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CO/10788/2009

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

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 16 November 2009

B e f o r e:

MR JUSTICE COLLINS

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Between:
THE QUEEN ON THE APPLICATION OF AW (A CHILD)

Claimant

v

LONDON BOROUGH OF CROYDON

Defendant

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Ms Shu Shin Luh (instructed by Pierce Glynn Solicitors) appeared on behalf of the **Claimant**
Miss Sian Davies (instructed by DMH Stallard LLP) appeared on behalf of the **Defendant**

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J U D G M E N T

1.1. MR JUSTICE COLLINS: This is a claim by AW seeking judicial review of a decision of the London Borough of Croydon given on 23 June 2009, whereby he was assessed to be 17 years old. He contends that he was born on 1 January 1994. That, it is appreciated, is an artificial date which is meant to reflect the age he believes himself to be, which would make him now nearly 16. There is a difference therefore of getting on for two years between the assessment of the local authority and that which he puts forward as being his age.

1.2. The importance of his age lies in the duties that the local authority has towards him. It also was important in regard to a claim for asylum that he made. He arrived in this country in December 2008. He is from Afghanistan, and thus on arrival was an unaccompanied asylum seeking child (or UASC as they are known).

1.3. When he presented himself for interview by an immigration officer, his age was disputed, but he was provided with a pro-forma letter from the Borders Agency, which stated that it was recognised that he appeared to be under the age of 18 and would thus be processed as a child. He was issued with a registration card which gave the date of birth of 1 January 1994. That was merely to reflect the age which he asserted he was, and it was not intended to, nor does it, represent his true date of birth.

1.4. He then applied to the London Borough of Croydon as a UASC.

1.5. It was then necessary for Croydon to assess his age in order to determine, first, whether the view taken by the immigration officer was correct in that he was truly under 18, and second, to try to assess what age he in fact was on the assumption that he was under 18 because depending on his age would depend the services which the Council had to provide for him. It would be of particular importance whether he was under or over 16 because the obligations owed to one who was in the care of the Council when under 16 are more onerous, so far as the Council is concerned, than for those who were only over 16 when they were the concern of the Council. However, there are obligations owed to anyone under 18, and so the age assessment is of considerable importance.

1.6. He was interviewed and assessed in January 2009. The conclusion then reached was that he was over 18, and accordingly not entitled to any services under the Children Act. What was then relied on to reach that conclusion was that his demeanour and attitude was that of a young person confident in conversing with adults. He had an appearance of self assurance and an ability to control his behaviour and emotions, which could be described as the behaviour of a mature young person and one who had mastered adult interactions, and that his physical appearance appeared to be that of a young person who had been through puberty and who had, as it was put, established a level of comfort with the physical changes that occurred during that period, whatever that may mean.

1.7. In the result, the Council indicated that, because he was over 18, they had no duty to continue to house him or to look after him, and the Home Office was notified accordingly. In the result, he was in a position in which, by the end of February, he found himself without any accommodation despite efforts made by solicitors acting on his behalf, and he was about to be street homeless. In the result, judicial review

proceedings were taken against the assessment, and an interim order was made that he be accommodated pending my judgment in the case of A v Croydon. I say "my judgment"; in fact the case came before me on 10 March, together with a case against Kent, WK, with a view to trying to sort out the issue which arose in very many age assessment cases when paediatricians, who had been instructed on behalf of the particular claimants, had produced reports which stated that the assessments by the local authorities through their social services were not to be relied on, and that, in reality, the various claimants were under the age of 18. The issue there was essentially whether reliance could be placed upon the paediatricians' reports in order to throw doubt upon the assessments made by the social services in question.

1.8. I decided that, in general, the paediatricians' reports added nothing and should not be relied on to contradict the decisions made by the social workers. I say "in general" because that depended upon the court being satisfied in an individual case that the assessments carried out by the social workers could be relied on. They had to be done by experienced and trained social workers, and the procedures had to be fair so that the whole complied with the approach which has been recognised as the correct approach in these cases, laid down by Stanley Burnton J (as he then was) in a decision of this court, B v the London Borough of Merton [2003] EWHC 1689 Admin. Hence the reference in this area to assessments being Merton compliant.

