



Neutral Citation Number: [2026] EWHC 440 (Admin)

Case No: AC-2025-LON-003818

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2026

Before :

MR JUSTICE SHELDON

Between :

The King (on the application of)

- (1) RKC1
- (2) RKC2
- (3) RKC3
- (4) RKC4
- (5) RKC5

- (6) RKC6, by their litigation friend RKC1
- (7) RKC7, by their litigation friend RKC1

Claimant
s

- and -

- (1) SECRETARY OF STATE FOR
FOREIGN, COMMONWEALTH &
DEVELOPMENT AFFAIRS
- (2) SECRETARY OF STATE FOR THE
HOME DEPARTMENT

Defendants

Charlotte Kilroy KC, Michelle Knorr, Isabelle Agerbak (instructed by **Leigh Day**) for the
Claimants

Rory Dunlop KC, Sian Reeves, Richard Evans, Paul Erdunast (instructed by **Government
Legal Department**) for the **Defendants**

Hearing dates: 12th December 2025, 26th January 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 27/02/26 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SHELDON

Mr Justice Sheldon:

1. This is a challenge to the way in which the Secretary of State for Foreign, Commonwealth and Development Affairs (“the SSFCDA”) and the Secretary of State for the Home Department (“the SSHD”) (collectively “the Defendants”) have dealt with six people living in Gaza (RKC2-7) who wish to be reunited with their father who lives in the United Kingdom (RKC1) (collectively “the Claimants”). It is contended that the Defendants have acted unlawfully in failing to assist RKC2-7 to exit Gaza and transit through the Kingdom of Jordan to the United Kingdom.
2. The original grounds of challenge were lodged on 31 October 2025, and a “rolled-up” hearing of permission to be followed by a substantive hearing if permission was granted, took place on 12 December 2025. Shortly before that hearing, the Claimants were informed that a submission had been sent to the SSHD on 9 December 2025, for her to consider providing to the Kingdom of Jordan onward travel assurance: that is, a guarantee that if RKC2-7 exit Gaza, they will transit through the Kingdom of Jordan to the United Kingdom irrespective of the outcome of biometric checks that would be undertaken of RKC2-7 in Amman.
3. No decision had been made on that submission by the time of the rolled-up hearing. The parties did not seek a stay of that hearing. At the end of the hearing, I indicated that if the decision made by the SSHD was negative – that she would not provide the onward travel assurance – and a draft judgment had not been circulated by the time that the SSHD’s decision was made, I would hold off from circulating the draft so that a challenge to the negative decision could be made as part of the current proceedings. That is what has occurred.
4. A decision not to provide onward travel assurance to RKC2-7 was made on 18 December 2025. This decision has been challenged by the Claimants and a further hearing took place on 26 January 2026. In this judgment, I will address the original grounds, and the additional grounds that focus on the decision of 18 December 2025.

I. Factual Background

5. RKC2-7 were aged between 14 and 23 years old when the claim was lodged. They are the children of RKC1 and his first wife, from whom he is divorced. RKC1 is a recognised refugee in the United Kingdom and suffers from serious mental health problems. RKC1 remarried and his second wife and their twin daughters were assisted to leave Gaza by the SSFCDA in December 2023.
6. During the war in Gaza, following the attacks by Hamas on 7 October 2023, RKC2-7 have been displaced from their home and separated from their mother. The evidence before the Court is that their physical and mental health has been badly affected by the war and, even since the ceasefire which came into effect on 10 October 2025, they have had limited access to food and clean water, and do not have adequate clothes or shelter from the elements, sanitation or medical attention. RKC1’s mental health problems have worsened as a result of his separation from his children and his fears for them.

7. On 17 April 2024, RKC2-7 applied for entry clearance to the United Kingdom on the basis that they met the requirements of Appendix Family Reunion (Sponsors with Protection) of the Immigration Rules, a route which is also known as ‘refugee family reunion’. They resubmitted their applications on 6 February 2025. As part of those applications, RKC2-7 asked to be excused from enrolling their biometrics, and for their visas be approved without enrolling biometrics. Ordinarily, biometric information needs to be provided before visas are granted. Alternatively it was requested that they be given a decision in principle (otherwise known as predetermination) that their visa application would be accepted, which would allow them to negotiate exiting Gaza and for them to provide biometrics in a neighbouring country before travelling to the United Kingdom.
8. RKC2-7 submitted that they met the criteria for predetermination or biometric excuse as set out in the SSHD’s *Unsafe Journey Policy*. On 16 April 2025, an official (acting on behalf of the SSHD) found that RKC2-7 met the criteria for “predeterminations”, but their application for biometric excusal was refused.
9. In the decision letter, it was stated that:
 - “4. In accordance with the Biometric enrolment guidance - unsafe journeys (publishing.service.gov.uk) dated 21 August 2024, version 4, a request to pre determine an application or to be excused from the requirement to attend a Visa Application Centre (VAC) to enrol their biometrics will, in most circumstances, only be agreed to where the applicants can demonstrate they meet all 4 criteria as per the published guidance.
 5. In respect of your clients’ request for a biometric excusal and based on the evidence provided by your client, I am satisfied with Criterion Two (Unsafe Journey) Criterion Three (Compelling Circumstances). However, I am not satisfied with Criterion One (Identity), and Criterion Four (Travel).
 6. In respect of your clients’ request for a pre-determination and based on the evidence provided by your client, I am satisfied with Criterion One (Identity), Criterion Two (Unsafe Journeys), Criterion three (Compelling Circumstances) and Criterion Four (Travel).
 7. Biometrics, in the form of fingerprints and facial images, underpin the current UK immigration system to support identity assurance and suitability checks. In submitting an online visa application, you will have recognised there is a requirement to enrol your biometric information as part of the process and must have considered the various options for doing so.”
10. With respect to “Criterion 4: Travel”, it was stated that:
 - “16. The Biometric enrolment guidance . . . states that applicants seeking a request to be excused from the requirement to attend a VAC to enrol their biometrics, need to explain how they can travel to the UK, but not to any VAC including any on route to the UK.

17. Within your letter of legal representations dated 13 February 2025, it has been stated that, **‘This will allow the minors to qualify for FCDO assistance in accordance with their published criteria, while the older children will have a very strong case for an exercise of FCDO discretion. We note the applicants are willing and able to then provide biometrics prior to travel and before they collect their visas from a VAC in a neighbouring country, even if granted biometric excuse.’**

18. It is noted that border crossings out of Gaza closed on 06 May 2024. It is also noted that in order for your clients to travel to the UK, they would need to travel through a third country where they could access a VAC and enrol their biometric information. Furthermore, it has been noted from your legal representation letter dated 13 February 2025 that **‘We note the applicants are willing and able to then provide biometrics prior to travel and before they collect their visas from a VAC in a neighbouring country’**. It is therefore considered by their own admission; your clients have confirmed that they are able to travel to a VAC to enrol their biometric information before travelling to the UK.

19. In light of the above considerations, your clients’ request to be excused from the requirement to enrol their biometrics has been refused.

20. Given the above, it is considered that although a biometric excusal cannot be granted on this occasion, a predetermination of your clients’ application has been deemed appropriate for the purposes of your clients’ Unsafe Journey request. Consequently, the purpose of predetermining your clients’ application is to enable your clients to assess the risks of making an Unsafe Journey before they wish to travel to a VAC or wait until they deem their circumstances have changed and their journey has become less challenging.

21. It is open to your clients to complete their application by attending a visa application centre to enrol their biometrics within 240 days from the date of last submission of their online application, which was on 06 February 2025.”

(Emphasis in the original). The decision was confirmed by letter dated 1 April 2025, but actually sent on 1 May 2025: the SSHD was minded to grant entry clearance to RKC2-7, subject to them attending a Visa Application Centre (a “VAC”) to enrol their biometric information.

11. The SSHD’s *Unsafe Journeys Policy* describes biometric enrolment as the recording of an individual’s biometric information to seek to verify their claimed identity and to undertake background checks on them. It is explained that:

Biometrics, in the form of fingerprints and facial images, underpin the current UK immigration system to support identity assurance and suitability checks on foreign nationals who are subject to immigration

control. They enable comprehensive checks to be made against immigration and criminality records to identify those who pose a threat to our national security, public safety, immigration controls or are likely to breach our laws if they are allowed to come to the UK.

12. It is further explained that:

Granting an individual a biometric excusal, such that they do not have to attend a Visa Application Centre (VAC) to enrol their biometrics prior to travelling to the UK, creates a heightened risk to our national security. By doing so, we lose the opportunity to identify individuals whose fingerprints are linked to terrorist activities or serious criminality until after they have arrived in the UK. In some cases, this could prove to be too late to protect the British public. Therefore, if an individual is suitable for a predetermination, then this must be offered instead. Biometric excusals should be limited in scope to reflect the strong public interest in protecting UK national security and public safety, as well as protecting the border. It is anticipated that biometric excusals will only be granted where the individual presents circumstances that are sufficiently compelling as to outweigh the wider and heightened public interest resulting from excusing the requirement to attend a VAC.

13. On 14 May 2025, a request was made to the SSFCDA to assist RKC2-7 to leave Gaza. The request was refused on 3 June 2025, on the basis that they did not satisfy the “extended eligibility criteria” for Gaza: that is, an extension to the normal criteria for consular assistance. Further, their circumstances were not regarded as exceptional to warrant a departure from those criteria.
14. This decision was challenged by the Claimants and their claim (along with claims from five other family units) was case managed behind a similar case which was decided by Chamberlain J on 28 July 2025: R (BEL) v Secretary of State for Foreign, Commonwealth and Development Affairs [2025] 4 WLR 103. In BEL, Chamberlain J allowed one ground of challenge: that the refusal to provide consular assistance was irrational. Chamberlain J rejected a challenge based on Article 8 of the European Convention on Human Rights (“the Convention”). I shall discuss this judgment further below.
15. On 30 July 2025, the SSFCDA agreed at a hearing before me that, in light of the judgment in BEL, the decision of 3 June 2025 with respect to RKC2-7 was unlawful and agreed to reconsider the decision by 13 August 2025. On 13 August 2025, the Claimants were informed that the decision had been reconsidered and that the SSFCDA had agreed that “on an exceptional basis the FCDO [Foreign, Commonwealth and Development Office] will extend support to the Claimants to try to effect their departure from Gaza.” The Claimants were invited to withdraw their claim, which they did on 4 September 2025. The preamble to the Consent Order referred to the agreement made on 13 August 2025 by the SSFCDA.
16. The decision made by the SSFCDA to extend support to RKC2-7 had been preceded by a submission to the Parliamentary Under-Secretary for the Middle East, Afghanistan and Pakistan, Hamish Falconer MP, on 7 August 2025. The submission

was written by Mr Neil Kavanagh, the Deputy Head Consular Assistance at the FCDO. In the submission, Mr Kavanagh highlighted the “range of operational dependencies and requirements necessary to mount a successful operation” to get people out of Gaza and into the United Kingdom. These were explained at paragraph 18 of the submission as:

- (a) Obtain Israeli clearance for the individuals to leave Gaza. We have no control over Israeli decisions. And once clearance is granted, to get Israeli agreement for specific individuals to move on specified days, subject to their operational considerations.
- (b) Ensure that those being moved have valid travel documents (many are expired, or lost or destroyed), which for Palestinian nationals involves us working with the Palestinian Authorities.
- (c) Obtain clearance for the individual to enter Jordan as a point of transit. We do not take lightly the nature of the ask when seeking such clearances given Jordan’s own position on the displacement of Palestinian nationals.
- (d) Individuals need to have the necessary permissions to enter the UK or a third country. **Israel will not permit departures from Gaza without confirmation that Jordan has agreed entry; which Jordan will not permit without assurance from the UK Government of rapid onward travel.**
- (e) FCDO must identify a humanitarian partner within Gaza capable of collecting the individuals and transporting them to Kerem Shalom as safely as possible, and with Israeli permission and security deconfliction throughout the journey.
- (f) Non-British nationals must have available funds in order to meet Jordanian entry fees, accommodation and subsistence costs while in Jordan, and to fund onward travel to their final destination.
- (g) FCDO officials are able safely to reach the Kerem Shalom crossing to support those being moved; have the capacity to move them to Jordan; and have the ability to respond to issues arising on the day (eg we have needed to deploy ambulances in the past; or Israeli officials have threatened to return people to Gaza from the Israeli border with Jordan).”

(Emphasis added).

17. In the submission, Mr Kavanagh explained that:

“39. No exit from Gaza is guaranteed. The decision before the Minister on the cases before him is whether we regard their circumstances to be exceptional such as to justify a departure from published policy, and

correspondingly to try to support their departure from Gaza by attempting to make the arrangements as described at paragraph 18.

40. Additionally, we will need to liaise with the Home Office to do what we can to ensure that visa processing is speedy (**eg through an extension of biometric deferral as envisaged for medevacs**), such as to avoid crossing Jordanian red lines that they will travel onward to the UK in potentially as little as 72 hours (a standard that Jordan has recently introduced).”

(Emphasis added). Mr Kavanagh’s recommendation was approved. The Parliamentary Under-Secretary for the Middle East, Afghanistan and Pakistan decided that they “should try to provide support on an exceptional basis to these individuals to leave Gaza, noting advice that this will not be straightforward to deliver.”

18. In an Information Note that Mr Kavanagh prepared on 11 August 2025, which was not shared with the relevant Minister, but set out his thinking at the time, he stated that the FCDO would “work with [Home Office] colleagues to establish their willingness to extend to this cohort the same offer being made on behalf of medevac patients and HMG scholars or other reassurance in the event that they failed biometrics (mindful that there may also be future requests)”.
19. The reference in Mr Kavanagh’s submission to the biometric deferral for “medevacs” was to the agreement that had been made by the SSHD to provide biometric excusals for persons in critical medical condition. The Kingdom of Jordan could therefore be assured that this group would be transited through that country to the United Kingdom.
20. The *medevac* programme had been announced by the Prime Minister on 24 July 2025. This involved a partnership between the United Kingdom Government and the World Health Organization to identify eligible children who should be evacuated from Gaza to receive medical treatment in the United Kingdom. As of 14 November 2025, 50 critically injured or ill children were evacuated via Jordan to the United Kingdom along with 217 eligible family members.
21. The rationale for supporting the *medevac* cohort was explained in a policy paper entitled “UK Government response to the situation in Gaza: policy summary”, published by the FCDO on 14 September 2025. This referred to the Prime Minister’s statement of 24 July 2025 which had highlighted the worsening situation in Gaza, describing it as a “humanitarian catastrophe”. The policy paper stated that:

“Political and diplomatic efforts continue to secure a ceasefire, the release of hostages and the unrestricted flow of humanitarian aid into Gaza, alongside work to restore a framework for peace. The support that is outlined below for specific cohorts to leave Gaza is one contribution amongst several to alleviate the human suffering in Gaza and efforts towards a political solution.

...

Medical Evacuations

The situation for those critically ill in Gaza is dire. All hospitals are either damaged or partly destroyed, with the vast majority unable to function. Essential medicines and supplies are running out and medical workers are not able to do their jobs safely.

On that basis, the Government has committed to evacuate a limited number of sick and injured children out of Gaza to receive specialist treatment in NHS hospitals across the UK. All children will be accompanied by their immediate family, which means parents and siblings under 18. Where both parents are deceased, they must be accompanied by a responsible adult such as a legal guardian.

The Government is partnering with the World Health Organization ... which works on the ground and plays a critical role in supporting medical evacuations from Gaza. . . ”.

22. In his Information Note of 11 August 2025, Mr Kavanagh had also referred to “HMG scholars”. This was a reference to a further cohort who were being provided with biometric deferrals to students from Gaza who had been admitted to the Chevening scholarship programme (a programme for Master’s degree students in the United Kingdom that had been established in 1983). This cohort was widened to include students who had fully-funded scholarship places to attend universities in the United Kingdom. With respect to this cohort, SSHD agreed to provide the Kingdom of Jordan with assurances of their onward travel. The assurances were subsequently extended to dependants of the scholarship students and to one child of a Chevening scholar. By the end of November 2025, 76 students had been evacuated, and a further 16 were due to arrive shortly.
23. The rationale for supporting Chevening scholars was to promote United Kingdom foreign policy priorities abroad by creating lasting positive relationships with future leaders, influencers and decision-makers. The support for the fully-funded scholarship students was said to align with the foreign policy objectives of enabling Gaza’s brightest students to continue their education and contribute to future reconstruction efforts.
24. On 14 August 2025, solicitors for the Claimants were written to by officials at the SSFCDA. It was explained that:

“the FCDO has decided that it will extend support to [RKC2-7] to try to effect their departure from Gaza. The FCDO can now begin the process of trying to secure the various permissions and other arrangements. This is a complex process, and there are no guarantees that we will be able to achieve the outcome sought.”

The solicitors for the Claimants were notified of the various steps that they needed to take. It was then stated that:

“Once we have all the relevant information we can request from the Israeli authorities security clearances to allow your clients to depart Gaza in principle. If those are granted, we will need the

support/agreement of others, including Jordan and a partner (usually an INGO) that can operate within Gaza to provide transport.

