

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

The Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 13 May 2025

BEFORE:

JONATHAN MOFFETT KC
(Sitting as a Deputy Judge of the High Court)

BETWEEN:

THE KING (ON THE APPLICATION OF ABAJ)

Claimant

- and -

WEST SUSSEX COUNTY COUNCIL

Defendant

MS O BEACH (instructed by Bhatia Best) appeared on behalf of the Claimant
MR A KHAN (instructed by West Sussex County Council Legal Services) appeared on
behalf of the Defendant

JUDGMENT
(Approved)

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JONATHAN MOFFETT KC:

Introduction

1. By this claim for judicial review, the Claimant challenges the decision of West Sussex County Council (“the Council”) not to treat the Claimant as a child for the purposes of the Children Act 1989. The decision was taken on 8 August 2024 and was communicated by way of an email of that date.
2. Permission to apply for judicial review was granted by David Pievsky KC, sitting as a deputy High Court Judge, by an order dated 8 November 2024. As I will explain, Mr Pievsky also granted an anonymity order, which remains in force. Accordingly at the outset, it is important to note that any report of these proceedings or this judgment must not directly or indirectly identify the Claimant.
3. In brief, the Claimant challenges the Council’s decision on the basis that the Council reached its decision about first meeting with the Claimant to form its own view of the Claimant’s age, and instead relied on an earlier age assessment of the Claimant which had been conducted by the Home Office. The Claimant argues that the Council failed to make reasonable inquiries into his age and reached a decision which was irrational.
4. The Claimant is represented before me today by Ms Olivia Beach, and the Council is represented by Mr Arfan Khan. I am grateful to both counsel for their helpful submissions.

Procedural matters

5. Before turning to the facts, I will address two procedural points. First, anonymity. By an order sealed on 1 November 2024, Vikram Sachdeva KC granted the Claimant an anonymity order. Then, when granting permission, on 8 November 2024 Mr Pievsky also granted a withholding order and a reporting restriction order under section 11 of the Contempt of Court Act 1981, and he directed that the Claimant be referred to by the initials ABAJ. Mr Pievsky’s orders were not expressed to be time-limited, and accordingly they continue in force until varied or discharged by the court.

6. At the outset of the hearing, I canvassed with the parties the question whether Mr Pievsky's orders should continue in force. Neither party asked for them to be discharged or varied and, in view of the fact that the Claimant is an asylum seeker who claims a well-founded fear of persecution and who claims to be a child, I consider that a derogation from the important constitutional principle of open justice is justified, and that Mr Pievsky's orders should remain in force. Accordingly, as I have said, any report of these proceedings or this judgment must not directly or indirectly identify the Claimant.
7. Secondly, legal professional privilege. Unusually, a copy of the Council's case file which had been provided to the Court includes internal legal advice. I raised this with Mr Khan at the outset of the hearing, and he confirmed that the Council was content to waive privilege of this material to this limited extent. However, I should note that the court has received no witness evidence from the Council, and I shall return to the significance of this in due course.

The facts

8. Insofar as relevant, the factual context is as follows. The Claimant is an asylum-seeker from Sudan. He speaks Arabic, and it appears that he has at most only limited English. He arrived in the United Kingdom on 16 June 2024, apparently at or near Dover, and he claimed asylum the following day. The Claimant's asylum claim has yet to be determined. He says he was born on 10 January 2008, which would have made him 16 years old at the time, and 17 years old now.
9. On 17 June 2024, the Claimant was interviewed by Home Office officials. On the same day, he was given a letter by the Home Office. It stated that the Claimant's date of birth was 10 January 2001, which would have made him 23 years old at that time. Insofar as material, the letter stated as follows (emphasis in original):

“You have applied for asylum in the United Kingdom and you have claimed that your date of birth is 10/1/2008. However, you have failed to produce any satisfactory evidence to substantiate this claim.

Furthermore:

ξ two Home Office members of staff have assessed that your physical appearance and demeanour very strongly suggest that you are **significantly over 18 years of age**.

...

In the absence of any credible documentary evidence to the contrary, the Secretary of State does not accept that you are a child and from this point on, you will be treated as an adult Claimant for asylum.

