



**Upper Tribunal
(Immigration and Asylum Chamber)**

R (on the application of A) v London Borough of Croydon AAJR [2013] UKUT 00342 (IAC)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Heard at Field House

Determination Promulgated

**On 26, 27 & 28 November and
17 December 2012**

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Before

UPPER TRIBUNAL JUDGE LATTER

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

The Queen on the application of

A

Claimant

and

LONDON BOROUGH OF CROYDON

Respondent

Representation :

For the Claimant: Mr C Buttler, instructed by Luqmani Thompson, Solicitors

For the Defendant: Ms S Rowlands, instructed by London Borough of Croydon

DETERMINATION AND REASONS

Introduction

1. This is an application for judicial review by the claimant, a citizen of Iraq, of a decision by the defendant made on 2 March 2009 assessing his date of birth as 9 November 1990, contrary to his assertion that he was born on 9 November 1992. A previous age assessment made by the defendant on 21 February 2008 also assessing his date of birth as 9 November 1990 was quashed following judicial review proceedings on 29 November 2008. Permission was granted to challenge the defendant's second decision and following a stay pending the decision of the Supreme Court in R (A) v London Borough of Croydon [2009] UKSC 8, the appeal was transferred to the Upper Tribunal. Our task is to carry out a fact finding exercise to assess the claimant's age.

The Evidence before the Tribunal

2. We heard oral evidence from the claimant, Albertha Golding and Jennifer Dunn, social workers employed by the defendant, Dr Nadja Alim a psychologist who prepared a psychological assessment of the appellant and Susan Van Scoyoc, a consultant counselling psychologist, who prepared a report in response for the defendant.

3. The documentary evidence is contained in an agreed bundle indexed and paginated 1-1239. We were also provided with a bundle of authorities and helpful and comprehensive skeleton arguments from both counsel.

Background

4. It is not disputed that the claimant is a citizen of Iraq who arrived in the UK on 21 February 2008. He made a clandestine entry by lorry and after leaving the lorry he made his way to Brighton and contacted the police. They took his details and gave him a train ticket and the address of Lunar House where he claimed asylum (701). In his witness statement of 18 April 2008 in support of his asylum claim he said that he had left his home in Kirkuk and arrived in Turkey on 19 November 2007 where he stayed for six days. He left with others on 25 November 2007 by boat but as soon as they left the boat they were arrested. He thought he was still in Turkey at that time. He was detained over night and fingerprinted. He was able to continue his journey and eventually arrived in France where he was fingerprinted and released twice when caught trying to board lorries. However, he was finally able to get on a lorry and arrived in the UK on 21 February 2008.

5. His application for asylum was refused by the Secretary of State. There was a preliminary hearing before IJ Kumrai on 6 July 2009. He found that the claimant's date of birth was 9 November 1990. There was a full hearing on 24 August 2009 before IJ Jhirad who dismissed his appeal on all grounds. That decision was later set aside by agreement and directions were given for the appeal to be heard afresh. That rehearing has been adjourned pending the decision in these proceedings.

The Evidence of the Claimant

6. The claimant gave his evidence in English but there was a Kurdish Sorani interpreter present throughout to assist him on the very few occasions when he had difficulty in understanding the question or giving his answer. He referred to his witness statement at 105-109 and in particular to [18] where he said that his agent had ordered him not to tell anyone that he had been fingerprinted or he would be beaten, detained and sent back to Iraq. He had also been told to change the dates when he had left Iraq. It was for this reason that the dates he had given at the screening interview were incorrect but after receiving advice from his legal representatives he said that in fact he had left Iraq on 15 November 2007. He then referred to his supplementary statement of 7 August 2008 at 96 and his statement of 4 September 2008 at 84. In that statement at [5] - [8] he refers to his identity card which his uncle had given him when he left. He was aware that his solicitors had subsequently obtained a report from Dr George and that it was his view that this card was not genuine, but he had no explanation for this.

7. He then referred to his statement of 25 January 2010 at 110-118 where he sets out his evidence to support his assertion that his date of birth is 9 November 1992. He confirms that he had always known his date of birth. He deals with his time at school in [5] - [21]. The claimant gives further information about his schooling in his witness statement of 8 June 2012 at 1202-1209. This statement sets out his evidence that when he was in year 5, academic year 2003/2004, following the fall of Saddam Hussein Kurdish started being taught in his school. The name of his school was also changed from Al Wahda School to Rezgari School and a lot of places in Kirkuk changed their names from

Arabic back to Kurdish at this time. He repeats in this statement what he had said in his previous statement that he had started school at the age of 6 in 1999, leaving at the end of year 5 in 2004.

8. He then deals with the accommodation provided by the defendant in [18] - [24]. After a short time in bed and breakfast accommodation, he was moved to semi-independent accommodation where he stayed from 11 March 2008 to April 2008. The three other residents there were all older than him and ranged from between 16 and 18. He felt frightened and intimidated by the other residents and was unhappy there. His case worker at the Refugee Legal Centre wrote to social services about these problems and he was then moved to 1 Lesley Grove where he stayed from April 2008 to December 2010. He was moved at the end of December 2010 to Morden where the residents are all adults and the age range is varied.

9. In his oral evidence he said that when he first went there, his bedroom was very dirty, the carpet was dirty and there was no bed or TV. He was told by his key worker Megan that he had no option but to go and he accepted the position although he did feel sorry for himself. His contact with his social worker Ms Dunn had been very limited. He saw her about every six weeks and their contact tended to be very brief. He accepted, referring to [7] of her witness statement at 1210 -1212, that he had lost his temper. He had been angry and upset and should not have spoken the way he had.

10. So far as his age assessment interview in February 2009 was concerned, he had received a letter telling him when it was. He had not felt it was up to him to ask someone to go with him. During the interview he explained that he had started school in 1999 and had left in 2004. He had not said that he had left in 2002 or 2003. When he left school in 2004, he was 11 almost 12. He had written down year 1 as 2000 and had tried to explain the position. He accepted that he had become angry during the interview because he believed what he was saying was correct whereas Ms Golding was saying that it was not correct. He felt he was being put under pressure. He acknowledged that she was nice to him but he was in a room with two people who kept asking him questions.

11. In cross-examination he accepted that he had gone over his story several times with different people including his solicitors and the various doctors he had seen. He had been at school for five years. He confirmed that his father had been born in 1970 and his mother in 1975: this was not a guess although he could not remember the actual date or place of their birth. He did not know the year when they married. He had first been seen by Croydon on 4 March 2008. He did not remember who had first asked him about his schooling. He was referred to the report of Dr Birch at 218 recording that he was school from the age of 5 to 11. He said that he did not remember this. At the next age assessment he had not had anyone with him. He had been asked if he was happy to proceed and he had agreed thinking that it would not last for long.

12. He was aware that Dr George had said that his identity card was a forgery. He had no explanation but repeated the account in his statement about how it was obtained. He accepted that the agent would have cost about \$12,000. He did not know where his uncle had got the money from. He accepted that when first interviewed, he had said that he had a birth certificate but he was referring to his identity card. His birth had been registered in Kirkuk. He had not given a false age to try and improve his asylum claim. He had not thought he would get asylum if he said he was younger than he was. He accepted that he had not always told the truth to Dermot Williams, one of his key workers, about his girlfriends.

13. He had had a girlfriend of 27 and she had cleaned his house for him. He had had a number of girlfriends. He did gamble to maximise his income. He did not drink every night. He had started working in Iraq when he was 15 in a teashop and then with a business which made windows and

doors. It had not been heavy work so far as he was concerned: he was doing the simple stuff. He had been to the Red Cross to try and make contact with his school or with his uncle but he had been unsuccessful. He accepted that normally he had a beard but had shaved it off for this hearing as he felt it would be respectful to do so. He denied that his beard had had grey hairs in it. He accepted that he had been fingerprinted twice in France. Although he had shown his ID card, the French authorities had not accepted what he said about his date of birth.

The Evidence of Albertha Golding

14. Ms Golding adopted her witness statement at 123-5 and confirmed the record of the age assessment at 128-135. She and a colleague had carried out the age assessment on 6 February 2009 and their decision was dated 2 March 2009. They had assessed the claimant's age as 9 November 1990. There is an addendum to the report at 137-141 and her notes made during the course of the assessment are at 562-580. Her attempt to collate the information the appellant gave her about his schooling is at 580.

15. In her oral evidence Ms Golding confirmed that she no longer worked for the defendant. She had gone to work for Bromley and had also started her own company so that she could work as a locum social worker. She had been aware that the defendant had carried out a previous age assessment on the claimant in March 2008 when his age had also been assessed at 2 years older than he claimed and that it had been quashed on grounds of irrationality by the High Court. The interview on 6 February 2009 probably lasted for about two hours with a break of 20 minutes. The questioning lasted for about one to one and a half hours and she had made notes. The assessment was written on 2 March 2009. She was aware of the guidance that decisions should be made in a timely way but said that at the time of this assessment she had overall responsibility for about 600 young people.

16. She confirmed that she had wanted the claimant to clarify the dates when he was at school and needed to challenge him on this matter. She accepted that no other adverse points were put to him apart from his schooling. She had not questioned his account that his parents had been killed or the events leading to him leaving Iraq. She qualified as a social worker in 1996 and believed that she had the necessary skills to carry out a holistic assessment. She did not accept that a psychologist was in a better position to assess maturity and felt that evidence of anxiety, nervousness and lack of self esteem could be consistent with the claimant being either 16 or 18. She accepted that being anxious and nervous could indicate that he was younger than his assessed age. She also accepted that some 16-year olds would have skills which others did not have. She was referred to a number of reports at 394, 401, 405, 451 and 528 and she accepted that this could be an indication that the claimant was younger rather than older but referred to 529 that he was happy in semi-independent accommodation. She accepted that from April 2008 to December 2010 when he was at Lesley Grove, he had been with 16 and 17 year olds and there had been no concerns about his behaviour.

17. She accepted that the claimant had not had an appropriate adult present at the February 2009 age assessment and she was aware that it was a legal requirement. When asked about the claimant's education, she accepted that he had studied Kurdish and that he had left school at the end of year 5. She was referred to the notes at 580 and accepted that if the school year began in September, then the dates given by the claimant did add up. She also accepted that she had not challenged the dates he had given about the respective years in which his father and mother had been born and had not considered whether those ages were consistent with the age he gave. She accepted that if in fact his mother was born in 1975 then the appellant would have been conceived when she was 14 or 15 if in fact he was born in 1990.

18. She agreed that the claimant's physical appearance should be taken into account. She had known young people to develop a deep voice at 13 and she had experience of a number of Kurdish young men who from 13 onwards had a deep voice and had developed an Adam's apple. She was referred to the report of Dr Birch at 77 that in June 2008 he did not have a developed Adam's apple whereas by February 2009 he did. If so, she accepted that his voice must have broken between June 2008 and February 2009. She had budgetary responsibility in her work and was aware of the relative cost of foster care and living semi-independently which would be about £200 per week cheaper. The fact that assessing the age of 18 rather than 16 meant that there would be less cost to the local authority had not been relevant to her assessment.

19. She said that the claimant appeared older than his claimed age and also appeared to be comfortable in semi-independent accommodation. It was common practice to accept the claimed day of birth but to adjust the year as appropriate when making an age assessment. She believed that he was older than he claimed but denied that it was common practice if the age was disbelieved simply to assign a two year age difference. A second statement from Ms Golding appears at 1215-1216 on the issue of whether there is a practice of routinely adding two years to an individual's age in such cases.

20. In re-examination she accepted that there was a need to consider a whole range of factors when reaching a decision on an age assessment. She was asked why the day of birth of 9 November was allocated and she explained that in circumstances where there was a specific date claimed they did not change the day or the month whereas in cases where there was no asserted date routinely a date of 1 January was allocated and then the year assessed. So far as the claimant was concerned, there was no reason to pick any other date of birth apart from that asserted by him, 9 November. She accepted that it was normal practice for the interview and assessment to take place with an appropriate adult but the claimant had been asked whether he wished to proceed and he had been happy to go ahead. She felt that the mother's date of birth was not implausible with the allocated date of birth for the claimant of 1990. She said that when a boy's voice broke and he acquired a prominent Adam's apple varied from individual to individual but she thought it would be on average about age 13.

Evidence of Jennifer Dunn

21. Ms Dunn's witness statement is dated 9 July 2012 and is at 1210-1212. She is the claimant's current allocated social worker and has been since December 2010. In her statement she says that she has met him on a number of occasions at her office and at his accommodation and has regular telephone contact with him. She said that he comes across as a mature adult who appears very independent and confident. In her experience he tries to manipulate relationships with professionals especially females so that he is the superior party. When her line manager was involved in moving him from his semi-independent to independent accommodation, he presented as authoritative and tried to dictate the situation. She said that the claimant has a controlling nature and there have been two occasions when his girlfriend who is 27 years old had been present at his accommodation and admitted to her line manager that she was the one who cleaned the house rather than him. She said that the claimant's presentation appears to be that of an older person and he can be rude and sarcastic with an authoritative manner which can be intimidating.

22. She referred to an incident on 27 January 2011 when he was so aggressive that she was reluctant to be in a room alone with him. He asked for a television and an increased weekly subsistence and when these were refused, the claimant told her that she was lucky she was pregnant otherwise he would "deal with her". There was another occasion early on 6 January 2011 when a colleague went to

speak with him but she was dismissed in a rude way, the claimant waving her away. He was always well dressed in high quality clothes and appeared to live well in excess of the £45 weekly subsistence he received from the defendant. He has told her that he gambles to fund his life style which includes going to nightclubs, drinking, smoking and women. In her view the claimant presents as being at least his assessed age of 21 if not older than that.

23. In her oral evidence Ms Dunn said that she believed that the claimant had now changed his girlfriend. Her contact with him was very short, up front with no chit- chat and this was her agenda. General things were discussed about the house and his wellbeing. She said that normally he had a beard which had a number of grey strands of hair but it had been shaved off.

24. In re-examination she accepted that she owed the claimant a duty of care and should build a relationship with him and had done so to a certain extent. Since he had been in the UK, he had had key worker support of about five hours per week. She had not been aware that he had been on a course to boost his self-esteem but his independence and self-confidence had grown. He was now an adult and it was his choice how to make his life. The issues she had raised were not inconsistent with her duty of care and did not undermine their relationship.

25. She had not witnessed the incident which had taken place when he had moved to independent accommodation but had been told about it by her manager. She had not seen the accommodation provided but said it would have been cleaned up and she was not aware that there had been no hot water. She was surprised that the claimant had remained in his previous accommodation for so long; he would normally be moved a bit earlier. She felt his behaviour was not consistent with that of an 18 year old. She did not approve of his girlfriend cleaning for him and would not associate a young adult being with such an older person. If there had been no bed at his new accommodation then one would have been provided the same day. This had been the first time she had heard of this.

26. So far as the January 2011 incident was concerned this was not the first time he had spoken to her aggressively. She was used to some outbursts but not the way he presented himself on this occasion. She said that he thought everything should remain the same and had been quite naïve to think that he could have a TV. She did not accept that such behaviour was indicative of immaturity. She had been told that he had been gambling and he had said that he put bets on football and it looked like he had been very lucky. She was not aware of whether he received money from fellow Kurds but accepted it was not necessarily unusual for someone of his age to go to nightclubs or to drink or gamble.

The Evidence of Dr Nudja Alim

27. Dr Alim is a psychological consultant, a senior psychologist in learning disabilities and visiting lecturer at the Institute of Psychiatry of Kings College London. Her full qualifications are set out at paragraph 3 of her report dated 28 April 2012 at 1178-1198. She was instructed by the claimant's solicitors to carry out an expert psychological assessment to consider the claimant's adaptive skills level, his intellectual functioning, his age equivalence, to assist the Tribunal by examining in general terms what was being assessed, to provide details of her qualifications, to consider the qualifications and expertise of Dr Birch and Dr Stern and to comment on whether they have the necessary qualifications to assess the claimant's intellectual functioning and emotional/intellectual development, to state whether she agreed or disagreed with their findings and to express a view on whether the claimant's responses are genuine and accurate and how easy it would be for him to exaggerate those responses with a view to manipulate the results of the tests without a trained psychologist being able to detect this.

28. Dr Alim sets out the background information she was supplied with at part 6 (1182-1184) and at part 7 the tests she used and the results obtained in the Wechsler Abbreviated Scale of Intelligence (WASI), the Ravens Coloured Progressive Matrices (Ravens), the Vineland Adaptive Behaviour Scales Second Edition (Vineland II) and the Brief Symptom Inventory (BSI). Her conclusions are set out in part 8. So far as the claimant's adaptive skills level is concerned, the tests indicated that his skills are moderately low overall in comparison with individuals in an age range of 19 to 21 where 93% function at a higher level. When considering his intellectual functioning, Dr Alim felt that the Ravens test rather than the WASI test more accurately reflected his ability. The IQ range on the WASI test suggested an IQ of 69 to 78 which for someone of 21 would equate to a mild intellectual disability whereas the Ravens test gave a result lying in the range of 80 to 100. Following his overall presentation he did not appear to be a person with an intellectual disability and it was her view that he functioned at an average level of intellectual ability.

29. She then went on to consider the question of age equivalence. His scores in various areas set out in the table on 1194 vary extensively between 6.4 years for expressive communication and 22+ for interpersonal relationships. The report emphasises that these results need to be treated with care as the values do not indicate "mental ages" or give an indication of a person's likely chronological age but are merely age equivalence indicating at what age the "average" person in a Western society normally performs at this level. The claimant's low level of functioning in the areas of communication, personal and daily domestic living skills as well as an exceptionally high level of performance with regard to interpersonal relationships were likely to be affected by cultural factors, psychopathology and survival mechanisms which might have impeded his function and skill acquisition. It was her view that the claimant functions most likely at the level of a 19 rather than a 21 year old. She referred to the reports of Dr Birch and Dr Stern who are paediatricians and says that neither are likely to have the necessary qualifications to assess the claimant's intellectual functioning but would have the necessary experience to assess his emotional development. She makes it clear that it is impossible for her to judge the validity of Dr Birch's assessment and her judgment of the claimant's "mental age" as it was impossible to judge the validity of her assessment procedure.

30. To Dr Alim's knowledge the methods used did not allow judgments of this kind and it was impossible to derive a person's age from their intellectual performance. She does believe that Dr Birch holds the necessary qualifications and clinical experiences to assess the level of emotional development and notes that she does not give an independent opinion of the claimant's emotional and intellectual functioning. She says that the assessments were carefully considered and there was no evidence of exaggeration of responses by the claimant. He seemed keen to show off his levels of ability when judging his adaptive behaviour using Vineland II. He showed a good level of functioning for all lower level tests whilst in some areas higher level adaptive skills were judged as unsuccessful. There was no evidence of exaggerated responding by the claimant.

31. In her oral evidence, she confirmed that his intellectual functioning would be normal for a developed 19 year old but if he was 21, his performance may have been in line with a mild intellectual disability. She felt he was at a low level for 19 but still in the average range. She said that she would look at the pattern of responding to assess whether there was confabulation or suppressed responses. When she was preparing her report the claimant had said that he was getting a headache and feeling stressed and she felt that there was no reason to believe that he was trying to exaggerate. The claimant had been very keen to show how well he was able to do and that he was able to manage his affairs. She did not believe that he was trying to skew the results. She believed that it was possible to given an opinion on age and that a psychologist was well qualified to do so.

32. In cross-examination she said that she had considered the ages of 19 and 21. She accepted that it was easier to tell the difference between a 7 and a 9 year old than between a 19 and a 21 year old although there would be significant differences, unlike for example an age range of 30 to 32. She had sought to assess maturity for a normal healthy member of the population. She agreed that the claimant had had no problem in communicating and she had asked him about his current accommodation. He had complained of headaches and she had made a note of this. She had considered the way that he was responding and this impacted on her judgment. She had taken into account that his first language was not English and accepted that the tests would be used to inform her clinical judgment. She accepted that he did not fall within the intellectually disabled range. When considering adaptive skills it was known from clinical research that people subjected to psychological trauma were less likely to do well than those in optimal circumstances. She said that it was possible to distinguish between the two age ranges of 19 and 21. When asked about the table at 1194 she agreed that it was not possible to attach a scientific value to the age equivalence set out. She was aware of the test of memory and malingering (TOMM) but had not carried out this assessment. She felt from the claimant's pattern of responding that there was no issue of malingering or fabricating. It was part of her role to question the claimant's account. This had been the first age assessment report she had carried out. When doing so she had to show empathy towards a claimant rather than sympathy.

The Evidence of Susan Van Scoyoc

33. Mrs Van Scoyoc's report appears at 1218 - 1223. She is a chartered counselling psychologist, a chartered health psychologist and Associate Fellow of the British Psychological Society. Her background and experiences are set out at 1219 of her report, which was written at the request of the defendant's solicitors to address the methodology usually used by Dr Alim, whether it is reliable enough to lead to a reasonably accurate assessment of age and if not, why not. She made the point that Dr Alim had used a number of psychometric assessments usually used to assess those with suspected learning difficulties or disabilities and accepts that she is suitably qualified and experienced to do so. She has no concerns on how those measures were administered but significant concerns regarding the underlying assumptions on the use of such tests to assess an individual's chronological age. So far as she is aware there are no psychometric measures designed to determine chronological age. She says that the WASI is not designed to assess chronological age nor is Raven's or Vineland II.

34. Dr Alim had highlighted some of the difficulties in using this assessment for someone not raised within UK culture. The claimant was not raised in Western Europe; he only came to the UK in his later adolescence and is not therefore part of the "norm" population upon which this test was developed. The test can therefore only be a "guide" as to how he compares with the UK population at best and cannot be considered reliable enough to determine, even if possible, his chronological age. It is her opinion that the methodology used is inappropriate for determining chronological age. Even if the test were a means of calculating by inferring from results obtained in ability to chronological age and even if the claimant met the criteria for the population usually assessed by such tests, there appeared to be no statistical significant difference in the scaled score when calculated between a 19 or 21 year old. The full IQ for the claimant if 19 fell between 72 and 81 of the fifth percentile but for 21 between 69 and 78 at the fourth percentile. Therefore, there was a lack of significant difference between the results expected for a 19 year old compared to a 21 year old, which would mean that the conclusions drawn by Dr Alim to support a particular age were not reliable even if psychometric tests were designed to achieve this.

35. In her oral evidence Mrs Van Scoyoc said that when using these scales a complex judgment had to be made as to whether a particular scale applied and it was highly questionable whether the claimant

would meet the required norms. He was likely to underscore under the WASI scale but she accepted that Ravens was regarded as a less culturally bound system. Vinelands II was largely to see how someone was coping or adapting to daily life and their ability to look after themselves. The results would inevitably be affected by cultural influences and family background. If someone was clinically depressed, they would do worse across all levels. In any event, people reacted very differently to difficult experiences. There should also be an assessment of whether the information given was false in circumstances where the result might lead to financial gain. It would be useful to approach answers with a level of scepticism. It was her view that the conclusion was highly questionable that the claimant was functioning at the level of a 19 year old. This needed to be picked apart to take into account the influences which may have increased or decreased the adaptive scale report. She did not agree that a 19 and 21 year old could be distinguished through clinical impressions.

36. In cross-examination she explained that she had three areas of practice, seeing people privately, preparing expert reports for courts and teaching psychology. She had not examined the claimant or formed any opinion as to his age. She accepted that Dr Alim was not trying to assess chronological age. She said that it would be useful to have a reliability test when assessing the information received. She agreed it was a question for Dr Alim's clinical judgment as to how much she could do. She had been surprised that she had managed to do as much as she did. However, she would have expected this to take longer if a reliable opinion was to be provided. She accepted that Dr Alim was qualified to provide an opinion on psychological maturity and that the Ravens and Vinelands II report would have been the most suitable. The tests were about cognitive ability and needed to be considered in the context of the participant's life history. Her concern was about the prevalence of figures and the use of the banding results and not about Dr Alim's observations. She confirmed that her concern was that most psychologists would not choose to make a judgment between such close dates and she doubted whether it could be done with any real reliability.

37. Following the preparation of their reports there was a face-to-face meeting on 18 October 2012 between Dr Alim and Mrs Van Scoyoc which led to a considerable measure of agreement set out at 1239 - 1240. It was agreed that the tests were not used to assess chronological age but to make a clinical judgment with regard to the likely age of the claimant. It was agreed that psychological maturity was one factor in offering clues about age and in assisting with forming an opinion as to someone's likely chronological age but disagreed as to the usefulness of the clues in this particular case. They agreed that expert psychological opinion was a better judgment of psychological maturity than an impressionistic view of a non-expert and that caution needed to be exerted when interpreting numerical data from Dr Alim's assessment of the claimant because of the difficulties acknowledged by them both. The points of disagreement were the necessity and appropriateness of using psychometric scales to assess the reliability of the claimant's responses and they continued to disagree with regard to the weight to be given to the numerical data produced by the psychometric assessment trials. Dr Alim's clinical impression of the claimant's case was influenced by the outcome of the psychometric assessments whereas Mrs Van Scoyoc argued that the psychometric assessment results should not substantially affect the opinion and that the judgment on whether the claimant was 19 or 21, based largely on clinical impression, could not be viewed as reliable in this case given the claimant's environmental, social and cultural history.

Submissions for the Defendant

38. Ms Rowlands referred to the Merton guidelines, that we should have regard to the claimant's physical appearance, personal history and demeanour and, as appropriate, to questions of credibility. The starting point would be the claimant's physical appearance which, whilst not determinative, could

be a strong indicator of age. In his case his appearance very strongly indicated that he was older than he claimed: he was fully grown, had a prominent Adam's apple and heavy hair growth. It was harder to distinguish age the older a child became and therefore harder for the Tribunal to determine age than it was for those who had dealt with him previously. She submitted that it was therefore relevant to note that the French police considered that he was 18 when they saw him in January 2008, the Secretary of State's officials had considered that his appearance very strongly suggested that he was over 18 (371), Dr Ritchie considered that he was 17 as at April 2008 (395) when he was described as sexually mature and behaving like an older adolescent. The first assessors who saw him on 4 March 2008 considered he was over 18 noting that he was about 5'6" with a pronounced larynx and a confident demeanour. The Immigration Judge (755) considered he was 18 in July 2009. She submitted the best evidence of age was probably from Ms Dunn who had observed him over a period of time and discussed him with colleagues.

39. There was a consistent opinion that the claimant was a young adult and that the local authorities' age assessment was accurate. The claimant normally had a beard but had chosen to shave it off when attending the hearing and the issue therefore arose of whether he had done this to be respectful as he claimed or to try and give a more youthful appearance. At the hearing he had worn a scarf round his neck and it was submitted that this was to conceal his Adam's apple. His self-confessed adult life style, involving drinking, gambling and smoking, were all activities where there were age restrictions. The veracity of the claimant's evidence as a whole must be considered and this included the fact that there had been no satisfactory explanation for having relied on an identity card regarded by his own expert, Dr George, as not genuine. The claimant had not explained why he had used such a card, his first witness statement making no mention of his uncle obtaining it from his parents' house.

40. She submitted that the claimant had a motive to lie, firstly to obtain the advantages of being treated as a child and being cared for by the local authority and secondly, he believed being a child would assist him in his asylum application. The claimant had told untruths to his key worker about his girlfriends and also lied to them about his background and whereabouts. He confabulated, telling the Tribunal that he had been in Calais and in Sangatte as if he had known that for a fact whereas he could not have known at the time but must have figured it out since. His evidence that his uncle had sold his parents' house to fund him leaving the country was based on speculation. The central issue on which the claimant's evidence had been examined was his credibility as to his schooling. His evidence on this was inconsistent. In his witness statement of 18 April 2008 (105) he said he started school in 1999 aged 6.5 and left his school in 2004 aged almost 12 but this could not be accurate. When interviewed by Dr Birch he said he attended school for six years from between 5 and 11 and started work at the age of 14½. When interviewed by Ms Golding without having a date written down he had given a variety of different dates, saying he had finished school in 2002, then 2005, then 2003, then 2004 (129,566), that he was 12 or 13 when he left school, not 11, (131), that he was 13 when he left in 2005 (131) and in the written note of dates at (580) he indicated that year 1 was 2000 rather than 1999 as stated elsewhere.

41. She submitted that there were two issues about his schooling which had not been rehearsed which might be indicative of his age. He had said that until 2003 no Kurdish was spoken in the school but in year 5 a teacher joshed him about his age and this was in Arabic. This would indicate that he was in year 5 before 2003. The other factor was that in answer to questions from the Tribunal, he said he had been used to being educated separately from girls and this indicated staying on at school after 12.

42. Ms Rowlands commented on the absence of an independent social worker's report or evidence from the claimant's school, arguing that obtaining evidence from Kurdish Iraq was not difficult and no

adequate explanation had been given for the failure to produce such evidence. She also submitted that his evidence about his work was unsatisfactory. He had said in his witness statement at 105 that he painted windows but when interviewed said that his employer had a metal workshop and he assisted with little jobs. When asked how he coped with this as a child he sought to minimise the work he had done. She submitted that his evidence of his age was simply his own assertion. He had sought to rely on medical evidence which had been of no assistance. Dr Alim's evidence used tools which were not appropriate for a person of a non-English background and the attempt to differentiate between someone acting as a 19 or 21 year old was so inappropriate that Mrs Van Scoyoc would not even have accepted instructions to carry out a task and said that there was no body of competent doctors which would do so.

43. Dr Alim had admitted that she had empathy with the claimant but this was inappropriate for an expert giving dispassionate forensic evidence and may well have affected her assessment. Her report did not take account of the affect on the claimant of the traumatic life events he had been through. Dr Alim said that was taken into account but she could not point to any part of her report where the scores had been so adjusted. There had been no assessment of the claimant's veracity. Her evidence, so she argued, could do no more than provide a snapshot taken on the wrong camera for a young person practised in presenting himself. In so far as it might be argued on the claimant's behalf that Ms Golding had conceded the claimant's age about the length of time and when he had been at school, she had simply been agreeing with the dates for the purposes of the arguments being advanced. In any event, even if she had accepted them, that did not bind the Tribunal.

44. She submitted that the defendant did not consistently pick a date two years older than that advanced by a claimant. In any event, there were good reasons for selecting the day and month put forward because a lie with a kernel of truth was more convincing so in giving a false date of birth, it would be sensible to stick to the date but to change the year. The fact that an adult was not present at the interview with Ms Golding had not been raised in the pleadings but such absence without more did not undermine the age assessment. There was no evidence that the claimant had been disadvantaged by the absence of an adult. He had the services of an interpreter and was given the chance to have a break. Inconsistencies were put to him and he had a chance to explain them. She submitted that there was no reason to interfere with the careful assessment of age made by the local authority.

Submissions for the Claimant

45. Mr Buttler submitted that the claimant had given an account of his age, his educational history and his family background which, if true, would be determinative of his age. Even if an untrue account had been given this did not necessarily indicate a lie as to his age and such a lie in any event would leave open the question of his true date of birth. He submitted that the claimant's account was confirmed by the fact that Kirkuk was a large oil city with a developed infrastructure and it was to be expected that a middle class child would know his date of birth. The school year in Iraq began in September and compulsory education at the age of 6. Saddam Hussein's regime had sought to oppress Kurdish identity but that regime was toppled in 2003. The claimant's claim that he had been taught Kurdish in his last year in 2003-04 was therefore consistent with the background. There was a filter at the end of year 5 and so only the more successful students were admitted to year 6.

46. When assessing the weight to be attached to Ms Golding's age assessment, it had to be taken into account that she had accepted in cross-examination that the claimant had started school in 1999 at the age of 6, had started year 5 in 2003, the school started to teach Kurdish that year and had

changed its name and he left at the end of year 5 in 2004. Overall, she had accepted that if she had known in 2009 what she knew now, she would have found the claimant to be 16 not 18.

47. She had agreed that the only adverse point put to the claimant at the age assessment was the year when he left school. In any event, even if, which was not accepted, the claimant had given inconsistent answers about the year when he left school, he had consistently told the interviewers that he attended school for five years and that Kurdish was added to the curriculum after the fall of Saddam Hussein when the name of the school had been changed. The interview notes indicated uncertainty as to the calendar year in which he finished school. The claimant had produced a table in an attempt to explain the position to the assessors (131). In any event, following the initial uncertainty about what he was saying, he had clarified that he started school in year 1 at the age of 6 in 1999 and finished at the end of year 5 in 2004. Ms Golding had then proceeded to calculate the dates but, given that the Iraqi school year started in September, the table supported what the claimant had told the assessors. Further, the interview had been procedurally unfair as the claimant was not given an opportunity to bring an appropriate adult and it must follow that the assessment was not lawfully conducted. The absence of an appropriate adult in the present case had to be taken into account when considering the confusion about the claimant's evidence about when he went to school and his vulnerability in the light of the fact that he was recorded as being nervous and anxious, upset and needing help with lack self-esteem (129, 133). Further, the written reasons were produced 21 days (15 working days) after the interview rather than within the time set out in the defendant's policy of giving reasons within 10 working days.

48. Mr Buttler submitted that it was not open to the Tribunal to reject any part of the claimant's account which was not challenged in cross-examination and in particular the years of birth of his parents, his evidence about his family life and the fact that he grew up knowing his place of birth. His evidence that he had started working in a coffee shop in May 2007 and shortly afterwards at a workshop had not been challenged, neither had his evidence that he had reported terrorist activity to his father, that his parents had disappeared on 8/9 November 2007 and had then been killed. So far as the identity card was concerned, there was no evidence before the Tribunal that it was a forgery. The claimant had said that he clearly remembered going with his father to obtain it in 2005. He had been given an identity document by his uncle when he left Iraq which he assumed was the same card. The claimant had arrived with it in this country and the details were recorded at the screening interview. There was no substance in the submission that he had back-peddled about the work he carried out at the workshop. The claimant had accepted that he had not told his key worker about his girlfriend but this was exactly the kind of behaviour that could be expected by teenagers towards parental figures and did not bear on the credibility of his account. He had also accepted other matters raised by the defendant such as having an older girlfriend, being involved in drinking and betting and getting angry with the staff following his move to accommodation in December 2010 where there was less support.

49. Mr Buttler then dealt with the evidence about the claimant's appearance, noting that Dr Birch when examining him on 16 June 2008 found that his voice had not broken and that his larynx was not enlarged (227). Ms Golding had accepted these observations in cross-examination. Regardless of Dr Birch's methodology for assessing age, it had been accepted that she employed a high level of professional skill in her basic clinical observations (287). If they were correct, it must follow that by March 2009 the claimant's voice had broken and his Adam's apple had become visible. In any event, it would clearly be exceptional to find a boy of 17 with an unbroken voice and Ms Golding had said from her experience that she would expect a Kurdish boy's voice to break from the age of 13. The apparent

opinion of French police officers on the claimant's age was of no evidential value because it was not known on what basis the view had been formed.

50. So far as the claimant's demeanour was concerned, there was evidence which should be given proper weight from his key workers, who met him more often than the social workers, that he was very shy and reserved and needed a great deal of support (401), felt intimidated by other residents in his accommodation (394), in June 1998 continued to be reserved and shy but had shown other signs of improvement (451), in November 2008 he was assessed to need further support to enable him to believe in himself (528) and by February 2009 he had been referred for a course to boost his self-esteem (133).

51. At the February 2009 assessment the claimant had presented as anxious, nervous and at times upset and he had been placed with 16 and 17 year olds from April 2008 to December 2010. He submitted that little weight could be attached to Ms Dunn's opinion because she had only met the claimant every six weeks or so and the meetings had been short. She had recounted incidents which had been reported to her, only witnessing one of them. Mr Buttler submitted that she had a duty to promote the claimant's welfare and that it was not appropriate for her to produce such a jaundiced statement directed to undermining him. In any event, her evidence did little to advance an assessment of the claimant's maturity. It could be little surprise after five years of key work support and self esteem building that he would be more assertive than he had been. In any event, there was nothing surprising about a 20 year old drinking, betting or having girlfriends. Dr Alim had been in a position to assess the claimant's psychological maturity and weight should be given to her clinical opinion that his level of psychological maturity was more in line with a person of his claimed rather than his assessed age.

52. In summary, Mr Buttler submitted that the evidence indicated that the claimant was born on 9 November 1992 rather than 9 November 1990. He sought to argue further that there was clear evidence that the decision was arbitrary in that Ms Golding had been unable to provide any rationale for concluding that the claimant was born on 9 November 1990. It was suspicious that the date of birth arrived at was precisely the same as that in the quashed assessment and there was evidence before the Tribunal that the defendant regularly assigned a date of birth exactly two years earlier than claimed. It followed, so he argued, that there was a proper basis for making a finding that the assessors had been influenced by the defendant's general practice, thereby taking an irrelevant factor into account. He also argued that there was a real suspicion that this unlawful practice was unconsciously influenced by the defendant's financial interest in the outcome of the decision as the defendant stood to save a substantial sum by finding that the claimant was older than he claimed to be. He accepted that there was insufficient evidence to enable the Tribunal to make a finding that the decision was influenced by financial considerations but the financial benefit to the defendant underscored, so he submitted, the gravity of the unlawful practice referred to.

The Law

53. In *R (A) v London Borough of Croydon* [2009] UKSC 8 the Supreme Court held that in cases involving the exercise of a local authority's statutory obligations in respect of children, a child's age was a matter subject to a determination by the court as a precedent fact. In *R (CJ) v Cardiff City Council* [2011] EWCA Civ 1950, Pitchford LJ said:

"... I do not consider that the appellant can have it both ways. It seems to me that once a court is invited to make a decision upon jurisdictional fact it can do no more than apply the balance of probability to the issue without resorting to the concept of discharge of the burden of proof. In my

view a distinction needs to be made between a legal burden of proof, on the one hand, and a sympathetic assessment of evidence on the other. I accept that in evaluating the evidence it may well be inappropriate to expect from the appellant conclusive evidence of age and circumstances in which he has arrived unattended without original identity documents. The nature of the evaluation of the evidence will depend upon the particular facts of the case”.

Both counsel accepted that the assessment of age was a question of fact for the Tribunal to decide, neither the claimant nor the defendant having a burden of proving the age. It was for the Tribunal to enquire and on the basis of the evidence produced to make a decision on a balance of probabilities.

54. We were also referred to the judgments of the Court of Appeal in R (K) v Birmingham City Council [2012] EWCA Civ 1432 on the issue of the extent to which we should engage with arguments based on traditional public law grounds as well as the factual age assessment. In his judgment at [50] – [52], the Master of the Rolls said:

“50. A number of other issues of some importance were discussed during the course of argument. It is right that I should say a few words about them. The first, what should the court do where an applicant brings judicial review proceedings challenging the age assessment of a local authority both on the facts and on traditional public law grounds, such as, for example, procedural unfairness? This problem was considered in some detail in R (Z) v Croydon London Borough Council [2011] EWCA Civ 59 [2011] PTSR 748 at paras 5 to 10 of the judgment of the court given by Sir Anthony May. I do not wish to say anything to qualify the guidance given there as to how the court should decide whether or not to give permission to apply for judicial review of a decision on the facts. But what if there is also a challenge on judicial public law grounds? At para 5, the Court said:

‘A judicial review claim challenging the local authority’s assessment of age may thus be on various grounds. Some of them may be orthodox judicial review grounds. But the core challenge is likely in most cases to be a challenge to the age which the local authority assessed the claimant to be. Thus most of these cases are likely to require the court to receive evidence to make its factual determination. It is therefore understandable that Mr Haddon, for the defendant local authority in the present appeal, submitted that orthodox judicial review challenges are likely to be subsumed in the court’s factual determination of the claimant’s age. If the claimant succeeds on his factual case, the orthodox judicial review challenges fall away as unnecessary.’

51. The point was also mentioned by Beatson J at para 5 of his judgment in MWA :

‘In the case of the question of jurisdictional fact, it is absolutely clear that although the relevant public authority has to enquire into the facts, if its decision as to those facts is wrong, it cannot give itself a jurisdiction which it does not have and cannot, as a result of that decision, decline a jurisdiction which it does have. That does not, however, mean that a local authority’s decision that a person is or is not a child for the purposes of the Children Act 1989 is not susceptible to challenge on ordinary judicial review principles. In R (A) v Croydon LBC and R (M) v Lambeth LBC the Supreme Court recognised that the local authority had to make its own determination in the first place (see [33] and [54]). The fact that, in certain circumstances, a court is ultimately responsible for determining a matter, does not mean that in an appropriate case, where the court has identified a public flaw, it cannot remit the matter to the local authority.’

52. I would put the point that the court made at para 5 of his judgment in R (Z) in rather more forthright terms than merely to say that ‘it is therefore understandable that [counsel] ... submitted that orthodox judicial review challenges are likely to be subsumed in the court’s factual determination

of the claimant's age'. These appeals show how disputes as to age assessments can generate prolonged and costly litigation. The expense is bad enough. But even worse is the damage that delay and uncertainty may cause to the interest of children. Let us suppose that the court gives an applicant permission to apply for judicial review of a local authority's age assessment on the grounds that it is tainted by procedural unfairness or some other orthodox public law ground. The applicant will not raise such an issue unless he disputes the authority's age assessment. There is, therefore, no point in deciding that there has been procedural unfairness and remitting the case unless the court is satisfied that on a reconsideration the authority is likely to make a different assessment and one which the applicant will not dispute. In most cases where there is a challenge both on the facts and on some orthodox public law ground, it will be better for the court to decide all issues in one hearing, or to transfer the case to the UT for that purpose."

55. We were also referred to authorities on the issue of whether reliance could be placed on an age assessment carried out in breach of the requirement that a young person must be asked whether he wished to bring an appropriate adult in advance of the interview. In AAM v Secretary of State [2012] EWHC 2567, Lang J found that the age assessment in that case failed to comply with the Merton standards of good practice in that there was no appropriate adult present. We were also referred to R (AK) v Secretary of State [2011] EWHC 3188 where the Deputy Judge held that the absence of an adult at the time of the claimant's interview was not a ground even of itself for undermining the age assessment [33] but we note that this was a case where the claimant was given the opportunity of having a friend present prior to the final interview and he declined.

Evaluation of the Evidence and Assessment of the Issues

56. We now turn to our assessment of the evidence. It is common ground that the claimant is a citizen of Iraq who made an unlawful entry into this country on 21 February 2008 in the back of a lorry. He went to the police and then made a claim for asylum. From his arrival he has claimed that his date of birth is 9 November 1992, he is an only child, his family was middle class and until his parents' death, he expected to have a reasonably comfortable future. He said at the screening interview that his father was born in 1970 and his mother in 1975. He claimed that he started school in year 1 at the age of 6 in 1999 at Warda Al Wahda Primary School for Boys. He did not repeat any years and so started year 5 at the age of 10 in September 2003. In that year the school started to teach Kurdish and changed its name to Rezgari Primary School. He left at the end of year 5 in June 2004 when he was 11 because he had failed his exams and because of the worsening of the security situation.

57. He started working in a coffee shop in May 2007 and shortly afterwards began working at a workshop that made windows and doors. He claims that he reported apparent terrorist activity at the workshop to his father who told him to stop working there and in November 2007 the police arrested the owner of the workshop. On 8 November 2007 the claimant and his parents went to his uncle's house. The claimant stayed over night and his parents returned home. On the following day it was discovered that his parents had disappeared and on 12 November they were found dead. On 15 November 2007 the claimant's uncle handed him over to an agent and he travelled to Turkey, then across Europe arriving in the UK on 21 February 2012.

58. The points argued in favour of the claimant's account are that not only is it consistent within itself but is corroborated by a number of factors. He was born in Kirkuk and it would be expected that a child born there would know his date of birth. There is evidence that the school year in Iraq began in September and compulsory education at the age of 6 (789). The fact that the claimant would have had lessons in Kurdish in his final year is consistent with Saddam Hussein's regime being toppled in

March 2003 as is the change of name in the school from an Arabic to a Kurdish name. There is also evidence that the security situation in Iraq worsened in 2004. It is argued that a number of aspects of the claimant's account have not been challenged, or at least that during the age assessment he was not given the opportunity of commenting on them. These include the years of birth of his parents, the details of his family life, the fact that he grew up knowing his date of birth and the evidence that the school's name was changed, that Kurdish was only taught in his final year, the background to his arrival in the UK, his report of terrorist activity and the fact that his parents had disappeared and been killed. There is force in this submission as Ms Golding accepted in her evidence that the only issue of substance challenged during the age assessment was the claimant's evidence about his schooling.

59. However, his evidence and its credibility has been challenged on the basis that there was no reasonable explanation about why he had travelled with an identity card which his own expert found was very likely to be false and no explanation for the lack of any evidence from Kirkuk where there would be a record of when he was at school. It was also submitted that he had a clear motive to lie about his age to obtain treatment as a child to which he was not entitled or for longer than he was entitled and because he believed that reducing his age would assist him in his asylum application. Reliance is also placed on the fact that the claimant has told lies to his key workers about his girlfriends, his own evidence being that he did not always tell them the truth about his background and whereabouts. It is also argued that his general behaviour and lifestyle is more consistent with someone born in 1990 rather than 1992.

60. We attach little weight to the submissions based on the appellant's behaviour such as gambling, drinking, having an older girlfriend and getting angry with staff following his move to less supported accommodation in December 2010. This behaviour seems to us to be equally consistent with either being born in 1990 or 1992. However, we do have serious concerns about his use of a document which his own expert did not regard as genuine. We are also concerned about the failure to produce evidence which should be available from the authorities in Kirkuk which could confirm the appellant's account about his age and his schooling. However, we must be careful not to fall into the error of requiring corroboration and of drawing inferences from the absence of evidence without a full enquiry about why the evidence was not obtained. Nonetheless, we do not find the claimant to be a sufficiently reliable or credible witness to conclude on the basis of his evidence alone that on a balance of probabilities his date of birth is 1992 rather than 1990.

61. We must look his evidence in the context of the evidence as a whole. The age assessment carried out by the defendant in February 2009 gives rise to its own concerns. Ms Golding accepted that there was no appropriate adult present and we are not satisfied that the claimant was invited to bring an adult with him. We accept the submission that it was not the defendant's practice to invite appropriate adults in February 2009. We also note that the notes were written up 15 working days rather than 10 working days after the interview but we must balance this with the fact that Ms Golding was responsible for a considerable case load and was overseeing six to eight age assessments a week. But when cross-examined Ms Golding accepted that the only matter put in issue during the assessment was the claimant's account of his schooling. We find that there was considerable confusion about what he was trying to say, possibly arising from the fact that the school year ran from September and the inquiry into what the claimant was saying appears to have been on the assumption of calendar year basis. The defendant's case by necessary inference is that the claimant is deliberately putting forward a prepared false story. Assuming this to be the case, it is still not easy to see how what he was saying

about his school dates became so confused. We must also bear in mind that there was no appropriate adult present who might have helped the claimant explain himself in a way avoiding such confusion.

62. We do not accept that we are necessarily bound to find that individual matters not specifically put to the claimant must be resolved in his favour but we must take into account that he was not given an opportunity at his interview of dealing with significant points such as the dates of birth of his parents. These dates had been given at the screening interview and maintained. When dates were put to Ms Golding in cross-examination about the claimant's schooling, including when he started, when he left and when he was able to study Kurdish, she certainly appeared to accept that had those matters been more clearly expressed or appreciated at the interview, they would at least have affected her assessment. Whilst we are not bound by her apparent acceptance of the matters put to her in cross-examination, we must take into account that she is an experienced social worker and it is no criticism of her that she was, apparently at least, prepared to reconsider her assessment in the light of the issues raised in cross-examination.

63. A similar point was raised about the claimant's physical appearance. It is clear that Dr Birch in her report of June 2008 found that the appellant did not have a developed larynx with an Adam's apple and that his voice had not broken but that had happened by February 2009. Ms Golding accepted on this basis that his voice must have broken between June 2008 and February 2009. It is right to note at this point that the defendant's previous age assessment of 27 February 2008, quashed by the High Court, had said that there was such physical development at that date but Ms Golding said that she had not read that assessment. However, she did say that she had experience of assessing the age of young Kurdish men and accepted that normally the Adam's apple had appeared and the voice broken by the time they were 13, which on the basis of the assessed age would be November 2003. Therefore, in the light of the concessions made by Ms Golding during her evidence and the fact that there was no appropriate adult present, we have serious concerns about the reliability of the age assessment report.

64. We now turn to the evidence of Ms Dunn. Her evidence has been severely criticised on the basis that as the claimant's allocated social worker she has produced a jaundiced statement filled with hearsay and failed in her duty to build an effective relationship with him. We do not accept these criticisms. Her evidence must set out the facts as she sees them. We find that aspects of the claimant's behaviour towards her and his key workers have been overbearing and unacceptable. Whatever his age there has been no justification for such behaviour and at the hearing before us he accepted this. However, most of the evidence related by Ms Dunn comes from other people and as we have already indicated, we do not draw an inference simply from the claimant's behaviour or his life style that he is older than he claims to be. It could be equally consistent with immature behaviour by someone of his claimed age.

65. We now turn to the evidence from the psychologists. We have a number of concerns about Dr Alim's evidence. We are not satisfied that the assessment tools relied on provide any reliable guide in this case to the claimant's chronological age. The tests are aimed at assessing psychological maturity and both Dr Alim and Mrs Van Scoyoc accepted in their final joint report that they were not used to assess chronological age but as an aid to make a clinical judgment on the claimant's likely age. We accept the evidence of Mrs Van Scoyoc that the tools used were generally not appropriate for someone from a non-English background and that the exercise of differentiating between someone acting at a 19 year level and a 21 year level was particularly unreliable in the circumstances of this appeal. In her evidence Dr Alim essentially relied on the fact that if the appellant were 21 her results would lead to a conclusion that he had some mild intellectual disability but we accept Ms Van

Scoyoc's evidence that the difference between a 19 and 21 year old in the IQ results is so insignificant as to have little weight but in any event we prefer her evidence that the use of psychometric assessment scales in this context is flawed as the scales used can only give reliable and valid results for IQ and age comparative adaptability if the correct chronological age is used to calculate scaled scores for cognitive ability and adaptive behaviour and even when the assessments are applied correctly, they are unreliable until a true chronological age can be established. Further, the WASI, Ravens and Vineland II assessments were developed by using a "norm" population and the claimant due to his background and upbringing falls outside that "norm" and does not meet the criteria for being assessed by such psychometric assessments with the possible exception of Ravens: see Mrs Van Scoyoc's report of 5 September 2012, pages 4-5. In summary, we find that the psychological evidence does to take us any further in our assessment of the claimant's age.

66. We therefore find ourselves in a position where there is very little reliable evidence on which we can reach a finding as to the claimant's age. As both counsel accepted in their submissions, the assessment of age is in these circumstances a very difficult, exercise. However, we must make a finding on the evidence before us. As we have already indicated, we do have considerable concerns about the claimant's own evidence. We take into account that he was regarded as older than he claimed to be by the French police although there is nothing to indicate how or why they reached this conclusion and by the Home Office when they first interviewed him, taking the view that his appearance very strongly suggested that he was over 19. We accept that the appellant's appearance and demeanour could be consistent with him being born in 1990 but equally in 1992.

67. We must remind ourselves that physical appearance and characteristics are an unreliable guide as to age as is behaviour and maturity. We must also take into account the points made in the reports of the key workers, noting that in April 2008 the claimant was very shy and reserved and needed a great deal of support (401), that he felt intimidated by other residents in his room and felt frightened and spent most of his time in his room (394), in June 2008 he continued to be reserved and shy but has shown signs of improvement in his confidence (451), in November 2008 he was assessed to need further support to enable him to believe in himself (528) and by February 2009 he had been referred to a course to boost his self-esteem. It might well be said that the evidence about his gambling, his girlfriends and drinking indicates that these assessments were not correct but as we have already indicated, this kind of behaviour seems to us to be equally consistent with a date of birth in 1990 or 1992.

68. We also take into account the concessions made by Ms Golding during her cross-examination. We were certainly left with the impression that this experienced social worker was accepting in the light of the way the case was being put to her that her age assessment may not be accurate. We also take into account that there were no reported problems about how the claimant related to other residents when placed in accommodation for those within his claimed age range. Suffice to say that we have found this matter to be very difficult and albeit with some hesitation, we have come to the view on the evidence before us that on a balance of probabilities the most probable date of birth is as the claimant has asserted, 9 November 1992.

69. Mr Buttler sought to challenge the decision on other grounds arguing that the defendant had applied an unlawful policy of simply reducing the claimed age by two years in circumstances when it was not believed, that the age assessment in the present case had been influenced by that general practice and was therefore vitiated by the application of an irrelevant consideration. He also argued that there was no proper basis for accepting the claimed day and month of birth but not the year of birth. However, having reached a decision on the claimant's date of birth, we do not see any need or

purpose in the present case for exploring these issues further in the light of the guidance given by the Court of Appeal in R (K) v Birmingham City Council .

Decision

70. In summary, doing the best we can on the evidence before us, we find on a balance of probabilities that the claimant's date of birth is 9 November 1992 and we make a declaration accordingly. The parties may make further written submissions on the terms of any further orders sought and in particular on the issue of costs. In the absence of agreement these issues will be determined on the basis of the written submissions.

Signed Date: 15 February 2013

Upper Tribunal Judge Lattar