



Challenges to age assessments of separated children and young people
13 July 2021

dsc doughty street
chambers

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Overview of session

Speakers:

Antonia Benfield, Barrister, Doughty Street Chambers

Helen Johnson OBE, Head of the Refugee Council's Children's Section

Edward Taylor, Solicitor at Osbornes Law

- Overview of the current position on age dispute claims, the role of the Refugee Council and direction of travel in age dispute claims
- Current case law position: short form assessments; HO assessments; interim relief and fact-finding hearings
- Best practice in preparing age dispute claims: pre-action, JR claim and fact-finding
- Questions and discussion.



Challenges to age assessments of separated children and young people

Doughty Street, July 2021

Helen Johnson, Head of Children's Services, Refugee Council

Role of the Refugee Council re age disputed young people



- Variety of services to children and young people.
- Largest service is Children's Advice Project (CAP), works nationally. Home Office funded. Attends age assessments as appropriate adults, but since April 2021 has been prohibited from working proactively on any age matter.
- Age Dispute Project does specifically work with young people who we believe to be children but who are being treated as adult as the result of a decision by the Home Office and/or a local authority.

Background



- The Home Office publishes statistics on age disputes but these must be regarded with a great deal of caution. The stats below refer **only** to age disputed applicants who the Home Office refers to a local authority for assessment, they **do not include** those who the Home Office believes to be '25 years or over'.

	2016	2017	2018	2019	2020
Applicants disputed	929	716	875	798	732

- <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/06/15071458/Children-in-the-Asylum-System-May-2021.pdf>

Stats



- We have repeatedly asked the Home Office to report on outcomes of age cases.
- We only know of the cases we know of – there is no published figure on how many disputes are raised, and at what stage, by whom, and how many young people are then accepted as children, and at what stage.

Stats



- ADP has 1.8 members of staff. New referrals:
 - April: 15
 - May: 23
 - June: 90
- On top of large existing caseload.
- 2019/20, 135 children accepted as such.

Background



- Many social workers across the country are doing an excellent job in very challenging circumstances – by definition you tend to see where things go wrong.
- Not all young people we meet know their own age, or tell the truth about their age. A humane but robust approach is needed at times.

Our work



- Best interests of the child / young person.
- Difficult decisions need to be made. Settling a case which gives a child the 'wrong' age can be very damaging for them, but on balance can also be the right thing to do.
- Protracted delays infect other parts of the young person's life, most obviously in relation to asylum decision making. Also important to consider the impact on the individual in relation to memory / mental health / credibility / participating positively with the rest of their life.
- Settling a case should be explored from the start, and again at any opportune moment.

Home Office asylum decisions and age



- <https://www.gov.uk/government/publications/assessing-age-instruction>
- 'If the age of the claimant is material to the decision on the claim, the decision must be delayed whilst a full decision on their age remains outstanding.'

Our work



- Meet the young person. Take a view. We can be wrong.
- If no local authority assessment, refer to local authority where putative child is in need – sometimes this is enough. Once being looked after as a child, CAP colleagues can pick up other support issues.
- If a local authority has already undertaken an assessment, then in most cases legal representation is needed in order to challenge that decision.
- Act as a litigation friend.

Our work



- Ongoing liaison with young person and solicitor. Aiming to ensure that the right decisions are made at the right time, and that the young person understands what is happening.
- Preparing for court as necessary – for ourselves and for the young person.
- Celebrating when age is accepted – and having very difficult conversations with the young person when this doesn't happen.
- Working to influence policy and practice, through casework, through training, through engagement with local and national government etc.

Future



- No obvious solution world-wide – no-one can accurately tell age - hence the need for clear guidance for all involved, and an acceptance of doubt.
- Solicitors and barristers play a crucial role in the development of good practice by all, and in holding us all to high standards.
- Thank you – comments and questions very welcome at the end of the session.

