

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT SITTING AT CARDIFF**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17th January 2011

Before :

**MR JUSTICE OUSELEY**

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**THE QUEEN ON THE APPLICATION OF**

**CJ**

**Claimant**

**- and -**

**Defendant**

**CARDIFF COUNTY COUNCIL**

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**Mr C Buttler** (instructed by **TV Edwards Solicitors**) for the **Claimant**  
**Mr Matt Hutchings** (instructed by **Legal Services Department for Cardiff County Council**)  
for the **Defendant**

Hearing dates: 22<sup>nd</sup>, 23<sup>rd</sup> & 24th November 2010

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**Judgment**

**Mr Justice Ouseley :**

**Introduction**

1. The Court, in this judicial review, has to decide whether CJ is a minor, aged 17, or an adult now probably 20 plus, who was at least 18 on arrival in the UK in August 2008. If he was a minor when he arrived, the Court will have to decide when he was born because of the implications which his precise date of birth has for duties owed under the Children Act 1989, even if he is now over 18. He claims that he was born on 20 September 1993. Cardiff County Council, to whom he was dispersed, assessed him to be 5 years older.
2. CJ is an Afghan national who was born and lived in Iran until he left towards the end of 2007, and eventually made his way to the UK. He entered the country illegally on 27 August 2008, and claimed asylum. At his screening interview on 28 August 2008, he gave his birth date, at least as translated, adjusted to the Gregorian calendar and then noted on the record as 1 April 1993, and his age as 15. Croydon LBC undertook a summary visual age assessment and concluded that he was over 18. The two events took place on the same date; but their order is uncertain.

3. The Claimant was dispersed to Cardiff, where he underwent an initial age assessment in October 2008, which concluded that he appeared to be over 15. Verification was awaited of a residence card he had provided. The Claimant was placed in foster care. UKBA then said that it thought that the residence card was false, and the foster carer told the Council that he thought that the Claimant was well into his twenties. Accordingly, Cardiff County Council carried out an age assessment produced on 11 December 2008, concluding that he was over 18, with an estimated birth date of 19 September 1988. This simply reflected the view that he was five years older than he claimed. But in July 2009, following the receipt of further documentation which tallied with the date of birth on the residence card, the Council treated CJ as a child, and he was eventually placed in foster care on 14 August. On 17 August, following deteriorating behaviour in his foster home, and violence to the police, the Claimant was detained under the Mental Health Act 1983. In the course of his time in the mental hospital, he appeared to staff to be much older than 15 and in his early twenties. The Council decided to do a further age interview. In the course of this, the Claimant asserted that his birthday was in 1988; he repeated this to staff saying that he had lied about being 15 in order to obtain a visa. He now says that he was lying about that in order to achieve his release from hospital.
4. The final decision was made on 25 August 2009. It was that he was over 18. Appropriate adult services were contacted. He was discharged from hospital on 28 August 2009. It is the decision of 25 August 2009 which is now challenged. There is no record of what age the Council actually thought he was at that stage; but it appears that it was reverting to its earlier decision of December 2008.
5. After discharge, the Claimant was placed in NASS accommodation, from which he was evicted three weeks later. But on 2 March 2010, Mr Timothy Corner QC, sitting as a Deputy High Court judge, ordered the Council to provide him with accommodation and support pending determination of his application for judicial review.
6. In *R(A) v London Borough of Croydon* [2009] UKSC 8, [2009] 1WLR 2557, the Supreme Court held that the question under the Children Act of whether an individual was a child or not was, upon challenge by judicial review, one of fact for the decision of the Court itself. The Court was not to answer that question by reviewing the Council's decision for lawfulness on traditional review grounds. It is silent as to who bears the burden of proof.
7. The Claimant gave oral evidence, through an interpreter. The credibility of his evidence about his life in Iran, his travels to the UK, and of his explanations for the divergent ages he had given here, was important to the Council's case. The Council relied strongly on what he said in Court, and how it contrasted with what he had said in his screening interview and age assessment interview in December 2008, as a counterweight to the strongly contested evidence of the document expert called by the Claimant. His demeanour when giving evidence was relevant to how much weight I should give to the view as to his age expressed by his case worker at the Welsh Refugee Centre, and litigation friend.

8. The Council called Mr Nedsky, its social worker who had most dealings with him, a nurse and a police officer who also had had dealings with him, as well as a document expert from the UKBA.

### **The interviews and assessments**

9. The first point at which the Claimant told the UK authorities about his age was at his screening interview. I disregard the evidence from it that he said that he was born on 1 April 1993, in view of the fact that quite apart from any interpretation difficulties which clearly existed, (CJ appears to have had an Uzbek interpreter and Uzbek was not his first language although one he understood), there are difficulties in transposing dates from the Iranian or Afghanistan calendar into the Gregorian calendar which would prevent reliance on the precision of that date without very clear evidence. The two languages noted as the only languages which he spoke did not include Farsi which was the language in which he gave evidence and was one which he spoke fluently. That birth date was not important to the Council, but the Council relied on other aspects of the screening interview.
10. He told the interviewer that he was 15; but there was no adult with him at the interview. He was a shoe repairer from Kharameh. He described his family, and their ages. He gave a brief description of his journey from Iran to the UK: leaving Iran on foot for Turkey where he stayed for 3 months, then to Greece by inflatable dinghy for 4 months, then to Italy, by train to France, and to the UK holding onto the underneath of a lorry. In England he met a Pakistani who provided a ticket to him, free, to travel to London. A friend had introduced him to an agent, Ali Irani, to whom he paid \$500 to get him to Turkey. He had worked in a tailor's shop in Turkey earning \$7-800. His intention had been to come to Britain because he loved the country and its football teams. He had gone to Turkey and then had come to the UK to work to earn money to help the family and his mother in her treatment for her heart condition; he could not go back to Afghanistan.
11. On the same day as the screening interview, Croydon LBC undertook a brief visual age assessment. This was important because it led CJ to contact someone in Iran; he says that his father sent him the disputed residence card, and the two other relevant documents. I accept that the envelope, the photocopy of which I have seen and the original of which is with the Home Office, shows that the residence card arrived from Iran on 17 September 2008 at the Immigration Advisory Service. The other two arrived later but before 9 October 2008. These documents give his date of birth as 20 September 1993, after adjusting to the Gregorian calendar.
12. Next, following dispersal to Cardiff, the Council carried out an initial assessment of the Claimant's age on 9 October 2008. The birth date noted was 1 April 1992, but there is no evidence that that is what the Claimant said rather than it being an inaccurate transcription of the date of birth from the screening interview. The assessment was carried out in the light of the residence card, and a request from the WRC for an appropriate placement. Mr Nedsky was present and agreed with the assessment carried out by the primary assessor Mr Dawkins.

13. The Claimant gave a history of his travels for the purposes of that assessment which differed to a degree from what he said at his screening interview: he had stayed with his brother in law in Turkey but left because the brother in law wanted him to work; he had to pay an agent to leave Turkey so he stole the money from his brother in law. He left Greece because everyone seemed to be doing so; and in Italy he was stopped by the police who let him go when he said that he was 15. He borrowed money from a friend to travel to Calais by train. He came to the UK because everyone he met said that the UK was the best place to go to. The outcome was that the social worker was of the view that the Claimant's appearance was that of a "*young person over the age of 15*" and, since the documents were being verified and he had been assessed as being 18 by Croydon, the case should only be re-referred if the documents were assessed as valid.
14. Mr Nedsky said in evidence that although the assessment was based on a fairly long interview, it was only slightly more comprehensive than Croydon's, as it was largely based on physical appearance and demeanour.
15. Nonetheless, in November 2008, the Council placed the Claimant in foster care. This was because UKBA gave the impression that it had verified the Claimant's identity or residence card, the date of birth on which meant that he was now just over 15. But two factors led to a further age assessment being carried out: UKBA confirmed that it did not consider the residence card to be genuine, and it lacked any back up such as a birth certificate; the foster carer, when warned that CJ might have to leave the placement, said that he believed him to be older than 15, nearer 25.
16. The December 2008 age assessment was carried out by Mr Nedsky, who gave evidence and another social worker who did not. There was a Farsi interpreter. It was intended to be "*Merton compliant*". The introduction to his physical appearance and demeanour said:

