

<b>Neutral Citation No: [2024] NIKB 82</b>	<b>Ref: COL12611</b>
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No: 22/074075/01</b>
	<b>Delivered: 14/10/2024</b>

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**KING'S BENCH DIVISION  
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY  
JR235 (No. 2)**

**Applicant**

**AND IN THE MATTER OF A DECISION BY THE SECRETARY OF STATE FOR  
THE HOME DEPARTMENT**

**Respondent**

**Mr Hugh Southey KC with Mr Robert McTernaghan (instructed by Phoenix Law  
Solicitors) for the Applicant**

**Mr Philip Henry KC (instructed by Crown Solicitor's Office) for the Respondent**

**COLTON J**

***Introduction***

[1] The applicant and her infant son arrived in the United Kingdom on 27 December 2019 and claimed asylum on arrival.

[2] On 26 August 2022, the applicant issued proceedings seeking leave to apply for judicial review in respect of the ongoing failure by the respondent to make a decision in respect of her asylum application. Leave was granted by the court on 8 September 2022.

[3] On 4 November 2022, the applicant was granted refugee status. In the decision dated 4 November 2022, the respondent determined that the name and date of birth allocated to the applicant was different from that claimed on her behalf.

[4] The judicial review proceedings were amended to include a challenge to the decision regarding the applicant's name and date of birth.

[5] On 6 June 2024, the court delivered its judgment in respect of the name and date of birth issue – [2024] NIKB 46. This judgment now deals with the delay issue. It should, therefore, be read in conjunction with the judgment delivered on 6 June 2024, for a full understanding of the background and circumstances of the application.

### *Factual background*

[7] The factual background is set out in detail in the judgment of June 2024 as follows:

“[80] The applicant is an Eritrean national. She came to the attention of the authorities in the United Kingdom on 27 December 2019 when she approached Mears Housing Association in Belfast, who had the contract in Northern Ireland for providing asylum seekers with accommodation and support. She claimed that she was a child and was treated provisionally as an unaccompanied minor. She presented with her own son. Her claimed date of birth was 17 December 2003.

[81] After arriving in the UK, the applicant and her son were placed by the Trust in a foster carer’s home with a local family.

[82] On 21 June 2020, the applicant’s solicitor served a Statement of Evidence Form (SEF) in relation to her application for asylum which included a typed statement. That statement set out her background and described her journey from Eritrea to the United Kingdom.

[83] She stated that when she was around one and half years old her mother left her home to work in Saudi Arabia. Her father was in the Eritrean army, and she only saw him once in her life when he was hospitalised. She was left in the care of her maternal grandmother until her death in and around 2015.

[84] Following her grandmother’s death she left Eritrea and travelled via Sudan to join her mother in Saudi Arabia.

[85] She explained that she originally crossed from Eritrea to Ethiopia and then on to Sudan before arriving in Libya. She was there for approximately 8-10 months during which time she was kidnapped and held captive.

She was repeatedly raped by her captors who were also smugglers. She left Libya when her mother gathered up enough money to discharge a ransom demand. She travelled from Libya to Italy by way of a harrowing journey by boat.

[86] When she arrived in France she was in a camp in Calais when she was again raped.

[87] After a while there she travelled to Germany. She did so via a lorry in the expectation that she would arrive in the UK but ended up in Germany.

[88] In Germany she gave her age as an adult. She explains she did this to be safe and in order to get to the UK. She was told that if she said she was a child she would be placed in a children's home and would not be able to get to the UK. She claims she attempted to get to the UK on a number of occasions but was caught by border guards and returned to Germany.

[89] She gave birth to her son whilst in Germany. Because of the birth of her son she had to remain in Germany longer than she had hoped. She describes flying to Ethiopia around 2018/2019 where she bathed in the holy waters at St George's Church, Addis Ababa. Shortly after her son's first birthday she again travelled to Calais in the hope that she would get a lorry to take her to the United Kingdom. She was told that it was less dangerous to fly on the false documents she had relied on to claim asylum in Germany. She therefore returned to Berlin and friends booked a flight for her from Berlin to Dublin.

[90] She left Germany by plane and went to Dublin on 24 December 2019. She travelled by bus from Dublin to Belfast. Based on advice by those who arranged her transport, she disposed of her German travel and residence documents before leaving for Northern Ireland.

[91] The applicant's foster family with whom she had been placed, raised concerns with the Trust that the applicant was not, in fact, a child. The foster parents accessed her phone. As a result of material discovered on that phone, they were convinced that she was not a child as claimed. The applicant complains that this was done surreptitiously and without her consent. Nonetheless,

that information raised sufficient concerns with the Trust that it referred the matter to the Office of Care and Protection in the Family Division of the High Court.

