Neutral Citation Number: [2025] EWCA Civ 136

Case No: CA-2024-000221

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)
UPPER TRIBUNAL JUDGE BLUNDELL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 February 2025

Before :

LADY JUSTICE KING
LORD JUSTICE SINGH
and
LORD JUSTICE ARNOLD

- -

Between :

THE KING (on the application of AI)	**Appellant**
- and -	
WEST BERKSHIRE COUNCIL	**Respondent**

- -
- -

David Gardner (instructed by **Bhatia Best Solicitors**) for the **Appellant**
Andrew Lane (instructed by **West Berkshire Council Legal and Democratic Services**) for the **Respondent**

Hearing date: 4 February 2025

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Approved Judgment

This judgment was handed down remotely at 10 a.m. on 18 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Singh:

Introduction

1. The issue on this appeal is whether the Upper Tribunal (Immigration and Asylum Chamber) ("UT") failed to give adequate reasons for accepting an age assessment made by West Berkshire Council ("the Respondent") in respect of AI ("the Appellant"). That assessment adopted the date of birth assigned to the Appellant by the Home Office on arrival in the United Kingdom ("UK"): 20 April 1998. Before the UT the Appellant contended that his true date of birth was 4 August 2004, and that he should therefore have been treated as a child (that is a person under the age of 18) at the relevant time. The reason why this was an issue that concerned the Respondent is that it is the relevant local authority which would have owed certain duties to the Appellant if he was a child when he was referred to it.

2. By an order sealed on 8 January 2024, UT Judge Blundell ("the Judge") refused the Appellant's claim for judicial review and made a declaration that the Appellant "was, at the time of the Respondent's assessment of him, and, is an adult, with an allocated date of birth of 20th April 1998."

3. Permission to appeal to this Court was granted by Asplin LJ on 25 June 2024. In granting permission she invited the parties to consider the question whether this appeal had become academic. Although, on any view, the Appellant is now over the age of 18, it is clear that, for the reasons explained in para 12 below, the appeal is not academic in so far as it concerns the question whether the Appellant was an adult at the relevant date. It is less obvious that, if the Appellant was an adult then, the precise date of birth ascribed to him matters. Mr David Gardner contends that this aspect of the appeal is not academic, because the UT made a declaration as to his date of birth which will continue to affect him in many tangible and intangible ways. At the hearing before this Court it was accepted by Mr Andrew Lane, who appeared on behalf of the Respondent, that, although the declaration made by the UT is strictly speaking binding only as between the parties to these proceedings, it could in practice continue to have an impact on the Appellant, and so this Court was not invited by Mr Lane to dismiss this part of the appeal simply on the ground that it has become academic.

Factual background

4. The Appellant is a Sudanese national who arrived in the UK in October 2021 and claimed asylum. He had attempted to cross the English Channel in a "small boat", which was rescued by the British authorities. His claim was based on threats to his safety in Darfur posed by the Janjaweed militia, who had allegedly killed his father and kidnapped his brother. The Appellant was granted asylum on 28 October 2023 (between the first date of the hearing before the UT and the second, part-heard date). The Appellant was informed on 8 November 2024.

5. On his arrival in the UK, the Home Office assigned the Appellant the date of birth of 20 April 1998. He was placed in adult accommodation as a result. On 28 October 2021 he claimed to Care4Calais that his date of birth was 4 August 2004 (which

would have meant that he was 17 at that time), and Care4Calais notified the Respondent's children's services department on 1 November 2021.

6. The Respondent undertook an age assessment over five meetings at the Appellant's supported lodgings in November and December 2021. The assessment was carried out by Ms Bolton, a senior social worker, and Ms Davis, a family support worker. The meetings were also attended by a Sudanese Arabic interpreter and an appropriate adult.

7. The assessment concluded that the Appellant was likely to be in the age range of 20-24 years, with his most likely age being 23 years. The Respondent was not convinced by the Appellant's account, and instead adopted the 20 April 1998 date of birth assigned to him by the Home Office. This was communicated to the Appellant on 16 December 2021, and he was relocated by the Home Office on the same day. The assessment was set out in a lengthy document which was before both the UT and this Court.

