



Neutral Citation Number: [2021] EWHC 645 (Admin)

Case No: CO/4109/2020

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

Cardiff Civil Justice Centre
2 Park Street, Cardiff CF10 1ET

Date: 19/03/2021

Before :

HIS HONOUR JUDGE JARMAN QC

Between :

THE QUEEN (on the application of AA)

Claimant

- and -

CARDIFF CITY COUNCIL

Defendant

Ms Tayyiba Bajwa (instructed by Instalaw Ltd) for the claimant
Ms Mona Bayoumi (instructed by Cardiff County Council) for the defendant

Hearing dates: 18 February 2021

Approved Judgment

HH Judge Jarman QC :

1. The claimant renews his application for permission for judicial review at an oral hearing following refusal of permission on the papers by His Honour Judge Lambert on 17 December 2020. He claims to be a child of 17 years of age with a date of birth of 17/06/1382 in the Iranian calendar which is 8 September 2003 in the Gregorian calendar. He contends that the defendant's assessment of his age as over 18 by two of its social workers carried out on 11 August 2020 was wrong as a question of fact, that the defendant was not entitled to use a short form assessment in his case, and that that assessment was conducted in a manner which was procedurally unfair.
2. Each of those grounds is disputed by the defendant.
3. The relief which the claimant seeks is an order transferring the claim to the Upper Tribunal (Immigration and Asylum Chamber) for a fact-finding hearing on the question of his age, and an order requiring the defendant in the interim to support and accommodate him as a child under the Children Act 1989 (the 1989 Act).
4. The factual background is that the claimant is a national of Iran who entered the UK around October 2019 as an unaccompanied asylum-seeker. Shortly thereafter he was interviewed by immigration officials. He gave a date of birth as set out above. His age was not accepted, and he was issued with a form which stated that he was over the age of 25 with an assessed date of birth of 7 June 1994. He was subsequently dispersed to accommodation in Cardiff for adult asylum seekers.
5. In January 2020 he was interviewed again by Home Office officials. He was not legally represented at this interview. He again gave his date of birth as set out above, so the interview was cancelled. In July 2020 he presented at Tros Gynnal Plant Cymru Asylum Rights Programme and again gave his date of birth as above.
6. On 11 August 2020 two of the defendant's social workers, Sophie Richards and Sofia Grammenos, visited the claimant at the accommodation for adult asylum seekers where he was living. The meeting lasted between 30 minutes to an hour and was conducted through an interpreter. Two days later the defendant set out in a letter dated 13 August 2020 which it sent to the claimant that a decision had been made that he was an adult, and gave the following reasons:
 - a. The claimant had told the defendant's social workers that he would have accepted the age of 18 if given by the Home Office;
 - b. He also told them that he had been in the UK for about a year, that he was 17 when he left Iran, and that the journey took three months. That would make him over the age of 18 at the time of their interview;
 - c. The claimant's physical appearance was of an individual over the age of 18 as confirmed by presentation, mannerisms and ability to communicate confidently with the social workers;
 - d. The claimant's assessed support needs did not match those of a child, and in particular, he had formed supportive friendships with other males with whom he lived, one of whom was 28 – 30;
 - e. On his initial meeting with the Home Office, he agreed to go through the process

as an adult.

7. Also on 13 August 2020, one of the social workers who had interviewed the claimant, Sophie Richards completed a well-being assessment upon him, based upon the visit two days earlier. In the written assessment it was indicated that it was a proportionate assessment as it had been deemed he was an adult so a full assessment was not undertaken. In the section dealing with expression of view it was indicated that he liked to speak for himself and was confident in doing so, but that he had support from the Asylum Rights Programme. He stated that he was 17 years old and repeated his birth date in the Iranian calendar, which he said he had given in London when interviewed on arrival in the UK. He also said he would have accepted the age of 18, but not 10 years older.
8. The assessment then continues:

“When asked why he would accept being given the age of 18 as this makes him an adult and he is claiming to be a child, [the claimant] said because the gap is closest to his age. I explored with [the claimant] whether he understood this would make him an adult, and he said he did as this is the same in all countries. [The claimant] states that during his interview in London, they didn’t believe him. When he moved to Cardiff during his interview, he said that his age had been disputed and he was then told to contact a solicitor for advice.”
9. The assessment also recorded that the claimant said he had been in the UK for one year and that his age is still being disputed. Details were given of his education, work and family experiences in Iran. He left Iran when he was “around 17 years old” and the journey to the UK took 3 months. He said he always used the same age. As to his needs, he said he did not owe any money, and that he got on well with his Kurdish housemates, one of whom is around 28-30 years old and they were supporting each other. He was capable of basic cooking. He could manage his weekly allowance. He had complained to the manager of the accommodation about the state of the carpet in his room and was told to wear shoes.
10. The claimant then instructed solicitors who by pre-action letter sent on 28 September 2020 challenged the refusal to give him adequate support under the 1989 Act and the failure to conduct a case-law compliant age assessment. The alleged deficiencies in the age assessment conducted by the social workers were set out. On 16 October 2020, the defendant responded to the pre-action letter contesting the claim and attaching a copy of the wellbeing assessment.
11. The renewed permission hearing was originally listed for 26 January 2020 but that was adjourned on the claimant’s application to await the results of an independent social worker age assessment which took place on 21 and 22 January 2021. That report (ISW Report) was finalised on 8 February 2020 and concluded that there was no evidence to suggest that the Claimant’s claimed age was incorrect.
12. Towards the end of oral hearing before me it became clear that there was an issue as to whether witness statements dated 9 and 10 November 2020 of the social workers who carried out the assessment, which were included in the bundle before me, had been served on the claimant’s solicitors. It was not possible to resolve that issue by inquiries by

