UTIJR6

JR/2471/2016

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of MK, IK (a child by his litigation friend MK) and HK (a child by her litigation friend MK)

Applicants

V

Secretary of State for the Home Department

Respondent

Before The Honourable Mr Justice McCloskey, President
and Upper Tribunal Judge Peter Lane

Application for judicial review: substantive decision

Having considered all documents lodged and having heard the parties' respective representatives, Ms C Kilroy and Ms M Knorr, both of counsel, instructed by Bhatt Murphy Solicitors, on behalf of the Applicants and Mr B Keith, of counsel, instructed by the Government Legal Department, on behalf of the Respondent at a hearing at Field House, London on 21 April 2016.

Decision: the Applicants are granted permission to apply for judicial review, the application for judicial review succeeds and the Applicants are granted relief in the terms set forth in [54] of this judgment

McCLOSKEY J

Anonymity

(1) All of the Applicants have been granted anonymity on account of the ages and vulnerabilities of the second and third Applicants. Thus any communication or publication which either identifies any of the Applicants or could have this effect is prohibited and, if occurring, may have adverse consequences, including contempt action.

Introduction

(2) There is one contentious issue, of not less than fundamental importance, as between the Applicants and the Respondent, the Secretary of State for the Home Department (the "*Secretary of State*"). It is asserted that the first Applicant (MK) is the mother of the second and third Applicants (IK and HK), both teenagers. The Secretary of State is not persuaded by this assertion. This disbelief has formed the cornerstone of the decision making lying at the heart of these proceedings. By this challenge the Applicants invite the Upper Tribunal to intervene and grant appropriate relief.

The Applicants' Case

(3) The Applicants claim to be nationals of Iraq. It is asserted that the second and third Applicants, IK and HK, resided in "the jungle" in Calais, France for a period of some 2 ½ months, dating from September 2015, subsequent whereto they have been living with a local French family pursuant to a species of fostering arrangements.

(4) The first Applicant, MK, who is said to be their mother, has been residing lawfully in the United Kingdom pursuant to a grant of indefinite leave to remain, having been recognised as a refugee in March 2010. Throughout her sojourn in the United Kingdom she has lived with three of her seven living children (one daughter having died in Iraq), whose ages range from 6 to 16 years. She has since given birth to a further son, aged one year. IK, a male and HK, a female, aged 17 and 15 years respectively are said to be the second and fourth oldest of her children.

(5) In her witness statements MK describes a troubled marriage to her first husband, who died around 2006. In February 2007 MK and her children travelled from Iraq to Syria. It appears that her deceased husband's mother, who was consistently hostile to her, continued to form part of their lives. In circumstances of threat and coercion, her mother in law (it is

claimed) took IK and HK from MK, warning that they would not be seen by MK again. In one of her witness statements MK recounts:

> "*I thought I had lost* [IK and HK]. *I thought that I would never see them again. I cannot describe how painful, as a mother, it was to lose them like this. …..*
>
> *I would not talk about them and if one of the other children started to talk about them I would change the subject.*"

MK claims that she and her remaining children left Syria in November 2009 and, aided by so-called people smugglers, reached the United Kingdom on 23 December 2009. On 09 March 2010 she and her three accompanying children were granted asylum.

(6) In the events which have occurred, a single aspect of MK's asylum interview, conducted on 16 February 2010, has evolved into a matter of critical importance. In the course of questioning about the family's life in Syria, the following exchange occurred:

> "*Did your children live with you?*
>
> *Yes, I had five kids, only three are here. I don't know where my eldest son is, my daughter died before she was two.*"

The decisions on behalf of the Secretary of State precipitating these proceedings are contained in successive letters, both dated 12 February 2016, addressed to the relevant French authorities. These letters were responding to a formal request that the United Kingdom "take charge" of IK and HK under the regime of Council Regulation (EU) No 604/2013 (hereinafter the "*Dublin Regulation*"). The letters are in all material respects identical and include the following key passages:

> "*You have stated that the mother of* [IK and HK] *lives in the United Kingdom and has status here ….*
>
> *I have to inform you that I have studied the original documents and interview statements made by* [MK] *in her asylum application in 2010 and compared them with the statements attached to your formal request. I regret that I am unable to reconcile the family statements given in 2010 to* [sic] *those given in 2016 ….*

> ***Therefore, unless further evidence of the family relationship, such as a DNA match, is received, I regret to inform you that your request to take charge of the above named is respectfully denied.***"
>
> [Emphasis added.]

(7) Resuming the narrative, it is asserted by IK and HK that, following the separation from their mother (MK) and siblings in Syria, they remained with their paternal grandmother, living in Iraq. Some two years later, in 2012, due to the deteriorating situation in Iraq, the three of them went to live in Turkey. In early 2015 their paternal grandmother died. IK and HK then travelled to Izmir where they made contact with an aunt who, in turn, communicated with their mother. Subsequently, arrangements were made for IK and HK to travel to Europe, following which their sojourn in Calais began.

(8) Communications among the three Applicants had been restored by the time they met with their United Kingdom solicitors in November 2015. Events during this phase included a meeting attended by MK and the solicitor concerned. In the solicitor's witness statement, the following is recounted:

> "[MK] *had given up hope of seeing* [IK and HK] *again.* [MK] *expressed her very strong wish to be reunited with* [them]. *She said she would do anything to be able to hold her children again. She asked me to do all I can to make this happen as soon as possible.*"

In the aforementioned context family photographs said to depict (*inter alios*) IK and HK were provided by IK to his legal representatives.

