

Case No: CO/7897/2010

Neutral Citation Number: [2011] EWHC 2019 (Admin)

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29 July 2011

Before :

**HIS HONOUR JUDGE DAVID PEARL**  
**Sitting as a Deputy Judge of the High Court**

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Between :

THE QUEEN  
(on the application of KN, by her litigation friend JA)

**Claimant**

- and -

THE LONDON BOROUGH OF BARNETT

**Defendant**

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Mr C Buttler (instructed by Fisher Meredith LLP) for the Claimant  
Ms S Davies (instructed by Legal, London Borough of Barnet) for the Defendant

Hearing dates: 20, 21, 22 July 2011  
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**Judgment**

## HHJ David Pearl:

### Introduction

1. This is a fact finding hearing in which, as Mr Buttler states in his skeleton argument, the function of the Court is to assess the age of the Claimant, ( whom I shall refer to in this judgment as K), in the light of the decision of the Supreme Court in *R(A) v LB Croydon [2009] UKSC 8*.
2. The circumstances surrounding K's upbringing in the Democratic Republic of Congo (DRC) is not in dispute. Of the various Reports I have read for the purposes of this hearing, one of the more comprehensive, which sets out the background information, appears in the Report written by Dr Meena Naguib, Consultant Psychiatrist at the Edgware Community Psychiatric Hospital dated 7<sup>th</sup> July 2011. She writes as follows:

“[K] has lived all her life prior to moving to the UK in a brothel in DRC, after she was kidnapped from her family at a young age. She is said to have never known her family and she was confounded (sic) with four other girls in that brothel where they were used for child prostitution. She has never been through any formal education in DRC but was taught the alphabet and “little” reading by a person in the brothel. It is also said that she got pregnant at the age of twelve and gave birth to a baby...She was reportedly breast feeding her baby but two months later, ‘they’ took the baby away from her and she never saw him/her again. She also has had another pregnancy about a year or two later but she had a termination of that pregnancy. [K] was trafficked to the UK in 2008 and kept in captivity in a house, in London (the whereabouts of that place is not recorded in any of the available information) where further sexual exploitation took place. It was some time later that the man who kept her restricted...suddenly left the house and never returned. She subsequently managed to leave the house and ‘ran as far as she could and eventually rushed up to a woman who was speaking French, Mrs JA, originally from Cameroon and now a British subject’. She has been living with [Mrs JA] and her two children since then”.
3. In fact, the last sentence is not quite correct, because there was a short period of time during which K lived with two different foster carers, from 16-27 February, and from 27 February – 19 March. She then returned to live with JA who had been rehoused in the interim.
4. She has been diagnosed with PTSD (F43.1 ICD10). Dr Naguib states that the symptoms include intrusive thoughts, memories and images of the past abuse in addition to a high state of arousal that is reflected in her difficulty to sleep at night. The Doctor also states that K is known to suffer from a severe form of depressed mood considered to be separate from PTSD. This includes recurrent bouts of crying, a sense of despair and hopelessness, loss of interest in activities, slowness of thinking and movement, guilt feelings and recurrent self harm behaviour. It is possible that she could be developing Eating Disorder that needs further exploration. She has been taking Citalopram 20mg medication, but she reported to Dr Naguib that she has ceased taking this medication.

