



Neutral Citation Number: [2024] EWHC 2670 (Admin)

Case No: AC-2023-LDS-000268

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING AT LEEDS

Leeds Combined Court Centre, 1 Oxford Row,
Leeds, LS1
Date: 24/10/2024

Before :

HH JUDGE DAVIS-WHITE KC
(sitting as a Judge of the Administrative Court)

Between :
THE KING ON THE APPLICATION OF
AM
- and -
SHEFFIELD CITY COUNCIL

Claimant
Defendant

Ms Julian Norman (instructed by **Bhatia Best Limited**) for the **Claimant**
Mr Brett Davies (instructed by **Legal Services Sheffield City Council**) for the **Defendant**

Hearing dates: 27 September 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 24 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HH JUDGE DAVIS-WHITE KC

HH Judge Davis-White KC :

1. On 27 September 2024 I heard three oral renewals of applications for permission to proceed with judicial review. The three applications were all made against Sheffield City Council, the Defendant, and sought judicial review, in substance to challenge and set aside age assessments made in relation to unaccompanied asylum seekers. In each case, the age assessment of the relevant asylum seeker concluded that they were over the age of 18 and not a child.
2. Oral submissions took the morning to hear and Counsel was not available in the afternoon. Accordingly in two cases I gave my decision with reasons to be given later. The decision in each of the two cases was that permission to apply for judicial review should be refused, as should certain applications for interim relief. In the third case I reserved my judgment ([2024] EWHC 2671 (Admin)). This judgment deals with one of the cases where I gave my decision to refuse permission to proceed with judicial review, with my reasons to be given later. These are my reasons. (My reasons in the other case where I gave my decision with reasons to follow is [2024] EWHC 2669 (Admin)).
3. Before me, the claimant (as were the claimants in the other two cases that I have mentioned) was represented by Ms Julian Norman of Counsel and Sheffield City Council was represented (as it was in the other two cases that I have mentioned) by Mr Brett Davies of Counsel. I am grateful to both of them for their assistance, the helpful and measured manner in which they conducted the hearing and the way in which both of them drew my attention to material in a fair way to ensure that I was not misled by, for example, overlooking a particular document contrary or potentially contrary to one or to facts that they had earlier referred to.
4. As Fordham J has helpfully articulated and summarised in *R (on the application of Pishtian Karimi) v Sheffield City Council* [2024] EWHC 93 (Admin), there are often two elements to challenges to an age assessment, one challenge (or series of challenges) based on traditional judicial review grounds and one related to the factual issue of the age of the person in question, that ultimately being a question for the court:

*“[2] Age assessments are unusual in the sense that, alongside any conventional public law ‘soft review’ principles, there is an objective hard-edged factual question whose correctness is for the reviewing court (or usually the upper tribunal following transfer) to decide, embracing any fresh evidence and where appropriate with oral evidence. The judicial review permission threshold, so far as the objective question is concerned, is identified in *R (FZ) v Croydon LBC* [2011] EWCA Civ 59 at §9. The permission-stage Court asks whether the material before the court raises “a factual case which, taken at its highest, could not properly succeed in a contested factual hearing”. Only where the Court is satisfied on that negative question will there be the ‘knockout blow’ to justify refusing permission for judicial review.”*

5. As regards the traditional, “soft review” principles, the test, both when permission is considered on the papers and when it is considered on an oral renewal hearing, is that:

“ *the Judge will refuse permission unless satisfied that there is an arguable ground for judicial review which has a realistic prospect of success*” (see *The Administrative Court, Judicial Review Guide 2024* (“*The Administrative Court Guide*”), paragraphs 9.1.3 and 9.6.5 and the cases footnoted in the first of those paragraphs).

6. As regards typical “soft review” principles of judicial review in the context of this case I was referred particularly to the judgment of Swift J in *R (on the application of HAM) v London Borough of Brent* [2022] EWHC 1924 especially at [6], [10]-[13] and [40]-[41]; the judgment of HHJ Thornton QC (sitting as a Judge of the High Court) in *AS v Croydon* [2011] EWHC 2091 (Admin) at [9]-[10] (dealing with the duty to give reasons) and the judgment of Picken J in *MVN v London Borough of Greenwich* [2015] EWHC 1942.
7. The test for interim relief is dealt with at paragraphs 16.6.1 and 16.6.2 of the Administrative Court Guide.
8. In all I was referred to some 14 cases as well as various parts of certain Acts of Parliament and some guidance relating to age assessments and/or judicial review principles raised by the case.
9. I did not understand there to be a disagreement as to the relevant law and principles, rather the disagreement between the parties is as to how such law and principles apply on the facts (and evidence) in this case.

