Neutral Citation Number: [2014] EWHC 3187 (Admin)

Case No. CO/471/2014

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

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Tuesday, 25 March 2014

B e f o r e:

MICHAEL FORDHAM QC (SITTING AS A DEPUTY HIGH COURT JUDGE)

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

Between:
THE QUEEN ON THE APPLICATION OF BG

Claimant

v

OXFORDSHIRE COUNTY COUNCIL

Defendant

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

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

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

Mr Azeem Suterwalla (instructed by Scott Moncrieff & Associates) appeared on behalf of the **Claimant**
Mr Matthew Gullick (instructed by Oxfordshire County Council Director of Law) appeared on behalf of the **Defendant**

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

J U D G M E N T

THE DEPUTY JUDGE:

Introduction

1. This is a claim for permission for judicial review in an age assessment case. The claimant is an Eritrean asylum seeker who arrived in the United Kingdom on 16 October 2013, or at least was encountered on that date by the authorities. She was taken by the police to a venue described on the form as, "Oxford Custody". It being recognised that she was claiming to be a child the Social and Community Services Emergency Duty Team of Oxfordshire County Council sent one of its team workers who was able to talk to her with an interpreter down the phone and reach an interim age assessment which put her age as, "Query 17". The initial assessment, which was carried out at 6.30 on that day, went into a degree of detail under the same headings as broadly would apply to a full age assessment and that initial assessment document was typed up and is before the court.

2. On 4 November 2013 two other age assessment team members of the Council conducted a full age assessment, as a consequence of which they concluded that the claimant's assessed age was 18 years and 11 months. The claimant was moved to accommodation used for adults on 22 November 2013 and subsequently steps were taken at a pre-action stage and then by commencing this claim for judicial review which comes before this court in open court today pursuant to directions of His Honour Judge Thornton on 12 March 2014.

3. The claimant's case is that her date of birth is 9 January 1997, which means that she is still 17. At the heart of the case is the fact that the initial assessment clearly records her as having said on that occasion that her date of birth was 5 August 1997 and also having said on that occasion that she was 17. The immediate and obvious problems with that are as follows. Firstly, that is a different date of birth from the one which she says is the correct one. Secondly, the age of 17 would not have been correct even on the date of birth recorded in that initial assessment; nor, for that matter, would 17 have been correct on the basis of 9 January 1997. Either of those dates would have meant that she was 16.

4. The test which I have to apply in deciding whether to grant permission for judicial review was described, by reference to earlier authority, in AE [2012] EWCA Civ 547 by Aikens LJ:

> "Permission to challenge a local authority's assessment will only be granted if there is a realistic prospect or arguable case that the court would reach a conclusion that the claimant was of a younger age than that assessed by the local authority."

5. As the authorities in this area establish, the court's function in relation to age assessment involves the court, in an appropriate case, assessing the evidence and arriving at its own conclusion rather than applying the more conventional (and sometimes described as more “deferential”) review function where a public authority has assessed questions of fact, judgment and appreciation. I

say, "court", because this court has the power to transfer a substantive hearing to the Upper Tribunal for that age assessment consideration to take place in that forum and so for current purposes the Tribunal falls within what I have described as the role of the "court". The inquisitorial role that the court on the substantive hearing would discharge was itself summarised in the AE case by reference to earlier authority at paragraph 23. Nevertheless: "The permission stage is an important filter."

6. I have had the considerable advantage of detailed written and helpful oral submissions from counsel on both sides: Mr Suterwalla for the claimant, Mr Gullick for the Local Authority.

Permission for judicial review

7. Mr Gullick submits as to permission that there is here no realistic prospect or arguable case that the court would reach a conclusion that the claimant was of a younger age than that assessed by the Local Authority. I do not accept that submission. Although I am only granting permission, in the circumstances of this case and in recognition of the submissions that he has put forward, I will elaborate on the reasons that have led me to reach the view that I have.