We have no control over the outcomes or timings of those processes. In the event that all that is possible and a common date can be agreed, your clients or their family would be expected to make arrangements for their time in Jordan, any UK visa processes and onward travel to the UK. Everyone we help must comply with any and all instructions from the relevant authorities in each country, including all instructions and directions from the Jordanian authorities to depart before their transit permission (typically 72 hours) expires.”

25. On 12 September 2025, an official of the SSFCDA wrote to the Claimants’ solicitors to update them on “progress” following the decision that they would try to effect the departure of RKC2-7 from Gaza. It was confirmed that Israel had granted exit clearance in principle, and they remained in contact with INGO partners who had previously helped. It was explained that:

“We are considering how to approach the requirement for rapid onward travel from Jordan before transit permissions expire, given that your clients’ entry clearance for the UK is conditional on successful biometric checks.

We are also considering whether it would be wise to have any passports held outside Gaza to be sent to our colleagues in Jerusalem, to ensure we would be able to move in a timely manner should all other issues be resolved. We will update you next week.”

26. The Claimants’ solicitors wrote to the official at the FCDO on 16 September 2025 to say that their experience had been that “the Home Office can cooperate with the FCDO to act very swiftly to issue visa decisions”, and that there was “no prospect” of RKC2-7 failing biometric checks as they have “passed Israeli checks and have never left Gaza. We also understand that the Home Office can also do some further checks on their identities while they await exit, and can examine the passports in advance, as they do when they are minded to issue a biometric excuse.”

27. This was responded to on 19 September 2025. An official at the FCDO wrote to say that “while Israeli clearance has been secured by the FCDO, Jordan sets a requirement that people must depart before their transit permissions expire. We are considering how to approach that requirement (ie for rapid onward travel from Jordan before transit permissions expire) given that your clients’ do not yet hold entry clearance for the UK, because it is only after the conclusion of biometric checks that a final decision on their entry clearance applications would be made.”

28. Following further correspondence, a pre-action letter was sent by the Claimants’ solicitors on 17 October 2025 complaining about the failure of the SSFCDA to deliver on its agreement to assist RKC2-7 and/or of the failure of the SSHD to take the necessary steps to facilitate their departure from Gaza. The letter referred to the support to exit Gaza that had been provided by the United Kingdom Government to other cohorts: the *medevacs* and the students. In a response provided on 27 October 2025, the Government Legal Department stated that assurances of onward travel are

not provided under the *Unsafe Journey Policy*, and that a guarantee of onward travel would not be given to the Kingdom of Jordan with respect to RKC2-7.

29. A judicial review claim was issued on 31 October 2025. On 6 November 2025, I ordered an expedited rolled-up hearing. The initial date for that rolled-up hearing was postponed to 12 December 2025. Detailed Grounds of Resistance were provided on 24 November 2025. A number of submissions to Ministers were disclosed to the Claimants.
30. The decision-making with respect to RKC2-7 can be discerned from those submissions, and in witness statements provided to the Court by Mr Kavanagh, Sabrina Pickering (an official at the Home Office, where she heads the Crisis Response Hub for Policy, Planning and Operational Engagement) and Dr Christian Dennys-McClure.
31. Mr Kavanagh has explained that it was always his understanding that the Kingdom of Jordan expected that anyone that the United Kingdom or other countries helped to exit Gaza would leave their territory in a timely manner. Initially, the Kingdom of Jordan agreed to transits on the basis of undertakings that the United Kingdom would use its “best endeavours” to process visas to enable rapid onward travel. The last consular assisted departure that was implemented under these arrangements took place on 27 August 2025, involving a Palestinian mother of three British children travelling with them and her British husband.
32. In early September 2025, Mr Kavanagh judged that the operating context was changing: more countries were moving people via the Kingdom of Jordan more frequently; there was increasing scrutiny by the Kingdom of Jordan as to whether onward travel had taken place and less time was being given for onward travel; and there was no contingency plan for the event that biometrics or other factors resulted in a visa not being issued and someone becoming ‘stuck’ in the Kingdom of Jordan, and that the probability of that occurring was increasing.
33. Mr Kavanagh has stated that on 15 September 2025, he was informed that the Home Office had decided not to provide assurances of onward travel for RKC2-7. Mr Kavanagh explained that he had not personally requested such assurances as he understood that the Home Office was already considering the matter in the round for exceptional cases outside the *medevac* and student cohorts.
34. A submission had been made to the Home Secretary on 3 September 2025 by Ms Pickering, in which it was noted that the Kingdom of Jordan “has recently stopped accepting requests for individuals travelling to a third country (i.e. anyone FCDO support is expected to be coming to the UK) without there being assurance of onward travel.” Under the heading ‘Exceptional requests for Consular Support’ reference was made to the cohort of 7 family units, of which RKC2-7 were a part. It was stated that:

7. FCDO has identified 36 people (in 7 family units) requesting exceptional support, most of whom hold ‘positive predeterminations’. These include extended family allowed on Article 8 grounds at appeal. Advice was put to FCDO Ministers (following partially adverse judicial review findings in one case) whereby a Minister made the

decision that FCDO would try to support their departure on an exceptional basis.

8. FCDO are working with these 7 family units to ensure that they have the correct travel documentation that would allow them to take part in a future move (subject to operational judgements on risk around Jordan transit). **At this point we have not received a request that you, Home Secretary, provide assurances of onward travel to the UK.** We understand that FCDO are considering alternative ways to support the group to exit that would not require this undertaking.

(Emphasis added). It was recommended that assurances of onward travel not be provided to those falling within the “Exceptional” cohort, which include the 7 family units of which RKC2-7 were a part.

35. A reshuffle of Ministers took place before any decision was taken in response to this submission. On 10 September 2025, a further submission was made to the new SSHD by Ms Pickering. The recommendations made in the 10 September submission were that the SSHD should:

- “• Agree to provide assurances, with visa applications and biometrics being submitted in Amman, for Core Consular cases (direct family of British Nationals)
- Agree to not provide assurances for Exceptional Consular cases
- Agree to not seek to extend the cohorts at this stage beyond HMG current priorities – Medevacs, Chevening Scholars, Full scholarship students and Core Consular cases
- Agree that individual cases can be raised by FCDO, or other government departments via FCDO, to be considered on a case-by-case basis.”

36. The “Considerations” behind the recommendations were set out as follows:

“8. Any decision to expand the assurances on onward travel, beyond those already in scope, would increase the risk of precedent setting where others in comparable situations seek to rely on these provisions; undermine biometric policy and national security which requires biometrics are checked prior to decisions on granting entry to the UK allowing for those who may seek to do harm being prevented from travelling to the UK; undermine the wider Immigration Rules by allowing those who do not meet the Rules to enter the UK. There is also a risk that by supporting individuals it could be implied that we accept that there is a duty to facilitate the reunification of family members.

9. These risks will become exacerbated once the fact that assurances are being given becomes more widely known.

10. Exit from Gaza remains subject to both Israeli and Jordanian approval, and is facilitated by FCDO. Currently, border openings are planned for 10th and 17th September and 22nd October. The capacity for exit is limited; FCDO expect there to be c600 exit slots across all countries, with the UK looking to use about 300- 350 of those.”

37. With respect to “Core Consular Cases” – which involves non-British national spouse/partner or children travelling with their British national spouse/partner – it was recommended that “due to the exceptional circumstances in Gaza that you agree, should the Jordanian Government require it, to provide assurance” – which means a guarantee that they would be permitted to enter the United Kingdom.
38. With respect to what were described as “Exceptional Consular cases” (the cohort that included RKC2-7), it was stated that:

“15. There are additional requests for consular support that do not meet the above, referred to as 'exceptional requests'. These can be from a variety of individuals, including extended family of British nationals, journalists and NGOs. For context the FCDO continue to receive requests for support between 3-20 individual per week; on average only one case per month has included British nationals over the last quarter.

16. In this cohort the FCDO has agreed to support 36 people, in 7 family units, this was a FCDO Ministerial decision (following partially adverse judicial review findings in one case).

17. These individuals mostly hold 'positive pre-determinations' for UK visas (see Annex A 'What is a pre-determination?'). These decisions were based on Article 8 ECHR being engaged. An example of a case is 'IA', he applied with his wife and children, to join his adult sibling in the UK, whilst the application was refused this was overturned at appeal on Article 8 ECHR grounds.

18. The Biometric Policy Unsafe Journeys guidance is very clear that HMG will not facilitate travel to a visa application centre (VAC) or provide assurances of onward travel to the UK to anyone who obtains a positive pre- determination. That remains the responsibility of the individual.

19. [Redacted text]. We do not recommend supporting exceptional consular cases as it would undermine the Unsafe Journeys guidance. Do you agree?”

It was recommended, therefore, that the cohort of which RKC2-7 were a part, should not be provided with an assurance of onward travel irrespective of the outcome of any biometric testing.

39. There was a further section dealing with what were described as “Wider Cohorts”:

“20. We are also seeing requests from wider cohorts seeking support to exit Gaza, this includes journalists and employees of NGOs. On the 2nd September the former Home Secretary and former Foreign Secretary met and agreed to prioritise the existing agreements on medevac and student cohorts.

21. It would be possible to provide assurances to the Jordanians of onwards travel to the UK prior to biometrics being enrolled for a number of cohorts listed below. This would be based on biographic checks and would be subject to individuals submitting and paying for their visa application/ Immigration Health Surcharge, where appropriate. There are a number of overarching risks attached to providing broader assurances, as well as different risks and considerations for the various cohorts outlined in Annex B.

22. Based on these initial identified risks and the limited capacity for exit in September and October we recommend that you do not seek to extend the cohorts at this stage until you and Foreign Secretary are provided with [redacted text] a risk assessment subject to pipeline capacity. This position is also consistent with the NSC officials meeting. Do you agree?

23. There are instances where the FCDO, or other departments, are made aware of individual cases where the Foreign Secretary and you, Home Secretary, may wish to exercise discretion. We recommend that you agree that individual cases can be raised by FCDO, or OGDs via FCDO, to be considered on a case-by-case basis, and that applicants who are supported apply for the most appropriate visa type where one exists and that biometrics are provided prior to travel to the UK in Jordan. This must also be subject to FCDO confirmation that logistics support exit on either 17th September or 22nd October. We will provide advice on onward travel assurances and, if necessary, Leave Outside the Rules. You will shortly receive advice on an individual case of an ITN journalists.

24. Do you agree to consider individual cases, raised by FCDO or OGD’s on a case-by-case basis?”

40. In an Annex to this submission, Ms Pickering explained what a “predetermination” was under the *Unsafe Journeys Policy*, distinguishing it from “Biometric excuse”:

“a. Pre-determination – where the applicant requests that their application be provisionally assessed before biometrics are enrolled, to avoid undertaking an unsafe journey unnecessarily. The final decision is still subject to a satisfactory biometric enrolment and check ahead of travel to the UK.

b. Biometric-excuse – biometric enrolment is excused or deferred until after the person is issued with entry clearance and reaches the UK.”

It was further explained that:

“4. Should an individual be granted a positive pre-determination, the policy does not offer a third country assurances that the applicant will be brought to the UK regardless of an adverse biometric result (e.g. a Laissez-Passer offer). This is because upstream biometric checks are crucial in allowing us to take appropriate action on derogatory information before an individual reaches the UK.

5. Offering assurance of onward travel for those ... who hold a positive predetermination would completely erode the benefit of offering pre-determinations which protect the UK’s national security by still ensuring biometric checks are undertaken in advance of the final decision to grant a visa to enter the UK. The approach of providing assurances for positive predeterminations would not support wider national security or safeguarding concerns, nor would it maintain the wider policy position that biometrics must be enrolled before a decision on granting permission to travel to the UK.”

41. There was a further Annex setting out a “Summary of potential cohorts that we do not recommend providing assurances to as we are unable to assess whether individuals would meet the requirements of the Immigration Rules prior to leaving Gaza.” With respect to “Cohort 2”, those who are dependants of either British citizens, or those with settled status/granted humanitarian protection in the United Kingdom, it was recognised that they had “an arguably stronger tie to the UK than other cohorts”. It was stated, however, that:

“The challenge with supporting this cohort is that the assessment of the genuineness of relationship is often complex, requires evidence of funding to meet the Minimum Income Threshold and accommodation. In instances where the sponsor in the UK does not earn, or hold, sufficient funds, then permission to enter can still be granted with recourse to public funds. Those in this cohort are also eligible to apply for a visa Fee waiver, and 'Unsafe Journey' consideration. There have been a number of visa applications from extended family members (adult siblings/nieces/other) seeking to rely on Article 8. [Redacted text]. Supporting this group may increase Article 8 claims from individuals outside the UK, not limited to Gaza. To provide assurances to this cohort could result in large numbers seeking support and because the requirements of the rules are not met, then relying on public funds, including housing, to support themselves on arrival in the UK. Providing assurances only to those who had a positive pre-determination, whilst reassuring ourselves of the nature of the relationship, has the potential to undermine the wider biometric policy and set a precedent for other locations where people believe they can only enter a country with the assurance of onward travel.”

42. By email dated 10 September 2025, it was reported that the SSHD and Alex Norris MP, the Minister of State (Minister for Border Security and Asylum), had reviewed the submissions and were content to accept the recommendations. The decisions made were set out in an email from the Private Secretary to the SSHD on 15 September 2025. The SSHD had agreed to support the departure from Gaza to the United Kingdom of the *medevac* cohort, the Chevening scholars, and individuals with

fully-funded scholarships to a United Kingdom university but not their dependants, as well as existing consular commitments.

43. With respect to the wider “exceptional” consular cases, then identified as 36 cases, the decision of the SSHD was not to extend assurances “due to the high risk of precedent setting not only for additional groups in Gaza but all other conflict zones, and the risk of undermining the immigration system, in particular the unsafe journey's policy contained within the biometric policy.” In addition, the SSHD agreed in principle to a “case-by-case approach” for “Exceptional cases”. The email stated that “cases should only be put forward where FCDO confirms that there is pipeline and capacity to support exit; decisions are not for the Home Secretary in isolation”.
44. On 18 September 2025, Mr Kavanagh sent a submission to Parliamentary Under-Secretary Falconer to deal with the issue of “how to deliver FCDO's decision to try to effect the departure from Gaza on an exceptional basis of a number of 'family' cases, where the individuals do not meet the Extended Eligibility Criteria, and who do not benefit from Home Office onward travel assurances?”. That is, how to deal with the cohort of which RKC2-7 were a part.
45. One option was for the British Embassy in Amman to submit to the Kingdom of Jordan “the 36 exceptional family cases that we have already agreed to try to support, setting out **explicitly the conditional nature of the entry clearance** (which distinguishes these cases from medevacs and scholarship students), and **invite them to open a discussion about their red-lines and any arrangements they may be willing to accommodate for contingencies** in the event that someone failed biometrics.” (Emphasis in the original). The alternative option would be to proceed without assurances, and not submit their names, on the basis that submitting their names could compromise the other cases (*medevac*, scholarship students, and consular cases) and for future cases.
46. Parliamentary Under-Secretary Falconer asked Mr Kavanagh for his view as to the level of risk that the first option would have on the cohorts that were passing through Jordan. Mr Kavanagh’s response was:

“Jordanian positions on onward travel are firmly held, and grounded in policy concerns about displacement. Other international partners who are operating at scale are understood to have offered blanket assurances, and that is what Jordan wants and expects. They might shift from that position, although the limitations on our ability to offer a contingency arrangement for a biometric failure is likely to be a factor.

With the right sequencing, HM[G]'s view is that we should be able to have exploratory contact about cases where there is no onward travel assurance without affecting other cohort processes, and has highlighted the importance of candour and respect for their position. Given the confirmation as of yesterday that we have cohorts ready for the 29 September move, Post's refreshed advice on sequencing is that any formal ask of Jordan on this issue would be better made after the medevac and student cohorts are processed by MFA next week, on the basis that any progress that may be possible will entail patience.”

47. It was agreed that the Kingdom of Jordan should be spoken to about the other cohort once the move of the *medevac* and student groups had taken place. A meeting took place on 1 October 2025 with the Jordanian Ministry of Foreign Affairs. At that meeting, it was confirmed that a guarantee of onward travel to a defined destination remained a core principle for all countries. Mr Kavanagh explained that the Jordanian Ministry of Foreign Affairs had left open the option to submit a *Note Verbale* explaining the factual situation with respect to the families (including RKC2-7), but it seemed clear to him that submitting names that were not supported by a guarantee of onward travel would not be successful.

48. On 7 October 2025, a further submission was sent from Mr Kavanagh to Parliamentary Under-Secretary Falconer with respect to the issue of “how to respond to confirmation that Jordan requires assurances of guaranteed onward travel for anyone we seek to help exit Gaza, where those individuals do not currently benefit from such assurances from the Home Office.” It was recommended that the SSFCDA:

“**Notes** Jordan's confirmation that it requires a guarantee of onward travel to a confirmed destination country before it will agree to admit Gazans for transit.