The Claimant

10. The claimant is a national of Afghanistan. His claimed date of birth is 03 May 2006. As at the end of September 2024 that would make him just short of 18 years five months old.
11. He arrived in the United Kingdom on 21 August 2023. He applied for asylum the same day. Also on that day, the Home Office assessed him as an adult with an assessed date of birth of 3 May 1998. The relevant Home Office Notification notes that Home Office members of staff had assessed that his physical appearance and demeanour very strongly suggest that he was significantly over 18 years of age.
12. After a few days at a hotel near Heathrow airport he was moved to a hotel at Sheffield which is where he has been ever since.

The Age assessment by the Defendant

13. The relevant age assessment in this case followed a referral by the Refugee Council to Sheffield Safeguarding Hub and suggesting that the claimant was 17 years old.
14. The age assessment in relation to the claimant was carried out by Chloe Elliott and Eric Banks for the Defendant. Each is a social worker employed by the Defendant. Present by video call was also a Pashto interpreter, Raqia Popol. The claimant confirms in his witness statement that he could hear and understand the interpreter clearly.

15. The age assessment took place on 30 August 2023 at the hotel where the claimant was lodged in Sheffield.
16. The claimant confirms in his witness statement that he was asked a number of questions about his age, his taskira (an Afghan national identity document), his journey to the UK and his home office interview on his arrival. As regards his taskira he says that he told the social workers that he had lost it whilst travelling to the UK and that it included his name, his father's name and his grandfather's name as well as his family's address. He could not remember what other information it bore.
17. At the end of the interview he was provided with a partly handwritten partly typed letter signed by each of the two social workers. The letter referred to the meeting, its location and date and its purpose. It confirmed that the social workers had undertaken a brief enquiry as to his age in person supported by a face to face/telephone interpreter. Their conclusion was that he was over the age of 25 and that as such the local authority had no duty towards him as a child.
18. The evidence as to the detailed circumstances is set out in the witness statement of Mr Banks who says:

“Following the Brief Enquiry being completed, [the Claimant, “C”] was asked to leave the room whilst we discussed our findings. [C] was then made aware that we deemed him to be an adult and he was given a letter explaining this, which was translated verbally by the interpreter. He was also given information about his right to appeal this decision. He was given the opportunity to ask questions or add any further information which he declined.”
19. The process for the brief enquiry is evidenced by a form headed “Brief Enquiry [as to Age]”. The form is signed and dated by the two social workers in question. The form commences by setting out certain guidance on making a provisional decision on age. It then sets out certain matters with room for the interviewers (as they did in this case) to fill in the details, such as “Name as stated by person presenting”, “Language spoken-Interpreter language requested” and so on. Under the heading “Physical appearance and presentation observations” the following is noted in manuscript:

*“Shaved face-evidence of facial hair
Acne scarring
Adult demeanour”*
20. The form also records answers and explanations given about his taskira as he also explains and confirms in his witness statement (viz it having been lost on his journey to the UK) and that his father told him his age in 2021.
21. One of the questions posed by the form is “Do you consider this person to be under the age of 18? With possible responses of “No/Yes/Not Sure (delete as appropriate).” In this case the “No” is circled. Under “Next Steps” the form goes on to say that “If yes or unsure full assessment required...” And “If no, ensure “Over 25 letter” has been issued and fully explained to the presenting adult...”

These proceedings

22. The claim form in this case was issued on 20 November 2023. By the claim form, the following final relief is sought:

*“(i) Pursuant to Ground 1, a Declaration that the Defendant's Brief Enquiry procedures are procedurally unfair;
(ii) In the alternative to (i) above, a Declaration that the Defendant's Brief Enquiry in this claim was procedurally unfair;
(iii) A Quashing Order quashing the Defendant's decision to assess the Claimant as being over 18 years old;
(iv) A Mandatory Order directing the Defendant to conduct a full Merton-compliant age assessment;
(v) A Declaration that the Claimant's date of birth is 26th November 2006
(vi) further or other relief
(vii) costs”*

23. In addition interim relief was claimed in Section 9 of the Claim Form as follows:

*“(i) An Anonymity Order to protect the Claimant's identity in light of the dispute over his age, his vulnerabilities following his journey to the UK and in light of his pending asylum claim, in which he has raised a well-founded fear of the Afghan authorities;
(ii) An Order permitting the Claimant to conduct proceedings without a litigation friend, pursuant to CPR 21.2(3);”*