counsel of their instructing solicitors or by the court of the court office. Accordingly I adjourned the hearing for copies to be sent and for written submissions limited to the issue of whether the statements had previously been served and issues arising out of such statements. I also directed that judgment would be handed down on the basis of the oral submissions I had heard and on any written submissions complying with that limitation.

13. The claimants written submissions filed further to that order confirmed that the witness statements were not served until 19 February 2021, and made submissions upon them. The claimant's solicitors also took this opportunity to make an application dated 1 March 2021 to rely on further evidence from witnesses who have observed the claimant. This comprises a letter dated 27 January 2021 from an officer of a charity known as Oasis who has worked with him, a witness statement dated 14 January 2021 from a friend of his who gives his age as 21, and another statement of that date from someone who gives his age a 20 who shared accommodation with the claimant. In these various views are expressed on the claimant's age as 16 or 17 on the basis of his appearance, demeanour, punctuality, and/or domesticity.
14. I have considerable doubts whether it is fair or proportionate to admit into evidence on the issue of permission either the defendant's two witness statements or the claimant's evidence in purported response. It is a serious matter that the defendant's statements were not served until after the permission hearing and no good reason has been put forward for that failure. Having regard also to all the circumstances, I doubt whether the defendant's witness statements take the issues on permission very much further than revealed in the assessment and consequent written reasons provided to the claimant. I would in the first instance refuse to admit them. However, now that I have heard oral submissions and have read them and the claimant's further evidence and the further written submissions and in case I am wrong about their admission I will in the event consider how they would inform my conclusions.
15. The relevant legal principles as to age assessment were not in dispute before me. Age is a matter of objective fact and not of reasonable belief. In *A v Croydon* [2009] UKSC 8, Lord Hope observed that there cannot be any assumption that any assessment carried out by the local authority should be afforded more weight than the account of a young person and that a local authority has no margin of discretion.
16. In *R (FZ) v Croydon London Borough Council* [2011] EWCA Civ 59 the Court of Appeal held that permission for judicial review should only be refused in an age dispute case if the court can properly conclude that the material before it raises a case that could not properly succeed at a contested factual hearing. That test was satisfied where there are no glaring inconsistencies in the claimant's account, nor clear analytical reasons why his account was unbelievable. The President of the Queen's Bench Division, giving the judgment of the court, said this:

“2...Some young people may be obviously and controversially children. Others may accept that they are adult. It is for those whose age may objectively be borderline, between perhaps 16 and 20, that an appropriate and fair process of age determination may be necessary. A process has developed whereby an assessment is undertaken by two or more social workers, trained for that purpose, who conduct a formal interview with the young person at which he is asked questions whose answers may help them make the assessment. It is often

necessary for there to be an interpreter. The young person may or may not be able to establish or indicate his age by producing documents, which themselves may require translation.

3. In *R (B) v Merton London Borough Council* [2003] EWHC 1689 (Admin), [2003] 4 All ER 280 Stanley Burton J gave guidance in judicial review proceedings on appropriate processes to be adopted where a local authority is assessing a young person's age in borderline cases. The assessment does not require anything approaching a trial and judicialisation of the process it to be avoided. The matter can be determined informally provided there are minimum standards of inquiry and fairness..... This decision and its guidance have led to the development of what is sometimes referred to as a 'Merton compliant' interview or process."

17. In *R(K) v Milton Keynes* [2019] EWHC 1723 (Admin) the court observed that the full rigour of assessments under the *Merton* guidance are reserved for cases of doubt where, as the authorities suggest, the young person appears to be between 16 and 20 and where there is real scope for error when acting simply on physical appearance and demeanour. In *R (AB) v Kent County Council* [2020] PTSR 746 Thornton J held that the assessment in that case, based on physical appearance and demeanour, was unlawful because the abbreviated assessment failed adequately to acknowledge the potential margin for error or to give claimant the benefit of the doubt.
18. Section 17 and paragraph 1(1) Schedule 2 of the 1989 Act imposes a duty upon a local authority to assess the needs of a putative child in need. In *AS v Liverpool* [2020] EWHC 3531 (Admin), Nicol J observed that the nature of support from the Home Office in respect of an adult asylum seeker is much less than the duties owed under the 1989 Act.
19. Applying those principles to this case, Ms Bajwa for the claimant submits that there are three arguable grounds for challenging the assessment in this case.
20. The first of these is that it is at least arguable that the defendant's social workers reached the wrong conclusion in respect of the claimant's age and the reasons given do not provide a cogent basis for dismissing his claimed age. He has provided a consistent account of his date of birth in all interviews. In his witness statement in these proceedings he says that he knew his age and date of birth because he had an ID card and other documentation which he describes as being pink in colour with his photo and date of birth.
21. Moreover two independent social workers in a *Merton* compliant assessment concluded that his claimed date of birth is accurate. There was nothing in his physical appearance that led to the conclusion that he presented as significantly over 18. He presented with naivety and innocence and exhibited adolescent behaviours such as sleeping in and requiring support from his legal team to attend the assessment. He is unable to meet his self-care needs, and is reliant on others to assist him in preparing food.
22. Taking his case at its highest it cannot be said that he would be bound to fail to establish his claimed age at a fact-finding hearing, and his account of his age has a prospect of being accepted.