5. Dr Naguib recommended that K is currently unfit to attend Court, as she is a very vulnerable, traumatised and psychologically damaged person. It was Dr Naguib's opinion that if K were forced to be cross-examined either in Court or via video link, the risk of self harm would significantly increase and the whole event would be detrimental to her well being and damaging to any achievement she might have gained so far.
6. On 11<sup>th</sup> July 2011, Mr David Holgate QC, Deputy High Court Judge, upon reading the Report of Dr Naguib, ordered that the Claimant be excused from giving evidence or attending court for the final hearing.
7. Accordingly, I must make a decision on the age of K and, if possible, her date of birth, without the advantage of seeing K and hearing K give evidence. I must rely on the Witness Statements and the oral evidence of those who appeared before me. This of course is a most unsatisfactory scenario, rendered even more difficult by the fact that the London Borough of Barnett has not provided witness statements nor called as witnesses any of the three Social Workers (Ms O'Donovan, Ms Morales, and Ms Johnson) who carried out the First Age Assessment Interview (18.2.2009 and 2.3.2009) or the Lead Assessor (Ms Sanz) who conducted the Second Age Assessment Interview (22.5.2008 and 28.5.2008). The London Borough of Barnett has relied upon the witness statement and oral evidence of Ms Philippa Selby, the second assessor in the second Age Assessment, who at the time of the interviews was a Social Work assistant.
8. Thus, I must reach a decision based on a reading of the various Witness Statements and Reports, and an assessment of the oral evidence, of Ms Selby who gave evidence for the Defendant, and of Dr Birch, Dr Agnew-Davies, Mr Shreeve, Ms Hall, and Dr Helen Bamber, all of whom gave evidence on behalf of the Claimant.

#### The burden of proof

9. Before I turn to an examination of the evidence, I wish to make certain observations on the question of who has the burden of proof in these matters.
10. I have to say that I have considerable sympathy with the view as set out by Langstaff J in *MC v Liverpool City Council [2010] EWHC 2211 (Admin)*. In that case he said:

“It seemed to me, and in this I am supported by the submissions of [Counsel for the Defendant], with which I do not understand [Counsel for the Claimant] to disagree in his submissions, that the process is one of assessment. It is not in reality choosing between one of two alternatives, one or the other of which must represent the fact.”
11. Neil Garnham QC, sitting as a Deputy High Court Judge, in *The Queen on the Application of N v London Borough of Croydon [2011] EWHC 862 (Admin)* agreed with Langstaff J. Mr Garnham QC said:

“A court faced with a question like this is not in truth considering whether it has been shown on the balance of probabilities that a particular date is the true date of birth. The likelihood will be that, if there is a possible range of birth dates, whichever one is selected will, on the balance of probability, not be the correct

one. In other words, in such circumstances it will be more likely than not that the date selected is wrong. What in fact the court is doing is making an assessment of what is the most likely date of birth. It is comparing the likelihood of a wide range of dates and picking the one which the evidence suggests is the more likely than the rest to be accurate. Where all other factors are equal, that may well be the middle of the appropriate range, because as one moves to the extreme ends of the range proximity to error increases.”

12. The question of the burden of proof was considered also by Ouseley J in *The Queen on the Application of CJ v Cardiff County Council [2011] EWHC 23 (Admin)*. He also agreed with Langstaff J 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.”

13. Ouseley J went on to say:

“...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 burden of proof, and the balance of probability.”

14. It is my view that there may be cases where a stark choice has to be made, in particular where there are issues of credibility and alleged false documentation, and one or both of which may well be pivotal in the decision making process. In such a case, I can see that the person who challenges an assessment which has been made by the Local Authority that he or she is over 18 because it is stated that the Claimant is not credible and/or that a particular document is not reliable for one reason or another, carries the burden of proof. Thus, the Claimant will be required to demonstrate, on the balance of probability, that he or she is credible and/or that the document is reliable.

15. Ouseley J (at para 125) said:

“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.”

16. Finally, Ouseley J (at para 127) addressed the question of the burden of proof. He said:

“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.”

