Neutral Citation Number: [2022] EWHC 308 (Admin)

Case No: CO/3127/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/02/2022

Before :

THE HONOURABLE MR JUSTICE BENNATHAN

- -

Between :

THE QUEEN, on the application of SB (a child, by his litigation friend Roxanne Nanton of the Refugee Council)	**Claimant**
- and -	
ROYAL BOROUGH OF KENSINGTON & CHELSEA	**Defendant**

- -
- -

Ms A Patyna (instructed by **Instalaw**) for the **Claimant**
Ms C Rowlands (instructed by **Borough Legal Services**) for the **First Defendant**

Hearing date: 18th January 2022

- -

Approved Judgment

Judgment Approved by the court for handing down.

MR JUSTICE BENNATHAN :

Introduction

1. The Claimant ["SB"] is a South Sudanese asylum seeker who claims to be a child. The Defendant is a local authority, with functions, powers and duties under the Children Act 1989.

2. The issue in the case focuses on the Defendant's determination of whether the Claimant is a child, as the effect of such a finding has an impact on a number of aspects of how he will be treated within the United Kingdom. The precise terms of the issue are themselves disputed:

   (1) The Claimant submits that his case is a challenge to the lawfulness of the decision of the Defendant, on 11 June 2021 ["*the June determination*"], that he was not a child.
   (2) The Defendant argues that these proceedings are, in fact, about their refusal to reassess the 11 June determination at some later date.

3. I am grateful to Counsel for both parties for their written and oral submissions.

Facts

4. The Claimant arrived in the United Kingdom on 28 May 2021. He stated to the authorities that he was a child aged 17. Based on an assessment of his appearance and demeanour, the relevant Home Office official rejected that claim. The Claimant was kept in detention for 4 days and was then dispersed to the Defendant's area and accommodated with adult asylum seekers.

5. The Claimant was referred to the Refugee Council who in turn referred him to the Defendant, seeking for the local authority to undertake an assessment of his age.

6. On 11 June 2021 the Claimant was assessed by two social workers employed by the Defendant within their *Unaccompanied Minors and Independence Support Team*, Nicola Hughes and Aaron McCrossan; both have significant experience with young asylum seekers, including some from Sudan. For economy of expression, I refer to them collectively as "*the social workers*". Their report, notes kept by them both, and subsequent witness statements set out their views, approach and the procedure they followed:

   (1) Their view was that the Claimant was significantly older than he claimed, based on aspects of his appearance including what might be a receding hairline, some grey hairs, some pronounced lines on his neck, and his confident and calm manner.
   (2) On the basis of his appearance and manner, both Social Workers believed the Claimant to be well above the age of 18, perhaps by as much as 7 or 8 years. In the light of their view, they stated that they had not conducted a full "*Merton compliant*" age assessment.
   (3) They conducted an interview with the Claimant. Within that interview he gave answers which, in the view of the social workers, were unlikely to be true. I consider the detail of those aspects of the interview in more detail, below.

(4) In their witness statements made for these proceedings both social workers make clear that they relied, in part at least, on the interview in reaching their conclusion. Ms Hughes [at her paragraph 10] writing, "*During the meeting we conducted a short form age assessment*" while Mr McCrossan [at his paragraph 9] wrote, "*during the short form age assessment we explained to SB*…".

(5) To similar effect in the completed pro forma of the age assessment, within the section under the heading "*All available sources including other age assessments that have been taken into consideration*", the social workers have written, "*Ms Hughes and Mr McCrossan have considered the information they obtained in conversation with* [SB]….".

7. There are three elements of that interview process that the Claimant argues were unfair: the lack of an interpreter, the absence of an "*appropriate adult*", and the failure to afford the Claimant the chance to argue against any adverse conclusions the social workers were minded to reach. The first two are fairly simply described, the third is factually more complex.