(9) The evidence includes quite detailed accounts provided by IK and HK reproduced in two reports of a consultant child and adolescent psychiatrist. The accounts contained in the reports are, in many respects, in substance consistent with the case made by MK in her asylum interview and her more recent witness statements, generated in the context of these proceedings. In this context it is also appropriate to highlight the evidence suggesting daily telephone contact among the three Applicants since communications were reinstated some months ago. At this juncture we mention also the expert psychiatric assessment that IK and HK are suffering from significant psychological disorders. As regards IK, the expert states:

> "['His] *overwhelming need is for reunification with his family, to be relieved of the responsibility for the safety and well being of his sister, an end to the uncertainty and insecurity of being a refugee in Calais and to have a secure home.*"

With regard to HK, the expert states:

> "*She is extremely vulnerable and regressed and has an **urgent** need for reunification with her mother and a secure home.*"

The Secretary of State's Stance

(10) In the narrative above we have referred to what may be described as the Secretary of State's primary decision, namely the refusal to accede to the "take charge" requests of the French authorities, vis-à-vis IK and HK, dated 12 February 2016. Undeterred, the French authorities urged the Secretary of State to reconsider. This stimulated a further decision on behalf of the Secretary of State (postdating the initiation of these proceedings), dated 16 March 2016. Having rehearsed the various materials, all provided by the French authorities, purportedly considered and MK's asylum interview record of February 2010, the decision states, in material part:

> "*It is noted that* [MK] *failed to mention* [HK or IK] *at any point during her asylum interview nor was there any indication of* [MK] *having any other children ….*
>
> [This failure] *….. damages the credibility of her claim to be their mother …..*
>
> *During the interview* [MK] *made no reference to her former mother in law taking* [IK and HK] *or the threat she claims her former mother in law made stating she would have her killed. It is not considered credible that* [MK] *would choose not to disclose this.*"

Next, the decision maker, assessing the witness statements of three of MK's other children, offers the criticism that:

> "*…. the statements contain remarkably similar sentences, paragraphs and structure.*"

The decision continues:

> "*It is also noted that family photographs have been submitted along with recent photos of* [IK and HK] *taken in Calais. However upon analysis of the photographs, given the passage of time it cannot be stated that the*

individuals that appear in the family photographs are those pictured in the recent photos."

These assessments give rise to the following omnibus conclusion:

"*Taking the evidence in the round it is concluded that the fresh evidence referred to in the paragraphs above does not remove the significant doubt that remains about the relationship between* [the three Applicants]."

(11) The initiation of these proceedings and the subsequent generation of further evidence on behalf of the Applicants gave rise to a further, third decision on behalf of the Secretary of State, contained in a letter dated 19 April 2016, two days prior to the "rolled up" hearing directed by order of this Tribunal dated 08 March 2016. The main impetus for this further decision was evidently the aforementioned two psychiatric reports. The decision maker states:

"*The information provided about the difficult situation of the children in Calais and their psychiatric trauma does not address the central issue of 'proven family links' raised in the SSHD's reconsideration of the take charge request …..*

The SSHD does not consider that the further material submitted above demonstrates 'proven family link'."

In common with the two earlier decisions, this decision then highlights the answer given by MK during her asylum interview in 2010, reproduced in [6] above.

(12) It is appropriate to observe at this juncture that the advent of this third decision on behalf of the Secretary of State addressed the Tribunal's concern that it might find itself in a situation of considering material evidence not previously considered by the primary decision maker, in conjunction with a litigation context of "rolling review": see R (N) – v – Secretary of State for the Home Department (JR – Scope – Evidence) IJR [2015] UKUT 437 (IAC) at [70] – [75].

Legal Framework

(13) There is no dispute *inter-partes* about the governing legal framework. While this, of course, is not binding on the Tribunal we have no reason to disagree with the parties' assessment.

The Dublin Regulation

(14) This measure of EU law establishes the criteria and mechanisms for determining which EU Member State is responsible for "*examining*" an asylum application lodged in one of the Member States by a national of a non-EU country. Within chapter III there is a hierarchy of criteria to be applied in making this determination. The Regulation has the aim of establishing a regime which will operate in a fair, consistent and foreseeable way. It is an instrument which also aims to be efficacious and viable in practice. The regime is designed, per the fifth recital, to:

> "*…. make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.*"

It is a measure which forms part of the common EU policy on asylum which, in turn, includes the Common European Asylum System ("CEAS"). It is, per the second recital:

> "*…. a consistent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.*"

(15) One of the features of the current incarnation of the Dublin Regulation, in force from 01 January 2014, is the special provision which it makes for protecting children. Given the issues raised in the present challenge, it is appropriate to reproduce in full Article 6 which, under the heading "Guarantees for Minors", provides:

> *"1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.*
>
> *2. Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors.*

This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor, in accordance with his or her age and maturity.

4. For the purpose of applying Article 8, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.
To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.
The staff of the competent authorities referred to in Article 35 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

5. With a view to facilitating the appropriate action to identify the family members, siblings or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 4 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2)."

(16) The prescribed criteria for determining the Member State responsible operate in the hierarchical order set forth in Chapter III, per Article 7. Article 8, which enshrines the first of these criteria, provides, under the rubric "Minors":

"1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best

interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that

the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).

6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2)."

(17) Article 22 features in the factual matrix giving rise to these proceedings. It provides:

"1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of receipt of the request.

2. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

3. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

(a) Proof:

(i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;
(ii) the Member States shall provide the Committee provided for in Article 44 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

(b) Circumstantial evidence:

(i) this refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them;
(ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6. Where the requesting Member State has pleaded urgency in accordance with the provisions of Article 21(2), the requested Member State shall make every effort to comply with the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give its reply after the time limit requested, but in any event within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival."