Notes the Home Office decision not to extend such assurances to this cohort, and its published policy that the Home Office will not support cross-border travel under the 'unsafe journey policy' that has been applied to this cohort.”

49. As for what decision the SSFCDA should take, one option that was recommended was to inform the exceptional family cases that the SSFCDA was unable to effect their exits via the Kingdom of Jordan at this time. The other option was to use future cross-government discussion of Gaza across all groups to consider the approach to be taken.

50. In Annexes to the submission of 7 October 2025, it was explained that the Kingdom of Jordan “expects anyone we assist to leave the country within a set period (recently reduced to 72 hours). UK visa processes are therefore integral to enabling all moves. Home Office have agreed that explicit assurances are given to Jordan that *medevac* and student cohorts will be allowed to travel to the UK, whatever the outcome of their biometric checks. Assurances remove the risk that any of those cases become stranded in Jordan.”

51. The submission continued:

“Following advice from officials the Home Secretary decided on 15th September that such assurances of onward travel would not be provided to the cohort of ‘exceptional’ family cases “due to the high risk of precedent setting not only for additional groups in Gaza but all other conflict zones, and the risk of undermining the immigration system, in particular the unsafe journey’s policy contained within the biometric policy”.

13. In the past, where a Palestinian national has needed to complete biometrics in Jordan before travel to the UK, FCDO has managed this

at risk. Numbers have been low (6 people over 10 months). No guarantee of onward travel was given (we said that we would make ‘best endeavours’ to process visas), and there was no contingency plan for the event that a visa was not issued. We do not assess that taking the same risks again is a prudent course of action because we assess that **Jordanian positions on onward travel have stiffened over time**, as larger numbers of nations have started operations; and that they have a low tolerance for ‘failure’ (ie someone being subject to an adverse biometric ‘hit’ sufficiently serious to mean that their visa is refused, becoming ‘stuck’ in Jordan). This is against a background of wider Jordan policy and sensitivities, including around the perceived facilitation of Palestinian displacement.

14. At the same time, the implications of a failure to complete onward travel are also very significant. **HMG has significantly more at stake now as it aims to progress its offer to medevac and student cohorts at scale**. The failure of someone to travel onwards poses a tangible risk that Jordan would withdraw or alter their support for future assisted departure cohorts across the board, and could conceivably extend to impacts in other areas of UK interest. There are **also implications for individuals who cannot travel to the UK**, who could be subject to detention on immigration grounds, potentially returned to Gaza or ‘stuck’ in Jordan without official status, and who might potentially still call on the UK for support in Jordan.

(Emphasis in original).

52. There was also a description given of “Contingencies”. It was stated that:

“We have considered the question of contingencies for anyone who failed biometrics. We do not recommend any of these options as being immediately viable.

a) There is currently no viable UK contingency arrangement that does not involve Home Office assurances. Home Office officials have confirmed that their position on this family cohort remains as at 15 September.”

53. There was also wording suggested for a “PS-PS Letter”: that is, correspondence from one Private Secretary to another. This included the following:

“Following a Judicial Review in July 2025 which held FCDO decision making to be irrational in considering (and declining) to support exit from Gaza in one case, the FCDO subsequently decided to extend support in August 2025 in order to try to effect the departure of 36 people on an exceptional basis. The majority of these 36 people have positive predeterminations of their UK visas to join family members in the UK, issued under the Unsafe Journey Policy. I understand that policy does not extend to travel assurances as a general principle, and that the Home Secretary decided on or around 15 September not to

extend assurances to this cohort due to precedent setting in Gaza and beyond, the impact on the unsafe journey's policy.”

54. On 16 October 2025, a meeting between Parliamentary Under-Secretary Falconer and the SSFCDA took place. Mr Kavanagh told the Court that at that meeting it was noted that implementation of exit via the Kingdom of Jordan was not possible due to the requirement for a guarantee of onward travel and the policy relating to biometrics. It was concluded that the aim should be to explore other options by which support could be provided, with particular reference to the planned reopening of the Rafah crossing which might not require onward travel guarantees. It was also noted by officials that it remained open to Ministers to exercise discretion in any case across the cohorts, for example, on the basis of any identified particular time sensitivity or other factors. It was also agreed that the affected individuals should be provided with an update, and this was done on 27 October 2025.
55. Details about the situation of RKC2-7, based on representations made on their behalf, were provided to Parliamentary Under-Secretary Falconer and the SSFCDA on 22 October 2025:

“**A family of six children** (two of whom are minors) who wish to join **their father in the UK**. They were issued with ‘Minded to Issue Entry Clearance’ letters on 1 May 2025. In October 2023 they were taken to a nearby UNRWA school out of fears for their safety. At the end of 2023 the children and their mother fled the school. In May 2024 they travelled back to avoid the bombing. In August 2024 their mother was taken from them by her new husband, leaving the children effectively abandoned and forced to cope by themselves amidst a war despite never having lived independently or formed their own family unit. The children have no contact with their mother. The children are displaced, without parental support, and surviving in a tent with little access to food, water, or medical care leading to malnutrition and dehydration. They are struggling to access aid and are too frightened to travel to where there is limited aid. As a result, they are forced to buy food from the black market when possible. The children have limited contact with their father due to poor signalling in Gaza and their messages to their father describe unbearable fear and trauma.

Their father lives in the UK with his wife and two children (the stepmother and half siblings). According to a psychological report he is experiencing worsening mental health and suicidal ideation due to the separation and danger his children face. FCDO supported the father’s second wife and their children to leave Gaza in December 2023.”

56. On or about 20 November 2025, the SSFCDA made a request to the SSHD that the Claimants’ case be considered individually. The trigger for the request was explained by the Defendants in an application made to the Court to seek a stay of these proceedings on 19 November 2025 (an application which I refused). In that application, it was stated that:

“In the course of the Defendants’ preparation of their evidence it has become apparent that the SSHD has not previously been asked to consider whether to provide assurances in the Claimants’ cases on an individualised basis (i.e. on consideration of the specific facts of their case). Rather, the SSHD’s key decision-making to date, as regards the provision of assurances to Jordan (which is currently the only potential exit route), has been conducted on a “cohort basis”, and the Claimants have been considered only in the context of wider cohorts for consideration.

Once this was identified, and following urgent consultation, it has been agreed that Ministers should be asked to consider this case on an individualised basis, by reference to the Claimants’ specific circumstances, in order to decide whether to provide assurances to Jordan in respect of the Claimants on an exceptional basis. Officials are aware of the urgency. The decision will need to be made at a Ministerial level, and the necessary submissions are being prepared at pace.”

57. The submission with respect to RKC2-7 was sent by email on 9 December 2025 to, among others, the Private Secretaries to the SSHD and Minister Norris. The submission was addressed to the SSHD as well as to the Minister. The submission stated as follows:

Decision and Recommendation

Timing – Urgent

1. FCDO (Minister Falconer) agreed in August 2025 to provide support to exit Gaza to six families, a total of 35 individuals, who held positive predeterminations for entry clearance. The FCDO and Home Office have started to receive litigation from these families with this particular case being heard on **Friday 12 December**.

2. The first challenge is from a family group of six (RKC2-7), comprising of four adult children and two minor children of a person granted protection status in the UK. They are currently unable to exit Gaza and have challenged the FCDO for failing to ensure their exit from Gaza, and the Home Office, for failing to provide an onward assurance of travel to Jordan (“onward travel assurance”).

3. Noting your previous decisions, we are not proposing to change the approach to include those that hold positive pre-determinations, but [redacted] FCDO has now asked that you, Home Secretary, consider providing onward travel assurances for this family.

4. We carefully scrutinised the facts of the RKC2-7 family and considered FCDO’s decision; however, we have not identified compelling circumstances that outweigh the border and national security risks that would warrant you providing onward travel assurances for this family. For that reason, **we recommend you do not provide onward travel assurances to this family group (RKC2-7).**

Background

5. **On 10 September you were sent advice on providing onward travel assurances for wider cohorts in Gaza, which included reference to the 35 individuals who had received positive pre-determinations of which this family are included (Annex A - SUBMISSION Wider Cohorts wishing to exit Gaza). That submission recommended that this cohort should not collectively be provided with onward travel assurances.** This advice also stated that you could agree to consider individual cases where they were supported by another Government department who wished them to come to the UK. You agreed both recommendations.

6. **The decision here is whether you wish to provide onward travel assurance for this family of six individuals (RKC2-7), under the exceptional process for individual cases.** In the near future, FCDO are also likely to request that you consider providing assurances for the further five family groups consisting of 29 individuals whom they have agreed to offer support to exit Gaza, as outlined in Annex B. FCDO has also identified a further 17 individuals who hold positive pre-determinations who have requested its support to exit.

7. **You should note that three of these five families have submitted judicial reviews on similar grounds.** You, Home Secretary, may also come under pressure to provide onward travel assurances to other locations where an individual is unable to meet the exit, or entry requirements, to travel to a visa application centre. The larger volume of these provided, the higher the border/national security risks will be.

Advice

8. **The RKC2-7 family group consists of four adult children, two male and two female (aged 19-23), and two minor children (16 and 14).** They are seeking to join their father (RKC1) who was granted asylum in the UK after arriving clandestinely in 2020; and their stepmother and two half-siblings who were granted Family Reunion visas in 2023 and were supported to exit by FCDO in December 2023.

9. **In February 2025, the family group applied under Appendix Family Reunion requesting a predetermination and biometric excuse under the Unsafe Journey policy.** This policy explicitly requires applicants to make their own way across international borders. The RKC2-7 family had been residing with their mother in Gaza; however, in their visa applications submitted on 6 February 2025, they state that their mother was taken away by her new husband in August 2024. In litigation proceedings, they state they have not since had contact with her and are residing in a tent at Al Nuseirat refugee camp and are dependent on charities for basic living requirements. Following consideration, they were refused a biometric excusal but granted a positive predetermination under Appendix Family Reunion, meaning

that on attendance at a visa application centre to submit biometrics and identity documents and there being no adverse information identified, a visa would be granted. A full pen picture, including the elements raised by their legal representatives as part of the litigation in support of onward travel assurance, is at **Annex C**.

10. The FCDO subsequently exceptionally agreed to provide this family, and the additional five families with consular support, even though they do not fall within their core policy and Extended Eligibility Criteria (EEC) for Gaza. Minister Falconer considered the advice put to him and each case and decided that FCDO should try to provide support on an exceptional basis to leave Gaza. This decision is however distinct from your (Home Secretary) decision to provide onward travel assurance as this impacts border control.

11. In support of their litigation, which is partially aimed at obtaining onward travel assurances, the Claimants state:

- they have strong ties to the UK and share family life with the UK-based sponsor, their stepmother and stepchildren. They state they have not formed independent lives, are emotionally and practically dependent on the UK sponsor and have no other family to care from them;
- their lives are at serious risk from starvation, disease, bombing and artillery fire;
- the UK sponsor is a vulnerable individual, diagnosed with PTSD and a major depressive disorder;
- they have been granted predeterminations under the Unsafe Journeys policy in light of exceptional and compelling factors including those listed above; and
- they have passed UK security checks for predetermination and Israeli exit checks.
- they claim as two of them are minors and they have not previously left Gaza, there is "no real prospect" of them failing UK biometric checks.

12. The positive predetermination is a positive factor in the family's favour, as it indicates they are likely to be eligible for visa subject to submitting biometrics and passing associated checks. However, there is a significant difference between a positive predetermination and onward travel assurance. The former protects border/national security risks by requiring that biometrics enrolled and considered prior to the final decision on granting entry to the UK; this ensures that a person who presents a known national/border security risk will be prevented

from travelling to the UK. In contrast, the latter would mean that an individual identified as such a risk would have to be brought to the UK.

13. There is significant public interest in requiring and reviewing biometrics against our databases, prior to a decision being made on whether the family is allowed to come to the UK. Making a decision on onward travel assurance before biometrics have been reviewed means we lose the opportunity to prevent alias travel (where someone has used a different identity), and/or individuals whose fingerprints are linked to terrorist activities or serious criminality, or adverse immigration history prior to a decision to allow travel to the UK. If such circumstances occurred where you had provided an onward travel assurance, HMG would be required to facilitate their travel to the UK, where it may prove difficult or impossible to remove them. This is a significant national security/border risk. In addition, and in contrast to the Gaza medevac and full scholarship groups, there is no independent assurance undertaken, over and above the Israeli clearance process discussed below, which would mitigate against this risk (e.g. by the WHO/universities); and there are not considered to be the same foreign policy objectives which would warrant taking such a risk.

14. In addition, we do not accept their claim that there is "no real prospect" of failing UK biometric tests because they state they have never travelled outside of Gaza and they have obtained Israeli exit clearances. UK biometric checks differ from the Israeli biographic checks [redacted] and the reasons for refusing to allow entry to the UK also differ from the reasons that Israel would refuse exit from Gaza. Israel will focus on their own national security assessment rather than HMG national and border security risks [redacted] in visa applications individuals do not always disclose adverse immigration or criminal activities; these only come to light once biographic and biometrics have been checked.

15. Whilst RKC2-7's circumstances are sympathetic, as are RKC1's, they are not considered sufficiently compelling to outweigh the border/national security interests in requiring biometrics before a decision is taken to allow travel to the UK¹. The family unit consists of individuals who are of an age where they could conceivably fail biometrics and they are from a territory where terrorists operate. The family unit consists of adult males and females

¹ You should note that we have taken into account that in the positive predetermination decision of 16 April 2025, the family was held to satisfy limb 3 of the Unsafe Journey policy circumstances that go beyond simply joining relatives who are living in the UK and that they outweigh the interests of national and border security. This limb applies the same threshold for both predeterminations and biometric excusals. However, the Claimants did not satisfy limb 4 for a biometric excusal satisfactorily explaining how they can travel to the UK, but not to any VAC including any on route to the UK. That limb adopts a high threshold in recognition of the public interest in obtaining biometrics before a decision is made on entry to the UK. That decision was considered to be in accordance with Art 8 ECHR and was not challenged by the Claimants. We therefore do not consider that our recommendation on onward travel assurance is inconsistent with that decision. [This was the original footnote].

who will be able to support the day-to-day care of younger teenage children, they have access to humanitarian aid, and some medical care, until they can independently travel to a visa application centre.

16. We do not consider the circumstances of this family sufficiently compelling that they outweigh the wider national and border security risks that would warrant you providing onward travel assurances. **Based on this, and your wider position on assurances, we recommend that you to not extend assurances to this family. Do you agree?**

17. You have already agreed to provide assurance to a young child who meets the student dependant rules, and FCDO agreed to support, (details contained in Annex B). You, Home Secretary, considered these circumstances to be of the level that warranted assurance.

18. **It is open to you to provide onward travel assurance to this family group, on the basis of their circumstances.** The personal circumstances of the individuals in Gaza, and the sponsor in the UK, are similar to many other families in the territory who are seeking to join UK sponsors. However you may be able to justify an exceptional approach on the grounds that they hold positive pre-determinations; on the basis of their individual circumstances; that the FCDO have exceptionally agreed to provide them with consular support; and that their exit can currently only be effective with an onward travel assurance. The impact could therefore possibly be limited to this family and others who hold valid positive predetermination. Should you adopt this approach we would look to make representations to FCDO Ministers making it clear that they should not agree to provide consular support where there is a dependency on Home Office assurances without consulting with Home Office Ministers.

(Emphasis in the original).

58. There were a number of Annexes to the submission. Annex A was described as “SUBMISSION Wider Cohorts wishing to exit Gaza”; Annex B was described as “overview of individuals with positive predeterminations who have either obtained or are waiting on a decision from FCDO on support to exit”. Annex C was a “pen picture” of RKC2-7. This provided the following:

Sponsor

RKC1 - Biological father of all 6 applicants. HO records show that he entered the UK on a small boat on 17 July 2020 and claimed asylum, which was granted on 10 November 2022. He holds valid permission to stay until 09 November 2027.

Applicants:

	Current Age	Gender
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RKC 2	23	M
RKC 3	22	M
RKC 4	20	F
RKC 5	19	F
RKC 6	16	M
RKC 7	14	F

Background and current circumstances in Gaza:

RKC2 to 7 are the biological children of the UK sponsor. All 6 have the same mother, however the sponsor married another woman in 2009. As stated in the Claimants grounds and the witness statement signed by **RKC1** (their father)) **RKC 2** to 7's parents divorced in 2015 (or alternatively as was articulated in their predetermination request, 2011), however their mother split her time between residing in the same building as the wider family and with her new husband. **RKC 2** to 7 lived with her and the sponsor's second wife after the sponsor left Gaza. The sponsor's second wife, and twin children (now aged 8) applied for Family Reunion visas on 15 March 2023, which were granted on 16 October 2023. With FCDO support, they were able to exit Gaza and travel to the UK.

RKC2 to 7 remained with their mother after the stepmother and half-siblings left Gaza. **RKC2** to 4 were over 18 then, however they were studying and were said not to have formed independent lives. **RKC 2** to 7 state they lost contact with their mother on 7 August 2024 after she moved with her new husband. The adult children are now acting as carers to the younger ones, the decision maker accepted that all 6, had lived as a close family unit with the sponsor and his new wife now in the UK, and had not formed independent lives.

