

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/06/2011

Before :

MR JUSTICE KENNETH PARKER

Between :

The QUEEN on the application of "R"	<u>Claimant</u>
- and -	
THE LONDON BOROUGH OF CROYDON	<u>Defendant</u>

Mr Azeem Suterwalla (instructed by **Harter and Loveless**) for the Claimant
Ms Catherine Rowlands (instructed by **DMH Stallard**) for the Defendant

Hearing dates: 24 and 25 May 2011

Judgment

Mr Justice Kenneth Parker :

Introduction

1. In this claim for judicial review the Claimant, R, challenges the determination of his age by the Defendant, the London Borough of Croydon. R is an asylum seeker who is originally from Afghanistan. He claims that he is presently a child aged 17. R is unaware of his exact date of birth ("d.o.b") but his case is that he was born in the Afghan year 1372. The Afghan year runs from March to March. The year 1372 is equivalent to 1993/94 so R's case is that he was born on a date between 21 March 1993 and 20 March 1994. R submits that if he persuades the Court that he was born in 1372, fairness dictates that the mid-point of that year, 21 September 1993, should be adopted as R's nominal d.o.b., making him now (at the beginning of June 2011) about 17 years and 8 months. However, in an assessment of R's age carried out in May 2008, the Defendant assessed R to be over 18 years old. This decision was reaffirmed when the Defendant carried out a second assessment of R's age in December 2010. Therefore, on the Defendant's assessment R is currently 21 years old or over.
2. In the light of the decision of the Supreme Court in *R (A) v LB Croydon* [2009] UKSC 8 it is for the Court to determine R's age/d.o.b.
3. R's age is significant for at least two reasons:

- i) If he is a child he is entitled to accommodation and support under the Children Act 1989 (“CA”). R is presently living in accommodation provided for adults by the United Kingdom Border Agency (“UKBA”). R does not receive any care or support, as he would do under the CA.
- ii) If R’s age were accepted and he had received accommodation pursuant to Section 20 CA for a period of 13 weeks or more before turning 18 (when the duty to provide accommodation under Section 20 CA ceases) he would acquire the status of a “former relevant child” (within the meaning of section 23C CA) and as a result would be owed further duties (such as assessments of needs, planning, a personal advisor, help with education and training) up until the age of 21.

Factual Background

4. R is from Maidan Wadark, Bisood Village in Afghanistan. He alleges that his entire immediate family was killed when he was three years old, following a land dispute between his father and a neighbour. R fled to Iran with his paternal uncle. He remained in Iran until the latter part of 2007, when he made his journey to the UK. R arrived in the UK by lorry on 21 May 2008. He met another Afghani who offered him accommodation and on the following day, 22 May 2008, took R to the offices of the UKBA in Croydon.
5. On 22 May 2008 R made an application for asylum. The UKBA’s initial position was that R’s claim was a “Third Country” case and therefore his asylum application would not be considered within the UK. In a letter dated 21 October 2010 the UKBA stated that it had withdrawn the Third Country Certificate and it would proceed to consider R’s asylum claim in the UK. R’s claim for asylum was subsequently considered and refused. He submitted an appeal which was to be heard on 15 May 2011. Following his application for asylum R was referred by the UKBA to the Defendant. The local authority decided to carry out an assessment of R’s age, which it did on 27 May 2008. R claimed he was 15 years old but at the conclusion of the assessment he was assessed to be “over 18 years of age”. He was referred to the UKBA for accommodation and since 27 May 2008 has been provided with accommodation and subsistence support through that agency.
6. In the light of the Defendant’s decision, R asserts that he arranged for his uncle to send him his ID document issued in Afghanistan. A copy of that document was sent to the UKBA on 12 June 2008. The translation of the ID document states that R was 11 years of age in the year 1383 by the Afghan calendar.
7. The Afghan calendar is such that its years run from 21 March to 20 March by the Gregorian calendar. If the ID is accurate then R would have been born in the year 1372 (1383 less 11 years). R’s case, therefore, is that he was born at some point between 21 March 1993 and 20 March 1994 although he remains unclear as to his exact d.o.b.
8. The Refugee Legal Centre, which formerly represented R, arranged for him to be assessed by Dr Diana Birch, a paediatrician well known in cases of age assessment. She assessed R on 26 June 2008 and produced a report dated the same day. Dr Birch concluded that:

“... taking all parameters into consideration it is likely that [R] is aged 15.1 to 17.1 years of age – Calculation of 16.1 years – ie 16 years 1 month. This estimate is consistent with his given age of 15 years and 5 months.”

The Refugee Legal Centre sent that report to the UKBA.