8. There was no interpreter at the interview. The Claimant's first language is Nuer, a language not widely spoken in the UK. The social workers tried to locate a Nuer interpreter but were unable to do so. They spoke to Roxanne Nanton of the Refugee Council who had also been unable to find a Nuer interpreter, but who told them that she had managed to communicate with the Claimant in English. Thereafter the social workers spoke to the Claimant by telephone and satisfied themselves he was able to communicate in English; their various reports, notes and statements stress how the Claimant seemed proficient and confident in English but I note there are, even in their own documents, some grounds for at least a degree of caution. Mr McCrossan, for example, wrote in his notes of the Claimant speaking English with "*next to no difficulty*". In Ms Hughes' handwritten notes, there is an entry that reads, "*became emotional could be because of stress of the meeting, lack of interpretation or speaking about family*". The Claimant, by contrast, in his statement prepared for this litigation asserts, "*I try to speak English, I want to learn English, but currently my English is not very good*". It is right to add that the social workers stressed, in their report and subsequent witness statements, that they sought to ensure the Claimant understood their questions and only began to speak more freely once it became apparent to them he could do so.

9. There was no appropriate adult at the interview. The Claimant states that he was never told that he might have such a person present. Neither social worker suggests they ever told the Claimant of this possibility, nor do they proffer an explanation for not doing so.

10. There were a number of subjects within the interview wherein the Claimant gave answers that led the social workers to doubt he was giving them an accurate and truthful account. Within the completed pro forma report and the notes of the social workers, the relevant answers were as follows:

(1) His initial account spoke of his journey to the UK but made no mention of his passing through Egypt. Once the social workers examined the Claimant's *Facebook* account they saw images of him in Egypt. When asked about those images, he said he had at one stage flown to Egypt using someone else's passport. In Mr McCrossan's notes he adds that the Claimant spoke of the passport being in

someone else's name, being back in colour and written in Nuer. In the same notes Mr McCrossan adds "*Online it is clear that the passport would have been green and in Arabic, with some English (no Nuer passports)*"

(2) The same examination of the Claimant's Facebook account showed images which the social workers decided were of him in Ethiopia. When asked about those images the Claimant repeated that he had never been to Ethiopia.

(3) The Claimant spoke of being in Malta "*in detention*" for 10 months; his *Facebook* account showed him relaxing on a couch in Malta in what seemed to be an apartment rather than any type of institution; when asked about this, he replied that the images had been taken when he was visiting a friend.

(4) The Claimant told the social workers his date of birth was 25 May 2004; this date is recorded on the completed form as the "*claimed date of birth*", and in Mr McCrossan's notes of the interview he states that the Claimant said he had been told that date by his mother. Within the *Facebook* account the social workers saw a different date of birth, albeit one within 2004.

11. The form that the social workers completed includes a section titled "*Decision on age issue*" beneath which is a further section the heading "*How shared and opportunity provided to check or challenge information included*": it is apparent this part of the pro forma is designed to afford the writer the possibility of recording the extent to which the interviewee was given the chance to argue against any adverse conclusions. The entry in that section of the form simply records the social workers telling the Claimant their conclusion and explaining the reasons for their thinking. The notes made by both social workers confirm the impression that at this stage of the meeting they were announcing their conclusion as opposed to proffering the opportunity for the Claimant to rebut any adverse factual conclusions.

12. The Claimant and Ella Royle, of his Solicitors, have both made witness statements that spoke to the issues raised within the interview by the social workers, and Her Honour Judge Walden-Smith, sitting as a Deputy High Court Judge, gave permission on 29 December 2021 for them to be adduced at the hearing before me. The responses to the social workers' adverse findings set out in those statements are:

(1) The Claimant states that he did not pass through Egypt as part of his route to the UK but went there on a short visit when he was in Sudan, having left South Sudan in fear of his safety. I note that there is some support for his explanation in the handwritten notes of Ms Hughes, "*18 July 2019 – Egypt then went back to Sudan*". He further states that he did not tell the social workers the passport was written in Nuer, but that it was in the name "*Nuer*", a common name in his native country. Ms Royle has conducted what she describes as a "*cursory*" search on the internet and seen that the colour of Sudanese passports was changed in 2009 from green to a very dark blue that appears as almost black. I note that in reply to this point, within the Defendant's *Skeleton Argument*, a page from the internet is attached that suggests the passport is in fact green: however, the image attached is of such a dark green as to appear almost black.

