



Neutral Citation Number: [2024] EWHC 2872 (Admin)

Case No: AC-2024-LON-000784

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 12/11/2024

**Before :**

**MR JUSTICE SWEETING**

**Between :**

**THE KING (ON THE APPLICATION OF LS)**  
**- and -**  
**WARRINGTON BOROUGH COUNCIL**

**Claimant**

**Defendant**

-----  
-----  
**HELEN FOOT** (instructed by **DUNCAN LEWIS SOLICITORS**) for the **CLAIMANT**  
**MICHAEL PAGET** (instructed by **WARRINGTON BOROUGH COUNCIL LEGAL SERVICES**) for the **DEFENDANT**

Hearing dates: 21st May 2024  
-----

**Approved Judgment**

This judgment was handed down remotely at 10.30am on 12<sup>th</sup> November 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

## THE HONOURABLE MR JUSTICE SWEETING :

### Introduction

1. The Claimant is an asylum seeker from Eritrea, who says that she was born on September 12, 2006 and is now 17 years of age. The Defendant, a local authority, disputes the Claimant's age and assesses her as an adult, born on March 12, 1998 and so 26 years old. The central issue in the proceedings is whether the Claimant is a child, as she claims, or an adult, as assessed by the Defendant.
2. The Defendant's assessment of the Claimant's age is central to her request for support under the Children Act 1989 ("The Children Act"). The Act imposes obligations on local authorities in England to support children within their area, including providing accommodation. A child who was once looked after remains entitled to certain types of support even after becoming an adult (as a "former looked after child"). This support may include a personal adviser, a pathway plan, and financial assistance for education and training. If a child is wrongly assessed as an adult and does not receive support before turning 18, the local authority has a discretion to treat them as a "former looked after child".
3. When a person seeks support under the Children Act and their true age is uncertain, the local authority conducts an age assessment. The Claimant sought permission for judicial review of the Defendant's decision as to her age, following such an assessment. She also applied for interim relief because her mental state had deteriorated due to her living conditions and, it is said, lack of support from the Defendant. The interim relief sought was that the Defendant provides her with accommodation and other support, appropriate for a child, pending the outcome of the claim.
4. The issues raised included arguments as to procedural impropriety and relief from sanctions. At the conclusion of the hearing I indicated what my conclusions were in summary with judgment to follow. I subsequently made an order giving the Claimant permission to apply for judicial review, extending time for filing the claim and transferring it to the Upper Tribunal to be case managed there. I also acceded to the Claimant's application for interim relief, ordering that she was to be provided with appropriate support as a child.

### The Legal Framework

5. At the permission stage, the fundamental question is whether the claimant has raised "a factual case which, taken at its highest, could not properly succeed in a contested factual hearing." This test is not satisfied by the claimant simply asserting that the assessment of age was wrong: see *R (FZ) v Croydon LBC* [2011] EWCA Civ 59, [2011] PTSR 748 at [6-9]:

*5. A judicial review claim challenging a local authority's assessment of age may thus be on various grounds. Some of them may be orthodox judicial review grounds. But the core challenge is likely in most cases to be a challenge to the age which the local authority assessed the claimant to be. Thus most of these cases are now likely to require the court to receive evidence to make its factual determination. It is therefore understandable that Mr Hadden, for the respondent local authority in the present appeal, submitted that orthodox judicial review challenges are likely to be subsumed in the court's factual determination of the claimant's age. If the claimant succeeds on his factual case, the orthodox judicial review challenges fall away as unnecessary.*

*6. Claims for judicial review require the court's permission to bring the claim. If the claim challenges the local authority's assessment of age as a fact, the court has to apply an appropriate test in deciding whether to give permission. The parties presently before the court agree that the claimant is not entitled to permission simply because he asserts that the local authority's assessment was wrong. It is evident that the Supreme Court did not contemplate that permission would be given in every case irrespective of any consideration of the merits. In one sense, the parties to the present appeal agree what that test should be. They agree that it is that formulated by Holman J in R (F) v Lewisham London Borough Council [2010] PTSR CS 13; [2010] 1 FLR 1463 to the effect that the test is whether there is a realistic prospect or arguable case that the court would reach a conclusion that the claimant was of a younger age than that assessed by the local authority.*

...

