Upper Tribunal
(Immigration and Asylum Chamber)

R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 (IAC)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Heard at Birmingham Civil Justice Centre
on 10 and 11 October 2011, and
at Field House
on 12 October 2011

Decision

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Before

Mr C M G Ockelton, Vice President
Upper Tribunal Judge C Lane

The Queen on the application of

AM

(by his litigation friend James Whitehouse) Claimant

-v-

SOLIHULL METROPOLITAN BOROUGH COUNCIL Defendant

Representation:

For the Claimant: Mr Adrian Berry, instructed by Public Law Solicitors
For the Defendant: Mr Jon Holbrook, instructed by Solihull MBC

DETERMINATION AND REASONS

Introduction

1. The claimant claims to be a minor, born in 1994. He arrived in the United Kingdom in January 2010 and claimed asylum. He was placed with foster parents, Mr and Mrs Patel,

and attended Washwood Heath School. Quite soon, the school expressed doubts about his claimed age, and at the school's request Solihull MBC, in whose area Mr and Mrs Patel live, undertook an age assessment.

2. Solihull has undertaken two assessments, one in May 2010 and one in December 2010, and concluded that it would be right to assign to the claimant a nominal date of birth of 1 January 1992, making him over 18 when he came to the United Kingdom. It is the second assessment, dated 17 December 2010 that the claimant challenges in these proceedings. The claim form was not issued until 17 March 2011. It was accompanied by an application for urgent consideration and interim relief. Blake J declined to grant interim relief before permission, remarking that "it could be said that the claimant has not acted promptly in the adverse age assessment" and extended time for the acknowledgement of service. Walker J ordered the application for permission into court and by order dated 14 April 2011 granted permission and interim relief, and transferred the claim to this Tribunal.

3. Meanwhile, the Secretary of State considered his asylum claim. On 31 March 2010 the claimant was issued with what is called an "Immigration Status Document", indicating the British Government's recognition of him as a refugee and describing him as born on 1 September 1994. On the basis of that status he has limited leave to remain in the United Kingdom until 13 March 2015. But following the second age assessment by Solihull, the Secretary of State wrote on 22 December 2010 to the claimant, indicating that she proposed to cancel refugee status for the following reason:

> "You made an asylum claim as an unaccompanied asylum-seeking child and your asylum decision was made on that basis. However, it has since been deemed by Social Services that you are over 18 years of age."

We are not directly concerned with that question in these proceedings.

4. Whilst the claim was before the High Court, the claimant had a litigation friend in the person of the official solicitor. Following transfer, the question was raised whether the Tribunal had power to appoint a litigation friend, and if so who that should be. The Tribunal considered the matter on 28 July 2011 and decided that (i) the Tribunal has power to operate through a litigation friend; (ii) in the circumstances of this case it was appropriate for one to be appointed and (iii) it was appropriate to appoint James Whitehouse.

5. We heard evidence on 10 and 11 October 2011 and submissions on 12 October. In addition to the oral evidence we take into account the written evidence given at various stages.

Our Task

6. The starting point is the decision of the Supreme Court in R (A) v Croydon LEC [2009J UKSC 8. Lady Hale JSC, who gave the first speech, set out the importance of a decision as to the age of a young person, particularly an unaccompanied asylum seeker. She then considered whether, in Judicial Review proceedings challenging an assessment by the Local Authority, the latter could adequately defend itself by showing that its decision had in every respect been made appropriately on the basis of the material available; or whether it was open to the claimant to show that, even if that were the case, it was factually wrong. After considering certain questions that she described as "evaluative questions", she turned

to the duty under s. 20 (1) of the Children Act 1989. That is expressed in the Act as follows:

> "Every local authority shall provide accommodation for any child in need within their area",

and by s.105 (1) of that Act,

> ""Child" means. a person under the age of 18".

7. Lady Hale JSC said this:

> "[27] But the question whether a person is a "child" is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence. But that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision-makers
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> [32l However, as already explained, the Act does draw a distinction between a "child" and a "child in need" and even does so in terms which suggest that they are two different kinds of question. The word "child" is undoubtedly defined in wholly objective terms (however hard it may be to decide upon the facts of the particular case). With a few limited extensions, it defines the outer boundaries of the jurisdiction of both courts and local authorities under the 1989 Act. This is an Act for and about children. If ever there were a jurisdictional fact, it might be thought, this is it.
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> [33} The final arguments raised against such a conclusion are of a practical kind. The only remedy available is judicial review and this is not well suited to the determination of disputed questions of fact. This is true but it can be so adapted if the need arises: see *R (Wilkinson) v Broadmoor Special Hospital Authority* [2002] 1 WLR 419. That the remedy is judicial review does not dictate the issue for the court to decide or the way in which it should do so, as the cases on jurisdictional fact illustrate. Clearly, as those cases also illustrate, the public authority, whether the children's services authority or the UK Border Agency, has to make its own determination in the first instance and it is only if this remains disputed that the court may have to intervene. But the better the quality of the initial decision-making, the less likely it is that the court will come to any different decision upon the evidence. If the other members of the court agree with my approach to the determination of age, it does not mean that all the other judgments involved in the decision whether or not to provide services to children or to other client groups must be subject to determination by the courts. They remain governed by conventional principles.
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> [46] .... The result is that if live issues remain about the age of a person seeking accommodation under section 20(1) of the 1989 Act, then the court will have to determine where the truth lies on the evidence available."

8. Lord Hope DPSC, in a concurring judgment, offered the following observations amongst others on this issue:

> "[51] It seems to me that the question whether or not a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the court. There is no denying the difficulties that the social worker is likely to face in carrying out an assessment of the question whether an unaccompanied asylum seeker is or is not under the age of 18. Reliable documentary evidence is almost always lacking in such cases.

> So the process has to be one of assessment. This involves the application of judgment on a variety of factors, as Stanley Burnton J recognised in R *(B) v Merton London Borough Council* [2003] 4 All ER 280, para 37. But the question is not whether the person can properly be described as a child. Section 105(1) of he Act provides: "In this Act ... 'child' means, subject to paragraph 16 of Schedule 1, a person under the age of 18." The question is whether the person is, or is not, under the age of 18. However difficult it may be to resolve the issue, it admits of only one answer. As it is a question of fact, ultimately this must be a matter for the court.
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> [53] If, as the respondents contend, and Ward LJ in the Court of Appeal [2009} PTSR 1011, para 25 accepted, the phrase "child in need" which sets the threshold for the provision of accommodation under section 20 must be taken as a whole, the judgment that must be made will fall ll1to the latter category. But the definition of "child" in section 105(1) applies to the Act as a whole, without qualification or exception. The question whether the child is "in need" is for the social worker to determine. But the question whether a person is or is not a child depends entirely upon the person's age, which is an objective fact. The scheme of the Act shows that it was not Parliament's intention to leave this matter to the judgment of the local authority.
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> [54] As for the practical consequences, the process begins with the carrying out of an assessment of the person's age by the social worker. Resort to the court will only be necessary in the event of a challenge to that assessment. So I do not accept that our conclusion will inevitably result in an inappropriate judicialisation of the process. It may, of course, require a judicial decision in some cases. But I would hope that that the fact that the final decision rests with the court will assist in reducing the number of challenges. The initial decision taker must appreciate that no margin of discretion is enjoyed by the local authority on this issue. But the issue is not to be determined by a consideration of issues of policy or by a view as to whether resort to a decision by the court in such cases in inappropriate. It depends entirely on the meaning of the statute. We must construe the Act as we find it. As I have said, when the subsection is properly construed in the light of what section 105(1) provides, the question admits of only one answer."