Current position on legal challenges – Antonia Benfield, Doughty Street Chambers

- ***Merton*** as a term of art
- Short-form assessments
- Home Office age assessments, including Kent Intake Unit (KIU)
- Interim relief applications – recent case law and procedure
- Fact-finding hearings in the Upper Tribunal (IAC)

Requirements of Merton compliant assessments

Recent case of *R (AB) v Kent County Council* [2020] EWHC 109 (Admin), court summarized the requirements for a lawful and fair age assessment in the following terms, similar to the framework in *VS v The Home Office* [2014] EWHC 2483 (QB):

Purpose of the assessment

(1) The purpose of an age assessment is to establish the chronological age of a young person.

Burden of proof and benefit of the doubt

(2) There should be no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child.

(3) The decision needs to be based on particular facts concerning the particular person and is made on the balance of probabilities.

(4) There is no burden of proof imposed on the applicant to prove his or her age.

(5) The benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process.

Physical appearance and demeanour

(6) The decision maker cannot determine age solely on the basis of the appearance of the applicant, except in clear cases.

(7) Physical appearance is a notoriously unreliable basis for assessment of chronological age.

(8) Demeanour can also be notoriously unreliable and by itself constitutes only '*somewhat fragile material*'. Demeanour will generally need to be viewed together with other things including inconsistencies in his account of how the applicant knew his/her age.

(9) The finding that little weight can be attached to physical appearance applies even more so to photographs which are not three-dimensional and where the appearance of the subject can be significantly affected by how photographs are lit, the type of the exposure, the quality of the camera and other factors, not least including the clothing a person wears.

Conduct of the assessment

(10) The assessment must be done by two social workers who should be properly trained and experienced.

(11) The applicant should be told the purpose of the assessment.

(12) An interpreter must be provided if necessary.

(13) The applicant should have an appropriate adult, and should be informed of the right to have one, with the purpose of having an appropriate adult also being explained to the applicant.

(14) The approach of the assessors must involve trying to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions. Assessors should be aware of the customs and practices and any particular difficulties faced by the applicant in his home society.

(15) The interview must seek to obtain the general background of the applicant including his family circumstances and history, educational background and his activities during the previous few years

(16) An assessment of the applicant's credibility must be made if there is reason to doubt his/her statement as to his/her age.

(17) The applicant should be given the opportunity to explain any inconsistencies in his/her account or anything which is likely to result in adverse credibility findings.

Preliminary decision

(18) An applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant with their conclusions without first giving him the opportunity to deal with the adverse points.

The decision and reasons

(19) In coming to the conclusion the local authority must have adequate information to make a decision independent of the Home Office's decision.

(20) Adequate reasons must be given.

(21) The interview must be written up promptly.

Short-form age assessments

- Short form; abbreviated; eyes on; initial screening; **Merton** light; abbreviated **Merton** assessment – what do they mean?!
 - What is the current guidance?
 - What is required in terms of procedural fairness in a short form assessment?
 - How to challenge them?

Local authority short form assessments

R (B) v London Borough of Merton [2003] 4 All ER 280

- **[§27]** *Of course, there may be cases where it is very obvious that a person is under or over 18. In such cases there is normally no need for prolonged inquiry; indeed, if the person is obviously a child, no inquiry at all is called for*
- **[§38]** In an obvious case, the appearance of the applicant alone will require him to be accepted as a child; or, conversely, justify his being determined to be an adult, in the absence of compelling evidence to the contrary.

ADCS Guidance:

In some rare circumstances, it will be very clear that the individual is an adult well over the age of 18, so prolonged inquiry may not be required, as stated in the Merton judgement. Even in these rare circumstances when you are making a relatively quick decision, you are still undertaking an assessment, albeit a brief one, and you must record the rationale for your decision as well as share your decision with the individual being assessed.

Short-form age assessments

BF (Eritrea) v Secretary of State for the Home Department [2019] EWCA Civ 872

- visual age assessments by the Home Office “*physical appearance and demeanour strongly suggests that you are significantly over 18 years of age*”
- Policy unlawful as it failed to take account of the margin of error in visual assessment (5+yrs). HO withdrew and reissued their policy to “*significantly over 25*” but the case is currently in the UKSC

R (AB) v Kent County Council [2020] EWHC 109 (Admin)

- Lawfulness of abbreviated LA assessments
- Public law **Tameside** duty. Essential to take account of the margin of error; minimum standards of inquiry and fairness; benefit of the doubt. AB assessed to be 20-25 was too close to 18 for the benefit of the doubt not to be given.

