



Neutral Citation Number: [2021] EWHC 3348 (Admin)

Case No: CO/1720/2021

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10<sup>th</sup> December 2021

**Before :**

**CLIVE SHELDON QC**  
**SITTING AS A DEPUTY JUDGE OF THE HIGH COURT**

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**Between :**

**THE QUEEN**  
**On the application of**

**G**

**Claimant**

**- and -**

**ROYAL BOROUGH OF GREENWICH**

**Defendant**

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**Antonia Benfield** (instructed by **Scott-Moncrieff and Associates Ltd.**) for the **Claimant**

**Hilton Harrop-Griffiths** (instructed by **Royal Borough of Greenwich Legal Department**) for the  
**Defendant**

Hearing date: November 24<sup>th</sup> 2021  
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**Approved Judgment**

**Clive Sheldon QC (sitting as a Deputy Judge of the High Court):**

1. This is an application for judicial review of the refusal of the Royal Borough of Greenwich (“the Council”) to conduct a reassessment of G’s age. The Council had previously assessed G’s age, and had concluded that he was an adult when he was initially accommodated. The Council was presented with further information from G about his age and was asked to carry out a reassessment. The Council refused to reassess G’s age, and G challenges that decision as being *irrational*.
2. The hearing of this application was conducted by CVP on November 24<sup>th</sup> 2021. I am satisfied that, in the circumstances, the principles of open justice were met and that the parties had as full an opportunity to present their cases as they would if the hearing had been held in person.

Factual Background

3. G is an Angolan national who claims to have been born on May 4<sup>th</sup> 2003. He arrived in the United Kingdom on May 13<sup>th</sup> 2019, and claimed asylum on that date as an unaccompanied child. G was referred to the Council and taken into care. The Council carried out an assessment of G’s age and, on February 20<sup>th</sup> 2020, informed G that his age was disputed and he would be 20 years old at his next birthday. The effect of this was that the Council had assessed G’s date of birth as being May 4<sup>th</sup> 2000, and so G was well over 18 when initially accommodated by the Council. On March 9<sup>th</sup> 2020, G was transferred from the Council’s care to accommodation provided by the National Asylum Support Service in Croydon, before being dispersed to Wakefield and subsequently to Middlesbrough where he now lives.
4. The age assessment was carried out by two social workers. They carried out three interviews with G: on June 11<sup>th</sup> 2019, June 17<sup>th</sup> 2019 and September 27<sup>th</sup> 2019. At the third interview, the assessors read back to G their notes of the first meeting and he was given an opportunity to comment on what had been said by him. G took up that opportunity, and added some new material about his education in Angola.

5. The assessment report noted that G claimed “to be 16 with a stated date of birth as 04/05/2003. G states that he does not have any form of identification to verify his age and that he has been told about his age by his father.” G said that he had been born in a place called Soyo in Angola. G described his reasons for leaving Angola and his journey to the United Kingdom. G told the assessors about his education in Angola. At the initial assessment interview, G had referred to attending 3 educational institutions. At the third interview, he mentioned a fourth establishment.
6. The assessment report contained many references to G’s education in Angola. As this material is at the centre of the application of judicial review, I shall set it out in detail:

#### “Education

G was asked to speak about his education history. G states that he can remember going to nursery, but he cannot remember the age he first attended. He said that not many children go to nursery because it was very expensive; G’s first school was Rosa Gattorno. G states that he still has the t-shirt and the school was by a football field and it was near Soyo. He said “I would get a taxi to school every day”. His second school was Colegio Baptista, G was asked how long he was in primary school, he said it was about 6 years. He said “We had a lot of activities and it was close to a marketplace, I used to have trouble in that area as people would steal a lot”. Rosa Gattorno Missionary School is located in Soyo. The school does not have an internet page so the social workers were not able to conduct further checks on the educational establishment.

Colegio Baptista da Paz is located in Luanda. An internet search identified that it offers:

Patio 1 - for the elementary, early childhood education and technical high school

Patio 2 - for primary and secondary education.

\*G commented at the reading back on 27/09/19 that he was in Patio 2 and that whilst he was in Year 7 he could not remember his age but the youngest girl in the class was 11/12 years old. G also informed that he was in the class for 1 year. G comments that within Patio 2 there is no specific age that you study as the class is set by ability not age.

\*During the reading back on 27/09/2019, G stated that he attended another school before going to a polytechnic. This next education establishment that G attended was Colegio Kimbamba in Luanda.

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\*G informed that he studied similar subjects in Colegio Kimbamba as he did in the polytechnic. He attended from 2017-2018 and G previously described this school as a polytechnic and this is supported by country of origin information which states that the later part of secondary school can be a polytechnic programme. The subjects were electronics, instrumental and auto mechanics. The polytechnic programme was sponsored by a big gas company; G informed that he was working towards becoming a technician. G informed he was 14 at the time and left at the age of 15.

The fourth school was a polytechnic or a technical school and it is the last level of education before university. The technical school consisted of four classes; school years 10, 11, 12 and 13.

G previously said that he completed year 10, 11 and 12 and left in year 13.

\*G commented at the reading back on 27/09/19 that he did not complete year 10 at the Polytechnic. Year 10 was completed in Colegio Kimbamba (the third education establishment).

The polytechnic (the fourth education establishment) was a private Institute where G did what he referred to as medium studies, at this establishment G was initially living on the campus before his father rented separate accommodation for him. G states in Angola it is not common for this to occur. G informs that he lived in a small house with basic furniture in the bedroom, G had shared access to a kitchen and bathroom G informs that he would cook his own meal dishes such as rice, pasta or burgers whilst in Luanda.”

7. The assessors had carried out some research into the education system in Angola. They set this out in the report:

#### “RESEARCH

##### Education system in Angola and Luanda

All sources confirm similar primary school system of 4 years compulsory and free education starting from age 7 or 6 in some private schools. There is a general secondary school system which is 9 years education but in private school students may complete secondary schools education in 6 or 7 years. Secondary school may also implement polytechnic curriculum in the later part.

...

Elementary education was from 1st to 6<sup>th</sup> Grade. In 2002, 7<sup>th</sup> and 8<sup>th</sup> Grade were added to the curriculum, and in 2006, in response to changing needs in the area, secondary school teaching exclusively 7<sup>th</sup> to 9<sup>th</sup> grade. Since 2011, the schools have been implementing the Polytechnic program (Escola Polivalente e Profissional/Practical and Theoretical School) for 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Grade.

...