[92] On 24 June 2020, the solicitor for the Trust contacted the respondent seeking information about the applicant's circumstances. Specifically, the respondent was asked whether she would have any objection to being joined to the proceedings in the family court where the Home Office would be available to give evidence at a review hearing or whether a formal subpoena would be required to attend any court hearing.

[93] Regrettably, it does not appear that there was a direct response from the respondent to this correspondence, but in an affidavit sworn on her behalf by Nicole Grey, it is averred that the respondent sought to contact the Trust on numerous occasions thereafter, to no avail.

[94] In any event the respondent was not involved in the subsequent family proceedings, something upon which I will comment further.

[95] In the meantime the respondent, in accordance with standard practice when someone claimed asylum in the UK at that time, made a EURODAC search using the applicant's fingerprints.

[96] On 13 July 2020, the respondent received a response from the German authorities which indicated the fingerprints matched with the name Selam Y, (I have not given her full surname to protect her anonymity and will adopt this approach throughout the judgment) DOB: 21 August 1992 and enclosed a copy of the ID document the applicant provided to the authorities in Germany. German authorities accepted her as such, granting her asylum on 19 September 2017. She was given a residence permit and a travel permit as an adult in accordance with the information she provided.

[97] This is the documentation which the applicant obviously used to travel from Berlin to Dublin which she says was discarded after her arrival in the Republic of Ireland before travelling to the United Kingdom.

[98] Returning to the Trust's concerns, these were set out in a lengthy affidavit from the social worker involved in the applicant's care at that time. The affidavit is dated 19 June 2020.

[99] The respondent points out that this affidavit was not disclosed as part of the Order 53 application in this case.

[100] Although lengthy, the substance of the affidavit bears setting out here.

[101] It states as follows:

- "2. I am the social worker assigned to the Y family for the young person, (JR235) Y. My colleague, Leah Campbell, is the social worker for (NY) the son of (JR235). The Trust application is for a care order in respect of (JR235) Y who has given her date of birth as 17 December 2003.
3. As a result of information provided to the Trust, there are concerns regarding the history that (JR235) has given regarding her background circumstances and events leading to the birth of her son and her coming to Northern Ireland. In addition, there are concerns raised which would lead the Trust to question the date of birth provided by (JR235) which would mean that she is a 16-year-old child.
4. This affidavit addresses specifically the concerns in respect of the Trust's ability to satisfy the court that (JR235) is a child and the evidence currently available to the Trust which would indicate that she is, in fact, an adult.
5. When (JR235) came to Northern Ireland on 27 December 2020, she initially approached Mears Housing Association in Belfast. (JR235) advised that she was 16 years old and was unaccompanied (see further details below). (JR235) stated that

she did not have any identification with her (although on her phone are photographs of her residence permit and travel permit from Germany).

6. (JR235) and (her son) were transported to Gateway by housing association staff. It is of significance, that both (JR235) and (her son) were reported to be clean and well-presented. This was in the context of a history of travelling on lorries to get to Ireland and having no luggage or clothing etc with them at this time. The only belongings they had were the clothes they wore and a backpack containing baby foods. (JR235) had her phone.
7. (JR235) indicated that she wanted to seek asylum in the United Kingdom. In accordance with protocol, I understand that the Gateway team contacted the Belfast Asylum Office on 30 December 2019 to advise that (JR235) is applying for asylum in the United Kingdom and to have this process commenced.
8. On 31 December, (JR235) and (her son) were taken for a LAC medical and (JR235) reported to the GP that she was suffering from a number of matters to include memory loss.
9. On 14 January 2020, during a home visit, I discussed with (JR235) (in the presence of a Big Word telephone interpreter) her account of her background and journey to Belfast as self-reported to Gateway Social Services. This was then further discussed with (JR235) on 21 January 2020 in the presence of a face-to-face interpreter. At this time, (JR235) made some amendments, ie corrected the spelling of her name from '(JR235) J' to '(JR235) Y' and a minor detail about her father. This social history and reported journey to Belfast to include a traumatic account of

her life over the past four years is detailed in my initial social work report.