"In terms of his physical appearance, [CJ] looks older than 15 years of age: He has shaving shadow and the foster carer reports that he shaves regularly; he has a fully-developed Adam's apple and a mature voice; he has wrinkles around his neck and others around his eyes. In terms of his general demeanour, CJ gives an impression of being much older than 15 years-of-age: he bears and carries himself like an adult and has, what in many ways could be termed, a more confident lifestyle than that of a typical 15-year old: CJ often goes out alone to visit friends in the Roath area of Cardiff (the other side of the city from his current placement) and often stays awake at night until 1.00am or 2.00am."
17. It notes that the Claimant says that he is 15, based on what his parents told him and what he said it says on his birth certificate. The Iranian year 1372 is transposed wrongly as 1994, not 1993. He gave more detail about his home life. He had lived in Shiraz for all his life, and had never travelled away before. His family were very poor, so he had decided to leave and also because he was

bullied at school as an Afghani. He worked for three months in the summer, earning \$1000 which is what it cost him to get to Turkey. He lived and worked there with his brother in law, from whom he stole a significant amount of money and then left. He went to Greece with a friend and claimed asylum there; they photographed him at the border and asked him to leave. He had told them that he was 13, when he was in fact 14; his friend had told him to say that he was one year younger than he was. He told officials in Italy however that he was 15, and they let him go after taking his photograph.

18. He was asked about the length of his journey: Iran to Turkey took about 1 month; he stayed in Turkey for 2-3 months where he worked in a factory making material and he helped people who were sewing; he worked in Athens for 3-4 months where he got a job picking fruit, but travelled very quickly from Greece to Italy, France and then on to the UK via Calais. He borrowed money in Rome to get to France. He suffered no abuse en route. He had intended to go to Norway where he had relatives, but appears to have decided during his very brief sojourn in France that he would come to England.

19. They assessed his interaction during the assessment as follows:

“CJ’s interaction with people who must appear to him to be powerful people, oscillates between confident interaction and withdrawal/upset. CJ can interact in a mature manner, but during our assessment he also became emotionally upset. Indeed, following our assessment, CJ self-harmed and was admitted to University Hospital Wales (Young Person’s Unit), where he was kept in for x2 nights (9<sup>th</sup> and 10<sup>th</sup> December 2008). At the time of writing, CJ has recovered from what the hospital described as “*superficial scratches to one arm*” and has been discharged back into the care of his foster carer. Medical staff on the hospital ward described CJ as being “*much older than fifteen-years of age.*”

In terms of demeanour and interaction, CJ’s foster carer – and the foster carer’s extended family – described CJ as being “*at least in his early-twenties.*” The foster carer has also described CJ as being “*controlling and sometimes unco-operative.*”

(In evidence, Mr Nedsy said that the self-harming was because he was upset by the age assessment. From the dates, this appears to be caused by the fact that the process necessarily meant that his age was not accepted, rather than the as yet unknown outcome).

20. CJ now spoke to his family on the internet. He had gone to secondary school aged 12, but left during his second year, one year ago, (which would be about December 2007). He did not know how old he would have been when he left school. He could budget he said and could buy a lottery ticket.

21. The assessment noted the views of others: the Home Office officials who had met the Claimant thought that he was an adult. At the initial assessment, Mr Nedsky and another social worker believed that he was over 18 and were happy to put him in adult accommodation. His foster carer thought him to be well over 20. Medical staff at the Young Persons Unit at University of Wales Hospital Cardiff thought him significantly over 15.
22. Its conclusions were that:

“Our initial impression of CJ’s age, based on his demeanour, interaction and physical appearance strongly suggested that he could be over the age of 18. This view is, in part, based on our experience of working with young people from an Iranian/Afghani/Middle Eastern background. In particular, our team is currently working with several Afghani young men who are aged-16 and above. Our view that CJ is at least 18/over-18 has since been enhanced by conducting this age-assessment.”
23. Seven factors were listed as impinging on the Claimant’s credibility and indicated that he was probably over 18: repeated lies about his age to officials en route to the UK; use of false documentation to prove identity and age; the improbability of a 15 year old from a rural area undertaking so long and arduous a journey to the UK; his obtaining employment several times; vagueness about his age and contradictions about the time spent in Turkey and Greece; he spent two years in secondary school which started at 14, and so he was likely to have been 17 when he left Iran, and then spent several months travelling to the UK; there was a consensus among professional and others eg foster carer, medical staff at the hospital and social workers that he was over 18.
24. This assessment assigned the birth date of 19 September 1988 to the Claimant to reflect the view that he was 5 years older than he said. The odd day out from 20 September 1993 appears to be an unintentional error.
25. On 16 January 2009, as CJ was being moved from his foster placement, he harmed himself having prepared to do so with a razor hidden under his pillow. He was taken to hospital whence, after treatment, he was discharged to the care of adult services. Mr Nedsky did not accept that these episodes were necessarily the result of mental health problems, but could have been in protest at not being believed, or cries for help. CJ could be sullen if upset and his moods oscillated.
26. In July 2009, further documentation relating to the Claimant’s age was received by the Council. It appears that the only document considered in December 2008 was the residence card. The Council had them translated and was told that the dates on the three documents tallied with each other. They also tallied with what CJ had previously told the Council. The Claimant was also seen as vulnerable because of his mental health problems; he had harmed himself after learning of the decision in December that he was over 18.

27. The Council from 29 July 2009 treated him as 15, which was the age he had given, and provided child care services to him. He was given another foster placement on 14 August, with a family who had young children, contrary to the intention of the social workers.
28. Next day he threatened to take the young daughter of the family to Iran; his behaviour deteriorated further, and he was removed by the police on 17 August 2009, charged with causing a breach of the peace, and detained under s2 Mental Health Act 1983. He assaulted a police officer. CJ was taken under restraint by three police officers, with leg restraints and handcuffs, to Royal Glamorgan hospital. He displayed psychotic symptoms and was thought inappropriate for a children's ward.
29. The next day, he was transferred under restraint to Whitchurch Hospital, where he was admitted to the Psychiatric Intensive Care Unit. He was thought to be unsafe to be dealt with in the acute ward because of his challenging behaviour: restlessness, grandiosity, aggression and hostility. The aggression appeared to have been largely triggered by anger and frustration at being detained in hospital, and he was in constant distress at being detained. CJ was showing symptoms of psychosis but it was not clear that he was actually psychotic.
30. According to the hospital notes, his mood became more settled but he was "*floridly psychotic*", expressing beliefs that he was God and acting bizarrely. By 20 August 2009, he was more settled, and wanting to go home. Odd behaviour was noted, not psychotic, but from choice. However, on 21 August, he was again displaying psychotic symptoms, with bizarre and delusional thoughts about being God. The daughter of his foster carers was much in his mind as a companion for Iran. However by 23 August 2009, no symptoms of psychosis or mental illness were being noted, but he was demanding of staff. Overnight from 23/24 August, there were no real symptoms of psychosis but he spent the night reading, refusing night sedation, and then he got up at 4 am, and packed his bag, ready to leave.
31. Mr Semmens was the manager of the ward within the unit where CJ was detained. Mr Semmens formed the view, based on his observations of CJ in the ward and his interactions with him, that he was considerably older than 15, though he accepted that he had no expertise in assessing age. Staff were aware that other agencies had taken the view that he was rather older. CJ also consistently, according to the notes, (p138), gave his birthday as 19 September 1988, even when unwell. One early note records him as appearing "*far older*" than 15. Mr Nedsky became aware that medical staff thought that CJ was in his early 20s; the foster carers thought he was over 20.
32. By 24 August 2009, medical staff were uncertain whether to treat him as an adult or as an adolescent because of the uncertainty over his age: it was not, said Mr Nedsky, that they were uncertain of his age as a matter of judgment of his age, they were not; rather they were understandably concerned not to put an adolescent in an adult unit or vice versa and did not regard age assessment as a matter for them. The medical and social care teams agreed that Mr Nedsky would interview CJ about his age again to reach a decision which would end that uncertainty. The decision would not lead to an earlier discharge either way.