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Angola / Luanda has grade 1 to 9 the term year 13 used by G is British or European and does not exist in public schools in Angola. Polytechnic program could be grades 7 to 9, the final part of secondary.

...

Primary education is compulsory for four years, starting at seven years old until 11.

Secondary education

Often, if children want to continue their studies into secondary education, they must move to a regional capital city, so most children do not continue.

Secondary education can last up to 7 years and is not free. The first three years are considered part of primary education but they are not compulsory. There are two programs, one that lasts three years (vocational secondary) and another that lasts four years (pre-university).

Both paths award students the diploma of Habilitações Literárias (Secondary School Certificate). The grading system in Angola is from 0 to 20, 20 being the best grade and 10 being the minimum required to pass (Suficiente). For a score of 13 to 15, you get a Bom (Good), and from 15 to 20, Excelente (Excellent).

Higher education

In order to access higher education in Angola, students must hold a diploma of Habilitações Literárias (Secondary School Certificate) and pass an entrance exam. Information on United Kingdom: Home Office, Country of Origin Information Report - Angola, 1 September 2010 confirmed the following:

Education is free and compulsory up to the 6th grade. This may explain why G was eager to account for 6 year in secondary school as opposed to 5 years like the British system. Furthermore, according to COI Education in Angola has four years of compulsory, free primary education which begins at age seven, and secondary education which begins at age eleven, lasting eight years. This also suggest he completed compulsory education secondary school at age 18 or 19. Taking into consideration the fact that he left in year 13 this will make him no younger than 18 before he came to the UK.

School stated by G

colegio Kimbamba Luanda – facebook account was recently created so not on ministry of education website.

The other similar link were –

- Kimbamba College, Primary school which is a primary school not a college
- Kilamba College

From the list of Schools in Angola

Universidade Gregório Semedo, Luanda

...

The page "Colegio baptister in Angola" does not exist.

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The polytechnic school are listed under higher education i.e after secondary schools.

Education timeline in Angola

Primary school – age 7 + 4 years

Secondary school - age 11 /12 +8 years secondary and high school education = 19

/20 years for school leaving age

Higher education – 19+

This in the system for public school however other sources suggested that secondary schools can last 6 or 7 years depending on the region or as G suggested, the ability of the student. Therefore, school leaving age could be 17 or 18.”

8. The assessment report contained observations on G’s response to the read back of the assessment on September 27<sup>th</sup> 2019.

“G was generally very relaxed but also very mature in his response to our findings

- Fluent English language

- Some statements were retracted or changed; for example the language on the airplane and airport and another school added to previous statement

- Social economic status – We pointed out that private rent and living on his own at age 15 conflicts with the values of someone from the social economic status he described. G previously suggest he was from a well-off family; he had nursery school education, private schools, swimming pool etc but he later said they were just average and also included that he attended a government school However, some of the stated schools were not traceable.

- Evasive and minimal with family information as G said he only remembers the birthdate not the age or the year his sister was born.

- Huge age gap between himself and sister. The age was deduced as he did not volunteer this.

- Timeline on education – it was not possible to draw up a timeline from family background as G was very evasive and provided no date or age. But it was possible to deduce timeline from completed year 8, 9 and 10 at age 13 education”.

9. The assessors provided an analysis of the information that they had obtained. This included a timeline as follows:

“G informs that when he was in year 7 there was a girl in his class that everyone made fun of because of her weight. G said the girl was 11 or 12 years old. G also said that he stayed at the same school for

one year, this would make him a minimum of 12 if the girl in his class, who was the youngest, was 11 or 12. G informed that in Year 8 to 10 he was at his second secondary school, this would make him a minimum age of 15 by the time he left. G then states he attended a polytechnic, for years 11 to 12. He says that he left before year 13. This would make G between 17 or 18 before traveling to the UK. If G claims his date of birth to be 4th May this would make him at least 18 to 19 when he was accommodated by the local authority. However going by his 4th school, he could be older. According to G he already started attending Polytechnic before leaving for the UK. Given Polytechnics were mostly listed under higher education or universities in Angola, this further confirm that G could be age 19 or 20 before he left Angola and this would make him 20 or 21 at the time of the age assessment. Having deduced the age that G started secondary school (age 12 or 13) from his statement, there are three possible secondary school leaving ages, from the research on the education system in Angola. As stated in section 8 students spend 9 years in general in public school starting from age 11. Private school may operate a different system. For example some private schools follow the European school calendar for students between the ages of 3-18. . . . Other sources confirm that students may complete secondary school within 6 or 7 years which supports G's claim about brightness and not chronological age. G therefore, might have completed secondary school between age 17 and 20, depending on the age difference with the youngest child in his class in year 7. The age he left Angola also depends on his programme at the fo[u]rth education institute. This information was vague as the school is not traceable and this appears to be a post 16 education institute where he completed 2 years before leaving Angola."

10. Under a heading "Education and English language skills", the analysis contained the following:

**"Education and English language skills**

According to G, he started secondary school after age 12 or 13 therefore 18 or 19 by his final year. G has also stated that education in Angola is not according to chronological age but how bright one is; this is a familiar system in many African Countries. This statement is also supported by COI if he attended a school where he is allowed to complete secondary school education in 6 years starting from age 12 or older, going by G's account.

Regarding his age in secondary school, G stated that he did not know this but he was at least one year older than the youngest person in class. G repeatedly said the younger person was a female who was 11 or 12 years old and they used to tease her because she was very skinny. This would make G 12 or 13 years old in year 7 and at least age 18 or 19 years old by the time he completed secondary school in 2017.

In response to the statement he made on the schools he attended, while Simon was reading the reports, G grabbed the sheet of paper and pointed out that he omitted one of the schools he attended. He read the paragraph fluently at this stage which was a huge surprise because he claimed he did not understand the English language and he had previously provided written and verbal information on the three schools he attended. This was a school he attended before going to the Technology College / polytechnic. This added at least two years to his timeline. He did not mention this in his previous statement. Furthermore, in the previous statement he was very clear about the time he spent at the various schools and it seems to align with the age he claimed.

As stated on section 8, in Angola secondary education begins at age eleven, lasting eight years. This also suggest he completed compulsory education secondary school at age 18 or 19. Taking into consideration the fact that he left in year 13 this will make him no younger than 18 before he came to the UK. By adding a 3rd School, he further confirmed he completed the entire 6 years of secondary school before commencing college education where he completed 2 years and left during his third year. This further suggest the completed secondary school at age 18 and left college at age 20 or 21.