(2) The Claimant's response to the suggestion that photographs in his *Facebook* account shows him in Ethiopia was that the images referred to were not of him but received onto his account, in effect through some sort of interaction on social media.

(3) Dealing with the images from Malta the Claimant states that after initially being detained in restrictive conditions in some army barracks, he was moved to a second establishment "*Hengle camp*" where he was permitted to go out on occasions, and at a later stage went to the apartment where he is pictured in images on his *Facebook* account.
(4) The Claimant's explanation for his different birthday as recorded on his *Facebook* account is that the friend who set up that account for him in Malta used his correct year of birth but did not trouble to ask him or use his actual date of birth.

13. On 5 July 2021 Solicitors acting for the Claimant sent a letter before action to the Defendant. Whilst the letter was lengthy, it began with a simple recitation of the litigation in contemplation which, given, the preliminary issue that has arisen in this case, I set out in full:

> Issues/Details of the Matter Being Challenged:
>
> A challenge against the decision of the Defendant, dated 11/06/2021 that the Claimant is an adult aged over 25 in circumstances where the Claimant claims to be a child aged 17 which decision we aver in the below circumstances is unlawful, unreasonable and irrational.

14. The Defendant responded to the letter before action by a letter dated 12 July in which, in essence, the claim was rejected on the basis that the assessment that had been carried out was fair and procedurally correct. The Defendant conceded that there had been a truncated process, but argued that in the light of the social workers' clear view of the Claimant's appearance and manner, this was permissible under the *Merton* guidance.

15. At some date in July the Claimant was transferred to Southampton under the Home Office dispersal scheme. Once there he was housed and treated on the basis he was an adult. The Claimant's solicitors then asked Southampton City Council ["*SCC*"] to treat him as a putative child and carry out an age assessment. On 23 July a letter before action was sent to SCC seeking to oblige them to carry out an assessment. SCC replied on 2 August, asserting that the Claimant's remedy was against the Defendant, given it was their social workers who had carried out the age assessment upon which SCC was entitled to rely.

16. On 10 September [thus just within the 3 month limit from the date of the June determination] the Claimant lodged a claim for judicial review against both the Defendant and SCC. The claim against the Defendant was expressed concisely and was essentially in the same terms as the letter before action that had been sent on 5 July:

> A challenge against the decision of the 1st Defendant, dated 11/06/2021 that the Claimant is an adult aged over 25 in circumstances where the Claimant claims to be a child aged 17 which decision we aver in the below circumstances is unlawful, unreasonable and irrational.

17. The Claimant's claim form also sought permission to judicially review the refusal of SCC to treat him as a child. The claim included a brief letter from Ms Nanton, a Children's Advisor for the Age Dispute Project run by the Refugee Council, who was by now acting for as the Claimant's litigation friend, given his claim to be under 18. That letter implied she believed he was under 18 ["*I will only act as litigation friend in a case where I believe that the Claimant/Applicant is a child*"], noted the Claimant's concerns that he had been disbelieved, and his suggestion that the social workers report made some basic mistakes about the history he had recounted. That brief letter had not been supplied to the Defendant before the claim was issued and the detailed grounds in support of the claim drafted by Ms Patyna, Counsel for the Claimant, at no stage suggested otherwise.

18. The Defendant lodged *Summary Grounds* opposing the grant of permission. Therein the Defendant defended the 11 June assessment as being lawful and also argued that the Claimant had not acted expeditiously, commenting that the claim had been lodged "*at the last possible moment within 3 months of the decision*".

19. Permission was considered by a Deputy High Court Judge on 18 October 2021. As that decision has led to a significant preliminary issue, I set them out in full insofar as they address the terms of permission and his view of the issue for which he had granted permission:

> 2. The application for permission to apply for judicial review against the refusal of the First Defendant to conduct a full age assessment is granted.
>
> 3. The application for permission to apply for judicial review against the decision of the Second Defendant is refused.
>
> Observations
>
> 1. The evidence of Ms Nanton of the Refugee Council, as to her impression of the Claimant's age, provides an arguable basis sufficient for the grant of permission to challenge the First Defendant's refusal to conduct a 'full' Merton compliant assessment.
>
> 2. The claim against the Second Defendant will become academic in the event that the Claimant succeeds in demonstrating that a full Merton is required and if any subsequent assessment demonstrates that he is a child. In those circumstances it can be presumed that the Defendants will comply with their relevant statutory obligations.