Commission Regulation (EC) 1550/2003

(18) As appears from the provisions set out above, the Dublin Regulation contemplates certain "*implementing acts*" on the part of the European Commission. This complementary legislation is contained partly in Commission Implementing Regulation (EU) No 118/2014 (the "*2014 Regulation*"). This measure both amends and preserves its predecessor, Regulation (EC) No 1560/2003 (the "*2003 Regulation*"). Article 12 of the 2003 Regulation is directed exclusively to the topic of unaccompanied minors. It provides, as amended, in material part:

> *"3. With a view to facilitating the appropriate action to identify the family members, siblings or relatives of an unaccompanied minor, the Member State with which an application for international protection was lodged by an unaccompanied minor shall, after holding the personal interview pursuant to Article 5 of Regulation (EU) No 604/2013 in the presence of the representative referred to in Article 6(2) of that Regulation, search for and/or take into account any information provided by the minor or coming from any other credible source familiar with the personal situation or the route followed by the minor or a member of his or her family, sibling or relative.*
>
> *The authorities carrying out the process of establishing the Member State responsible for examining the application of an unaccompanied minor shall involve the representative referred to in Article 6(2) of Regulation (EU) No 604/2013 in this process to the greatest extent possible.*
>
> *4. Where in the application of the obligations resulting from Article 8 of Regulation (EU) No 604/2013, the Member State carrying out the process of establishing the Member State responsible for examining the application of an unaccompanied minor is in possession of information that makes it possible to start identifying and/or locating a member of the family, sibling or relative, that Member State shall consult other Member States, as appropriate, and exchange information, in order to:*
>
> *(a) identify family members, siblings or relatives of the unaccompanied minor, present on the territory of the Member States;*
>
> *(b) establish the existence of proven family links;*

(c) assess the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State.

5. Where the exchange of information referred to in paragraph 4 indicates that more family members, siblings or relatives are present in another Member State or States, the Member State where the unaccompanied minor is present shall cooperate with the relevant Member State or States, to determine the most appropriate person to whom the minor is to be entrusted, and in particular to establish:

(a) the strength of the family links between the minor and the different persons identified on the territories of the Member States;

(b) the capacity and availability of the persons concerned to take care of the minor;

(c) the best interests of the minor in each case.

6. In order to carry out the exchange of information referred to in paragraph 4, the standard form set out in Annex VIII to this Regulation shall be used.

The requested Member State shall endeavour to reply within four weeks from the receipt of the request. Where compelling evidence indicates that further investigations would lead to more relevant information, the requested Member State will inform the requesting Member State that two additional weeks are needed.

The request for information pursuant to this Article shall be carried out ensuring full compliance with the deadlines presented in Articles 21(1), 22(1), 23(2), 24(2) and 25(1) of Regulation (EU) No 604/2013. This obligation is without prejudice to Article 34(5) of Regulation (EU) No 604/2013."

(19) The amended 2003 Regulation is notably prescriptive, as the substituted Article 15(1) demonstrates:

> *"Requests, replies and all written correspondence between Member States concerning the application of Regulation (EU) Number 604/2013 shall be sent through the "DubliNet" electronic communications network, set up under Title II of this Regulation."*

Article 3 of the 2003 Regulation remains unaffected by the amendments introduced by the 2014 Regulation. Under the rubric of "Processing Requests for Taking Charge", it provides:

> *"1. The arguments in law and in fact set out in the request shall be examined in the light of the provisions of Regulation (EC) No 343/2003 and the lists of proof and circumstantial evidence which are set out in Annex II to the present Regulation.*
>
> *Whatever the criteria and provisions of Regulation (EC) No 343/2003 that are relied on, the requested Member State shall, within the time allowed by Article 18(1) and (6) of that Regulation, check exhaustively and objectively, on the basis of all information directly or indirectly available to it, whether its responsibility for examining the application for asylum is established. If the checks by the requested Member State reveal that it is responsible under at least one of the criteria of that Regulation, it shall acknowledge its responsibility."*

The 2003 Regulation, per Article 19, made provision for the exchange of information between Member States in prescribed forms, contained in the Annexes. The 2014 Regulation introduced, via Article 1(12) and its Annexes, more detailed regulation of this discrete subject. Within Annex II, List A, there is a section entitled "Means of Proof" which provides:

> *"I. Process of determining the State responsible for examining an application for international protection*
>
> *1. Presence of a family member, relative or relation (father, mother, child, sibling, aunt, uncle, grandparent, adult responsible for a child, guardian) of an applicant who is an unaccompanied minor (Article 8)*
>
> ***Probative evidence***
>
> *– written confirmation of the information by the other Member State;*
> *– extracts from registers;*
> *– residence permits issued to the family member;*
> *– evidence that the persons are related, if available;*
> *failing this, and if necessary, a DNA or blood test."*
>
> [Our emphasis]

This latter provision resonates in the context of the present challenge.