9. It is said that the Administrative Court is not set up in order routinely to make findings of fact on dispute of evidence; and the Immigration and Asylum Chamber of the Upper Tribunal has experience particularly in considering evidence from asylum claimants, and has judicial review jurisdiction under the Tribunals, Courts and Enforcement Act 2007. This claim, like a number of others, has therefore been transferred to the Upper Tribuna1 under arrangements which are expected to continue. But, after transfer, the claim remains a claim for judicial review, and that has a number of consequences. We were invited by Mr Berry to conclude that the effect of the decision of the Supreme Court in A v Croydon is that the Local Authority's decision has no weight once it has been challenged. We do not think that can be right.

10. It must in any event be the case that an assessment by a Local Authority that is not the subject of any challenge stands, however wrong it may happen to be. An assessment that is challenged must surely stand until the challenge succeeds, otherwise there would be no basis upon which any provision for the claimant could be made. Whether more can be said than that at present, we doubt. There is clearly a danger that the possibility of judicial review will encourage unmeritorious challenges, by claimants who may have nothing to lose: not even costs, if they are legally aided and entitled to fee exemption.

11. Mr Berry suggested that the need for the claimant to obtain permission to bring judicial

review proceedings forms an adequate filter in these cases as in any other. Only a claim that ought to be allowed to proceed will be heard substantively. It followed, he submitted, that there is no vice in proceeding on the basis that, although the claim itself is not sufficient to displace the Local Authority's decision, the grant of permission should do so, leaving the question of the claimant's age undetermined until the Tribunal rules on it. That cannot be right in principle, because it would mean that nobody could adopt any view of the claimant's age between the grant of permission and final judgment. But, in any event, the grant of permission is too readily obtainable in cases of this nature to provide any useful filter. In particular, permission is not to be refused simply on the basis that the evidence appears to the single judge not to be worthy of credit. The test is that set out by the President of the Queen's Bench Division giving the judgement of the court in R (FZ) v Croydon LBC [2011] EWCA Civ 59 at [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 delays."

The test is repeated in similar terms at [26].

12. Thus, there is in the ordinary case no effective filter, and a claim made on the basis of evidence that could be believed will obtain permission. When we originally prepared this judgment we had been inclined to accept many of Mr Holbrook's submissions about the role of the Tribunal, and about how the development of this field of the law should be able to realise what was clearly the aspiration of Lord Hope at least, that we should not reach the position that a large number of assessments come to be made judicially rather than administratively. Mr Holbrook had relied on the statement of his task set out by Ouseley J in R (CD) v Cardiff County Council [2011] EWHC 23 (Admin), particularly at [126]-[128]. We then heard that the Court of Appeal were to hear an appeal against that decision, and their judgments, [2011] EWCA Civ 1590, are now to hand. In these circumstances, where the court exercises its supervisory jurisdiction, and although the question is one of fact to be determined on the evidence, Pitchford LJ, with whom Laws LJ and Lloyd Jones J agreed, said at [23]: the application of a legal burden is not the correct approach. There is no hurdle which the claimant must overcome. The court will decide whether, on a balance of probability, the claimant was or was not at the material time a child. The court will not ask whether the local authority has established on a balance of probabilities that the claimant was an adult; nor will it ask whether the claimant has established on a balance of probabilities that he is a child.

13. A claimant therefore has a minimal hurdle to overcome in obtaining permission, and none at all in the substantive hearing. The implications for the resources of local authorities remain to be explored. For our part, we simply turn to the evidence in the present case, and to making our assessment on the basis of it.

General Observations

14. As well as hearing oral evidence in the present proceedings, we have had the advantage of reading the judgements of a number of those who have had a task of making a judicial assessment of a claimant's age. Those judgements set out some of the difficulties in

making an age assessment, but they also indicate some approaches to the available evidence. It is convenient to set out here our observations on the evidence in general.

15. In the present case the evidence is wide ranging. It may therefore be appropriate to make some general observations about the impact of evidence of various sorts and from various sources in this type of case. First, we think that almost all evidence of physical characteristics is likely to be of very limited value. That is because, as pointed out by Kenneth Parker J in R (R) v Croydon [2011] EWHC 1473 (Admin) there is no clear relationship between chronological age and physical maturity in respect of most measurable aspects of such maturity.

16. The difficulty is exacerbated by the lack of any clearly-based data. In relation to Afghans in particular, our understanding is that there is no group of Afghans in Afghanistan of certain age. It is obviously difficult to see how the assessment of one individual can be justified if it is based not on similarity to the development of another individual whose age is known, but merely on similarity of development to another individual whose age is also only assessed. Secondly, those individuals who raise questions of the assessment of their age typically have a history, or claimed history, beginning with childhood and early youth in a country of relative poverty, continuing with a long and arduous journey that is claimed to have taken place during their mid-teens, and concluding with a period living in a country of relative affluence such as the United Kingdom. So far as we are aware, no, or no sufficient, work has been done to identify what affect such a history might have on their physical maturity at various dates. In particular (although we accept that we are relying more on instinct than anything else) physical maturity may be attained more slowly in conditions of poverty and malnutrition and that on arrival such a person may look less physically mature than his chronological age might suggest. After his arrival it may be that physical changes take place more quickly than they would otherwise do, but it may (or may not) be that a person with such a history is less physically mature than anybody might expect for his age.

17. We have used the word "mostly" in those observations. Looking at the authorities and the literature as we have, it appears to us that there are two physical indicators which may be of some assistance, but only at the very top end of the range. The first is general growth. As an individual matures, he increases in height, and then his body fills out, so he increases in weight. When his body is mature, the rate of increase of both height and weight drops very considerably. Unless he is becoming obese, there comes a point when there is little change in either. That is a matter that cannot be assessed by a single measurement. Nor do we think that very much assistance can be gained by attempting to assess any perceived difference or levelling off in the individual's increase in height or weight. Where, on the other hand, accurate measurements of the claimant's height and weight are available extending back over a considerable period of time (say 18 months or more) and show no, or no significant, change, we think that that is likely to be a sign that the individual is now over about 18.