1.9. It is necessary, and this is perhaps obvious, for the individual UASC to be put as much as possible at ease. He should not be browbeaten in any way in the manner in which the interview is carried out. It must be recognised that there are not only cultural differences, but also that the UASC in question may have gone through traumatic circumstances, having travelled across the world in order to arrive at this country, and often in circumstances which were, to say the least, somewhat unpleasant, usually in the back of lorries or some such unlawful transportation, and no doubt is missing family and friends from where he has come. All that clearly has to be taken into account.

1.10. In addition, it is known that age assessment is an imprecise art. It is not possible ever to be entirely sure that the decision reached is the correct one, and social workers, indeed anyone concerned with age assessments, has to appreciate that, and to recognise that there is a margin of error. Of course, that works to an extent both ways, because if a firm conclusion is reached by experienced and properly trained social workers, who have carried out a Merton compliant assessment, then it will be difficult to persuade this court, perhaps impossible, that that decision is one which can be said to be wrong in law, and it is only wrong in law if it is a decision which is flawed by a failure to have regard to a material consideration, by taking an immaterial consideration into account, or because it is a decision which no reasonable person could, on the material before him, reach. Thus, it is, I regret, inevitable in this area, because of the impossibility of being sure that any decision reached is the right decision, that erroneous decisions may be made and may not be able to be amended. That, I fear, when human beings are dealing with situations such as this, is inevitable. One cannot achieve perfection. But of course it does mean that the benefit of any doubt must be given to the UASC in question. Indeed, that is a matter that is particularly relied on in this case by Ms Luh on behalf of the claimant.

1.11. I go back to the history of this matter. The assessment that he was over 18 was challenged and was made the subject of an interim order, and in due course the Council decided that a fresh assessment would be made so that those proceedings became unnecessary. That fresh assessment was made on 23 June. It was attended on behalf of the claimant by a lady who is the Children's Panel Adviser of the Refugee Council, Ms Mejzini. She has, I gather, attended a number of such interviews and is experienced in this field. She has made a statement in which she criticises the manner in which this particular assessment was carried out. She asserts that the two social workers who conducted it did so in a more hostile manner than she considered appropriate, and asked questions in what was, to her view, an insensitive and inappropriate fashion. She went so far as to state that she had never seen a worse case of hostile questioning in the circumstances. That is, as perhaps one would anticipate, denied by the social workers who conducted the interview in question.

1.12. Ms Mejzini has given a reply in a statement which has been lodged with the court today to those statements made by the social worker. She deals with a criticism made that she had intervened at one stage in what was said to be an inappropriate fashion, and she deals with what the social worker said at the conclusion of the interview, namely that they told the claimant that he would know the outcome within a few days, but they were of the view that he was under 18 but unsure whether he might be under 16. She confirms, as they asserted, that they were both taking notes during the assessment interview, which in fact took some 40 minutes longer than the allotted time, although there was a ten-minute break in the middle when the claimant became distressed when a reference was made to his father's death, his father having been, he said, killed by the Taliban, and it was indeed that that had led eventually to his leaving Afghanistan and seeking asylum in this country.

1.13. As I indicated to Ms Luh, it would not be possible for me to reach a final conclusion on the allegations made by Ms Mejzini as against the assertions made by the social workers, without the matter being tested and evidence given by both sides. Ms Luh did not ask me to undertake that exercise -- indeed, no such application had been made and so all witnesses were not present today. Nor do I think it is necessary to do so. One has to recognise of course that the social workers are entitled to probe the account given because it may, in certain respects, and indeed probably will, have a bearing upon the question of the true age of the individual in question, and certainly it is always part of the interview that takes place. Whether it appeared to be more hostile than usual is to some extent a subjective judgment. It is of course essential that the social workers in question appreciate that the manner in which they question is likely to affect the way in which the person being interviewed responds, and thus any conclusions drawn from the manner in which he responds must be considered in the light of that. It is dangerous to place too much weight upon what is perceived to be a particular manner of response, said to be perhaps evasive, without bearing well in mind the effect of the questioning upon the individual. I am far from saying that probing, as I indicated, is not permissible; it clearly is, and it may be that, in certain circumstances, where the answers are less than satisfactory, it may seem necessary to go somewhat further. Of course, there must never be what could be regarded as hectoring or browbeating, or an indication of general overall hostility. That must never be allowed to happen. But I am not prepared, in the light of the material I have seen, and in the absence of any request

to listen to cross-examination on it, to find that the manner of questioning went beyond that which could be regarded as permissible. I will, however, recognise that it may have been quite robust, but that does not mean that it crossed the line which would be regarded as unacceptable.

