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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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IN THE MATTER OF AN APPEAL AGAINST THE DISMISSAL OF AN APPLICATION FOR JUDICIAL REVIEW IN THE CASE OF JR256

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Mr Hugh Southey KC with Mr Richard McLean (instructed by Phoenix Law Solicitors) for the Appellant
Mr Philip Henry KC with Mr Joseph Kennedy (instructed by Crown Solicitor's Office) for the Respondent Secretary of State for the Home Department

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Before: Treacy LJ, Horner, LJ and Huddleston J

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TREACY LJ (*delivering the judgment of the court*)

Introduction

[1] The appellant challenges the decision of Colton J to dismiss the application for judicial review. The judicial review was heard together with two other cases as they raised common issues regarding age assessments for applicants for asylum who claimed they were minors. In the case of JR256, the court provided detailed reasons in a reserved written judgment as to why the court, 'based on the evidence before it' concluded, as a matter of fact, that JR256 was an adult. It is this finding which is sought to be impugned in this appeal.

[2] The underlying evidence supporting the judge's conclusion was contained principally in a 'Merton' compliant age assessment carried out by the local authority in Manchester which found him to be an adult, seven years older than claimed. JR256 then moved to Belfast from Manchester where he had been residing. He came to the attention of social services in Northern Ireland on 7 July 2021 and was placed in foster care. The foster carer queried if he was the age he said he was "due to his presentation – he was noted to present as confident and mature and not like other accompanied young people he had cared for." An age assessment was carried out by the Belfast Health and Social Care Trust ("the Trust") dated 2 December 2021. The Trust report concluded the appellant's date of birth was 17 February 2004. The Trust noted it was giving JR256 "the benefit of the doubt" in accepting his age. The respondent disputed the age assessment on the basis that the Manchester City

Council had made a different conclusion following the Merton Compliant Age Assessment criteria, and that the Trust had not taken this into account when making its decision.

[3] The Manchester age assessment ("AA") report is lengthy and detailed and explains that:

> "The age assessment was necessary due to concerns raised by different professionals including the referring police officer in Scotland, social workers in Glasgow Children's Services and staff at Hazelcourt, (JR256's) accommodation provider in Manchester, *all of whom,* raised concerns that his physical presentation suggested he was *significantly older* than his reported age. The decision was *also* informed by social work observation and information gathered through social work assessment."

[4] Colton J considers in some detail the evidential content and weight to be attributed to the Manchester report (see paras [274]-[327] of judgment). The judge is highly critical of the Trust's approach and sets out in detail the reasons for his criticism which includes the following:

- The fact that the Trust's AA did not engage with the findings of the Manchester *Merton* compliant age assessment. The judge said, "There is no consideration of that assessment apparent in the Trust's assessment." [312]

- The Trust appears, "… to have rejected the views, opinions and observations of the various social workers and accommodation providers who had an input into the age assessment [and] those concerns were shared by those who provided accommodation to the applicant in this jurisdiction." [314]

- No contact between the Trust and those who conducted the Manchester AA and the Trust appears, "to have accepted that the process was not explained to the applicant."

- The Trust records that JR256 informed them that the need for an assessment was not explained to him during the Manchester AA. As the judge observes "the records of the (Manchester) interviews ***completely undermines*** this statement." (see [312])

- Concerns about the 'accuracy' of the applicant's history e.g. a concern that he would be joining the Chad army when he was 12/13 which 'flies in the face of' independent information cited by the judge which 'confirm(s) that 20 is the legal minimum age for compulsory military service' [315]; giving a different date of birth to the French authorities namely 10 May 2004 as opposed to his

claimed date of birth here of 17 February 2004 [292]-[293]; Ms Hall's indication that if JR256 is correct that the French police issued him with a deportation notice, this would suggest, as far as the French authorities were concerned, that he was over 18. [294]

- 'Paramount' amongst the criticisms of the Trust's approach was their apparent "failure to have regard to the Manchester City Council AA and the multiple issues of concern raised by them and other agencies." [301]

- The Trust "never raised any of the information from the Manchester AA with the applicant during their assessments simply accepting that the applicant had not engaged with the Manchester assessors on the mistaken basis that the nature and reason for the assessment were not properly explained to him." [302]

Age Assessment

The applicable law

[5] The trial judge noted that there was no dispute about the applicable law and then sets out the governing principles at paras [30]-[42] of his judgment. Unsurprisingly, this statement of the applicable principles was not challenged on this appeal. We note that at para [317] the judge noted pithily:

> "[317] In accordance with the authorities (discussed at paras [30]-[42] above) in light of the dispute between the parties it is for the court to determine the applicant's age. There is no direct or reliable evidence as to when the applicant was born. In such circumstances, in accordance with the Court of Appeal's judgment in *R(WA (Palestinian Territories)) v Home Secretary* [2021] 1 WLR at para [41]:
>
> > 'Once it is recognised that a precise date of birth cannot be established by evidence, the best that can be done is to assess age.'"

[6] We think it will be of assistance to the reader if we set out his helpful distillation of the agreed principles and his analysis of the relevant authorities at paras [30]-[42]. We have, where appropriate, highlighted some passages.

> "[30] There is no dispute on the applicable law. In the cases of *R(A) v Croydon London Borough Council (Secretary of State for the Home Department) & Anor* and *R(N) v Lambeth London Borough Council (Secretary of State for the Home Department) & Anor* [2009] UKSC 8 the Supreme Court considered the issue of age assessment in the

context of the local authorities' statutory duty to provide accommodation to "any child in need." The claimants had both sought asylum and asserted that they were aged under 18 years. Their ages were assessed as over 18 by immigration officers and by social workers from the respective local authorities. The local authorities accordingly refused to provide accommodation for the claimants under section 20(1) of the Children Act 1989 ("the 1989 Act") since they only had responsibility for accommodating "any child in need within their area who appears to them to require accommodation."

[31] Both claimants sought judicial review of the decisions as to their ages and the cases were heard together.

[32] The Supreme Court held that in enacting section 20(1) of the 1989 Act Parliament had intended that the question whether a child was "in need" was for the local authority to determine. *The question whether a person was or was not a child, was dependent entirely on the objective fact of a person's age and would be subject to ultimate determination by the courts.* Since the 1989 Act was an Act for and about children, the question whether a person was a child was a fact precedent to the exercise of a local authority's powers under the Act and on that ground also was a question for the court. The court held that it followed that although a local authority had to make its own determination in the first place, such a decision, if remaining a matter of dispute, was for the court to decide by judicial review.

[33] *Where issues remained about a disputed age it is for the court to determine that question "on the evidence available."*

[34] Section 55 of the Borders, Citizenship and Immigration Act 2009 provides that relevant statutory immigration functions must be discharged:

> '… [having] regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.'

[35] The engagement of section 55 depends on whether someone is a child. In light of the decision in *Croydon* it is

for the court to decide whether the applicant is a child so that section 55 applies.

[36] Further, *Article 8 of the European Convention on Human Rights entitles a person to have their date of birth correctly recorded in official documentation – R(WA) (Palestinian Territories) v Secretary of State for the Home Department* [2021] 1 WLR 2117 at [77]. *There is a clear public interest in accurate and evidence based records of dates of birth.* Thus, even on his own case, JR194, in common with the other applicants is no longer a minor there remains an important dispute between the parties on the issue of age.

[37] *Separate to the court's jurisdiction to determine the age of a claimed child, the court also has jurisdiction to determine whether the procedure used to assess age was fair (R(HAM) v Brent London Borough Council* [2022] PTSR 1779 at [6]).

[38] The court in *HAM* said that *what fairness requires in this context is commonly referred to as a "Merton-compliant assessment"* after the judgment in *R(B) v Merton London Borough Council* [2003] 4 All ER 280.

[39] In *Merton* the court was asked to give guidance on the requirements of the lawful assessment by a local authority under the 1989 Act of the age of a young asylum seeker claiming to be under the age of 18 years.

[40] *The guidance outlined in Merton is comprehensive.* The court's understanding is that it is accepted as providing *the best judicial guidance on how to approach age assessments by those authorities engaged in this exercise. Hence, the common reference to "Merton-compliant age assessments" by various statutory authorities undertaking this task.*

[41] Some of the passages of the judgment are worth repeating here and are also relevant to the applications of JR235 and JR256. In his judgment Burton J sets out the background:

> "**The background**
>
> [20] In a case such as the present, the applicant does not produce any reliable documentary evidence of his date of birth or age. In such

circumstances, *the determination of the age of the applicant will depend on the history he gives on his physical appearance and on his behaviour.*

[21] There is no statutory procedure or guidance issued to local authorities as to how to conduct an assessment of the age of a person claiming to be under 18 for the purpose of deciding on the applicability of Part III of the Children Act 1989.

[22] The determination of an applicant's age is rendered difficult by the absence of any reliable anthropometric test: for someone who is close to the age of 18, there is no reliable medical or other scientific test to determine whether he or she is over or under 18. The Guidelines for Paediatricians published in November 1999 by the Royal College of Paediatrics and Child Health states:

> 'In practice, age determination is extremely difficult to do with certainty, and no single approach to this can be relied on. Moreover, for young people aged 15-18, it is even less possible to be certain about age. There may also be difficulties in determining whether a young person who might be as old as 23 could, in fact, be under the age of 18. Age determination is an inexact science, and the margin of error can sometimes be as much as 5 years either side.
> …
> Overall, it is not possible to actually predict the age of an individual from any anthropometric measure, and this should not be attempted. *Any assessments that are made should also take into account relevant factors from the child's medical, family and social history.*'

[23] Different people living in the same country, with the same culture and diet, mature physically and psychologically at different rates. It is difficult for a layman to

determine the age of someone born in this country with any accuracy. A general practitioner is very unlikely to have the knowledge or experience to improve on the accuracy of an intelligent layman. To obtain any reliable medical opinion, one has to go to one of the few paediatricians who have experience in this area. Even they can be of limited help, as in the instant case and is referred to below.

[24] The difficulties are compounded when the young person in question is of an ethnicity, culture, education and background that are foreign, and unfamiliar, to the decision maker.
…

[27] Of course, there may be cases where it is very obvious that a person is under or over 18. In such cases there is normally no need for prolonged inquiry; indeed, if the person is obviously a child, no inquiry at all is called for. The present is not such a case. The difficulty normally only arises in cases, such as the present, where the person concerned is approaching 18 or is only a few years over 18. But the possibility of obvious cases means that it is not possible to prescribe the level or manner of inquiry so as sensibly to cover all cases.

[28] 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 to 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 applicant is a child. Conversely, however, an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid his return to his

country of origin. Furthermore, *physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other.*

[29] In this context, as in others, it would be naïve to assume that the applicant is unaware of the advantages of being thought to be a child. Draft Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers state:

> 'Assessment of age is a complex task, which is a process and not an exact science. This is further complicated by many of the young people attempting to portray a different age from their true age.'

It advises the decision maker/interviewer:

> 'It is also important to be mindful of the 'coaching' that the asylum seeker may have had prior to arrival, in how to behave and what to say …'

[30] The lack of a passport or other travel document may itself justify suspicion, as it did in the present case, particularly if the applicant claims to have entered this country overtly, for example through an airport, in circumstances in which a passport must be produced.'"

[42] In his judgment the judge also refers to other guidance including Home Office policy. In the discussion section of his judgment, he says:

> '[36] The assessment of age in borderline cases is a difficult matter, but it is not complex. It is not an issue which requires anything approaching a trial, and judicialisation of the process is in my judgment to be avoided. It is a matter which may be determined informally, *provided safeguards of minimum standards of inquiry and of fairness are adhered to.*

[37] It is apparent from the foregoing that, *except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant.* In general, the decision-maker must seek to elicit the general background of the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. *If there is reason to doubt the applicant's statement as to his age, the decision maker will have to make an assessment of his credibility, and he will have to ask questions designed to test his credibility.*

[38] *I do not think it is helpful to apply concepts of onus of proof to the assessment of age by local authorities.* Unlike cases under section 55 of the Nationality, Immigration and Asylum Act 2002, *there is in the present context no legislative provision placing an onus of proof on the applicant. The local authority must make its assessment on the material available to and obtained by it.* There should be no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child. Of course, if an applicant has previously stated that he was over 18, the decision maker will take that previous statement into account, and in the absence of an acceptable explanation it may, when considered with the other material available, be decisive. Similarly, *the appearance and demeanour of the applicant may justify a provisional view that he is indeed a child or an adult. In an obvious case, the appearance of the applicant alone will require him to be accepted as a child; or, conversely, justify his being determined to be an adult, in the absence of compelling evidence to the contrary.*

[39] However, the social services department of a local authority cannot simply adopt a decision made by the Home Office. It

> must itself decide whether an applicant is a child in need: i.e. whether the applicant is a child, and if so whether he or she is in need within the meaning of Part III of the Children Act 1989. A local authority may take into account information obtained by the Home Office; but it must make its own decision, and for that purpose must have available to it adequate information. …'"

Consideration

[7] Mr Southey argued before Colton J that the Manchester AA placed undue reliance on the appellant' appearance. The same argument was repeated before this court. Colton J rejected this argument at para [300]:

> "Account was taken [by the Manchester AA] of the history obtained and his behaviour along with the statements of three professionals who had significant contact with applicant during his time in Manchester and also the records and information obtained"

[8] The judge was plainly correct to have rejected this argument having proper regard to the contents of the comprehensive *Merton* compliant Manchester AA.

Approach of the Court of Appeal to a challenge to a finding of fact

[9] This court set out in *Peter Kelly v Department for Communities and the Department of Finance* [2023] NICA 21 at paras [79]–[82]:

> "[79] In *Mihail v Lloyds Banking Group* [2014] NICA 24 Coghlin J stated:
>
> > "[27] This is an appeal from an Industrial Tribunal with a statutory jurisdiction. On appeal, this court does not conduct a re-hearing and, unless the factual findings made by the Tribunal are plainly wrong or could not have been reached by any reasonable Tribunal, they must be accepted by this court (*McConnell v Police Authority for Northern Ireland* [1997] NI 253 per Carswell LCJ; *Carlson Wagonlit Travel Limited v Connor* [2007] NICA 55 per Girvan LJ at para [25])."

[80] The relevant principles governing the proper approach to be taken by an appellate court to its review of findings made by a judge at first instance were recently summarised by Lord Kerr at paragraphs [78]-[80] in *DB v Chief Constable* [2017] UKSC 7.

[81] Lord Wilson stated in *In re B (A Child)* [2013] 1 WLR 1911, para [53] that:

> '… where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it.'

[82] We also remind ourselves of the following principles set out in well-known passages (at least to lawyers) in *Edwards v Bairstow* [1956] AC 14 at p. 36 (per Lord Radcliffe):

> 'When the case comes before the [appellate] court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene.'"

General approach of Colton J

[10] The court outlined the facts, namely that JR256 is an individual who claimed asylum in the UK, stating he was a minor. The applicant's claimed date of birth conflicted with information provided by foreign authorities, and findings from an independent age assessment conducted by Manchester-based experts. The Trust in Belfast, to where the applicant had moved following the Manchester based assessment, found that his age was as per the appellant's stated case. The Belfast

assessment relied heavily on the applicant's untested version of his history rather than accepted standard assessment practices and was rejected by the Home Office.

[11] The court reiterated the principles established in *R(B) v Merton London Borough Council* [2003] 4 All ER 280, which set standards for lawful age assessments. Among the key elements considered were that applicants must be informed of the process and given an opportunity to present their case. Assessments should consider appearance, demeanour, and life history, avoiding reliance solely on one factor, such as physical characteristics. Decision-makers must weigh evidence carefully, ensuring procedural and evidential fairness. Additionally, under section 55 of the Borders, Citizenship and Immigration Act 2009, public authorities must prioritise safeguarding the welfare of children in immigration decisions.

[12] JR256 maintained they were a minor, citing their own account of birth and life history. They argued that discrepancies in age arose from coercion or misinformation during their migration journey. They also highlighted their vulnerabilities as an asylum seeker.

[13] The Home Office commissioned an independent age assessment in Manchester to resolve the dispute. This assessment, conducted by medical and social care professionals, concluded that JR256 was an adult. The report was based on a combination of physical indicators, developmental assessments, and analysis of the applicant's narrative. Information from foreign authorities, including asylum applications in other countries, indicated the applicant had previously declared an older date of birth. The applicant challenged the reliability of this data, arguing it was influenced by coercion and the pressures of migration.

[14] The Belfast Health and Social Care Trust (the Trust) initially accepted JR256's claimed age but did not conduct a Merton-compliant age assessment. The Trust's decision was criticised by the judge for being overly reliant on the applicant's narrative and failing to address contrary evidence adequately.

[15] The court found the Manchester report to be thorough, detailed, and credible. Unlike the Trust's initial decision, the report systematically evaluated evidence, including physical, psychological, and developmental factors. The judge determined that the findings of this independent assessment carried significant weight and justified rejecting the applicant's asserted age. The court did not accept the applicant's explanation for discrepancies in their age declarations. While acknowledging the potential for coercion or trauma to affect narratives, the judge emphasised that the weight of evidence - particularly from the Manchester report - supported the conclusion that JR256 was an adult.

[16] The court criticised the Trust's handling of the case, noting that it failed to conduct a proper age assessment when requested by the Home Office; it did not engage meaningfully with evidence from foreign authorities or the Manchester

report; and its adversarial approach with the Home Office hindered a collaborative resolution.

[17] The judge emphasised the importance of a fair process but concluded that the Home Office and the Manchester report adhered to these principles. The applicant was given opportunities to respond to concerns about his age and to provide further evidence. The court upheld the Home Office's decision to reject the applicant's claimed date of birth. It found that the independent assessment provided reliable, evidence-based conclusions that outweighed the applicant's narrative and the Trust's initial acceptance of their age. The court accepted the findings of the Manchester report that JR256 was an adult. The Trust's lack of a Merton-compliant assessment and failure to cooperate with the Home Office undermined the applicant's case.

[18] Thorough, independent age assessments, such as the Manchester report, can significantly influence judicial decisions in age disputes. Local authorities like the Belfast Trust must conduct proper, collaborative, and evidence-based assessments to avoid undermining asylum cases. While applicants must be given opportunities to explain discrepancies, the court will prioritise credible, detailed evidence over subjective narratives. The court acknowledged that trauma and exploitation can affect the consistency of an applicant's narrative but emphasised the need for robust evidence to support their claims. Leave was granted but the application was dismissed.

Appellant's primary submission

[19] Mr Southey contended that the approach of the judge should have been not to look at which of the reports he preferred but rather the contents of the report. His primary submission on appeal was that the judge did not take into account the underlying material in this case. In this respect he is critical of what he characterised as the judge's reasoning process particularly at para [323] where the judge refers to preferring the age assessment carried out by Manchester City Council.

[20] Frankly, this submission is difficult to follow and entirely misconceived given the evident and meticulous care with which the judge did exactly what he is accused of not doing. The judge citing *Croydon* correctly identified his task as to decide the issue of disputed age "on the evidence available" (para [33]). At paras [255]-[266] he considers the assessment from the Trust. Colton J considers in some detail the evidential content and weight to be attributed to the Manchester report (see paras [274]-[327] of judgment). It is self-evident that the primary submission of the appellant is confounded by the detailed analysis contained within the judgment.

[21] We have already set out above our summary of the judge's overall approach to the case. We now propose to set out portions of the judgment to demonstrate how risible is the contention that the judge did not take into account the underlying material when making his decision:

"[276] The report is a lengthy and detailed one. It is explained that:

'The age assessment was necessary due to concerns raised by different professionals including the referring police officer in Scotland, social workers in Glascow Children's Services and staff at Hazelcourt, (JR256's) accommodation provider in Manchester, *all of whom,* raised concerns that his physical presentation suggested he was *significantly older* than his reported age. The decision was *also* informed by social work observation and information gathered through social work assessment.

The report confirms that as part of the preparation the assessors read all relevant background information on file, assessments, reports and case notes held on Children Services computer system. In addition to the case information, they refamiliarized themselves with the Association of Directors of Child Services ("ADCS") Age Assessment guidance. They also familiarised themselves with country reports and relevant information on Chad, the applicant's country of origin. This included research on the ethnic, cultural and religious make-up of the country and issues of political and religious conflict.

The report confirms that the ADCS guidance was followed.

The sources of information available to the panel were:

- Glasgow City Council Social Work Services' case chronology (03/03/21).

- Manchester City Council Children's Services Child and Family Assessment (08/04/21).

- Initial health assessment undertaken by Manchester Community Paediatric Services (08/03/21).

- Manchester City Council Social Work assessment tools – Care Plan (08/02/21), placement plan (15/02/21); and Strengths and Difficulties questionnaire (23/03/21).

- Opinion and observation offered by individual professionals."

[277] The assessment goes on to outline the views of those professionals. It quotes from an email from Sarah Hembrough (allocated social worker) at Manchester City Council Children's Services. She was the applicant's allocated Children's Social Worker at Manchester City Council since his care and support transferred from Glasgow Local Authority. Her opinion was that:

> 'In terms of his physical presentation, I feel that (JR256) is of a build, height and features which is suggestive that he is over the age of 18 years old.
>
> In terms of his demeanour, in sessions held with him, (JR256) has presented as a mature and knowledgeable person who at times presents as understanding the care and support system in the UK greater than would be expected of a child who had only come to the UK in September 2020. For example, in my initial visit with (JR256) he stated that he was aware of his rights e.g. towards housing, education and entitlements such as money which was a surprise given that although he was supported by Glasgow this was a different arrangement to a section 20 in England and the confidence that he stated these views was suggestive that he had been in the UK longer than expected and more confident than would be expected of a child. This was furthered in other conversations when he spoke about being aware of his entitlement towards money for his birthday in February 2021.
>
> (JR256) presents as confident and self-reliant, for example, (JR256) has repeatedly said in sessions with him that if he does not get something he has asked for that he will leave his placement, leave Manchester and/or the UK and has evidenced his independence skills in leaving his placement in April 2021 where he left, navigated public transport and travelled to Leeds when he was reported

> missing from his home. Whilst, in my experience, UASCS have needed to develop independent skills in use of transportation to be able to travel to the UK so it is not unexpected that he would be able to travel to Leeds independently. However, his dismissive attitude towards the support provided is both suggestive that his expectations were higher than could be achieved which could be indicative that he has experienced care and support elsewhere in the UK, has experience with care and support overseas and/or has knowledge and grasped the system beyond what would be expected of a child.'