8. Mr Gullick submits that this is a case where the court has before it a full "Merton-compliant" age assessment with proper and detailed reasons leading to a proper and convincing assessment of age. He points, as I have, to the centrality of the problem relating to given date of birth and age. That arose in circumstances where it, alongside other perceived discrepancies, plainly weighed heavily in the evaluation carried out under that age assessment. This led the assessors, when put alongside all the evidence as a whole - including their assessment of the claimant having questioned and observed her – to arrive at the adverse conclusion that they did. Mr Gullick submits that it is obvious that it must be open to any relevant public authority encountering someone claiming to be a child to be able to ask them, and ask them without further delay, their age and their date of birth. He submits there cannot, therefore, be any force in any process objection in this case in relation to the initial assessment. He submits that in this case it is very clear from the materials that there was a major inconsistency in terms of date of birth and, for that matter, age, between (a) what the claimant came to tell the assessors on the full assessment and (b) what she was recorded as having said in the initial assessment. Mr Gullick submits that that major inconsistency is not and never has been adequately explained. He points to the fact that although the claimant suggests that that was a mistake by the initial assessor to record the different date of birth on the full assessment in the handwritten notes one finds a record of the claimant saying: "Maybe gave different date of birth." He points to the assessment itself as reflecting the claimant's own acknowledgement that it was "possible" that she had given a different date of birth. Stepping back from it, one is entitled to add on the local authority's behalf that the date recorded in that

initial assessment must have come from somewhere.

9. Moreover, submits Mr Gullick, whatever the position as a matter of principle, regarding credibility concerns and where they lead, this is a case in which the assessors were entitled (and the court would do the same) to take the inconsistency on the central question of date of birth and age and conclude that there was and is a lack of credibility in the claimant's position. Once her credibility on that issue is so clearly compromised the conclusion can safely be arrived at in this case that she is not, as she claims to be, a child.

10. Moreover, says Mr Gullick, all the evidence would need to be considered in the round and there is no reason to suppose the court would take a different overall view then that conscientiously taken by the assessors who did precisely that, including in their response in a later addendum to further material put forward on the claimant's behalf by an Orientation Programme Coordinator in a letter of 28 November 2013. There are, says Mr Gullick, other features of this case which the assessors were also entitled to regard as unsatisfactory. In summary, the necessary realistic prospect of success is, in all the circumstances, absent. The court's filtering function should result in the refusal of permission.

11. I am not persuaded, as I have already said, that those matters are capable of carrying the day for the purpose of the permission stage test.

12. Mr Suterwalla submits on behalf of the claimant that there are real concerns arising out of the use of an initial age assessment process and the subsequent focus on suggested discrepancies in what the claimant is recorded to have said during that initial assessment compared to what she later says on the full assessment. For the purposes of this permission stage consideration I see the force in that submission. The safeguards on which the authorities in this area insist, focusing as they do on the full assessment, include the presence of a "responsible adult" while the putative child is being interviewed in relation to the relevant substantive topics. On the face of it they also, in my judgment importantly, include the clear recognition as to the safeguard of taking and retaining contemporaneous notes of the assessment interview. Cited to me was the summary of His Honour Judge Thornton QC in AS [2011] EWHC 2091 Admin at paragraph 19 in which he describes the safeguard of the appropriate accompanying adult during the interview and the importance of the full note, see paragraphs 19.1 and 19.3, alongside other safeguards, including attention being given to the level of tiredness, trauma, bewilderment and anxiety of the child being interviewed.

13. I accept that there cannot be any objection to asking about age or date of birth. Indeed, in my judgment, it is clear that the police could ask the same questions for the purposes of knowing whether they ought to be engaging with the local

authority. The fact is, however, that the initial age assessment document is plainly a process involving some detail in interviewing an individual who claims to be a child and in a case such as the present. The realities of that are that it is a process after arrival or interception of the individual, conducted in custody and, in this case, commencing at 6.30 in the evening.

