



Neutral Citation Number: [2025] EWHC 451 (Fam)

Case No: FD24P00588

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28 February 2025

**Before :**

**THE HONOURABLE MR JUSTICE GARRIDO**

*Re K (Children) (No. 2) (Application for return orders: Best interests decision)*

**Between :**

**Kent County Council**

**Applicant**

**- and -**

**(1) EK**

**(2) SK**

**(3) MIK & (4) MAK**  
**(By their Children's Guardian)**

**Respondents**

**The Secretary of State for the Home Department**

**Intervener**

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**Edward Devereux KC** (instructed by **Bevan Brittan LLP**) for the **Applicant**  
**Ruth Kirby KC, Charlotte Baker and Michelle Knorr** (instructed by **Osbornes Law LLP**)  
for the **1<sup>st</sup> & 2<sup>nd</sup> Respondents**  
**Sally Stone KC and Henry Lamb** (instructed by **Creighton & Partners**) for the **3<sup>rd</sup> and 4<sup>th</sup>**  
**Respondents**  
**Sir James Eadie KC, Professor Rob George, Alexander Laing and Jack Anderson** for the  
**Secretary of State for the Home Department**  
Hearing dates: 18 and 19 February 2025

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**Approved Judgment**

This judgment was handed down remotely at 14:00 on 28<sup>th</sup> February 2025 by circulation to the parties or their representatives by e-mail.

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THE HONOURABLE MR JUSTICE GARRIDO

This judgment was delivered in private, and a transparency order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

## The Honourable Mr Justice Garrido:

### Introduction

1. This application pursuant to the inherent jurisdiction returns before me for a final hearing to determine what orders, if any, are in the children's best interests. These 6 and 9 year-old children arrived in England in July 2024 on a small boat from France without their parents and have subsequently been accommodated by Kent County Council ("Kent") pursuant to section 20 *Children Act* 1989. Their welfare is my paramount consideration.
2. The wider circumstances in which these proceedings came to be issued is set out in my judgment also handed down today (*Re K (Children) (Application for return orders: Concurrent asylum claims)* [2025] EWHC 450 (Fam)) that addresses the preliminary issue of whether the High Court has the power to implement a return order pending the determination of the children's claims for asylum in the United Kingdom. I concluded that it does, and a draft of that judgment was provided to the parties on the first day of this hearing. The judgments need to be read together.
3. At this hearing, I have been presented with a consent order that I am invited by all parties and the intervener ("the parties") to approve. The order provides for the return of the children to France to be reunified with their parents. Given the consensus, it is not necessary for this judgment to go into extensive detail, but it is right that I should record how the parties came to agree the order and why I approved it on 19 February 2025.

### Reunification in England or France?

4. An accelerated mechanism has been created to enable the children to be swiftly re-admitted to France and placed in the care of their parents, which obviates the need for a potentially lengthy referral process via the Central Authorities pursuant to article 8 of the 1996 *Hague Convention*. This bespoke arrangement envisages the children flying to France with a social worker within three weeks of the order, crossing the border with the equivalent of a *laisser-passez* issued by the UK government and a copy of the re-admission decision to be issued by the French government following my order, before being handed to their parents at the airport and returning without supervision to their parents' accommodation. The French local authority will be notified of the children's arrival, but local court order will not be required nor is it anticipated that one will be sought.
5. Such expedition has only been possible because of considerable industry over the last three months on the part of Kent, the Secretary of State for the Home Department ("SSHD") and the French authorities. There has been commendable cooperation between the UK and France at both national and local government level, and through the respective Central Authorities. The local children's services in France have produced a helpful safeguarding report in three weeks that it was feared could take three months. I wish to record my thanks to all concerned.

