. It seems to us that many of Mr Southey's question to NJ, and many of his submissions, were based on the wrong premise that in order to justify a significant interference with D2's article 8 rights, the Secretary of State had to prove to us, on the balance of probabilities, with 'actual evidence', that D2, was, for example, involved in the killing of Israilov, or that D2 was working for Kadyrov, or that Zakayev is in fact at risk from Kadyrov. *Rehman* shows that that is not the right approach. We are reviewing the Secretary of State's assessment of what the interests of national security require. We are not, on this part of the case, evaluating, as a first instance tribunal, the evidence of live witnesses and other primary sources of evidence in order to find facts on the balance of probabilities about the various allegations which make up the national security case. We are reviewing the Secretary of State's assessment of the future risk posed to national security by D2, on the basis of all the strands of intelligence, and not deciding, one by one, whether the Secretary of State has proved counts on an indictment. We are making our own decision but we must give appropriate deference to the Secretary of State's assessment of that future risk and to his judgment of what the interests of national security require. In doing so, we have to bear in mind that the Secretary of State is entitled to take a preventive and precautionary approach. That does not prevent us, of course, from making findings on the balance of probabilities where the relevant material enables us to do so, but we are not required to make such findings on each strand of the national security as a precondition of upholding it.

135. We will consider, by way of example, three aspects of the national security case. Before we do so, however, we address D2's credibility. We accept Mr Glasson's submission that there are many occasions on which D2 has lied, or concealed the truth, usually to gain, or to preserve, an advantage of some kind. At times he has later conceded that he was untruthful. We consider that he has only done so where he knows, or suspects, that his lie has either been exposed, or that there is a risk that it will be exposed. An example of this is his concession that he lied to the Commission in his 2010 witness statement about his fear in Chechnya. A further example, which we consider below, is his explanation for having a car with KRA number plates. A similar analysis applies, in our judgment, to apparently candid admissions against interest. We consider that those admissions are tactical and have been made because he suspects that there may be some coverage of his use of telephones, and do not come from any genuine candour. A further hole in D2's credibility is his evasiveness, noted by many different people who have asked him about it, on the topic of money. He has travelled widely at various times, and his large family fly regularly from London to visit him in Chechnya. He has had no visible means of support at any stage, apart from his mysterious 'family pool of money'. This evasiveness supports an inference, which we have drawn, that he does have a regular source of income, but does not want the authorities to know what it is. It supports a further inference, which we have also drawn, that that source is Kadyrov. Those inferences are to some extent supported by the references in his wife's witness statement and daughter's evidence to rumours in Chechnya that he is rich.
136. We make clear that our view of D2's credibility is not based on his failure to give evidence. However, his failure to give evidence damages his case in two ways. First, it means that he has not been able to answer the obvious questions to which parts of his case give rise and about which Mr Glasson made it clear that he would have cross-examined him. Second, it means that where material in his witness statement is self-serving and is not corroborated by other material, we can give it little weight. We also make it clear that we accept Mr Southey's submission that D2's failure to give evidence does not prove the Secretary of State's case. Nor does his lack of credibility prove the Secretary of State's case, although it is a factor which we have taken into account in considering whether or not the Secretary of State has made out the OPEN national security case.
137. We deal first with the case about the murder of Israilov. It is not for us to decide whether or not the Secretary of State has 'substantiated' any accusation about D2's involvement in the murder of Israilov with 'real evidence'. The question, rather, is whether the Secretary of State was entitled to conclude that the strands of OPEN intelligence about the murder of Israilov indicate that D2 is a future risk to national security, adopting a precautionary approach. We consider that she was.
138. D2 accepts that he went to Vienna in October 2008 with Turlayev. D2 accepts that he is close to Turlayev and that he knew that Turlayev worked for Kadyrov in negotiating returns to Chechnya. Turlayev is assessed to be a close associate of Kadyrov. They both worked for Maskhadov, D2 as Turlayev's subordinate. D2 accepts that his flights to and from Vienna and likely hotel were paid for by Sabsabi, who, he knew, was the Chechen representative in Moscow, and who, it is assessed, is a close ally of Kadyrov. We consider that the Secretary of State was entitled to conclude that this trip, paid for as it was, was, at least in part, connected with Kadyrov's repatriation programme. It is also relevant that D2 has not given an accurate account of his travel in the relevant period. It is significant that D2 accepts travelling from Minsk back to Chechnya (probably in late January 2009) with Yeshurkaev,

who was suspected by the Austrian prosecutor of being involved in Israilov's murder. Open source reporting referred to in the fifth re-amended national security statement, paragraph 26, refers to Yeshurkaev's information to the Austrian authorities in October 2009 that two 'high-level' Chechen representatives were coming to Austria, and to the link created by the Austrian indictment between Yeshurkaev and the surveillance of Israilov before the murder. It also seems that D2 has lied about contact with Edilov between mid-November 2008 and January 2009, as his account in his witness statement that he unexpectedly saw Edilov in Chechnya is contradicted by a photograph, date stamped 15 November 2008, and downloaded from D2's phone, which shows D2 sitting next to Edilov on a plane. D2 has not explained this photograph, and we have no doubt that, had he given evidence to us, Mr Glasson would have cross-examined him about it. Edilov was convicted and sentenced to life imprisonment for Israilov's murder.

