

Neutral Citation Number: [2005] EWHC 2811 (Fam)

Case No: FD04P01739

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/12/2005

Before :

THE PRESIDENT

Between :

"E"
(by her Litigation Friend, P W)

Applicant

- and -

London Borough of X

Respondent

Mr Peter Horrocks (instructed by **Atkins Hope Solicitors**) for the Applicant
Ms Lucy Craig (instructed by **London Borough Legal Services Department**) for the
Respondent

Hearing dates: 4th October 2005

Judgment

THE PRESIDENT

This judgment is being handed down in private on 6 December 2005. It consists of 15 pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Sir Mark Potter, P :

Introduction

1. “E”, who sues by her Litigation Friend, is presently a ward of court. She is a citizen of Ghana who, on her account, entered this country with her older sister “S” in 2001 and has since been resident here. The circumstances of her background and early life in Ghana are by no means clear. She states that she believes and has always understood that she was born on 20 September 1988 and is now therefore just seventeen. The question at issue before me is whether or not that is indeed her age, or whether she has been deliberately and persistently misstating her age in order to represent herself as a child entitled to various benefits, and / or protection from the London Borough in which she has until lately been resident (“the Local Authority”) as a child in need of care.

The background facts

2. On her account, she was brought up with her elder sister S in the midst of an extended family in a compound in a rural area of Ghana, being principally cared for by KY whom she looked on as her mother, but understood to be her maternal grandmother. She believed that her mother (“E McL”) went to the UK soon after her birth and was living in England where she had married. E McL rarely returned home to Ghana. S had preceded E to the United Kingdom. She obtained a visa in Ghana in 2001 and went to live with E McL, enrolling at school. However, she was not happy there. She returned briefly to Ghana where E then obtained a visa and went to England, the girls returning on separate flights. E was accompanied by a man called Vincent whom she understood to be her mother’s boyfriend. Once in England, she lived with E McL and S as her mother and older sister respectively, being enrolled at a local secondary school where she proceeded to do well.
3. After a time, E fell out with E McL whom she states began to mistreat her. In June 2004, E was caught shop-lifting and, shortly afterwards, her school notified the Local Authority Social Services that her work had deteriorated and that she appeared to be sad and hungry much of the time.
4. On 9 July 2004, the Social Services visited E McL who made a number of complaints about E’s behaviour but said that she was willing for her to remain in the house. When recommended by social workers to return to her mother’s care, E left home and

spent three nights sleeping on a park bench. When she returned to school on 12 July 2004, her tutor took her back to Social Services insisting that they accommodate her, which they did, placing her with foster carers.

5. On 24 August 2004 Social Services convened a meeting to look at the relationship between E and E McL and explore ways of returning E home. However the meeting was difficult and E and E McL were unable to resolve their differences. E McL withdrew her consent for E to be accommodated by the Local Authority with foster parents and stated that she had an airline ticket for E to return to Ghana on 30 August 2004. E was again advised to return home. She refused and stayed a further 3 days with her foster carers, before the Local Authority removed her belongings.
6. On 27 August 2004, being now homeless, E consulted solicitors and acquired an advocate from Reconstruct. E applied ex-parte by counsel before Munby J to be made a Ward of Court and for an order that the Local Authority should prepare a report outlining the outcome of any child protection investigation and making clear why E had not been accommodated or placed on the Child Protection Register. On counsel undertaking to issue an Originating Summons requesting such relief forthwith, E was made a ward of court and her advocate from Reconstruct was appointed her Litigation Friend. It appearing to the court that a care or supervision order might be appropriate, the Local Authority was directed to prepare a report under s. 37(1) of the *Children Act* 1989 and the case was listed for urgent hearing on 6 September 2004.
7. On 6 September 2004 the matter came before Holman J, with E and the Local Authority represented. E McL, who had been served as second respondent to the Originating Summons, was neither present nor represented.
8. There was placed before the court a s.37 report upon E dated 3 September 2004, made by a qualified and experienced senior social worker employed by the Local Authority, Ms M. That report is a thorough and comprehensive document, setting out the circumstances surrounding E and her family, being based on a number of interviews and conversations with E and E McL over a seven week period as well as two interviews with S, in which a thorough investigation of the family history and situation was set out. The Report records E's date of birth as 20th September 1988, and that E McL had produced E's birth certificate (which Ms M photocopied), which stated that E McL was the natural mother of S and E. The s.37 report was in large measure concerned with the allegations and counter allegations of E and E McL and the best way forward so far as E was concerned. It concluded that the Local Authority had no grounds to apply for an order, and that the issues centred around family boundaries and a breakdown in communication. The Local Authority did not consider the threshold for proceedings was met and considered that the issues within the family could be dealt with without the Local Authority sharing parental responsibility for E. The Local Authority, having referred to Rapid Response to work with the family, proposed no further action on its part.
9. Despite the indication of Holman J that, if application were made, he would be prepared to make an interim care order, the Local Authority took the position that it believed the return of E to E McL could be brokered. In the face of E's stated fear that E McL wished to return her to Ghana, which she did not want, the judge urged the Local Authority to be as caring as possible. He directed that the Home Office provide information as to E's immigration status and ordered that no one should cause