33. As Mr Nedsky and Mr Semmens accepted, throughout this time and until discharge, he satisfied the conditions required for detention under s2 of the Act; that is he suffered from mental disorder of a nature or degree which warranted his detention for assessment, and he ought to be detained for his own health and safety or the protection of others.
34. It is clear from the medical notes and from Mr Nedsky's evidence that CJ disliked being detained in hospital, and Mr Nedsky accepted that he was "*desperate to leave*," in the words of Mr Buttler, his counsel. "*Desperate*" said Mr Nedsky did not mean that CJ was "*crawling up the wall*"; he wanted to leave but was comparatively calm at interview.
35. Mr Nedsky interviewed CJ on 24 August 2009 over a period of about 45 minutes to an hour through an interpreter. Mr Semmens was present but no appropriate adult who, with hindsight Mr Nedsky agreed, should have been present. He did not ask Mr Semmens if CJ was fit to be interviewed, but Mr Semmens did not suggest that CJ was unfit, either then or when he gave evidence. CJ maintained for the early part of his interview that he was 15. The medical notes of the meeting, and of one afterwards are as follows, spelling errors corrected:

"Following meeting SW spoke with [C] with an interpreter present. [C] initially stated that he was 15 years of age but became very evasive of questions when asked again about his age. As SW proceeded to finish the interview [C] became increasingly agitated and requesting to leave. When informed that he was unable to leave as he was detained under the MHA and we were unable to make any decision on his detention because a RC had not been allocated due to the discrepancy in his age, [C] stated that he is 20. [C] stated that he was born in 1988. [C] appeared calm in his manner when disclosing this. SW states that he will take this info to his team and will inform the ward of his decision regarding age assessment.

Following interview [C] was also assessed by Dr Oruganti (on behalf of Dr J Morgan) [C] appeared calm during assessment stating that he said he was 15 to get a passport. RC informed [C] that he would have to remain in hospital a few more days under assessment, [C] annoyed at this and does not appear to understand the restrictions of section 2."

36. Mr Nedsky said that those notes, which he did not make, were not entirely accurate to the extent that they gave the impression that CJ wanted strongly to leave, since he found CJ "*comparatively calm and sensible*" throughout; his statement said "*lucid and relaxed*". The question as to CJ's age was put in 3 or 4 different ways, to ensure that there was no misunderstanding. He could understand the question, and was quite vehement about being born in 1988, and being 20, not 15. The inconsistency between 15 and 20 could not be attributed to mental illness;

if there were to be inconsistency due to that, he would have expected several different years to have been given.

37. Subsequent entries for that afternoon show CJ impatient to leave the ward but pleasant, calm, lucid, unaggressive, talking about his journey to the UK, his experiences in Iran, his interests, clearly understanding English well and able to speak it.
38. Mr Semmens said that at the interview CJ was angry and upset at the start as he had come to believe that once a consultant had been appointed to his case, he would be free to leave. Mr Semmens said that he explained to CJ that no decision had been made since the team was unclear as to his age. CJ then said that he was born in 1988, and had only said that he was 15 to get a visa. Mr Semmens described CJ as calm in his manner when he said that.
39. Although no one would have told CJ that were he to be 20 rather than 15 he would be discharged, CJ was told that the uncertainty over his age was holding up decisions on his detention. Mr Nedsky accepted that CJ could have understood that the resolution of that issue would speed up release, and could cause him to say that he thought that that would happen if he said that he was 20.
40. The result of the interview between Mr Nedsky and CJ was discussed the next day between Mr Nedsky and his Operational Manager, who had been involved in earlier decisions about CJ's age and care, but had not actually met him. Mr Nedsky made no recommendation about age, but the decision emerged by agreement in the course of the discussions that, taking everything into account, CJ was an adult. There is no record of the age decided upon, but Mr Nedsky said, and I accept, that they agreed to the 1988 birth date. If discharged to adult mental health services, he would be better looked after. He was discharged on 28 September 2009. There is no record of the reasons but I accept that the consideration was careful, and was based on the previous age assessment, what had happened since, and especially what had been said at the hospital.

### **The Claimant's evidence**

41. The Claimant in his evidence said that he could not remember how old he was when he left Iran but could remember how old he was when he arrived in the UK. A lot of things had happened, but he left in the second year of High School. Birthdays were not very important. After he left school, he worked cleaning shoes for some months but he could not remember for how long. It was poorly paid. He could not remember whether he had earned \$1000, as he had said in the December 2008 assessment, though he would have remembered at the time. He said that he could not even remember what happened yesterday.
42. He could not remember whether he had paid \$1000 to the agent to get him to Turkey; he just escaped from the agent. He had gone from Shiraz to the border by car and an agent had taken him over the mountains avoiding border posts. He could not remember why at the screening interview he had said that he paid the agent \$500. He said that he could not remember what the balance of the \$500 was used for: he might have lost it or used it for clothes and food in Turkey, or lent it

to someone. He then said that it might have been \$500 to get to Turkey and another \$500 when he got there. All he knew was that he gave \$500 to the agent, and another \$500 on arrival; but he also escaped from the agent and may only have promised to give him another \$500.

43. The Claimant was initially clear that he had left Iran during the second year of secondary school, the school which followed primary school; primary school lasted until 12 and secondary school lasted from 13-15. He had said that secondary school started at 14. Later, when the contradiction between his age and time at school was put, he was unsure in which school year he had left, first or second. He said that he had forgotten.
44. Contrary to what he had said at his screening interview, he did not think that he had worked in Turkey. He had not been allowed to work in Turkey as his brother in law said that he was too young. He explained the references to working there by saying that he had gone to the factory where his brother in law worked 2-3 days a week and had helped out. It was the mistake of the interpreter to say that he had said that he had earned \$7-800 in Turkey. He had stolen money, \$500, from his brother in law to buy an inflatable boat, at the suggestion of a friend, to get from Turkey to Greece. He left because his brother in law wanted him to work. He did in fact then work in Greece, fruit picking.
45. He could offer no explanation for the generosity of the stranger in England who provided him with a train ticket to London beyond that this man had seen the situation he was in on arrival underneath a lorry. He had only had to spend one night in Calais before being able to get under a lorry to make the transit to the UK. He could not now remember how long the whole journey from Iran had taken but he put it at the order of 6-8 months. He had been able to undertake it, age notwithstanding, because things were difficult in Iran for an Afghani.
46. He had been trying to go to Norway, where he had relatives, but he had changed his mind during the journey; he also said that he had always intended to come to the UK because of his love of English football. Notwithstanding that he said in his December 2008 age assessment interview that he had claimed asylum in Greece, he told me that he had only had his photograph taken there; he said now that he might have thought, not that he did think, that that of itself was making an asylum claim. He had told the immigration officials in Greece untruthfully that he was 13 so that they would not fingerprint him, which is what he had been told. They had just told him to leave. He did not know what claiming asylum meant.
47. CJ had told staff at Whitchurch Hospital that he was born in 1988, when he was not well. The man, who asked him for his age several times, which must be Mr Nedsky, was in a hurry, and because he wanted to leave hospital, he just said that he was born in 1988. CJ described himself as upset, and accused the man of trying to make him angry. He said that Mr Nedsky kept asking him his age, and accusing CJ of lying when he gave what he says is his correct age. CJ described the repetitive questions as mental torture and said that he was angry, upset, suffering in the head. CJ thought that he if he gave the older age, he would be saying what they wanted, and would be able to leave the hospital, and that

otherwise they would keep him. He did not say that any member of the staff had told him that, but the idea came from the devil.