9. The UKBA subsequently informed the Refugee Legal Centre that they did not accept Dr Birch’s opinion and would stand by the Defendant’s assessment of 27 May 2008.
10. This claim was brought on 15 October 2008 and on 3 November 2008 the Defendant filed its Acknowledgment of Service and Summary Grounds of Resistance.
11. Pending *R (A) v LB Croydon* [2009] UKSC 8, on the preliminary issue of how the Court was to approach age dispute challenges, and *R (A) and (WK) v LB Croydon and Kent CC* [2009] EWHC 939 Admin, which concerned the weight to be placed upon paediatric evidence when assessing age, the claim was effectively stayed.
12. On 14 May 2010 R was reassessed by Dr Birch. In her report she stated that:
 - “1. [R] has now been monitored on two occasions over the period of 23 months.
 2. There have been changes in his examination indicating increased maturity and hence this supports the premise that he was not fully developed or a young adult when first seen.
 3. The findings are consistent with the degree of change that one might expect in a boy of R’s claimed age.
 4. The first assessment indicated that his age fell within a range about a mid point of 16 years.
 5. Chronologically 23 months have elapsed since he was first seen and during that time he has progressed an equivalent degree of maturity.
 6. The findings of the two examinations are consistent with his claimed age (which would now be 17 years and 4 months).”
13. On 9 December 2010 the Defendant carried out a second age assessment of R. It again concluded that R was “*an adult 18+*”.

The Relevant Guidance on Age Assessment

14. There is no statutory scheme for the assessment of age. Procedures have developed on an ad hoc basis with local authorities and the Home Office developing their own practices over recent years. These policies and practices have been the subject of judicial scrutiny on a number of occasions.
15. A template entitled “Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers” (“Practice Guidelines”) is commonly used by local

authorities when carrying out age assessments (this document was formulated by the London Boroughs of Croydon and Hillingdon). The Practice Guidelines materially state that:

“The task of the assessing worker is to assess from a holistic perspective, and in the light of the available information, to be able to make an informed judgement that the person is probably within a certain age parameter. It is a process of professional judgment.

Age assessments are sometimes undertaken at the port of entry and the asylum screening unit where a decision is required in a short period of time, or sometimes at a later stage. In circumstances of age uncertainty, the benefit of doubt should always be the standard practice. When practical, two assessing workers is beneficial. Age assessments are also undertaken following the acceptance of a referral to social services to ascertain if the person is entitled to a service as a child. However, in some Local Authorities age assessments are undertaken on presentation when the stated age is disputed. Here the assessment can sometimes be undertaken over a period of time, and involve other professionals, for example residential social work staff, foster carers, doctors, panel advisors, teachers and other young people. It is very important to ensure that the young person understands the role of the assessing worker, and comprehends the interpreter. Attention should also be paid to the level of tiredness, trauma, bewilderment and anxiety that may be present for the young person. The ethnicity, culture, and customs of the person being assessed must be a key focus throughout the assessment.

It is also important to be mindful of the “coaching” that the asylum seeker may have had prior to arrival, in how to behave and what to say. Having clarified the role of the social services, it is important to engage with the person and establish as much rapport as the circumstances will allow. This process is sometimes known as “joining”. The assessing worker needs to acknowledge with the young person that they will have had to already answer many questions, and that it may be difficult and distressing to answer some of the questions.

In utilising the assessment framework, the practitioner should ask open-ended, non - leading questions. It is not expected that the form should be completed by systematically going through each component, but rather by formulating the interview in a semi structured discussion gathering information at different stages. The use of circular questioning is a useful method, as it is less obvious to the person being assessed that the questions relate directly to age, and hence may reveal a clear picture of age - related issues.”

16. The guidelines include a form for use when assessing the age of an applicant, with spaces for information as to his or her physical appearance and demeanour, manner of interaction with the assessing worker, social history and family composition, developmental considerations (i.e. information about the types of activities that the person was involved in before arriving in the UK), education, his or her level of independence and self-care, health and medical assessment, information from documentation and other sources and, finally, the conclusion of the assessment.
17. In *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin), Stanley Burnton J (as he then was) set out a number of principles relevant to age-assessments undertaken by local authorities:
 - i) Given the impossibility of any decision-maker being able to make an objectively verifiable determination of the age of an applicant who may be in the age range of, say, 16-20, it is necessary to take a history from him or her with a view to determining whether it is true. A history that is accepted as true and is consistent with an age below 18 will enable the decision-maker in such a case to decide that the applicant is a child ... physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other. (Paragraph 28)
 - ii) [T]he decision maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision-maker must seek to elicit the general background of the applicant, including family circumstances and history, educational background and activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the given age, the decision-maker will have to make an assessment of credibility by questions designed to test credibility. (Paragraph 38)
 - iii) A local authority is obliged to give adequate reasons for its decision that an applicant claiming to be a child is not a child. (Paragraph 45)
 - iv) Procedural fairness requires those assessing age to put to the child matters, which they are minded to hold against the child, so the child has an opportunity to rectify any misunderstandings that may have arisen. (Paragraph 55)
 - v) The court should not be predisposed to assume that the decision-maker acted unreasonably and carelessly or unfairly. It is for the Claimant to establish that the decision-maker acted in such a way.