14. It is the detail in the interview process which gave rise to a number of features of this case, alongside the date of birth and age, which were plainly relevant in the view of the two later assessors as, on the face of it, they conducted a process of eliciting responses astute to identify any discrepancy and put it to the claimant. I emphasise that because, although it can be said that the date of birth and age matters are central to the case, it is clear from the ultimate assessment that the assessors considered that they had identified a number of discrepancies viewed against the initial interview with which they did not consider the claimant had adequately or convincingly dealt.In my judgment, it is inevitable that that series of concerns will have informed their overall appraisal as to credibility. Indeed, in the summary grounds in response to this claim for judicial review precisely that point is perfectly properly and understandably made on the local authority's behalf.

15. I have heard submissions on each of the features of a list of factors with which the assessors were concerned and I am not going to lengthen this judgment further by going through each of them. I can, however, illustrate the nature of the concern by taking one example.

16. The assessors were evidently troubled as to an inconsistency, as they saw it, in the claimant's narrative in relation to what she said about how she had come to know her age and date of birth. The discrepancy identified in this regard related to the claimant having described what she was told by her mother when she was 12 but also describing what she said she was told at a much earlier stage when she started her education. Ultimately the assessors took the view that there was a discrepancy which the claimant had been unable to clarify. It came to this:

> "According to [the claimant] she was first told of her age when she was 12 years old ... the assessors therefore asked how she knew her age to be six when she started education ...
>
> ... when asked why, therefore, she had said the first time she knew of her age was when she was 12 the claimant said it was her mother who told her of her date of birth. This was the first time she knew her actual date of birth.
>
> The assessors were left with the view that this response did not explain why her account had changed."

17. Happily, the notes of the full assessment were retained and have been made available to the court and it is possible to trace back in the contemporaneous note what she was actually asked. The question was:

"How know DOB (date of birth).

"My mother told me."

Later the question is asked:

"First time told date of birth?"

And there is, again, a reference to the mother and having joined the mother aged 12.

18. When this suggested discrepancy was identified and put to the claimant, her response was that she had not been saying the first time she knew her age was when her mother told her, she had been saying that was the first time she knew her date of birth.

19. In my judgment, examining with care and with the assistance of both counsel the underlying materials, there is no discrepancy there at all. It would be one thing if one had a mature individual in their first and primary language dealing with this sort of suggested discrepancy. Here, of course, it is an individual claiming to be a child who is alone and in a foreign country with an interpreter. But in any event, on close examination, she is quite right, on the face of it, as to the question she was asked and was answering. I do not suggest that that of itself demonstrates that the claim is likely to succeed but, in my judgment, it does illustrate the problems that can arise in focusing on a series of what are considered to be discrepancies.

20. That example, of course, is one that arises solely on the basis of the ultimate assessment for which there are the underlying notes by reference to which it can be explored. In my judgment, Mr Suterwalla forcefully submits that in the present case the difficulties in relation to the approach that has been adopted are exacerbated by the fact that the notes of the underlying assessment, on the basis of which various suggested discrepancies came to be identified, either were not retained or, in any event, have not been located so as to be able to be examined.

21. There are other features of this case that identify similar concerns. The phrase used in the typed-up initial assessment document when it speaks of the claimant's sister as having been born in Eritrea and being with her mother "When she left" gives rise, when read in context, to what, in my judgment, is an obvious ambiguity. Who is the "she" and what the place is that is being “left”? On one basis that description does not make any sense if it is talking about the mother leaving the claimant in Ethiopia, for the sister had not yet been born. "Precisely", says the claimant: "But I never said that, I was talking about the time which I had left Eritrea to come to the UK". One cannot, as I have said, examine any other underlying material to see whether the assessors were

right or wrong to identify that as another discrepancy that gave rise to their overall concern as to credibility.