HRA 1998 and the Charter of Fundamental Rights

(20) The governing legal framework also contains a human rights dimension. Section 6(1) of the Human Rights Act 1998, which makes it unlawful for any public authority to act in a manner incompatible with a Convention right, applies to the Secretary of State. One of the Convention rights embraced by section 6 is Article 8 ECHR which establishes the right to respect for private and family life in the following terms:

> *"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

The Charter of Fundamental Rights of the European Union (the "*Charter*") is also engaged, having regard to Article 51 thereof. The Applicants invoke, firstly, Article 7, which provides:

> "*Everyone has the right to respect for his or her private and family life, home and communications.*"

Reliance is also placed on Article 24(2):

> "*In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*"

Article 24(3) is also of some significance:

> "*Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.*"

The Applicants further invoke Article 47 which provides, in part:

> "*Everyone whose rights and freedoms guaranteed by the law of the Union are violated as the right to an effective remedy before a Tribunal in compliance with the conditions laid down in this Article.*"

UNCRC

(21) Article 8 ECHR and Articles 7 and 24 of the Charter do not exist in a vacuum. Rather, they form part of a broader international legal framework which includes the United Nations Convention on the Rights of the Child ("UNCRC"). This includes in its preamble the following:

> "*The States Parties to the present Convention ….*
>
> *Convinced that the family, as the fundamental group of society and the natural environment for the growth and well being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community, …..*
>
> *Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding ….*
>
> *Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection …..' ….*"

UNCRC, while more prescriptive and comprehensive than its predecessors, was not revolutionary, its roots being readily traceable to the Geneva Declaration of the Rights of the Child, a measure adopted by the League of Nations in 1924. Article 3(1) of UNCRC provides:

> "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*"

The UN General Comment

(22) Both UNCRC and, by logical extension, the various measures of domestic and international law rehearsed above, are to be considered in conjunction with a publication of the United Nations Committee on the Rights of the Children, namely "General Comment Number 14 (2013) on the Right of the Child to have his or her best interests taken as a primary consideration" (the "*General Comment*") promulgated in May 2013. This emphasises, in its opening passages, that the best interests of the child have the threefold

status of a right, a principle and "*a rule of procedure*". The essence of this rule of procedure is explained in paragraph 6(3) in these terms:

> "*Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees.*"

This theme is developed in paragraph 48 which, under the title of "Best Interests Assessment and Determination", states:

> "*Assessing the child's best interests is a unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned, such as, inter alia, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc.*"

This is followed by a non-exhaustive and non-hierarchical list of factors to be included in a best interests assessment.

(23) Section B of the General Comment is devoted to the subject of the procedural safeguards required to guarantee the implication of a child's best interests. These, unsurprisingly, are not unduly prescriptive. Predictably, they emphasise the importance of (*inter alia*) "*establishment of facts*". Paragraph 92, in this context, states:

> "*Facts and information relevant to a particular case must be obtained by well trained professionals in order to draw up all the elements necessary for the best interests assessment. This could involve interviewing persons close to the child, other people who are in contact with the child on a daily basis, witnesses to certain incidents among others.* ***Information and data gathered must be verified and analysed prior to being used in the child's or children's' best interests assessment.***"

[Emphasis added.]

Paragraph 94, in similar vein, exhorts the deployment of a "*multidisciplinary team of professionals*" – who may hail from the spheres of child psychology, child development and other relevant human and social developments fields – in every best interests assessment.

(24) In passing, in the municipal law context of the United Kingdom, comparable duties and requirements have been recognised for some time, via the domestic law equivalent of Article 3(1) of UNCRC, section 55(1) of the Borders, Citizens and Immigration Act 2009 and the Secretary of State's statutory guidance made under section 55(2). The requirements and duties thereby established have been recognised in a number of reported cases. These include the decisions of the Supreme Court in ZH (Tanzania) – v – Secretary of State for the Home Department [2011] 2 AC 166 at [34] – [37] especially (per Baroness Hale) and the fifth and sixth of the precepts in the code devised by Lord Hodge in Zoumbas – v – Secretary of State for the Home Department [2013] 1 WLR 3690 at [10]. These decisions prompted this Tribunal to hold in JO and Others (Section 55 Duty) Nigeria [2014] UKUT 00517 (IAC) that being adequately informed and conducting a scrupulous analysis of all relevant information and factors are essential pre-requisites to the inter-related tasks of identifying the child's best interests and then balancing them with other material considerations. We are mindful, of course, that section 55 does not apply to the present context as the two children concerned, IK and HK, are outside the United Kingdom.

(25) In R (SG) – v – Secretary of State for Work and Pensions [2015] UKSC 16, Lord Carnwath described the General Comment as "*authoritative* guidance": see [105] – [106]. The unmistakable correlation between the substantive right and the procedural duty is particularly clear in another decision of the Supreme Court, Mathieson – v – Secretary of State for Work and Pensions [2015] UKSC 47, at [41] especially. The decision in Mathieson also serves as a reminder that Convention rights do not belong to a vacuum but must be interpreted in harmony with general principles of international law, a long familiar pronouncement of the ECtHR: see [42].

(26) As a perusal of the jurisprudence considered above makes clear, the hallowed "Tameside" principle also has its place in the governing legal framework, above all when one is applying a pure public law prism. This, again by analogy, was noted by this Tribunal in JO and Others (Nigeria), at [10]:

"*The passages highlighted above seem to me to support the proposition that in order to discharge the twofold, inter-related duties imposed by section 55 (i) to have regard to the need to safeguard and promote the welfare of any children involved in the factual matrix in question and (ii) to have regard to the Secretary of State's guidance, the decision maker must be properly informed. I consider this construction of section 55 to be dictated by its content, its evident underlying purpose, the aforementioned decisions of the Supreme Court and the well established public law duty to have regard to all material considerations. The outworkings of this discrete duty were expounded by Lord Diplock in Secretary of State for Education and Science v Metropolitan Borough Council of Tameside [1977] AC 1014, at 1065b, in a passage which has particular resonance in the context of section 55:*

> "*…… It is for a court of law to determine whether it has been established that in reaching his decision ……* [the Secretary of State] *had directed himself properly in law and had in consequence taken into consideration the matters which upon the true construction of the Act he ought to have considered and excluded from his consideration matters that were irrelevant to what he had to consider …..*
>
> *Or, put more compendiously, the question for the court is did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?*"

Linked to this is another hallowed principle of public law, namely the duty of the public authority concerned to promote the policy and objects of the Act in giving effect to the relevant power or duty : Padfield – v – Minister of Agriculture, Fisheries and Food [1968] AC 997, at 1030b/d per Lord Reid. This overlay of public law duties, when applied to section 55, should serve to ensure fulfilment of the underlying legislative purpose in every case. These principles also give sustenance to the proposition that the duties enshrined in section 55 cannot be properly performed by decision makers in an uninformed vacuum. Rather, the decision maker must be properly equipped by possession of a sufficiency of relevant information."