18. The other sign of physical maturity to which we must make reference is that relating to the eruption of the third molar. As the paper by Olze and others, 121 Int J Legal Med 445 (2007) makes clear, both racial and sexual differences are observable. There are no figures for Afghan males: perhaps there could not be, because of the difficulty about accurate aging to which we have referred. But it does appear that it would be right to say that the

full emergence of the third molar is typically a characteristic of adulthood rather than adolescence. It would be quite wrong to say any more than that. We are, we hope, fully aware of the dangers of misuse of material of this sort. But these two physical features seem to us to be so characteristic of the period of adolescence having finished that it may be right to give them some weight, although they will, we think, never be of any help in picking an age within the teenage years.

19. Our second observation relates to mental maturity and demeanour. So far as mental development is concerned, it is very difficult indeed to see how any proper assessment can be made from a position of ignorance as to the individual's age. Most assessments of mental development are, in essence, an assessment of whether the individual is at average, or below or above average, for his chronological age. Without knowing the age, a person who appears to have a mental age of (say) 15 may be 15, or he may be a bright 13 or 14 year old, or a dull 16 or 17 year old. There is simply no way of telling. So far as demeanour is concerned, it seems to us that there may be value to be obtained from observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. But we find it difficult to see that any useful observations of demeanour or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult. There may of course be cultural difficulties in such an interview but there are the ordinary social difficulties as well.

20. The asserted expertise of a social worker conducting an interview is not in our judgement sufficient to counteract those difficulties. A person such as a teacher or even a family member, who can point to consistent attitudes, and a number of supporting instances over a considerable period of time, is likely to carry weight that observations made in the artificial surroundings of an interview cannot carry.

21. Reactions from the individual's peers are also likely to be of assistance if they are available. We do not suggest that other young people are qualified specifically to give evidence about the age of a colleague of theirs, nor should they be encouraged to do so. But those who work with groups of young people see how they react with one another and it seems to us likely that evidence of such interaction, if available, may well assist in making an age assessment, particularly if any necessary allowance for cultural differences can be made.

22. Thirdly, we have, like others, used the phrase "expert evidence" as a description of the evidence of the social workers called to support the claimant's case. It is, however, worth pointing out that expert evidence has, as such, no specific place in Tribunal procedure. In court proceedings, governed by rules of evidence, however tenuous they may now be in civil cases, the person demonstrating qualifications as an expert is thereby entitled to give evidence which may contain opinions, and may be based on hearsay. Neither opinion evidence nor hearsay evidence is excluded from Tribunal proceedings. There is therefore no specific status for an expert. Nevertheless, witnesses are tendered on the basis of their expertise, and we accept that what they have to say may be more or less helpful according to their expertise. But, in our judgement, the assistance they can give us is even more closely linked to what it is that they have to say, and their basis for saying it.

23. Finally, we should note that, as the task of age assessment is for the court or the Tribunal,

it is important that the court or Tribunal be given the material to perform that task. When all the material available has been gathered in, the judicial decision-maker will need to reach a final conclusion on it, and in reaching that conclusion may want to, or decline to, act on evidence that is unsupported, and may in doing so decide that it can fairly resolve any doubts it has in favour of one side or the other. In order for that to be done, the judicial decision-maker needs to have the raw evidence. It needs to be told the range of ages to which the evidence appears to point. It needs to be advised as how to select an age within that range. It is extremely unhelpful if, instead, the court is offered an opinion which itself purports to be a final determination of age, not giving any range but, instead, selecting a particular age because the writer of the opinion has decided to give (or, it may be, refused to give) the benefit of doubt to the individual. The fact that a witness might wish, if he or she were the final decision-maker, to make the decision in that way is of no assistance to, or even relevant to, the court or Tribunal. If a claimant is to be given the benefit of the doubt, that will be because the judicial decision-maker concludes that that is the right thing to do on the basis of all the evidence, not merely that which the writer of an individual report took into account and not because the writer of that report thought that it would be right to do so.

24. In the present proceedings, much time was devoted to attempting to disinter the actual information included in reports prepared on behalf of the claimant which did not give any proper indication as to the range of the possible ranges, but, instead, presumed (partly silently) to make assumptions in favour of the claimant. As we say, that is unhelpful. If reliance is placed on such reports there is a risk of the benefit of the doubt being given a number of times; there is a risk amounting almost to a certainty that the court will be asked to act on an opinion which is based on less evidence than the court itself has; and if the report is phrased in that way the court is deprived of having the evidence in a form on which it can properly act.

The Evidence

25. The evidence falls into three broad categories. First, there is what may be broadly described as "lay evidence". The claimant and his foster carers Mr and Mrs Patel have each given evidence describing their own experiences. Secondly, there is evidence from social workers commissioned by and on behalf of the claimant to write 'expert reports' for the purposes of these proceedings. Thirdly, there is evidence from various professionals, occupying various roles within the defendant's sphere of activity. This latter evidence is adduced principally for the purpose for supporting the assessments the defendant has made and to which they have, in one way or another, contributed.

Lay evidence

26. Because of his asylum claim, there is a considerable written record of statements made by the claimant at various stages. Obviously he can give no direct evidence of the date of his birth. The statements he has made relate to his reasons for movement between Afghanistan and Pakistan; his journey to the United Kingdom; and his taskara. His claim to a date of birth giving him the age he asserts is, as we understand it, based solely on his taskara: he himself does not seek to support it in any other way. Indeed, in one of his witness statements he says that he did not know that he was the age he claims until he

came to the United Kingdom and was told that this was the impact of the date of birth he claimed on the authority of what he had been told was in his taskara.

27. The evidence about the taskara is partly curiously precise and partly curiously vague. The claimant says that his brother got it for him, and that his mother gave it to him, but he gave it back to her for safekeeping, because he knew it was an important document. Before he left, to travel to the United Kingdom, his mother gave it back to him. Or, at any rate, that is what he said in most of his evidence. Right at the end, he said that it was his maternal uncle who had given it to him to carry on his journey. But his evidence was that it was his mother who told him that his brother had got it for him and advised him not to lose it.

28. It is now lost. The circumstances are unknown. The claimant says that he lost it some time on the journey and that he is sometimes careless.

