

CO/3444/2005

Neutral Citation Number: [2005] EWHC 1753 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Friday, 15th July 2005

B E F O R E:

MR JUSTICE DAVIS

THE QUEEN ON THE APPLICATION OF C

(CLAIMANT)

-v-

LONDON BOROUGH OF MERTON

(DEFENDANT)

Computer-Aided Transcript of the Stenograph Notes of
Smith Bernal Wordwave Limited
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

MR ROBERT LATHAM (instructed by Messrs AM Vance & Co) appeared on behalf of the
CLAIMANT

MR NICHOLAS O'BRIEN (instructed by London Borough of Merton) appeared on behalf
of the DEFENDANT

J U D G M E N T

1. MR JUSTICE DAVIS: This is a claim brought on behalf of a young woman who may be identified as C, issued on the 1st June 2005. The essentials are that the claimant seeks now to quash a decision made by the defendant, the London Borough of Merton, given on 20th May 2005, whereby the defendant indicated that it was not prepared to grant support to the claimant under the relevant provisions of The Children Act 1989. Very shortly put, the decision of the defendant under challenge was that the claimant was someone aged 18 or over and therefore was not entitled to support under The Children Act.
2. The background is this. The claimant arrived in the United Kingdom on 6th January 2005 in the company of someone who may in conventional terms be called an agent. It is not disputed that the claimant was traveling on false travel documents. On 11th January 2005 she claimed asylum and also provided the Home Office official with what purported to be a photocopy of her birth certificate. That birth certificate identifies her as someone who had been born in Guinea and gave the date of birth as 29th November 1987, along with other details. In the course of her interview, the claimant gave an account of her background. On 14th January 2005 the claimant applied to the London Borough of Merton for support, having by then been referred to it by the Refugee Council. So far as the Home Office was concerned, they had (by, I think, what may fairly be called a pro forma letter, which was dated 11th January 2005) indicated that they had not expected on the basis, in effect, of physical appearance and demeanour that the claimant, C, was under the age of 18. The letter, as I say, was in entirely standard form with the date and name simply inserted in manuscript.
3. On 17th January 2005 a social worker on behalf of the defendant carried out an initial assessment of the claimant. In the course of that assessment it appears that the claimant told that social worker that she had a birth certificate. The initial decision made by the defendant was briefly stated. It is contained in a letter dated 17th January 2005. It referred to the visit by C to the council of that date and indicated shortly that the council was of the opinion that she did not meet the criteria. The Refugee Legal Council then sought to pursue the matter on behalf of the claimant, who perhaps, it should be added, seems to have a very limited or no grasp of the English language. The Refugee Legal Council caused to be consulted a Dr Colin Michie, who saw the claimant on the 2nd February 2005 and prepared a report. Dr Michie appears to have a significant degree of qualification in this field. He is a general paediatrician and amongst the various areas of expertise which he says he has is included that of age assessment. It is the fact that he, as expert, has provided reports (as I gather, for the most part if not entirely, on behalf of claimants in the position of this claimant) with regard to their age, several hundred in number; and indeed his name features in various of the legal authorities which have been cited to me today.
4. In the course of that report, made following his physical examination and interview of the claimant, Dr Michie stated at the outset that the estimated age of the claimant was 17 years and that there was potentiality of error in his estimate of plus or minus two years. He went on to say:

"In written terms, it is more likely than not that the client is 17 years old.

It is possible that the client is either 16 or 18 years old.

It is highly unlikely that the client is either 15 or 19 years old."

In the report, by way of summarising the background, Dr Michie expressed the view that there were "no inconsistencies, either verbal or non-verbal" in evidence in the information provided to him by the claimant. He went on to say:

"... she was particularly accurate in the way she described dates and events."

He said that he would welcome any further inquiry as to the details of the information which he then gave below. He went on to say that the claimant was born, as she said, in Guinea and she later gave her date of birth as 29th November 1987 and that she had not recalled any serious health problems during her early life and had no major trauma and so on. It may be indicated that her answers elsewhere to the Home Office and indeed the London Borough Merton perhaps make it a little surprising that the claimant had indicated to Dr Michie that she had no major trauma because on other occasions the claimant had been claiming that she had suffered major trauma.