20. In December 2021 directions were given by another Deputy High Court Judge and once more, I set out the relevant parts in full:

> 1. Permission to adduce by 26 November 2021 the Second Witness statement of the Claimant;

2. Permission to adduce by 26 November 2021 the witness statement of Ella Royle

3. Permission to adduce the witness statement of Roxanne Nanton is refused.

Reasons

1. This is a judicial review of the determination of the Defendant not to undertake a full age assessment of the Claimant on the basis that it has been determined by the Defendant that the Claimant is not a child.

2. The issues raised in the statement of Roxanne Nanton were not before the decision maker at the time and therefore are not matters that would properly be before the court.

3. The second statement of the Claimant and the statement of Ella Royle deal with matters which may have gone to the credibility of the Claimant and therefore are to be adduced before the court. The Judge can determine whether there is assistance given by this additional evidence at the hearing.

Law

21. The Children Act 1989 imposes a variety of duties on local authorities in their dealings with children. Schedule 2 of the Act provides that every local authority shall take reasonable steps to identify the extent to which there are children in need within their area. The effect of those provisions in this case is that the Defendant was under a duty to consider whether the Claimant was a child, and there is agreement between the parties that this is indeed the legal position.

22. In recent years the rights of children have been given increased prominence in the law, see, for example, the detailed and authoritative review of the relevant jurisprudence by Moses LJ in *R (C) v Home Secretary* [2014] 1 W.L.R. 1234. Thus, in my view, a decision such as that challenged in this case has to be seen as one of substantial importance.

23. The starting point in any consideration of the requirements of an age determination process is *R (B) v London Borough of Merton* [2003] 4 All ER 280 (‘*Merton*’), in which Stanley Burton J, as he then was, set out detailed guidance on the process to be followed by local authorities. The *Merton* principles have been extensively considered in subsequent case-law and were approved and discussed by the Court of Appeal in *R (Z) v Croydon London Borough Council* [2011] EWCA Civ 59, in which case the Court, while repeating Stanley Burton J’s observations that judicialisation of the process was to be avoided, stated that except in clear cases appearance alone could not be a basis for determining age, and laid emphasis on the importance of the interviewers allowing the interviewed person the chance to deal with any adverse findings they were minded to make.

24. In *R (AB) v Kent County Council* [2020] EWHC 109 (Admin), Thornton J set out the relevant principles to be extracted from the case law and Home Office guidance. They are so concise and comprehensive, I set them out in full [21]:

> Purpose of the assessment
>
> (1) The purpose of an age assessment is to establish the chronological age of a young person.
>
> Burden of proof and benefit of the doubt
>
> (2) There should be no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child.
>
> (3) The decision needs to be based on particular facts concerning the particular person and is made on the balance of probabilities.
>
> (4) There is no burden of proof imposed on the applicant to prove his or her age.
>
> (5) The benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process.
>
> Physical appearance and demeanour
>
> (6) The decision maker cannot determine age solely on the basis of the appearance of the applicant, except in clear cases.
>
> (7) Physical appearance is a notoriously unreliable basis for assessment of chronological age.
>
> (8) Demeanour can also be notoriously unreliable and by itself constitutes only 'somewhat fragile material'. Demeanour will generally need to be viewed together with other things including inconsistencies in his account of how the applicant knew his/her age.
>
> (9) The finding that little weight can be attached to physical appearance applies even more so to photographs which are not three-dimensional and where the appearance of the subject can be significantly affected by how photographs are lit, the type of the exposure, the quality of the camera and other factors, not least including the clothing a person wears.
>
> Conduct of the assessment
>
> (10) The assessment must be done by two social workers who should be properly trained and experienced.

(11) The applicant should be told the purpose of the assessment.