It appears G was very relaxed and off guard when he made these statements which did not align with the stated age.

When this discrepancy was put to him, G tried to deny it stating that he needed to write things down in order not to be confused. He was given a piece of paper to write this down as he requested but he simply wrote the various forms / class and slotted his age in order to align it with the age he claimed. He did not offer any explanation on how he arrived at the ages and it was totally different to his statements. He also could not explain the big gap in his age between secondary and college education.

We concluded from this that G was more guarded during the first meeting but having spent some time in local authority care by the reading on 27th September 2019, he was more relaxed, and he provided what came more naturally and factual.

**This updated report which incorporated G's comments during the readback on 27/09/2019, was read back to G on 20/02/2020.**

His comments were as follows;

G stated that the four education institutions he attended and his age at the time were Primary School was Rosa Gattovno in Soyo, he completed grades 1 to 6 and finished at age 9



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Attended two secondary schools

1. Colegio Baptista in Luanda, completed year 7 at age 10
2. Colegio Kimbamba in Luanda, completed year 8,9 and 10 at age 13

Attended Institute Medio Politecnico Do Soyo, completed year 11 and 12 by age 15.

The various names are the same as the one provided during the readback on 27/09/19 but the age provided is totally different to his previous accounts.

It has not been possible to ascertain the possible ages at these education institutions at this stage, but the polytechnic is a post 16 provision and not possible for G to commence at age 14.”

11. The assessment report also contained sections dealing with G’s family composition, his journey to the United Kingdom, G’s skills, G’s medical and health information, his physical appearance and the credibility of his account among other things. The assessors set out their conclusion as follows:

“• Timeline given by G and the education system in Angola would make him between 18 and 21 when he was accommodated.

• G claims that a flat was rented for him by his father when he was 13 or 14; it is unlikely that a landlord would allow a child to be left alone in an accommodation unsupervised at that age.

• G’s account on how he came to the UK does not appear truthful where he comments boarding 3 planes not seeing his travel documentation and not being questioned by customs when entering the UK. When he was challenged on this point he gave no credible explanation.

• His presentation at the second meeting was too mature and sophisticated for someone who took off from Angola at age 15 given his controlled responses and him not able to give clear and convincing answers about his family or education. He was able to read in English language fluently and also acknowledged during the read back that he recognised the language during part of his trip was English language, but he still denied knowledge of any travel information. This was taken into consideration in his overall credibility. The local authority recognised that being untruthful about his language skills does not mean he was untruthful about his age but we also recognised that withholding vital information may be a deliberate attempt to conceal his age.

**Judgment Approved by the court for handing down.**

- G’s facial features, demeanour and presentation do not fit that of a child.

- [The social worker assessors] are of the view that G is significantly older and more likely to be between 19 and 21 years of age. However, we will err on the side of caution and state that he will be at least 20 years of age on his claimed birthday”.

12. G challenged the Council’s age assessment by way of judicial review, arguing that it was wrong as a question of fact. No issue was taken with the process undertaken by the Council. During the course of the proceedings, G relied on letters from Edyta Janczak, a tutor at Croydon College, and Ambra Malandrin, Project Coordinator of the Young Refugee Service at the British Red Cross, both of whom expressed their opinion that G was a child. A letter from Carlotta Zanello of the British Red Cross was also produced supporting this position as to G’s age.

13. The application for judicial review was dismissed on the papers by William Davis J; and subsequently at an oral renewal hearing by Thornton J. On November 2<sup>nd</sup> 2020, permission was refused by Lady Justice Andrews in the Court of Appeal.

14. The reasons given for refusing permission were as follows. William Davis J stated that:

“1. The age assessment was Merton compliant in procedural terms, the Claimant having been informed of the provisional adverse finding of the assessment when the report was read through in the presence of the appropriate adult.

2. The substance of the age assessment – which was conducted by two experienced social workers – was the result of a detailed investigation of all relevant aspects of the Claimant’s life. The social workers undertook significant research in relation to educational establishments in Angola, the result of which tended to undermine the Claimant’s account.

3. Critical to the assessment was the credibility of the Claimant. The assessment concluded that his account of his journey to the UK “does not appear to be truthful”. This conclusion was wholly justified. The account was fanciful. Lack of credibility on this issue was highly significant. Even more important were the inconsistencies in the account given by the Claimant in relation to his education in Angola. When seeking to deal with the provisional adverse finding, the Claimant made significant changes to the

timeline of his attendance at various institutions. Added to this, he claimed to have attended a polytechnic at an age when this would not have been possible.

4. The views expressed by those with whom the Claimant has had contact in this country are not without weight. However, they do not address the crucial features relied on by the experienced social workers in the age assessment. Taken at its highest the factual case which the Claimant could present would have no prospect of succeeding at a contested factual hearing before the Upper Tribunal.

5. It follows that there is no arguable case.”

15. In her judgment after the oral permission hearing, Thornton J. set out the reasons why the assessors reached their conclusion and stated that:

“[10] In my judgment these are firm grounds and valid reasons for the decision reached about age. As is common ground, the Defendant’s decision turned primarily on the Claimant’s credibility. There were inconsistencies in G’s account of his educational provision, in particular his account of attending a polytechnic which provides 16+ provision, which were put to him to give him an opportunity to respond. His response did not resolve the inconsistencies. His evidence was compared with research on educational provision in Angola.

[11] The evidence relied by the Claimant and emphasised by Ms Benfield in her submissions, in the form of the professional opinions from the Claimant’s tutor and from Red Cross Workers does not address the key point about Claimant’s education history and the inconsistencies in his account. As Ms Benfield said in her submissions, it is what the Claimant says himself that is critical.”

16. In dismissing the application for permission in the Court of Appeal, Lady Justice Andrews stated that:

“There is nothing wrong with the conclusion reached by the judge that, taken at its highest, the applicant’s case could not succeed at a fully contested hearing. Thornton J did not disapply R (AM) v Solihull MBC or dismiss the value of the evidence relied upon from the college tutor and the British Red Cross workers, but rather pointed out, as she was entitled to, that opinion evidence based solely on behaviour, demeanour and presentation could not overcome the fundamental features of the age assessment that led to the specific adverse credibility finding. That was not just the

information about the applicant's education history, but the fanciful account of how he came to be in the UK, coupled with the vagueness of the information he divulged on other matters that might cast light on his age. This was a balanced and careful assessment which did not rely on demeanour or appearance alone and where the experienced social workers accepted that even though the applicant was untruthful about his understanding of English, that did not mean his account was untruthful in other respects. Given that the applicant had the opportunity to and did change the information he initially provided relating to his education, and the fact he has a better understanding of English than he originally made out, the suggestion that the anomalies in his account could be explained away by errors in translation or a misunderstanding of what he said is fanciful (I note that he now says that his asylum statement, made three months after his assessment interviews, also contains a mistake in his education history)."