The Assessments Made by the Defendant in This Case

18. The conclusion of the first assessment (27 May 2008) was that R's
"physical characteristics and demeanour are indicative of a person whom (sic) is over 18 years of age."

It was also stated that

“a variety of non-physical characteristics gathered during the course of the assessment would support the conclusion [R] is over 18 years.”

19. The second assessment (9 December 2010) was in standard format, and the conclusions were summarised as follows:

“The purpose of this age assessment was to try and determine R’s age which he claimed as being 17 years and few months. R did not remember the exact day and month that he was born. R presented a Tazkera which he obtained in 2004; this document established that he was 11 years old when it was issued. This document did not establish the exact date and month that R was born. We have found the Tazkera helpful in the course of our assessment, however we did not accept that the information that this document provides was adequate to draw a logical conclusion regarding R’s age. We are of the view that a logical conclusion regarding R’s age should involve an holistic approach, which will consider all the reports and evidences that we had before us, including expert reports and information that we gathered during the interview.

In coming to a decision on R’s age, we took into consideration the information gathered and analysed in the course of the assessment. We have been guided by information gathered from R’s physical appearance, demeanour and presentation, and experience of working with other young persons from same or similar ethnic backgrounds.

Based on the information that we have gathered during the interview, R appeared to function above his claimed age of 17 years and few months. Our views have been informed by the reasons that have been fully discussed in our analysis which appear to suggest that his physical developmental features and functioning are consistent with that of a typical adult.

R’s overall physical developmental features appear to demonstrate that he has attained full process of physical maturation. He had two visible skin folds on his forehead, sunken eyes, with a visible well developed larynx. R had visible facial skin wrinkles and he was clean shaven. R was about 1.7m tall. R’s visible forearm, wrist, hands and fingers appeared fully developed. In our view, R’s physical developmental features appeared to suggest that he is older than his claimed age, and it may appear accurate to classify him as an adult.

We refer to Dr Birch’s report dated 26 June 2008 page 4 paragraph D (1); this area of the report established that R was able to state his date of birth as 01/01/93 with a stated age

being 15 years 5 months. Furthermore, Dr Birch provided an estimate age of 16 years and 1 month.

We have noted Dr Birch's conclusion which with estimate of R's age calculated as 16 years 1 month. Considering this information and with simple calculation it would appear accurate to say that R is now over 18 years old.

During the assessment R stated that he did not remember his date of birth, but he knew that he was 17 years and a few months old. We have observed that this account was not consistent with his stated age during interview with Dr Birch. Having taken Dr Birch's report into consideration, we do not find it persuasive.

We would like to emphasize that R did not provide much specific information for chronological purposes. R did not hesitate in his responses to questions that were asked during the assessment. Interaction with the Assessors was good, he was not rude, he was calm, and was never irritated by questions that were asked.

Assessors established a pattern of attitude to questions relating to his age, and it appeared that his attitude was deliberate to avoid questions that would help the Assessors to form a chronological order of events since his birth, as well as his travel history to the UK.

For example, R stated that he did not remember the date that he left Iran to begin a significant life event and what he described as a very difficult journey to the UK which took between 7 to 8 months. R stated that he was 15 years old when he commenced his journey to the UK. In the Assessors' view R's age during this period along with his developmental consideration (and a physical separation from his girl friend) were factors that we assumed should make this period and date very memorable for him.

In spite of these gaps, we are of the view that R's cognitive functioning is consistent with that of a typical adult.

We are of the view that R is functioning above his claimed age of 17 years and few months considering the reasons outlined above, the Assessors have assessed R as an **adult 18+.**"

The Hearing Before the Court

20. At the hearing before me R gave evidence on his own behalf, together with Mr Andrew Frederick, R's legal case worker, who attended the second assessment and made notes of the interview, and Dr Birch, to whose reports I have referred. Shortly before the hearing the Claimant submitted a third, and relatively recent, age

assessment by Dr Birch. This assessment was consistent with the conclusions reached in her earlier reports, and I admitted this third assessment into evidence, notwithstanding its late production. For the Defendant, Mr Adetunji Oyetele, one of the two social workers responsible for the second assessment, gave evidence, together with Dr Colin Stern, consultant paediatrician emeritus at St Thomas' Hospital, London.