These two orders were granted

*“(iii) An order expediting the claim in accordance with the timescales set out in the attached draft order;
(iv) An order consolidating his claim with that of other claimants represented by Bhatia Best Solicitors for the purposes of Ground 1, as set out in the attached order.”*

These last two orders were not granted

24. In addition, a separate application notice was issued seeking the same interim relief as referred to under paragraphs (i), (ii and (iv) of Part 9 of the Claim Form and also (by way of interim relief) that the Defendant provide accommodation to the Claimant as a child under the Children Act 1989.
25. The Claimant's evidence comprised a witness statement from him.
26. As well as filing an acknowledgement and summary grounds of defence, the Defendant filed three witness statements, one each from the two social workers that I have mentioned and one from Lisa Bushby, Service Manager with the Looked After Children Team of the Defendant. That witness statement primarily deals with the practice and procedure followed by the Defendant when carrying out age assessments.

27. Permission to apply for judicial review was refused on the papers by HH Judge Belcher on 7 February 2024. As already mentioned, she granted certain orders by way of interim relief but refused that relating to accommodation and consolidation. As I largely agree with her conclusions, I set out the summary of her reasons as set out in her Order
28. As regards consolidation, and which is also relevant to the first head of substantive relief claimed, generally challenging the Defendant's procedure and practice she said the following:

“Consolidation with the other named cases is refused. It is sought based on the premise that the short form assessment used by D in this case and the other cases is procedurally unfair. There is ample authority that there will be cases where a short assessment is appropriate and proper. The form used in this case is designed to enable D's social workers to identify those cases where they are sure the individual is a child, those where they are sure the individual is not a child (taken by them as over 25) and those cases where they are not sure and where a full assessment will be required. Whether the short assessment was appropriate/properly carried out in the circumstances of any given case is fact specific. Each of these cases falls to be considered on its own merits.”

29. She then deals with a number of points made:

“3. The form is designed to address the difference between the obvious cases (of a child or an adult over 25) and those which are not (where the person completing the form is “Not Sure”). The suggestion that it is unfair for failing to record that the case is an obvious one is not reasonably arguable in those circumstances.

4. I accept that reasons in a short form assessment may be brief. C states in his witness statement that D's social workers told him he was not a minor and that they agreed with the date of birth given by the Home Office, namely 3/5/88. One of the social workers states in his witness statement that C was made aware that they deemed him to be over 25. No detail is given as to what was said or if any reasons were given. The other social worker does not address this at all in her witness statement.. Thus the case relies on the documents, being the undated Over 25 letter” handed to C on 30/8/23 and the Brief Enquiry form completed by the social workers.

5. The Over 25 letter includes no reasons for the conclusion that C is over 25. The Brief Enquiry form lists 3 matters under “Physical Appearance and Presentation”, but nowhere lists these as reasons for reaching any conclusion. C argues that is insufficient to allow C to know the reasons for the decision. I accept D's position that the 2 documents are to be read together, given that the Over 25 letter was handed to C at the end of the interview meeting. The reasonable bystander relied on by D would see references to physical appearance and adult demeanour. When read together with the Over 25 letter, it is not reasonably arguable that the conclusion that C is over 25 is based on anything other than his physical appearance and presentation, including the obvious reference to adult demeanour. There is nothing else in that document which could lead to that conclusion. Whilst it would undoubtedly be better if that list was specifically referred to as being the reasons (either in the form itself or in

the Over 25 letter), in my judgement it is nevertheless sufficient to enable C to understand the reasons for the conclusion reached.

6. Much of C's complaint amounts to a challenge to the outcome, rather than the process. The assessment form does not need to record whether there was an interpreter and any difficulties with the interpretation. That does not go to D's reasons and in any event C accepts he had and understood the interpreter.

7. The form refers to the Home Office assessment and date of birth give, and C says that the social workers told him they agreed with that. Without more, that does not make it arguable that irrational or improper emphasis was placed on the Home Office assessment or that the social workers failed to undertake their own assessment. The fact of the Home Office assessment cannot be ignored. It forms part of the procedural and factual background."

