



Neutral Citation Number: [2011] EWCA Civ 59

Case No: C1/2010/2824

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM QBD Administrative Court
JAMES DINGEMANS QC SITTING AS A DEPUTY HIGH COURT JUDGE
CO/11423/2010

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/02/2011

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
LADY JUSTICE SMITH
and
LORD JUSTICE AIKENS

Between :

R (FZ)	<u>Appellant</u>
- and -	
LONDON BOROUGH OF CROYDON	<u>Respondent</u>

Jan Luba QC and Shu Shin Luh (instructed by **Pierce Glynn Solicitors**) for the **Appellant**
Rhys Hadden for the **Respondent** (instructed by the solicitor to the Local Authority)

Hearing date: 12th January 2011

Approved Judgment

President of the Queen's Bench Division:

1. This is the judgment of the Court.

Age assessments

2. There are various circumstances in which a local authority, often the London Borough of Croydon, has to determine the age of a child or young person who claims to be a child. Typically a young person arrives in this country unaccompanied from overseas and seeks asylum. If he is a child under 18, he must be provided with accommodation and maintenance under sections 20(1) and 23(1) of the Children Act 1989, which comprise a wider range of services than other forms of housing and benefit provision available for those over 18. Not only may it be necessary to determine whether the person is a child, but also to determine his actual age or date of birth. The authorities will thus be able to know when the various obligations to children will come to an end. Some young people may be obviously and uncontroversially children. Others may accept that they are adult. It is for those whose age may objectively be borderline, between perhaps 16 and 20, that an appropriate and fair process of age determination may be necessary. A process has developed whereby an assessment is undertaken by two or more social workers, trained for that purpose, who conduct a formal interview with the young person at which he is asked questions whose answers may help them make the assessment. It is often necessary for there to be an interpreter. The young person may or may not be able to establish or indicate his age by producing documents, which themselves may require translation.
3. In *R (B) v Merton London Borough Council* [2003] EWHC 1689 (Admin), [2003] 4 All ER 280 Stanley Burnton J gave guidance in judicial review proceedings on appropriate processes to be adopted when a local authority is assessing a young person's age in borderline cases. The assessment does not require anything approaching a trial and judicialisation of the process is to be avoided. The matter can be determined informally provided that there are minimum standards of inquiry and fairness. Except in clear cases, age cannot be determined solely from appearance. The decision-maker should explain to the young person the purpose of the interview. Questions should elicit background, family and educational circumstances and history, and ethnic and cultural matters may be relevant. The decision-maker may have to assess the applicant's credibility. Questions of the burden of proof do not apply. The local authority should make its own decision and not simply adopt a decision made, for instance, by the Home Office, if there has been a referral. It is not necessary to obtain a medical report, although paediatric expert evidence is sometimes provided in these cases, and there is some difference of view as to its persuasiveness in borderline cases. If the decision-maker forms a view that the young person may be lying, he should be given the opportunity to address the matters that may lead to that view. Adverse provisional conclusions should be put to him, so that he may have the opportunity to deal with them and rectify misunderstandings. The local authority is obliged to give reasons for its decision, although these need not be long or elaborate. This decision and its guidance have led to the development of what is sometimes referred to as a "Merton compliant" interview or process.
4. Young persons who wish to challenge an assessment of their age by a local authority habitually and understandably do so by a claim for judicial review. Such a challenge may be on orthodox judicial review grounds, as where, for instance, it is said that for

some reason the local authority proceeded unlawfully or adopted a materially unfair or otherwise non-compliant procedure. The challenge may, however, be that the decision assessing the claimant's age was factually wrong. The Supreme Court held in *R (A) v Croydon London Borough Council* [2009] 1 WLR 2557 that the question whether a person is or is not a child, which depends entirely on the objective fact of the person's age, is subject to the ultimate determination of the courts. It is a fact precedent to the exercise of the local authority's powers under the 1989 Act and on that ground also is a question for the courts. If such a decision remains in dispute after its initial determination by the local authority, it is for the court to decide by judicial review. This means that the court hearing the judicial review claim will often have to determine the fact of a claimant's age by hearing and adjudicating upon oral evidence. This may be an extensive and time consuming process. The Supreme Court does not seem to have been concerned with the administrative consequences for the court of this. The judgments of Baroness Hale of Richmond JSC and Lord Hope of Craighead DPSC are expressed in terms which appear sanguine about this – see for example Baroness Hale at paragraph 33 and Lord Hope at paragraph 54. The Administrative Court does not habitually decide in orthodox judicial review proceedings questions of fact upon oral evidence, although it has power to do so in appropriate individual cases. It stretches the court's resources to have to do so more than occasionally. Yet there were, on 12th January 2011, 64 age assessment cases in the Administrative Court's list at various stages of progress.

5. A judicial review claim challenging a local authority's assessment of age may thus be on various grounds. Some of them may be orthodox judicial review grounds. But the core challenge is likely in most cases to be a challenge to the age which the local authority assessed the claimant to be. Thus most of these cases are now likely to require the court to receive evidence to make its factual determination. It is therefore understandable that Mr Hadden, for the respondent local authority in the present appeal, submitted that orthodox judicial review challenges are likely to be subsumed in the court's factual determination of the claimant's age. If the claimant succeeds on his factual case, the orthodox judicial review challenges fall away as unnecessary.
6. Claims for judicial review require the court's permission to bring the claim. If the claim challenges the local authority's assessment of age as a fact, the court has to apply an appropriate test in deciding whether to give permission. The parties presently before the court agree that the claimant is not entitled to permission simply because he asserts that the local authority's assessment was wrong. It is evident that the Supreme Court did not contemplate that permission would be given in every case irrespective of any consideration of the merits. In one sense, the parties to the present appeal agree what that test should be. They agree that it is that formulated by Holman J in *R (F) v Lewisham London Borough Council* [2010] 2 FCR 292; [2009] EWHC 3542 (Admin) to the effect that the test is whether there is a realistic prospect or arguable case that the court would reach a conclusion that the claimant was of a younger age than that assessed by the local authority. The parties were, however, in imprecise disagreement as to the practical effect of this test, which each of them nevertheless espoused. Mr Luba QC, for the claimant, argued that in cases such as these, where matters of fundamental importance to claimants having wide ranging and lasting consequences are in issue, the test should be liberally applied in favour of any claimant with an arguable factual case. There should be a discretion, as there obviously is, to refuse permission in cases of long delay or where the issue has

become academic. But otherwise, if there is some material before the court to support the claimant's case, permission should be given. There should be no starting presumption that the local authority's decision was correct. It would require, he submitted, a peculiarly weak case for permission to be refused.

7. Mr Hadden promoted a view on behalf of the respondent that in practice the court is seen as giving permission too freely. He submitted that due weight should be given to a decision of the local authority reached by a *Merton* compliant process. He was, we think, inclined to submit that it was for the claimant to show at the permission stage that the local authority's assessment was arguably wrong. In so far as this tended to be a debate about a burden of proof, we do not think it is persuasive one way or the other at the permission stage. The essential eventual issue is one of precedent fact for the court to decide. At the permission stage, the claimant has to show that he has a properly arguable case on the facts in the light of the evidence before the court, the local authority's assessment and other relevant facts or circumstances. We are wary lest reformulation of, or discussion about, Holman J's unchallenged formulation may muddy the waters by substituting one necessarily general formulation for another.
8. We do, however, consider that the question now under discussion is broadly analogous with the question in defamation proceedings of when a party is entitled to require issues of fact to be determined by a jury. For the law on this topic, see *Alexander v Arts Council of Wales* [2001] 1 WLR 1840 at paragraph 37. In defamation proceedings, issues of law are for the judge and normally, by section 69 of the Senior Courts Act 1981, the parties are entitled to a jury trial on material issues of fact. In so far as issues depend on an evaluation of evidence so as to determine material questions of disputed fact, these are matters for the jury. But it is open to the judge in a libel case to come to the conclusion that the evidence, taken at its highest, is such that a properly directed jury could not properly reach a necessary factual conclusion. In these circumstances, it is the judge's duty, upon submission being made to him, to withdraw that issue from the jury. That is the test applied in criminal jury trials: see *R v Galbraith* [1981] 1 WLR 1039 at 1042C. It applies equally in libel actions.
9. There is an analogy between the court withdrawing a factual case or matter from the jury in defamation proceedings and the court refusing permission to bring judicial review proceedings upon a factual issue as to the claimant's age. We consider that at the permission stage in an age assessment case the court should ask whether the material before the court raises a factual case which, taken at its highest, could not properly succeed in a contested factual hearing. If so, permission should be refused. If not, permission should normally be granted, subject to other discretionary factors, such as delay. We decline to attach a quantitative adjective to the threshold which needs to be achieved here for permission to be given.
10. Beyond the very useful general guidance given in the *Merton* case, there is no formalised central government Guidance as to how local authorities should conduct age assessments. It is a matter for consideration whether such guidance might be prepared. The United Kingdom Border Agency has a Process Guidance document for assessing age for the rather different purposes of section 55 of the Border, Citizenship and Immigration Act 2009, and another document for Processing Asylum Applications from a child and for conducting an Asylum Interview. There is also a draft All Wales Protocol for Safeguarding and Promoting the Welfare of

Unaccompanied Asylum Seeking and Refugee Children. The London Boroughs of Croydon and Hillingdon have produced their own Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers. This useful short document has attached to it an 8 page form divided into sections with detailed suggestions of the topics which an age assessment interview might address and spaces for recording the answers. This interview form was used in the present case. The Guidelines suggest that the practitioners should ask open, non-leading questions. The last page of the form is constructed to enable the interviewers to record their conclusions and reasons and provides for this form to be handed to the person assessed.

Facts

11. The appellant is an unaccompanied asylum seeker from Iran who claims to have been born on 28th December 1993 and thus to be 17 years old. His claimed date of birth was accepted by the UKBA when he first arrived in this country from Iran by lorry on 20th August 2009. He was thus referred to the respondent for child welfare services. The respondent disputed the appellant's age and carried out an age assessment and a subsequent review which eventually concluded that he was two years older than he claimed to be, being born in 1991 and now being 19 years old. It is agreed that he has mental health difficulties which have been identified as the consequences of post traumatic stress disorder as a result of experiences in Iran.
12. The initial assessment of the appellant's age was conducted on 4th September 2009 by two trained social workers. They carefully recorded his interview answers on the form and gave their own impressions arising from them. They assessed his age then as 17+ with a date of birth of 28th December 1991, this being the product of the conclusion that he was 2 years older than he claimed to be. They recorded their conclusions as follows:

“FZ's overall physical appearance and general demeanour indicate that he is older than his claimed age. He has mature features and spoke assertively and confidently.

Although he says he has documents in Iran to verify his age and date of birth claim he is unable to produce them and therefore they cannot be given any weight in this age assessment.

The age and date of birth that he gave were inconsistent with each other and can be given little weight.

He was unable to provide sufficient dates to support his version of events. While he could name how many days it had been since he left Iran he was unable to say when this was. Since he was able to name his birth date it is thought that he would be able to name the dates of when significant events happened such as when he left his home country.

He couldn't say when he started or finished school and he was only able to estimate ages for his family despite the fact that he said that he's always known his own age. It is thought that if

he grew up being told his age then he would also know his siblings' ages and be able to give more accurate answers.

He gave little information regarding how he used to occupy his time, saying he watched his father working but that he himself had very little responsibility. It was considered by the social workers that he was deliberately being vague and playing down his role within the family in order to make himself appear younger.

Therefore taking the above into consideration we have assessed the young person to be 17+ years old with an assessed DOB: 28/12/1991."

They completed the form to be handed to the person assessed in rather shorter terms as follows:

"CONCLUSION

Based on the information provided and in our professional judgment we believe that FZ is not the age he claimed as stated below:

His overall physical appearance and general demeanour indicate that he is older than his claimed age.

He brings no documentation to verify his age or claimed date of birth.

He was unable to provide sufficient time frames or dates to support his age claim.

Therefore taking the above into consideration we have assessed the young person to be 17+ years old with an assessed DOB: 28/12/1991."

13. Following this initial assessment, the appellant produced a vaccination card in support of his claimed age and, on 7th May 2010, the respondents conducted a review of their previous decision. A social worker had met the appellant again on 16th April 2010. During this interview, the appellant became agitated and stated that he did not want to talk about the issue any more. The review noted that the assessment was based on a photocopy of the vaccination card with a translation. The originals were with the appellant's solicitors. Unsuccessful attempts were made to contact the Iranian issuing authority of the vaccination card. The reviewers noted that the vaccination card had neither a photograph nor a signature, nor any issuing date or other form of identification mark linking the appellant to it. The assessors were not satisfied with the explanation offered and were not prepared to accept the vaccination card as proof of his identity or date of birth. The new evidence did not change the initial decision.
14. We have photocopies of the vaccination card and its translation from Farsi to English. It gives the appellant's name and date of birth as 28.12.1993 and its equivalent in the Iranian calendar. It has in five columns a series of dates for what appear to be infant

vaccinations against common infectious diseases which are listed. The date for the first vaccination for three of these is the stated date of his birth. There is no date earlier than the stated date of his birth. The original (photocopy) document has an unexplained graph on its reverse. There is what appears to be an official stamp on the face of the card.

15. There was a further review of the decision on 5th August 2010 in the light of a supplementary medical report from a paediatric neurologist which did not materially strengthen the appellant's case as to his age. The further review did not materially change the local authority's conclusions.

The proceedings

16. The appellant applied for permission to bring judicial review proceedings to claim that Croydon had acted unlawfully in three ways: first in not assessing his needs; second, in not securing him adequate accommodation; and third, in wrongly determining his age. The first two of these were resolved for the purpose of an oral application for permission which was heard by James Dingemans QC sitting as a deputy High Court Judge on 26th November 2010. The deputy judge proceeded to consider the claim that the respondent had incorrectly assessed the appellant's age and refused the appellant permission. The President gave the appellant permission to appeal that decision in part to enable this court to consider problematic aspects of age assessment cases in the light of the Supreme Court's decision in *R (A) v Croydon London Borough Council*.
17. The deputy judge applied Holman J's approach in *R (F) v Lewisham London Borough Council* to the question whether permission should be granted. He held that there was no realistic prospect that at a substantive fact finding hearing the court would conclude that the claimant is younger than the local authority had determined him to be. The authority had carried out a proper *Merton* assessment. Inconsistencies that had been relied on in the assessment were not material. The deputy judge then considered and rejected as unimpressive two matters which are relied on in this appeal, that is that provisional adverse conclusions were not put to the appellant, and that the interviews took place without an appropriate adult being present. The deputy judge considered that there was no realistic prospect that the age assessment would be quashed on procedural points alone. He accordingly refused permission.

The appeal

18. The appeal to this court raises three questions:
 - i) whether a local authority is obliged to give the person whose age they are assessing an opportunity to respond to provisional adverse findings which they are inclined to make;
 - ii) whether the local authority should in fairness offer the young person the opportunity to have an appropriate adult present at any age assessment interview; and
 - iii) how the court should address the question whether the factual issue of the young person's age is arguable. Should it start by assessing the person's

positive claim, or should it first examine the apparent integrity of the local authority's assessment?

We regard the third of these as the most important, in so far as it may necessary to go beyond or gloss what Holman J said in *R (F) v Lewisham London Borough Council*.

19. As to the first question, Mr Luba submits that a person who is likely to be seriously affected by the decision of a public authority should, in a case such as this, have the opportunity to comment on matters which are likely to weigh against him. Mr Luba refers to this as a “minded-to procedure” – an expression which tends to fossilise the detail of what may be required. Mr Luba submits that these are matters of great moment to the claimant and that transparently fair and careful assessments are required – see Blake J in *R (NA) v London Borough of Croydon* [2009] EWHC 2357 (Admin) at paragraph 48. Mr Luba refers to *R v London Borough of Hackney* [1995] 27 HLR 108 at 113, where Laws J in a housing context emphasised that, if the authority is inclined to make an adverse decision because it does not believe the account given by the applicant, it has to give the applicant the opportunity to deal with it. Mr Luba refers to like effect to paragraph 80 of this court's judgment in *R (Q) v The Secretary of State for the Home Department* [2004] QB 36.
20. It is part of a *Merton* compliant age assessment process that, if the decision-maker forms the provisional view that the applicant is lying as to his or her age, the applicant must be given the opportunity to address the matters that have led to that view, so that he can explain himself if he can – see the judgment in the *Merton* case at paragraph 55. If this is not done, the local authority must show that it would have made no difference. Mr Luba points to the fact that the respondents themselves have sent out “minded to” letters in other cases – see *R (A) v Croydon London Borough Council* [2008] EWHC 2921 (Admin) at paragraph 17. He invited us to clarify a possible inconsistency of approach adopted by Collins J in *R (AW) v London Borough of Croydon* [2009] EWHC 3090 (Admin) at paragraph 16 and 17. Having referred to paragraph 55 of the judgment in the *Merton* case, Collins J said in effect that it could be that the applicant had been given a proper opportunity to address matters of concern in the course of the interview itself and that a further “minded to” opportunity would be superfluous. Mr Luba pointed out that the Croydon/Hillingdon guidance recommended open questioning.
21. In our judgment, it is axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him. Obvious possible such points are the absence of supporting documents, inconsistencies, or a provisional conclusion that he is not telling the truth with summary reasons for that provisional view. In the absence of formal central government guidance, we would not be prescriptive of the way in which this might be done, and we stand aside from requiring in every case a formal “minded to” letter sent after the initial interview. It is accepted that these matters should not be over-judicialised. It is theoretically possible that a series of questions appropriately expressed during the course of the initial interview might fairly and successfully put the main adverse points which trouble the interviewing social workers. But that would be a haphazard way of doing it and one which would be intrinsically likely to lead to subsequent controversy in the absence of an expensive transcript of the interview. Mr Luba agreed that fairness could be achieved in this respect if the

interviewing social workers were to withdraw from the interview room at the end of the initial interview to discuss their provisional conclusions. They could record these with brief reasons in writing on a form by means of which, upon returning to the interview, they could put the adverse points which trouble them to the person whose age they are assessing, thereby giving him the opportunity to deal with them. The young person may be able to deal points then and there or he may say he needs more time, for example to obtain more documents. Either way, the interviewers could then withdraw again to consider his answers and reach their decision. This would be a modification of the procedure adopted in this case. We emphasise that this suggested outline procedure is not the only way in which fairness might be achieved in this respect.

22. In our judgment, the procedure adopted in the present case did not achieve this element of the *Merton* requirements. Mr Hadden was constrained to accept that he was unable to show on the material available to him that it did. The deputy judge considered that it was sufficient that the assessors' conclusions were put to the appellant in writing and that he signed that he understood them. Although the interviewing social workers withdrew to consider their decision, when they returned, they presented him with their conclusions without first giving him the opportunity to deal with the adverse points. Further, the conclusions were not expressed with sufficient detail to explain all the main adverse points which the fuller document showed had influenced the decision. It is also evident from subsequent correspondence that, given the opportunity, the appellant would have been able to explain with reference to the Iranian calendar, for instance, an apparent inconsistency between his date of birth and the age which he claimed to be. On the face of it, therefore, there is substance in the first ground of appeal. The initial deficiency was not corrected by the holding of a review, since the review only dealt with the more recently produced vaccination card and the procedure adopted had the same deficiency as had affected the initial interview.
23. As to the second question it is generally accepted in a variety of contexts that, where children or other vulnerable people are to be interviewed, they should have the opportunity to have an appropriate adult present. Reference may be made in this respect to the Police and Criminal Evidence Act Code C at paragraph 11.17; *R (DPP) v Stratford Youth Court* [2001] EWHC 615 (Admin) at paragraph 11; and the Home Office Guidance for Appropriate Adults. Apparently Croydon do adopt this procedure in many of their cases, but they did not make the offer at the assessment on 4th September 2009. However, the appellant's key worker was present at the reviewing interview on 16th April 2010. The requirement does not feature in their written procedure, or in the attached form. In an age assessment case, the young person will at least claim to be a child. The present appellant did so and at the time it was agreed that he was. Additionally he was known to have mental health problems. In *R (NA) v London Borough of Croydon*, Blake J recognised at paragraph 50(1) the need in that case for the claimant to be asked whether he wanted to have an independent adult present.
24. The deputy judge concluded that the appellant should have had the opportunity of having an appropriate adult present, but that this failure did not undermine the proper process. This was because the appellant is recorded as having had a good relationship and interaction with the Azeri interpreter and that he was assertive and perfectly

capable of dealing with matters where he was able to give credible evidence. The deputy judge did not consider that every departure from good practice should be seen as resulting in unfairness.

25. In our judgment, the appellant should have had the opportunity to have an appropriate adult present, and the fact that he was not given this opportunity contributes to our decision whether he should be given permission to proceed.
26. As to the main question in this appeal, we have already discussed what we consider to be the correct approach to the grant or refusal of permission where an applicant seeks to have the court determine on evidence that his age is not that which the local authority have determined. In short, the court should ask whether the material before it raises a factual case which, taken at its highest, could not properly succeed in a contested factual hearing.
27. As we read his judgment, the deputy judge refused permission because the local authority in his view conducted a proper *Merton* assessment; because inconsistencies in the assessment relied on were immaterial and unpersuasive; because one of the procedural failures relied on was not established and the other did not make the process materially unfair; and because the local authority's reasons for disregarding the vaccination card were persuasive. Underlying these reasons is the inferential finding that the local authority were entitled to disbelieve the appellant as to his age, and that he had no realistic prospect of establishing in court what he had failed to establish when he was interviewed by the local authority assessors.
28. Mr Luba submits that the deputy judge was wrong to base his decision on a conclusion that the assessment process was *Merton* compliant. He should rather have examined the appellant's factual case to see whether there was consistent chronological evidence capable of establishing that he was the age he claimed to be. The assessment did not articulate compelling reasons why the appellant should be disbelieved, nor glaring inconsistencies which obviously undermined his factual account. There was no sufficient or proper basis for the inferential conclusion that the vaccination card was a false or forged document, especially when the original was in Farsi and the appellant's first language is Azeri. A vaccination card is not an identity card and you would not expect it to have a photograph or other means of formal identification. The original did have a stamp on it, and the local authority did not inspect the original although inspection was offered.
29. In our judgment, this is a case where permission to proceed to a factual hearing on evidence should be granted. One factor contributing to that conclusion is that there were two procedural lapses. However, our main reason is that we do not consider that the appellant's factual case taken at its highest could not properly succeed in a contested factual hearing. The appellant is recorded as giving a reasonably consistent factual account, and the initial apparent inconsistency between his claimed age and his claimed date of birth was capable of being explained. There were no glaring inconsistencies in his account, nor clear analytical reasons why his account was unbelievable. The vaccination card is not obviously a forgery, and the series of dates which it gives for the various vaccinations is positively consistent with his claimed date of birth and positively inconsistent with a birth date two years earlier. It may to a layman be mildly odd if he had a hepatitis B and BCG vaccination on the very day of his birth. But for all we know that may well be the practice in Iran and elsewhere. It

would be much more strange, if he had no vaccination at all until he was two years old. We take account of the fact that the social workers will have been able to judge his general appearance and demeanour, and to make a general credibility judgment from the manner in which he answered their questions. It does not follow that the court would be bound to make the same judgments; nor is general credibility, judged by others, alone sufficient for the court to refuse permission for a factual hearing before the court, when it is for the court to determine in a disputed case the fact of the young person's age.

30. For these reasons, in our judgment, permission to bring judicial review proceedings to determine the appellant's age should be given and we shall accordingly allow the appeal.
31. The Administrative Court does not habitually decide questions of fact on contested evidence and is not generally equipped to do so. Oral evidence is not normally a feature of judicial review proceedings or statutory appeals. We would therefore draw attention to the power which there now is to transfer age assessment cases where permission is given for the factual determination of the claimant's age to the Upper Tribunal under section 31A(3) of the Senior Courts Act 1981, as inserted by section 19 of the Tribunals, Courts and Enforcement Act 2007. The Upper Tribunal has a sufficient judicial review jurisdiction for this purpose under section 15 of the 2007 Act and by article 11(c)(ii) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010, SI 2010 No. 2655. Transfer to the Upper Tribunal is appropriate because the judges there have experience of assessing the ages of children from abroad in the context of disputed asylum claims. If an age assessment judicial review claim is started in the Administrative Court, the Administrative Court will normally decide whether permission should be granted before considering whether to transfer the claim to the Upper Tribunal. The matter could be transferred for permission also to be considered, but the Administrative Court should not give directions for the future conduct of the case after transfer, and in particular should not direct a rolled-up hearing in the Upper Tribunal.
32. It should be noted that transfer cannot at present be made if the claim calls in question any decision made under the Immigration Acts or the British Nationality Act 1981, but the present is not such a case. It is suitable for transfer. We shall accordingly order transfer of the present claim to the Upper Tribunal at Field House, 15 Breams Buildings, London EC4A 1DX, which will give further directions. In doing so, we take note of, but do not adopt, submissions on behalf of the claimant made in writing after the hearing, that his case should not be transferred because of his vulnerable personal circumstances. In this respect, as in others, he will receive an entirely appropriate hearing before the Upper Tribunal.