5. The report went on to say that the claimant presented as in good physical health, being of average height and heavy build and further comments were made in that regard. Then under the heading "Age assessment of this client", the report says this:

"The social, schooling and narrative history provided by the client provides good verifiable support for the declared date of birth. However her height and weight, skin fold thickness, body mass index, the skin signs seen in young adults and her dental examination today were consistent with a chronological age of 17 ± 2 years when compared with published charts of these measures. These observations are supported strongly by the non-objective assessment of the psychological maturity of this client during the interview, particularly in response to questions relating to her schooling and her interactions with the interpreter and myself. A more narrow error margin is probably not possible using these methods. The birthdate given to me today by [the claimant] falls within the recognised and recommended error limits for this estimate."

The overall conclusion was that his opinion was that age was consistent with a date of birth of November 1987.

6. Mr O'Brien appearing on behalf of the respondent local authority before me today told me "and Mr Latham, who is equally experienced in this field, did not dispute) that the form and layout of Dr Michie's report is very similar indeed to the form and layout and indeed wording that he has frequently adopted in other reports in other cases.
7. Pausing there, there are a number of questions that immediately arise, given the wording of that report. First, it is on one view a little hard to assess the reasoning for the asserted conclusion that the estimated age of the claimant was 17 years. Essentially it is one of asserted opinion. The immediate query might well be raised of why the conclusion did

not express it as being within an age bracket, for example 16 to 18 years, if a two year bracket, allowing for variation upwards or downwards was considered appropriate. It is only because the estimated age is put by Dr Michie as 17 years that he is then able to say, with I suppose some degree of mathematical correctness, that in written terms it is more likely than not that the client is 17 years old. The second point is this. It is plain (and indeed stated by Dr Michie) that he has taken account and significantly so of the version of events put forward to him by the claimant. Indeed he is careful to note that in his view there were no inconsistencies in the information provided to him by her and that (since he saw fit so as to be able to express a view on this) that she was "particularly accurate" in the way that she described dates and events.

8. In expressing this conclusion, Dr Michie started off, in the paragraph I have just read, by saying that the social schooling and narrative history give good verifiable support for the declared date of birth: so it can be seen that he is relying upon his own personal appraisal of the accuracy of the information provided as supporting that observation. The next part of that paragraph indicates to my mind that the criteria relating to the height, weight, skin fold thickness, body mass index and skin signs as well as dental examination are consistent with a chronological age of 17. That phrasing seems to suggest consistently with a pre-given postulate; and it is not necessarily the case that Dr Michie is saying that, irrespective of everything else, the purely medical and physical criteria indicate an age of 17 years. Furthermore, Dr Michie is fairly careful to point out that those observations were then supported strongly by the "non-objective" assessment of the psychological maturity of the child: so again he is, and clearly saying so, taking into account what might be described as subjective matters.
9. A further report was prepared at a later stage by Dr Michie and after the relevant decision letter -- and indeed in the context of those proceedings, at the request of the solicitors acting for the claimant by a letter dated 5th July, which is detailed and careful in the questions it puts to Dr Michie for his further comments. In the course of that, Dr Michie says this at paragraph 1.4:

"Communicating with clients, which produces non-objective evidence, is critical to performing an age assessment".

In other words, he is making clear that the assessment cannot be by strictly medical or scientific reasoning alone but critically also depends on non-objective evidence: that is to say, amongst other things, the appraisal of the reliability and credibility of the information being provided by the particular claimant concerned.

10. The first report obtained on behalf of the claimant however, was on the face of it very helpful to the claimant, asserting as it did an estimated age for her of 17 years, allowing for the possibility of an error plus or minus two years. Accordingly the defendant was asked to reassess the claimant in the light of that report. In the meantime, I might add, the Home Office had refused the asylum claim on 18th February 2005. It appears that in its Statement of Evidence Form, the Home Office had said that the Home Office did not accept Dr Michie's report: but without giving any further elucidation so far as I am aware.

