Neutral Citation Number: [2025] EWHC 1970 (Admin)

Case No: AC-2025-LON-000997

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2025

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

THE KING
on the application of

(1) BEL
(2) BEB
(3) BCC
(4) BEC
(5) BKJ (by her litigation friend BSJ)
(6) BDM (by his litigation friend BSJ) **Claimants**

- and -

SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS **Defendant**

- -

Tim Owen KC, Ben Bundock and Tim James-Matthews (instructed by **Bindmans LLP**) for the **Claimants**
Julian Milford KC and Rupert Paines (instructed by the **Government Legal Department**) for the **Defendant**

Hearing date: 9 July 2025

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Approved Judgment

This judgment was handed down remotely at 2pm on 28 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Chamberlain:

Introduction

1. The claimants are a Palestinian family: a father (who has been given the cipher BEL), a mother (BEB), two young adults (BCC and BEC) and two children aged 9 and 7 (BKJ and BDM). They live in Gaza, where they have very little food and no effective sanitation. BEL, BCC and BEC have been fired upon by Israeli forces close to one of the very small number of aid distribution sites. BEC was struck by shrapnel from a tank shell. BEL was also injured. They have not been able to access proper medical treatment. The family remains at constant risk of injury or death.

2. BEL's brother (BSJ) is a British citizen, who lives in the UK. In January 2024, the claimants applied for leave to enter the UK outside the Immigration Rules ("IRs") to join him. The application was refused. They appealed unsuccessfully to the First-tier Tribunal ("FTT"). On 13 January 2025, the Upper Tribunal ("UT") allowed the family's further appeal on the ground that the refusal was incompatible with the UK's obligations under Article 8 of the European Convention on Human Rights ("ECHR"). The Home Secretary confirmed that she would not seek to appeal and that she would grant the family leave to enter the UK, conditional on satisfactory completion of biometric checks at a Visa Application Centre ("VAC").

3. There is no VAC in Gaza. The closest one that is available to the claimants is in Jordan. The crossing between Gaza and Egypt at Rafah is no longer open. The only way out is through Israel, using the crossing at Kerem Shalom, but exit requires the permission of the Israeli Government. The Israeli Government will only give this permission at the request of the government of another state. On 3 February 2025, the claimants applied to the Foreign, Commonwealth and Development Office ("FCDO") for consular assistance to enable them to leave. This led to the series of refusals challenged in these proceedings.

4. On 5 February 2025, the Secretary of State refused to provide assistance, but later agreed to reconsider. On 12 March 2025, the Defendant again refused, on the basis that the claimants did not meet the published criteria for assistance leaving Gaza and their circumstances were not sufficiently exceptional to qualify for assistance outside those criteria. This claim was filed on 2 April 2025. Directions were given leading to a rolled-up hearing, fixed for 5 June 2025.

5. On 30 May 2025, the Secretary of State agreed to reconsider the refusal in the light of developments post-dating the claim. I vacated the rolled-up hearing but gave directions for a reconsideration within 7 days, leading to an expedited rolled-up hearing if the refusal was maintained. A further decision maintaining the refusal was made on 6 June 2025.

6. The hearing took place on 9 July 2025. The parties filed a core hearing bundle running to 399 pages, a supplementary hearing bundle running to 300 pages and a further supplementary hearing bundle running to 83 pages. They also filed three authorities bundles running to 516 pages, 1,367 pages and 112 pages respectively.

7. The present claim is advanced on two grounds. Ground 1 is that the refusal on 6 June 2025 (i) was irrational, (ii) was procedurally unfair and (iii) failed properly to apply the Secretary of State's own policy. Ground 2 is that the ongoing refusal to provide consular assistance is incompatible with the positive obligations of the UK under Article 8 ECHR and was therefore contrary to s. 6 of the Human Rights Act 1998 ("HRA").

Facts

The family's circumstances

8. BSJ was an interpreter and foreign relations co-ordinator for the security services of the Fatah-controlled Palestinian Authority ("PA"). BEL, his elder brother, also worked for the PA. Hamas were and are political opponents of Fatah. When Hamas came to power in Gaza in 2007, BSJ came to the UK on a Tier 2 worker visa. He has worked here ever since and was naturalised as a British citizen more than ten years ago. He has not returned to Gaza out of fear for his personal safety, but has remained in close contact with the claimants.

9. BEL and BEB remained in Gaza, living with BEL's parents. Their children were born in 2006, 2007, 2015 and 2017. BEL received a stipend from the PA but was prevented from working by Hamas. One of BEL's and BSJ's uncles was murdered by an Islamist group. Other family members suffered threats and discriminatory treatment.

10. On 7 October 2023, Hamas carried out coordinated attacks against civilians across Israel and took hostages. The Israeli military responded with a military campaign in Gaza aimed at defeating Hamas and rescuing the hostages.

11. On 20 October 2023, the claimants received a 10-minute notification from the Israeli military that their apartment block in Al-Zahra was to be bombed. They left with their travel documents, but had no time to gather even a few spare clothes before they left. The building was entirely destroyed. They went to Khan Yunis. In December 2023, after Israel warned of an impending ground invasion, they fled to Al Mawasi near Rafah, where they lived in a tent. They moved to Nuseirat in late 2024 and to Deir al-Balah in April 2025. There, they rent an area of ground beneath a 3-storey stilted building, where they have pitched their tent.

12. In a witness statement dated 6 May 2025, BSJ says that he is terrified to think of them living under a building, in case it is shelled. The situation for BEL and his family was getting worse by the day. Their access to food was becoming more limited due to Israel's blockade on humanitarian aid entering Gaza. What little food was available was being sold at extortionate prices. The family were not getting enough protein.

13. In a further witness statement dated 18 June 2025, BSJ said that the family situation had deteriorated further. In late May 2025, the US company Gaza Humanitarian Foundation began to distribute aid in a few locations. The distribution sites are surrounded by the Israeli military. BEL, BCC and BEC started going to the site near the Netzarim Corridor on 30 May 2025. They walked for 1½ hours to get there. When they arrived, they were made to wait between fences for aid boxes. On the first day, an Israeli quadcopter broadcast a message that there was no aid left. On each occasion

when they visited the site, there was violence from Israeli soldiers. This included the use of grenades, firing into the air and firing towards people approaching the distribution centres.

14. On 2 June, BEL, BCC and BEC attended the same site again. Soldiers shouted through loudspeakers that they should come back on 3 or 4 June, while firing live rounds above their heads. On 3 June 2025, they attended again, were fired upon by Israeli soldiers and narrowly escaped being injured. They could see the bullets landing close to them "making the sand jump". On the night of 9-10 June 2025, BEL and BEC walked to the site again, trying to get there early. BSJ explains:

> "…as BEL and BEC approached the distribution point get aid, alongside crowds of others, the Israeli military opened fire. It was complete chaos, like a full-scale attack on the people trying to get food. A tank shell was launched and exploded about 10m away from BEC and BEL. Shrapnel from the explosion, a ball bearing, hit BEC and lodged into his left hand/wrist. BEL also sustained impact wounds to his legs".

15. BEL and BEC went to a field hospital, where the medical staff could not remove the shrapnel from BEC's wrist. They had no sedatives, so "[t]hey just patched him up and sent him off". BEC was 18. He had lost friends and was terrified that he might die. His arm was starting to get numb and painful.

16. The events described in BSJ's witness statement of 18 June 2025 were not before the decision-maker when she took the challenged decision on 6 June 2025, but those events have not caused the Foreign Secretary to reconsider.

