

Case No: CO/10874/2011

Neutral Citation Number: [2012] EWHC 2389 (Admin)

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/08/2012

Before :

**MR JUSTICE FULFORD**

Between :

TS

**Claimant**

- and -

**London Borough of Croydon**

**Defendant**

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**Mr C Buttler** (instructed by **Steel & Shamash**) for the **Claimant**  
**Miss C Cooper** (instructed by **LB Croydon Legal Services**) for the **Defendant**

Hearing dates: 15-16<sup>th</sup> August 2012

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**Judgment**

## **Mr Justice Fulford:**

### **Introduction**

1. The claimant (who is referred to in these proceedings as TS) brings this application for judicial review by his litigation friend (Mr Breijer of the Refugee Council) following the grant of permission by Thirwell J on 25 May 2012, and the defendant is the London Borough of Croydon.<sup>1</sup> The claimant challenges two decisions: first, the determination (made on 11 August 2011) that he was born on 1 January 1996 and, second, the decision by the defendant – as it is suggested – that he is not to be provided with full-time education. The court is invited to determine i) TS's age; ii) whether the defendant is in breach of its duties under the Children Act 1989 and the Education Act 1996; and iii) the suggestion that the defendant has indirectly discriminated against the claimant because of his race.<sup>2</sup> When granting permission on 25 May 2012, Thirwell J ordered, *inter alia*, i) an expedited hearing on the question of the claimant's age and ii) that the defendant provides TS with a full-time educational course from 11 – 22 June 2012 for the purpose of preparing him for full-time education in the following term (if the Administrative Court determines that he is of compulsory school age) or for further education or training, and ensures that the claimant is appropriately assisted during the course by a Pashto speaker.<sup>3</sup> The parties anticipate that my decision as to TS's age will be determinative of all the issues in this case.

### **The core facts**

2. The claimant arrived in this country on 16 June 2011 and applied for asylum on 17 June 2011.<sup>4</sup>
3. The screening interview was conducted at Croydon on 28 June 2011.<sup>5</sup>
4. Given the dispute as to the claimant's age, two senior social workers employed by the defendant, Mr Kumar and Ms Jones, interviewed the claimant in order to assess his age on 1 August 2011 and they provided their findings on 11 August 2011.<sup>6</sup>
5. Two independent social workers instructed on behalf of the claimant, Mr Ambat and Ms Palmer, met him on 3 February 2012 and their report is dated 11 March 2012.<sup>7</sup>
6. The other two notable individuals in this case are Mr Iqbal, the claimant's foster carer, and Ms Aroyewun, his social worker.<sup>8</sup>

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<sup>1</sup> Order of Thirwell J, Trial Bundle, pp. 56 – 57.

<sup>2</sup> Claim Form, Trial Bundle, pp. 1 – 14.

<sup>3</sup> Order of Thirwell J, pp. 56 – 57.

<sup>4</sup> Statement of TS, 9 November 2011, Trial Bundle, pp. 163 – 164.

<sup>5</sup> Screening Interview for Children, Trial Bundle, pp. 58 – 74.

<sup>6</sup> Age Assessment, 11 August 2011, Trial Bundle, pp. 89 – 103.

<sup>7</sup> Age Assessment Report, Trial Bundle, pp. 116 – 150.

<sup>8</sup> Mr Iqbal: Supplementary Trial Bundle pp. 52 – 53 and 63 – 65. Ms Aroyewun: Trial Bundle, pp. 171 – 177 and 188 – 191.

7. On 15 and 16 August 2012, counsel for the claimant called TS and Mr Ambat as witnesses, and Mr Kumar, Ms Jones and Ms Awoyewun gave evidence for the defendant. Additionally, counsel advanced their submissions on the issue of the claimant's age.

### **The law**

8. The present state of the law as regards the role of the court in these circumstances has been described by Pitchford LJ in *R (on the application of CJ by his litigation friend SW) v Cardiff City Council* [2011] EWCA Civ 1590, as follows:

“[2] In *R (A and M) v Croydon and Lambert Borough Councils* [2009] UKSC 8, [2010] 1 All ER 469, [2009] 1 WLR 2557, the Supreme Court settled the question whether, in the event of a challenge to the decision of a local authority as to the Claimant's age, the High Court was required either to reach its own decision as to the Claimant's age or, alternatively, the challenge was by way of review of the local authority's assessment on *Wednesbury* principles (*see Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, [1947] 2 All ER 680) alone. Baroness Hale gave the leading judgment with which the other members of the Supreme Court agreed. At paras 26 and 27 Baroness Hale explained the difference in approach required for the evaluative judgment whether a child was “in need” within the mean of s 20 of the 1989 Act and the decision upon the precedent question of fact whether the individual concerned was a child. She said this:

“26. . . . the 1989 Act draws a clear and sensible distinction between different kinds of question. The question whether a child is 'in need' requires a number of different value judgments . . . but where the issue is not what order the court should make but what service should the local authority provide it is entirely reasonable to assume that Parliament intended such evaluative questions to be determined by the Public Authority, subject to the control of the courts on the ordinary principles of judicial review. Within the limits of fair process and '*Wednesbury* reasonableness' there are no clear-cut right or wrong answers.

27. But the question whether a person is a 'child' is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence but that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision-makers.”

Lord Hope, in his concurring judgment, said at para 51:

“It seems to me that the question whether or not a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the court. There is no denying the difficulties that the social worker is likely to face in carrying out an assessment of the question whether an unaccompanied asylum seeker is or is not under the age of 18. Reliable documentary evidence is almost always lacking in such cases. So the process has to be one of assessment. This involves the application of judgment on a variety of factors, as Stanley Burnton J recognised in *R (B) v Merton London Borough Council* [2003] 4 All ER 280, para 37. But the question is not whether the person can properly be described as a child. Section 105 (1) of the Act provides: 'in this Act . . . 'child' means, subject to paragraph 16 of Schedule 1, a person under the age of 18'. The question is whether the person is, or is not, under the age of 18. However difficult it may be to resolve the issue, it admits of only one answer. As it is a question of fact, ultimately this must be a matter for the court.”

[...]

[22] I am persuaded that the nature of the inquiry in which the court is engaged is itself a strong reason for departure from the common law rule which applies a burden to one or other of the parties. I gratefully adopt my Lord’s analysis that the High Court is exercising its supervisory jurisdiction and in so doing is applying the rule of law. Neither party is required to prove the precedent fact. The court, in its inquisitorial role, must ask whether the precedent fact existed on a balance of probability.

[...]

[23] In the present case there was a range of powers and duties exercisable by public authorities dependent upon the single issue of age. Where the issue is whether the Claimant is a child for the purposes of the Children Act it seems to me that the application of a legal burden is not the correct approach. There is no hurdle which the claimant must overcome. The court will decide whether, on a balance of probability, the claimant was or was not at the material time a child. The court will not ask whether the local authority has established on a balance of probabilities that the claimant was an adult; nor will it ask whether the claimant has established on a balance of probabilities that he is a child.”

9. This is, therefore, a situation in which the court’s duty is to make a factual determination on the basis of the available evidence, untrammelled by any consideration of the burden of proof or presumption in favour of either party. Whether the judge, as the fact finder, accepts any of the competing suggested ages or dates of birth (there are in excess of three in the present case) depends on the overall view he or she forms of the evidence and the viability of the conclusions of the experts.