...

The date of birth you have been allocated reflects the Home Office's assessment of your physical appearance and demeanour very strongly suggests that you are significantly over 18 years of age.

The Home Office's determination of your age does not prevent you from approaching your local authority's children's services department with a view to them undertaking their own assessment of your age, which may include the conducting of a Merton-compliant age assessment. If the assessment concludes that you are a child and the Home Office is provided with sufficient evidence of this, the Home Office's determination of age will be reviewed."

10. Pausing there, it is to be noted that the only reason given in this letter for the decision that the Claimant was 23 years old is his physical appearance and demeanour.
11. The Home Office subsequently provided the Council with a copy of form BP7, which records the reasons why the Home Office did not accept the Claimant's claimed age. It appears these reasons were not provided to the Claimant at the time; indeed it seems they were not provided to the Claimant until 9 December 2024 when the Council's solicitor provided them to the Claimant's solicitor. The form BP7 records that the Claimant was being treated as an adult because:

"Two officers, one of at least chief immigration officer (CIO), higher executive officer (HEO), or higher officer, (HO) grade, have separately determined that their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age and no other credible evidence exists to the contrary."

12. It records the following (emphasis in original):

“If two officers (one of at least CIO/HEO/HO grade) have separately determined that their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age, all the following must be confirmed.

- ξ The second assessing officer’s assessment was based on the same level of information as that available to the first assessing officer.
- ξ Both assessing officers’ assessments were undertaken after they interacted with the Claimant or after they observed the Claimant’s interaction with other Home Office members of staff or other people around them.
- ξ Their assigned date of birth recorded on CID/Atlas reflects the Home Office assessment that they are significantly over 18 years of age.”

13. The form records the explanation for the decision in section 3 as follows.

“Social worker’s comments:

Name: Abu Baker Ali Jumuaa’ – KIU/8187017

He claimed to be from Sudan. He speaks Arabic.

His claimed DOB: 10/01/2008. He claimed to be 16 years old, but looks older than 16 years old. His father told him his Date of Birth in 2018 when he was 6 years old. He was challenged that he would not be 6 years old in 2018, then he changed it to 2014 and said that he did not say 2018.

He did not provide any official documents to prove his identity. He said that he has ID documents in Libya and it was burnt in Libya.

Physical presentation:

Abu Baker has an Adam’s apple that has grown forward. He spoke with a deep and clear voice. He spoke with a confident tone, clear voice, indicating that the larynx changes associated with puberty had taken place.

He has a defined jawline and has defined cheekbones. His facial features are also entirely developed. He has shaved facial hair, shaved stubble and moustache. When asked he said that he did not shave.

His head hair rescinded. His skin is showing to be maturing. His nose is developed and proportionate to his face which is common in adults. He has a defined muscle tone, which is consistent with reaching adult age.

Abu Baker has mature skin indicating that he is an adult. His shoulders are also visibly broader compared to his waist, which is an indicative shape of a post-pubescent male.

Abu Baker has strong hands, and his fingers were observed to be mature. He has hair on his arms and hands. I am mindful that sun, hardship lifestyle and poverty could have contributed to his fingers showing signs of aging.

Abu Baker is tall in height and medium built-in stature. However, the curvature in his body stature indicates developmental changes associated with adulthood.

Demeanour:

Abu Baker presented as a calm and confident individual who was able to assert his views and feelings during interview meetings. He appeared to be confident contrary to children who are normally shy. He showed no evidence of childlike emotional distress or anxiety. He went to School for 5 years. He was 6 years old in 2014. I finished school 2018, which is 4 years rather than 5 years d incorrect. He did not work, but helped his father in the shop, he was young when he started since he was 11 years old. He helped him for 6 years until 2023, which makes him 17 years old and he turned 18 years old now. He came to the UK because he wants to be protected and he is seeking safety.

He left Sudan last year in June 2023. He travelled to Chad (travelled through – stayed two months), then he travelled to Libya (stayed 20 days). Then he travelled to Algeria and then went to Tunisia (he stayed for about 15 days). He then travelled to Lampedusa in Italy in 20th September 2023.