17. I do not believe that there is really any difference in approach as between Langstaff J and Neil Garnham QC on the one hand, and Ouseley J on the other hand. It is my view, in age assessment cases, that the Court is faced, in the first instance, with having to reach a view on the basis of all of the evidence as to the age of the Claimant, and if possible the Claimant’s date of birth. The Judge will have the benefit of evidence presented, in many cases (but not in all) by the Claimant himself or herself, as well as the Reports, witness statements and evidence from the Social Workers who carried out the Assessment. There may well also be evidence presented on behalf of the Claimant which serves as expert evidence in support of the Claim.
18. All of this evidence has to be assessed by the Judge, regardless of any question of who has the burden of proof. In many respects, this exercise is similar (at least in my experience), for example, to assessments made by Courts and Tribunals of whether a person has or has not a mental disorder, whether a child has or has not a special educational need requiring education in a particular school, whether a person is suitable or is not suitable to work with children and/or vulnerable adults, and whether a Care Plan is or is not a choate Care Plan enabling a Court to agree to a Care Order in respect of a child.
19. Of course, if the Court is unable to reach a decision after conducting the assessment exercise, it will have to fall back on the burden of proof, as Ouseley J acknowledged:

“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.”
20. This approach, namely to make an assessment first, and only if the evidence as presented does not enable an assessment to be made, to fall back on the burden of proof, is particularly relevant in age assessment cases because it must be remembered that the Local Authority, in reaching its assessment that a person is over 18, should already have given this person the “benefit of the doubt.”
21. On the Left hand corner of paragraph 8 of the “Document for an Age Assessment” used by the Defendant, it states “Please remember...that conclusions should always give the benefit of the doubt.” Thus, if a judicial decision maker really is unable to reach a decision, and if he accepts that the Local Authority already has given “the benefit of the doubt” to the Claimant yet still assessed him or her as over 18, it is my view that it may inevitably follow that the Claimant has not come up to proof, and the Local Authority will not owe the Claimant a duty as a child.
22. It is in this context that I would accept the approach taken by Keith J in *R(Y) v LB Hillingdon [2011] EWHC 1477* when he said:

“For my part, I am sure that when the court is having to assess a youngster’s age for the purpose of determining whether and for how long the youngster is entitled to benefits under the 1989 Act, the concept of the burden of proof is entirely appropriate, and that the burden of proving his or her age is on the youngster.”

23. I have to say, however, that the first responsibility of a court is to try to reach a view on the age, and if possible the date of birth, by way of an assessment, and only if it cannot be achieved should a court fall back on the burden of proof. Thus I am unable to agree with Ms Davies who, if I understand her correctly, submits that a court must start off with the approach that a Claimant must establish, on the balance of probability, that she is the age she claims to be. That is not the way that I consider these cases are to be approached, and it is in my view not the way that the Supreme Court in *R(A) v LB Croydon [2009] UKSC 8* requires courts to deal with these matters. Lady Hale used words of assessment:

“The result is that if live issues remain about the age of a person seeking accommodation under section 20(1) of the 1989 Act, then the court will have to determine where the truth lies on the evidence available”.

24. It must also be remembered that there may be precedent facts upon which a decision needs to be made as to its truth. The burden of proof in establishing the truth of these facts remains on the person who asserts their validity, in most cases almost certainly likely to be the Claimant.

#### The Home Office Screening Interview

25. With these points in mind, I turn to assess the evidence in this case, starting with the Home Office Screening Interview on 16.02.1999, conducted some two months after K arrived in UK. She was asked what her date of birth was and she replied 23<sup>rd</sup> August 1993. The Home Office Form states:

“In the absence of any credible documentary evidence to the contrary, the Secretary of State does not accept that you are of the claimed age/ DOB 23/8/93, although it is recognised that you appear to be under the age of 18 and will be processed as a child.”

#### The First Age Assessment by the London Borough of Barnett

26. In the age assessment conducted by the Defendant on 18.02.2009 and 2.03.2009, it is stated that K told them that her date of birth was 23.8.2003 and this was given to her by Angelique (referred to as Angeline both by Mr Shreeve, the Independent Social Worker in his Report dated 12<sup>th</sup> March 2010, and by Dr Birch in her Report dated 29<sup>th</sup> June 2010) who was managing the brothel where K was living in Goma, DRC.
27. K told the social workers that she genuinely believed that this was her real date of birth. This would have made her 15 and a half at the time of the interview.
28. K has been consistent in telling everyone who has asked her that Angelique told her that her date of birth was in August 1993, and the bulk of the reports point to 23.08.1993. Mr Shreeve states that she told him her date of birth was 13.08.1993, but it may be that that was simply a typing error on his part. Dr Agnew-Davies records it as 13.08.1993 and 26.8.1993.
29. The Defendant’s first age assessment was conducted by three Assessing Workers, on 18.02.2009. On physical appearance and demeanour, the document states:

“K first impressions were of a young person older than [her] given age (someone who has just turned 15 years old)...Since the three social workers that undertake the age assessment met K, we agreed about the difficulty to state a confident outcome as K age could vary and as there was a clear unbalance between her emotional age and what could be her physical age.”

30. In paragraph 6 (Health and Medical assessment) it states:

“As the Merton assessment by the social workers was not conclusive, a forensic dental assessment was agreed.”

#### The Forensic Dental Assessment

31. The forensic dental assessment was conducted by Mr John Graham Ritchie, and he has provided the Court with a witness statement dated 17<sup>th</sup> March 2009. He states that he was engaged in general dental practice from 1968 – 2006, and amongst other responsibilities, he is a founder member, Past President and Secretary of the British Association of Forensic Odontology.

32. Mr Ritchie had a telephone conversation on 12<sup>th</sup> March 2009 with Ms Morales (one of the Assessing Social Workers). Mr Ritchie reports Ms Morales as telling him that K’s claimed date of birth is 23<sup>rd</sup> September 1993. I have no way of knowing whether that was the case, but the substitution of September for August is of little consequence. Mr Ritchie received from Ms Morales on 14<sup>th</sup> March 2009, a panoramic X-ray (OPG) dated 10<sup>th</sup> March 2009.

33. He found that all normally present 32 permanent teeth were present with the exception of (a) lower left first and second molars; (b) lower right third molar (wisdom tooth), and (c) upper left third molar (wisdom tooth). He noticed

“considerable over-eruption (excessive downward growth) of the upper right third molar and upper left first and second molars as a consequence of the absence of the opposite teeth. There was no evidence of any tooth decay.”

34. Mr Ritchie concluded that the implications of the absence of the lower left first and second molars was that “these teeth must almost certainly have been surgically extracted because of tooth decay.” He estimates a minimum period of one year since their removal.

35. He then says that “Given the lack of any visible tooth decay or dental repair work on the X-ray, decay in these two teeth would be expected to be a slow process requiring some years to cause the need for removal. None of the above is accurately age-specific but, in total, points to an older rather than a younger age.”

36. He states that the lower left third molar of K has fully mature root tips and that this gives an “average age of 20.00 years with at least a 91.43% likelihood of an age of at least eighteen years.” He concludes that K is almost certainly at least 18 and could be significantly older.

37. K has provided the following account of the loss of her lower left first and second molar to Dr Birch:

“When she was about 11/12, K was severely beaten by one of the customers who had come to the house and she had two teeth knocked out on the left side of her lower jaw.”