10. The PSNI were also contacted in relation to (JR235's) assertion that she was sexually abused in Libya and was raped in Calais (she would have been aged 13 at the time). (JR235) said that her son [] was born as a result of that rape. (JR235) refused to speak with the police regarding the allegation of sexual abuse in Libya and the rape in France advising that that was too upsetting for her. The case was therefore closed. There are concerns as to whether (JR235) and her son were being 'trafficked' and this case is currently with the relevant division of PSNI who deal with such matters.
11. The Trust would highlight the following information to support the assertion that (JR235) may not be a child. Throughout, I refer to the young person as (JR235) - the name given to the Trust. However, her name may be (JR235) as referred to in the formal official documentation issued in Germany.
12. Exhibits 1 and 2 are photographs taken from (JR235's) public Facebook account and which are time stamped as being taken in 2014. At that date (JR235) would have been 10 years old. The photographs do not appear to be those of a 10-year-old child but of someone much older.
13. Exhibit 3 is a photograph taken from (JR235's) public Facebook account where her friend has posted a 'happy birthday' message to her profile page in August 2019. (JR235) asserts that she was born in the month of December.
14. Exhibit 4 is a photograph of a German residence permit and also of a travel permit issued in Germany. Both of these

documents have a photograph of (JR235) on it with the name '(JR235) Y' and gives her date of birth as 21 August 1992. This indicates that (JR235) is exactly 27 years old and will be 28 years old in August this year.

15. The German Resident Permit was issued on 5 October 2017 in Germany and will expire on 4 October 2020.
16. In respect of these documents it would appear that (JR235) has claimed successfully for asylum in Germany and has been granted a residence permit there. Although the permit issued on 5 October 2017, there is the possibility that (JR235) was in the country for some time prior to this. The permit and travel documents were issued to Selam as an adult. These are official documents and information provided to obtain these would need to be a truthful account of the person's identity and date of birth. The date of birth now provided by (JR235) would mean that she was 14 years old at the time she applied for that permit and travel document. It is questionable that the authorities would have granted asylum to a 25-year-old adult if they had any suspicion that she was, in fact, a child of fourteen.
17. Exhibit 5 is a photograph taken from (JR235's) phone which is dated 10 March 2019 and shows her in a graduation hat. Exhibit 6 appears to be a photograph taken in an educational setting. Despite requests for information as to what educational establishments, (JR235) attended in Germany or elsewhere, there has been no information provided in respect of this.
18. These photographs would indicate that (JR235) was accessing some form of



schooling whilst residing in Germany and this could be High School/Third level education.

19. Exhibits 7 and 8 are photographs of (JR235) blowing out candles on a cake. It is of significance that the numbers 2 and 4 are placed on top of the cake and, therefore, indicating that this is a 24<sup>th</sup> birthday. (JR235) is wearing a headband with happy birthday on it. The Trust's view is that this is a photograph of a 24<sup>th</sup> birthday celebration in which (JR235) is clearly celebrating within her own environment where there are no pressures to give false information/tell lies. I raise this in the context that (JR235) has asserted to her Independent Guardian that she was told by others to give a false name and date of birth to the German authorities.

#### **Birth of (the applicant's son)**

20. (JR235) informed me that (her son) was born in Germany, but she could not remember much about his birth. In discussing (JR235's) time spent in Germany she would become upset, and the discussion would have to end with very little information being provided.
21. Exhibit 9 shows a photograph of (JR235) in a hospital bed with baby [] in her arms. Efforts to obtain details from (JR235) of where the birth occurred have not been successful. From the date of birth given by (JR235), she would have been 14 in December 2017 and then gave birth to (her son) the following February 2018. As a child herself, it is expected that she would have given her true date of birth to the medical staff involved who would have immediately alerted the relevant authorities. If a false date of birth was given it would have been expected that

the medical staff would have had concerns that she was a young child herself and would have had social services' involvement.

22. Exhibits 10, 11 and 12 are photographs which were taken at the christening of (her son).
23. Exhibit 13 is a photograph of a poster displayed on the day of (her son's) christening. He is named there as []. The date of the christening appears to be from the poster as 30 March 2018.
24. Exhibit 14 was a photograph of (JR235) in which she is wearing rings on the wedding finger of her left hand.
25. Exhibit 15 was a photograph of (JR235) and (her son) with the same man who appears in the christening photographs. They are dressed up as a family in matching outfits for a special occasion.
26. Exhibits 16 and 17 show the same male person with (her son) and then with (JR235) and (her son).
27. It is my belief that the male person is Robel Gebremedhin, and he is (the applicant's son's) father. The name Robel was given to the child when he was christened. I observed that Mr Gebremedhin's number was saved on (JR235's) phone. I observed that he is in many photographs on (JR235's) phone dating back to when (her son) was a baby, in his christening photographs, his first birthday party and up until the night before (JR235) leaves for Ireland. (JR235) denies that he is the child's father.