8. These proceedings for judicial review were commenced in the High Court (the Administrative Court) on 31 May 2022. The formal subject of the claim for judicial review, as set out in section 3 of the claim form, was a letter of 14 April 2022, in which the Respondent declined to change its age assessment of the Appellant in the light of further information that had been sent on his behalf. Permission to bring the claim was granted by Dexter Dias KC, sitting as a deputy High Court judge, on 26 July 2022, and, in accordance with normal practice in age-assessment cases, the proceedings were transferred to the UT for a fact-finding hearing to take place.

The judgment of the Upper Tribunal

9. The Judge set out the background to this case at paras 6-12 of his judgment. At para 8, the Judge noted that the Appellant had been treated by the Home Office as having the date of birth of 20 April 1998 but observed that: "It is not clear why that date of birth was assigned to him …".

10. The Judge described the age assessment process undertaken by the Respondent at paras 13-24. He summarised the Appellant's case at paras 25-37. He noted that he had heard oral evidence from only two live witnesses: the Appellant and Ms Lily Stephenson, who was a witness in support of his application.

11. The Judge summarised the parties' submissions at paras 38-60. He had a skeleton argument on behalf of the Appellant from Ms Georgina Rea and from Mr Lane for the Respondent. Oral submissions for the Appellant were made by Mr Michael Bimmler and by Mr Lane for the Respondent.

12. The Judge set out the legal framework at paras 61-64. He noted that Part III of the Children Act 1989 ("the 1989 Act") imposes a range of duties on local authorities in respect of children within their area who are in need. Section 17, for example, obliges local authorities to safeguard and promote the welfare of such children and to provide a range and level of services appropriate to their needs. Section 20(1) requires that every local authority shall provide accommodation for any child in need in their area.

By section 23C, a local authority may continue to be obliged to perform certain functions in respect of a "former relevant child" (or a person who should be treated as such) even after the individual has attained the age of 18. The Judge noted that, by section 105(1) of the 1989 Act, "child" means a person under the age of 18.

13. The Judge correctly directed himself, in accordance with the decision of the Supreme Court in *R (A) v London Borough of Croydon* [2009] UKSC 8; [2009] 1 WLR 2557, that the question whether a person is a child in this context is one of precedent or jurisdictional fact and therefore must be determined by the courts or tribunal itself. In this regard, the position is different from the normal one in judicial review proceedings, where it is not normally the function of the court or tribunal to find facts for itself but is rather to assess whether the decision-making body was reasonably entitled to reach a factual finding on the material before it.

14. The Judge also correctly directed himself that the task of the court or tribunal is "inquisitorial" and that it is inappropriate to speak in terms of a "burden" of establishing the precedent or jurisdictional fact: see *R (CJ) v Cardiff City Council* [2011] EWCA Civ 1590; [2012] PTSR 1235, at para 23 (Pitchford LJ). The Judge also reminded himself that a "sympathetic assessment of the evidence" is appropriate.

15. The Judge set out his analysis of this case at paras 65-110. The Judge found the evidence of the Appellant to be "thoroughly unreliable in material respects": see para 65. He reached this conclusion even after bearing in mind that the Appellant is, on any view, a young person who is now accepted by the Home Office to be a refugee and taking into account his vulnerability.

16. The Judge analysed in detail various aspects of the evidence before him which went to support that conclusion as to the Appellant's credibility. This included his consideration of the question whether the Appellant had been to school, the degree to which he was familiar with Sudanese Arabic, and whether a Facebook account which appeared to be in his name had in fact been created by someone called Mohammed. The Judge considered at some length the question whether discrepancies in the Appellant's accounts could be explained by the fact that there had been errors of translation but concluded that they could not.

17. The Judge accepted in part criticisms which were made on behalf of the Appellant about the assessment process conducted by the Respondent. For example, at para 105, he accepted that the assessment was "heavily, and unduly influenced, by the assessors' view of the applicant's physical appearance." He accepted, therefore, at para 106, that there were "proper reasons for attaching more limited weight to the age assessment undertaken by the local authority."