29. Before it was lost, however, he had a conversation about it. Somewhere on the journey, he cannot now remember where, or when, a "friend", whose name he cannot remember (he cannot even remember roughly how many people where travelling together at the time) looked at it. He looked at it because the claimant had asked him to look at it to ascertain his age. There had been some discussion between the boys on the journey and he was the one that did not know his age. So he asked his friend to read the taskara and the friend did so. He told the claimant that the taskara said that he was born in the year AH 1373. The friend also told the claimant the month, but the claimant cannot remember whether he was told that it was the sixth month or the ninth month and, as we have said he does not even say that after this conversation he knew his age. He knew only that the taskara said that he was born in AH 1373 and he claims to remember that date with the greatest precision, although he can remember so little else about the circumstances or content of the conversation.

30. The claimant was asked a number of questions by Mr Holbrook on behalf of the defendant about whether he understood the importance of the taskara and the importance of being able to establish that he was under 18. His answers amounted to a claim that he did not understand the importance of anything. Despite asserting that he knew the document was important because he had been told so when he received it from his mother (or uncle), he claims that he subsequently had no conception of its importance. Despite needing it to be read in order to ascertain his age, for comparison with other people he was travelling with, he claims that, once it had been read, he did not know what his age was and had to be told after his arrival in this country.

31. If the claimant had a taskara giving age 1373 as his date of birth, that would not resolve the issue of his age. A taskara is merely a statement of inexpert opinion. It is obtained by making assertions about identity and age to the local authority in Afghanistan. But, as it is the information upon which the claimant chiefly relies for his own opinion of his own age, it is essential that we reach a view about it.

32. We have come to the conclusion that the claimant is not telling the truth. First, some of the details given about the history of the taskara are inconsistent. That may not be a matter of the greatest importance, but the most glaring inconsistency is at just the point at which this important document is being handed over to him with a statement of its importance.

Secondly, we regard the account of its reading on the journey and of what the claimant can remember of that incident as wholly implausible. The one thing the claimant claims to remember is the one thing that now helps him in his claim, even though he asserts that he had no idea of its meaning or that it was important.

33. Thirdly, we are confident that the claimant is not in general being frank about his history or circumstances. EURODAC records show that he was fingerprinted in Greece in October 2008. He has never volunteered that information: in his asylum interview he claimed not to remember having been fingerprinted. Further, he has never admitted having travelled for such a long time that he was in Greece by then and took a further period of over a year to travel from Greece to the United Kingdom. We do not think that the claimant has been honest about his journey.

34. There are other reasons for doubting the claimant's credibility.

35. It is dear from the evidence derived from the education authorities and the claimant's own social worker, and not as we understand the matter challenged either at the time or before us, that the claimant copied a signature of either Mr or Mrs Patel onto a document on which the school required their signatures, but which they had refused to sign.

36. It is also clear from the defendant's evidence that the claimant is willing to pretend to have less education (and, particularly, less English) than is in fact the case. When he first had contact with the education authorities in this country, he claimed to speak no English. Three of the defendant's witnesses give good reasons for thinking that that was not the true position. Ms Keen had originally assessed him as having virtually no English, whereas a few weeks later he had much more than could possibly have been learnt in the interval. She gives more details in the report she made to the assessors in relation to the second age assessment, and in her second witness statement dated 10 October 2011. Ms Cameron said in her witness statement that the claimant was not open about his knowledge of English, and in her oral evidence said that his apparent ability to learn so much in such a short time had caused her to doubt her own experience. Ms Birdi had already recorded in a note dated 17 March that "surely he must have learnt some English before he arrived?!", and in an email of 8 June 2010, said this:

> "He certainly appears to understand far more than an average Afghan student who has only been in the UK for a matter of weeks and who is categorical that they never learnt English before coming to the country. In my experience dealing with overseas students I would say that he has had access to far more tuition than he says."

37. So by March he had sufficient English for it to be thought by those with experience of such matters that he must have spoken English before the date of his claimed arrival in the United Kingdom. By April he was able to have a conversation with Ms Keen, one of the defendant's witnesses, expressing himself in an assertive way, But then it looks as though in May he was again purporting to speak very little English, because a summary minute of that month says "speaks very little English", and in September he pretended not to understand a teacher who was telling him off in English.

38. Mr Berry asked the claimant and other witnesses a number of questions about the claimant's linguistic abilities. The claimant gave evidence through an interpreter at the hearing. We make no criticism of him for that, but it is clear that although he represented

his understanding as minimal, he was able to understand many questions in English and when it came to the date "1373" he replied giving that date in English.

39. There is no evidence that the claimant is a linguistic genius, as he would have to be in order to make progress that he would appear from the evidence to have made between January and April 2010, if his claim to understand no English on his arrival in January 2010 were the truth. And if he had made that progress it is difficult to understand how he could have failed to continue to make similar progress in the period between then and the hearing. Our conclusion is that he has a greater knowledge of English than he is prepared to admit, and in general it seems to us that he is a dishonest person who is prepared to attempt deception to secure his ends.

40. Mr and Mrs Patel, who it is said have looked after him since he came to the United Kingdom, gave oral evidence. They had recently qualified as foster carers, and although they had no language in common with the appellant, he was assigned to them as their first (and so far as we know, to date only) charge. He was with them until after the first age assessment, the council withdrew its support for his foster care, and relocated him in a hostel. The claimant has said that he hated being there, and the evidence is that he left the hostel and came back to Mr and Mrs Patel. They told us that he lived with them, and that they considered him as a member of a family. As a result, the position is at the date of the hearing before us, it is said that the claimant had lived with the Patels for about 21 months, all but a few days.

41. In that context it is astonishing that they were able to tell us so little about him. Mrs Patel seemed clear that her opinion was that what the claimant said about his age that is to say, that he was 15 when he came to live them -was the truth. She described his getting on well with her own youngest son, who is 17. She was able to give two - we think only two - examples showing that he is not mature. He does not put his clothes away, and he said he would mend a bicycle but took a hammer to it and broke it.

42. There is a record of an interview conducted by the defendant's social workers with Mrs Patel alone, in which it is recorded that she said that the claimant might be 18 or 19. In her oral evidence she denied saying that and reasserted that she thought that the claimant was the age that he claimed.

43. Mr Patel has, if the account of the claimant's present circumstances is to be believed, taken on the role of his father. Mr Patel is the senior male in the house in which it is said that the claimant has been living. Mr Patel is unemployed: he is at home all the time. He says that he accompanies the claimant to prayers four times a day in the mosque. But he was entirely unable to say anything substantial about the claimant as a person save that he used to leave his clothes around and used to leave lights on and did not clean the bath. Mr Patel said that he had had no conversation with the claimant about whether he shaved, which we do consider rather remarkable in a relationship which is said to be that of foster father and adolescent son.

44. What was also remarkable about Mr Patel's evidence was that he described the time in which the claimant lived in his house as having been nine months and as being in the past. When he was challenged on that, he gave an answer which, so far as we were able to understand it, amounted to saying that he was only counting the period when he was

receiving payment for the claimant's residence with him.