## **Family**

28. Exhibit 18 is a photograph of (JR235) and her sister with other family members. (JR235) claims to have only one sister and it is not clear who the others are in the photograph.
29. Exhibit 19 contains two photographs – the before photograph appears to be taken from the photograph at Exhibit 18 and the ‘after’ photograph shows (JR235) and the male person now. It is not known who this male is, but the significance of this photograph is that it demonstrates that they are known to each other for a long period of time. They may be related to each other. The male is the adult male who travelled with (JR235) to Dublin in December 2019 and is clearly known to her (see Exhibit 28).
30. Exhibits 20 and 21 are photographs of (JR235) and her mother. (JR235) told me that she had not seen her mother since she was one and a half years’ old.
31. Exhibit 22 was a photograph of (JR235’s) sister and her mother which was taken with (JR235’s) phone.
32. Exhibits 23 and 24 show (JR235) with whom we believe to be her grandmother (and sister in Exhibit 14). (JR235) informed me that her grandmother died in 2015. (JR235) would have been 11 years old at the time. (JR235) presents as much older than an 11-year-old child in both photographs.
33. Exhibit 25 shows a photograph of (JR235) and her sister, which I believe was taken in Ethiopia during a visit (JR235) made there in December 2018. Exhibit 26 is a photograph of (JR235) with friends in Edna Mall which was also taken in

December 2018. The Edna Mall is in Addis Ababa in Ethiopia. (JR235) never informed me of travelling to Ethiopia to visit her sister and she would have required the requisite travel permit to enable her to do so.

**(JR235's) entry into Dublin**

34. (JR235) informed me that she travelled to Calais before she was successful in getting on a lorry that travelled by boat to Dublin. (JR235) travelled with others in the lorry and when she arrived in Dublin she was told to travel to Belfast. (JR235) travelled by bus to Belfast.
35. Exhibit 27 is confirmation of return flights from Berlin to Dublin and Dublin to Berlin. This is for (JR235) Y and one infant. In addition to one small bag, a 20kg bag was also booked on going out and on the return journey. (JR235) and (her son) were due to travel from Berlin to Dublin on 24 December 2019 at 18:05 and the return flight from Dublin to Berlin is booked for Thursday 2 January 2019 at 17:40.
36. Exhibit 28 shows (JR235) and an adult male together on the Ryanair flight to Dublin in December 2019. This is the same male referred to above at para 29.
37. Exhibit 29 shows (JR235) and two other males and (her son) taken on 24 December before the flight to Dublin.
38. Exhibit 31 is a photograph of a booking dated 23 December 2019 for Marilyn Mansion Bed and Breakfast in Dublin. The arrival date is 24 December 2019 for two nights.
39. Exhibit 32 is a photograph taken on 25 December 2019 of (JR235) and a male

person (same man as on the flight) in the bed and breakfast in Dublin.

40. My colleague, Ms Campbell, contacted the Garda in Dublin to enquire whether they would be willing to call out to the bed and breakfast establishment to obtain information on behalf of the Trust. The name of the bed and breakfast together with (JR235's) name was provided. There was a request from the Garda for this to be put in writing to them. Legal advice invited us to wait until consent was obtained to this information being sought. Nothing was sent in writing, but we were informed that the officer from the Garda contacted the out-of-hours social work team at night (16 June) and the following information was noted and passed on to me:

'Garda Peter Byrne from Terenure Garda Station contacted RESWS wanting to pass on information, he will try ringing you again in the morning, his number is [] or email [].

He wanted to let you know a person called (JR235) Y stayed at hostel called Marilyn Mansion 24/26 December, one other adult was with the person and a baby. They claimed to be German nationals, their telephone number was [] and used an email address [] to book the hostel. He is not sure if this is the same person you are enquiring about.'

41. I am informed that a request was made to enable us to forward a photograph of (JR235) to the Garda to show to the personnel at the B&B to confirm that this was the guest at their establishment, but consent was not given for this to be done.

I understand that it was felt that too much time had passed, and this would not be reliable identification.

42. My colleague, Leah Campbell, has sent further written communication to the Garda for clarification of some issues. To date there has been no response. Should a response be forthcoming then the original request and that response will be lodged with the court.
43. In addition, we have contacted the appropriate agencies in Germany. It would appear from the limited information to which I have access, that the family were not known to the social services there. They were known to the Home Office there as (JR235) sought asylum under a residence permit which was granted. I am waiting for further information and as and when that becomes available, I will provide copies of same to the court and the other parties.'

[102] The affidavit is signed by Ms Claire Doherty, the social worker allocated to the applicant.

[103] On 17 October 2020, the respondent made a request to the German authorities pursuant to article 34 of the Dublin III Regulations.

[104] The respondent received a response from the German authorities on 11 November 2020.

[105] The response indicated the applicant using the name Selam Y and providing the date of birth of 21 August 1993 sought international protection on 13 April 2017. She was granted asylum on 24 September 2017. She was granted a residence permit and a travel permit under this name and date of birth.

[106] The request also confirmed that the child [] was born on 19 February 2018 in Germany and was granted family refugee status on 30 August 2019 pursuant to an application made on 21 August 2019.

[107] On the basis of this information, the respondent made a re-admission request which was accepted by Germany on the basis of a return to a safe third country.

[108] In the event this was not processed due to the end of the transition period arising from the UK's withdrawal from the European Union and the ongoing age dispute which is the subject matter of this application.

[109] Returning to the Trust's involvement in the High Court, according to the affidavit from Ms Doherty, age assessment was undertaken by two social workers on behalf of the Trust (the respondent was not aware of this until much later).

[110] This age assessment is a fundamental document in the context of this dispute. It was completed on 18 September 2020.

[111] It was undertaken by two social workers, one who is a senior practitioner in the Northern Health and Care Trust and another who is a social worker employed by the Gateway Belfast Health and Care Trust.

[112] It was based on two interviews with the applicant on 29 July 2020 and 19 August 2020.

[113] An independent guardian from Barnardo's was present to assist the applicant and an interpreter was present on videolink.

[114] In the course of the interviews the reason for the assessment was explained to JR235 in that significant doubt was raised in relation to her age after additional information and photos were obtained from her phone.

[115] The age assessment indicates that assessing social workers referred to the guidelines laid out within the *Merton* judgment [2003] and guidance to assist social workers undertaking age assessments for unaccompanied asylum-seeking children in Northern Ireland. The guidance is contained in "Working arrangements for the welfare and safeguarding of unaccompanied and separated children and young people." Guidance identifies the *Merton* case. It also provides that:

‘Social workers and others contributing to the age assessment process should comply with the ADCS (Age Assessment Guidance); guidance to assist social workers and their managers in undertaking age assessment in England.’ [October 2015]

[116] The summary indicates that the social workers explored JR235’s social history, family composition, education, development considerations, independent/self-care skills, health and information from documentation and other sources.

[117] The available sources of information which were taken into consideration were as follows:

- Initial social work statement for the Family Proceedings Court dated 15.01.20.
- Statement completed by Phoenix Law with JR235 which was dated 15.06.20.
- Updated social work statement prepared for court dated 23.03.20 completed by Leah Campbell (social worker) and Jemma Armstrong (Senior Social worker).
- Updated social work statement prepared for court dated 16.03.20 completed by Claire Doherty (social worker) and Niall Rodgers (senior social worker).
- Affidavit completed by Claire Doherty (social worker) dated 16.06.20.
- Photographs obtained from JR235’s mobile phone.
- Discussion with foster carer on 27.08.20 who is currently supporting JR235 and her son – her views are contained throughout the report.

[118] The decision is recorded as follows:

‘Based on the information available to the assessing social workers and in accordance with the guidelines it was decided to give



(JR235) the benefit of the doubt and, therefore, accept the age that she provided, which is 16 years old.'

[119] The assessment provides a brief summary and analysis of reasons in the following terms:

- JR235 provided an account for her journey from Eritrea to Northern Ireland. She was not able to provide and (sic) reliable documentary evidence which supports her date of birth.
- JR235's initial account detailed that she arrived in Dublin via ferry, however, this was later discovered to be false when photographs became available, which were located on her mobile phone and evidenced she had, indeed, travelled to Dublin via a Ryanair flight from Berlin.
- Questions arose in respect of photographs obtained from JR235's phone. She provided an account for these in previous reports which were available to the assessing social workers. While some of the information may have raised queries over both her age and credibility there was no evidence to prove that JR235 is not the age she stated.
- Assessing social workers were mindful of the account provided by JR235 which indicated she had experienced significant trauma and multiple adverse childhood experiences. Despite the difficulties experienced, JR235 engaged with the age assessment process.
- Assessing social workers acknowledged that there are concerns about JR235's account, with inconsistencies and lack of detail provided about significant periods in her life. However, it was noted (sic) this may be due to feelings of insecurity, mistrust and other reasons which are not connected to her age.
- Assessing social workers agreed that while age cannot be determined on appearance alone, that JR235's physical appearance and/or demeanour did not strongly suggest that she was significantly over the age of 18.

[120] Presumably, based on this age assessment, on 10 December 2020 the Office of Care of Protection in the Family Division of the High Court issued a care order under Article 50 of the Children (Northern Ireland) Order 1995. As was the case with the age assessment, the respondent was unaware of this order until after it was made.

[121] The age assessment was first sent to the respondent by the applicant's social worker on 16 December 2020.

[122] On 8 February 2021, the respondent wrote to the Trust's solicitor querying if any decision had been made by the High Court in respect of the applicant's age.

[123] On the same date the Trust's solicitor replied stating:

'The court did not make any formal findings in relation to this girl's age, they simply took on board the age assessment that was carried out and deemed her to be a child and have dealt with her on the basis that she is subject to the Children's (Northern Ireland) Order 1995. The court order was made by the Honourable Mrs Justice Keegan on Thursday 10 December 2020.'

[124] The order confirmed that the child should remain in the care of the Trust. The applicant's mother appears to have been a respondent. The order records that the time occupied was 10 minutes.

[125] In or around the time that the Trust age assessment was disclosed to the respondent, the respondent draws the court's attention to the fact that the applicant's solicitor was informed by the social worker that "I plan on sharing the attached information sharing proforma which was completed by the age assessors."

[126] On 22 December 2020, the applicant's solicitor made a number of comments on the age assessment. She was concerned that references to inconsistencies and "false" information could give rise to a negative

credibility assessment being made and could be damaging to the applicant's claim.

[127] As it transpired, the assessment had, in fact, been sent before these comments were received.

[128] Nonetheless, the respondent says that the Trust were at all times liaising with the applicant's solicitor, but not with it, despite its obvious interest in the applicant's date of birth.

[129] Thereafter, there were some discussions between representatives of the respondent and representatives of the Trust. The respondent raised concerns about not being kept informed, information not being shared, delay in processing cases and the approach to age assessments generally.

[130] On 3 June 2021, the applicant's asylum interview was conducted remotely because of restrictions imposed arising from the Covid-19 pandemic.

[131] The applicant draws the court's attention to the fact that the box in relation to whether age is in dispute was not ticked on this occasion.

[132] On 4 November 2021, the applicant's solicitor emailed the respondent asking when the decision would be made in relation to the application.

[133] On 5 November 2021, the respondent replied to say that the email had been passed on to the performance team. The reply indicated that the decision would be "with you" the following week.

[134] On 15 November 2021, the decision maker writes to say that there was now a delay because of an issue which has arisen in relation to the applicant's age which meant the matter had to be referred to a more senior official.

[135] On the same date the applicant's solicitor emailed the respondent referring to the High Court's determination and the care order made on 10 December 2020.

[136] On 20 December 2021, the respondent sent an email to the applicant's solicitor setting out their concerns about the age assessment, referring to the information from Germany and to the respondent's age assessment guidance.

[137] The correspondent notes the order from the Office of Care and Protection but complains that it had not been involved in the proceedings and sought further information about the applicant's partner Robel, and information about him and the applicant's family. It is confirmed that based on the available evidence it was disputing the applicant's claimed age.

[138] On the same date the applicant's solicitor responds by asking whether a decision has been made to dispute age. None of the information requested was provided.

[139] Again, on the same date, the respondent responds to say that it was providing an opportunity for the applicant to respond to the queries raised before it made its decision on asylum.

[140] On 7 January 2022, the applicant's solicitor writes to the respondent indicating that there was nothing wrong with the age assessment carried out by the Trust and that a care order had been made by the court on the basis of a "*Merton Compliant*" age assessment.

[141] The correspondence complained that it was too late for the respondent to rely on the information obtained under article 34 of the Dublin III Regulations and that that information was not available at the time of the original assessment.

[142] It is not clear that this is correct. As is apparent from the original affidavit sworn by Ms Doherty the Trust certainly were aware of some of the material provided by the German authorities, including the German residence and travel permits. They may not have had the confirmation of the date upon which the request for asylum was made and confirmation that the applicant was granted asylum there. This could be assumed on the basis of the travel documentation which was available to the applicant.

[143] In its reply on 14 January 2022, the respondent explained that the Trust had been in contact with the Home Office asking for information. The Home Office expressed concern that the authors of the age assessment would not have been given the information from Germany. The respondent pointed to evidence that contradicted the applicant's date of birth claim and invited a response.

[144] On 3 February 2022, the applicant's solicitor responded to say the High Court order is the "final decision" and is determinative of age. It was indicated that any decision finding a different age would be judicially reviewed.

[145] On 12 May 2022, the applicant's solicitor sent a pre-action protocol letter.

[146] On 27 May 2022, the respondent replied indicating that the age assessment upon which the court order was based was not "*Merton Compliant*."

[147] The respondent did not accept the age assessment of 18 December 2020.

[148] On 8 November 2022, the applicant's asylum application was granted, but based on the name and date of birth provided to the German authorities. Thus, the respondent says that the applicant's name is Selam Y, and her date of birth is 21 August 1992. It is this decision which is challenged by the applicant in these proceedings."

[8] The court went on to consider the law in relation to age disputes. It decided, as per the judgment, that the decision of the respondent in relation to the name and age of the applicant was lawful and judicial review was refused.

#### *Delay – the applicant's case*

[9] The applicant challenges the delay between her claiming asylum in December 2019 and the granting of asylum on 4 November 2022.

[10] The applicant claims that her article 8 rights are engaged by the delay in determining her asylum application. It is argued that there has been an unlawful interference with those rights as a result of the delay and, as a consequence, she is entitled to a declaration to that effect and damages.

[11] The engagement and interference with article 8 rights in the context of delay in making asylum decisions was dealt with by this court in a written judgment in the case of *JR247* [2024] NIKB 72 on 13 September 2024.

[12] That judgment should be read in full for a proper understanding of this decision.

[13] In *JR247*, the court analysed the applicable legal framework in relation to delay in this context. The conclusion in that case and the related guidance was set out in paras [84]-[100] of that judgment in the following terms:

“[84] From a review of the authorities, I conclude as per *EB* and *BAC* that delay in determining an asylum claim may result in a breach of an asylum seeker’s article 8 rights. The obligation on the State is to provide a statutory framework under which asylum claims are assessed and which provide an enforceable judicial mechanism to protect any individual rights under that system. Such obligations include a duty to examine claims in a reasonable time.

[85] What amounts to a reasonable time is fact specific. It is not for the courts to be prescriptive in terms of any time limits in this context. There is no specified period within which, or at which, an immigration decision must be made.

[86] What is important is that the system provides consistent and fair outcomes.

[87] Turning to the facts of this case, the applicant focuses on the insecurity inherent in her situation and, in particular, the interference with her right to establish and develop relationships with other human beings and the outside world. In truth, this is a general assertion, which could be made in respect of any asylum seeker awaiting a decision. The applicant points to no relevant or significant relationships, unlike *BAC*, or the applicant in *EB*. The only specific issue she raises is that of her mental health.

[88] True it is that mental stability has been held to fall within the scope of article 8. In *Bensaid v United Kingdom* [2001] 33 EHRR 10, the applicant was an Algerian national who was a schizophrenic suffering from a

psychotic illness. He arrived in the UK as a visitor in 1989 and married a UK citizen in 1993. Since 1994 and 1995 he has been receiving treatment for his medical condition. On the basis that the marriage had been one of convenience, however, the Home Secretary decided to remove him. Relying on articles 3 and 8 of the Convention the applicant claimed that his proposed expulsion to Algeria placed him at risk of inhuman and degrading treatment and would violate his right to respect for his private life. The court in its assessment acknowledged at para [47] that:

‘Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life.’

[89] However, on the facts of that case it held that the implementation of the decision to remove the applicant did not violate article 8 of the Convention.

[90] Turning to the facts of this case on the issue of mental health I note that the first time the issue of the applicant’s mental health was raised on her behalf was in a letter of 8 September 2022. All that was said at that time was “this delay is unreasonable and impacting her mental health.”

[91] In her initial screening interview, the applicant was asked about whether she had any medical conditions. She referred to the fact that she had been bitten by a dog and which had caused a significant injury to her leg. In relation to potential mental health issues, she stated:

‘I don’t sleep very well. I will be awake all through the night. I might have depression. I don’t know. I’m always worried.’

[92] True it is that after the substantive interview on 20 October 2020, a note made by the interviewer said that

the applicant was “displaying signs of trauma, no professional assessment made, I would point out there are symptoms there, she did answer she has no mental health issues, but I would imagine there is potential PTSD, those displays of trauma were apparent throughout the interview, due to her getting extremely upset and also talking about flashbacks.”

[93] In relation to any other evidence before the court on this issue, the applicant simply avers that:

- ‘28. Since 13 October 2021, there has been a heightened urgency of my asylum claim and this delay has a great effect on my own mental health and well-being.
- 29. The delay has only exacerbated these problems.
- 30. I highlighted these problems to the proposed respondent in my SAI (see Q12-Q14).
- 31. I have discussed these problems with my GP, and I feel my life is currently in a state of limbo. I have been prescribed sleeping tablets from my GP which is under review.’

[94] Having considered this evidence, it is difficult to see that the applicant has established a sufficient evidential basis for saying that there has been infringement with her article 8 rights.

[95] The respondent recognised her potential vulnerability and mental health issues and immediately referred her to the NRM procedure. Whilst she has been awaiting a decision, she has been provided with accommodation and an ARC card. The respondent has been in regular contact with her solicitor who has been assiduous in looking after the applicant’s needs. There is no suggestion that she has been denied any access to health services, indeed, the opposite appears to be the case. The sort of substantial prejudice envisaged in *Anufrijeva* is plainly absent.



[96] The circumstances of this case are markedly different from the situation in *BAC*. There the uncertainty experienced by the applicant “far surpassed that of an applicant” awaiting the completion within a reasonable time of his or her asylum procedure. In *BAC*, despite a positive indication, the applicant was still awaiting a decision more than 12 years after his claim. During that time, he pointed to very specific prejudice he suffered as a result of the restrictions on his status. Importantly, at the time of the court’s decision he was still awaiting a decision.

