

CO/13864/2009

Neutral Citation Number: [2010] EWHC 754 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

Friday, 29th January 2010

B e f o r e:

MRS JUSTICE COX DBE

Between:

THE QUEEN ON THE APPLICATION OF MSA

Claimant

v

LONDON BOROUGH OF CROYDON

Defendant

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(Official Shorthand Writers to the Court)

MR A SUTERWALLA (instructed by Harter and Loveless Solicitors) appeared on behalf of the **Claimant**

MR B MCGUIRE (instructed by LB Croydon) appeared on behalf of the **Defendant**

J U D G M E N T

Friday, 29 January 2010

1. MRS JUSTICE COX:
2. This claimant, an Afghan national, arrived in the United Kingdom in or around November 2006. He was unaccompanied and he sought asylum. He is unclear as to his exact date of birth but claims that he was born in 1992. There is a dispute between the claimant and the defendant as to the age assessment subsequently carried out by the defendant in December 2006, which is currently the subject of earlier judicial review proceedings, CO/1977/2009. However, the discrete issue arising for determination in this case is whether the defendant, having agreed to carry out a reassessment of the claimant's age, has acted unlawfully in refusing to permit the person nominated by the claimant, to accompany him as an independent adult observer, to attend that reassessment interview. This is the expedited and "rolled up" hearing, ordered on the papers, to determine whether permission should be granted and, if granted, to determine the substantive claim. The reassessment has been postponed pending the court's decision. Pursuant to CPR 21.23 the claimant is permitted to bring these proceedings without the need for a litigation friend.
3. There is no dispute as to the accuracy of the factual background set out at paragraphs~6 to 10 of the claimant's grounds. The claimant arrived here in November 2006. He was initially considered to be 14 years of age, as a result of the Home Office screening process on entry, and he was given a date of birth of 1 January 1992. He was then referred to the defendant to carry out an assessment of his age and the age assessment interview took place in December 2006. The single page decision handed to the claimant immediately after this interview gave his date of birth as 1 January 1989. Subsequently, however, the full age assessment report sent to the claimant's solicitors in November 2007 gave his date of birth as 1 January 1990, so that he was considered by the defendant to be 16 as at December 2006.
4. Social service records subsequently disclosed to the claimant's solicitors, referred to at paragraph 8 of the claimant's grounds, suggested that the December 2006 assessment had not in fact been concluded, and that the defendant had decided that further assessment was needed. It is unnecessary to set out the contents of those documents here although I note that, somewhat confusingly, the defendant stated in a letter dated 26 July 2007 that the claimant had been assessed in December 2006 as having a date of birth of 1 January 1991.
5. On 19 January 2009 the claimant's solicitors sent a pre-action letter to the defendant challenging its assessment of the claimant's age. In its response the defendant contended that the claimant's date of birth had been lawfully assessed as 1 January 1990. The claimant issued judicial review proceedings on 2 March 2009 challenging the defendant's assessment. That claim is still live, awaiting the outcome of these proceedings and of the reassessment which is now to take place.
6. The correct age of this claimant is important because it is determinative of his entitlement to the provision of accommodation and support by the defendant under the Children Act 1989. Although the claimant is now no longer even a child even on his

own account, he is a "former relevant child" within the meaning of the Children Act and the Children (Leaving Care) (England) Regulations 2001 because he was accommodated by the defendant under section 20 of the Act for a period of more than 13 weeks. As a former relevant child he is entitled to leaving care, and the defendant's duties continue in that respect, with some exceptions, until the person is 21 years of age.

7. In the first claim brought by this claimant, the judge reading the papers ordered that judicial review should be considered after determination of the case of **R(A) v Croydon London Borough Council** and **R(WK) v Kent County Council** [2009] EWHC 939 Admin. The claimant's grounds were subsequently amended, and may yet be further amended following the Supreme Court's decision in **R(A) v London Borough of Croydon** and **R(N) v London Borough of Lambeth** [2009] UKSC 8.
8. In relation to the present claim what happened is this. The defendant wrote to the claimant's solicitors on 7 September 2009 indicating that a "final assessment" of the claimant's age would be the best way forward. By that was meant a reassessment to be carried out in accordance with the principles established in **R(B) v London Borough of Merton** [2003] 4 All ER 280. In their faxed letter dated 9 September the claimant's solicitors made a number of observations concerning the process for reassessment, including the following:

"Our client will wish to have an adult with him at the assessment."