139. We have summarised the OPEN strands of intelligence connecting D2 with the murder of Israilov. We are not in a position to make findings on the balance of probabilities about D2's role in the murder. We do, however, consider that the Secretary of State was entitled to conclude that these strands connect D2 in some way, as someone who was involved in a task set by Kadyrov, both to the preparations for the murder, and to an operation to help Yeshurkaev evade justice. That is so even though D2 was not present when the Israilov was killed, and despite the fact that he was not named in the Austrian indictment as a suspect, or as someone the Austrian authorities wanted to question.
140. We turn, second, to the risk to Zakayev. In our judgment the recent OPEN materials entitled the Secretary of State to conclude that there is a risk to Zakayev from the Russian state. We consider that there is a clear link between the agenda of the Russian state in this regard, and that of Kadyrov. Putin and Kadyrov need each other (for different, but linked, reasons). Kadyrov is not, in every sense, Putin's junior partner, as his control of Chechnya is central, and essential, to Putin's policy for Chechnya. If reporting that the murder of Nemtsov in Moscow was ordered or facilitated by Kadyrov is true, that point is underlined; but the point is valid even if the report is not true. That policy, and with it, Putin's prestige, would be damaged if Kadyrov's control were undermined. Kadyrov does not tolerate dissent. We accept NJ's evidence that Zakayev is a threat to Kadyrov because he is a moderate focus for anti-Kadyrov feeling among the Chechen diaspora, and an alternative voice to Kadyrov.
141. We consider that the press release from the Russian Embassy in London on 22 March 2017 is revealing. The masthead photograph was of Zakayev, next to Vanessa Redgrave and flanked by two British policemen. The headline was 'Britain the go-to-place for Russian criminals'. The text said that over 50 Russian 'criminals', who were wanted on 'various charges' were being sheltered by the British government. The article accused the British government of hypocrisy for raising concerns about the rule of law in Russia. The British government had refused to extradite 51 Russian criminals between 2002 and 2016. Extradition requests were accompanied by detailed information and guarantees of the criminals' rights. The majority of those whose extradition was refused were financial criminals. The article then said, 'The British government is also still sheltering ...Zakayev, the former head of the Chechen Republic of Ichkeria (ChRI) who is wanted on terrorist charges in Russia'. The article went on to describe the ChRI as a 'terrorist organisation that was linked to the kidnapping and beheading of four British telecommunications engineers in 1998'. The article quoted from the widow of one of the victims speaking to RAI news, and saying that the United Kingdom allowed Chechen terrorists to enter the country and claim asylum.

