Case No: CO/2425/2010

Neutral Citation Number: [2011] EWHC 1477 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 June 2011

Before:

MR JUSTICE KEITH

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Between:

R (on the application of Y)	**Claimant**
- and -	
The London Borough of Hillingdon	**Defendant**

- -
- -

Ms Shu Shin Luh (instructed by the **Children's Legal Centre**) for the **Claimant**
Mr Andrew Sharland (instructed by the **London Borough of Hillingdon**) for the **Defendant**

Hearing dates: 28-30 March 2011
Further written representations: 4, 8, 11 and 18 April 2011

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Judgment

Mr Justice Keith:

Introduction

1. There is a new growth industry in the Administrative Court. It relates to those cases in which the court is being asked to assess the age of youngsters claiming to be children – almost all of them asylum-seekers from overseas arriving in this country as unaccompanied minors – who look to the local authority for accommodation and support. In the past, it was thought that it was the local authority which had to decide the youngster's age, subject only to judicial review on the usual principles of fairness and rationality. But the Supreme Court decided in *R (on the application of A) v Croydon London Borough Council* [2009] 1 WLR 2557 that in cases of dispute it is for the court to assess the youngster's age. The effect, as May P pointed out in *R (on the application of FZ) v London Borough of Croydon* [2011] EWCA Civ 59 at [4], is that

> "… the court hearing the judicial review claim will often have to determine the fact of a claimant's age by hearing and adjudicating upon oral evidence. This may be an extensive and time consuming process … The Administrative Court does not habitually decide in orthodox judicial review proceedings questions of fact upon oral evidence, although it has power to do so in appropriate individual cases. It stretches the court's resources to have to do so more than occasionally. Yet there were, on 12 January 2011, 64 age assessment cases in the Administrative Court's list at various stages of progress."

This case is one of them.

2. In two respects, though, this case is unlike many of the others. First, the claimant did not arrive in this country as an unaccompanied minor seeking asylum. She was brought to this country from Nigeria when she was about 5 years old to work as a domestic helper. She spent the whole of her time since then in domestic servitude until she escaped from the family she was then working for. Secondly, even on her own case, she is now 18. She is therefore no longer a child for the purposes of the Children Act 1989 ("the 1989 Act"). As such, she is no longer entitled to accommodation and maintenance under sections 20(1) and 23(1) of the 1989 Act. But until she is 21 she is entitled to support and assistance in other ways under section 23C of the 1989 Act. It is therefore still important for her date of birth to be determined, so that the date when she ceases to be entitled to that support and assistance from the defendant, the London Borough of Hillingdon ("Hillingdon"), can be identified.

3. Two other preliminary points should be made. First, even though the court's function is to determine the youngster's age for itself, the local authority has to make its own determination of his or her age in the first instance. The court's functions are only engaged if the local authority's determination of his or her age is disputed. Secondly, if the local authority's determination of his or her age is disputed, the only remedy is by way of judicial review. That means that, in common with all claims for judicial review, the court has to give permission for the claim to proceed. The effect of that

was described by Holman J in *R (on the application of F) v Lewisham London Borough Council* [2010] 2 FCR 292 at [15] as follows:

> "… the familiar discretionary grounds for refusal to grant permission may apply no less than in other cases. For example, delay or that the question is academic, or that for some other reason there is no useful purpose in the proposed proceedings. Permission must not become a formality in these cases any more than in any others."

He went on to say that the relevant test for the grant of permission in a case such as the present, bearing in mind that the question for the court is a purely factual one, is whether there is a realistic prospect or arguable case that at a substantive fact-finding hearing the court will conclude that the claimant is younger than the local authority has assessed the claimant to be. In determining whether such a realistic prospect or arguable case exists, May P said in *FZ* at [9] that

> "… the court should ask whether the material before the court raises a factual case which, taken at its highest, could not properly succeed in a contested factual hearing. If so, permission should be refused. If not, permission should normally be granted, subject to other discretionary factors, such as delay."

4. I mention the test at the permission stage because this is a case in which Nicol J ordered a "rolled-up" hearing of the claim. I understand entirely why Nicol J decided to do that in this case. He was asked to deal with the case as a matter of urgency and before an Acknowledgement of Service to the claim had been filed. Nor was he informed of Holman J's concern, which Holman J had expressed in *F* at [13], about the undesirability of the practice of ordering "rolled-up" hearings in this type of case gaining momentum. As Holman J said:

> "Permission is an important filter and safeguard, precisely designed to ensure that only cases with appropriate merit get beyond even the preliminary stage. If orders are repeatedly made for a rolled-up hearing, the whole point and purpose of the requirement of permission would be completely outflanked."

Indeed, there is now another reason why the issue of permission should be grappled with at an early stage. In *FZ*, May P drew attention at [31] to the power which there now is to transfer to the Upper Tribunal age assessment cases where permission to proceed with the claim has been granted on the basis that the court will determine for itself the claimant's age. He added that transfer to the Upper Tribunal was appropriate because of the experience which judges there have of assessing the age of youngsters from abroad in the context of disputed asylum claims.

5. When ordering a "rolled-up" hearing of the claim, Nicol J made an order under rule 39.2(4) of the Civil Procedure Rules that the claimant's identity should not be disclosed, and that she should be referred to by her initials. Although the claimant has now reached the age of 18 even on her own case, I think that her right to respect

for her private life under Art. 8 justifies the maintenance of her anonymity. Having said that, what her real name was is important in the context of a particular feature of her account of her life in this country, and the parties have agreed that in this judgment I can refer to her by what she claims to be the name her real family gave her (Y), as well as the name by which she was known here (Wande). However, since the first letter of her surname would be apparent if she was referred to as Nicol J had ordered, I direct that she be referred to as Y.

6. There is one other preliminary matter I should mention. In *F* at [37], Holman J anticipated that judges presiding over a fact-finding hearing of this kind would be able to give an extempore judgment at the end of it. Indeed, he said that it was "crystal clear" to him that the hearing and judgment should be dealt with "as a single composite exercise". He may well have had in mind the comment of Stanley Burnton J (as he then was) in *R (on the application of B) v Merton London Borough Council* [2003] 4 All ER 280 at [36] that the "assessment of age in borderline cases … is not an issue which requires anything approximating a trial, and a judicialisation of the process is … to be avoided". Indeed, Holman J himself said at [41] that he was "profoundly sympathetic" to the notion that the process should be a "truncated" and "summary" one, which was "relatively swift". For that reason, Holman J directed that any estimate of the length of such hearings should include time "for preparation and delivery of the judgment extempore". Two days were set aside for that purpose in the present case. In fact, although the court sat at 10.00 am on 29 and 30 March (the second and third days of the hearing), with less than ¾ hrs. for lunch on 29 March, the hearing did not finish until 1.35 pm on 30 March, and that was only achieved by directions I gave on 29 March for curtailing the length of any cross-examination yet to be conducted or completed.

7. That is not a criticism of the parties. It is very difficult to give an accurate estimate of the time which a trial needs. But the upshot was that, even if I had been able to give judgment otherwise than a reserved one, I would not have had time to marshal my thoughts sufficiently to give it immediately, and I would almost certainly have had to give it on the morning of 31 March, which would have interfered with my other commitments that day. As it turned out, I would not have felt comfortable giving an extempore judgment in this case, and although I understand why Holman J thinks that in many cases it will be possible to give an extempore judgment, the decision of the Supreme Court by definition requires the assessment in the event of a dispute to be judicialised, and so there may be some cases in which it is not possible to give an extempore judgment. This was such a case.

8. Holman J envisaged in *F* that some of these cases may require a preliminary hearing before the judge who ultimately presides over the final fact-finding hearing for procedural issues to be addressed, such as whether the claimant should be required to attend the final hearing for cross-examination. An order for such a hearing was made in this case, and that hearing took place before me on 1 March. At that hearing, I decided that Y should be required to attend court to be cross-examined, and that although the claim had been lodged out of time, Y's time for lodging it should be extended. I also dealt with the real nature of her claim. Despite the details given in section 3 of the claim form of the decisions which Y was seeking to have judicially reviewed, I decided that what she was actually challenging was Hillingdon's

assessment of her age. To the extent that it is necessary to do so, the judgment I gave on that occasion should be read with this judgment.