Application for entry clearance and appeal proceedings

17. On 25 January 2024, the family applied for clearance to enter the UK, relying upon Article 8 ECHR. The application was made using the form for the Ukraine Resettlement Scheme. This was not because the claimants were seeking to pass themselves off as Ukrainians. It was because there was no form applicable to their circumstances and the Home Office guidance document *Leave outside the Immigration Rules* (version 3, 29 August 2023) tells applicants to "apply on the application form for the route which most closely matches their circumstances".

18. Normally, applicants for entry clearance must attend a VAC to submit their biometric information. The claimants could not do so, because there is no VAC in Gaza. They therefore applied to provide their biometric information later. On 26 April 2024, the Home Secretary agreed to consider their application without biometric information in the first instance.

19. On 30 May 2024, the Home Secretary refused the family's applications for leave to enter. They appealed to the FTT on the basis that the decisions were incompatible with their and BSJ's Article 8 rights. On 19 September 2024, the FTT dismissed the appeals, accepting that BSJ and the claimants had a "family life" for the purposes of Article 8 and that the refusal of entry clearance amounted to an interference with their right to respect for that family life, but holding that the interference was proportionate.

20. The claimants appealed to the UT. On 19 December 2024, it upheld the FTT's finding that a protected "family life" existed between the claimants and BSJ, but went on to conclude that the FTT had made five errors of law in its proportionality assessment. It followed that the UT had to re-make the decision. On 13 January 2025, it allowed the claimants' appeal, concluding that the Home Secretary's refusal of the claimants' human rights claims amounted to a disproportionate interference with their and BSJ's Article 8 rights in the light of the family's "very compelling or exceptional circumstances": see [140] and [182] of the UT's decision. The UT found that BSJ intended and had the means to accommodate and support the family in the UK.

21. On 23 January 2025, the Home Secretary confirmed that she would not seek to appeal. On 30 January 2025, she sent formal confirmation to the claimants' legal representatives that she was minded to grant the claimants entry clearance, subject to them attending a VAC to enrol their biometric information and satisfying security checks.

22. The UT's decision was raised by the Leader of the Opposition at Prime Minister's Questions in the House of Commons on 12 February 2025. She described the decision as "completely wrong", drawing attention to the fact that they had applied using the form designed for the Ukrainian resettlement scheme. The Prime Minister agreed, saying:

> "Let me be clear, it should be Parliament that makes the rules on immigration, it should be the government that makes the policy… and the Home Secretary is already looking at the legal loophole that we need to close in this particular case."

23. On 5 March 2025, the Home Secretary applied to the UT for permission to appeal out of time. The application was made without prejudice to the grant of entry clearance to the claimants, i.e. on the express basis that, irrespective of the outcome of the appeal, the claimants' conditional leave to enter would be honoured. The UT refused permission to appeal. On 8 May 2025, permission to appeal was granted by Dingemans LJ. The appeal will consider, among other things, the circumstances in which the concept of "family life" in Article 8 extends beyond the core family. It is listed in January 2026.

The process for leaving Gaza and the Foreign Secretary's consular assistance policy

24. The Foreign Secretary is responsible for the exercise of the Royal prerogative to provide consular assistance to those in foreign states. The FCDO has published online guidance on when that power will be exercised. In a crisis, consular assistance will usually be provided to British citizens and dual nationals. It may sometimes be extended to Commonwealth nationals and "non-British immediate family members". It is not usually provided to nationals of other countries, though decisions to assist foreign nationals may be made on a case-by-case basis, based on the specific circumstances of the individual or individuals in question.

25. On 14 December 2023, following the outbreak of hostilities in Gaza, the Foreign Secretary adopted the Extended Eligibility Criteria ("EEC"), which provide that

consular assistance in exiting Gaza may be given to another class of non-British nationals: those who (i) have a spouse/partner or a child aged 17 or under currently living in the UK and (ii) hold valid permission to enter or remain in the UK for longer than six months. Outside these policies, the Foreign Secretary retains a residual discretion to provide consular assistance to other non-British nationals in exceptional cases.

26. As at 25 June 2025, the Defendant had exercised his discretion to provide consular assistance to exit Gaza to persons falling outside of the established policies (including the EEC) in four exceptional cases. These included: (i) two families where one or both parents were eligible for consular support, but whose children did not have leave to enter the UK for longer than six months; (ii) a fourteen-year-old child with half-siblings in the UK, whose father had died and whose mother had abandoned him; and (iii) a vulnerable elderly couple with adult children in the UK, both of whom had extant leave to remain in the UK.

27. Sarah Taylor is Director for Consular and Crisis at the FCDO. In her first witness statement in these proceedings, dated 29 April 2025, she explained that between November 2023 and early May 2024 departures from Gaza took place through the Rafah border crossing with Egypt. That crossing was seized and closed by the Israeli military on 6 May 2024. From that point onwards, departures have only been possible through the Kerem Shalom crossing into Israel, and then on into Jordan. Departures are now heavily restricted and can only be initiated through an inter-state request to a body that is part of the Israeli Ministry of Defence. The body is known as the Coordination of Government Activities in the Territories ("COGAT").

28. Ms Taylor refers to the process of providing consular assistance to exit Gaza as "an immensely complex exercise" which "involves sustained work and negotiation with multiple foreign state actors, and with international humanitarian partners… [and] a sustained expenditure of political and diplomatic capital with Israel and others". She gives eight reasons for this.

29. First, the process of obtaining clearance from COGAT is opaque. No reasons are given for decisions. The FCDO's assessment is that frequent requests run the risk of overwhelming the Israeli process, making it harder for the government to secure clearance in the future for others.

30. Secondly, clearance must be obtained from Jordan as a point of transit.

31. Thirdly, the individuals require permission to enter the UK (or another third country), as neither Israel nor Jordan will permit entry without being assured of their rapid onward travel.

32. Fourthly, the FCDO must identify and request the assistance of an appropriate humanitarian partner in Gaza, which is capable of locating the individuals and getting them to Kerem Shalom as safely as possible. Ms Taylor notes that some countries have chartered commercial buses within Gaza to move their nationals to Kerem Shalom (which she considers a "risky option"). On one occasion in the past the FCDO offered an individual the opportunity to take a bus operated by a third country. To date, only

two partners have been identified. They have to balance such requests alongside their own humanitarian work and other consular assistance requests from other countries.

33. Fifthly, sufficient funds must be available for those being moved to reach their destination.

34. Sixthly, FCDO officials in the region must be available and able to safely travel to the Kerem Shalom crossing to receive the individuals being moved following processing by Israel.

35. Seventhly, any issues at the crossing must be managed and navigated successfully. Ms Taylor notes that, whereas in the early stages of the conflict this required repeated top-level diplomatic and political engagement, the relationship is now primarily between officials. However, in the past COGAT has refused requests to move people on specific days. Further, formal clearance from the Israeli authorities does not equate to permission to approach the Kerem Shalom crossing, which is itself guarded by the Israeli military and requires their approval. The attitude of the units guarding the crossing (who are rotated) to such requests has been variable.

36. Eighthly, the FCDO must have the capacity to transport the individuals (under escort) through Israel to the Allenby/King Hussein border crossing to Jordan. There, the individuals will be processed by Israeli and Jordanian officials before being received on the Jordanian side by FCDO officials from the British embassy in Amman.

37. The FCDO's position is that it is essential to maintain a limited and targeted approach to providing consular assistance in order to make effective use of its resources (in particular, diplomatic capital).