17. On October 12<sup>th</sup> 2020, solicitors for G sent the Council a pre-action letter requesting a reassessment "in light of new evidence that has become known": this was a reference to a photograph of G's "Christian ID card" and a translation of what was on the card. The translation set out G's full name, G's place of birth (Soya), his date of birth (May 4<sup>th</sup> 2003), his date of baptism, and the names of parents and grandparents.

18. G's solicitors explained that:

"G obtained the two photographs of his Christian ID card through a friend of his in Angola called Miss Teresa Luis. Teresa Luis was a friend of G's who met at Church and as friends they used to discuss several things including studies.

Earlier this year, G had contacted Teresa to ask whether she could visit their Church to take a picture of his Baptism Certificate. Teresa went to Church but was unable to take a photograph of the Baptism Certificate as the Church was closed. As G had asked for the documents, this was something that was still fresh in Teresa's memory. Whilst Teresa Luis was clearing her computer of files one day, she came across a photo of a Christian ID card that G had sent to her in 2017. Among various photos of a younger G there were the two photographs showing G's Christian Identity card.

Teresa Luis had evidence of the Christian Identity card as she has previously been helping G with registering for an external Maths revision course that took place after school hours. It was Teresa herself who had heard about the course, and mentioned it to G. As G had wanted to improve his maths further, he told Teresa that he was interested in the revision course and had asked her to register

him. Teresa had asked G to forward her evidence of his ID so that she could register him.

G had sent the photos of his Christian ID card to Teresa around Christmas 2017 so that she could help him register with her for the maths revision course. At the time, G was on Christmas break in Luanda with his family, so could not register for the course himself.

It has not been possible for G to obtain the original of his Christian ID card because his father used to hold all his documents and G does not know his father's whereabouts. However, these photographs of G's Christian ID constitute an additional element that corroborates his account of his age."

19. The Council responded on October 27<sup>th</sup> 2020, referring to the threshold legal test for reassessment: "where you (i.e. the local authority) believe that a significantly different conclusion might be reached and that the child or young person may be notably older or younger than initially assessed" (discussed further below). The Council explained that the threshold test had not been met:

"On the basis of the information currently provided and whilst the Council accepts that the Christian ID is new information not available at the date of the initial assessment it does not believe that a significantly different conclusion might be reached for the following reasons:

1. The document is hand written and a photograph which verifies that your client was baptised but not his age.
2. There is no photograph of your client although we note that Ms Luis states that she also found photographs of your client when he was younger.
3. Save that she is a friend of your client no verifiable details of Ms. Luis have been provided and indeed all the information attributed to her is hearsay.
4. Whilst the Council accepts that part of any reassessment will require it makes enquiries to establish the authenticity of the documents, there is no evidence that you have made any enquiries at all as to Ms Luis, the origins of the document or its authenticity."

20. The Council said that it was not refusing a reassessment, but required further information in order to make an informed decision:

"1. Contact details of Ms Luis so that the Council can verify her identity and take a witness statement from her. She can reasonably be expected to provide a statement setting out the chronology of her

contacts with your client and how she came to locate the document and attaching the relevant emails with your client.

2. The covering email from your client to Ms. Luis sending her the Christian ID in 2017.

3. The name and address of the church which your client and Ms Luis attended and which she attended to try and get a copy of the Baptism Certificate.

4. Contact details of the Parish Priest at the church.

5. Photographs of your client which Ms Luis has in her possession and which she found at the same time as the Christian ID.”

21. The Council also noted that steps had been taken to contact the Home Office and the relevant diocese in Angola to establish the authenticity of the Christian Identity card. On learning this, G’s solicitors responded to express concern about the Council making contact with the Diocese given G’s pending claim for asylum. G’s solicitors also asked the Council to bear in mind the clear risks to G in obtaining information from Angola, as well as “the possibility that Teresa Luis giving evidence in support of G’s case may place her at risk of repression from the authorities”.

22. On November 9<sup>th</sup> 2020, G’s solicitors invited the Council to instruct a joint country expert on Angola to consider G’s account of his education, the veracity of the Christian Identity card and any other relevant issues. The Council responded on November 12<sup>th</sup> 2020 to say that the age assessment had been upheld on the basis of the information provided by G in relation to his education, and that G was given ample opportunity to provide information and clarification during the assessment process. The Council also queried why Teresa Luis would be put in danger by providing a witness statement and sharing emails. The Council explained that it was entitled “to verify the source” of the documents that G had provided.

23. On February 16<sup>th</sup> 2021, G’s solicitors sent a pre-action letter enclosing a country expert report from Dr. Schubert, a letter from Edyta Janczak at Croydon College dated February 8<sup>th</sup> 2021, and a letter from Carlotta Zanello of the British Red Cross dated February 15<sup>th</sup> 2021. A further written opinion on G’s age from Alex Johnson, his ESOL Tutor at Middlesbrough College was provided on February 18<sup>th</sup> 2021.

24. Dr. Schubert is an anthropologist with an MA and PhD in African Studies. He lived for many years in Angola, writes extensively about Angola, and has served as a country expert on Angola on a number of occasions. In his report, Dr. Schubert set out his understanding of the Angolan education system, and stated that G's account of his schooling in Angola was "credible and consistent with my knowledge of the Angolan education system". Dr. Schubert explained that:

"5. In his witness statement, G recounts his schooling trajectory in Angola as follows: 6 years of primary in Soyo, followed by 1 year in a first colégio in Luanda, and another 3 years (years 8, 9, 10) in a second colégio in Luanda. After this, he was admitted to the medium-level polytechnic in Soyo(see #9-14, below).

6. G's account of his schooling in Angola is credible and consistent with my knowledge of the Angolan education system. Mandatory education has been expanded from previously 6 years to 9 years, that is 6 years of primary school, followed by 3 years of the first cycle of secondary school (1° ciclo) Accordingly, G's account and chronology of 6 years of primary, followed by 3 years at Colégio Kimbamba in Luanda is consistent.

7. I noticed from his witness statement and his education history in the Borough's age assessment that G does not appear entirely certain about his age when he started primary school. Mandatory state schools normally only start at 6; however, Colégio Rosa Gattorno in Soyo is a Catholic school (i.e. not state-run), which could explain why G might have started earlier (age 4, as he ventures in his statement). The six years of primary in total are accurate.