*9. We consider that at the permission stage in an age assessment case 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.*

6. Guidance for conducting age assessments was given in *R (B) v Merton LBC* [2003] EWHC 1689 (Admin), [2003] 4 All ER 280, and developed in *R (AB) v Kent CC* [2020] EWHC 109 (Admin), [2020] PTSR 746 at [21]. There is no burden of proof or starting presumption of adulthood or childhood. In the absence of clear evidence, the benefit of the doubt should be given to the applicant. Physical appearance and demeanor are relevant but not the sole bases for assessment. The local authority must make an independent decision, considering reliable information. The assessment of credibility involves asking questions about an applicant's background, including family circumstances and history. Accepting the applicant's account as true inevitably leads to an acceptance of the claimed age, but an untrue history does not necessarily indicate a lie about age. Trained social workers should conduct the assessment, with an interpreter if needed. The process should be respectful, culturally aware, and allow the applicant to address inconsistencies. If an adverse decision is reached provisionally, the applicant should be told of this and given a fair opportunity to respond. The decision itself must be supported by adequate reasons and be written up promptly.
7. A decision may be challenged by way of judicial review. While the court's primary task is factual determination, Claimants may also challenge the local authority's age assessment through conventional public law arguments.
8. When local authorities make decisions they should act fairly, ensuring that their actions do not unfairly impact individuals. The requirements of fairness and rationality in decision making are contextual and vary depending upon the specific circumstances of each case. Local authorities must make inquiries that are rationally necessary before reaching a decision. While not necessarily determinative, the *Merton* guidelines play a significant role in assessing fairness and rationality
9. The Administrative Court should decide applications for permission and interim relief but where permission is granted, a claim will be transferred for assessment in the Upper Tribunal. This approach aligns with the standard procedure in age assessment cases, as outlined in *R (SB) v Royal Borough of Kensington and Chelsea* [2023] EWCA Civ 924 at [86].

## **Background**

10. The Claimant sought asylum in the UK after arriving by small boat on 21 August 2023. She provided conflicting birth dates (either 3 September, 2006, or 1 September, 2006). Home Office staff assessed her as visibly over 18, assigning a probable birth date of March 12, 1998. The assessment was based on appearance and demeanour, as well as doubts about the personal history she provided. The internal age assessment document mistakenly referred to her as a man; the Claimant says that her date of birth, as recorded on this occasion, may also have been a mistake by the official filling in the proforma. The Claimant correctly stated her date of birth, as she asserts it to be, during her screening interview on 25 August, 2023.
11. She was provided with hotel accommodation by the Home Office in a hotel in Warrington. The Claimant lives in the hotel alongside adult asylum seekers.
12. On 28 September, 2023, a referral was made to the Defendant, indicating that the Claimant had said she was a minor. Social workers met with the Claimant on 29 September, 2023, and conducted an assessment through a Tigrinya interpreter. An age assessment, completed subsequently, suggested that the Claimant's date of birth was March 12, 1998, effective from 29 September, 2023; exactly the same date of birth as assigned to her by the Home Office on arrival. The Claimant contends that no proper reasoning has been given to explain why this date was arrived at and that the agreement of her assessed date of birth with that arrived at by the Home Office calls into question whether the process was an independent reconsideration.
13. On 6 October, 2023, Ms. Debbie Jackson (on behalf of the Claimant) emailed the Defendant with copies of a school report, supporting the inference that the Claimant was aged 11 in the 2018 academic year, and a baptism certificate stating the Claimant's date of birth to be 12 September, 2006.
14. The Defendant sought advice from a Home Office official Mr. Andrew Martin regarding the authenticity of these documents. Mr. Martin indicated that the National Document Fraud Unit would not be able to confirm the Claimant's age since the documents were not official. He said in an email of 9 October 2023:

*“It's unlikely the NDFU would be able to say much about either documents as they are not official government produced documents. I have seen a fair few cases where Eritreans produce baptism and / or school certificates as proof of age rather than something that would actually be able to confirm their age with certainty (e.g. a passport or birth certificate).”*

15. On 25 October 2023, Council officials met with the Claimant again. They discussed the documents provided and asked further questions about her background. She said that she had never had a passport and had lost her visa (with which she had originally entered Germany) when it became soaked as she was waiting to cross the Channel in Dunkirk. Following this interview, the Defendant updated its age assessment, confirming the Claimant's date of birth as March 12, 1998. The decision is dated 27 November 2023. The Claimant did not receive a copy of the age assessment directly from the Defendant's age assessment team but was copied into an email on 6 December 2023.

## **The Proceedings**

16. In early December, the Claimant sought help from Ms. Rachael Bramham, a Refugee and Asylum Seeker Caseworker, to help her understand her situation. On December 6,

Approved Judgment

2023, Ms. Bramham sent a copy of the decision to Luke & Bridger Law Ltd., asking for their support in challenging the assessment.

17. The Claimant subsequently contacted Migrant Help and Care4Calais for assistance and instructed Duncan Lewis solicitors in mid-February 2024. Pre-action correspondence challenging the age assessment was sent on 21 February, 2024. The pre-action claim letter is lengthy and detailed. The Defendant responded on 5 March, 2024, maintaining its assessment.
18. On March 6, 2024, the Claimant filed an application for judicial review, including a Claim Form and a document headed "Preliminary Statement of Facts and Grounds" These outlined the relief sought by the Claimant, with fuller grounds to follow once counsel's instructions were confirmed. The "Preliminary" grounds are so short that they can be set out in this judgment in their entirety as follows:

*"1. These grounds are prepared on a preliminary basis. Following pre-action correspondence dated 21 February 2024, the Defendant responded to the proposed grounds of claim on 5 March 2024 maintaining the decision under challenge.*

*2. The Claimant is a national of Eritrea. She claims to be a child with the date of birth of 12 September 2006.*

*3. Following an age assessment, the Defendant has assessed her with the DOB of 12 March 1998.*

*4. The Defendant has agreed that following procedural improprieties relating to the service of the decision that the date of decision under challenge is 6 December 2024.*

*5. The Claimant therefore issues this claim on a protective basis in order to ensure that the Claimant can challenge the unlawful decision within the relevant window. She has identified counsel and will seek judicial review funding on an emergency basis at the earliest opportunity.*

*6. The Claimant seeks to apply to amend grounds once funding has been granted."*

19. Additional documents, including an Amended Claim Form and an application for interim relief, were filed on 19 March, 2024. The Defendant responded with Summary Grounds of Defence on 26 March, 2024, resisting both permission and interim relief.
20. By order of Lang J. dated 30 April 2024 the Claimant was granted anonymity and permission to amend the Claim Form, Statement of Facts and Grounds and supporting bundle, as well as permission to file further evidence in support of her application for interim relief.
21. That order recorded at paragraph 5 that:

*"It is appropriate, and in the interests of justice, to allow the Claimant to file evidence, and for both parties to file their amended pleadings and responses, to enable them to present their respective cases, and to assist the Court in understanding the competing arguments at the permission and interim relief hearing."*

22. An Amended Summary Grounds of Defence was later filed, asserting that the claim was time-barred. Subsequent exchanges included a Reply from the Claimant, an Additional Response from the Defendant, and a final Reply to the Additional Response. The Claimant also applied for permission to rely on further evidence in support of her application for interim relief, including medical reports.