The Tameside duty has also been described from time to time as a duty of enquiry. This duty resonates strongly, in the specific context of a child's best interests assessment, in the opinion of Baroness Hale in H (H) – v – Deputy Prosecutor of the Italian Republic [2013] 1 AC 338, at [82] – [86].

(27) The legal framework is completed by the series of legal rules and principles considered by this Tribunal in its recent decision in R (ZAT) and Others - v

– Secretary of State for the Home Department (Article 8 ECHR – Dublin Regulation – Interface – Proportionality) (IJR) [2016] UKUT 61 (IAC), at [36] – [39]. In brief compass:

(i) A state may have a positive obligation under Article 8 ECHR to admit persons to its territory in order to achieve family reunification: Sen – v – Netherlands [2003] 36 EHRR 7 and Mayeka and Mitunga – v – Belgium [2008] 46 EHRR 23, at [85] and [90] especially.

(ii) One of the purposes of the Refugee Convention is to protect and preserve the family unit of a refugee: ZN (Afghanistan) – v – Secretary of State for the Home Department [2010] 1 WLR 1275, at [35].

(iii) It is incumbent on states to examine applications for family reunion involving children with flexibility and humanity: Mugenzi v France (App 52701/09, 10 July 2014), at [50] – [56] especially. Notably the ECtHR emphasised the duty on the national authorities to take into consideration the applicant's vulnerability and difficult personal history.

(iv) To like effect is the decision in Senigo-Longue & others v France (App 11903/09, 10 July 2014), at [64] – [75] especially, where there is a notable emphasis on the procedural dimension of Article 8 ECHR at [63], also identifiable in the undercurrent of [68] – [69]. We would add that in both Mugenzi and Senigo-Longue, there are clear traces of Article 10 of UNCRC, which provides that any application by a child or a child's parents to enter a state for the purpose of family reunification "*… shall be dealt with by States Parties in a positive, humane and expeditious manner*" and the linked provision in Article 22. The latter provision clearly contemplates that the vindication of a child's procedural rights under Article 8 ECHR, in the conduct of the best interests assessment, for example, shall require appropriate proactive steps on the part of the state concerned.

(v) The vulnerability of an asylum seeking or refugee child carries significant weight and may require special measures to be taken: Tarakhel – v – Switzerland [2015] 60 EHRR 28, at [99] and [119] especially.

The Battle Lines Drawn

(28) The primary contention of Ms Kilroy, appearing with Ms Knorr on behalf of the Applicants, is that the Secretary of State is under a positive legal duty to

admit IK and HK to the United Kingdom for the purpose of reunification with MK and the other children of the family. Ms Kilroy submits that the Secretary of State's rejection of the French authority's "take charge" request in respect of IK and HK is vitiated by her failure to discharge the investigative and evidence gathering obligations deriving from the various instruments and principles outlined in [14] – [23] above. This failure, it is argued, gives rise to a breach of the three Applicants' rights under Article 8 ECHR and Article 7 of the Charter. Breaches of both the procedural and substantive dimensions of Article 8 are asserted. The fundamental default on the part of the Secretary of State of which the Applicants complain is her failure to properly investigate the viability and availability of IK and HK undergoing DNA testing in the circumstances in which they find themselves in France and given that all three Applicants have consented to this procedure.

(29) Acknowledging the evolution in the evidence which has occurred since the Secretary of State's initial refusal decision was made, Ms Kilroy submits that this refusal cannot lawfully be maintained, having regard to a combination of the evidence in its totality and the Secretary of State's entirely passive stance regarding the acquisition of DNA evidence. The Secretary of State has neither investigated this issue, properly or at all, nor provided the Applicants with any assistance to facilitate and expedite acquisition of the evidence. Relying on R (Al-Sweady) – v – Secretary of State for the Home Department [2010] HRLR 2, Ms Kilroy submits, in terms, that this Tribunal is obliged to examine all the evidence with appropriate scrutiny given the procedural dimension of the rights invoked by the Applicants, is entitled to differ from the Secretary of State's assessment that there is insufficient evidence of family ties linking the three Applicants and, having conducted this exercise, should make findings sufficient to warrant the grant of the primary relief sought by the Applicants, namely a mandatory order requiring the Secretary of State to admit IK and HK to the United Kingdom.

(30) This Tribunal, it is further contended, should find that IK and HK are the biological children of MK. It is submitted that this is the appropriate finding having regard to the totality of the evidence, coupled with a series of factors: in particular, the absence of any adverse credibility issue in the Secretary of State's decisions; the positive credibility assessment implicit in MK's successful claim for asylum in 2010; the Applicants' consistent willingness to submit to DNA testing; the repeated daily contact involving all three Applicants during recent months; and, finally, the very fact of these proceedings and the course which they have taken.

(31) Ms Kilroy's alternative contention is that, given the breaches of legal duty on the part of the Secretary of State which, it is said, are established, the Tribunal should, as a minimum, grant relief in a form which will require the Secretary of State to take appropriate steps to remedy the evidential void – namely the absence of DNA testing reports – which is the only obstacle preventing the reunification of IK and HK with their mother MK and their siblings in the United Kingdom. Finally, highlighting the pure public law dimension of this challenge, Ms Kilroy submits that the Secretary of State has, unsustainably, attributed no weight to the French authority's "take charge" request, has erred and misdirected herself in law in suggesting that in the circumstances prevailing her function is merely passive; and, in contravention of the "Tameside" principle, has both failed to ask herself the correct question – namely what are the best interests of IK and HK – and has also failed in her duty of enquiry.