6. Although there is now a mechanism for reunification of the family in France, there is no such mechanism for reunification in England. The parents have been refused entry clearance to the United Kingdom, and they have not requested expedition of their appeal against the SSHD's decision. Further, the Upper Tribunal has dismissed the parents' applications for judicial review, following the Court of Appeal's judgment in favour of the SSHD. Although I am encouraged on behalf of the parents to accept that their challenge to the SSHD's decisions could be compromised quickly if I were to determine that only reunification in England would promote the children's welfare, it remains uncertain whether the parents would receive entry clearance and if so, by when.
7. There remain a number of loose ends in the immigration proceedings: the children's asylum claims remain live; there are proposed appeals by the parents against the decisions of the Court of Appeal and the Upper Tribunal; and there is an appeal against the SSHD's entry clearance decision. The SSHD has urged the parents to take a realistic view and not pursue any of these matters. On behalf of the parents, counsel before me did not have instructions, save to say that the parents would now be taking advice on claiming asylum in France. Of course, none of this prevents me from approving the consent order concluding these family proceedings, if that is in the children's best interests.
8. In any event, at a hearing before me on 27 January 2025, it was recorded on the face of my order that:
  - “[The parents] ask for the children to be returned forthwith to them in France [subject to the following conditions]:
    - (a) The French authorities (national and local) confirming in writing that (i) the children can enter lawfully to France and explaining how that will happen; and (ii) the children will be placed in their parents' care on arrival in France and will remain in their parents' care;
    - (b) Kent County Council will arrange for the children to fly to France to be reunited with their children accompanied by a social worker and by their maternal aunt.”

I consider that those conditions have now been met in the ways described in this judgment and in the schedule to the consent order.

### **Is reunification in the children's best interests?**

9. The central issue, therefore, is not *where* the children should be reunified with their parents but *whether* they should be reunified with their parents. Is it in their best interests to live with their parents? Will their parents sufficiently promote their welfare? Most importantly, will they be safe in their parents' care? Is there an appreciable risk of the parents endangering the children's lives again by attempting another illegal entry to the UK?
10. To help me answer those questions and undertake a global, holistic analysis of the children's best interests, I have given the most detailed consideration to the statements and reports from social workers in Kent and France, the parents, a consultant child and adolescent psychiatrist and the children's guardian, a myriad of other evidence filed in

these and the immigration proceedings, together with the written and oral submissions on behalf of the parties.

### **Analysis**

11. Although it may not be strictly necessary when exercising the inherent jurisdiction to consider the evidence in the context of the welfare checklist at section 1(3) of the *Children Act 1989*, I consider it a useful discipline and have briefly done so.

### **The ascertainable wishes and feelings of the children**

12. The children have been consistent in wishing to be reunited with their parents at the earliest opportunity. Not only have they verbalised these wishes to the social worker and children's guardian, but the difficulty that they have demonstrated in regulating their emotions, particularly around video contact with their parents, confirms their feelings.

### **Their physical, emotional and educational needs**

13. More than most, given their experiences to date, these children require the safety, stability and love that provides the bedrock for their development.
14. The children's physical and educational needs have been met in their foster placement and by the provision of mainstream State-funded healthcare and education. They do not appear to have required additional educational support and their English language skills have improved over time.
15. Their emotional presentation is complex and challenging, even for experienced foster carers who have provided sensitive and predictable parenting. The children have a strong bond with each other and with their parents. However, even when back in their parents' care, they are likely to need professional support to process their emotions and life experiences to date.

### **The likely effect of them on a change in their circumstances**

16. All parties agree that they have received exceptionally good care from their foster carers, attending a local school where they are doing well and have made friendships. Kent, and particularly the foster carers, deserve public acknowledgement of the exemplary care provided to the children in very difficult circumstances, and the very high level of video contact that has been made available between children and parents.
17. The children cannot, however, remain in that placement for much longer. If they are to continue to be accommodated by the local authority, there will be at least one more short-term move to alternative temporary foster carers (maybe to separate placements) and a likely change of school, followed by a long-term placement. Set against the turmoil in these children's lives to date, these unavoidable moves are likely to be destabilising and exacerbate the significant harm that they have suffered and to which I refer below.