38. Dr Birch’s view, repeated in her evidence, is that the teeth were lost not through decay but through being beaten up at age 12.
39. K told Mr Shreeve, the Independent Social Worker, that she had two teeth extracted from her lower jaw after she was beaten up.
40. Ms Selby said, both in her witness statement, and in her evidence, that in the age assessment that she participated in, K made no mention of being beaten by a customer, but that a dentist extracted the two teeth because of toothache.
41. Dr Bamber explained to me what she had been told about the extraction of the two teeth. She said that K had told her about a very violent assault she had had from a customer. She was in great pain, and Angelique brought a dentist. Her teeth had been knocked out in an irregular way and the dentist removed the base of the teeth. Dr Bamber said that when she described the incident she was actually reliving the episode. Dr Bamber said that she believed K because of her bodily expression
42. I have decided that the explanation of how the teeth came to be extracted is more likely than not to have been the explanation given by K to Dr Bamber.
43. I have looked carefully at the British Dental Association response to the Home Office Consultation Paper “Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children” (May 2007). This Report states that the BDA is vigorously opposed to the use of dental x-rays to determine whether asylum seekers have reached 18. The Document states that it is an inaccurate method for assessing age, and specifically refers to the fact that the developmental timing of the third molar varies considerably and the root is fully formed between 16 (early maturing individuals) and 23 (late maturing individuals). The document goes on to say that in an early maturing individual the mandibular third molar root might be complete at 16 years, while a late maturing individual will reach this stage six or seven years later.
44. I have to say that the views of the BDA carry considerable weight for me, and I have concluded that using root formation of teeth to estimate age will have a large margin of error.
45. Thus, I have arrived at the conclusion on this aspect of the evidence, that it matters not whether K’s two teeth were removed because they had been decayed and she had toothache, were removed because they were knocked out by a customer, or after a customer had beaten her, her teeth were broken and a dentist or doctor was summoned to remove what remained. These slightly differing accounts do not in my view destroy K’s credibility, and I am unable to agree with the adverse assessment on credibility suggested by Ms Davies in her closing submissions.
46. I am fortified in my view of Mr Ritchie’s observations by reading the decision of Mr Justice Walker in *The Queen on the application of A v Liverpool City Council* [2007] EWHC 1477 (Admin). In that case, he made it clear that the local authority had taken a wrong approach as a matter of law, for it failed to take into account relevant



information as to non-dental matters. In addition, Walker J pointed out that Mr Ritchie does not at any stage grapple with his own centile analysis, He said:

“There will be, in any group of individuals, showing the dental characteristics of the claimant, some who are under 18. It would be manifestly absurd to stop there, and say that because that proportion is less than 50% it follows that on the balance of probability the claimant is 18 or over.”

47. For exactly the same reason as Walker J in the *Liverpool* case, the sentence in the Defendant’s first age assessment: “...K’s age assessment was referred to a forensic dentist, and K has been then assessed to be an adult rather than a child” constitutes a clear error of law, and frankly undermines the totality of that first assessment, as it is in reality acknowledged by Ms Davies when she concedes that the first assessment did not adopt a holistic approach applying the principles as set out in *R (B) v Merton [2003] EWHC 1689 (Admin)*.

#### The Second Age Assessment by the London Borough of Barnett

48. I turn now to the second age assessment, conducted by Natalia Sanz and Philippa Selby. I have read the notes taken by both assessors.
49. The Document referred to as the “Document for an Age Assessment” contains the following relevant passages.
50. On “physical appearance, demeanour” it says:

“K is of Congolese origin and is of medium build, approximately 1.60m tall. Her body appears fully developed with a well formed bust. She has a round face and although she does not have defined lines under her eyes or skin folds, her skin appears as if she has already passed puberty. Her hair was plaited in square sections, which appeared to give her a childlike appearance, which was out of keeping with her demeanour that remained mature. Initial impressions therefore were suggestive of a young adult, who is likely to be significantly older than her stated age...Despite her obvious vulnerabilities, her general demeanour remained mature and out of keeping with her alleged age.”
51. In the Document, under the heading: “Information from documentation and other sources”, the assessors state that they took a holistic approach. They comment that Ms Archer, the previous foster carer, had informed them that K presented as a mature young person whom she believed was older than the 15 years she was claiming.
52. The document at paragraph 7 says

“The dental report compiled by the surgeon Mr Ritchie, which did focus on the issue of age stated that ‘K is almost certainly at least 18 years of age and could be significantly older’.”
53. There is then an analysis in paragraph 8 of the information gathered. This is attached to this Judgement at Appendix A.
54. The Defendant conclude K to be over the age 18 for the following four reasons:

- Your physical appearance suggests that you are over your given age. Your body is well developed and although there are no distinctive lines or folds around your eyes, your skin is smooth with no signs of acne and you seem to have passed puberty
  - The assessors believe that you have experienced a very traumatic past and, although you were tearful and emotional at times during the assessment, the way you carried yourself indicates your demeanour was that of an adult
  - You have stated that you only know your date of birth as 28.08.93 (in actual fact this must be a typing error for 23.8.1993) because Angeline told you, however you have also confirmed that you were not aware of how she came to know this date. You have further agreed that had Angeline given you a different date of birth you would have accepted this. It may be that Angeline had other motivations to give you a younger DOB in relation to the work that you were forced to do.
  - In coming to our conclusion we have also taken into account the dental and psychological reports, the Screening interview, the Community Care Assessment as well as the feedback from one of your previous foster carers.
55. Ms Selby was subjected to a robust cross examination by Mr Buttler, although at the end of her evidence she confirmed that she stood by the decision. I have to say that I found Ms Selby's evidence to be less than convincing. I am unable to understand how the Defendant thought that it was appropriate to rely solely on the evidence of a relatively young and inexperienced social worker. None of the other four social workers provided witness statements or made themselves available to the Court. Even accepting the proposition advanced by Ms Davies in her closing submissions that the Claimant's delay in bringing about this claim is responsible for Ms Selby's recollection being diminished, it does not begin to address the fact that Ms Selby, as one of two people who conducted the age assessment at the time, was no more than a trainee social worker.
56. Ms Selby herself told me that her colleague gave her training on the job, but of course even if that were the case, it does not give me much confidence in the manner in which the second assessment was performed. I have to say that I agree with Mr Buttler who says of Ms Selby that in May 2009, she was inexperienced, that she had received no formal training in age assessment and no training in dealing with sexually abused young women. She had only a few years experience working with young people, had limited experience working with traumatised young people and had no experience working with sex trafficked young people.
57. In her evidence, Ms Selby returned constantly to the theme that she and Ms Sanz had the impression that K was an adult. She admitted that she could not identify features in the documents to support this view.
58. Particularly concerning is the reference to adverse credibility when analysing the information. The assessors wrote: "The inconsistencies within K's account undermine her credibility." She admitted that she did not know the relevance of this. She accepted that there was a margin of error, although she could not say what that would be. She did however agree with the Royal College of Paediatricians that the margin of

error is plus/minus five years. When Mr Buttler asked her why Angeline gave K the date of birth as 23/8/1993, she acknowledged that one possibility may well be that Angeline was telling the truth.

59. I have to say that with the benefit of hindsight, it would have been desirable for the Council to have carried out the second age assessment using the skills and expertise of at least one social worker with expertise in mental health, because K's presentation obviously required real mental health expertise. I note that Dr Agnew-Davies said in evidence that she did not consider K fit to be interviewed in May 2009.

#### The evidence of Dr Bamber

60. In looking at all of the evidence in this case, I have to say that it is the evidence of Dr Helen Bamber that for me holds the key. Dr Bamber was an impressive witness. She was the founder of the Medical Foundation for the Victims of Torture and has been a co-director of the Helen Bamber Foundation for the last six years. She has treated hundreds of sexually exploited young women and has substantial, indeed unique, experience of treating victims of sex trafficking. She also has experience of treating young African women.
61. It is of course true, as Ms Davies states, that Dr Bamber's focus is on K's needs, prognosis and state of health. Indeed, in answer to one of my questions she said "I can't help on the age, unfortunately." That to my mind makes her evidence even more persuasive. She has no statistical model that she wishes to defend (as Mr Richie or Dr Birch), or a Decision that she wishes to defend (as Ms Selby). Her priority is for an extremely damaged young person whose needs are enormous and who is extremely vulnerable. She described K as one of the most severely traumatised young people she has seen.
62. She knows K well, and has had more than 30 sessions with her, amounting to more than 60 hours. She knows her better than anyone else who gave evidence before me. She described her as fully grown, slightly overweight, fully developed. That she is a regressed child, there is in her view no doubt. She also said that it is possible for an adult to regress to a child.
63. She is clear in her evidence, however, that both she and Dr Hartree have concluded that she is a child, and that she was between 15/17 when she first saw her. She would place her now at around 17. She said that Dr Hartree thought she may be younger.
64. There is no magic in age assessment. Assessment is just that; no more than opinion, which can be best achieved by professionals trained in the various fields, and not just trained as social workers, obtaining a view of the person over a number of sessions.
65. In looking at the assessment of age made by the Defendant compared with the assessment of age that Dr Bamber provided, I have to say that I prefer without any qualification whatsoever the assessment of Dr Bamber.