38. In her second witness statement dated 20 May 2025, Ms Taylor said that, on 13 May, the FCDO had been contacted by COGAT to put forward names for inclusion in an upcoming "evacuation". COGAT informed the FCDO that it would be able to put forward any Palestinian citizens, irrespective of whether they were dual nationals, provided that the receiving country was willing to issue those individuals a visa/residency permit. She noted that this was the first time that COGAT had explicitly informed the FCDO that it was willing to accept Palestinian citizens for exit from Gaza, regardless of whether they had dual nationality, although (as noted in her first witness statement) in practice such exceptions had already been made in the past. Ms Taylor's assessment of this change was that "while it appears the Israeli authorities may more readily accept requests for exiting Gaza [than in March 2025], that position may change again."

39. In her third witness statement, Ms Taylor confirmed that, after the COGAT request, two departures took place in May, but two other departures scheduled to take place in June were both postponed.

What BSJ and the claimants have done for themselves

40. In their efforts to exit Gaza, BSJ and the claimants have sought to make various arrangements for themselves.

41. On 24 April 2025, BEL contacted the International Committee of the Red Cross ("ICRC") to enquire about assistance in leaving Gaza. The response was that, although the ICRC did not have the capacity to assist with evacuations, they had assisted with the safe travel of people in Gaza to the Kerem Shalom crossing in March 2025 on behalf of various countries.

42. On 28 April 2025, BSJ called the ICRC office in Ramallah, to enquire about evacuating the claimants from Gaza. The ICRC's response was that, although they could not accommodate requests from individuals, they would be willing to help if they received a request from the British Consulate in East Jerusalem or the British Embassy in Tel Aviv.

43. On 11 June 2025, BSJ called the Jordanian Representative Office in Ramallah to enquire whether it would be possible to obtain "no objection letters" for the claimants to enable them to pass through Jordan. He was informed that the Jordanian government had subcontracted such requests to a company called "Wassel", which is based in the West Bank, and that there should be no problem in obtaining these for the claimants.

44. Subsequently, on 25 June 2025 a friend of the claimants based in the West Bank submitted applications on the family's behalf to the offices of Wassel, which have been couriered to the Jordanian consulate for consideration. By the time of the hearing, nothing further had been heard. The Foreign Secretary's position at the hearing was that he has no information to suggest that such letters are accepted for entry to Jordan.

The requests for consular assistance

45. On 3 February 2025, in light of their successful appeal to the UT, and the Home Secretary's confirmation that she was minded to grant leave to enter the UK, the claimants made a request to the Defendant for consular assistance to exit Gaza and attend a VAC, noting that they were unable to arrange their own safe travel out of Gaza. On 5 February 2025, an FCDO caseworker made an initial decision refusing to provide consular assistance, on the basis that the claimants fell outside the scope of the EEC and that their circumstances were not sufficiently exceptional to warrant the discretionary provision of consular assistance.

46. On 12 February 2025, the claimants sent pre-action correspondence to the Foreign Secretary enclosing the UT's decision and other documentation. On 21 February 2025, the FCDO agreed to reconsider the claimants' request. On 12 March 2025, Ms Taylor took a second decision on behalf of the Foreign Secretary to refuse the claimants' request. She had been provided with a "rationale" document, compiled by caseworkers in the FCDO's Israel/OPTs Consular Cell. This set out the claimants' circumstances and the policy framework and attached representations by the claimants' solicitors. It offered two options: refuse the request on the grounds that the claimants fell outside the EEC and there were no exceptional circumstances justifying a departure from the published policies; or allow the request because such exceptional circumstances existed.

47. Ms Taylor explained her decision-making process in her first witness statement in these proceedings. She refused the request, having determined that: (i) the claimants fell outside the scope of the EEC, and (ii) their circumstances were not sufficiently

exceptional, relative to those of other Palestinians in Gaza, to warrant departing from the Foreign Secretary's established policy. She adopted the reasons associated with the first option above as set out at paras 9-10 of the "rationale" document. These included that:

> "b… The family are living in a 'profoundly dangerous' situation in Gaza. However, this is likely to apply to the wider population.
>
> c… [S]upport for [Hamas] is far from universal, with a number of significant opposition groups active in Gaza. The opposition to Hamas from within the general population of Gaza is not so rare as to set this family apart from a reasonable proportion of that population. The findings of the UT inasmuch as their links to Fatah and opposition to Hamas do not appear to be so strong or consequential as to draw threats from that group (in a context of widespread reporting of their approach to those who oppose them).
>
> d… [I]nternal displacement; the difficulty in accessing essential items or employment; the ongoing risk to life in the event of renewed hostilities; or the separation from extended family is not exceptional in the Gaza context.
>
> f… [I]t is likely that representations along similar lines to those made in the family's case could also be made by other individuals who may seek support to leave Gaza in the future. The family's circumstances are likely to be faced by a significant number of individuals."

The present proceedings and the fresh decisions

48. On 2 April 2025, the claimants filed the present claim, challenging Ms Taylor's decision of 12 March 2025. The claim was expedited. Mould J adjourned the decision on permission to a rolled-up hearing, later fixed for 5 June 2025.

49. On 21 May 2025, the claimants wrote to the Foreign Secretary, asking him to reconsider his refusal in light of the offer from COGAT to the FCDO set out in Ms Taylor's second witness statement. The claimants also referred to other developments including the public statements of various senior Israeli officials (including cabinet members) indicating strong support for the voluntary departure of Palestinians who remain in Gaza and have permission to go to third countries.

50. On 30 May 2025, the Foreign Secretary confirmed that he would reconsider his earlier decision. I approved an Order vacating the hearing and setting a timetable for a reconsideration within seven days and a new rolled-up hearing on 9 July 2025 in the event that the Defendant maintained his refusal.

51. On 6 June 2025, the FCDO made a new decision to refuse consular assistance. This decision was taken by Ms Jennifer Anderson, who was Ms Taylor's predecessor in her role at the FCDO between January 2020 to June 2024. Ms Anderson was provided with

a new "rationale" document, which includes information about the claimants' family and the UT's decision, which is materially similar to that included in the earlier "rationale" document. It offered the same two options as had been presented to Ms Taylor.

52. The document provided further information on the current operational context and attached the most recent representations from the claimants' solicitors. The information presented was interwoven with the internal assessments and advice of FCDO officials. In summary, it provided as follows:

    (a) COGAT and the situation in Gaza: The situation in Gaza was a continually evolving one, and the FCDO's assessment was that "the obtaining of clearances/permission has required the FCDO to use its diplomatic capital with Israel and Jordan, in a context in which both countries have numerous priorities" other than assisting with the UK's exit requests. It also repeated the FCDO's position that repeated requests would overwhelm the Israeli process and/or elicit a negative reaction from the Israeli authorities (para. 9).

    (b) Recent developments: In recent months, there had been statements from Israeli politicians saying that Palestinians who wish to leave Gaza should be allowed to do so. The 13 May 2025 communication from COGAT (para. 10) was noted. However, the FCDO's assessment was that the conclusion that these developments signify a more open stance from the Israeli authorities to evacuating individual from Gaza would be "premature, and the present evidence does not demonstrate with certainty that the Israeli position has shifted". It listed several reasons for this conclusion which largely echo those set out by Ms Taylor in her first witness statement, in particular, that "[t]he statements of individual Israeli politicians (including of Government ministers, and including to media outlets) cannot be taken as reliable indications of a settled position of the Israeli authorities" (paras 11, 13-14).