22. Since there were a series of features that were viewed in the round it is, in my judgment, the case that once some of them are exposed as, in fact, not displaying any troubling inconsistency it is perfectly possible the overall assessment could materially change when recognising that these are not, in fact, unconvincing answers or discrepancies.

23. Even in the context of the date of birth the underlying notes that we do have from the full assessment do say:

> "Maybe gave different date of birth."

That came to be recorded in the typed-up assessment report as recognising that it was possible. However, looking at that series of questions fairly and in the round it can be seen that the questions start when the claimant is asked about the date of birth being given at the police station as 5 August 1997. The first answer that is recorded is the claimant saying, "I reported 09/01/97". Later on she says again, "I think I said 09/01/97".

24. So far as the age having been given as 17 is concerned, Mr Gullick for the Authority points to the contemporaneous documents and the explanation referred to as to the claimant's state of mind at the time compared to on the later assessment. He submits that it is revealingly only later in her witness statement that the claimant identifies what she says is the practice of referring to age by reference to the number of year that one is in, so 17 to mean 17th year of someone who is 16. I have no doubt that is the sort of submission that will weigh in the tribunal or court's evaluation of the question of fact with which it will, as a result of my grant of permission, need to evaluate.

25. I have had regard to all the other points that have been raised and the rest of material that is before the court. On the face of it, one has, even in the initial age assessment and notwithstanding what was evidently a reasonably lengthy process, the fact that the claimant was at that stage being assessed as a child albeit, "Query 17". One has the evidence of the Orientation Programme Coordinator and, in my judgment, it will be possible properly to place weight on an assessment from an individual who explains that she had five years of experience working specifically with unaccompanied asylum seeking children and had 50 hours of direct contact with the claimant and that she believed, for reasons she explained, that the claimant was correct and truthful in relation to her age.

26. A court or tribunal deciding the substantive stage of these proceedings would have, as I have not, the advantage, no doubt, of primary and direct evidence from those concerned, including, in particular, the claimant, in order to make up its mind as to credibility and the relevance of any credibility concerns.

27. I have also had regard to the fact that, even taking the apparent discrepancy between

the two recorded dates of birth in the forms, it is not as though one of them indicates adulthood; nor is it as though the Authority's assessors took the first of the two dates as being the reliable one on which it should rely.

28. This is always, as everyone recognises – and I have no doubt the Local Authority forefront among them – an anxious context in which the best interests of children are in play. No doubt that it is that context, together with an analysis of the statutory scheme, that gives rise to the specially heightened function of a reviewing court in this area.

29. It is for those reasons that I came to the conclusion that the permission threshold of arguability is crossed in this case and there is a realistic prospect that the claimant would succeed at a substantive hearing in relation to her age.

Interim Relief

30. I turn to deal with the question of interim relief. The claimant seeks a mandatory order that the Authority should, from now on, treat her as being a child on the basis of the date of birth that she puts forward. I have already dealt with the arguability of the point. Neither counsel submits that in this case it would be appropriate or necessary for me to apply a "degree of arguability" approach, though were it necessary for the case to be more than arguable, that is to say a "strong **prima facie** case", then I would have been satisfied that this does indeed constitute a "strong **prima facie** case".

31. Mr Gullick submits that I ought not to order interim relief. It would, as he submits, involve the mandatory interference with the conscientious assessment of those within the Local Authority who are charged with that function. It is true that interim relief in this case would involve a mandatory order. This is a case in which the age assessment was speedily implemented and there was not the step taken on behalf of the claimant to seek to restrain its implementation.

32. The court, on interim relief, will always have close regard of course to the implications of what it would be ordering. On the other hand, even in areas where the courts have a more indirect supervisory jurisdiction on review, that is to say the more conventional standards of reasonableness review, it is inevitably always the case that a court considering interim relief is being invited to dictate to the public authority concerned a step which the public authority itself has decided is not necessary or appropriate. The homelessness context would be a classic example where interim relief will have that consequence. That of itself, in my judgment, cannot suffice to deter the court in granting interim relief if satisfied by reference to arguability and the "balance of convenience", modified to apply in the public law context, that interim relief is appropriate.