(32) Turning to the Secretary of State's case, we note the combined detailed grounds of defence and skeleton argument of Mr Keith. The asserted breaches of Article 8 ECHR, Article 7 of the Charter and the relevant provisions of the Dublin Regulation are all resisted on the ground that there was insufficient evidence to establish a familial relationship among the three Applicants. Attention is also drawn to the manner in which MK's account has evolved and (it is contended) altered beginning with her asylum interview in 2010 and extending through her successive witness statements in these proceedings. Inconsistencies in the witness statements of two of the children of the family are also asserted. Further, it is suggested that the French authorities, in making the "take charge" requests, did not have access to MK's 2010 asylum interview.

(33) The basis upon which the Secretary of State takes her stand is particularly clear from the following passages in the grounds of defence:

> "*It is a matter for the Applicants should they wish to have DNA tests conducted. In any event, the Respondent does not require DNA evidence to be submitted in order to prove a familial relationship under the* [Dublin Regulation] *or in support of visa applications ….*
>
> *In this case the take charge request has been refused on the basis of credibility.*"

The grounds of defence also seek to draw support from Article 22 of the Dublin Regulation (reproduced in [17] *supra*). The contention advanced is based exclusively on Article 22(5), which obliges the requested Member State to acknowledge its responsibility if the circumstantial evidence is

"*coherent, verifiable and sufficiently detailed to establish responsibility*". The contention formulated is the following:

> "*Therefore, it is not incumbent on the requested Member State to seek out evidence but rather to consider that which is in front of it.*"

This may be linked to a later passage in the grounds:

> "*The Respondent is not required to actively investigate the claim under the Dublin Regulation, it being the Applicants' application to make and, therefore, their role to provide evidence that they are in fact mother and children from the same family.*"

The impugned decision of the Secretary of State is, ultimately, justified on two bases. First, it is contended that it does not infringe Article 8 of the Dublin Regulation. Second, it is contended that the decision is reasonable (presumably in the Wednesbury sense).

(34) In the course of his submissions, Mr Keith was disposed to accept that one of the options available to the Secretary of State has been, and remains, to admit IK and HK to the United Kingdom for the sole purpose of undergoing DNA testing. This, however, he argued, would be undesirable as it would establish a dangerous precedent. It was further submitted that the Secretary of State could not enforce any mandatory order requiring DNA testing of IK and HK in France. Mr Keith acknowledged the inconclusive nature of the evidence of French law in this respect. Finally, Mr Keith accepted that the Secretary of State, upon receipt of the "take charge" request, had a duty under the Dublin Regulation to investigate. His associated submission was that since the initial refusal decision was made there has been no continuing duty of this nature.

Our Conclusions

(35) As the résumé in [2] – [9] above indicates, there have been three separate decision making processes altogether involving the Secretary of State. These have yielded three discrete decisions of the Secretary of State, namely the initial refusal to accede to the "take charge" request of the French authorities, the subsequent affirmation of such decision following a reconsideration request by the French authorities and, ultimately, a second reconsideration decision prompted by the further evidence accumulated by the Applicants in the context of these proceedings. All three decisions have been to like effect and each has had the same rationale.

(36) The available evidence points readily to the threefold conclusion that the Secretary of State has at no time (a) investigated, in conjunction with the French authorities or otherwise, the viability or availability of DNA testing for IK and HK in France, (b) investigated what the relevant French domestic laws are in this respect or (c) considered the possibility of admitting IK and HK to the United Kingdom for the purpose of carrying out DNA testing. We consider that these are all material considerations, none of which has been taken into account. This analysis is reinforced when one superimposes the "Tameside" duty of enquiry. It follows that, viewed through a pure public law prism, the Secretary of State's initial and subsequent decisions are unlawful.

(37) This is not, however, the only dimension from which the legality of the Secretary of State's rejection of the "take charge" request is to be evaluated. As the outline in [14] – [27] shows, the governing legal framework has multiple constituent elements, many of them interlocking. The analysis that the dominant instrument in this legal matrix is the Dublin Regulation seems to us uncontroversial. In contrast with the situation prevailing in ZAT, the processes and procedures of the Dublin Regulation had been fully observed in the present case. In summary, IK and HK made their respective claims for asylum in France, these claims were examined by the French authorities, a "take charge" request ensued and the Secretary of State made her refusal decision accordingly and reaffirmed it subsequently. The contrast with ZAT, where no Dublin Regulation steps had been taken, is striking.

(38) We consider that duties of enquiry, investigation and evidence gathering course through the veins of the Dublin Regulation and its sister instrument, the 2003 Regulation as amended. In some of the provisions of the Dublin Regulation, these duties are explicit: see for example Article 6(4) and Article 8(2). These duties are also explicit in Article 22(1), which requires a requested Member State to "*make the necessary checks*" upon receipt of a "take charge" request prior to reaching its decision. In other provisions of the Dublin Regulation, these duties are clearly implicit. The scheme of the Dublin Regulation is that the more detailed outworkings of these duties are not specified in the measure itself but are, rather, to be found in the ancillary, implementing legislation adopted by the Commission, namely the 2003 Regulation as amended. These two measures must be considered together and as a whole.