18. Reunification in France will obviously result in a change of accommodation, school and healthcare provision. The children may experience a sense of loss in leaving the stability of the care provided by their foster carers and their new friends at school. However, they will be supported to adapt to the change by their parents, who will provide them with love and reassurance. The children's guardian considers that the children are sufficiently resilient and adaptable to adjust to life in France. Now that the parents have agreed to receive the children in France, it is important for the children that this should be implemented without undue delay.

**Their age, sex, background and any relevant characteristics**

19. These are 6 and 9 year-old boys of Kurdish heritage and Turkish citizenship. The magnetic factor under this heading is their reported background as children of a father who has been treated as a political dissident in Turkey, and who fled their home and homeland to travel across Europe to seek refuge, culminating in the fateful events of 19 July 2024. They are too young to fully appreciate the complexities of their family situation and life experiences, which have resulted in frequent episodes of emotional dysregulation.

**Any harm which they have suffered or are at risk of suffering**

20. A statement by a deputy director in the Home Office dated 29 October 2024 and filed in the immigration proceedings reads as follows:

[16] Children are at particular risk in small boats crossings as they are usually placed in the middle of the boat, where the mixture of spilled petrol and sea water can cause severe burns. Children have drowned as a result of these poorly constructed boats which have disintegrated. This includes the flooring becoming deflated or rupturing, which can cause the boat to collapse inwards. Migrants including children have died due to drowning or crushing/asphyxiation as other migrants fall onto them, or they are trapped within the deflated boats. Crush injuries have also been caused in the chaos of 'non-fee paying' 'opportunistic' migrants storming already overcrowded small boats as it tries to launch. Whilst evidence has shown that Organised Crime Groups will usually supply the small boat itself, they will not supply adequate, or sufficient number of buoyancy aids.

[17] These dangers have to be seen in the context of the fact that the state from which migrants are seeking to travel, France, is a safe state, a signatory to the Refugee Convention and the ECHR, subject to EU legislation in relation to the treatment of migrants. For the avoidance of doubt, the SSHD disputes any assertion that the Applicants are not safe in France or that their children would not be safe there.

21. The parents report that an attack on the dinghy on the French beach is what caused them to be separated from the children. The elder child reports having seen another child drown during the crossing and initially feared that his own parents had drowned. He has reported almost drowning himself before being recovered by the Coastguard.
22. The adverse impact on the children of the journey and subsequent separation from their parents, as reflected in their behaviour, has been documented by the foster carers. There

is no dispute that the children underwent a traumatic and life-threatening journey because of the decisions made by their parents, in consequence of which they have clearly suffered significant emotional harm. If the parents make the same decision again, the children will be at risk of significant further emotional and/or physical harm, including death.

23. The delay in reunification has exacerbated the consequences for the children of the parents' actions. The short-term and potential life-long impacts on the children of delayed re-unification were addressed by a child and adolescent consultant psychiatrist instructed on behalf of the parents in the judicial review proceedings. The local authority accepts that the ongoing separation has caused the children harm.
24. In my judgment, the parents have made the primary contribution to this by prioritising entry to the UK to join the children rather than making an early demand, pursuant to sections 20(7) and 20(8) *Children Act* 1989, that Kent return the children to them in France. It may well be that that reflects the advice that initially they sought and were given, being focused on immigration law rather than family law. If that is right, it has not served them or the children at all well. I note, however, that the mother is reported in the child and family assessment to have told the social worker in a phone call on 22 November 2024 that "I will not consent to [the children] coming to France" and that she would "fight for mine and my children's rights until the end". It seems that it was always the parents' intention to settle in the UK, whether legally or illegally.
25. Kent has also contributed to the delay by waiting some 20 weeks before eventually applying to this court for a return order. No explanation has been given for this approach, save that the legal advice is said to have changed in that time. In the Court of Appeal, these family proceedings were described by those representing the parents as an abuse of process, which was clearly wrong and not an argument pursued before me. The parents have argued before me that the SSHD has also played a central part by delaying and then refusing entry clearance, but that submission must be seen in the context of the decision of the Court of Appeal in favour of the SSHD.