Type and date of applications

Appendix Family Reunion, submitted on 06 February 2025

Unsafe Journey Request details:

RKC-2-7 submitted family reunion application forms on 6 February 2025. On 13 February 2025, predetermination and biometric excusal requests were made following the prescribed procedures. Upon review under the Unsafe Journey policy, it was determined that:

- For Criterion 1 (identity), the biodata pages of passports and photocopies of birth certificates satisfied the balance of probabilities standard required for pre-determination and would potentially meet the higher threshold for excusal if all other criteria were met.
- For Criterion 2 (unsafe journey), as **RKC 2-7** are in Gaza, it is accepted that they are in an area which is demonstrably unsafe and there are no alternative options to travel to a VAC safely.
- For Criteria 3 (circumstances of sponsors and individuals), the biological relationship to the sponsor was accepted based on the birth certificates provided and information in his asylum claim. **RKC 6** and **7** are therefore minor children of an individual with protection status in the UK. With regards to **RKC 2-5**, they are residing with **RKC 6** and **7**, the sponsor has maintained contact, and it is stated that their mother has had no contact with them since August 2024. Medical evidence relating to the impact of the separation on the sponsor's mental health, including him suffering from PTSD and a major depressive disorder was provided. In addition, it was stated **RKC 2-7** were hospitalised following a chemical attack and as above, **RKC 2,5** and **6** have medical issues, also covered above. Considering the above, it was deemed that the circumstances were sufficiently compelling to satisfy this limb
- For Criteria 4 (travel), as **RKC 2-7** stated that they were willing to provide biometrics at a VAC before travelling to the UK, they met the criteria for predetermination, but not for excusal.

On this basis, the decision was made to reject the biometric excusal but approve pre-determination on 16 April 2025.

Substantive decision decided minded to grant (in principle) by:

Entry Clearance Officer (ECO) on 1 May 2025

Reasons for Decision

RKC 6 and **7** on the basis that they appear to meet the requirements of Appendix Family Reunion. **RKC 2** to **5** were issued in principle on the basis that whilst they were over 18 at the time of application, the ECO was satisfied that there were exceptional circumstances which met the requirements of FRP.6.2 of Appendix Family Reunion, citing that they remained dependent on their sponsor and stepmother at point of application, have no other relatives who could support them and would likely be destitute if left on their own.

RKC 2-5 were aged between 18 and 22 at the time of application, however at the point of sponsor's departure in 2020, all were under 18 and were dependent upon the sponsor, mother and the sponsor's second wife. The sponsor has remained in contact since 2020, as evidenced by WhatsApp call logs. Since the sponsor's departure, it is stated **RKC 2-7** lived with either their mother or the sponsor's new wife until the sponsor's new wife left Gaza for the UK in December 2023 and they lost contact with their mother in August 2024. It was

stated that **RKC 2-7** have remained dependent on their sponsor and stepmother and were also dependent on their mother until August 2024.

RKC 2-7 were in university and school when the sponsor's new spouse and 2 children applied for UK visas, and it was stated that it was decided they would remain with their mother to avoid their studies being disrupted.

It was stated that **RKC 2-5** are currently unable to access employment or support, they have had no contact with their mother since August 2024 and there is nothing to suggest that they have any other relatives in Gaza who could provide support. In light of them being relatively young adults who had not formed independent family units of their own, them being under 18 at the time the sponsor claimed asylum, and them remaining in the care of at least one parental figure until their mother left the family unit in August 2024, it was accepted on balance that the requirements of paragraph 6.2(a)(b) and (c) of Appendix Family Reunion were met.

Additional grounds raised in judicial review:

It has been argued in their Statement of Grounds dated 31 October 2025 that **RKC 2-7** should be provided with an onward travel assurance for the following reasons:

- they have strong ties to the UK and share family life with the UK-based sponsor, their stepmother and stepchildren. They state they have not formed independent lives, are emotionally and practically dependent on the UK sponsor and have no other family to care from them;
- their lives are at serious risk from starvation, disease, bombing and artillery fire;
- the UK sponsor is a vulnerable individual, diagnosed with PTSD and a major depressive disorder;
- they have been granted predeterminations under the Unsafe Journeys policy in light of exceptional and compelling factors including those listed above; and
- they have passed UK security checks for predetermination and Israeli exit checks.
- they claim as two of them are minors and they have not previously left Gaza, there is “no real prospect” of them failing UK biometric checks”.

(Emphasis in the original).

59. An “Information To Note” was sent by email on 16 December 2025 to, among other persons, the Private Secretaries to the Home Secretary and the Minister. The email

stated that the attached Information To Note and Annex “which should be read alongside the submission that was attached to this original email chain, in advance of the Home Secretary providing a read-out on her decision.” The Annex was the Claimants’ skeleton argument for the hearing on 12 December 2025.

60. The Information To Note addressed a number of points that had arisen at the hearing on 12 December 2025, stating as follows:

Summary

1. You were provided with advice on providing assurance of onward travel to the UK for the family group of RKC on 9 December 2025 (**Submission Gaza – onward assurance request RKC (exceptional Consular case)**). As noted in that advice a hearing on this case took place on Friday 12 December at the **Administrative Court of the High Court, before Mr. Justice Sheldon**. During the hearing, the Claimants’ barrister raised some criticisms with the 9 December 2025 submission. [REDACTED]... **you are provided with a note to address these points, and a copy of the Claimants skeleton (Annex A), allowing you to consider these as part of your decision making on RKC2-7.**

Overview of Issue

2. The hearing for RKC 1-7 took place on Friday 12 December during which the Claimant’s barrister criticised the submission noting that your attention had not been drawn to a number of points, these are summarised at paragraph 5 - below and relate to: potential missed opportunity to exit; the positive predetermination decision; and the fact that decision was Rules-based. We invite you to consider the below points and take them account of in reaching your decision on whether to grant the RKC 2-7 family with an onward travel assurance (“OTA”).

3. The points raised do not individually, or cumulatively, change our recommendation that you (Home Secretary) do not provide an OTA.

4. You (Home Secretary) should note that the Judge indicated that it is unlikely he would hand down judgment or a draft judgment by Monday or Tuesday this week. If your (Home Secretary) decision on OTA was made early this week before the judgment or draft judgment has been handed down or circulated, then, in the event of a refusal to provide an OTA, the parties would likely be given the opportunity to make further submissions before the Judge issues his judgment.

Missed opportunity to exit and delays

5. The Claimant’s position is that but for FCDO’s previous unlawful decision to refuse consular support, see 5.iii below, , they may have been able to exit Gaza before the Jordanian government’s position hardened (i.e., started requiring OTAs as a matter of course), is a relevant factor that you should consider in now deciding whether to grant an OTA. The factual matrix is summarised below.

- i. On 6 February 2025, RKC2-7 applied under Appendix Family Reunion to join RKC1 in the UK. They also sought biometric deferral. On 1 May, they were issued with a positive predetermination/minded to issue Entry Clearance, subject to attending at a visa application centre (VAC), submitting biometrics and passing associated checks.
- ii. On 14 May 2025, RKC2-7 requested FCDO's support to exit Gaza. On 29 May 2025, it was refused, on the basis that it did not meet the eligibility criteria for consular support, and at that time was not considered exceptional to provide support outside of that criteria. On 3 July 2025, the Claimants issued a claim for judicial review challenging that decision. The judicial review was stayed behind a lead case of BEL (known as IA within the Home Office).
- iii. On 28 July 2025, the judgment in BEL was handed down. That case found that FCDO's decision on consular support was irrational, because they had failed to consider the number of cases and diplomatic effort required fully, meaning that they were required to consider it again. Following this, on 31 July 2025, FCDO accepted their original decision to refuse consular support to RKC2-7 was unlawful and agreed to reconsider it.
- iv. On 13 August 2025, following advice, Minister Falconer decided to provide exceptional consular support try to enable the departure from Gaza of RKC2-7. This was communicated to the Claimants. On 14 August 2025, Jordan indicated OTAs would be required for Gaza medevac and full scholarship cases. Notwithstanding that on 18 August, FCDO secured the last exit of a family member of a British Citizen via Jordan without providing an OTA.
- v. On 1 September 2025, Israel confirmed that RKC2-7 had been granted exit Clearance.
- vi. On 10 September 2025, you (Home Secretary) received advice on providing OTAs to wider cohorts. It covered those who were from Gaza and seeking to join family members in the UK, including RKC2-7. You agreed with the advice not to extend the provision of OTAs, but to consider such assurances on a case-by-case basis where raised by other Government departments including the FCDO.
- vii. On 1 October 2025, the British Embassy in Amman met with the Jordanian Ministry of Foreign

Affairs who confirmed that OTAs would be required for entry of family cases, such as RKC2-7.

viii. On or around 20 November 2025, FCDO made a request for you to consider providing an OTA to RKC2-7. On 9 December 2025, you (Home Secretary) received advice from your officials on this.

6. The Claimants contend that had the previous FCDO decision of 29 May 2025 been lawful, they may have had the opportunity to exit Gaza before the Jordanian position on OTAs hardened. **We consider this is a factor you should afford some weight to, but do not consider it outweighs the border/national security risks summarised in paragraphs 13-15 of the 9 December 2025 submission.**

7. The Claimants also criticise the time it took from your 10 September 2025 decision on refusing to extend provision of OTAs, but agreeing to consider exceptional cases, and the request for such individual consideration by FCDO (20 November 2025) and a decision on that request (TBC, likely w.c. 15 December 2025). **We consider this factor to be of limited weight: the delay has not been substantial and is unlikely to have made any difference with the Jordanian position having already hardened.** Further, it is considered reasonable for FCDO to have considered other avenues following your cohort decision of 10 September 2025 before returning with an individual request.

Previous predetermination decision

8. The Claimants' barrister criticised footnote 1 of the 9 December submission. She claimed it 'made no sense'. We consider this criticism to be of little merit given your (Home Secretary) knowledge of biometrics and the Unsafe Journey guidance. Nonetheless, for completeness we have addressed it in more detail below.

9. Under the Unsafe Journey policy ("UJP"), biometric excuse, whereby the submissions of biometrics are deferred until after the person reaches the UK, requires approval from a Home Office Minister. This is in recognition of the border and national security risks involved and that it is ultimately you (Home Secretary) who are responsible to Parliament for the management of such risks.

10. In the Home Office decision of 16 April 2025, an official decision maker accepted that limb 3 of UJP (circumstances which go beyond simply joining relatives who are living in the UK and that they outweigh the interests of national and border security) both for predetermination and biometric excuse. No submission was prepared for Home Office Minister approval for biometric excuse because the Claimants did not satisfy limb 4 (explain why they cannot attend any VAC but are able to travel to the UK).

11. The Claimants submitted that you could not depart, without good reason, from the decision of the official on 16 April 2025 about limb 3

of UJP without good reason. We do not accept this analysis: you are required to consider the previous decision but, as the most senior Minister in the department, you are not bound by their decision and must reach your own conclusion on whether the compelling circumstances outweigh the national security and border risks. This is expressly provided for in the UJP. We accordingly consider this factor to be of limited weight.

Positive predetermination made under the rules, rather than LOTR

12. The Claimants' barrister stated a further relevant factor was that their positive predeterminations of 1 May 2025 was issued under the Immigration Rules rather than LOTR. They sought to rely on this point to contrast it to the extended family member cases, like IA, which has been referenced in some of the previous advice you received on OTAs.

13. You should note RKC2-7 were issued with minded to issue visas under Appendix Family Reunion, subject to submitting biometrics and passing associated checks. The two minor children of the UK-based sponsor qualified based on their relationship. The four children over 18 qualified based on their relationship and exceptional circumstances.

14. Again, we consider this factor to be of relatively limited weight in considering the OTA request, but you are invited to consider it.

Media, Parliamentary and Stakeholder Reaction

15. Given this is an internal decision, if you (Home Secretary) agree with the recommendations then this could be of some interest to the media if disclosed to the media. The communications team will work with FCDO to prepare a reactive media statement.

Next Steps

16. We will share this information to note with the claimants and the court, along with your decision on providing OTA to RKC2-7.

(Emphasis in the original).

61. The decision was actually taken by the Minister and not the SSHD as a result of the latter's illness. A "read-out" of the decision was set out in an email from the Private Secretary to the Minister on 18 December 2025. This stated that:

"This submission has been delegated to Minister Norris.

Minister Norris has reviewed:

Submission: **Gaza – request for onwards assurance - exceptional Consular case**

ITN - **Gaza onward assurance RKC supplementary information and Annex A – Supplementary Note: RKC1 & Others -v- SSFCDA (D1) and SSHD (D2) Skeleton Argument AC-2025-LON-003818**

Minister Norris **agrees** with the recommendation to not provide onward travel assurance to this family group (RKC2-7), with no further comments.”

(Emphasis in the original).

62. As part of the evidence for the hearing on 26 January 2026, Sarah Crowe, solicitor for the Claimants, provided information about the security checks that were carried out by the Israeli authorities as part of their decision to grant in-principle exit clearance from Gaza for RKC2-7.

“8. In relation to this concern, it is highly unlikely that any such information would not have been identified during the security checks carried out by Israel. The scale of Israeli security surveillance and intelligence-gathering systems in Gaza is well-documented.

9. The United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (“the UN Special Committee”) has expressed concern about the use by Israel of “artificial intelligence systems (which rely on mass surveillance to process large volumes of data), to rapidly generate tens of thousands of [military] targets, as well as to track targets to their homes”.

10. Israel is reported to use extensive facial-recognition technology in Gaza. The use of this technology is reported to have affected even individuals with no known links to Hamas and who had no knowledge that their biometric data was being captured by Israeli authorities.

11. Human Rights Watch (“HRW”) has identified a number of other digital tools used by Israel in Gaza, including one which “is based on mobile phone tracking to monitor the evacuation of Palestinians from parts of northern Gaza”, and another which “assigns ratings to people in Gaza related to their suspected affiliation with Palestinian armed groups”. In relation to the first tool, the New York Times has reported that the tool uses data harvested from more than one million mobile phones. HRW has noted that “before October 2023 the Gaza telecommunications ministry reported a total of 1,041,198 active mobile phone subscriptions in Gaza”. This is indicative of the proportion of the population in Gaza likely to be subject to Israeli intelligence gathering.

12. According to Israeli intelligence officers speaking to the New York Times, Israeli operations in Gaza also include “tapping phone lines, interrogating Palestinian prisoners, harvesting drone footage, getting access to private social media accounts and hacking into telecommunications systems”. According to Israeli Scholar Professor Neve Gordon, Israeli intelligence officer advised him that “we can see almost everything in the Gaza Strip, whether it’s through our Zeppelins, whether it’s through our drones, whether it’s through satellites and different devices.” He adds that Israel’s surveillance apparatus in Gaza is extensive and sophisticated: “Israel monitors

every little step in the Gaza Strip. Every SIM card in the Gaza Strip is monitored. A lot of times when they say they're targeting a person, they're targeting the SIM card. So, what we have is a whole massive apparatus of surveillance that has existed for years for military use." For these reasons, Gaza and the West Bank are often described as among the most surveilled places in the world.

13. The breadth of Israel's intelligence operations, and their effectiveness in capturing information relevant to the security of other nations, has been underlined in statements made by Benjamin Netanyahu to the UN General Assembly:

"Behind closed doors, many [national leaders] tell me how much they value Israel's superb intelligence services that have prevented time and again terrorist attacks in their capitals, time and again saving countless lives. General George Keegan, former head of US air force intelligence, once said: "If the United States had to gather on its own the intelligence that Israel gives us, we would have to establish five CIAs.""

14. Claimants 2-7 have never left Gaza. In light of the sophistication, intensity and breadth of Israeli intelligence operations in Gaza, to the extent that data exists which discloses that they may be linked to terrorist activity, or serious criminality, this data is likely to have been held by Israel, and would have been identified in the course of Israel's security checks."

63. Ms Crowe has also updated the Court with respect to the humanitarian situation in Gaza, and the ongoing military operations by Israel in Gaza. With respect to the circumstances of RKC2-7, she says that their situation continues to deteriorate; and RKC1 is said to remain extremely distressed by their situation.

64. Mr Tom Rutherford, the Deputy Director of the Borders and Aviation Security Unit within the Homeland Security Group in the Home Office, has responded to Ms Crowe's observations about the Israeli security checks. He has stated that:

"I am personally aware there are instances where individuals have passed Israeli security checks but have adverse hits on UK holdings. It would not be appropriate to disclose the details of national security checks undertaken by the UK government or the data sets that they are undertaken against. However, it would be wrong to assume that there is equivalence of those checks when compared to the security processes of another Government. There will always be differences between the national security priorities, thresholds, capabilities, data sets and wider security apparatus of different Governments. While security checks undertaken by another Government may provide a level of assurance regarding whether an individual poses a threat to the United Kingdom, those checks cannot replicate or replace the checks undertaken by the UK government itself."