(12) An interpreter must be provided if necessary.

(13) The applicant should have an appropriate adult, and should be informed of the right to have one, with the purpose of having an appropriate adult also being explained to the applicant.

(14) The approach of the assessors must involve trying to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions. Assessors should be aware of the customs and practices and any particular difficulties faced by the applicant in his home society.

(15) The interview must seek to obtain the general background of the applicant including his family circumstances and history, educational background and his activities during the previous few years.

(16) An assessment of the applicant's credibility must be made if there is reason to doubt his/her statement as to his/her age.

(17) The applicant should be given the opportunity to explain any inconsistencies in his/her account or anything which is likely to result in adverse credibility findings.

Preliminary decision

(18) An applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant with their conclusions without first giving him the opportunity to deal with the adverse points.

The decision and reasons

(19) In coming to the conclusion the local authority must have adequate information to make a decision independent of the Home Office's decision.

(20) Adequate reasons must be given.

(21) The interview must be written up promptly

25. Many of the other reported decisions on this subject are examples of the application of what are now established principles. I deal with one such judgment as the Defendant

seeks to place weight upon it in this case: in *R (AK) v Home Office and Leicester City Council* [2011] EWHC 3188 (Admin) a Deputy High Court Judge refused permission on numerous grounds including the absence of an appropriate adult at an age assessment interview: in doing so, she stressed that the Claimant had been offered the chance to bring a friend in circumstances whereby such a person would have been an adult [32]. I note that this decision was before the description of the relevant principles by Thornton J in *AB v Kent*, and that in *R(Z) v Croydon* the Court of Appeal did find for the Claimant on the basis of unfairness relying, only in part, on the absence of an appropriate adult.

26. The preliminary issue raised by Ms Rowlands on behalf of the Defendant suggests that this case is not about the fairness of the June determination but about the reasonableness of the Defendant's refusal to subsequently reassess the Claimant's age. In *R(F) v Manchester City Council* [2019] EWHC 2998 (Admin) Julian Knowles J considered an appeal against the refusal of a local authority to reopen, or reassess, an earlier assessment and did so on the basis that the test he had to apply was that of the well-known *Wednesbury* unreasonableness [paragraphs 1a and 26]. The obvious and significant distinction is that in an assessment case the Court applies its own judgment of whether the process was fair whereas, on the basis of *R (F) v Manchester*, the Court asks whether the refusal to reassess was within the options open to a reasonable defendant local authority. Ms Patyna, for the Claimant, submitted that the application of *Wednesbury* to reassessment cases was not firmly established in the law as in both the cases cited in argument [*R(F) v Manchester* and *R (BM) v Hackney* [2016] EWHC 3338 (Admin)] the Court was rejecting what were, on one view, attempts to avoid the time limit for launching challenges against the original assessment and, in any event, the Court had in fact looked at the fairness of both original assessments. I note Ms Patyna's competing analysis of those authorities, but do not need to resolve it for the purposes of this case.

Discussion

27. I first need to decide what I am deciding. Ms Rowlands, on behalf of the Defendant, argues that the claim is not a direct challenge to the June determination, but a challenge to the refusal to reassess, "*The Defendant having completed an age assessment, the duty came to an end. The question for the Court is therefore whether the Defendant's decision not to re-open its assessment of the age of the Claimant (and revive the duty) was lawful, applying the conventional judicial review standard*." [paragraph 3, Defendant's *Skeleton Argument*]. In argument, Ms Rowlands conceded that there were no additional arguments or evidence the Defendant could have deployed were the application, as Ms Patyna argues, about the fairness of the June determination.

28. The technical argument advanced by the Defendant would set a higher legal hurdle; the effect could be that I viewed the June determination as unfair, but nonetheless dismissed the application on the basis of the Defendant being entitled to refuse to reopen it. This is obviously an unattractive prospect for a judge but technical defences often are, yet parties are perfectly entitled to advance them.