    (c) FCDO's overall assessment: "It is possible that the Israeli authorities may more readily accept requests for evacuating [non-British nationals] from Gaza than has previously been the position, but that cannot be established with certainty" (para. 12).

    (d) Availability of humanitarian assistance: It was noted that the claimants had contacted the ICRC, which had indicated its willingness to provide transport to the family out of Gaza, but "[n]evertheless, in our experience such undertakings are time specific, and NGO partner support cannot be taken for granted" (para. 15).

53. In the "Decision" section of the "rationale" document, two further points were noted for Ms Anderson's consideration. First, granting assistance to the claimants would widen the scope of the EEC (which itself represented a "significant departure" from normal consular policies) and thus endanger the FCDO's ability to secure permissions that are fundamental to arranging further departures from Gaza. Second, it was likely that if assistance were granted, similar representations would be made by others in analogous positions to the claimants. In this regard, it was noted that requests for consular support had been received by the FCDO from some 50 people since early May 2025.

54. Ms Anderson's decision was set out in an email dated 6 June 2025. Like Ms Taylor, she concluded that the claimants did not fall within the EEC and then turned to consider whether there were identified exceptional circumstances. In her witness statement, she explains that, when considering whether the claimants' circumstances were exceptional, she considered their position relative to: (i) the wider population of Gaza; and (ii) those in Gaza who might request consular assistance from the FCDO. In relation to each comparison, the answer was "No".

55. Given that it is the subject of challenge under Ground 1, it is necessary to set out Ms Anderson's reasoning in full:

> "There are two main issues: a) does the BEL family meet the published eligibility criteria; and, if not, b) are any exceptional circumstances which would justify departing from published policy and granting the request by the BEL family.
>
> 1. Does the family meet the published eligibility criteria?
>
> Given the advanced nature of the request, I assume it is agreed by the parties that the family do not meet the published eligibility criteria. But for the avoidance of doubt, I have reviewed them against the criteria. They are not British nationals. Nor do any of the applicants have a spouse/partner or child under 17 living in the UK. Finally, although the Home Office has issued 'minded to issue entry clearance letters' for all the family members, those letters state that the issuance of an entry clearance vignette is subject to them attending a Visa Application Centre to enrol biometric information, and to satisfactory security and background checks. In other words, whilst a positive step towards securing the relevant UK visas, none of the applicants currently hold a UK visa or is guaranteed one. In short, they do not fall within any of the three limbs of the published policy (British Nationality; a spouse/partner or child in the UK; a valid UK visa for more than 6 months). They can only be considered for consular assistance if there are identified exceptional circumstances which would justify departure from the policy.
>
> 2. Are there identified exceptional circumstances?
>
> I have considered all the issues raised in the Bindman's letter of 21 May and the other material that you have provided to me. As has been consistently noted, any discussion of what constitutes exceptional circumstances is difficult given the extreme nature of the situation in Gaza. That situation is particularly acute for children and other individuals and groups with additional vulnerabilities.
>
> However, the question here is whether the situation of the family is such that theirs is exceptional relative to any others seeking to leave Gaza. In particular, I need to consider if it is exceptional

relative to those seeking UK consular support outside of our established policy.

In terms of the family's overall situation, their 'profoundly dangerous' situation is sadly similar to that of the vast majority of Gaza residents... Unfortunately, the family's inadequate shelter, vulnerability to further attacks and lack of access basic supplies and medical treatment is not exceptional in Gaza.

I have considered whether the number, age and vulnerability of their children is exceptional. The continued presence of the family, and particularly their four children, in Gaza is clearly not in their best interests. However, it is not evident how that is distinct from the many children affected by the conflict, including those seeking UK consular support outside our published policy.

Although the Fatah connection was identified by the Upper Tribunal of the Asylum and Immigration Chamber in its decision of 13 January 2025, it is not clear why that is exceptional in the context of consular support…

Finally, I have reviewed of the additional factors cited in the Bindmans' letter of 21 May concerning possible changes in Israeli departure policy. Israeli policy – or the viability of departure requests – is not a relevant consideration to exceptionality. The FCDO policy is first and foremost focussed on the safe departure of British nationals and their direct dependants, and secondarily for those who fall within the specified exceptions. Nonetheless, I would note that no departures are guaranteed and that the process of securing exit remains highly uncertain, contingent on the agreement of several countries and institutions and often requires significant diplomatic intervention at multiple points. Current departure routes require permissions from Israel and Jordan at a minimum, previously the agreement of Israel and Egypt was required.

Conclusion

Despite the family's acute vulnerability, the deteriorating situation in Gaza and the updated information provided in Bindmans' letter of 21 May, I have concluded that their circumstances are not exceptional relative to others in Gaza. In particular, they are not exceptional relative to others seeking UK consular support outside our consular policy. On that basis, it is my decision that request should be declined."

Information provided at the hearing

56. Shortly before the hearing on 9 July 2025, I asked the Foreign Secretary's legal team to indicate how many people the Foreign Secretary was aware of in Gaza who had leave to enter the UK. The answer, given on instructions by Mr Julian Milford KC, was that the Foreign Secretary was aware of 10 individuals in Gaza with unconditional leave to enter the UK and a further 28 with conditional leave who did not meet the EEC and whose circumstances were not considered exceptional. These, however, were those who had come forward to the FCDO. There may be others. The Foreign Secretary was not aware of any UK national currently in Gaza, though one had come forward in April and had been given assistance to leave.

57. At the hearing, I drew attention to a news report on the BBC website on 8 July 2025, in which Israeli Prime Minister Benjamin Netanyahu was quoted as saying this at a meeting at the White House:

> "I think President Trump has a brilliant vision. It's called free choice. If people want to stay, they can stay, but if they want to leave, they should be able to leave...
>
> We're working with the United States very closely about finding countries that will seek to realise what they always say—that they wanted to give the Palestinians a better future."

58. Mr Milford said that there had been a number of statements by the Israeli government, but that the Foreign Secretary's assessment of the position remained unchanged from that set out in the decision documents.

The joint statement on the Occupied Palestinian Territories

59. Although neither side has sought to adduce it in evidence, it is relevant to note that, on 21 July 2025, the Foreign Secretary—together with the Foreign Ministers of Australia, Austria, Belgium, Canada, Cyprus, Denmark, Estonia, Finland, France, Iceland, Ireland, Italy, Greece, Japan, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovenia, Spain, Sweden, and Switzerland—issued a statement which includes the following:

> "The suffering of civilians in Gaza has reached new depths. The Israeli government's aid delivery model is dangerous, fuels instability and deprives Gazans of human dignity. We condemn the drip feeding of aid and the inhumane killing of civilians, including children, seeking to meet their most basic needs of water and food. It is horrifying that over 800 Palestinians have been killed while seeking aid. The Israeli Government's denial of essential humanitarian assistance to the civilian population is unacceptable. Israel must comply with its obligations under international humanitarian law.
>
> …

> We call on the Israeli government to immediately lift restrictions on the flow of aid and to urgently enable the UN and humanitarian NGOs to do their life saving work safely and effectively.
>
> We call on all parties to protect civilians and uphold the obligations of international humanitarian law. Proposals to remove the Palestinian population into a 'humanitarian city' are completely unacceptable. Permanent forced displacement is a violation of international humanitarian law."

