

**Neutral Citation Number: [2010] EWHC 2211 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**Sitting at:**  
**Leeds Combined Court**  
**1 Oxford Row**  
**Leeds**  
**West Yorkshire**  
**LS1 3BG**

Date: Friday, 16 July 2010

**Before:**

**MR JUSTICE LANGSTAFF**

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**Between:**

**MC**

**Claimant**

**- and -**

**LIVERPOOL CITY COUNCIL**

**Defendant**

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**Mr Azeem Suterwalla** appeared on behalf of the Claimant.  
**Mr Bryan McGuire QC** appeared on behalf of the Defendant.

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**Judgment**

**Mr Justice Langstaff:**

1. Because of the hour, my judgment will be shorter than it otherwise might be.
2. The issue in this case is the age of the claimant. He says he was born on 24 March 1994 in Iran. The defendant's case is that it does not accept that. It has assessed his age as being two years older. He was so assessed in three steps. On 8 December 2008 Cheryl Hall saw him on his first applying for asylum and being referred to her as social worker for the defendant, and thought that he was borderline 18/19 but might be younger, and, therefore, a week later held a formal assessment at which the well-known Merton guidelines were purportedly applicable. That was an assessment made by her and by Linda Brown.
3. He was reassessed on 19 May 2009. The reason for this was initially it was suggested that there had been a suspicion he had been unable to cope in the accommodation in which he had been placed following his assessment as having a date of birth two years earlier than he claimed, which had been raised on his behalf by his solicitors. The reassessment was by Deborah Shannon and by Jonathan Rogers. Jonathan Rogers thereafter had some regular contact with the claimant as his allocated social worker.
4. I have had regard in assessing his age to what they told me, to the documents, such as they are that have been produced, to subsequent documents produced by the claimant or as a result of applications he made for social benefit, in which it was apparent that he had put forward an age giving his date of birth as 24 March 1992. I have read through and listened to the claimant's own evidence. I have attempted to evaluate that evidence in light of the probabilities and what it lay within the power of one party to prove and the other to disprove. I have had regard, in addition, to what the evidence has revealed to have been the actions of others independent of the defendant and independent of the claimant in respect of the claimant, as he has revealed them to have been in the course of his evidence.
5. My approach is that directed in effect by paragraphs 31, 54 and generally of R(A) v Croydon [2009] UKSC 8; and paragraphs 7, 11, 27 and 30 of R (C) v Croydon [2009] EWHC 3542 (Admin), a decision of Holman J applying the A case, though I should make one comment. At paragraph 16 Holman J made reference to the burden of proof. The standard of proof, he said, was the ordinary civil standard of balance of probability. I accept that. But he did not purport to determine upon whom the burden of proof lay. It seemed to me, and in this I am supported by the submissions of Mr McGuire QC for the defendants, with which I do not understand Mr Suterwalla 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. A person's age, if it is to be assessed, can fall within a range. Here I accept what Liverpool says is one end of the range and what Cheryl Hall says is at the other, but the assessment may fall within the limits of that range.
6. The first question is what I make of the claimant's own evidence. I have sadly come to the conclusion that I cannot accept what he says without there being some

independent verification of it in general terms. I have come to this conclusion because of the way in which he answered a number of questions. He gave evidence through an interpreter. I have to make allowance for the fact that he did so, that his English – though I would not say it does not exist - is not by any means perfect, and that he is operating within a strange culture. All those factors would persuade me in favour of his account rather than against him. But on a number of occasions when it seemed to me a straightforward answer could easily have been given, he chose to divert attention from it by talking about other matters, and I suspect that was because a straightforward answer might in those particular circumstances have been uncomfortable for his case.

7. Secondly, he has on a number of occasions said that which might be thought to have suited his immediate purpose. Thus, he gave an account when he first came to Cheryl Hall of the reasons why he had left Iran. There is no suggestion in any of that interview that his father and family went with him to Pakistan. In a number of places it was said (through an interpreter) that his parents remained in Iran. Since the reason for his going later to be advanced was that he himself felt at risk of harm, not because of his own but because of his father's activities as a smuggler, it might be thought that was a curious answer to give. The claimant says it was a fault of interpretation. If so, it is a repeated fault and repeated in different ways in answer to different questions. Next, he has given a number of different accounts of how it was that he came to this country and the length of time it took him and where and when precisely it was that he departed from his family. Even today, when the question of how he got from France to Liverpool was explored in his evidence, I found his answers opaque.
8. Next, it was said by him that he told the social worker in Liverpool that he wished to go to live in Sheffield with a relative, but the social worker's account is firm that he, the social worker, was told that he wished to go and live independently. Whether he actually lived independently or not is a matter which is still to some extent unclear, but it is clear that he was not fully frank about the reasons for going to Sheffield to the Job Centre on 29 July with Liverpool; that he told the Jobcentre by means of a form that he had started living on 2 July at an address in Sheffield when he had not; that he gave details in forms, or they were given by someone on his behalf or written down by someone from answers which he gave, to the effect that his relative lived at one address, the address of his business in Sheffield whereas in fact he lived at another. His reconciliation today was that in fact he lived at both.
9. A number of documents are not consistent with that. The document at page 131 and 132 of the court bundle headed "About your claim and habitual residence test" is a document signed by him, as he accepts, on 8 August. In answer to the question: "Please tell us where you are living now." He says "living on own" in private rented accommodation. At the time he was in fact living in Liverpool with others. He was shortly to move to Sheffield. "How did you arrange your present accommodation?" -- "knew landlord through friends." He tells me that Mr. Ali, his landlord, is a relative. He says Mr Ali filled in the form, and that may well be so, but if it is so Mr Ali filled it in as he did either because it was true or because he, Mr Ali, was using the claimant to commit an offence by obtaining housing benefit for the claimant which could be

passed to him, Mr Ali, in return for some accommodation. Neither reflects well upon the claimant, the first because it does not fit with his account, the second because it shows how others were acting in respect of him.

10. In questions he answered when claiming income support, he gave the reason for leaving Iran as “political unrest”. The dates do not fit his present account. He gave in respect of benefit a date of birth which is consistent with what the council had assessed. I do not blame him for this because he had a residence card given by him from government which gave that date and I accept this part of his evidence that he felt there was no other date which he could legitimately give. But he did take advantage of it. And I am quite satisfied from his answers that he did so knowingly. He is intelligent, as it seems to me. He is able to pick up information, as it seems to me. He knew for instance what NASS was, although he was not supported by them. He plainly understood much about the benefit system in this country and I have come to the conclusion that he is fully capable of manipulating it to his advantage when he chooses to do so. And that is what I think he has probably done in respect of the benefits which he arranged for himself in Sheffield. That makes me think that he is perfectly capable of manipulating information about his age and date of birth for the purposes of ensuring that he had a chance to establish a life in this country without being returned as would be someone who had no right to remain through asylum.
11. There are a number of other instances which have satisfied me that his evidence has been inconsistent from time to time, some of which he accepts to be the case, such as the account he first gave of coming to this country by aircraft, having been in Pakistan for 48 days, whereas he now accepts that he came through Greece. He reports that he said he said so because he was scared that he might be sent back to Greece, but the social worker's notes of that meeting at which he said those matters suggested that he was a man who seemed to be composed and confident.
12. The assessments which were made were made on the Merton guideline approaches. Detailed assessments began, as I have mentioned, with a view by Cheryl Hall that he might well be 18 or 19, she giving him the benefit of the doubt, as she called it, though I do not think she really understood what that meant, by suggesting that he was between 16 and 18 in age. She accepted the date of birth in terms of day and month because there was no better date than 24 March, and therefore on the occasion of the first assessment found him effectively to be 16 and three quarters years of age. That may have been influenced by her view that he was over 18, or possibly over 18, at the start.
13. The second assessment was independent, but had had regard to the findings of the first assessment. It did so to gain factual information to test the accounts given in the assessment, as was appropriate, but it had the curious result that at the conclusion of the second assessment, which was in May 2009, the age was given as “16 plus”, whereas he had by now had his 17th birthday if the original assessment were to be accepted. What was effectively decided was that the first assessment was appropriate, but Mr Rogers in his answers to me -- and he had the greatest exposure of all the

social workers to the claimant -- told me that he thought the claimant came across as a 16 year old, between 16 and 17, assessed as 16, but within that general range.