65. Also of relevance is a decision taken by the SSHD on or about 25 November 2025 to provide onward travel assurance to a young child in Gaza. The circumstances were that she holds a positive predetermination decision from the Home Office as an eligible dependant of a student. The mother (the sponsor) holds valid permission until 30 January 2030, as a student at a United Kingdom university. The child was not within scope, however, of the process for students and their dependants. The father of the child was declared missing on 7 October 2023 and has been declared deceased; and the child was staying with various relatives temporarily who are unable to care for her long term. The submission made to the SSHD was to recommend assurance drawing on the specific facts of the case, namely: “the age of the child, the fact that they are without parental support in Gaza, the circumstances in which those conditions arose, along with the Immigration Rules being likely met, and that the Foreign Secretary wishes to support their exit.”

II. The Initial Decision(s)

66. The Claimants produced Amended Grounds of Claim in advance of the “rolled-up” hearing that took place before me on 12 December 2025. They contended that the Defendants’ refusal to exercise the necessary collaboration to achieve the exit of RKC2-7 from Gaza was unlawful for the following reasons:

- (1) It was in breach of the Claimants’ legitimate expectation, created by the circumstances and terms of the urgent settlement of their claim, that the SSFCDA would take all reasonable steps to assist them to leave Gaza as expeditiously as possible, including, where needed, collaboration with the SSHD.
- (2) It was inconsistent with the treatment of other groups of individuals who were provided with onward travel assurances, and there was no proper or rational basis for that inconsistency given RKC2-C7’s circumstances, their eligibility for refugee family reunion with RKC1, and the fact they already have the benefit of a Court order after unlawful conduct by the SSFCDA.
- (3) It was based on a series of irrational decisions, including the SSHD’s decision not to assist a cohort including the Claimants which takes into account a range of irrelevant matters, fails to consider relevant matters, and was procedurally unfair.
- (4) It was a breach of the Claimants’ rights under Article 8 of the Convention. The SSHD has already decided that the Claimants, who are a refugee father and six children, have a right under Article 8 of the Convention to be reunited. The Defendants, who have a policy and/or practice of working together to achieve the exit from Gaza of certain groups or individuals with a view to their entering the UK, have a positive obligation to facilitate the Claimants’ exercise of that Article 8 of the Convention, and have failed to do so without lawful or proper justification.
- (5) The Defendants have also unlawfully discriminated against the Claimants in breach of Article 14 of the Convention in conjunction with Article 8 of the Convention, by treating them less favourably than other cohorts they have assisted to leave Gaza. No justification has been offered for the difference in treatment.

67. In making these claims, the Claimants contend that two decisions were taken:
- 1) The September Decision: the decision by the SSHD, following the submission of 10 September 2025, not to provide assurances to the Kingdom of Jordan in various cohorts of cases, one of which included RKC2-7;
 - 2) The October Decision: the decision of 16 October 2025 not to continue to try to assist RKC2-7 to leave Gaza via the Kingdom of Jordan (the only option for exit at this time) on the basis that it was “not possible” to implement the August decision (to try to effect their departure from Gaza) via the Kingdom of Jordan.

The Parties’ Submissions

68. Miss Kilroy KC appeared for the Claimants along with Michelle Knorr and Isabelle Agerbak. Mr Dunlop KC appeared for the Defendants along with Sian Reeves, Richard Evans and Paul Erdunast.

(i) Breach of legitimate expectation

69. Ms Kilroy KC contended that the Claimants have a legitimate expectation that the SSFCDA would take all reasonable steps available to her to assist RKC2-7 to leave Gaza as expeditiously as possible, including where needed, in collaboration with the SSHD.
70. The legitimate expectation arose because (1) the SSFCDA has a practice of collaborating with the SSHD where she agrees to assist individuals to leave Gaza, including by working with the SSHD to allow required visa processes to be completed in a way that also allows individuals to comply with the requirements of countries through which she negotiates transit; and (2) it was known that the Kingdom of Jordan would require an assurance that RKC2-7 would be required to leave the Kingdom of Jordan within a short period; that the SSHD’s co-operation would be required to meet that assurance; and (3) the Claimants agreed to settle their claim on this basis.
71. Ms Kilroy KC contended that the legitimate expectation was breached because the SSFCDA failed to take all reasonable steps available to her. In particular, she failed to ask, let alone, press the SSHD to provide assurances for RKC2-7. Furthermore, the SSFCDA has not acted expeditiously.
72. Mr Dunlop KC contended that there was no legitimate expectation engendered in the circumstances of this case. All that the SSFCDA promised was to “try and effect [RKC2-7]’s departure from Gaza”; that is, to take reasonable steps, to make a *bona fide* attempt, to effect their departure from Gaza within a reasonable period of time. Mr Dunlop KC submits that that is too vague to amount to a clear or unambiguous representation to provide any particular form of support. On any view, it did not amount to a promise to offer whatever form of assurance may be required by the Kingdom of Jordan, or to do whatever was necessary to effect their exit from Gaza. It did not amount to a promise that the SSFCDA would give the Kingdom of Jordan a guarantee for onward travel or press the SSHD to give such a guarantee.

73. In any event, the promise was complied with: the SSFCDA has tried to effect their departure from Gaza and continues to do so. On 19 August 2025, the SSFCDA sought permission from the Israeli authorities for RKC2-7 to leave Gaza and transit through Israel. This permission was obtained on 2 September 2025. The SSFCDA tested the Kingdom of Jordan’s position, in a meeting on 1 October 2025, to see if the Kingdom of Jordan might be willing to agree transit without a guarantee of onward travel. The SSFCDA had considered other options for exit, e.g. the possible Rafah re-opening. Moreover, the SSFCDA had recently made a request to the SSHD to consider giving guarantees of onward travel, for all exceptional cases and for RKC2-7 on an exceptional, individual basis. Looking at these matters cumulatively, the SSFCDA has taken all reasonable steps to assist RKC2-7, and has done so expeditiously.
74. Further, Mr Dunlop KC submitted that it was justified for the SSFCDA not to have made a request of Jordan for RKC2-7 to exit without a guarantee: it was clear that the Kingdom of Jordan would not accept that request.

(ii) Inconsistent treatment with *medevac* and student cohorts

75. Ms Kilroy KC submitted that the Defendants have acted irrationally by failing to treat the Claimants’ case consistently with the *medevac* and student cohorts for whom assurances have been given for onward travel. There is no rational justification for the difference in treatment, and the Defendants did not even turn their mind to the question as to whether the difference in treatment was justified.
76. For the Defendants, Miss Reeves pointed out that there is a high threshold before a finding of irrationality can be made – which is the proper way to characterise the inconsistent treatment argument. It was not satisfied here, as RKC2-7 are not in the same position as the students and the evacuees under *medevac*: there is no foreign policy objective which outweighs the risks of not providing biometric information, and RKC2-7 have not been vetted by an external organisation. Furthermore, no final decision has yet been taken as to whether the SSHD will offer the guarantee to RKC2-7: the only decision taken so far is that they will not automatically qualify for the guarantee along with the remainder of the cohort of “exceptional consular cases”.
77. Miss Reeves argued that rationality does not require a public authority to “turn their mind” to differences in treatment between groups who are not analogous.

(iii) Irrationality and Procedural Unfairness

78. Ms Kilroy KC stated that the Claimants did not seek to challenge the September Decision insofar as it applied to the cohort as a whole. Rather, she submits that the September Decision, and the October Decision which was a reiteration of that earlier decision, were irrational because they amounted to, and were treated as, a refusal to offer guarantees of onward travel for RKC2-7, and yet the SSHD was not asked to and did not ever consider the Claimants’ individual circumstances.
79. The decisions not to assist RKC2-7 were taken on a ‘cohort’ basis, with their circumstances being wrongly conflated with others with whom they share little. Ms Kilroy KC pointed out that RKC2-7 are highly vulnerable children seeking to join a refugee parent; and they have been granted predetermination under the Immigration

Rules, and not on exceptional Article 8 grounds outside of the rules. They are therefore distinct from others within the cohort.

80. When looking at the wider cohort of ‘exceptional consular cases’ with whom their cases were joined, RKC2-7 are distinct because they had the benefit of the agreement to assist them. Furthermore, as a result of the unlawful decision taken in June 2025 they have lost the opportunity to benefit from the less stringent, best endeavours, approach that was accepted by the Kingdom of Jordan in the past, and have been caught up in the decision-making with respect to the *medevac* and student groups.
81. Further, Ms Kilroy KC submitted that the SSHD’s conclusion that providing assurances would undermine the *Unsafe Journeys Policy* is perverse when applied to RKC2-7, in light of the predetermination decision that had been taken in April 2025, and given the fact that assurances have been given to the *medevac* and student cases. Ms Kilroy KC emphasised the conclusion reached in the predetermination decision that RKC2-7 met the criterion of “Compelling Circumstances” in line with the *Unsafe Journeys Policy*. Furthermore, the decision not to grant biometric excuse was based on the belief that the SSFCDA would be able to help them and they would be able to travel to Jordan and give their biometrics in Amman.
82. The October Decision was unlawful in that it was based on the September Decision. Furthermore, Ms Kilroy KC submitted that it was irrational for the SSFCDA to conclude that it was not possible to facilitate exit via the Kingdom of Jordan when (i) the SSHD had not been asked to provide assurances and (ii) the SSFCDA had not submitted an individualised request to the Kingdom of Jordan concerning the Claimants.
83. Ms Kilroy KC argued that the failure of the Defendants to disclose the September and October Decisions until 24 November 2025 constitutes procedural unfairness. It is submitted that had these decisions been disclosed sooner, the errors in the decision-making process could have been pointed out earlier.
84. Mr Dunlop KC resisted these submissions on behalf of the Defendants, contending that the decision of 10 September 2025 not to extend the cohorts to whom a guarantee of onward travel would be provided was rational and fair. There was, in Mr Dunlop KC’s submission, no decision taken in October 2025.
85. Mr Dunlop KC explained that the September Decision was a “general policy” decision not to create any new cohorts where all members would receive guarantees of onward travel, and was only the first stage of the process. The second stage was individual consideration which is now taking place. Mr Dunlop KC contended that that is what was envisaged by the September Decision.
86. Mr Dunlop KC submitted that the only matters that were required to be taken into account on that individual consideration are those which are “so obviously material” that they need to be taken into account: see R (Friends of the Earth) v Heathrow Airport Ltd [2020] UKSC 52 at [119].
87. Further, Mr Dunlop KC submits that the conclusion of the SSHD that providing guarantees to all “exceptional consular cases” would undermine the *Unsafe Journeys Policy* was rational. If the decision had been taken to offer guarantees of onward

travel to all in this cohort, it would have undermined that policy because (i) it would have created a new, and far broader, group of individuals whom the United Kingdom would be obliged to accept without biometric checks and (ii) it might have led to predeterminations being used as a basis to demand that the United Kingdom Government assist the subject to cross international borders.

88. With respect to the predetermination decision made in April 2025, which found that the compelling circumstances test was satisfied, Mr Dunlop KC contended that that decision was made by an official and did not bind the SSHD. Mr Dunlop KC stated that a decision to permit someone to come into the United Kingdom without their biometrics being checked had to be made by the SSHD herself, and that was clearly set out in the *Unsafe Journeys Policy*. That policy was, according to Mr Dunlop KC, never meant to be a lever to pressure the SSFCDA, or to guarantee onward travel, but to help individuals with their decision making when considering an unsafe journey.
89. Mr Dunlop KC argued that it was not procedurally unfair to fail to inform the Claimants of the September Decision. That decision was a policy decision which covered a broad range of individuals and not just the Claimants. The Claimants have a fair opportunity to challenge the decision at the rolled-up hearing. In any event, the decision did not affect the *status quo* for the Claimants, as the SSFCDA has continued to support RKC2-7 to try to exit Gaza.

(iv) Breach of Article 8 of the Convention

90. Ms Kilroy KC submitted that the Strasbourg Court had stated that, under Article 8 of the Convention, there may be a ‘positive obligation’ to facilitate admission to the United Kingdom of relatives depending on “the particular circumstances of the persons involved” and with respect to refugees “the family unit is an essential right of refugees” and “family reunification is a critical element for permitting persons who have fled persecutions to resume a normal life” (see e.g. Tuquabo-Tekle v Netherlands [2006] 1 FLR at [42]-[44]). In the circumstances of this case, the Defendants’ failure to take the steps necessary to assist RKC2-7 to leave Gaza put the United Kingdom Government in breach of this positive obligation.
91. This included the decision of the SSHD on 10 September 2025 to apply the “Exceptional consular cases” cohort decision to RKC2-7. That decision interfered with their Article 8 rights because it prevented them from exiting Gaza to exercise the rights given to them by the SSHD to enter the United Kingdom. That decision was not “in accordance with the law” and was not justified.
92. There are also procedural protections to ensure that if family members are at risk visas requests are to be “examined quickly, attentively and with particular diligence”, and where needed there is flexibility with respect to biometrics to ensure applications can be made: that was not done here. Further, the withholding of information about the September and October Decisions breached the Claimants’ procedural rights.
93. Ms Kilroy KC submitted that the Article 8 claim in this case is distinguishable from BEL in that the Claimants’ case is not about consular assistance, as the SSFCDA has agreed to provide that assistance. The issue in this case is the failure of the Defendants to take steps to implement the agreement to provide assistance and their approach to biometrics.

94. For the Defendants, Mr Dunlop KC acknowledged that Article 8 of the Convention may impose a positive obligation to admit a person presenting themselves at the United Kingdom border, or to provide them with United Kingdom travel documents which would enable them to enter at the border. However, it cannot extend to an obligation to provide consular assistance: see BEL at [87]; and therefore does not impose a positive obligation to provide the assistance that is sought by RKC2-7: a guarantee to the Kingdom of Jordan of onward travel, regardless of biometrics. That would amount to obliging the United Kingdom Government to undertake international engagement on behalf of an individual outside of its territory, even if not doing so would have an impact on the Article 8 rights of an individual within its territory. Mr Dunlop KC submitted that that would be an improper extension of the jurisdiction of the Convention: Article 1 provides that “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”.
95. If there was such an obligation it would fall on the SSHD, and whether or not the obligation was complied with depends on the overall outcome, not the process: see R (FWF) v Secretary of State for the Home Department [2021] EWCA Civ 88 at [144]. At the time of the “rolled-up” hearing, no individualised decision had been taken with respect to RKC2-7.
96. In any event, whether or not to offer a guarantee of onward travel was a matter which, Mr Dunlop KC submitted, was well within the margin of appreciation to be accorded to the Government. The decision impacts on national security as well as international relations.
97. Mr Dunlop KC also contended that the Claimants’ procedural rights under Article 8 have not been breached, in any event. The Claimants have been able to make detailed submissions as to the nature of the assistance to be provided to them.
- (v) Article 14 of the Convention: discrimination
98. Ms Kilroy KC submitted that the Defendants had breached Article 14 of the Convention, read with Article 8. RKC2-7 were in a relevantly similar situation to cohorts for whom assistance has been agreed for them to leave Gaza via the Kingdom of Jordan and there was no justification to treat them less favourably.
99. The difference in treatment was on the ground of ‘other status’ related to the basis on which RKC2-7 are entitled to enter the United Kingdom, the cohort into which they have been placed by the SSHD, or because they qualify for and have decisions made under the *Unsafe Journeys Policy*.
100. Further, RKC2-7 had been treated in the same way as other cohorts when they should have received more favourable treatment in accordance with the principle in Thlimennos v Greece (2001) 31 EHRR 15.
101. Miss Reeves, for the Defendants, submitted that the Article 14 claim failed to comply with the principles expounded in R (Stott) v Secretary of State for Justice [2020] AC 51 at [207]. The claim did not fall within the ambit of one of the Convention rights, as the level of consular assistance to be provided is outside the scope of Article 8; RKC2-7 were not in an analogous or relevantly similar situation to the groups they

seek to compare themselves with (the *medevac* and student cohorts); and, in any event, any difference in treatment was justified: no individualised decision had been taken at the date of the hearing, and the cohort decision was objectively justified. That decision was not “manifestly without reasonable foundation”.

