Case No: CO/3012/2010

Neutral Citation Number: [2011] EWHC 3073 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24th November 2011

Before :

MR JUSTICE COULSON

- -

Between :

The Queen (On the application of J)	**Claimant**
- and -	
Secretary of State for the Home Department	**Defendant**

- -
- -

Mr Zia Nabi (instructed by **TV Edwards LLP**) for the **Claimant**
Mr Sarabjit Singh (instructed by **Treasury Solicitor**) for the **Defendant**

Hearing date: 16th November 2011

- -

Judgment

The Honourable Mr Justice Coulson:

1. INTRODUCTION

1. On 27 October 2009, the claimant, who is from Afghanistan, was the subject of an age assessment carried out by Wiltshire Social Services which concluded, despite his claim to the contrary, that he was 18. That age assessment was relied on by the defendant in refusing asylum, and by the AIT judge in dismissing the claimant's subsequent appeal. Later, information relating to the claimant's older brother's successful asylum claim was made available to the defendant, along with other information that appeared to cast doubt on the Wiltshire age assessment. Despite this, the claimant was detained on 1 March 2010 in readiness for removal on 9 March 2010. On 4 March 2010, Cranston J allowed an emergency application for judicial review, and the claimant was released from detention. It is now accepted that the claimant was about 14 ½ at the time of the Wiltshire age assessment and is now about 16 ½. In consequence, the claimant has been granted discretionary leave to remain in the UK for at least another year.

2. The present claim is limited to a claim for damages against the defendant for unlawful detention. Essentially, three issues arise. The first is whether or not the Wiltshire age assessment complied with the relevant principles so that it could be regarded as Merton compliant. If it was not, then there is no real dispute that the subsequent detention (which was based on that age assessment) was unlawful. If, however, the age assessment was Merton compliant, then there is a second issue, relating to subsequent events: did the later information made available to the defendant amount to a fresh claim that was not properly dealt with, again making the detention unlawful? Thirdly, if the detention was unlawful, what damages should be awarded to the claimant?

2. THE WILTSHIRE AGE ASSESSMENT

2.1 The Assessment Itself

3. The claimant entered the UK illegally on 27 October 2009. The circumstances in which the claimant arrived here remain obscure and, in my view, there was considerable force in the subsequent criticisms of the credibility of his story. Be that as it may, the claimant was taken to Melksham Police Station and on the same day, was the subject of an age assessment.

4. A number of general points need to be made about the age assessment itself. The first is that it was carried out by just one assessing worker, Ms Jackie Charlton. No other social worker was involved. Secondly, no appropriate adult was present. There is nothing to suggest that the possibility of having such an adult was explained to the claimant, or that the facility was offered to him; on the evidence, I find that it was not.

5. The age assessment was carried out under a number of particular headings including: physical appearance/demeanour, interaction of person during assessment, social history and family composition, developmental consideration, education, independent/self-care skills, health and medical

assessment, and information from documentation and other sources. On analysis, the information that Ms Charlton was able to glean under these heads was very limited. The relevant parts of the report read as follows:

> "Physical appearance, demeanour
>
> [J] was small in stature but he did not look malnourished. [J] gave little eye contact and bowed his head for most of the assessment. [J] had dark skin and dark brown hair and he has dark facial hair. [J]'s nails were cut and very clean…
>
> Interaction of person during assessment
>
> [J] was very gently spoken and he was very distressed when he spoke about his Mother. There was little eye contact and he appeared considered in his responses.
>
> Social history and family composition
>
> Mulla Jabar – Father
>
> Maliha – Mother – Deceased
>
> Zaky – Brother – 16 years (whereabouts unknown)…
>
> Later in the interview [J] said his father was killed for spying for the Americans. [J] left Afghanistan because he was not safe. He could not offer any more detail or reasons why he could not stay…
>
> Developmental consideration
>
> [J] did not have any hobbies or interests and said he did not do anything in his spare time when he lived in Afghanistan. [J] worked sometimes helping the family with farming in Afghanistan…
>
> Education
>
> [J] did not attend school. The only education he had was through the mosque…
>
> Health and medical assessment
>
> [J] was given a medical by the attending doctor at the police station and a tablet for stomach ache. There were no other health issues identified.
>
> Information from documentation and other sources

No papers or documents brought to the United Kingdom."

6. The last part of Ms Charlton's age assessment was in these terms:

> "Analysis of information gained
>
> [J] was gently spoken he presented as very considered in his responses. From his appearance [J] appears older than his claim of 14 ½ years.
>
> Conclusion
>
> Based on the assessment, the client's age is: 18."

2.2 The Law

7. The appropriate principles relating to a proper age assessment were set out by Stanley Burnton J (as he then was) in ***R (on the application of B)v Merton London Borough Council*** [2003] 4 All ER 280. In that case the judge noted:

a) 'The determination of the age of the applicant will depend on the history he gives, on his physical appearance and on his behaviour' (paragraph 20);

b) 'Given the impossibility of any decision-maker being able to make an objectively verifiable determination of the age of an applicant who may be in the age range of, say, 16-20, it is necessary to take a history from him or her with a view to determining whether it is true. A history that is accepted as true and is consistent with an age below 18 will enable the decision-maker in such a case to decide that the application is a child. Conversely, however, an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant' (paragraph 28);

c) 'Except in clear cases, the decision-maker cannot determine age solely on the basis of the appearance of the applicant' (paragraph 37);

d) 'Reasons are required so that the applicant may make an informed decision whether to ask the local authority to review its decision or to make a complaint concerning the decision, quite apart from the need for him (or rather a legal adviser) to be able to ascertain whether the decision is lawful or amenable to judicial review' (paragraph 46);

e) 'The decision-maker must explain to an applicant the purpose of the interview…if the decision-maker forms the view, which must at that stage be a provisional view, that the applicant is lying as to his or her age, the applicant must be given the opportunity to address the matters that have led to that view, so that he can explain himself if he can' (paragraph 55).

8. Further guidance concerning age assessments can be found in the decision of Blake J in ***R (on the application of NA) v London Borough of Croydon*** [2009] EWHC 2357 (Admin). There, at paragraph 28, the judge considered that factors such as demeanour and assertive behaviour were "somewhat

fragile material to weigh conclusively in the balance against the age claimed". At paragraph 48, Blake J stressed that age assessments "are decisions of great moment to the claimant and that is why the courts have insisted on transparent, fair and careful assessments of extremely difficult questions with the importance of giving the benefit of the doubt to the claimant in a case of real doubt, when every other factor for and against has been appropriately weighed."

9. In ***NA***, the judge found that there had been a number of procedural failures, including the failure to ask the claimant whether he wanted to have an independent adult present, and the failure to put the inconsistencies that were relied upon as the basis for the adverse decision to the claimant at the time for comment, so as to give him an opportunity to disabuse him of any false impression created.

10. The most recent guidance can be found in the decision of the Court of Appeal in ***R (FZ) v London Borough of Croydon*** [2011] EWCA Civ 59. In that case the President of the QBD made these general observations about age assessments:

> "2…It is for those whose age may objectively be borderline, between perhaps 16 and 20, that an appropriate and fair age determination may be necessary. A process has developed whereby an assessment is undertaken by two or more social workers, trained for that purpose, who conduct a formal interview with the young person at which he is asked questions whose answers may help them make the assessment. It is often necessary for there to be an interpreter. The young person may or may not be able to establish or indicate his age by producing documents, which themselves may require translation.
>
> 3…The assessment does not require anything approaching a trial and judicialisation of the process is to be avoided. The matter can be determined informally provided that there are minimum standards of inquiry and fairness. Except in clear cases, age cannot be determined solely from appearance. The decision-maker should explain to the young person the purpose of the interview. Questions should elicit background, family and educational circumstances and history, and ethnic and cultural matters may be relevant. The decision-maker may have to assess the applicant's credibility. Questions of the burden of proof do not apply…If the decision-maker forms a view that the young person may be lying, he should be given the opportunity to address the matters that may lead to that view. Adverse provisional conclusions should be put to him, so that he may have the opportunity to deal with them and rectify misunderstandings. The local

> authority is obliged to give reasons for its decision, although these need not be long or elaborate."

11. In the decision itself, the Court of Appeal concluded that the local authority had failed to give the claimant an opportunity to respond to provisional adverse findings. At paragraph 21, the President said:

> "In our judgment, it is axiomatic that an application 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…
>
> 22. In our judgment the procedure adopted in the present case did not achieve this element of the ***Merton*** requirements."

In addition, the Court of Appeal also concluded that, in that case, an appropriate adult should have been present at the assessment, or at the very least the appellant should have been given the opportunity an opportunity to request the attendance of an appropriate adult.

2.3 Was The Wiltshire Age Assessment Merton-compliant?

12. In my judgment, the Wiltshire age assessment was not Merton compliant. Although I have had very much in mind the emphasis, highlighted in the passages in the authorities which I have cited, that age-assessment is a relatively informal and non-judicial process, it seems to me that this particular age assessment fell well short of the appropriate guidelines.

13. First, it was only carried out by one social worker. That is contrary to the accepted practice, as referred to by the President in ***R(FZ)***. I also accept Mr Nabi's additional argument that, in ***A v London Borough of Croydon*** [2009] EWHC 939 (Admin) – a case which is material later – Collins J, at paragraph 33 of his judgment, noted that age assessments carried out by social workers were to be given considerable weight because they were the product of more than one trained person. That was not the case here.

14. Secondly, the claimant was not given the opportunity of having an appropriate adult present during the process. Given that the claimant had only just arrived in this country, illegally, and was being held at a police station, it seems to me axiomatic that he should have been offered such assistance. Indeed, given that it is now accepted that the claimant was 14 ½ at the time, I consider that the absence of an appropriate adult was a substantive failing.

15. Thirdly, it is clear that Ms Charlton, in carrying out the assessment, did not accept the claimant's case that he was indeed 14 ½, even though her reasons for that view are obscure. In accordance with ***R (FZ)***, the claimant ought to have been given an opportunity to comment on how and why Ms Charlton had reached that adverse view. Although the age assessment does not say in terms that Ms Charlton doubted the claimant's credibility, the whole basis of her

conclusion was that the claimant was some 3 ½ years older than he claimed to be. That was a big difference, which gave rise to a major issue concerning the claimant's credibility. The failure to give him an opportunity to deal head on with that criticism again meant that this age assessment was not Merton compliant.

16. Fourthly, but perhaps most important of all, I consider that any fair-minded reader of Ms Charlton's assessment cannot fail to be struck by the absence of detail in her analysis of the (admittedly scanty) information gained. On one view, that analysis concluded that he was 18 merely because "from his appearance [J] appears older than his claim of 14 ½ years." That conclusion in itself falls foul of the Merton guidelines, because it appears to be basing the age assessment solely on appearance. And although Mr Singh argued that there were other matters that were taken into account by Ms Charlton, such as the claimant's "very considered" responses, she does not say so expressly, or explain how and why such 'considered responses' meant that the claimant must be over 18. In my judgment, on its face, the Wiltshire age assessment fails to explain how the conclusion (that the claimant was over 18) was arrived at.

17. Accordingly, for the reasons that I have given, I conclude that the age assessment undertaken by Ms Charlton on behalf of Wiltshire Social Services on 27 October 2009 was not Merton compliant. Moreover, I note that, in their letter of 11 March 2010, Wiltshire themselves were keen to say that any deficiencies in the assessment (which they did not accept) were to be measured against the fact that it was an initial assessment "to be judged by the circumstances in which it was conducted, namely as a matter of urgency, at a police station and on the day the claimant and others arrived in the UK (or at least in the area) in the back of a van". I accept Mr Nabi's submission that, even though this submission was put as a fall-back position by Wiltshire, that paragraph of their letter did not amount to a ringing endorsement of the ultimate reliability of the age assessment carried out by Ms Charlton.

18. Accordingly I find that the age assessment carried out by Wiltshire was not carried out in accordance with the relevant guidance. Moreover, I am bound to find that its deficiencies were obvious and all-pervasive. I find that the defendant should not have relied at any stage on such an obviously flawed document. It is difficult not to agree with Mr Nabi's conclusion that it was, in many ways, a vivid illustration of how *not* to conduct an age assessment.

3. THE ASYLUM CLAIMS

3.1 The Facts

19. J's application for asylum was refused in a lengthy letter dated 23 November 2009. It was said that J's behaviour was designed to conceal information and mislead. The only part of the letter dealing with his age said:

> "Regard has been had to your age. It is noted that a Merton-compliant age assessment has been completed by Wiltshire Social Services and you were assessed as

> being aged 18. It is considered that your age is not a sufficiently compelling factor to justify allowing you to remain in the UK."

This was the first reference to the Wiltshire age assessment allegedly being Merton compliant.

20. J appealed. By the time of the hearing of the appeal, on about 16 January 2010, he was in Cardiff, where two social workers had apparently reached the view that he was under 18. At this stage they had not seen the Wiltshire age assessment, although they were aware of it and what it said. They said in their written interim assessment that they would await the judgment of the AIT.

21. The AIT rejected J's appeal in a judgment promulgated on 16 January 2010. The judge referred to the assessment from the social workers in Cardiff as having been "clearly written without full information being available to the writers who have made no more than an initial assessment. They have been made aware that the appellant's solicitors were seeking a Judicial Review against Wiltshire Council in respect of the age assessment and that Wiltshire would be standing by their decision". He also noted that, although J was legally represented, those representatives had failed to undertake or obtain their own independent full age assessment. He gave "considerably more weight" to the Wiltshire assessment because it was "a full Merton compliant age assessment" as oppose to an "incomplete initial assessment from Cardiff." The judgment was not the subject of an appeal.

22. On 10 February 2010, the claimant's solicitors sent a formal notification of a proposed claim for Judicial Review to Cardiff Social Services. The issue was identified as being the claimant's age. In response, on 18 February, Cardiff repeated parts of the judgment in the AIT and said that any decision about whether there should be a re-assessment of the claimant's age was the responsibility of Wilshire Social Services.

23. On 23 February 2010, the claimant's solicitors wrote to the UK Border Agency, making a fresh claim for asylum. The basis of the fresh claim was said to be the fact that the claimant had reunited with his older brother, Zaky, whose asylum claim as a UASC (Unaccompanied Asylum Seeking Child) had been granted. The letter went on:

> "Our client clearly details his brother Zaky throughout his own asylum claim and Zaky has detailed our client in his claim. Evidence of this is enclosed as detailed above [screening interview notes and the like]…
>
> It has been noted that the UK Border Agency found Zaky's account of events to be credible and that he was at risk of Geneva Convention persecution upon return to Afghanistan. He was duly granted Refugee Status in 2009 in this regard.

> You will note that the account of events detailed by our client is consistent with that of his brother, which has already been found to be credible. It is also noted that Zaky's account of events substantiates our client's claimed age…
>
> Please note that this is new information which has come to light since our client's asylum appeal was dismissed and on this basis we wish to make a fresh asylum claim. It would obviously be in the interests of justice for this vulnerable UASC to be granted Refugee Status, in line with his older brother. Please treat these representations as our client's wish for a fresh claim…We also request that no action is sought to remove our client at the current time until you have considered the representations."

24. That letter was dealt with in a response from UKBA dated 1 March 2010. The response again principally relied on the findings of the AIT. As to the reference to Zaky, the letter went on:

> "Despite the outcome to Zaky's case this has no bearing on that of your client who has been through the appeal system and has been found to be someone who is over 18 years of age and who is not in need of international protection. He has never been dependant on his brother's claim or vice versa."

There was no reference in that letter to the respective ages of Zaky and the claimant.

25. It should be noted that the claimant's solicitors wrote again the following day, in a letter which I do not have, but which apparently enclosed a letter from the claimant's GP, Dr Cook, in which he stated in clear terms that the claimant was under 18, and expressed concerns about the process by which a different age had been assessed. The response from UKBA again relied on the AIT judgment and made the point that the claimant had still not obtained his own independent full age assessment.

26. On 1 March 2010, the claimant attended for a pre-arranged interview with UKBA. He was accompanied by Ms Hussain, from the Cardiff Refugee Council. He was taken to another room and detained by 4 or 5 officers. Despite his request, Ms Hussain was not allowed into the room. His request to call his brother was also denied. He was crying but, despite this, he was handcuffed, and put in a police cell. At some point, because of the risk of self-harm, he was dressed in padded clothing. An order was given for his removal on 9 March 2010. However, on 4 March 2010, an urgent application for judicial review was made which was granted by Cranston J. The claimant was immediately released from detention.

3.2 The Law

27. As to what constitutes a fresh claim under rule 353 of the Immigration Rules, the law is settled. In ***WM(DRC) v SSHD*** [2006] EWCA Civ 1495, the Court of Appeal said that the defendant had to decide, first, whether there was material which was significantly different to the material originally relied on and, if so, whether that material meant that the further asylum claim had a realistic prospect of success.

28. As to the defendant's obligations when in receipt of material which contradicted a previous age assessment, clear guidance was set out by Collins J in ***A v London Borough of Croydon*** [2009] EWHC 939 (Admin). He stressed the importance of a Merton compliant assessment and said that, whilst decisions based on age assessments were challengeable, the court would not readily take the view that they were flawed. He went on:

> "10. It follows that the decision under attack can only be challenged successfully if the defendant, whether the Secretary of State or local authority, erred in law in not changing it following the submission of a report from the paediatrician or any other material which is said to cast doubt on its correctness…
>
> 80. For the reasons I have given, I do not think that [later, contrary reports can be relied on] insofar as they contradict the views of properly trained experienced social workers carrying out Merton compliant assessments. The crucial point is not whether either assessment is or is not in fact correct; that can very rarely if ever be ascertained with complete accuracy. The point is whether the authority or the Secretary of State is entitled in law to prefer the social worker's assessment to that of Dr Birch or another paediatrician. Generally speaking, they are and no error of law is shown if they do.
>
> 81…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. It is always necessary to be sure that the assessment was properly conducted and has reached a sustainable conclusion and the record of and reasons for the assessment will be crucial. This rather than any medical report will usually provide the only possible grounds for Judicial Review."

3.3 Did the Defendant Act Unlawfully in the Period November 2009-March 2010?

29. In my view, the defendant acted unlawfully during this period in two particular respects.

30. First, I consider that the refusal of asylum on 23 November 2009 was unlawful. The defendant must have looked in detail at the Wiltshire age assessment (in order to conclude that it was Merton compliant), but failed to identify any of the obvious deficiencies which I have outlined above. The letter of 23 November was the first time that the Wiltshire age assessment was described as being Merton compliant, but no justification for such a conclusion was provided in the letter. This was doubly unfortunate, because it was this assertion that was picked up and repeated, mantra-like, in all of the later documents.

31. The authorities noted above make plain that, although the defendant was entitled to rely on a Merton compliant age assessment completed by a local authority, there was an independent obligation on the part of the defendant to consider that assessment and to reach her own conclusion as to whether or not it was Merton compliant. And the defendant's own policy document, at paragraph 5.2, confirms this: although case owners within the defendant's department "should give considerable weight to the findings of age made by local authorities…case owners should carefully consider the findings of the local authority and discuss the matter with them …if it appears the general principles set out in the Merton judgement were not adhered to." The policy also states, at paragraph 5.3, that "where applicants have been assessed as adults by the local authority, but maintain they are children, it is important to establish the local authority's reasons for their decision on age."

32. Here, although the detail of the assessment was looked at in the present case, (because a conclusion was reached that it was Merton compliant), there was no discussion with the local authority and no reconsideration, despite the obvious flaws. The absence of reasons for Ms Charlton's decision seemed to have been overlooked altogether. The defendant's conclusion that the Wiltshire age assessment was Merton compliant was, for the reasons I have given, an unreasonable and irrational conclusion.

33. It is not appropriate to criticise the AIT judge, particularly given that his judgment was not appealed. He was entitled to regard the information that he was sent from the Cardiff social workers as "eleventh hour". He was also right to say that their contrary view was contained in a document that was described as an *initial* assessment, although he may not have understood that this was simply the name of the appropriate process under the Children Act, and not an indication that their assessment was incomplete. Most important of all, it does not appear that the fairly obvious points which I have made about the Wiltshire age assessment, and the reasons why it was not Merton compliant, were even argued before the AIT judge. Unhappily, that is one of a number of instances in these proceedings in which the claimant's former legal representatives failed to advance his case with proper clarity.

34. The second error during this period concerned the treatment of the fresh claim. I am in no doubt that the letter of 23 February (paragraph 23 above) was a fresh claim. Again, it could have been much better worded, because the emphasis in the letter appeared to be that the claimant's brother had successfully been granted asylum (and so therefore the claimant should be too), rather than any argument about their respective ages. Although that point was just about made in the letter, it is not at all easy to discern. But ultimately it was a very short point. The claimant had throughout maintained that he had an older brother and the older brother, Zaky, had maintained throughout that he had a younger brother, J. Accordingly, the acceptance by the defendant of Zaky's asylum claim amounted, at least arguably, to an acceptance of the claimant's claimed age, and therefore an acceptance of his claim to asylum. It was, on any view, an entirely new matter and therefore a fresh claim. But the respective ages were not addressed at all in the response of the 1 March, which dealt only with the link between the two claims, and not the respective ages of the brothers. This was an unfortunate oversight on the part of the defendant. It meant that the fresh claim was never properly considered, and therefore never properly answered. In accordance with the test in ***WM (DRC)***, I conclude that, in dealing with that fresh claim, the defendant failed to ask herself the correct question.

35. Although it is academic, I do not consider that anything turns on the provision of the other information to the defendant, such as the letter from Dr Cook. As explained by Collins J in ***A v London Borough of Croydon*** (paragraph 28 above), the defendant is generally entitled to rely on the original age assessment, whatever subsequent medical or other material may be provided, provided of course that the original age assessment was Merton compliant. Here it was not.

36. Accordingly, the defendant's conduct in the period between November 2009 and March 2010 can properly be criticised. The first criticism (the original refusal of asylum) is no more than a manifestation of the deficiencies in the Wiltshire age assessment and the defendant's unreasonable failure to act upon them. The second is a separate and stand-alone failure, namely the failure to consider the clear (and strong) fresh claim of 23 February 2010.

4. THE DETENTION OF THE CLAIMANT

37. It follows that the detention of the claimant was unlawful. The detention was based on the Wiltshire age assessment, which was fundamentally flawed for the reasons given in **Section 2** above. It was also the result of the defendant's failure to have regard to the substance of the fresh claim made on 23 February 2010 (**Section 3** above). It only came to an end following the granting of the application for judicial review by Cranston J. Following the decision of the Supreme Court in ***R (Lumba) v SSHD*** [2011] 2 WLR 671, that false imprisonment is a trespassory tort and so is actionable *per se*, the claimant is entitled as of right to damages for his unlawful detention.

5. DAMAGES

5.1 Ordinary Damages

38. The starting point is the decision of the Court of Appeal in ***Thompson v Commissioner of Police of the Metropolis*** [1998] QB 498. There, at page 515, paragraph (5), Lord Woolf MR said:

> "(5) In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate to those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for 24 hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale."

The figure of £3,000, when adjusted for inflation, produces a current figure of £4,604.52.

39. In ***R (on the application of B) v Secretary of State for the Home Department*** [2008] EWHC 3189 (Admin), Kenneth Parker QC (as he then was) was invited to update the position as to damages. In that case, for an unlawful detention of 6 months, he awarded the sum of £32,000 (£35,757.63 when adjusted for inflation). In so doing, he had regard, amongst other matters, to the settlement figure of £15,000 in the case of ***R (Johnson) v Secretary of State for the Home Department*** [2004] EWHC 1550, following a period of 53 days unlawful detention.

40. Two Court of Appeal decisions from April 2010 are also relevant. In ***MK (Algeria) v Secretary of State for the Home Department*** [2010] EWCA Civ 980, there was a period of 24 days detention which was wrongful and unjustified. The judge at first instance had awarded £8,500. That was increased by the Court of Appeal to £12,500 (£13,347.17 when adjusted for inflation). And in ***Abdillaahi Muuse v Secretary of State for the Home Department*** [2010] EWCA Civ 453, damages were assessed at £25,000 for a period of 128 days unlawful detention.

41. In the present case, the claimant was detained on 1 March and released on 4 March, a period of 4 days maximum. In line with ***Thompson***, and the subsequent authorities, it seems to me that ordinary damages in those circumstances, taking into account inflation, should be assessed at £7,500. In particular, that is in direct proportion to the £12,500 – now over £13,000 - awarded by the Court of Appeal in ***MK (Algeria)*** for 24 days unlawful detention.

42. It is worth noting what the sum of £7,500 is designed to compensate the claimant for. It is to compensate him for being unlawfully detained for nearly 4 days; to compensate him for the shock of his initial arrest and the time that he spent unlawfully detained thereafter. It is also to compensate him for the fact that, although he was a child, he was (for the reasons previously explained) detained as if he had been an adult.

5.2 Aggravated Damages

43. There is a claim for aggravated damages. The suggestion in the claimant's submissions was that the claimant was somehow entitled to aggravated damages as of right. I do not accept that. ***Thompson*** is very clear that aggravated damages are only due where there are aggravating features. As Woolf MR said:

> "Such damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injuries suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution."

44. A number of matters were relied on to suggest that there were aggravating factors here. The first was that the claimant was a child, but was detained as an adult. I have already made the point that the claim for ordinary damages compensates the claimant for that, because that mistake was the basis of his wrongful detention in the first place. Moreover, in a number of the reported cases, such as ***B***, the claimant was a vulnerable person and that was taken into account in the assessment of the ordinary damages to be awarded. Accordingly, on my approach, the claimant's age cannot give rise to aggravated as well as ordinary damages.

45. Secondly, it is said that the defendant failed to have regard to the claimant's fragile mental health. That seems to me to be wrong on the facts. Although criticism is made of the fact that the claimant was put in padded clothing, and was subjected to regular checks, these procedures were adopted because of the awareness of those detaining him that there was the risk of self-harm. It seems to me to be a nonsense to suggest that the claimant should be compensated by way of aggravated damages as a result of actions which were only taken because of the officers' express consideration of (and concern about) the claimant's potential for self-harm.

46. The final complaint concerns the manner of his arrest, and the use of handcuffs, which the claimant describes as "painful". That seems to me to have some force as an aggravating factor, at least on 1 March. I find that there was an element of high-handedness in the treatment of the claimant, who was

obviously upset, and who manifestly did not pose a risk either to the officers or of escape, but who was refused the opportunity to speak to Ms Hussain or call his brother. In those circumstances, I consider that this final factor does justify a claim for aggravated damages.

47. The cases demonstrate that an award of aggravated damages, if appropriate, should be significantly less than the ordinary damages awarded. That seems to me to be common sense. In ***Muuse***, the aggravated damages were £7,500 (as against ordinary damages £25,000) and in ***MK***, the aggravated damages were £5,000 (as against damages of £12,500).

48. Given the narrow basis on which I consider aggravated damages to be appropriate, and the sum of £7,500 that I have awarded by way of ordinary damages, I consider that an additional sum of £2,500 ought to be awarded by way of aggravated damages to reflect the high-handed and unnecessarily aggressive treatment of the claimant on 1 March. That is broadly in line with the relative amounts awarded in the other cases.

5.3 Exemplary Damages

49. There was a pleaded claim for exemplary damages, maintained in the skeleton and in opening, in the sum of £10,000. However, in answer to questions from me, Mr Nabi realistically accepted that this was not a case in which exemplary damages were appropriate. I agree. Exemplary damages can only arise where there has been exceptionally oppressive or arbitrary conduct (see ***Thompson***). The only one of the cases to which I have previously referred in which exemplary damages were awarded was ***Muuse*** in which the Court of Appeal upheld an award of £27,500 by way of exemplary damages in a case where the claimant was detained for 128 days on the alleged grounds that he was a illegal immigrant from Somalia, despite the fact that the defendant had his Dutch identity card at all times. There, Thomas LJ described the defendant's conduct as "outrageous". Nobody could begin to suggest that the same epithet applies in this case. Accordingly, there will be no award of exemplary damages.

6. CONCLUSIONS

50. For the reasons set out in **Section 2** above, I have concluded that the Wiltshire age assessment was not Merton compliant.

51. For the reasons set out in **Section 3** above, I have concluded that the defendant erred in refusing asylum in November 2009 (because of the obvious deficiencies in the Wiltshire age assessment) and erred again in February/March 2010 in failing to deal with the fresh claim based on the respective ages of the claimant and his brother.

52. For he reasons set out in **Section 4** above, I have concluded that the detention of the claimant from 1-4 March 2010 was unlawful.

53. For the reasons set out in **Section 5** above, I have concluded that the claimant is entitled to £7,500 by way of ordinary damages and £2,500 by way of aggravated damages, making a total of £10,000.