45. We simply do not know what the truth of the matter is. Although the claimant and the Patels say that they live together as a family, it looks as though part of Mr Patel's evidence is either that they do not live together, or that he does not regard the claimant as a member of his family unless he is receiving payment. Neither of the Patels appears to have the knowledge that one would expect of two adults who have been living in the same household as a boy for a considerable period of time, even if they had not been, as they claim to have been, taking an interest in him almost as a son. Mr Holbrook sought to persuade us to discount their evidence on the basis that they have a financial interest in establishing that the claimant is under the age of 18, because it is only if he is, that they are paid for looking after him. We do not need to take that view. We say simply that Mr and Mrs Patel are not experts in age assessment. They appear to have no perception of the cultural differences between their own children, of Guajarati background and English upbringing, and the claimant who claims to have a wholly Afghan background. Despite all the opportunities which it is said that they have had, they do not cite a wealth of observations to show the claimant behaving as a child. We do not think that it can be said that in reality their evidence adds anything to the claimant's case.

The claimant's expert evidence

46. Elaine Fehrman describes herself as an independent social worker. She is currently in full time employment in healthcare. She received instructions on 17 February 2010, interviewed the claimant on 19 February 2010 and prepared and completed her report, 41 pages, on the same day. In her report she details at some length what the claimant told her about his history. She then embarks on a criticism of the age assessments already made by Solihull, remarking in particular that (a) no detailed references were made to the use of interpreters or to their qualifications; (b) there was a lack of specificity as the qualifications of Solihull's social workers (c) there was reliance on a report that the claimant's third molars were all present on 17 June 2010 without providing the report to her; (d) there was reliance in general on the claimant's physical presentation as pointing to an age older than he claimed, and (e) there was a failure to give reasons that she considered adequate. After that critique, Ms Fehrman goes on to make her assessment. It is that "there is insufficient evidence to undermine [the claimant's] credibility", and, at paragraph 16.7:

> "I am of the view that there is no credible evidence to indicate that [the claimant's] assertion that he is not 18 years old and is age 16 is untrue. I conclude that [his] age is as he has claimed in that he will be 17 years old in September 2011. He should therefore benefit from the safeguards in place for children of the asylum process, should this be granted."

47. That last phrase, and a similar phrase used in the subsequent paragraph, shows that Ms Fehrman was not aware that the claimant had been granted asylum nearly a year previously. Perhaps he did not tell her. Clearly she did not have, or apparently seek, a comprehensive knowledge even of those aspects of his situation that were readily ascertainable. As a result of Mr Holbrook's questions to her in cross-examination, she accepted that some of the criticism she made of Solihull's process were misplaced.

48. She was asked why she had reached the particular assessment that she had. She said that it was because Home Office policy was to give the benefit of the doubt to the person claiming to be a child. That is a further reflection of what must be regarded as her ignorance of the purpose of the assessment. The Home Office were not currently in any way involved; the Home Office had made its decision. But, in any event, as we have said, what is required from a person such as an independent social worker is an assessment of relevant facts, giving the range of possible conclusions so that the final decision-maker, whoever that may be, can assess the age, giving at that stage, whatever benefit of doubt appears to be applicable. What, on the contrary, Ms Fehrman appears to have done is to have discounted all the evidence tending against the claimant's claim, reached her own view that he was credible in his account of the taskara, and made her assessment by reference to his claim. That is done specifically on the basis that there is nothing in his presentation, account or demeanour to show that his claim is not the truth. What Ms Fehrman entirely fails to do is to decide whether there is anything showing that it is the truth.

49. The latter became perfectly apparent when she was asked to say what she thought were the youngest and oldest ages that the claimant could be. She first said that she was not prepared to give a figure for either boundary, although she was also unable to say how it was that she was able to fix an age without any conception of the boundaries within which she was doing so. She then, as it appears to us, simply tried to minimise the damage to her own written report that was caused by the questions being asked. She accepted that what she described as "the publications" indicated a margin of error of 5 years either way. She was asked again what the range was for this claimant. She said 12 to 22: in other words, she gave a range of 5 years each side of her own assessment. But she also accepted that there was no question that the claimant was not 12. She declined to accept that the realistic range was about 17 to 26, and that 16 or 17 was the very youngest that the claimant might be. She was unable to give any reason for her refusal to accept that, nor did she provide any explanation of what giving the claimant the benefit of the doubt meant, if it did not mean allowing him to establish an age at the lower end of the applicable range.

50. Ms Fehrman's report is, in our judgement, wholly unsatisfactory. She brings nothing to the assessment of the claimant's age other than his own claim about the taskara and her largely unmerited criticism of others. She declines to take into account evidence which is likely to be of some relevance (for example that relating to the emergence of his molars) and is ill-informed about his status and whether the report is being compiled for the purposes of the Home Office. Whether the defects in her report are attributable, or partly attributable, to the period of what must have been less than 48 hours between her original instructions and her completion of a quite lengthy document, we do not know. In any event, her report does not assist us to make any assessment of the claimant's age.

51. Ms Fehrman's oral evidence added little to the report, other than indicating very clearly that she was more concerned to adopt what she described as "anti-oppressive" attitude to the claimant than to reach any independent view of his age. Her acceptance that even her own opinion gave a possible range of 12 to 22 for the claimant's age necessarily deprives her evidence of much of its possible relevance or force. It is clear that she did not have in mind a range equally distributed around the age she assessed, however, because she herself said that 12 was impossible and her assessment gave the claimant the benefit of

the doubt. The 10 year range for the purposes of reading her report must in truth be one which has its boundaries at considerably more than 12 and 22 respectively.

52. Simon Shreeve and Carey Baff prepared a report and gave oral evidence.

53. The report is dated 21 July 2011 and is signed by both of them. They interviewed the claimant and Mr Patel and considered information from other sources. Towards the end of the report they write as follows:

> "The following 'weighting scale' has been devised by the assessors [sic] to help demonstrate the apportioned weight applied to the information gathered within this assessment"

A number of factors are then set out, grouped or divided in a way that is not immediately apparent, and to each group there is assigned a "weight", a number which the keys set out below the table shows could be between 0 and 5, although in fact there are no Os and no 5s. Some of the factors identified point to greater maturity, others to less maturity; sometimes factors pointing in opposite directions are grouped together and given a single "weight". For example, the first item in the list is as follows:

> "Physical appearance and demeanour:
>
> His body hair, adam's apple and general physical appearance suggest he is past his mid-teenage years and possibly an adult. Demeanour during assessment was of an adolescent who had not reached adulthood.
> Weight: 4".