R (HJ) v London Borough of Croydon [2021] EWHC 66 (Admin)

- Reliance upon a short form AA after HJ moved to another area.
- Court held there must have been doubt as to whether the AA was case law compliant as there had been no recognition of the margin of error; the purpose of the assessment was not explained; no reasons; no minded to; no appropriate adult.

R (K) v Milton Keynes Council [2019] EWHC 1723 (Admin) – challenge to failure to conduct a **Merton** compliant assessment dismissed, “obvious case”, K later found to be a child on full assessment

Short form age assessments

- **Requirements of fairness:**
 - Depends on the facts of the case.
 - In all cases, the purpose of the AA should be explained; if credibility is in issue adverse points should be put; **Tameside** duty applies; a suitable interpreter is required; as is a suitable location (see Joint Working Guidance / ADCS)
 - Sometimes an appropriate adult is required; consideration of information from other sources; country information; trafficking or trauma
- **Routes of challenge:**
 - Could be brought as a challenge to the refusal/failure to conduct a full **Merton** compliant assessment on lawfulness and rationality grounds
 - Alternatively, under **A v Croydon** jurisdiction to determine age.
 - Threshold in the latter is lower and permission more achievable.
 - Consider AA; reasons; evidence and delay.

Home Office Age Assessments

- The Home Office is often the first authority who meets a separated child and often is required to make a decision on age for the purpose of asylum routing or detention
- **Assessing Age Policy** (v4.0) – sets out procedure for IO decisions on age. To treat as an adult, 3 routes:
 - LA **Merton compliant assessment** finds 18 or over
 - Two HO staff consider physical appearance and demeanour very strongly suggests that they are **25 years of age or older**
 - There is **credible and clear documentary** evidence that they are 18 years of age or over

Otherwise, should be referred to a LA for a **Merton** compliant assessment and given the benefit of the doubt and treated as child in the interim.

Home Office Age Assessments

- In reality, often very quick decisions that have a high margin of error.
- Issued as an **IS97M** which states: *“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.”*
- Focus of challenges are often on the refusal of a LA to act on a referral after the HO has disputed age and dispersed to NASS accommodation in their area.
- If the HO decision leads to a decision to detain, or to treat an asylum claim as inadmissible under the Immigration Rules, can bring a challenge against HO – or in other cases include as an interested party or second defendant.

Home Office Age Assessments: KIU

- Since September 2020, the Home Office has operated a **policy** whereby embedded social workers, employed by the HO, conduct short form age assessments at KIU, often when putative children have been detained following entry to the UK by boat.
- KIU social workers will be asked to assess if:
 - Claiming to be a child but physical appearance and demeanour very strongly suggests 25 or over
 - Reason to doubt age, but not deemed 25 or over
- KIU SWs should review the HO decision on age; provide their view to KIU and conduct a short form assessment
- HO often relies upon KIU assessments to dispute age, even though they state they are not **Merton** compliant and often find children to be under 25 years of age

Home Office Age Assessments: KIU

- Challenge currently in Administrative Court: **MA & HT v Coventry City Council & SSHD** (CO/428/2021 and CO/524/2021) challenging lawfulness of KIU assessments, lawfulness of KIU policy and of detention pending AA – substantive hearing 20/21 October 2021.
- MA assessed by KIU to be 20, and HT as 21.
- Assessments are conducted without any safeguards; often on day of arrival; while detained.
- Arguably incompatible with the Assessing Age policy and the permissible routes to treating a person claiming to be a child as an adult; i.e. not a **Merton** compliant assessment and not over 25.
- Issues of ambiguity of IS97Ms issued following KIU assessments which impact on LA referrals.