He said he was fingerprinted in Lampedusa in Italy. He told them that he was 16 years old. They accepted his age, but did not accommodate him or offered him any type of accommodation and he was left on the Streets indicating that he was treated to be an adult. He was in contact with a charity and they did not give him accommodation. He did not want to stay in Italy.

He was fingerprinted and claimed asylum in France in October 2023 as well. He claimed that he was 16 years old to them as well. They accepted this age. They did not accommodate him. He was sleeping under a Bridge.

But he entered Italy and France late in 2023, so if he was 16 years old then, he is now at least 17 years old because he was born in January and we are in 2024.

Since he was born in Sudan he was struggling and going through difficulties.

Overall, he presented as an adult through his physical appearance and demeanour.

In conclusion

- There are No safeguarding issues identified or reported that needs to be followed up in the UK.
- Abu Baker did not provide any official documents to prove his identity, age or date of birth.
- Abu Baker physical appearance and demeanour, which included

inconsistencies indicate that he is an adult.

- Abu Baker's appearance and demeanour suggest that he is over the age of 18 years old.

- I am of the view that Abu Baker's is a young adult, he appears over the age of 18 years old.

- Abu Baker's age was considered by a CIO and 2 Immigration Officers. He was Age Assessed as an adult aged 23 years old.

Date of Birth:

10/01/2001

Social Worker:

Kaied Omar Ghiyatha

CIO comments:

All assessments begin with initial impression made from visual presentation. An initial impression of age range is formed based on height, facial features including facial hair, skin line/folds, etc, voice tone, and general impression.

I therefore looked at the applicant to be satisfied with the assessment.

In the absence of documentary evidence and based on their size, facial and body hair, and behaviour I was not satisfied that they are the claimed age. Based on the assessment I am in agreement with and IO Nutilova that the applicant is 23 years of age and they will be registered on our system as born 10/01/2001. IS97M and BP7 have both been completed and issued as appropriate.

Furthermore, this assessment was witnessed by Social Worker Kaied Omar Ghiyatha. Who agrees that the applicant is 23 years old.

The view of the social worker has been given considerable weight due to their expertise of working with children.

CIO S Burt"

14. For reasons which I will come to, it is relevant to note the following points about these reasons:

- (1) The interview was conducted the day after the Claimant arrived in the UK.
- (2) There was no record of an appropriate adult being present.
- (3) There is no record of an interpreter being present, and there is no explanation of how the social worker or the immigration officers were able to make themselves understood to the Claimant, or *vice versa*.

- (4) It is not clear what the status of the social worker was, in particular whether he was employed by the Home Office, by the relevant the local authority, or whether he was independent.
 - (5) On the face of it, the social worker appears to have relied not only on the Claimant's physical appearance/demeanour, but also what he saw as inconsistencies between the Claimant's account and his claimed age. However, there was no record of the relevant matters having been put to the Claimant so he could respond.
 - (6) Although the Chief Immigration Officer expresses agreement with the Immigration Officer's view, there does not appear to be any record of the Immigration Officer's reasons for her conclusions.
 - (7) There is no record of either the social workers or the immigration officers' experience of conducting age assessments, although as Mr Khan pointed out, the reasons do record that the social worker has expertise of working with children.
15. On 17 June 2024, the Claimant was granted immigration bail, and was provided with accommodation by the Home Office at a hotel in Crawley, which is in the Council's area. The Claimant remains in this accommodation today.
16. On 26 July 2024, the Claimant was referred to the Council by the charity Care4Calais. The referral stated as follows:

“The child is separated from his parents and is not cared for by an adult. He is currently housed in Home Office accommodation in a hotel with adults. He does not feel safe and is suffering from anxiety as a result. He is in a vulnerable situation. He has informed the Home Office of his age and has supporting identification papers from Sudan. I would like to refer this child for an assessment under the provisions of the Children Act 1989 and the Working Together to Safeguard Children 2018 statutory guidance. This child is an asylum seeker who arrived in the UK on or around 16th June 2024. He applied for asylum on arrival and his application is currently being considered by the Home Office. He was placed in Initial Accommodation at [a hotel in] Crawley. He is

not being cared for by an adult. As a putative child, physically present in your area, he seeks the provision of services from your client department. I consider him to be a 'child in need' whose welfare is at risk as defined in section 17 of the Children Act. I believe the child is in need of immediate care and assistance. In accordance with the case of *S v Croydon* (2017), we ask that you make arrangements to accommodate and support this young person whilst a child in need assessment is being completed. Please arrange for an assessment to be carried out as soon as possible and please respond to this referral within 24 hours to confirm the steps that you have agreed to take. Would you please also inform the young person of the result of your assessment and provide him with a copy, ensuring this is done in Sudanese Arabic. Should you decline to offer assistance, could you please provide written notification to the child of your decision clearly stating the reasons why assistance has been denied?"

17. As I have mentioned, the Council has not sought to adduce any witness evidence; however, I have seen what appears to be a copy of the Council's electronic case file which indicates that the Council's response to the referral was as follows.
18. On 1 August 2024, the Council contacted the Care4Calais case worker, asking what his relationship was with the Claimant, whether he had met the Claimant, or whether the Claimant had provided him with any evidence that he is below 18. The Council referred to a photocopy of an ID document which had been provided by the Claimant, but noted that it was not possible to tell if the photograph was a photograph of the Claimant, as it was blacked out.
19. I have seen a copy of this document. It is a very poor reproduction and it is entirely in Arabic script, apart from a heading referring to the Republic of Sudan's Ministry of Interior, the date (10/01/2008), another date, and what might be a reference number. It is not possible to tell from the copy I have seen whether it even includes a photograph.
20. The Care4Calais case worker responded the same day, and explained he had spoken to the Claimant via an interpreter and seen him via video, and it was the case worker's view that the Claimant's story and supporting document were consistent with him being under 18. The case worker said he would try to obtain a better copy of the ID document, but given the situation in Sudan, that might not be possible.

21. The case worker went on to say that the Claimant's age had not been properly assessed and it is highly likely that the age attributed by the Home Office was not correct. He stated that he understood that staff at the hotel took a similar view, and were uncomfortable with the Claimant being housed with adults.

22. Also on 1 August 2024, the Council contacted the Home Office to ask for a copy of the Claimant's screening interview. The Home Office responded the same day and provided the Council with a copy of the form BP7. Later that day, the Council contacted the Care4Calais case worker and stated as follows:

“Further to the previous email I sent to you earlier, I would like to update you that we have received communication from the Home Office that as part of his screening interview process, [the Claimant] was also age assessed by a social worker who has not deemed him to be below 18 years old. Given that he was age assessed by a social worker already, we will please require evidence to prove otherwise, and unfortunately at this stage the ID you sent us does not show if it is him on the picture.”

23. It appears that, at that stage, the Council's approach was to treat the Home Office's age assessment as determinative because it had involved a social worker and would only take any further action in the Claimant's case if the Claimant was able to provide evidence which he proved he was aged under 18.

24. The matter was considered internally within the Council and the Council took a decision on 2 August 2024. The internal recommendation to the manager is recorded as follows:

“[The Claimant] declared to be 16 years old when he arrived in the UK seeking asylum. The Home Office assessed him to be 23 years old which included an assessment by a social worker within the home office as well. Therefore he was placed in an adults accommodation.

IFD has consulted with Matt Vincent from children's asylum team as well as Brett Coleborn, age dispute legal team on whether it is proportionate to consider the age assessment already done by a social worker with the home office, and it was considered proportionate at this stage, unless [the Claimant] provides further evidence that he is below 18 years old.

The ID which [the Claimant] has provided to prove he is 16 years old does not show his face, therefore we are unable to use this as evidence as it does not prove it is him in the photo. I recommend that we take no further action at this stage, given that the social worker with the Home Office age assessed [the Claimant] to be 23 years old.

Recommendation: no further action.”

25. The relevant manager’s decision is recorded as follows:

“I have reviewed this referral alongside the work of the Social Worker and in line with the West Sussex Level of Need Descriptors and would endorse the recommendation that no further action is required at this time. This comes as a direct result of there being no evidence to substantiate [the Claimant] being under the age of 18 and has therefore been correctly placed in adult accommodation at this time.

There is no role for Children’s Services at this time unless a referral is received that legally evidences that the Claimant is under the age of 18.”

26. Again, it appears that the approach of the Council was to treat the Home Office’s age assessment as determinative. In this respect, it would appear that the key point from the Council’s point of view was the fact that the Home Office age assessment had involved a social worker. There is nothing in the Council’s case file which indicates that anyone at the Council ever evaluated the substance of the Home Office’s age assessment.

27. Subsequently, on 8 August 2024, Human for Rights Network also referred the Claimant to the Council, and requested an assessment of him under the 1989 Act. The referral form stated that Human for Rights Network considered that the Claimant was a child in need who was in need of immediate care and assistance. The Council responded by email on the same day. That response stated as follows:

“This has previously been reviewed by West Sussex Children’s Services on 01.08.24 and the outcome was no role for West Sussex Children’s Services.

[The Claimant] declared to be 16 years old when he arrived in the UK and seeking asylum. The Home Office assessed him to be

23 years old, which included an assessment by a social worker within the home office as well, therefore he was placed in an adults accommodation. West Sussex Child Asylum and Legal Team have considered that this age assessment is proportionate at this stage unless and until [the Claimant] provides further evidence that he is below 18 years old. The ID which [the Claimant] provided to prove he is 16 years old does not show his face, therefore we are unable to use this as evidence as it does not prove that this is him on the photo.

If [the Claimant] is disputing the age assessment, he will need to seek legal advice.

West Sussex Children's Services will take no further action."

28. Again, this email refers only to the fact of the Home Office assessment and the fact that it involved a social worker. It does not refer to the substance of that assessment. It is this decision which is the decision under challenge.
29. Thereafter, the Claimant's solicitors were instructed and, on 3 September 2024, they wrote to the Council asking it to undertake an age assessment of the Claimant. The Council replied by way of an email sent on 9 September 2024, to which was attached the Home Office form BP7. It appears that this was the first time the Claimant had been provided with a form BP7. The email stated that form BP7:

"... indicates that your client is clearly an adult and therefore does not warrant age assessment being undertaken by the Local Authority."

30. On 10 September 2024, the Claimant's solicitors wrote again, asking whether the Council intended to meet with the Claimant. The Council responded on 11 September as follows:

"I can confirm that my client does not intend to meet with yours. He has been assessed as clearly being an adult of approximately 23 years of age which is significantly above the 16 years of age which he appears to be claiming. As you are aware, there is no burden on a Local Authority to undertake an assessment in such circumstances."

(Quote unchecked)

31. The Claimant's solicitors sent a letter before claim on 13 September 2024. The core of the points made in the letter before claim were set out as follows:

“Contrary to the Defendant's bold assertion that ‘there is no burden on a local authority’, in such circumstances is actually abundantly clear that their approach is unlawful, unreasonable and irrational. The ADCS Guidance is clear that the Defendant should undertake their own assessment and the outright refusal to take any action at all is wrong and unjustifiable. This is contrary to all leading case law and, unsurprisingly the Defendant offers no authority for their position.”

32. The Council responded on 16 September 2024. That response referred to the case of *R (B) v Merton London Borough Council* [2003] EWHC 1689 (Admin) [2003] 4 All ER 280; and to *R (HAM) v Brent London Borough Council* [2022] EWHC 1924 (Admin), [2022] PTSR 1779, and made the following points:

“It is inconceivable, given the information provided by the claimant himself that he could even be on the cusp of being a minor. Indeed, it accords with the Home Office assessment conclusion that he is 23 years of age.

...

Given that you have offered nothing to suggest that the additional assessment is not credible, nor have you offered any new information in respect of your client, it is clear there is no burden on the Local Authority to assess your client.”

33. The claim was filed on 30 September 2024. The Claimant sought an interim injunction requiring the Council to provide him with accommodation and support pending resolution of the claim. That application was refused by Mr Pievsky by his order of 8 November 2024.