11. On the 26th March 2005, C's solicitor sent a pre-action protocol letter to the London Borough of Merton in respect of its refusal to provide support to the claimant under the Children Act. At the end of March 2005, a social worker completed further reports. As far as the intake assessment report is concerned, which seems to have been made on 29th March, it is stated, amongst other things:

"From discussion with C she presents as a vulnerable adult. She talked of having been exploited from various people she has encountered."

A little later on, at the end of the report, this is said:

"C did not physically look 17 years old. She wanted me to be aware of her hardships and concentrated on this more than answering questions about her age".

There was then appended a detailed age assessment which went through the conclusions drawn. It was stated by the writer that, from discussions with the client and from observations, the writer could not believe that she was 17 years old as she was claiming and indeed, based on the assessment, the claimant's age was put at 25 plus.

12. That assessment indeed was at the end of the month then approved by the relevant team manager and in a further addendum to the report on 5th April 2005, the relevant social worker said, amongst other things:

"I have reconsidered my age assessment in light of Dr Michie's report. My original assessment was that C was over 18 years old. The basis and conclusion of Dr Michie's report has not changed my assessment and in my opinion C is over 18 years old."

13. By subsequent correspondence, the borough declined to accede to the request made in the pre-action protocol letter. Eventually, on 14th April 2005, a claim form was issued seeking Judicial Review. Interim relief, granting support to the claimant to be provided in financial terms by the borough, was ordered on 15th April 2005. As it happens, as I gather, the claimant has been living in Portsmouth in accommodation and with subsistence provided by NASS but the London Borough of Merton, as I understand, has been funding that.

14. There was further correspondence with regard to the position. In the event (and in effect, by way of forestalling any further need to pursue that claim form) a further assessment of the claimant was agreed to by the London Borough of Merton. An interview took place, seemingly quite a lengthy one, on 20th April 2005, attended by two representatives of the Borough and by the claimant together with a French interpreter. The notes of that interview are in evidence. There was some discussion about why it was that the claimant was saying that her date of birth was November 1987; and the claimant seems to have made reference to her birth certificate amongst other things. The notes of the interview conclude by noting that by the next interview the Borough would have made a decision about the age of the claimant and she was told that.

15. In the meantime, on 27th April 2005 the asylum appeal had been heard by an Immigration Judge, the claimant having appealed against the decision letter of the Home Office refusing her entry as a refugee.
16. On 3rd May 2005 a further interview took place with the claimant, attended by the same two representatives of the Borough (a previous interview had had to be cancelled because of the ill health of one of those involved). The decision was announced to the claimant by a decision letter of 3rd May 2005. I say a decision letter, because in my view that is plainly what it is, although Mr O'Brien sought to persuade me otherwise. The letter said this:

"I am writing to inform you of the Local Authority's decision in relation to continuing to provide you with support under the Children Act 1989.

"You first approached this Department for assistance in January 2005. An age assessment was undertaken on 14th January 2005 and this concluded that you were not a minor and were not eligible for support under the Children Act 1989.

"This decision was reconsidered in February 2005 when you provided a medical report from Dr Colin Michie which states that he considers your chronological age to be 17 ± 2 years. Having given consideration to Dr Michie's report, the Local Authority maintained that you were not a minor and were not eligible for support as a child.

"In April 2005, the Local Authority agreed to undertake a reassessment of your age. You came into the office on Wednesday 20th April to undertake an Age Assessment interview. You met with myself and my colleague, Gertude Bernard-Draper. Following this reassessment, I consider that you are not the age you state, and consider that you are not eligible for services under the Children Act 1989.

"I have reached this decision based on your appearance and presentation, the information provided by you in the two assessments undertaken, and the information in the documents which you have provided to the Local Authority.

"In particular, I have taken into consideration the following:

"1) Your physical appearance is not consistent with the age you have stated;

"2) The information you provided at the first Age assessment in June 2004 is different to the information you have provided in this assessment, and differs from the information you provided to the Home Office in your interviews with them.

"As a result of this assessment you are not eligible for services as a child and will be notifying the Home Office of our decision.

"If you do not agree with any of the information above, or believe that there is other information that should be taken into consideration could you please contact me immediately..."