29. In my view it has always been completely obvious what this application is about:

(1) The claim was set out in simple and direct terms, "*A challenge against the decision of the 1st Defendant, dated 11/06/2021 that the Claimant is an adult aged over 25 in circumstances where the Claimant claims to be a child aged 17 which decision we aver in the below circumstances is unlawful, unreasonable and irrational.*"
(2) While the Defendant, at one stage in September, in a letter defending the June determination, made a passing reference to the lack of any basis to reopen the assessment, it is clear from the terms of their *Summary Grounds* of opposition that the issue was clear. The comment written therein stating the claim was lodged, "*at the last possible moment within 3 months of the decision*", only made sense if the Defendant knew full well it was the June determination that was being litigated.
(3) While it is correct to note that the judges dealing with permission and leave to call witnesses wrote in terms of the Defendant's refusal to conduct a full *Merton*-complaint assessment, those comments were obviously related to the Defendant's justification for the limited investigations made during the June determination: the alternative reading of the grant of permission would have to be that the very experienced Deputy High Court Judge refused permission [without saying so] for the ground that *had* been drafted, but gave permission [without further comment] for a ground that had *not* been.

30. Although I do not regard this preliminary matter as being in any doubt, out of an excess of caution, I grant permission if it is needed for the original ground to be advanced. I do so without causing any prejudice to the Defendant, given Ms Rowlands' very proper concession that there were no additional arguments or evidence that would have been submitted by the Defendant in any event.

31. I turn to the real issue in this appeal, did the June determination meet the standards of fairness required by law? I remind myself that local authorities should not be hobbled by the Courts taking a highly technical approach to appeals such as this, demanding that every box is ticked, but instead should allow flexible and practical procedures to be deployed. It is also right to note that some asylum seekers may realise there is a legal advantage in being treated as a child, and therefore the Courts need to allow age assessment procedures to be robust and effective.

32. In my view the depth of enquiry required of a local authority in an age assessment process is not binary. Obviously there will be cases, for example of a young child, where no process is needed to decide they are under 18. At the other end of the scale, were a middle aged person to claim the status of a child, it must be open to a local authority to dismiss that claim without any formal process or interview. Once, as in this case, the local authority is dealing with a young person who their suitably-qualified staff regard as very likely to be older than 18, a shortened process must be permissible, but it still needs to be fair. In argument it was conceded on behalf of the Defendant that once the social workers decided the Claimant's assessment required an interview, that interview had to be fair. On that basis, I turn to consider the three aspects that, the Claimant alleges, made the June determination unfair.

33. In their statements the social workers state that they tried very hard to locate an interpreter who could speak Nuer, and I have no reason to doubt them. They found that the Claimant was capable of conducting a conversation in English; once more, I have no reason to question that assertion but I note that, as most judges and lawyers will have seen, a person's command of English may ebb and flow depending on them

tiring or being under stress. I note the comment in Ms Hughes' notes that one possible cause of the Claimant becoming distressed was the lack of an interpreter. I also note that some of the matters the social workers relied on to undermine the Claimant's credibility are the sort of comments that could be explained by a lack of verbal precision; the difference between a passport "*in Nuer*", meaning in that language, and one "*in the name Nuer*" is one example.

34. In my view the lack of an interpreter at the assessment interview was a significant short falling, but that by itself would not necessarily have been sufficient to render the process so unfair as to be unlawful. Any problems might have been sufficiently mitigated by other steps such as an appropriate adult and/or a slower and more thorough "*minded to*" process.

35. The role of an appropriate adult is well established in situations where there is an interview process that could lead to adverse inferences. The Association of Directors of Children's Services published *Age Assessment Guidance* in October 2015 which sets out the role of an appropriate adult in such an interview as including asking for breaks if the interviewee seems upset, ensuring they understand the questions, clarifying questions, and interrupting if irrelevant matters are raised.

36. Appropriate adults are also common in police interviews of children under caution. While that situation is factually distinct, some light can be shed on the role and importance of an appropriate adult by the Home Office guidance which includes the following direction to anyone fulfilling that duty:

> You have a positive and important role. You should not expect to be simply an observer of what happens at the police station. You are there to ensure that the detained person for whom you are acting as appropriate adult understands what is happening to them and why. Your key roles and responsibilities are as follows:
>
> • To support, advise and assist the detained person, particularly while they are being questioned.
>
> • To observe whether the police are acting properly, fairly and with respect for the rights of the detained person. And to tell them if you think they are not.
>
> • To assist with communication between the detained person and the police.
>
> • To ensure that the detained person understands their rights and that you have a role in protecting their rights.