1.14. The detailed reasons for the decision were not given until a letter was sent on 30 June to the claimant's solicitors. In the grounds and in the skeleton argument, that was criticised, but, in my view, there can be no criticism of that at all. The social workers may in a given case be able to reach a conclusion at the end of the interview, and in those circumstances, they may well be in a position to tell the UASC that he is of a particular age in their view, whatever that may be. Equally, and this was the position in this case, they may not be, without discussion, satisfied as to the exact position, and in those circumstances it will be appropriate for that to be indicated and for reasons to be given at a later date. But that there is an obligation to give reasons there can be no doubt. That has been indicated by Stanley Burnton J in the B case, and was confirmed by me in the A case, and I repeat it now: it is an obligation upon the social workers and upon the Council accordingly to give reasons, which need not be extensive, but must explain the matters which have led the social workers to reach the conclusion that they have reached. Obviously if they decide that they entirely accept an individual's indication of his age, those reasons can be very short, but if there is a disbelief or a different view formed, then clearly the matters relied on must be identified. Indeed, it is fair to say that the notes which are contained on the document that is used by the social workers in Croydon makes that very clear, indicating that clear reasons must be given for the decision which is reached. But although those reasons must be given to the claimant or those advising him if he has representatives, it is not necessary that that be done immediately. It should be done as soon as possible.

1.15. The approach adopted in Croydon, and I think this is an approach which can properly be made in general, is that the aim should be to produce them in no longer than seven days. Of course, there may be circumstances in which a longer time is needed, and if so, it would be desirable for it to be explained in the reasons why it has been necessary to take longer than the period of seven days.

1.16. We now come to a matter that is in issue, and that is whether, in such circumstances, there is an obligation as a matter of procedural fairness to tell the UASC that he has the right to make representations about the matters relied on against him. Quite how it is put matters not, but it is said that fairness dictates that the social workers should enable the individual to make representations to see whether he can deal with any of the matters relied on against him. Support for this is said to exist in Stanley Burnton J's decision in B. At paragraph 55, under the heading, "Other requirements of fairness", he said this:

> "55. So far as the requirements of fairness are concerned, there is no real distinction between cases such as the present and those considered in Q. It follows that the decision maker must explain to an applicant the purpose of the interview. It is not suggested that that did not happen in this case. If the decision maker forms the view, which must at that stage be a provisional view, that the applicant is lying as to his or her age, the

> applicant must be given the opportunity to address the matters that have led to that view, so that he can explain himself if he can. In other words, in the present case, the matters referred to in paragraph 15 above [the matters relied on to reach the conclusion in that case] should have been put to him, to see if he had a credible response to them. The dangers of misunderstandings and mistranslations inherent in the absence of the interpreter reinforced the need for these matters to be put, to give the Claimant an opportunity to explain."

1.17. That of course is to an extent fact sensitive to that particular situation. But I am bound to say I do not accept that the view reached by the decision-maker must be a provisional view at the end of the interview. It may well be in a given case that a final view is reached if there is sufficient information and sufficient in the questioning which leads to a final decision. It may well be that the applicant had been given the opportunity to address the matters inasmuch as he had been asked all the relevant questions, given his answers and those answers had been considered to be unsatisfactory in various respects, and the unsatisfactory nature of those answers had led to the conclusion reached. There is nothing necessarily provisional in the view which may be formed. Of course, if it is a provisional view, and if it is recognised by the social workers to be a provisional view because perhaps they have formed a conclusion that there has been a degree of evasiveness in certain respects, or that particular answers have not been satisfactory, but those matters had not been put specifically to the individual in question and so he has not really been given the opportunity of dealing with them, then and in those circumstances it may be necessary for him to be given the opportunity to deal with them. But I would not accept that it was a universal requirement, whatever the circumstances of the case.

1.18. The second point to come out of that sentence is that Stanley Burnton J refers to the provisional view that the applicant is lying as to his or her age.

1.19. In many of these cases, and this is an example, the UASC in question does not know when he was born, does not know what his true age is, and has relied upon what his family has told him. There is no documentation, and indeed in Afghanistan cases certainly, and I suspect in others, the existence of a document which purports to show a date of birth may well, for various reasons, not be reliable. Again, it may well be that the individual is entirely dependent upon what he has been told. In fact, it is true to say that every witness who is asked his date of birth is dependent upon hearsay because he does not know when he was born. But it is all the more the case in situations such as exist in Afghanistan. Thus, the UASC may genuinely and honestly believe that he is the age that is being put forward. But that may not be the case, and one has to bear in mind that it is not necessarily the case that a UASC who says he is whatever age is lying, when the assessment is that he is actually older than that. It may simply be that what he believes to be true is not. However, there are cases when he is deliberately indicating an age which is younger than his true age. Most of those who come in as UASCs will have been assisted by an agent, and the claimant is no exception. It is of course well-known to agents and thus common knowledge that if the UASCs persuade the authorities here that they are under 18, they will be allowed to remain here, whether or not they are true refugees, until they have reached the age of 17 and a half, when the

Border Agency begins to take steps, but certainly they will be allowed to remain here for a time. Accordingly, the younger they can make themselves out to be, the more chance they have of being able to stay here for a substantial period of time, which will assist them in setting down roots here perhaps and, they hope, getting a favourable decision in due course when they reach the age when they would otherwise be liable to be removed if their asylum claims are rejected.

1.20. One must recognise that there is in these cases a strong motive for ages to put as low as possible. That does not of course mean, and must not be taken to mean, that these cases are approached on the basis that one starts by thinking that the person concerned may not be truthful. It is necessary that an open mind is kept at the outset, and the matter is approached on the basis simply of the appearance, demeanour, history given, answers to questions and what is known about him. Sometimes of course there is an input, for example from those who are running the home or wherever it is that the individual is accommodated, because his attitude and actions when he is not the subject of any interview or formal consideration of his age may be important in seeing how he reacts generally to those with whom he is placed. For example, if he says he is 15 and is placed with others of the same age, the way he interacts with them may provide a very powerful indication as to whether he actually is of that age or not. It is not suggested that in this case there was any such material relied on, but I simply refer to it as an indication of what can be important.

1.21. If there is such material, then it ought to be put to the individual in question for him to respond to it, and it is of course necessary, if it is information that comes to light after the formal interview has taken place, that that is put so that he has an opportunity to deal with it. That would be the case with any evidence that was not available or not considered at the time of the interview and which is subsequently to be used against the individual. Fairness dictates that he must be given the opportunity to deal with it. Thus, I would not regard Stanley Burnton J's observations as being necessarily all embracing and valid for all cases. It will depend upon the individual circumstances of the case.

1.22. If the matters upon which reliance is placed have been gone into in the interview, there have been answers given to questions which identify the evasions or discrepancies relied on, then it may well be unnecessary to re-open the matter if reliance on those matters is used against him.

1.23. I come now to the content of the interview -- the matters that were in fact relied on. We find those set out in the document which is produced for the reasons under the heading, "Analysis of information gained" and "Conclusion" of the assessment. The rubric beside that reads as follows:

> "Key indicators of the conclusion.
>
> The assessing worker should draw together the information obtained and present his/her views and judgement on the age of the person being assessed, giving clear reasons for the conclusions. If this differs from the stated age, clear reasons for this disagreement should be given.

> Please remember that this process is not an exact science and that the conclusion should always give the benefit of the doubt."

1.24. Ms Luh submits that that is an overriding and important principle: because these are inexact matters, it is always necessary from the outset to bear in mind that the benefit of the doubt should be given. I do not think that that is an approach which is appropriate. What the social workers must do is to make their assessment based upon the evidence that they have heard from the individual and their observations of him. In reaching that conclusion, they must bear in mind that the benefit of any doubt must be given. Thus they must only conclude that he is older than he says he is if they are satisfied in their own minds that that is the correct conclusion to reach. If they have any doubt about it, then of course the benefit must be given to the individual. But they are entitled to, and indeed bound to, reach their own conclusions on the material that is before them, and it is only if, having made that assessment, their conclusions are not entirely firm that they should then come down in favour of the claimant. It is only if they are persuaded that his stated age is not as he says it is that they should conclude that that is indeed the case.

1.25. Thus, the reasons that they give are important. Those reasons must be read as a whole. It may be that in a given case some are not, on the face of it, particularly weighty; others, on the other hand, looked at in isolation, may be of some considerable importance. But what matters is the overall view. It may be that some of the matters relied on can be said not to justify the conclusion reached, but that does not mean of itself that the conclusion can be said to be wrong. What matters is whether there are sufficient reasons which show that the decision can be upheld.

1.26. Furthermore, so far as this court is concerned, one has to bear in mind what Stanley Burnton J said, what I said in A, and what others have said in different contexts in various courts: that it is to be remembered that the persons who are deputed to make these assessments are trained and experienced social workers. It is wrong that the courts should -- unless of course persuaded that there has indeed been an error of law -- intervene, and it must be recognised that there is a danger in going along that route because it takes away from the persons who have the responsibility of making the decision, and seeks to give it to the court which does not have the experience, training, or the necessary knowledge of the individual case. The court of course has to act upon the reasons given and, in rare cases, if there is a dispute about the propriety of the manner in which the interview was carried out, on the conclusions that are reached on those matters.

1.27. Before I go to the reasons in dealing with the approach, reliance was placed by Ms Luh on a decision of Blake J in NA v the London Borough of Croydon [2009] EWHC 2357 Admin, a decision of 18 September of this year. That was an age assessment case involving the same Council. In fact, there were two age assessments carried out in that case. Unfortunately, things had gone wrong in both. In the first one, Blake J made the point that the matters relied on were, as he put it, somewhat fragile material to weigh conclusively in the balance against the age claimed, either at all or to the degree in which the balance did weigh against the defendant in the conclusion that he was not 15 but 17 (para 28 of Blake J's decision). The matters that he refers to were "his

demeanour assessed in interview, his response to the interpreter, which he was told not to do", and that that was indicating some asserted behaviour, and some doubt about the narrative of his travel from Afghanistan to the United Kingdom. There was also an identity document which was not properly taken into account by the social workers at that first assessment. It may well be that the document in question formed an important basis for deciding that that first determination was unsatisfactory. It was not directly in issue before Blake J because events had moved on and he was concerned with the subsequent assessment which had been carried out in 2009. Again, of course I have not seen the precise details of the assessment in that case, and the reasons given, and one must always bear in mind that they are fact specific.

1.28. The second interview was unfortunately reached by a flawed procedure, because there were various matters which I do not need to go into which Blake J decided were somewhat, to say the least, unsatisfactory. There was a striking inconsistency in the notes in relation to an allegedly really important answer. There was a failure properly to analyse or engage with the identity document, and it seems that there was a procedural defect inasmuch as the claimant was not asked whether he wanted to have an independent adult present, and furthermore, there was a two-month gap between the interview having been conducted and the writing up of the assessment, which was recognised to be contrary to Croydon's practice (I have already indicated it was a seven-day practice). So things clearly, and one hopes exceptionally, went wrong in the NA case. It means of course that, on its facts, there is no surprise in the decision reached by Blake J, but it is, I emphasise, a decision on its facts, and it does not and cannot dictate the conclusion which it is proper for me to reach on the facts of this case.

1.29. Let us see what the matters relied on were. They are set out in the conclusion, and they read as follows:

> "Person is assessed to be 17 years after the age assessment carried out based on following points observed during the process:
>
> (1) [The claimant's] physical appearance and his demeanour suggested that he is older than his claimed DOB of 01/01/1994 ... but is a minor under the age of 18."

Pausing there, of course technically it was not his claimed date of birth; it was the date of birth provided to him by UKBA, but it was a date that he was happy to accept because it coincided with the age that he was asserting himself to be. Going back to the reasons:

> "(2) [The claimant] was evasive in answering certain questions related to his family background, reasons why he left Afghanistan and age related questions.
>
> • [He] said he did not know what his father was doing in Afghanistan. Then he said his father was an engineer, later he claimed that his father is the director of the Narcotic department in Paktia Province.

> • He claimed that he left the country as Taliban decided to destroy his family. Later he said Taliban was looking exclusively for him.
>
> (3) He could not give a proper reason why he was sent when his family left his younger siblings in danger. He said Taliban would not kill young children when he is claiming himself to be a young child at his age of 15.
>
> (4) [The claimant] was confused about dates of the incidents happened in his life -- including the date or month on which his father disappeared.
>
> (5) [The claimant] could not explain his journey to UK. He could just tell the social workers that he travelled in lorries.
>
> (6) [The claimant] does not have any document or identity papers to prove his DOB and nationality.
>
> (7) [The claimant's] attitude and demeanour when challenged by the social workers became more argumentative and that of an older person.
>
> The above document has been read by social workers and interpreted to [the claimant].
>
> [The claimant] has understood the above but indicated he was not happy with the decision and that the local authority was not respecting his human rights. He was advised by the assessing social workers that he could discuss this with his solicitor."

1.30. There is I think an inaccuracy, in that it is said that the above document had been read by social workers and interpreted to him. The reasons were not written up until some seven days after the end of the interview, and there is no evidence before me that the claimant was personally told of or had read to him the contents. What he was told was that it was not accepted that he was the age that he indicated, but that he was under 18, and the only question was whether it was 17 or 16. So to that extent it may well be that he said he was not happy with the decision, and it may well be that he was advised that he should consult with his solicitors. But there has been a degree of carelessness, on the face of it, in the manner in which that was set out. If all that was intended to be conveyed was that he was aware of the matters that were concerning the social workers, because it was obvious from the questioning what the concerns were, then well and good, but that is not unfortunately what the document says. However, it may be that that is not of itself sufficient to justify an adverse decision.

1.31. The questions relating to his history and background and reasons why he left Afghanistan are of course relevant. Some of them may well be highly relevant to his age: discussions of his family; discussions of when his father died, which he said was 18 months before the interview in question; attempts to see whether the account hangs together, all are material in at least considering his credibility generally, which is a factor which can be taken into account, and in certain instances is of direct relevance to age.

1.32. It is said by Ms Luh that he was never asked, as he should have been, how long it had taken him to get from Afghanistan to this country, because if it had been a substantial period of time, that would be or could be material. He had apparently told the interviewers in the previous assessment that it had taken about two months, but there is a record in the notes, although it is not repeated in the typed reasons, that he had said that it had taken him seven months on this occasion. Nothing appears to have been made of that discrepancy, and indeed the period was not mentioned in the reasons given. But it does seem that the interviewers did ask how long it did take him and did get an answer. Of course, there is a degree of materiality because the longer it took him to get here, the younger he would have been when leaving Afghanistan, and that might be material because one would not expect a family to send a child who was then perhaps only just 14, maybe even younger, to come on his own unless it was absolutely vital for his protection that that should be the case, and thus the account that he gave as to why he left becomes possibly more material, and any holes in it and any discrepancies observed in it the more important.

1.33. The starting point, as I say, is demeanour and the manner in which he answers questions, and the view taken of him as a person. That of course is not of itself determinative, and is a dangerous basis for reaching a final conclusion if looked at on its own, because one has to take into account background, the circumstances in which he lived in the country of origin, what he may have gone through in having to travel here, what he may have gone through and suffered in his country. All are material and may have an impact on the manner in which he deals with questions and acts in the course of interview. Again, as I have already said, the reactions to the interview and the questions asked are of importance.

1.34. It is not possible to spell out in detail what it is about demeanour, appearance and the manner in which questions are answered which leads to the conclusion in question unless there is something striking. It is a question of judgment; it is a question of experience; it is a question of training, which should lead to it. I am far from saying that one must assume that social workers are infallible in this respect. They are not. Indeed, one only needs to look at first assessment here which said that he was over 18, and in the circumstances of ANC which related to assessments carried out at much the same time, to see that mistakes can be made. One must be well aware of that.

1.35. Ms Luh has raised cogent criticisms to individual matters relied on, and she submits that, for example in relation to the question as to whether younger siblings were left in danger at the age of 15 as the eldest son of his father, or even at the age of 14, he would not be regarded as a child for the purposes of the Taliban and their lack of activities against children. So far as his father's employment was concerned, he said that he was an engineer and then that he was involved in the narcotics suppression. The two are not exclusive. But if one looks at the notes, one sees that what is said is that there were three separate answers given to this question, and the interviewers were entitled to regard it as evasive rather than merely to be explained by forgetfulness coupled with the fact that the father was indeed trained as an engineer.

1.36. When his father disappeared was, one would have thought, a most important matter for him. Indeed, he became upset when that issue was raised, which is not at all surprising.

It could be said that it was a matter that one would have expected him to have etched on his memory and he would not have been as vague as he was about when it had occurred. Whether that is a fair point or not is not for me to say. The only question I have to ask myself is whether it is a point that can be relied on as a factor to be taken into account. I think it is difficult to say that it cannot.

1.37. I have to ask myself, in the light of the criticisms which have been raised, and in the light of the approach that I have indicated to be the correct approach, whether it can be said that, in the circumstances of this case, the decision was one which was flawed as a matter of law. I can understand and appreciate the criticisms that have been made. But there is, in my judgment, nothing in this decision that can be said to be such as shows that it was one which could not reasonably have been reached, or was in any other way flawed by a failure to have regard to material matters, and it seems to me that the reasons given, looked at as a whole, are appropriate for the decision and do justify the conclusion which was reached.

1.38. Accordingly, I would dismiss the claim in relation to that interview and age assessment.

1.39. I have already indicated that the Council has now belatedly produced the necessary plans for the future. They should have done it long ago. In fact, there is a period of 35 working days laid down within which such should be done. Quite why it was not until very recently that these plans and assessments were made I do not know. I suspect it is general pressure upon this authority, which has the misfortune to be the authority that deals with so many of these UASC cases because of where the Home Office is situated. I do not doubt that their social services department in particular is under the most enormous pressure. But having said that, I fear that the law does require that these things are done within a particular time and that must be kept to.

1.40. There are criticisms of the content of the assessment and the plan that has been put forward. The Council has not had the opportunity to deal with those criticisms, and it is not possible for me at this stage to consider whether there has been any error of law in the assessment and plan that has been put forward. Indeed, the Council has not had the opportunity of considering whether there is any validity in any of the criticisms that will be made because it may well with be that they will accept that some amendments should be made, or they may give good reasons for saying that what is suggested is not appropriate in the circumstances of this case.

1.41. The claim as lodged criticised the lack of the assessment and plan. It would have to be amended if there were to be a challenge to the plan and the assessment as it has been made. As I have said, I cannot deal with that. The only question is whether I simply dismiss the claim or leave it open for that matter to be raised if there is a valid claim. I imagine the difference may be important. I imagine you are legally aided, is that right, Ms Luh?

1.42. MS LUH: Yes.

1.43. MR JUSTICE COLLINS: Obviously whichever way it went, whatever I did, you will have to persuade the Legal Services Commission that it was a claim that needed to be pursued, or was appropriate to be pursued.

1.44. MS LUH: Quite.

1.45. MR JUSTICE COLLINS: It seems to me that one ought really to start from scratch because it will be a question as to whether it is arguable, and it would be wrong for the Council to be put in the position of having to face a claim in which permission had not been granted. That goes to costs and the burden upon the Council. So unless you have strong grounds to the contrary, I think what I will do is to dismiss this claim, but of course indicate that if things are unsatisfactory and if you, having negotiated with the Council, reach a situation where you take the view that there is a good case to be made that they have gone wrong, then you will have to persuade the court accordingly.

1.46. MS LUH: All I would say to that, my Lord, is that, in relation to dismissing the case on ground 3, that you would simply indicate as you have already done, but simply indicate clearly, that the dismissal is simply on the basis that it has been superseded subsequent to the judicial review, so that it cannot be drawn in an adverse way in relation to --

1.47. MR JUSTICE COLLINS: I thought I had made that clear, that I have not been able to deal with any argument that the assessment and plan that is made is defective nonetheless, but it may not be because you may be able to persuade Croydon, or they may have good reasons for rejecting, but whichever it is, you will have to make a fresh challenge to that in due course. Even if I adjourned it, I would only do so on the basis that you needed permission to proceed. So you will be in no better position. I think the right course in those circumstances is to dismiss the claim.

1.48. MS LUH: Yes, and the only thing I would flag up, my Lord, in relation to this heading is that you mentioned earlier 35 weeks; it is actually 35 working days.

1.49. MR JUSTICE COLLINS: Did I say weeks? That was a slip of the tongue.

1.50. MS LUH: I wanted to make sure that is reflected accurately in the judgment.

1.51. MR JUSTICE COLLINS: I will make sure that that is changed when I approve the transcript.

1.52. What about costs?

1.53. MS LUH: Our submission is that there should be no order as to costs on two bases: one is, in relation to ground 3, it has been dismissed for the sole reason that it has been superseded.

1.54. MR JUSTICE COLLINS: You would have won on it, and you are right, there has been a lamentable failure, I am afraid, by the Council to answer letters when they should have been answered, and there has been a failure to comply with the obligation to produce the plan and assessment. But equally, you have won on the age assessment. I think the fair order probably is no order for costs.

1.55. MISS DAVIES: I would seek to persuade your Lordship that there should be a percentage order for costs.

1.56. MR JUSTICE COLLINS: You can try to persuade me, yes.

1.57. MISS DAVIES: Simply looking at it on an issue by issue basis, the majority of the claim form related to the age assessment, and the Council has had to incur considerable costs meeting that challenge, which it has won. The issue relating to the assessment was actually dealt with fairly briefly by producing the assessment, and I completely acknowledge that it was produced late. I take some issue with the point about failure to respond to correspondence because in fact the Council did ask for extra time --

1.58. MR JUSTICE COLLINS: But not until rather later. You have a letter of 20 July. That was your opportunity to give an immediate reasoned answer and you did not.

1.59. MISS DAVIES: There was a delay in responding --

1.60. MR JUSTICE COLLINS: It is important, because if you had answered that letter of 20 July, then you would have had on record your answer to the claim on the age assessment, and it would have been much easier in those circumstances to say, "Well, this means that you have said, you have gone up front and your answer has been accepted". It may also, if there had been a full answer, have persuaded the Legal Services Commission not to -- because of course counsel would have had to advise on the basis of that, and it may be that they would have gone ahead, but it is very important that an answer is given to a pre-action protocol letter in order to meet that possibility. I am afraid that is really what I was criticising in the failure to answer correspondence. I think to some extent you have brought this on your own heads -- to some extent.

1.61. MISS DAVIES: Well, my submission is that there ought to be an order for costs, of some of its costs, in the Council's favour to reflect the fact that it has won on the major issue, and I suggest an appropriate percentage would be 50 per cent, subject to the usual section 11 order because the claimant is publicly funded.

1.62. MR JUSTICE COLLINS: It is all a bit academic because there is no way, I suspect, that you would ever enforce any order for costs.

1.63. MISS DAVIES: It may be academic from the point of enforcement, but nonetheless necessary to persuade the auditors that the Council has protected its entitlement.

1.64. MR JUSTICE COLLINS: You can tell the auditors that you have done your best, but you did not persuade the judge. No order for costs.

1.65. MS LUH: I am grateful. Would it assist you for us to draft a simple order?

1.66. MR JUSTICE COLLINS: I do not think it is necessary, I have simply said claim dismissed, no order for costs, and you can have your necessary detailed assessment order -- whatever they call it nowadays.

1.67. MS LUH: I am grateful, my Lord.

1.68. MR JUSTICE COLLINS: Thank you both.

1.69. I must say I rather hoped in A that age assessments were not likely to trouble this court again. I gather they are still floating around.

1.70. MS LUH: My Lord, if it does not trouble the court, then I would be out of business.

1.71. MR JUSTICE COLLINS: I am sure you have much else that you could deal with.

1.72. MS LUH: I wish it would not trouble the court, but unfortunately it is still a very live issue, and it may be with A v Croydon and the Supreme Court judgment, which I understand will be handed down in a few weeks' time --

1.73. MR JUSTICE COLLINS: Two weeks?

1.74. MS LUH: -- two or three weeks' time. At least before the end of term, no later than the end of --

1.75. MR JUSTICE COLLINS: It is a worrying thought, I am bound to say. I do not think it will make a great deal of difference to the result in most cases.

1.76. MS LUH: It depends on how their Lordships deal with the Article 6 issue.

1.77. MR JUSTICE COLLINS: If it means in effect that we are going to have to consider it on a very different basis, then we are in trouble.

1.78. MS LUH: One of the issues raised, as I understand it from counsel for the appellant, one of whom was my supervisor, is that there was a question raised in the hearing in relation to whether or not judicial review in its jurisdiction can deal with some of these very crucial issues.

1.79. MR JUSTICE COLLINS: It depends. There is a lot of Strasbourg jurisprudence on this, as you know, and it may depend on the extent of the judicial review. They got around that in the control order cases by effectively ignoring what Parliament intended, and saying judicial review was equivalent to a merits review -- reliance on, is it, Wilkinson v the Parole Board? No, Mental Health Review Tribunal, I think. I am bound to say it is a decision which I have never been entirely happy with, although it may be in given cases it needs to be there. But I think, as I say, I am not sure that it necessarily will make a great deal of difference overall to the outcome of most cases. But anyway, we will have to see. Who is your pupil master?

1.80. MS LUH: It is Ian Wise.

1.81. MR JUSTICE COLLINS: Yes, Ian and I go back a long time, as you may know. I led him in a number of cases at the Bar. He has appeared before me quite regularly.

1.82. MS LUH: Yes, I gathered that.

1.83. MR JUSTICE COLLINS: All right. Thank you.