Case No: C01558412006

Neutral Citation Number: [2007] EWHC 1477 (Admin)

**IN THEHIGH COURT OF JUSTICE**
**QUEEN'SBENCH DMSION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice Strand,
London. WC2A 2LL

Date: 26/06/2007

**Before** :

**MR JUSTICE WALKER**

- - - - - - - - - - - - - - - - - - - - -

**Between** :

**The Queen on the application of A**

Claimant

- and -

**LIVERPOOL CITY COUNCIL**

Defendant

- - - - - - - - - - - - - - - - - - - - -

(Transcript of the Handed Down Judgment of
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**Mr Ian Wise** (instructed by **Jackson** &**Canter Solicitors)** for the **Claiman**t
Mr **Hilton Harrop-Griffiths** (instructed by **the Solicitor to Liverpool City Council)** for the **Defendan**t

Hearing dates: 21 May 2007

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Judgment

Mr Justice Walker :

Introduction

1 The claimant is from Afghanistan. The court has made an order preserving his anonymity. The reason for the order is that he claims to be a child. He arrived in this country and sought asylum in January 2006. At that time he said that he was 14 years old. It is common ground that, subject to determination of his age, the defendant local authority has responsibilities in relation to him. The eventual determination made by the defendant, set out in a letter dated 6 November 2006, was that it should adopt the opinion of an expert dental surgeon, Mr Ritchie, as set out in a second report prepared by him on 15 September 2006 and signed on 21 September 2006. The opinion expressed in that report was that the claimant is, on the balance of probability, well over 18 years of age.

2 The second report of Mr Ritchie was in fact prepared after the proceedings had begun. The claim form was lodged on 6 July 2006, and challenged an earlier decision of the defendant dated **3** July 2006, also to the effect that the claimant was over 18 years old. The grounds for judicial review proceeded on the basis that the determination of the claimant's age was a matter for the defendant, but that when making that determination the defendant was obliged to act fairly, and to take into account all relevant information. Proposed amended grounds of judicial review were then prepared to take account of the fresh determination on 6 November 2006. The approach adopted is essentially similar. It is accepted that it is for the authority to determine the age of the claimant. However, it is said that the determination made on 6 November 2006 was a determination which contravened accepted principles of public law.

3 The matter came before me on 21 May this year. On the basis of clarification provided orally by Mr Wise, who appeared on behalf of the claimant, I gave permission to amend the claim form, and I granted permission to apply for judicial review. With the consent of both parties I then proceeded to hear argument on the substantive judicial review claim. This involved two issues. The main issue was whether the defendant's determination of 6 November 2006 should be quashed. The second issue was whether a declaration should be granted as to the lawfulness of the defendant's actions on 3rd July 2006. At the conclusion of argument I indicated that I would quash the decision of 6th November 2006, and that I would grant a declaration that the earlier decision of 3rd July 2006 had been made unfairly. I now give my reasons.

**A Note of Caution**

4. The argument on the main issue proceeded on a common basis as to the legal principles concerning determination by local authorities of the ages of those claiming to be children. This was that relevant legal principles were set out in two first instance decisions, ***R (B) v Merton London Borough Council*** **[2003] 2** ***FLR*** **888**, and ***R (T) v Enfield London Borough Council*** **[2005] 3** ***FCR*** **55**. Each of those decisions proceeds on the assumption that obligations are imposed on local authorities not because the court holds the claimant to be a particular age, but because the local authority has made a determination as to age. The common basis adopted in the present case meant that I was not taken to statutory provisions which would otherwise have been relevant. If that common basis had not been adopted, questions might have arisen, dependent upon the statute governing particular obligations, whether in a disputed case the age of a claimant is to be determined by the local authority or by the court, and if the latter whether in proceedings for judicial review or ordinary action in the High Court or the County Court. I express no view on any of those questions.

**History of Events**

***5.*** An initial assessment of the claimant's age was made by two of the defendant's social workers on 5 January 2006. They completed an "Age Assessment" form, which recorded that the claimant's asserted date of birth was 1 January 1992. In the form they noted that no medical opinion had

been sought. Their analysis was as follows:

> "Initially [A] appeared youthful looking. [A] showed some signs of ageing, visible lines on the face and protruding Adam's apple. [A] was very articulate in his communication, [A] was relaxed confident during the interview. [A] showed no emotions when talking about his separation from his family, showing maturity in being able to control his emotions. [A] asked if he could be put with a family, as he may not find his own. [A] seemed to be aware of what is on offer in the UK for people under the age of 16 yrs. [A] stated his father had his birth certificate but the school told him his date of birth. [A] stated he was told his date of birth when he left six months ago.
>
> Colleague and myself felt that [A] was very honest when explaining his journey to the U.K. [A] did not remember any problems leading up to their escape from Afghanistan but stated his Mother told him his Father had a fight.
>
> [A] was asked how he felt he would cope living independently,
> [A] stated he felt he would have no problems taking care of himself. [A] seemed very independent for a person who had never lived alone or helped around the house while living at home. [A] showed maturity in his ability to interact with adults.
> [A] is considered to be a minor but over the age of 16 yrs. [A] will be supported by social services under section 17 of the Children Act 1989."

6. A minor is a person below the age of 18 years. It will be apparent that by concluding that the claimant was a minor, but over the age of 16 years, the social workers arrived at an assessment that the claimant was 17 years old. This assessment was of concern to those advising the claimant, for it meant that he would not receive the education and other services appropriate to a 14 year old. They instructed Dr Michie, a consultant paediatrician. He examined the claimant on 29 March 2006. Dr Michie in his first report, dated March 2006, reached the conclusion that it was more likely than not that the claimant was 14 years old. It was possible that he was either 13 or 15 years old. Dr Michie thought it highly unlikely that he was either 12 or 16 years old. It is necessary to set out a considerable part of what was said by Dr. Michie in his first report:

> **"Client history and examination**
>
> [A] was born at home in the Ghazni province of Afghanistan. His declared date of birth was not employed in the following age estimation. **[A]** did not recall any serious heath problems during his early life; he has had no chronic disease, trauma or surgery that may have affected his physical growth or maturity. He does not smoke tobacco or drink alcohol. He has had no teeth extracted but has some pain from several teeth. He takes no long-term medication. There is no evident history of malnutrition or food shortage. He attended formal schooling for between **3** and 4 years. He arrived in the United Kingdom in January 2006; he is not independent or self-caring and is currently cared for by Social Services. He has a younger brother aged 9 or 10 years of age. He has never known the age of his parents. An estimate of the mid-parental centile was in the region of 175 cms.
> [A] is in good physical health at present. He is tall and slim. He is not anaemic or jaundiced. [A] has a height of 170 cms and shows no dysmorphic features, nutritional disorder or spinal anomaly. His mid upper arm circumferences is 22.6cms, his triceps skin fold thickness 2.6 mm. He shows no obvious signs of early aging in the skin around either the eyes or the hands although there is solar damage evident in these areas of skin. The

client is sexually mature and Tanner stage 4/5 using this scoring system. On examining his mouth he has no erupted wisdom teeth (permanent third molars). There is no molar wear evident on the upper and lower jaws; there are several cavities as described. There is no gum inflammation or damage evident to my examination. There is no evidence of surgery. The morphology of this client's teeth and gums was carefully documented and compared with reference charts. His dietary history and socioeconomic status were taken into account in the estimation of his dental condition.