The Claimant's Case

21. The Claimant relies first on the Tazkera. This, as I have explained, was in Afghan years dated 06/08/83, i.e. in the Gregorian calendar 28 August 2004. The age stated on the document was 11 years of age. In *R(NA) v LB Croydon* [2009] EWHC 2357 (Admin), Blake J considered the status of an Afghan ID in circumstances where the claimant, in seeking to challenge the local authority's assessment of his age, relied upon an ID card (see paragraphs 20 and 21). At paragraph 64 Blake J stated:

“Here the local authority is engaged in an age assessment where, to some extent, the obligation is upon them to provide cogent reasons after a fair procedure as to why the claimed age, particularly where it is supported by the document that would normally be indicative of age is to be objected. I have already quoted the guidance on the form which indicates the importance of the documents as the adjournment in December indicates that Croydon were aware that it was important.

65. Third, for reasons already noted, there is in my judgment nothing about this document on its face to suggest that it is unusual or peculiar. It is the kind of document that is issued in Afghanistan when one needs it to progress in the education at school as the home office COIR shows.”

22. In this case a copy of the Tazkera was sent to the Claimant after he had arrived in the United Kingdom. It is said that the uncle of the Claimant sent this document to him. The Claimant does not know how the uncle obtained the document.
23. It seems to me that in this case there are a number of difficulties with this evidence. First, on the Claimant's own case both he and his uncle left Afghanistan in fear of their life and moved to Iran. In order to obtain the document the uncle would have had to return to Afghanistan. It was the Claimant's evidence that he and his uncle, after having come to Iran, did, on a number of occasions, return to Afghanistan. However, I do find that evidence strains credulity given that on the Claimant's account return to Afghanistan would have been highly dangerous. Furthermore, in order to obtain the document the uncle, or someone on his behalf, would have had to make contact with the Afghan authorities which would have increased the risk to him. Furthermore, it is plain on the face of the document that it was the uncle himself who gave the stated aged of 11 years of the Claimant, even if it is accepted that the document had indeed been properly obtained from the authorities. The credibility of the document therefore turns upon the likelihood that the uncle would, in the hypothetical circumstances, have given a correct age to the authorities. However, again on the Claimant's own account, the uncle was heavily engaged in the illicit drug trade and had indeed forged documents for use in Iran. Therefore it appears to me

that the Court must be extremely cautious before accepting that this document was either properly obtained or that it accurately recorded the Claimant's age, particularly, as I have said, the Claimant could offer no explanation as to how the uncle obtained the document. It was submitted on behalf of the Claimant that the uncle would have had no motive for misrepresenting the Claimant's age. I reject that submission. It seems to me that the uncle might well have wanted within Iran a document showing that the Claimant was younger than his actual age because there was evidence that at the material time the Iranian authorities were targeting young Afghan men within Iran. Furthermore, at the time that the document was obtained, namely August 2004, it might well have been the case that the uncle already had in mind that the Claimant might, at some stage, wish to claim asylum in a country such as the United Kingdom and his having a document showing him to be younger than his actual age would be of material advantage. Simply to assume that the uncle, an admitted mover in the illicit drug trade and a forger of official documents, had no motive for ascribing a false age to the Claimant would be naïve. Therefore I have very great concern in this case about the authenticity and accuracy of the Tazkera and in my judgment little, if any, reliance should be placed upon it for the purpose of assessing the Claimant's true age.

24. Secondly, the Claimant relied upon his own account of his life chronology as corroborating the age which he claimed to have. He made three witness statements for the purpose of these proceedings and he verified the truth of these statements when he gave his evidence. He was then cross-examined in some detail as to his life history. It seemed to me that there was vagueness in the account that he gave of his life and in respect of certain details. There were inconsistencies between the evidence that he gave under cross-examination and statements that he had made on earlier occasions. For example, in the first age assessment he said that he had worked in a cotton factory from the age of about 10 for 5 years. In the second age assessment he said that he had worked in the cotton factory for 2-4 years and left a few months before he moved to Iran. In his oral evidence, however, he said that after leaving school he did nothing for a time then worked in a toy factory from the ages of about 8-9 and then in the cotton factory.
25. As to his accommodation whilst he was working in the cotton factory in Iran, in his first age assessment he said that he lived in accommodation provided by the factory mill owner and that he had moved away from his uncle's house five years ago as relations were strained. In his witness statement he said that he sometimes stayed at the factory rather than going back to his uncle's house, and in his oral evidence he said that he lived in accommodation provided by the mill owner and he joined other workers to cook food. Later, however, he changed this account to say that he lived in that accommodation only for some of the time.
26. As to his activities, he said in his second age assessment that he had not engaged in any sporting activities, but then he had told Dr Birch that he had been engaged in body building for the last nine months and he repeated this in his witness statement and in his oral evidence.
27. As to his alleged trips back to Afghanistan, he said in his second age assessment that he stayed 7-10 days each time that he revisited Afghanistan. However, in his oral evidence he said that he stayed 15-20 days and then changed that to 20-25 days and then said that he stayed 3-4 weeks at a time. He said that he visited yearly from the age of about 8 or 9.