Discussion

102. In considering the various grounds of claim that were presented at the hearing on 12 December 2025, it is necessary to make two preliminary findings of fact. First, I have to decide whether the September Decision specifically envisaged that there would be individualised consideration of the Claimants’ case and circumstances. Second, I have to decide whether there was only one decision as contended for by the Defendants (the September Decision) or two decisions as contended for by the Claimants (the September and October Decisions).
103. With respect to the first of these, I find that the September Decision did not envisage that there would be individualised consideration of the Claimants’ circumstances. Rather, the decision of the SSHD was that an onward guarantee would not be provided to RKC2-7 as part of a cohort with others. It was not contemplated that there would be an individualised consideration of their cases at some later point. This finding reflects the wording of the submission of 10 September 2025, as well as the message on behalf of the SSHD sent out on 15 September 2025. It also aligns with the subsequent documentation, including the representations made by the Defendants when applying for a stay of these proceedings on 19 November 2025.
104. The submission of 10 September 2025 made four recommendations. One of these was to “Agree to not provide assurances for Exceptional Consular cases”: the cohort which includes RKC2-7 and the other family units who had been offered support by the SSFCDA in light of the BEL judgment. The clear implication from that recommendation was that none of the cases who fell within that cohort, including RKC2-7, would be provided with assurances. The recommendation to “Agree that individual cases can be raised by FCDO, or other governmental departments via FCDO, to be considered on a case-by-case basis”, reads as if it was applying to other cases that do not fall within the other categories that have already been referred to. This is also how the substantive text of the submission reads. At paragraph 19 of the submission, the final paragraph of the section dealing with “Exceptional Consular cases”, the question asked is whether the SSHD agrees with the recommendation not to support this cohort. The following section, which is described as “Wider cohorts” includes a paragraph (paragraph 23) which refers to “instances where the FCDO, or other departments, are made aware of individual cases where the Foreign Secretary and you, Home Secretary, may wish to exercise discretion”. The clear inference of being “made aware of individual cases” is that this does not include cases of which the Ministers were already aware, which would include the “Exceptional Consular cases”.
105. This understanding of the submission is fortified by the email of 15 September 2025 (see paragraph 42 above), which specifically records the SSHD’s decision not to extend assurances to the wider “exceptional” consular cases, which refers specifically to the “36” (which includes RKC2-7). In a separate part of the email there is reference to the “case-by-case approach”, with no suggestion that this could include any of the “36”.

106. That was clearly the understanding at the time of Mr Kavanagh, as he sent a submission to Parliamentary Under-Secretary Falconer on 18 September 2025 about the “family” cases who were said not to benefit from onward travel assurances. No suggestion is made by Mr Kavanagh that an exception could be made for any of them, or that they could be looked at on a case by case basis.
107. Any doubt about this was put to rest by the representations made on 19 November 2025, where the Defendants refer to the fact that the SSHD had not been asked to consider the Claimants’ cases on an individualised basis, and no suggestion is made that that was something which had been envisaged as happening anyway.
108. With respect to the second issue – was there an October Decision? – my finding is that there was. The SSHD had made a decision not to offer assurances to RKC2-7 as they fell within the cohort for whom no such assurances would be offered. The SSFCDA then tested with the Jordanian authorities at the meeting of 1 October 2025 whether the offer of assurances was a requirement. If it was not, then there would have been room for the SSFCDA to explore whether a lesser offer would suffice and whether that could be offered by the SSHD. The clear understanding that was given by the Jordanian authorities at the meeting, however, was that an offer of assurances was a requirement. As a result, the SSFCDA decided not to take the matter any further with the Jordanian authorities, or with the SSHD, but instead to look into other options to facilitate the exit of RKC2-7 from Gaza.
109. Accordingly, I agree that a decision was taken by the SSFCDA on 16 October 2025 (as set out at paragraph 48(5) of the Amended Statement of Facts and Grounds) “not to continue to try to assist the Claimants to leave Gaza via Jordan (the only option for exit at this time) on the basis that it was “not possible” to implement the August decision via Jordan”.
110. Against this background, I shall consider the various grounds of challenge.
- (i) Was there a breach of a legitimate expectation?
111. In my judgment, the Claimants did have a legitimate expectation that the SSFCDA would try to effect the departure of RKC2-7 from Gaza. A promise to that effect was made by the SSFCDA in a letter to the Claimants’ solicitors on 13 August 2025, and this was repeated in a further letter on the following day and in the preamble to the Consent Order entered into on 3 September 2025. That promise was clear, unambiguous and devoid of relevant qualification.
112. The language “try to effect” their departure from Gaza is made up of ordinary English words. The way in which that wording would reasonably have been understood by the Claimants (see Paponette v Attorney-General of Trinidad and Tobago [2012] 1 AC 1 at [30]), in the context in which the promise was made, is that the SSFCDA would make a *bona fide* attempt to effect their departure in a reasonable time. The urgency of the situation meant that both the SSFCDA and the Claimants understood that there could not be inordinate delay. As for what “try to effect” entailed, that would be by taking reasonable steps.
113. Looking at the steps that were taken, I find that the SSFCDA did take some steps to try to effect the departure of RKC2-7 from Gaza: permission was sought for RKC2-7

to leave Gaza from the Israeli authorities on 19 August 2025, a matter of days after the promise was made. Permission was obtained on 2 September 2025. Nevertheless, until 20 November 2025 or thereabouts, the SSFCDA had not asked the SSHD whether she would be willing to provide the assurances that would be needed for RKC2-7 to exit Gaza and transit through Jordan. This was confirmed in the evidence of Mr Kavanagh.

114. Whilst the promise made to the Claimants was not to guarantee the exit of RKC2-7, it is difficult to see how the SSFCDA could be said to have tried to effect their exit without even asking the SSHD if she was willing to provide the assurances that the Kingdom of Jordan was now requiring. That was a step which it would have been reasonable for the SSFCDA to take, even if the likely answer of the SSHD (that it would be negative) was contemplated.
115. I do not consider that there were good reasons for the SSFCDA to depart from the legitimate expectation. There was no suggestion that making the request would cause any particular difficulty for the SSFCDA. Furthermore, the very fact that the request was subsequently made indicates that there were no real obstacles to making such a request.
116. I find, therefore, that the SSFCDA failed to comply with the legitimate expectation that had been engendered by failing to make the request to the SSHD before 18 November 2025.

(ii) Was the treatment of the Claimants unlawfully inconsistent with the treatment of other groups: *medevac* and student cohorts?

117. In my judgment, it was not unlawful to treat the Claimants differently from the other groups - the *medevac* and student cohorts – when looked at on a cohort basis. There were clear, rational, reasons for the difference in treatment between the cohort of exceptional consular cases and the *medevac* and student cohorts. As I explain below (see paragraph 193 below), there were foreign policy objectives relevant to the latter cohorts that did not apply to the exceptional consular cases of which RKC2-7 were a part. As for the treatment as an individual unit within that cohort, I deal with that under the following heading.

(iii) Was the treatment of the Claimants irrational, and procedurally unfair?

118. I consider that the initial failure of the SSHD to consider the individual circumstances of RKC2-7, treating them alongside all of the other exceptional consular cases, was unlawful. Whilst the cohort decision itself could be justified (and this was not actually challenged by the Claimants), it was irrational not to give the Claimants' individual consideration. What the SSHD had done was to apply a policy decision to all of that cohort, and in doing so failed to consider all relevant considerations.
119. I also consider that it was unlawful to fail to inform the Claimants about the decisions that had been taken. Whilst the Claimants did not have a right to make representations about the decision that had been taken, it was irrational not to inform them of the outcome. The particular circumstances of the Claimants called for them to be told about what decision had been taken in their case or which affected their case: as already discussed, a promise had been made by the SSFCDA to try to effect their

departure from Gaza; and there was no rational reason to keep from them the fact that departure would not be taking place, especially as that resulted from a decision that had been taken by the SSHD.

(iv) Was there a breach of Article 8 of the Convention

120. I do not consider that the Claimants' Article 8 rights were engaged in the decisions, or omissions, of the Defendants in this case. Whilst the facilitation of the Claimants' family reunion could give rise to positive obligations under Article 8 on the part of the United Kingdom, those obligations would not be unlimited. They would not, in my judgment, extend to the provision of onward travel guarantees to the Kingdom of Jordan which is the focus of the Claimants' challenge. The reason why onward travel guarantees were not provided to the cohort of whom RKC2-7 were a part involved the SSHD's decision-making around biometric information and risks to national and border security, but the substantive assistance that was being sought by RKC2-7 was that the United Kingdom Government would guarantee to the Kingdom of Jordan that they would be permitted to travel on to the United Kingdom whatever the result of their biometric enrolment.
121. In BEL, Chamberlain J held that positive action in the form of diplomatic and consular assistance to persons outside of the territory of the United Kingdom was outwith the scope of the Convention, and I see no reason to depart from Chamberlain J's analysis, or to distinguish it on the facts of the present case.
122. BEL was concerned with whether the United Kingdom government was obliged under Article 8 to provide consular or diplomatic assistance to individuals residing in Gaza but wished to be reunited with family members lawfully resident in the United Kingdom. In the course of his judgment, Chamberlain J explored the contours of the Convention principles as they applied to assisting an individual to exit a third country.

“79. In my judgment, Mr Milford is correct to submit that the duty contended for by the claimants in this case would go beyond anything recognised by existing case law of the Strasbourg or domestic courts and would be inconsistent with important principles recognised in that case law.

80. Article 1 ECHR imposes on contracting states the obligation to “secure to everyone within their jurisdiction” the rights and freedoms in Section I. In general, a person is within a state's “jurisdiction” for these purposes when he or she is within its territory, subject to limited exceptions in cases where the state exercises authority and control over an individual or has “effective control” over the areas where he or she is located: *Al Skeini*, [131]-[139].

81. Since “family life” is a unitary concept, the interests protected by the right to respect for family life are not divisible: *Beoku-Betts v Secretary of State for the Home Department* [2008] UKHL 39, [2009] 1 AC 115, [4] and [20]. Accordingly, if one member of the family is within the territorial jurisdiction, Article 8 may impose certain obligations on the state to promote the reunification of the family, even though some family members are outside the jurisdiction: *Abbas v*

Secretary of State for the Home Department [2017] EWCA Civ 1393, [2018] 1 WLR 533, [17].

82. The key question, however, concerns the extent of these obligations. There is no doubt that Article 8 (in common with some other ECHR rights) can and does imply positive obligations in certain circumstances. But the Strasbourg Court has been cautious in recognising new circumstances in which positive obligations arise. Article 8 may in a particular case generate a positive obligation on a state to promote family reunification by admitting a person who presents himself or herself at that state's border. It may generate a positive obligation to provide travel documents to enable an individual to get to the border. It is, however, quite a different matter to suggest that Article 8 requires positive action in the form of diplomatic or consular assistance. There is no Strasbourg authority to suggest that it does. On the contrary, the Grand Chamber of the Strasbourg Court has said in terms, relatively recently, that the ECHR "does not guarantee the right to diplomatic or consular protection": *HF v France*, [201].

83. In *HF*, the applicant was a national of France and relied on Article 3 of Protocol No. 4 ("A3P4"), which provides: "No one shall be deprived of the right to enter the territory of the State of which he is a national". On the face of it, it might be thought that this UK) to take certain steps to facilitate the return of their nationals. The Court, however, held that such obligations did not extend to a right to assistance with repatriation: see [253]-[259].

84. The fact that this case was brought under A3P4, far from assisting the claimants to distinguish it, seems to me to make it a stronger authority for the Foreign Secretary. The right conferred by A3P4, on its face, confers an express and absolute right on nationals of a state to enter the territory of that state. Nationals of a state which has ratified A3P4 are, therefore, in an even stronger position than non-nationals such as the claimants with conditional rights to enter for family reunification purposes. If A3P4 generates no right to assistance with repatriation in the case of a national, it is difficult to see why Article 8 should do so in the case of non-nationals.

85. In my judgment, the Foreign Secretary is also correct that an expansion of the scope of positive obligations owed by contracting states under Article 8 would be inconsistent with broader principles recognised by the Strasbourg Court. The precise ratio of the decision of the European Commission on Human Rights in the *Bertrand Russell* case is somewhat difficult to define. It is clear, however, that the Strasbourg Court has relied on that decision and others following it as authority for the proposition that "no right to diplomatic intervention vis-à-vis a third State, which by action within its own territory has interfered with Convention rights of a person 'within the jurisdiction' of a Contracting State, can be inferred from the obligation imposed on the Contracting States by Article 1 of the Convention to 'secure' that person's rights": see e.g. *S v Germany* (App. No. 10686/83), a case

which concerned consular assistance rather than diplomatic protection. The Commission considered that proposition to be consistent with Article 34 of the Vienna Convention on the Law of Treaties. See also *M v Italy* (2013) 57 EHRR 29, [127], and the cases cited there.

86. None of the three Strasbourg cases cited by Mr Owen supports the proposition that Article 8 can imply positive obligations to afford consular assistance in circumstances such as these. Two of those cases—*Rantsev* and *Güzelyurtlu*—were concerned with the investigative duty under Articles 2 and 4 ECHR. In each case, it was significant that the states between which co-operation was required were (at the time) both ECHR contracting states: see *Rantsev*, [205]-[208]; *Güzelyurtlu*, [232]-[234]. *Nada*, though it was an Article 8 case, arose in very unusual circumstances and concerned an enclave under the jurisdiction of one contracting state (Italy) surrounded by the territory of another (Switzerland).

87. Two conclusions follow from my analysis of the case law of the Strasbourg Court. First, there is no Strasbourg authority which supports the proposition that Article 8 can imply a positive duty to provide either diplomatic protection or consular assistance to an individual who is located outside its territory (and outside the “espace juridique” of the ECHR), even if the failure to provide that protection or assistance has an impact on the Article 8 interests of a person within the UK’s territorial jurisdiction. Secondly, any expansion of the scope of the Article 8 positive duty in the way contended for by the claimants would infringe a principle which has hitherto been regarded by the Strasbourg institutions as an important corollary of the jurisdictional limitation in Article 1 ECHR. In those circumstances, such an expansion would be impermissible: see *R (Ullah) v Secretary of State for the Home Department*, [2004] UKHL 26, [2004] 2 AC 323, [20].

88. For these reasons, the Foreign Secretary’s refusal to provide consular assistance to the claimants did not interfere with any Article 8 right of the claimants. . . . ”

123. I consider that this analysis is equally applicable here. The positive obligation that the Claimants call for would apply *extra-territorially* as it applies to the treatment of non-British nationals resident in Gaza. Furthermore, the positive obligation that the Claimants call for would involve the provision of diplomatic and consular assistance involving the Kingdom of Jordan. Whether or not to provide onward travel assurances to the Kingdom of Jordan with respect to RKC2-7 is not the same or substantially similar to the provision of “travel documents to enable an individual to get to the border” with the United Kingdom: an example provided by Chamberlain J in BEL as falling within the positive obligation under Article 8.
124. If I am wrong about this, and Article 8 did give rise to a positive obligation on the United Kingdom to at least consider providing the onward travel guarantee with respect to RKC2-7, then I would have found that the failure even to consider the individual circumstances of the Claimants would have been a contravention. Whilst the decision not to grant onward travel guarantees to all of those within the cohort

could be justified, there is no proper reason, let alone, objective justification for failing to consider individual cases within that cohort.

(v) Was there a breach of Article 14 of the Convention?

125. I do not consider that there was any breach of Article 14 of the Convention in the failure to offer onward travel guarantees to RKC2-7. The primary reason for dismissing this aspect of the challenge is that Article 14 only applies to matters which fall within the ambit of a Convention right. I have already explained that the failure to offer onward travel guarantees does not fall within Article 8. Accordingly, Article 14 has nothing to bite on.
126. If, however, Article 8 was engaged in some way, then I would have found that Article 14 had been contravened by failing to consider whether to provide onward travel assurances for the family unit of RKC2-7, rather than treating them as part of a cohort with other exceptional consular cases.
127. As I will explain at paragraph 191 below, I consider that the “other status” requirement of Article 14 was met, and RKC2-7 are in an analogous or relevantly similar situation to the groups they seek to compare themselves with (the *medevac* and student cohorts). Furthermore, the failure to take an individualised decision with respect to the family unit of RKC2-7 could not be objectively justified. This is demonstrated by the fact that an individualised decision has now been taken.

II. The 18 December 2025 decision

128. Following the decision of 18 December 2025 to refuse to provide the Kingdom of Jordan onward travel assurances with respect to RKC2-7, the Claimants produced an amendment to the Grounds. They contend that:
- (1) the refusal decision is irrational; it fails to take into account properly or at all the SSHD’s previous decisions of April and May 2025, and the Defendants’ obligations under Article 8 of the Convention, and is inconsistent with them; it also fails to take into account other relevant matters in assessing compelling circumstances, the public interest, and does not justify the difference in treatment with others who were provided with onward travel assurances;
- (2) the decision does not comply with the Defendants’ positive obligation to facilitate the Claimants’ exercise of their Article 8 Convention rights to family reunion; and
- (3) the decision discriminates against the Claimants in breach of Article 14 of the Convention in conjunction with Article 8 of the Convention, by treating them less favourably than others who have been provided with onward travel assurances, without proper justification.

Submissions

(i) Irrationality

129. Miss Kilroy KC, for the Claimants, accepted that the reasons for refusing to grant onward travel assurance were to be found in the arguments presented in the submissions sent by officials on 9 December 2025, and supplemented by the

Information To Note on 16 December 2025. Those reasons, however, needed to be viewed with great caution as it was evident that, in the submissions, there was an attempt to shore up the earlier decision-making about the cohort and this was something that the courts have repeatedly warned against: see R v Secretary of State for the Home Department ex p Turgut [2001] 1 All ER 719 at 729G; and R (Caroopen) v Secretary of State for the Home Department [2017] 1 WLR 2339 at [94]-[95], and [99]-[100]. There was, at least, a real risk that the decision in December 2025 had not been approached with an “open mind”.