17. Accompanying that letter was an age assessment which bears the date upon the face of it of 20th April 2005. It is accepted by Mr Latham that that age assessment is to be taken as part of the decision letter, as I find it to be, of the 3rd May. There was a passage dealing with the physical appearance and demeanour of the claimant. There is a lengthy passage relating to the action of the claimant during assessment, and Mr Latham made the point that these passages really offered little or no support of any kind one way or the other of age assessment. There is a passage dealing with the social history and the family composition and a passage dealing with developmental considerations. There is a passage dealing with education and a passage dealing with independent/self-care skills. Then there is a passage headed "Health and Medical Assessment". According to that, the claimant was not expressing any concerns about her health. The writer said she had been asked to ask the claimant a number of questions relating to Dr Michie's medical age assessment but the claimant was unable to discuss the information in the report in detail because she could not read the report as it was not in French. The passage goes on in this way:

"According to the information she provided to the Home Office, and the two social workers, first in January and then this assessment, C accounted traumatic experiences. Dr Michie wrote that C 'had no problem with her concentration, memory or mental health state'. In addition when the first age assessment was to take place at Merton Social Services C fainted and was taken at the local hospital where she was examined and there was no concern about her well being. C's response was that she had suffered trauma. When asked to explain what she considered trauma she recited the rape, living with rebels and being ill treated by her stepmother.

I asked her why didn't Dr Michie refer to any scars on her body i.e. the scar on her arm. C told me she did not know. She then went on to say that she did show Dr Michie the scar on her arm."

Then the passage further goes on in other respects not dealing with Dr Michie at all.

18. The information then indicated also as having been taken into consideration was set out in section 8. That did not refer in any shape or form to the copy of the birth certificate and then went on to set out further background information. The report then said later on:

"My overall assessment would consider that C has given different information to each profession she has encountered. This behaviour would put into question her actual age because of the inaccuracies. In addition there is the issue of culture and religious knowledge..."

Then under section 9, under the heading "Analysis of Information gained/Conclusion of the assessment" this, amongst other things, is said:

"The information about her family and her life in Guinea was very little..."

And later on:

"I would suggest that over all C has the maturity both emotionally and psychologically to interact with professionals at a sophisticated level that an African girl with her history would not have been able to understand nor negotiate successfully. C has shown that she is able to do all this when it suited her at the time. Therefore she is not the age she says she is.

"I would suggest that based on the above information that C is between 18 years old and 21 years old. Therefore she does not meet the criteria to be supported by the Merton Children Social Services under the 1989 Children act."

19. On receipt of this particular letter, a further pre-action letter was sent by the solicitors of the claimant on 17th May 2005 setting out in some detail their reasons why they challenged that decision. That received a carefully worded and carefully structured response from the London Borough of Merton through the Head of Legal Services letter 20th May 2005. It set out the various documents which they had been asked to provide and then, with regard to the letter before action (as to why the local authority's decision of 3rd May was said to be unlawful), the Borough's solicitor wrote stated that she was instructed in the following respects. She then set out five, and it might be said, cogently worded, paragraphs supporting the decision of 3rd May and resubmitting the letter before action.
20. Mr O'Brien, in the course of his argument before me, sought to rely upon that letter as part of the decision which, as I will come on to next, was also communicated on 20th May. It is tempting to accept that submission. But I do not think it right to do so: for two reasons. First, as Mr Latham crisply pointed out, this is a letter from a solicitor in response to a pre-action letter from a solicitor. It does not purport to be part of any decision-making process. Secondly, this letter is written in response to a complaint as to the decision which had been communicated on 3rd May 2005; but in the event, a further decision was being given by the local authority on 20th May 2005. To that decision letter therefore I now turn.
21. It is easy to summarise: because it is in precisely the same terms as the previous decision letter of 3rd May 2005, including the closing paragraph with regard to a request for contact if the information given was not accepted.
22. Attached to and part of that decision letter of 20th May 2005 was a second assessment. That derives, as is evident from its wording, from the previous assessment of 20th April 2005 and indeed, the opening paragraphs of it appear to be identical. Under section 7 the comments with regard to Dr Michie are likewise identical. Under section 8 the information that has been taken into consideration as stated now includes the birth certificate. That section refers to what is said to be the discrepancies which had arisen in the information then summarised. Aspects of this section continued to be in the same form as previously asserted but also go on to deal with the birth certificate, which the

writer says she had not seen at the interview of 20th April, although there has been reference to it. There was then set out in this section of this assessment reasons why the writer concluded that she could not support that the birth certificate that C took to the Home Office could be "seriously considered as proof of her date of birth" given the circumstances in which C lived her life prior to coming to the UK. The analysis then maintains the same conclusion that C was not the age she said she was, and repeated the view that she was between 18 years old and 21 years old.