33. In my judgment, there is though a further consideration that arises in the present context. Parliament, as explained by the Supreme Court, has imposed in the present area a heightened duty on the reviewing court to evaluate objective facts for itself. As it seems to me, once the court has reached the position at the permission stage filter that there is a properly arguable case which ought to proceed to a hearing, the court is squarely seized of a matter which falls within what can properly be described as a primary judgment of the court. In my judgment, in that context there are limits on the weight that can be given to the submission that the Local Authority has reached its own conscientious view and would, were there interim relief, be making provision which it is satisfied is unnecessary and inappropriate.

34. Mr Gullick, for the Local Authority, submits that in the present case there is no particular vulnerability identified on behalf of this claimant. He points to what he says is the absence of urgency with which the judicial review was initially pursued. He points to the implications for what will happen next if there is to be a tribunal hearing, which I have been told could be a matter of several months, possibly up to six months, and he makes the submission, given the Local Authority's assessment in this case, that interim relief would logically be putting an individual they have assessed as being an adult inappropriately alongside children in accommodation which is designed for children.

35. I have carefully considered and evaluated all of those matters in relation to the balance of convenience but I am satisfied that it is appropriate in this case to make an order for interim relief in circumstances where I am satisfied, for the reasons that I have given, that there is an arguable case and a realistic prospect that a court would find in favour of the claimant. In my judgment, it is not necessary that the claimant go further and show that there is particular vulnerability arising from the arrangements which are being applied to her but, in any event, there is material, both from the November letter of the Orientation Programme Coordinator and also from the claimant herself, as to the implications of her position and treatment of her as an adult.

36. As to delay, I accept that the proceedings were not commenced within three months, although it is true to say that various steps were taken in the interim, including pre-action correspondence and the seeking of notes. That is not a matter that is weighed against the appraisal of the realistic prospect of success and it is not a matter, in my judgment, that should be visited against the claimant herself in the context of whether interim relief is appropriate, particularly in circumstances where the age assessment decision was, on the face of it, implemented with reasonable speed and the matter no doubt needed to be carefully evaluated before proceedings were commenced.

37. So far as the other features are concerned, it seems to me that those are at best double-edged. The claimant is entitled, as Mr Suterwalla does, to submit that the function of ongoing delay, far from indicating that interim relief is inappropriate, supports its grant for that would suggest that there could be a prolonged period during which the claimant, with her properly arguable claim, continues to be treated as an

adult and on one view, depending on the lapse of time, could give the utility of the claim diminishing return significance.

38. So far as the inapt placement of the claimant with children when she been assessed to be an adult, what I need to evaluate in the balance of the convenience is the risk of injustice in which one of the scenarios is that the claimant is treated as a child in the interim but ultimately fails on the substantive challenge but where, on the other hand, the claimant continues to be dealt with as an adult alongside adults and is subsequently vindicated at the substantive hearing and is found to have been a child.

39. In all the circumstances of this case and in the context of the best interests of the child, the protective precautionary approach which the law for good reason, expects and the benefit of the doubt, as it is sometimes described in the authorities, having regard to each of the points that have been put forward by the parties, in my judgment, the balance of convenience comes down clearly in favour of the grant of interim relief. I accept, as did Mr Suterwalla, that it would not be appropriate for any court to impose any unrealistic requirement upon a local authority and, therefore, I accept that the form of the order will be to order that the claimant should be accommodated as soon as reasonably practicable rather than forthwith. What I propose to do is to pause and ensure that no one leaves today in any doubt as to what the appropriate wording is and I will hear counsel on that and any other consequential matters.

40. For the reasons, which in deference to both counsel's submissions and given the importance of this case I have sought at some length to explain, I have decided that permission for judicial review will be granted and so will the order for interim relief.