9. The defendant's response of 10 September (from Legal Services) stated:

"My client is happy for an adult to attend with MSA."

10. After further correspondence concerning the date and time of the proposed interview the defendant wrote as follows on 1 October 2009:

"I refer to your fax of yesterday and write to confirm that my client is able to carry out an age assessment interview for MSA on 21 October 2009 at 2 pm at Taberner House. Your client may wish for an independent adult observer to accompany him to the assessment. If this is the case please notify me in writing of who this will be."

11. On 6 October the claimant's solicitors confirmed his attendance on that date and informed the defendant as follows:

"Our client will be accompanied by a clerk by the name of Andrew Frederick. He will be an independent adult observer. He will not say anything in the assessment. He will simply be there to observe and note what takes place."

12. Andrew Frederick is a legal clerk registered with an agency called WNT Legal, which advertises itself as a "unique specialist support company delivering effective recruitment and outsourcing solutions". It arranges for those people who are registered with it to provide, amongst other things, clerking support to solicitors' firms. E-mails

from Ms Nackeem, a manager at WNT, dated 23 November 2009 state that all the WNT clerks have completed either the Legal Practitioner Course or the Bar Vocational Course, and have previously worked as either paralegals or solicitors. They work on a freelance basis and are assigned to solicitors' firms through WNT to work on the particular task identified.

13. Mr Purkiss, the claimant's solicitor (with the firm Harter and Loveless) has used the services of WNT and of Andrew Frederick on a number of occasions. He regards Mr Frederick as an efficient clerk who takes a good note. At paragraph 3 of his witness statement Mr Purkiss says this:

"The claimant in these proceedings does not have a panel advisor at the Refugee Council Children's Section [the RCCS]. The RCCS was therefore unable to provide somebody to accompany my client to the reassessment interview scheduled to take place on 21 October 2009. My client did not have any other person to accompany him to the interview. My client's social worker obviously works for the defendant. My client's key worker works for the agent of the defendant. Neither the social worker nor the key worker are therefore independent or separate from the defendant. I advised my client that it was important somebody attend the age reassessment interview with him in order to take a note of what is said by the assessing social workers and by him. My client accepted my advice. Because my client had no-one who could accompany him to the assessment interview he agreed that my firm should arrange for somebody to accompany him to the interview. I arranged for my client to be accompanied by Mr Andrew Frederick. He is a legal clerk who works for an agency WNT Legal. Andrew Frederick has done many clerking jobs for me and my firm. He is efficient. He takes a good note. He is an adult. I requested him to attend the age reassessment interview with my client and to take a note. I asked Mr Frederick to meet my client outside the social services building in Croydon and to go in with him. Mr Andrew Frederick was made aware by me that his role was not to take part in the assessment and that he was not to intervene. He was there to support my client. If my client wanted to have a break Mr Frederick could help my client ask for a break. Other than this he would not say anything during the assessment. I advised Mr Frederick that he might be asked to sit at the back of the room behind my client. I advised him of this because this was an instruction given to a RCCS panel advisor who accompanied another client of mine to London Borough of Croydon social services for an assessment interview."

14. By letter of 13 October, however, the defendant responded to Mr Purkiss as follows:

"Please note that a clerk of your firm is not considered an independent adult observer by my client and so will not be permitted to attend the assessment. Instead my client is willing to contact the Refugee Council and ask for a representative to attend from there."

15. This dispute, which was unresolved by further correspondence, has led to the issue of this second application for judicial review by the claimant and to the reassessment interview being postponed. In their pre-action letter of 14 October the claimant's solicitors made essentially three points:
 - 1) The claimant does not have a advisor at the Refugee Council Children's Section. Furthermore, the Council was no longer permitted to advise in age dispute cases because of a decision by central government that they would not be funded to advise in such cases.
 - 2) The defendant's decision to refuse permission for Mr Frederick to attend as an independent adult observer was unreasonable and irrational. An independent adult means an adult who is independent of the London Borough of Croydon and the claimant is entitled to choose the adult he wishes to accompany him to his interview.
 - 3) In any event, Andrew Frederick is not a clerk employed by the claimant's solicitors but works as assigned by the outsourcing agency WNT Legal.
16. The defendant's reasoned response of 27 October, so far as relevant to the issue I have to decide, and upon which the defendant relies, is as follows, as expanded upon by the evidence which has been filed subsequently:
17. Firstly, the defendant's current policy is to offer interviewees in age assessment cases the opportunity to have an independent adult present. The defendant's current pro forma age assessment invitation letter, referred to in the summary grounds, includes the following passages:
18. "Your client may wish to bring an independent observer to attend and to provide your client with support during the assessment process. Please note that the independent observer may not provide guidance, advice, nor answer any questions on your client's behalf. Persons your client may wish to consider are his social worker, key worker, a friend/family member, a representative from the Refugee Council, the Official Solicitor or your client's litigation friend. LB Croydon are willing to make contact with an appropriate independent observer on your client's behalf. If your client wishes, however, we will require at least 72 hours notice to do so. Failure to inform us that your client wishes us to organise this may result in your client's assessment interview being carried out without his observer or the interview being rescheduled to another date. We do not consider that legal representatives, their agents or associates will generally be appropriate to fulfil the role of independent observer. There may be comparatively rare occasions, however, where on the facts of a particular cases it is appropriate for such a person to be present. Examples are where the Official Solicitor or a specialist child protection solicitor has been appointed."
19. I was told during the course of the hearing that this claimant had not in fact been sent the letter containing this information.
20. Reliance is also placed by the defendant in this respect on the witness statement of Janet Patrick, service manager with the defendant's Unaccompanied Minors Team

("UMT") dated 13 May 2008. This statement was in fact prepared for use in earlier judicial review proceedings in a different case, but it has been served in this case in addition and the defendant wishes to rely upon its contents. The statement deals with the age assessment process generally but at paragraphs 63 to 64 Miss Patrick states as follows:

"Prior to the day of the assessments the assessing social workers will establish what language the applicant wishes to use and an interpreter provided as appropriate. The applicant is also advised that he can have a person to support him during the process and sit with him at interview. This is frequently, for example, a panel advisor from the Refugee Council. The role of this person is to observe the age assessment interview. The UMT's experience is that applicants are often accompanied by a Refugee Council Panel advisor to the age assessment.

64) An age assessment interview will last approximately one hour thirty minutes to two hours although some may take longer as circumstances dictate. Each interview is undertaken by two social workers."

21. Secondly, at paragraph 7 of the response of 27 October, the defendant stated that it was "certainly willing for the applicant to have an adult with him for the purposes of providing support".

22. Paragraph 8 continued:

"If your client cannot identify an adult, LBC is willing to assist him in two further ways. First, it is willing to provide assistance in the form of contacting the Refugee Council so as to ensure that a person is represented albeit that your client does not have a specific adviser from there. We do not accept your point in relation to the Refugee Council not being appropriate due to their inability to advise in an age disputed matter as clearly a representative from the Refugee Council would not be taking the role of an adviser but instead that of an independent adult observer which is surely the key issue here. Secondly, my client is willing to ensure that a key worker who is independent of the assessment process in his case is present to provide the necessary support."

23. There is before me a statement from Bana Banafunzi, a panel adviser to children being advised and assisted by the Refugee Council. He confirms that as a panel adviser he has accompanied children or young persons to age assessment interviews carried out by this defendant on numerous occasions. His role has always been to support the child. He is not permitted to interfere with the assessment, save to request a break where appropriate, and he is always permitted to take a note of the interview. However, he states that this claimant does not have a panel adviser at the Refugee Council. Further, he states:

"Due to United Kingdom Border Agency funding requirements placed on the RCCS, the RCCS is currently unable to send an adviser to attend an

age assessment interview in circumstances where the child/young person does not have a panel adviser. The UKBA has said to the RCCS that the RCCS cannot work with children/young people whose sole reason for referral is that they are age disputed."

24. This is confirmed by Helen Johnson, RCCS operations manager, in her letter attached to Mr Banafunzi's statement.
25. On the evidence before me therefore support for this claimant at his interview would not be available from anyone at the Refugee Council. Mr McGuire, appearing on behalf of the defendant, accepts this and fairly did not pursue this suggestion before me.
26. The remaining points made by the defendant in opposing the presence of Mr Frederick are as follows. There is no general legal right to insist on the presence of a legal representative at an age assessment interview, or to choose a legal representative as an independent observer. Nor is it appropriate to allow an applicant "to have the benefit of legal representation at the age assessment". In most cases, it is said, it is undesirable for a legal representative to be present at interview. This is because, and I quote from the summary grounds:

"They are liable to affect adversely the proper conduct of the interview, to judicialise the process and undermine the prospects of any rapport being developed. Their very presence is liable to make the process more formal and to undermine the prospects of effective information gathering occurring in interview. It would interfere with the professional ability of social workers to carry out social work. Further it is generally undesirable for the interview to be conducted in conditions where those conducting the interview are being observed by lawyers who are present at the behest of the applicant they are interviewing. Moreover, as was noted by Janet Patrick, the authority is concerned to ensure that answers given are spontaneous, open and genuine. We are concerned that an applicant who has a legal representative present may seek to say no more than he has said to his legal advisers and thereby thwart the information gathering process in interview. The presence of a legal representative is liable to have a negative impact on the interview, on the openness of the applicant, and on the interview itself. We note that you say he would remain silent in interview. That does not allay our concerns as to the possible negative impact of his presence on the interviewing process."

27. Later on the defendant added this:

"We do not discount the possibility that in the particular circumstances of the case it may be appropriate for a solicitor to be present. The particular facts of a case may make it appropriate either to allow a solicitor or legal representative to be present. We do not see that such circumstances arise on the facts of this case however."

28. Finally in relation to Mr Frederick's position in particular, it was said to be clear that he was acting as agent for the claimant's firm of solicitors and that he "therefore falls to be treated in the same way as an employee".
29. The Law:
30. It is unnecessary, given the discrete issue which arises in these proceedings, to set out the statutory framework for the defendant's duties under the Children Act 1989 to children in need within its area. It is common ground, as is now well known, that there is no statutory procedure or guidance on the assessment of a young person's age. Local authorities and the Home Office have developed their own policies and practices on an ad hoc basis over recent years and these have now been the subject of judicial scrutiny on a number of occasions. Practice Guidelines for age assessments and a template interview check list for such purposes, known as the "Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers" have been formulated by this defendant together with the London Borough of Hillingdon. They are now being used, I am told, by many local authorities in conducting such assessments.
31. A number of principles relevant to age assessments undertaken by local authorities were set out by Stanley Burnton J in **R(B) v London Borough of Merton**. The effect of the very recent judgment of the Supreme Court, however, is that where there remains a dispute as to age between the assessing local authority and the young person in question, this is to be resolved by the courts as a matter of fact on the evidence available to them in any particular case. Judicial review proceedings will need to be adapted as necessary in such cases.
32. Last month, following this decision, Holman J gave directions in a number of disputed age cases, which he considered might helpfully be used in such cases in future. He held that, when considering whether or not to grant permission and without prejudice to the usual discretionary issues, such as delay or whether the relief sought has become academic, the test in such a case as this should essentially be whether there is a realistic prospect, or arguable case, that at a substantive fact finding hearing the court will reach a relevant conclusion that the claimant is of a younger age than that assessed by the local authority.
33. I mention this by way of background because there is a dispute between counsel in this case as to the full effects of the Supreme Court's decision on judicial review proceedings in such cases. It is neither necessary nor wise for me to pronounce authoritatively upon that dispute here. However, I shall approach the issue arising in this case on the basis that the assessment carried out by the local authority, including the integrity of the age assessment interview, will still be relevant before this court. The public authority has to make its own determination in the first instance and it is only if the claimant's age remains in dispute that the court may have to intervene. As Lady Hale observed at paragraph 33 of her judgment:

"The better the quality of the initial decision making, the less likely it is that the court will come to any different decision upon the evidence."

34. Leaving aside the question of admissibility of expert evidence, which is a matter of some controversy, there will, I anticipate, be a number of cases where the age assessment interview is the only information before the court. The particular claimant may have, for example, no ID card or any other documentary information, or any witnesses who can help as to his age. Given the complexity of the assessment task and the possible trauma, bewilderment and anxiety of the young person, as referred to in the Practice Guidelines, the fairness and transparency of the questioning process will continue to be important, not only for the participants at the time, but for any court subsequently asked to determine a dispute as to that claimant's age.
35. There being no statutory guidance in relation to the conduct of assessments, the defendant in this case has decided that fairness includes each young person being afforded the opportunity to be accompanied at interview by an independent adult observer. It has adopted a policy which, subject to the limitations identified in the pro forma invitation letter to which I have referred, enables this independent adult to attend the interview, observe the proceedings, and, as Mr Banafunzi's unchallenged evidence shows, to take a full note. The "support" referred to is support offered by their presence alone, any intervention being restricted to suggested comfort or refreshment breaks and the like. There is no criticism made of these restrictions in this case.
36. The first issue raised is what the words "independent adult observer" mean and the dispute before me has centred on the word "independent". In paragraph 21 of its summary grounds, the defendant states that it is the lack of independence of Mr Frederick which is contested and not the claimant's freedom to choose the adult he wishes to attend. This naturally begs the question: independent of whom?
37. I agree with Mr Suterwalla that the word "independent" is not to be considered in a vacuum but in the context of the defendant's policy and of what this claimant was being told. Mr McGuire's submission, on behalf of the defendant, that it means independent of the parties, that is someone who is "not aligned with one party or another", with respect cannot be correct on the defendant's own case. The pro forma invitation letter identifies, as examples of such observers, a friend of the young person, or a member of his family, or a representative from the Refugee Council, none of whom would be independent of the claimant in that sense. A panel adviser from the Refugee Council would clearly be "aligned to" the young person they are tasked to advise.
38. On the evidence before me the plain meaning of the words used by the defendant, in informing this claimant that he could be accompanied by an independent adult observer, is that he was permitted to have in attendance someone who was independent of the defendant authority. Further, the claimant was told that he was entitled to choose that person and, if he was unable to find someone, then the defendant would be willing to help him to find someone. I therefore accept Mr Suterwalla's submission that the starting point here is that, under the defendant's own policy, the claimant is entitled to have an adult of his own choosing in attendance, who is independent of the defendant and who may or may not fall within one of the categories of people suggested by the defendant by way of examples in the pro forma letter.

39. The second issue is whether, as the claimant contends, it follows from this that a young person can choose to have his legal representative in attendance, and that the reasons given by the defendant for its refusal to permit lawyers to attend, save in rare and exceptional circumstances, are unreasonable and irrational. Mr McGuire submits that the defendant was entitled to decide, for the reasons given, that in most cases it would be undesirable for a legal representative or his agent to be present at an age assessment interview and that the decision to exclude Mr Frederick was arrived at on a rational and lawful basis.
40. The reasons given in the summary grounds for refusing access to Mr Frederick really come to this: Lawyers are liable adversely to affect the proper conduct of the interview; to judicialise the process and make it more formal; to undermine any prospects of any rapport being developed and of effective information gathering during the interview; to render it likely that the young person stays silent; and generally to have a negative impact on the openness of the young person and on the conduct of the interview itself.
41. One other reason referred to by Janet Patrick in her statement related to the need for the assessors to ensure that the answers given by the young person are genuine answers and not the product of any coaching. Mr McGuire did not, however, rely upon this as a valid reason for excluding a legal representative from the proceedings. He was wise to do so, because given the individuals suggested by the defendant as appropriate to fulfil this role, this would not in my view be a rational basis for singling out a legal representative as someone to be excluded from the process.
42. It seems to me that this reasoning would apply in addition to some of the other objections. I can identify no rational basis for suggesting, for example, that a lawyer, whether representing the young person or not, would be more likely by her mere presence in the room to undermine the development of a rapport or the effective gathering of information at interview than, say, a good friend or member of the claimant's family, or indeed an adviser from the Refugee Council. Obviously if the defendant had valid reasons for believing that the particular person chosen as adult observer, whether or not this included the claimant's legal representative, might adversely affect the conduct of the interview in any of the ways identified, they would be entitled to refuse permission for that person's attendance. There does not seem to me, however, to be any rational basis for refusing permission on any of these bases to all legal representatives, their agents or associates.
43. This leads me to another difficulty for the defendant in this case, as I see it. The reasons being advanced amount essentially to broad, generalised assertions in respect of which the defendant has provided no evidence in support. The context for this defendant's refusal to allow a legal representative is the agreement of the parties that the adult attending must remain mute, offer no guidance or advice, and must merely observe the proceedings. The assessment interview is already a process now attended by some formality, as the defendant's own Practice Guidelines and interview template indicate. The template in particular, with its structured headings for questions and notes of guidance, indicates the necessity for careful and appropriate questioning and for a proper record to be taken of the responses. I fail to see how the formality that

already arises would necessarily be increased to an undesirable degree by the mere presence in the room of a legal representative as observer as opposed, say, to an adviser from the Refugee Council. On the defendant's own evidence this interview is carried out by highly trained and experienced professionals, who are unlikely to regard themselves as constrained in any way by the presence of another professional in the room, albeit of the legal variety. Nor do I consider that a young person is more unlikely to answer questions as a result of the presence of a legal representative, or that such a representative might influence his frankness in some way. In circumstances where the importance of giving truthful answers is carefully explained by trained professionals, and given the confidential relationship existing between the young person and his legal representative, the mere presence of the latter as observer cannot plausibly be a reason for the young person not to be open and frank with his assessors.

44. In my judgment therefore, the reasons advanced by the defendant for refusing to permit lawyers, their agents and associates to attend do not withstand scrutiny. On the contrary, based upon the defendant's own evidence, there would seem to me to be real benefits afforded by the presence of the claimant's lawyer in terms of the fairness and transparency of the procedure. The defendant has emphasised the importance of "getting it right". Miss Patrick has drawn attention, at paragraph 67 of her witness statement, to the difficulties which frequently present themselves in such cases, reference to which is made in addition in the Practice Guidelines. Thus she refers, for example, to the possibility that those being interviewed may be nervous in an unfamiliar situation; to the need to be alert to the level of tiredness, trauma, bewilderment and anxiety that the young person may be experiencing; and to the need to ensure that he or she understands the questions asked and that the questions are asked clearly and sensitively.
45. In such circumstances, where the need for fairness in the conduct of assessments is accepted by the defendant, I would regard the presence of a legal representative to observe it as more likely to enhance that aim than to thwart it. I gain some support for this conclusion from some observations of Mr Justice Blake in his recent judgment in **R(NA)v London Borough of Croydon** [2009] EWHC 2357 Admin. It is correct, as Mr McGuire points out, that different issues and indeed a greater number of procedural defects in the age assessment process for that claimant, were there under consideration. Mr Suterwalla rightly accepts in addition that Blake J was not focussing on the claimant's entitlement to choose his legal representative to attend as independent observer and that his observations did not therefore have the benefit of full argument on the point and indeed were not part of the ratio. Nevertheless, the defendant's failure in that case to afford the claimant an independent adult observer arose in the context of the defendant undertaking a second assessment following a dispute over the first.
46. Having referred at paragraph 16 and paragraph 50(1) to the view of Collins J in **R(A)v London Borough of Croydon (No.2)** that the presence of an independent adult was one of the necessary aspects of fair procedure to be applied, Blake J expressed the view that the context of the case before him revealed "the importance of that requirement in the overall assessment". At paragraph 50(2) he said this:

"It is particularly surprising that the claimant was not offered the

opportunity to have an independent adult present in the light of the fact that he had been recognised as a minor, was represented by a litigation friend in the outstanding judicial review proceedings, and he also had a solicitor experienced in child protection matters acting for him. Neither the litigation friend nor the solicitor were informed that there would be a review at all of the decision and challenge or that a further interview of their client was contemplated in pursuance of that review."

47. He returned to this issue later on, when referring to a misunderstanding said to have occurred during the interview. He said as follows at paragraph 56:

"In his witness statement the claimant says that this was an error in understanding and translation and that what he was really trying to get across was that he was worried at the time he received the advice in Pakistan about his future prognosis at 18 because of the continuing problems with his elbow. In my judgment this is precisely the sort of important dispute that the presence of a solicitor or an adult friend or an adviser is intended to guard against. It is certainly the kind of inconsistency that must be put at the time to ensure that the assessors have accurately captured the information through the interpreter and any explanation that they might be able to obtain from the claimant in respect of it."

48. Given the restrictions applied to the role of the independent observer, which have been accepted by the claimant in this case, Mr Suterwalla does not suggest that there could or should be any intervention by Mr Frederick during the interview to correct any such misunderstanding. He is content for the claimant's nominated representative to attend only to observe. Whilst I acknowledge that Blake J was not focusing on the issue as it arises before me, it seems clear to me from his remarks that he anticipated that an independent adult observer could include a young person's legal representative. I respectfully agree. The fact that there is no legal right to insist on a legal representative being present seems to me to be beside the point. The entitlement to choose his legal representative to act as his independent observer arises from the policy the defendant has itself adopted and the lack of any rational basis advanced by the defendant before me for refusing it, in particular given the limited role that it is agreed that the observer will play.
49. Even if the defendant were entitled to refuse to permit the claimant's legal representative to attend, it is also clear that Mr Frederick would not in fact be performing that role for this claimant. Indeed, he would not be permitted professionally to represent him, given the limited basis on which WNT have assigned him, to carry out only clerking services requested via an outsourcing arrangement. The ban on all legal representatives, their agents and associates is therefore in any event too wide and cannot be sustained. Mr Frederick could not reasonably be said to be assuming a role "aligned with that of the claimant's firm and its identity and purpose", as the defendant suggests.

50. Mr McGuire submits that Mr Frederick's presence would be more disruptive because of the the already existing dispute between the defendant and the claimant's solicitors. I do not accept, however, and there is certainly no evidence to support it, that there can be any legitimate concern that the claimant might adopt a defensive position as a result of Mr Frederick's attendance. Whilst he may be attending as agent, to represent the claimant's solicitors on this occasion, he will not be acting as the claimant's legal representative. It is important, in my view, to concentrate on the substance of his task and the actual role he is to play rather than the label that may be attached to it. Mr Frederick is himself a professional and would be fully cognisant of the nature and extent of his role, and of the boundaries.
51. I turn finally to the question of discretion. Mr McGuire submits that, since the defendant has offered to find an alternative observer for this claimant, he is not entitled to relief. However, there was no reference to the offer made now in the letter of 13 October, save in respect of the possibility of somebody attending from the Refugee Council which, it is now accepted, is not an option in this case. This offer was then repeated in the reasoned response of 27 October and the alternative mentioned, namely a key worker, would not be independent of the defendant authority. Thus the first time an offer of an observer independent of both parties was made was during the hearing before me.
52. Mr McGuire referred to the possibility of someone from the organisation Voice Advocacy Services. There is, however, no evidence that someone from that organisation would be prepared to act in that capacity or as to how their attendance might be funded, if at all. If it were being suggested that the defendant could pay for their attendance that would, of course, strike at the heart of their independence.
53. In all the circumstances, having regard to the need not to delay any longer the pressing need for the reassessment in this case, the claimant is entitled to the relief sought, and I shall now discuss with counsel the terms of the order. It follows that I grant permission and indeed grant the substantive application for judicial review.
54. MR SUTERWALLA: My lady, I am grateful for your considered judgment. I do not know whether the defendant is in the light of that judgment willing to undertake in open court that he will allow the claimant to bring with him Andrew Frederick to the reassessment and that it be scheduled forthwith. If the defendant is willing to say that in open court, in terms of the (inaudible) order, well, it is entirely in your discretion, my lady, but the relief would be obtained effectively by that.
55. MRS JUSTICE COX: Well, Mr McGuire may be able to say so now or he may need time or he may want the benefit of some time --
56. MR MCGUIRE: I had best preserve the position by saying the way to deal with this is for there to be a declaration that he is an independent adult observer and is still comfortable in that definition. I do not offer an undertaking because of the application I will seek to make in order to preserve our position in terms of permission to appeal so that we do not find ourselves in a situation of making different commitments to different people.

57. MRS JUSTICE COX: No. Well, I understand. Are you making that application now?
58. MR MCGUIRE: Yes, I do.
59. MRS JUSTICE COX: Right. Well, I have considered your application. On the particular facts of this case and having regard to the conclusion I have arrived at I will refuse you permission to appeal. You may, of course, if you wish proceed to the Court of Appeal.
60. MR MCGUIRE: I am obliged.
61. MR SUTERWALLA: My Lady, the only other thing is the matter of costs as I understand it. We would seek our costs to (inaudible).
62. MRS JUSTICE COX: Thank you very much.
63. MR SUTERWALLA: I do not know if my learned friend has any --
64. MRS JUSTICE COX: Do you want to say anything?
65. MR MCGUIRE: I could not challenge it on that judgment.
66. MRS JUSTICE COX: Thank you very much indeed. Well then, I will make the declaration that is sought and can I rely upon counsel, please, to agree the precise terms of the order and submit it.
67. MR SUTERWALLA: I will endeavour to get your clerk's email address.
68. MRS JUSTICE COX: Thank you very much.
69. MR SUTERWALLA: Just to confirm, my Lady, it is a quashing order on the defendant's decision and then a declaration as well that Mr Andrew Frederick is an independent adult observer within the meaning of the defendant's policy.
70. MRS JUSTICE COX: Yes. There will be an appropriate formula, I am sure, that you can both agree but that is the essence of it I think, yes. Thank you very much. I am very grateful to you both for your assistance.