or attempt to cause E to be removed from the jurisdiction, the Local Authority being ordered to hold E's passport by the order of the court. The matter was adjourned to 21 September 2004 for further directions.

10. After the hearing before Holman J, E made disclosures of possible sexual abuse at home. The Local Authority conducted a s.47 investigation and concluded there was no risk. E still refused to go home. The refuge to which she applied was unable to accommodate her and the Local Authority called the police to remove E from their offices.
11. On 9 September 2004, an emergency out of hours' application for judicial review was then made on E's behalf, seeking review of E's s.37 assessment and the decision of the Local Authority not to issue care proceedings. At that hearing Cox J ordered the Local Authority to provide suitable accommodation.
12. E was then placed in foster care. At an adjourned hearing on 13 September 2004, E McL consented, and the Local Authority agreed, to E being accommodated by the Authority with foster parents under s.20 of the 1989 Act. On 22 September 2004 a consent order was made in the judicial review proceedings discharging the order of Cox J, the Local Authority agreeing as part of that order that it would give forty-eight hours notice of any future intention not to provide such accommodation.
13. E then settled well with the foster parents after what had been a period of stress and uncertainty during which she had indulged in self-harm. She kept in touch with S who stayed on with E McL in the family home. However E McL would have nothing to do with E. An application was lodged with the Home Office by the Community Law Clinic on behalf of E for her to have leave to remain in the United Kingdom (which application has since been granted).
14. On 7 December 2004, matters took an unexpected turn. Earlier in the proceedings, E McL had sworn an affidavit setting out the history from her point of view in which she stated:

“I have two daughters. My older daughter is [S] and my younger daughter is [E] who will be sixteen on 20 September 2004..... The father of the two girls is [DA].”

At the hearing before Singer J, however, E McL stated that she was not E's mother, but her older sister, and that E was not a child. In those circumstances, Singer J gave directions that E McL file and serve a full and frank affidavit setting out the circumstances concerning paternity, age and family relationships of E and that E file and serve a statement in response. He gave additional directions and listed the matter for further hearing on 26 January 2005. He also adjourned an application made by the local authority to be discharged from the proceedings to be heard on the same date.

15. In her second affidavit, dated 21 December 2004, made pursuant to Singer J's order, E McL asserted that she was not the mother of E, although she was the mother of S. She claimed that E was the child [and not the grandchild] of KY by DA, and thus was E McL's half-sister. DA was E McL's stepfather and S had been born to her as a result of her rape by DA. E, was in fact *older* than S by some three years, S having been born on 20 September 1985. E McL had originally come to the UK because of

the unbearable situation in the home in Ghana leaving KY to care for E and S. S had first joined her, followed later by E. She said that difficulties had developed in England between her and E once E arrived in the UK. E had begun to threaten her and in effect to blackmail her, telling her that if she did not let E stay she would tell E McL's husband that S's birth father was a result of rape by her step-father. E McL exhibited a certified copy of E's Ghanaian birth certificate obtained by her on 21 March 2002 (presumably that produced to Ms M when she made the earlier s.37 report). It is noteworthy that this named DA and E McL respectively as the father and mother of E, the date of her birth being 20 September 1988. It thus gave no support to E McL's assertion that E was older than S or that she had any birth date other than 20 September 1988. E McL asserted that the birth date shown on the certificate was false. However, she gave no explanation as to how that came about or why it should be so.