End-Note

41. I give permission to cite this judgment in future. I do so for the following reason. In so far as interim relief was concerned I had to deal with the submission about mandating public authority to do something which was contrary to its assessment. My view was that there is a different consideration that is relevant in this context. I cannot say that that is necessarily a new insight because in order to say that I would need to examine all other cases in this area to see if someone else has said so but in the absence of having the body of authority to be able to judge that point. However, I am prepared to say that, on the face of it, this is a relevant point of principle and it is not one that I am aware of as having been made anywhere else.

MR SUTERWALLA: My Lord, thank you for your careful and thorough judgment. Three points, my Lord. Firstly, in terms of interim relief, we are content with the order as indicated.

THE DEPUTY JUDGE: Is there a form of words that could save a bit of time?

MR GULLICK: Yes, there is, my Lord. That was put in with the draft application. There was a draft order from my learned friend.

THE DEPUTY JUDGE: Thank you. Let me just see if I can find that.

MR SUTERWALLA: That is behind tab 1, page 3.
THE DEPUTY JUDGE: Yes.
MR SUTERWALLA: We are content, my Lord, with, "Reasonably practicable", save that if your Lordship is minded we would put an outside time limit of 14 days so, "In any event within 14 days".
MR GULLICK: My Lord, if you put that in but on the basis that if there is some difficulty we can have liberty to apply and come back and extend that if necessary.
MR SUTERWALLA: To be honest, my Lord, I am sure we would not need to trouble the court. It is the sort of thing where if there are difficulties we can discuss it. Well, the solicitors can discuss it.
THE DEPUTY JUDGE: Would it be within 14 days but with liberty to apply in writing in the event of any difficulty? It puts down a marker but it does not seek to straight jacket people. That is the advantage of it. You do not always have the same people who are in court who then have to deal with these things so sometimes markers are quite useful. I think it is very fair, Mr Gullick, if I may say so, that on the basis that, of course, you have that protection it will at least give that discipline, would it not?
MR GULLICK: My Lord, I am sure it would focus minds if the court puts 14 days but equally if there are particular practical difficulties then we can come back.
THE DEPUTY JUDGE: It will protect. Is the rest of the wording right? It occurred to me, and you probably heard me say it as I was going through the judgment, you have the question of treat her as a child but on what basis and I do not know how long these things take but I would not want to make any order that somehow put her in a better position than her own claim. That could not be right.
MR SUTERWALLA: No. She does not seek that, my Lord.
THE DEPUTY JUDGE: Anyway:
"The defence are required to reinstate the accommodation support provided to the claimant prior to and up to 4 November 2013 as soon as reasonably practicable and, in any event, within 14 days of today, but with liberty to apply in writing in the event of any difficulty and, within the same timeframe, to make arrangements."
We probably could have done that better.
MR GULLICK: My Lord, I am reminded from behind me that, "The said accommodation", we cannot, of course, grant that she be returned to the same accommodation. It should be, "Such accommodation", but it cannot necessarily be the same accommodation.
THE DEPUTY JUDGE: No, that was why I wanted to get the wording right because this is “reinstate the support that was provided”.
MR SUTERWALLA: Could we say, my Lord, perhaps --
THE DEPUTY JUDGE: I wonder if it is sensible for me to rise and for you to see if you can hammer this out? Is that going to be best?
MR SUTERWALLA: That is fine, my Lord. We can do that.
THE DEPUTY JUDGE: You can probably, within a few minutes, get this on to a page.
MR SUTERWALLA: Yes.
THE DEPUTY JUDGE: Have you not already got an anonymity order in this case?
MR SUTERWALLA: We have that.
THE DEPUTY JUDGE: You do not need me to make that.
MR SUTERWALLA: No.
THE DEPUTY JUDGE: I am not going to go too far, I am actually going to wait outside. As soon as you want me back I will come back in. Is there anything else I am going to

need to deal with?

MR SUTERWALLA: My Lord, yes. There are just two other points.