48. On 30 October 2009, at the local Magistrates' Court, CJ pleaded guilty to possessing cannabis and to minor criminal damage. He could not remember the criminal damage offence and did not know whether he pleaded guilty to the former, nor whether he was represented. However, his age on the PNC printout was 19 September 1988, with alias birth dates of 1 January 1991 and 19 September 1993. He was dealt with as an adult, rather than in the Youth Court, and fined with a day in default set against time already served. He did not know how those other dates had got there, nor had he told the police of any date other than his Iranian birth date. The only time he had given a birth date other than that was in hospital, when he was crazy. Otherwise he complained that nobody had listened to him, which had destroyed his life in this country.
49. CJ gave evidence about the three documents he produced. The residence card which expired on 23 August 2006, gave his birth date as 20 September 1993, when transposed from the Iranian calendar. It permitted the holder to travel and reside in the city of Shiraz. The card stated that it was an offence to use it after expiry or outside the permitted area, the penalty for which was to be taken to a secure camp. Photocopies were invalid. CJ said that it had to be carried around, since it was the same as an identity card for foreigners. When asked about its seemingly pristine condition, he said however that he always left it at home, and he would only get it if he was asked for it. His family would renew it every 6 months or so, going from Kharameh to the Ministry of the Interior in Shiraz, but he never went to get it renewed. He did not know the age he was in the photograph of him on the card, but he was clearly younger than now. The officials did not always change the photograph on renewal. These cards had been green but when Ahmadinejad came to power they became pink, as this one was. He did not take a residence card with him when he travelled from Shiraz to the northern border on leaving Iran. Nor did he know whether any subsequent ones had been issued to cover the period of residence up to his departure towards the end of 2007.
50. He obtained it after the visual age assessment carried out by Croydon LBC on the same day as the screening interview. He said that he told them that he had an identity card to prove his age, and called his family to get them to send it. He spoke to both his parents, but he does not speak often now to his father, who is the only one of his family left in Iran. He was upset that neither he nor his father now knew the whereabouts of his mother and siblings. The other two documents did not come at the same time.
51. The second document was produced by the Kharameh Health Centre, certifying that CJ was born there to his parents, who were named, on the date in the Iranian calendar which is 20 September 1993 in the Gregorian calendar. It is stamped and there is a line which passes for an initial or signature. His father had been to the hospital to request it; this was not produced at his birth and kept since at home. It was however a valuable document for Afghans, and common for them to ask for it so as to prove their length of residence when they asked for permanent residency, as it proved where and when they were born.

52. The third document was given to his mother when he was born, and it recorded his birth date and when he received various vaccinations. CJ accepted that the signatures were all alike on the vaccinations done at very different dates, and thought that this too was a document which could be produced on request made to the hospital to show what vaccinations someone had had. His father would have asked for a copy of the hospital records to be made, just as with the other letter.

### **The document experts**

53. CJ supported his case on the documents with three reports from Dr Kakhi, a highly qualified Iranian attorney and now academic in the UK, who has provided expert evidence on the authenticity of Iranian documents in the statutory immigration appeal bodies, Crown Courts and Family Division; he says that in 80 percent of the cases he gives a negative opinion on authenticity. He obtained his knowledge from the training and duties of an attorney in Iran, which includes the authentication of documents, through his experience as a defence attorney in Iran, and keeping up to date from a variety of sources. He was selected to advise on the Iran Country of Origin Information Reports.
54. His first report dated 5 April 2009 was quite brief on these three documents. He described them; it was only of the letter that he said that it had been obtained by the request of the father. The report gives the impression that the vaccination record is an original filled in at the time of the vaccinations. (It was not the sort of record, he said later in evidence, that he authenticated regularly but he knew of it as a father). He identified the characteristics of the documents which led him to have no doubt as to their authenticity as follows:

“I can confirm that all the necessary legal requirements for genuine documents of these types have been satisfied within the instances listed above. The format, layout, texture and size of the documents correspond with the correct style as specified by the Iranian government. With regard to the size and texture of the documents, I should explain that the Iranian government owns a Printing House and all the official documents are published on paper with a distinctive texture. There is also a specific size and, as mentioned, a prescribed texture, allocated for documents of this kind; the instances in question conform to this correct texture and dimensions. The lamination of the ID card is also commonplace. The reference numbers on the documents are also consistent with those generated in the official system. Taken as a whole, the documents have complete consistency in terms of chronology, contents, issuing procedure and identity of the offices that produced them. The stamps included on the documents are genuine inked stamps, as should be the case.”

55. After Mr Allen of UKBA, whose report was not relied on by the Council, reported that the card was counterfeit, Dr Kakhi produced a second report dated 19 April 2009 in which he said some of what he was to say later in cross-examination. He

produced a third report dated 31 October 2010 in response to the report of 21 July 2010 from Ms Roberts of UKBA upon which the Council did rely.

56. Ms Roberts' report said that the residence card was a reproduction, with the background, overprinted information and personal details printed by inkjet printer; the photo and purported wet ink seal had been scanned onto the document, but no wet ink seal had actually been applied. The serial number was printed by inkjet, and not by the letterpress method which UKBA intelligence said would be used. The printed pink background did not reach the end of the paper, and the document sides were unequal in length and width. All in all, this was not a secure document which is what would be expected. Ms Roberts was questioned, without progress, about the intelligence which underlay her evidence that letterpress would be used for the serial number on these specific foreign residence cards for Afghans.
57. In fact, Dr Kakhi had not disputed in his third report what Ms Roberts said about that document. He said in oral evidence that, although these points were visible to the naked eye, he had not mentioned them because it would have made the report too long, and his references to "*genuine inked stamps*" included reproductions of genuine inked stamps. Only later did Dr Kakhi appear to think that letterpress would not have been used.
58. His third report drew a large distinction between how secure documents were produced using professional printing presses at the Government Printing house and how the foreign residence card was produced. On renewal at the local office, a template would be produced and an ordinary ink jet printer would print out the renewed card. The expiry date would be changed; the photograph would not necessarily be changed; the birth date would be ascertained in the first place from the hospital if the holder was born in Iran and would remain unchanged; the individual would have a unique and unchanging serial number. The ink jet stamp would be part of the reproduction. It was not and was not intended to be a secure document.
59. He thought that the card looked new but that could be consistent with its age depending on how it was looked after. If the birth date were changed on an existing card, and the authorities did not always require the expired card to be produced upon renewal, the marks would be visible on the pink background, and none were. The typing was consistent as between the date and the name. Ms Roberts agreed that such a change would probably leave marks, and she could see none.
60. After Ms Roberts' evidence, Dr Kakhi was recalled to clarify what he thought was the renewal process. The first time a residence card was issued to a particular individual, it would be a secure document with letterpress and wet ink stamp. The local office on renewal would have the template and would only change the expiry date, scanning in the file. He could not say how the personal details were put on to the renewal card if there were a template in use.
61. Dr Kakhi described the importance of the residence card for an Afghan or other foreign nationals. There were no birth certificates for foreigners born in Iran, and no national identity cards for them either. It was not the substitute for the principal

identity document which foreigners would usually have, their own national card or passport. The residence card was very important to Afghans such as CJ, because it gave the holder the right of residence. It could be used in evidence to show how long they had lived in Iran. The travel restrictions were not rigorously enforced, but he could not help as to what would happen if the card were not renewed.

62. These cards were of varying duration, from 3 months to 3 years. Their frequent renewal, covering some 1 million Afghans and 4 million foreign residents of other nationalities, meant that renewals were dealt with by speedy and cheap processes locally, and not through the provision of secure documents on each occasion through a central office in Tehran. This explained how the ink did not reach the edge of the paper, and the uneven cut of the paper. The concern of the Iran Government would be to protect against the forgery of more important national documents, and it would not invest money to protect these rarely forged and comparatively little used documents.
63. He accepted that the vaccination record was probably not an original one provided at birth stamped at the time when the vaccinations were given. The signature and the appearance of the pen used was the same for all entries, which together with the absence of dots on the growth chart, suggested that it would have been requested by the father recently and the entries would have been taken by a nurse from hospital records.
64. He thought it unlikely that the vaccination record could have been forged, with fake stamps, since the blank form would be needed, and the person filling it in would need to know the approximate times when the various vaccinations were given in relation to each other and at what age. It would be difficult to bribe a nurse to produce one with a false date of birth from the records: an appointment would be necessary, the request would have to be taken to archives, and a nurse would have to go through the records. There was nothing special about the paper used in either of the two hospital documents.
65. A letter from the hospital, such as CJ had produced, was also commonly used to prove place of birth, date and hence residence in Iran. The letter too was provided at the request of the father and the date of birth would have been taken from the hospital records by hospital staff. This was not a document commonly found abroad, because it would only be of value to a foreigner in Iran, but he had considerable experience of them. They were rarely forged, because they were temporary documents, which forgers would not routinely produce. He thought that a small city hospital letter was also unlikely to be forged: those wishing to create a false identity would forge the national identity card or birth certificate. The letter would come from a different person, also using the same records, who would also need to be bribed. It is a standard form of wording produced after a check of the records: this letter was produced using a wet ink stamp, and it is unlikely that a forger would produce one for a small hospital.
66. There were strict penalties for bribery, which would deter someone putting their job, pension, and liberty at risk, at least for a foreigner, and Afghans were not very popular in Iran. He could not imagine how these documents would be obtained outside Iran.