10. Stanley Burnton J in *R (on the application of B) v Merton London Borough Council* [2003] EWHC 1689 (Admin) (“*B*”) made various observations as to the approach that should be taken by the local authority when assessing a disputed age in these circumstances. This guidance was approved by the Court of Appeal in *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59, and in addressing the appropriate procedure to be adopted when a local authority is assessing a young person’s age in borderline cases, the President of the Queen’s Bench Division set out:

“3. [...] The assessment does not require anything approaching a trial and judicialisation of the process is to be avoided. The matter can be determined informally provided that there are minimum standards of inquiry and fairness. Except in clear cases, age cannot be determined solely from appearance. The decision-maker should explain to the young person the purpose of the interview. Questions should elicit background, family and educational circumstances and history, and ethnic and cultural matters may be relevant. The decision-maker may have to assess the applicant's credibility. Questions of the burden of proof do not apply. The local authority should make its own decision and not simply adopt a decision made, for instance, by the Home Office, if there has been a referral. It is not necessary to obtain a medical report, although paediatric expert evidence is sometimes provided in these cases, and there is some difference of view as to its persuasiveness in borderline cases. If the decision-maker forms a view that the young person may be lying, he should be given the opportunity to address the matters that may lead to that view. Adverse provisional conclusions should be put to him, so that he may have the opportunity to deal with them and rectify misunderstandings. The local authority is obliged to give reasons for its decision, although these need not be long or elaborate. This decision and its guidance have led to the development of what is sometimes referred to as a '*Merton compliant*' interview or process.”

(See also *AS v Croydon* [2011] EWHC 2091 (Admin) paragraph 19.)

11. I have carefully borne in mind the undoubted difficulties in undertaking this task, which include:
- i) there is no reliable anthropometric test, and particularly there is no reliable medical or scientific test to determine whether the individual is over or under 18 (*B* [22]);
  - ii) individuals mature physically and psychologically at different rates (*B* [23]);
  - iii) it is difficult for a layman to determine the age of someone born in this country with any accuracy, and this is aggravated when the court is considering a young person who comes from a different ethnic background and culture (*B* [23 – 24]);

- iv) depending on the facts and circumstances, lies told by the claimant – for instance if he or she provided an untrue history – may not assist the court on the issue of age (*B* [28]);
  - v) “physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and credibility of his account are all matters that reflect on each other” (*B* [28]); and
  - vi) the court needs to be mindful of the “coaching” an asylum seeker may have received prior to arrival (*B* [29]).
12. The factors set out above do not, in any sense, comprise an exhaustive list. This is undoubtedly a complex task – it has been described as a process rather than an exact science – which can be made more complicated if claimants attempt to portray a different age from their true age,<sup>9</sup> or if they seek to establish a particular age when they do not, in fact, know the true position.

### **The relevant history**

13. The claimant is a Pashtun from Afghanistan, and his family comes from a village called Qala Sarferaz Khan in the Qarghayi district of the Laghman Province. He applied for asylum on 17 June 2011, having arrived in this country the day before in the back of a lorry.<sup>10</sup>
14. His family comprises his father (who is a member of the Taliban), his mother, an older brother and sister, and a younger brother. The brothers are respectively two years older and younger than TS, and his sister – who lives in Jalalabad – was married when she was about 16 ½. His older brother is under arrest in Pakistan as a result of being a member of the Taliban. He has variously described his sister’s son as being not much more than a year old at the time he left Afghanistan and only 1 – 1 ½ months,<sup>11</sup> and in evidence he said that his nephew was about a 1 ½ months old when he departed for Europe. Mr Ambat described this contradiction as “quite bizarre”.
15. The claimant maintained in the screening interview at Croydon on 28 June 2011 that he had spent 3 years at a “commissionary” school in Qala Sarferaz Khan<sup>12</sup> (although in evidence he could not recall having provided this information). During the Croydon age assessment interview on 1 August 2011 he said that he went to a school in Dander village<sup>13</sup> when he was 8 years old, and stayed for two years.<sup>14</sup> TS testified that after he left school the family went to live in Pakistan for five years and 3 months. When it was pointed out to TS that this would mean – given his account of his age (13) – he was in Afghanistan and Pakistan at the same time, he said that he was confused by the

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<sup>9</sup> *B*, paragraph 29.

<sup>10</sup> Screening Interview, p 10, Trial Bundle, p. 67; Statement of TS, 9 November 2011, Trial Bundle pp. 160 and 163 – 164.

<sup>11</sup> Mr Breijer’s notes, 1 August 2011, Trial Bundle p. 79; Age Assessment Report, 11 March 2012, p.12, Trial Bundle, p. 127; Statement of TS, 9 November 2011, Trial Bundle, pp. 160 and 162.

<sup>12</sup> Screening Interview for Children, p.4, Trial Bundle, p. 61.

<sup>13</sup> This village has been spelt differently by the witnesses.

<sup>14</sup> Age Assessment, 11 August 2011, Trial Bundle, pp. 90 and 94.

dates.<sup>15</sup> For the Personal Education plan dated 9 January 2012, the claimant again indicated (on this occasion to Ms Aroyewun) that he went to school between the ages of 8 and 10 in Dander village.<sup>16</sup> In his witness statement for these proceedings<sup>17</sup> and during his interview with the independent assessors on 11 March 2012, the claimant said that he went to the school in Dondar village when he was about 6 years old, and stayed for two years.<sup>18</sup> In evidence he said that he knew he was 6 years old when he started school because he asked his mother.

16. His account is that he left school because of his mother's concern about the deteriorating security situation and as a consequence of the position of his father, who was disliked by some of the local population given his involvement with the Taliban and because he was being pursued by the government. As a result, they travelled to Pakistan when TS was 8 years old, staying at Refugee Camp 15 for a little over five years.<sup>19</sup>
17. Once back in Afghanistan, the family returned to the same village and house, and his father continued with his Taliban activities.<sup>20</sup> TS said in evidence that he became of interest to the Taliban between one and a half and two months after they returned. His case is that his father was told by his supervisors to deliver him for "initiation" into the Taliban.<sup>21</sup> In TS's statement of 21 November 2011 (submitted in support of his asylum claim), he suggested that the Taliban wanted to use him as a suicide bomber – his father purportedly said this to his mother – and in the screening interview on 28 June 2011 he stated that he did not want to kill himself in this way. The applicant's account is that his father was told that if he did not deliver his son to the Taliban within a week, the entire family would be killed.<sup>22</sup>
18. To Mr Kumar and Ms Jones this was explained somewhat differently: the claimant said "his life was in danger and difficulty because his father wanted him to train with the Taliban and learn to make bombs. TS stated he 'did not want to shed the blood of innocent Afghans'. He said that his mother became so worried for his safety that she decided to send him to his sister in Jalalabad".<sup>23</sup>
19. TS has suggested that before he left Afghanistan in April 2011 his mother told him that he was aged 13 years 8 months. On this basis he claims his date of birth should be determined as being 1 August 1997 (making him now just 15 years old).<sup>24</sup>

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<sup>15</sup> Mr Breijer's notes, 1 August 2011, pp. 13 and 14, Trial Bundle, pp. 87 and 88.

<sup>16</sup> Personal Education Plan, Trial Bundle, p. 110.

<sup>17</sup> 9 November 2011.