In terms of the judgment there were just two clarifications. I think your Lordship referred to when the claimant moved to the Home Office accommodation. The correct date for the transcript is 4 November 2013.

THE DEPUTY JUDGE: Thank you.

MR SUTERWALLA: Finally, my Lord, we think it is a very useful judgment in respect of interim relief which could be of use for the courts down the line. I would ask for a transcript, if that is possible, so that --

THE DEPUTY JUDGE: Well, it will not be at public expense, you are still going to have to apply for it. The only thing I can do is certify that a permission judgment can be cited.

MR SUTERWALLA: Yes.

THE DEPUTY JUDGE: I can do that but I am not going to do anything that involves a transcript being provided at public expense.

MR SUTERWALLA: The difficulty then is how one gets hold of this judgment effectively. If it does not have a neutral citation which can be readily accessed then that proves problematic in terms of future reliance and it would be, I think, useful if it is in the public domain.

THE DEPUTY JUDGE: I repeat, I think the most I could do would be to give permission if appropriate.

Mr Gullick?

MR GULLICK: My Lord, I did not understand your Lordship to be extending the state of the current law.

THE DEPUTY JUDGE: What is the test? Is it deciding a point of principle? Perhaps we can look at that as well when I come back in because I think I ought to just remind myself of what I would have to be satisfied of.

MR GULLICK: My Lord, it is the practice direction on citation of authorities and I cannot remember where that is in the White Book but I think it is towards the back.

THE DEPUTY JUDGE: I am trying to remember what the test is. If you do not have White Books here there is one here you can look at. It is volume 1, is it?

MR GULLICK: Yes. It is in the list of practice directions at the back.

THE DEPUTY JUDGE: It seems to me I was not trying to extend any law anywhere and so if that is the test it is probably not going to be appropriate but the point about the nature of the court's jurisdiction and this idea of restraint when you are making an authority to do something which is contrary to its assessment it seems to me is potentially significant. I would not be tying anyone's hands to decide anything in any other case but I can see that if someone did want to get a transcript and show that was my view that would be the point that would be worth showing the judgment for.

MR SUTERWALLA: Precisely.

THE DEPUTY JUDGE: And depending on what you are going to tell me is the threshold that is the candidate but that is as far as I am going to go, if I go there at all.

Is there anything else?

MR SUTERWALLA: My Lord, no.

MR GULLICK: My Lord, I have the practice direction on citation. It says this:

> "A judgment falling into one of the categories referred to in paragraph 6.2 below may not in future be cited before any court unless it clearly indicates that it purports to establish a new principle or to extend the

present law. In respect of judgments delivered after the date of this direction, April 9, 2001, that indication must take the form of express statement to that effect."

Then it deals with judgments before the direction. Then 6.2:

"Paragraph 6.1 applies to the following categories of judgment which include decisions on an application which decide an application is arguable."

THE DEPUTY JUDGE: Have you made your submissions both of you about that?

MR GULLICK: It is not really a matter for our submission, it is a matter for you.

THE DEPUTY JUDGE: Exactly, but that is the test?

MR GULLICK: That is the test for citing a judgment on a permission for judicial review.

THE DEPUTY JUDGE: So what does it say -- sorry, you have lost your place now -- what does it say about certification?

MR GULLICK: The judgment must contain a statement to that effect.

THE DEPUTY JUDGE: So that is the test for the certificate as well. I have seen them done without saying anything remotely like that.

MR GULLICK: It does not say, "In the judgment", it says, "An express statement to the effect".

THE DEPUTY JUDGE: To the effect that it can be cited? That is another ambiguity.

MR GULLICK: To the effect that it establishes a principle and extends a current law and can be cited, therefore, as a result.

MR SUTERWALLA: My Lord, it is obviously a matter for your Lordship. The only thing I would say is that I think that your judgment does establish a new principle in respect of age dispute cases and when interim relief should be granted.