The law

34. Part 3 of the 1989 Act makes provision for local authorities to provide support for children and families. The following provisions are of particular relevance for present purposes. Section 17(1) of the 1989 Act imposes on every local authority a general

duty to “... safeguard ... the welfare of the children within their area who are in need ... by providing a range and level of services appropriate to those children’s needs.”

35. Section 20(1) imposes on every local authority a duty to provide accommodation “... for any child in need within their area who appears to them to require accommodation as a result of” certain specified circumstances.
36. For the purpose of these duties, “child” means a person under the age of 18: see s 105(1) of the 1989 Act. Although in most cases there is no dispute as to whether an individual is a child for the purposes of the 1989 Act, there are some cases in which it is necessary for a local authority to determine whether an individual who requests accommodation and support under the 1989 Act is a child. Such cases arise particularly in the context of individuals who come to the United Kingdom to claim asylum, as they might arrive in the United Kingdom without any documentary evidence as to their age, and in relation to who there may be a dispute as to their age. For present purposes, it is necessary to mention two main points which have arisen out of the case law on the determination of age in the context of the 1989 Act.
37. First, there is a considerable body of case law relating to the manner in which a local authority should go about assessing the age of an individual in the context of the 1989 Act. This case law begins with the decision of Stanley Burnton J in the *Merton* case. That decision and the case law which has followed it has given rise to the terminology of a “*Merton*-compliant” age assessment.
38. However, as Swift J explained in the *HAM* case, at paragraphs 23 to 34, the terminology of a *Merton*-compliant age assessment is inapposite. The *Merton* case does not prescribe the form an age assessment must take in all cases, or even in all cases of a particular type. What is required in a particular case depends on the specific circumstances of that case. In particular, as is apparent from the *Merton* case itself, the most relevant public law duties which are engaged in respect of age assessments in the context of the 1989 Act are the duty to undertake reasonable investigations (the so-called “*Tameside* duty of inquiry”, after *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, 1065 *per* Lord

Diplock), and the duty to act in a procedurally fair manner. What each of these duties requires varies according to the circumstances.

39. Nevertheless, the case law identifies certain matters which might, depending on the particular circumstances, be relevant when considering whether an age assessment is lawful. Six examples are of particular relevance for the present purposes.
- (1) There is no burden of proof, and a decision maker should not start from an assumption that an individual is an adult or that he or she is a child (see *Merton*, paragraph 38; *HAM*, paragraph 10).
 - (2) It might be procedurally unfair for an age assessment to be carried out by only one social worker (see *Merton*, paragraph 33; *HAM*, paragraphs 12 and 18 to 19).
 - (3) It might be procedurally unfair to carry out an age assessment interview without an appropriate adult being present (see *HAM*, paragraph 20).
 - (4) In a case in which the individual whose age is being assessed does not speak English or does not speak English well, it might be procedurally unfair to conduct an age assessment without an interpreter (see *HAM*, paragraph 12).
 - (5) It might be procedurally unfair to rely on a matter adverse to the individual whose age is being assessed, particularly if it goes to the individual's credibility, without first giving the individual an opportunity to address that matter (see *Merton*, paragraph 55; *HAM*, paragraph 11).
 - (6) Apart from in an obvious case, the duty of inquiry is likely to require that age should not be assessed solely on the basis of appearance (see *Merton*, paragraphs 37 to 38; *HAM*, paragraph 10).
40. However as I have said, and as Swift J emphasised in the *HAM* case, everything depends on the circumstances.