[278] Later in the correspondence she opines:

> "I feel that his presentation, demeanour and information that he has provided about himself and his journey to the UK is suggestive that he is over the age of 18 years old.
>
> The reason for this view is that there has been some plausibility concerns regarding the timeline (JR256) has currently provided regarding his journey to the UK and view of the EU services would not withdraw service to a 16-year-old as he suggested happened. (JR256's) behaviours could indicate that he is older than 18 years old given his confidence in navigating the UK care system and maturity in responding to safeguarding concerns raised and dismissive attitude to age-appropriate rules and boundaries being put in place.'

[279] Lucy Hall was a social worker in Manchester City Council Children's Service who has experience in working with the Manchester Children's Service for 11 years. She records her initial shock concerning (JR256's) presentation which "gave cause for me as an apprentice to reflect on my values as I struggled with the ethical dilemma of believing (JR256) looks much older than 18 and how I had wanted to work with children."

[280] She then sets out the reasons why she believes JR256 was over 18. She indicates that she has worked and

lives in a diverse community of central Manchester. She indicates that she worked voluntarily at Chrysalis Family Centre in Moss Side for over 10 years which has a huge African attendance. She indicates that her work always included children and that she is aware that some children can look older. Her initial view was that (JR256) looked older than 25 and was not a child. This was because of his appearance and demeanour. He had a receding hairline which suggested to her that he was an adult. He had a very matured face, and his demeanour was of an adult in that he had an air of maturity and confidence which she had not seen in children. She explained that she has worked with many unaccompanied asylum-seeking children. She also notes that JR256 stated that French police issued him with a deportation notice as he did not want to claim asylum. She says that this suggests, as far as the French were concerned, that JR256 was over 18. She says:

> "I am worried that (JR256) is avoiding the asylum process intentionally, it may be because he is older than 18 and through this process this would be discovered. I believe this because in Glasgow the guardian made attempts to meet with (JR256) and (JR256) was reported to be "very negative and defensive" and queried why he was being asked for his date of birth and why he was asked what country he was from.
>
> Thus, not engaging the guardian reported this was highly unusual. In Manchester (JR256) was allocated to a solicitor and (JR256) refused to work with him, stating he wanted a different solicitor. While I understand how trauma can affect unaccompanied asylum-seeking children (JR256) appears to be selective in who he is engaging with and those he does not relative to the asylum process.'

[281] There is a report from Ciara Courtney who was the team leader at the accommodation provider for (JR256) in Manchester. She echoes the concerns expressed by Lucy Hall in relation to (JR256's) appearance. She describes him as being stocky by build and of average height. She considered his facial features to be mature in that he had

a pronounced jawline, that his hairline was high on his head and receding evenly on both sides. She describes that he presented with muscle definition on his legs and upper body and a fully filled out body shape. Her view was confirmed by his demeanour and behaviour.

[282] She records that he simply refused to engage with any attempts to assist him.
…

[286] There are reports on his education, his independent self-care skills, health and medical assessment, physical appearance and demeanour and interaction during assessment.

[287] This information is then analysed in detail. Ultimately, the age assessment is based on his engagement with the process and his behaviour, his physical appearance, the background information and history provided by JR256.

[288] It is recognised in the analysis that any assessment based on physical appearance is by its very nature subjective. The assessor has experience of working with asylum seekers from Chad who are aged 17 and considers that JR256 appears older than his stated age and those he has worked with who were minors.

[289] The assessor is aware that experiencing traumatic events and going through extended periods of difficulty during childhood and adolescence can lead to premature aging or an outward appearance of an increased chronological age. It is recognised that this is particularly relevant. The assessor states:

> "However, when I consider (JR256's) appearance alongside his life story, work and compare that to unaccompanied minor asylum seekers from Chad that I have worked with, I do not consider this sufficient to explain his appearance as a young man."

[290] The assessor says:

> "Despite all the challenges faced by (JR256) across his life course, so far, when considering

> his presentation against my experience of working with other young people from Chad, or young people from other countries experiencing multi-level systems breakdown or armed conflict, I remain of the view that he does not present as a child. His demeanour, presentation and appearance are still demonstrative of someone aged over 18."
>
> [291] He notes JR256's claim that he had been supported in France as a child but had subsequently been asked to leave by the French authorities. That would have been at the age of 16. The assessor points out that country profile information contradicts that account because unaccompanied asylum-seeking children are supported in France up to the age of 18. Unfortunately, without an account from JR256 it was not possible to explore this with him further."

[22] The judge at para [307] *et seq* addresses head on the conflicting reports, refers to the respondent's guidance in relation to contested age assessments which at para 6.2 sets out the approach of the Home Office to conflicting age assessments noting that:

> "The Home Office will continue to follow the case law compliant decision that had previously been notified to [it] unless and until new information is submitted as part of a properly conducted assessment."

[23] In this case the respondent reviewed the Trust's AA and maintained its position that they would continue to rely on the *Merton* compliant AA carried out by Manchester giving the following reasons:

> "[238] The respondent reviewed the full AA and maintained its position for the following reasons:
>
> (a) The matter was not referred to a SW manager despite this being requested by the respondent.
>
> (b) The Trust appear to have disregarded the multi-agency input from Manchester SW, Glasgow SW, police, accommodation providers, the foster carer and the respondent – all of whom had concerns over the applicant's age and levels of maturity.

(c) The Trust had disregarded the Manchester City Council AA.

(d) The Trust had not fulfilled its obligations under the joint working guidance. The respondent's guidance states that there should be communication between the two conflicted local authorities. It also details the process for referring the matter to an SW manager. The Trust did not communicate with Manchester City Council SWs nor refer the matter to an SW manager."

[24] The judge then sets out his detailed criticisms of the Trust's approach some of which we have already recorded at para [4] above.

[25] The judge records correctly at para [319] that the authorities indicate that the court must determine aged based on the evidence before it. The judge then notes that he had "***serious reservations***" about the adequacy of the Trust age assessment. At para [320] he was critical of the approach of the Trust to the AA it carried out. As the judge said:

> "[320] I am critical of the approach of the Trust to the age assessment it carried out. I consider that there should have been liaison with both the social services in Manchester and with the respondent. It is simply unacceptable that the age assessment in this case was only disclosed to the respondent after these proceedings were issued."

[26] The Trust were a Notice Party. The respondent sent a letter to the applicant's solicitor and the Trust setting out the issues the respondent had identified with the Trust's AA.

[27] The Trust were legally represented before Colton J. As noted by Colton J at para [322], the Trust did not take the opportunity afforded to it to set out its position in relation to the challenge to the AA it carried out.

[28] The judge noted that there are "***significant limitations***" to the Trust AA**,** it lacked the detail provided in the Manchester AA and it accepted the applicant's assertions at face value and gave him the benefit of the doubt. We note that the applicant's assertions included an account of why he did not engage with the Manchester AA which was "wholly undermined" the record of their interviews.

The benefit of the doubt point

[29] The other ground of appeal which the appellant focussed on was the contention that Colton J erred by holding that the Trust erred by applying the benefit of the doubt and that the judge failed to apply the benefit of the doubt. The appellant argues that the judge failed to apply the benefit of the doubt and improperly criticised the Trust for doing so. The appellant also tried to persuade the court that the Manchester AA and the judge, in his reliance upon it, impermissibly and predominantly relied upon physical appearance. This is demonstrably incorrect. For example, the Manchester AA at para [12] refers in detail not only to his physical appearance but also to the background information and history provided by the applicant. The Manchester AA in concluding that he was an adult expressly took into account the following:

- The discrepancies in his timeline;
- The unanswered questions around his time in France;
- The views of the named professionals;
- His appearance;
- His demeanour, and
- His presentation.

[30] As Burton J noted in the passage cited and highlighted at para [6] above, the applicant does not produce any reliable documentary evidence of his date of birth or age "the determination of his age will depend on the history he gives on his physical appearance and on his behaviour." But "physical appearance, behaviour and the credibility of his account are all matters that reflect on each other." There were many important aspects of the applicant's account as well as his appearance and presentation that simply did not stack up and which the Manchester AA referred to in considerable detail. The Trust on the other hand appear to have accepted at face value his account, did not test it notwithstanding the compelling body of evidence which pointed to him being an adult well in excess of his claimed age and they failed to engage either appropriately or at all with the *Merton* compliant Manchester AA. The Trust also accepted at face value JR256's explanation for refusing to engage with the Manchester AA which explanation was as the judge found "completely undermine[d]" by the Manchester records of the interviews.

[31] There was an abundance of evidence which entitled the judge to conclude on the evidence that JR256 was an adult. We are wholly unpersuaded that the factual conclusion was "plainly wrong." It is also plain to us that the judge entertained no doubt, on the evidence before him that JR256 was an adult.

[32] The appellant argues that rejecting his claimed age violates article 8 of the European Convention on Human Rights, which protects the right to private life. The state must justify the denial of rights based on the claimed age, and proportionality is central to this evaluation. Guidance from the Home Office, Council of Europe, and case law such as *R (AS) v Kent County Council* [2017] UKUT 00446 (IAC) and *MH v*

Hungary app 10940/17 §79 emphasise the need to apply the benefit of the doubt in age assessments, particularly for unaccompanied asylum-seeking children.

[33] The appellant lodged a short addendum skeleton which referred to a recent decision of the European Court of Human Rights in *AC v France* app 15457/20 on 16 January 2025. That judgment relied on the judgment of the court in *Darboe and Camara v Italy* app 5797/17. The appellant submits that the key points that arise from both judgments are that:

(a) They both confirm that article 8 is engaged by age assessment (*Darboe* at para [121] and *AC* at para [152]).

(b) One reason why age assessment engages article 8 is that it determines whether a child enjoys their rights as a child (*Darboe* at para [125] and *AC* at para [156]). That is significant in light of the importance attached to the best interests of the child (*AC* at para [154]). It is not in the interests of children for rights to be denied in circumstances in which there is uncertainty about their age.

(c) There is a presumption of minority (*Darboe* at para [153] and *AC* at para [167] and [182]). Although that language is not the language of benefit of the doubt, it is difficult to see how the concept is different to benefit of the doubt.

[34] We do not consider that the addendum skeleton argument or the authorities referred to are of much assistance given that this case involved a judicial factual determination on the basis of cogent and persuasive evidence that the appellant was an adult, following a detailed and scrupulously fair assessment applying the applicable legal principles and policies. Article 8 is not violated, as the Manchester report provided a robust basis for determining JR256's age. Proportionality was considered throughout the detailed assessment process.

[35] In truth, as the respondent contended, the appeal, was a thinly veiled effort to have the same arguments from the High Court reheard in the Court of Appeal. This is not the role of an appellate court. Appeals on factual findings can only succeed if the lower court's decision is "plainly wrong," a high threshold established in cases like *DB v Chief Constable* [2017] UKSC 7.

[36] This was neither a borderline nor finely balanced case. The judge found the evidence favouring JR256 being an adult was significantly stronger than the evidence supporting his claim of being a minor. The judge had no uncertainty that the evidence established that the appellant was an adult. There was no doubt to be balanced.

[37] Colton J was entitled to evaluate the competing assessments and prefer the Manchester report, which was more detailed, rigorous, and "*Merton*-compliant" (adhering to legal standards for age assessments). The Manchester report

considered a wide range of evidence, including input from multiple professionals, physical observations, and JR256's background. By contrast, the Trust's assessment was criticised for accepting JR256's claims at face value and failing to engage with the concerns raised by the Manchester report.

[38] This appeal is an impermissible attempt to challenge Colton J's factual findings, which were reasonably open to the judge based on the evidence. Colton J's decision was legally and procedurally sound, and there is no basis for the Court of Appeal to intervene.

[39] The placement of adults with vulnerable children is a significant concern, indicating that in some cases, individuals later determined to be adults were placed in settings meant for minors. This self-evidently raises important safeguarding issues.

[40] The 'benefit of the doubt' principle is well-established in international and domestic guidance, particularly for vulnerable groups like unaccompanied minors. The principle is not in play in cases where evidence is borderline or finely balanced or where, as here, the evidence overwhelmingly indicates that JR256 was an adult, thus negating the need for this principle.

[41] The appellant emphasises that rejecting JR256's claimed age violates article 8 of the ECHR, particularly given the guidance in *Darboe* and *AC v France* about the presumption of minority and the need to prioritise children's rights. The respondent has not directly addressed these cases given that they were filed late as part of the appellant's supplementary argument, however, the substantive issues are addressed in the respondent's argument.

[42] We consider that there is also considerable merit in the respondent's position regarding the issue of whether the appeal reflects an appeal based on errors of law, or a dispute over the judge's factual findings. Appellate courts generally exercise a limited role in reviewing factual findings made by lower courts. The underlying principles governing this role are critical to understanding the scope of appellate review and how it applies to the present appeal. *DB v Chief Constable* confirms the "plainly wrong" standard for appellate review of factual findings. This threshold has not been passed.

[43] In *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, the Supreme Court held that appellate courts should not interfere with findings of fact unless there is a "material error of law" or the decision is "unreasonable to the point that no reasonable judge could have reached it." In cases like *R (AS) v Kent County Council* [2017] UKUT 00446 (IAC), courts emphasise the need for robust procedural compliance but remain cautious in overturning factual determinations.

[44] Appellate courts differentiate between errors of fact and errors of law. Errors of fact require a finding that the lower court's conclusions were unsupported by

evidence or clearly irrational, whereas errors of law involve misapplication of legal principles, such as failing to apply the benefit of the doubt or not considering proportionality under article 8.

Conclusion

[45] The approach of Colton J to the factual determination he was required to make was entirely open to him to make and could not be found to be clearly wrong as would be required to permit his decision to be overturned by this court. His decision was not infected with any material error of law and was not unreasonable to the point that no reasonable judge could have reached it. The lower court's conclusions were supported by the evidence and plainly rational. We reject all the grounds of challenge for the reasons set out in this judgment.