14. I do not think he could be any younger, not least because on his account he either lived independently in Sheffield if one takes the written accounts made in his name, or Mr Ali, on his oral account was prepared to leave him in Sheffield on his own as being presumably capable of being left – this at an age which corresponds to an age of about 17 on the social workers’ views, but on his account at about 15. If Mr Ali really was a relative it is difficult for me to contemplate that he might have left his relative (if 15) in that situation without making care arrangements of some sort for him. I note during the course of trafficking into this country he travelled with 19 year olds by choice of the agents. I rather doubt that traffickers would easily send a lad of then just 14 with lads of 19 because of the dangers that their journey might be interrupted and without the trafficker being himself present.
15. The assessments generally were explored, carefully and effectively, by Mr Suterwalla for the claimant. He demonstrated that if one were to take any single aspect of the description of the claimant on its own, it would not necessarily be a sufficient basis for setting out the age of the claimant. I accept that insofar as it goes, but it does not seem to me to be any reason for rejecting the general thrust of the assessments, because any such assessment is made and has to be made holistically, that is taking into account every feature. One cannot simply look at one feature in isolation without acknowledging that other features also exist. Thus the presence of hair on the lip does not sit on its own, for on its own it would be relatively meaningless as to age, but it must be considered together with demeanour, which itself does not sit on its own, but has to be viewed together with the youth’s history and what that may show about the capabilities of the youngster concerned.
16. Merton is clear as to the need for an holistic approach. That is what the social workers time and again in the witness box were driven to say that was what they took. And I think it is what they did. I have been left with the distinct impression, however, that there was something of a tendency to think, so far as Cheryl Hall was concerned, that MC was a little older than perhaps he was. That is in part because of her initial view of him. Secondly, her view was that he was between 16 and 18 because she based that on a comparison with others she thought of that age, but it emerged in evidence that 95 per cent of those others in the comparison group she used were people who also disputed their age. If so it was a poor comparison group.
17. The social workers were experts. I respect their expertise. There is, however, no suggestion that they could assess the claimant’s age on an empirical basis on wholly objective criteria. There is a strong element of subjectivity necessary in their assessment, just as there has to be in mine, and I have to acknowledge that, not being a social worker and not having made age assessments in the past, I have to rely upon the evidence of those who have, insofar as it compels me or leads me to a particular conclusion. But if I form the view, as I have, first that Jonathan Rogers' reaction was probably right as to what he felt, he also being an experienced social worker and with the greatest contact with the claimant, and second, in the assessment that he

performed, a view was taken that the claimant was hesitant about his age, based upon a mistake which could well have been a mistake of interpretation and represented no actual hesitation, and third given that the conclusion was to fit an age which was said to be giving the claimant “the benefit of the doubt” earlier, when a date very nearly midway in the range which the social worker was suggesting was selected, rather than one which benefited from being at the bottom of the range, I have come to the conclusion that the age is not quite as old as the social workers assessed him. That is basing myself, as I say, on their evidence and upon the conclusions of everything else I have read and seen. I include the social work notes revealing what happened when he was with others over 16 in Liverpool, which suggests marginally that he might have been a shade younger than many whose accommodation he shared.

18. Taking all that into account, I do not think that he is, as he claims, born in 1994. I do not think he is quite as old as having been born on 24 March 1992. I suspect, this being an imprecise science, that his age must be much closer than this is to what he claims and I note that when I tried to put his age into the family context, he told me his sister was one to two years younger than he was. He told the social worker when he first arrived in December 2008 she was then 14, or approximately 14. If he was right, he was then 15 to 16, yet he was claiming to be 14. It seems to me that the evidence he gives about his family circumstances, in an assessment he had not been asked to do before he was asked by me in the witness box, indicates that I am right to conclude he is indeed considerably older than he has claimed.
19. I think that the best way of reflecting these imprecisions is to say that he should be taken as having an age six months younger than that which the local authority have assessed. It leaves the 24th of the month unchanged, but makes it 24 September 1992. I appreciate that that almost certainly will not be his actual date of birth, but, for the reasons I have given, on the evidence before me it is the evidence on which it is most fairly and properly in my view to be assessed.
1. MR SUTERWALLA: My Lord, I am grateful for the judgment. The only application I would make is this. We would say that it has been necessary to come before this court in order for there to be a final determination of his age, which is not the determination made by this local authority. In those circumstances we would say it would be appropriate for costs to be granted. We make an application for costs.
2. MR MCGUIRE: That is opposed. He has come to court, told a series of lies, or at any rate put forward a story that has not been accepted in very large measure. The declaration he sought has not been given. It is right the court has formed its own view, which is a different view, but I would say the appropriate order in all the circumstances, to reflect its appropriate displeasure at the account given, would be no order as to costs.
3. MR JUSTICE LANGSTAFF: You are publicly funded, are you?
4. MR SUTERWALLA: We are publicly funded, your Lordship, yes. Your Lordship will be aware that that particular aspect is not a principle which was on a point...

5. MR JUSTICE LANGSTAFF: That does not sway me as to the order. I am just enquiring because you will require your appropriate order in any event. The order which I am going to make is no order for costs save...
6. MR SUTERWALLA: Detailed assessment.
7. MR JUSTICE LANGSTAFF: ...the assessment of your costs. Mr Suterwalla, I have been very grateful for your assistance and you have done everything that you could and should have done.
8. MR SUTERWALLA: I am grateful, my Lord.
9. MR JUSTICE LANGSTAFF: Any consequential relief, no doubt you can agree amongst yourselves.
10. MR MCGUIRE: We are happy to draft up an order.
11. MR JUSTICE LANGSTAFF: Thank you very much.