[97] In this case, notwithstanding any delay, the applicant has received a positive outcome. This alone weighs strongly against any finding of a breach of article 8.

[98] It may well be that the decision in this case should have been taken earlier. Plainly the evidence establishes that there is a significant backlog in the determination of asylum applications. This appears to be attributable to a number of factors including the volume of applications and available resources to deal with them. The applicant has been a victim of that backlog. The court has received an account of how her claim was dealt with from which it is clear that there were delays in deciding her application. Quicker, more effective decisions would be desirable. Quicker decision-making would undoubtedly improve the overall situation regarding claims for asylum. It is not, however, for this court to set out timescales or direct that additional resources be provided to ensure quicker decisions. The State has provided a statutory framework under which asylum claims are assessed and which provide an enforceable judicial mechanism to protect any individual rights under that system. That system produces fair and consistent outcomes which are subject to consideration and review by Tribunals and ultimately the High Court.

[99] In conclusion, I am not satisfied that the applicant has established a breach of her article 8 rights arising from any delay in determining her asylum application. The application for judicial review is therefore dismissed.

### *Guidance*

[100] In terms of overall guidance in relation to claims alleging a breach of article 8 rights in the context of delays in making decisions in asylum claims, it seems to the court that the following principles should be applied:

- (i) In certain circumstances delays in making decisions may give rise to a breach of an asylum seeker's article 8 rights.
- (ii) The court cannot be prescriptive about what constitutes an unlawful period of delay.
- (iii) An important factor will be whether an actual decision has been made. If a decision has been made, then it would only be in exceptional circumstances that a breach of article 8 will be established. If a decision is pending then the court will have to make an individual assessment of the period of delay, the reasons for any delay and whether a decision is imminent. Any delay must be so excessive as to be regarded as manifestly unreasonable. In a case such as *BAC* it was easy for the court to determine that the relevant delay was inexcusable.
- (iv) In order to establish a breach of article 8 in any case, the applicant will need to point to specific evidence-based factors which demonstrate an interference with article 8 rights, above and beyond what one would expect of any person awaiting such an important decision. Any impact on private or family life must be serious. This could include factors pointing to serious deprivation such as homelessness, lack of medical attention required in respect of significant health issues, impact on the welfare of children and significant interference with family or personal relationships."

### *Application of the legal principles*

[14] It will be seen that in this case a decision in favour of the applicant has been made. That being so, in light of the court's analysis, the applicant will need to demonstrate exceptional circumstances to establish a breach of article 8.

[15] Mr Southey, on behalf of the applicant, argues:

- (a) The delay caused substantial harm to the applicant's mental stability as demonstrated by, among other matters, the evidence submitted by the social worker to the respondent on 4 October 2021.
- (b) The delay left the applicant and her infant son without any stable status for a considerable period.
- (c) The delay left the applicant and her infant son in a precarious situation that was likely to have impacted on her and her son's relationship.
- (d) These matters impacted on the welfare of the applicant as a child and young adult.
- (e) Fundamentally, it was a breach of the duty to determine asylum claims promptly.

[16] The email of 4 October 2021, referred to at sub-para (a) above was in the following terms:

"Carol,

Please see below which shows that the proforma for the age assessment outcome was shared with the Home Office in December 2020.

Can you advise when an outcome of the client's asylum claim is likely to be received, so that emotional support and reassurance can be offered given the high levels of distress evident."

[17] Her affidavit in support of the Order 53 statement sets out the background to her arrival in the United Kingdom. Understandably, given the focus on the question of the applicant's age, her affidavit deals extensively with this issue.

[18] There is nothing in the affidavit evidence which points to any particular hardship or distress occasioned to her as a result of the delay in determining her claim.

[19] She swore a second affidavit on 3 February 2023, which, again, focused on the question of her identity and age.

[20] Put simply, there is nothing in the evidence before the court that would meet the threshold required in law to establish a breach of the applicant's article 8 rights.

There is nothing to suggest that she suffered anything above and beyond the stress associated with awaiting such an important decision in relation to her status.

[21] As noted, the applicant was treated as a minor (wrongly in the court's view) whilst she was awaiting her decision. She and her infant son were properly provided with a home, education, and all various supports required while the decision was pending.

[22] As Mr Henry points out, this was in the context of having left a safe third country which had already granted her asylum and provided housing, medical care and all of the other rights to public services that a German national would have.

[23] There is nothing in this case which comes near the factual matrix in the case of *Bensaid v United Kingdom* [2001] 33 EHRR 10 (where the applicant was unsuccessful) or *BAC v Greece*, App No: 11981-15 [2018] 67 EHRR 27 analysed in the decision in JR247.

[24] Therefore, the application for judicial review in respect of delay is dismissed.