142. We do not consider it likely that this article, with its emphasis on Zakayev, containing as it does a recent photograph of him and an older photograph, dressed in a way that invokes a stock image of a terrorist, and with its references to the fact that he is accused of terrorism, and with its strong implication that Zakayev is still wanted in Russia, would have been published as recently as it was if Zakayev was yesterday's man, and of no significance to the Russian state.
143. This article also provides a context for an article dated 17 March 2017 on which Mr Southey relied. This is headed 'Why are Fugitives from Justice Welcome in the United Kingdom'. It says that corrupt people are fleeing Russia and specifically setting their sights on the United Kingdom. It refers to 51 people whose extradition Russia has sought, unsuccessfully, between 2002 and 2016. It lists 22 by name, including Glushkov, who is now dead. Mr Southey relied on that list because it did not include Zakayev's name. We consider that Zakayev's omission from that list is explained, not by his lack of interest for the Russian authorities, but by the fact that it is a list of financial criminals, and by the fact that it was followed very closely by the article to which we have just referred. Although the articles were published by different outlets, we infer that their release was co-ordinated, an inference which is supported by a hyperlink in the second to the first. The theme of the first article is the impunity of 22 financial criminals who are part of the list of 51 people whose extradition has been refused. Any reference to Zakayev would have been incongruous with that theme. We consider that the principal theme of the second article, which recognises explicitly that most of the 51 are accused of financial crimes, is Zakayev. The only other person who is named is Khodorkovsky. The absence of Zakayev's name from the first article is not significant; but his prominence in the second (which contains two photographs of him) is. He is not one of a crowd of 22 in the second article, but one of the only two individuals who are named, and the only one who is depicted (twice).
144. On 18 June 2018 a news item was transcribed from NTV. Its subject was 'Ahmed Zakayev's role: how a terrorist has turned into a "political dissident" '. The article referred to the commemoration of a terrorist attack in Budyonnosvsk in 1995, led by Basayev. More than 1500 people were taken hostage. NTV journalists witnessed the tragedy. The organisers of the attack, 'including Basayev and his patrons have been paid back over the years. Out of the former leadership of so-called Ichkeria, who took part in the negotiations with Moscow, only one person is still living and has avoided punishment for terrorist offences: Akhmed Zakayev, who has obtained asylum in Britain. However, who would envy his fate'. This was Zakayev's first appearance in the press as a former actor. He had played many roles. He returned to Chechnya and put a black keffiyeh on his head and began playing a new part. The transcript accuses him of ordering the execution of Russian prisoners and shooting at prisoners himself. He shot off the fingers of one. There is then a graphic quotation, presumably from an eye witness. The piece also refers to the kidnapping, on Zakayev's orders, of two Orthodox priests in 1996 and their torture and forced conversion to Islam.
145. The evidence against Zakayev was considered unconvincing in the United Kingdom. He had 'the status of a refugee' conferred on him. He then played a new role as a respectable dissident, with Vanessa Redgrave in the supporting role as 'patroness of the bearded Chechen'. He was living off someone else's money and leading a campaign against the Moscow regime. His crimes and contact with Al Qaeda seem a lesser evil in the West. The piece then quoted Kulikov, a former head of the Ministry of Internal Affairs of the Russian Federation, speculating about who was funding Zakayev. In 2001, Russia issued an

international arrest warrant for Zakayev. 'However, by 2018, as a matter of fact, he is the last of those Chechen terrorists who has not been killed or is not in prison.' Mikhail Chernov, a 'political expert' is quoted. He does not think Zakayev is contented or successful. 'If somebody wants to use him now, then I would only be sympathetic. Because it is simply dangerous'. The piece ends with the sentence, 'On the other hand, no one knows which role will be Akhmed Zakayev's last'.

146. This article is very recent. It was published after the attack on the Skripals, who, like Zakayev, had the protection of the United Kingdom Government. We consider that the overall tone of this piece conveys a sense of menace towards Zakayev. It refers to his unenviable fate, twice to the fact that he is the only participant in an attack who is still living and has avoided punishment, and refers ominously to his 'last role'. Its tone is also deliberately inflammatory. It gives a graphic description of Zakayev shooting off the fingers of a Russian soldier and refers to his orders to execute Russian soldiers and to the kidnap and torture two Orthodox priests, and their forced conversion to Islam. It insinuates that Zakayev is linked to Al Qaeda. At the same time, it denigrates him by referring repeatedly to the various roles he has played, and to his association with Vanessa Redgrave, and by implying that he is being paid by someone. It is given colour by direct quotations, apparently from eye witnesses, and experts. This piece is all the more menacing if, as Vatchagaev and Dr Aliyev both said in their evidence, any charges that Zakayev has been a terrorist are false. That menace increased further by the enactment by the Duma in 2006 of a law which permits the killing of 'terrorists' abroad.
147. If Zakayev is a spent force and a forgotten man, this last piece is inexplicable. In our judgment, rather, it suggests strongly that the Russian state has a lively and hostile interest in Zakayev, and wishes it to be understood publicly that he will not be safe, even as a refugee, indefinitely. These reports are, in our judgment, of a piece with Kadyrov's televised visit to Zakayev's relatives in Chechnya, and the pressure put on his clan to curse him in the Mosque. In our judgment that visit was an event which was intended publicly to threaten Zakayev. That is so whether or not Zakayev's associated reporting is true. A recent public threat of that kind is inconsistent with a view that Zakayev is yesterday's man and of no interest to the Russian state/Kadyrov, whose interests, we consider, are in this respect aligned. We also consider, as Dr Aliyev recognised in his addendum to his witness statement, that the attack in Salisbury is significant. In our judgment, it shows that the likelihood of an attack in the United Kingdom cannot easily be discounted, despite the political consequences which it, and the murder of Litvinenko, have caused. It all depends on the precise balance of the advantages and disadvantages (including overt messaging) which it is calculated could flow from such an attack. We note that on 27 November 2017 the Guardian reported that Kadyrov had said that Putin was his 'idol', that he was ready to die for him, and to fulfil any order of his.
148. The third topic we consider is the OPEN material about the number plates of D2's car. There is open source reporting attached to the sixth OPEN national security statement about the significance in Chechnya of number plates with the initials 'KRA'. One item says, 'In Grozny, luxury cars speed around with the special plate "KRA", an abbreviation for the President's full name...Their owners belong to a select circle of people not subject to the highway code – or any other rules. Rules are for ordinary mortals who are left with nothing to find comfort in but tales of disgraced favourites, expropriated ministers, and thrashed officials' (Respondent's bundle, p 471). Another piece says that if you see cars with that number plate