Interim relief

- **When to apply?**
 - in most cases the client will be a child at the date of the JR claim and ensuring support under s.17 and 20 CA 1989 is extremely important, as is ensuring preservation of any leaving care entitlement.
 - important to ensure age-appropriate education and health care and protect against safeguarding risk in NASS and risk of dispersal acknowledged in **R (NG, AL and KM) v London Borough of Hillingdon** [2020] EWHC 2847 (Admin).
- An application for interim relief. should therefore be sought in most cases, either prior to consideration of permission or with a request for expedition.
- Reality test your case.
- Keep in mind the **Hamid** jurisdiction and recent cases of **R (DVP & Ors) v SSHD** [2021] EWHC 606 (Admin) and **In the Matter of the Court's Exercise of the Hamid Jurisdiction (Re An Application for Judicial Review)** [2021] EWHC 1895 (Admin)

Interim relief

- **What to seek?**
 - Mandatory order that the LA support and accommodate under CA 1989, in accordance with the client's claimed age, pending determination of their age by the court.
 - If seeking an immediate order pre-permission, consider whether whether an immediate order is required and be realistic about what being sought (forthwith/as soon as possible/practicable/x days)
 - Important to get the client into care but then also to scrutinize whether the LA is in fact discharging the order and treating as claimed age under CA 1989. Often, children may be held in assessment centres with no provided with education.
- **Local authority lines of defence:**
 - Arguments on costs (over stretched budget/detracting from funding for others) and risk (of client to other children)
 - NASS is not that bad / sufficient
 - The claimant is almost an adult (e.g. 17) or no particular vulnerabilities

Interim relief: useful caselaw and guidance

- **Statutory guidance: Care of unaccompanied and migrant children and child victims of modern slavery**, November 2017 – definition of a child (p.5-6) “where a person’s age is in doubt, they must be treated as a child unless and until, a case law compliant age assessment shows them to be an adult” – **R (S) v LB Croydon** [2017] EWHC 265 (Admin)
- **ADCS Guidance**, October 2015 - “where there is doubt about whether or not a young person is a child, the dangers inherent in treating a child as an adult are in almost all cases far greater than the dangers of taking a young adult into your care.” – contrast with **R (M) v Ealing LBC** [2016] EWHC 3645 (Admin), “the risks associated with having to accommodate someone who is an adult with children are far more severe and troubling than the other way round where the individual is, even on his case, within four months of becoming an adult”
- **R (BG) v Oxfordshire County Council** [2014] EWHC 3298, at §39: “the risk of injustice in which one of the scenarios is that the claimant is treated as a child in the interim but ultimately fails on the substantive challenge but where, on the other hand, the claimant continues to be dealt with as an adult alongside other adults and is subsequently vindicated at the substantive hearing and found to be a child”
- **R (KA & NBV) v LB Croydon** [2017] EWHC 1723 (Admin) at §48: “in most, if not all cases, the ‘status quo ante’ is a case like this is the status quo ante the impugned decision, not the status quo ante the application for interim relief”

Interim relief: useful caselaw and guidance

- ***R (Talash) v London Borough of Croydon*** [2018] EWHC 2138 (Admin)
 - 16 yr old, Afghan in possession of a Taskira. Pre-permission – arguability threshold met and IR ordered.
- ***R (AS) v Liverpool City Council*** [2020] EWHC 3531 (Admin)
 - No hard and fast rule on a strong prima facie case [§13]. Pre-permission IR granted, “firmly in favour of a grant of interim relief” [§22]
- ***R (LYB) v Kent County Council*** [2021] EWHC 663 (Admin)
 - Claimed to be 16, assessed to be 20. Grant of permission, reliance on BG to find balance of convenience in favour of IR
- ***R (AH) v Kent County Council*** [2021] EWHC 878 (Admin)
 - Pre-permission, AH turned 18 prior to IR hearing, IR granted acknowledging the importance of leaving care
- ***R (A) v Manchester City Council*** [2021] EWHC 1872 (Admin)
 - 17 yrs 8 months old, assessed to be “in his twenties”. LA argued that A was capable of independent living and there would be prejudice in the expenditure of resources [§31]. Balance “falls squarely in favour of the grant of interim relief” [§32], not necessary to show a strong prima facie case.
- ***R (AXA) v LB Hackney*** [2021] EWHC 1345 (Admin) – pre-permission, claimed 16, assessed 21-25. Resources of LA deemed relevant, risk to other children (***M v Ealing***), nature of NASS accommodation.