**Age assessment of this client**

The physical measures of this client including his height, skin fold thickness, body mass index, the skin signs seen in young adults and his dental examination today were consistent with a chronological age of 14 years when compared with published measures appropriate for adolescents and young adults. The narrative history provided does not provide any material to contradict this estimate or support another. The client has a number of skin changes that are deceptive, suggesting he is older, but in my opinion these are not linked to his
chronological age. These observations are supported by the non-objective assessment of the psychological maturity of this client during the interview, particularly in his interactions with myself and other staff during the appointment; the client behaves like a young adolescent. The physical measures have a published error of 2 years: more narrow error margin is probably not possible.

**Further possible steps for age assessment**

These specific measures of age may be extended if required by repeated measures over time (to estimate any height and weight velocity). Radiographs of the skull may aid the estimate, although dental aging techniques have an error of 2 years in this age group. Please contact me should there be an indication that these are required. Normal values for such measures are not available for central Asian populations, but are probably not significantly different from those employed in the UK. Use of any non-medical radiographs is not recommended under the current Royal College guidelines.

**How does this report compare with others I have prepared?**

In 2005 approximately 500 clients were seen for age assessment, referred from a range of sources. My age estimations for this group demonstrated 55% to be less than 18 years, and 12% to be 16 years or less in age.

**How might this assessment be compared with another?**

This holistic report of [A] is based on a number of objective, quantified forensic measurements, carefully collected and compared with the appropriate population data sets.. ."

**7.** At this point reference was made by Dr Michie to notes 2 and 3 to his first report. Note 2 was headed "Background to Age Assessment techniques: Evidence:", and cited various publications. Note **3** was headed "Dental Age Assessment: Evidence:", and gave four citations. The third of these was:

> "Mincer HH, Harris EF, Berryman HE. The ABFO Study of Third Molar Development and its Use as an Estimator of Chronological Age. (***JForen***Sci 1993; 38: 379-390)"

This paper will be referred to in this judgment as "the ABFO Study"

8. Dr Michie's first report continued:

> "Each measurement has an error; the final error is calculated on the basis of error propagation.. ."
>
> **Conclusions**
>
> Following an interview and an initial examination using recognised, validated, published and logical methods of measurement [reference was again made to notes 2 and 3] it is my independent opinion that [A] age is consistent with an age of 14 years. Please contact me should further details be required, if the authenticity of this report needs to be checked or further reference material would be contributory."

9 In response to Dr Michie's first report, the defendant sought the opinion of Mr Ritchie. An OPG X-ray of the claimant was arranged. "OPG is short for Orthopantomograph, a panoramic dental X-ray film produced by rotating a horizontal arm holding an X-ray source in a half circle from ear to ear. Having received the X-ray film, and Dr Michie's first report, Mr Ritchie travelled to Liverpool on 13 June 2006 where he met the claimant.

10. Meanwhile on **7** June 2006 the claimant told his solicitors that he had been taken to the dentist to have his teeth photographed, but was unclear as to the reasons for this. On 8 June 2006 the claimant's solicitors wrote to the defendant. Among other matters, they asked the purpose of the dental assessment. They requested that, if it were intended to use the dental assessment as a method of assessing age, then a copy of any report be forwarded to them. A reply was requested by 4 pm on Wednesday 14 June 2006.

11. Mr Ritchie's findings were set out in a witness statement using the form commonly adopted in criminal proceedings. The section of his report dealing with his findings began with some observations on what had been said in Dr Michie's first report:

> "I have seen a number of similar reports complied by DR. MICHIE. In some, though not here, he states, correctly, that dental methods of age assessment are the most accurate in the age range concerned.
>
> He also sees fit, though a purely medical man, to comment on wholly dental matters, as he does in this case. His dental "findings"as stated fall under three headings:
>
> A) MEANINGLESS to me as "The morphologyof teeth and gums.." and "His dietary history..".
>
> B) IRRELEVANT as "no molar wear" and "no evidence of surgery".
>
> c) NONSENSE-
>
> 1 "No erupted wisdom teeth". There were three -see below
> 2 "no gum inflammation". There was marked chronic redness, swelling and recession of the gum around the lower front teeth -see below.
>
> DR MICHIE obviously had no idea what he was looking at and his conclusions are therefore wholly flawed in my opinion."

12. Mr Ritchie's visual findings were as follows:

> "[A] possessed thirty-one permanent teeth, or parts of them. Most were fairly healthy but three, the first molars at upper left and lower left and right, were very severely decayed to the point where there were only fragments of the roots left -these were easily visible. In all three areas the "gaps" had partly closed as a result of forward tilting of teeth behind so that, at lower left, the "gap" was reduced by around 1/3and in the other two areas, by nearly *1/2*There were three wisdom teeth clearly visible at upper left and lower left and right. They had not appeared recently but were fully erupted, so that when [A] closed his teeth tighter, the wisdom teeth were in full biting contact with those opposite. There were other areas of decay (caries) much less severe than the gross first molar damage referred to. The only area of relevance was a moderate cavity on the outer wall (nearest the cheek) of the upper left wisdom tooth.
>
> The gum on the fronts of the four lower incisors, as well as in between them, was in a state of chronic (long -standing) inflammation with obvious redness and swelling. The edge of the gum had clearly receded, the more so if one took account of the swelling."

13. In relation to the X-ray, Mr Ritchie said this:

> "The OPG, which was well taken, confirms the above points where appropriate. It also shows the upper right wisdom tooth to be buried in the jaw. Root development of the two lower wisdom teeth is very similar, with the tip of the front root fully formed and that of the back root very nearly so.
>
> The roots of the upper right wisdom tooth cannot be seen because the tooth has grown heavily angled outwards so that the roots lie behind the crown on X-ray. The roots of the upper left wisdom tooth appear to be fully formed."