<sup>18</sup> Age Assessment Report, p. 11, Trial Bundle, p. 126; Statement of TS, 9 November 2011, Trial Bundle, p. 160.

<sup>19</sup> Statement of TS, 9 November 2011, Trial Bundle, pp. 160

<sup>20</sup> Ibid, pp. 161 and his oral evidence.

<sup>21</sup> Ibid, pp. 161.

<sup>22</sup> Screening Interview for Children p. 12, Trial Bundle, p. 69; Statement of TS, 21 November 2011, Supplementary Trial Bundle pp. 94 – 95.

<sup>23</sup> Age Assessment, 11 August 2011, Trial Bundle, p. 90.

<sup>24</sup> Screening Interview for Children, p. 4, Trial Bundle, p. 61; Statement of TS, 9 November 2011, Trial Bundle, p. 160.

20. It is to be noted immediately that the claimant's evidence as to the circumstances in which he discovered his age has changed. During the age assessment interview on 1 August 2011, his account was interpreted and Mr Breijer (his litigation friend from the Refugee Council) made a detailed note. Although Mr Breijer has not been called to give evidence, the note has been included in the Trial Bundle and counsel do not challenge its accuracy. TS is recorded as saying that although he did not know his date of birth, his mother told him his age when he was leaving the country. He emphasised that he was not aware of his age prior to his departure and he was not lying.<sup>25</sup> However, during his evidence Mr Ambat expressed the opinion that he did not think it was possible that TS's mother told him his age as he was leaving.
21. In his statement prepared for these proceedings, dated 9 November 2011, TS set out that prior to any decision that he was to leave Afghanistan and during the month he spent there having returned from Pakistan, his mother told him his age in the context of a discussion between the claimant and his friends who – unlike TS – knew how old they were. He indicated that when he asked his mother, who was preparing a meal, she did not need to reflect on the question – “she just knew it”.<sup>26</sup>
22. To the independent assessors on 3 February 2012, once they informed TS that they had frequently met young men from Afghanistan who (also) claimed that they were told their ages for the first time when they were leaving for Europe, he said that the conversation about his age arose when some of his peers were discussing how old they were, which prompted him to go home to ask his mother. Initially, he said this conversation occurred approximately 3 months before he became aware that he needed to leave Afghanistan. However, when it was pointed out that this would have made him at least 14 years old when he entered the United Kingdom, TS amended his account to say that this took place no more than 15 to 20 days before he left.<sup>27</sup> He also told the assessors that he only spent a month in Afghanistan (having travelled from Pakistan) before leaving the country for Europe.<sup>28</sup> The independent social workers doubted that this was as short a period as a month, given – on the claimant's account – his younger brother had been sent to, and was withdrawn from, school in the period following their return to Afghanistan and prior to his departure.<sup>29</sup>
23. It is of note that TS had not been told his age by his mother on any other occasion and they do not celebrate birthdays in his family. Indeed, on his evidence he first learnt about the concept of birthdays when he came to this country.<sup>30</sup>
24. In the skeleton summary of his opening submissions, Mr Buttler dealt with this issue thus:

“It is accepted that C is not able to give reliable evidence of his age and there appear to be inconsistencies in the answers he has given at different interviews. What is the significance of this? Afghanistan is a pre-industrial country in which age is not

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<sup>25</sup> Mr Breijer's notes, 1 August 2011, p. 11, Trial Bundle, p. 85.

<sup>26</sup> Statement of TS, 9 November 2011, Trial Bundle, pp. 161 – 162.

<sup>27</sup> Age Assessment Report, 11 March 2012, p.17, Trial Bundle, p. 132.

<sup>28</sup> Ibid, pp. 132 – 133.

<sup>29</sup> Ibid, pp. 132 – 133.

<sup>30</sup> Statement of TS, 9 November 2011, Trial Bundle, p. 162.



important and an individual being told his age by his mother is not good evidence of age: *N v Croydon* [2011] EWHC 862 (Admin) paragraph 11; *U v Croydon* [2011] EWHC 3312 (Admin) paragraph 33. Further, it is unreal to expect a child (whether 15 or 16) to give a reliable chronology of events in his early life. Furthermore, on any view, C has only been told his age recently and any attempt by him to reconstruct how old he was in the past will be no more than rough approximation. ”

25. Therefore, the court is not asked to place any reliance on the claimant’s own assertion as to his age.
26. Turning to the journey to Europe, in the statement of 9 November 2011, TS stated that his mother sent him to his sister in Jalalabad, where she was living with her husband and their child. After he had been with them for three days, his brother-in-law made the necessary arrangements for the journey with an agent. The claimant suggests that he was not told about his destination. Having been transferred between agents, he travelled by bus through Pakistan to Quetta. Thereafter, following many changes of transport and travelling largely at night, he arrived in the United Kingdom. En route, the agent at one point told him that they were in Iran. The claimant maintains that he knew his journey lasted around 50 days because he was so bored that he counted the days in order to pass the time and because the agent provided him with this information. During the local authority assessment he said the trip lasted 38 days.<sup>31</sup>
27. TS was treated and fed well and the worst aspect of the journey was that he contracted scabies. There is a suggestion that a premium was paid to ensure that his trip was as comfortable as possible – that he travelled “first class”. In the view of the independent assessors his account of his journey stands out as being different from that of many other children in similar circumstances.<sup>32</sup> Mr Ambat gave evidence that although young children sometimes travel via the “hard journey”, generally their passage is easier.
28. Mr Ambat testified that as part of the trip to Europe, TS would have been told what to expect during the age-assessment process.
29. From the outset the authorities in the United Kingdom did not accept his assertion that he was 13 years 8 months old when he left Afghanistan (and 13 years 11 months at the time of the local authority assessment).<sup>33</sup>
30. He arrived without any papers and no member of his family has been identified as living in this country.<sup>34</sup> The account he has given is unsupported by any external evidence, although self-evidently this is not uncommon with those who maintain they are refugees.

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<sup>31</sup> Age Assessment, 11 August 2011, Trial Bundle, p. 97; Statement of TS, 9 November 2011, Trial Bundle, pp. 162 – 163.

<sup>32</sup> Mr Breijer’s notes, 1 August 2011, p 10, Trial Bundle, p. 84; Age Assessment Report, 11 March 2012, p. 14, Trial Bundle, p. 129; Statement of TS, 9 November 2011, Trial Bundle, p. 164.

<sup>33</sup> Screening Interview for Children, p. 4, Trial Bundle, p. 61.

<sup>34</sup> *Ibid*, pp. 65 and 67; Age Assessment Report, 11 March 2012, p.16, Trial Bundle, p 131; Statement of TS 9 November 2011, p. 162.