16. On 26 January 2005 Singer J again adjourned the proceedings to 10 March 2005 when E and E McL were to attend. He also ordered that the Local Authority file and serve a final or interim age assessment on E by 28 February 2005. He adjourned to the same date the application of the local authority, together with a similar application now made by E McL, to be discharged from the proceedings.
17. On 28 February 2005, Ms N, a social worker employed by the Local Authority completed an Age Assessment in consultation with Ms M, the author of the earlier s.37 report. That too was an apparently thorough document, which set out at length the conflicting material considered by Ms N. It highlighted various inconsistencies found to exist in the accounts given by E from time to time of the dates and circumstances surrounding the application for her visa and her flight from Ghana to London and her apparently shifting memory of various members of her extended family. It also placed weight on the fact that, whereas previously E had presented to Ms M as focused and grown-up in manner, she was at her assessment interview presenting as relatively "immature, giggly [and] unsure about basic information to do with her family, life style and future."
18. The conclusion of the Age Assessment was as follows:

"Although [E] may not appear to be physically older, her thought processes, presentation, actions and self-awareness as well as all the documentary evidence, this would indicate that she is behaving in a manner which leads me to conclude that she is much older than the age she says she is."

It was further concluded that, based on that assessment, E's age was "between 20-22 years old".

19. That being so, when the matter came before Bracewell J on 10 March 2005, the Local Authority took the stance that it had no duty to E as a child in terms of accommodation or support and applied to be discharged from the proceedings. Miss Craig, who appeared for the local authority, submitted that, if E wished to challenge the Age Assessment, then the appropriate process was by way of judicial review, and that no such application had been made. Bracewell J having heard representations from all parties discharged E McL as a party but refused to discharge the local authority. She considered that E's age required to be determined for the wider purpose of the wardship proceedings and in the interests of her future welfare. To that end, she

directed that E serve a statement in response to the Age Assessment and any other evidence to show she was a child by 31 March 2005, by which date the Local Authority was also to file any further evidence. The matter was listed to be heard before Singer J on the issue of E's age on 13 June 2005.

20. On 14 March 2005, the Local Authority terminated E's foster placement. Since that time E has led a shifting existence in temporary accommodation with acquaintances and sometimes with S, who herself moved out of her mother's home in December 2004, when E McL made it plain that she was not welcome there because she was defending E. S has managed to support herself and is now a student at Leicester University. She remains in close touch with, and is highly supportive of E, whom she states that she has always known, loved and regarded as her younger sister.
21. The position at the time of the hearing before me is that E has since May 2005 been living in the home of Mrs CG, a teacher at the secondary school which E formerly attended. That home is situated in Croydon, a different local authority area. E has completed her GCSEs with good results and is now at a convent senior school, hoping herself to go to university in due course. Her finances are precarious. She receives £30 per week from the school she now attends. She also does some part-time work outside school hours as a sales assistant, earning almost £40 per week. The Department of Work and Pensions are currently assessing E, whom they accept is a child of seventeen. Mrs CG, is presently accommodating E rent-free, but she is now retired and feels unable to give E continued lodging unless she shortly receives rent. E is hoping that she may in due course receive housing benefit. Her immigration position is that she has now obtained limited leave to remain in the United Kingdom until 2008.
22. Despite the fact that E has now moved to live elsewhere and no longer appears to be the appropriate subject of a care or supervision order, the Local Authority retains an interest in the position and concerned to prove that E is indeed not a child for the following reason. It is not in dispute between the parties that the local authority in whose area E now resides is the relevant authority in relation to any duties which may be alleged to exist in respect of E under Part IV of the *Children Act 1989*. Furthermore, the Local Authority, where E now resides has been notified of these proceedings but does not seek to be heard. However, if E is still only 17, because the period of accommodation which she spent in foster care provided for her by the Local Authority between September 2004 and March 2005 exceeded 13 weeks, she is a "relevant child" for the purposes of access to the resources and support of the Local Authority under s.23A-C and s.24B of the 1989 Act, as amended by s.2 and s.4 respectively of the *Children (Leaving Care) Act 2000*, although she has made no claims in that respect.

Jurisdiction

23. In the ordinary way, it is of course for the local authority to decide whether or not to issue care proceedings or otherwise to exercise its powers under Part IV of the 1989 Act. However, given the power of the courts to call for a s.37 report it is a legitimate exercise in appropriate circumstances for a party to issue wardship proceedings for the purpose of obtaining an order for such a report so that, dependent upon its findings, a local authority may consider taking proceedings under Part IV where hitherto it has not done so.