14. The remainder of Mr Ritchie's first report dealt with age estimation and his conclusion. It was in these terms:

> "The most accurate feature is the degree of growth of the wisdom tooth root tips. Applying the A.B.F.0 Study (see reference) [the reference gave a citation for the paper by Mincer and others cited at note 3 of Dr Michie's first report] tables gives results in his case as follows:
>
> | Upper Jaw | Lower Jaw |
> |---|---|
> | 50"centile 20.02 yrs | 50"centile 20.00 yrs |
> | 10"centile 17.58 yrs | 10’’centile 18.00 yrs |
> | 90"centile 23.18 yrs | 90"centile 23.00 yrs |
>
> So that [A] is most likely to be twenty (20) years of age.
>
> Of the other aspects referred to, none is better than a general guide but;
>
> a) The degree of redness, swelling and recession of the gum in the lower front area is to be expected in the adult, not the child.

b) The wisdom teeth had had sufficient time to erupt fully into contact.

c) The upper left wisdom tooth had been present in the mouth long enough to acquire a moderate cavity (the formation of which is, in itself, usually a slow process).

d) The gross destruction of the upper left and both lower first molars also points to the adult rather than the child.

e) All of these features point to an older rather than younger age, so that;

MY CONCLUSIONS ARE

a) That [A] is, beyond reasonable doubt, at least 18 years of age.

b) That, on the balance of probability he is very nearly 20 years old

c) It is quite possible that he is 23 years old."

15. Mr Ritchie's witness statement was dated 20 June 2006. It was received shortly after that date by the defendant. However the defendant did not at that stage give any substantive response to the claimant's solicitors' letter of 8 June 2006, nor to a chasing fax sent on 14 June 2006. Without informing the claimant's solicitors of Mr Ritchie's report, the defendant on 3 July 2006 decided that the claimant was over 18 years old. It withdrew children's services from him, and took him to the Home Office, which in turn set about moving him to Dover to be accommodated with adults in National Asylum Support Scheme accommodation. The claimant's solicitors had no inkling of this until on 3 July 2006. On that day Asylum Link, a centre for asylum seekers and refuges, telephoned them, and explained that the claimant was in a car on his way to the Home Office with a social worker. On 4 July 2006 the claimant's solicitors received a copy of Mr Ritchie's witness statement. On behalf of the claimant his solicitors then launched the present proceedings, against not only the present defendant but also the Secretary of State for the Home Department as second defendant. Declarations were sought against the present defendant. These included a declaration that it erred in not giving the claimant an opportunity to address matters relevant to its decision. As against the second defendant a declaration was sought that he had unlawfully fettered his discretion in automatically accepting that the claimant was over 18 years old. As against both defendants an interim order was sought requiring that the claimant be moved back to Liverpool.

16. The matter came before Wilkie J on the papers. By an order dated 7 July 2006 he adjourned the application for permission for 7 days to permit the defendant to file an acknowledgment of service explaining the lack of any communication with the claimant or his representatives before acting in reliance on Mr Ritchie's report. Wilkie J declined interim relief, and commented:

> "The report of Mr Ritchie appears compelling and may be determinative but I have concerns about the procedure which the defendant must address before permission and any interim relief is determined."

17. After filing of acknowledgements of service by both defendants an order was made by Burton J dated 28thJuly 2006 directing that the application for interim relief be listed on 1 August 2006. A hearing took place that day before Jackson J. The present defendant undertook to provide the claimant with accommodation in Liverpool, to provide financial support for him, and to pay for his return from Kent to Liverpool. The application for permission against the present defendant was, on this basis, adjourned by Jackson J for a period of 5 weeks to enable discussions between the experts and production of a further report by Dr Michie if he deemed it appropriate. Undertakings were given by the Secretary of States that he would take no further part in the investigation or resolution of the assessment of the claimant's age, and that he would not curtail the claimant's discretionary leave to remain in the United Kingdom before the outcome of the present judicial review. On that basis Jackson J dismissed the application against the Secretary of State.

18. It was in these circumstances that Dr Michie responded to Mr Ritchie in a second report dated August 2006. Commenting on precautions needed before an OPG is performed, Dr Michie noted inferentially that the Royal College ,of Radiologists and the Royal College of Paediatric and Child Health do not permit "forensic films". By contrast the General Dental Council and the National Radiological Protection Board ("NRPB) have permitted forensic films, but both require that there be informed and written consent. He explained that there was extensive literature dealing with concerns about the use of radiation for age determination, in particular as to increasing the risk of malignant transformation of human tissues. He cited Home Office guidance that it was inappropriate for X-rays to be used merely to assist in age determination for immigration purposes. The guidance stated that under .no circumstances should a caseworker suggest that an applicant should have X-rays for this purpose. Section 3.5 of Dr Michie's second report concluded that the claimant had not freely provided consent to the OPG. Section *3.6* expressed concern that there was no record that the result of Mr Ritchie's examination had been communicated to the claimant's general practitioner or dental surgeon, an omission which was said to be in contravention of recommendations of the Dental Council and the NRPB. Sections 3.7,3.8 and 3.9 require to be set out in full:

"**3.7 What comments may be made of the OPG collected?**

The film is not labelled with the client's name, any registration numbers, the right/left orientation or the date on which it was collected. These are routine for most clinical services. As a consequence, a film of his nature could not be used as evidence in any medico-legal situation. Identification is particularly important to asylum seekers. There is no record of the radiation exposure given to **[A],** the dose used or the equipment employed in the collection of this film. The film shows a vertebral shadow, but demonstrates the third molars clearly. The film demonstrates features evident to the untutored eye of a paediatrician, notably that there are several first molar teeth missing and evidence of decay.

**3.8 Can this OPG be employed for accurate age assessment?**

No. Although I am not a dental surgeon, the published literature on the subject of age assessment based on the third molar describes significant difficulties in reviewing clients with missing teeth. Missing teeth result in movement of the remaining growing teeth, leading to an altered pattern of tooth placement and eruption. The problem is particularly marked in those who have lost teeth on both sides of the jaw, as is the case with this [A]. I would therefore recommend a second opinion as to the value of using this OPG for age determination.

**3.9 What does the reference cited inform one of the methods used in the determination of age from an OPG?**

At the risk of violating copyright, I enclose a copy of Mr Ritchie's reference, the only one cited in his report, for your use. Please note that this paper is referenced in my age assessment reports along with a number of others relating to forensic dentistry. A number of points may be made from this reference relating to Mr Ritchie's report as follows:

a) The research work described in this paper is aimed at establishing benchmarks for the use of the third molar in age assessment of American whites aged 14-24 years.