Interim relief: useful caselaw and guidance

- *R (NG, AL and KM) v London Borough of Hillingdon* [2020] EWHC 2847 (Admin)

Considered the position of three putative children (all aged 17) where LB Hillingdon had agreed to conduct age assessments and accepted that pending assessments, they should be treated as putative children but said there was no s.20 duty to accommodate because they were housed in a hotel by NASS and therefore did not require accommodation. LA said it could discharge s.17 duties while they stayed at the hotel. The LA said they had commissioned key workers to support the children but permission was granted, and IR ordered with the court noting:

[§8] – good arguable case that Council is failing to discharge and side-step its statutory duties

[§10] – NASS accommodation is not set up to cater for the needs of children and young persons.

[§11] - hotel staff had not been trained in safeguarding and there was no evidence they had enhanced DBS checks.

[§13] – took account of practical difficulties with daily living; lack of prompt medical care; lack of education.; lack of English made it difficult to communicate their needs.

[§18] – this was a significant departure from past practice of local authorities and impacted on the ability to acquire leaving care support.

[§19] - there is a risk of dispersal where there may not be any facilities in place and education and welfare support may be disrupted.

[§23] – there are budget and resources considerations for the council if “NASS foots the bill” but there is no prospect of the claimants being able to compensate the council even if it were to defeat the claim.

[§24] – the risk to the wellbeing of the claimants weighs more heavily in the balance, and the potential harm to them cannot easily be remedied.

Fact-finding hearings

- Upon the grant of permission, almost all cases are transferred to the Upper Tribunal (IAC) pursuant to s.31A(3) of the Senior Courts Act 1981
- As held in ***R (FZ) v LB Croydon*** [§31]:

“...The Administrative Court does not habitually decide questions of fact on contested evidence and is not generally equipped to do so. Oral evidence is not normally a feature of judicial review proceedings or statutory appeals. [...] The Upper Tribunal has sufficient judicial review jurisdiction for this purpose under section 15 of the 2007 Act and by article 11(c)(ii) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010, SI 2010 No. 2655. Transfer to the Upper Tribunal is appropriate because the judges there have experience in assessing the ages of children from abroad in the context of disputed asylum claims...”

- The CPR however does not apply (although can be referred to as useful guidance e.g. relief from sanctions)
- **Procedure Rules and Practice Directions**

Fact-finding hearings

- Standard case management directions following transfer from the Administrative Court:
 - i. Parties to serve on all parties all documents relevant to the determination of age and date of birth and, file a list of documents with the UT (**28 days**) – from Applicant (immigration) from Respondent (social care)
 - ii. Parties are to file and serve relevant witness statements within **28 days** of disclosure of (i)
 - iii. **14 days** thereafter, parties to notify the names of witnesses they seek to call to give oral evidence (presumption that assessing social workers will not give oral evidence)
 - iv. CMRH on FAD **13 weeks** after directions are sent.
- **7 days** before CMRH – parties to file an agreed statement of facts and issues
- Failure to comply with directions may result in costs / strike out.

Fact-finding hearings

- Current situation is that FFHs are **hybrid**, with Applicant and any witness who requires an interpreter to attend in person and others remote
- Timetable is **strictly applied** – a party is required to make an application for an extension of time/relief from sanctions
- The UT is open to **diverting** from the standard time frame if there is a need e.g. for expert evidence
- **Round table meetings** are required under directions and the conduct of the parties and the extent which they have engaged to further the overriding objective, including any attempt to reach a resolution of the claim and to narrow the issues, will be considered by the Tribunal when it considers any application for cost.
- Whereas a litigation friend is required to issue proceedings in the High Court, R (on the application of **JS and Others**) **v Secretary of State for the Home Department (litigation friend – child)** [2019] UKUT 00064 (IAC), sets out guidance for the UT.