54. No information is given as to how the weighting is ascertained from the factors pointing in different directions, and in fact the conclusions, which immediately follow this list, make no reference to the weightings. We will set out the conclusions in full:

> "[AM] does not claim to have definite knowledge of his age, but has reported what he was told by a relative stranger. The only doubt about his credibility would arise if *his* fingerprints were taken in Greece in October 2008. However the information he believes to be on his Taskera cannot be tested or held as reliable information. Therefore it is believed necessary to evaluate his age entirely on the basis of his presentation and on the other information available.
>
> Had [AM] been 18 in January 2010 he would now be over 19 ½ years of age, but neither his behaviour during the interview and as reported by Mr Patel, nor the extent of his body hair growth and the presence of acne spots suggest a young person of that age. Further, for the reasons elaborated in section 7 [health and medical assessments] it is not believed that the assessments of May to September 2010 and December 2010 gave reasons to retrospectively assess his age to January 2010. A considerable body of the information included in these assessments have been available from at least mid January 2010, but had not then caused [AM's] age to be doubted.
>
> It is believed probable that he was at or near the end of his growth to adulthood when he was admitted to care, which is more indicative of a young person who is then somewhat older than 15 years 3 months, and very probably at least 16 years of age. While the presence of third molars cannot be the sale basis for evaluating age by June 20103114 of [AM's] third molars had fully erupted: the research reported by Olze et al (ibid) does not assist in dearly evaluating age from this data although and [sic} the lower age for the eruption of both

upper and lower third molars in the research by Chagula, cited by Olze et al is 17. Sheila Birdi also believed he was aged between 17 and 19.

The majority of professionals with significant contact with [AM] have believed him to be older than his given age, but there is no consensus that he was an adult at the beginning of 2010 or even 6 months later.

Taking this into account and the expressed views of Mr and Mrs Patel along with other professionals, it is concluded [AM] was at least 16 ½ years of age when he arrived in the United Kingdom. Assessors are aware of the duty to award the benefit of the doubt to [AM] and on this basis we find it very likely he was *below* 16 ½ years of age on arrival in the UK and therefore we conclude he has probably attained his 18th birthday in the recent past.

DOB is estimated to be 1 June 1993."

55. Certainly on its face the report appears to be a careful and comprehensive analysis of the information with attention being also given to the differing value that various observed factors may have in assessing the claimant's age. It may well have been a report in this form that prompted the comments of Mr Neil Garnham QC in his judgement in R (N) v Croydon [2011] EWHC 862 (Admin) at [23]:

> "I turn to the final social worker evidence, namely the evidence of the independent social worker Simon Shreeve. His is, if I may say so, by far the most impressive analysis of the issues that arise in this case that I have seen. Whilst it can fairly be said that he saw the claimant alone and it might have been preferable if he had conducted the interview with another social worker, nonetheless his is a balanced and well reasoned report. His formal age assessments record issues of significance that point away from the claimant's primary case. His report strikes me as more compelling as a result of that willingness to contemplate and address the alternative point of view".

56. Before us, as we have indicated, both of the authors of the report gave evidence, and it is the answers that they gave particularly in cross-examination that causes us to differ very substantially from the view expressed by Mr Garnham.

57. Although she gave evidence second, we will take Ms Baff first. A surprising feature of the evidence of the two authors of the report was that they were unable to agree on who had produced the first draft. Mr Shreeve said he had; Ms Baff, challenged in cross-examination, insisted that she had. Ms Baff added that she had not previously been familiar with the weighting scale used by Mr Shreeve, although the report itself describes the weighting scale as having been devised by the assessors, that is to say both of them. Her evidence was that the assessment was accurate to within a year either side. That, as we shall see, is very different from what Mr Shreeve said. Further, and very surprisingly, despite the clear assessment that at the date of the report the claimant was just over 18, Ms Baff said that she did not think he was. So far as her own methodology is concerned, she told us that she had thought the claimant's demeanour pointed to an age of 15½ to 16, but that other factors pushed the age up. She declined to accept the possibility that the claimant had been deliberately adopting the demeanour of a young person. She said that she would have been "very surprised" to learn that the claimant was over 18 on his arrival.

58. We can only assume that Ms Baff's cooperation in the production of the report was sought by Mr Shreeve in order to meet the point made by Mr Garnham that it would have been

better to have two social workers. It was quite clear from her oral evidence that Ms Baff did not fully understand the contents of what she had signed; it is further obvious from comparing her oral evidence with that of Mr Shreeve that they took very different views of the assessment of the material as a whole. Ms Baff gave us no real reason for preferring her oral evidence to that of the report which she had signed, and offered no explanation for the differences. Her own method of assessing age appears to be purely impressionistic, and she is apparently content to use that method after a single meeting with the claimant. It does not appear to us that her evidence added anything useful to the case at all. Nor do we think that she had any real input into the report, which we shall refer to as the 'Shreeve Report'.

59. We look then in more detail at the Shreeve Report and at the oral evidence given by Mr Shreeve.

60. Mr Shreeve said that he had performed a similar number of assessments, but had only once previously been subject to any cross-examination. Thus, as it seems to us, the evidence about the real meaning of his report, given in the course of the present case, is of considerable importance.

61. Only one clear feature showed itself. That was Mr Shreeve's decision that, on the basis of his assessment of the claimant's credibility in relation to his own story, he should assign to the claimant an age very near the lowest possible age for the evidence he was evaluating. We are inclined to agree with Mr Holbrook that Mr Shreeve was seeking to avoid indicating the boundaries within which he had selected the age (or date of birth) identified in his report. He claimed that he was always accurate within a year, and that he could sometimes estimate age with a tolerance of 6 months. But further questioning revealed that those figures were hopelessly ambitious. He accepted that, from the material he had seen, the claimant could, on his arrival in the United Kingdom, have been between about 16 ½ and 22 or 23 years old. He had chosen the age he had, in order to give the claimant the benefit of the doubt. There was, so far as we could understand his evidence, no other reason for choosing that age rather than any of the other ages within the available range.

62. That evidence is very troubling. There is no suggestion at all in the Shreeve Report that the evidence would have been capable (indeed, so far as we understand the matter, equally capable) of supporting an age of 22 ½ on arrival, 6 years more than that assessed.

63. We have already given our observations on the role of the benefit of the doubt and its application by decision-makers other than the final decision-maker. Here we pause only to inquire into the basis upon which Mr Shreeve attributed so much benefit to the claimant. We are completely unable to understand it. In the table of weightings there is the following entry:

> "Social history and family composition:
> His account of leaving Afghanistan and the journey to the United Kingdom has been consistent, although if his fingerprints were taken in Greece in October 2008 there would be significant doubts about the veracity of his account.
> Weight: 1"

64. The weighting of "Figure l" means, according to the key to the table, "unsupported/unable to substantiate, but cannot entirely discredit/discount." There is no other entry in the list of weightings that relates to the claimant's credibility as to his history. If the judgement of

credibility was to be given only a weight of 1, we cannot understand how it came to have such a massive impact in choosing an age at the very bottom of the available range.