It is not therefore directed at assessment of the type of client in the case of [A], or indeed of comparing this type of age assessment with any other. Clarification of this point is made in the discussion and literature review, first

paragraph on page 387, in which it is considered whether one can use the grade of tooth formation to assign a subject a particular chronological age. It is observed that ethnic and socioeconomic variables influence the standards used ("standards based on one locality are biased in terms of their ethnicity and socioeconomic milieu"). I note that Mr Ritchie takes no account of the difference between this client, in any sense of socioeconomic status, nutrition or ethnicity, and the standards he uses based on American whites.

b) This third molar is described on page 379 as "the most variable tooth in the detention" and on page 386 as a "far from ideal development marker". These points need to be kept in mind when examining why the authors find this degree of variability. It is interesting that one does not find this type of comment in Mr Ritchie's report. Reasons for this variability are detailed in the paper, and will be outlined in later points here.

c) This paper cited as his sole source by Mr Ritchie describes two distinct methods of age assessment. It is unclear from his reports or reference to this article which of these methods Mr Ritchie employs. As each has distinct statistical assumptions, it is important to distinguish between them. Both require the dental surgeon or technician to grade the development of the third molar from a radiograph of appropriate quality. The grading technique has 8 stages and was described by Demirjian and colleagues in 1973. In one method the developmental grade may be used to predict chronological age. In the other the developmental grade is treated with a statistical method known as regression **analysis to determine the**likelihood or degree of confidence one can have in the client having a particular chronological age. Which method, or both, is used by Mr Ritchie? I note in his reports he does not grade the development of the third molars from A to H as described in this paper. This makes his results impossible to challenge, particularly if the radiograph is not available to other specialists. Once the method and values calculated by Mr Ritchie are available, one might be able to investigate the process of his methods further.

d) If the first strategy is applied, as in Table 4 of this paper, the data bear a clear footnote that the figures displayed are based "just on whites". In other words, the population surveyed in this study. The values are not applicable to other groups for the reasons outlined in notes a ) and b) above, and the first paragraph of page 387 explains in detail why this approach is "far too imprecise to be much use in forensic dentistry". Further, the paper observes that developmental grades E, F and ***G*** are "essentially a coin toss whether a subject with one of these three grades is younger or older than **18."** (p.387). It is therefore of some importance for **Mr** Ritchie to state his actual scoring or measurement of [A], rather than providing a final statistic, if this is the method he employs.

e) Alternatively, as outlined in Table 5, a regression analysis may be applied to predict chronological age. This technique provides an estimate of certainty with standard deviations. Several observations may be made by any observer of Table 5. Firstly the footnote indicates the data are used only for "white data" Secondly, no centiles results are given. **A** third observation is that the regression methodology requires a calculation of observed minus predicted age. If one reviews Mr Ritchie's report relating to [A], it becomes very unclear as to how he has employed these data, as the client is not an American white. Further, it is unclear where the centiles he cites are derived from. Finally it is unclear from his report what values he has used for either the observed or predicted ages of the client in order to apply this method.

**f**) The paper makes a number of comments on left/right differences in the development of the third molar, differences between the upper and lower jaw, differences between the sexes and the possibility of using sex-specific norms. However none of these points is made in the report from Mr Ritchie, although this is his only source of information cited in the area. The differences relating to ethnicity and socioeconomic background are not recorded in his reports. Are they used? Does Mr Ritchie have other data sources that are not cited?

g) The paper by Mincer et al may be examined further if required. For instance, it acknowledges inter-observer variation (p380) and makes some estimate as to the accuracy of the methods (381-2). These aspects have been researched more recently in works cited in my age assessments and in the references forwarded to you earlier. It is for this reason and based on this literature that I provide some idea of the levels of error inherent in dental assessments in each of my reports."

19. At paragraphs 3.10 and 3.11 Dr Michie said that recent publications suggested that American white standards were not applicable to other ethnic groups, and that there had been significant recent changes identified in growth patterns since the paper by Mincer had been published. Published literature suggested some measurable changes in dentition patterns over the same time period.

20. Paragraph 3.12 read:

> **"How useful are the figures in Mr Ritchie's Report?**
>
> Mr Ritchie provided a series of age estimate figures for the upper and lower jaws (to two decimal places), then summarises these to provide an age with no decimal places. He gives as his ranges of age the 10"and 90thcentiles. This is in contrast to the ranges provided by others in the field of age estimation, which are given either from the 5th to the 95" centiles or as ± 2 standard deviations (as in the Mincer paper). It would appear therefore that Mr Ritchie has attempted to reduce the errors on his test interpretation more accurate for reasons that are not stated.
>
> It is unclear as to how or why two decimal places are included at one point in the estimate (giving the impression of considerable accuracy) but left out at another. By what process are these calculated or measured initially, and by what process are they dropped or removed? The answers to this might influence the level of accuracy one might apply to the results of this report.
>
> It will be observed however that using relatively old standards on American white patients, Mr Ritchie's error estimates have an error of ± 2.5 years."

21. After setting out comments on the lack of statistics in relation to Mr Ritchie's own work, along with the lack of any publications in relation to the use of the system in the ABFO Study for those born is Afghanistan, Dr Michie turned to the causes of variation in dental age measurements. At paragraph 3.15 he said:

> "Dental maturation is subject to genetic and environmental influences. The most significant environmental factors documented in the published literature are nutritional: a number of medications additionally influence tooth development. Genetic influences include a wide range of clinical syndromes that influence tooth development: whether these are absent or poorly developed. Nutritional causes such as dietary sugar influences

dental decay and tooth loss. Although [A] has clearly lost teeth in his OPG, the cause or consequence of this does not appear to have been taken into account by Mr Ritchie."

21. At paragraph 3.16 Dr Michie said that there appeared to be a conflict of interest in that Mr Ritchie was a declared Home Office advisor, who had not claimed membership of an expert witness group. Dr Michie added at paragraph 3.18 that Mr Ritchie's views had not been expressed by any authoritative working group in this area. The use of white American standards on an Afghan client did not constitute useful evidence.

22. Paragraph 3.17 read:

> **"3.17 Do I agree to the age estimation provided to Liverpool Social Services by Mr Ritchie?**
>
> No. I would hold to the observations stated in my report. There are reasons to doubt the value of dental age assessment in the case of this client and their applicability, let alone their validity needs to be questioned. My report attempts to provide a number of age assessment methods, of which third molar eruption is only one. Given the complexity of [A]'s dental development (see 3.8) this more broad approach is likely to provide a better chance of accurate age assessment."