(39) It follows that we reject the Secretary of State's contention (as pleaded) that she had no duty of investigation upon receipt of the "take charge" requests and the associated contention that the onus to provide all necessary

evidence rested on the Applicants. These contentions are, in our judgment, confounded by the provisions of the Dublin Regulation and its sister instrument considered as a whole. We further reject the Secretary of State's selective reliance on one of the various components of Article 22, namely Article 22(5), of the Dublin Regulation, for the same reason.

(40) We must now consider the Secretary of State's modified position at this stage of the hearing. This entailed an acknowledgement that there was a duty of investigation under the Dublin Regulation when the initial "take charge" request was received. What did this duty require of the Secretary of State? We consider that the investigative and evidence gathering duties imposed on Member States by the Dublin Regulation are unavoidably factually and contextually sensitive. The content and scope of such duties will vary from one context to another. While we did not receive detailed argument on this discrete issue, we are inclined to the view that these duties are not absolute, in the sense that they apply irrespective of considerations such as excessive or disproportionate burden. It seems to us that implicit in the Dublin Regulation is the principle that these duties require the Member State concerned to take reasonable steps. The court or tribunal concerned will, having regard to its duty under Article 6 TEU, be the arbiter of whether this duty has been acquitted in any given case.

(41) We find nothing in either the Dublin Regulation or its sister instrument to support the argument that the Secretary of State's acknowledged duty of investigation was extinguished once the initial refusal decision had been made. There is nothing in this regime to suggest that a decision on a "take charge" request is in all cases final and conclusive, subject only to legal challenge under (*inter alia*) Article 27. Furthermore, this would be entirely inconsistent with the concept of practical and effective protection and the broader context of the real world of asylum claims. The phenomenon of renewed "take charge" requests and successive "take charge" decisions by the requested State is, in our view, implicitly recognised in the Dublin Regulation. Furthermore, it was not argued that the Secretary of State's reconsidered decision, made pursuant to a renewed "take charge" request, was in some way a voluntary act of grace, as opposed to the discharge of a decision making duty. Nor was it argued that the Secretary of State's later decisions, made in the course of these proceedings, were in some way divorced from the Dublin Regulation context.

(42) The present cases are a paradigm illustration of the truism that, in certain contexts, there may be a series of formal requests by one Member State and a series of formal decisions by the requested Member State. We are in no doubt that all such decisions and associated decision making processes are

governed by the Dublin Regulation and its sister instrument, the 2003 Regulation as amended.

(43) We have identified in [36] above three failures on the part of the Secretary of State in making the principal decision, namely the refusal of the initial "take charge" request by the French authorities. All are, in essence, failures of a procedural nature. The conclusion that these failures, individually or collectively, amount to a breach of the investigative and evidence gathering duties imposed by the Dublin Regulation does not, however, follow inexorably. This question must, rather, be answered by reference to the context in which the failures occurred.

(44) At its most basic and material, this context was possessed of two conspicuous features. The first was the absence of DNA evidence establishing that all three Applicants are, biologically, members of the same family. The second is the acknowledgement on the part of the Secretary of State that if evidence of this kind were available the "take charge" requests would be accepted. In our judgment this context obliged the Secretary of State as a minimum, to take the procedural steps and properly consider the options identified in [36] above. The Secretary of State did not do so. We conclude that, in consequence, the investigative and evidence gathering duties, both explicit and implicit, in Articles 6 and 8 of the Dublin Regulation, considered in tandem with the 2003 Regulation as amended, were not discharged. The corresponding rights of the Applicants were infringed. The principal decision of the Secretary of State is, therefore, in breach of the Dublin Regulation.

(45) We elaborate on this conclusion as follows. The absence of DNA evidence establishing the requisite biological familial link was the crucial feature of the Secretary of State's decision. No alternative hypothesis – such as sophisticated invention or manipulation – has ever been postulated. The key to breaking the logjam was DNA evidence: but none was available. The Applicants were unable to provide such evidence for a variety of reasons, including in particular lack of resources and uncertainties relating to French law. The Secretary of State was at all material times in a position to proactively take steps to at least attempt to overcome this *impasse*. However, the evidence establishes beyond peradventure that nothing was done. In particular, none of the elementary steps identified in [36] above was taken. The Applicants were in a position of helpless and hopeless impotency. Relying upon a mistaken assessment that she was entitled, in law, to be purely passive and a further erroneous view of onus of proof the Secretary of State proceeded to make a decision adverse to the Applicants of fundamental significance to their lives. We consider these failures to be

incompatible with the progressively strengthening mechanisms and provisions contained in the current incarnation of the Dublin Regulation, reflected particularly in the investigative and evidence gathering duties identified above and the new (and welcome) emphasis on protecting children and families.

(46) The analysis above must, logically, apply fully to the second and third of the Secretary of State's decisions. Furthermore, it impels to the further conclusion that all of these decisions are in breach of the both the Dublin Regulation and the procedural dimension of Article 8 ECHR.

(47) We further consider that, in the fact sensitive context of this case, the Secretary of State's investigative and evidence gathering duties are continuing. This follows logically from our analysis that these duties were not properly discharged in the context of any of the three decision making processes which have occurred, coupled with our conclusion that the Dublin Regulation has continued to govern the relationship between the parties since the initial decision was made.

(48) The due discharge of the Secretary of State's duties, once effected, will, *inter alia*, illuminate the relevant provisions of domestic French law which, at this stage, remain an *incognito*. What <u>is</u> clear is that there is, at present, no compelling evidence of any insuperable legal obstacle. In passing, it would seem unlikely that French law enshrines an absolute prohibition against the DNA testing of IK and HK, taking into account the twin factors of their consent to this being done and the specific recognition of this measure in an instrument of supreme EU law, namely the 2003 Regulation. Beyond this limited observation we do not venture.

