Neutral Citation Number:[2009] EWHC 3542 (Admin)

CO/8380/2008-CO/1221/2008-CO/1392/2009-CO/12297/2009-CO/35555/2009

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 17th December 2009

B e f o r e:

MR JUSTICE HOLMAN

Between:

THE QUEEN ON THE APPLICATION OF F **Claimant**

v

LONDON BOROUGH OF LEWISHAM **Defendant**

_ _ _ _ _ _ _ _ _ _ _ _

THE QUEEN ON THE APPLICATION OF D **Claimant**

v

MANCHESTER CITY COUNCIL **Defendant**

and

Secretary of State for the Home Department **Interested Party**

THE QUEEN ON THE APPLICATION OF Z **Claimant**

v

LONDON BOROUGH OF GREENWICH **Defendant**

THE QUEEN ON THE APPLICATION OF C **Claimant**

v

LONDON BOROUGH OF CROYDON **Defendant**

THE QUEEN ON THE APPLICATION OF S **Claimant**

v

LONDON BOROUGH OF SOUTHWARK **Defendant**

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Mr C Buttler appeared on behalf of the **Claimant F** and **Mr B McGuire** appeared on behalf of the **L.B. of Lewisham**.
Mr A Suterwalla appeared on behalf of the **Claimant D**, **Mr H Harrop-Griffiths** appeared on behalf of the **Manchester City Council** and **Mr J-P Waite** appeared on behalf of the **Secretary of State for the Home Department**.
Mr C Buttler appeared on behalf of the **Claimant Z** and **Miss R Fowkes** appeared on behalf of the **L.B. of Greenwich**.
Mr A Suterwalla appeared on behalf of the **Claimant C** and **Ms P Etiebet** appeared on behalf of the **L.B. of Croydon**.
Mr I Wise appeared on behalf of the **Claimant S** and **Mr B McGuire** appeared on behalf of **L.B. of Southwark**.

J U D G M E N T
(As approved)

MR JUSTICE HOLMAN:

1. On 26 November 2009 the Supreme Court gave judgment in the cases of A v London Borough of Croydon and M v London Borough of Lambeth, in relation to the issue of the assessment of age of people who claim to be children. There were listed for directions or case management hearings before me yesterday and today five such cases which have been waiting in the pipeline, as it were, upon that decision of the Supreme Court. As each case conveniently involves a different local authority, I will for convenience and the purpose of this judgment call them the Southwark (1392/2009), Manchester (8380/2008), Croydon (1213/2008), Lewisham (3555/2009) and Greenwich (2297/2009) cases.

2. A considerable number of different issues in relation to this type of case has been raised before me, both in writing by detailed skeleton arguments and orally at the hearing. For the purpose of the orderly disposal of all these combined directions hearings, I prepared a provisional template of a range of possibly standard form directions which took account of the contents of the skeleton arguments. That template has evolved and developed in some respects, mainly ones of relative detail, during the course of the hearing. The result is that I now give directions in each of these five cases. Those directions do differ, to some extent, from case to case, so as to reflect the facts and circumstances of the individual cases, but there is also considerable overlap in the structure and language of the directions. I hope it is not extravagant or a vanity, but it does seem to me, as I have now received quite considerable argument, that it may be appropriate and helpful if I make some comment by this judgment on some of the issues and topics that have been canvassed before me. It is important that I stress that I

do so from the perspective of a relatively short directions hearing; and acknowledging at once that some of the matters to which I will refer may be the subject of further argument and judicial ruling at one or more future substantive hearings.