67. The COIR for Iran in Chapter 18 recognises the pervasiveness of corruption in Iran, notwithstanding the penalties; the law was not enforced effectively; many officials expected bribes for routine services. Chapter 30 on forged documents said that counterfeit passports could be purchased rather easily on the black market, but the authorities were generally adept at identifying them through a double check against its database. There was anecdotal evidence that forged court documents were rarely used inside Iran, because they too could easily be checked. There was no mention of the sort of documents featuring in this case.
68. Ms Roberts thought that a fake document could be produced by putting the photograph of CJ on a document bearing the date of birth. A lot could be done with IT now, and this sort of laminated document could be produced in a shop. It looked official, and there should be a wet ink seal, but the wet ink seal had simply been photocopied and the photograph scanned. There was no point in a wet seal if the document was just to be reproduced on an ink jet printer. She could not definitely say however that it was a forgery.
69. Dr Kakhi emphasised that his view on authenticity was based on a consideration of all three documents together, rather than a series of three separate conclusions. Ms Roberts was not able to comment on the other two documents because she had not seen them as they did not purport to be secure documents, which were her concern, nor therefore had she assessed the residence card as a group with the vaccination card and the letter from the hospital. She would ignore them anyway as they are not secure documents, and she had no point of comparison for them.

### **The social worker evidence**

70. I permitted Mr Winstanley, the case worker and litigation friend to give opinion evidence about CJ's age. I accepted that Mr Winstanley's social work background with people of the age bracket into which CJ fell, his work at WRC as a case worker, and the considerable extent of his dealings with CJ could afford valuable insights into his age, and into how factors such as physical appearance, demeanour as observed in court, or the history of his journey from Iran, which the Council was saying was implausible for a 14-15 year old, could mislead.
71. Mr Winstanley had seen CJ every 2-3 weeks over the last one and a half years, for periods varying from a few minutes to an hour, and in a variety of settings from the semi-social to the more formal. He said he saw no reason to dispute the age given by CJ. The story of CJ's travels did not strike him as implausible for a 14 - 15 year old who had never left his rural home area before. He had come across a 13 year old with a similar story accepted as true. The inability of CJ to remember what had happened over quite large sums of money did not surprise him, since the way in which what he had said in the UK had been believed and disbelieved, when he was expecting to find a "*safe haven*", would have had a major effect on his ability to remember what happened. He was "*passionately*" of the view that the UK would not treat indigenous children who had travelled thousands of miles in the way CJ had been treated, not given a full education, and the benefit of the doubt.

72. Foster carers could have an informed opinion, and depending on the circumstances could be in a better position to form a view. CJ, he thought, appeared physically to be between 17 and 19, but that should not be over-emphasised.
73. He would not have thought that CJ could give evidence in the way he had, and he was immensely proud of how CJ had handled it; he thought that this unexpected achievement, was the result of CJ being more settled in recent months, although he was still regularly tearful.
74. As at the date of the hearing, he put CJ at 17-17½. He reached his view on CJ's age because he was unable to keep appointments, lacked concentration, and had disturbing emotional moments and tearful episodes. He would change the topic when things were not going his way, would play off one adult or body against another, and was inconsistent in recalling events. All of this was similar to what he had observed in other young people, and with what he had heard others say about him. The lack of support and instability would have a more marked impact on someone who was younger, as was shown in his mental health problems.
75. Mr Nedsky gave evidence for the Council. His statement was largely an account of how the various assessments and changes in assessment of CJ's age had evolved. He had been trained in 2007 in age assessment, in the difficulties and techniques. No formal qualifications in age assessment were available. He agreed that chronological age did not always march in step with maturity, that children showed wide variations between emotional maturity and age. Confidence and demeanour could vary with upbringing and character. The experience of fending for oneself could give confidence but a false impression of greater age, as could working at an early age. He agreed that the difficult task of assessing age was made more difficult with a different cultural background, for example where birthdays may not always be celebrated. He thought that social workers had some advantage over medical opinion because of their wider experience.
76. There was value in what the foster carers thought, because they were people who had known him, although the first one was in his 60s. There was evidence from his going out late at night and his network of friends, which tended to show that he was older than claimed, which should not be ignored.
77. CJ's mental health problems could affect the assessment, and the fact that Mr Nedsky thought that CJ was psychotic when he went to collect him from the short-lived second foster placement, tended to put him as older than claimed, because 21 was the usual age of onset for psychosis.
78. But having interviewed CJ, Mr Nedsky thought that he was quite mature for a supposed 15 year old, and he was quite mature physically. He had undertaken an arduous journey and had taken employment. Mr Nedsky had dealt with child refugees, but the story of CJ's journey and what he had done was not like theirs. He had had in depth one to one discussions with CJ, when he had been a calm, amenable, astute, intelligent, very mature young man, when not afflicted by mental health problems. He had a good grasp of English. When they first met, his impression was that CJ was between 18 and 19 ½. His physical appearance and bearing in December 2008 was of a man of about 20. In answer to me, he said that

he thought that CJ was now 20 plus, to give him the benefit of the doubt and to allow for some tolerances, but that CJ could be between 18 and 22.

### **Conclusions: general**

79. At root, this is a case about the Claimant's credibility and the reliability of the documents he produced. It is not a case of ignorance, uncertainty or forgetfulness where a fine line divides the parties. If the Council is right that the Claimant was over 18 when he arrived, he was at least three years older than he claimed, and in reality at least four years older. I say that because I think it a reasonable working basis that where a false birth date is given to an otherwise true identity (as is the Council's contention here), and the day and month do not matter but the year does, as here, it is only the year which would be falsified. This would make it easier to remember the falsehood and make it easier to obtain a false document. The Council's approach was simply to attribute a different year of birth, not a different month or day, to reflect its view of the Claimant's age.
80. On that basis, the competing claims are CJ's that he was 14, nearly 15 on arrival, and at the hearing in November 2010, was just over 17, versus the Council's claim that he was at least 18, nearly 19 on arrival and just over 21 at the hearing. That reflects Mr Nedsy's "20 plus". The five year difference in the December 2008 assessment would put him at 19, nearly 20 on arrival and just over 22 now.
81. I agree with Langstaff J in *R (MC) v Liverpool City Council* [2010] EWHC 2211 (Admin) that the judicial reasoning in a case such as this is closer to assessment, in that the decision is not necessarily fixed by the positions of the competing parties, one of which must be chosen as correct; the fact finding role permits the Court to come to its own view which may differ from both parties' contentions, subject to procedural fairness. But that may not always be appropriate where serious issues arise, as here, of credibility and false documentation concerning a large and crucial gap.
82. This illustrates why what Stanley Burnton J said at para 38 of *R (B) v Merton LBC* [2003] EWHC 1689 Admin, has to be applied with qualifications to a court: the local authority's task is to undertake an assessment rather than deal in the burden of proof and the balance of probability. By contrast, whilst that may often be how the fact finding role of the Court is undertaken in disputed age cases, "assessment" is not a complete statement of its task. The fact finding role may require a stark choice and conclusion based on the burden of proof, and the balance of probability.

### **The Claimant's credibility**

83. I accept the basic outline of what CJ told me about his departure from Iran and his travels as broadly correct. But I find it hard to believe that at his claimed age of little more than 14, he would leave the small rural area in which he had lived all his life, alone, and against his parents' wishes. In the October 2008 assessment he said that they had not wanted him to go, and in the December assessment he said that it was his decision.