24. In argument before me, Miss Craig for the Local Authority did not suggest otherwise. Nor has she suggested that, for the purposes of determining its own jurisdiction over infants in wardship proceedings, the court lacks the power, which plainly it has, to determine the true age of the subject of the proceedings, in order to ensure the proper exercise of its powers. However, Miss Craig submitted that the sole purpose for which the wardship proceedings are now being pursued, following the Local Authority's adverse Age Assessment is to reverse that assessment. Thus (1) in substance the court is being asked to exercise an appellate or review function in respect of the Age Assessment which (if done at all) ought properly to be done by way of judicial review and (2) the court is in any event being invited to interfere with the powers granted to the Local Authority to supply or (if so decided) to withhold services under the 1989 Act, which invitation it ought in its discretion to decline.
25. Mr Horrocks, on the other hand, submits on behalf of E that the exercise which the court is being asked to conduct is one that is necessary and integral to the exercise of its wardship jurisdiction and that, albeit the issue as to the age of E has arisen in the context of the court's consideration of the needs of E at a time when the necessity for a care or supervision order by the local authority was under consideration, the court is not now interfering with any statutory power granted to the local authority by itself proceeding to determine E's age. He submits that the court should proceed to its determination, not only for the purpose of deciding whether or not to continue to exercise its powers of wardship, but because it is in the general welfare interests of E in the confused and effectively parentless situation in which she finds herself to have the matter of age determined on the basis of the evidence now available and, if found to be a child, to enjoy the protection of the court.
26. In my view, I am not prevented from proceeding to deal with the issue before me as a matter of jurisdiction; the only question is whether I should do so as a matter of discretion.
27. The object of the intervention of the court in respect of the care or welfare of child, whether by way of wardship proceedings or when exercising its inherent jurisdiction outside wardship, has always been to promote the welfare of the child; see *A v Liverpool City Council* [1982] AC 363 per Lord Wilberforce at 371. Although the limits of the inherent jurisdiction have never been defined in this respect, the court has none the less recognised that it will not exercise its powers in respect of children so as to interfere with powers granted to a person or institution such as a local authority unless the statute granting such powers expressly so permits: see *Re W(A Minor) (Wardship: Jurisdiction)* [1985] 791 per Lord Scarman at 795-6:

“The High Court cannot exercise its powers, however wide they may be, so as to intervene on the merits in an area of concern entrusted by Parliament to another public authority. It matters not that the chosen public authority is one that acts administratively whereas the court, if seized of the same matter, would act judicially. If Parliament in an area of concern defined by Statute (the area in this case being the care of children in need or trouble) prefers power to be exercised administratively instead of judicially, so be it. The courts must be careful in that area to avoid assuming a supervisory role or

reviewing power over the merits of decisions taken administratively by the selected public authority.”

See also *Re Z (A Minor)(Freedom from Publication)* [1997] Fam 1 at 23 B.

28. In this context, it is specifically provided by s.100(2) of the *Children Act* 1989 that:

“No court shall exercise the High Court’s inherent jurisdiction with respect to children –

- (a) so as to require a child to be placed in the care, or put under the supervision, of a local authority;
- (b) so as to require a child to be accommodated by or on behalf of a local authority;
- (c) so as to make a child who is the subject of a care order a ward of court; or
- (d) for the purpose of conferring on any local authority power to determine any question that has arisen, which may arise, in connection with any aspect of parental responsibility for a child.”

29. The question therefore arises whether to proceed with the hearing would be a breach of that statutory provision or of the wider principle articulated by Lord Scarman so that I should decline to perform the exercise previously ordered by Bracewell J in respect of which the local authority did not seek to appeal.

30. The position which has been reached in these proceedings so far as the local authority is concerned is that it does not propose, nor is it sought by or on behalf of E, that this court should exercise its inherent jurisdiction for any of the purposes set out in s.100(2); nor does the local authority seek to make any application for the court to exercise its inherent jurisdiction to make any order in respect of E: see s.100(3). Thus for the court to proceed to determine the age of E pursuant to the order of Bracewell J would not involve any breach of s.100 of the 1989 Act. Nor has Miss Craig so submitted.

31. Nor, if the court were to proceed to do so, would it be exercising an appellate or supervisory function in respect of the local authority’s Age Assessment. That assessment was conducted under a non-statutory internal procedure of the local authority carried out in accordance with the guidance given by Stanley Burnton J in *B v London Borough of Merton* [2003] EWHC 1689 (Admin). I am being asked on E’s behalf to conduct an inquiry by way of original (and not appellate or review) jurisdiction for the purposes of the court in the exercise of its wardship function on the basis of the evidence now available to it a good deal of which was not available to the local authority. To do so will not in itself interfere with the exercise of the statutory powers of the local authority in relation to which there are no provisions governing age assessment. While the local authority is at liberty, and indeed no doubt obliged, to withhold care services it would otherwise supply to a person if it is satisfied that party is not a child, the statute does not prescribe what method of

assessment should be adopted for that purpose. It does not seem to me that, if the question of the age of a putative child becomes an issue in wardship proceedings, a decision of the court to adjudicate upon that issue for the purposes both of establishing or confirming its protective jurisdiction and furthering the welfare of the child, the court should decline to deal with it simply because a local authority has conducted an earlier age assessment on the basis of more limited evidence and for a more limited statutory purpose.

32. Having said that, however, if the court is satisfied that wardship proceedings are being misused, in the sense that they, are being carried on solely for the purpose of obtaining a decision or order which by-passes or interferes with a process of age assessment by a local authority then it would be inappropriate for the court to exercise its wardship jurisdiction for that purpose. While the 1989 Act does not expressly so provide, it is inherent in its structure and content that a local authority, in any case where doubts are raised in respect of the age of a putative child in need of care and protection, should make an age assessment and, according to its results, decide whether to take measures in respect of the “child” under the provisions of the Act. It is thus an area in which, in the words of Lord Scarman, the court must be careful to avoid assuming a supervisory role or reviewing power over the merits of the local authority’s decision.
33. Is the position here such that those observations apply? In the special circumstances of this case, I do not think it is. There is no suggestion that the proceedings were inappropriately commenced (see paragraph 23 above). The question of doubt as to E’s age only arose in the mind of the local authority *in the course* of these proceedings in the unusual circumstances described. When it did arise, Singer J rightly directed the authority to conduct an age assessment before the matter was further considered. When the matter returned for further consideration before Bracewell J, I am told that Miss Craig aired the submissions which she has made before me, however, Bracewell J was not prepared to treat the Age Assessment as dispositive of the question of E’s age for the wider purpose of the wardship proceedings in which the court is required to consider the position of the subject child on a broad welfare basis. In that respect, it was the position of E at that time was that her fate would be entirely at large on termination of the foster placement in which she was currently placed but from which she was about to be ejected. She would effectively be parentless and the local authority would have washed its hands of her. That being so, Bracewell J no doubt considered that in relation to (a) the need to determine the jurisdiction of the court in wardship and (b) general welfare concerns in respect of E in her limbo of uncertainty as to her age, it was appropriate to make a judicial determination of E’s age, having afforded her a sufficient opportunity to gather evidence in that respect.
34. The court having so ordered, if objection was to be taken to the judicial determination of E’s age in the wardship proceedings, the proper course was to have appealed the order of Bracewell J. Instead, on the basis that the order was effective and thereafter unchallenged, E’s advisors were encouraged to proceed to obtain further evidence for the purpose of the hearing on the basis that thereafter the matter would be appropriately dealt with in the wardship proceedings, the date for any proceedings for judicial review being due to expire well before the date fixed for the hearing of the issue.

35. In these circumstances, I see no reason to decline to deal with the issue in accordance with the order of Bracewell J. Indeed, it would be unjust to E to do so. For the reasons I have set out, it is neither the intention nor the effect of my determination to constitute an appeal or review of the Age Assessment. Although in the ensuing paragraphs of my judgment, I refer in some detail to the content of the Age Assessment, that is because, at the request of the Local Authority I have received it in evidence in the inquiry before me, the nature of which is more inquisitorial than adversarial for the purpose of establishing E's age. In that respect, at the outset of the hearing I made it clear to the Local Authority, who were content, that I would treat the views and conclusions stated in the Age Assessment as being the bona fide views and conclusions of Miss N and Miss M on the basis of the interviews conducted by them and the evidence before them as referred to in the assessment, without the necessity to hear their oral evidence to that effect. That being so, I have felt it appropriate carefully to explain the reasons why, in the event, I differ from their conclusions.