23. The difficulty for the claimant in this respect in my judgment is that his account of his age is not consistent. It is not just a case of assessing his account against counter indications. Whilst his claimed date of birth as given is consistent, it is clear the issue of his age was explored with him in greater detail with him the reality is different. Three of the five reasons given for the defendant's conclusion that is he not a child relate to such matters.
24. His willingness to accept to Home Officials that he would be processed as an adult and that he would have accepted an age of 18 do not, in my judgment, when taken in isolation, provide a strong indication that he is an adult. Far more telling is his account that he was around 17 when he left Iran, that he spent some months in his journey to the UK, and that had been in the UK for one year. In my judgment that is the key factor in this case. That, taken with the defendant's assessment of his physical appearance and presentation and his support needs provides a sound basis in my judgment for the defendant's conclusion. The assessment of his presentation and his support needs was based on a visit to the claimant in his accommodation.
25. In my judgment there are inconsistencies in the claimant's account of his age, and there are clear analytical reasons why his given birth date was not accepted.
26. The explanations now sought to be advanced in respect of these matters, in the claimant's witness statement and in the IRW report do not significantly detract from the way he presented to the defendant's social workers. In particular the IRW report was based not on a face to face meeting but upon a video assessment. In seeking to come to conclusions about the weight to be attached to the various matters upon which the defendant based its conclusion, and in particular the claimant's own responses to questions, the question of his age has become judicialised in the way that is to be avoided.
27. The further evidence sought to be adduced on behalf of the claimant does not impact upon these clear analytical reasons. They are limited to matters of appearance and demeanour, where there is a real scope for error, or punctuality or domesticity where similar considerations apply.
28. The weight to be attached to the claimant's answers in relation to his age is ultimately a matter for the court. The question is whether the material before me raises a case on which a court or tribunal could properly come to a conclusion that the claimant is a child. In my judgment in light of the clear analytical reasons set out above, which come from the claimant's own version of events, as apposed simply to a recitation of his claimed birth date, it is not arguable that such a conclusion would be proper.
29. The second ground is that the defendant should have carried out a *Merton* compliant assessment because this is a case of doubt where the claimant appears to be between 16 and 20 and where there is real scope for error when acting simply on physical appearance and demeanour. The defendant has not indicated the claimant's assessed age, and so there is no evidence that his assessed age fell far outside the age range of 16-20. The inconsistencies identified by the defendant would have pointed to an age of around 18 years' old. As a result, there is "scope for error in deploying a short form age assessment, and the decision to do so was unlawful.
30. However, it is clear that the defendant did not act simply on physical appearance and demeanour. Moreover, whilst this is not a case where the claimant expressly accepted that he was an adult, his account of his journey to the UK and what he accepted or was prepared to accept as to whether he was an adult strongly indicates that his claimed birth date is unlikely to be correct. In my judgment it is not arguable that a *Merton* compliant was required.

31. The third ground is that the assessment was procedurally unfair because there was no acknowledgment of the margin of error in the defendant's assessment and no application of the benefit of the doubt. The defendant did not spend a significant amount of time with the claimant. The interview was an hour-long, which taking account of interpretation does not allow for proper consideration of any margin of error." Moreover, there is no indication in the August letter or the wellbeing assessment that the margin for error was considered.
32. In the present case, the issue of margin of error and benefit of the doubt must be judged in the context that from the claimant's own account there were sufficient reasons to justify the defendant's conclusion. It is clear in my judgment from the report of the interview set out in the wellbeing assessment that the claimed birth date was appropriately probed. It was explored with him why he would accept being given an age of 18 as that would make him an adult. His understanding of that was also explored and it is clear from his answer that he did have a sufficient understanding of the issues. The accuracy of what he told the defendant's social workers has not been challenged.
33. In conclusion, in my judgment the grounds are not arguable and permission is refused. It follows that interim relief is not appropriate. This judgment will be handed down in writing without the need of the parties to attend. I invite counsel to submit a draft minute of order, agreed if possible, and written submissions on any consequential matters which cannot be agreed, within 14 days of handing down.