



Patrick Steel provides commentary on  
Re KM (A Child) (Welfare)[2023]EWFC  
313 (18 May 2023)  
for Family Law Week

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**WESTGATE**  
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## Re KM (A Child) (Welfare) [2023] EWFC 313 (18 May 2023)

*A child of 16 was deemed beyond parental control after DM, who had cared for her, developed Alzheimer's. It was decided that KM should remain in the UK under a care order while the Local Authority would support contact with KM's previously estranged parents in a non-Hague Convention nation. An order under s.34(3) was not necessary.*

### Introduction

The case of Re KM (A Child) (Welfare) [2023] EWFC 313 concerned a child, KM, about to turn seventeen. KM was born in a southeast Asian state which is not a party to the 1996 Hague Conventions, 'Country A'.

KM had been in the care of 'DM', whom she calls Dad, since 2006 when she left the care of her birth parents, KS and AS, in County A. She has continued to reside in the United Kingdom for most of her minority.

DM developed Alzheimer's disease and could no longer care for KM nor was there anyone in this jurisdiction who could exercise parental responsibility on KM's behalf. She was thus conclusively deemed beyond parental control and the threshold was crossed on that basis.

The question before the court was, therefore, 'what should happen for KM next?' In addressing this, HHJ Sharpe produced a judgment which acknowledges the power of family ties while considering the inherent qualitative limitations of the court when intervening in family life. Although the law plays a fundamental role in shaping societal behaviour, creating structures for societal progress, and protecting rights, it cannot create or nurture the emotional bonds that define family life.

### Background to the final hearing

The key issue at the final hearing was to enable KM to shape her future, respecting her near legal independence while addressing her challenging past. An earlier judgement, *Re KM (A Child)(Jurisdiction: Habitual Residence)* [2022] EWFC 132, confirmed that determinations on KM's welfare would be made in the UK. Nonetheless, her return to Country A remained an option if deemed in her best interests.

KM's parents, AS and KS, who live in Country A, wish to reunite with KM, but KM opposed any return. The necessity for a thorough parental assessment led to delays. The independent social worker, Ms Snow, went to great lengths to visit and assess KM's birth parents in Country A.

This was made possible by the extensive assistance of the Local Authority and the relevant Embassy. Ms Snow furnished the court with a greater understanding of KS and AS's view of how it came to be that KM moved to the United Kingdom with DM. More valuably, His Honour Judge Sharpe was able to consider KS and AS's position in respect of proceedings and what should happen for KM next.

Through Ms Snow's assessment the court heard that KS and AS lead a life of relative simplicity. Their family home was described as 'basic, clean and nicely presented' [13]. The home did not have many of amenities which KM, in her experience, was likely to consider essential, such as electrical appliances, internet connectivity, or its own bathroom.

Beyond the physical environment, the court considered that village in Country A was able to offer a potentially valuable sense of community. KS and AS were also said to place great store in their Muslim faith which, it's noted, KM does not share. Indeed, they came to understand that many of KM's views and values could be considered "antithetical to their traditional Muslim beliefs" [14]. Nonetheless, KS and AS were content to accept her views as they were and placed greater emphasis on KM's happiness and wellbeing which is said by His Honour Judge Sharpe to evidence their "tolerance, compassion and ability to prioritise their daughter's needs." [14].

When considering how it came to pass that KM resided in the UK, the court heard that AS lost her mother to an illness which was asthmatic in origin and that AS herself went on to struggle with a condition causing breathing difficulties in 2006; during the time that the decision was made for KM to leave Country A. After that decision was made AS and KS tragically suffered the loss of an adult child due to breathing issues related to his employment. AS was not only aware of what KM could not have if she has remained in their village in Country A, but that she appreciated the risks of an illness arising for which there would be a 'real lack of protection' [20]. His Honour Judge Sharpe considered that:

*"Seen from that perspective the decision to allow KM to be cared for elsewhere is properly to be regarded as an act of devotion to the immediate welfare of a child and underlines the commitment they have demonstrated throughout these proceedings."* [21]

The court acknowledged that KM's bond with DM was profound. Her devotion and care for DM was illustrative of a deep and enduring attachment arising out of the life they have shared for as long as KM can remember, [23]. While KM remained open to exploring a relationship with her birth parents, she insisted on doing so on her terms and at her pace.

### **The Positions at final hearing**

Following the report by Ms Snow, it became evident that KM's parents were not seeking her return. HHJ Sharpe stated:

*"...despite the parents' obvious good qualities, their appreciation of their daughter's needs and their willingness to take any necessary steps to facilitate a return to Country A for KM the gap which existed between what KM's*

*wishes and feelings were and what the parents could offer to her in terms of their lifestyle and their ability to meet her specific needs simply could not be bridged. It was more of a chasm than a gap.” [27]*

The parents, guided by good advice, shifted their focus to maintaining contact, recognizing that KM would remain under a care order in this country.

The Local Authority, Guardian, and KM herself agreed that a care order was necessary due to the lack of suitable family members in the jurisdiction. The Official Solicitor, representing DM, also supported this outcome, acknowledging that KM’s best interests were served by staying in the UK, in line with her wishes and feelings, while maintaining contact with DM. Therefore, a care order was the only possible outcome.

### **Discussion**

To a great degree, the court focused on facilitating future contact between KM and her birth family. Despite the complexities of geography, language, and logistics, it was crucial to establish a framework that promotes a potential relationship. It was acknowledged that KM’s preference was to engage with her parents at her own pace, prioritizing her relationship with DM.

The court decided against an order under s.34(3) of the Children Act 1989, as it would bring inflexibility and might hinder KM’s voluntary engagement with her parents [42]. It was considered that an order under s.34(3) would have lasted just over a year, and that the process of building some form of connection and relationship between KM and her parents is more likely to be measured in tens of years. The court will not target an order at a child and she could not be compelled to reestablish a relationship with KS and AS by any means, and any attempts to do so would only lead “to her withdrawal from any prospect of future development of a relationship with her parent” [42]. Conversely, the court was satisfied that despite the significant obstacles the Local Authority were well placed to facilitate the development of contact in the forms and pace that KM desires, under their care plan.

While the Family Court has no jurisdiction to determine questions of immigration, residence or rights to remain, it was noted that KM does not have indefinite leave to remain in the UK. This issue would require resolution to ensure matters core to her welfare, namely, KM’s right to remain in the jurisdiction and to thus maintain her relationship with DM. Notably, Country A does not permit dual nationality, and this may require future decisions and reflection on her personal sense of belonging. It must not be the case that KM’s immigration status prohibits her from visiting and reconnecting with her family in Country A, due to uncertainty as to her right to return to the UK.

### **Conclusions**

HHJ Sharpe’s judgment concludes a lengthy and complex set of proceedings. The court extended its gratitude to all legal professionals, particularly acknowledging the efforts of Ms King KC and Ms Kirby KC, who contributed significantly despite the outcome not aligning with AS and KS’s initial desire to have their daughter returned to their care.

After judgement was handed down AS wished to thank DM, through counsel, for all that he had done for KM and to express her sadness that he was now in ill health.

Finally, HHJ Sharpe considered a future in which KM visits her family in Country A, and he expressed hopes that this re-engagement would not be: “through any desire to obliterate the intervening years since she was last in that place but instead to take full advantage of all that her Dad was able to do for her and all that he enabled her to become and be ready then to discover all that her family can offer her in fully understanding her own unique place in the world”[50].