65. Whilst giving his evidence, Mr Shreeve was asked to look at the EURODAC record of the claimant's fingerprinting in Greece, and after looking at it, he said that he accepted it, but commented that the Home Office had been aware of that material but had accepted the claimant's account of his age. But he did not say that the weighting needed to be changed, nor did he say that his award of the benefit of the doubt needed to be changed.

66. There are other matters that cause concern. In the course of his oral evidence, Mr Shreeve said that he himself had looked at the claimant's teeth, and had noted that the molars had fully erupted. He accepted that that was an important indicator of adulthood, and agreed that the claimant's tooth development was more indicative of an adult in his 20's than his claimed age. But the fact that his third molars had erupted fully is not mentioned in the report itself but only in the conclusions. In the report, where the evidence is set out, it is said is first that they had "erupted"; and then "all third molars were present at least a year ago" is given a weighting of 4. Mr Shreeve was aware of the Olze paper, he refers to it. He was therefore aware that the stage of eruption is of importance. He knew from his own observation that this claimant's molars had reached the last stage. But instead of looking at the matter dispassionately in the course of setting out the evidence, he cites the paper only to show that the age he has chosen is not wholly ruled out. Despite the weighting, the matter is virtually discounted in the overall assessment which we have set out above. That is the converse of the process we have noted in relation to the claimant's credibility. Whereas on that matter, material with a low weighting had a great effect, on the present, a high weighting has very little effect.

67. In his oral evidence, Mr Shreeve accepted that the claimant's height and weight and cessation of growth pointed to his adulthood. That is not different from what was said in the report, but, as we have noted, 'general physical appearance' is given a weighting only in combination with an assessment of demeanour pointing in the opposite direction. Now that we know the way the Shreeve Report treats one physical feature pointing clearly towards an older age, this treatment of another physical feature strikes us as somewhat suspicious. There is another difficulty in relation to acne. Acne is not mentioned in the list of features with weighting, but is mentioned in the conclusions, as set out above. It is there clearly indicated that the claimant's acne suggests that he is not as old as 19 ½ at the date of the report. In oral evidence, Mr Shreeve said that young men often have acne in their early 20's.

68. In the course of his oral evidence Mr Shreeve indicated that he did not claim that his assessment was any more accurate than those undertaken by the defendant. Indeed he acknowledged that his having only seen the claimant on one occasion might make it less reliable; but added that the defendant might be regarded as having an interest in asserting that the claimant was an adult, whereas he, Mr Shreeve, was entirely independent.

69. Mr Shreeve's evidence makes it clear to us that he is neither independent nor reliable. The position is that the material he gathered showed merely that the claimant was between about 16 ½ and about 22 (or a little more) on arrival, and 18 months older at the time of his examination. Given that bracket, he selected almost the lowest possible age, on the basis of a judgement of credibility which he regarded as of little importance and which collapses in the light of the actual facts. The truth of the matter is that Mr Shreeve had no good reason for choosing a particular date of birth between about the summer of 1987 and the summer

of 1993. His choice of the latter date to the exclusion of others shows, in our judgement, a clear intention to assist the claimant rather than to assist any other fact finder.

70. It seems to us that the Shreeve Report is a rather dangerous document. It looks as though it has been written by somebody who takes all the relevant evidence into account. That appearance is misleading. It looks as though it was written by someone who applies a clear methodology of weighting to the evidence pointing in various directions. That appearance too is misleading. It looks as though there must be some good reason behind the eventual assessment of the subject's age. That appearance too is misleading.

71. Mr Shreeve's willingness to accept as a co-assessor, who signs a report with him, Ms Baff, who, as we discovered, neither fully understands the impact of the report nor agrees with its conclusions, further detracts from Mr Shreeve's professional credibility. Again, the appearance of validation given by a second signature is seriously misleading.

72. Anybody reading the report alone, might conclude that it should be given considerable weight and that there was good reason to suppose that the claimant's date of birth was about 1 June 1993. Without oral evidence we might have taken precisely that view. When the full picture as seen, it is clear that all that can be *said* on the basis of Mr Shreeve's evidence is that the claimant was, at the date of its writing, somewhere between about 18 and about 25 years old. We find it difficult to see how the report in its present form can be regarded as honest.

The defendant's evidence

73. As well as written material, the defendant called oral evidence from six witnesses. The formal age assessments were made by Helen Guizani and Chris Collins in May 2010 and Cornelia Heaney and Shamayla Anwer on 17 December 2010. All gave oral evidence with the exception of Ms Guizani. There was also oral evidence from Sheila Birdi (formerly Corkery), Kate Keen and Lisa Cameron, all of whom have encountered the claimant in the course of his education. The formal age assessments take into account material from other sources as well, including the claimant himself and Mr and Mrs Patel, as well as other informants, in particular, Emma Rose, the claimant's social worker.

74. None of those eight people considered that the claimant was as young as he claimed. The formal age assessments both adopted and assessed date of birth of 1 January 1992. In their witness statements, the assessors gave their more recent view, and sometimes a span. Ms Collins said that she believed he was over 18 on his arrival in the United Kingdom and in her oral evidence said that he might have been as much as 22 or 23 at that time. Ms Guizani's witness statement indicated her confidence that the claimant was an adult in January 2010 and was at least 21 by 3 August 2011. Mr Berry challenged Ms Collins on some of the methods she had used in gathering information and making the first assessment. She responded that she had taken a view against the credibility of the claimant and Mr Patel. She thought in particular that the latter had misled her and as a result she had perhaps not put as much to him as she might have done. Ms Heaney has considerable experience working with children of known ages between 14 and 17, and with care leavers. Her view expressed in her witness statement and confirmed at the hearing was that it was "not at all likely" that the claimant was the age he claimed. She was confident that he was an adult when he arrived, and that by June 2011 he might be as old as the oldest care

leavers[1] that is to say 24: she thought it was more likely that he was around 21. Her co-assessor, Ms Anwer, also has experience working with those up to 24. She thought the claimant was more like a care leaver than a looked after child. She thought it was highly unlikely that the claimant is the age he states and was confident that he is an adult but "may be under the age of 24 years".

75. In answer to Mr Berry's questions in cross-examination, Ms Heaney accepted that she had not interviewed Mr Patel, because she had been able to speak to Mrs Patel and did not think that she did not have enough material to make the assessment. She said that she took a cautious attitude to the possibility of regarding the claimant's account of his travel as lacking in credibility, despite the difficulties caused by the EURODAC evidence. She was also cautious about accepting dental evidence as providing proof of adulthood. In his questions, Mr Berry did not specifically challenge Ms Heaney's assessment as contained in her witness statement and her oral evidence.