3. It is important to consider some of these issues in the context of the volume of cases which may, I stress may, in due course come before this court. Clearly there has been a considerable number of both issued and unissued, but prospective cases awaiting the final decision of the Supreme Court. The figures I am about to give are approximate; but I understand that there are currently about 65 issued and outstanding cases in the Administrative Court of which about 53 are awaiting paper or oral permission decisions. In addition, I have been told by Mr Bryan McGuire, who acts on behalf of the London Borough of Croydon in one of the cases currently before me, that Croydon (who are proximate to Gatwick airport) are currently holding letters before claim in about a further 180 cases. So far, there has been no substantive response to those letters before claim and the solicitors for the prospective claimants have very responsibly not pressed their cases until the outcome of the decision of the Supreme Court was known. Mr McGuire also acts on behalf of Liverpool City Council, although they are not involved in any of the cases currently before me. His understanding is that they have about 70 such cases in which a letter before claim has been received, but further action at the moment has been suspended. That refers only to two local authorities and, of course, there are several others in the forefront of exposure to this kind of claim. It thus seems likely that there are some hundreds of issued or potential cases currently in a pipeline. Of course, permission to apply will not probably be granted in all those cases but it is plain that there is potential for a huge upsurge in the demands upon this court. More generally, I have been told by Mr John-Paul Waite, who appears on behalf of the

Secretary of State for the Home Department as interested party in the Manchester case, that in the calender year 2007 about 5,000 unaccompanied people arrived in United Kingdom who claimed to be children, of whom the age of about 2,500 was disputed. The figures for the calender year 2008 are that about 4,280 such people arrived, of whom the age of about 1,400 was disputed.

4. It is vital at all times to bear in mind that the overriding objective in rule 1.1 of the Civil Procedure Rules applies no less to these cases than to any other case in the High Court. Accordingly, so far as is practicable, the court must take into account the factors in paragraphs (a) to (e) of rule 1.1 (2). Subparagraph (e) requires the court to allot to these cases an appropriate share of the court's resources whilst taking into account the need to allot resources to other cases.

5. The approach to disputed age cases until recently was the conventional approach in judicial review of seeing whether or not there had been a "Merton compliant" assessment, and whether or not there had been reviewable error or other unlawfulness on the part of the local authority. The decision of the Supreme Court now makes crystal clear that (i) there must first still be an assessment by the local authority (see paragraph 33 of the judgment of Lady Hale and paragraph 54 of the judgment of Lord Hope); (ii) if there is a challenge by the person concerned to the assessment and decision of the local authority, then the mechanism and remedy for that challenge is judicial review; and (iii) on any judicial review the essential issue is one of pure fact for the court.

The issue in these cases

6. Against that background I now turn to some of the range of issues that has been canvassed or discussed before me. The first of these is identifying or defining the issue that falls for consideration and requires a fact-finding decision by the court in the event of a judicial review taking place. On behalf of the local authorities, Mr McGuire, Miss Peggy Etiebet, Mr Hilton Harrop-Griffiths and Miss Rebecca Fowkes have all submitted that the only issue considered and ruled upon by the Supreme Court was the issue of determination of whether or not the person concerned is or was "a child". They accordingly submit that in any judicial review the court should go no further than to determine whether or not, on the relevant date (which is normally the date when the person first seeks the provision of accommodation or services) the person was a child, and perhaps whether or not at the date of hearing he still is a child. If the court determines that even on the relevant date the person was not a child but, rather, that at all material times he was adult, then it may very well be that there is no purpose or need to give further consideration to actual age. These cases do not involve some abstract determination and declaration as to age. If at all material times the person was already adult, then the range of duties under the Children Act 1989 are not in point at all and that, arguably, is the end of the matter.

7. The advocates on behalf of the various claimants have, however, strongly submitted that if the court concludes, as a matter of fact, that on the relevant date the person concerned was a child, then it will inevitably be necessary in almost any case (and certainly in all these cases) to go on to determine, as best the court can, on a balance of probability, on such evidence as is available, the actual age (or which comes to the

same thing, a date of birth) of the claimant. The reason for that submission is that if it is determined that the claimant was still a child on the relevant date, so that the local authority were under a duty, or were potentially under a duty, to provide services or accommodation under the Children Act 1989, then it is essential to establish the date up to which those services have to be provided. Since there is in most cases a duty to continue to provide leaving care services after the age of 18 and up to the ages of 21, or for some purposes 25, it is submitted that the court needs to grapple with the question of actual age and not merely the question whether the person was or was not a child on the relevant date.

8. As I understand the submission of Mr McGuire and his colleagues, it is really to this effect; that on a substantive judicial review the court must determine whether or not the claimant was a child on the relevant date. But once the court has determined that, it is again entirely a matter for the local authority (subject to conventional judicial review) to determine the actual age of the child and, accordingly, the date up to which any accommodation or services must be provided.

9. With respect to Mr McGuire and his colleagues, that seems to me to be not well-founded and, indeed, to be a recipe almost for chaos. It simply cannot be right that in the instant proceedings for judicial review the court determines only the narrow or general question of whether or not, on the relevant date, the claimant was a child, leaving the local authority once again to make their own assessment or decision as to actual age or date of birth, with a potential for further judicial review at a later date, when the local authority terminate the provision of services, taking the view that the person has then reached the relevant age for termination. Patently, as it seems to me,

once the court is required to engage on determination of whether the person was on the relevant date a child, it must and should go on to make its own determination (binding as between the claimant and the local authority in point) as to actual age or date of birth. Further, that seems to me plainly to follow from the language of both Lady Hale and Lord Hope. At paragraph 33 of her judgment Lady Hale said:

> "If the other members of the Court agree with my approach to the determination of age ..."

At paragraph 40 of her judgment, expressly under the heading "Conclusion", she said:

> "The result is that if live issues remain about the age of a person seeking accommodation... then the court will have to determine where the truth lies on the evidence available."

At paragraph 54 of his judgment, Lord Hope said:

> "As for the practical consequences, the process begins with the carrying out of an assessment of the person's age by the social worker. Resort to the court will only be necessary in the event of a challenge to that assessment [viz assessment of age]."

10. I stress the use of the word "age", where it appears in each of those three passages. Mr McGuire, supported by his colleagues, has submitted that in those passages the Justices of the Supreme Court were merely using the word "age" as some form of shorthand for a reference to whether or not the person concerned is or was a child. I cannot, for my part, accept that submission. It seems to me that when Justices of the Supreme Court

use words in carefully considered reserved judgments, they should be assumed to intend the words they use to mean what they say, at any rate unless they have earlier identified and defined that they are using some word or phrase as shorthand. I say that in particular in regard to paragraph 46 of the judgment of Lady Hale. She heads that as being her overall "Conclusion" and it seems to me that her conclusion could not have been more clearly expressed in simple straightforward language as relating to issues not merely about whether or not somebody is or was a child, but "about the age of a person".

11. I accept and acknowledge that this is an issue which it will remain open to Mr McGuire or other advocates on behalf of local authorities to re-argue in the context of a substantive hearing. But for the purpose of giving directions today, I have identified the issue in all these cases as being: "... the case will be listed for a fact- finding hearing to determine whether or not, on the relevant date, the claimant was a child, and if so, his date of birth."

Permission

12. The next matter that has been the subject of some argument and consideration at this hearing has been the approach to the grant of permission. As it happens, in all five cases listed before me there has already been either an order granting permission or an order listing the case for a full "rolled up hearing" on both the issue of permission and the substantive matter in the event of permission being granted. In one of the cases, namely the Greenwich case, which has certain special facts of its own, there was an express consent by Miss Fowkes on behalf of that local authority today, to permission

being granted today. But as there have been argument and submissions to me on the topic of permission, it seems to me not unhelpful if I express at any rate a provisional view of the court as to what the approach of the court should be.

13. It is particularly undesirable that the practice of ordering a "rolled up hearing" should gain any momentum in this type of case. Permission is an important filter and safeguard, precisely designed to ensure that only those cases with appropriate merit get beyond even the preliminary stage. If orders are repeatedly made for a rolled up hearing, the whole point and purpose of the requirement of permission will be completely out flanked.

14. But, in the approach of the court to the question of permission in this type of case, it is now necessary to appreciate that the relevant question in the substantive judicial review, if permission is granted, will be a pure question of fact. There are two types of situation. In the first type of situation, exemplified by some of the cases before me this week, the local authority have assessed the claimant to have been already over 18 on the relevant date. In the second type of situation the local authority have admittedly assessed the claimant to be under 18 or to have been under 18 on the relevant date, but have assessed his age, or determined his date of birth, to be older than that asserted by the claimant. Even in the second type of case there is potentially real importance in the judicial review, because the actual range and nature of services and accommodation provided may vary according to whether, for instance, the person is 15 or is 16 or is 17. In any event, as I have already explained, a very real issue may arise as to the date of termination of services. Further, such assessment generally has a knock-on effect upon

the manner in which a person is treated by the Secretary of State in relation to asylum and immigration claims.

15. I cannot stress strongly enough that, as the Supreme Court has made quite clear (see paragraph 33 of the judgment of Lady Hale), proceedings such as this remain firmly proceedings for judicial review. Accordingly, in common with all claims for judicial review, permission is required before the claim can proceed. Further, in my view, the familiar discretionary grounds for refusal to grant permission may apply no less than in other cases. For example, delay or that the question is academic, or that for some other reason there is no useful purpose in the proposed proceedings. Permission must not become a matter of formality in these cases any more than in any others. Subject to that, and reflecting that the relevant question in the substantial judicial review, if permission is granted, will be a pure question of fact, it seems to me that in the first class of case the relevant test is: is there a realistic prospect, or arguable case that at a substantive fact-finding hearing the court will reach a relevant conclusion that the claimant is of a younger age than that assessed by the local authority and is or was on the relevant date a child? In the second class of case (where the local authority have admittedly assessed the claimant to have been under 18 on the relevant date) the test is: is there a realistic prospect, or arguable case that at a substantive fact-finding hearing the court will reach a relevant conclusion that the claimant is of a younger age than that assessed by the local authority?

Burden and standard of proof

16. I turn, next, to make very brief reference, for it has been raised before me, to issues of the burden and standard of proof. It seems to me patent that in all these cases the

standard of proof is the ordinary civil standard of the balance of probability. The burden of proof may be more problematic. It has been submitted to me on behalf of the local authorities that the burden of proof will always be upon the claimants throughout these cases. I, for my part, am not sure that the evidential burden will necessarily always be upon the claimants, and the question upon whom the evidential burden lies (if the case is so finely balanced by the end that it has any relevance) may depend on the facts and circumstances of individual cases. But what, in my view, is clear is that that is entirely a matter for decision, if it arises at all, by the judge at final hearing. It is not a topic for any kind of advance direction at a directions hearing.

Medical evidence

17. I turn, next, to consideration of medical evidence. In four out of the five cases listed before me (but not the Lewisham case), the claimant has already obtained and produced medical evidence in the form of a report or reports, in each case I think from Dr Diana Birch. A major issue in this type of case has hitherto been whether or not a decision of the local authority not to take into account medical evidence of that kind renders the underlying decision of a local authority vulnerable to judicial review. In two cases heard together in March 2009, in which judgment was given on 8 May 2009, namely A v London Borough of Croydon and WK v Kent County Council, Collins J gave extensive consideration to the reliability and value of medical evidence, and specifically that of Dr Birch, in this type of case. It is perhaps important to stress that although the hearing before him lasted four days, and he clearly gave profound consideration to written material from Dr Birch, Dr Michie and other paediatricians, Collins J. did not in fact hear any oral evidence. The reason for that was that at that

date the prevailing binding authority as to the correct approach to these cases was that of the Court of Appeal in the cases that were later heard by the Supreme Court. The Court of Appeal had held that disputed age cases should be approached as conventional judicial review cases and not as involving any primary fact finding by the court. Accordingly, at paragraph 2 of his judgment, Collins J said:

> "These two claims come before me in order to enable guidance to be given on the proper approach to be applied by the Secretary of State or local authorities who, having made their assessment of age, are presented with a report from a paediatrician whose opinion is that their assessment was wrong."

18. At paragraph 4 Collins J referred to the decision of the Court of Appeal, saying that he gathered that the House of Lords had accepted the petition for leave to appeal and that the appeal was to be heard in July. He continued:

> "However, that is no reason not to decide the claims before me, since the law to be applied is that set down by the decision of the Court of Appeal."

19. So it is crystal clear that Collins J was necessarily looking at the issue of medical evidence through the prism of the decision of the Court of Appeal and, as it were, a conventional judicial review perspective. He referred at length to a number of the difficulties with any paediatric evidence in this field, including reference at paragraph 15 to guidance from the Royal College of Paediatrics and Child Health itself. Referring to that guidance, he said within paragraph 15:

> "Anthropometric measures cannot be used to predict the age of an

individual. At most they may play a part in conjunction with relevant factors from the individual's medical, family and social history. The situation is complicated because nutritional problems and illnesses can delay puberty so that an individual may be older than his physical developments appear to suggest. Ethnic differences also play their part ..."

20. At paragraph 32 of his judgment Collins J referred to aspects of physical development, such as sexual maturity and body hair and the state of a person's teeth, that are not observable by social workers but may be seen and assessed by a doctor. “But” added Collins J:

> "... none of these can be a reliable basis for assessing age."

21. So Mr McGuire fastens on that sentence as indicating that generally the aspects within the province of a paediatrician but not a social worker do not form "a reliable basis for assessing age".

22. After analysis of the facts of two cases before him and viewing, as I have said, through the prism of the then authority of the Court of Appeal, Collins J said of the first case at paragraph 60:

> "However, I have to deal with this on a judicial review basis. The decision is that of Croydon and this court should be slow to intervene unless there is established an error of law. In this context, the test is irrationality, albeit as defined by Lord Diplock in the CCSU case to include a failure to have regard to a material consideration. I am for the reasons given entirely satisfied that it is proper for the authority to attach

little if any weight to Dr Birch's conclusions if their own assessment is in their view sound."

In relation to the second of the two cases, Collins J. similarly concluded that there had been no reviewable error by either the local authority or the Secretary of State.

23. It does not seem to me, however, that anything in the judgment of Collins J indicates that medical evidence of the kind given by Dr Birch is so unreliable or so unhelpful that it can simply be ignored altogether. He said at paragraph 34:

"I do not however think that LAs or the Secretary of State can in general disregard reports from Dr Birch or any other paediatrician."

He said at paragraph 75:

"Thus Kent and so the Secretary of State are entitled to attach little if any weight to reports which make assessments based to a significant degree on contradictory findings." But he immediately continued:

"But this does not in my view mean that such reports can be ignored. Flawed though they may be and in my judgment are, they should be considered since there is always a possibility that they may identify something which could and occasionally should lead to a different conclusion."

At paragraphs 79 to 81 of his judgment, he said:

"Since, he [Mr Béar on behalf of Kent] submitted, there is no body of

opinion which I could properly regard as being responsible, reasonable or respectable, I should on that basis not only reject Dr Birch's findings but decline to permit her to be admitted as an expert."

Collins J continued:

"I do not need nor do I think it right to go that far. She is a paediatrician with experience in dealing with age assessment and as such can provide assistance. Thus her reports are admissible and can be taken into account. But it is then necessary to see whether they can be relied on. For the reasons I have given, I do not think that they can insofar as they contradict the views of properly trained experienced social workers carrying out Merton compliant assessments ... As will I think be clear, I do not suggest that reports from such as Dr Birch can have no value, but only in a very few instances will it be possible to review successfully a refusal to change a conclusion reached through a Merton compliant assessment."

24. There is currently an appeal to the Court of Appeal from the decision and outcome of Collins J in those two cases, since in each case he finally dismissed the claim for judicial review. One of the cases is the case of A v London Borough of Croydon, which has now itself gone to the Supreme Court. I was informed by Mr Ian Wise, who appeared before me at this hearing in the Southwark case but who acted or acts for the claimant in that Croydon case (which is not before me) that there is some hope, if not expectation, that the Supreme Court itself, which has not yet announced the actual order following their judgments, will reinstate the claim for judicial review such that

the appeal currently listed before the Court of Appeal will simply fall away. I was also told that there is some understanding amongst members of the Bar present at this hearing (many of whom are familiar practitioners in this field) that there may yet be some consensual agreement to the judicial review being reinstated in the WK v Kent case, in light of the decision of the Supreme Court, which would also render the proposed appeal otiose. In other words, it may very well be that the Court of Appeal will not, after all, be able to express any opinion at or following an appeal at the end of April 2010, on the general issues as to medical evidence considered by Collins J in that judgment.