Challenge to the practice and process adopted by the Defendant in age assessment cases

30. Ground 1 of the Detailed Statement of Facts and Grounds asserts generally procedural unfairness and irrationality in the manner in which brief age assessments are carried out by the Defendant. However, the complaints are also clearly directed at the particular assessment in this case.
31. It is submitted that the format of the enquiry form, the lack of care taken in recording the social workers notes ("handwritten and often illegible"), the failure to record reasons underlying the assessment and which are capable of drawing all the information collated from the assessment together renders the assessment procedurally unfair (paragraph 19).
32. It is also submitted that the form does not unequivocally confirm whether an interpreter was utilised and whether any difficulties were experienced as a result. The form does not record whether checks were undertaken with each of the claimants as to their ability and fitness to participate in the assessments. Neither does the form record what was discussed with each of the claimants, particularly in the context of adverse credibility being held against them subsequently (paragraph 22).
33. Finally it is suggested that there is a misconceived belief of an entitlement to rely upon Home Office assessments. Reference is made to a different case. As regards this case, the form simply has the option to fill in details under the question: "Other professional's opinion on age e.g. police, police doctor immigration official". In this case that part of the form was not completed, although the Port/Home office reference number is completed under the heading Information required...if person to be accommodated...due to stated age of under 18 being accepted or a full age assessment being require. [Sic]. This information does not need to be completed if it is judged that the person is over the age of 25."
34. First of all, I agree with HH Judge Belcher that a general challenge to the practice and procedure of the Defendant's age assessment process is misconceived. It does not seem to me arguable, with a real prospect of success, that the form which is utilised is inadequate for the purposes of raising questions to see whether on a brief assessment it is either obvious that the subject is over the age of 25 or it is obvious that they are under the age of 18 or that it is unclear whether they are either such that a full assessment may be required. Further, no particular practice/procedure is identified of

which criticism is made which can be said to be general rather than occurring in particular cases.

35. Most of the other complaints do not identify matters that necessarily apply in every age assessment carried out by the Defendant but will depend upon the precise facts in each case.
36. As regards complaints as to illegibility and how the form is filled in it seems to me these are obviously matters which fall to be considered on a case by case basis. In this case I cannot see that the handwritten nature of the notes bears upon the fairness of the procedure and they are not illegible.
37. As regards complaints about recording the interpreter position in a more detailed manner (including checks as to the ability and fitness to participate of the subject), again it seems to me that this misses the point. The issue is whether the process is fair not whether every matter is recorded. The form does allow for recording any immediate health or wellbeing needs (that being the first question after Physical Appearance and Presentation observations). In this case in any event there is no evidence at all of any unfairness following from language or interpreter difficulties nor in respect of ability and fitness to participate and the Claimant himself confirms the opposite.
38. As regards the Home Office assessment, it is part of the background and seems to me sensible for such assessments (as with other assessments by professionals) to be taken into account. If for example, the Home Office had decided that the age of the Claimant was younger than that determined by the assessors in this case that would clearly be a matter for the assessors to consider by way of cross-check. As HH Judge Belcher says, the Claimant himself asserts in his witness statement that he was told that the assessors agreed with the Home Office assessment of his date of birth. This, however, does not begin to demonstrate a real prospect of success of showing that the assessors placed an irrational or improper emphasis on the Home Office assessment or that they failed to undertake their own assessment.
39. So far as the giving of reasons for the age assessment are concerned, it seems to me that each case will be fact specific as to whether the reasons are clear enough or not. Again, a generic complaint on this ground about all brief age assessments carried out by the Defendant does not have a real prospect of success.
40. In this case, I agree with HH Judge Belcher that the reasons are to be found by reading together the letter provided to the Claimant and the form entitled "Brief Enquiry [as to Age]". I also agree with her that it is clear that the reasons are based on the Physical Appearance and Presentation observations made in that form and quoted earlier in this judgment.
41. As regards the specific assessment in this case (but relied upon as a grounds for attacking the entire practice and process of carrying out brief age assessments by the Defendant), it is said that (a) there is no indication that the assessors took into account cultural, ethnic and racial contexts and the individual claimant's life experiences and (b) has failed to set out reasons as to why the case is an "obvious one" not requiring a fuller enquiry (paragraphs 28 and 29).