Justiciability

60. In the original pleadings, the parties appeared to be at odds as to the justiciability of this claim, on the basis that—as the Foreign Secretary put it—the claim intrudes into the "forbidden area" of foreign affairs. By the time of the hearing before me, however, it was common ground that this claim is justiciable. That is correct. In *R (Abbasi) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598, [2003] UKHRR 76, Lord Phillips MR (giving the judgment of the Court of Appeal) said this at [106]:

> "We would summarise our views as to what the authorities establish as follows:
>
> (i) It is not an answer to a claim for judicial review to say that the source of the power of the Foreign Office is the prerogative. It is the subject matter that is determinative.
>
> (ii) Despite extensive citation of authority there is nothing which supports the imposition of an enforceable duty to protect the citizen. The European Convention on Human Rights does not impose any such duty. Its incorporation into the municipal law cannot therefore found a sound basis on which to reconsider the authorities binding on this court.
>
> (iii) However the Foreign Office has discretion whether to exercise the right, which it undoubtedly has, to protect British citizens. It has indicated in the ways explained what a British citizen may expect of it. The expectations are limited and the discretion is a very wide one but there is no reason why its decision or inaction should not be reviewable if it can be shown that the same were irrational or contrary to legitimate expectation; but the court cannot enter the forbidden areas, including decisions affecting foreign policy.
>
> (iv) It is highly likely that any decision of the Foreign and Commonwealth Office, as to whether to make representations on a diplomatic level, will be intimately connected with decisions relating to this country's foreign policy, but an obligation to consider the position of a particular British citizen and consider

> the extent to which some action might be taken on his behalf, would seem unlikely itself to impinge on any forbidden area.
>
> (v) The extent to which it may be possible to require more than that the Foreign Secretary give due consideration to a request for assistance will depend on the facts of the particular case."

61. These principles mean that it is no answer to a claim such as this that the action which the claimants requested of the Foreign Secretary falls into the category of diplomatic or consular protection or assistance. A finer-grained analysis than that is required. The court must focus on the particular aspects of the decision-making process that are challenged and the particular remedies which are sought. Once the court's focus has been directed in that way, it can go on to consider whether the questions it is being asked to determine fall within any "forbidden area", such as the conduct of foreign policy. Even if they do not, the area may be one which for institutional or constitutional reasons attracts a wide margin of discretion.

62. At one stage, Mr Tim Owen KC for the claimants submitted that the considerations which justify caution in a challenge to a decision not to afford diplomatic protection are different from those which apply to a decision not to give consular assistance. I do not accept that any such clear dividing line can be drawn. In either case, it is likely to be inappropriate for the court to entertain grounds of challenge which require it to second guess the weight that a decision-maker has given to policy factors, but less problematic to consider whether a decision is vitiated by a process rationality defect.

63. Similarly, relief which requires the Foreign Secretary to take some particular action (such as the mandatory order sought by the claimants requiring the Foreign Secretary to "take all reasonable steps to assist the Claimants in exiting Gaza") is likely to come closer to the "forbidden areas" referred to by Lord Phillips than relief requiring a decision-maker to re-take a defective decision.

The grounds of challenge

64. The two grounds of challenge advanced by the claimants would, if successful, have very different consequences.

65. Ground 2 asserts that Article 8 ECHR imposes on the UK an obligation that goes beyond merely admitting the claimants to the UK if and when they present themselves at a border (provided that security checks are satisfactory) and extends to assisting them to leave Gaza. If that ground of challenge were to succeed, there would be no need to consider Ground 1, because the Foreign Secretary would be obliged by s. 6 of the HRA to provide the assistance requested. Ground 2 would also have substantial implications for other applications for consular assistance not only from individuals in Gaza, but also more generally.

66. Ground 1, by contrast, does not involve the contention that the claimants have any legal right to receive the assistance they have sought. Whilst success in this ground would of course be relevant to the way in which other similar requests must be considered, it would not determine whether the request for assistance ultimately succeeds in this case or any other. Ground 1 is more narrowly focussed on the particular decision taken in

this case. It asserts that the decision was vitiated by flaws of a kind that are justiciable in judicial review proceedings. This ground turns on an analysis of the adequacy of the reasons given in this case.

67. I have therefore reversed the order in which I consider the grounds. I turn to Ground 2 first.

Ground 2

Submissions for the claimants

68. Tim Owen KC for the claimants submits that the Foreign Secretary has a duty under Article 8 ECHR to respect BSJ's and the claimants' right to respect for their family and private life. Since BSJ is in the UK, the family life that he and the claimants enjoy together is protectable even though the claimants are not themselves within the UK's territorial jurisdiction for the purposes of Article 1 ECHR.

69. The UT has determined that BSJ's and the claimants' Article 8 rights require as a matter of international law that the claimants be allowed to enter the UK and be reunited with BSJ. They cannot do so without the UK's assistance. Israel had made clear it is willing to allow Palestinians to leave if a request is made by the UK, and indeed recently invited the UK to put forward the names of Palestinians for departure in planned evacuations.

70. In circumstances which have not yet come before the Strasbourg Court, the domestic courts can and should anticipate how that court would decide the case, on the basis of established principles. Here, Article 8 imposes positive obligations upon the state to facilitate the reunification of the family.

71. There is nothing in the case law of the Strasbourg Court to suggest that all inter-state contact falls outside the scope of the Convention. On the contrary, it is clear that positive obligations upon the State can include an obligation to take actions vis-à-vis another state: see *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1; *Nada v Switzerland* (2013) 56 EHRR 18; *Güzelyurtlu v Cyprus and Turkey* (2019) 69 EHRR 12. There is therefore no authority to support the Defendant's extreme submission that the ECHR can never impose an obligation on a state to intervene diplomatically or otherwise with another state on behalf of an individual.

72. The refusal of assistance fails to strike a fair balance between the relevant competing public and individual interests, because:

    (a) The UT gave detailed and considered reasons which outline that the claimants' individual interests are very weighty, which amount to "very compelling" or "exceptional circumstances".

    (b) The consequence of the UT's decision, which the executive has undertaken to respect, is that Article 8 ECHR requires that the claimants be allowed to enter the UK to be reunited with BSJ.

    (c) The public interests apparently relied upon by the Defendant to refuse consular assistance are not such as to outweigh the claimants' interests, given that the Foreign

Secretary's evidence does not suggest that diplomatic engagement would be necessary at this point to secure the claimants' exit from Gaza, the failure to review the scope of the EEC and the strong public interest in giving effect to, and avoiding the frustration of, the Upper Tribunal's decision.

Submissions for the Foreign Secretary

73. Mr Milford for the Foreign Secretary submitted that the Strasbourg Court has never held that Article 8 does or could impose a duty to provide consular assistance to help an individual exit a third country, including by intervening with a foreign state on the individual's behalf. Such a proposition would mark a major departure from existing ECHR jurisprudence: see *HF v France* (2022) 75 EHRR 31. To endorse it would be to go further than one could be confident the Strasbourg Court would go.

74. The claimants—who are not UK nationals—seek to derive from Article 8 a substantive duty of diplomatic assistance equivalent to "quasi-repatriation", on the sole basis that they share a family life with BSJ, who is in the UK. No decision of the Strasbourg Court has come close to suggesting the Convention could confer such a duty. Such a duty would be contrary to established Convention principles, given that:

    (a) the Strasbourg Court has consistently held that the Convention does not imply a right that requires a State to intervene diplomatically or otherwise with the authorities of another State on behalf of an individual: *Bertrand Russell Peace Foundation Ltd v UK* (1978) 14 DR 117; and

    (b) jurisdiction under Article 1 ECHR is predominantly territorial. The Claimants here seek to assert a positive obligation under Article 8 to assist individuals outside the UK, by acts in a foreign state over which the UK has no control.