28. As to his journey to the United Kingdom, he has said consistently that it took 6-7 months. However, he had to explain a stop in Greece along the way because he had been fingerprinted in Greece and it had been the original intention of the UKBA to return him to Greece for the purposes of his asylum claim. However, he had difficulty during cross-examination of accommodating the proven stay in Greece with the 6-7 months timescale of his journey to the United Kingdom.
29. As to his knowledge of his age, in the second age assessment he said he was first told his age when he was 7. In his oral cross-examination before the Court he said that his uncle had told him just before he left Iran and on one other occasion. He was not able to explain why he had asked his uncle how old he was and he accepted that his uncle could not be sure of the Claimant's age.
30. In the second age assessment, as has been recited, the assessors concluded that the Claimant was being deliberately vague about his life chronology in order to obfuscate that chronology and therefore to support his claim to be younger than he actually was. Having heard the Claimant give his evidence, I am not satisfied that he was deliberately seeking to misrepresent the position. However there was nonetheless a vagueness in the account that he gave and there were certain, not insignificant, inconsistencies in that account. Therefore, the Claimant's own account of his chronology in this case does not give strong support to his claimed age. The absence of reasonably precise dating and the absence of clearly identifiable periods in which the Claimant has said that he engaged in certain activities makes it very difficult indeed to be confident that the chronology is sufficiently precise and accurate to infer that the Claimant is presently, as he asserts, no more than 17 years of age. For these reasons, in this case, the evidence of the various assessors is of particular importance and it is to that evidence I now turn.
31. In this context the Claimant relies, as I have indicated, on the reports prepared by Dr Birch. Dr Birch is a paediatrician with special interest in adolescents and she is the director of Youth Support, a charity specialising in the assessment of single mothers, families, young people and children. She carries out paediatric, adolescent, family and public health work on an international basis at senior consultant level and has worked with deprived groups in diverse settings and across various cultures. She has experience of working with asylum seekers in the United Kingdom and abroad and in conducting age assessments. She is experienced in the diagnosis and treatment of child abuse and protection cases and in the rehabilitation of single mothers and families where child protection has been an issue. She is a qualified medical psychotherapist and specialises in the therapy of single mothers, abuse victims and disordered families.
32. The methodology that she employs has been used in each of the reports to which I have referred and I will consider in more detail the first report as an illustration of Dr Birch's methodology. For example, she carried out what she calls psychometric testing and psycho-social development and she concluded on the basis of her observations that the Claimant's age was consistent with the age that he himself had represented. In relation to psycho-social development she scored various factors such as organisational skills, coping skills, abstract reasoning and adolescent behaviours out of a maximum score of 100, reached an average score and calculated an age equivalent of 15.

Average SD 2.0

Average values physical development B

Average age calculation 16.4 (corrected 16.1)

Average SD 2.0

Average values sexual development C

Average age calculation 16.2

Average SD 2.0

Average values maturation D

Average age calculation 17.0

Average SD 2.2

Average values mental development E

Average age calculation 15.5

Average SD 2.0

This gives an overall age calculation of Age 16.1 years (SD ± 2.1 yrs) (calculated using weighted averages – see appendix for details). For Standard Deviation of 2.1 there is a 72%

chance that the age lies between ± 2.1 yrs of that estimated; there is a 50% chance that the age lies between ± 1.7 years of that estimated and there is a 35% chance that the age lies between ± 1.05 years of that estimated.

5. The accuracy of an age estimate can be improved by a repeat examination and observations over a period of time.
6. The results given above are based on the probabilities of these parameters but it should be acknowledged that probabilities are based on a scatter of individual values about a mean and an individual can be at the extreme ends of such a scale and thus fall outside the probabilities given.
7. The principles used in calculations are set out in Appendix 2 below.
8. Without the applied corrections the calculated level would be 16.48 years and with corrections 16.1.

G. Conclusions and Recommendations –

1. I conclude that taking all parameters into consideration it is likely that R is aged 15.1 to 17.1 years of age – Calculation of 16.1 years – ie 16 years 1 month.
 2. This estimate is consistent with his given age of 15 years 5 months.”
36. The second report was dated 14 May 2010 and the conclusions were as follows:
- “1. The Claimant has now been monitored on two occasions over the period of 23 months.
 2. There have been changes in his examination indicating increased maturity and hence this supports the premise that he was not fully developed or a young adult when first seen.
 3. The findings are consistent with the degree of change that one might expect in a boy of the Claimant’s claimed age.
 4. The first assessment indicated that his age fell within a range of about a mid point of 16 years.
 5. Chronologically 23 months have elapsed since he was first seen and during that time he has progressed an equivalent degree in maturity.