23. It is that decision which is challenged by the claim form of the claimant issued on 1st June 2005.
24. In proceeding to assess the competing arguments that were put forward, I have had regard to the various authorities cited to me. I intend no disrespect to the council, if I do not go through those authorities in detail. The authorities cited to me in particular were the cases of B v LB Merton, a decision of Stanley Burnton J, [2003] EWHC (Admin), T v LB Enfield, a decision of Jackson J, [2004] EWHC 2297 (Admin) and I&O v SSHD, a recent decision of Owen J, [2005] EWHC 1025 (Admin). In the course of the B case, Stanley Burnton J very helpfully sets out what are likely to be the relevant criteria and the relevant approach required in cases of this kind. He emphasises that what might be called the "judicialisation" of the procedures to be adopted is to be avoided. At paragraph 28 he makes clear that it will be necessary to assess the age of a particular applicant to take a history from him or her with a view to determining whether it is true, and that the history accepted as true and consistent with an age below 18 will enable the decision-maker in such a case to decide that the applicant is a child. Conversely an untrue history, while relevant, was not necessarily indicative of a lie. He also indicated that, generally speaking, reasons given for rejecting or indeed upholding such a claim need not be long or elaborate. The decision of T, a decision of Jackson J, was a decision very much on its own facts and, amongst other things, involved quashing the order made because of a failure to give any consideration to a report of Dr Michie filed in that case. The reasoning again in I&O was broadly to similar effect but by reference to the facts of that particular case, no reason having been given for departing from the report of Dr Michie provided in that case.
25. In support of his claim, Mr Latham advances his arguments under three main heads. The first claim is that the defendant failed to carry out a fair and lawful assessment. Indeed, at various stages of his argument, Mr Latham suggested that the local authority here was simply providing reasoning to justify a predetermined decision. Mr Latham sets out in his grounds various particulars in support of that assertion. However, he made it clear that that ground was in a sense subordinate to his second and third grounds, with which I propose therefore to deal first.
26. The second ground was an alleged failure on the part of the defendant to have adequate regard to the claimant's birth certificate. Mr Latham complains that the defendant had failed to obtain a copy of the birth certificate from the Home Office. It is said that the local authority may have had too much regard to what the Home Office had made of the birth certificate and it is also said that it was only in the amended age assessment that the question of the birth certificate was considered at all; and complaint was made that the issues related to the claimant's birth certificate were never, in Mr Latham's words, put to

her. Furthermore it is said that the claimant had described how she came to have a birth certificate in her first witness statement (made, I think, on the 23rd January 2005) and such a certificate would provide important corroboration for matters stated in that witness statement.