84. The reasons he gave for leaving also sit ill with his claimed age: in the screening interview he said he wanted to come to the UK to work to support his family and to help pay for treatment for his mother; and in the December 2008 assessment he said that he was bullied at school, the Iranians were not good with Afghans, and his family were very poor, the latter a point he made on a number of occasions. As to the former, even allowing for some golden view of the UK from those living afar, I find it hard to believe that he thought that he could work in the UK, and earn well enough to help his family if he were 14-15. As to the latter, I find it hard to believe that those reasons would impel someone so young to leave home, and embark on a difficult and uncertain journey, risking imprisonment and assault, whatever might be the case with someone more obviously being persecuted or sent away for safety by a desperate family. The older the man, the more such reasons might appear to be good reasons for leaving the family home to try for one's fortune abroad.
85. On the other hand, he may well not have known what it would be like before he set out, he was going to his brother-in-law in Turkey on leaving Iran, and turning back could have been as hard as going on. En route, he could fall in with travelling companions, who would assist rather than abuse him.
86. I do not believe what CJ said about how he had earned money towards his travel, nor about forgetting it. \$1000 is a large amount of money to earn aged 13 or just 14, and in a fairly short period. I do not believe that he has forgotten that now so completely. I also rather doubt that he could earn it in around 3 months as a low paid cobbler or shoe cleaner in the street. But he did not resile from the fact that he would have had about that amount when leaving Iran. If he was working as a cobbler, rather than doing something else as a clearly astute and intelligent young man, he would have taken much longer after leaving school to earn such a sum, and his very poor parents could not have helped out. I think that this forgetfulness was the result of his awareness that it did not help his claimed age.
87. There was however evidence from the 2010 Country of Origin Report on Iran which showed that secondary school started aged 14, as he said with a three year first cycle. There would probably not be a perfect match between school year and age, so I accept that some may transfer aged 13. But it is difficult to see how, making all allowances, he could have left school before he was 14, having done one or part of two secondary school years. Hence his prevarication over how long he had been there. It is difficult in fact to see how he could have spent any time in secondary school, on his account of his age and earnings before he left.
88. He was very vague over how much he had paid the agent, when and in what circumstances and, if \$500 had been paid, what the balance had generally been spent on. I do not regard such uncertainty as consistent with truthfulness; such forgetfulness is unlikely. He was aware again under questioning of the problems in his story. When he said that he could not remember why he had said at the screening interview that he had paid \$500 to the agent, he appeared to be making an astute distinction, which the English he could read permitted, between what he had paid the agent and what the journey as a whole had cost. I attributed that to speed of thought under questioning rather than to a genuine distinction, in view of the way the answers came out and the way he read the documents as he was being

questioned; he could understand the thrust at least of the questions before translation. This was not the answer of someone who could not remember what he had paid.

89. The varying answers he gave over whether he had worked in Turkey reflected in my view the same awareness now that working there suggested that he was older than he claimed. I am troubled by the casual admission that he stole money from his brother-in-law, who had given him hospitality, to buy a boat because he did not want to work. Not merely is he admittedly dishonest, but his reason for dishonesty is not fear but a desire not to work. But is what he had been doing willingly in Iran, and which is why he said in the screening interview he wanted to go to Turkey. He then worked in Greece. I do not believe he did not work and earn money in Turkey; the asserted dishonesty is a cover for his working there because of what that might say about his true age. If I am wrong about that, he is a dishonest untrustworthy ingrate; and that affects rather adversely how I view his evidence about his age.
90. Given the journey he had embarked on, and its cost, I do not believe that he did not know what asylum was, or how to claim it when he was in Greece; he managed it within a day of arriving in the UK. He had simply not got to his destination when in Greece. He was also aware of the advantages of lying to officials in claiming to be younger or older than he was when travelling through Greece and Italy. I do not believe that good fortune as he described it shone on him on his arrival in the UK. It may not matter greatly in itself, but it makes me very wary of his truthfulness when he thinks that it may not help him.
91. I do not accept that his mental problems created forgetfulness or inconsistency in memory. I had no evidence that they could have had that effect. I do not accept the suggestions from Mr Winstanley, that he suffered such bad experiences over his age assessment and the refusal of the safe haven he was expecting, that these answers could be truthful. He clearly had some command of English, as was plain from the evidence of his interactions with social workers. He was also able in Court, as he grew in confidence, to answer in Farsi questions put in English before they had been translated. He was also able to read documents in English as he was being asked about them. The questioning, with translation, and his habit of continuing to speak after answering the question, made for some two and a half hours of evidence. During that time, to outward appearance, he remained calm, collected, astute at times, with only the most occasional sign of impatience, though tense, wary of the whole process. He may have been a little upset when talking about where his mother and siblings were after they too had left Iran for Turkey. He was clearly keen to finish his evidence, for that reason refusing the break which his team thought he might need.
92. I make those points in particular because a few days before he gave evidence, I had refused an application for him not to give evidence or to attend the vicinity of the court, as had been ordered by consent in February 2010. The application was made on the grounds that he was unfit to give evidence, supported by a short doctor's note dated 4 August 2010, and the general view of his case worker from the Welsh Refugee Centre that his mental health had worsened since February 2010, that he was finding the litigation stressful, and that he would be tearful or

crying when the age issue was raised because people were saying that he was lying. He could not concentrate on answering questions. It struck me then that the application was unsupported by persuasive evidence, and it became apparent to me during his evidence that the application was wholly unjustified. It did not persuade me of the objectivity of Mr Winstanley.

93. Mr Buttler raised but did not pursue possible inadequate translation from the interpreter, which Dr Kakhi had discerned. Whilst there was one instance of that in relation to dates, I received no evidence and nothing was apparent from the Claimant, whose understanding of English was greater than might appear from the presence of an interpreter, which led me to believe that any important or even nuanced pieces of evidence were misinterpreted.
94. Of course, implausibilities or lies about what happened and what he has forgotten, do not necessarily mean that he is lying over his age. But he was well aware that the questioning was directed to what his account might tell of his age, and, in my view, he adjusted his evidence accordingly. The motivation for lying about being a minor in an immigration or asylum case is usually clear. Return is more difficult and greater benefit provided in care, schooling and other assistance. The prohibition on work is not lesser for minors however, so if the original aim was to earn money, the problems faced in doing so would have become more apparent en route. On the other hand if lying, why lie to the extent the Council says he is? So large a gap provokes suspicions or disbelief which a lesser gap might not, whilst still achieving the advantages of being a minor albeit for a lesser period. But that does not persuade me that CJ is being truthful about his age.
95. I turn to other occasions when CJ has, or may have told people how old he was. I give some weight to the evidence about occasions when CJ admitted lying to immigration officials abroad saying that he was younger or older than he now asserts, in order to avoid being finger printed, or detained. I do not regard such lies, whilst of themselves wrong, as of real significance in judging his age, but he lied about his age to achieve a specific immigration objective, to get to where he wanted to, to do what he wanted to do there. So they are relevant to his honesty.
96. There was an issue over whether CJ had told the police that he was born in 1988, but I am satisfied from the evidence of Ms Shackson and PC Bailey that there is no clear origin for this in anything that CJ may have told the police, as opposed to the police using information from somewhere else. So this adds nothing to the evidence.
97. Mr Hutchings submitted that I could infer from what happened in the Magistrates' Court on 30 October 2009 either that CJ had told the Court what his age was, or that he was represented and his representatives had done so and he accepted as true what they said. CJ had said in re-examination that he had not told the Court that he was born in 1988, and otherwise had given his date of birth only in the Iranian calendar. I am not prepared to draw the inference contended for by Mr Hutchings: it ought to have been possible to find out what had happened at the Court, from a source other than a forgetful and perhaps uncomprehending Claimant. The Court might have worked from the Council's age assessment, or from what the police said from their records, without any examination as to its

source. His physical appearance would not have put him obviously under 18 if the contrary appeared on official records already. So I cannot see in that any useful independent or additional source of evidence of age or admission.

98. The most important occasion when he did give a different age was when he was interviewed in hospital. There is no dispute about what he said. I reject his evidence about the manner of the interview in which he said that he was born in 1988. Whatever may be the way in which CJ perceived what was happening, I am entirely satisfied that Mr Nedsky did not ask questions in a way of which any justified complaint can be made: he was a mild, quietly spoken, caring man. It was not suggested to him that he had pressured CJ, nor that his appraisal of CJ's mood as calm was wrong, desperate as Mr Nedsky agreed he was to leave the hospital. So whatever may have been the way in which CJ perceived events in the hospital, I accept the account given by Mr Nedsky as to his mood and the manner of the questions. What he said was also consistent with how Mr Semmens described CJ, angry at the start of the interview but calmed when he gave his birth date as 1988. Although the notes differ to a limited extent, I accept that CJ also told the consultant that he was five years older than he had claimed, in a calm manner shortly afterwards.
99. The further questioning about age came up in a context in which a decision one way or another would not make any difference to when CJ might leave. But it was also holding up the decision as to how CJ's case would be dealt with. It is easy to see that CJ could have had an imperfect understanding of his position, because of language, the novelty to him of mental health procedures, and any effect which his mental health condition might have had on him. It is not in dispute that he really wanted to get out. It is but a short step for him to believe that the uncertainty over his age was holding up his release, and that the quickest way to get out would be to opt for the age which was the least contentious vis a vis officialdom. Mr Semmen's evidence shows that CJ was angry because he thought delay in appointing the consultant because of uncertainty over age, was holding up release.
100. Accepting as I do the manner of the questioning as described by Mr Nedsky and Mr Semmens, and the manner of CJ when answering as described by Mr Nedsky, I still cannot give this admission the weight contended for by the Council. It is the one occasion when there is evidence that CJ gave an age other than the one he has otherwise always said he was. He did not give an age other than the one assessed by the Council, which was simply to say that he was 5 years older than he claimed. Given the imprecision about his age which the Council still feel, as Mr Nedsky accepted in his evidence, it would be as much or perhaps more luck than judgment that the Council were right that he was five years older than claimed rather than four or three or two. That is some evidence that CJ was adopting the official version rather than admitting that he had lied about his age by five years.
101. CJ was detained in hospital because of his mental condition; he was "*desperate*" to leave, though the connotations of that word, which was Mr Buttler's, can be overdone as Mr Nedsky suggested. CJ was not far wrong in believing that certainty over his age really mattered to his early release. Opting for the official view would be the obvious answer, and there would every reason to be controlled in manner while so saying, and to repeat it to make sure that the message was

understood. The situation and its implications would have had to be explained very carefully to him, and the necessary safeguards be put in place, before weight could be given to an admission which, if untrue, was at best in his short term interests but otherwise contrary to them. In the end I put no reliance on what he said in hospital in reaching my decision.

### **The experts**

102.CJ produced a report dated March 2009 from Dr Warner, a consultant paediatric endocrinologist, who concluded on the basis of an age assessment interview that CJ appeared emotionally to be around 15 ½, and his physical features were compatible with that age. His view about emotional age is not one for which he demonstrated experience or expertise. His view about physical appearance was based on CJ's height and weight which, using UK growth standards, gave a 50 percent chance of his being under 14. He had the facial features of a 15 ½ year old boy. This view is based on the application of the UK standard to someone of a poor background from rural Iran, with a different diet and ethnicity from that which would create the UK standard; no allowance was made for this in the report, nor even comment about the applicability of the standards. I regard the report as valueless for that reason. The instructions to Dr Warner were not provided, yet the report reads as though Dr Warner was not asked how old he thought CJ to be, but whether what he saw was consistent with his being the age he claimed. The report does not show that CJ was not or probably was not 20 or 21 at the time. I can give it no weight one way or the other.

103.I have no doubt but that the criticisms by Mr Hutchings of Dr Kakhi's first report were well made out: the evidence which Dr Kakhi later gave about the way in which the proffered residence card was produced was very different from what Dr Kakhi said in this report. He only gave that evidence after UKBA had pointed out various features of the card which Dr Kakhi said that he had noted but had not thought worth mentioning. He had not examined the card outside the lamination; "texture" to him included lamination. He expected the residence card to be laminated, and that was included in the phrase from his report "*published on paper with a distinctive texture.*" He treated his report as covering all the hundreds of printing facilities used by any government service, including hospitals.

104.I regret to say that what Dr Kakhi said in evidence is simply not what any reader could have understood him to be meaning in his first report, before UKBA commented adversely on the card. If that report was overly formulaic, as Mr Buttler with some understatement suggested was its fault, in itself that was a serious and misleading failing by Dr Kakhi in his duty. He failed to address the specific documents which were before him. His evidence became completely different in its explanation of authenticity, changing from the apparent view that these were special documents shown to be authentic in part through specific features they possessed, to ones in which those features were merely those of an insecure reproduction, precisely because of the very number required. Dr Kakhi accepted that his report might have been clearer but affirmed that he had no reason to damage his credibility for one case. I accept that latter observation.

105. I have real difficulty with his evidence about the process of renewal of residence cards. I asked him why, if the authorities were not concerned to produce a secure document, they were willing to produce one which had seemingly secure features, notably the wet ink stamp, but in fact did not have them. He said that that was because the card when first issued would have been secure, but the renewal process meant that it became insecure through the manner of reproduction at local offices. The authorities became more indifferent on renewal to the insecure nature of the document because there were so many of them, and they had to be issued locally. A temporary residence card was unlikely to be sufficiently valuable to forge, and so did not require security. By implication that was not so for the residence card first issued.
106. I did not find this answer at all convincing. This was a document as important for foreigners and state control over their entitlement to be in Iran, as a national identity card was for nationals. If it was important to make it secure when first issued, it is difficult to see why renewal should be insecure, especially as the affixing of a wet seal and the use of a template and letter press on special paper would not add greatly to the time taken to issue it. A wet seal was used on what is said to be the commonplace hospital letter, and on the duplicate vaccination record. The letter used standard wording but was typed each time.
107. I did not find his evidence about how the renewed cards were actually produced at all clear either: he had not seen what was on the computer screen, and it was difficult to understand which parts he thought were produced from a template and which were scanned in from another document to make the scan lines appear in the card CJ produced. The photograph he said came from the file kept by the authorities, but scan lines also appeared on the reproduction of the wet ink stamp. I could not follow why this process would mean that the printing did not reach the end of the paper nor why it would lead to the unevenness of the cut.
108. I cannot accept Dr Kakhi's evidence by itself as demonstrating the genuineness of the documents and the accuracy of the date of birth. This is because of the serious failings in the first report, the evolution of his evidence in response to UKBA, and the uncertainties in his evidence. But those failings do not mean that the documents can simply be put to one side or that what he later said can simply be rejected.
109. These are the sort of documents which an Afghani in Iran would have and use to prove his age. The letter and vaccination card are simple documents which are produced or reproduced on request. The three documents are all self consistent. They are each in the appropriate size and layout, containing the required information where it should be. Ms Roberts cannot say that the residence card is definitely a fake and she is not in a position to challenge the authenticity of the other two. This makes a finding difficult that they are forged or genuine but, by bribery, contain false information.
110. There is weight in Mr Buttler's submission that in judging whether the documents were faked, or genuine ones procured by bribes, or genuine documents, the speed with which they were obtained was relevant. The residence card was received

from Iran by the IAS, within three weeks of CJ knowing from Croydon that it had not accepted his age. The other two were sent within a further 3 weeks or so. CJ's father had to go to the hospital to obtain them, since it is accepted by Dr Kakhi that that is how they would have been newly produced. Mr Buttler contends that that is not a long time in which to carry out the process of bribing the nurse who fills in the vaccination record, or the official who stamped the letter. Two officials at the hospital would have been involved, as well as someone at the local office of the Ministry of the Interior. The seals on the two documents are wet ink seals; and it is unlikely that false, forged or stolen ones for a small centre would have been readily to hand. So the speed with which they were obtained and sent supports their authenticity, it was unlikely that forged documents were already prepared ready to be sent, but not taken on the journey, to back up a pre-arranged falsehood.

111. The forgery is not one of identity since the name is CJ's, the personal details, save date of birth, are not disputed. It would not have been sufficient to put a photograph of CJ on someone else's existing card, because that would not have matched the name. There is no evidence of the date of birth being changed on the card.

112. Mr Buttler is also right that there is no specific evidence in the COIR that forged versions of documents such as these are readily available in Iran, although the evidence on bribery of officials suggests that it goes beyond bribery to fulfil a function properly, to include bribery to do it wrongly.