25. Where does the issue of medical evidence currently stand? As I have said, in four out of the five cases there are already reports from Dr Birch. Collins J has said in terms, in a passage quoted above, that he does not think that local authorities and the Secretary of State can in general disregard such reports. If that is true of local authorities, it seems to me that at this stage in the evolution of the approach to this type of case they cannot be disregarded either by the court. As I have said, Dr Birch did not give any oral evidence before Collins J. It seems to me that, at any rate in the cases with which I am concerned and which are currently before the court, and in which there is already paediatric evidence, reliance upon it at the fact- finding hearings cannot be excluded by some direction given at this stage. Accordingly, in all four cases in which there is already such evidence, I give directions to the effect that that evidence can be admitted into the proceedings and relied upon; directions permissive of updating by Dr Birch; and directions permissive, if any of the local authorities so wish, of expert evidence in answer.

26. It may -- I stress may -- transpire that as a result of substantive consideration of some of these cases, a different view may be taken in relation to medical evidence. In one of the cases, that of Lewisham, there is currently no medical evidence. Emboldened by my broad approach yesterday, Mr Christopher Buttler, who appears on behalf of the claimant in that case, applied for a permissive order that his client might now be examined by a paediatrician (probably, but not necessarily, Dr Birch) with a view to adducing evidence. I have not permitted that, for I am determined that introduction of medical evidence into cases, where it does not so far already exist, shall not be permitted (at least routinely) until the court has had some opportunity at a fact-finding hearing fully to consider the value of that kind of evidence. In the end, the way in which that has been dealt with in the Lewisham case at this hearing has been to fix an earliest date for final hearing of that case at least two months after the hearings in the other cases, so that the claimant in that case may, if she wishes, renew her application for permission to adduce medical evidence in the light of any observations made as to the utility of medical evidence in the other cases.

The conduct of the hearings

27. I turn, next, to a number of issues that have been raised as to the conduct of hearings. On behalf of the claimants it has been strongly submitted that if local authorities wish to rely upon the assessments already made by their social workers, then the social workers concerned must be available for cross-examination if required. On behalf of the local authorities it has been submitted that the assessments should, as it were, stand or fall within their own four corners and in written form, and that it is not appropriate to require social workers to attend. On that issue, I am firmly in agreement with counsel

for the claimants. It is entirely a matter for local authorities how they wish to defend these cases, but if they wish to defend them by reliance upon assessments (which include matters of fact as well as opinion) of their social workers, then they simply must, in the ordinary way, produce those social workers for cross-examination if required. So as to reflect that, and the involvement generally of witnesses other than the claimant, I order, in all these cases, that "any witnesses must attend the final hearing if, not less than 4 weeks before the date fixed for final hearing, the other party gives written notice that the witness is required for cross-examination."

28. Next, there has been much lively debate about the role and involvement of the claimants themselves in these hearings. The point has been made that in every case the claimant claims to be a child, or at any rate until recently to have been a child. In every case, the claimant claims to have had a difficult and often tragic life history and in general terms to be a vulnerable person.

29. In all the cases it has been submitted on behalf of the claimants that special measures should accordingly be available for their participation at any hearing, for instance, that hearings should take place in chambers, or even that they should give any evidence even more informally and privately in a judge's private room. Additionally or alternatively, it has been submitted that video links should be made available for the giving of their evidence. More profoundly, Mr Christopher Buttler in particular, on behalf of his two clients submitted that the claimants simply should not be involved in the forensic process at all, unless at any rate they positively wish to be.

30. I have to say as a general observation that it does not seem to me that these fact- finding hearings can ordinarily take place without some involvement of the claimant and

engagement of the claimant with the court. In most, if not all, cases there is some issue as to the credibility of the claimant and the account that he or she gives as to his or her earlier history. But I do accept that the extent to which, and manner in which, a claimant participates or gives evidence is quintessentially a matter for the judge at the hearing itself. Accordingly, in all these cases, I make a general direction in the following terms: "Conduct of the hearing: Any question whether the claimant shall give oral evidence or be cross-examined; and any question whether all or any part of the hearing will take place in chambers, or whether the judge will see the claimant in his private room, will be a matter for the sole discretion of the judge at the final hearing. If the claimant wishes to give by video link any evidence that he may be required to give, then his solicitors must so inform the court in good time and make necessary arrangements for the hearing to take place in a court room equipped with video link facilities and for reserving a video suite. The question whether the claimant actually gives evidence by video link will be decided by the judge at the final hearing."

31. Having thus made plain that all those matters are ultimately for the discretion of the judge at final hearing, it seems to me extremely important that ordinarily, at any rate, there should be a provision to ensure that the claimant is readily available if the judge considers that he should in some way give evidence. So in most of these cases I have also made an order as follows: "Without prejudice to his right to be in the courtroom throughout the hearing if he so wishes [which is axiomatic], the claimant must attend the vicinity of the court at the final hearing."

32. Mr Christopher Buttler, in particular, has strongly submitted that that is an order that I have no power to make, or if I do have such a power, that I should not make. I do not

propose to engage in the detailed argument on that topic in this already over long judgment. At all events, I have accepted that there is something about the particular facts of the Lewisham case, in which the claimant claims to have been trafficked and very abusively treated, which may raise in acute form the question whether any involvement or questioning of the claimant at all would itself amount to a further abuse.

33. So in that particular case, I have been persuaded and have agreed (without opposition by Mr McGuire on behalf of Lewisham) to provide for a staged final hearing by a direction that: "The dates for the final hearing shall be fixed as follows: in each case before the same judge: (i) for one day in one week for consideration of [the above matters and issues as to the conduct of the hearing] and in particular whether the claimant personally must attend to give oral evidence or otherwise be seen by the judge; and (ii) for two days in the following week (with not less than five days intervening between the two dates fixed under (i) and (ii))." The purpose of that is so that the judge indentified for the final hearing itself can hear the fact specific submissions and make a ruling about whether or not the attendance of the claimant is required, and there will then be a reasonable and orderly period to prepare the claimant for attendance.

34. In the Southwark case, Mr Ian Wise, on behalf of the complainant, has said that there may be issues in that case as to the current mental health of the claimant. That may be the subject of further evidence from a psychiatrist, and may even lead to a need to consider whether a litigation friend is appointed on behalf of that claimant, but at all events, in relation to that case, instead of requiring the claimant to attend the vicinity of

the court at the final hearing, I make an order by agreement that that claimant "must be available at half-a-day's notice to attend the vicinity of the court at the final hearing."

35. By way of general observation, I merely wish to stress that it seems to me that there is a considerable difference between this type of case and the care cases to which Mr Buttler has referred and in which various observations have been made by Lords Justices who were previously judges of the Family Division as to the giving of evidence by children. In the first place, these cases are not care cases. In care cases, the protagonists are the local authority and, generally, the parents of the child. The child is the subject of the proceedings. In these cases, albeit that he claims to be a child, the "child" is the claimant himself. Second, those observations generally relate to the giving of evidence about disclosures or allegations of forms of sexual abuse in which there already exists an ABE video recorded interview made at a very early stage after first disclosure. In all the present types of case there is usually nothing more than the manuscript notes of immigration officers of the first accounts of the claimants upon entry. Third, in most care cases at any rate, the children concerned are relatively younger than the claimants in these types of case. It is highly unlikely that someone below the actual age of about 14, as a minimum, will have been assessed as being not a child by a local authority, and as the facts of most of these cases show, claimants in this type of case tend to be more of the age of 16 or 17. It is my experience that not infrequently children of that sort of age do answer questions, perhaps via video link, about sensitive matters; and I, for my part, do not regard the observations of the Court of Appeal upon which Mr Buttler placed so much reliance as in any way concluding or making it inappropriate that the claimants will have to engage with the court process if they wish to bring and pursue this type of claim.

Category of judge

36. The next matter which has been raised before me has to do with the category or type of judge who may hear these cases, because it has been strongly submitted that they should be heard by judges who are both nominated judges of the Administrative Court and judges of the Family Division. I understand the thrust of those submissions, but I wish to make absolutely clear that identification of the category or tier of judge who hears this type of case must be entirely a matter for the court. There are obvious resource implications and at this hearing I have given no indication whatsoever, still less made any order, as to where or by whom these cases should be heard (save it is hoped that the Manchester case may be able to be heard in that area).

Estimates and preparation

37. More prosaically, I mention the question of estimates of length of final hearings and bundles and similar preparatory matters. There is a tendency in the Administrative Court for counsel to give estimates which are no more than the time required for their argument itself. There seems to be some expectation that the judges will then reserve judgment and hand it down at a later date. Whether or not that is appropriate to the other work of this court, much of which may in any event require the reserving of judgments, is a separate matter. But it is crystal clear to me that the sort of fact-finding hearing and judgment now in point must be dealt with as a single composite exercise with an ex tempore judgment at the end. If this series of cases is each going to result in a reserved judgment because insufficient time has been allowed for preparation and delivery of the judgment ex tempore, the system will completely collapse. I have

accordingly insisted that there be an estimated length of final hearing which includes time for judicial pre-reading and preparation and delivery of an ex tempore judgment, with a requirement that the solicitors for the parties must notify the court forthwith if it appears that longer time may be required after the scale of the evidence is known.

38. It is my experience, having now sat in the Administrative Court for some years, that the bundles are often voluminous and duplicative and are not always at all well organised. That may be acceptable for other types of cases in this court but is, frankly, not acceptable for basic fact-finding hearings. It is almost certainly the case that in the existing bundles in all the present cases there is much material which frankly completely falls away, now that a purely fact-finding hearing is in point. Further, such material as exists needs to be differently and better organised than it currently is. So in each case I make the standard direction that: "All existing bundles must be removed from the court file and not less than 3 weeks before the date fixed for final hearing, the solicitors for the claimant must lodge with the court fresh, agreed, paginated, indexed and tabbed bundles which contain in an orderly form those documents, but only those documents, which are relevant to the issue as previously identified and (i) an agreed chronology; and (ii) a case summary at the front of the bundle." There will be relatively standard form provision as to skeleton arguments.

39. I mention finally, so far as the directions are concerned, that in all the present cases and no doubt in most of these cases, there will be a requirement for an interpreter, at any rate if the claimant is to be present or involved at all in the hearing. Accordingly, I

direct that the solicitors for the claimant must arrange for the presence of a suitably qualified and professionally objective interpreter if one is required.

40. Before concluding this judgment, I wish to make brief reference to the helpful submissions of Mr John-Paul Waite, on behalf of the Secretary of State as interested party in the Manchester case. In his document he has submitted that in light of the decision of the Supreme Court, there should be a "truncated procedure in age dispute cases" with an abbreviated period for the acknowledgement of service, which should do little, if nothing, more than rely upon the age assessment and that there should be a hearing within 14 days of the grant of permission.

41. I have no idea how these cases may evolve in the longer term and in particular what role, if any, medical evidence will play in the longer term. I am profoundly sympathetic to the approach and desire that there should be a "truncated" and indeed relatively swift and summary procedure, but currently these cases take place within the backdrop of rule 54. It does not seem to me appropriate that I could give any kind of directions for a truncated procedure in the current cases. If some such procedure is to devised and adopted it would require a Practice Direction or similar edict from the President of the Queen's Bench Division, probably after some degree of consultation with representative interested bodies.

42. I hope there is no matter to which I have failed to make appropriate reference.

43. MR BUTTLER: My Lord no.

44. MR JUSTICE HOLMAN: I am incredibly grateful, Mr Buttler and Mr McGuire, for your stamina and endurance throughout these last two days. So thank you very, very

much indeed. I have already directed that this judgment be transcribed. As soon as I personally get back from holiday I will hopefully have the transcript here to be corrected and it will be circulated and publicly available if it has any value to anybody.

45. MR BUTTLER: May we thank you.

46. MR JUSTICE HOLMAN: Tomorrow I will try to perfect these orders and you will get them as soon as you can.