8. Both Colégio Baptista da Paz and Colégio Kimbamba have functioning and moderately active Facebook pages in Luanda. After mandatory school, those with the necessary grades can proceed on to the second or middle/medium cycle (2° ciclo, or ensino médio) of secondary school, which precedes tertiary, or higher (university) education. Many of these middle schools have a technical-vocational orientation and are therefore termed polytechnics; others are termed Pre-University (PUNIV) and offer a curriculum more oriented towards general education.

10. An Instituto Médio Politécnico such as the one in Soyo attended by G is not to be confused with an Instituto Superior Politécnico, which would offer university-level technical/engineering formations. As second cycle of secondary education, such middle institutes will normally instruct students aged 14-17 (see also at #11).

**Judgment Approved by the court for handing down.**

11. 14 years is the normal/minimal start age for this Year 10 of school education. In this case, G appears to already have studied for a 10th year in Luanda before gaining entry to the Soyo Institute.

12. Students who frequented a minimum of 9 mandatory school years would be able to enter such a middle school at the age of 14 or 15. However, given Angola's still patchy education system, it is not uncommon that older students also frequent classes with younger, regular-age students (i.e. a certain age spread for students in the same grade is to be expected). This explains why some of G's classmates would have been several years older than he was himself.

13. An August 2019 online news article reports that the Instituto Médio Politécnico de Soyo was founded in 2015 and at the time of writing offered seven different courses, chiefly in areas related to oil and natural gas production and processing. These are not to be mistaken for university degrees, but rather comparable to diplomas in vocational training (welder, drill technician, mechanic, electrician, e.g.).

14. Some of the Institute's students are boarders and live on campus. A January 2015 news report about the imminent opening of the Institute confirms that the buildings were planned to initially host 270 students of which 100 are boarders (em regime de internato). Given that this is a boarding school that was designed to serve students from Zaire province (who, according to the Angop piece, receive studentships), it seems perfectly credible that school-age children such as G would live there independently."

25. With respect to the Christian Identity card, Dr. Schubert stated that:

"Judging from the photographs I've been given the Christian Identity card looks genuine and credible to me. I base this assessment on the layout, logo, wording, style of handwriting, and categories featured on the card. The card simply confirms that G has been baptized in the Christian (Roman Catholic) faith, and lists his full name, date of birth, as well as the name of his parents, grandfathers, and godparents.

The card is issued by the Diocese of Mbanza Congo, parish of the Kikudo Mission in Soyo. Though the document looks perfectly genuine, I have still done a quick search to verify the name and place of the parish and can confirm it."

He explained that "Such cards are very common in Angola. The different churches use them to register their parishioners and keep track of baptism, confirmation, and marriage (as well as first communion, in the case of Catholics such as G)."



In addition, he stated that

“In many cases, especially in the provinces (such as in G’s case), such cards can also serve to enrol children in school, in substitution of an official birth certificate. As such they can serve as provisional evidence of birth. They might normally not be used to procure official documents such as national ID, voter card, driver’s licence or passport, though . . . there are also official ways to obtain official ID in the absence of a birth certificate.”

26. As for the risks that Ms Luis could be exposed to if she gave evidence in G’s case, Dr. Schubert wrote that:

“If G’s father and he himself are indeed the target of government authorities, Ms Luis might indeed be exposed to a risk of repercussions from the Angolan authorities by trying to help G, if this fact became known to them.”

27. Ms. Janczak who had taught G at Croydon College stated that:

“I have no doubt that at the time of the age assessment he was still a child.

G said he was 16 at the time of the age assessment and I do believe him. At that time he looked and behaved just like any other 16-year-old boy. He was friendly, sociable, easily blended in with the rest of the group, and was loved by his classmates. He was also very obedient, and liked being praised and rewarded for his behaviour and his achievements in class, which from my experience is a type of behaviour displayed by children and not by the adults. In fact when I observed G with his classmates I was confident he was one of the younger kids in class, and I had no doubt then and still have no doubt today that the Age Assessment decision on G’s age was wrong.”

28. Ms. Zanello wrote to say that she was providing “further observations on G’s age and behaviour, reiterating that he continues to present to our service as an unaccompanied asylum-seeking child (UASC).”

29. Ms. Johnson wrote to say:

“I am G’s personal tutor this year while he is studying ESOL (English as a Second Language) at Middlesbrough College. During his time here, G has integrated with the group very well, behaving and responding in the same way of the other 16–18-year-old students. He has fun with his friends in the class; laughing, dancing, and doing all the thing you would see a typical teenager do. I would not judge him to be any older than his peers as he does not stand out as so. In the past, myself and my colleagues have been in a situation where we have questioned a student’s age. They look older, they certainly behave older, their interests are different, and they have a distinct attitude and approach towards things which makes them stand out as an adult. G does not fit this description. He looks and behaves like a 17-year-old, he shares the same interests as his classmates and during my one-to-one tutorials with him, he has expressed personal details about his life, which showed a vulnerability to him, that would naturally be experienced by a child who has been separated from his family.”

30. G’s solicitors also explained to the Council that G was “unable to provide the messages he sent to Teresa Luis with the Christian ID card in 2017 because he no longer has access to this account. He cannot remember the name of the Parish Priest. . . .” G’s solicitors also explained that Ms. Luis had been asked to provide evidence, but she had discussed this with her father who had “strongly advised her against providing evidence due to the risks involved.” In light of these matters, the Council was requested to carry out a reassessment.

31. On March 2<sup>nd</sup> 2021, the Council responded to G’s solicitors, referring to the ADCS Guidance and the judgment in *R(BM) v LB Hackney* (see further below). The Council said that in light of those matters, it was “entitled to start from the basis that their initial assessment was correct but must consider the effect of the new material on that assessment”. The Council referred to the questions that it had raised about Ms. Luis’ evidence and said that one of its questions remained unanswered: its request for a witness statement from Ms. Luis, and the photographs of G that she had. The Council commented that:

“Although I note that Ms Luis has been advised not to provide such information out of fear of the regime retaliating against herself and her family, we are however unclear how the risk would be greater by providing this information to us than by providing information including the document purporting to be a baptism certificate to

your client for the purpose of proving his claimed age to the UK authorities.”

32. The Council addressed the further material that had been produced. With respect to the evidence from the Red Cross and Ms Janczak, the college tutor, the Council said that their evidence had already been considered, making reference to the refusal of permission by the Court of Appeal.