24. The remainder of Dr Michie's second report needs to be set out in full:

> **"3.19 What explanation may be given for the differences in findings between Mr. Ritchie and myself?**
>
> A number of clear differences between the two clinical examinations exist, although both examinations agree that [A] suffers from dental decay. Mr Ritchie identified 3 erupted third molars whereas I did not identify any. The OPG however demonstrates that due to the disappearance of the first molars on both sides of the lower jaw, the third molars have moved forward, and may to my untutored eye appear to be second molars.
>
> **3.20 What other comment may be made of the clinical aspects in Mr Ritchie's report?**
>
> Mr Ritchie found a number of acute abnormalities on his examination of [A] and his OPG. This examination had been requested by the Social Services caring for [A]. Given his history of dental pain together with the acute observations, one would have expected the average clinician and Social worker to have responded to the abnormalities detected and to refer this client to a practising dental surgeon for treatment. There is no evidence that this was carried out from the documentation received (although it is possible this has not been submitted). Given the very difficult situation in which the client was placed by Social Services in effectively forcing him to have this examination, one would expect at the very least an appropriate clinical response to the information obtained.
>
> **4.0 Conclusions**
>
> An age-disputed asylum seeker from Afghanistan, [A], received an OPG radiograph at the request of Liverpool Social Services and Mr Ritchie, a forensic odontologist, in order to ascertain chronological age. The

odontologist concerned has a declared conflict of interest in the outcome of any age assessment. The procedure was carried out despite cautions provided by several national British professional organisations and the direct recommendation of the Home Office itself. These are based on the risks of the procedure and the lack of accuracy of the result. There is no evidence provided to show the client provided complete informed consent for the procedure as recommended by the General Dental Council. The OPG supplied does not meet routine clinical standards.

The age estimate provided by Mr Ritchie on [A] (with an error of between 2 and 3 years) cannot be accurate or useful as it does not account for the clinical state of the client and is based on inappropriate standards. The technique employed by Mr Ritchie is not evident from the materials supplied or the reference cited. Published literature relating to dental age determination demonstrates it has been found inaccurate in determining the age of asylum seekers.

An important procedure carried out without evidence of consent has been used contrary to guidelines and recommendations. It has produced unhelpful evidence. A young asylum seeker has received unnecessary radiation.

**5.0 Consequences**

A number of observations may be made relating to process in this case, some of which might potentially lead to serious allegations relating to the probity and indemnity of those involved. These may of course be irrelevant if notes relating to the consent, registration and documentation of the OPG carried out on [A] exist and have not been forwarded to me.

1. There appears to have been a series of failures in the duty of care, irrespective of [his] chronological age, provided to [A]. As there is no evidence of his competence to consent to medical procedures, the performance of the OPG may represent an assault, exacerbated by the fact that the client may have had no choice in the matter. The procedure was carried out against guidelines from the Home Office and Royal Colleges. There is no evidence in the report of appropriate levels of care of a potential minor having been taken in the process of Mr Ritchie's analysis. These matters should be brought to the attention of the Liverpool Area Child Protection Committee and the role of MS G Martin in arranging this procedure merits careful scrutiny.

2. There have been failures of clinical systems in the provisions of an OPG examination for the purposes of age assessment contrary to guidelines and without appropriate informed consent. The exact mechanism of the arrangement of the OPG in this case is not clear, but would appear to involve the Borough Council rather than a general practitioner or dental surgeon with whom [A] was presumably registered. It is not stated who was responsible for the clinical request in Liverpool (other than a Social worker who probably did not have access to this facility). It is unclear who provided or regulated the investigation. It is unclear whether these parties were aware that the Royal College of Radiologists has recommended that radiographs are not performed for the purposes of age assessment. The issue of clinical records is unclear too. Using the Bolam principle, this standard of care falls below that

expected of an average clinical service, and is therefore open to litigation by the client. The Patient Safety mechanisms in the centre involved in takiig these radiographs needs to be informed of these breaches, as does its Calidicott Guardian and the General Dental Council.

3. There has been a missed opportunity to re-measure the client's height: should he have gained height, as indicated in my report, his chronological age would have been readily demonstrated with some degree of accuracy.
4. As this situation has been repeated on a number of clients by Liverpool Social Services, representations may have to be repeated in several centres and to central regulatory bodies. I am not aware of any indemnity system that covers such procedures, performed contrary to national recommendations."

25. The claimant's application was due to come back before the court on 5 September 2006. However, that hearing was adjourned as the defendant wished to have more time to consider Dr Mitchie's second report. The upshot was that the defendant in due course provided the claimant's solicitors with Mr Ritchie's second report, dated 16 September 2006 but signed by Mr Ritchie on 21 September 2006. It is necessary to set out substantial parts of this second report. For this purpose I have inserted paragraph numbers, which I have placed in square brackets. So far as material, Mr Ritchie's second report stated:

"[2] I am astonished that, having produced his first flawed and erroneous Report, Dr. Michie now changes track and chooses to remain outwith his *own* field and criticizes my work, of which area he clearly has no worthwhile knowledge.

[3] I repudiate every aspect of his report bar one and I deal with that first. It is not known whether there is any inter-racial variation in age for the various stages of tooth development -the literature, such as it is, is equivocal and there is no information available for Afghani people -not that they seem to be very different from us in facial detail in the same way that, for example, the black races are. This area was regularly of importance during fourteen weeks I spent in Thailand last year dealing with post-Tsunami identification where every recovered body was assessed as to age; the consensus of opinion among the many odontologists present (from many countries) was that, if it occurs at all, racial variation is probably very small. Given that there is a considerable "safety margin" of two years incorporated in my conclusions and that, in any case, any possible racial variation could be in either direction, I do not believe that this area throws any doubt at all upon my conclusion.

[4] MY INDEPENDENCE. Dr. Michie, at his para 3.16 accuses me of potential bias as a "declared Home Office Advisor" and states that I do not "claim membership of an Expert Witness Group".

[5] As to the first point, the advice to the Home Office concerned was related to their HOLMES computer system and occurred some ten years ago -hardly a cause of bias! As to the second point, Dr. Michie clearly does not read very carefully. My statement preamble states that I am subject assessor and a member of the medical sector panel of, and, by implication, registered with the Council for the Registration of Forensic Practitioners. This body was set up some five years ago and requires a far greater degree of peer review for successful application than do the other registers. I have been involved since early days and am considered to be of sufficient

status that I am part of a verification process for other dental applicants.