The evidence as to age

36. In reaching my decision, it seems to me right to start with the oral evidence given before me by E and her sister S, which was consistent so far as E's age is concerned. E stated that she has always believed her birthday to be 20 September 1988, though she had never seen a copy of her birth certificate until recently in connection with this litigation. In Ghana she was first educated at a junior school called the Oxford School prior as a preliminary to attending the secondary school, which S was attending in 2001. They were brought up together till S went to the UK towards the end of 2001.
37. S for her part said that she was brought up with E, who was her younger sister with whom she was very close. She was 3 years older than S. They had walked to school together till S came to the UK in September 2001 to join E McL. Unhappy, S had come back to Ghana for the Christmas holidays she returned to England at the same time as E, but on a different flight. While she and E were at school in Ghana, E McL had for years sent money back to KY for the care and school fees of both E and S.
38. I heard also from Mrs CG, who was E's form teacher in the year commencing 2002 and with whom she has been living since May 2005. Mrs CG said that E was enrolled at school in the UK in a form appropriate to her stated age. Mrs CG, who has been a teacher for many years, had no doubt but that E was the same age as her classmates who were 13 and 14-year-olds. E's behaviour was typical of a girl of her age. She was a bright student and a very competent-seeming pupil, but was also somewhat vulnerable, sulking with disappointment if she did not do well. Since May 2005, Mrs CG has come to know her very well. She said that E is by no means fully mature. Mrs G has also met S whom she considers plainly older and more mature than E, the two enjoying a typically older and younger sister relationship.
39. Ms HW of the Local Authority's Youth Awareness Programme, whose responsibility is support work in respect of 16 to 19-year-olds, also stated that she was confident of being able to detect the difference between a 16-year-old and a 19-year-old. Having worked with E since September 2004, she believed that she showed the typical attributes and behaviour of a 16-year-old.
40. I also received in evidence a statement from Mrs A the Deputy Student Access Co-ordinator and a teacher at E's school who has known E throughout her three years of

progress there. Mrs A stated that, while presenting as a highly motivated learner, E has throughout behaved in accordance with the expectations of her peer group neither standing out for reasons of size or behaviour as an older person. Her level of maturity was average for the children in her year.

41. Having observed E and S closely in court and while giving evidence, my own assessment, which is of course grounded in much less experience than that of the social workers and teachers involved, is confirmatory of that of the witnesses from whom I have heard, to the extent that in appearance and manner E presents as an apparently bright and intelligent 16 or 17 year old, and that S, who is plainly older and more mature, presents as the older of the two by a few years. It is also right to say, that there appears to be an obvious familial likeness between E and S.
42. So far as the detail of their evidence was concerned, the substance of their evidence as to their age and relationship was consistent and convincing. Further, the picture of an older and younger sister, brought up together in the same extended family and proceeding in turn to the same schools in Ghana on the basis of an age difference of three years was consistent with their similar assessment, placing and performance in the English educational system once in the UK. I was left in no doubt whatever that S is the older of the two and that there appears to be an age gap of about three years.
43. I have been careful to state that I regarded the evidence of E and S *as to their age and relationship* as credible and convincing. I was less impressed by their accounts as to the obtaining of E's visa in Ghana, the visits of the family to the High Commission in that regard, and the circumstances surrounding the unavailability of E's passport, stated by E to have been destroyed by her in England in order to avoid being sent home by E McL to Ghana. However, the vagueness and, as I suspect, lack of frankness of their evidence in that regard does not in my view affect the consistent and convincing nature of the available evidence as to their age. If, as I suspect, there has been irregularity in relation to E's entry to this country (and it may even be there has been use S's visa and passport for that purpose), it does not in my view go directly to the question of E's age, albeit that suspicion calls for close scrutiny and assessment as to the truth of their evidence in that respect. As I have already stated, I have found that evidence convincing, although I am conscious that my conclusion differs from that of the experienced Local Authority social worker who performed the Age Assessment, to which I shall shortly turn.
44. Before I do so, I refer to the evidence concerning the various forms (three in number) of photocopy birth certificates, which have been placed before me in these proceedings, in the order of their provenance.

The Birth Certificates

45. The first certificate, is or purports to be, a "Certified Copy of Entry in Register of Births" (certificate No F 436494) relating to E (whose full names are given) showing the father and mother as DA and E McL with a birth date of 20 September 1988. The birthplace is shown as Konongo Health Centre, Konongo, informant DA. The entry number in the Konongo registry is shown as No 331. Both the date of registration and the date of the certificate by the Konongo Registrar are shown as 18 March 2002. The second affidavit of E McL states that this certificate was obtained shortly after E

was due to return to Ghana in 2002 after her original entry to the UK as a holiday visitor but “could not find her passport”. Its date is consistent with that account.