41. The second point is one which arises out of the decision of the Supreme Court in *R (A) v Croydon London Borough Council* [2009] UKSC 8, [2009] 1 WLR 2557. In that case, the Supreme Court decided that the question whether an individual is a child for the purposes of s 20(1) of the 1989 Act is an issue of precedent fact and therefore, if there is a relevant dispute as to an individual's age at a stage, it is ultimately for the court to determine whether the individual is a child (although in practice claims raised in such an issue of precedent fact are commonly transferred to the Upper Tribunal).
42. The Court of Appeal has cautioned against determining what were referred to as "procedural" challenges in age assessment cases, given the fact that the court has jurisdiction to determine an individual's age for itself: see *R (SV) v Kensington and Chelsea Royal London Borough Council* [2023] EWCA Civ 924, [2024] 1 WLR 2613, paragraphs 83 to 88 *per* Elizabeth Lang LJ.
43. However, in this case, neither party has suggested that the court should determine the Claimant's age as a question of precedent fact. At every stage, each party has approached the claim as a conventional claim for judicial review of the Council's decision. Further, the Claimant's case is not so much that there were procedural flaws in an age assessment carried out by the Council; it is that there has been no proper age assessment at all. In these circumstances, bearing in mind the need for caution, I consider it is appropriate to determine the claim on the basis of the arguments advanced by the parties.

The parties' submissions

44. For the Claimant, Ms Beach submitted that it was unlawful for the Council to base its decision entirely on the Home Office's age assessment without meeting with the Claimant. She argued that the Home Office's age assessment provided only an "unreliable and fragile" basis for a decision as to the Claimant's age, in particular because it was based almost entirely on the Claimant's appearance and demeanour. She argued that the Council had failed to take into account the fact that two charitable organisations had expressed concerns about the Claimant being treated as an adult and the fact that reference had been made to hotel workers harbouring similar concerns. Ms Beach argued that, in those circumstances, the failure to meet with the Claimant

constituted a breach of the *Tameside* duty of inquiry, and it was unlawful to treat the Home Office's age assessment as determinative of the Claimant's age.

45. Ms Beach also points to the fact that the Council has failed to adduce any evidence explaining its decision making, and she argued the court should therefore in effect infer that the Council did not properly consider the issue of the Claimant's age. In this respect, she relied on *R (Das) v Secretary of State for the Home Department* [2014] 1 WLR 3538, [2014] EWCA Civ 45, paragraph 80, where Beatson LJ endorsed paragraph 21 of the judgment of Sales J at first instance, and *R (SA) v Secretary of State for the Home Department* [2023] EWHC 1787 (Admin), paragraph 26 *per* Fordham J.
46. For the defendant, Mr Khan submitted that, on the basis of the material available to it, the Council's decision was reasonably open to it. In this respect, Mr Khan emphasised that the Home Office's age assessment had involved a social worker, and it reached an unequivocal conclusion that the Claimant was well over 18 years old, and the Claimant had not provided any credible evidence to show he was a child. In those circumstances, Mr Khan argued that the only reasonable inquiry the Council was required to make was to investigate whether the Claimant could produce any credible evidence to show that he was a child. Mr Khan pointed out that the Council did this, but the only other evidence available was the unsatisfactory Sudanese identification document. Mr Khan submitted that if a local authority were required to do more than the Council did in this case, that would place an unreasonable burden on hard-pressed local authorities. In writing, Mr Khan also advanced a makes no difference argument, to which I will return in due course.

Conclusions

47. It was common ground between the parties that the question which the Council had to decide was whether the Claimant was a child for the purposes of Part 3 of the 1989 Act. In accordance with basic principles of public law, the Council had to decide that question for itself. It could not abdicate its decision to the Home Office, or to anyone else. Further, this was not a case like *R (F) v Manchester City Council* [2019] EWHC

2988 (Admin), in which the local authority was being asked to revisit a decision as to age which it had previously taken.

