OUTER HOUSE, COURT OF SESSION

[2024] CSOH 8

P545/22

OPINION OF LORD SANDISON

In the petition

MOHAMMED ISMAEL SULIMAN ABDULLAH

Petitioner

for

Judicial Review of an age assessment made on behalf of Aberdeenshire Council for which an outcome meeting was held 4 April 2022

Petitioner: Haddow; Drummond Miller LLP (for Latta & Co, Glasgow)
Respondent: (Aberdeenshire Council) Blockley; DWF LLP

31 January 2024

Introduction

[1] Mohammed Ismael Suliman Abdullah claims to be a national of the Republic of the Sudan who arrived in the UK on or around 17 June 2021. When encountered by police at the side of a road in Aberdeenshire on 25 June 2021, he claimed that he was 17 years old. Although it appears that doubts were entertained about that claim from the outset, he was not initially subjected to any formal process of age assessment, but rather was given the benefit of the doubt and treated as if his date of birth was 1 January 2004. He was accommodated by Aberdeenshire Council as a child in terms of section 25 of the Children

(Scotland) Act 1995, in accordance with his claimed age. In August 2021, he was charged with rape and remanded in custody to a Young Offenders' Institution. The court before which he first appeared queried his claimed age and suggested that a formal age assessment be carried out. That triggered a process which might in due course have occurred in any event, and an age assessment was undertaken in the Young Offenders' Institution on behalf of the Council by two suitably experienced social workers supplied by the Home Office over the period 15 February to 4 April 2022 (by which time Mr Abdullah's age was, on his own account, 18). It concluded that he was at least 22 years old, with an assigned date of birth of 1 January 2000.

[2] Mr Abdullah's solicitors commissioned a critique of the age assessment obtained by the Council from another very experienced social worker, Ms Jacinta Kane, which was provided in June 2022. On 7 July 2022 interim orders were obtained from this court bearing to suspend the age assessment and, for good measure, interdicting the Council from acting on it, notwithstanding that by then Mr Abdullah had been removed from its area with no immediate obvious prospect of return. Mr Abdullah's solicitors then asked consultants, Immigration Social Work Services, to furnish another view as to his age. ISWS interviewed him in December 2022 and provided an interim report in January 2023, in which they stated that they would not be able to draw any conclusions until he had undergone psychological assessment. Such an assessment took place, and a further report in April 2023 concluded that Mr Abdullah was suffering from post-traumatic stress disorder and depression. A further age assessment process conducted by ISWS (which was terminated while still in progress due to concerns about Mr Abdullah's mental capacity) reported in July 2023 that it was possible that he was indeed 19 as he claimed, and that there was no significant evidence to dispute that claim.

[3] On 24 October 2023 Mr Abdullah was sentenced in the High Court of Justiciary to 7 years' detention in respect of his conviction for rape after a trial by jury.

[4] In this petition for judicial review, Mr Abdullah seeks reduction of the age assessment carried out on behalf of Aberdeenshire Council and the grant of various ancillary orders, including declarator as to his true age. The Council resists the petition. The Scottish Ministers, the Governor of the Young Offenders' Institution holding Mr Abdullah, and the Secretary of State for the Home Department were called for such interest as they might have in the subject-matter of the petition, but none entered process. The matter came before the court for a substantive hearing to decide whether the petition is merely academic, and to determine the merits of the challenge to the age assessment, leaving over for now any judicial assessment of his true age which may transpire to be required.

Petitioner's submissions

[5] On behalf of the petitioner, counsel submitted that the petition was not academic. The age assessment currently stood as the authority which would determine for all material purposes the petitioner's assigned date of birth. It would have a continuing effect. By way of example, the petitioner was currently serving his sentence in a Young Offenders' Institution and not in an adult prison; that would be likely to change if the court upheld the age assessment. The petition did not (and could not) challenge the factual observations recorded in the age assessment, but it did challenge the reasoning of the assessors, their interpretation of their observations and the conclusions they had reached. If the court considered that the age assessment was irrational, failed to give adequate reasons, left out of account material factors, took into account irrelevant material, or was conducted in breach of natural justice, then it should conclude that the assessment ought to be reduced. That in

turn might require the court in due course to make its own findings about the age of the petitioner.

[6] So far as the applicable law was concerned, the petitioner adopted the summary of the principles stated in *AB* v *Kent County Council* [2020] EWHC 109 (Admin), [2020] PTSR 746 at [18] to [21] and [31] to [46], especially paragraph 21 at headings 3, 5, 7, 8, 16 and 20, namely: the decision needed to be based on particular facts concerning the particular person and was made on the balance of probabilities; the benefit of any doubt was always given to the unaccompanied asylum-seeking child since it was recognised that age assessment was not a scientific process; physical appearance was a notoriously unreliable basis for assessment of chronological age; demeanour could also be notoriously unreliable and by itself constituted only "somewhat fragile material", it would generally need to be viewed together with other things including inconsistencies in the account of how the applicant knew his age; an assessment of the applicant's credibility must be made if there was reason to doubt his statement as to his age; and adequate reasons must be given.

[7] Further, as noted in *AB* at [31], when deciding to treat a young person as an adult instead of a child in circumstances where the young person was claiming that he or she was a child, the decision maker was under a public law duty to make the necessary inquiries to arrive at an informed decision on the fact of the young person's age. Failure to discharge this duty lawfully gave rise to a public error of law rendering the decision unlawful: cf *Secretary of State for Education and Science* v *Tameside MBC [*1977] AC 1014, [1976] 3 WLR 641.

[8] It was accepted that an age assessment compliant with the process set out in *R (B)* v *London Borough of Merton* [2003] EWHC 689 (Admin), [2003] 4 All ER 280 was seen as the

most reliable means of resolving disputes over the age of a young person by providing a disciplined, subjective assessment by experienced professionals: *AB* at [32]. Where a court was satisfied that an age assessment had been carried out lawfully (in the public law sense of being rational, adequately reasoned and conducted in a matter compatible with natural justice), then that would normally be determinative. The court should take care not to over-judicialise matters or impose unrealistic burdens on age assessors: *AB* at [34], but no assessment was immune from judicial examination.

[9] It was further accepted that the intensity of scrutiny applied by the court should, as a starting point, reflect the specialist knowledge and experience of the age assessors, and that the court should exercise due restraint before interfering in a decision made by such experts. Nonetheless, in exercising its supervisory jurisdiction, the intensity of review to be applied, or amount of restraint to be exercised, would vary according to the circumstances, subject matter and background of the matter under consideration: *Jasim* v *Scottish Ministers* [2022] CSOH 64, 2022 SLT 1065 at [34] to [36], citing *R (SC)* v *Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223. The quality of the decision-making process was a relevant consideration when assessing the intensity of review: *Jasim* at [40] to [41].

[10] The courts were well-used to assessing the credentials of those giving opinion evidence as expert or skilled witnesses. The criteria applied by the court in that connection included considering whether the supposed expert's opinions were indeed supported by a recognised and reliable body of knowledge and experience: *Kennedy* v *Cordia (Services) LLP* 2016 UKSC 6, 2016 SC (UKSC) 59 at [44(iv)], [48] and [54] to [56]). The court could apply that criterion in examining the quality of the expert opinion contained in the age assessment. Its authors set out the body of knowledge on which they relied when they

evaluated the physical appearance, demeanour and body language of the petitioner. These were each important factors relied upon by the authors when reaching their conclusions.

[11] That body of knowledge did not represent a reliable body of knowledge and experience. In some cases, the information relied on by the authors was from websites that were quite clearly unscientific and entirely incapable of supporting an accurate assessment of the age of a specific individual from a non-Western background. For example, in discussing the height of the petitioner in comparison with the average height of adult Sudanese males, the assessors had relied as a source for that supposed average height an unvouched observation on colonelheight.com, a website which appeared to exist in order to sell insoles to those wishing to appear taller. They relied on design.tutsplus.com for information relating to physical development of adult males, but it was a site providing assistance to those wishing to learn how to draw the human body and did not purport to provide accurate scientific information. Observations about eye contact made by a supposed body language expert on racketandwrench.com had been cited, despite that being a site designed to enable the proprietors of US auto care centres to succeed in that line of business.

[12] Even the information which was from websites run by established medical organisations was general information for educational use, and did not purport to be comprehensive or suitable for diagnostic or assessment purposes. None addressed the probability that individuals might not fall within the general boundaries described due to natural human variance or environmental or developmental factors. The authors did not explain why they relied on information from websites which bore to support their conclusions but discounted other information from the same websites which might cast doubt on them. Specifically, they had relied on an article on the "Healthline" website as

supporting an assertion that nasolabial folds were age-related but did not explain why they did not consider whether sun damage, which was also mentioned as a cause of such folds in the same article, might be relevant to those observed in the petitioner. Similarly, they did not explain why they conflated smile lines and nasolabial folds when the article distinguished between them. The authors cited each of the NHS website and the Better Help and Healthy Children websites together but did not explain why they relied on the Better Help article (which suggested that physical changes could continue to occur in someone aged 18 to 21 and was thus consistent with the petitioner being 21 or over) and not the Healthy Children article (suggesting that development was complete by the same age range, which was consistent with the petitioner being his claimed age), or the NHS Website which also suggested development was complete by 18.

[13] The assessors' reliance on, and treatment of, material of this sort for their conclusions was so egregious as to render their conclusions irrational. But, in any event, their willingness to rely on such sources, and cite them as purportedly reliable evidence supporting their views, should give the court significant concern as to the extent to which they had undertaken a proper, fair and disciplined assessment, or whether they had merely set out their own subjective impressions and attempted to bolster them by appearing to refer to academic or scientific sources which were, in reality, nothing of the kind. In those circumstances, it was entirely appropriate for the court to apply a heightened intensity of review to the assessors' reasoning and conclusions.

[14] The petitioner further adopted the criticisms set out in the expert report by Ms Jacinta Kane, a social worker with extensive practical and supervisory experience of age assessment. She was well qualified to offer an expert view of the age assessment. She had been asked by the petitioner's agents to provide an appraisal of the deployment of

applicable guidance by the social workers who carried out the age assessment with particular reference to any deficiencies or points of concern, to comment on the appropriateness and relevance of various factors taken into account throughout the assessment and the sources referred to, and had produced a report dated 25 June 2022. She had concluded that the assessors had been thorough and had acted broadly in line with applicable guidance (being a joint publication of the Scottish Refugee Council and Glasgow City Council, published in June 2012 entitled "Age Assessment Practice Guidance: An Age Assessment Pathway for Social Workers in Scotland" and a further document published by the Association of Directors of Children's Services in October 2015 entitled "Age Assessment Guidance: Guidance to assist social workers and their managers in undertaking age assessments in England"). However, her view was that the assessors had given a limited rationale for their conclusions regarding age and in particular, had not explained why more weight was given to the views of police officers and a prison guard over the views of a child guardian with experience of working with unaccompanied children.

[15] Ms Kane noted that the assessing social workers had considered the physical appearance and demeanour of the petitioner; his interaction during assessment; his social history, family composition and journey to the UK; developmental considerations; education; independence and self-care skills; health; and information from documentation and other sources. She accepted that those were all standard factors to consider in an age assessment. She was critical of the assessors' observation that they found the petitioner's eye contact with them during interviews intimidating and that this was a sign of his age and maturity, criticising that as an illogical conclusion given cultural norms about limited eye contact between men and women in Sudanese culture. The assessors had selectively interpreted views and information relevant to a conclusion on the petitioner's age available

from sources other than themselves. They had not sufficiently explained why they had chosen to give weight to some professional views over others. They appeared to have given more weight to views that accorded with their own, which was contrary to applicable guidance about explaining clearly the interpretation and weight given to relevant information. The assessors had been made aware of the nature of the offence with which the petitioner had been charged, and Ms Kane's professional opinion was that that created the potential for unconscious bias in the interpretation of his behaviour in the interviews.

[16] A decision would be unlawful if it was so unreasonable that no reasonable decision-maker could have reached it, or if it took into account matters no reasonable decision-maker should have taken into account: *Associated Provincial Picture Houses Ltd* v *Wednesbury Corporation* [1948] 1 KB 223 at 233. No reasonable social worker could have decided to proceed on the basis that the internet sources used by the authors to justify their observations and conclusions on the petitioner's physical appearance, demeanour and body language were sufficiently reliable as to entitle them to do so. The age assessment, having been founded on conclusions justified by reference to material on which no reasonable social worker could have relied, was itself rendered irrational.

[17] Reasons given for a decision had to enable the reader to understand why a matter was decided as it was and what conclusions were reached on the principal issues or considerations: *South Buckinghamshire District Council* v *Porter (No.2)* [2004] UKHL 33, [2004] 1 WLR 1953. The authors of the age assessment had failed to provide adequate (or indeed any) reasons why the petitioner's supposedly "intimidating" eye contact should be taken as an indicator of age and maturity. Given that the authors' initial impressions were that the petitioner's overall interaction, presentation and demeanour were consistent with his

claimed age, they were under a particular duty to provide coherent and well-founded reasons as to why their view changed during the assessment, and had not done so.

[18] The authors of the report considered that the petitioner's demeanour showed him to have a level of confidence and sophistication more consistent with a person older than his claimed age. They also founded particularly on the petitioner's statement that he left school as a teenager in 2013, a statement that, if true, contradicted his claimed age. The authors did not explain how it was that the petitioner could make, and insist, on a point that was so obviously inconsistent if he was as confident and sophisticated as they considered him to be. That was a glaring contradiction in their reasoning that demanded an explanation, and none was given.

[19] The authors failed to provide adequate reasons for giving weight to the views of some professionals over the views of others, and specifically for giving weight to the views of a police officer and prison officer with no identified expertise in age assessment whilst disregarding the professional views of a guardian with four years' experience in working with unaccompanied children.

[20] The authors did not explore, and thus left out of account, the reasons why it had apparently been the case that the petitioner's claimed age was initially accepted. Relevant documents were not analysed and considered by the authors.

[21] Given the inadequate citation in the age assessment of some information relied upon, the petitioner was unable fully to assess the context of the information purportedly cited. This potentially concealed whether reliance on some of these references might disclose a ground of challenge. That constituted a failure to give adequate reasons: *R (Doody)* v *Secretary of State for the Home Department* [1994] 1 AC 531 at 565 G-H.

[22] Natural justice required that a decision or assessment must be made by a person or persons with no bias against the person who is the subject of the decision or assessment: *O'Reilly* v *Mackman* [1983] 2 AC 237 at 279 F-G. The authors were made aware of the nature of the offence (rape) with which the petitioner had been charged. Such knowledge had the potential to create an unconscious bias in the minds of the authors. Consequently, it was procedurally unfair and a breach of natural justice that the authors knew, when conducting the assessment, the nature of the allegations against the petitioner.

[23] The age assessment should be reduced and the court should proceed at a subsequent hearing to make findings about the age of the petitioner based on the evidence now before it.

Respondent's submissions

[24] On behalf of the respondent, counsel submitted that the petition should be refused. Although the petitioner disagreed with its conclusions, the observations underpinning the age assessment decision were cogent, sensible and lawful. The decision demonstrated that it had addressed the principal and important issues and relevant considerations.

[25] Although the petitioner challenged the sources cited by the assessors as supposedly supporting their conclusions, those citations were merely illustrative, if perhaps ill-advised, examples used to highlight the observations made of the petitioner's physical presentation, his demeanour and behaviour. They were unnecessary, but not harmful to the conclusions of the report. No issue was taken with the observations themselves. Social work was a recognised field of knowledge and a proper basis upon which expert evidence could be given.

[26] As to the relevant law, it had been judicially recognised that there was no peer-approved anthropomorphic test: *Merton* at [22]. The assessors could only proceed on the

information available. That would usually comprise an assessment of (i) physical appearance; (ii) the personal history given; and (iii) behaviour or demeanour. Appearance and behaviour (or demeanour) were relevant considerations: *Merton* at [20], [37], [47] and [48]. Those were precisely the factors considered in the age assessment. The actual observations about the petitioner's physical appearance, personal history and behaviour were not challenged by the petitioner. What was challenged was whether the information provided to illustrate the assessors' points amounted to "scientifically verified information of a sort which could conceivably support a reliable age assessment". The petitioner sought to judicialise the age assessment, which ought to be avoided:

> "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." (*Merton* at [36]).

[27] It was reasonable for the assessors to take the petitioner's height into account in determining his age. They observed the petitioner to be 5ft 3 inches tall. The website colonelheight.com indicated that the average height of Sudanese males was 5ft 8 inches, putting the petitioner some five inches shorter than average. The information on colonelheight.com could not be verified as the article cited was no longer available. However, this observation was favourable to the petitioner, indicating that he had perhaps not reached full height.

[28] It was equally reasonable for the assessors to take the petitioner's physical development and presentation into account. The petitioner was observed to have fully developed shoulders, and well-established muscle definition. The website design.tutsplus.com was illustrative of the points made by the assessors that, *inter alia*, the petitioner had well-established muscle definition, and his shoulders were seen to be fully

developed. That was not cited as the authoritative source of the assessors' knowledge that fully developed shoulders and well-established muscle definition indicated someone who was post-pubescent. Indeed, no authority ought to be needed for such a standard and self-evident statement; it was within the knowledge of experienced social workers.

[29] The petitioner was observed to speak with a consistent and masculine tone. This was a further reasonable thing for the assessors to take into consideration. The website kidshealth.org was illustrative of the points made by the assessors that, *inter alia*, the petitioner spoke with a consistent and masculine tone, and that that indicated that the changes associated with puberty had taken place. Again, this was not cited as the authoritative source of the assessors' independent knowledge that a deep voice indicates someone who has already gone through puberty.

[30] The presence of fine lines on the petitioner's face was also a reasonable thing for the assessors to take into account. The petitioner was observed to have fine lines on his face. The website healthline.com was illustrative of the point that the petitioner had nasolabial folds ie smile lines, which occur as a person ages. Again, the observation that the petitioner had fine lines on his face was a standard one, which indicated maturity.

[31] The petitioner was asked when he had last had a growth spurt. He could not remember. The assessors could properly take that into account. The NHS.uk website was illustrative of the point that people generally stop growing at around the age of 16. The petitioner was not able to remember the last time he had a growth spurt, and the assessors took the view that he had completed his growth. Again, this was an unremarkable observation within the knowledge of experienced social workers.

[32] The assessors took the view that the petitioner's overall physical appearance suggested he was beyond the stage of later adolescence. The website healthychildren.org

was used to illustrate that later adolescence is usually between the ages of 18 to 21. The website betterhelp.com was further used to illustrate that late adolescence could be from the ages of 18 to 24. Nonetheless the assessors' view was that the petitioner was beyond this stage, and they came to the conclusion that he was aged between 21 to 25.

[33] The behaviours exhibited by the petitioner were observed by the assessors. This was a reasonable thing for them to take into account. It was observed that the petitioner seemed comfortable speaking to authority figures and he exuded confidence. He made good eye contact, and this was noted to be intimidating at times. The website rachetandwrench.com was cited in relation to an observation that the petitioner's demeanour exuded confidence, as might that of someone experienced in speaking to authority figures with a significant level of maturity. Again, this was in any event an observation within the knowledge of experienced social workers. The article itself was no longer available, but its general observations on the significance of eye contact had not been challenged within the petition.

[34] The petition challenged the use of the websites Kids Health, Healthline, the NHS website, Healthy Children and Better Help as being unsuitable to provide information to be used by professionals in individual cases for diagnostic or assessment purposes. The petitioner had misunderstood the nature of the internet sources cited. These websites provided information to illustrate the assessor's observations, not to provide an authoritative medicalised anthropomorphic test to underpin those observations. Use of the websites was also challenged on the ground that they did not address the extent to which individual cases might vary from the general information provided, in particular for those with a different genetic heritage, childhood malnutrition and exposure to environmental factors or trauma not normally found in the general US and UK population. Again, there was no authoritative medicalised anthropomorphic test that could be cited. However, the

assessors were both social workers of considerable experience and both had experience of working with children and families from diverse backgrounds. Prior to his social work qualifications, the second assessor had over 10 years teaching experience in Nigeria, and taught teenagers in the later years of secondary education. The assessors were well-placed to know the extent to which individual cases could vary.

[35] The petitioner maintained that no reasons were given as to why intimidating eye contact should be taken as an indicator of age and maturity. However, reasons were given, including that the petitioner did not come across as a vulnerable young person, but on the contrary carried himself with maturity, with the confidence he displayed during the assessment being seen in people much older than his claimed age. Similarly, reasons had been given for preferring the views of some professionals over others. It had been said that the guardian's opinion was respected, but that information gathered during the assessment contradicted her views. The prison officer had been mentioned as a person who had more day-to-day interactions with the petitioner. It was difficult to explain in great detail reasons for what could never be anything but a subjective view. The petitioner might disagree with the reasons provided, but they were cogent, sensible and lawful. They had addressed all principal and important issues and relevant considerations. Weight was a matter for the decision-maker.

[36] The challenge based on unconscious bias arising out of the assessors' awareness of the nature of the offence in respect of which the petitioner had charged appeared to be linked to the suggestion that this may have been the reason the assessors found the petitioner's eye contact intimidating. However, two experienced social workers would know the difference between normal conversational eye contact, and eye contact that was

intimidating. The petition did not aver what type of bias could arise by knowing the nature of the allegations against the petitioner. The averment was irrelevant.

[37] Nothing had been stated within the petition that undermined the core observations of the assessors. The factors taken into account were all ones that a reasonable age assessment ought to take into account. The conclusions drawn were cogent and sensible. The conclusion that the petitioner was over 18 was therefore sensible. There was no irrationality on the part of the assessors, nor on the part of the respondent. The petition should be dismissed.

Further submissions on procedural matters

[38] At the conclusion of the oral argument, I invited further written submissions on the question of whether the court had an original jurisdiction to determine the petitioner's age and, if so, whether there were any considerations which required it not to exercise that jurisdiction without reducing the extant age assessment, or otherwise ought to cause it to exercise restraint in that regard.

[39] In response, it was submitted on behalf of the petitioner that this court had an original jurisdiction to pronounce declarators which had the effect of definitively establishing certain matters which might otherwise be disputed, making clear that which was doubtful and which it was necessary to make clear. The earlier institutional authorities described declarator as a remedy relating to confirming the existence of certain rights (eg *Stair*, Inst., 4.3.47). However, this came to include declarators of status, including declarators of marriage and bastardy (*Bell*, Dictionary (7th Ed), p291; *Zamir and Woolf, The Declaratory Judgment* (3rd Ed, 2002) per Lord Clyde at [8.32]). The logic of the equivalence of declarators of rights and declarators of status was, in any event, obvious: where particular

rights were inherently enjoyed by persons with a certain status a declaration of such status was, in effect, a declaration that they enjoyed those rights. Age was not explicitly mentioned as a status in the authorities but was directly determinative of whether a young person was, under the former law, a pupil, minor or adult. This was explicitly mentioned as a part of a person's status, along with various other factors, in at least one textbook (Walker, *Principles of Scots Private Law* (4th Ed, 1988), p208-209). The question of whether or not a person was (or at a certain point had been) a child under the current law was, in effect, the same question. The absence of examples of declarators of age in older decisions was not indicative of the court not having jurisdiction over such matters. No material had been identified demonstrating that the court would have refused to decide the age or date of birth of a person had it been required to do so. A better explanation might be that such declarators were never necessary, as Scotland had enjoyed reliable systems of birth registration for many hundreds of years. Age was rarely, if ever, in dispute.

[40] The status of child would change simply by the passage of time and without any supervening event. Equally, age-related legal rights, entitlements and presumptions, would depend on age at a particular juncture. It was therefore necessary, as a matter of logic and practicality, that when a court pronounced declarator of age, it should do so in a form which declared a person's date of birth to be a certain date. *U* v *Glasgow City Council* [2017] CSOH 122, 2017 SLT 1109 at [22] found that a person's age clearly fell into the category of issues which could be determined by declarator, as had *L* v *Angus Council* [2011] CSOH 196, 2012 SLT 304 at [70].

[41] In *R(A)* v *Croydon London Borough Council* [2009] UKSC 8, [2009] 1 WLR 2557 the Supreme Court at [1] to [2] defined the central question as "who decides whether [the age-disputed person] is a child or not?" when analysing a local authority's duties under the

Children Act 1989. Either the answer was a matter of "precedent fact"; or it was for the local authority to decide in the exercise of its judgment, subject to the normal principles of fairness and rationality. If it was the former, then the court had original jurisdiction to decide the matter; if the latter, then the court could only review the decision under its supervisory jurisdiction. The Supreme Court noted that the 1989 Act referred only to the term "child" in objective and unqualified terms and gave no discretion to a local authority to decide the matter (such as by referring to "a person who appears to be a child" or similar words). Consequently, the question of whether a person was a child was found at [27] and [52] to [54] to be a factual matter which was subject to the ultimate determination of the courts. In *L* v *Angus Council*, the Lord Ordinary at [24] to [25] noted that the Scottish 1995 Act was different to the 1989 Act which the Supreme Court considered in *R(A)*, although the court was not addressed on the differences. However, the petitioner submitted that the reasoning of the Supreme Court in *R(A)* applied equally to the 1995 Act. The meaning of the word "child", whilst different for different provisions within the Act, was always objectively and without qualification defined by age.

[42] The position might be different for any age assessments conducted after 31 March 2023 by a "designated person" (ie a person from the new National Age Assessment Board). Such age assessments would be binding on local authorities in exercise of their duties under the relevant children's legislation (Part 4 of the Nationality and Borders Act 2022). At a future point, a right to appeal such assessments to the Immigration and Asylum Chamber of the First-tier Tribunal would also be commenced.

[43] The court should find that it had an original jurisdiction to determine the petitioner's age and to pronounce declarator specifying what was deemed to be his date of birth for all purposes.

[44] There were very limited circumstances in which a court might decline to exercise its jurisdiction. However, it had an inherent right to decline to exercise its jurisdiction in particular cases when it would not be in the interests of justice to do so. This could take into account all the circumstances of the case and the factual and legal context. For example, a court would decline to pronounce declarator unless it was pronouncing on an issue of live practical importance and not a mere hypothetical question.

[45] In the current petition, parties proceeded on the basis that the guidance at [28] in *U* v *Glasgow City Council* was that age assessment challenges should proceed by way of judicial review and that the court should begin with the existing age assessment. However, the logic of *U* was somewhat unclear. If the court had the power to determine age as a matter of fact, then the existing assessment could only be an adminicle of evidence. Equally, if the court had original jurisdiction to determine the factual issue, then that should be dealt with first, as once that matter was determined, the age assessment would be superseded by the declarator of the court and any further consideration of the lawfulness of the age assessment would be redundant. Equally, even if the age assessment survived a public law challenge, it did not become binding on the court and it would remain open to an age-disputed person to bring an action for declarator, even if the age assessment had not been reduced. A court might be reluctant to entertain such an action where there was an age assessment which was, at face value, robust and little or no other evidence; but an age assessment might still have been found lawful even if it was less than robust and there was competing evidence.

[46] In procedural terms, there was a strong argument that ordinary procedure was the better procedure to use. Fundamentally, the central issue was a factual one subject to the original jurisdiction of the court rather than the supervisory jurisdiction. The court in *U* at [24] had pointed out, relying on what had been said by Lord Hope in *West* v *Secretary of*

State for Scotland 1992 SC 385, 1992 SLT 636, that a matter should only be found to be incompetent on the basis of its framing and presentation if it would be likely to lead to manifest inconvenience and injustice or be impossible to conduct in a way that met the requirements of justice. Now that the court was seized of the petition, it should proceed to decide the underlying factual issue, making such case management orders as were necessary to do so fairly and expediently. The test for finding the matter incompetent was not met. If the petition were dismissed, the petitioner would be able to raise a fresh action to bring the same matter back before the court as an ordinary action; this would not be an efficient use of the court's resources. The court had heard detailed submissions on the age assessment produced on behalf of the respondent. It should now proceed to consider the independent age assessment produced by the petitioner and treat the two competing age assessments as competing expert reports. It should invite the parties to call the authors of the reports to speak to them and be cross-examined, then hear submissions on that evidence and decide the matter. The evidence of the petitioner himself and that of the other professionals who interacted with him was adequately recorded in the two age assessments. The credibility of the witnesses whose evidence had been recorded in the age assessments was not challenged, so it was not necessary to submit them to cross-examination. The independent social workers had found the petitioner to be highly variable in his presentation and emotional state. At points, interviews had to be discontinued due to the petitioner's mental state and what appeared to be episodes of psychosis. It would be impossible to predict what mental state the petitioner would be in, if called to give evidence; and, in these circumstances, it was likely that little or no weight could be placed by the court on the petitioner's answers. In any event, the court had a detailed record of his interactions with others within the written evidence already before it. It was not disputed that the petitioner's recorded

statements contained apparent discrepancies. If the respondent considered those discrepancies to be determinative or significant, then it would be open to it to put the significance of those discrepancies to the petitioner's expert and comment on those discrepancies in submissions.

[47] The court's decision in *U* v *Glasgow City Council* that future age assessment challenges should proceed by judicial review was motivated by an understandable desire that there should be limits to recourse to the courts where there was an established (albeit currently non-statutory) process for suitably qualified and experienced professionals to assess age. Nonetheless, it was wrong to decide that judicial review was the appropriate mechanism for these proceedings. It might well be against the interests of justice for unmeritorious or late proceedings for declarator of age to be entertained where there was a robust age assessment in place; but it was wrong in principle for such proceedings to be treated as applications to the supervisory jurisdiction simply because the procedural restrictions on such applications appeared to be a good fit for the criteria that should limit the court's willingness to make declarators of age. The correct route for future challenges (at least prior to any changes which may flow from the Nationality and Borders Act 2022) should be by ordinary action. The court would be able to exercise its inherent powers of case management to decline to hear matters where it was not in the interests of justice to do so. This might include where the matter was raised too late or where there was little prospect of success in the presence of an obviously robust age assessment. The court should remain seized of the present proceedings and fix an evidential hearing, making such other case management orders as it considered appropriate.

[48] On behalf of the respondent, it was submitted that the court should hold that it had jurisdiction to re-make an age assessment decision only if the impugned decision was

reduced. If it was competent for the court to decide the question of age for itself irrespective of the lawfulness of the decision, it should decline to do so. It was not the role of the court in the exercise of its supervisory jurisdiction to usurp the functions of lawfully made decisions of public bodies. In any event, the remaking of the decision would make no difference because the petitioner was no longer the responsibility of the local authority, and no duties were owed by the respondent to him. That rendered the petition academic.

[49] The starting point was that the Court had jurisdiction to review the decisions of a local authority. Generally, this was confined to reviewing the way in which the decision was made and not the merits: *West* v *Secretary of State for Scotland*. Judicial review was not an appellate process and ought not to be concerned with whether the challenged decision was factually correct, or whether a better decision could have been made with the benefit of hindsight, but rather simply with whether a decision had been taken in accordance with the law: *R* v *Secretary of State for Scotland* 1999 SC (HL) 17 at 41H–42B. The court could, however, pronounce declarator in the context of judicial review, which entailed that it had the power to determine a factual issue for itself. After *R (A)* v *Croydon* it was clear that in England the courts could and would engage in merits review in age assessment cases. The practical implications of that were still being worked through; *R(SB)* v *Royal Borough of Kensington & Chelsea* [2023] EWCA Civ 924 implied that the English courts had jurisdiction to re-make a decision simply on the basis that it was factually incorrect.

[50] *U* v *Glasgow City Council* at [23] and [30] was authority for the proposition that this court had jurisdiction to determine the factual issue of age for itself in judicial review challenges. That was in conflict with *L* v *Angus Council*, which held at [57] that the Court had no power to usurp functions confided by law to other decision-makers. The rationale of *U* v *Glasgow City Council* was that judicial review procedure was the correct procedure in

age assessment cases, because otherwise there was a risk that a petitioner would have to raise two separate actions (judicial review and ordinary action for declarator) in order to have a final determination of age. The decision seemed to have proceeded on the premise that the court ought to be re-making decisions about age rather than have the respondent re-make them. The alternative, that the respondent could be ordered to re-make the decision itself, had not been discussed. That was the norm in every other successful judicial review petition. Furthermore, there was no appeal against age assessment decisions so the idea that an ordinary action for declarator was possible seemed illogical.

[51] The petitioner's contention that the court could re-make an age assessment decision without reducing the extant decision was not presaged in his pleadings and came too late now. The correct statement of the law was that set out in *L* v *Angus Council*. The Court had no power to usurp the functions confided by law to other decision makers, and the supervisory jurisdiction should not be exercised to quash a decision for no practical benefit. This would be in line with the traditional understanding of the point and purpose of judicial review as an exercise in supervision and not as an appeal. If an age assessment decision was subject to being re-made, notwithstanding that it had been made lawfully and rationally, then the court would indeed usurp the function of the local authority in deciding factual questions. That would create a right of appeal in age assessment cases in all but name and would judicialise the age assessment process.

[52] In the event that the court considered that it did have jurisdiction to re-make a lawful decision, it should decline to exercise that jurisdiction. Whether or not to grant any remedy in a judicial review petition was always at the court's discretion: *Walton* v *Scottish Ministers* [2012] UKSC 44, 2013 SC (UKSC) 67 at [111]–[112]. If the only complaint was about a procedural failing that did not go to the heart of the decision, then the court should refuse

to grant any orders. In this case, there was no realistic prospect of a different decision being taken if it had to be remade. The observations made about the petitioner's physical appearance, demeanour and personal history were all cogent and sensible. The facts underpinning the decision were not challenged and remained the same. The decision had, further, caused no substantial prejudice to the petitioner. The respondent no longer owed any duties to the petitioner. The only conceivable such duty would have been accommodation and support under the Children (Scotland) Act 1995. However, the petitioner was currently serving a sentence of imprisonment and was no longer the responsibility of the respondent, which had no power to re-assess him since he was no longer in its area. The petition was therefore academic and the court should refuse to grant any orders on that basis in any event.

Decision

[53] This is a case involving a non-statutory age assessment carried out on behalf of a Scottish local authority, seemingly for the purpose of enabling it to determine whether or not it owed duties to the petitioner in terms of the Children (Scotland) Act 1995. The observations in this opinion apply to that kind of age assessment and not to those carried out and to be carried out in terms of Part 4 of the Nationality and Borders Act 2022, which have a legal force absent from non-statutory assessments and will in due course have their own appeal route.

[54] The most extensive discussion of the rules and principles of Scots law applicable to the question of disputed age assessments of the kind in question here is to be found in *L* v *Angus Council* [2011] CSOH 196, 2012 SLT 304. That was a petition for judicial review in which the petitioner sought reduction of an age assessment on the basis that the process

used to arrive at it was flawed, and separately on the basis that it was factually wrong. He further sought declarator of his true age for the purposes of accessing potential advantages under the Children (Scotland) Act 1995. The Lord Ordinary held that the petition was incompetent in so far as it sought reduction of the age assessment on the ground of factual error and declarator as to the petitioner's true age. That was, firstly, on the basis that the court had no power in the exercise of its supervisory jurisdiction to review on its merits an act or decision complained of, under reference *inter alia* to *West* v *Secretary of State for Scotland* and *Eba* v *Advocate General for Scotland* [2011] UKSC 29, 2011 SC (UKSC) 1 at [32], and that accordingly it would be an incompetent exercise of the court's supervisory jurisdiction to review an age assessment on the ground of factual error; and secondly, that the rationale of the decision of the Supreme Court in *R(A)* v *Croydon London Borough Council*, that it was for the courts, and not local authorities, to determine an applicant's age in the context of an application for assistance under the (English) Children Act 1989 was not binding, and should not be followed, in Scotland.

[55] I agree with the first of those propositions, but not the second. It would be a very considerable and undesirable innovation for the Court of Session, and would indeed involve a fundamental remodelling of the supervisory jurisdiction itself, judicially to review decisions complained of on their merits. Normally, that is because the power to make the decision in question has clearly been committed to some other body. In the case of age assessments for the purposes of section 20 of the Children Act 1989 and for the purposes of section 25 of the Children (Scotland) Act 1995, it is rather because the power to make the decision as to a person's age in the event of dispute has clearly been committed to the court rather than to any other body, and – just as in every other case where parties are in dispute as to a matter of fact – the circumstance that some other person or body has already formed

a view on the subject is neither here nor there in the context of the discharge of the court's power and duty to make its own decision on the matter, save insofar as the way in which that earlier decision was made, and its reasoning, may render it persuasive (but never binding) in the eyes of the court.

[56] The Lord Ordinary's treatment in *L* v *Angus Council* of the decision of the Supreme Court in *R(A)* v *Croydon* is, with respect, unconvincing. In the latter case, Baroness Hale (with whom Lords Scott, Walker and Neuberger agreed) observed that section 20(1) of the 1989 Act was in the following terms:

> "Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of –
>
> (a) there being no person who has parental responsibility for him;
>
> (b) his being lost or having been abandoned; or
>
> (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care."

[57] Section 105(1) of the 1989 Act defined a child as "a person under the age of 18." Section 25(1) of the Children (Scotland) Act 1995 provides that:

> "(1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because—
>
> (a) no-one has parental responsibility for him;
>
> (b) he is lost or abandoned; or
>
> (c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care."

[58] Section 93(2)(a) of the 1995 Act defines "child" for the purposes of *inter alia* section 25 as meaning "a person under the age of eighteen years".

Baroness Hale set out the core argument on the question of the proper construction of section 20(1), which she described as "straightforward" at [14], as follows:

> "The words of section 20(1) themselves distinguish between the statement of objective fact – 'any child in need within their area' – and the descriptive judgment – 'who appears to them to require accommodation as a result of' the three listed circumstances – which is clearly left to the local authority. The definition of 'child' in section 105(1), which applies throughout the 1989 Act, is unqualified: 'a person under the age of 18' – not "a person who appears to the local authority to be under the age of 18' or 'a person whom the local authority or any other person making the initial decision reasonably believes to be under the age of 18'."

[59] While it is true – as the Lord Ordinary in *L* v *Angus Council* points out – that certain other considerations which are not necessarily applicable in the Scottish context were described as "bolstering" that core argument, it is difficult to see those additional matters as detracting from the rationale of the decision as expressed succinctly by Baroness Hale at [32]:

> "However, as already explained, the Act does draw a distinction between a 'child' and a 'child in need' and even does so in terms which suggest that they are two different kinds of question. The word 'child' is undoubtedly defined in wholly objective terms (however hard it may be to decide upon the facts of the particular case)."

[60] A similar view was expressed by Lord Hope of Craighead:

> "[51] It seems to me that the question whether or not a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the court … the question is not whether the person can properly be described as a child … The question is whether the person is, or is not, under the age of 18. However difficult it may be to resolve the issue, it admits of only one answer. As it is a question of fact, ultimately this must be a matter for the court.
>
> …
>
> [53] … The question whether the child is 'in need' is for the social worker to determine. But the question whether the person is or is not a child depends entirely upon the person's age, which is an objective fact. The scheme of the Act shows that it was not Parliament's intention to leave this matter to the judgment of the local authority.

> [54] … The initial decision taker must appreciate that no margin of discretion is enjoyed by the local authority on this issue. But the issue is not to be determined by a consideration of issues of policy or by a view as to whether resort to a decision by the court in such cases is inappropriate. It depends entirely on the meaning of the statute. We must construe the Act as we find it … when the subsection is properly construed in the light of what section 105(1) provides, the question admits of only one answer."

[61] It is, further, impossible to distinguish the rationale of that decision, or the effect of the decision itself, when considering the question of the proper construction of the closely corresponding provisions of section 25 of the 1995 Act. Just as in the context of section 20 of the 1989 Act, the question of whether a person is a child or not is a matter of objective fact for the court to rule upon in the event of dispute. The view that age is a question of judgment rather than a question of fact, which was ultimately expressed by the same Lord Ordinary who decided *L* v *Angus Council* in *ISA* v *Angus Council* [2012] CSOH 134 at [11] and *ALA* v *Angus Council* [2012] CSOH 135 at [8] cannot be accepted, and is answered completely by Baroness Hale in *R(A)* v *Croydon* at [27]:

> "But the question whether a person is a 'child' is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence. But that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision-makers."

[62] The difficulty in English practice to which the conclusion that age was a matter of objective fact for the court, if need be, to determine gave rise was that the age question cannot – it seems – be addressed by the court (at least in the context of age assessments for the purposes of section 20 of the 1989 Act) other than by way of an application for judicial review: *R(A)* v *Croydon* at [33]. That has given rise to the same conceptual difficulties concerning the general absence of merits-based judicial review in English law and the apparent pointlessness of determining procedural attacks on an age assessment if the court

is in any event obliged to come to its own view, as would be the case in Scots law: see *R(SB)* v *Royal Borough of Kensington and Chelsea* at [83]ff. Nonetheless, given the apparent absence of any other mode by which the English court could be asked to exercise its clear jurisdiction to determine the age of an applicant under the 1989 Act, necessity required to be the mother of invention and the Supreme Court in *R(A)* v *Croydon* observed that the judicial review process would have to be adapted to meet the requirements of the situation, noting (perhaps somewhat opaquely) at [33] that the fact that the remedy was judicial review "does not dictate the issue for the court to decide or the way in which it should do so".

[63] In Scots law and practice, however, there is no need to appeal to its supervisory jurisdiction as a means of getting this Court to determine for itself the age of an applicant for assistance under the Children (Scotland) Act 1995, and so no call for invention. As was acknowledged in *L* v *Angus Council*, and further for the reasons submitted by the petitioner in the present case, an ordinary action of declarator can be used to invoke the relevant jurisdiction. In such an action, any person who appears likely to rely on an extant age assessment may be called for such interest as it may have (thus binding it to the result), and the court will be able to rely upon such evidence as any party wishes to put before it in coming to its own determination of age, without being restricted to the material before those who have made their own previous assessment. An action of declarator will, further, not require the court to grapple with what I regard as questions which it is unnecessary and difficult or even impossible to answer, such as the grounds upon which an extant age assessment may be challenged or the intensity of review which should be applied to it. A declaratory action enables the court to supply its own answer to the age question without the necessity of first setting aside, on whatever grounds, someone else's answer to the same question. That is not a matter of "re-making" a decision already made by a body to which a

jurisdiction to do so has been committed by law. It is, rather, simply a matter of the court being asked in cases of dispute to exercise a power of decision committed by law to it and to it alone.

[64] In *U* v *Glasgow City Council* [2017] CSOH 122, 2017 SLT 1109 an action for declarator of age was raised after a previous petition for judicial review concerning the same facts had been dismissed by consent of the parties. The Lord Ordinary observed at [5] that the choice between declarator and judicial review was not merely a technical issue, but involved significant procedural difference, at [20] that procedure is either competent or not, there being no halfway house, and at [22] that declarator was a competent remedy by which to obtain the court's view on a question of age. None of that can be regarded as at all controversial. However, the Lord Ordinary went on to hold at [23] that judicial review was also a competent remedy. I do not agree with the suggestion that judicial review can be regarded, in abstraction from the circumstances of any particular case, as a competent remedy. Quite apart from the fact that judicial review is generally regarded (rightly or wrongly) as a mechanism available to bring a matter before a court for which no other remedy exists in general law (and the remedy of declarator would be available in the very many cases where the power to decide a question of age has been committed to the court rather than to any other body), there requires to be an exercise or threatened exercise of some jurisdiction on the part of a person (usually a public authority in this context) or a failure to exercise a jurisdiction which it is contended falls to be exercised, before recourse to the supervisory jurisdiction is competent. In cases not falling within those categories, judicial review is an incompetent means to invoke the powers of the court. The fact that an age assessment has been made on behalf of some authority which enjoys a relevant consequential jurisdiction is not in itself sufficient. Indeed, I doubt whether a decision or,

more pointedly described, the expression of an opinion, which in itself effects no change to anyone's position in law is properly susceptible to reduction or suspension at all. The present case is one in point – the age assessment which is complained of was commissioned by the respondent Council in the circumstances already set out, but it has never had the opportunity to act on it and no other body with a relevant jurisdiction has acted on it or indicated that it intends to do so unless judicially prevented from doing so. A functionally similar situation arose in *L* v *Angus Council*, where the Lord Ordinary correctly observed at [155] that local authority age determinations for welfare purposes are essentially provisional and can be reassessed repeatedly and indefinitely if further information comes to hand. I add that the respondent Council might, perfectly properly, have declined to act upon the assessment provided to it had it had the opportunity to do so, whether on the basis of the criticisms of that assessment set out in the petition, or for any other proper reason commending itself. The short answer to the present petition for judicial review is that it is incompetent, in that it does not call into question the exercise or refusal to exercise a jurisdiction of any sort committed to any body other than to the court itself.

[65] The reason why these proceedings take the form of a petition for judicial review is that the Lord Ordinary in *U* v *Glasgow City Council* "recommended" at [30] that all future challenges to age assessments should be taken in that form. However, as already noted, judicial review is fundamentally incompetent when it is invoked in a situation where the substantive decision in question is one for the court rather than for any other body to make. There is no need for a view reached by any other person on the matter (and that is all that a non-statutory age assessment can ever be) to be set aside or in some way got over or avoided before the court reaches its own conclusion on a matter properly submitted for it to decide (cf *R(SB)* v *Royal Borough of Kensington & Chelsea* at [84]). There is accordingly no need, as

the Lord Ordinary in *U* v *Glasgow City Council* apprehended at [24], for double litigation to ensue in order for the court to provide a definitive answer to the question of someone's age. These points cannot simply be wished away on grounds of convenience or expedience such as those referred to by the Lord Ordinary at [28]. There may be cases in which the competency of judicial review is a very narrow or difficult question, in which the observations of Lord Hope in *Ruddy* v *Chief Constable of Strathclyde* [2012] UKSC 57, 2013 SC (UKSC) 126 at [32] cited by the Lord Ordinary in *U* v *Glasgow City Council* at [24], to the effect that the requirements of practical justice should prevail over mere questions of procedure, are applicable. Those observations cannot, however, apply to a case where the first principles of judicial review indicate clearly that recourse to the supervisory jurisdiction is incompetent. It is neither convenient nor just for the court to attempt to perform an exercise, the very nature of which is quite unclear, with no obvious means of determining which tools may or may not properly be deployed in the enterprise. That would truly be an embarkation on a perilous voyage without map or compass.

[66] The pragmatism underlying Lord Hope's observations in *Ruddy* is, further, now dealt with by RCS 58.15 and 58.16, respectively allowing causes raised as actions to proceed as judicial reviews, and judicial review petitions to proceed as ordinary actions if such transformation appears appropriate. I have not been asked to consider exercising the relevant powers of transfer in the present case, and would not in any event have been prepared to do so. That is because, apart from being incompetent, the petition raises only an academic question. It was, I suppose, possible at the time the Council instructed the age assessment to be carried out in relation to the petitioner that he might have been released on bail pre-trial and that the question of his age might in that way, had he returned to its area, have immediately become an acute one for it to deal with. However, in the event he was not

released on bail and is now serving a long-term sentence. It is just conceivable that, upon his eventual release, he might return to Aberdeenshire and make some claim dependent on the notion that he ought to have been a looked-after child before his incarceration, but that seems highly speculative in both its legal and factual aspects. On the factual side, the petitioner has, judging from various interviews he gave, no particular fondness for Aberdeenshire and, if given the chance, would much prefer to live somewhere with a larger Sudanese community. He arrived in the area by chance, it being (on his own account) simply the place where he was first able safely to disembark from the lorry in which he had stowed himself away on his journey into the interior of the United Kingdom. While it was suggested in argument that he might be moved from the Young Offenders' Institution to an adult prison based on the age assessment carried out for the Council, that proposition is by no means self-evident and it is certainly not one to which the Scottish Prison Service has remotely committed itself. In these circumstances, and paraphrasing the Court of Appeal in *R(SB)* v *Kensington and Chelsea Royal London Borough Council* at [78], putting things at their very highest, there is no more than a remote possibility of a potential future dispute arising to which the extant age assessment might be even indirectly relevant, and litigation about the matter is academic and raises nothing of wider general importance (see also *L* v *Angus Council* at [72]). Had I not been dismissing the petition as irrelevant, then, I would in any event have dismissed it as academic.

[67] In these circumstances it is unnecessary to say anything about the substantive criticisms made of the age assessment commissioned by the Council. However, for the avoidance of doubt, and in the briefest of terms, had I considered that that assessment was susceptible to challenge on familiar public law grounds, I would not have considered that any case making good such a challenge had been made out. The exercise carried out by the

assessors was a disciplined, subjective assessment by experienced professionals and wholly complied with the principles set out in *Merton* and *AB*. The suggestion that it was infected by subconscious bias appeared to me to be entirely speculative in nature. The references to certain external sources, though not inspiring additional confidence in the views arrived at by the experienced assessors, fall within the concept that *superflua non nocent*, rather than detracting in any material way from the conclusions otherwise arrived at. The criticisms maintained in that and other regards well exemplify the risks inherent in the judicialisation of ultimately subjective opinions against which the authorities so firmly warn.

Conclusion

[68] For the reasons stated, I shall dismiss the petition as incompetent.