[6] AGE OF CONSENT. It is common ground that valid consent is required for any dental or medical examination and that, in general, those below sixteen years of age cannot give it except subject to Frazer (Gillick as was) competence. Dr Michie makes much of his implication that I mishandled this aspect, far from it -but he did! I spent a considerable time explaining to [A] (via an excellent interpreter) who I was, why I was there, what I wished to do and the implications of that -such had, I was told, been passed on to [A]'s legal representatives and he was present with their agreement. I stressed to [A] that he was quite free to refuse if he wished. During the fifteen minutes or so of this interchange, I observed [A] and noted that he appeared to be a highly street-wise, coherent and self-confident young adult -no timorous adolescent -clearly over sixteen years -competent to give his consent. He knew perfectly well what an X-ray was.

[7] In contrast, Dr. Michie (March 2006) does not appear to have tested for what he calls Gillick competence at all yet, on his front page, below a heading of " ..14 years" he blithely states that "he" ([A]) "gave informed consent verbally"

[8] A recent case in Crown Court has some bearing here as well as on the propriety of X-ray examination -see below.

[9] THE OPG X-RAY ITSELF does not bear a name but its provenance and continuity can easily be verified by Liverpool Social Services, I believe. The original does have left and right marked so it can be easily orientated. It is good, clear film entirely fit for purpose.

[10] THE PROPRIETY OF X-RAY EXAMINATION. Please see Appendix A for my specific attitude.

[11] In general, it is obvious that the risks involved in carefully conducted X-ray examinations are either non-existent or so small as to be not worthy of consideration. I do not know what the figures are but crossing the road is obviously a far riskier undertaking. There must be many hundreds killed or injured in the former occupation but, in the latter, I suspect nil.

[12] I was involved in a recent Crown Court case at Peterborough (I am not sure if it is yet concluded so no details here) where both charge and sentence apparently depended upon the age of the defendant -he was, apparently, an age-disputed asylum seeker -and the trial judge ordered an adjournment, with the express request that I provide an age estimation based upon an OPG X-ray, with the consent of all involved. This I did and my evidence accepted without appearance. I would prefer to rely on the procedure and view of the trial Judge than Dr. Michie's comments.

[13] IN CONCLUSION. Dental age assessment is simply an evaluation of the likely chronological age of an individual based upon the only indicator of growth available at the time (the development of third molar roots) coupled with any clinical evidence that may be

present. It is not exact -Dr. Michie's reference to decimal figures is simply laughable -0.02 of a year is about 7 1/2 days -but I have allowed for possible variations and have, nevertheless, never been more certain of my conclusions.

[14] [A] IS, ON THE BALANCE OF PROBABILITY, WELL OVER EIGHTEEN YEARS OF AGE."

26. Appendix A to Mr Ritchie's second report acknowledged that he was not an expert in radiology, but offered 8 remarks. Remark A contrasted dental X-rays and medical X-rays. Remark B pointed out that most dental X-rays were taken in the absence of symptoms, while Remark C said that many, probably most, dental X-rays were taken for purposes which were not at all or only marginally therapeutic. Remark D said that dental X-rays were not thought to have any damaging consequences if precautions were taken, while Remark E stated that guidelines from the General Dental Council and other bodies did not bar forensic use of X-rays. Remark F said that a dental X-ray to help to establish age involved no greater risk than if taken for clinical reasons, and commented that whether a person was over 18 or not was of greater importance to an asylum seeker than whether he had a small cavity in one of his teeth or not. Remark G said that for all these reasons forensic dentists were "quite happy to recommend X-ray examinations as appropriate." Remark H added that "soft" X-rays were routinely taken of suspected hard drug "packers and stuffers". To the best of Mr Ritchie's knowledge there was no opposition to this, which could hardly be said to have therapeutic value.

27. After a further exchange of correspondence between the parties the defendant took the decision which is now under challenge. That decision was set out in a letter dated 6 November 2006, sent by the legal services department of the defendant. The letter stated:

"My clients have now had the opportunity to consider their position in the light of all the reports, i.e. Dr. Michie's dated March and August and Mr. Ritchie's dated the 20" June, and the 15"September 2006.
They have decided they prefer the opinion of Mr. Ritchie to that of Dr. Michie, for the following reasons:

1 The primary issue the reports address is the assessment of age by reference to examination of the teeth and of dental X-rays, in particular as regards wisdom teeth, i.e. third molars.
2 Mr. Ritchie is a dental surgeon who has far geater expertise in this respect than has Dr. Michie.
3 In particular, he has pointed out in his first report that Dr. Michie in his stated that your client had no erupted third molars whereas in fact he had three. Dr. Michie now accepts that to his "untutored eye" these appeared to him to be second molars. Further, on this point, he appears to have considered the absence of third molars to be significant but now, in his second report, seeks to discount their significance, in that their presence does not appear to impact at all on his assessment of age.
4 Further, Dr. Michie in his first report stated there was no gum inflammation or damage, again apparently attaching some significance to this, whereas Mr Ritchie noted marked chronic redness, swelling and recession of the **gum** around the lower front teeth. These are matters that in addition to the development of the third molars and destruction of three first molars he considered to support his assessment of age, which Dr. Michie has not challenged in his second report.

In short, the authority is more confident in Mr Ritchie being correct as regards dental matters in general."

28. The claimant's application was then due to come before the court on 12 February 2007. That hearing, however, had to be adjourned following a power failure. Following the adjournment the claimant's solicitors notified the defendant of proposed amendments to the claim form. By an order dated 17 April 2007 Wilkie J gave directions for the hearing which eventually took place before me on 21 May 2007.

**Submissions on the Main Issue**

29. At the outset of the hearing, Mr Harrop-Griffiths on behalf of the defendant confirmed that its decision that the claimant was not under 18 had been taken on 6 November 2006 for the reasons given in the letter of that date. The documentary material put before the court included some further notes prepared by Dr Michie on 21 September 2006, along with a third report of Mr Ritchie signed on 28 February 2007. Those documents had not, however, been before the defendant on 6 November 2006, and I shall say no more about them.

30. Mr Ian Wise on behalf of the claimant referred me to the principles stated by Stanley Burnton J in the Merton case. As set out in the headnote at [2003] 2 FLR 888, these are as follows:

> (1) The assessment of age in borderline cases is a difficult matter, but it is not complex. It does not require a trial and judicialisation of the process is to be avoided. It is a matter which may be determined informally provided safeguards of minimum standards of inquiry and fairness are adhered to.
> (2) Except in clear cases the decision-maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision-maker must seek to elicit the general background of the applicant, including family circumstances and history, educational background and activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the given age, the decision-maker will have to make an assessment of credibility by questions designed to test credibility.
> (3) There should be no predisposition to assume that an applicant is an adult, or conversely that he is a child. The social services department of a local authority cannot simply adopt a decision made by the Home Office. It may take information into account, but it must itself decide whether the applicant is a child.
> (4) The local authority is obliged to give adequate reasons for its decision that an applicant, claiming to be a child, is not a child...
> *(5)* The court should not be predisposed to assume that the decision-maker acted unreasonably and carelessly or unfairly. It is for the claimant to establish that the decision-maker acted in such a way."