48. In this case, the Council was deciding whether the Claimant was a child for the first time. The Council's decision of 8 August 2024 (and its earlier decision on 2 August) was to the effect that the Claimant was not a child. The question for me is whether that decision was lawful.
49. In her submissions, Ms Beach accepted that in reaching its decision, the Council was entitled to take into account the Home Office age assessment, and I think she was correct to do so. However, I consider that in order lawfully to take that assessment into account, the Council was required to consider not only the fact of that assessment, but also its substance. In my view, without considering the substance of the assessment, the Council could not lawfully determine how much weight to attach to it. In public law terms, it would have been irrational for the Council to have taken into account and attached weight to the Home Office's age assessment without evaluating its substance.
50. I have already alluded to certain aspects of the Home Office's age assessment which might potentially have required consideration by the Council when evaluating the substance of that age assessment. In my view, they included the following:
 - (1) The interview was conducted the day after the Claimant arrived in the United Kingdom. Although the Home Office age assessment records that the Claimant was calm, it is possible that an interview undertaken so soon after the Claimant arrived in the United Kingdom might not have been undertaken in ideal circumstances.
 - (2) There is no record of an appropriate adult being present.
 - (3) There is no record of an interpreter being present, and there is no explanation of how the social worker or the immigration officers were able to make themselves understood to the Claimant, or *vice versa*. It may be this was done through interpretation by the social worker, but if so, that is not explained anywhere in form BP7.

- (4) There was only a single social worker, and it is not clear what the status of that social worker was.
- (5) The Home Office age assessment relies very heavily on appearance and demeanour.
- (6) On the face of it, the social worker also appears to have relied on what he saw as inconsistencies between the Claimant's account and his claimed age. Indeed, this was an aspect of the Home Office's age assessment which Mr Khan pressed heavily in his skeleton argument. However, there is no record in form BP7 of the relevant matters having been put to the Claimant so he could respond.
- (7) Although the Chief Immigration Officer expresses agreement with the Immigration Officer, there does not appear to be any record of the Immigration Officer's reasons for her conclusion.
8. There is no record of either the social worker's or the immigration officers' experience of conducting age assessments. Although, as I have noted, the reasons do record that the social worker has expertise of working with children, no detail is provided.
51. There is also the fact that the Claimant had no opportunity to consider the full reasons for the Home Office's age assessment or to make any representations on it before the Council took its decision.
52. It seems to me that the difficulty for the Council is that there is no evidence it considered the substance of the Home Office's age assessment, whether by reference to the matters to which I have referred or any other matters. Also, as Ms Beach pointed out, there is no evidence that the Council took into account the points which have been made by the two charities.
53. I have already explained that, in my view, the contemporaneous documentation shows that the Council in effect treated the Home Office's age assessment as determinative,

and in this respect the Council referred only to the fact of the assessment and to the fact that it involved a social worker.

54. Had the Council undertaken any substantive consideration of the Home Office's age assessment, the duty of candour would have required it to explain that to the court, presumably by way of a witness statement from the relevant decision-maker. There has been no such explanation and there is no witness evidence from the relevant decision-maker. Accordingly, and in line with the case law cited by Ms Beach, I conclude that the Council did not undertake any such substantive consideration.
55. Accordingly, I consider that the Council acted irrationally by failing to consider the substance of the Home Office's age assessment and, by simply treating the fact of it as determinative, I consider that the decision is unlawful for that reason.
56. Ms Beach argued that the only rational course open to the Council would have been at least to have met with the Claimant, so that the Council could see his appearance and demeanour for itself. It seems to me there is considerable force in this argument, but I do not need to decide this point. In my view, it is sufficient to conclude that the Council's decision was irrational for the reasons which I have given.
57. Turning to whether the unlawfulness made any difference, in his skeleton argument Mr Khan argued that, even if the Council had not acted unlawfully, it was highly likely that the outcome for the Claimant would not have been substantially different. Therefore, he submitted that, pursuant to section 31(2A) of the Senior Courts Act 1981, a remedy must be refused. Mr Khan did not make any oral submissions on this point, but I should nevertheless address it.
58. I am not able to accept this argument. I do not know what the Council would have made of the Home Office's age assessment had it properly considered its substance, and the Council has not adduced any evidence to explain what approach it would have taken. In particular, I do not know if the Council would still have decided to treat the Home Office's age assessment as in effect determinative. In view of the elements of the Home Office age assessment to which I have referred, it would be entirely

speculative to conclude that it is highly likely that consideration of those matters by the Council would have made no substantial difference to the outcome.

59. Accordingly, I do not consider that section 31(2A) of the 1981 Act requires me to refuse a remedy.

60. In conclusion, for the reasons I have given, this claim for judicial review succeeds.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge