



Age Disputes Procedure and Practical Tips

31st January 2011

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The Issue and its Importance

- The development of litigation over the last 5 years
- Provision of Children Act Services
- Provision of Leaving Care Services



The Issue and its Importance (2)

- The impact upon the young person's immigration status
- The effect of being age disputed upon the young person
- The future of age dispute litigation



R (A) v LB Croydon

- A recap of *R (A) v LB Croydon* [2009] 1 WLR 2557
- The impact of the Supreme Court's decision



Assessing the merits of a potential claim

- The starting point for the Court when assessing age
- The role of documentary evidence



Merits (2)

- The role of medical evidence
- The burden of proof



Steps Pre-Action

- The relevance of the claim?
- Timing
- Identifying the correct Defendant



Steps Pre-Action (2)/Issuing the claim

- Obtaining instructions from the client and the preparation of witness statements
- Other evidence to obtain



Steps Pre-Action (3)

- The pre-action letter
- Urgency and potential interim relief to seek



The Permission Stage

- The applicable test, paragraph [15] of *R (F) v Lewisham and others* [2009] EWHC 3542 (Admin)
- Directions



Transfer to the Upper Tribunal

- Power – section 31A Senior Courts Act 1981 and s. 19 TCEA 2007 – if it appears ‘just and convenient to do so’
- When – pre- or post-permission
- Transfers only



Which Chamber?

Immigration and Asylum Chamber – any judicial review application which is “made by a person who claims to be a minor from outside the United Kingdom challenging a defendant's assessment of that person's age”

First-Tier Tribunal and Upper Tribunal (Chambers) Order 2010, Art 11(c)(ii)



What Judges?

- UTIAC generally – 1 – 3 judges, at least one UTJ, up to 2 others
- Proposal for age disputes – one Judge entitled to sit in Admin Court + 1 SIJ



Transfer to Upper Tribunal

Procedure:

- any steps taken, permission given, leave given or orders made by the High Court in relation to the application are to be treated as taken, given or made by the tribunal – s. 19(3) TCEA 2007



Relief

- mandatory, prohibiting, quashing orders (s. 15(1)(a)-(c) TCEA 2007)
- Declarations and injunctions (s. 15(1)(d)-(e) TCEA 2007)
- Damages where High Court could (s. 16(6) TCEA 2007)
- Costs (rule 10)



What difference will it make?

?

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The Full Hearing

- The role of the Court
- The role of the age assessors
- The young person's evidence



Interplay with immigration status

- Discretionary leave to remain to 17.5 years
- HO policy – accept social services assessment of age
- Impact on credibility of asylum appeal



Age disputes in immigration appeals(1)

- JR or statutory appeal first?
 - PM v Hertfordshire
 - SSHD as an interested party
 - Social services as a party
 - Timing/delays
 - Joining proceedings



Age disputes in immigration appeals(2)

Evidence:

- Medical evidence – live?
- SSD age assessment
- Social workers/LA witnesses
- Independent social workers



Impact of Tribunal decision on age

- No right to appeal solely on issue of age – not a ‘decision’
- Are social services bound?
- What if judicial review proceedings reach different result?