'it is better not to take photos, say locals' (Respondent's bundle, p 474). A third says that Kadyrov's 'closest allies' drive 'luxury sedans with tinted windows' and these number plates (Respondent's bundle, p 482). D2 accepts that he has a car with KRA plates, and there is a photograph of him standing in front of it. We immediately acknowledge that it does not look like a luxury sedan to us; but the reported rate of unemployment in Chechnya is 80% and outside Grozny, many people live in poverty. We speculate; but it could be that to most of the population of Chechnya, a Toyota Camry might as well be a luxury sedan. D2, on his own account, lives not in Grozny, but on the family farm.

149. What is significant, in our judgment, is D2's explanation for having a car with these plates. It was given to him in February 2009, with 'a few thousand miles on the clock' by his friend Kana, the Mayor of Gudermes, as 'pay-back' for what D2 had done for Kana, D2 imagines, from a pool of official cars. He went to register the car with a police officer, who was 'expecting to process me in a fast manner'. He was given a list of numbers to choose from. The police keep a special corrupt list of desirable number plates that people can pay for. D2 understood that Kana had arranged for him to be allowed to choose a number from that list. There were about 200 numbers on the list, about 20 of which had the letters 'KRA'. He chose a KRA plate because the number to which it was attached was close to his birthday. He did not realise the significance of the letters KRA and did not choose the plate for those letters. He had not been long in Chechnya and did not know about 'the phenomenon that was related to them'. He only realised later, when people commented about it. People told him that they were good plates to have. He noticed afterwards that he was not often stopped by the police. He was happy with the 'enhanced status' and did not 'act to dispel everyone's mistaken belief that I was actually very close to Kadyrov. The reality is that very close people around Kadyrov can give out these plates too and so Kadyrov is not necessarily very close to everyone who has the plates. I think this describes my situation'.
150. We note that D2 says in his witness statement that Gudermes is where Kadyrov's official residence is (paragraph 105) and that he has met Kadyrov there. He has known Kadyrov for many years, and in 1999 went on a pilgrimage to Mecca with Kadyrov's father (witness statement, paragraph 10). He met Kadyrov within ten days of his return to Chechnya in September 2008 (paragraph 104).
151. We consider that his explanation for the plates is implausible. We do not think it likely that if Kana was giving Kadyrov pay-back, and was a 'very close' person 'around Kadyrov' who was allowed to give out KRA plates, he would leave it to chance whether D2 got such a useful number plate. We consider that if D2's story were true, it would be more likely that he had deliberately been given a KRA plate, rather than that he ended up with one by chance (a 1 in 10 chance, at that). But we do not think that D2's story, which attributes his possession of the useful and prestigious number plate to chance, is true. We consider that he has invented this far-fetched account in order to attempt to explain his possession of the number plates in a way which distances him from two clear implications of their possession, which are that he is close to Kadyrov, and that the car and the plates, which, on his account he still has, were pay-back from Kadyrov. The timing, we consider, is also significant: February 2009, shortly after Israilov's murder. It is not an obvious moment for Kana to choose to give D2 payback for the favours D2 had done for Kana many years previously (and which D2 describes in his witness statement) when Kana was an oil trader. For these reasons, we reject this account, and for these reasons, have taken it into account in our overall assessment of D2's credibility (see paragraph 138, above).

Conclusion

152. For these reasons, we dismiss this appeal. We consider, first, that D2's application for entry clearance outside the Rules, based on article 8, fails. The interference with D2's article 8 rights which that decision caused is not such as to require weighty justification. The factors we have considered above lead us to decide that that interference was justified, without any recourse to the national security case. If we are wrong about that, we would not, applying *Rehman*, have interfered with the Secretary of State's decision that D2's presence in the United Kingdom is not conducive to the public good. In short, we consider that D2 is a future risk to national security. We accept the assessments that he played a role in Israilov's killing, has been rewarded for that by Kadyrov, and would be in a good position, if he returned to the United Kingdom, because of the contacts with the Chechen diaspora to which Mr B referred, to facilitate an assassination attempt against Zakayev. On the basis of the material we have considered, that does not seem to be a remote or speculative prospect. Such an attack would clearly present a risk to national security, and the Secretary of State is right to exclude D2 from the United Kingdom in order to mitigate that risk.