75. The first principle is expressed in broad terms in *Bertrand Russell* and subsequent cases. It explicitly reflects Article 34 of the Vienna Convention on the Law of Treaties and is founded on the principle of respect for state sovereignty and independence. It applies fully in this case, since the consular assistance the claimants seek would require a range of diplomatic interventions with Israel and Jordan, entailing what the Foreign Secretary has rationally concluded would be an immensely complex exercise, which would require the expenditure of diplomatic capital. It could have cascading effects for other departures and wider diplomatic relations.

76. The contexts in which the Strasbourg court has held a contracting state to be under a positive obligation to take action have never involved diplomatic intervention. *Al-Skeini v UK* (2011) 53 EHRR 18 makes clear that jurisdiction under Article 1 ECHR is predominantly territorial, subject to certain limited exceptions, none of which apply here. The Article 1 obligation upon Member States is to secure the ECHR rights and freedoms to "everyone within their jurisdiction". The existence of an Article 8 "family life" is not itself a basis for saying that the claimants are within the UK's jurisdiction for all purposes: cf. the more limited scope of *Abbas v SSHD* [2018] 1 WLR 533, [17]. If it were otherwise, the state would owe such obligations to persons all over the world simply because they enjoyed a "family life" with persons located within its borders. That would undermine the territoriality principle.

77. The claimants' arguments underscore the reasons why Article 8 should not apply in the first place. They would require the court to balance the claimants' acute needs against incommensurable considerations of diplomacy (with the potential to affect other potential refugees in Gaza), and the UK's wider diplomatic relationship with Israel and Jordan. They would require the court to enter the forbidden area of foreign relations to assess for itself the weight to be attributed to different factors, an assessment which is both unnecessary and inappropriate.

78. If (quod non) Article 8 is engaged at all, the refusal on 6 June 2025 was a proportionate interference with that right in light of: (i) the very wide margin of discretion in this area; and (ii) the cogent evidence of Ms Taylor and Ms Anderson.

Discussion

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

provision would impose an obligation on states which have ratified it (not including the 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. The question of justification therefore does not arise. Ground 2 accordingly fails.

Ground 1

Submissions for the claimants

89. Under Ground 1, Mr Owen's case, as originally put, had three limbs.

90. First, the Foreign Secretary failed to consider at all (or failed rationally to consider) the weighty public interest in giving effect to the UT's decision, or the detriment to the public interest of rendering that decision ineffective. In particular, the decision of the UT (a superior court of record) was that the UK's obligations under Article 8 ECHR required that they be allowed to enter the UK. The protection of ECHR rights must be "practical and effective", not "theoretical and illusory": see e.g. *HF v France*, [252] (among many other cases). Ms Anderson was not provided with the claimants' original Statement of Facts and Grounds, which made these points, nor did the "rationale" document make reference to these points.

91. Secondly, where a decision is taken on the basis of reports provided to the decision-maker by officials, the relevant matter must be fairly and adequately presented to them: *R (Hindawi) v Secretary of State for Justice* [2011] EWHC 830 (QB), [73]-[74]; *R (Khatib) v Secretary of State for Justice* [2015] EWHC 606 (Admin) [53]-[56], [72], [74], [78]; *B4 v SSHD* [2024] EWCA Civ 900 [2024] 1 WLR 5342, [62]. The "rationale" document did not address the critical question whether the claimants could be distinguished from others in Gaza in a fair, balanced or adequate way; and failed to draw the decision-maker's attention to the central reason they asserted they were so distinct.

92. Thirdly, in cases falling outside the EEC the Defendant has adopted a policy or practice that he will not exercise his discretion to provide consular assistance unless there are exceptional circumstances relative to other people in Gaza. This approach was applied in the decision dated 12 March 2025 by Ms Taylor. However, in the June Refusal, Ms Anderson significantly narrowed the group against which the claimants' circumstances were to be assessed, by asking "whether the situation of the […] family is such that theirs is exceptional relative to any others seeking to leave Gaza. In particular, I need to consider if it is exceptional relative to those seeking UK consular support outside of out established policy". This was contrary to policy and/or irrational.

93. In oral argument, Mr Owen relied on two further points, which emerged partly in response to suggestions and questions from me. The first was a variation on the three limbs set out above. The decision documents show that Ms Anderson did not know and did not consider how many others had conditional or unconditional entry clearance to enter the UK (though Mr Milford provided the number falling into this category of whom the Foreign Secretary was aware in answer to a question from the court). This fact was critical in deciding whether the claimants' case could properly be regarded as exceptional.

94. Furthermore, the decision documents show that Ms Anderson treated the change in policy by the Israeli government as irrelevant to the question of exceptionality. Given that the need to keep exceptions within narrow bounds was justified in part by a desire to avoid expending limited "diplomatic capital", this was irrational.

Submissions for the defendant

95. Mr Milford for the Foreign Secretary made no objection to the new points raised during the course of the hearing and undertook to deal with them. He submitted that Ms Anderson's decision on 6 June was rational and otherwise lawful. Facilitating departures from Gaza is a highly complex exercise which expends diplomatic capital. The Secretary of State rationally took the view that there was nothing exceptional about the claimants' case that distinguished them from those who might seek consular assistance from the UK.

96. Mr Milford submitted that there is an incoherence at the heart of the first two limbs of Ground 1. The effect of the UT's decision was that the Home Secretary was obliged to grant entry clearance to the claimants (subject to security checks). That was done and communicated by way of the "minded to issue" letters. Nothing further was required to render the UT's decision effective. The fact that their (conditional) entry clearance arises because of a UT decision does not logically serve to distinguish the claimants from others with entry clearance. The claimants are in no different position from the many thousands who have entry clearance but do not have the funds to make the journey. They have the right to be admitted if they present themselves at the border (subject to security checks), but no right to assistance in getting there.

97. As to the first limb of the claimants' originally pleaded case, whether a matter is a relevant consideration is itself for the decision-maker to determine, subject to review on rationality grounds. In this context, the Defendant's decisions are to be afforded the widest possible margin of discretion, and the standard for review is whether the Defendant's decision was "frankly perverse": *R (Al-Rawi) v Secretary of State for Foreign and Commonwealth Affairs* [2006] EWCA Civ 1279, [2008] QB 389, [141]. In any event, it is clear from the evidence that Ms Anderson was fully aware of the UT decision and its implications, and was also informed of the claimants' arguments about its significance. There was nothing more for her to consider.

98. As to the second limb of the claimants' original argument on Ground 1, the requirements of fairness will vary according to context; and what is required in an administrative decision-making process may be quite different from an adversarial or quasi-judicial process. As to the claimants' submissions on the "rationale" document, these are based on the flawed premise that entry clearance arising from a judgment of the UT (rather than a decision of the Home Secretary) was a distinguishing feature.

99. As to the third limb of Ground 1 as originally pleaded, the claimants are wrong to assert that the Foreign Secretary has any policy or practice as to what he considers amounts to "exceptional circumstances" which would take someone outside the EEC. There is simply a discretion to assist in circumstances of the Foreign Secretary's own choosing. The Foreign Secretary has so far chosen to assist only in exceptional circumstances. That is not a "policy" upon which an action can be founded. In any event, Ms Anderson

has confirmed that her approach was "the approach that the FCDO has consistently taken to such requests".

100. As to the additional points adopted by Mr Owen during the course of oral argument, Mr Milford submitted as follows.

101. First, the policy considerations mandating a narrow approach to exceptionality do not themselves need to be applied or considered when applying that test. The decision-maker could not be expected to apply them on the ground, as an individual decision-maker does not have visibility on the question of diplomatic capital.

102. Secondly, when considering the relevant cohort for the question of diplomatic capital, the entire pool needs to be engaged with in the predictive exercise, including those already in the tribunal system and those who may come forward. This is not a number that can be known with certainty, but it is nevertheless substantial.

103. Thirdly, an arithmetical exercise would risk being unprincipled and inconsistent. The Defendant is not operating a quota system, which would simply privilege those at the front of the queue. The decision-maker instead needs to examine the circumstances of individual cases in order to assess if there is extraordinary need. This is illustrated by the circumstances of the individuals who have already been found to be exceptional, as detailed in the witness statements of Ms Taylor.

104. Fourthly, and in any event, the Secretary of State was aware of the numbers of people, as the decision letter itself refers to 40 eligible persons who were helped to leave via Israel and Jordan since October 2024.

Discussion

105. I begin by accepting three points made by the Foreign Secretary. First, the grant of entry clearance did not in and of itself give rise to any obligation to provide consular assistance to enable the claimants to travel to the UK border. As the Foreign Secretary submits, there are people all over the world who have conditional or unconditional clearance to enter the UK but who cannot, for one reason or another, get to the UK border. The reasons may be many and various. Consular assistance may or may not be provided. The refusal of such assistance does not undermine the grant of entry clearance or make it ineffective.

106. Secondly, there is nothing in the claimants' suggestion that their case should have been regarded as exceptional simply because their entry clearance was granted following a successful appeal to the UT, rather than in the first instance by the Home Secretary. The UT is a superior court of record and the UK Government gives effect to its decisions, subject to any appeal. In this case, the UK Government (through the Home Secretary) did so on 30 January 2025 when she indicated that she was minded to grant entry clearance to the claimants, conditional on security checks. A family in similar circumstances would have just as strong a claim to consular assistance if their entry clearance had been granted immediately upon application to the Home Secretary.

107. Thirdly, when considering whether to make an exception to an established policy, and in circumstances where the criteria for exceptionality are not themselves set out, it is

for the decision-maker to decide what is relevant and what is irrelevant, subject to rationality review: *R (Friends of the Earth) v Secretary of State for Transport* [2020] UKSC 52, [2021] PTSR 190, [116]-[121]. Similarly, the obligation on a decision-maker to take steps to gather information extends only to taking such steps as are reasonable; and the decision as to what steps are reasonable to take is for the decision-maker, again subject to review only on grounds of rationality: *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, [2019] 1 WLR 4647, [70].

108. These principles provide the starting point for a consideration of the rationality of Ms Anderson's decision of 6 June. However, whatever the latitude in identifying relevant factors or in deciding how to go about making the decision, the obligation to decide rationally remains. In *R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370 (Admin), I explained by reference to higher authority that rationality has two aspects—process rationality and outcome rationality:

> "56. Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that 'does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic': *R v Parliamentary Commissioner for Administration ex p. Balchin* [1998] 1 PLR 1, [13]. In similar vein, Saini J said that the court should ask, 'does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?': *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), at [33].
>
> 57. Outcome rationality, on the other hand, is concerned with whether – even where the process of reasoning leading to the challenged decision is not materially flawed – the outcome is 'so unreasonable that no reasonable authority could ever have come to it (*Associated Wednesbury Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, 233-4) or, in simpler and less question-begging terms, outside the 'range of reasonable decisions open to a decision-maker (*Boddington v British Transport Police* [1999] 2 AC 143, 175)."

109. At [76], I explained that "the court's approach to assessing the rationality of a decision varies depending on the importance of the interests affected by it or, to put the point another way, the gravity of its potential consequences". This was so whether or not it was possible to identify a "right" impacted by the challenged decision.

110. At [77], I noted that, in a case where the potential consequences were especially grave, this had consequences for the way the court evaluated complaints of process rationality: the court would "subject the decision to 'more rigorous examination, to ensure that it is in no way flawed'" and would "expect the decision-maker 'to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into

account'". At [78], I said that the nature and importance of the public interests were likely to be important when assessing complaints of outcome rationality.

111. In this case, the potential consequences of the decision under challenge are certainly grave. Although they have no anterior right to assistance, the effect of the challenged decision is to deny a family of six, including two minor children, the opportunity to escape from a place where they face the daily danger of death or injury from military action or starvation. This means that, in considering what are in effect complaints of process rationality, it is necessary to subject the challenged decision to "rigorous examination, to ensure that it is in no way flawed".

112. In doing so, it is important to have regard to another aspect of rationality review. Even when applying a very broad test (e.g. a test of exceptionality with no defined criteria), a decision-maker generally acts in a particular policy context. The context may depend on previous decisions by the same decision-maker. The policy context helps shape what will be rational at the next stage and what will not. The point was put in this way by Sales LJ giving the judgment of the Court of Appeal and accepting a submission of mine, in *R (London Criminal Courts Solicitors' Association) v Lord Chancellor* [2015] EWHC 295 (Admin), [2016] 3 All ER 296, at [13]:

> "even if a decision-maker starting with a blank canvas might have a wide discretion how to proceed in order to achieve the result required, he might proceed in stages and gradually structure his consideration of how to move forward. A decision-maker who structured his approach in this way might adopt criteria as a guide for himself. If he does so, the rationality of his decision-making might in principle be tested by reference to the rationality of his assessment whether his own chosen criteria have been satisfied. The rationality of steps in his reasoning could in this manner be assessed in a more precise and determinate way."

113. In this case, the decision challenged was about whether to make an exception from the policy about the categories of person to whom consular assistance would be offered. The parameters within which the rationality of that decision fell to be examined can only be understood by reference to the considerations which animated the policy. The policy was drawn as tightly as it was for particular reasons. The main one was that the provision of consular assistance would involve the use of "diplomatic capital": see para. 9 of the "rationale" document which went to Ms Anderson and para. 32 of Ms Taylor's witness statement. In context, that term refers to the limited stock of goodwill upon which a state can call when it seeks to persuade another state to do something that, other things being equal, that other state would rather not do.

114. Against this background, Ms Anderson's reasons disclose three related flaws. Taken cumulatively, these in my judgment vitiate the decision.

115. The first flows from the structure of the decision. Ms Anderson considered, first, whether the family fell within the established eligibility criteria (including the EEC) and secondly, having found that they did not, whether their circumstances were exceptional. Since it is uncontentious that the family did not meet the established

eligibility criteria, the second was the key question. In answering it, Ms Anderson compared the circumstances in which family were living with those of other families in Gaza and the age and vulnerability of the family members. Since these were not exceptional, when compared with others in Gaza and others seeking British consular support from Gaza, the request for assistance was refused. This, however, left out of account the principal factor that, on the claimants' case, distinguished them from others and justified the provision of consular assistance to them.

116. I have already noted that the fact that the claimants' conditional entry clearance was granted following the UT's decision did not, in itself, logically distinguish them from those granted a similar status by the Home Secretary without the need to appeal. But the fact remains that the claimants did and do have conditional entry clearance, granted on the basis of their close family connection to a UK national. That connection was, in the view of the UT, such as to give rise—on the particular and exceptional facts of their case—to an obligation binding on the UK in international law to admit them to the UK. In the context of a policy designed to focus on UK nationals and others with a close connection to them, the decision-maker was in essence being asked to treat this as a sufficient connection to the UK to justify the provision of consular support.