THE DEPUTY JUDGE: I give permission to cite this judgment in future, for the following reason. In so far as interim relief was concerned I had to deal with the submission about mandating public authority to do something which was contrary to its assessment. My view was that there is a different consideration that is relevant in this context. I cannot say that that is necessarily a new insight because in order to say that I would need to examine all other cases in this area to see if someone else has said so but in the absence of having the body of authority to be able to judge that point. However, I am prepared to say that, on the face of it, this is a relevant point of principle and it is not one that I am aware of as having been made anywhere else.

When you draw up this order can you just include within it, you do not need the reasons, but can you just include within it permission is -- actually it has to be in the judgment, does it not? Is that what you read out?

MR GULLICK: Yes.

THE DEPUTY JUDGE: It is not going to be any good that it is in the order.

MR GULLICK: Your Lordship could, in due course, as and when it is transcribed, order that what you have just said can be added to the end of the judgment as an addendum. So it would be, "(Further arguments on consequential matters)".

THE DEPUTY JUDGE: I will do that now. I direct that what I have just said about my reasons for being prepared to certify the judgment as one which can be cited can be moved, please, to be an end note to the judgment itself so that those who do not need to see the other exchanges do not need to have them.

MR GULLICK: My Lord, just one point. That is in relation to the interim relief question, not the question of the arguability of the claim, because, of course, one would not want

potentially in future debate as to whether the lengthy -- with all due respect to your Lordship but as your Lordship accepted -- discussion of the merits of this particular case would be cited in future cases.

THE DEPUTY JUDGE: No, quite. I think on the reasons I have just given that are going to be blocked and moved it will be clear what the point was.

MR GULLICK: Yes.

THE DEPUTY JUDGE: Good. Can I ask you both just to get your heads together and deal with the order. Will I have to deal with any other consequential matter?

MR SUTERWALLA: My Lord, no. On costs we say costs reserved. That is the order that we seek.

MR GULLICK: And you, of course, direct that it be transferred to the Upper Tribunal.

THE DEPUTY JUDGE: Yes, can you include that.

MR GULLICK: You have suggested that you should not give directions.

THE DEPUTY JUDGE: I am not going to say any more, it seems to me that would just be a way of trying to give back door directions, but, yes, can you please put the proper form of words in for the transform to the Upper Tribunal and I will wait to hear when you are ready for me to come in and see what you have come up with. Thank you very much.

(A short break)

THE DEPUTY JUDGE: Thank you for doing that. This will be included then within the order. The only things I have done is I have reversed your points (1) and (2) so I deal with permission for judicial review first and then interim relief second.

Where you say, "The order of Lewis J dated 5 February, paragraph 1", I have put in brackets, "(Anonymity)", because that is what that is, just so the reader of the order knows what that is getting at. And I have put, "Further case management to be dealt with in the Upper Tribunal", but that was the drafting that you had. So I will just read it out. The order will be as follows.

"(1) Permission to apply for judicial review is granted. (2) The defendant is required by way of interim relief to reinstate accommodation support on the same basis it was provided to the claimant prior to and up to 4 November 2013, as soon as reasonably practicable and, in any event, within 14 days (with liberty to apply in writing in case of difficulty). The defendant shall make arrangements for the claimant to be transported to the accommodation. This paragraph to remain in force pending trial or further order. (3) This claim is transferred to the Upper Tribunal (Immigration and Asylum Chamber), further case management to be dealt with in the Upper Tribunal. For the avoidance of doubt, paragraph 1 of the order of Lewis J dated 5 February (Anonymity) remains in force. (4) Costs reserved."

Are there any other loose ends with which either of you think that I need to deal?

I was not asked to direct an expedited transcript, that was not your point, you point was about access, and in terms of what the judgment will say I think that is clear.

We have spent a considerable time, albeit at a permission stage, on this case given the nature of the case, and I mean that viewed in all respects, and I would like to thank everyone for their assistance in the preparation and presentation of the arguments.