## **Age Assessment - Conclusions**

23. The Defendant says that the Claimant continues to choose not to ask her mother for a witness statement or supporting documentation of her age. She has also refused to provide the Defendant with contact details for her mother. She now has access to funds but continues not to contact her mother or grandmother notwithstanding that any financial impediment has been removed. The case was, it was said, an unusual one because the claimant had travelled alone and stayed in Germany for some time before travelling on to the UK.
24. Mr Paget, on behalf of the defendant, submitted that the Claimant's credibility was significantly impaired by these factors in circumstances where the truthfulness of her account was central and could reasonably be doubted.
25. These contentions may have force but they are, in my view, matters for a subsequent substantive hearing. In judicial review, the court will independently determine the applicant's age by considering the available evidence on the balance of probabilities. At the permission stage, the threshold for proceeding will be met if the presented evidence, taken at its highest, could reasonably support a successful outcome in a contested factual trial. In other words, the evidence must raise a genuine question of fact that could be resolved in favour of the applicant.
26. Ms Foot argued that the Claimant has given a consistent date of birth and has produced documents which support her age as being that claimed. Although the Claimant has been assessed by officials and social workers as being older than she claims these assessments are necessarily impressionistic and will have to be considered carefully against the documentation produced by the Claimant, which may be the only material available to her in her country of origin. In addition, there is psychological evidence from Dr Gemma Parker, a clinical psychologist specialising in forensic mental health, whose assessment on examining the Claimant was that her emotional responses and cognitive function were consistent with the developmental stage of adolescence and her claimed status as a child.
27. In my judgment the Claimant has, on the claim now advanced, cleared the threshold for obtaining permission in a case involving age assessment.

## **Timing of the Claim**

28. The Defendant initially challenged the timeliness of the Claimant's judicial review application. However it was then conceded that with a December 2023 date of decision, the application fell within the three-month limitation period mandated by CPR 54.5(1).
29. However, in addition to its opposition on substantive grounds, the Defendant raised a procedural objection to the claim being allowed to proceed. In short it objected to the Claimant's reliance on the Amended Statement of Facts and Grounds and contended that although the Claimant had secured permission to amend through a separate court order, that did not preclude the Defendant's broader argument that the use of barebones "Preliminary Statement of Facts and Grounds" grounds was an abuse of process.
30. Mr Paget submitted that the claim was brought in an abusive manner and should be dismissed because the Claimant had failed to include any grounds for judicial review in the Claim Form filed on 6 March 2024; it merely asserted that a protective claim was going to be issued, but did not provide a cause of action or grounds for challenge based on public law error. He characterised this as a clear attempt to circumvent the three-month time limit for judicial review claims in circumstances where no reason for the omission of grounds had been identified and the Claimant's solicitors had failed to

provide any adequate explanation as to why permission was sought for an amendment. Although the claim was, strictly, issued in time it was unarguable on its face, to the extent that the deficiency could only be cured by amendment.