27. In my view there is no substance in this particular ground. Indeed, aspects of Mr Latham's argument, with respect, seem to me to involve precisely the kind of judicialisation of the process which, generally speaking, is to be deprecated. Social workers have their own skill and expertise. They are not, in a normal way, trained lawyers. They are not expected to act like lawyers. Indeed it could be positively counter-productive and unfair to, as it were, cross-examine an applicant in the way that Mr Latham's arguments might, in some respects, have seemed to suggest. There is no doubt that the issue of the birth certificate had been raised. Certainly that issue was fully confronted by the Borough by the time of the final decision of the 20th May, even if it had not, as I have said, been confronted before. I see no reason why the London Borough of Merton need obtain a photocopy of the photocopy of the birth certificate that had been produced. They gave reasons as to why they did not find it cogent or convincing in support of the claimant's assertion as to age and, in my view, there is no substance in that particular ground.
28. There is however, in my view, potentially more substance in the third ground advanced; that is that the defendant failed, it is said, properly to assess the expert opinion of Dr Michie.
29. If one simply took the decision letter of 20th May 2005 by itself, that, as Mr O'Brien frankly acknowledged, poses a great deal of problems so far as his client is concerned. All it says with regard to the report of Dr Michie is that they have given consideration to it. The conclusion thereafter reached is a conclusion which had not been reached by Dr Michie; but nowhere in the letter, if taken on its own, is it explained in any shape of form as to why the Borough did not agree with Dr Michie's conclusion. The letter said that the particular matters taken into consideration were the physical appearance as not being consistent with the age as stated and that the information provided in the first age assessment in June 2004 was different from the information provided in this assessment and different from the explanation provided to the Home Office in interviews. The reference to the first age assessment in June 2004 is inexplicable; there never was one. It may have been intended to be, as Mr O'Brien has suggested, the initial assessment in January 2005. But certainly there is no elaboration of any kind as to what the differences, even in broad outline, might have been. But Mr O'Brien said that that has to be read in the context of the other aspects of the decision letter. As I have said, I do not accept that the solicitor's letter, also of this date, can form part of the decision. However the written assessment of that date can be; indeed, Mr Latham rightly and fairly accepts as much. One can find in that assessment an exposition of areas of the claimant's various accounts which the authority considered were not credible because of the inconsistencies with what had been said elsewhere. When, however, one turns to look at the treatment of Dr Michie's report, one does not, as I see it in this second assessment, find any explanation as to why it is that the local authority was disagreeing with Dr Michie's views. The only points that are extracted specifically from that report as mentioned in the second

assessment relate to what can be described as issues of credibility. They do not relate in terms as to why the local authority did not agree with Dr Michie's own opinion.

30. I think it quite wrong to impose too legalistic a role on the local authorities in a context such as the present. But at the same time I do think it incumbent on the local authorities to express, in what no doubt can ordinarily be shortly-put wording, but in a clear and concise way, why it is that a claimant's case is being rejected. Here, probably the central feature of the claimant's case was the report of Dr Michie; at least that certainly was a central feature. In my view it behove this particular local authority in the circumstances to explain, albeit briefly, why it was that they did not accept Dr Michie's opinion. There is no doubt at all, to my way of thinking, that, if one reads the entirety of all the various local authority assessments and internal documents, it had amply laid the groundwork for departing from Dr Michie's opinion. As I have said, there are, self-evidently, on the face of Dr Michie's opinion, matters which cry out for explanation and examination. Self-evidently one can query how it is that Dr Michie almost plucks out of the air, if I may use that phrase, the age of 17 as opposed to, say, the age or 18 or the age of 16. But the point remains that this was a report of a highly experienced doctor who claims expertise in this area and the local authority does not explain why it disagrees with it. One can infer that the local authority might wish to say, "we disagree with it because Dr Michie has accepted her as credible but we have good reason to think she is not credible." That, as so formulated, seems to me probably in itself a valid justification for departing from Dr Michie's report. But that is not said. Equally, it might easily be said that in fact a decision that she was 18 or over was not in fact inconsistent with Dr Michie's report; if only because Dr Michie himself acknowledges a potential variation of plus or minus 2 (even assuming, and it is an assumption, that 17 is to be taken as the estimated age). But again, that is not in terms said. All of this could have been said but it is not.
31. I think, overall, Mr Latham's point is made out here. It does seem me that his client and those instructing her are entitled to know why it is that the claimant was rejected as being under 18. I do not think they can be expected to scratch around amongst the entirety of documents provided by the local authority to try to construct an explanation with a view to working out why it is that they have failed. In my view this particular decision letter cannot stand because it is insufficiently explained why it is that Dr Michie's report is not being accepted. That is quite different from the fact that there may well have been ample material available to the local authority not to follow Dr Michie's opinion.
32. Having reached that conclusion, I really need not go into great detail as to Mr Latham's first ground. I have sufficiently indicated that if that ground was intended to be a freestanding ground, it would not have succeeded. I can see no basis for saying that the defendant failed to carry out a fair and lawful assessment in any of the respects indicated. Indeed in many respects it seems to me that this ground appears simply to be rearguing the merits and seeking to displace the role of the local authority as decision maker.
33. In the result therefore I conclude grounds 1 and 2 are not made out but ground 3 is.
34. The final question then is what relief, if any, should I grant?