The court's approach

9. *Assessing age*. Guidance given to social workers with local authorities who assess a youngster's age comes from two sources: the judgment of Stanley Burnton J in *Merton* and guidelines issued by the London Boroughs of Croydon and Hillingdon which a number of other local authorities have adopted. These sources concentrate for the most part on the procedure to be adopted by social workers when conducting age assessments, though there are some passages in *Merton* which would apply when it is the court which is making the assessment just as much as it applies to social workers. The first is at [37]:

> "… except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision maker must seek to elicit the general background of the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to his age, the decision maker will have to make an assessment of his credibility, and he will have to ask questions designed to test his credibility."

The reference to the applicant's credibility picked up on something at [28]:

> "A history that is accepted as true and is consistent with an age below 18 will enable the decision maker in such a case to decide that the applicant is a child. Conversely, however, an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case at to his age, for example to avoid his return to his country of origin. Furthermore, physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other."

10. The guidance issued by Croydon and Hillingdon also contains passages which could inform the court's approach just as much as that of social workers:

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

- "In circumstances of age uncertainty, the benefit of doubt should always be the standard practice."

- "The ethnicity, culture, and customs of the person being assessed must be a key focus throughout the assessment."

Since the Supreme Court in A did not spell out how courts should approach the fact-finding task of assessing a youngster's age, I have borne this guidance as well as Stanley Burnton J's in mind in assessing Y's age.

11. *The burden of proof*. Stanley Burnton J did not think it helpful to apply concepts of the burden of proof to the assessment of age by local authorities: see [38] in *Merton*. One of his reasons was that for the purpose of determining the age of a youngster seeking to exercise his or her rights under the 1989 Act, there is no legislative provision placing the burden of proof on him or her. Whether the position is different when it is the court which has to assess the youngster's age is still to be definitively decided. Langstaff J in *MC v Liverpool City Council* [2010] EWHC 2211 (Admin) may have been going along with Stanley Burnton J's view in *Merton*. He said at [5] that he was not choosing between one of two alternatives, but deciding where within a possible range the claimant's true age was. But he described that process as "one of assessment", inferring, I think, that there was no place for the concept of the burden of proof in the exercise. Holman J in *F* thought at [16] that there was a place for the concept of the burden of proof in the process, but he left open the question on whom it lay. Judge McMullen QC in *R (on the application of A) v London Borough of Camden* [2010] EWHC 2882 (Admin) also thought that there was a place for the concept in the process, but he did not decide upon whom the burden lay, because he was able to decide the case without resort to the burden of proof.

12. The most rigorous analysis of the question was in *R (on the application of CJ) v Cardiff City Council* [2011] EWHC 23 (Admin). There Ouseley J acknowledged at [126] that he "had intended not to decide this case by what could be an unsatisfactory resort to the burden of proof". But because the decision was a close one, he concluded that he had to decide who bore the burden of proof. His conclusion at [127] was as follows:

> "In my view it is for the Claimant to show that he is or was under 18 at the time that he asserts a duty was owed to him as a child. First, in judicial review proceedings it is for the Claimant to show that the public authority has erred in its duties. Second, but obviously related, it is the Claimant who is asserting that the duty is owed; the authority is not asserting a power to do something. It is not crucial but supportive nonetheless that the readier means of knowledge lies with the Claimant on this issue."

13. I was told that an appeal against Ouseley J's decision has been filed, but neither counsel were sure whether permission to appeal had been granted, whether by Ouseley J himself or the Court of Appeal. For my part, I am sure that when the court is having to assess a youngster's age for the purpose of determining whether and for how long the youngster is entitled to benefits under the 1989 Act, the concept of the burden of proof is entirely appropriate, and that the burden of proving his or her age is on the youngster. Although it is for the local authority to prove the facts which it needs to establish in order to give it such a power as it is seeking to exercise, it is not

for the local authority to disprove the facts asserted by others as the basis for the duty which it is alleged the local authority owes to them. That does not mean that youngsters like Y have to prove their precise date of birth. There may be cases in which the youngster will not know their date of birth, and they may not have any documents showing what it was. In such a case, the court will give the claimant a presumed date of birth in the light of what the claimant proves his or her approximate age is, though in this case Y happens to claim that she knows what her actual date of birth was.

14. That is because Y claims that she saw an entry in a diary with her real name and what she assumed to be her date of birth in it. However, since her credibility is in issue – because her account relating to what she claims she read in the diary as well as other parts of her account is not accepted – it is important to consider her credibility overall, and that includes looking at the account she gives of her life in the UK. Her account comes from a statement she submitted to the Home Office in April 2009 in support of an application for leave to remain in the UK, though it is supplemented by what she told Hillingdon's social workers when they assessed her age and by her evidence in court. I stress that the account which follows is her account, and I deal later in this judgment with its credibility.

Y's account

15. *Y's early life*. Y comes from Nigeria. She recalls her family being members of the Yoruba tribe, and when she arrived in this country she spoke only Yoruba, which is one of the languages spoken in Nigeria. She cannot recall anything about life in Nigeria. She does not know, for example, who her parents are, or whether she has any brothers or sisters. She cannot remember what her parents look like. All she recalls is being brought to England by Esther Shangowawa.

16. *Life in Wembley*. For a number of years, Y lived with Mrs Shangowawa and her family in Wembley. They came from Nigeria. Mrs Shangowawa's family consisted of her husband, their daughter Dolapo (who Y thought was roughly the same age as her) and their son Ayo (who was born while Y was living there and when she thinks she was aged 6 or 7, and who would have been 10 or 11 in April 2009 shortly before Hillingdon's social workers assessed her age). There was another boy who lived with them for several years, but he would return to Nigeria every so often. He was older than Y. Y thought that he was Mrs Shangowawa's cousin. Although Y was treated differently from Mrs Shangowawa's two children, Y thought at the time that Mr and Mrs Shangowawa were her parents. She called them "mum" and "dad". She remembers that Dolapo was going to school and learning to read when she joined the family, and since Mrs Shangowawa was teaching her, Y, from Dolapo's books, Y thinks that she, Y, was about 5 at the time. She thought her name was Wande because that was what she was called.

17. Life was difficult for Y in Wembley. Unlike Mrs Shangowawa's children, Y did not go to school, and she did not have toys or books of her own. She was not allowed to eat with the family. Her role was to do the housework, and if she did not do what she was supposed to do, Mrs Shangowawa would smack her or beat her with a slipper or a wooden spoon. In addition, when Mrs Shangowawa went back to work some time after the birth of Ayo when he could crawl and sit up by himself, Y would look after him during the day. She would have to feed him, change his nappies, play with him

and get him to sleep when he cried. She was not allowed to go out of the house except with Mrs Shangowawa or her cousins when they came on a visit. Y would accompany the family to church, but she was not allowed to speak to anyone there, and had to stay close to Mrs Shangowawa. If anyone asked, Mrs Shangowawa would say that Y was her daughter. However, Mrs Shangowawa taught Y to read and write, how to count and tell the time, in addition to some basic arithmetic. She would even give her homework. Y also picked up quite a lot from watching children's programmes on television with Mrs Shangowawa's own children. Mrs Shangowawa wanted Y to speak and understand English, and she would not let her (or her own children) speak Yoruba. On the other hand, Y had very little to do with Mr Shangowawa. He would ask her to do things for him like iron his clothes or cook for him if Mrs Shangowawa was not there, but otherwise he ignored her. To him Y was just a servant.

18. *The entry in the diary*. One day Mrs Shangowawa asked Y to get a book from her bedroom for her. Y could not find it, so she asked Mrs Shangowawa where it was. Mrs Shangowawa told Y that it was on the bed. Y found it there *under* some clothes, although at one point in her evidence she said that it was visible on the bed as it was *among* some clothes. It had handwritten entries in it, and although Y says that it could have been an address and telephone number book, she has always described it as a diary, and I shall refer to it as a diary for convenience. It was open, and on the page which was open, Y read "Y" followed by a surname. I refrain from giving that name so as not to identify her but it was an African name. Underneath that was written 17 February 1993. There were some Nigerian telephone numbers immediately below those entries, and further down the page were other telephone numbers, both Nigerian and English ones, with names next to them.