31. CPR 54A, PD para 4.2-4.3 requires that the grounds for bringing a claim must be clearly and concisely stated. That requirement cannot be met by reference to pre-action correspondence. The Defendant submitted that the claim as issued on the 6th of March did not disclose arguable grounds but, in very short order, simply asserted that the assessment was wrong which is not a permissible basis of challenge (see *FZ* above).
32. Unlike ordinary civil litigation, judicial review applications are subject to a strict 3-month window. Failure to meet this deadline without a compelling justification is likely to result in dismissal of the claim, regardless of any prejudice it may cause. The onus falls upon the claimant to demonstrate a sufficient reason for any delay and to seek relief from sanctions if that is needed. The Claimant argued that she was not in fact required to seek an extension of time to file the claim, as the claim itself was filed within the three-month time limit. Instead, she contended that the Court should confirm its order allowing the Claimant to rely on her Amended Statement of Facts and Grounds. The Claimant did not dispute that the “Denton” principles were relevant to determining whether the Court should allow either remedial course.
33. The test in *Denton v TH White Ltd* [2014] EWCA Civ 906, 1 WLR 3926., is applicable to applications for extensions of time in JR cases, as confirmed by *R (AK) v SSHD* [2021] EWCA Civ 1038. There are three stages:
  - a. Stage 1: An assessment of the seriousness of the breach.
  - b. Stage 2: Consider the explanation provided for the non-compliance.
  - c. Stage 3: Evaluate the overall context, including the need for efficient litigation and enforcement of rules.
34. I apply that staged assessment to the present case as follows:
  - a. Stage 1: A statement of facts and grounds is mandatory; the Claimant's initial form did not explicitly articulate legal grounds of challenge, but merely referenced pre-action correspondence containing those grounds. A breach of this sort is properly to be regarded as serious in my view.
  - b. Stage 2: The Claimant's explanation was that the omission was an oversight motivated by a desire to minimise costs, anticipating counsel would draft comprehensive grounds later. This was not in my judgment a sufficient explanation for the delay in setting out a proper case. It is evident from the pre-action protocol correspondence that the Claimant could have articulated a proper basis for a public law challenge but equally that did not mean that the Claim Form could simply be used as a placeholder for grounds that would come later. If an extension was needed it could have been applied for in time although that would have raised an obvious question as to why more time was needed. The solution was not however to issue a plainly insufficient Claim Form.
  - c. Stage 3: The overriding objective is to ensure just and efficient resolution of the claim. Even though the breach was a serious one I have come to the view that refusing permission to rely on the amended grounds or denying the Claimant an extension of time would be disproportionate and risk injustice in this case. The Claimant's initial Claim Form lacked explicit grounds, it is nevertheless true that the Defendant had been informed of those grounds in pre-action correspondence. The Claimant then filed the amended grounds promptly. The relief that the Claimant requires is an extension of time. I therefore grant the Claimant relief from sanctions, in the form of an extension of time which in turn allows her to rely on the amended grounds.

## **Interim Relief**

35. The Claimant's evidence is that she is "scared and uncomfortable" living in adult accommodation, and that this is causing her "extreme anxiety".
36. Rebecca Merry, a senior caseworker at Care4Calais, gives details of the Claimant's expressions of suicidal intent on multiple occasions, The Claimant's safeguarding form is to similar effect. Simon Beech, a manager at Serco, the Home Office's accommodation provider, describes the Claimant's concerning behaviours, including damaging property, drawing childlike pictures, and isolating herself in her room. He notes that Serco staff have "concerns regarding [her] mental health" but given the lack the resources to provide adequate support, their "hands are more or less tied in knots".
37. A report from Dr. Parker (see earlier reference) provides an assessment of the Claimant's mental state and identifies signs of depression, anxiety, and potential PTSD. She concludes that the Claimant's accommodation and inability to access education are contributing factors to her distress and suicidal ideation. The evidence therefore paints a picture of a young woman struggling with severe mental health challenges stemming, in part at least, from her presence in adult accommodation.
38. There is plainly a serious issue to be tried as to the Claimant's age. The balance of convenience involves weighing: (a) The potential harm if the claimant is treated as an adult but is later found to be a child. (b) The potential harm to the local authority if an interim order is made but the claimant is later found to be an adult.
39. There is clear evidence of potential harm to the Claimant. The Claimant resides in adult asylum-seeker accommodation, an environment unsuitable for children. Her mental vulnerability and deteriorating mental state are well evidenced. If she is not recognised as a child in need before she turns 18, she may lose statutory entitlements to support as a former looked-after child, potentially leaving her with inadequate support. The Defendant has not presented any evidence of specific safeguarding risks if the Claimant is treated as a child while awaiting the final determination of her age nor is there any evidence of resource constraints.
40. I conclude that the potential harm to the Claimant if relief is denied, in particular further deterioration of her mental health and loss of statutory support significantly outweigh any prejudice to the Defendant and therefore grant the interim relief sought.

END