35. In the ordinary way, in the light of the conclusion I have reached, the court will order a quashing of the decision. In this particular case however there has been a further development in that, by the decision of the Immigration Judge, promulgated on 15th June 2005, the claim of the claimant for asylum has been rejected in a very thorough and careful determination of the Immigration Judge. Amongst other things, having considered at length the question of the birth certificate, the Immigration Judge concluded, with copious reasons given, that he was not satisfied that the birth certificate was genuine. Furthermore, before the Immigration Judge was the selfsame report of Dr Michie and indeed the Immigration Judge, in a way that seems to me to be entirely open to him, was not minded to attach any particular weight to Dr Michie's assessment in the sense that, as he crisply put it:

"This therefore means that if the Appellant could be 17, then she is equally possible from Dr Michie's assessment, for her to be 15 years of age or even 19 years of age. It is therefore difficult to follow how Dr Michie can conclude that in his opinion her age is consistent with the date of birth which she has given".

36. I have therefore given consideration as to whether or not, in all the circumstances, I should withhold relief on a footing not just of what the Immigration Judge has decided but from what, especially in the light of what Mr O'Brien has told us, was intended to be the local authority's reasoning. But on the whole I do not think it would be right for me to withhold relief. The fact is that this decision letter was flawed. The claimant is entitled to a valid decision from the person entrusted with making that decision; that is to say the London Borough of Merton. It may be that if a subsequent decision is made, the London Borough of Merton would be entitled, if it saw fit, to have regard to the decision of the Immigration Judge. But the decision in the context of the claim under the Children Act remains the decision of the local authority. It may also be, I know not, that the local authority will take the same view as it thus far has taken. It will be apparent from what I have said that, as matters currently stand, there is ample material available to the local authority, if it takes that view, to be entitled to refuse to accede to this claim under the Children Act. But all in all, I think there should be a further decision and accordingly I quash this particular decision. I only add that, wisely, Mr Latham did not seek to pursue a ground raised in the claim that the only proper decision that could be reached was one to grant support under the Children Act.
37. May I just add this. I was told that the claimant has not sought to appeal from the decision of the Immigration Judge and it appears that she is now out of time for doing so (I might add that it is hard to identify any point of law available which would have enabled an appeal validly to have been pursued). But Mr Latham has told me that the claimant has very recently discovered that she is pregnant and that the child is due in March 2006. If that is right then conception must have been very recent indeed and must have taken place after the hearing before the Immigration Judge. It is said in the skeleton argument that the father is himself a refugee. It may be noted that an Article 8 claim had been raised before the Immigration Judge but not supported by any evidence at all and there was no claim before the Immigration Judge that this claimant was in some family relationship with this particular man. I raise this point simply because I am told that a fresh application by reference to Article 8 will be pursued by this particular claimant. It is not

for me to comment on that. It will be for the Secretary of State in due course to give his decision. All I would say is that if such a claim is made, then the claimant presumably would be seeking to claim support from NASS, if it be the case (and of course it is "if" it be the case) the local authority refuses to grant support under the Children Act.