31. On behalf of the defendant Mr Harrop-Griffiths indicated that propositions (1) to (5) in the headnote were accepted.

32. Mr Wise also drew attention to the decision of Owen J in R (I and 0)v SSHD [2005] EWHC 1025 (Admin). This was a case which concerned the determination of age by the Secretary of State rather than by a local authority. Nevertheless, it was relevant that Owen J had, in material respects, taken the same approach as that identified by Stanley Burnton J in Merton**.**

33. Mr Wise drew my attention specifically to paragraph 37 of Owen J's judgment. That paragraph sets out paragraph 5.6.3 of guidelines published in 1999 by the Kings Fund

and the Royal College of Paediatrics and Child Heath ("the Kings Fund Guidelines"). Paragraph 5.6.3 includes the following:

> "There is not an absolute correlation between dental and physical age of

children but estimates of a child's physical age from his or her dental development are accurate to within ± two years for 95% of the population and form the basis of most forensic estimates of age. For older children, this margin of uncertainty makes it unwise to rely wholly on dental age."

34. Mr Wise referred to the Enfield case, where a similar approach had been taken. In addition, he noted that in that case Jackson J was concerned with a report by Dr Michie that had been lodged on behalf of the claimant. Jackson J described Dr Michie in paragraph 48 as a very experienced paediatrician and a very experienced man in this kind of assessment. At paragraph 49 Jackson J added that in that case the defendant's officers had very little assistance when questioning the claimant. In those circumstances, one would expect particular regard to be paid to the useful and helpful information provided by Dr Michie.

35. The submission made by Mr Wise on behalf of the present claimant was that the defendant was obliged to have regard to a wide range of factors which it ignored, both at the initial stage and in the decision taken on 6 November 2006. The dental assessment had led the defendant to depart from its own social workers' view of the matter. By treating Mr Ritchie's opinion in relation to the claimant's teeth as determinative, the defendant had failed to take into account matters which it ought to have taken into account, and had acted unreasonably.

36. In submissions on behalf of the defendants, Mr Harrop-Griffiths noted that this was the first case to come before the court in which another expert had expressed a view differing from that of Dr Michie. It was accepted that Dr Michie is an experienced paediatrician, but he was not a dental expert. He had acknowledged that the best way of assessing age was through a dental X-ray, but had not acknowledged what the dental X-rays in the claimant's case had shown. In his first report he had missed the fact that the third molars had erupted, he had missed gum information and he had not identified references. If he had not identified the third molars it was difficult to see what he had gained from the ABFO Study. His first report had acknowledged that the values for central Asian population were probably not significantly different from those for North American whites. His second report had envisaged further inquiries. Mr Ritchie had formidable qualifications in dentistry. His assertion was that matters apart from dental ageing were not the best way. Mr Ritchie had expressed forthright views about Dr Michie's expertise in dentistry. Nothing in the material relied upon by Dr Michie showed that it could outweigh the dental evidence.

37. Mr Harrop-Griffiths then at my request dealt with a point which had troubled me. The centile analysis quoted by Mr Ritchie varied slightly from that found in the AFBO paper. This was explained as resulting from an allowance made by Mr Ritchie for the absence of eruption of the upper right molar, and the small extent to which the back roots of the two lower wisdom teeth were not fully developed. I commented that, even if one assumed that Mr Ritchie's adjusted centile table was applicable to consideration of the claimant's dental age, all that the table demonstrated was that around 90% of those with the dental characteristics of the claimant were aged 18 years or over. What that meant was that if one took 100 individuals with those characteristics, somewhere in the region of 9 or 10 of them would be affected by dental developmental factors which led to them having these characteristics at a stage when they were still under 18. The same was true if one applied the approach in the Kings Fund guidelines, referring to 95% accuracy. If one assumed that 95% accuracy could be applied, then in any group of 100 individuals with the claimant's dental characteristics, there would be 4 or 5 who were under 18. I suggested to Mr Harrop-Griffiths that the task for the defendant was to consider whether or not the claimant fell within the "lower centiles", that is, the sub-group of the population which shares the relevant dental characteristics, but is in fact aged under 18. As to this, Mr Harrop-Griffiths said that the ABFO Study used the expression "reasonably certain". The four additional dental points identified as A to D by Mr Ritchie immediately before setting out his conclusion in his first report showed that the claimant was over 18. They were all things more likely to happen to an adult than to a child. The position simply was that Dr Michie had failed to take into account relevant dental matters and had not looked at the matter from Mr Ritchie's perspective. A reasonable local authority was entitled to say that Mr Ritchie's reports set out a

strong opinion which appeared well founded.

38. Commenting further on Dr Michie's reports, Mr Harrop-Griffiths said that Dr Michie's focus had been on dental matters. In response to a question from me, it was accepted by Mr Harrop-Griffiths that it was undesirable for an expert to use expressions such as "beyond reasonable doubts", for there was a danger of usurping the function of the decision maker. However, he submitted that in the light of all the material it was open to a reasonable authority to focus on the dentistry. This was particularly the case when the defendant's social workers had arrived at an age which was 3 years higher than that identified by Dr Michie. It was submitted that the defendant had carried out the sort of exercise it should have done, and that applying a holistic approach it was entitled to regard Mr Ritchie's report as swinging the balance towards a determination that the claimant was aged 18 or over.

**Analysis of the Main Issue**

39. As indicated earlier in this judgment, I did not find the defendant's submissions persuasive. On the contrary, it seems to me that the defendant's approach is both contrary to the principles established in the first instance decisions mentioned earlier, and in any event lacks logic to such a degree as to be unreasonable.

40. As to the governing principles, each of the three cases mentioned earlier makes it clear that before taking a decision as to age, the local authority must have regard to all relevant information. The letter of 6 November 2006 simply shuts out anything other than dental matters. In that regard, of course, it takes the same course as Mr Ritchie. The role of the defendant, however, is not to act as a dental expert. The defendant's role, given the common basis of argument described earlier in this judgment, must be to have regard to the dental assessment in the context of other relevant information. It is impossible to see from the letter of 6 November that the defendant had any proper regard to non-dental matters relied on by Dr Michie. The answer put forward by Mr Harrop-Griffiths was that by this stage attention had focused on the dental issues. I accept that there was a focus on dental issues. At no stage, however, did this become the exclusive focus of attention. No such inference arises from the remarks of Wilkie J on 7 July 2006. Further, paragraph 3.17 of Dr Michie's second report made his position clear. He held to the observations in his first report. His first report had attempted to provide a number of age assessment methods, of which third molar eruption was only one. Given the complexity of the claimant's dental development, this more broad approach was likely to provide a better chance of accurate age assessment. Accordingly I cannot accept that dental issues had become the exclusive focus. The defendant's letter of 6 November 2006 thus took a wrong approach as a matter of law, for it failed to take into account relevant information as to non-dental factors.