117. Mr Milford submitted that I should take the limited EEC as a fixed matter, focus exclusively on the question of exceptionality and (because the criteria for exceptionality were not defined) allow a wide latitude to the decision-maker to decide what was relevant in that regard. A similar argument was made in *R (Sandiford) v Secretary of State for Foreign and Commonwealth Affairs* [2014] UKSC 44, [2014] 1 WLR 2697. Lord Carnwath and Lord Mance (with whom Lord Clarke and Lord Toulson agreed) said this at [70]:

> "It may be said (as Gloster J suggested [2013] EWHC 168 (Admin) at [78]) that there is a difference between formulating or reformulating policy, and considering exceptions to policy once made. In many contexts, no doubt, that may be a significant difference, where for example the making of policy is itself subject to a formal process, perhaps including consultation, distinct from its application in individual cases. However, in the present context that seems a distinction without a difference. Our review of the development of policy shows that, on the one hand, policy submissions were made to ministers without any formal procedure, and generally in response to issues raised by individual cases."

118. The same applies here. The claimants were putting forward their conditional entry clearance (granted on the basis of a close family connection to a UK national) as a basis to justify the provision of consular assistance. The FCDO had to consider whether that was a sufficient basis for granting consular assistance or not. There were two ways in which the significance of this status could have been considered: as a basis for regarding their case as exceptional or as a basis for extending the EEC. It was never grappled with in either of these two ways.

119. The second flaw is connected to the first. As I have said, the request for consular assistance was justified by reference to the claimants' conditional entry clearance,

granted on the basis of their close family connection with a UK national. Since the limited terms of the EEC and the strictness of the exceptionality criteria were justified by the need to preserve the UK's diplomatic capital, it was relevant to consider how many others were likely to be in the same position as the claimants. Making requests for a large group would involve the expenditure of significant diplomatic capital. Making requests for a smaller group might not. But neither the "rationale" document, nor Ms Anderson's decision, makes any attempt to assess the size of the relevant group.

120. The "rationale" document notes that around 50 requests for support had been received since May 2025, but does not say how many of these were from individuals with entry clearance (let alone entry clearance granted on the basis of a close family connection with a UK national). At the hearing I was told that the total number of whom the Foreign Secretary is currently aware who have final or conditional entry clearance to enter the UK is 38, though there may be other cases whose applications have not yet been considered. The total number known to be in the same position as the claimants would have been relevant to understand how much diplomatic capital would have to be used to assist them. If a decision-maker is concerned that acceding to a request in one case risks opening the floodgates, he or she ought to make some attempt to understand whether what lies behind the gates is really a flood, or only a trickle.

121. I accept that there are others whose cases are currently before the tribunals and/or the courts. But, unlike the claimants, those relate to individuals whose entitlement to (conditional) entry clearance remains contested. Moreover, it may be assumed from the Home Secretary's stance in the claimants' appeal that she is not currently granting leave to persons in the claimants' circumstances. It seems likely that she will be appealing positive FTT or UT decisions made on Article 8 grounds where the applicants are not core family members of a UK national. The appeal in the claimants' case is now listed to be heard in January 2026. For the time being, the category with leave to enter the UK on the basis of a close family connection to a UK national may be very small. If the Home Secretary's appeal does not succeed and the category is widened, that might be a proper basis for narrowing the policy on consular assistance later. The prospect of this happening in the spring of 2026 (by which time conditions in Gaza may have changed) did not make it inevitable that the claimants' request would be denied.

122. The "rationale" and decision documents also took no account of the numbers of British nationals currently in Gaza and seeking consular assistance. It appears from information given to me at the hearing that, at the time of the decision, there was one such individual, who was being given assistance to leave. He had left by the time of the hearing. The fact that there was only one individual in this position was relevant, given Ms Anderson's reliance in her decision on the fact that the FCDO policy is "first and foremost focussed on the safe departure of British nationals and their direct dependants, and secondarily for those who fall within the specified exceptions". If the aim was to preserve diplomatic capital for the benefit of such individuals, rationality required the decision-maker to have some idea of how many British nationals seeking assistance there were. The FCDO had this information, but there is no evidence that the decision-maker took it into account.

123. The third flaw arises from Ms Anderson's conclusion that "Israeli policy – or the viability of departure requests – is not a relevant consideration to exceptionality", because FCDO policy is focussed on British nationals, their direct dependants and those

falling within the EEC. Mr Milford's principal response was to say that, at the stage of considering exceptionality (as opposed to at some earlier stage), she was right to regard Israeli policy and the viability of departure requests as irrelevant. As I have already said, it was wrong—for the reasons given by the Supreme Court in *Sandiford*—to regard the question of exceptionality and the question whether to modify the EEC as fundamentally distinct. The refusal to make an exception for the claimants can also be read as a refusal to modify the policy to cover those who, like them, had a conditional or unconditional entry clearance decision in their favour, based on their close family connection with a UK national.

124. In either case, the rationality of the decision fell to be evaluated in accordance with the considerations which made it important to limit the categories to whom consular assistance was provided. Chief among these was the need to preserve diplomatic capital. Even if the Foreign Secretary wished to maintain a policy focussed on UK nationals and those with a close connection to the UK, the Foreign Secretary had to confront the question whether extending eligibility to those in the claimants' position would, in fact, run down the UK's diplomatic capital and, if so, by how much.

125. At least in relation to Israel, it would do so only if and to the extent that the Israeli authorities were being asked to do something that, other things being equal, they did not wish to do. If facilitating the exit of Palestinian citizens from Gaza accorded with their current policy, then that was relevant in assessing how much diplomatic capital would be expended by assisting them. Even an assessment as cautious as that in para. 12 of the "rationale" document ("it is possible that the Israeli authorities may more readily accept requests for evacuating non-BNs from Gaza than has previously been the position, but that cannot be established with certainty") could have made a difference. It might have caused the decision-maker to think that it was worth making a request to test the water. In this context, a stance which regarded the evidence of a change in the Israeli position and the viability of departure requests as categorically "irrelevant" was, in my judgment, irrational.

126. This analysis holds good despite the fact that arrangements would have to be made with Jordan as well. The decision documents suggest that it is the interface with the Israeli authorities that presents the greatest difficulty and Mr Milford did not suggest the contrary. In any event, if there was an error in relation to the position of Israel, there is nothing to show that the difficulties of arranging entry to Jordan would be regarded as a sufficient basis for the refusal on its own. It may be relevant that BSJ's initial enquiries in this regard appear to have met with a positive response (as a matter of principle, at least).

Section 31(2A), (3C) and (3D) of the Senior Courts Act 1981

127. I have considered whether I can conclude that it is highly likely that the outcome for the claimants would not have been substantially different if the decision had not been flawed in the respects I have identified. In my judgment, it is impossible to reach that conclusion. It is possible—though far from certain—that, had these errors not been made, the outcome would have been positive.

Conclusion and relief

128. For the reasons I have given, the challenged decision of 6 June 2025 is flawed and cannot stand. It will have to be reconsidered. This does not mean that the Foreign Secretary is obliged to decide in the claimants' favour, just that he must think again.

129. Because the family's position and that of the Israeli Government may have changed since the decision was taken, it would be appropriate for the claimants to be entitled to a short period in which to file further representations. It may also be appropriate to set a timetable for the decision to be reconsidered.

130. Subject to what I have said, I shall invite submissions as to the appropriate form of relief.