19. Although the entries on that page did not say that 17 February 1993 was the date of birth of Y -------, Y "just knew" that the entry related to her, and that this date was her date of birth. Two things made her think that. First, she had known that the name she was called, Wande, was a diminutive, i.e. short for her real name, and she was struck by the similarity between Wande and Y. Secondly, she knew that her birthday was 17 February, because a couple of times in previous years Mrs Shangowawa had told her on 17 February that it was her birthday. Her real name came as a surprise to her. She had assumed that her surname was Shangowawa because she had believed Mr and Mrs Shangowawa to be her parents. Since her surname was not that, it was then that she realised that she was not their daughter. She was also able to work out how old she was, and that came as a surprise to her as well, because in some of those years when Mrs Shangowawa had told her on 17 February that it was her birthday, Mrs Shangowawa had also told her how old she was. That had been two years older than she really was if her date of birth had indeed been 17 February 1993.

20. When Y gave Mrs Shangowawa the diary, Mrs Shangowawa made some telephone calls. But later – it may have been the same day, or it may have been a few days later – Mrs Shangowawa asked Y whether she had seen anything in the diary. Y told her that she had seen the name Y ------- with a date by it and some telephone numbers. Mrs Shangowawa told her that Y ------- *was* her real name and that the date *was* her date of birth, but that Y was not to tell anyone about it, because at her age she was supposed to be going to school. Mrs Shangowawa added that if people found out about her, she would be taken away and put into prison. She might even be sent back

to Nigeria because she had no right to be in this country. Y was frightened by that. She did not know anyone in Nigeria. She did not know what would happen to her if she was returned there. In truth, she did not want to be sent away. Y now thinks that all this happened when she was about 11.

21. *The move to another family*. A few days later, Y heard Mrs Shangowawa on the telephone talking to a friend of hers. She was speaking in Yoruba. She was planning to return to Nigeria, and was arranging for Y to live with her friend. Y heard her say that she had used her daughter's passport to get her, Y, into the UK. In due course, Y was collected by Mrs Shangowawa's friend, Abi Omojola, and from then on Y lived with Mrs Omojola's family in Hillingdon. The family consisted of Mr and Mrs Omojola, their two daughters Dami and Teni, who were aged 3 and a couple of months respectively when Y went to live with them, and their son Ayokumi who was born after Y had been there for a while.

22. Life in Hillingdon was like life in Wembley. Y's role was to clean the house, do the cooking, wash and iron the clothes, look after the children and sometimes help Mrs Omojola with the shopping. Mrs Omojola was on maternity leave from her work when Y moved there, and Y looked after Teni initially. But when she went back to work, Y would look after Teni herself, as well as taking Dami to nursery and collecting her from nursery. The same thing happened when Mrs Omojola became pregnant with Ayokumi. Mrs Omojola stayed at home for about six months after his birth, but then she went back to work, and Y had to look after him as well. Like her time at Wembley, Y was smacked and hit with a wooden spoon by Mrs Omojola if she forgot to do something. On one occasion, she was beaten with a belt.

23. When Y thinks she was about 14, Mrs Omojola made her go to college to do a course in cake-decorating. This was not altruism on Mrs Omojola's part. She wanted Y to be able to make cakes which she could then sell. It was Mrs Omojola who made all the arrangements. The other women on the course were much older than Y. One of them was surprised that someone who looked so young was on the course, but Y told her what Mrs Omojola had told her to say – that she was at university, and that she was doing the course before going back there. In fact, the form which had to be completed for Y to be enrolled on the course has been retrieved from Hillingdon's files. It gave her name as Wande -------, i.e. the same surname as Y had seen in the diary. It referred to the course in cake-decorating starting on 10 January 2008. It was completed by Mrs Omojola, who gave her own name as the person to be contacted in the event of an emergency. She described Y as her cousin. She gave Y's date of birth as 17 February 1988. Y signed it "Wande" in childish handwriting.

24. *The end of Y's captivity*. Y was unhappy living with the Omojolas. She would sometimes take refuge with a Ugandan family who lived across the road and who were suspicious about her circumstances. They wanted to alert the police or social services about her, but Y told them not to as she would get into trouble. Although they told her that it was Mrs Omojola who would get into trouble, and not her, Y thought that *she* might get into trouble and be sent to prison. Eventually, though, when Y had realised that she could not take it any more, she packed a bag with her clothes one night, and left the house clandestinely. She thought that she had been living with the Omojolas for about 4 or 5 years. She slept rough for several days, travelling further and further away from Hillingdon, until a Nigerian woman who spoke both Yoruba and English found her sleeping in a telephone box. She took Y to

her home and called the police. Hillingdon's records show that the area she was found in was Elephant and Castle, and that the date the police were called was 11 August 2008. Police records show that she gave 17 February 1993 as her date of birth.

Subsequent events

25. Y was referred by the police to the Social Services Department of the London Borough of Southwark ("Southwark"). Her account to the social worker who interviewed her – as it had been to the police – was broadly consistent with her evidence, though it does not look as if she was then being asked how she knew her date of birth. However, since she had last been living in the Hillingdon area, she was referred by Southwark to Hillingdon within a day or two. By 14 August 2008, the police officer who had interviewed Y was telling Hillingdon that he was "convinced" that Y had been telling the truth about her experiences. She had not been hesitant when questioned, and had made good eye contact. He told Hillingdon that she was very naïve and unworldly, and that when he and Southwark's social worker had taken her to her temporary placement, she had sat there "like a frightened rabbit". Indeed, a placement plan prepared by Hillingdon for Y on 19 August 2008 described her as "lack[ing] in confidence, not street wise and quite naïve". It is fair to say that Hillingdon has never really questioned the truthfulness of Y's account about how she came to this country and her life in domestic servitude. It is accepted, therefore, that she was the victim of trafficking, though the age she claims she is, of course, is not.

26. Hillingdon immediately placed Y with a short-term foster carer, though within a few days the records were recording her date of birth as "17.02.93?", and by the time the placement plan was prepared on 19 August 2008, she was being given a presumed date of birth of 1 January 1993. Having said that, in a report on Y by a chartered educational psychologist dated 28 August 2008, Y was reported as having said on 18 August 2008 that although she had no paperwork proving her age, she had seen "details stating her date of birth as 17 February 1993". The psychologist did not doubt her age in that report. Moreover, the doctor who completed an initial health assessment on Y on 4 September 2008 referred to Y's periods as having arrived "quite young", so that must have been based on her judgment that they had started quite early for someone who claimed to have been born on 17 February 1993. That had not caused the doctor to express any doubts about Y's age. From then on, all Y's case plans and similar documents gave 17 February 1993 as her date of birth.

27. The first time that the possibility of referring Y for an age assessment is to be seen in Hillingdon's records was at a meeting on 8 September 2008 when the question of an age assessment was mentioned. It is unclear why, but it may simply be that where there is no proof of a youngster's age, local authorities routinely commission an age assessment. Such a practice would be entirely understandable given the differences in the level of support provided to those aged under 18 and those aged 18 or over. Indeed, there is nothing in the records which suggest that Hillingdon's decision to do so was prompted by any doubts over Y's claim that she was only 15. Since Y was due to see a dentist, Hillingdon asked him to estimate her age. I shall come to his assessment of her age shortly, but the age which Y claimed she was continued not to be doubted. On 1 December 2008, it was decided to refer Y to the team responsible for children aged 16 or over in February 2009 (when Y would have become 16 on when she said her date of birth was). And on 4 February 2009, Hillingdon wrote an

open letter confirming her date of birth as 17 February 1993 to enable Y's foster carer to open a bank account for her.