130. Miss Kilroy KC submitted that there were a number of obvious flaws in the submissions, which therefore fed into the decision. First, there was no acknowledgment that the SSHD has an obligation under Article 8 of the Convention to facilitate the reunion of the Claimants in the United Kingdom. It had already been accepted by the official in April and May 2025 (decisions which are treated to have been made by the SSHD herself under the *Carltona* principle) that the Claimants’ circumstances were sufficiently compelling under Article 8 of the Convention to grant a positive predetermination under the *Unsafe Journey Policy*, and it was accepted that the Claimants meet the criteria for refugee family reunion in the Immigration Rules which are based on Article 8 of the Convention. Powerful reasons would, therefore, be needed to refuse the onward assurance guarantees given that the Claimants can only exercise their accepted Article 8 rights if those guarantees were granted. No such reasons were provided.
131. Second, the central reason given for refusing the onward travel assurances was that the Claimant’s circumstances were “not considered sufficiently compelling to outweigh the border/national security interests in requiring biometrics before a decision is taken to allow travel to the UK”. However, this was inconsistent with the decision in April 2025; the submission of 9 December 2025 wrongly advised that a decision to refuse would not be “inconsistent” with that decision (see last sentence of footnote 1) and that error was not corrected by the Information To Note of 16 December 2025; and not only should the Minister have taken into account that previous decision, but any departure from it required reasons to be provided.
132. Third, the Minister had erred in his assessment of the application in the Claimants’ case of the public interest in biometrics. There was no acknowledgment that, as a result of the decision in April 2025, the identities of RCK2-7 had been accepted, and further checks could be conducted on their passports before a decision is taken to grant onward travel assurances, so that any risk to national security and the public interest will be significantly reduced.
133. Further, Miss Kilroy KC submitted that it was irrational for the submission to state that “independent assurances” had been carried out by universities and the World Health Organisation which would mitigate the biometric risk in respect of the *medevac* and student cohorts. The independent assurances of the universities and the WHO went to identity and their assessment as to eligibility for meeting the criteria under the Immigration Rules (for the students) or policy (for the *medevac* cohort). In the Claimants’ case, by contrast, the SSHD had carried out that assessment: there had been identity checks and then further checks of their biographical details. Furthermore, RKC2-7 had offered for their passports to be checked before exiting Gaza, which would provide more assurance to the SSHD than was provided by the *medevac* or student cohorts.

134. Whilst the Minister relied on the fact that the *medevac* and student cases had “foreign policy” objectives, Miss Kilroy KC contended that there had been no consideration of the foreign policy objective in the Claimants’ case: that is, adhering to the United Kingdom’s obligations imposed by international and domestic human rights law.
135. It was also irrational to discount, or downplay, the fact that RKC2-7 had passed stringent Israeli checks when concluding there was a risk to national security because they come from ‘a territory where terrorists operate’. Miss Kilroy KC observed that it was not pointed out in the submission that no investigation had been carried out as to what the Israeli checks include, or that those checks do provide some assurance. The evidence before the Court, and which could have been shared in the submissions, was that the Israeli authorities carry out an extensive array of checks using a whole range of surveillance devices. Miss Kilroy KC suggested that it was far-fetched to think that the Israeli authorities would fail to identify that someone who was being considered to exit Gaza was a terrorist given the range of surveillance and checks that they applied.
136. Further, there was no acknowledgment that RKC2-7 pose a lowered risk, especially when compared with student cohorts, because they are family members of individuals living in the United Kingdom all of whom have given biometrics and had been subject to security checks, and that the family unit includes two minors. In addition, by the time of the decision more than 350 individuals had been admitted (via the *medevac* and student cohorts) without biometric checks and there had been no security risk posed by any of them. This was relevant to the assessment of the level of risk that might otherwise be the case, in the context of the checks made by the Israeli authorities.
137. Fourth, Miss Kilroy KC pointed out that the Information To Note accepted that it was relevant that the initial (and unlawful) decision of the SSFCDA to refuse to provide consular assistance meant that RKC2-7 had lost the opportunity to leave Gaza when no onward travel assurance was required by the Kingdom of Jordan, but there was no mention of this in the submission. Further, whilst the Information To Note accepted that it was relevant that the Claimants qualified for refugee family reunion under the Immigration Rules, it was said that this was of “limited weight” and yet the same factor was relied upon when the SSHD gave an onward travel assurance to a young child on 3 December 2025. There was also criticism of the assessment that “relatively limited weight” should be attached to the point made at the earlier hearing that the positive predeterminations for RKC2-7 was issued under the Immigration Rules rather than “LOTR” (Leave outside the immigration rules). That point was significant as it distinguished RKC2-7 from others in the cohort, was the same as for the young child who was granted onward travel assurance, and was a point of importance. The Courts had repeatedly said that weight should be given to the Immigration Rules which were, “statements of the practice to be followed, which are approved by Parliament, and are based on the Secretary of State’s policy as to how individual rights under article 8 should be balanced against the competing public interests”, per Lord Reed in R (Agyarko) v. Secretary of State for the Home Department, [2017] 1 WLR 823 at [46].
138. Fifth, a major concern expressed in the submission was that of setting a precedent for other predetermination cases, and that there may be pressure to provide onward travel assurances in other locations if the assurance was made for RKC2-7. There was no recognition that the situation in Gaza was unique: the borders were closed and the only means to exit is with governmental support.

139. Sixth, there was no real individualised assessment of risk carried out in the case of RKC2-7. The generic risks were presented, and no exercise was carried out to see whether that risk might be reduced in their particular circumstances. This was contrary to the approach that had been applied by Lieven J in R (JZ) v Secretary of State for Foreign, Commonwealth and Development Affairs [2022] EWHC 771 (Admin), in a case concerning a failure to defer biometrics. In that case, a generic harm had been applied when on the specific facts there was “no risk” that the claimant a known and documented individual would be rejected for Leave Outside the Rules and then present himself again in a different guise. In the instant case, the SSHD had not identified anything that was in reality capable of being a problem that would be picked up by the biometric check.
140. Seventh, the submissions had improperly described the circumstances of RKC2-7 which should have been weighed in the balance against the residual risk: it was wrong to say that the adults could meet the care needs of the minor children. It was wrong to say that they had access to humanitarian aid.
141. Miss Kilroy KC also submitted that the Minister who actually took the decision did not have regard to all the documentation that was presented to him. No reference was made in the “read out” of his decision to the Minister considering Annex B to the 9 December 2025 submission: this concerned the young child who was granted onward travel assurances (see paragraph 65 above). Miss Kilroy KC contended that the factors affecting the young child and the Claimants were the same, apart from the age of the child, and this should have been drawn to the Minister’s attention.
142. Miss Kilroy KC also drew the Court’s attention to the wording in paragraph 18 of the 9 December 2025 submission. This made it clear that the decision would be a cohort decision, as it implied that if onward travel assurance was provided to this family group it would also need to apply to those others who held positive predetermination decisions. Furthermore, Miss Kilroy KC pointed out that it was stated in that paragraph that if onward travel assurances were granted, “we would look to make representations to FCDO Ministers making it clear that they should not agree to provide consular support where there is a dependency on Home Office assurances without consulting with Home Office Ministers.” It was striking that what was not said was that at the time when the offer was made to provide consular support, Home Office assurances were not required.
143. When asked whether the decision maker could have looked at each of RKC2-7 individually rather than as a group, Miss Kilroy KC stated that this could have been done in principle. However, the evidence was that they needed to come together, and so on the facts of this case they had to come together.
144. These contentions were resisted by the Defendants. Mr Dunlop KC submitted that there was no basis to the suggestion that the decision made on 18 December 2025 was not made with an open mind. This was not a decision which was taken in relation to the same issue as the 10 September 2025 decision: that was a cohort decision, and this was a decision based on consideration of the individual circumstances of the Claimants. Further, Mr Dunlop KC invited the Court to apply a benevolent approach to the wording of the submission in accordance with the observations of Stuart Smith J in Stagecoach East Midlands Trains Ltd v Secretary of State for Transport [2020] EWHC 1568 (TCC) at [73].

145. With respect to the status of the 16 April 2025 decision, Mr Dunlop KC submitted that any errors or ambiguity in the final sentence of footnote 1 of the 9 December 2025 submission (“We therefore do not consider that our recommendation on onward travel assurance is inconsistent with that decision”) were resolved by the Information To Note of 16 December 2025. Moreover, it was open for the Minister to take a different view than the official, because a decision to depart from the biometric policy is a decision for a Minister to make, not an official. The Minister is part of the democratically elected Executive, and is personally accountable to Parliament for decisions on border security. The basis for the Minister’s decision is set out in the recommendations, and in particular at paragraph 15 of the submissions. There was no need for a written decision to have been provided by the Minister.
146. Mr Dunlop KC submitted that there were no mandatorily relevant considerations that had not been taken into account by the Minister when taking the decision. Whilst there is an acceptance that RKC2-7 are the children of RKC1, without biometric checks there is still a risk of ‘alias travel’ (that is, someone else using RKC2-7’s identities to travel to Jordan and then to the United Kingdom). There is also still a risk that their fingerprints would reveal information that name checks alone cannot reveal: one or more of them may have links (including under an alias) to terrorist activities, serious criminality or an adverse immigration history.
147. Mr Dunlop KC countered Miss Kilroy KC’s criticism of the sentence in paragraph 13 of the 9 December 2025 submission that RKC2-7 do not have “independent assurance” in contrast to the medevac and student cohorts. First, he said that this was an additional factor and so not decisive. Second, in any event, the contrast with those cohorts was rational: the checks performed by the WHO and the universities of the individuals that they sponsor provides an additional layer of reassurance. Further, for those groups the risk of providing onward travel assurances was outweighed by the foreign policy objectives.
148. Mr Dunlop KC submitted that there were no errors in the Minister’s assessment of the compelling circumstances. It was factually accurate for the 9 December 2025 submission to state that the “family unit consists of adult males and females who will be able to support the day-to-day care of younger teenage children”. What was being said was consistent with RKC1’s own evidence. Further, they are a family which includes adults who can provide care to their minor siblings by, for example, seeking out such food as is available. Further, there was evidence that they had access to humanitarian aid, via charities linked to mosques and churches.
149. The distinction between this family unit and the situation of the young child who had been granted onward travel assurance had been appropriately pointed out in the 9 December 2025 submission to the Minister: the age of the child was referred to and, as she was very young, it was unlikely that she posed any risk in the United Kingdom.
150. Further, Mr Dunlop KC argued that there was nothing improper for the submission of 9 December 2025 to make reference to other individuals who held predetermination, or that the SSHD may come under pressure to provide onward travel assurances in other situations if such assurances were granted to RKC2-7.

(ii) Breach of Article 8 of the Convention

151. Miss Kilroy KC submitted that the decision to refuse to give the Kingdom of Jordan onward travel guarantees for RKC2-7 clearly interfered with and violated the Claimants' Article 8 rights. A decision had already been taken that the family should be reunited. The decision was neither in accordance with the law, nor proportionate. The Claimants' circumstances were exceptionally compelling – reference was made to the mental health of RKC1, the dire circumstances experienced by his children in Gaza and the impact on their health, as well as their ability to continue their relationship with their father. It was submitted that powerful public interest reasons would be needed to justify the extreme interference with their Article 8 rights caused by their continued separation; and such reasons were not present here. Miss Kilroy KC repeated a number of points made under the irrationality ground, including that the SSHD had already accepted the Claimants' compelling circumstances when making the decision in April 2025. There was no reasonable justification to depart from this decision.
152. Miss Kilroy KC submitted that the public interest was protected somewhat by a number of matters: (i) the identity of RKC2-7 had already been established, and could be corroborated by making full biographical and passport checks prior to their exit from Gaza. I was told that their passports were already in Ramallah, and so outside of Gaza. (ii) Israel had already approved their exit from Gaza and transit through Israel in circumstances where Israel uses tools of mass-surveillance in Gaza, so that any risks related to terrorism activity in the region would have been identified. RKC2-7 had never left Gaza, so there was no real prospect of their data being held or showing risk to the public interest in biometric checks. In any event, they will give biometrics and full checks can be made before their travel to the United Kingdom and mitigation steps can be taken. It was also notable that biometrics had been waived in the *medevac* and student cases where the security risks were no less, but probably higher, than those posed by RKC2-7.
153. Miss Kilroy KC also submitted that there was also no real concern about setting a precedent as the Claimants' case has many distinguishing features: (i) an agreement was made to assist them as part of an order from the Court; (ii) their need to exit with onward travel assurances had arisen as a result of the delay caused by the unlawful decision made by the SSFCDA; (iii) they have the right to enter the United Kingdom under the Immigration Rules; and (iv) the circumstances in Gaza are unique.
154. For the Defendants, Mr Dunlop KC disputed that Article 8 was engaged at all, but if it was it could only be as a positive obligation to facilitate reunion. The decision to refuse onward travel assurances did not violate the Claimants' Article 8 rights. First, even if Article 8 was engaged, this would be by way of a positive obligation to facilitate reunion, and the 'in accordance with the law' requirement does not apply in a positive obligation case: see R (FWF) v Secretary of State for the Home Department [2021] EWCA Civ 88 at [143]-[144].
155. Second, considerable reliance was placed on the recent decision of the Court of Appeal in IA v Secretary of State for the Home Department [2025] EWCA Civ 1516, where the Court stated (in *obiter* remarks, having found that the relationship between the applicants did not give rise to Article 8 rights in any event) that considerable weight should be given to the SSHD's policy on immigration; that was a question of respect for the United Kingdom's laws and democratic processes. Further, there was no resettlement policy for Gaza and, in the absence of such a policy, the fact that an

individual in Gaza is at risk and suffering from the consequences of living in the warzone of Gaza should not “distort the balance” or outweigh immigration policy.

156. In the instant case, the relevant immigration policy is the general biometric policy not to admit foreign nationals into the United Kingdom unless they have provided biometrics which have been checked. Applying this policy, an application for entry clearance is not valid until the individual has provided biometrics. RKC2-7 have not met the validity requirements of the Immigration Rules as they have not provided biometric information and that requirement had not been waived, and there may be other aspects of the Rules – such as the suitability criteria – which might not be met. Every exception to the biometric policy carries risk to national and border security, and that is especially so here where some of the Claimants are adults living in an area where there has been significant terrorist activity. The biometric policy should, according to Mr Dunlop KC, be given very strong weight: it is a policy which protects national and border security. Those are issues that are quintessentially for the democratically elected executive, not the courts.
157. Mr Dunlop KC addressed the more granular points made by Miss Kilroy KC. Full biographical and passport checks do not provide the same level of protection as biometric checks: they would not identify whether there is a record of the fingerprints of RKC2-7, or of persons holding themselves out to be them, under a different name. It cannot be said that if RKC2-7 posed national security risks in the United Kingdom, they would have been refused permission by Israel to transit through their territory. Even if they gave biometrics when they got to Jordan, the United Kingdom would still be obliged to allow them to enter the country whatever risks were highlighted and, given the situation in Gaza, there was not a likelihood that these risks could be mitigated by returning them there. Whilst it was correct that risks were taken for the *medevac* and scholar cohorts, it had been decided that the risks were outweighed by foreign policy benefits which do not apply to the Claimants.
158. Mr Dunlop KC submitted that the decision to refuse onward travel assurances struck a fair balance between the interests of the State and the interests of the Claimants. This was within the range of decisions open to the Minister in the field of border and national security, and the Court did not have the institutional competence to second-guess this decision.

(iii) Discrimination contrary to Article 14 of the Convention

159. Miss Kilroy KC submitted that there was a violation of Article 14 of the Convention applying the well-known taxonomy in In re McLaughlin [2018] 1 WLR 4250 at [15]: that is (1) Do the circumstances “fall within the ambit” of one or more of the Convention rights? (2) Has there been a difference of treatment between two persons who are in an analogous situation? (3) Is that difference of treatment on the ground of one of the characteristics listed or “other status”? (4) Is there an objective justification for that difference in treatment?
160. Miss Kilroy KC argued that the Claimants’ circumstances brought them within the ambit of Article 8 of the Convention. There was a difference of treatment between them and others in a relatively similar situation who had been granted onward travel assurance: the young child, but also the *medevac* patients and the students. They fell within the grounds of “other status”, an element of Article 14 which is to be given a

generous meaning: they had refugee status, had predeterminations and had had consular assistance, but did not fall within the rules applying to the students or the *medevac* patients. The difference in treatment was not justified. The objectives in their case – to uphold their Article 8 rights – was at least as important as the objectives in the other cases; and the situation of RKC2-7 had actually been prejudiced by the hardening of Jordan’s position given the numbers transferring through that country for the *medevac* and student schemes.

161. Against this, Miss Reeves, for the Defendants, submitted that RKC2-7 were not in an analogous position to the *medevac* or student cases. The provision of assurances to those cohorts was a decision taken and agreed across the United Kingdom Government. The *medevac* cohort consisted of critically ill or injured children selected by the WHO. Supporting them assists the WHO in a vital mission. As for the students, providing onward travel assurances for this cohort supported a foreign policy objective that was not engaged by RKC2-7: that is, to enable Gaza’s brightest students to continue their education and contribute to future reconstruction efforts.