33. With respect to Ms. Janczak’s evidence, the Council added that

“She clearly developed a positive and supportive relationship with [G] but there is nothing in her statement that can be considered to be new or relevant in determining age or which could result in a significantly different decision when taken alongside the holistic and professional assessment of two experienced social workers trained in the age assessment process”.

As for the British Red Cross evidence, the Council stated that this “does not add anything new or significant to lend itself to a reassessment of the matter, beyond information regarding your client’s current physical and mental well being”.

34. With respect to the report from Dr. Schubert, the Council said that this was

“opinion based solely on research, provided by an academic who has been conducting research into Angola. Whilst that may qualify him to comment on issues related to Angola, as a professor of African Studies and a fellow of the Anthropology department it is unclear how he is qualified to comment on the age of your client or the authenticity or otherwise of the documents produced by your client to support his claimed age.”

35. The Council noted that Dr. Schubert had said that the Christian Identity card can be used “as a provisional evidence of birth establishing identity but they might not normally be used to procure official documents such as national ID “. The Council said that, in the circumstances, it was clear that “such a document has little or no weight for official purposes such as procuring National ID”.

36. With respect to what Dr. Schubert had said about the education system in Angola, the Council noted that G had ended his schooling in 2017, and there was no evidence that the arrangements for schooling had remained unchanged between then and January

2021 when Dr. Schubert's report was written. The Council said that it was possible, therefore, "that the situation with regard to schooling has changed between then and when the expert carried out his research".

37. In conclusion, the Council stated that

"the baptism certificate cannot be considered in isolation from the other factors set out in the Age Assessment which included a detailed conclusion and analysis of the information obtained, your client's education, his journey to the UK and his experiences of the journey and the countries he had passed through, his physical appearance and demeanour, health, selfcare and independence skills. The Assessors clearly recognised that the fact that your client was not credible in various respects as previously detailed, however they were mindful of the fact that that did not automatically give rise to a conclusion that he was not being credible in relation to his age. The Age Assessment was carried out by two very experienced social workers, trained in carrying out such assessments and has not been overturned on challenge. The information put forward by your client does not meet the threshold for a reassessment and in the circumstances the Council will not carry out the requested reassessment".

38. On April 13<sup>th</sup> 2021, G's solicitors wrote to the Council to say that they had obtained further evidence demonstrating that G had grown 3 centimetres in height since he was last measured on June 13<sup>th</sup> 2019, and that this was more consistent with his claimed age than the age he was assessed to be by the Council. That evidence was "clearly indicative of him being an adolescent that continues to grow." In light of the totality of the evidence, a further request was made for a reassessment.

39. On April 28<sup>th</sup> 2021, the Council responded refusing to make a reassessment; saying again that the threshold test had not been met. The Council stated that it was "not satisfied that a significantly different conclusion might be reached in relation to the Councils assessment of your client's age as a result of the further evidence provided. For that reason the Council will not be carrying out the requested reassessment".

40. With respect to the latest evidence of G's growth, the Council noted that "growth is not a precise measure of age . . . the assessment of age is itself not a precise science". The Council expressed the view that the doctor who measured G in July 2019, and the nurse

who measured him in February 2021, were not paediatric auxologists and were not experts in physical growth in the context of age or determining age. The Council also stated that:

“The difference in measurement between June 2019 and February 2021 is 3cm which is not significant as suggested particularly given that the measurements are subject to many variables e.g. posture of the person, type and accuracy of the equipment used and method employed by the measurer. Further these two measurements were taken in different settings. There is no evidence of the process adopted in both cases or evidence that the Council is being asked to compare like with like”.

### The Law

41. The age at which a young person presents to a local authority is significant. If that young person is a child, various obligations are imposed on the local authority under the Children Act 1989 (“the Act”), and the local authority will have certain powers which can be exercised to support that child under the Act.
42. Ms. Benfield, who acted on behalf of the Claimant, explained that asylum-seeking children, or children who have been granted asylum, but are unaccompanied by a person having parental responsibility for them will usually be regarded as a “child in need”. As a consequence, the local authority in whose area the child presents him or herself will be under a duty to provide accommodation and support: see sections 17 and 20 of the Act. Where a child is accommodated under section 20 of the Act, they will become a “looked after child”, and this will give rise to further duties, including duties that continue once they turn 18 as a previously “looked after” child. Local authorities will, under the ‘leaving care regime’ (sections 23A-24D of the Act) and depending on how long they have been ‘looked after’, owe them duties as ‘relevant children’ and ‘former relevant children’ as they approach the age of 18 and up until the age of 25, or lesser duties as ‘persons qualifying for advice and assistance’ from the age of 16 to the age of 21.
43. There is extensive case law on the approach that should be taken by local authorities to carrying out an age assessment. Detailed guidance was provided by Stanley Burnton J.

in *R(B) v London Borough of Merton* [2003] EWHC 1689 (Admin). In *R(FZ) v. Croydon LBC* [2011] EWCA Civ 59, the Court of Appeal referred to the age assessment process and to the guidance set out in the *Merton* case as follows:

“2. 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* . . . 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.”

44. In other cases, to which I was referred by Counsel, a number of other important points have been made about the assessment process:

- (i) The benefit of the doubt is always given to the unaccompanied asylum seeking child, since it is recognised that age assessment is not a scientific process (*A and WK v London Borough of Croydon* [2009] EWHC 939 (Admin) at [40];
- (ii) “A person such as a teacher or even a family member, who can point to consistent attitudes, and a number of supporting instances over a considerable period of time, is likely to carry weight that observations made in the artificial surroundings of an interview cannot carry” (*R(AM) v Solihull Metropolitan Borough Council* [2012] UKUT 00118 (IAC) at [20]); and
- (iii) “Reactions from the individual's peers are also likely to be of assistance if they are available. . . . [T]hose who work with groups of young people see how they react with one another and it seems to us likely that evidence of such interaction, if available, may well assist in making an age assessment, particularly if any necessary allowance for cultural differences can be made” (*R(AM)* at [21]).

45. With respect to re-assessment, the parties are agreed that where further information becomes available, the relevant test is as set out in *R (BM) v. Hackney LBC* [2016] EWHC 3338 at [69] (per Leigh-Ann Mulcahy QC, sitting as a deputy judge of the High Court), namely whether the local authority believes that on the basis of the further information

“a significantly different conclusion might be reached. That is a higher test and involves consideration of the degree to which the material might impact on the existing age assessment.”

