

CO/7380/2010

Neutral Citation Number: [2012] EWHC 1130 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 13 April 2012

B e f o r e:

MR C M G OCKELTON
(SITTING AS A DEPUTY HIGH COURT JUDGE)

Between:

THE QUEEN ON THE APPLICATION OF W_

Claimant

v

LONDON BOROUGH OF CROYDON_

Defendant

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(Official Shorthand Writers to the Court)

Ms S Luh (instructed by TV Edwards) appeared on behalf of the **Claimant**

Mr R Hadden (instructed by London Borough of Croydon) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved)

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1. THE DEUPTY JUDGE: The claimant applies for judicial review of the defendant's refusal to treat him as a child for the purposes of entitlements under The Children Act. Permission was granted by Charles George QC, sitting as a Deputy Judge of this court. He ordered the Secretary of State for the Home Department to be joined as a party. That appears to have been done but I am told administratively that the Secretary of State sought to be removed as a party on the ground, as I understand it, that she does not challenge the claimant's claimed age. The Secretary of State has taken no part in the proceedings before me but it may be that the joinder was thought to prevent transfer of these proceedings to the Upper Tribunal and so they have continued in this court.
2. The claimant says that he is a national of Afghanistan. He presented himself to the Home Office on arrival in this country and said that he was born on the 26th of the tenth month of 1373, which, after an earlier mistake, was correctly translated as 16 January 1995, according to the Gregorian calendar. He handed over to the Secretary of State the documents that he had been given to bring with him to the United Kingdom, and he claimed asylum. His claim was refused, and he appealed. An Immigration Judge heard his appeal in the absence of any representation from the Secretary of State for the Home Department and there was, therefore, at that stage, no serious forensic challenge to the facts as stated by the claimant. The Immigration Judge dismissed the appeal on asylum grounds but accepted that the claimant was the age he claimed. As a result of that, there were further decision and further proceedings in the immigration jurisdiction but the finding as to age has been preserved there, and, as a result, the Secretary of State has issued a status document giving 16 January 1995 as the claimant's date of birth.

The law

3. These proceedings raise the question of the claimant's age and, in particular, whether he is, or at any time when in the defendant's area was, a child, that is to say under 18 years old. The decision on that fact is for the court in accordance with the authorities, most notably R (A) v Croydon LBC [2009] UKSC 8 and R (CJ) v Cardiff City Council [2011] EWCA Civ 1590. I do not need to set out the law in any greater detail than that. The court's task is to assess the age of the claimant on the material available to it. Although in form these are judicial review proceedings, there is no burden on the claimant to show that the defendant local authority's assessment is wrong, and the court is not confined to choosing between the party's positions. The court simply does the best it can. The decision may properly result in a declaration of the claimant's age in rem -- that is to say for all purposes -- so that neither the claimant nor any different arm of the state or a local authority can subsequently require the matter to be litigated again on the basis of privity (see R (AS) v London Borough of Croydon [2011] EWHC 2091 (Admin) at [45] to [63]).

A note on calendar and language

4. Afghanistan uses a form of the Persian calendar, a solar calendar calculating years from the Hijra with a very accurate system of intercalation. The difference between the Afghan calendar and the Gregorian used in the West is rather over 621 years. In this application there is no issue as to the correspondence or the translation of dates, and it will be apparent which calendar I refer to at any stage.

5. As to language, both Pashto and Dari (which is a dialect of Farsi) are widely spoken in Afghanistan. Pashto is declared as the national language but each language is used officially in the parts of the country where it is spoken by the majority. The languages are different, and vocabulary on some subjects is widely different, but there appears to be at least a measure of mutual intelligibility between them. The claimant's language is Dari.

Procedure at the trial

6. The question whether it was appropriate to arrange special measures for the claimant to give his oral evidence had not been decided before the trial, and was therefore left for me to decide. That was no doubt entirely appropriate; but it would not in fact have been easy to arrange an informal hearing room at short notice. The same incidentally applies in the Upper Tribunal. Besides, it is not entirely clear why a person who claims to be a child is entitled to the same facilities as a person who actually is a child.
7. Given the essentially inquisitorial nature of these proceedings, it seemed to me that the way forward was for the examination of the claimant's evidence to be conducted by the court. He sat on the jury benches, at a level well above that of counsel and nearly that of the bench, to which he was also quite close. After some discussion, I decided that counsel should attempt to agree on the areas to be covered by questions but that the surprise essential to cross-examination would be preserved by reserving to either party the liberty to communicate suggested questions, or areas of questioning, to me without disclosure to the other party in advance, or indeed at all.
8. The questions were, therefore, all asked by me. I received at the beginning of the claimant's evidence, and at various points during it, notes suggesting further questions; some, but not all, of which I acted on. Thus, I regulated entirely the questions put to the claimant, and their being put by the court rather than by the parties in turn had the advantage that all the evidence on one subject could be taken before moving onto the next.
9. This was a novel procedure, I think, but it did seem to work in this rather novel type of case and, in any event, no issues were raised about it once it was under way.
10. I also heard oral evidence from Mr Facey, who was instrumental in the compilation of the defendant's assessment of the claimant's age as over 18 when he was examined, and also in the later review confirming the original assessment. Mr Hadden made brief oral submissions at the end of the evidence. Miss Luh made comprehensive submissions orally and in 38 pages of typescript in addition to her extensive skeleton argument.
11. The claimant was assisted by a Dari interpreter, provided by his representatives, not by the court, but with no objection from Mr Hadden. The claimant and the interpreter had, I think, worked together before and clearly understood one another. The interpreter was able to give me assistance in the reading of the claimant's documents, and I am very grateful to him for the assistance that he gave during the trial.

The evidence

12. Much of the evidence is in the documents. They record the claimant's account of his history, given, with few and very unimportant variations, to the defendant's social workers twice, to all those who interviewed him in connection with his asylum claim and those who dealt with challenges to its refusal, and to two professionals instructed by those representing him in connection with these proceedings. The consistency of his evidence throughout is one of the main things Miss Luh relies on in asserting that it is credible.
13. His evidence is that he was born on the 26th of the tenth month in 1373 and that he went to school when he was seven, which he remembers because it was just after his father died and his uncle told him that he was 7 then. He stayed at school for four whole years and started the fifth year; and he was then taken away from school and went for a tailoring course lasting six months at the Afghan-Korean Centre. He finished that course aged just under twelve. He then began work at a tailor's shop, where he worked for a period of more than a year and perhaps nearly two years. While he was there he met a girl and began a relationship; and it was that that caused his uncle to decide that he must come to the United Kingdom. He left with others and in the control of an agent whom his uncle had told him to obey. He travelled with the party over land, passing through Iran and then Turkey, where they stayed about three weeks. The next country where he emerged was Italy, from where he travelled to France. He was near Calais for five or five and a half months before travelling to the United Kingdom in a lorry on about 29 October 2009. He claimed asylum very soon after his arrival. All his travel was, as I understand it, illegal throughout, after he left Afghanistan.
14. I do not need to set out the claimant's evidence here in any more detail. My detailed comments about it come later.
15. Mr Facey gave evidence about the process used by the local authority in reaching its assessment of the claimant's age. An earlier assessment had been withdrawn as procedurally unsatisfactory, and Mr Facey and a colleague interviewed the claimant at length. On the basis of their own experience working with children and, to a lesser extent, young adults, they then assessed the claimant as over 18 at that date that they were making the assessment, which was in April 2010.
16. In the course of his evidence, it became apparent that Mr Facey was not wholly committed to the accuracy of the process adopted in the present case. He accepted that the interview had been conducted in the wrong language: Pashto rather than Dari. He did not know how the mistake had happened. The claimant's immigration interviews were in Dari, and the defendant's office probably knew that, but anyway the wrong interpreter was booked. The interview was not rescheduled because the claimant appeared to be able, for the most part, to deal with the language the interpreter was speaking. The difficulty only became apparent when the conversation turned to exact dates, because the names of the months is one of the striking differences between the two languages. In response to Miss Luh's question, Mr Facey said that he probably ought to have started again with a Dari interpreter.
17. In response to further questions, he accepted that there is no sure way of determining the age of a young person. Afghans in particular, he said, are an "unknown quantity". At one

point he indicated that if the assessment that he had made had not been the subject of current litigation, he might have considered withdrawing it, but in the end his firm view appeared to be that he could tell whether a person was or was not a child. He had conducted a considerable number of age assessments and this was the first that had been challenged. He said that one could tell from the different way in which children and adults responded. You could tell, he said, if you sat next to a young person on a bus or the tube whether he was under or over 18. He might have some doubts about the process he had used in the present case but he would, he said, be lying if he said he thought the claimant was only the age he claimed.

The claimant's documents

18. The claimant relies on three documents from Afghanistan. The originals are not available but are said to have been deposited with the Home Office in conjunction with the claimant's claim for asylum. In the order in which they are said to have come into existence, they are as follows.
19. First, a document said to be a letter from the hospital at which the claimant was born, attesting his birth on the date he claims and signed by medical officials. This document is said to have been kept in the family, apparently by the claimant's mother, and given to him in order to travel. Nothing I heard about it suggested other than that it purported to be of the age of the claimant, that is to say, a document produced at the time of the claimant's birth.
20. Secondly, the claimant's taskera. His evidence was that his school did not ask for one and he did not need one in order to begin the course at the Afghan-Korean Centre; but they required a taskera for his certificate at the end of the course. So he went with his uncle to have his photograph taken and then to the office to get the taskera. The document, of which a copy was produced to me, is far from fully completed. Almost all the spaces for personal details are still blank, including, in particular, that relating to fingerprints. Although the form invites it, the taskera does not give a date of birth for the claimant. It says instead that reference to records shows that at the date of the issue of the taskera he was about twelve years old.
21. The third document is the certificate at the end of the Afghan-Korean Centre course. It gives the dates of the course and it gives the date of the claimant's birth as claimed.

Assessment of the evidence

22. I am perfectly sure that the claimant was not telling the truth about his age. My principal reasons for reaching that conclusion, in no particular order, are as follows.
23. I listened to his oral evidence carefully, and there were parts of it which bore the ring of truth. When he told me about the tailoring course and about the arrangements for work at the tailor's shop he opened up and gave lots of details of exactly the sort of thing that would be given by a person who had been there: but there was an strong contrast between that and the evidence going to his date of birth. On the latter, he could not give any more details than he had given all along. If he was asked, he simply repeated himself. I could not get

him to tell me anything about his father, who died when he was seven, other than that he bought him clothes. When I asked again, he told me again the same thing. When he was asked how he knew what year it was at school, he gave the account as he had done before, in apparently the same words, and stuck to it very firmly. The same applied when he gave details of his journey. Asked why it was that when he was in France he had always told the authorities he was over 16, which is inconsistent with his claimed age, he said that the agent had told him to do so because of the difficulties that would follow if he were thought to be under 16. But when he was twice asked to say what the difficulties were, he gave an example the first time and exactly the same example the second time. There is a difference between the consistency that derives from recitation and the consistency that derives from the recollection of events. The claimant's evidence on matters going to his age, as distinct from that on some other matters, bore the marks of the former. I am confident that he had, in essence, learnt a story that he was unwilling to depart from. On the subjects it covered, he would not depart from or expand on it.

24. I should say, because it one of the points of consistency, that one remarkable feature of this case is that he was able to give exactly the same consistent account to Mr Facey that he had given on all the other occasions. This is remarkable because, as I have mentioned, he was being interviewed in a language he says he does not understand. It may be that the interpreter was, in fact, tri-lingual or it may be that there was sufficient mutual intelligibility between the languages so that that worked. The interpreter did not claim to be able to understand Dari. On the contrary, he asserted that Dari and Pashto were completely different languages. I can place no weight at all on this particular feature of the evidence because I simply do not know what happened.
25. The second reason is that the claimant's claimed complete ignorance of the passage of time and of numbers in general is entirely implausible. His position is that he had no idea of his age at any time except when he was told by his uncle, and no idea of the passage of years except when told of that. Thus, (1) he remembered that he was seven when he father died and he started school but did not remember his age at any later date and could not apparently work it out. (2) He remembered that the taskera said that he was 12, because he had asked his mother what it said and she had told him. She did not apparently tell him that the taskera was wrong, because it said he was 12 when, if the hospital letter was right, he was still 11. (3) He knew about the years at school because he was told each year what year it was. He denied being taught about the calendar during four and a half years at elementary school, or having learnt any such thing at home. He told me that he knew he had left school during the fifth year because everyone had said it was the fifth year: teachers, students and parents. I asked him later in his evidence again how he knew it was the fifth year and he gave, essentially, the same answer. He said that he did not think about what year it was except when he was told and he said that he therefore did not think that he was getting one year older year by year as he went through the years at school.
26. He also denied being able to read. For example, he says he still cannot read his taskera. But on leaving school half way through the fifth year he was able to take a course that qualified him to begin work at a tailor's shop, and one of the things he did there was certainly to take measurements, because he told me about it, with a tape. He must have

remembered them if he did not write them down. I do not believe that he is essentially innumerate, as he claims.

27. It is to be noted that he described the same process for learning the passage of time in the shop and in his travels. He said that he knew he had worked at the shop for over a year because the owner told him that it was the first anniversary but he did not remember whether he had been told that he had worked there over two years. He remembered the months in Calais because at the end of each month the agent told him how many months had passed. So this claimed way of counting, or failing to count, time is not something that he grew out of when he left school and had to start working with numbers at the tailor's shop. It is a position that he maintains. It is that his knowledge of the passage of time depends solely on occasional information from others he has mentioned. He is incapable of working out anything of the sort himself and he is entirely incurious himself about his age or the calendar or of what the position is between the rare snippets of information he has been given. I do not believe it.
28. The claimant's position on that becomes even more incredible when it is appreciated that almost the only conversation that he was prepared to recall that he had with Farzana, the girl with whom he struck up a relationship, was that he asked her her age and was told that it was 14. He was clear in his evidence that he, the boy who has no interest in or knowledge of his own age, had asked her hers. That the girl with whom he had struck up the relationship was young was no doubt considered important in terms of the story that he was to tell on arrival, in an effort to qualify for asylum. But this reported conversation is, in my judgment, wholly inconsistent with the claimant's own claimed attitude to age.
29. In fact, it was on this point that the mask slipped once, and I think only once. In his asylum interview, when he had given the information about Farzana's age, his interviewer said, "So she was 14 and you were 15?" And the claimant agreed. For once he forgot that he did not know what his age was unless he was told at the time. On the other hand, and despite his general lack of interest in such matters and his inability to read the documents he was carrying, he knew to say that he was born on the 26th of the tenth month 1373. That, in my judgment, is another pointer to him having been briefed on what to say.
30. The claimant is prepared to lie when told to do so. That is clear from his evidence about his time in France. He wants to say that he lied then but is telling the truth now. I am afraid that despite Miss Luh's submissions, I am not persuaded that the fact that he has given evidence about his schooling, training and job, apparently from his own knowledge, helps in showing that the evidence of his age is to be believed. There is little doubt that he was at school, and I accept also that he undertook the course that he told me about and then went on to work as a tailor. It does not follow that he did so on the timescale he claims. For the reasons I have given, I do not accept that timescale and, as a result, I do not regard his evidence as remotely reliable in pointing to the age he claims.
31. I reach that conclusion without taking into account the assertion that his biodata were collected in Greece in February 2009, which is before the date he claims he left Afghanistan on a journey that he denies had any stop in Greece. Miss Luh devotes a great part of her submissions about the claimant's journey to this matter and to attempting to

reduce its importance. The position is that the assertion that his biodata were collected in Greece was made by the Secretary of State in refusing him asylum. The claimant has been professionally represented throughout and has never apparently sought to investigate or contradict that assertion. Apparently, it was hoped simply that nobody would notice. Miss Luh indeed did not appear to be aware of the difficulty about the date until I pointed it out to her. Contrary to what she submits, this is not a matter of a freestanding allegation of deception by the claimant, creating a need for further and new notices to him, investigations, trial, establishment of an especially high standard of proof, or anything like that; it is simply part of the evidence. The claimant not having challenged it, it is difficult to see any basis upon which it could be doubted, but, really, it merely points in the direction in which I was already travelling. It is a further factor casting real doubt on the parts of the claimant's story that are important in the present case.

Documents

32. The documents, in my judgment, can add little to the claimant's case. That is why I have been content to leave their consideration until after giving my views on his oral evidence. They are foreign documents. They are simply untested hearsay (probably multiple hearsay) evidence of their contents. There have been a number of problems with them on their face, which the interpreter was able to help with. There are two rival translations of the birth letter, but one appears to be over-literal, and I take the one where the mother's name is that of the claimant's mother as the accurate translation. There was also a difficulty raised about the taskera because in the rubber stamp over the photograph there are the figures 1383, which is potentially embarrassing in a taskera supposed to have been obtained in the year 1385, but I do not think that the figures on the stamp are a date: there is insufficient room on the rest of the line for a date, as the interpreter confirmed and he also said that the one legible letter there could not be the part of the name of any month.
33. The taskera purports to be an official document produced in the way I have described. The birth letter purports to be accurate and more or less contemporary evidence of the claimant's birth. The certificate from the Afghan-Korean Centre is not independent; the relevant information in it is derived from the taskera or from the claimant's uncle.
34. These documents have their difficulties even if they are accepted as precisely what they appear to be. The problem is that they do not seem to accord with the story of their production. The taskera refers to records as having been consulted but there is no indication of what those records were. The family had, it is said, access to the birth letter. Either, under those circumstances, it was produced to the issuers of the taskera or it was not. If it was not, it looks very much as though there was no real effort to provide the best information to get the taskera. If it was produced, the taskera would record the date of birth rather than give the incorrect information that it does give. Then the evidence was that it was the taskera that the Afghan-Korean Centre wanted, but the information on the certificate could have been obtained only from the birth letter or from the family, because the taskera does not give the date of birth which appears on the certificate.
35. The birth letter would, if reliable, no doubt be evidence to take into account, provided that there were also some evidence to show that it truly reflects some official record. But the

story of the obtaining of the taskera without it casts real doubt on it. It seems to me that it is highly unlikely, given the story of the obtaining of the taskera and the terms of the taskera, that the birth letter was in the family's possession at the time when the taskera was obtained. There was no evidence of the birth letter being obtained subsequently and there was no evidence of how the information in the birth letter could accurately have been obtained years after the birth. I should say that the birth letter does not appear to be a document of a sort regularly available in Afghanistan. So I have obtained no help from the birth letter, and the other two documents do nothing more than repeat information from the claimant's uncle, who it was who told him to obey the instruction of the agent in leaving the United Kingdom. The uncle himself cannot be regarded as a reliable independent source of information.

36. Mr Facey, the social worker, was, in my judgment, scrupulous and honest. The problem is that his evidence does not help very much either. As I have to make my own assessment, the defendant's assessment, as such, is not capable of being the answer to the question at issue. I might well have thought it right to give great weight to the reasoned judgment of a person experienced in dealing with young people of known age, if Mr Facey had been able in the witness box to show me that that would be the right thing to do. Instead, it was in the witness box that Mr Facey had his doubts. He was entirely frank about them, but they have the effect that I cannot regard his opinion as of any real weight in assessing what age the claimant is.

Decision

37. If this were anything like ordinary litigation, the answer would at this stage be clear: the claimant has by a very long way failed to prove his case, or, to put it another way, to establish that there is any good reason for working on his assertion as to the facts rather than anybody else's. Following *R (CJ) v Cardiff*, that is not enough. The court is required to reach an assessment and it is required to do so despite the fact that there is no reliable positive evidence. Saying that a child is entitled to the benefit of the doubt does not, in this context, help at all, for two reasons. The first is that the question in this case, as in many other cases of this sort, is that very one: is the claimant a child? And the second is that giving someone the benefit of the doubt is a process associated either with decision-making where there is a burden of proof or with the assessment of credibility. There is in this case no burden of proof and I have no doubts about my assessment of credibility. There is, it should perhaps be said, no rule that a person who claims to be a child is to be treated as one unless there is positive evidence to the contrary. Nor is there a rule that a person who is telling the truth in part of his evidence is entitled to be believed on another part when there is reason to think otherwise.
38. It may be envisaged that in many cases following *R (CJ) v Cardiff* there will be no possible progress from this point other than by guesswork, otherwise called instinct or judicial talent. I have already commented on Mr Facey's evidence, and it does seem to me that it would be wrong for the court to place any reliance on his instincts, but in a case with no reliable positive evidence, it may not be possible to do other than use similar divinatory tests. Judicial age assessment is likely to be simply an expensive lottery: expensive, that is,

for the public in its various guises, for the claimant is unlikely to have to bear any of the costs.

39. That, however, in my judgment, is not the answer here. None of the evidence points reliably and directly in its content to any particular age for the appellant. It is, however, as I have said, my judgment that the claimant's evidence about his age was not the truth but was instead what he was told to say and stick to. It seems to me that overwhelmingly the most likely reason for that is that those who planned his journey half way round the world, who knew that the United Kingdom was a more beneficial place to be than anywhere nearer to home, knew also that he would have better access to benefits if he said he was under 18. In fact, I cannot think of any other reason why he should lie, or be told to lie, about his age.
40. The conclusion that I reach is that it was known full well that if he told the truth he would not be entitled to those benefits and he was, therefore, also told to tell his story. It follows from that, that, in my judgment, the claimant was at all relevant times over 18.
41. That thesis receives modest support from another aspect of the evidence, to which I have not previously referred. Mr Hadden adduced country evidence showing that in Afghanistan school is compulsory for 9 years, starting at 7, and that the most recent advertisements for the Afghan-Korean Centre's courses requires the 9th year of school to have been completed before the course is begun. There was, however, no evidence as to the extent to which practice in attending school accords with the law, even in Kabul itself, and no evidence of the Afghan-Korean rules at the date when the claimant says he began his course.
42. For those reasons, amongst others, I have preferred to make my judgments on credibility, on the basis that the chronology was not as the claimant claims rather than that it could not have been. It is, however, rather unlikely that a respectable institution, such as the Afghan-Korean Centre appears to be, would be able to, or would choose to, defy the law by providing full-time daytime classes to children who ought to be in school. That is so even if the course itself were to count as schooling, but the more recent material, at any rate, does not suggest that it does. The truth of the matter is, therefore, probably that rather than leaving school in the 5th year the claimant completed school before being allowed to begin the tailoring course. That would add four and a half years to his claimed age and mean that he was about 18 at least when he left Afghanistan.
43. I shall, therefore, find as a fact that the claimant was over 18 on arrival in the United Kingdom, and assess his date of birth as 16 July 1990, which is four and a half years older than he claims. There will be a declaration to that effect, which, as at present advised, I consider should be a declaration in rem. The interim orders, including that under part 39.2 of the Civil Procedure Rules, will be discharged.
44. MS LUH: My Lord, I am grateful for your judgment. In terms of practicalities of the consequences of the judgment, obviously, currently, the claimant is accommodated by the local authority. You have indicated that you will be discharging the interim orders. Arrangements will then have to be made to some extent to get the claimant to NAS accommodation. We would be grateful if that could be done so that no destitution issues

arise. To the extent that that is necessary, if the local authority can assist in the coordination of that, that would be something that we would be grateful for.

45. In relation to the issue of costs, we would invite the court to make no order as to costs, given the reasons that the court has taken the view that neither party has been able to put forward a positive case to assist the court in its finding.
46. THE DEUPTY JUDGE: It is fair to say Mr Hadden did not leap to his feet, and that may have been an indication that he was not going to make an application.
47. MR HADDEN: My Lord, as you have seen, no-one is sat behind me. My instructions would be to seek costs in the normal circumstances whereby the claimant has not succeeded and indeed the assessment by the court has shown that he is even older than the local authority has assessed him to be. That is, of course, without having heard my learned friend's comments in respect of the court's assessment.
48. THE DEUPTY JUDGE: I simply wanted to see whether you were making an application before hearing Miss Luh at length.
49. MR HADDEN: My instructions would be to seek costs.
50. THE DEUPTY JUDGE: I hear what you say. The point is Mr Facey's evidence was not in the end sufficient to point to the solution that he sought.
51. MS LUH: The practice nowadays is where neither party's evidence was able to establish before the court a declaration that was granted, the appropriate order was no order as to cost. We say that that is the appropriate order in this case. This issue needed to be resolved by the court and it could only have been resolved by the court. So we ask for no order as to costs and the normal detailed assessment of the claimant's legally aided costs.
52. MR HADDEN: My Lord, the only submission I can make in respect of whether or not costs should be ordered was that the local authority have had to go to the expense of defending this claim, and following your judgement, my Lord, the claimant's credibility has been shown to be lacking in respect of this particular point and, as such, subject to the normal protection provided by the Access to Justice Act 1999, I would ask for the court to make an order that the claimant do pay the defendant's costs.
53. THE DEUPTY JUDGE: Thank you. So far as accommodation is concerned, today is Friday, can it be continued until Tuesday?
54. MR HADDEN: My Lord, yes. I am without instructions but it is entirely reasonable under the circumstances.
55. THE DEUPTY JUDGE: It is a bad time to try and get officials working to provide housing and they have got plenty of other things to do over a weekend with people who have not got housing at all. The interim order then is to be continued to include accommodation on Monday night; any financial support that is being provided is to be provided for the 24 hours which are Tuesday, but after that, it will be a matter so far as I am aware for NASS.

56. So far as costs are concerned, there will be no order for costs. Although in principle the defendant is entitled to its costs of these proceedings, the position was that as the case turned out to be conducted, the evidence of Mr Facey was such that it became readily apparent that the decision made by the local authority which was under challenge was one that ought to have been reviewed at a much earlier stage, particularly in regard to the language used at the interview. For that reason, I do not think it would be right for the claimant to pay the costs of this action. You can have your detailed assessment.
57. MS LUH: I am grateful, my Lord. Would you like us to draft up the order to send to the associate?
58. THE DEUPTY JUDGE: Yes, I am sure you can agree something. You are familiar with sending things to my email address but I have to tell you that I shall not be reading emails between now and 29 April because I shall be well out of the jurisdiction. So if you can agree something in accordance with what I have said, it can no doubt be administratively sealed.
59. MS LUH: The only other thing is if it would be possible to have a transcript of the judgment sooner rather than later.
60. THE DEUPTY JUDGE: That is a matter out of my hands, save that I shall not be able to consider a transcript between now and 29 April.
61. MS LUH: I would be grateful if it were able to land on your desk prior to 29 April.
62. THE DEUPTY JUDGE: That is well within the timescale normally adopted by those who arrange transcripts. Thank you.