Fact-finding hearings – the reality

- The primary focus in a FFH on the account A gives and credibility
- Non-reporting of determinations makes it difficult to assess the consistency of approach: **unreported determinations**.
- Judges are in the main careful not to stray into the territory of a young person's asylum / trafficking claim
- Application of **Joint Presidential Guidance No.2 of 2010, child, vulnerable adult and sensitive appellant guidance**.
- Be aware that a UT determination is a judgment *in rem*, consider whether preferable to seek to establish age in asylum claim: **Rawofi (age assessment – standard of proof)** [2012] UKUT 00197 (IAC)
- Be creative, cautious and collaborative.

Best Practice in Preparing Age Dispute Cases

- Pre-Action work
- Preparing a Claim for Judicial Review
- Getting Ready for Fact-Finding Trial

Case Study: Sensible steps immediately following instruction

You are contacted by Ben, a foster carer for Mohammed. Ben explains that Mohammed needs advice to challenge an age assessment of Brent Council which has found him to be 21 rather than 17. You see Mohammed the next day. Mohammed does not have a copy of the assessment document. He has been told that he will shortly be moved to adult Home Office accommodation. He remembers that during the interviews he was supported by an appropriate adult from the Refugee Council. He also provides the details of his immigration solicitor.

What initial steps come to mind?

Case Study: Sensible steps immediately following instruction

- Urgent correspondence to Brent's lawyers, requesting the assessment document, SW notes and to address the threat of removal from care (LAs take different approaches, but as a minimum he should not be moved until assessment is produced).
- Send a SAR to Brent's data protection team, requesting a copy of Mohammed's social care file. It'll take a month (or longer) but best to get the request in early, and diarise to chase once the 1 month statutory deadline arrives.
- Write to the Refugee Council requesting a copy of the appropriate adult's interview notes.
- Write to the immigration solicitor, to touch base and to request copy immigration papers especially any child welfare form, screening interview record and any statement submitted to the Home Office for asylum purposes.
- Try to obtain an opinion from the foster carer, Ben, setting out how long he has looked after Mohammed and what his observations are, including in relation to Mohammed's age. Tactically it can be best to seek an opinion informally via email at this early stage, so you at least have something from him (the prospect of formal witness evidence might scare him off..).
- Explore with Mohammed and also with Ben who else has been involved in Mohammed's life since he arrived into the UK. Has he been going to school/college? Has he been attending any clubs? Does Ben have a partner? Has Mohammed formed any close friendships with others of his age? You can then seek their opinions too (good idea to call first to gauge if helpful).

Case Study: Pre-action work continued...

You have received Mohammed's age assessment document, which you have read through. Mohammed is from Eritrea. You note that during his journey to the UK he was in Germany for 2 years where he was fingerprinted and claimed asylum. You also note that Mohammed has contact with family members through WhatsApp. You have also read the appropriate adult notes which record Mohammed saying that there might be a document at home showing his date of birth, although this is not reflected in the assessment document.

What next steps come to mind?

Case Study: Pre-action work continued...

- Discuss with Mohammed what happened while he was in Germany; did he provide the German authorities with his date of birth or with some other date of birth, was he treated as a child during his stay there (living with other children, going to school etc.), was he subjected to any form of age assessment or medical testing, and would he be willing to sign a request for information/documents to send to the German immigration/asylum authorities (a request under Article 15 GDPR). It is best to make GDPR requests at the earliest possible stage, or if the client does not wish for such request to be made you can seek to address concerns and manage expectations in terms of how this may affect his prospects of success, such that it may even make the claim not strong enough for full legal aid funding provision.
- Ask Mohammed whether it would have been possible for the age assessors to speak with his family members before reaching their decision, and whether the family members would have been able to confirm his age/date of birth. If so, would Mohammed be comfortable with you arguing this in the Letter Before Claim, and if the assessment is maintained would he be comfortable with you contacting the family members?
- Ask Mohammed to speak with his family members to see if there are any documents to support his age/date of birth, and if so to send photos of the same to him through WhatsApp.
- Preparation of a Letter Before Claim under the Pre-Action Protocol – this should plead the decision being wrong as a question of fact, as well as the legal flaws with reference to the facts and relevant Merton framework.