The dental assessments of Y's age

28. The dentist who first assessed Y's age from her teeth was Mr Alec Rifkin. It is said that he should not have been asked to make that assessment without Y's consent, but this is not the place to debate that. On 20 October 2008 he wrote to Hillingdon saying that because her upper wisdom teeth had not begun to come through and her lower wisdom teeth had only partially come through, he thought that she "could be between the age of 15½ to 17". He originally wrote "15½ to 17-18", but "-18" had been crossed out. I fear that Hillingdon did not read this letter sufficiently carefully. Mr Rifkin was described as having "indicated that she could not be younger than 15.5 years". Mr Rifkin had not said that. He had said that she *could* be between 15½ to 17, which on my reading of it did not exclude the possibility that she could have been even younger than that. Not that that matters. Even on Hillingdon's reading of his letter, Mr Rifkin's findings were consistent with what Y claimed her age to be, though the weight which I attach to his report is minimal since he appears to be a high street dentist, and it is not suggested that he has any specific expertise in assessing the age of a patient from the state of her teeth.

29. On 16 February 2009, Y was examined by a forensic odontologist, Dr Philip Marsden. He did so on the instructions of the police rather than Hillingdon. This time Y knew that he was examining her to see whether a dental examination could cast light on her age. His methodology and findings were as follows:

> "Dental age estimation in the case of an individual of stated age 16 years 0 months is based on the root development of the wisdom teeth. Tooth root development seems to be little affected by external environmental conditions in comparison to growth and development of the body as a whole. The assessment of this root development is performed using a radiograph (x-ray) of the tooth … [The] radiograph showed that the lower right wisdom tooth was fully developed. There is no difference between the stage of development on right and left sides of the same jaw. I estimated the stage of root development in the widely used Demirjian system to be at stage H. This represents the end stage of development and as such it is not possible to state *when* historically this stage was achieved."

His conclusion based on these findings was that Y

> "… is more likely than not to be over 18 years of age. It would be unlikely that the stated age of 16 years 0 months is correct since the lower wisdom tooth is fully formed, however there *could* be individuals in the population with a completed wisdom tooth at that age. This would NOT however be common. It should be noted that age assessment at this age cannot be precise given the scarcity of age indicators and that there will always be exceptions from the norm. My

> conclusions however are based upon available evidence and are appropriate where the burden of proof is civil, i.e. on the balance of probabilities."

30. However, in addition to the lack of precision when assessing the age of someone who claims to be just 16, Dr Marsden noted that one of the factors which may affect wisdom tooth development is race, and most of the research in the field had involved Caucasians. He added:

> "It has been found that Black Africans show earlier dental development than Caucasians at the earlier stages of tooth formation but that this gap closes for later development (i.e. as the tooth nears completion) so that the difference for the later stages (as in this case) is less significant."

Having said that, he had found some research on black African women which showed that on average they reached stage G on the Demirjian scale at 19.8 years, and some research on black African-American women which showed that an average woman reached stage G at 18.72 years, while other research on black African-American women which he had found showed that there was an 84% probability of them reaching stage H by their 18th birthday. However, there was no published research on the development of wisdom teeth specifically for Nigerians.

31. I do not doubt Dr Marsden's assessment of the degree of the development of Y's wisdom teeth. Nor do Y's advisers, because they did not ask for Dr Marsden to attend the hearing for cross-examination. But I do not believe that I should give his conclusion as to her age in the light of that development disproportionate weight, bearing in mind his own acknowledgement that there will always be exceptions from the norm. Moreover, it looks as if identifying the norm may be difficult. Guidance issued by the Royal College of Paedatrics and Child Health in November 1999 said that

> "… [t]here is not an absolute correlation between dental and physical age of children but estimates of a child's physical age from his or her dental development are accurate to within + or – 2 years for 95% of the population …" (para. 5.6.3, "The Health of Refugee Children: Guidance for Paedatricians")

32. This view was mirrored in a paper issued in May 2007 by the Immigration Law Practitioners Association ("ILPA"), "When is a child not a child? Asylum, age disputes and the process of age assessment", particularly at pp. 31-33. The paper was written by Dr Heaven Crawley, a senior university lecturer and the Director of the Centre for Migration Policy Research. It is apparent that in addition to classifying the various stages in the development of wisdom teeth, the Demerjian system assesses age from their development, and is the method which has gained the widest acceptance. The ILPA paper reports that the Demerjian method of assessing age was not accurate when applied to one particular group, that in another group it produced too wide a bracket to be acceptable for age determination, and that it produced variations between different ethnic groups. The paper referred to other instances of "wide variations in the chronological ages that are associated with different recognised stages of dental development". The upshot was that there was "a widely

accepted margin of error associated with dental age assessment", and such assessments "are widely regarded as being highly unreliable for assessing age". I acknowledge that because Dr Marsden was not required to attend the hearing, I do not know whether he agrees that these papers undermine the weight to be attached to his conclusion, but his own reservations based on his acceptance that there will always be exceptions from the norm lead me to conclude that the weight which I should attach to Dr Marsden's conclusion about Y's age is relatively modest.

Hillingdon's assessment of Y's age

33. Y was interviewed by two of Hillingdon's social workers on 21 and 22 April 2009 for the purpose of assessing her age. Hillingdon has said – in an e-mail to Action for Children on 16 July 2009 – that her age was being assessed because concerns had been expressed about her age in 2008, and in particular that she may have been over 18. I have struggled to find any reference to such concerns in 2008 in the records which I have been provided with. The only reason to doubt the age she claims she was was Dr Marsden's assessment of it, and that was in February 2009. If what was being referred to was the Omojolas' claim to the police that they had seen paperwork stating that Y was 18 years old, I would have discounted that entirely since the Omojolas would have had every incentive to claim that Y was older than she really was. In any event, that could not have been an expression of concern that she was *over* 18. Having said that, I have no reason to doubt that it was Dr Marsden's assessment of Y's age which caused Hillingdon to conduct its own assessment of her age.

34. The social workers who conducted the assessment were Sybil Ferguson and Rachel Lee. They were experienced social workers who had conducted many such assessments, and had been trained both in-house and by the Refugee Council. Since the court is having to assess Y's age for itself, the process by which Ms Ferguson and Ms Lee reached their conclusion about Y's age is less important than it would have been in the past, but it is nevertheless appropriate to take into account their reasons for the conclusion they reached even if it is inappropriate for the court to defer to their views. Only Ms Ferguson gave evidence, and I have considered her evidence with care. I did not have the benefit of a witness statement from Ms Lee.

35. Ms Ferguson and Ms Lee used a dedicated form – Hillingdon's own age assessment form – in the course of their assessment of Y's age. The form had a number of boxes in which information from Y and the assessors' views could be recorded under different headings. But the box under the last heading "Analysis of information gained" is where the assessors set out their reasons for their conclusion that Y was at least 19 years old when they assessed her age, and their decision to give her a presumed date of birth of 17 February 1990. In her witness statement, Ms Ferguson helpfully summarised what she described as the matters which they had taken into account in reaching their conclusion, and which I take to be the principal reasons for their conclusion. They were (i) Y's appearance, demeanour and body language, (ii) Dr Marsden's conclusion that Y was likely to be over 18 years old when he examined her, and (iii) various inconsistencies in the account she gave.

36. As for (i), it is noteworthy that the assessors did not express a view about how old Y looked. For my part, Y looked to me a little older than someone who was just 18 at the time she gave evidence, but I have put that out of my mind, not only because

appearances are very deceptive since people mature at different rates, but also because my experience of how old girls of Y's ethnicity appear is nil. What the assessors did say, though, is that Y struck them as confident, mature and independent. Ms Ferguson qualified that in her witness statement by saying that, as the likely victim of trafficking, Y may have appeared more mature than she actually was. That is, I think, an important and insightful consideration. Her upbringing as someone who was working as an unpaid servant in two households doing the sort of things which an adult nanny or domestic helper would do without having anything approaching a normal childhood could well have caused her to give the impression that she was older than she really was. Moreover, in the eight months or so before Hillingdon's assessment of her age, Y had experienced for the first time the freedom to do as she liked which the majority of us take for granted. She had been going to a language college since the previous September and had met people of her own age. This would have been a very heady time for her. It would not be surprising for her to have, albeit unconsciously, reflected her new found freedom in an exaggerated show of confidence.

37. For my part, I did not detect the confidence or maturity which the assessors spoke of when she gave evidence before me. However, I have again put that to one side: appearing in court would have been quite daunting for her, even though I had given a number of directions designed to make the atmosphere of the courtroom as unintimidating as possible. The experience of being in court could have had the effect of masking her real personality. After all, unlike the time when the assessment was being carried out, Y knew that what she was claiming her age to be had already been disbelieved by two experienced social workers, and she may well have been apprehensive about the outcome of the case.

38. As for (ii), I have already explained why I am not prepared to attach the weight to Dr Marsden's opinion which Ms Ferguson said the assessors did. Indeed, it is a little surprising that Ms Ferguson put Dr Marsden's opinion as one of the three principal reasons for their conclusion, in the light of their acknowledgement in the form they completed that "a dentistry examination will always have a margin of error when estimating age". Moreover, Ms Ferguson acknowledged that she had not read Dr Marsden's report at the time of the assessment, and that she was only going on what she had been told his opinion was. In any event, it is possible that the weight they attached to Dr Marsden's opinion may have been greater than was appropriate, because the form they completed showed that they were under the impression that Mr Rifkin had estimated Y's age as between 15½ and *18*, not 17.

39. The third and by far the most significant of the reasons why Ms Ferguson and Ms Lee disbelieved Y's claim about her age related to the various inconsistencies which Ms Ferguson and Ms Lee thought there were in the account Y gave. Since those inconsistencies, together with Y's evidence on the topics on which it was thought that she had previously given inconsistent accounts, are at the forefront of Hillingdon's case on what Y's true age is, I propose to deal with each of those topics in turn.

40. *(1)* <u>*The age Y claimed to be*</u>. In the form which Ms Ferguson and Ms Lee completed, they acknowledged that when Hillingdon assumed responsibility for Y, she was giving as her date of birth – 17 February 1993 – a date which would have made her 15½ years old at the time. However, they added that Hillingdon's records showed that she was claiming at the time to be only 14 years old. In fact, the only references

in Hillingdon's records to Y having claimed to be 14 was in a document dated 12 September 2008 headed "Transfer Summary" and in Hillingdon's letter of instruction to Mr Rifkin. The contents of the document do not disclose what transfer was being contemplated, and the document did not state what was the source of the information that Y had been claiming to be 14. It is inconsistent with her previous claim that her date of birth had been 17 February 1993, and there is nothing in the records which suggest that Y had ever resiled from that. In my opinion, it is likely that the reference in the document to Y having claimed to be 14 was a mistake, and that that mistake was carried through to the letter to Mr Rifkin. In the circumstances, I discount it entirely.

41. *(2) The age the Shangowawa and Omojola families claimed Y to be*. The form completed by Ms Ferguson and Ms Lee contained the following passage:

> "Records indicate that both families believed her to be over the age of 16 years in 2003. Y has stated that she saw herself as an employee of Mrs Omojola. The police were not able to conclude that any offences had been committed under the terms of the Children Act 1989 as the evidence indicated that she was not under the age of 16 when she started living with the [*sic*] either the Sangawawa [*sic*] family or the Omojola family."

The last sentence does not make sense. On any view, Y was a young child when she went to live with the Shangowawa family, and even on Hillingdon's own case she was less than 16 when she went to live with the Omojola family. I suspect that what Ms Ferguson and Ms Lee intended to say was that the evidence the police had did not indicate that Y was under the age of 16 by the time she left the Omojolas. Even that would not have been correct. The truth is that there was no evidence either way, and the only reason why there were no prosecutions was because the police thought that there was no admissible evidence to prove that Y had been under 16 at a time relevant to any prosecution.

42. In any event, it was not correct to say that the records indicated that *both* families believed Y to be over 16 *in 2003*. Although the records showed that Mr and Mrs Omojola had been interviewed, there was nothing to suggest that the Shangowawas had been interviewed. Indeed, it looks as if they had returned to Nigeria some years before, which was why they had arranged for Y to go to the Omojolas. Moreover, although the Omojolas were reported to have said that they had paperwork stating that Y was 18 years old, there is nothing which suggests that they were saying *when* she had attained the age of 18. Apart from anything else, though, as I said at [33], the Omojolas would have had every incentive to claim that Y was older than she really was. For these reasons, I have discounted entirely what the Shangowawas and the Omojolas are alleged to have said about Y's age.

43. *(3) The ages of the other children*. Y is said to have told Ms Ferguson and Ms Lee two things about the age of two of the children in the Shangowawa and Omojola families which differed from her account in the statement she provided to the Home Office:

> (i) *Ayo*. It will be recalled that Y claims that Ayo was born while she was living with the Shangowawa family. She thinks that she was about 6 or 7 at the

time, and that Ayo would have been 10 or 11 in April 2009. On that basis, Y could well have been 16 at the time of the assessment. However, Ms Ferguson and Ms Lee claimed that Y told them that Ayo had been born when she had been with the Shangowawa family for three years, and that he would have been 11 at the time of their assessment. They reckoned that, assuming that Y had been only 5 when she had been brought to the UK, she would, on what Y told them, have been 8 when Ayo was born, and therefore 19 at the time of the assessment if Ayo was indeed 11 then. That did not square with her claim that she was born on 17 February 1993 and was therefore only 16 at the time of the assessment.

(ii) *Teni*. It will be recalled that Y claims that Teni was only a couple of months old when she went to live with the Omojola family. However, Ms Ferguson and Ms Lee claim that Y told them that she had lived with the Omojola family for 3½ years, and that Teni was 2-2½ years old when she left. Not only were those two assertions inconsistent with each other if Teni had been born by the time Y joined the Omojolas, but according to the form completed by Ms Ferguson and Ms Lee, inquiries have revealed that Teni was born on 2 May 2004, which would have made her 4 years old (not 2-2½ years old) in August 2008 when Y claims to have left the family, and would have meant that she would have been with the Omojolas for 4 years (not 3½ years). Those assertions are not said to be inconsistent with her claim to have been 15 years old when she left the Omojolas, but they were nevertheless inconsistencies in the account she gave at the time her age was being assessed.

44. Understandably, Y does not now recall what she told Ms Ferguson and Ms Lee, though she doubts whether it would have differed significantly from the statement she made a month or so earlier for the Home Office. For her part, Ms Ferguson can only go on the form she completed with Ms Lee, since again understandably she has little recollection now of the detail of what Y told her almost two years previously. It is possible that Ms Ferguson and Ms Lee may not have recorded absolutely accurately what Y told them, but my own reason for being reluctant to place particular weight on the inconsistencies on which Ms Ferguson and Ms Lee relied is that it would have been very difficult for Y, in the light of everything which she had gone through, to be sure about how old she was when particular things happened, and how long a particular state of affairs lasted for. It would not be surprising if her recollection varied at different times, and her recollection on particular topics would not have had to vary all that much for there to have been the inconsistencies which Ms Ferguson and Ms Lee identified.

45. There is one curious feature about the case which I should mention here. It will be recalled that Y claims that the Omojolas' older daughter Dami was aged 3 when she, Y, went to live with them. *If* Y was born in 1993, and *if* she went to the Omojolas when she was about 11, i.e. in 2004, Dami would have been born in 2001. According to the form completed by Ms Ferguson and Ms Lee, inquiries have revealed that Dami (who was born on 28 August 2001) was not a girl, but a boy, Damilola. Curiously enough, that inconsistency was not referred to by Ms Ferguson and Ms Lee in that part of the form where they compared Y's accounts with what the inquiries had revealed. They preferred to say that the "most evident" instance of Y's account being "inconsistent and contradictory" with what their inquiries had revealed was "her account of the ages of the children in the Omojola family". Even the use of the plural

– "children" – was not correct. It was only the age of the younger daughter, not the age of Dami, which Ms Ferguson and Ms Lee referred to as being inconsistent with Y's account of how long she had been with the Omojolas.

46. Mr Andrew Sharland for Hillingdon made a couple of other points here. For example, the form completed by Ms Ferguson and Ms Lee recorded Y as having told them that she thought that she was the same age as Dolapo because they were roughly the same height even if Dolapo had been a bit taller than her. The point is that height is not a particularly reliable indicator of age, and it may have been the case that Y was a year or two older than Dolapo, which could well have made Y a year or two older than she thinks she was. But that works both ways: it may equally have been the case that Y was a year or two younger than Dolapo. In any event, the doubts cast over the age which Y claims to be are not dependent on her age relative to Dolapo, but on her age relative to Ayo and Teni.

47. There is, of course, the point that it would be very surprising for Mrs Shangowawa to have left Ayo, and for Mrs Omojola to have left Teni and later Ayokumi, to be looked after by someone as young as Y when they were at work. That may be so in our culture, but there has been no evidence about the practice amongst Nigerians living in this country, and in any event like Ms Ferguson and Ms Lee I have not doubted that aspect of Y's account. I accept, of course, that if Y was 3 years older at the time than she claims she was, that might have made the responsibility which was thrust on her less surprising, and that is a factor I have borne in mind in determining whether she is older than she claims.

48. *(4) The cake-decorating course*. Ms Ferguson and Ms Lee were sceptical about a number of features of Y's account of this course. Maybe their sceptism was to do with the fact that they described her as having attended "adult education classes". They had been advised that documentation establishing Y's age (she had to have been over 16 to attend adult education classes) and her immigration status would have had to be provided. They were concerned about how she could have managed with the course bearing in mind that her reading skills on her own admission were limited at the time. They were surprised that the other people on the course had not questioned why she had been there. And since Y had told them that Mrs Omojola had sometimes taken her to her classes, but that she had had to make her own way home, they were surprised that someone who claimed that she had never been allowed out before could make that journey, involving as it did one or two bus rides.

49. In my opinion, it *is* surprising that Y was allowed to make the journey home by herself, and that she was able to do so, but apart from possibly undermining her credibility, it is difficult to see how this makes much of a difference to what her age is. The fact of the matter is that Y was accepted onto the course. There is nothing to suggest that any documentation about Y's age or immigration status was in fact provided, and it looks as if the college enrolled her on the course on the basis of the form completed by Mrs Omojola. Indeed, inquiries by a social worker instructed by Y's solicitors to assess her age revealed that since the course was a non-accredited one, confirmation of Y's age would not have been required. There is no reason to doubt Y's claim that even if she could not read the ingredients, the tutor was there to tell the class what to do, or that there were people on the course who questioned her age. Unlike Ms Ferguson and Ms Lee, Y's account of her experience on the course does not cause me to doubt her claim about her age.

50. *(5) Y's independence*. Ms Ferguson and Ms Lee thought that Y was unusually independent for someone of the age she claimed to be with her history of being held in domestic servitude. They would have expected her to be shy and apprehensive about other people, particularly adults. The way she spoke about herself and how she looked after the Shangowawa and Omojola children while they were in her care were not that of someone who had been sheltered from the outside world. Indeed, Y was reported to have been very independent in her foster placement: Ms Ferguson and Ms Lee described her as being "very vocal" and advocating for young people in foster placement. Ms Ferguson and Ms Lee referred to three things in particular: (i) Y's ability "to navigate public transport in Central London as easily as Y did" so as to end up in South London, (ii) her claim to have forgotten the address at which she had lived with the Omojolas, and (iii) her claim never to have left "the house". (i) was cited as an example of Y's independence, and (ii) and (iii) were given, I assume, as examples of her untruthful attempts to downplay her independence.

51. I have not found any of this particularly compelling. As I have said, the fact that Y was held in domestic servitude for much of her childhood is not really challenged by Hillingdon, and the level of her independence is therefore relevant only to whether it is consistent with her being as young as she claims to have been. I dealt with that at [36] above. As for the three things which Ms Ferguson and Ms Lee referred to in particular, I do not understand (i) at all. The account she gave them of how she ended up in the Elephant and Castle shows anything but an ability to navigate the public transport system. As for (ii), Y claims – and there is no reason to doubt it – that when she was first interviewed by the police she gave them the Omojolas' address, though she had forgotten it by the time of the assessment eight months later. As for (iii), Y *is* recorded in the form completed by Ms Ferguson and Ms Lee as not having left "the house" save when she was taken to church, but it is plain that at that stage in the interview she was being asked about her time with the Shangowawas in Wembley. She was not being asked about her time with the Omojolas, during which she says that she would have taken Dami to nursery and collected her from there. In short, I have not found any of these features of Y's account to undermine her evidence about her age.

52. *(6) The diary*. Y's evidence about the entry in the diary is by far the most important evidence in the case. If she read what she claims to have read, and if the entry in the diary related to her, and if the date she saw referred to her date of birth, and if the person who made the entry knew what Y's date of birth was, her true age will have been established. Of course, Y relies on the entry "as evidence of the matters stated" in it within the meaning of rule 33.1(b) of the Civil Procedure Rules, and her evidence is therefore hearsay. No notice of an intention to rely on hearsay evidence was served, and although that does not make her evidence inadmissible, it can affect the weight to be attached to it. As it is, I attach no less weight to it than I would have attached to it if a hearsay notice had been served, because there are no other steps which Hillingdon would have taken had such a notice been served. I can infer that the entry was made by Mrs Shangowawa, and although anything she says must be treated with caution (because she has convictions for deception and on Y's case lied to her about her real age), there is no reason to suppose that she would have made false entries in her diary. A possible problem is that the source of her knowledge of Y's true name and date of birth is unknown, but since Y says that it was Mrs Shangowawa who brought her to the UK, it is likely, I think, that Mrs Shangowawa

was given Y's real name and date of birth by Y's own family who "sold" her to Mrs Shangowawa or by an intermediary with knowledge of Y's real name and date of birth.

53. I can also infer that, *if* Y read what she claims to have read, and *if* Mrs Shangowawa had told her previously that her birthday was 17 February, the entry in the diary must have related to her, and the date she saw must have been her date of birth. It would have been too much of a coincidence for an entry about someone named Y with the date 17 February 1993 next to it to relate to someone other than Y when (a) she had always been known as Wande and (b) she had been told that her birthday was 17 February. So it all turns on whether Mrs Shangowawa had previously told Y that her birthday was 17 February, and whether the entry in the diary was as Y claims it was.

54. Y's account of how she came to read the entry in the diary differs from what she told Ms Ferguson and Ms Lee as recorded in the form they completed in a number of respects. She did not tell them that Mrs Shangowawa had asked her to get the diary for her. They say that on the first day of interviewing her, Y told them that she had "found" the diary in Mrs Shangowawa's bedroom, and that she had read the entry in it quickly because she had not wanted Mrs Shangowawa to catch her with it. It was only on the second day of being interviewed that she had added that Mrs Shangowawa had seen her with the diary, and had told her not to say anything about it. And as for how she realised that the entry related to her, she said only that "Wande" was the name she had read in the diary. She said nothing about Mrs Shangowawa having previously told her that 17 February was her birthday. It was (a) the differences between the account she gave on the first day of interviews and the account she gave on the second, (b) scepticism about whether Y would have had the reading skills at the time to read her name and the date next to it, and (c) Y's apparent inability to explain why she thought that the entry in the diary related to her which combined to cause Ms Ferguson and Ms Lee to doubt Y's account.

55. There are some other points which Mr Sharland added to the mix:

(i) In the statement Y provided to the Home Office, she described what she had seen on the bed as "a page", whereas in her evidence she described it as a book.

(ii) In that statement, she said that the entry included her name, her date of birth *and* her age, whereas in her evidence she said that it consisted only of her name and date of birth.

(iii) When Y was asked on the first day of the interviews how she knew her date of birth, her initial response related to a comparison of her age with that of Dolapo based on their respective heights, rather than to what she had seen in the diary.

(iv) When the notes which Ms Ferguson and Ms Lee had made of what Y had said were read back to her, Y had not corrected them by saying how it had come about that she had seen the entry in the diary, or by telling Ms Ferguson and Ms Lee that the name she had read in the diary was "Y", not "Wande", and that the date 17 February 1993 meant something to her because Mrs Shangowawa had previously told her that 17 February was her birthday. Nor did she dispute the

accuracy of the notes in a subsequent witness statement she made in November 2010.

(v) The fact that Mrs Shangowawa had previously told her on some of her birthdays how old Y was was not something she had said either in the statement she provided to the Home Office or when interviewed by Ms Ferguson and Ms Lee. She had said it for the first time in her oral evidence in court.

(vi) On Y's account, it was entirely coincidental that when she saw the diary it happened to be open at the very page on which her name and date of birth were.

56. Some of these points are more compelling than others, but I place little weight on the differences between (a) her account in the statement she provided for the Home Office and in her evidence and (b) what she told Ms Ferguson and Ms Lee. People of Y's approximate age – especially someone with her background – can often be imprecise when it comes to detail, and they sometimes need to be questioned very closely for the detail to come out correctly. Moreover, how Y realised that the entry in the diary related to her was not entirely straightforward to explain, especially when it came to the significance of Mrs Shangowawa having previously told her what her birthday was. I can understand why she forgot to mention that to Ms Ferguson and Ms Lee, even though it had been in the statement she had provided for the Home Office.

57. Similarly, I attach little weight to variations in her use of language. For example, she could well have talked in the statement she provided for the Home Office of having seen "a page" rather than a diary, because it was on a page in the diary that she had seen the entry. In any event, later on in that statement she had referred to the diary itself. Again, it would have been natural for her to say in that statement that the entry in the diary included her age, if what she was trying to get across was that what she assumed was her date of birth told her what her age was. Again, she could well have told Ms Ferguson and Ms Lee that she had seen "Wande" in the diary, because what she was trying to get across was that she believed that the entry in the diary related to her.

58. As for the other points, Y could well have talked of her age in relation to Dolapo because she thought she was being asked how old she thought she was, rather than how she knew what her date of birth was. Nor do I think it surprising that Y did not previously mention that Mrs Shangowawa had told her on some of her birthdays how old she was. Once Y had seen what she assumed was her date of birth, the fact that she had been led to believe by Mrs Shangowawa that she was a couple of years older than she really was was irrelevant to what her real age was. Nor do I think it significant that Y did not correct what she now says were errors in Ms Ferguson's and Ms Lee's notes when they were read back to her or in her subsequent witness statement. It would have been easy for her to miss those errors in circumstances when she would have been entitled to assume that they had recorded accurately what she had said, and what should have been included in her subsequent witness statement was really a matter for her solicitors.

59. The two matters which I have regarded as of some potential significance are whether Y had been able to read sufficiently well at the time to be able to read her name and the date next to it, and the fact that the diary was by chance open at the relevant page.

As for her reading skills, it looks as if Ms Ferguson and Ms Lee thought that they were better than Y was claiming them to be. They appeared, from their comments in the box headed "Education", to have thought that her reading had progressed beyond the two letter words which she had previously said she had been able to read. They reported Y's acceptance that she was reading the sort of books which Dolapo had been reading when aged 10 or 11, and they noted that Y had not appeared to experience problems spelling the names of the Shangowawa and Omojola families. People who are less than fully literate tend to be able to recognise their own names and have little difficulty with numbers. So even if Y's reading skills had been well below that of a normal 11 year old, it is likely, I think, that she would have recognised the letters which make up "Wande", which is what Ms Ferguson's notes of the interview record Y as having said, that she would have noticed the prefix "Ye-", and that she would have recognised the numbers which made up the date she says she saw.

60. The fact that on Y's account the diary was by chance open at the relevant page is a coincidence which cannot be glossed over. On the other hand, coincidences do happen, though I am not prepared to discount the possibility that leaving the diary open at that page and asking Y to get it for her may have been Mrs Shangowawa's way of letting Y know who she was and when she was born. I understand entirely that Mrs Shangowawa could, potentially at least, have been laying herself open to prosecution, but it is noteworthy that it was shortly after that that Y went to live with the Omojolas. Mrs Shangowawa may well have wanted Y to know the truth about herself before Mrs Shangowawa and her family returned to Nigeria, where they would no longer be at risk of criticism about the way Y had been treated.

61. There is one other matter. It will be recalled that when Mrs Omojola completed Y's application form for the cake-decorating course, she gave the same surname for Y as Y claims to have seen in the diary and her date of birth as 17 February 1988. Y was never asked if she had told Mrs Omojola what she claims she had discovered her surname to be and what she claims she had been told her birthday was. If she had, there are two possible scenarios. One is that she made up both her surname and her birthday randomly, and gave them to Mrs Omojola. The other is that Mrs Shangowawa had indeed told Y her birthday, and that Mrs Shangowawa had either told Y her surname or Y had read it in the diary. Of these two scenarios, the latter is the more likely. On the other hand, if Y had not told Mrs Omojola what she claims she had discovered her surname to be and what she claims to have been told her birthday was, Mrs Omojola must have got that information from Mrs Shangowawa. There is no reason to suppose that Mrs Shangowawa would have lied to Mrs Omojola about that, and that would be powerful support for Y's account of what Mrs Shangowawa told her what her birthday was and about what she claims she read in the diary. However, the matter cannot be taken further because Y was not asked what, if anything, she had told Mrs Omojola about her surname or her birthday.

62. Having said that, Y's evidence about the entry in the diary hangs together, it has the ring of plausibility about it, and it has not in my opinion been undermined by any of the other evidence. It is noteworthy that she told the police that her date of birth was 17 February 1993, and that within a week of the police being called about her, she was telling Hillingdon that she had seen "details stating her date of birth as 17 February 1993". I am as sure as I can be that Mrs Shangowawa did indeed tell her

that her birthday was 17 February, and that Y saw the entry in the diary which she claims to have seen.

The other evidence

63. I have not regarded the other evidence called on behalf of Y as helping on the critical issue of Y's age. Factual evidence came from Helen Roberts, who taught Y in the year she spent at the language college she attended and who subsequently befriended her, and from Anna O'Brien, who was Y's personal tutor at the college Y went to in September 2009 to study childcare. They spoke of her personal qualities and the level of her maturity, but I did not think that their evidence could cast any real light when it came to Y's age. Other evidence came from Rose Palmer, a social worker with extensive experience of conducting age assessments of youngsters, who with another social worker with similar experience was instructed by Y's solicitors to assess her age. Ms Palmer and her colleague interviewed Y for that purpose on 23 January 2011. They concluded that she was likely to be the age she claimed to be, though I note that their report does not contain the usual declaration which experts' reports are supposed to have, and Ms Palmer herself thought that her primary obligation was to Y on whose behalf she had been instructed. In the end, I have not found it necessary to rely on Ms Palmer's evidence, because the rest of the evidence in the case has persuaded me, for the reasons I have already given, that Y was 15 years old when she was first referred to Hillingdon in August 2008, having been born on 17 February 1993.

Relief

64. For these reasons, I give Y permission to proceed with her claim challenging Hillingdon's assessment of her age, I quash Hillingdon's decision that Y was at least 19 years old when Ms Ferguson and Ms Lee assessed her age, and I declare that she was 16 years old then, having been born on 17 February 1993. Other relief is sought in the detailed statement of grounds attached to the claim form in the light of that finding: declarations that (a) Y is a child in need and as such is entitled to support from Hillingdon under sections 17 and 20 of the 1989 Act, and (b) Hillingdon acted unlawfully by withholding support and accommodation for her following its assessment of her age, and orders requiring Hillingdon (a) to carry out a lawful assessment of her needs in accordance with the 1989 Act and the Framework for the Assessment of Children in Need and their Families issued by the Department of Health, (b) to produce a realistic and operational care plan to meet such needs as such an assessment of her needs has identified, and (c) in the meantime to provide such support and accommodation for Y as is suitable for her. I was not addressed on any of this, and it will, of course, have to be modified as, even on Y's own case, she has attained the age of 18 since these proceedings were issued. I imagine that it will be possible for Y's solicitors and Hillingdon to agree whether it is appropriate for any such declarations or orders to be made, and I leave it to them to notify the Administrative Court Office within 28 days of the handing down of this judgment if any consent order needs to be made, or in the unlikely event of any dispute, if a further hearing to resolve the issues on relief is required.

Other claims

65. The dispute over Y's age deflected everyone's attention from two other claims made on Y's behalf. They are that (a) Hillingdon failed to refer Y's case to the UK Human Trafficking Centre ("the UKHTC") for her to be assessed whether she had been the victim of trafficking, and (b) Hillingdon's failure to make that referral, together with its decisions to dispute what Y claimed to be her age and to terminate the support and accommodation appropriate for someone under the age of 18 as a consequence of its decision that she had reached the age of 18, amounted to a disproportionate and unjustified interference with her right under Art. 8 to respect for her private life.

66. *The failure to refer*. Art. 10 of the Trafficking Convention adopted by the Council of Europe on 3 May 2005 (which was ratified by the UK on 17 December 2008) required Member States to appoint a competent authority to identify and help such victims of trafficking as may be referred to it. With effect from 1 April 2009, the UK Border Agency ("the UKBA") and the UKHTC were named as the competent authorities for that purpose, which is why the UKHTC was named in the claim form as an interested party. However, although presumably served with the claim form by Y's solicitors, the UKHTC did not file an Acknowledgement of Service and has taken no part in the proceedings. It is common ground that Hillingdon did not refer Y's case to the UKHTC for her to be assessed as to whether she had been the victim of trafficking.

67. There are three reasons why I have decided to refuse Y permission to proceed with her claim relating to Hillingdon's failure to refer her case to the UKHTC. First, the claim has become academic as the only relief sought for Hillingdon's failure to refer her case to the UKHTC is an order requiring Hillingdon to refer her case to the UKHTC. Since the commencement of these proceedings, her case *has* been referred to one or other of the competent authorities for an assessment whether or not she has been the victim of trafficking. That is apparent from the UKBA's letter to Y of 21 January 2011 which referred to the fact that her case had been refered to one of the competent authorities, and it had concluded that there were reasonable grounds to believe that she had been trafficked.

68. Secondly, there was in any event no need for such a reference to be made by Hillingdon, since Hillingdon had never doubted that Y had been the victim of trafficking. Hillingdon's doubts related only to her age. To that extent, the author of the report on Y dated 30 November 2009 prepared by Christine Beddoe, the Director of ECPAT UK (ECPAT standing for End Child Prostitution, Pornography and Trafficking) who Y's solicitors commissioned to report on whether Y had been the victim of trafficking, and who thought that Hillingdon had concluded that Y had not been the victim of trafficking, was wrong. It may be that a reference to the UKHTC could have been made by Hillingdon so that they could get advice from the UKHTC about how best to help Y as a victim of trafficking, but Hillingdon's failure to do that is not the criticism levelled at Hillingdon.

69. Thirdly, Ms Shu Shin Luh for Y has not been able to identify the legal duty which Hillingdon failed to comply with when it did not refer Y's case to the UKHTC. Ms Luh contended that the duty was encompassed within the duty imposed on local authorities looking after any child by section 22(3)(a) of the 1989 Act "to safeguard and promote [the child's] welfare" when read in conjunction with sections 10 and 11

of the 1989 Act. I do not understand this contention at all. Section 10(1)(c) of the 1989 Act required Hillingdon to make arrangements to promote co-operation between it and "such other persons or bodies as [Hillingdon] consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in [Hillingdon's] area". Section 11(2)(a) required Hillingdon to "make arrangements for ensuring that [its] functions are discharged having regard to the need to safeguard and promote the welfare of children". The duty on Hillingdon to make the sort of arrangements envisaged by section 10(1)(c) is a duty to provide a framework within which the co-operation between Hillingdon and various bodies can be promoted. That is very far from a duty to refer individual cases to one of the competent authorities under the Trafficking Convention. Similarly, the duty on Hillingdon to make the sort of arrangements envisaged by section 11(2)(a) is a duty to provide a framework within which the need to safeguard and promote the welfare of children will be taken into account when discharging its functions. That is also very far from a duty to refer individual cases to one of the competent authorities under the Trafficking Convention.

70. *The breach of Art. 8*. This ground was not developed at all in the grounds attached to the claim form or in Ms Luh's skeleton argument, nor has any relief been sought. It was developed only in written submissions sent to the court after the conclusion of the hearing, at which I had said that both I and Hillingdon needed to know how this aspect of the claim was being put. Even then, the written submissions did not identify what relief was being sought on this part of the claim. I assume that it is simply a declaration that Y's rights under Art. 8 to respect for her private life have been infringed. Since I have refused permission for Y to challenge Hillingdon's failure to refer her case to the UKHTC, it cannot be said that the absence of such a referral infringed her Art. 8 rights. The argument therefore is that Hillingdon's decision to assess her age and the decision made on that assessment that she was at least 19 at the time of the assessment infringed her Art. 8 rights because those decisions combined together to deny her the support and accommodation appropriate to her real age.

71. I deal first with Hillingdon's decision to assess Y's age. The argument here is that there was no sensible basis for Hillingdon to have doubted Y's age, and there was therefore no lawful justification for proceeding to an assessment of her age. I do not agree. All that Hillingdon had to go on was Y's account of how she knew her age, and although I have accepted that account to be correct, I could only do so following a careful and rigorous judicial process. As I said at [27] above, it may be that where there is no proof of a youngster's age, the invariable practice of local authorities is to commission an age assessment. In any event, in Y's case, there was Dr Marsden's opinion. Although I have concluded that I should attach only relatively modest weight to his conclusion about Y's age, it is quite impossible to say that there was no basis for Hillingdon to have proceeded to a proper age assessment.

72. I turn to the assessment itself. The argument here is that the conclusion which Ms Ferguson and Ms Lee reached about Y's age "did not found itself properly on the evidence and information collected in the course of the assessment and in the existing social services records". I am not sure what this means. Is it being said that they took into account matters which they should not have taken into account? Or is it being said that the materials which they had did not justify the conclusion they

reached? Either way, the argument amounts to a contention that if the assessment had been challenged on conventional judicial review grounds, such a challenge would have succeeded. The grounds which are advanced for that proposition are the inappropriate use which Ms Ferguson and Ms Lee made of what Mrs Shangowawa and Mrs Omojola were said to have claimed (see [41]-[42] above), how Y was said to have behaved when in foster care (see [50] above) when there had not been anything about that in Hillingdon's records, and the reasons they gave for regarding Y's account of what she claims she saw in the diary inconsistent and unconvincing. I see the force of some of those points for the reasons I have already given, but they do not begin to mean that the process overall was so flawed that a challenge to the assessment on conventional judicial review grounds would have succeeded. In the circumstances, I refuse Y permission to proceed with her claim that her rights under Art. 8 have been infringed.

Costs and permission to appeal

73. I wish to spare the parties the trouble and expense of attending court when this judgment is handed down. At present, I see no reason why Hillingdon should not pay Y's costs of that part of her claim which challenged Hillingdon's assessment of her age, to be the subject of a detailed assessment if not agreed, with no order for Hillingdon's costs of the other aspects of her claim, because there is little point in ordering Y to pay them. If either Hillingdon or Y wish me to make some other order for costs, their solicitors should notify my clerk of that within 14 days of the handing down of this judgment, and I will make such order for costs as I think is appropriate without a hearing on the basis of such written representations as are made. If Hillingdon wishes to apply for permission to appeal against my decision about Y's real age, its solicitors should notify my clerk of that within 7 days of the handing down of this judgment, and I will consider that application as well without a hearing. However, Hillingdon's time for filing an appellant's notice will still be 21 days from the handing down of this judgment. If Y wishes to apply for permission to appeal against the refusal to permit her to proceed with her other claims, she must apply to the Court of Appeal for permission in accordance with rules 52.15(1) and 15(2) of the Civil Procedure Rules.