<u>Remedy</u>

(49) The primary remedy sought on behalf of the Applicants is a mandatory order requiring the Secretary of State to admit IK and HK to the United Kingdom, for the purpose of family reunification. The basis upon which Ms Kilroy urged this remedy requires careful consideration. It would involve this Tribunal in the twofold exercise of (a) conducting its own detailed examination of all available evidence and (b) making findings that such evidence is sufficient to establish that IK and HK are the biological children of MK. The Tribunal was invited to, *inter alia*, conduct a microscopic examination of the photographic evidence. Furthermore, the findings which the Tribunal has been urged to make would be based not insubstantially on a series of witness statements rather than *viva voce* evidence duly tested by cross examination.

(50) To the above factors we add the consideration that the Secretary of State is the primary decision maker, coupled with our conclusion that a lawful decision making process and ensuing decision on the part of the Secretary of State have not yet occurred, given the legal deficiencies identified above. Furthermore, we are in a position to fashion a swift and efficacious remedy.

(51) We further take into account that, to date, the case of the Applicants has proceeded via the route of the Dublin Regulation. This contrasts with ZAT, where this Tribunal stated, at [52]:

> *"We consider that the Dublin Regulation, with its rationale and overarching aims and principles, has the status of a material consideration of undeniable potency in the proportionality balancing exercise. It follows that vindication of an Article 8 human rights challenge will require a strong and persuasive case on its merits. Judges will not lightly find that, in a given context, Article 8 operates in a manner which permits circumvention of the Dublin Regulation procedures and mechanisms, whether in whole or in part. We consider that such cases are likely to be rare."*

We are mindful of the very recent assessment of the Court of Appeal that the Dublin Regulation is a measure of elevated importance. Laws LJ stated, at [31]:

> *"It is a legal instrument of major importance for the distribution of responsibility among the Member States for the administration of asylum claims. If it were seen as establishing little more than a presumption as to which State should deal with which claim, its purpose would be critically undermined. In my judgment an especially compelling case under Article 8 would have to be demonstrated to deny removal of the affected person following a Dublin II decision."*

See R (CK Afghanistan and Others) – v – Secretary of State for the Home Department [2016] EWCA Civ 166, at [31]. While CK was concerned with the immediate predecessor of the current Dublin Regulation, this passage applies with full force to both measures. While noting the contrasting matrix of the present challenges, we draw attention to this since the potent reach of the Dublin Regulation is unthreatened by these proceedings. Furthermore, given our analysis and conclusions above, the framework of the Dublin Regulation continues to apply in the case of the Applicants. Any suggestion that it has become exhausted is misconceived for the reasons we have given.

(52) Balancing all of these factors we conclude, in the exercise of our discretion, that the appropriate remedies are the following:

(i) An order quashing the Secretary of State's primary decisions relating to IK and HK, both dated 12 February 2016.

(ii) An order quashing the Secretary of State's second decision relating to both IK and HK, dated 16 March 2016.

(iii) An order quashing the Secretary of State's third decision relating to both IK and HK, dated 19 April 2016.

(iv) A mandatory order requiring the Secretary of State (a) to take all reasonable steps and use her best endeavours to facilitate and secure DNA testing of IK and HK and to communicate and liaise with the appropriate French authorities in this exercise, which is to be completed not later than 31 May 2016 and (b) to make a further decision thereafter by 14 June 2016.

There shall be liberty to apply.

(53) The quashing orders will have the effect of requiring the Secretary of State to reconsider the impugned decisions and make fresh decisions and to do so in accordance with the analysis of the law set forth in this judgment and on the basis of all available evidence. The second of the two remedies will oblige the Secretary of State to proactively and expeditiously address the evidential *lacuna* which forms the centrepiece of all three decisions made to date. We have considered it appropriate to impose the above time limits, which we consider reasonable, having regard to the protracted separation of the family members concerned and already accrued delays, taking into account also one of the central themes of the Dublin Regulation, namely efficient and expeditious decision making, which applies with particular force in the case of children.

Order

(54) We order as follows:

(i) The Secretary of State's primary decisions, both dated 12 February 2016, refusing the take charge request of the French authorities under Council Regulation (EU) 604/2013 in respect of the second and third Applicants, IK and HK, are hereby quashed.

(ii) The Secretary of State's second decision, dated 16 March 2016, refusing again, following reconsideration, the said take charge request is hereby quashed.

(iii) The Secretary of State's third decision, dated 19 April 2016, maintaining the refusal of the said take charge request is hereby quashed.

While only the decisions in (i) were formally challenged at the outset, Mr Keith, realistically, did not oppose the further quashing orders and, in the interests of certainty and finality and reflecting our conclusions, we grant these further remedies and permit the necessary amendment to reflect this.

(iv) The Secretary of State shall (a) take all reasonable steps and use her best endeavours to facilitate and secure the DNA testing of the second and third Applicants and shall liaise and communicate as appropriate with the relevant French authorities in this exercise, which must be completed by 31 May 2016 and (b) make a further decision by 14 June 2016.

(v) The Applicants' application to rely on further evidence is granted.

(vi) The anonymity of all three Applicants is maintained.

(vii) The Respondent shall pay the Applicants' reasonable costs to be assessed if not agreed.

(viii) The Applicants' legally aided costs shall be subject to a detailed assessment.

(ix) (**[**Permission **to appeal]**.

(x) Liberty to apply.

For the avoidance of any doubt, this order takes effect today.

Signed: **Bernard McCloskey**

The Honourable Mr Justice McCloskey
President of the Upper Tribunal
Immigration and Asylum Chamber

Dated: **29 April 2016**

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was given (Civil Procedure Rules Practice Direction 52D 3.3(2)).