Case Study: We have to go to Court!

Mohammed agreed to sign a GDPR request, with confidence that the German authorities had his claimed date of birth. The request was sent 1 week ago and awaits response. You used the format recommended on the ICO website, adapting where necessary to reflect the circumstances of the matter.

Meanwhile, Mohammed has been moved from care and is now accommodated with adults by the Home Office in Derby. He is scared, sits in his room all day and is experiencing sharp pains in his stomach.

Brent has responded maintaining its age assessment even though Mohammed had obtained a photograph of a medical document from his family members through WhatsApp (showing his DOB), which has been disclosed to Brent. The original is on its way to the UK, having been posted by Mohammed's brother to your office. The 3 months limitation deadline is not for another 8 weeks. What should you do next?

- Keep time on your side, and act with urgency if you are going to be asking the Court to act with urgency in an interim relief application.
- Apply for certificated funding on an emergency basis in light of Mohammed's removal from care and circumstances. The application should be determined by the LAA within 2 working days. Do as much as you can in the meantime under Legal Help (does anything need chasing?).
- Once funding is in place, instruct Counsel right away, and work together to urgently prepare the claim and interim relief application.

Case Study: Preparing the client's evidence for Court

Bearing in mind the *FZ* permission test, the better prepared Mohammed's factual case is, the better chance there is of permission being granted, and of course those prospects follow onto the Upper Tribunal into the fact-finding arena. You should:

- Prepare a detailed witness statement for Mohammed working chronologically through his life, such that it hopefully chronologically supports the age he is now. It is a good idea to use headings to help break up the statement, for instance:
 - (after introductory paragraphs) "My life so far". This could contain sub-headings dealing with Mohammed's life in Eritrea, why he had to leave and his journey to the UK.
 - "How I know my age/date of birth"
 - "Problems experienced during the age assessment"
 - "Why I am asking the Court to return to Brent's care until my case is decided"
- If possible, speak with Mohammed's family members by phone or through WhatsApp calls, with interpreter assistance, the content of which could be set out in a solicitor witness statement so that the information is before the Court.
- At this stage and if not already done so, follow up on opinions obtained so far from third parties, to see if those individuals will give formal witness statement evidence, and if so to prepare the same. If not, at least you hopefully have their opinions recorded in other form, which you could put before the Court as exhibits to a solicitor witness statement perhaps with their communications about not wanting to give formal evidence (if it's because of the LA, for instance putting pressure on the foster carer Ben not to get involved, you could write to their lawyer warning that if they do not reassure Ben to give formal evidence you will bring that position to the attention of the Court).

Case Study: You are ready to issue the claim

You have finalised Mohammed's witness statement evidence, and Counsel agrees that the claim should be issued as quickly as possible to reflect that it is urgent and appropriate to apply for interim relief.

In the meantime, you have not yet heard back from Germany in relation to the GDPR request although there are still 2 weeks to go until the 1 month deadline lapses. You are also still yet to receive the original medical document in the post. Counsel has addressed these matters and the case in detail in the statement of facts and grounds for judicial review.

You are now preparing the N461, N463 and JR bundle. What considerations should you have in mind?

- The Court recently emphasised the importance of properly preparing the N463 application for urgent consideration. It is not acceptable to make general references paragraphs in the statement of facts and grounds. Each section needs to be completed with care, and should be approved by Counsel.
- New Practice Directions have been issued, including in relation to the preparation of the application bundle and with respect to seeking interim relief.
- Make sure to comply with the duty of candour, which is summarised in section 14 of the Administrative Court Guidance. It is for this reason that you wrote to the immigration solicitor in the first place... and then chased... immigration/asylum documents relevant to age (including the young person's chronology) fall to be disclosed.