6. The findings of the two examinations are consistent with his claimed aged (which would now be 17 years 4 months).”
37. The third report produced to the Court on the first day of the hearing, dated 20 May 2011, concluded that the findings in that third report was consistent with the two earlier reports and with R’s claimed age.
38. Dr Birch gave oral evidence and was cross-examined and basically stood by the findings in her report. The Defendant relied upon a detailed report from Dr Colin Stern, a consultant paediatrician emeritus at St Thomas’ Hospital. Dr Stern also gave evidence and was cross-examined. In my view Dr Stern was a most impressive witness indeed. In effect he was not significantly challenged in relation to the many, and in my judgment devastating, criticisms that he had made in his report about Dr Birch’s methodology. I shall therefore seek to summarise in this judgment those criticisms.
39. Fundamentally Dr Stern noted that the assessment of maturity and age were not interchangeable, even when carried out using the system developed by Dr Birch. She had averred that under her methodology an assessment of the maturity of various physical and developmental parameters could safely be equated with assessing age. In Dr Stern’s opinion that claim appeared to be specious. Dr Birch’s argument begged the essential question as to whether she had established a reliable statistical method for assessing age accurately. Dr Stern maintained that she had not done so although it might be desirable to be able to estimate the age of a young person with accuracy using appropriate statistical methods. In essence, Dr Birch had performed a series of observations of behavioural and psychological performance coupled with, but not limited to, observations of physical parameters such as height, weight and dentition. These studies were then compared with the same parameters in standard cohorts of children and young people of a range of ages and the information pooled using a variety of statistical methods in order to arrive at a value for a likely estimated age together with statistical limits of variation. A concluding statement was added in which the various likelihoods of a particular age for the putative child were given. While those techniques provided useful information about the maturity of the person, they were unable to give a sufficiently reliable age for the person. Individuals mature at different rates and each characteristic assessed varies in its rates of maturation. With adolescents, in particular, growth may develop in spurts rather than observe a smooth continuum typical of statistical models. Therefore the need to demonstrate the reliability of the methods in assessing age was self-evident.
40. Dr Birch had claimed that by measuring a large number of appropriate characteristics repeatedly she was able to make a more accurate estimation of age. However, in Dr Stern’s opinion the scientific evidence to support that assertion had not yet been proven. He pointed out that similar problems in estimating age had been faced by other European countries, and no reliable, ethically acceptable method had yet been established and received in the scientific community. A fundamental difficulty was that there had been no systematic blinded (meaning that the researcher should have no knowledge of the actual ages of the individuals under study) peer reviewed studies carried out and published in order to establish a measure of statistical reliability. Such studies would have to be performed upon large populations of different ethnicities and from a variety of environmental backgrounds, including physical, psychological and

nutritional stresses, before one would be able to use them with any confidence in order to estimate the age of an individual young person reliably. Even then in the absence of accurate measurements of the individual's parents some of the estimates would be difficult to put into an appropriate context.

41. Dr Stern referred to Dr Birch's recent monograph '*Age Assessment – A Practical Methodology. Age Assessment in Young People, a Blind Study of Afghan Children 2010*'. Dr Stern pointed out that this paper had not yet been published in a peer reviewed journal and he expressed considerable concern about the validity of this study. He pointed out that the number of adolescent volunteers studied in full was small and they were all male. He also contended that the number of volunteers that should be included in order to achieve statistical significance required independent statistical establishment, ideally with the assistance of a trained bio-statistician. He also pointed out that the majority of the clinical observations that were made were subjective to a greater or lesser degree. The statistical methodology was inappropriate because in his opinion the observations and measurements made were dependent variables and should be subjected to analysis of variance rather than independent variables as Dr Birch had claimed. The application of a Monte Carlo simulation to 450 volunteers and to 133 Afghan young people described in Dr Birch's book did not include sufficient information on the individual observations that were made, making a complete review of the studies difficult.
42. Summing up his criticisms in this respect, Dr Stern said that the key question with regard to clinically and psychologically derived estimations of age was the degree to which such measurements could be used to provide true estimations of age or whether they were in reality measurements of maturity within an unknown, and in the cases of many UASC, unknowable timeframe of individual development.
43. Turning to the specific headings in Dr Birch's report, Dr Stern made the following criticisms. As to mental and emotional development Dr Stern pointed out that Dr Birch's methods may not be designed to estimate age and described in most instances the maturity of performance in comparison with healthy control clients. For example, if any individual had suffered severe physical or emotional deprivation or stress over a prolonged period in their early and middle adolescence it was known that the outcome of such tests would be affected. In particular an older individual was likely to perform as if younger than they were, in other words in a more immature way. More controversially, under the pressure of a need to gain some financial or social advantage a person might choose or might be taught to perform in a way calculated to seem less mature. In either case plainly it would be almost impossible for an assessor to ascribe a definitive age to a person on the basis of such tests. Tests would have to be validated in a blinded manner on populations of known age if one was to be able to ascribe an age range to a particular person. Even then Dr Stern did not know how one would be able to allow for a deliberately manipulated series of responses.
44. As to the physical examination, Dr Stern pointed out, for example, that Dr Birch's charts were designed to be used in children of known height. It is one thing to say that a certain percentage of children of 16 is likely to be of a certain height (or thereabouts). It is another matter to say that someone of a particular height is more probably a certain age (reversing causality in this way is an example of The Prosecutor's Fallacy, which is exposed by Bayes' Theorem). Dr Birch had plotted R's height at the 50th centile and allowed a range to include half of a normal

population of boys of 16.5 years being the age at which a height of 174cms stands on the 50th centile. Dr Birch had given no scientifically acceptable justification for this particular plotting of R's height. Conventionally, heights lying between the 10th and 90th centiles could be regarded as normal (that is, within two standard deviations) in the absence of any reliable information about parental height. Dr Birch stated that R's height was on the 25th centile for a young man of 19 or more years. However that height lay between the 25th and 50th centiles for a fully grown adult compatible with someone of over 18 years of age.

45. As to R's weight of 69.5kg plotted on the 50th centile, that equated to 19 years and his BMI, plotted in the same way, equated to 20 years. Those differences reflected that R was between 7kg and 8kg above the average weight for his height. Dr Birch had decided that R's weight was more than that expected for his height as a consequence of his undertaking gym work and weight training increasing his muscle bulk. In the context of her attempt to use these parameters as an assessment of age, Dr Stern concluded that that decision was not scientifically acceptable, being entirely a subjective decision, and resulted in fact in these parameters, namely height, weight and BMI, being counted on more than one occasion to support Dr Birch's assessment.
46. All the charts used in Dr Birch's reports had been based upon measurements of height and weight on the primary assumption that those measurements had been made on a person of known age. They were not designed for the purpose of establishing an unknown age. If appropriate growth charts were to become valid for such a purpose they would need to be used in blinded, randomised studies on populations of known age and ethnicity. Those limitations apply to all the measurements of physical growth that Dr Birch had used in the assessment of R's age.
47. Dr Stern quotes the following passage from Dr Birch's report of 14 May 2010:

“It can be argued that the following groups of parameters are reasonably independent of each other and hence the age level suggested by these groups lends weight to the final age assessment. Mental functioning, including IQ and reasoning and concept, physical growth including height, weight and velocity and BMI, sexual development and maturation (see section F, paragraph 3).”
48. In Dr Stern's opinion that was not the case. For example, the maturation of sexual development depends upon nutrition and psychological well-being and development. Physical growth depends upon mental functioning, depending upon the cause of any delay in physical growth. Mental functioning depends both upon appropriate physical and sexual growth and development and all are interdependent variables to a variety of degrees. Dr Stern went on to say that that did not mean that such observations could not be statistically related one to another, rather that there were more appropriate ways in which such analyses could be carried out. Even then the burden of proof would rest upon the appropriate blinded studies having been carried out and submitted to statistical analysis of the right sort. This would be a form of analysis of variance.
49. Looking at Dr Birch's statistical conclusions, Dr Stern said this:

“Further Dr Birch derives an overall calculated age of 16.1 years stating that he is between 15.1 and 17.1 years of age, a range of two years. However, her stated standard deviation range is 2.1 years which would give R a tolerance, using Dr Birch’s methodology, of approximately 14.1 to 18.1 years of age. As I have pointed out the conventional range of tolerance would be two standard deviations or approximately 4 years either way, although it is implausible that R is 12 years old or less. Without the two corrections applied by Dr Birch, using her own methodology and omitting the psychometric data, which I believe to be excessively subjective, R’s median age becomes 16.8 years, applying approximately one half of the standard deviation, as Dr Birch has done, the age range becomes 15.7 – 17.9 and with one standard deviation 14.7 to 18.9. Employing Dr Birch’s, in my view, inappropriate analytical methods it is quite possible that R could have been over 18 years old. In any case Dr Birch has used an unsubstantiated method of calculating maturity and not age. Therefore I do not believe that her methods or conclusions reached employing such methods can provide a reliable estimation or basis upon which to assess R’s likely age.”