#### The other evidence.

66. Dr Agnew-Davies (an Associate Fellow of the British Psychological Society), Mr Shreeve (a senior social worker), Ms Hall (who works with the NSPCC exploitation

service), and Dr Birch (a paediatrician and psychotherapist), like Dr Bamber, all place K as under 18. They have superior experience to that of Ms Selby, and the duration of their observations, in the case of Dr Agnew-Davies and Ms Hall, in particular, was more than that of Ms Selby. There is of course corroboration between their views.

67. I do not need to analyse their evidence (although I shall say words about Dr Birch), however, because I consider that the Age Assessment carried out by Ms Selby and her colleague (about whom of course I know very little) is not supported by their collected information. Indeed, I would go as far as to say that on conventional judicial review grounds of procedural fairness and rationality, the decision taken by Ms Selby and Ms Sanz is open to being quashed.
68. In weighing up all of the evidence provided to me by Dr Bamber, Dr Agnew-Davies, Mr Shreeve, Ms Hall and Dr Birch, I have concluded that K is under 18.
69. I have been given one date of birth that Mr Buttler relies on on behalf of the Claimant, namely 23.8.1993. This date falls within the age range that I would assess K, and accordingly I have no reason to adopt another date of birth. I have not needed to apply the concept of the burden of proof.

#### The evidence of Dr Birch

70. It will be noticed that I have not commented on the evidence of Dr Birch, because I have not needed to, and I have not relied on her evidence given either in her Report or in the oral evidence. However, it may be helpful if I make comment on her evidence at this stage, because there may be other cases where her evidence is critical.
71. Ms Davies makes observations regarding Dr Birch, and submits that she should not be regarded as an expert witness. I have to say that I agree with Ms Davies, and I would wish to associate myself with the concerns expressed by Kenneth Parker J in *The Queen on the application of R v The London Borough of Croydon [2011] EWHC 1473 (Admin)*.
72. In consequence of the decision in that case, Dr Birch's Report was redacted on the direction of Silber J on 17<sup>th</sup> June 2011. However, in her evidence before me, it was clear that she does not accept the criticisms made of her methodology. She said in effect that she had been misunderstood and that it was scientifically valid, and that as between the original and the redacted reports, her opinion has not changed. She made clear in her evidence that she still stands by all of her Report, including those paragraphs in the Report that have been redacted.
73. There are concerns about Dr Birch's qualifications, and I am far from certain that the curriculum vitae that she submitted to the Court is entirely accurate. If nothing else, it is clearly economical with the truth.
74. Most important, I do not believe that she has subjected her methodology to any academic peer review.
75. I have formed the view that Dr Birch's analysis starts with a statistical analysis and then moves to a clinical assessment of age. She came across to me when she gave evidence as someone who, in Kenneth Parker J's words, has an "erroneous confidence

in the accuracy and reliability of the statistical methods that she has employed. That misplaced confidence undermines the other evidence that she has given.”

76. I do not believe that Dr Birch’s statistical methods are scientifically established, and until real peer review is conducted in this field, I would caution against the use of Dr Birch in age assessment cases. But, as I have said, in this case, I have not had to rely at all on her evidence, except in so far as it is supportive of the evidence of Dr Bamber, Dr Agnew-Davies, Mr Shreeve, and Ms Hall.

**Accordingly, and for the reasons as set out in this Judgement, I make a finding that K’s date of birth is 23.8.1993 and therefore the London Borough of Barnett has a duty to provide services to her under s 20 Children Act 1989.**

**His Honour Judge David Pearl**