38. MR LATHAM: My Lord, in the claim form I strictly seek quashing orders in respect of decisions of both the 3rd and 20th May.
39. MR JUSTICE DAVIS: Well, that follows, if you need it.
40. MR LATHAM: My Lord, I would ask for costs in this application and I would ask for costs in the first application for Judicial Review. My Lord, I do not think I need to address you at length in respect of the first application. You have seen the decision letter with the relevant reasons.
41. MR JUSTICE DAVIS: Why should you have costs in this application? You have succeeded but on one and only one aspect of the way in which your claim was propounded and much of the material in this case was relevant to the other two aspects of the claim.
42. MR LATHAM: My Lord, Dr Michie's report has always been the background to both these applications.
43. MR JUSTICE DAVIS: Well, that is ground 3.
44. MR LATHAM: It is ground 3. It is also a significant part of ground 1.
45. MR JUSTICE DAVIS: Well, reading ground 1, it is just a part.
46. MR LATHAM: There is the separate issue of the birth certificate but in my submission--
47. MR JUSTICE DAVIS: But also you were batting, until you were backing it today and that explains the detail of, when interviewed, the declaration to which she was entitled.
48. MR LATHAM: My Lord, it is not expanded upon in the skeleton argument and if I were to seek that--
49. MR JUSTICE DAVIS: But a lot of what is said could be said to be relevant to saying the only proper conclusion that could be reached would be one to grant support and I must say I think you are very wise, if I may say so, Mr Latham, not to pursue that today.
50. MR LATHAM: All I would say is that the birth certificate issue has not raised any new areas of law. All the authorities really relate to the assessment as a whole but if your Honour were to feel I should only be entitled to part of my costs, I could not oppose it. As far as the first application is concerned, you have seen the skeleton: an unreasonable decision, a protocol letter and which at the time was concealed.
51. MR JUSTICE DAVIS: What do you say about costs, Mr O'Brien?

52. MR O'BRIEN: My Lord, so far as your Lordship has already identified the fact that the notes of the relief form have changed significantly since permission and, secondly, the grounds which required the major trawl through the evidence has actually not succeeded, it is left to the question of not whether we were entitled to reject permission but the fact we did not explain why. It is quite a narrow point and could have been encompassed in a much shorter hearing from the start. So in my submission we should not be liable for the costs at all and there should be no order as to cost. I could not suggest--
53. MR JUSTICE DAVIS: No.
54. MR O'BRIEN: No order for costs or limited. My Lord, so far as the law of the matter, it is quite clear from the documents you have seen that my clients are very anxious to know what was the outcome of the Adjudicator's assessment and it was only when your Lordship pressed--
55. MR JUSTICE DAVIS: Yes but it is not relevant to the decision of primarily relief that Mr Latham is seeking. It is only relevant to the question of what relief is in the actual grounds and in the event of costs in the case.
56. MR O'BRIEN: My Lord, the second aspect was that there is a separate claim, I think from what I gather, for the costs of the first -- my Lord, so far as that was concerned, within 24 hours we got the claim form and that, the pre-action letter, the original pre-action protocol letter, did not mention the question of the birth certificate. They identified the birth certificate as a new issue and we then said we will reassess. Whilst that decision was being sent out, Sir Richard Tucker granted the interim relief. But in effect we say at that in accordance with the decision we took a fresh look at it and we should not be discouraged and in fact have the cost of the proceedings which came to an end in effect then, on the same day as Sir Richard Tucker indicated there should be interim relief.
57. MR JUSTICE DAVIS: Do you wish to reply, Mr Latham?
58. MR LATHAM: My Lord I would simply say in the first application it does seem to me that Dr Michie was the main string to the bow and he was both involved in relation to needing to ask for reassessment in a very detailed pre-action protocol letter and it was acceded that they would pay the costs and that would be the end of it.
59. MR JUSTICE DAVIS: I now have to deal with the costs. The claimant has succeeded in the claim of a quashing order. She has done so on a very much more narrow basis than that embraced by the grounds of claim and, had that been the only point argued before me, the hearing and indeed the materials would have been very much shorter than they have in fact been. Looking at the matter in the round, I think the appropriate order as far as this claim is concerned is: no order as to costs. It seems to me almost to follow from that alone that there should also be no order as to costs with regard to the first claim; but in any event, having regard to the circumstances in which the first claim very quickly, in effect, came to a compromise and having regard also to the Boxhall approach, I think no order as to costs is appropriate in that case. Legal aid representation as to your costs, Mr Latham.

60. MR LATHAM: I am grateful.
61. MR JUSTICE DAVIS: Now the further decision presumably can be made quite speedily? No doubt Mr Latham will have the chance to make any further representations on the issue.
62. MR O'BRIEN: If they can be made and taken into consideration, I will speak to Mr Latham as to--
63. MR JUSTICE DAVIS: No doubt he will write as to that as soon as possible. Right, thank you both very much indeed.