42. As regards (a), the form itself requires these matters to be taken into account and there is no evidence that they have not been. Further, the social workers have been trained and undergone relevant courses about age assessment. I do not consider that there is a real prospect of success of challenge on this ground.
43. As regards (b), it doesn't seem to me necessary to say anymore than the form records. The relevant matters relied upon are clearly set out. If the Claimant wishes to challenge the assessment on the basis that the characteristics identified do not demonstrate an age over 25 then he is well able to do so. The level of detail does not arguably fail to meet the test set out by Lord Brown in *South Bucks District Council v Porter* [2004] 1 WLR 1953 at paragraph [36] or by HHJ Thornton QC in *AS v Croydon* [2011] EWHC 2091 (Admin) at paragraph [19].
44. So far as it is said to be irrational to rely upon physical appearance and presentation, the case law makes clear that reliance can be placed on these matters in appropriate cases. There is no real prospect of success in establishing that in this case it was "irrational" to rely upon the characteristics identified.

Ground 2 procedural unfairness and irrationality

(a) "Minded to" procedure

45. It is suggested that a "minded to" procedure should have been followed to allow the Claimant to respond and comment on the Home Office assessment of his age given it is said the likely circumstances in which the Home Office assessment was carried out. This is on the basis that "considerable weight" was placed on this assessment. As I have already said, there is no evidence that "considerable weight" was put on the Home Office assessment rather than on the assessors own assessment of the Claimant's appearance and presentation. The basis for the asserted requirement therefore does not exist. I agree with what HHJ Belcher says in paragraph 7 of her reasons. I do not consider that there is a real prospect of success regarding this ground.
46. It is also submitted that issues of credibility were not raised with the Claimant. However, it is clear that his assertion as to his age (based upon assertion as to what his father told him) was not accepted in the light of the assessment based on physical appearance and presentation. It is unclear whether the assessors decided (they did not need to do so) that his father had not told him what he said he had or his father had been wrong in what he said. It cannot be right that in all cases a minded to procedure must be adopted whenever the age put forward by the subject is disagreed with by assessors. In any event he was given an opportunity to comment on their assessment at the time. I do not consider that there is any real prospect of success in this submission.

(b) no reasons given for "clear case"

47. As I have already held: it seems to me that there is no real prospect of success on the basis of a submission (or ground) that the reasons were inadequate as not explaining more fully why the case was an obvious one where the subject was over 25. I agree with HH Judge Belchers reasons set out in paragraphs 4 and 5 under the heading "Reasons" in her order.

48. Separately, it is asserted that the view is not recorded that the case is an obvious one where the subject was obviously over 18 (and in fact over 25). I do not consider that there is an arguable case with a real prospect of success on that ground. I agree with paragraph 3 of HH Judge Belcher's reasons for refusing permission to proceed with judicial review on this point and as set out earlier in this judgment.
49. Finally, in this context it is submitted that there was a failure to make further enquiries of a brother (said to be in England). However, in circumstances where the case was considered obvious it does not seem to me that there is a real prospect of being able to demonstrate that there was a need to make further enquiry, not least when it was and is unclear what evidence it is said such brother could provide and when the Claimant, with the benefit of the legal advice and assistance that he had, was (I was told) apparently unable to locate any contact details for him. It was suggested that the Defendant should, in effect, have carried out an investigation to try and locate the brother but I do not consider that that is arguable with a real prospect of success.

Ground 3-Failure to take relevant matters into account

50. It is said that the Defendant's assessors failed to take into account unidentified evidence from other, unidentified, professionals who had come into contact with the Claimant and apparently referring to staff at his hotel accommodation who brought about the referral in this case. I do not consider that there is a real prospect of success on this ground. No material from such "other professionals" has been put forward, either at the time or since. The fact that a reference was made is on the basis there was something to be investigated. If, as was the case, the assessors considered the position to be obvious then there was no need for them to inquire further.

The objective position

51. Almost hidden away in the Claimant's grounds (all of which are based on "soft" judicial review principles) is a reference to the objective test in the context of age assessments laid down by the *Croydon* case. However, the assertion is simply that the Defendant's age assessment was "wrong". No evidence or substantial grounds are put forward as to why there is a real prospect of success in establishing that the age assessment of the Defendant is incorrect and that in fact he only reached his 18th birthday on 3 May 2024. Accordingly, on the evidence before me there is simply an assertion that the Claimant was in truth born on 3 May 2006. No factual case by the Claimant is raised that could properly succeed in a contested factual hearing as to the Claimant's age or, put another way, I am satisfied that the Claimant's case as to his age raises a case which, taken at its highest, could not properly succeed in a contested factual hearing.

Interim Relief

52. With the refusal of permission it follows that interim relief regarding accommodation based on the Claimant being under the age of 18 also fails. In any event, the Claimant (even on his case as to his age) is now over 18 and there are now no grounds to grant such interim relief.