37. In my view the suggestion made on behalf of the Defendant in argument, that an appropriate adult was not allowed to interfere in the interview, is simply wrong. Had the Claimant been accompanied by a sympathetic adult they could have played a role in avoiding what, according to the Claimant's statement, were misunderstandings that were then used as a basis for the social workers to disbelieve what he was telling them. To take one example, the formal record of the interview states, "*When* [SB]

systematically went through the countries that he travelled through on his journey, he said he travelled from South Sudan to Sudan to Libya to Malta, he did not mention Egypt". The social workers then saw a photograph on his *Facebook* account of the Claimant in Egypt, and the record states, "*This contradicts what he had told the assessors. When they explicitly asked if he had been [to Egypt] he changed his story to say he had been to Egypt, flying there and using a passport*". In his statement for these proceedings the Claimant denies this was change of story, stating that whilst he had gone on a visit to Egypt from Sudan, that had not been part of his journey to the west, as he had returned from Egypt to Sudan. It seems to me that is the sort of confusion which, if genuine, could have been helped by an appropriate adult ensuring such a misunderstanding was not held against the Claimant. I am reinforced in my view that this may indeed have been such a misunderstanding by Ms Hughes' comment in her notes, "*18 July 2019 – Egypt then went back to Sudan*".

38. I do not suggest that the judgment in *R (AK) v Home Office and Leicester City Council* was wrongly decided on this aspect of the case, as the absence of an appropriate adult will not render all age assessment interviews unfair, it has to depend on the circumstances and, in particular, what other safeguards were in place. On the facts of this case, however, the combination of the lack of an appropriate adult *and* an interpreter combine to render the interview process one that was unfair.

39. I turn to consider the "*minded to*" process and in doing so I express my gratitude once more to both Counsel for the further written submissions they have supplied on this topic. I do not consider that the case law requires any very formal process in an abbreviated assessment, and I do not think the social workers were required to pause the interview and present the Claimant with a list of answers they were minded to treat as diminishing his credibility. There were, however, three answers which were relied upon as being dishonest and thus supporting the social workers assessment of the Claimant's appearance, namely the Nuer passport, the trip to Egypt and the terms under which he had stayed in Malta; for the reasons I have set out already, it seems to me those were the sort of answers that could have been explained away as misunderstandings if the perceived inconsistencies had been carefully and slowly articulated to the Claimant. If there had been an interpreter and an appropriate adult present, the failure to allow the chance to explain away those answers may not have been sufficient to render the process unfair, but when viewed cumulatively with those absences I think they amount to another unfairness.

40. In conclusion and drawing together the various short fallings relied on by the Claimant in his case I am driven to the conclusion that the combination of the lack of an interpreter, the absence of even the offer of an appropriate adult, and the flaws in the "*minded to*" process, amount to a clearly unfair process. Once the social workers decided to conduct an interview as part of the assessment process, they were obliged to ensure it was a fair one. I have not been asked to express any view on the Claimant's actual age and I do not do so, but nothing I have seen suggests the conclusion would necessarily have been the same, had a fair process been carried out. I allow the application and quash the decision taken by the Defendant. It will be for the local authority where the Claimant now resides to fulfil their obligation to conduct a fair assessment process and I do not think it necessary to make any further order for that to occur, trusting as I do that whichever is the relevant authority will carry out that important duty.

Postscript

41. This judgment was circulated in draft, as is common practice. Both parties submitted suggested typographical corrections and amendments to matters of detail. I accepted many, though not all, of those submissions. Counsel for the Defendant, however, went further and sought to persuade me to reverse the decision to quash. That application ignored the terms under which the draft was circulated and should not have been made [see *R (Edwards and another) v Environment Agency and others* [2008] 1 WLR 1587].