18. At paras 107-110, the Judge set out his conclusions as follows:

> "107. This is not, therefore, the paradigm case in which there is a watertight assessment by a local authority to which I can properly attach significant weight. The assessment is not fully *Merton* compliant [a reference to the decision of the High Court in *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin); [2003] 4 All ER 280] and there are proper bases upon

> which to impugn its conclusions. I must therefore draw my own conclusion based on the evidence before me.
>
> 108. In my judgment, the most significant aspect of that evidence is the applicant's general credibility. That cannot be determinative of his age … but I do not accept that the applicant has given a reliable account of how he knows his age. As we have seen, there was a discrepancy over whether the applicant stated that he was told his age by his uncle or his mother and I have not accepted that interpretation was to blame for that discrepancy.
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> 109. For reasons I have also explained at some length above, I consider the applicant also to have lied about his schooling and the means by which he came to the UK. He has been anxious throughout this process to disguise and mispresent the truth in various respects, including his ability to use Facebook when he first arrived in the UK. Whilst I bear in mind that young people might lie for reasons unrelated to their age, I come to the clear conclusion that that is not the case here. Even though I have taken account of the applicant's vulnerability and have borne in mind that the benefit of the doubt is always to be given to the UASC [Unaccompanied Asylum Seeking Child], I consider that the applicant has deliberately sought to mislead in relation to his age and other matters which shed light on that question.
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> 110. In my judgment, the applicant sought to disguise matters which pointed to his being an adult at the time of the assessment. I am wholly unable to rely on his account for the reasons that I have given. I find that he was an adult when he arrived in the United Kingdom. His claimed date of birth is a falsehood and I find on the balance of probabilities that his date of birth is as attributed to him by the Home Office and the respondent council: 20 April 1998."

The Appellant's submissions

19. The Appellant's sole ground of appeal is that the Judge failed to give reasons for finding that (a) the Appellant was an adult when he arrived in the UK and (b) the Appellant's date of birth was 20 April 1998. Mr Gardner submits that, while the Judge gave detailed reasons for finding against the credibility of the Appellant's evidence, he gave no adequate reasons for accepting the Respondent's case as to his age. The crux of his submission is that the Judge was not limited to the two propositions put forward by the Appellant and the Respondent, and that separate reasons had to be given for accepting the date of birth assigned to the Appellant by the Home Office and accepted by the Respondent, because the Judge decided the Appellant's date of birth for himself and made a declaration accordingly. Mr Gardner argues that, even if the Judge gave adequate reasons for concluding that the Appellant

was an adult when he entered the UK, he gave no reasons for finding that he was born on 20 April 1998.

20. On this point the Appellant relies on *MC v Liverpool City Council* [2010] EWHC 2211 (Admin), at para 5, where Langstaff J said that "[i]t is not in reality choosing between one of two alternatives, one or the other of which must represent the fact. A person's age, if it is to be assessed, can fall within a range". The Appellant also relies on *R (F and Ors) v London Borough of Lewisham* [2009] EWHC 3542 (Admin); [2010] 1 FLR 1463, at para 9, where Holman J said that:

> "once the court is required to engage on determination of whether the person was on the relevant date a child, it must and should go on to make its own determination (binding as between the claimant and the local authority in point) as to actual age or date of birth."

21. I would enter a note of caution because it seems to me that that passage needs to be read in its proper context. The hearing before Holman J in *F & Ors* was for the setting of directions in a number of cases in the light of the judgment of the Supreme Court in *R (A) v London Borough of Croydon*. At paras 6-11, Holman J considered what the issue was in the cases before him. He summarised the submission made on behalf of the local authorities as follows:

> "6. … They accordingly submit that in any judicial review the court should go no further than to determine whether or not, on the relevant date (which is normally the date when the person first seeks the provision of accommodation or services) the person was a child, and perhaps whether or not at the date of hearing he still is a child. If the court determines that even on the relevant date the person was not a child but, rather, that at all material times he was adult, then it may very well be that there is no purpose or need to give further consideration to actual age. These cases do not involve some abstract determination and declaration as to age. If at all material times the person was already adult, then the range of duties under the Children Act 1989 are not in point at all and that, arguably, is the end of the matter."

22. In contrast, Holman J noted at para 7, the advocates on behalf of the various claimants submitted as follows:

> "7. The advocates on behalf of the various claimants have, however, strongly submitted that if the court concludes, as a matter of fact, that on the relevant date the person concerned was a child, then it will inevitably be necessary in almost any case (and certainly in all these cases) to go on to determine, as best the court can, on a balance of probability, on such

> evidence as is available, the actual age (or which comes to the same thing, a date of birth) of the claimant. The reason for that submission is that if it is determined that the claimant was still a child on the relevant date, so that the local authority were under a duty, or were potentially under a duty, to provide services or accommodation under the Children Act 1989, then it is essential to establish the date up to which those services have to be provided. Since there is in most cases a duty to continue to provide leaving care services after the age of 18 and up to the ages of 21, or for some purposes 25, it is submitted that the court needs to grapple with the question of actual age and not merely the question whether the person was or was not a child on the relevant date."

23. At para 8, Holman J noted that the submission on behalf of the local authorities was to the effect that, although the court must determine whether or not the claimant was a child on the relevant date, once it has done so, it is entirely a matter for the local authority (subject to conventional judicial review principles) to determine the actual age of the child. Holman J rejected that submission and considered it "to be a recipe almost for chaos." At para 9, he concluded as I have set out above. He concluded this part of his judgment, at para 11, by identifying the issue for the purpose of giving directions in the cases before him as being:

> "… The case will be listed for a fact-finding hearing to determine whether or not, on the relevant date, the claimant was a child, *and if so*, his date of birth." (Emphasis added)

24. In other words, it is only if the court has determined that a claimant was a child on the relevant date that it was necessary to go on to consider their date of birth.

25. Mr Gardner emphasised two decisions of this Court in support of his submissions.

26. The first is *Re V (A Child) (Inadequate reasons for findings of fact)* [2015] EWCA Civ 274; [2015] 2 FLR 1472. Applying this Court's decision in *English*, McFarlane LJ said, at para 14, that:

> "In simple terms, what the law requires is that the losing party needs to know why he or she has lost on any particular point. …"

At para 16, he said:

> "In summary, the well-established approach of an appellate court in cases such as this is that a basic, short but clear description of the factors considered and the reasoning that underpins any conclusion is all that is required. But it is nevertheless required …"

27. The other is the well-known decision of this Court in *English v Emery Reimbold & Strick Ltd: Practice Note* [2002] EWCA Civ 605; [2002 1 WLR 2409. Lord Phillips of Worth Matravers MR analysed the earlier authorities, both at common law and in the European Court of Human Rights under Article 6 of the European Convention on Human Rights, although he concluded that there was no material distinction between them and certainly no additional requirement imposed by Article 6 which is not already familiar in the common law.

28. At para 6, Lord Phillips summarised the earlier authorities as follow:

> "In giving the judgment of the court, Henry LJ remarked, at p 381, that it was clear that today's professional judge owed a general duty to give reasons for his decision, citing *R v Knightsbridge Crown Court, Ex p International Sporting Club (London) Ltd* [1982] QB 304 and *R v Harrow Crown Court, Ex p Dave* [1994] 1 WLR 98. He made the following comments on the general duty to give reasons [2000] 1 WLR 377, 381-382:
>
> > '(1) The duty is a function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties especially the losing party should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know (as was said in *Ex p Dave)* whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not.
> >
> > (2) The first of these aspects implies that want of reasons may be a good self-standing ground of appeal. Where because no reasons are given it is impossible to tell whether the judge has gone wrong on the law or the facts, the losing party would be altogether deprived of his chance of an appeal unless the court entertains an appeal based on the lack of reasons itself.
> >
> > (3) The extent of the duty, or rather the reach of what is required to fulfil it, depends on the subject matter. Where there is a straightforward factual dispute whose resolution depends simply on which witness is telling the truth about events which he claims to recall, it is likely to be enough for the judge (having, no doubt, summarised the evidence) to indicate simply that he believes X rather than Y; indeed there may be nothing else to say. But where the dispute involves something in the nature of an intellectual exchange, with reasons and analysis advanced on either side, the judge must enter into the issues canvassed before

> him and explain why he prefers one case over the other. This is likely to apply particularly in litigation where as here there is disputed expert evidence; but it is not necessarily limited to such cases.
>
> (4) This is not to suggest that there is one rule for cases concerning the witnesses' truthfulness or recall of events, and another for cases where the issue depends on reasoning or analysis (with experts or otherwise). The rule is the same: the judge must explain *why* he has reached his decision. The question is always, what is required of the judge to do so; and that will differ from case to case. Transparency should be the watchword.' "

29. At paras 15-16, Lord Phillips said the following:

> "15. There is a general recognition in the common law jurisdictions that it is desirable for judges to give reasons for their decisions, although it is not universally accepted that this is a mandatory requirement – 'There is no invariable rule established by New Zealand case law that courts must give reasons for their decisions', per Elias CJ in *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546, 565. While a constant refrain is that reasons must be given in order to render practicable the exercise of rights of appeal, a number of other justifications have been advanced for the requirement to give reasons. These include the requirement that justice must not only be done but be seen to be done. Reasons are required if decisions are to be acceptable to the parties and to members of the public. Henry LJ in *Flannery's* case [2000] 1 WLR 377 observed that the requirement to give reasons concentrates the mind of the judge and it has even been contended that the requirement to give reasons serves a vital function in constraining the judiciary's exercise of power: see Professor Shapiro's article 'In Defence of Judicial Candor' (1987) 100 Harv L Rev 731, 737. …
>
> 16. We would put the matter at its simplest by saying that justice will not be done if it is not apparent to the parties why one has won and the other has lost."

30. At para 17, turning to the adequacy of reasons, Lord Phillips said that "as has been said many times, this depends on the nature of the case". At para 21, Lord Phillips again emphasised that:

> "The essential requirement is that the terms of the judgment should enable the parties and any appellate tribunal readily to

> analyse the reasoning that was essential to the judge's decision."

31. At paras 22-25, Lord Phillips considered what was to happen where amplification of reasons may be required. One course he recommended, at para 25, is that, if an application for permission to appeal on the ground of lack of reasons is made to the trial judge, the judge should consider whether his judgment is defective for lack of reasons and, if he concludes that it is, he should set out to remedy that defect by the provision of additional reasons, refusing permission to appeal on the basis that he has adopted that course. If the matter reaches an appellate court and it appears to the appellate court that the application is well-founded, it should consider adjourning the application and remitting the case to the trial judge with an invitation to provide additional reasons for his decision or, where appropriate, his reasons for a specific finding.

32. At para 26, Lord Phillips considered the situation which, Mr Gardner submits, is the one in which this Court now finds itself. This is where permission has already been granted to appeal on the ground that the judgment does not contain adequate reasons. Lord Phillips said that, if the appellate court is satisfied that the reasons are apparent, the appeal will be dismissed. If despite this exercise the reason for the decision is not apparent, then the appellate court will have to decide whether itself to proceed to a re-hearing or to direct a new trial. In the circumstances of the present appeal, Mr Gardner invites us to remit the case to the UT rather than decide it for itself.

33. Finally, I should point out that one of the factors to be taken into account on deciding whether reasons were adequate is to consider the audience to whom they are directed. A number of the authorities in this area make the point that, account should be taken of the fact that the decision is given to an "informed audience": see *R (H) v Ashworth Special Hospital Authority* [2002] EWCA Civ 923, at para 73 (Dyson LJ). That said, it is also salutary to bear in mind the caution urged by Dyson LJ about the "informed audience" point at para 79. Nevertheless, in the present case, it seems to me that it does have some relevance because the adequacy of the reasons given by the Judge in the UT can be assessed by reference to the way in which the parties had put the arguments to him.

Analysis

34. It is important to appreciate that the only ground of appeal in this case is that the reasons given by the UT were inadequate, in particular for making the finding of fact that the Appellant's date of birth was 20 April 1998. This is not a case where, for example, it is contended that the UT either misdirected itself in law or reached a finding which was not reasonably open to it on the evidence.

35. It is also important to appreciate that the question whether reasons for a judgment are adequate is inevitably fact-specific and depends on the particular circumstances, including the state of knowledge of the parties. This follows from the underlying rationales for why the law imposes a duty to give reasons on a judge, which I have set

out above by reference to the main authorities, *Flannery* and *English*. It is not an abstract exercise. The essential function of the duty to give reasons is to enable the losing party to know why they have lost and, if the case goes on appeal, to enable the appellate court to understand why they lost.

36. Thirdly, it is important to appreciate that the judgment of the UT must be read fairly and as a whole, not focussing on one or two passages out of context. In the present case, while the gravamen of the Judge's reasoning can be found, as Mr Gardner submits, at paras 107-110 of the judgment, that passage needs to be read fairly and in the context of earlier parts of the judgment, in particular the whole of the section headed 'Analysis' from para 65.

37. The thrust of the Appellant's submission is that there were two questions of fact which the Judge was required to decide: first, whether the Appellant was an adult at the relevant time and, secondly, what was his actual date of birth. In truth, however, in the particular circumstances of this case, there was no material distinction between those two questions.

38. This is made particularly clear by the way in which the case for the Appellant was presented in the claim for judicial review before the UT. The Appellant was represented at the hearing before the UT by Ms Rea and Mr Bimmler. At para 46 of the judgment, it is recorded that Mr Bimmler submitted "that the Tribunal should accept the age stated by the applicant." It was submitted that:

> "His evidence had been credible and it was cogently supported by the other evidence admitted, whereas the age assessment was not reliable for a variety of reasons."

39. At paras 47-59, there were summarised the five "headline" submissions which had been made by Mr Bimmler before the UT. It is clear from the way in which the case was presented to the UT that there was a binary issue presented to it, namely whether the age asserted by the Appellant should be accepted or whether it should be that attributed by the Home Office and adopted by the Respondent. Although in principle it is open to a tribunal in age assessment cases to find some different date, not least because its task is inquisitorial rather than adversarial, there is no duty upon it to do so. Everything will depend on the particular circumstances of the case and what are in truth the material issues before the tribunal in a particular case.

40. This helps to explain why the Judge concentrated as much as he did, in his analysis of the evidence, on the question whether the Appellant was to be relied upon as a credible witness, in particular in relation to the question of his age. The Judge was well aware, and correctly directed himself, that witnesses may lie for a variety of reasons and are not necessarily therefore lying on the crucial issue of fact which needs to be determined, but the reality of this case was that the Appellant had lied to the UT in respect of the crucial issue of his date of birth: see in particular para 109 of the judgment, which I have quoted above but which bears repetition on this point:

> "Whilst I bear in mind young people might lie for reasons unrelated to their age, I come to the clear conclusion that that is

> not the case here. … I consider that the applicant has deliberately sought to mislead in relation to his age and other matters which shed light on that question."

41. The fact that the material issue in this case was presented to the UT in a binary way is also clear from the underlying claim for judicial review and witness submissions before the UT. The original claim form, which had been issued in the Administrative Court, set out the details of the remedy being sought at section 8. This included, at para (6) a declaration that the Appellant "is a child" and that the Respondent "accepts [the Appellant's] claimed to date of birth". Similarly, in the skeleton argument before the UT, which had been drafted by Ms Rea, at para 29, the relief sought included (1) a Quashing Order of the Respondent's decision to assess the Appellant as being over the age of 18; and (2) a declaration that the Appellant was a child when he arrived in the UK.

42. There is one other aspect of this case which I should address. Although it is correct, as Mr Gardner has emphasised, that the UT found that there were a number of respects in which the assessment conducted by the Respondent was unsatisfactory, there was at least one important factor which had not been available to the Respondent at the time of its assessment and which tended to support its assessment. This is the finding of fact made by the UT (which is unchallenged on this appeal) that the Appellant had been to school in Sudan: see in particular para 76 of the judgment. This not only meant that the Appellant was better educated than he had claimed to be but it would inevitably add a number of years to his age, a fact that would not have been known to the Respondent when it conducted its assessment of his age.

43. Overall, therefore, in the particular circumstances of this case, I have reached the conclusion that the reasons given by the UT in its judgment were sufficiently adequate and the only ground of appeal must fail.

Conclusion

44. For the above reasons, I would dismiss this appeal.

Lord Justice Arnold:

45. I agree.

Lady Justice King:

46. I also agree.