#### **How capable each of their parents are of meeting their needs**

26. Despite the significant harm that the parents have caused, I do not ignore their love for the children, which is acknowledged by the social work team and the children's guardian. It is also apparent that they deeply regret the consequences for the children of their choosing to travel to the UK by small boat from France. Through their counsel, they have acknowledged the enormity of their 'mistake', as it was described, and they have each given the court an undertaking not to attempt illegal entry to the UK again. Nothing is ever certain, but I accept the position of all parties, which is at least implicit in their agreement to the order, that the prospect of the parents exposing the children again to the risk of death or serious injury is much diminished.
27. In all other respects, there is professional unanimity that these are good parents who can well meet the physical and emotional needs of the children. The children's guardian summarised it in this way:  
[16] Apart from the decision to make a dangerous crossing, there is no evidence to suggest that there are any other concerns in relation to [the parents'] parenting capacity. The children were well-cared for by their parents and the children's

many strengths are, in part at least, a product of the good parenting that they have received. Other than the fateful journey across the English Channel, which cannot be minimised, these parents appear to have always been able to meet their children's needs and act in their best interests.

28. Further, the children's guardian reports that she has seen nothing in the written evidence to suggest that the parents would not be able to meet the children's needs again to 'a more than good enough standard' in France. She considers that the parents have already 'demonstrated their own resilience and resourcefulness, and they will draw on these same skills again'.

29. Furthermore, she reports that:

[49] ... On the basis of my conversations with the parents and everything I have read, they are clear as to how catastrophic that crossing could have been. I accept that the parents love their children dearly and they are clear that they would not want to replicate the harm and separation which their past decision has caused.

30. In her statement dated 21 January 2025, the children's social worker has reported that the foster carers have observed a 'warm and loving relationship' between the children and parents, who are 'responsive to their needs'. Her professional opinion is that there are 'no immediate parenting concerns as to how the parents provide physical care for the children' and noted their 'strong bond'. She concluded that the local authority wanted assurances that the parents would not attempt another crossing, but that reunification as soon as possible is in the children's best interests.

31. The French safeguarding report states that the parents will be supported to meet the children's needs by the local authorities in France, which have a duty to monitor and, if necessary, assess the family. The State will provide school places. It is reported that the parents plan to move into a two-bedroom property made available to them free of charge by the local Turkish community and will be able to seek help from charities for food, clothing and financial assistance. The parents already receive financial support from the mother's sister. A claim for asylum in France may result in State-funded provision.

## **Conclusions**

32. The consequences for the children of continued separation from their parents is the continuation of significant emotional harm with life-long adverse impact on their functioning. In such circumstances, the children's behaviour will be increasingly challenging with the likely repeated breakdown of foster placements. To be set against that bleak prognosis is a return to the parents who are believed to be able to meet all their children's needs, provided that they do not again place them at risk of death or serious injury by attempting illegal entry to the UK. They have indicated their deep regret at having done so and provide assurances that they will not do so in the future. The risk cannot be eradicated but must be balanced against the near certainty of significant harm to the children of the only alternative. I repeat that the unanimous professional opinion is overwhelmingly in favour of reunification of this family.

33. In my judgment, to refuse to reunite the family in these circumstances would be a disproportionate response to the risk presented by the parents. The only option that meets the children's global, holistic welfare needs is a return to the care of their parents.



**THE HONOURABLE MR JUSTICE GARRIDO**  
**Approved Judgment**

In these circumstances, I have concluded that the consent order is in the children's best interests, and therefore I gave it my approval on 19 February 2025.

ENDS