50. In cross-examination, Dr Stern had gone on to say that he had simply failed to understand and had not at all been enlightened by anything said at the hearing as to how Dr Birch had been able to reach reliable statistical conclusions on the basis of the standard deviation that she had used. Dr Birch had said in evidence that she had workings to support her analysis but these workings were not before the Court. The point has some importance. About 95 per cent of the area under the normal distribution curve is within two standard deviations of the mean, but this percentage falls sharply (to about 68 per cent) for one standard deviation of the mean. The probability that someone with the identified characteristics falls within the relevant bracket drops correspondingly sharply (and even more sharply if the range is half a standard deviation).
51. In summary, I accept Dr Stern’s basic criticisms of Dr Birch’s statistical methods. In the absence of the blinded studies, based upon appropriate statistical methods supported by the assistance of a qualified bio-statistician these statistical calculations cannot, in my judgment, safely be relied upon.
52. That creates a problem in the context of this particular case. I do not doubt, nor did Dr Stern, that Dr Birch has very great experience in working with children and, in particular, with adolescents and therefore has accumulated over a number of years very considerable experience and expertise that would bear upon her credibility as an assessor of the age of such young persons. If Dr Birch had employed what I might call conventional techniques for assessing age, her evidence would have carried very great weight. However my concern is that Dr Birch, on the basis of the evidence that she gave to the Court, has in my judgement 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. It appears to me that that confidence leads her to rely primarily upon her statistical methods. Therefore she

is very likely to be biased in her assessment of age by reason of that misplaced confidence. Therefore it seems to be that I must approach with very great caution the conclusions that she has reached. In short, I do not believe that Dr Birch's assessment of the age of the Claimant is any more reliable than that of a social worker. Indeed, her assessment, in my judgment, is likely to be less reliable because she places such considerable confidence in her statistical methods that I conclude, on the basis of Dr Stern's essentially unchallenged evidence, to be not scientifically established and unreliable.

53. As I said, the Defendant relied upon two age assessments. It seems to me that I am not able to place substantial weight on the first age assessment. That is essentially because the Defendant chose not to produce as a witness the maker of that assessment so that that assessment could be tested under cross-examination.
54. It seems to me preferable in this case to focus upon the second assessment. For that purpose, as I have already indicated, Mr Oyetele gave evidence on behalf of the Defendant. Mr Oyetele was cross-examined at some length, both as to his experience and training and as to the way in which he, with his co-worker, had reached the age assessment in this particular case.
55. It is clear that Mr Oyetele has had considerable experience working with young children and therefore was in a position, on the basis of that experience, to make the assessment in question. Dr Stern, in his evidence, had pointed out that in many cases even lay persons who had worked over many years with young persons and had observed them carefully could make reasonably accurate assessments of age, at least as reliable as those that might be made by a paediatrician. It emerged in evidence that Mr Oyetele had had only one day's specific training on age assessment and that had somewhat surprisingly been conducted by a lawyer and not by a trained social worker with experience and expertise in making age assessments.
56. Furthermore, in cross-examination, it appeared to me that on more than one occasion Mr Oyetele had been directed to certain parts of the age assessments that could be shown, with the benefit of further information, to be inaccurate. He was somewhat reluctant to accept that there had been any error made at the time and this, to a certain extent, had detracted from the quality of the evidence that he gave. Nonetheless I formed a generally favourable impression of Mr Oyetele as a witness and I was reasonably confident that indeed he had sufficient experience and expertise to make the assessment that he did.
57. Furthermore, it seems to me that he and his fellow worker did have regard to all material factors, as indeed is evidenced by the report. Some reliance was placed on the alleged deliberate vagueness of the Claimant's account of his life chronology. However I have dealt above with that matter and even if the social worker assessors were perhaps erroneous in their attribution of deliberate vagueness on the part of the Claimant, that does not seem to me to undermine the fundamental conclusions of their report in relation to the Claimant's age. Unlike Dr Birch, Mr Oyetele and his colleague relied upon no flawed statistical methods but simply addressed as best they could each of the relevant factors bearing upon a lawful age assessment. Notwithstanding some inaccuracies and some points of obscurity in the assessment, I am not in a position to reject the assessment as a whole and it seems to me to be an assessment upon which the Court can properly rely. I, myself, am not an expert in

age assessment. The Claimant appeared before me over several hours but I would simply not be in a position to hazard any guessimate of my own as to his true age. I would go no further than saying that the way he struck me as a witness would be consistent with the age assessment made by the Defendant in the second age assessment. On the basis of my own untutored observations of his appearance and demeanour as a witness, I would have considerable difficulty in accepting that the Claimant remains, as he asserts, a child under the age of 18.

58. In those circumstances, the only safe conclusion that I can reach is that at the date of the second assessment made by the Defendant, that is, on 9 December 2010 the Claimant had reached the age of 18. On that hypothesis his date of birth follows as 9 December 1992, and at the date of this judgment he is now 18 years and 5 months old.
59. In response to a draft of this judgment the Defendant proposed that I should find that the Claimant was born before May 1992, that is, older than Dr Birch's assessment that he was 16.1 years old on 26 June 2008. However, the Defendant's assessment of 9 December 2010 simply states that the Claimant was at least 18 on that day, and gives no further help, although it was fully open to the assessors to seek to be more precise. In those circumstances the only fair result is as stated above, and I reject the Defendant's proposed alteration.