113. All this illustrates the importance of the approach in *Tanveer Ahmed v SSHD* [2002] Imm AR 318, that the documentary evidence along with provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case especially from the Claimant.

114. However, if the renewed cards are not secure as Dr Khakhi says, I really doubt that it is beyond the capability of someone fairly readily to reproduce them with altered details of date of birth. If renewals are intended to be secure, this is clearly a fake. I do not have sufficient confidence in Dr Khakhi's evidence to accept that an initially secure document is renewed insecurely. The security was never very great but does require a wet ink stamp in common with a hospital letter. Had this issue been confronted from the outset by Dr Khakhi, and had he been clearer about the way in which personal details were entered on the new paper on renewal, whether from a file or more surprisingly from an already personalised template for each individual, I might have accepted his evidence. But he seemed more to be guessing than knowing as his evidence progressed, even though he knew that the question of insecure renewal was at the heart of the authenticity of this and then of the other documents.

115. I remain troubled by CJ's uncertainty as to whether this important card was renewed after 23 August 2006. If not, he would have lived in Iran as a foreigner without the main identity paper for nearly one and a half years, as his physical

appearance changed from that in the photograph. If he renewed it, he would have left behind a newer one since he says he did not bring it with him. I acknowledge though that if forging a card, a later expiry date might have been used.

### **The previous assessments**

116. The previous assessments of age can only carry limited weight. I accept that Croydon LB has a great deal of experience in assessing age as a result of the UKBA presence in its bounds, but I cannot place much weight on its brief impressionistic assessment. Its function was to assist in the immediate decision as to what to do with the Claimant. It noted the birth date as 1 April 1993, but the source for that is not given. The initial Cardiff assessment of October 2008 is not of much greater value for the reason given by Mr Nedsky.

117. The December 2008 assessment cannot be given much weight because, although it also represents the view of another social worker as well, it is essentially the view of Mr Nedsky, which he has given evidence about orally. It cannot really receive greater weight than Mr Nedsky's views in Court. I add these observations. First, Mr Nedsky's evidence in answer to me, that CJ was 20 plus, in a range from 18-22, is rather less definite than the specific birth year assigned of 1988. I accept that the language of the assessment itself is rather more general and is consistent with what Mr Nedsky said in evidence, save for the lower end of Mr Nedsky's range. But he did not put the range as a range of equal probabilities; it covered only what he could not rule out as possibilities. Second, the December 2008 assessment also involved a judgment on CJ's credibility. Although relevant to the assessment task carried out by the Council, that is judgment for me now.

118. I recognise the impressionistic value of what others have thought: foster carers and hospital staff. The value of it lies in the close circumstances under which they have observed CJ. It was all one way; CJ is not and never was below 18 in the UK. There is no doubt but that is what they thought as a matter of fact, although they have not given evidence or been cross-examined about why that is what they thought. It would not be expert but an impression formed from observation and experience. It is not without value.

119. I accept that appearances can be very deceptive for the fact finder, but it would be wrong for me not to record my own impressions. CJ looked older than just 17, but I could not rule it out as appearance is very variable at that sort of age and a wide range of ages can look quite similar. He gave evidence in a confident and mature manner which suggested someone considerably older than just 17, facing such a tense and stressful time. I emphasise that this is no more than a small piece of what goes into the decision, but I see no reason to ignore it. The manner in which he gave evidence is relevant to how I judge the evidence of Mr Winstanley however.

### **The social workers**

120. This comes down to the views of Mr Winstanley and Mr Nedsky. Mr Winstanley's view was that physically CJ looked to be between 17 and 19, but rightly warned against overmuch weight being attached to that. He gave much

greater weight to his knowledge of CJ over one and a half years, and to CJ's immature behaviour, in coming to his view that CJ was 17-17 ½ . He gave no wider range, and CJ would be at the lower end of even that narrow range.

121. I am unable to give Mr Winstanley's evidence much weight. I have already referred to the application for CJ not to give evidence, and to Mr Winstanley's subsequent surprise that CJ could give evidence as he did. I do not think that he knew CJ as well as he thought he did or appraised him as objectively as he needed to in order to give really useful evidence as to his age. His role as case worker and litigation friend made him too tender to CJ, which allied to his general views about how children seeking asylum were treated, also impeded his objectivity.

122. The fact that Mr Nedsky's superior agreed with him, not having seen CJ, is of no consequence now, given the evidence which I have to consider for myself. I found Mr Nedsky to be a careful and fair witness, who did care for the individuals whose cases he handled. If his evidence had stood alone against CJ's and Mr Winstanley's, I would have had no hesitation in accepting it.

## **Overall**

123. I have in the end, after a great deal of thought, come to the conclusion that I should accept the appraisal by Mr Nedsky, that CJ now is 20 plus. This is supported by the general impressions of foster carers and hospital staff, and for what little it is worth the brief Croydon LBC assessment. It is also more in line with my own view of his emotional maturity from his demeanour, relevant but not especially weighty let alone decisive. He could be between 18 and 22, but I found just 17 impossible to accept and untruthfully alleged. I do not regard Mr Winstanley's evidence as persuasive.

124. I have explained the difficulties in CJ's evidence which caused me to have real doubts about it. There is nothing sufficiently reliable in it taken on its own to cause me to alter my view that Mr Nedsky's appraisal, supported as it is by other, albeit more impressionistic views from different sources, is correct. All of that evidence however would require the reliability of the documents he produced to be well demonstrated for his claim as to his age to be accepted.

125. In my view, there are too many unsatisfactory features in CJ's evidence for it to be accepted in the light of all the evidence about these three documents. The expert evidence simply fails to persuade me that I can give them the necessary credence. As it is, the documentary evidence is insufficient to counter the strong reservations CJ's evidence created about his truthfulness. I do not have to find that the documents are forged or obtained by bribery or a mixture of the two. I am not satisfied as to their authenticity, having heard all the evidence.

## **Burden of proof**

126. I had intended not to decide this case by what could be an unsatisfactory resort to the burden of proof. But it has been quite a close decision, principally because the speed with which the three documents were sought and obtained by CJ from Iran, supports their authenticity, which in turn helps CJ's credibility and could

overcome my strong reservations about him. And I am aware of the fragility of the basis for the age assessment decisions. In reality, if I ask: has the Council shown the Claimant to be an adult aged over 18 now and on arrival, I would answer nearly but not quite. If I ask: has the Claimant shown himself to be under 21 now, the answer is no and he is some way short of doing so.

127. I therefore have had to decide who bears the burden of proof. In my view it is for the Claimant to show that he is or was under 18 at the time that he asserts a duty was owed to him as a child. First, in judicial review proceedings it is for the Claimant to show that the public authority has erred in its duties. Second, but obviously related, it is the Claimant who is asserting that the duty is owed; the authority is not asserting a power to do something. It is not crucial but supportive nonetheless that the readier means of knowledge lies with the Claimant on this issue.

128. I appreciate Mr Buttler's point that there may be instances under the Children Act, e.g. a disputed age for the purpose of preventing a parent removing a child from section 20 accommodation, where an authority might have to prove age. But that is consistent with the obligation being on the person who is exercising power to show his entitlement to do.

129. That is the basis of my decision in *R (Becket) v SSHD* [2008] EWHC 2002 Admin para 2, that the SSHD bore the burden of establishing that the Claimant had obtained leave to remain by deception, the *Khawaja* issue [1984] AC 74.

130. It is not for the authority to disprove the jurisdictional fact asserted by a Claimant as the basis for the duty alleged. It is for the authority to prove the jurisdictional fact which it needs to assert against a disputing Claimant in order to give it the power it exercises.

131. This is not a case either, as I have considered it, where there is a grey middle range of 17-19 with the crucial age falling in the middle. Giving the benefit of the doubt to such a Claimant wisely reflects the uncertain nature of age assessment. But that is not the issue here: it is which side of the large gap was this Claimant, essentially as a matter of credibility.

## **Decision**

132. Accordingly, for the reasons I have given, I am not persuaded that CJ was under 18 when he arrived in the UK. He is now over 20. This claim is dismissed.