Case Study: We've issued – Can I have a break now?

Cases like this are quite front-loaded, so you've definitely earned yourself a break by now... but Mohammed's original medical document has just arrived at your office and you want to inform the Court of this because within the next couple of days you are expecting a decision on interim relief. You are mindful that the Judge will consider the strength of the claim in the context of the balance of convenience exercise. You are also conscious of the duty of candour. You therefore write to the Court, copying in the other side.

The next day you receive an order from the Court granting your interim relief application and abridging time for Brent's AoS and grounds of defence to 14 days. You are delighted because you know how important this is to Mohammed, and you know how difficult these orders are to obtain.

Mohammed is consequently returned to Brent's care, pending the outcome of the claim or further order. He is accommodated at a semi-independent placement with on-site support staff.

Two weeks later, Brent duly files and serves its AoS and grounds of defence. Some of their argument does not sit comfortably with you. You forward the pleading to Counsel setting out your observations. Counsel settles a Reply to be filed and served.

A week later you hear from the Administrative Court granting the permission application, and transferring the claim to the Upper Tribunal for fact-finding determination. You pay the JR continuation fee within the 7 day deadline.

Case Study: Before the Upper Tribunal for Fact-Finding

Mohammed's case is now before the Upper Tribunal, Immigration & Asylum Chamber. Standard directions are issued including for disclosure (28 days) and for the filing and service of any further witness statement evidence (28 days after disclosure). A case management hearing is listed in 3 months' time, after all directions should have been complied with.

You have meanwhile been chasing Germany for response to the GDPR request (after the 1 month deadline lapsed) and have just received an email attaching a PDF file of 39 pages, most of which is in the German language. You note that Mohammed's date of birth is within the documents as '01/01/1998'. His claimed date of birth is 29/12/2003, supported by the original medical document.

What should you do next?

Case Study: Before the Upper Tribunal for Fact-Finding

- Obtain certified translations of the 39 pages from German to English.
- Review the translations in full with Counsel. It appears that Mohammed was at all times treated as an adult asylum seeker by the German authorities, using a date of birth of 01/01/1998.
- Take Mohammed's instructions in relation to the date of birth within the material from Germany, and consider whether a further client statement should be prepared to accompany disclosure of the material to the Upper Tribunal and opponent.
- Consider with Counsel the possibility of expert evidence in relation to asylum processes in Germany (which may be from a German lawyer) and also in relation to the original medical document supporting Mohammed's date of birth (which may be from an Eritrea country expert).

Case Study: Upper Tribunal continued...

You file and serve a further statement for Mohammed exhibiting the GDPR material and translations, with the statement setting out Mohammed's further evidence on the point. You do this within a couple of weeks of receiving the material, mindful to ensure compliance with the ongoing duty of candour. Other than the possibility of expert evidence, what other considerations might you have at this stage of the case?

- Can I obtain any further helpful witness statement evidence to file/serve by the UT direction deadline?
 - Mohammed has been back in Brent's care for a period of time now, and remember this is a different placement to before. The on-site support workers might have helpful opinion to share. Again it is tactically best to seek informal evidence and work towards the possibility of a formal statement, as something is better than nothing. It is wise to speak via telephone first to gauge if their view might be helpful, before emailing.
 - Hopefully you have been pestering Brent to ensure that Mohammed's needs are being properly met, including him receiving formal education provision. If he is attending college, is there a tutor who could be approached for an opinion on the matter?
 - Take further instructions from Mohammed, and review updating social care file material provided by Brent under the disclosure deadline, to consider whether any other third party could be approached for evidence.
- Is it worth sending without prejudice correspondence inviting Brent to concede the claim when considering Mohammed's witness statement and documentary evidence of age? This could be relied upon in terms of costs.

How the story ends???

Mohammed goes onto win his case following fact-finding hearing!

I hope this was helpful!

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Any questions or comments?

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Thank you for joining us