Upper Tribunal
(Immigration and Asylum Chamber)

AB (British citizenship: deprivation; *Deliallisi* considered) Nigeria [2016] UKUT 00451 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 July 2015 (Error of Law) and 29 April 2016	
Final Submissions: 8 June 2016	…………………………………

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

AB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Naik and Ms B. Smith, Counsel, instructed by Islington Law Centre
For the Respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

(1) As held in Deliallisi (British citizen: deprivation appeal: scope) [2013] UKUT 00439 (IAC), in an appeal under section 40A of the British Nationality Act 1981 the Tribunal is required to determine the reasonably foreseeable consequences of deprivation.

(2) Whilst the Tribunal considering a section 40A appeal cannot pre-judge the outcome of any future legal challenge that the appellant might bring against a decision to remove, following deprivation, the Tribunal must nevertheless take a view as to whether, from its present vantage

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point, there is likely to be force in any future challenge: cf section 94 of the Nationality, Immigration and Asylum Act 2002 and paragraph 353 of the immigration rules. The stronger the potential case, the less likely it will be that the reasonably foreseeable consequences of deprivation will include removal.

(3) A person who had indefinite leave to remain in the United Kingdom, immediately before acquiring British citizenship, does not thereby become entitled to indefinite leave to remain, upon being deprived of such citizenship under section 40 of the 1981 Act. Leave to remain is effectively extinguished by becoming a British citizen, since the system of controls under the Immigration Act 1971 does not apply to British citizens.

(4) In a section 40A appeal, an appellant may rely on the ground that deprivation would have a disproportionate effect, as regards the rights flowing from citizenship of the EU, ***only if,*** *on the facts, there is a "cross-border" element. The finding to the contrary in* *Deliallisi* *was reached* per incuriam *in the judgment of the Court of Appeal in* *G1 v Secretary of State for the Home Department* *[2012] EWCA Civ 867.*

DECISION AND REASONS

A. The appellant's history

1. The appellant was born in Nigeria in 1961. She says her parents were killed in the Biafran war, in which she also suffered, being raped by a soldier and later by her brother-in-law. Each time she became pregnant, her babies were taken from her at birth. She was subsequently raped at a police station.

2. The appellant arrived in the United Kingdom late 1987, carrying class A drugs. She was detected, charged and convicted for drug trafficking. The appellant claims she was unaware that the package she had contained drugs. No one concerned in the present proceedings has seen any sentencing remarks; but the appellant was sentenced to seven years' imprisonment.

3. The appellant was sent to an open prison, but she absconded. After this she survived by begging and sleeping rough, before meeting an Ivorian national, with whom (and whose children) the appellant lived for three years. After the Ivorian national disappeared, the appellant was left looking after his children.

4. In 1991, the appellant claimed asylum in the United Kingdom, naming the Ivorian national and his children as her dependants. She claimed to be Ivorian. The appellant says that this was because she was frightened of returning to prison and then being deported to Nigeria.

5. Around the same time, it seems, the appellant learned from someone at her church that the appellant's niece SA, and nephew, H, had arrived in the United Kingdom in 1991. The appellant took in SA and H. SA gave birth to a son, S, when she was 15. S has learning difficulties, which make living on his own a challenge, despite the fact

that he is now an adult. SA later moved out of the appellant's home, followed by H. SA took S with her. In 1996, the Ivorian national reappeared and took his children away from the appellant. Meanwhile, SA became involved with drugs and S was taken into care.

6. Although the appellant's asylum claim had been unsuccessful, she was granted indefinite leave to remain by the respondent in 2003 in her false identity. The appellant enrolled for a nursing diploma and also worked. The appellant had previously suffered bouts of depression, whilst in the United Kingdom, and in 2003 she received antidepressant medication besides making twice-weekly visits to a psychiatrist for one year. The appellant was, at this time, said to be suicidal.

7. Around this time, SA (who was now taking heroin) became pregnant, giving birth to a daughter, Z, in February 2009. SA was not allowed to have the baby with her, so Z lived with the appellant.

8. In September 2009, SA, in revenge for losing Z to the appellant, informed the police about the appellant's background, including her escape from prison. The appellant was sentenced to eight months' imprisonment for the escape. The sentencing judge noted that, in the intervening twenty years, the appellant had "very much redeemed yourself". He noted that she had taken another identity, qualified as a nurse and looked after two children.

9. Whilst in prison, the appellant self-harmed and took an overdose. She was said to have been kept on suicide watch on a regular basis. During her imprisonment, S and Z were taken into foster care. Upon her release, the appellant (having nowhere else to go) lived with H in his studio flat for around a year. In March 2011 she was moved to her own accommodation and S came back to live with her until November 2012. S then moved into independent supported accommodation, but continued to see the appellant on a regular basis. The same was true of H.

10. The appellant conducted lengthy court proceedings in a bid to be allowed to foster Z but this was unsuccessful and Z was adopted in 2012. So too was another daughter of SA, whom the appellant had also attempted, by legal proceedings, to foster.

11. The appellant reported herself to the nursing authorities who suspended her from practising as a nurse for five years (until 2017).

B. Deprivation of citizenship: decisions and proceedings

12. In 2010, the respondent informed the appellant of her liability to deportation as a result of the drug trafficking offence. The subsequent deportation proceedings have, however, been terminated. In March 2013, the respondent wrote to the appellant to state that the appellant was to be deprived of her British citizenship as a result of the deception employed by the appellant in its acquisition. Shortly afterwards, the appellant was accommodated at the Maytree Sanctuary for those said to be "in

suicidal crisis". She was later admitted to hospital for a "non-significant" overdose with "suicidal intent".

(a) 2013 appeal decision

13. The appellant appealed to the First-tier Tribunal under section 40A of the British Nationality Act 1981 against the respondent's decision to deprive her of British citizenship. Following a hearing at Taylor House on 16 December 2013 before Judge Beg, the appellant's appeal was dismissed. Judge Beg heard oral evidence from H. She found that H (who is the appellant's nephew) and S (who is H's nephew) had a close relationship with the appellant. She accepted that the appellant had been a mother figure to both, although they were now adults.

14. Judge Beg also considered a report by Lucy Kralj, a psychotherapist and nurse. Miss Kralj was of the opinion that separating the appellant from her loved ones and a professional support network system would be highly detrimental to her mental health and safety. Judge Beg accepted that the appellant had been diagnosed as suffering from "complex PTSD". The judge concluded that deprivation would not, however, in the circumstances amount to a breach of Article 8 of the ECHR.

(b) 2014 appeal decision

15. In March 2014, the Upper Tribunal set aside the decision of Judge Beg, following the finding of an error of law, and remitted the matter to the First-tier Tribunal for a fresh decision to be made by a panel chaired by a Designated Judge. By a decision dated 2 October 2014, the First-tier Tribunal (Designated Judge Appleyard and Judge Talbot) dismissed the appellant's appeal.

16. For reasons that will become apparent, it is necessary to spend some time on the findings of the panel. At paragraph 26, the panel rejected the contention that the appellant had been the victim of trafficking into the United Kingdom. They were also concerned about the appellant's claim that she was unaware of what was in the drugs package, finding that the sentence of seven years' imprisonment "would hardly have been imposed if the judge had believed that she was an innocent party or had been wholly unaware of what she was doing".

17. The panel considered that the key issue was the appellant's medical condition. Whilst placing weight on the report of Miss Kralj (who is not a doctor) the panel also gave "considerable weight" to the views expressed by Dr Kelland, who had been the appellant's GP for some fifteen years. The panel found as follows:-

> "32. It is clear to us from all this evidence that the appellant suffers from long-standing psychological problems and a diagnosis has been made on more than one occasion of PTSD as well as depression associated with clinical concerns about suicidality and self-harm.

> 33. However, despite this clinical picture and the extraordinary series of distressing and traumatic events that the appellant appears to have encountered throughout her life, there have been extended periods when she appears to have functioned at a remarkably high level. She has served as a mother to a number of children (including one who is seriously disabled) and been able to cope with a whole series of family crises affecting her children. Whilst dealing with family responsibilities, she also studied and qualified as a nurse and she worked as a nurse for a number of years. She has also been highly energetic in pursuing a series of family and custody disputes and legal proceedings."

18. The panel then turned to the issue of the appellant's current mental state and the "associated risk that would follow from deprivation of her British citizenship". The panel contrasted the view of Miss Kralj, which they categorised as "most dramatic", and which described the appellant as "one of the most vulnerable patients with whom I have worked or whom I have assessed", with the "considerably more measured" views of Dr Kelland. The panel considered it significant that the appellant was currently able to live on her own and did not have any regular professional support other than from her GP. There was also no evidence that the appellant depended on H or S for issues of personal care and daily living.

19. At paragraph 35, the panel found that it:-

> "cannot ignore the fact that the appellant has faced the threat of removal or deportation for a long time. She has already been the subject of two deportation orders (which have only now been lifted). Despite the spectre of deportation hanging over her for such a long period, she survived and at times led an extremely active and successful life. The evidence from her GP does not indicate to us that her mental state has declined so seriously that the prospect of deportation would now have a catastrophic effect on her. In the past she has reacted to profound setbacks such as the loss of custody of her children by acting vigorously in the family courts to contest these decisions".

20. The panel addressed the evidence regarding suicidality and self-harm. The judges found it difficult to assess how serious or life-threatening the appellant's suicide attempts had been, in view of the lack of contemporaneous evidence. However, in regard to the appellant's support systems, particularly from the GP, the panel concluded that deprivation would not put the appellant at real risk of Article 3 harm in relation to suicide risk. The panel concluded that it was not a "reasonably foreseeable consequence of the deprivation decision (even if the deprivation decision were followed by a fresh deportation or removal decision) that the appellant is likely to commit suicide" (paragraph 35).

21. So far as concerned H and S, the panel concluded that the appellant's relationship with them, despite the fact that they were now both adults, was such that a family life, in Article 8 terms, existed between them and the appellant. The appellant also enjoyed a protected private life, given the length of time she had spent in the United Kingdom and the ties she had established here.

22. The panel assessed the issue of proportionality, in Article 8 terms, by reference to the provisions of Part 5A of the Nationality, Immigration and Asylum Act 2002 (inserted

by the Immigration Act 2014). The panel came to the conclusion that, in all the circumstances, deprivation of the appellant's British citizenship would not constitute a disproportionate interference with the Article 8 rights of the appellant, H or S. The appeal was, accordingly, dismissed.

(c) Setting aside the 2014 appeal decision

23. Permission to appeal against the panel's decision was refused by the First-tier Tribunal but granted by the Upper Tribunal on 18 March 2015. In an "error of law" decision promulgated on 31 July 2015, Deputy Upper Tribunal Judge Davidge found that the panel had erred in applying the provisions of Part 5A to the appeal. Part 5A is relevant only to the consideration by courts and tribunals of appeals and other challenges to decisions of the respondent taken under the Immigration Acts. The decision under section 40 of the British Nationality Act 1981 to deprive the appellant of her British citizenship is not a decision taken under the Immigration Acts.

24. Before Deputy Judge Davidge, the respondent contended that this error was not material because it would not have been likely to impact on the outcome. The Deputy Judge disagreed, concluding that it was "simply impossible to discern from the decision what, in the event that the erroneous self-direction fell away ... the decision in respect of the exercise of discretion would have been. This is not one of those cases where it can be said that the error if corrected could not have made any difference to the outcome".

25. Accordingly, the Deputy Judge set the decision aside, requiring it to be re-made, this time, in the Upper Tribunal. The Deputy Judge did, however, reject the other bases of challenge of the panel's decision:

> "10. In short, the error of law is limited to the terms of the assessment of proportionality, in the context of, and its interrelation with, the exercise of discretion. That error does not infect the findings of fact and they are preserved".

C. The present proceedings

26. In the event, the need to re-make the decision having regard to present circumstances has led to the filing by the parties of a considerable amount of additional evidence and submissions. Problems concerning the obtaining of up-to-date specialist medical reports on the appellant, together with the need for the representatives to research and make submissions on the effect of deprivation on the appellant's entitlement to housing, benefits and NHS treatment, meant that the substantive rehearing could not take place until 29 April 2016. Following that, both parties made further written submissions concerning matters with which they had been unable properly to deal at that hearing. These submissions were filed on 8 June 2016.

27. I am grateful to Counsel and to Mr Jarvis for the helpful and thorough manner in which they have presented their respective cases.

(a) Nephew H

28. At the hearing on 29 April I heard oral evidence from H, who spoke to his most recent statement (28 January 2016). H described how, after the appellant had been released from her most recent sentence of imprisonment, she had come to live with him in his studio flat. Having lost all her friends, the appellant became a recluse. Looking after the appellant cost H his own friends, as well as his girlfriend. He described the appellant as being unstable, sometimes exploding into anger when the appellant thought about what SA had done.

29. In her present accommodation, the appellant has interacted with the family upstairs, particularly the baby, to whom she is a godmother. The appellant, however, still has episodes of wandering in the street, wearing little or nothing at all.

30. H described the appellant as being "for many years" unwell "even before she went to prison". She had previously suffered from depression. At present, the appellant has a home treatment team which comes to look after her on a daily basis. Her neighbours upstairs also look after the appellant. Last Christmas H enjoyed Christmas lunch with the appellant, S, and two of her friends.

31. The appellant's present accommodation is, according to H, in a "state of disrepair. I cannot explain how bad it is". There is a particular problem with damp. H believes that the prospect of the appellant returning to live with him in his studio flat would be extremely problematic. He considers that "Hackney would still have to house her somewhere". If she lost her citizenship, H considers that if the appellant were "given some sort of leave which means that she would not be deported", then although the appellant "would be devastated by this", the family "at least … would know where we all stand and we can try to get on with our lives. The fact that it is always hanging over us is really hard to take and knowing that if she lost then the Home Office would start deportation proceedings".

32. H said that when the appellant looks back on her life "a black cloud takes over". H became visibly distressed, when giving oral evidence about the appellant's wandering the streets, semi-clothed. H confirmed that the appellant's other nephew, S, is currently back living with the appellant. H considers that S's social workers have "closed the book on him". H is not sure that he could look after S. In cross-examination, H agreed with Mr Jarvis that the appellant had experienced depression for a long time. H said that she was "always worrying about something". Asked about the appellant's current problems with her accommodation, H said that a Mr McDonald was looking into the appellant's case and he also understood that an organisation called Women in Prison was assisting the appellant.

(b) Medical evidence

33. In connection with the hearing, the appellant's proposed medical witness, Dr Price, had written (2 February 2016) to Islington Law Centre to explain that the failure to

produce a medical report on the appellant within the required timescale was entirely his fault, due in part to his ill-health, and that Dr Price felt that he "must withdraw and I am no longer able to provide the report". Owing to "the severe and enduring nature of her problems", Dr Price stated that health professionals were in the process of transferring the appellant's care from Dr Price's primary care liaison team to the more long-term care of the "recovery team", run by Dr Fisher, who would be able to offer "ongoing care" to the appellant.

34. Dr Price considered that it had been difficult to address the appellant's "psychological concerns whilst legal matters are unresolved as it has been understandably difficult for [the appellant] to focus on recovery under the circumstances. She remains in a constant state of anxiety and uncertainty". The appellant remained "vulnerable much of the time but also has heightened periods of crisis when she has required additional support from myself, her GP and the hospital psychiatric home-treatment team as an alternative to admission". Dr Price considered that additional stressors included the threat or the possibility of her losing benefits or housing, which he felt would have a significantly detrimental effect upon the appellant's mental health "possibly triggering crisis". Removal from friends and other informal support networks should be avoided and a separation from family "would almost certainly have a disastrous effect". The appellant wanted to work and provide for her family "although her legal situation prevents her from doing so". She did not wish to be a burden to the state and had demonstrated her ability to successfully function in work albeit "in unusual circumstances".

35. Dr Price's "biggest concern would be a serious attempt at suicide should the appellant be facing what to her would be the unbearable prospect of deportation". She feels that she would be "murdered by others" if returned to Nigeria. Dr Price considered that this was a "firm conviction" which is "not the result of any abnormal thought processes or as the result of her mental illness; but that for her at least this represents a reality". Dr Price did not regard the appellant's suicidal threats as having "the flavour of a manipulative or care-eliciting action which is clinically very worrying".

36. Dr Price's final view is that:

> "ideally she should remain in the UK where she has resided for many years, but without the threat of deportation and all that she understandably feels this would entail for her. This would allow her to have the opportunity of recovery from what is now a prolonged period of psychiatric ill-health in a stable environment. I have no doubt that she would engage fully with her treatment plan if left alone to do so, and without constant threat and anxiety, she would almost certainly have a good prognosis. I have no doubt that she would seek to gain suitable employment at the first opportunity and in my opinion would be very unlikely to reoffend".

37. Dr Fisher's report (1 March 2016) states that he is a Consultant Psychiatrist at the East London NHS Foundation Trust. He met the appellant for the first time on 23 February 2016 and for a second time on 15 April 2016. He described the appellant as arriving on time, well kempt and well groomed, although appearing a little passive, with a monotonous, repetitive and sometimes robot-like tone.

38. Dr Fisher refers to the appellant having had "three significant suicide attempts" and being currently housed by the London Borough of Hackney in temporary accommodation pending being given a "permanent property". The appellant still has contact with H and S. Dr Kelland describes S as most likely having a learning disability.

39. Dr Fisher described the appellant as presenting as "a slightly prematurely aged female patient who was very rare in mimic and reduced in psychomotor activity". He considered her to have a severe impairment with upper perception and concentration. Her mood was subjectively very low and objectively low, with constant suicidal ideation. The appellant frequently feels confused but has a "very strong belief in God and this helps her". The appellant has never had a proper relationship; "her main psychosexual experiences were that of being raped".

40. Dr Fisher could not find any delusional beliefs or thought disorders. He considered that the appellant would fulfil the criteria for moderate to severe depression with suicidality, and the criteria for personality change after a catastrophic event, according to DSM4-post traumatic stress syndrome. PTSD had been diagnosed by "Dr Lucy Kralj" (sic), with whose report Dr Fisher agreed.

41. Dr Fisher noted that the appellant "still retained some positive outlook and still has faith in God and thinks that things can turn out better". The prospect of being returned to Nigeria would be devastating for her.

42. Any "loss of status and benefits" would, in Dr Fisher's opinion, result in "significant risk" to the appellant's mental health. It is likely that thoughts of self-harm would increase. Should she lose her accommodation and housing, it is unlikely that the appellant "would be able to maintain any will to live in the future and it is very likely that she will harm herself should she lose benefits and status in the United Kingdom". One of the few reasons the appellant has found the will to live is her usefulness to S and H and her ability to receive love from them. Furthermore, the appellant has been looked after by her GP for fifteen years "very successfully" and has also formed relationships with the community mental health team "and it would be very difficult for her to form new relationships somewhere else. As the main suicide prevention is forming positive and hopeful relationships, this is of utmost importance to her". Dr Fisher considered that the appellant's "identification with being British helps her maintain a sense of wellbeing and security".

43. As noted in paragraph 40 above, in his report on the appellant, Dr Fisher referred to Miss Kralj as a doctor. This point was remarked upon by Mr Jarvis, who questioned whether Dr Fisher was aware that Miss Kralj was not, in fact, qualified as a doctor. Roopa Tanna, a solicitor with the Islington Law Centre, confirms in her statement of 29 April 2016 that she is aware, from her own knowledge, that Dr Fisher knew of Miss Kralj's status and that the reference in his report to her being a doctor was a simple error.

44. On 9 May 2016, the appellant filed a summary of recent mental health events, as recorded by Dr Kelland, the appellant's long-standing GP. What is striking from this material is the high and committed level of care that Dr Kelland has provided to the appellant over the years. It confirms the accounts of the appellant wandering the streets, inappropriately dressed, as well as underlining the way in which impending legal hearings have an adverse effect upon the appellant's state of mind.

45. Dr Kelland has been closely involved in the suicidal aspects of the appellant's condition. His notes of 25 April 2016 record the appellant's lawyer as calling wanting to know how many suicide attempts the appellant had made since September 2014. Dr Kelland's response was that there were "five episodes documented – some debatative (sic) serious attempts".

46. The record for 7 March 2016 describes the appellant as indicating that her family was well and that she was "seeing them every weekend". Dr Kelland adjusted the appellant's medication and explained to her that in view of the severity and chronicity of her illness, her care would be transferred to Dr Fisher at the CMHT.

47. The record for 9 October 2015 concerns Dr Kelland making a home visit to the appellant, who had taken tablets. The appellant's [great] nephew, S, was in the house. Dr Kelland's record reads "Frank disc[losure] – multiple similar episodes – but no real intent says she will not do it and will see me on Monday says she just wanted to disc[uss] issues w [ith] me".

(c) Bethan Harris's Opinion: benefits, health care and housing in the event of deprivation

48. Ms Bethan Harris, a barrister specialising in social housing, community care and Court of Protection work, produced an Opinion dated 22 April 2016. She considers that, if deprived of citizenship and lacking leave to remain in the United Kingdom, the appellant would not qualify for homelessness assistance under the Housing Act 1996. Although in the normal course of events, she would be housed pending the outcome of enquiries, were she to be evicted from her current accommodation and lack immigration status, the appellant would not be provided with temporary accommodation pending the completion of those enquiries.

49. According to Ms Harris, the accommodation position under the Care Act 2014 would be problematic, as regards the appellant. A local authority has a duty to meet a person's care and support needs where "eligibility" criteria, as set out in the Care and Support (Eligibility) Regulations, are met; otherwise the local authority has a power to meet a person's care and support needs (Care Act 2014, ss18 and 19). Section 21 of the Care Act 2014 provides that a local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 applies (exclusion from benefits) and whose needs for care and support have arisen solely because the person is destitute or because of the physical effects (or anticipated physical effects) of being destitute.

50. Section 21, according to Ms Harris, performs the same function as was previously performed by section 21(1A) of the National Assistance Act 1948. Case law in

relation to that provision demonstrates that a person subject to immigration control whose need for care and support was to any material extent made more acute by some circumstance other than the mere lack of accommodation and funds was not excluded from support by reason of their immigration status. This so-called "destitution plus" test was explained by the Supreme Court in SL v Westminster CC [2013] UKSC 27. A need for care and support nevertheless needed to be identified.

51. According to Baroness Hale in M v Slough Borough Council [2008] UKHL 58, "care and attention" (which Ms Harris considers a useful guide to the meaning of the present social care need) means "looking after", such as by providing assistance with household tasks. The provision of medical care is, however, expressly excluded.

52. In SG v Haringey BC [2015] EWHC 2579, the High Court held that for the local authority to be required to provide accommodation as a means of meeting a care and support need, the care that is needed must be such that it is normally provided in the home or will effectively be useless if the person has no home. Only two services in the long list of support services provided for SG (who suffered from severe mental health problems) were found to be accommodation-related in this sense. The two services did not include advice and assistance by SG's care coordinator, or counselling.

53. Where paragraphs 1 and 3 of Schedule 3 to the NIAA 2002 apply, Ms Harris's opinion is that there will be no duty on a local authority to provide support under the Care Act 2014 unless its provision is necessary for the purpose of avoiding a breach of a person's Convention rights. Paragraphs 1 and 3 would apply if the appellant were without immigration status. In Limbuela v Secretary of State for the Home Department [2005] UKHL 66, the House of Lords held that the issue of whether a person's lack of accommodation and funds gives rise to a breach of Article 3 of the ECHR depends on a determination of whether the entire package of work restrictions and deprivations is so severe as to be properly described as inhuman and degrading treatment. The threshold will normally be crossed where a person is obliged to sleep in the street or is seriously hungry or unable to satisfy the most basic requirements of hygiene. In determining the answer, individual factors such as age, sex and health are relevant. In Birmingham City Council v Clue [2010] EWCA Civ 460 the Court of Appeal held that, when applying Schedule 3 to the NIAA 2002, the local authority must not consider the merits of an outstanding application by a person for leave to remain in the United Kingdom. Except in a hopeless or abusive case, the duty to avoid a breach of that person's Convention rights does not entitle the local authority to decide how the Secretary of State will determine an application or, in effect, to determine the application by making it impossible for the applicant to pursue it.

54. Ms Harris' view is that "the process of seeking accommodation under Care Act 2014, if [the appellant] were lacking immigration status, would not be straightforward. There are a number of points that could cause difficulties and a positive outcome cannot be assumed".

55. The first potential difficulty is that the appellant is not at present assessed as needing care and support services. The fact of being mentally ill does not necessarily imply a need for social care, as opposed to a need for access to the Health Service. Secondly, in order to obtain accommodation under the Care Act 2014, an "accommodation-related" need must be identified. Ms Harris considers that this concept has been interpreted quite narrowly by the courts.

56. Ms Harris acknowledges the argument that the local authority in question would need to take into account that if the appellant were without accommodation, her condition would worsen in a way that would then give rise, not only to greater need for health services, but also inevitably in due course to a need for "looking after" that would amount to social care and which could only be met by the provision of accommodation. Accordingly, in order to anticipate such deterioration, the local authority would need to provide support. Against this argument, however, Ms Harris thinks the local authority might take the view that the threshold for the human rights-based last resort support of a social care type was not met in the case of the appellant, since the appellant should investigate other means of potential support and exhaust these first, whilst pursuing an application for leave to remain in the United Kingdom, before the local authority could be required to support her with accommodation.

57. On a related point, Ms Harris believes that, in the context of an assessment of the appellant's needs for human rights-based support under the Care Act 2014, the local authority could raise the issue of whether the appellant might qualify for so-called "hard cases" support under section 4 of the Immigration and Asylum Act 1999 and might expect her to pursue that route instead. Whilst accepting that there is an argument that the availability of support under the 1999 Act is irrelevant to whether the duty to provide support arises under the Care Act 2014 (an issue raised in paragraph 15 of SG v Haringey), the difficulty the appellant may face is that the local authority might assess her situation as not giving rise to a need for Care Act 2014 social care support, unless and until her condition has deteriorated.

D. Legal matters

(a) The task: determining the reasonably foreseeable consequences of deprivation

58. Before embarking on an analysis of the evidence, it is necessary to establish the legal parameters. With one exception, to which I will turn in due course, Ms Naik submitted that the correct basis was as set out by the Upper Tribunal in Deliallisi (British citizen: deprivation appeal: scope) [2013] UKUT 00439 (IAC). In that case, the Tribunal held that an appeal under section 40A of the 1981 Act requires the Tribunal to consider whether the Secretary of State's discretionary decision to deprive a person of British citizenship should be exercised differently. That consideration will involve (but not be limited to) ECHR Article 8 issues, as well as whether deprivation would be a disproportionate interference with a person's EU rights. In carrying out its task, the Tribunal is under no obligation to assume that the

person concerned will be removed from the United Kingdom in consequence of the deprivation decision. The Tribunal is, however, required to determine the reasonably foreseeable consequences of deprivation which may, depending on the facts, include removal.

59. Mr Jarvis told me that the Secretary of State does not consider that a deprivation appeal can ever encompass the possibility of removal. He did not, however, elaborate upon this view and I see no reason why, as a matter of law, the reasonable forseeability test, elucidated in Deliallisi, should be circumscribed in this or, indeed, any other way.

60. Having said that, it seems to me the facts of the present case are indicative of why, in practice, the reasonably foreseeable consequences of deprivation are often unlikely, as a general matter, to include removal. Even in a case where, unlike Deliallisi, the Secretary of State has not expressed an intention to grant leave, immediately upon deprivation taking place, the factual matrix (including the availability of rights of challenge to possible future decisions of the Secretary of State) will often preclude the Tribunal from identifying removal as a reasonably foreseeable consequence of deprivation, viewed from the vantage point of the hearing of the deprivation appeal.

61. In the present case, Mr Jarvis accepts that, as matters stand, the respondent may not grant the appellant leave, following deprivation. He also is clear that the respondent may begin steps to secure the appellant's deportation. Ms Naik submits that the appellant would have a compelling Article 8 case for resisting removal. Both sides are agreed that the formal resolution of these issues (if they arise) will be the subject of separate, future proceedings.

(b) British citizenship and indefinite leave to remain

(i) Deliallisi

62. I said I would return to the issue that the appellant says was wrongly decided by the Tribunal in Deliallisi. This concerns its finding that the person who, immediately before becoming a British citizen, had indefinite leave to remain in the United Kingdom, does not automatically become entitled to such leave, upon being deprived of such citizenship.

63. As she had in Deliallisi, Ms Naik acknowledged that, if the present appellant's submissions regarding the re-emergence of indefinite leave to remain were correct, this would weaken the appellant's case for resisting deprivation of her British citizenship.

64. In Deliallisi, the Tribunal addressed the issue as follows:-

> "45. The following provisions of the 1971 Act are relevant:

‘1. **General principles**

(1) All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

(2) Those not having that right may live, work and settle in the United Kingdom by permission and subject to such Regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act …

2. **Statement of right of abode in United Kingdom**

(1) A person is under this Act to have the right of abode in the United Kingdom if –

(a) he is a British citizen; or

(b) he is a Commonwealth citizen who –

(i) immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(c) or section 2(2) of this Act as then in force; and

(ii) has not ceased to be a Commonwealth citizen in the meanwhile.

(2) In relation to Commonwealth citizens who have the right of abode in the United Kingdom by virtue of subsection (1)(b) above, this Act, except this section and section 5(2), shall apply as if they were British citizens; and in this Act (except as aforesaid) ‘British citizen’ shall be construed accordingly.

2A. **Deprivation of right of abode**

(1) The Secretary of State may by order remove from a specified person a right of abode in the United Kingdom which he has under section 2(1)(b).

…

(4) While an order under subsection (1) has effect in relation to a person –

(a) section 2(2) shall not apply to him; and

(b) any certificate of entitlement granted to him shall have no effect.

3. General provisions for Regulation and control

(1) Except as otherwise provided by or under this Act, where a person is not a British citizen –

(a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;

(b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

(c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely –

(i) a condition restricting his employment or occupation in the United Kingdom;

(ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds;

(iii) a condition requiring him to register with the police;

(iv) a condition requiring him to report to an immigration officer or the Secretary of State; and

(v) a condition about residence.

…

5. Procedure for, and further provisions as to, deportation

(1) Where a person is under section 3(5) or (6) above liable to deportation, then subject to the following provisions of this Act the Secretary of State may make a deportation order against him, that is to say an order requiring him to leave and prohibiting him from entering the United Kingdom; and a deportation order against a person shall invalidate any leave to enter or remain in the United Kingdom given him before the order is made or while it is in force.

(2) A deportation order against a person may at any time be revoked by a further order of the Secretary of State, and shall cease to have effect if he becomes a British citizen.'

46. As can be seen, the general provisions in the 1971 Act regarding leave to enter and remain are expressly stated not to apply where a person is a British citizen. We do not consider that it is compatible with the scheme of that Act to regard indefinite leave to remain (or any other sort of leave) as having some sort of vestigial existence, whilst the person concerned remains a British citizen. A

person cannot be both a British citizen and concurrently subject to indefinite leave to remain. Upon becoming such a citizen, the appellant became a person to whom section 1(1) applied. As Mr Deller put it, the appellant's indefinite leave to remain simply ceased to exist.

47. Unlike the position in respect of a Commonwealth citizen who has a right of abode by reason of section 2(2)(b), and who may be deprived of that right under section 2A, the 1971 Act contains no provision regarding deprivation of British citizenship. Furthermore, section 2A(4) indicates that the revocation of an order depriving a person of the right of abode will automatically bring the person back within the ambit of section 2(2) and that any certificate of entitlement will again be effective. One looks in vain for any comparable provision regarding indefinite leave to remain for a person who had it before becoming a British citizen.

48. We do not consider that the appellant can gain any assistance from section 5(2), which provides that a deportation order shall cease to have effect if the person subject to such an order becomes a British citizen. The relationship between the final words of section 1(1) and section 5 is such as to require the position to be made clear. The drafter of the 1971 Act evidently took the view that it was unnecessary to say that indefinite leave to remain ceases to have effect upon acquisition of British citizenship because that was obvious, given the scheme of the legislation.

49. In support of her proposition, Ms Naik referred to the judgments of the Court of Appeal in Fitzroy George v Secretary of State for the Home Department [2012] EWCA Civ 1362. In that case, the Court, by a majority, found that where, pursuant to section 5(1) of the 1971 Act, a deportation order against a person has invalidated that person's leave to enter or remain, the subsequent revocation of the deportation order has the effect of reviving the earlier grant of leave (in that case, ILR).

50. We do not consider that Fitzroy George assists the appellant's argument. Fitzroy George was at all material times a person subject to the general provisions for regulation and control, set out in section 3 of the 1971 Act. At no time had he enjoyed the right of abode, as described in section 1(1). That is not the position with the present appellant who, upon becoming a British citizen, was removed from the 1971 Act's 'regulation and control of entry into, stay in and departure from the United Kingdom' (section 1(2)).

51. In further support of her argument on this issue, Ms Naik sought to invoke section 76 of the 2002 Act. This provides that the Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if that person is liable to deportation but cannot be deported for legal reasons. The existence of this section (and section 5 of the 1971 Act) does not, however, mean Parliament has legislated to the effect that indefinite leave to remain can cease *only* on deprivation under section 76 (or section 5 of the 1971 Act). Section 76 and the corresponding provisions in section 5 contain procedures for terminating indefinite leave to remain, whilst such leave subsists. They do not purport to offer a comprehensive guide as to whether a person has such leave in the first place.

52. Ms Naik, in oral submissions, said that a British citizen who is also a citizen of another country would, in practice, retain his or her indefinite leave to remain

‘stamp’ in the passport of that other country. Whilst that may be so (we express no view), the continued physical presence of a stamp in a foreign passport cannot be taken to govern the interpretation of the 1971 Act. We reiterate that it is incoherent with the legislation to assume indefinite leave to remain can remain extant, in the case of a person who is a British citizen, or that, without express statutory provision, such leave automatically reappears on deprivation of that citizenship.

53. Accordingly, for the purposes of these proceedings, we find that, were the appellant to be deprived of British citizenship, he would not fall to be treated as a person having indefinite leave to remain in the United Kingdom. This, of course, has a direct bearing on the consequences for the appellant of deprivation and, in particular, necessitates an examination of the respondent’s policies; in particular, as set out in the NIs. Conversely, if we are wrong, our error could not be material to the outcome of this appeal, unless we were to allow it.”

(ii) Fitzroy George in the Supreme Court

65. What the Tribunal said in Deliallisi about the case of Fitzroy George now has to be read in the light of the Supreme Court judgment in that case (R (George) v Secretary of State for the Home Department [2014] UKSC 28). The Supreme Court overturned the judgment of the Court of Appeal, finding that the revocation of the claimant’s deportation order did not revive his indefinite leave to remain.

66. So far as relevant, section 5 of the Immigration Act 1971 provides as follows:-

“5.-(1) Where a person is under section 3(5) or (6) above liable to deportation, then subject to the following provisions of this Act the Secretary of State may make a deportation order against him, that is to say an order requiring him to leave and prohibiting him from entering the United Kingdom; and a deportation order against a person shall invalidate any leave to enter or remain in the United Kingdom given him before the order is made or while it is in force.

(2) A deportation order against a person may at any time be revoked by a further order of the Secretary of State, and shall cease to have effect if he becomes a British citizen.”

67. At paragraph 29, the Supreme Court (per Lord Hughes) decided the issue of the interpretation of section 5 as follows:-

“29. The terms of section 5 of the 1971 Act are, as words, capable either of importing revival of leave or of not doing so. Revival is not their natural meaning, because the natural meaning is that revocation takes effect when it happens and does not undo events occurring during the lifetime of the deportation order. Revival is a significant and far-reaching legal concept, and it is much more likely that it would have been specifically provided for if it had been intended”.

68. Ms Naik relies on this passage of the judgment in support of her submission that specific words are needed in the immigration primary legislation, to prevent indefinite leave to remain from disappearing (without any prospect of revival), upon

a person becoming a British citizen. It seems to me, however, that paragraph 29 of Lord Hughes' judgment supports the respondent's position on this issue. Whether or not one assumes indefinite leave to remain has ceased to exist upon its holder becoming a British citizen, the suggestion that it reappears following deprivation of citizenship is at least as "significant and far-reaching [a] legal concept" as revival of indefinite leave to remain after revocation of a deportation order. Accordingly, what Lord Hughes said in paragraph 29 is, in my view, pertinent in the situation with which we are concerned; and one looks in vain for any specific provision supporting the appellant's contention.

(iii) Munir

69. Ms Naik prays in aid Munir v Secretary of State for the Home Department [2012] UKSC 32 for the proposition that immigration law, as set out in the Immigration Acts and instruments made under them, "should be taken to be complete and exhaustive". That this is so does not, however, help Ms Naik to overcome the crucial point, articulated in Deliallisi, which is that the general system of immigration control contained in the Immigration Act 1971 and other Immigration Acts – in particular, the granting or refusing of leave to enter or remain – simply does not impact upon a person who is a British citizen. In any event, in Munir at paragraph 31, the Court noted the important provision in section 3(1) of the 1971 Act "that a person who is not a British citizen shall not enter the United Kingdom unless given leave to do so who 'in accordance with the provisions of, or made under, this Act'" (my emphasis). The underlined words are, thus, the answer to Ms Naik's point. They are a "complete" and exhaustive pronouncement on the scope of the system of leave to enter or remain in the United Kingdom.

(iv) Legislation

70. Ms Naik refers to article 13 of the Immigration (Leave to Enter and Remain) Order 2000. Article 13 deals with the circumstances in which leave to enter or remain does not lapse when its holder travels outside the common travel area. Ms Naik submits that article 13 demonstrates that an express statutory provision is necessary in order "to curtail or otherwise bring to an end" indefinite leave to remain. Again, I agree; but, once more, the point does not advance the appellant's case. It is plainly the case that persons who remain subject to immigration controls should be told in the legislation in what circumstances their leave (of whatever kind) may lapse. It is quite another thing to contend that persons, who by reason of their British citizenship, have been completely freed from the system of section 3 leave, need to be told that their indefinite leave has been extinguished by the acquisition of that citizenship.

71. Although Ms Naik did not rely upon it, the appellant might point to section 5(2) of the 1971 Act as casting doubt upon the position which the Tribunal took in Deliallisi and which I take in the present case. As we have seen, section 5(2) provides in terms that a deportation order shall cease to have effect if the person concerned becomes a British citizen. If the scheme of controls in the 1971 Act etc. ceases to have any

relevance to a person who becomes a British citizen, then a deportation order would, on this view, automatically cease to have effect, since it is part of those controls. It is, however, plain that a deportation order is of a special nature, in that it has a continuing effect. Not only does it require a person to leave the United Kingdom; it also prohibits the person from re-entering during the currency of the order. Given that section 3(5) and (6) of the 1971 Act refer to persons who are not British citizens as being "liable to deportation from the United Kingdom", I conclude the legislature thought it necessary to make plain that a deportation order ceases to have all legal effect if a person becomes a British citizen. Such a person, if outside the United Kingdom, can, accordingly, re-enter it.

72. Ms Naik relies upon section 39 of the Borders, Citizenship and Immigration Act 2009. This amended the provisions of the British Nationality Act 1981 relating to the acquisition of citizenship by naturalisation. Paragraph 3 of Schedule 1 to the 1981 Act describes the requirements for naturalisation as a British citizen under section 6(2). For the purposes of paragraph 3, paragraph 4A (inserted by the 2009 Act) provides that a person has qualifying immigration status if, amongst other things, he or she has "probationary citizenship leave based on a relevant family association".

73. Ms Naik submits that the existence of the section 39 amendments (although not yet in force) does "not sit with an implied lapsing of ILR on grant of British citizenship, rather it suggests that certain types of leave defined there will so become otiose on grant of citizenship".

74. I agree with Mr Jarvis that there is no inconsistency between the section 39 amendments to the 1981 Act and the principle that actual British citizenship extinguishes indefinite leave to remain. Plainly, "probationary citizenship leave" is still intended to be leave within the ambit of section 3 of the 1971 Act. It is not to be equated with British citizenship.

(v) Dual citizenship

75. Finally on this issue, Ms Naik returns to an argument she deployed in Deliallisi, based on the concept of dual citizenship. Ms Naik refers to the respondent's guidance on the right of abode which states:-

> "2.1 If you have the right of abode in the United Kingdom, this means that you are entirely free from the United Kingdom immigration control. You do not need to obtain the permission of an Immigration Officer to enter the United Kingdom and you may live and work here without restriction.
>
> 2.2 However, you must prove your claim by production of either:
>
> (a) a United Kingdom passport describing you as a British citizen or a British subject with a right of abode; or
>
> (b) a Certificate of Entitlement to the Right of Abode in the United Kingdom issued by or on behalf of the Government of the United Kingdom".

76. This passage frankly contradicts the appellant's position. As has already been said, a British citizen does not require leave to enter or remain pursuant to section 3 and the Immigration Rules. The fact that, as a British citizen, I need to show my passport to demonstrate my freedom from controls is an entirely different matter.

77. Ms Naik cites *Fransman: British Nationality (Third Edition)* as stating that before 21 December 2006 it was possible for an individual to hold a United Kingdom passport and have a Certificate of Entitlement to the Right of Abode in the United Kingdom endorsed in a foreign passport. The fact that that may have been so, however, is, with respect, nothing to the point. It does not in any sense suggest that a British citizen remains entitled to indefinite leave to remain in the United Kingdom, if he or she previously possessed such leave.

78. For these reasons, I reject the appellant's contention that a foreseeable consequence of her being deprived of British citizenship is that she automatically becomes entitled to indefinite leave to remain in the United Kingdom, by reason of her previously holding such leave. This, of course, means that I approach the question of reasonable forseeability on the basis that the respondent has not confirmed that she will grant the appellant any period of leave, following deprivation, and that the respondent is not, as a general matter, committed to avoiding any period of so-called "limbo" following such deprivation.

79. In determining what is reasonably foreseeable, I consider it is relevant that the appellant may well (subject to issues of legal aid and finance generally) be minded to challenge by way of judicial review any refusal by the respondent, after any deprivation, to confirm that she has indefinite leave to remain on the above basis (see paragraph 97 below).

(c) The European dimension and the G1 case

80. In Deliallisi the Tribunal considered what it described as the European dimension to an appeal under section 40A of the 1981 Act:-

> "**G. THE EUROPEAN DIMENSION**
>
> 39. Even if the tribunal concludes that the issue of Article 8 ECHR proportionality does not arise in the particular appeal, it will still be necessary to decide whether deprivation of British citizenship 'observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of a European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law' (Rottmann v Freistaat Bayers [2010] EUECJ C-135/08 (02 March 2010)). In that case, a citizen of Austria had exercised free movement rights so as to settle in Germany. He applied for and obtained naturalisation in that country but, when it was discovered he had failed to disclose, in connection with his naturalisation application, that he was subject to criminal investigations in Austria concerning an

alleged fraud, the German authorities took steps to withdraw his German nationality. Upon becoming naturalised in Germany, Mr Rottmann had lost citizenship of Austria, pursuant to the nationality laws of that country.

40. For our purposes, the relevant findings of the CJEU are as follows:-

> '55. In such a case, it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law.
>
> 56. Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality.
>
> 57. With regard, in particular, to that last aspect, a Member State whose nationality has been acquired by deception cannot be considered bound, pursuant to Article 17EC, to refrain from withdrawing naturalisation merely because the person concerned has not recovered the nationality of his Member State of origin.
>
> 58. It is, nevertheless, for the national court to determine whether, before such a decision withdrawing naturalisation takes effect, having regard to all the relevant circumstances, observance of the principle of proportionality requires the person concerned to be afforded a reasonable period of time in order to try to recover the nationality of his Member State of origin.
>
> 59. Having regard to the foregoing, the answer to the first question and to the first part of the second question must be that it is not contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality has been obtained by deception, on condition that the decision to withdraw observes the principle of proportionality.'

41. At 19.2 of Fransman's *British Nationality Law* (3rd Edition) the author notes that:

> 'Rottmann concerned a case where a person had exercised free movement rights to move from his Member State of origin to a host Member State, in other words that there was a cross-border element

> engaging EU law in addition to the subsequent acquisition and thereafter loss of the nationality of the host Member State. The case did not test the proposition of whether the acquisition by deception and subsequent loss of the nationality of another Member State is within the scope of EU law in circumstances where the person remains within the Member State of origin during the period of acquisition and loss and does not move to that other state.'
>
> 42. In the light of Zambrano (European Citizenship) [2011] EUECJ C-34/09 (08 March 2011), we do not consider that Rottmann can be said to be of no application to the circumstances of the present case, merely because the present appellant has not engaged EU free movement laws by moving to another EU State. It is clear from Zambrano that the CJEU requires importance to be attached to the rights and benefits derived from EU Citizenship, not merely as regard free movement. Nevertheless, where a person affected by a deprivation decision has made actual use of rights flowing from EU citizenship, in particular, the right to work in another EU State, then the effect of removing such citizenship may well have a greater practical impact, compared with the position where such rights have not been exercised. Depending on the circumstances, that degree of impact may well require a greater degree of justification on the part of the national authorities, as regards their deprivation decision."

81. A case which is clearly of direct relevance in determining the European parameters of a section 40A appeal is G1 v Secretary of State for the Home Department [2012] EWCA Civ 867. G1 does not feature in the decision of the Tribunal in Deliallisi. As a member of the panel in that case, I cannot recall that it was cited in argument.

82. G1 involved a naturalised British citizen, originally from Sudan, who was deprived of his British citizenship and excluded from returning to the United Kingdom, on the basis that the respondent considered that both actions would be conducive to the public good. G1 was said by the respondent to be involved in terrorism-related activities and to have links to a number of Islamic extremists.

83. G1 contended that the application of EU law entitled him to attend in person his appeal in the United Kingdom. The appellant's contention "lies in the fact that because the loss of national citizenship entails the loss also of EU citizenship (conferred by Article 9 of the treaty on European Union and Article 20(1) of TFEU), the deprivation of the citizenship of a national of an EU member state "falls within the ambit of EU law". He relied principally on the decision of the Court of Justice of the European Union in Rottmann v Bayern [2010] ECR 1-1449" (Laws LJ at paragraph 30).

84. The Court had this to say:-

> "36. By its first question and the first part of the second question, which may appropriately be examined together, the national court seeks in essence to ascertain whether it is contrary to European Union law, in particular to article 17 EC, for a member state to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation and obtained by deception in as much as that withdrawal deprives the person concerned of the status of citizen of the

Union and of the benefit of the rights attaching thereto by rendering him stateless, acquisition of that nationality having caused that person to lose the nationality of his member state of origin.

37. All the governments that submitted observations to the Court, the Freistaat Bayern and the Commission of the European Communities argue that the rules on the acquisition and loss of nationality fall within the competence of the member states. Some of them conclude that a decision to withdraw naturalisation such as that at issue in the main proceedings cannot fall within the ambit of European Union law. In that connection, they make reference to Declaration No 2 on nationality of a member state, annexed by the member states to the final act of the Treaty on European Union.

38. The German and Austrian Governments also argue that when the decision withdrawing the naturalisation of the applicant in the main proceedings was adopted, the latter was a German national, living in Germany, to whom an administrative act by a German authority was addressed. According to those governments, supported by the Commission, this is, therefore, a purely internal situation not in any way concerning European Union law, the latter not being applicable simply because a member state has adopted a measure in respect of one of its nationals. The fact that, in a situation such as that in the main proceedings, the person concerned exercised his right to freedom of movement before his naturalisation cannot of itself constitute a cross-border element capable of playing a part with regard to the withdrawal of that naturalisation.

39. It is to be borne in mind here that, according to established case law, it is for each member state, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality: see *Micheletti's case (Case C-369/90) [1992] ECR I-4239,* para 10; Belgian State v Mesbah (Case C-179/98 [1999] ECR I-7955, para 29; and *Chen v Secretary of State for the Home Department (Case C-200/02 [2005] QB 325*, para 37).

40. It is true that Declaration No 2 on nationality of a Member State, annexed by the member states to the final act of the Treaty on European Union, and the decision of the heads of state and government, meeting within the European Council at Edinburgh on 11 and 12 December 1992, concerning certain problems raised by Denmark on the Treaty of European Union, which were intended to clarify a question of particular importance to the member states, namely, the definition of the ambit ratione personae of the provisions of European Union law referring to the concept of national, have to be taken into consideration as being instruments for the interpretation of the EC Treaty, especially for the purpose of determining the ambit ratione personae of that Treaty.

41. Nevertheless, the fact that a matter falls within the competence of the member states does not alter the fact that, in situations covered by European Union law, the national rules concerned must have due regard to the latter: see, to that effect, *Criminal proceedings against Bickel (Case C-274/96) [1998] ECR I-7637*, para 17 (as regards national provisions in the sphere of criminal legislation and the rules of criminal procedure); *Garcia Avello v Belgian State (Case C-148/02) ECR I-11613,* para 25 (as regards national rules governing a person's name); *Schempp v Finanzamt München V (Case C-403/03)[2005] ECR I-6421*, para 19 (as regards national rules relating to direct taxation); *Kingdom of Spain* v *United Kingdom (Supported by Commission of the European Communities intervening) (Case C-145/04)*

[2006] ECR I-7917, para 78 (as regards national rules determining the persons entitled to vote and to stand as candidates in elections to the European Parliament)).

42. It is clear that the situation of a citizen of the Union who, like the applicant in the main proceedings, is faced with a decision withdrawing his naturalisation, adopted by the authorities of one member state, and placing him, after he has lost the nationality of another member state that he originally possessed, in a position capable of causing him to lose the status conferred by article 17 EC and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law.

43. As the court has several times stated, citizenship of the Union is intended to be the fundamental status of nationals of the member states: *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve (Case C-184/00) [2002] ICR 566*, para 31; *Baumbast v Secretary of State for the Home Department (Case C-413/99) [2003] ICR 1347,* para 82).

44. Article 17(2) EC attaches to that status the rights and duties laid down by the Treaty, including the right to rely on article 12 EC in all situations falling within the scope ratione materiae of Union law: see Martínez Sala v Freistaat Bayern (Case C-85/96) [1998] ECR I-2691, para 62, and *Schempp v Finanzamt München V (Case C-403/03) [2005] ECR I-6421* para 17)".

85. I agree with Mr Jarvis that the effect of G1 is clear. Unless a section 40A deprivation appeal has a cross-border element, EU law has no part to play in the appeal's determination. To the extent that the Tribunal find otherwise in Deliallisi, its decision was reached *per incuriam*.

86. Ms Naik sought to circumvent the problem of G1 by recourse to the judgment of the Supreme Court in Pham v Secretary of State for the Home Department [2015] UKSC 19. In that case, which involved the issue of whether a person from Vietnam would be rendered stateless by depriving him of British citizenship, the Supreme Court considered the judgments in Rottmann and G1. At paragraphs 58 and 59 Lord Carnwath said as follows:-

"58. It seems clear that the issue of EU law would raise difficult issues, even before reaching the question of a reference to the European court. I see considerable force in the criticisms made by Laws LJ of some of the reasoning in the *Rottmann case [2010] QB 761*. In particular he raises the more fundamental issue of competence (para 54 above): that is, in his words, 'whether the European Communities Act 1972 or any successor statute had conferred any authority on the Court of Justice to exercise such a jurisdiction'. In the light of his judgment, this is an issue which would need to be considered, in the Court of Appeal or this court, before it would become appropriate to consider a reference to the European Court.

59. However, before that stage is reached, in my view, it is important that SIAC, as the tribunal of fact, should first identify the respects, if any, in which a decision on these legal issues might become necessary for disposal of the present case. Mr Southey relies in general terms on the EU requirement of proportionality, but he

has not shown how (whatever its precise scope in EU law) it would differ in practice in the present case from the issue of proportionality already before SIAC under the Human Rights Convention, or indeed from principles applicable under domestic law".

87. At paragraph 84, Lord Mance said:-

> "84. In the present context, it is clearly very arguable that there are under the Treaties jurisdictional limits to European Union competence in relation to the grant or withdrawal by a member state of national citizenship. Fundamental though its effects are where it exists, citizenship of the Union is under the Treaties a dependant or derivative concept – it depends on or derives from national citizenship ...".

With respect to Ms Naik, these passages make it quite evident that the ratio of G1 remains intact, so far as it concerns the inability of European law, in a case having no cross-border dimension, to have purchase upon a section 40A appeal. I can see no reason to distinguish G1 from the present case on the basis that G1 concerned the respondent's power to deprive G1 of citizenship on the ground that it would be conducive to the public good because of alleged involvement in terrorism-related activities. Likewise, the fact that G1 was excluded from the United Kingdom seems to me, for present purposes, to be immaterial.

E. The reasonably foreseeable consequences of depriving the appellant of British citizenship

88. This is the third occasion on which a substantive judicial decision has been made on the appellant's section 40A appeal. The First-tier Tribunal's decision of October 2014, although set aside because of the erroneous application of Part 5A of the 2002 Act, contains a detailed analysis of the evidence that was before the Tribunal, regarding the appellant's medical condition and the likely effects on it of being deprived of citizenship.

(a) Mental health

89. In summary, I do not consider that any of the more recent evidence, which I have seen and heard, casts any doubt upon the conclusions of the First-tier Tribunal, as set out at paragraphs 32 and 33 of its determination:-

> "32. It is clear to us from all this evidence that the Appellant suffers from long-standing psychological problems and a diagnosis has been made on more than one occasion of PTSD as well as depression associated with clinical concerns about suicidality and self-harm.
>
> 33. However, despite this clinical picture and the extraordinary series of distressing and traumatic events that the Appellant appears to have encountered throughout her life, there have been extended periods when she appears to have functioned at a remarkably high level. She has served as a mother to a number of children

(including one who is seriously disabled) and been able to cope with a whole series of family crises affecting the children. Whilst dealing with family responsibilities, she also studied and qualified as a nurse and she worked as a nurse for a number of years. She has also been highly energetic in pursuing a series of family and custody disputes and legal proceedings".

90. There can be no doubt in anyone's mind that the appellant has significant mental health issues. Insofar as they can be attributed, wholly or partly, to external factors, the immigration difficulties that the appellant has only relatively recently faced are plainly not the major ones. Although there are doubts concerning the precise sequence of events that led to her arrival in the United Kingdom, the appellant undoubtedly had a traumatic early life in Nigeria, as a result of the Biafran war, if nothing else. The sad sequence of events that led to the custody battles the appellant fought and (in the case of Z) lost have also had an evident impact upon her mental health.

91. I entirely understand that, against this background, the mental health professionals involved with the appellant's care would much prefer the appellant to be free from any worries on the immigration front and (insofar as the two are related) on the accommodation front also. Looked at overall, however, I do not accept that the consequences of deprivation upon the appellant's mental health would be reasonably likely to be as dramatic as Ms Naik contends.

92. Whilst I give due weight to the views of Drs Price and Fisher and of Ms Kralj, I agree with Mr Jarvis that the best overall evidence regarding the appellant's mental issues, in particular her suicidal ideation, is to be found in the materials emanating from her long-standing GP, Dr Kelland. This evidence shows the appellant has not evinced a clear intention actually to end her own life. The notes Dr Kelland made in respect of an incident on 9 October 2015 are indicative: "Frank disc[ussion] – multiple similar episodes – but no real intent says she will not do it ... says she just wanted to disc[uss] issues w[ith] me".

94. It is also significant that the appellant is plainly receiving a high and committed standard of care from both Dr Kelland and, more recently, Dr Fisher and the mental health team. Even if the appellant were to be left for any period of time without status, following deprivation of citizenship, she would be entitled to emergency medical care and the strong likelihood is that Dr Kelland would, furthermore, decide to remain as her GP.

(b) The respondent's likely actions

95. Although my findings on this issue are broadly in line with that of the First-tier Tribunal, in determining the reasonably likely consequences of deprivation, it is plainly important to consider what the respondent is, in fact, likely to do in those circumstances. Mr Jarvis says that the respondent can do one of three things: grant a period of leave; initiate deportation; or do nothing. Although the respondent's current policy, on its face, enables her to adopt the third such course, a policy must, of its nature, be able to be departed from, if the circumstances so require. In the

present case, any decision which would be likely to result in the appellant suffering significant disruption in the current mental health care that she is receiving could well lead to a disproportionate interference with her Article 8 rights. The respondent can, I find, be reasonably expected to be fully aware of this and to respond accordingly.

96. I find that, in all the circumstances of this (unarguably highly unusual) case, the respondent is – despite her policy – not reasonably likely to leave the appellant in a "limbo" state for any significant length of time, if at all. The respondent's choices would, thus, lie in either granting limited leave to remain or pursuing deportation. In the former case, the appellant would lose the freedom from immigration control that comes with citizenship. However, she would otherwise remain in a stable position, both as regards health care and accommodation (as to which, see further below). I was unpersuaded by the evidence of H that remaining British would be as beneficial to the appellant, in terms of her overall circumstances and outlook, as he claimed it to be. Of much greater significance to the appellant, I find, is her ongoing relationship with H and with S, with whom she now lives. The appellant's history shows plainly that she draws substantial validation from being in a position to look after others. S's decision to move in with the appellant is, accordingly, of considerable significance.

97. I accept that, as matters stand, the appellant fears that deprivation of citizenship will be followed by deportation action and that the respondent has refused to rule that out. I do not, however, consider that the appellant's removal from the United Kingdom, in consequence of deprivation, can be said to be reasonably foreseeable. The view is occluded by the following matters.

98. As I have already mentioned, the appellant's case is that, as a matter of law, she will enjoy indefinite leave to remain, upon being deprived of British citizenship. Whilst I fully acknowledge the appellant's limited means, and I am aware of the problems she may face as a person who, in the eyes of the respondent at least, lacks leave, her history shows that she has been able to mount legal proceedings, both as regards her immigration position and as regards custody issues. I therefore consider it is likely that the appellant will seek directly to test her contention regarding indefinite leave to remain. For the reasons I have given at paragraphs 68 to 77 above, I consider that such a challenge will fail. Nevertheless, whilst it is, of course, possible for the respondent to deport someone who has indefinite leave, the issue is likely at least to be a complicating factor.

(c) Removal to Nigeria not reasonably foreseeable

99. The much more significant point is that, regardless of the outcome of any hypothetical proceedings regarding the appellant's indefinite leave to remain, it is simply not possible to conclude that deprivation is reasonably likely to lead to the respondent's actually deporting the appellant to Nigeria. I agree with Ms Naik and Mr Jarvis that it is not for the Tribunal, in the present proceedings, to pre-judge the outcome of any appeal that the appellant may bring against a decision to deport her.

It would, nevertheless, be wrong to make a finding regarding the reasonably foreseeable consequences of deprivation that ignores this aspect. The Tribunal must take a view as to whether, from its present vantage point, there is likely to be force in any challenge to deportation that the appellant can be expected to bring. The stronger the case, the less likely it will be that the reasonably foreseeable consequences of deprivation will include removal from the United Kingdom. There is nothing novel or problematic in the Secretary of State, a court or a tribunal being required to take a view of the strength of future, hypothetical appeal proceedings: see eg section 94 of the 2002 Act and paragraph 353 of the Immigration Rules.

100. Following the changes to the appeal regime effected by the Immigration Act 2014 there is, of course, no appeal as such against deportation. What the appellant would need to do is make a human rights or protection claim (or both) and appeal any refusal of that claim. The appellant contends that she would not be able to meet the cost of making an application for leave on human rights grounds. The relevant IDI (*Fee Waiver for FLR(FP) & FLR(O) Forms* (April 2015)), however, does not purport to cover the entire range of circumstances in which the appellant might raise a human rights claim by reference to Article 8; nor does it cover protection claims, which, in view of the appellant's asserted history, cannot be ruled out. In any event, even if the appellant were to fail to qualify for a fee waiver, by reference to the IDI, because she is not considered "destitute" within the terms of its policy, I find that it is likely she would be able to make an application, by paying any requisite fee. She has family in the United Kingdom who, albeit with difficulty, would be likely to help her and she has also shown an ability to access relevant support mechanisms.

101. Based on the appellant's difficulties in Nigeria; the length of time she has spent in the United Kingdom; her relationship with H and S (which the First-tier Tribunal rightly found went beyond ordinary adult family relationships); her mental health problems; her training as a nurse; and the expiry next year of the ban on her working as such, I conclude that the appellant would have a strongly arguable human rights claim which, if rejected by the respondent, would have at least a realistic prospect of success before the First-tier Tribunal.

102. I therefore find that it is not a reasonably foreseeable consequence of the appellant's deprivation of her British citizenship that she will be deported or otherwise removed to Nigeria. Despite her mental health difficulties, the appellant is plainly able to understand the consequence of this finding, which can be reinforced by those advising her and caring for her mental health needs. As a result, it is not reasonably foreseeable that the appellant will regard the loss of her British citizenship as leading inexorably to her return to Nigeria. On the contrary, such a scenario is highly unlikely.

(d) Benefits and accommodation

103. Although I have set out in some detail Ms Harris's opinion regarding the appellant's access to accommodation and benefits, mention must also be made of the written statement on these issues, together with relevant legislation, guidance and case law,

prepared by Mr Jarvis on behalf of the respondent, pursuant to the Tribunal's directions. The contribution of each has been extremely valuable.

104. The detailed articulation of the parties' respective submissions on these issues has served to identify the key matters. The basic point that emerges from an analysis of the relevant legislation is that, complex though it may appear that legislation has been framed with a view to ensuring that the United Kingdom does not violate the human rights of those who have accommodation and/or care needs, which require to be met from the public purse.

105. In this regard, it is noteworthy that the Care Act 2014 provides for a local authority to have power to meet a person's care and support needs, even though the authority may not be under any duty to do so. Like any public law power, section 19 needs to be exercised rationally, with proper regard to the circumstances of any particular case.

106. As Ms Harris notes, <u>SL v Westminster CC</u> articulates a "destitution plus" test, which is of relevance in interpreting the restriction contained in section 21 of the 2014 Act, whereby a local authority may not meet the needs of an adult to whom section 115 of the 1999 Act applies: essentially, because the adult is subject to the Immigration Act 1971 and is in the United Kingdom without the necessary leave.

107. The mechanisms accordingly exist for the appellant to receive accommodation and care, following deprivation of her citizenship, even if she finds herself without any leave to remain. If and to the extent that this is not, in fact, the case, the likelihood grows that the respondent would, in practice, grant leave so as to remove the restriction imposed by section 115.

108. I nevertheless accept that there may be a period of uncertainty for the appellant, as regards her accommodation position, in the event of the deprivation of her British citizenship, although I find that the respondent is unlikely to leave the appellant in immigration "limbo" for a significant period. In assessing the effect on the appellant of this uncertainty, regard needs to be had to the fact that the appellant's current accommodation position, as described at the hearing, is far from ideal. Everyone concerned (including Dr Kelland) describes the appellant's accommodation as dire, largely as a result of damp problems.

109. Again, S's decision to live with the appellant is a positive feature, so far as her future accommodation position is concerned. Whilst I accept that S's needs cannot, in law, be conflated with those of the appellant, at least for the purposes of the Care Act 2014, S has an entitlement to accommodation in his own right. The local authority is likely, in my view, to regard S's presence in the appellant's household as a situation which it would be both beneficial to S and cost-effective to maintain.

(e) Significance of delay

110. The appellant has raised the issue of the delay in depriving the appellant of her citizenship, as a factor that may serve to diminish the public interest in bringing that about. I do not consider that there is any merit in this submission. The delay is, I consider, due to the appellant resolutely pursuing her case, both in the First-tier Tribunal (twice) and in the Upper Tribunal. I make no criticism of that; but it does not enable her to categorise the respondent's behaviour as "dysfunctional" in EB (Kosovo) [2008] UKHL 41 terms.

111. These, then, are the reasonably foreseeable consequences of depriving the appellant of her British citizenship. Are they such as to compel the conclusion that deprivation would be a disproportionate interference with the appellant's Article 8 rights?

F. The public interest

112. The appellant came to the United Kingdom, carrying class A drugs for supply to others. She was sentenced to a significant period of imprisonment, which must have reflected both the seriousness of the crime and the absence of any significant mitigating factor put forward on her behalf. The appellant then escaped from prison and assumed a new identity. Although she subsequently trained as a nurse, she deceived the nursing authorities as to her identity and the true position only became known as a result of her niece informing the respondent, in the course of a custody dispute.

113. I consider that the public interest in ensuring that British citizenship is given only to those who meet the relevant statutory requirements would be severely undermined if the appellant were to retain her citizenship. The public interest in deprivation is, in this case, extremely strong.

G. Striking the balance

114. I do not doubt that the appellant will initially see deprivation as a further blow in her plainly troubled life. For the reasons I have given, however, I do not consider that the reasonably foreseeable consequences of deprivation are as serious as have been contended on her behalf. In particular, the medical evidence not only fails by a wide margin to reach the threshold for Article 3; I also find that the appellant is highly unlikely to respond to deprivation with a serious attempt at suicide. The foreseeable consequences of deprivation do not include removal to Nigeria or being left without leave for any significant period of time. They do include the appellant continuing to have access to relevant mental health care and Dr Kelland continuing as her GP. Although a move from present accommodation may, in any event, be required, the appellant's accommodation needs are highly likely to continue to be met, in a way that enables her to continue to live with S and derive validation from her ability to look after him. The appellant will also continue to have a strong relationship with H.

Next year, the ban on her working as a nurse can be lifted, bringing with it a sense of hope for the future.

115. Weighing the public interest against the appellant's interests, in the light of my findings regarding reasonable foreseeability, the public interest prevails and no disproportionate interference with the appellant's rights will be caused by depriving her of the British citizenship that she acquired through deception.

H. Re-exercising discretion

116. I must also consider whether to re-exercise the respondent's discretion differently. Understandably, Ms Naik put forward no separate submission in this regard. Standing back, I can see no additional factor that is brought into play by this discretionary decision, which has not already been covered in my ECHR analysis. Nor can I see any reason to view any such factor in a different light.

I. Decision

117. This appeal is dismissed.

Direction Regarding Anonymity – rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Upper Tribunal Judge Peter Lane