41. Turning to the illogicality, it seems to me that a reasonable local authority, standing back from the rather intemperate language used by Mr Ritchie, and examining his reasoning, would not take very long to arrive at the analysis which I put to Mr Harrop-Griffiths. Mr Ritchie's reports do not at any stage grapple with the conclusions inherent in his own centile analysis. There will be, in any group of individuals showing the dental characteristics of the claimant, some who are under 18. It would be manifestly absurd to stop there, and say that because that proportion is less than 50% it follows that on the balance of probability the claimant is 18 or over. What needs to be done is to examine matters other than dental age, in order to see what light they shed on the question whether the claimant falls into that part of the group that is under the age of 18. Those who are making age assessments on behalf of local authorities are not expected to be experts in statistics, but they can be expected to consider assertions which are made in reliance on statistics and to apply common sense to those assertions.

42. In my view a reasonable local authority applying common sense to Mr Ritchie's analysis would have concluded that at least two queries obviously arose. The first was, given that on any view some of those with third molar development similar to the claimant formed a sub-group of children under 18, how should one go about deciding whether the claimant fell within that sub-group? The second query concerned dental matters other than third molar development. Did these

matters in reality add to the position reached as a result of analysis of third molar development? Or might they merely be the result of dental development factors which produced, in relation to third molars, the sub-group of children under 18?

43. Mr Harrop-Grifflths drew my attention to the reasoning in the letter of 6 November 2006. It is true that the letter made reference to dental matters other than third molar development. The purpose of doing so, however, was simply to cast doubt on Dr Michie's dental expertise. Nowhere in the letter of 6 November 2006 is any attempt made to grapple with the two queries I have identified. The present case appears to me to be a classic case of failure to have regard to the commonsense position which underlies a statistical analysis. I do not believe that it is imposing too high a burden on local authorities to conclude that the defendant in this case, by failing to consider the consequences of Mr Ritchie's analysis, took an approach which fell outside that which was reasonably open to it.

44. It is not necessary for the purpose of this judgment to examine the attacks made by Dr Michie on the professional integrity and conduct of Mr Ritchie, nor the concerns he has raised about the defendant's role in arranging the OPG. Nor is it necessary to examine the attacks made by Mr Ritchie on Dr Michie, including as to his dental expertise. It is, however, desirable to make some general comments about expert reports, a topic which I shall deal with later in this judgment.

**The Second Issue**

45. Mr Harrop-Griffiths accepted that the decision on 3 July 2006 involved a breach of natural justice, for it had been made without giving an opportunity for the claimant to make representations. He opposed the grant of a declaration, however, on the ground that there was no need for it. The decision of 3 July 2006 had now been overtaken by the decision of 6 November 2006. I consider that the course of events prior to the decision of 3 July 2006 involved a blatant failure by the defendant to observe elementary principles of fairness. When the claimant's solicitors became aware that there was to be a dental examination, they specifically asked to be informed whether. this was for the purposes of age assessment, and if it were for that purpose, to be given sight of any report. Those requests were completely ignored. It will often be the case that a declaration as to past events would be pointless. However, in the present case I regard the failures by the defendant as so blatant as to make it appropriate to grant the declaration sought.

**Expert Reports**

46. I do not in this judgment make definitive criticisms of either Mr Ritchie or Dr Michie. As I indicated to counsel during argument, I confine myself to identifying questions which, as it seems to me, fly off the page when the defendant is considering the material before it. This case does, however, provide important lessons for those who provide expert reports to local authorities. The first is that experts must be careful to limit themselves to their area of expertise. Plainly a person with dental expertise -whether that be specialist dental expertise in the case of Mr Ritchie or more limited dental expertise in the case of Dr Michie -can express a view as to the dental age of a particular individual. Only a person with wider expertise, however, can offer a view as to the strength of particular non-dental factors in reaching a conclusion as to age. Second, those who are experts in a particular field should normally confine themselves to setting out opinions on a relevant topic. Commentary as to the independence of an opposing expert is not generally an appropriate matter to be included in a report. That type of attack on an opposing expert may of course properly be made by legal representatives -whether in written submissions to a local authority or in argument before a court. An expert might in an appropriate case provide to legal representatives information which may be relevant for this purpose. This should be done separately from any report. However, the responsibility for checking such information and for advancing any attack upon the integrity of an opposing expert (as opposed to the soundness of the opinions of that expert) must be left to others. Third, it seems that the ill feeling between these two experts had grown to such an extent as to lead not only Dr Michie to make comments about his opponent's independence but also to Mr Ritchie expressing himself in terms which, taken at face value, indicate a lack of the professional detachment which one would expect. The

purpose of an expert's report is not to fan the flames of the dispute between the parties. It is, rather, to identify particular questions of expertise, and to explain in a fair and impartial way the information that is available on those questions. I stress that in making these comments I do not pass judgment upon Mr Ritchie or Dr Michie. Insofar as these comments or any passages earlier in this judgment might appear to imply any criticism of either of them, no such implication should be drawn. They have not had a chance to defend themselves, and accordingly I limit myself to pointing out matters which in my view call for attention for the future.

**Conclusion**

47. For the reasons given above the defendant's determination made on 6 November 2006 as to the age of the claimant will be quashed, and a declaration will be granted that the defendant's decision on 3 July 2006 as to the age of the claimant was unfair as it deprived the claimant of the opportunity to make representations. An order will also be made that the defendant shall no later than 31 July 2007 determine what it considers to be the claimant's age and give notification in writing to the claimant's solicitors of the same, and shall take no action adverse to the claimant until the expiry of 14 days after the giving of such notification. The defendant objected to this order, or at least to a deadline of 31 July 2007, saying that it needed more time because it intended to seek a consultant paediatrician's opinion. However, the defendant is plainly under a duty to form its own view of the matter with all reasonable speed, and I consider that by giving the matter an appropriate degree of urgency it will be possible to obtain a consultant paediatrician's opinion and give appropriate consideration to that opinion by 31 July 2007. A period of 14 days thereafter has been allowed so that the claimant's solicitors can consider any adverse notification and give advice to the claimant -including advice on the observations made in the section of this judgment headed, "A Note of Caution".