76. Ms Keen has experience of dealing with children and adults of various nationalities as learners of English. She was responsible for initial assessment of his abilities in English. She does not claim expertise in age assessment, but in comparison with others with whom she has dealt in the course of her work, she thought that the claimant seemed older than the age he claimed. She had what she called a "gut sense" that he was an adult or at least a very mature young man, and significantly older than his claimed age of 15 when he was at her unit in early 2010. In her oral evidence she said that she thought that he was most likely to have been about 19, but thought his age might be anything between 17 and 25. In cross-examination she emphasised that she had concerns related to the impact of what she might say about her views of his age. She did not want him to be deprived of the help that education could give him, whilst appreciating that if her suspicions were right, he was too old to be entitled to the services he was receiving.

77. Ms Cameron's professional knowledge is also as a teacher of English. She has worked with people between the ages of 16 and 21. She thought that the claimant was older than his claimed age of 15 ½ when he was at the unit at which she was working in early 2010. At the hearing she said that the lowest age he could have been at that time was 17 ½. The upper age would have been 21 to 22, but she considered it most likely that he had been aged about 19. Ms Birdi has experience working with speakers of other languages learning English, from a large variety of backgrounds and of various ages. She first encountered the claimant in March 2010 and was from the beginning suspicious of his claimed age and background. In her witness statement she summarised views she had received from colleagues, including one teacher who thought he was much older than his claimed age, one that he seemed older than the rest of the class, two who made no comment on his age, and one who said that she had no concerns about his age. She had contact with Ms Rose in relation to allegations of his misbehaviour. Based on her professional experience as a secondary school teacher, she estimated the claimant to be "more like a 17 to 19 year old".

78. Material from Ms Keen, Ms Cameron and Ms Birdi and Ms Rose, was taken into account by Ms Heaney and Ms Anwer in making the second age assessment. There are two particular features which in our judgement are of importance. We have set them out at paragraphs 35-39 above; we return to them briefly here.

79. There seems to us to be no reason to doubt either of these elements of the evidence, or of

their implications. They confirm the view that the claimant is not a person who is entitled to credit: on the contrary, he is prepared to practice deception in order to secure his ends. Further, the conclusion that we reach, on the basis of the educators' evidence that the claimant had more knowledge of English than he could have acquired since his arrival in the United Kingdom, does not merely throw doubt on his account of his history: it indicates that there are parts of his life as yet undisclosed by him. That in itself suggests that he must be older than he claims, because the account of his life that he has given has no space for his having previously learnt any English.

80. That factor goes towards our conclusion that his evidence is not worthy of credit. We see no reason to believe that he ever had a taskara giving his date of birth as AH 1373. That does not mean that he is the age assessed by the Local Authority. It simply means that his own evidential input to the process is of minimal weight.

Our Assessment

81. We must make the best assessment of the claimant's age that we can, on the basis of the evidence we have heard and seen, and the opinions that have been shared with us. We have concluded, for a number of reasons, that the evidence from the Local Authority's side is, on the whole, to be preferred.

82. There is in our judgement reason to doubt the truth, in partiality or integrity, in part at least, of all the claimant's witnesses. The claimant himself has not been truthful about his taskara, he has not been frank about his travel, he has claimed to have less knowledge of English than he has, and he has shown other signs of dishonesty. Mr and Mrs Patel were prepared to say astonishingly little about the claimant's life with them and their opportunities for observing him. Mr Patel's evidence appeared to be given on the basis that the claimant was not in fact living with them at the time of the hearing. Ms Fehrman's report is of no assistance; Mr Shreeve's was clearly written with an aim of assisting the claimant rather than the court. In contrast, there was nothing in the Local Authority evidence that caused us to think that to any material extent it had any of the vices we have identified in the evidence on the claimant's behalf. Indeed, many of the individual elements of the evidence, and the opinions, were not challenged by Mr Berry in his cross-examination. Further, the Local Authority had access to, and used, the evidence of those who had seen the claimant with others of his claimed age group, and who themselves had wide experience of dealing with young people of various ages. As we have said above, we consider this feature to be of some importance.

83. We think that the first age assessment by Ms Collins and Ms Guizani does have some defects. It was clear from her evidence that Ms Collins took an early and adverse attitude to the information being received from the claimant and the Patels. We do not think it would be right to say that she closed her mind to the possibility that her judgement was wrong, but it may well be that the assessment that she made, whether or not it was right, was based on more limited information than it should have been. We are content to say that, as an assessment, it should not be relied upon: we do not, however, take the view that that means that the matters recorded in it are of no value. The second assessment, by Ms Heaney and Ms Anwer, is one which does appear to have taken into account all relevant matters and done so in a balanced way. We have already mentioned Ms Heaney's clear evidence that she was not swayed by general opinion as to the adverse effect of untruths

about a claimant's journey, or evidence of the development of his teeth. She appears to have taken particular care in relation to the evidence she received from Mrs Patel.

84. Ms Heaney and Ms Anwer, in making their assessment, and in common, as it seems to us, with all those who provided information from the defendant's side, made no attempt to put the claimant's age at either end of any span that they identified. On the contrary, they all appeared to have made a genuine attempt to give a span and to judge an age within it. That in itself contrasts with Ms Fehrman and Mr Shreeve, each of whom selected an age, did not initially disclose a span, and were subsequently shown to have chosen an age at the very bottom of the span they had in mind.

85. Although the formal assessment by Ms Heaney gave the claimant an estimated date of birth of 1 January 1992, Ms Heaney's considered evidence in her witness statement and at the hearing was that he might be as old as 24 but was more likely around 21 in June 2011. Assessing the claimant's age at 21 on that date would thus be in accordance with the opinion of the most senior Local Authority social worker and would be consistent with almost all the other credible evidence in this case, including the assessments of the other Local Authority social workers, the age span eventually adopted by Mr Shreeve and that grudgingly accepted by Ms Fehrman, and two of the three witnesses who had been involved in the claimant's education. Only Ms Birdi's evidence would exclude that age: her suggested span would give a maximum age of 20 on the date in question.

86. It seems to us that it is appropriate for us to decide that the claimant was aged 21 at the end of June 2011. If that is so, his twenty-first birthday may have occurred on any date between June 2010 and July 2011. We assign to him a nominal birthday of 1 January, which is halfway between those two dates, and assess his date of birth as 1 January 1990.

Conclusion

87. On the basis of our assessment, the claimant was not a minor when he entered the United Kingdom, and was not and is not entitled to services as a minor or a former relevant child. His claim is dismissed.

88. There will be a declaration that the claimant was born on 1 January 1990, and the orders for anonymity and interim relief will be discharged. We will hear counsel if they cannot agree on the form of the order.

C M G OCKELTON
VICE PRESIDENT, UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER