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Age Disputes and Age Assessment 3

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This information sheet provides information about the way in which judicial review cases challenging a local authority's assessment that a person is not a child (or is a child, but is not the age he or she claims to be) are to be conducted. It also gives information about how local authorities should conduct interviews when seeking to assess someone's age.

Background

In November 2009, the Supreme Court gave judgment in *A v London Borough of Croydon & Anor; M v London Borough of Lambeth & Anor* [2009] UKSC 8 ("*A v Croydon*"). The Court decided that in judicial review proceedings seeking to challenge a local authority's assessment of age, it was for the High Court to make its own assessment of age on the evidence presented. More information is available from the February 2010 "Age Disputes and Age Assessment 2" information sheet.

In February 2011, the Court of Appeal gave judgment in the case *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59 ("*FZ v Croydon*"). This is the first time since the Supreme Court's judgment in November 2009 that the Court of Appeal has considered the way in which the High Court should deal with these judicial review cases.

Judicial reviews in England and Wales

The High Court deals with applications for judicial review in England and Wales. There are two stages to the judicial review process – the permission stage and the full hearing stage. Sometimes both of the stages are dealt with together at one hearing.

The permission stage

To bring an application for judicial review before the High Court, permission must first be obtained from the High Court. In considering whether to permit the application for judicial review to proceed, the High Court will consider whether the application has been brought in good time and the prospects of the application succeeding.

The full hearing stage

If the High Court grants permission for the application to proceed, it will then hear the application in full to decide whether to grant the application.

Some more general information about judicial review is provided in the September 2007 "Removals and Judicial Review" information sheet.

Matters dealt with in *R (FZ) v London Borough of Croydon*

The Court of Appeal dealt with three issues in this case:

- before a local authority makes its decision as to someone's age, should it give that person an opportunity to answer or respond to any doubts it may have?
- should a local authority provide the opportunity for an 'appropriate adult' (see below) to be present when it interviews someone for the purpose of assessing his or her age?
- what test should the High Court apply at the permission stage of a judicial review brought against a local authority seeking to challenge that local authority's age assessment?

As regards the first issue, the Court of Appeal decided that a local authority should give an opportunity for someone to respond to any doubts it may have about his or her age. There was not one particular way by which this must be done. However, the court said that one way to do so would be to have a break at the end of any interview. Those conducting the interview could then consider what was likely to be their view about age and anything they thought cast doubt on the age the person claimed to be. If they had doubts, they could return to the interview and give the person an opportunity to respond to those doubts. The court indicated that in some cases (e.g. where it was thought that relevant documentary evidence might be available), the person might need to be given some time to obtain that evidence.

As regards the second issue, the Court of Appeal decided there should be the opportunity for an appropriate adult to be present at any interview. That person should be independent – e.g. not someone who works for the local authority, not someone who is involved in making the assessment of the person's age and not someone (e.g. someone from the UK Border Agency) who has a direct interest in that age assessment. That person's role is to look out for the welfare of the person being interviewed (e.g. drawing attention to any obvious signs of tiredness or need for a toilet break).

As regards the final issue, the Court of Appeal decided that the High Court should grant permission for the judicial review to proceed to the full hearing stage unless, on all the evidence before the High Court and taking the case at its highest, that court is satisfied that the case cannot succeed. By 'taking the case at its highest', the Court of Appeal meant that, at the permission stage, the High Court should take the best view of the evidence that it is possible to give in favour of the person whose age is disputed.

Judicial reviews in Scotland

Judicial reviews in Scotland come before the Court of Session. The rules and procedures of that court are not the same as the rules and procedures of the High Court in England and Wales. The Court of Session has not yet decided a case, such as *FZ v Croydon*, to determine how it should deal with a judicial review case brought against a local authority seeking to challenge that local authority's age assessment. However, although the rules and procedures of the Court of Session are different, there appears to be good reason to think that it too should give effect to the Supreme Court's judgment in *A v Croydon* by giving a full hearing in any judicial review where it is not satisfied that the case, taken at its highest, cannot succeed.

Judicial reviews transferred to the Upper Tribunal

The Upper Tribunal was established by the Tribunals, Courts and Enforcement Act 2008. That Act includes powers to permit some judicial review cases to be transferred from the High Court to the Upper Tribunal. In England and Wales, some judicial reviews seeking to challenge a local authority's assessment of age have been transferred to the Immigration and Asylum Chamber of the Upper Tribunal. There, these cases may be dealt with by a senior immigration judge rather than a High Court judge. If a judicial review case is transferred to the Upper Tribunal, that tribunal will have to follow the judgments of the Supreme Court and Court of Appeal in the same way as the High Court is required to follow these judgments.