Discussion

162. I do not consider that the decision of 18 December 2025, refusing to give onward travel guarantees for RKC2-7 was unlawful in any of the ways contended for by the Claimants. In large part, I agree with the submissions made on behalf of the Defendants.

(i) Was the decision of 18 December 2025 irrational?

163. First, the decision was not *irrational*. The reasons for refusing to grant onward travel assurance were to be found in the arguments presented in the submissions sent on 9 December 2025, and supplemented by the Information To Note on 16 December 2025, as no independent reasons were provided by the Minister, and so those reasons have to be examined and evaluated against public law and Convention law principles.
164. I do not consider that the submissions and Information To Note need to be read with great caution, however. My reading of those documents is that they were a genuine attempt by the relevant official to set out the background and to provide the Minister with material to make the decision with respect to onward travel assurance. I do not consider that these documents were designed to shore up the earlier decisions. Rather, those earlier decisions were provided as background and context. Furthermore, whilst a strong recommendation was made as to the outcome that the official considered the Minister should reach, the alternative decision was not ruled out. There was nothing in the materials to suggest that the Minister should not approach the matter with an open mind, and no other evidence to suggest that he had not approached the matter in that way.
165. As for the specific flaws contended for by Miss Kilroy KC, it is correct that the submission makes no mention of the SSHD’s obligation under Article 8 of the Convention to facilitate the reunion of the Claimants in the United Kingdom but, for the reasons already provided and discussed further below, that obligation did not extend to the provision of onward travel assurances to the Kingdom of Jordan. There was also no requirement to have, or to provide, powerful reasons to refuse onward guarantees. As the obligation under Article 8 did not need to be referred to, there was

also no error in failing to refer in the submissions to the requirement, as a “foreign policy” objective, that the United Kingdom should adhere to its obligations imposed by international and domestic human rights law.

166. It was also open to the Minister to refuse to make the onward travel assurances despite what had been decided by the official when making the predetermination decision in April 2025. That decision was properly drawn to the Minister’s attention, and it was not an error to state that a decision to refuse would not be “inconsistent” with that earlier decision. It is clear from a perusal of the *Unsafe Journeys Policy* that an official cannot make a decision to waive the enrolment of biometric information without involving a Minister.
167. Thus, where there is a request to excuse the requirement for an individual to attend a Visa Application Centre to enrol their biometric information, the *Unsafe Journeys Policy* provides that:

“Individuals will not generally be excused from having to attend a VAC to enrol their biometrics solely because they have a UK sponsor. The individual must provide evidence they have an urgent need to come to the UK that overrides the need for the Secretary of State to protect the border, our national security and ensure public safety. **Given the importance of the public interest, such decisions can only be made by Ministers. If you consider the requirements are met, you must send a submission to a Home Office min[i]ster** who has responsibility for immigration and citizenship recommending that a biometric excusal is granted.”

(Emphasis added). Similarly, the *Unsafe Journeys Policy* provides that:

“Where you are satisfied the individuals meet the requirements to be excused the requirement to attend a VAC, and you are satisfied that it is not at all possible for them to attend any VAC to enrol their biometric information before coming to the UK, even on route to the UK, **you must obtain approval from a Home Office minister before notifying them of your decision to excuse them from the requirement to attend a VAC before they travel to the UK.**”

(Emphasis Added).

168. Accordingly, even if an official considers that there are “compelling circumstances” to justify a predetermination decision, the ultimate decision-maker with respect to the waiver of biometrics is a Minister.
169. It was not, in my judgment, an error for the Minister not to acknowledge that, as a result of the decision in April 2025, the identities of RCK2-7 had been accepted, and further checks could be conducted on their passports before a decision was taken to grant onward travel assurances so that any risk to national security and the public interest will be significantly reduced. One of the key reasons for the use of biometrics is to assure the SSHD that the person who is seeking to enter the United Kingdom is the person that they claim to be. A passport check cannot guarantee that, as there is

always the possibility of so-called alias ‘alias travel’: someone else using RKC2-7’s identities to travel to the Kingdom of Jordan and then to the United Kingdom.

170. I do not agree with Miss Kilroy KC that it was an error for the submission to state that “independent assurances” had been carried out by universities and the World Health Organisation which would mitigate the biometric risk in respect of the *medevac* and student cohorts. Third parties had carried out identity checks of those who would be coming to the United Kingdom which were different to the checks that had been carried out on RKC2-7, and could provide some mitigation of risk. As explained in the witness statement of Sabrina Pickering:

“[72] The WHO are a trusted third party who undertook considerable work in identifying patients. I understand that the WHO review documentation and information supplied to them in support of identity, family links and medical history/ condition. They have access to the original documentation that are provided direct to them and have local knowledge.

[73] Similarly, the students are supported by their universities and scholarship providers who will have undertaken due diligence to ensure they are who they have stated they are—people who are able to study at the highest level. These institutions have decided to give very significant sums of money to the students, sums they would not give unless they were satisfied as to their identity and ability to undertake the study. These third-party assurances gave a clear indication members of these groups were highly likely to meet the requirements of the Rules and go some way to mitigate the border security and identity risks for these cohorts. The steps go beyond the review of a single identity document to reach their decision on supporting them under the *medevac* or fully funded scholarship process.”

171. In any event, it is clear from the way in which this point was expressed that it was an “additional” matter for distinguishing RKC2-7 from the student and *medevac* cohorts. There is no basis to suggest that a different decision would have been reached with respect to RKC2-7 had this “additional” matter not been present. The key distinction was that there were foreign policy objectives with respect to the student and *medevac* cohorts that were regarded by His Majesty’s Government as outweighing the security risks that those cohorts otherwise posed. In the circumstances, therefore, even if there was an error in placing any reliance on the checks for the *medevac* and student cohorts, that error was not material, or it was highly likely that the same outcome would have been achieved had the error not been made: see section 31(2A) of the Senior Courts Act 1981.
172. With respect to the fact that RKC2-7 had passed Israeli checks, there was no public law error in failing to point out in the submissions what those checks were. The decision-maker did not need to know the detail of those checks so as to reach a decision. Furthermore, it was implicit in the submissions that the Israeli checks did provide some assurance as that is reflected in paragraph 13 where it was stated that “In addition, . . . there is no independent assurance undertaken, over and above the Israeli clearance process”.

173. The submissions specifically addressed the argument that there was "no real prospect" of RKC2-7 failing UK biometric tests because they have obtained Israeli exit clearances. At paragraph 14, it was explained that UK biometric checks differ from the Israeli biographic checks, and the reasons for refusing to allow entry to the UK differ from the reasons that Israel would refuse exit from Gaza. Further, it was said that "Israel will focus on their own national security assessment rather than HMG national and border security risks". This is a judgment for which a considerable degree of deference must be shown, and it is not possible for the Court to gainsay as there is some rational basis for it.
174. It was not, in my judgment, an error for the submissions to fail to acknowledge that RKC2-7 pose a lowered risk, especially when compared with student cohorts. The basis for this contention is not made out in the evidence. Further, the fact that by the time of the decision a large number of individuals had been admitted without biometric checks and no security risk had been posed did not mean that it could be inferred that the same would apply to RKC2-7, or that the assessment of risk was irrational.
175. The fact that the Information To Note accepted that RKC2-7 had lost the opportunity to leave Gaza when no onward travel assurance was required, made good the absence of this point in the earlier submissions. The recommendation that "limited weight" should be ascribed to the fact that the Claimants qualify for refugee family reunion under the Immigration Rules, and that "relatively limited weight" should be attached to the point made at the hearing on 12 December 2025 that the positive predetermination decision for RKC2-7 was issued under the Immigration Rules rather than "LOTR" (Leave outside the immigration rules), does not make the decision irrational. It is a matter for the decision-maker what weight to ascribe to different factors, and that should only be interfered with when the weighting is itself irrational. That is not the case here.
176. It was not an error for the submission to observe that providing the onward travel assurance could set a precedent for other predetermination cases, and from other locations than Gaza. As a matter of principle, it is entirely rational for a submission to inform the decision-maker of the consequences of their decision. Furthermore, the way in which the "precedent" point was made was not as a warning not to make that decision. The observations that are complained about were set out in the submission at paragraph 18. That paragraph expressly referred to the fact that it was "open" to the Minister to provide onward travel assurance to this family group on the basis of their circumstances, but then sought to explain how that decision could be justified as an "exceptional approach" and might possibly be limited to "this family and others who hold valid positive predetermination".
177. I reject the contention that there was no real individualised assessment of risk carried out in the case of RKC2-7. The submission to the Minister pointed out that "The family units consists of individuals who are of an age where they could conceivably fail biometrics and they are from a territory where terrorists operate". Whilst that description could apply to others, it does not mean that the assessment was not pertinent to RKC2-7 as well. It cannot be ruled out that something untoward would be picked up by the biometric check.

178. I disagree with the contention that the submissions had improperly described the circumstances of RKC2-7, and therefore failed to weigh up the relevant considerations. What was said was consistent with the evidence that had been presented by RKC1. Whilst the situation for RKC2-7 in Gaza remained extremely difficult, the family unit consists of both male and female adults who have some ability to support the care of younger teenage children. Furthermore, humanitarian aid and medical care was available.
179. As for the contention that the Minister did not have regard to all the documentation that was presented to him, the evidential basis for this was that the “read out” of the Minister’s decision referred merely to the “Submission” but not to the Annexes thereto, but did refer to the Information To Note “and Annex A” to that document. I do not consider that this gives rise to the inference that the Minister was not presented with the Submission and the Annexes thereto, or that he did not read them. It ignores the fact that the email which attached the Information to Note specifically stated that it should be read alongside the Annex to that document (this was the Claimants’ skeleton argument for the hearing on 12 December 2025), and so this explains why the Annex to that document was explicitly referred to in the “read out”. That does not mean that the Annexes to the submission were not provided to the Minister or read by him.
180. In any event, some of the content of Annex B was specifically referred to in the submission. Paragraph 17 of the submission stated that assurance had already been provided to “a young child who meets the student dependant rules” and the details of this were contained in Annex B. Accordingly, even if the Minister only had regard to the material contained in the submission, and not to Annex B, the submission informed him that an assurance had been provided to a “young child who meets the student dependant rules”. On its face, the Minister could discern that there were distinctions from RKC2-7: first, that an assurance had been provided to one person and not a family unit of six persons; that the assurance had been provided to a “young child”, whereas the youngest of RKC2-7 was 14; and the “young child” was associated with a student, where different policy considerations applied.
181. With respect to paragraph 18 of the submission of 9 December 2025, this made it clear that the Minister could decide to provide onward travel assurance to this family group on the basis of their circumstances. In doing so, it was entirely rational for the submission to set out the consequences of doing so: that this would set a precedent, but it was possible that this could be limited to others who held positive predeterminations. There was also nothing irrational about the observation that if onward travel assurances were granted, “we would look to make representations to FCDO Ministers making it clear that they should not agree to provide consular support where there is a dependency on Home Office assurances without consulting with Home Office Ministers.” That was a matter of inter-governmental mechanics which was a proper basis for the relevant Ministers to discuss.
182. Miss Kilroy KC contends that paragraph 18 should have referred to the fact that at the time when the offer was made to provide consular support, Home Office assurances were not required. That omission was corrected, however, in the Information To Note which referred to this point as part of its explanation of the Claimants’ case at the hearing on 12 December 2025.

183. Whilst it is correct that it would have been open to the Minister to have looked at each of RKC2-7 individually, that was not what was being asked of the Minister and did not form part of the claim that had been made. The representations that were advanced were that the family unit needed to come together, and so it was not irrational for them to be considered as a unit.

(ii) Did the decision of 18 December 2025 contravene Article 8 of the Convention?

184. In my judgment, there was no breach of Article 8 of the Convention in the decision to refuse to provide onward travel assurance. That is a decision which falls outside of the scope of Article 8 for the reasons explained at paragraphs 120-123 above. In any event, even if the decision fell within Article 8, I would have found that no contravention had occurred.

185. Even if had found that there was a public law error associated with the decision, which I have not, such an error would not mean that the decision was not “in accordance with the law”. In FWF [2021] EWCA Civ 88, it was pointed out by Elisabeth Laing LJ at [143-4] that the “in accordance with the law” criterion would not apply to the discharge of a positive obligation under article 8 – which is what the present case would involve.

186. Furthermore, any breach of Article 8 would have been justified. The basis for the decision was the SSHD’s policy towards biometric testing, as explained in the Introduction to the *Unsafe Journeys Policy* (see paragraphs 11-12 above), and the judgment made by the Minister that the circumstances of the Claimants’ case were not sufficiently compelling to outweigh the border/national security interests in requiring biometrics before a decision is taken to allow travel to the United Kingdom. That is a matter which relates directly to border and national security and is quintessentially a matter where the Courts will afford considerable deference to the relevant government department.

187. In Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs [2025] 3 WLR 346, Lord Sales and Lady Rose pointed out at [128] that the issue of national security was:

“central to the constitutional responsibilities of the Government. It is the executive government, as represented by the relevant Ministers, which has the democratic authority to take decisions in [this area], because it is important that those doing so should be responsible to the public for the effective protection of national security”.

The relevant Ministers will also have “institutional competence” in making such decisions, given their access to experts (and on some occasions secret information).

188. This does not mean that the Court can never intervene, but the Court will be slow to do so, according a substantial degree of weight to the decision-maker and taking an approach to proportionality that accords the same margin to as the formulation of “manifestly without reasonable foundation” which has frequently been used by the Strasbourg Court: see R(SC) v Secretary of State for Work and Pensions [2022] AC 223 at [160-[161].

189. It cannot be said that there is simply no risk to border security and/or national security in the instant case. As was stated in the submissions, “The family unit consists of individuals who are of an age where they could conceivably fail biometrics and they are from a territory where terrorists operate”. In my judgment, this assessment is sufficient to raise a genuine issue of border security and national security, which the Court cannot properly gainsay.

(iii) Did the decision of 18 December 2025 contravene Article 14 of the Convention?

190. In my judgment, there was no discrimination contrary to Article 14 of the Convention. Using the taxonomy of McLaughlin and Stott, the circumstances do not fall within the ambit of a Convention right for the reasons already explained; and, in any event, there is objective justification for the difference in treatment to those with whom the Claimants seek to compare themselves with.

191. I accept that the difference in treatment is on the ground of “other status”. That element of Article 14 has been read generously by the Courts, and would in my judgment encompass the situation of the Claimants in that they had refugee status, they were in receipt of a predetermination decision and were in receipt of consular assistance, but did not fall within the rules applying to the student or *medevac* cohorts.

192. I also accept that the Claimants are in an analogous situation to those persons who have been treated differently. There is not such an “obvious, relevant difference” between the Claimants and their comparators that “their situations cannot be regarded as analogous”: see R (Carson) v Secretary of State for Work and Pensions [2006] 1 AC 173 at [3]. RKC2-7 are resident in Gaza and have been given permission to enter the United Kingdom which they wish to exercise; they are unable to provide their biometric information without traveling to Jordan, but cannot do so due to the policy of the Jordanian government; as a result they require an onward travel assurance from the SSHD. That is the same or broadly similar to those Gaza residents who have come to the United Kingdom under the *medevac* or student schemes.

193. I consider that if Article 14 applied there would be objective justification for the difference in treatment. That is, the United Kingdom Government has adjudged that the risks associated with biometric waiver are warranted for foreign policy reasons with respect to the *medevac* and student cohorts, and the same does not apply to the Claimants. The foreign policy objectives are not trivial on their face, but of real substance. With respect to the *medevac* cohort, this was designed as part of arrangements made by the World Health Organisation (to which the United Kingdom is a signatory) “to assist very sick children who are currently exposed to immense suffering”. For the student cohort, this will align with the foreign policy objectives of the United Kingdom to enable Gaza’s brightest students to continue their education and development; contributing to future reconstruction efforts in the territory.

Conclusion

194. I consider that the Claimants raised an arguable case with respect to each of their Grounds of Claim, and so permission is granted for their challenge to the initial decisions in September and October 2025, and to the refusal decision of 18 December 2025.

195. On the merits, I find that the Defendants acted unlawfully with respect to the initial decisions in September and October 2025:
- (1) There was an unlawful failure of the SSFCDA to comply with the legitimate expectation to try to effect the exit of RKC2-7 from Gaza by failing to make a request to the SSHD to provide an onward travel assurance before 18 November 2025 or thereabouts.
 - (2) There was an unlawful failure of the SSHD to consider the individual circumstances of RKC2-7 on 15 September 2025; treating them alongside all of the other exceptional consular cases as a cohort.
 - (3) There was an unlawful failure to inform the Claimants about the decisions that had been taken in September and October 2025.
196. The other challenges to the initial decisions in September and October 2025, and all of the challenges to the decision of 18 December 2025, are dismissed.