46. The second certificate is also a certified copy of a registry entry (certificate No F 841269) in similar format, acquired for E from Ghana by the Connection Service on her behalf in connection with this litigation. I received no satisfactory account of the individuals involved in obtaining it. The father is again shown on the certificate to be DA, but the mother is stated to be one A. The birth date of E is also shown as 20 September 1988. The birthplace is shown as the District Hospital Konongo and the informant is stated to be A (mother). The entry number in the Konongo Registry is shown as No 461. The date of registration and the date of the certificate by the Konongo Registrar are shown as 4 April 2005 and 5 April 2005 respectively.
47. Finally, there is what purports to be a photocopy of E’s original Birth Certificate, dated 10 October 1988, stated by Ms HW of the Youth Awareness Programme to have been obtained in Ghana by a Ghanaian lawyer requested to investigate the position in Ghana in the light of the discrepant certified copies of registry entry referred to above. It appears to be a copy of an authentic document, though again I have no further detail as to its provenance. It is on its face signed by the Registrar of the Konongo District and witnessed by him on 10 October 1988. Like the second certificated copy of Registry Entry referred to above it shows DA and A as father and mother respectively, the birth date being 20 September 1988. The entry number appears as No 369.
48. Despite the various discrepancies I have mentioned and, most notably the fact that, the first certificate of Registry Entry shows E McL (under her Ghanaian name) as mother, whereas the second certificate of entry and the Birth Certificate show one A as mother, all show that a female child with the same name as E, whose father is DA (who is in turn acknowledged by all concerned to be part of the extended family in Ghana from which S and E McL also came) was born at Konongo on 20 September 1988. The only suggestion to the contrary comes from the second affidavit of E McL, sworn at a time when she was plainly interested to disown or discredit E and have her returned to Ghana. Furthermore, at the time the first certificate of Registry Entry was obtained by E McL in March 2002, she had no obvious reason to misrepresent E’s birth date. Whatever the precise state of the Konongo Registry or the number of the entries within it relating to the birth of E, there seems no reason to doubt that the date of birth recorded in the Registry is 20 September 1988 or that the date shown on the copy of the original Birth Certificate (see paragraph 38 above) was other than a true statement when made by the Registrar on 10 October 1988.

The Age Assessment

49. In considering whether or not I have sufficient and credible evidence to conclude E was born on 20 September 1988, I have carefully weighed the content and conclusions contained in the Age Assessment of the Local Authority made by an experienced social worker in conjunction with Ms M, the social worker who had principally been involved with E over the relevant period.
50. The Local Authority stands four square upon this assessment and the documents referred to in it. It also refers to a copy document, subsequently produced by E McL, which purports to be a certified copy of E’s admission form to Konongo-Odumasi

Secondary School in which E's date of birth appears as 9 December 1984. However, since it is immediately apparent to the eye that the digits of the year "1984", and possibly the month "December" are overwritten upon characters not now discernible, and since the document was produced by E McL after her "revelation" in order to support her new account, the document in my view has no probative value whatsoever.

51. Returning to the Age Assessment, the following features are worthy of comment.
52. First, it places great weight upon E's somewhat giggly and relatively vague and inarticulate performance at interview as compared with her presentation to Ms M, who was responsible for the earlier s.37 report, in which she described E as "bright, intelligent and focused". The question was raised, and indeed it is plain that the conclusion was drawn, that E was deliberately adopting this attitude because of the need to appear younger than she was. Accepting that to be so, it does not seem to me logically to follow that her age was older than that of a 16 to 17-year-old, which Ms M had plainly accepted that she was for the purposes of the earlier s.37 report, her care plan documents (which are also before me), and in all subsequent dealings between the local authority, E and E McL up to the time of E McL's "revelation".
53. Substantial weight is placed upon the apparent and/or deduced discrepancies in E's various accounts under the heading "Social History and Family Composition" and "Developmental Issues". In particular, doubt is cast on the circumstances and history of E's leaving Ghana and coming to England, including her visa application in Ghana. Again accepting this to be the case, and that such inconsistencies go to the general truth of E's account, they go, in my view, principally to the question of the lawfulness of her arrival and immigration status rather than the question of her age.
54. In considering the matter of E's education, a conclusion is drawn that her achievements at school in the UK suggest that she had a longer and better education in Ghana than she states and that she is not simply a bright student and conscientious for her age as stated by her teachers, but older than she admits. However, it is not apparent that this theory was ever put for comment to the teachers consulted, one of which was Mrs A to whose own considered assessment I have already referred at paragraph 27 above. Further, there is a passage in the Age Assessment, which shows that E's foster carer (who obviously had the opportunity to know E and her behaviour well) explained E's apparent maturity for her age on the ground that "in their Ghanaian culture children are trained from a very young age to be independent and they tend to be more developed than other young people who live in comfort in the UK."
55. The conclusion of the Age Assessment, as quoted at paragraph 18 above states that, not only E's behaviour but "all the documentary evidence" lead the maker to conclude that E is "much older than the age she says she is". I am not clear, nor has it been made clear to me in argument, to what documents this is a reference. Of the documents exhibited with the Age Assessment the only documents referred to are (1) the birth certificate (in fact the first copy Register Entry) obtained by E McL when applying for a new passport for E. In the Age Assessment it is stated that it is "unclear" whether the birth certificate can be relied on as evidence of age, and plainly it has been ignored in that respect, because the certified birth date was 20 September 1988, which is supportive of E's case.