31. At the time of the local authority assessment the claimant was fasting for Ramadan for the third time.<sup>35</sup>
32. TS indicates that he has always had thick hair and eyebrows. He suggests that his apparent lack of emotion as regards his overall situation is because his life is now no longer in danger.<sup>36</sup>
33. There was some discussion as to whether the claimant has recently grown by 2 -3 inches, and whether this is an indicator of his present age. However, as Mr Buttler accepted, the evidence for this proposition is insecurely founded, in that it is mainly based on a conversation between Mr Ambat and Mr Iqbal on 12 August 2012, leading to the following note “Mr Iqbal anticipates that the medical will confirm that [TS’s] height has increased during the interim period by two or three inches”.<sup>37</sup> Ms Aroyewun gave evidence that the complainant has not grown during the time she has known him.
34. The claimant attends a Mosque for prayers. His evidence is that he was taught to cook (at least eggs and kidney beans) by another Afghan boy who was staying at a hotel where he was placed at one stage.<sup>38</sup>
35. He met Alice Aroyewun, his social worker, on 7 November 2011. He maintains that from the outset she spoke to him as if he is an enemy.<sup>39</sup>
36. According to the independent assessors, he has not had any contact with his family since leaving Afghanistan, although he has asked the Red Cross for assistance in this regard.<sup>40</sup>
37. Mr Iqbal suggests that TS is currently working for a friend who runs a fruit and vegetable shop in Victoria, and Ms Aroyewun stressed that as a result he needs to apply for a national insurance number. He has demonstrated a very conscientious attitude to this work (it appears he is employed for at least 6 hours a day).<sup>41</sup> Mr Ambat expressed the view that this is the kind of activity that a boy would undertake in Afghanistan, and it does not tend to reveal his age.

**The age assessments**  
**(and related evidence)**

**Mr Kumar and Ms Jones**

38. In the assessment carried out Mr Jones and Ms Kumar on 1 August and provided to the claimant on 11 August 2011, the social workers considered his age by reference to a number of factors. They were unable to arrange for TS to be observed in social situations with other young people, a step that is considered to be helpful. It is not

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<sup>35</sup> Age Assessment, 11 August 2011, Trial Bundle, pp. 89 and 95.

<sup>36</sup> Statement of TS, 9 November 2011, Trial Bundle p. 167.

<sup>37</sup> Supplementary Trial bundle p. 65; however, see also p. 86.

<sup>38</sup> Statement of TS, 9 November 2011, Trial Bundle, p. 167.

<sup>39</sup> Ibid, p. 168.

<sup>40</sup> Age Assessment Report, 11 March 2012, p. 15, Trial Bundle, p. 130.

<sup>41</sup> Telephone Interview with Mr Iqbal, 12 August 2012, Supplementary Trial Bundle, p. 64.

suggested that this assessment was conducted improperly or unfairly, or that it failed to meet the Merton criteria (see [10] above).

### *Physical Appearance and Demeanour*

39. The guidance covers a number of factors, against the background that the assessors must bear in mind any relevant racial characteristics and the fact that different experiences can affect the way in which an individual develops physically. The assessors are advised to reach an initial general impression as to the individual's age range on the basis of height, facial features – including facial hair, and the lines and folds on the individual's skin – and voice. They will consider the individual's demeanour, in the context of his culture and the relevant events prior to the interview, bearing in mind how he “presents” and his “style, attitude and authority”. It is also useful to consider the length of time it took for the individual to travel to the United Kingdom.<sup>42</sup>
40. The initial impressions of Mr Kumar and Ms Jones were that the claimant looked older than 14 years of age but under 18. He was assessed as being small in stature (5' 2 -3”), and he had thick eyebrows, a moustache, thick hair and sideburns. His voice was “deep and mature in tone” and “[I]ines were evident on his forehead when his facial expression changed.” Ms Jones accepted that, broadly speaking, Pashtun boys develop facial hair earlier than individuals from other ethnic backgrounds, although in her estimation he was in the early stages of puberty.
41. When asked about his age, TS replied “in a calm, confident way that he was 13” and when it was suggested that this was disputed, he reacted “calmly”.<sup>43</sup> Ms Jones gave evidence that his behaviour revealed that he was older than 13 as opposed to being a confident thirteen year old.
42. Mr Kumar and Ms Jones each observed that the report in this section is awkwardly phrased, in that the expression “TS's physical appearance suggests he could be older than 13 years” was intended to mean that he was older than 13.<sup>44</sup> Mr Kumar testified in this context that they thought he was nearly 16 years old, and Ms Jones indicated that she has dealt with a number of teenage boys and young men.
43. Mr Kumar gave evidence that in their joint view someone who was 13 or younger would have responded in a different way, and particularly he would have demonstrated a greater degree of emotional response. In other words, he showed significant maturity (indeed, they considered his behaviour was consistent with someone who was 16 or older).

### *Interaction of person during assessment*

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<sup>42</sup> Age Assessment, 11 August 2011, Trial Bundle, p. 89.

<sup>43</sup> Ibid, p. 89.

<sup>44</sup> Ibid, p. 98.

44. It is said to be important to note “both the verbal and non-verbal (body language) behaviour of the person” and his or her reaction to adults, bearing in mind cultural differences in this context.<sup>45</sup>
45. The assessors observed that the claimant “had very good eye contact [...], his overall demeanour and presentation also his interaction with the assessing Social Workers [...] indicated that he did not look bored or distracted during the assessment. He kept his focus and concentration and appeared relaxed and confident in unfamiliar adult surroundings”. They considered that he “demonstrated good communication techniques, he made effective use of body language, gesticulating with his hands to support what he was saying”. As a result his “cognitive development and ability to understand and process information was observed to be at a higher level than the average 13 year old. He recounted his account of his life without any hesitation. He was forthcoming with information about why his life was in danger and freely answered questions in an open manner. The assessing Social Workers observed him to be engaged and [as] having a mature understanding of the questions that were being asked”.<sup>46</sup>

#### *Education*

46. The claimant indicated that he is unable to read or write, or undertake basic addition or multiplication. However, he has learnt since arriving in the United Kingdom how to spend money on food and to work out the appropriate change.<sup>47</sup>

#### *Independent/self-care skills*

47. The assessors are expected to ask a series of questions focussing on the individual’s history – for instance whether he was living at home or independently – taking into account his situation before he left his home country. The person’s ability to cope independently, including cooking more than a basic meal, is investigated as part of this process. The guidance in this context includes the following “[h]as the person stated a preference during the assessment of how they wish to live in the UK? Would this person be at risk living independently? [...] The assessing officer may wish to pose a scenario to the person at this point or at the end of the assessment: that if the person is believed to be under 16, he/she will be placed in foster care where certain house rules will have to be followed, and be expected to be at home at a certain time *etc.* The reaction to this may provide valuable information”. The answers in this section led to the following summary: “TS told social workers that he would be responsible for helping with certain chores *e.g.* carrying and fetching cooking utensils, water. And on occasion shopping. TS maintains that he cannot cook but since arriving in the UK he has learned to cook eggs and make tea, this has been by watching and learning from staff at the hotel. He also confirmed that he walked to the office today from the hotel showing he had the confidence to find the offices when given direction. TS says he has been able to use the bus if given simple directions.” He was observed as having adequate self-care skills.<sup>48</sup>

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<sup>45</sup> Ibid, p. 91.

<sup>46</sup> Ibid, p. 91.

<sup>47</sup> Ibid, p. 94.

<sup>48</sup> Ibid, p. 95.

*Information from documentation and other sources*

48. On the basis that the assessment is viewed as an ongoing process, it is suggested in the guidance to the assessors that it is important to obtain the views of other significant figures who are involved with the young person, and foster carers come into this category.<sup>49</sup>

*Analysis of information gained*

49. In the guidance, the assessors are enjoined to give their reasons and to afford the young person the benefit of the doubt.
50. The conclusions of the local authority's social workers under this heading included the following observations:

“[TS’s] physical appearance suggests he could be older than 13 years. He had a trimmed moustache and sideburns and had lines on his forehead when his facial expressions changed. [TS’s] voice was deep in tone, as if it has broken. [TS’s] general demeanour during the interview appeared quite confident and relaxed. He kept good eye contact and spoke to the Social Workers with ease. The Social Workers noticed that [TS] was never stressed or emotional during the whole process of the age assessment, even when talking about his life in Afghanistan and his journey to the UK. [TS’s] cognitive development and ability to understand and process information was observed to be of someone older at a higher level than the average 13 year old. He recounted his account of his life without any hesitation. He was forthcoming with information about why his life was in danger and freely answered questions in an open manner. The assessing Social Workers observed him to be engaged and [as] having a mature understanding of the questions that were being asked.<sup>50</sup>”

51. In the conclusions set out in the form to be handed to the person to be assessed, the following is set out:

“[TS’s] overall physical appearance indicates that he is older than his claimed age. He has defined physical features; his voice is deep which suggests that it has broken. He had some light facial hair on his cheeks and had small sideburns. He does not appear to have started shaving although he had a light moustache of which the hair was soft and downy in appearance. [TS] also has thick eyebrows and thick hair. Further to this, he appears to be of medium build around 5 feet 2 inches to 5 feet 3 inches in height. The social workers also noticed lines on his forehead.

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<sup>49</sup> Ibid, p. 97.

<sup>50</sup> Ibid, p. 98.

From his general demeanour during the interview, [TS] appeared quite confident and relaxed. He kept good eye contact and spoke to the Social Workers with ease. The Social Workers noticed that [TS] was never stressed or emotional during the whole process of the age assessment even when he was talking about his life in Afghanistan and his journey to the UK.

From the information provided by [TS] during the interview, his coping skills and self concepts are more appropriate to someone who is young but older than 13 years and 8 months old. [TS] stated that he can cook eggs and make tea. However he cannot travel alone around London and organise his journey. Social Workers were mindful about [TS's] previous life experiences, language difficulties, and change in environment and educational background which consists only of religious education received from a "Mosque".

[...]

52. On this basis, he was assessed on 11 August 2011 by Mr Kumar and Ms Jones as being 15 years 8 months, with a date of birth of 1 January 1996.<sup>51</sup>
53. Mr Kumar set out the following in his witness statement as regards TS's maturity:

"The claimant stated at the time of the assessment that he was 13 years 11 months old. In my experience a child of this age, who has been separated from his family, lost contact with them and is living in a strange place would certainly have been more emotional regarding his circumstances. His composure in the face of discussing such an upsetting matter was an indicator to the assessors of a much older person with a mature outlook."<sup>52</sup>
54. He was unconvinced by TS's explanation that he was not sad or upset because his life is no longer in danger. Ms Jones has provided similar observations on the issue of the claimant's emotional reaction to his separation from his family, given the absence of any signs of absence or loss.
55. Mr Kumar believed "that his functioning [...] was more likely to be that of someone who was approaching 16 years or older at the time of the interview we carried out".<sup>53</sup> The local authority assessors reached their conclusions on the basis of an assessment

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<sup>51</sup> Ibid, p. 102.

<sup>52</sup> Witness Statement of Mr Kumar, Trial Bundle, p. 181.

<sup>53</sup> Ibid, p. 182

of the claimant's demeanour, physical appearance and presentation which are "all part of a Holistic assessment in a Merton Compliant framework".<sup>54</sup>

56. Mr Kumar gave evidence that TS, having arrived in a new country, made friends and generally coped very well with the support provided by Croydon, without complaint. He learnt skills at the hotel where he lived for a period, and although he could not read he managed to travel in London successfully. In Mr Kumar's estimation he demonstrated a level of maturity that was indicative of a significantly greater age than he had claimed. Throughout the process they gave TS the benefit of the doubt as regards his age. Ms Jones gave evidence that their real view was that he was in the 16 – 18 year group, but they had reduced this figure in favour of the claimant.

### **Mr Ambat and Ms Palmer**

57. The assessors instructed on behalf of the claimant, Mr Ambat and Ms Palmer, met him on 3 February 2012 and their report is dated 11 March 2012.<sup>55</sup>
58. They noted that he does not shave, and they observed some downy immature growth on his upper lip. He did not have hair on his chest or navel areas, and he reported he has developed pubic hair. He has defined facial features and is approximately 5 feet 2 inches tall, and slightly built with no obvious muscle definition. His voice appeared to have broken, although his larynx was not prominent. It was suggested that the tone and pitch of the claimant's voice was not suggestive of being significantly older than the age he asserts. His hands were smooth.<sup>56</sup> On initial appearance alone, the independent assessors considered he was 14 to 15 years old, in the early stages of pubertal development. They put the matter thus: "[t]he independent assessors agreed that TS's physical appearance was not felt to be inconsistent with his asserted age and could reliably be considered as a potential indicator that TS is credibly asserting that he is a 14 year old child. [...] Physical appearance is only one aspect of a holistic assessment of age and must be considered alongside all other available information and observations".<sup>57</sup>
59. As to his behaviour in interview, the assessors noted "TS's demeanour throughout the independent assessment process was observed to be broadly consistent with his asserted age though it would be naïve to view demeanour as being a reliable indicator of chronological age". He maintained eye contact, and came across as someone who is unsophisticated and vulnerable who looks to adults for advice, support and guidance at all times. He clearly attempted to answer all the questions put to him.<sup>58</sup>
60. In the view of the independent assessors, the claimant's fasting regime did not indicate a significantly older chronological age than the one he had given.<sup>59</sup>

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<sup>54</sup> Witness Statement, Ms Jones, Trial Bundle, p. 186.

<sup>55</sup> Age Assessment Report, 11 March 2011, Trial Bundle, pp. 116 and 122.

<sup>56</sup> Ibid, pp. 123 – 124.

<sup>57</sup> Ibid, pp. 124 – 125.

<sup>58</sup> Ibid, p. 125.

<sup>59</sup> Ibid, p. 134.

61. Mr Ambat and Ms Palmer suggested that the claimant was unlikely to have had any significant experience of taking responsibility for his “daily living needs” prior to leaving his family.<sup>60</sup>

62. They formed the view that TS had a good level of attachment with his mother and siblings and that he must come to terms with his changed circumstances.<sup>61</sup>

63. Overall, the independent assessors concluded:

“[TS’s] apparent stage of physical maturity appears to be consistent with being at the earlier stages of adolescent development. [TS] does not appear to require a shaving regime and his overall physical appearance was felt to be suggestive of an age in the early teens *i.e.* 13 – 15 years. [TS’s] attitude towards fasting during Ramadam in 2011 suggests that he may have reached his 15<sup>th</sup> year prior to the commencement of Ramadan though it is noted that his attitude is likely to have been influenced by his circumstances at the time, as he was living in a Bed and Breakfast and had formed friendships with other young Afghans who may have been older. [TS] appears to identify more closely with the younger child who is placed with the same foster parent and it appears that the foster parent also feels that [TS] is younger than his assessed age.”<sup>62</sup>

64. The independent assessors found the claimant to have “been very open and honest when discussing certain aspects of his situation and history without hint of embellishment or exaggeration for the purpose of strengthening his claim for asylum and/or his asserted age”.<sup>63</sup> They concluded that his actual age was unlikely to have been more than a year older than his asserted age, and accordingly he should be given the benefit of the doubt on this basis.<sup>64</sup> The independent assessors have accepted that there are limits to TS’s reliability as to his age. They have described this as follows “[d]ue to the uncertainty surrounding the information that TS relies upon to support his asserted age the independent assessors agreed that their conclusion would not be overly influenced by TS’s apparent asserted age, *i.e.* in terms of years and months as there is no evidence on an actual birth date being known or recorded”.<sup>65</sup> Notwithstanding those observations, in the final conclusions the independent assessors set out:

“[TS] believes he was almost 14 years old when he left Afghanistan and appears to have arrived in the UK after a relatively short period journey arriving in June 2011. The independent assessors felt that [TS] presented physically and emotionally as a child aged approximately 15 years at the time of the independent assessment in February 2012. The

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<sup>60</sup> Ibid, pp. 136 – 137.

<sup>61</sup> Ibid, p. 135.

<sup>62</sup> Ibid, pp. 147 – 148.

<sup>63</sup> Ibid, p. 146.

<sup>64</sup> Ibid, p. 146.

<sup>65</sup> Ibid, p. 147.



independent assessors therefore propose that an operational date of birth of 1<sup>st</sup> January 1997 represents a more logical and evidence based estimate of [TS's] likely date of birth.”<sup>66</sup>

65. Mr Ambat agreed in evidence that it is very uncommon in Afghanistan for individuals to know their date of birth and age – he said that only a handful of people have this information. It is a country in which little emphasis is placed on dates. As to the contradictions in TS's account, Mr Ambat suggested that the court should “look at him as an individual” and bear in mind that he has very limited academic abilities and he will have found it difficult to recall dates. It is argued that Western expectations should not be imposed on the claimant. Mr Ambat's evidence was that although TS was, on occasion, “unreliable as regards describing consistent memories” he is convinced that TS provided “true recollections” which he is “unable to fix [...] at a point in time”. Because some aspects of the claimant's account were “hapless”, Mr Ambat did not think they had been deliberately fabricated and he noted that the complainant provided, generally speaking, a consistent family history.
66. Mr Ambat does not consider that TS's participation in fasting during Ramadam assisted in identifying his age. He suggested that children as young as 10 years may fast – it is, he said, all connected to strength and ability.
67. It was accepted by Mr Ambat that TS's consistent refusal to attend John Ruskin College showed a certain doggedness and ability to resist pressure. He observed that he has formed attachments; he is shy, reserved and respectful; he appears to be very moral; and he demonstrates maturity and immaturity – overall in this regard he is a “very mixed bag” and can be disruptive.
68. He suggested that a particular sign of immaturity on the part of TS was that he did not accept that he had said some of the things recorded by his litigation friend, Mr Breijer.

### **Ms Aroyewun**

69. Ms Aroyewun was appointed as the claimant's social worker on 8 September 2011, and one of her qualifications is in age assessment, although she has not formally assessed TS's age. She has visited him at his placement on a monthly basis.<sup>67</sup> She supports the conclusions of Mr Kumar and Ms Jones (indeed, she believes he is older than the age assessed by the local authority, concluding that he is 18 or 19).<sup>68</sup> She finds the precise age of 13 years 8 months that the claimant provided to the authorities unconvincing, given TS comes from a country in which birthdays are not celebrated and he was unaware of the concept until he came to the United Kingdom. Her views as to his age have been reached on the basis of her observations of him in a variety of settings over 9 months, which have enabled her “accurately [to] interpret his demeanour”.<sup>69</sup>

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<sup>66</sup> Ibid, p. 149.

<sup>67</sup> Witness Statement, Ms Aroyewun, Trial Bundle, p. 172.

<sup>68</sup> Ibid, pp. 172 and 177.

<sup>69</sup> Ibid, pp. 172 and 176.

70. As set out above, Mr Ambat and Ms Palmer commented that TS came across as an unsophisticated and vulnerable individual during their interview with him. Ms Aroyewun does not agree with this conclusion on the basis of her meetings with the claimant; indeed, she considers TS to be extremely mature.<sup>70</sup> Mr Iqbal told Ms Aroyewun that his peer group comprises adult males and she noted that his attitude to money appears to be quite mature, in that he insisted that he should have control over his own resources and Mr Iqbal has opened an account for him into which his weekly allowance is paid. She observes that unlike others in his situation he has not spent his money frivolously but instead he used his savings to buy a laptop computer.<sup>71</sup> In evidence, Ms Aroyewun said that the claimant has budgeted sensibly as regards his weekly allowance of £50, and he has never complained of being unable to cope. However, he refuses to reveal the contents of his bank statements and he has not provided the information necessary for Mr Iqbal to apply for a national insurance number. Ms Aroyewun considers that the claimant behaved appropriately for a 16 year old boy in the way that he interacted with others, and his conversation is inconsistent with that of a 13 year old. In her judgment the claimant is more emotionally developed than he maintains. As to the suggestion that TS had complained about a lack of love and care at the foster home, Ms Aroyewun gave evidence that his real complaint – as she understands it – is that he wants a woman at home 24 hours a day, as is normal in his culture.
71. The claimant, in Ms Aroyewun’s view, has formed a reasonably close relationship with the younger of the other two males living with the foster carer because the older resident is a “troubled young man” who has difficulties building relationships with his peer group.<sup>72</sup>
72. In the Core Assessment Record that was started on 22 September 2011, Ms Aroyewun noted:

“[TS] seems to have a coherent sense of his own identity. He has formed friendships with other young people who share his racial background. He also regularly attends cultural activities at the refugee council, where he is able to mix with some other young people who share his background. So in summary his identity needs seem to be being met in this way. [TS] is comfortable when relating to adults. He is able to hold a conversation with adults.”

[...]

[TS] seems to possess good social skills; he is able to form good, positive relations with his peers, as evidenced by the ease with which he has been able to make friends. [TS] is also mindful and attentive towards his appearance, he obviously takes pride in it and always looks well dressed.<sup>73</sup>”

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<sup>70</sup> Ibid, p. 175.

<sup>71</sup> Ibid, p. 175.

<sup>72</sup> Ibid, p. 176.

<sup>73</sup> Supplementary Trial Bundle, pp. 9 and 11.

73. In the Pathway Plan dated March 2012 and prepared by Ms Aroyewun, he is described as coming “across as confident young man and does not appear to possess any difficulties in relation to his self esteem and confidence. Overall, [TS’s] independent living skills appear developed”.<sup>74</sup> Ms Aroyewun gave evidence that TS cooked full meals to begin with, including items such as sauces, but this stopped once the age-dispute issues emerged. She said that he was able to do things that one would not expect from someone who had come from a society in which women are responsible for the domestic work.
74. Ms Aroyewun was criticised for the failure to have a personal education plan in place within the first 20 days of the claimant coming under Croydon’s care (the relevant meeting was on 9 January 2012). However, in this context it is to be observed that TS refused a place at John Ruskin College because of the presence of other Afghan teenagers, and he indicated to Ms Aroyewun that his solicitor has advised him only to accept a place at a school and to refuse any college placements.<sup>75</sup> In evidence, the claimant said that he was reluctant to go to John Ruskin College because of the number of Afghan students and the risk that they would make fun of him because he is illiterate, and he was worried about the anti-social and gang-related activities of some of the other Afghan students.
75. TS indicated to Mr Aroyewun that he was unhappy with the length of the period of his discretionary leave to remain in the United Kingdom, suggesting that it was insufficient.<sup>76</sup> The claimant confirmed in evidence that he is worried about the date when his permission to remain will expire and he wishes to secure a later date.
76. Over the last few months TS has refused to speak with Ms Aroyewun, as a result of the dispute over his age. When she attends at the foster home he declines to engage with her, and on the last occasion when they talked he suggested that his adviser from the Refugee Council had advised him not to speak to her.<sup>77</sup> Before he adopted this stance, he used to discuss his experiences in Afghanistan with Ms Aroyewun and what he hoped to do in the United Kingdom. As set out above, she believes he is 18 or 19, notwithstanding his placement in a foster home with a fourteen year old.
77. I have borne in mind the criticisms that have been made of Mr Aroyewun’s evidence as to the extent to which she complied with the Department of Health’s Framework for the Assessment of Children in Need and their Families, particularly as described at 2.3, 2.6, 2.7, 3.1 and 3.11, and as to the way she approached the Core Assessment Record<sup>78</sup> and the Personal Education Plan<sup>79</sup>.

## **Mr Iqbal**

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<sup>74</sup> Ibid, p. 51.

<sup>75</sup> Ms Aroyewun’s notes, Supplementary Trial Bundle, pp. 66 – 67.

<sup>76</sup> Ibid, p. 67.

<sup>77</sup> Ibid, p. 65 and 72.

<sup>78</sup> Ibid, pp. 1 – 17.

<sup>79</sup> Trial Bundle, pp. 104 – 115.

78. Mr Iqbal is an approved foster carer. Ms Aroyewun has indicated that he ensures that the individuals in his care attend all their appointments and he encourages them to prepare their own meals and he tries to instil some independent living skills.<sup>80</sup>
79. The independent assessors consider that the foster carer was well placed to compare the claimant's behaviour with the other two young men living in the foster home, particularly given the length of time he spent with them.<sup>81</sup> Mr Ambat gave evidence that "great weight" should be placed on the views of an experienced foster carer. However, Mr Ambat recognises that there are possible limits to Mr Iqbal's reliability on the issue of age: first, he may have an interest in keeping TS "young" for financial reasons, and, second, he may fear upsetting the defendant who ultimately is responsible for this aspect of his income. These are clearly competing considerations, and Mr Ambat noted that Mr Iqbal, on occasion, has been unwilling to express an opinion as to the claimant's age.
80. Mr Iqbal provided a statement for the purposes of TS's asylum claim dated 2 March 2012. He indicated that he could not be certain about the claimant's age but he "think(s) he may be around 14 ½ or 15 years old. My view is based on his behaviour. When he tries to talk about his feelings, I get the sense that he is quite young. He does not seem mature in the way he talks or how he thinks." He suggests in the statement that the claimant is unable to cook, although he seems keen to learn.<sup>82</sup> However, Mr Iqbal observed in a conversation with Mr Ambat on 12 August 2012 that TS attitude to developing independent living skills had changed once his age became a matter of dispute. He ceased demonstrating an interest in this, and instead he spends a considerable amount of time away from the foster home.<sup>83</sup> In this context, I interpolate to observe that Mr Breijer and Mr Ambat are of the view that TS has developed a private life that is enjoyed away from the scrutiny of the professionals and about which little is known.<sup>84</sup>
81. Mr Iqbal told Ms Aroyewun that TS cooked when he first started living at the foster home, but since the process for challenging the assessment of his age began, he informed Mr Iqbal that his solicitor has asked him to stop cooking and to end his involvement in any independent living programme.<sup>85</sup> In evidence the claimant disputed that he had refused to participate in activities related to living skills. He said this is a necessary step which has not yet been offered to him.
82. TS has threatened Mr Iqbal, in that during a conversation when he was angry he stated "OK let me have my case settled and then I will teach you a lesson". Mr Iqbal mentioned this to Mr Ambat in the context of false allegations that individuals sometime make in order to change placements.<sup>86</sup>

## **Mr Breijer**

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<sup>80</sup> Statement of Ms Aroyewun, Trial Bundle, p. 173.

<sup>81</sup> Age Assessment Report, Trial Bundle, p. 148.

<sup>82</sup> Supplementary Trial Bundle, pp. 52 – 53.

<sup>83</sup> Telephone Interview with Mr Iqbal, 12 August 2012, Supplementary Trial Bundle, p. 64.

<sup>84</sup> Telephone Interview with Mr Breijer, 14 August 2012, Supplementary Trial Bundle, p. 86.

<sup>85</sup> Mr Aroyewun's notes, Supplementary Trial Bundle, p. 71.

<sup>86</sup> Telephone Interview with Mr Iqbal, 12 August 2012, Supplementary Trial Bundle, p. 65.

83. Mr Breijer, the representative from the Refugee Council, is the claimant's litigation friend. He has not provided a statement and he was not called to give evidence. On 14 August 2012 he spoke with Mr Ambat by telephone. In the absence of any signed witness statement or oral evidence from Mr Breijer I have not placed any great weight on the record of their conversation,<sup>87</sup> although I note that the information from Mr Breijer formed part of the background to Mr Ambat's evidence.
84. Mr Breijer expressed some criticisms of Ms Aroyewun, most particularly that she has tended to dismiss any information that came from TS.<sup>88</sup>
85. He indicated to Mr Ambat that he would not have advised TS to refuse to engage in activities aimed at improving his daily living skills.<sup>89</sup>
86. Mr Breijer has expressed the view to Mr Ambat that TS is more likely to be "closer to his asserted age than his assessed age", and that he wanted to live in a family with a "mother" figure – that he felt a lack of love and care.<sup>90</sup>

### **Conclusions**

87. As Mr Ambat observed, there is a relatively narrow dispute over age in this case: the dates of birth proposed by the local authority social workers, the independent assessors and the claimant are respectively 1 January 1996, 1 January 1997 and 1 August 1997.
88. Prior to the hearing, Mr Ambat and Ms Palmer had seen the claimant three times, for a total of about 9 hours. In comparison, the local authority social workers, Mr Kumar and Ms Jones, spent 2 or 3 hours with TS during a single meeting.
89. Mr Buttler submits that there is no suggestion that the claimant has tried to deal cleverly with the various points raised in this case, and he argues that the inconsistencies principally indicate that he is poor at estimating time. Overall, it is said that TS's responses and the internal contradictions in his account are indicative of a lack of sophistication on his part.
90. Mr Buttler argues that the independent assessors are to be preferred over the witnesses for the local authority who lack "structural independence". He contends that Mr Ambat and Ms Palmer showed maturity, sophistication, balance, realism and a reflective approach to their assessment. They were prepared to reconsider elements of their analysis, and they engaged with the task in an appropriately flexible way. In comparison it is suggested that Mr Kumar and Ms Jones were rigid in their approach, and they tended to tailor the evidence in order to fit a preconceived hypothesis. The local authority social workers are criticised for not providing "age ranges" and for relying on an inadequate basis for arriving at their assessment of TS's age.

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<sup>87</sup> Telephone Interview with Mr Breijer, 14 August 2012, Supplementary Trial Bundle, pp. 85 – 86.

<sup>88</sup> Ibid, p. 85.

<sup>89</sup> Ibid, p. 86.

<sup>90</sup> Ibid, pp. 86 – 87 (including an update from Mr Ambat on 14 August 2012).

91. As set out above, the Core Assessment Record<sup>91</sup> and the Personal Education Plan<sup>92</sup> were substantially criticised by Mr Buttler, and undoubtedly they were not completed as timeously or comprehensively as they might have been. I have borne in mind, however, that given TS has refused to engage with Ms Aroyewun for a significant period of time or to attend John Ruskin College this was not the most favourable climate for his social worker to prepare these documents. Criticism has also been made of the way in which the Framework for the Assessment of Children in Need and their Families was approached by Ms Aroyewun, but my focus has been on the information she provided which is relevant to the assessment of TS's age – principally her observations – and in this regard I found her to be a credible and reliable witness, although I have borne in mind that a social worker's competence in this context should not be assessed on a narrow basis.
92. I am unable to accept the approach of the independent assessors as to the veracity of the claimant. As described above, they suggested he was broadly consistent as to his asserted age and they found him to be open and honest. They rejected the contention that he had embellished or exaggerated his account in order to improve his claims as regards asylum and his age. In my judgment, a consistent theme running through the claimant's various accounts has been his determination to establish a low age, and he has been prepared to vary his account in order to achieve this objective. There are a number of notable examples of this approach on his part.
93. First, he changed his account as to his age when he attended school in Afghanistan – 8 to 10 became 6 to 8, and on at least one occasion this seemingly occurred once it was pointed out that after he left school he spent over 5 years in Pakistan before returning to Afghanistan prior to his departure for Europe.
94. Second, he changed his first account – given during the screening interview, as well as to Mr Kumar and Ms Jones – that he was first told his age at the moment of departure from Afghanistan, to the markedly different suggestion that his mother gave him his age in the context of a conversation with his friends that was unconnected with his flight to Europe (see his statement of 9 November 2011 and the interview with the independent assessors on 3 February 2012). He told Mr Ambat and Ms Palmer that his mother informed him of his age approximately 3 months before he became aware he needed to leave Afghanistan. However, when it was pointed out that this would have made him at least 14 years old when he entered the United Kingdom, he amended his account to say that this took place no more than 15 to 20 days before he left.
95. In a similar vein, the claimant has deliberately modified his behaviour so as improve his position as regards the assessment of his age. A clear example is that he has deliberately stopped demonstrating his not-inconsiderable cooking abilities, and I am confident he has more generally withdrawn from many aspects of developing independent living skills as a result of his fear that this will prejudice his objective of establishing a low age.

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<sup>91</sup> Ibid, pp. 1 – 17.

<sup>92</sup> Trial Bundle, pp. 104 – 115.

96. I have accepted Ms Cooper's submission that the evidence indicates the claimant is attempting to manipulate the age-assessment process because he is worried about the length of the period of discretionary leave to remain in this country.
97. Although this clear determination on the part of the claimant to tailor his account and behaviour in order to establish a low age does not provide evidence of his date of birth, it undoubtedly demonstrates a single-minded commitment on his part to extend the period of his discretionary leave to remain in this country for as long as possible, irrespective of the truth. His approach does not tend to reveal someone who is in the lower age range contended for in this case – a young person who is (at least to an extent) uncertain, bewildered and emotional given his relatively youthful and precarious position. Instead, it shows a more mature individual who is thinking clearly and acting calmly, working determinedly in order to achieve an identified objective.
98. Similarly, I am unimpressed with the argument that his change of account merely shows that he is hapless and unsophisticated. If a witness provides an account which is either a deliberate lie or which is tailored to secure a particular end regardless of the truth, consistency can be extremely difficult to maintain. Judges regularly hear evidence from highly intelligent and sophisticated individuals who are "caught out" by contradictions between their various accounts, and the witnesses are forced, in these circumstances, to suggest either they did not utter the words that have been recorded or they have been misunderstood.
99. Lies or a disregard for the truth create evidential pitfalls, and the claimant has moulded his account in order to provide himself with the lowest possible age, regardless of the consequential difficulties. I consider this approach on his part revealed not only determination but also a marked degree of maturity.
100. There are other clear indicators of an older rather than a younger age. Throughout his dealings with the authorities in this country (with the possible exception of Mr Ambat and Ms Palmer, with whom he was at times less relaxed)<sup>93</sup> the claimant has been clear and calm when expressing himself, and his responses have been inconsistent with someone below the age as assessed by the defendant. He has spoken freely and unemotionally about his life in Afghanistan, including the reasons for his departure and his enforced separation from his mother and siblings. At an early stage, notwithstanding his inability to read, write or speak English, he took complete control of his financial affairs and has dealt with his bank account seemingly unaided. He travels around London without apparent difficulty and he has found near full-time employment with someone who sells fruit and vegetables. He has created an independent life, away from the gaze of the professionals and his foster carer, and he maintains a significant degree of privacy in this respect. He has been resolute about the approach he wishes to be taken to his education, and he has not been prepared to change his stance following persuasion or pressure. As Ms Cooper submits, he has been making his own choices over work and which school or college he attends and generally, throughout his time in the United Kingdom, he has demonstrated a marked ability to cope with life without stress or apparent difficulty, and he has shown composure even when discussing emotional topics.

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<sup>93</sup> Mr Ambat's evidence.

101. Although Mr Ambat and Ms Palmer spent a significant period of time with TS and they undoubtedly questioned aspects of his account, as I have already indicated I consider they were unrealistic in the extent to which they have been prepared to accept his honesty and accuracy. Whilst a significant part of the history he has related may well be true, as I have set out above on certain core issues there are significant, essentially irreconcilable contradictions in his account.
102. Apart from simply noting that his voice has apparently broken and his facial hair is developing, I have not placed any significant reliance on his physical appearance, which is clearly consistent with any of the three ages advanced in this case.
103. The claimant gave evidence in a confident and unemotional way and he seemed generally relaxed, particularly bearing in mind the unfamiliar surroundings (even allowing for the modified procedures adopted for his evidence).<sup>94</sup>
104. In my judgment, the determinative factor is the broad and consistent level of maturity TS has shown in all the observed and recorded aspects of his life since arriving in the United Kingdom, including his approach to these proceedings. Within a fairly narrow range of dispute as to his age, the preponderance of the evidence clearly tends to indicate that the assessment of Mr Kumar and Ms Jones, supported by Ms Aroyewun, is to be preferred to that of Mr Ambat and Ms Palmer. In my judgment, the conclusions reached by Mr Kumar and Ms Jones have a proper evidential foundation and their reasoning is persuasive. Mr Iqbal and Mr Breijer have provided relevant information, but on the central issue in this case (the age of the claimant) I consider the opinions they have expressed are of low value. Mr Breijer has not provided a witness statement (the papers only include records of a conversation with Mr Ambat), and the conflicting pressures operating on Mr Iqbal, set out above, make him a very difficult witness to rely on in the context of his views as to the age of the claimant. Although it is possible that TS is a confident, determined and grown up individual who has only just turned 15, I am of the view that the more probable explanation has been provided by the Croydon social workers, namely that he is 16 years 7 months (with a notional date of birth of 1 January 1996). They arrived at this assessment of his age having afforded TS a significant and appropriate reduction in the age they would otherwise have attributed to him, in order to provide the claimant with the benefit of any doubt that arises out of this non-scientific process. On the balance of probabilities, I agree with their conclusion, bearing in mind all the evidence in the case and the submissions of counsel.

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<sup>94</sup> Judge and counsel unrobed, sitting in court close to each other and the witness, approximately on the same level.