

Information note

**The Queen on the application of B v London Borough of Merton**  
[2003] EWHC 1689 (Admin) (14 July 2003)

Scope of the judgement

Judgement handed down by Burnton J in the High Court giving “*guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker claiming to be under the age of 18 years.*”

NB: There is no statutory procedure or guidance issued to local authorities as to how to conduct an assessment of 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. The judgement in *Merton* is, therefore, the statement of the law as it currently stands.

Guidance

- The assessment of age in borderline cases is a matter which may be determined informally provided safeguards of minimum standards of inquiry and of fairness are adhered to (para 36).
- Except in clear cases, the decision maker (the assessing social worker(s)) cannot determine age solely on the basis of the appearance of the applicant. (para 37)
- The decision maker must seek to elicit: the general background of the applicant including his family circumstances and history, his educational background, his activities during the previous few years (ethnic and cultural information may also be important). (para 37)
- Where there is reason to doubt the applicant's statement of his age, the decision maker will have to assess his credibility and will have to ask questions designed to test his credibility (para 37)
- The Local Authority must make its assessment on the material available to and obtained by it. There should be no presumption that the applicant is either a child or an adult prior to the assessment of the material. Where the applicant has previously stated that he is over 18, that statement should be taken into account and *in the absence of any explanation*, may be decisive (para 38)
- The appearance and demeanour of the applicant may justify a *provisional view* as to whether he is a child or adult and in an *obvious* case will require him to be accepted as a child or conversely, an adult, in the absence of compelling evidence to the contrary. (para 38)
- A social services department of a Local Authority cannot simply adopt a decision made by the Home Office but must decide itself whether the applicant is a child in need within part III of the Act. The Local Authority *may* take into account information obtained by the Home office but *must* make its own decision and for that purpose *must*

have available to it *adequate information*. To merely take the stance of the Home Office would be unlawful. (para 39)

- An age assessment decision by a Local Authority social services department is not a case in which *statute* requires that reasons be given for the decision let alone that reasons be given at the same time as the decision. However, a court will be cautious about accepting late reasons and where there was undue delay would consider relevant: whether the late reasons are consistent with the original reasons; whether there is a real risk that the later reasons have been composed subsequently to support the original decision retrospectively; the length of the delay before later reasons were put forward; the circumstances in which they were put forward (especially if put forward after the commencement of proceedings) (para 41, (34) (ii))
- The degree of scrutiny applied by the court to late decisions depends on the subject matter of the administrative decision under consideration. In asylum cases, anxious scrutiny is required. (para 41 (35))
- The court should bear in mind the qualifications and experience of the decision maker involved (paras 41 (36) & 43)
- A Local Authority is obliged to give *adequate reasons* for its decision that an applicant claiming to be a child is not a child and therefore not providing support under part III of the Act (para 45)
- The applicant is entitled to know the basis for the decision and to consider, with legal assistance if available, whether the decision is a lawful one.(para 45)
- The availability of an internal review or complaints procedure does not obviate the need for reasons to be given so that the applicant can make an informed decision whether to ask the Local Authority to review its decision , to complain about it or to ascertain whether the decision is amenable to judicial review.(para 46).
- A statement by the local authority that it is refusing to provide the applicant with support because he is not a child is not a statement of the *reasons* for the decision. (para 47) but the reasons need not be long or elaborate (para 48)
- The level of inquiry required in an assessment will vary depending on how obvious the judgement to be made is. There should be no predisposition to assume the decision maker has acted unreasonably, carelessly or unfairly. It is for the claimant to establish that the decision maker has so acted.
- Where an interpreter is required, it is greatly preferable for them to be present during the assessment interview to minimise the risk of misunderstandings. Great care is required to ensure mistakes are not made. A note of the questions and answers by the interpreter would be highly relevant to any assertion that the applicant had been misunderstood or that what he said was not correctly noted. (para 52)
- It is not necessary as a matter of law for a verbatim note to be taken of the interview but such a note would enable the court to be more confident as to the accuracy of its judgement. It is not necessary for the interview record to be countersigned by the applicant although evidentially it might help the authority (in subsequent proceedings) (para 54)
- The decision maker must explain to the applicant the purpose of the interview (para 55)
- If the decision maker forms the provisional view that the applicant is lying about his or her age, the applicant must be given the opportunity to address the matters that have lead to that view and the opportunity to explain him/herself if he/she can.(para 55)

- The availability of a statutory complaints and review procedure under s.26 of the Children Act and associated regulations does not provide an alternative to Judicial Review where the claimant *requires immediate relief* (e.g. because they have no available accommodation or support), due to the timescales set out in that legislation for investigating such a complaint or representation (28 days) (para 57)