56. (2) E's year 11 School report of January 2005, in which E is variously described as able, determined, hard-working and conscientious, producing work to a good standard and always prepared to ask for help if she encounters a problem. In a lengthy report, there is simply nothing to suggest that E is not an ordinary, age-appropriate member of her class or year.
57. (3) Documents (presumably supplied by E McL) in relation to E's admission to her school in London which appear in section D of the court bundle. There is nothing in these documents to show E's age as being other than 16. On the contrary, the Admissions Document, signed by E McL, showed E's birth date as 20.9.88. The Admission Document is accompanied by a post-natal "Road to Health Chart" from the Konongo Health Clinic, which shows the same birth date and bears a series of dated immunisation entries in different hands dated in 1988/1989, which are entirely consistent with such a birth date. It is again noteworthy that, whereas the father's name is shown as DA, the name of the mother is shown as AA.
58. (4) A message from the Embassy in Accra which relates to S's application for a visa, together with her answer to questions asked and certain pages of her passport, which are relied on to show that, at that time, no mention was made by S or E McL of E's existence as a sibling. This does not seem to me to assist on the question of E's age.
59. In the section of the Age Assessment headed "Information from Document and Other Sources" it is observed that:

"From a professional perspective, the information gathered is very inconsistent and [the fact] that it is difficult to sort out fact from fiction infers that something is being hidden."

I agree with that as a general observation. However, on all I have heard and seen in evidence, there is nothing which leads me to conclude that it is E's age which has been the subject of concealment and inconsistency, albeit there is reason to question the circumstances of her entry and as it now appears, the identity of her true mother.

60. As for the assessment of E's age as being 20 to 22-years-old, the reasoning is simply not apparent. While I accept the Age Assessment is a thorough and conscientious piece of work, I feel unable on the evidence before me to accept its conclusion.
61. Although the Local Authority have conceded before me that, in the light of the history, I should place no reliance upon the affidavits of E McL, it seems plain to me, and it is not surprising, that the contents of her second affidavit, which it is clear were taken into account for the purposes of the Age Assessment, must have conditioned the approach of the Local Authority in relation to the assessment. The revelations contained in that affidavit were the very context in which the Age Assessment was ordered by the court, whereas hitherto it had not occurred to the Local Authority that any such assessment was necessary. Indeed no question had been raised as to whether E was older than her appearance, let alone three years older (rather than younger) than S, who was by that time apparently of University age. Whereas the final Conclusion of the Age Assessment is stated in terms that rely simply on E's behaviour, demeanour and educational assessment, the fact that none of these had hitherto given the Local Authority any pause for thought and are contrary to the evidence of her teachers themselves, leads me to conclude that, although now acknowledged to be

unreliable, the evidence of E McL was influential upon the mind of the maker of the assessment.

62. Whether or not that is so, I have had additional advantage of the evidence and cross-examination of E and S upon oath and the views of others at least as well placed as the social workers to form a view about E's age and maturity. I also regard the birth date, as stated in the copy Birth Certificate now before me, together with the Konongo "Road to Health" chart, as corroborative of the evidence of E and S as to the age and birth date of E.

Conclusion

63. I am satisfied on the evidence before me that E is aged 17 years, having been born on 20 September 1988 and I am consequently satisfied that she has been validly made the subject of a wardship order.
64. No doubt, on receipt of this judgment in draft, the parties will be enabled to discuss the best way forward. E appears to have a proper roof over her head so long as her situation with Mrs CD continues. However (subject to the further submissions of counsel) I do not consider it appropriate to discharge the wardship of E before she reaches the age of 18, in the light of the uncertainty as to her present circumstances should she be obliged to leave her present lodging. It is by no means clear that she will continue to live with Mrs CD and, in the interim, it seems to me desirable that the court should retain oversight of her welfare for the 10 months or so of her minority. However, I will hear the further submissions of the parties as to the appropriate terms of any order following their opportunity to consider this judgment.