This formulation was approved by Julian Knowles J. in *R(F) v. Manchester City Council* [2019] EWHC 2998 at [26].

46. It was agreed by the parties that the “higher test” referred to in *BM* was more than that the new material *might* have a bearing on the existing assessment. Furthermore, the parties agreed that the test is context specific, and it is important to evaluate the new information in light of the reasoning or analysis for the initial assessment. The new information needed to be relevant and material to what troubled the original age assessors.

47. This approach to reassessment originates in the *Age Assessment Guidance* issued by the Association of Directors of Children’s Services (“the ADCS”) in October 2015 under the heading “Where further information becomes available”. The guidance states that:

“Age assessment is a difficult process for children and young people and for social workers undertaking the assessment; it should only be undertaken when there is significant reason to do so. However, there will be occasions when a further assessment is required. Other than on those occasions when reliable and authoritative information is available, an assessment will not allow the assessing social workers to know the age of a child or young person and will only allow them to come to a balanced and reasonable conclusion based on the information to hand and on benefit of the doubt. Other information may come to light at a later stage, for example, in the form of documentation or as professionals get to know the child or young person over time, which leads them to believe that the assessed age is wrong.

*Where you believe that a significantly different conclusion might be reached and that the child or young person may be notably older or younger than initially assessed, then a new assessment should be undertaken.* In most circumstances you will need to talk with the young person about this new information. There may be occasions when a re-assessment does not have to involve further questioning; for example, where new documentation has been provided which supports the child or young person’s claim and it can be relied upon, a decision on age can be made on that basis. Any new decision and the reasons for it must be clearly communicated with the child or young person, and if they are to remain in your service, then thought must be given to rebuilding trust and confidence. The Home Office must be advised of any new decision, and the child or young person will need to be issued with new immigration documents which reflect their assessed age.

(Emphasis added).

### The Arguments

48. Ms. Benfield, on behalf of G, contended that the Council’s decision refusing to reassess G’s age was *irrational*, and therefore unlawful, in the two ways set out by the Divisional Court in *Law Society v Lord Chancellor* [2019] 1 W.L.R. 1649 at [98]: that is, (i) the decision reached by the Council not to carry out a reassessment of G was outside the range of reasonable decisions open to the decision-maker in the classic *Wednesbury*



sense; and (ii) the decision was flawed by the process by which the Council's decision was reached. There was, it was submitted, a failure by the Council to engage with the substance of what was being put forward by G. The Council failed to keep an "open mind" to the fact that its initial decision on age could have been wrong even though it was *Merton*-compliant, on the basis that age assessments were unreliable. Age assessments were not scientific, and involved a margin of error.

49. Ms. Benfield referred the Court to the material which formed the basis for the reassessment request. It was contended that this material needed to be looked at individually, but also cumulatively.

50. With respect to the Christian Identity card, Ms. Benfield accepted that this would not be determinative on its own on a reassessment, but if the Council was satisfied as to its provenance and authenticity it would carry substantial weight. It was a document produced by a third party (G's church) which recorded the same date of birth that G had consistently given. Ms. Benfield acknowledged that, before deciding to reassess, the Council was entitled to ask questions about the document's provenance, especially as the age assessment reflected the Council's concerns about G's credibility, but she contended that the Council had acted unreasonably in not agreeing to a reassessment in light of the information that was provided.

51. Ms. Benfield criticised the reasons given by the Council in its email of October 27<sup>th</sup> 2020 (set out at paragraph 19 above). She contended that:

1. The fact that the document was handwritten should not affect the weight attributed to it; this was the form of document that was issued by the Church. It was also wrong to suggest that the Identity card only verified the date of baptism and not G's age. Although it was accepted by Ms. Benfield that the Identity card did not carry the same weight as G's date of birth in a birth certificate or passport would have done, it did record G's date of birth consistently with the age that G had claimed.
2. The fact that the Identity card did not contain a photograph of G was beside the point. This was not a document where a photograph should have been appended, but was missing.

3. It had been explained why further information could not be obtained from Ms. Luis. She would be placed at risk if she gave evidence on G's behalf, and this was confirmed by the country expert Dr. Schubert.
  4. As for verification of the Identity card, this could be carried out by the Home Office or its agents in Angola. Furthermore, the Council could have spoken to G to understand how the document was obtained.
52. With respect to the expert report of Dr. Schubert, Ms. Benfield submitted that he had sufficient expertise to comment on matters pertaining to Angola, and his report addressed two themes which were directly relevant to the age assessment. First, Dr. Schubert's evidence substantiated the credibility of the education history given by G. Second, Dr. Schubert explained the relevance and reliability of the Christian Identity card.
53. With respect to education in Angola, it was contended that Dr. Schubert's evidence directly addressed a core concern of the assessors – the education history and timeline for G. It was argued that one of the key reasons why the age assessors did not believe G's evidence was that he claimed to have attended a polytechnic at the age of 14-15, which the assessors thought was not possible as they had formed the view that the polytechnic was a post-16 provision. Dr. Schubert had explained that this was not correct, and that a polytechnic education such as that claimed by G should not be confused with a senior college.
54. Ms. Benfield accepted that in his report Dr. Schubert did not specifically address G's evidence about the girl in his Year 7 class who G had said was 11 or 12 and was younger than him. Nevertheless, Dr. Schubert did refer to the fact that classes could be made up of older and younger children. Ms. Benfield also explained that G had said that there had been a misunderstanding by the age assessors as to what G had said about the girl: he had actually said that the girl was older than him. Ms. Benfield submitted that the Council was now overstating the importance of this piece of information, when the assessors had relied on other matters including the age at which a child could attend a polytechnic.

55. As for the Christian Identity card, Ms. Benfield pointed out that Dr. Schubert had expressed the view that it looked genuine and credible, and he was able to provide important context about the use of these cards in Angola. They were commonly used in certain provinces to enrol children in school, and served as a substitute to a birth certificate. This was consistent with the claim made by Ms. Luis that she used G's card to enrol him on an educational course.
56. Ms. Benfield submitted that the Council's response to Dr. Schubert's evidence was unreasonable. The Council questioned whether Dr. Schubert was qualified to comment on age or as to the authenticity of the Christian Identity card, and yet his report gave reasons for supporting the authenticity and reliability of a primary document confirming G's age. The fact that Dr. Schubert had said that the document could not of itself be used to procure national identity documents did not mean it had no weight.
57. As for the Council's comment that the report of Dr. Schubert was prepared in 2021 when G's education finished in 2017 and that the situation may have changed, it was clear from the report itself that Dr. Schubert had considered information from 2019 and referred to a news article showing that the polytechnic where G studied opened in 2015, within the relevant time period. The Council had also failed to address the point that the assessors had concluded that a polytechnic was a 16+ provision and that was directly contradicted by Dr. Schubert.
58. With respect to the professional opinions of those who had worked with G, Ms. Benfield argued that these confirmed a maintained opinion that G was significantly younger than he had been assessed to be. Their opinions were treated cursorily by the Council. Although it was accepted that this evidence alone would not be sufficient to re-open an assessment, it needed to be viewed alongside the other evidence that had been presented to the Council.
59. As for the information relating to G's height growth, the Council had rejected this on the basis that height measurements are more accurately measured by a paediatric auxologist and that the height growth is not significant. Ms. Benfield accepted that this evidence was unlikely to be a determinative factor on its own, but it supported the overall case for a reassessment. A nurse or a doctor can measure height, even if the

most reliable evidence would come from a specialist. Furthermore, an individual is more likely to be over 18 if they do not grow, whereas there was some evidence that G had grown.

60. Overall, therefore, it was submitted that there was ample material presented to the Council that any reasonable local authority would have decided had crossed the threshold for reassessment. The Council had acted irrationally in failing to agree to a reassessment.

61. Mr. Harrop-Griffiths, on behalf of the Council, resisted the application. He contended that the Council was entitled to decide not to reassess G's age on the basis of the materials presented to it, and that its approach to the new materials was not flawed in an irrational sense. The original assessors had rejected G's assertion of his date of birth primarily on grounds of credibility, and in particular what he had said about his age in year 7 as compared to the younger girl who was 11 or 12. The material provided did not damage the conclusions reached by the assessors on G's lack of credibility.

62. With respect to the Christian Identity card, Mr. Harrop-Griffiths acknowledged that if the document was genuine it might make a significant difference to the reassessment. However, where credibility was seriously in issue, it was incumbent on G to explain as much as he possibly could about the provenance of the photograph of the Identity card up-front before the Council had to make a decision as to whether to reassess. Furthermore, the Council's reasoning in refusing to rely on what had been provided by G was reasonable. The Council's reference to there being no photographs was not about the Identity card itself but to the suggestion that Ms. Luis had photographs of G himself at a younger age. These photographs had not been provided. The Council wanted to hear directly from Ms. Luis, rather than what was attributed to her, given that G had presumably contacted her about his situation.

63. As for the report of Dr. Schubert, this did not engage with what G had told the assessors that in Year 7 he was older than the youngest member of the class who was herself 11 or 12. Dr. Schubert's evidence did not engage with the provenance of the Christian

Identity card, or why Ms. Luis would be at greater risk if she provided further information given that she had already purported to assist G.

64. As for what Dr. Schubert said about the starting age for attending a polytechnic (age 14, as opposed to the assessors' understanding that this had to be from age 16), Mr. Harrop-Griffiths contended that this was a subsidiary point for the assessors: it did not form a significant part of the assessors' reasoning in arriving at their conclusion as to G's age. Their reasoning really turned on what G had said about the girl in his class being younger than him, as well as other findings about his lack of credibility (in particular, his explanation as to his journey to the United Kingdom).
65. As for the views of the professionals, Mr. Harrop-Griffiths argued that this kind of information had already been considered by the Courts when looking at the original age assessment, and in any event could not outweigh G's lack of credibility. Similarly, with the evidence about G's height growth.
66. In answer to the Court's question as to what information would cross the threshold and require a local authority, acting reasonably, to reassess G in light of the earlier findings on credibility, Mr. Harrop-Griffiths gave a couple of examples. First, Mr. Harrop-Griffiths submitted that the threshold would be crossed if G had produced an identity document which could be validated or verified. Second, if G had accepted that he had previously told lies and opened up and explained what had really happened. Mr. Harrop-Griffiths submitted that neither of these situations applied on the present facts.

### Discussion

67. The starting point for considering whether the Council acted *irrationally* when presented with the new material is to understand what troubled the local authority when it made its original age assessment; and then to consider the extent to which the further material purported to address those concerns.
68. It is clear to me from a close reading of the assessment report that the key concerns for the Council were (a) the timeline given by G and the education system in Angola; (b) G's account of how he came to the United Kingdom, which went to his credibility; and

(c) G's presentation, including his presentation at the second meeting, and the English language skills that he showed at the third interview. It is against this background that I consider the further information provided to the Council.

(i) Christian Identity Card

69. The first piece of new information presented to the Council was the photograph of the Christian Identity card, and G's account of how this had come into his possession from his friend Ms. Luis. If the document was verified, it would be a record in a formal document produced by a third party (the church where G was baptised) that G's date of birth was May 4<sup>th</sup> 2003, the same as he had contended for. As such, the document would not necessarily prove G's date of birth in the same way as a validated birth certificate or passport would. Nevertheless, it might address some of the Council's previous concerns about G's credibility, leading to a significantly different conclusion as to G's age.

70. The Council did not reject the information about the Christian Identity card out of hand, but asked further questions about it. This was an entirely reasonable approach for the Council to have taken in light of its previous concerns about G's credibility. The Council was entitled to try to find out more about the photograph's provenance, rather than simply rely on G's own account, before deciding whether it was satisfied that the test in *R(BM) v. Hackney LBC* had been met.

71. In spite of its requests, however, the Council was not provided with any evidence, independent of what had been set out in the letter from G's solicitor on October 18<sup>th</sup> 2020 (see paragraph 18 above) as to the provenance of the photograph. The Council did have the evidence of Dr. Schubert that the Christian Identity card might be used as a proxy for other documents which evidence the date of birth, but this did not corroborate G's account that it had been used for that purpose in his case. G said that he had sent the photograph to Ms. Luis, but the Council did not even have evidence that Ms. Luis knew G: Ms. Luis did not provide photographs of G at a younger age even though she apparently had these in her possession. The Council had no contemporaneous evidence of the discussion between G and Ms. Luis which led to him sending her the photograph

to enrol him on an educational course. G said that he could not provide that correspondence as he no longer had access to the relevant account, but Ms. Luis had not provided a set of the correspondence either.

72. The Council was told that Ms. Luis had been advised not to give evidence with respect to this matter, and Dr. Schubert had explained that there might be risks to Ms. Luis if she was found out to have assisted G. In my judgment, however, the Council was entitled to be sceptical as to the further risk to which Ms. Luis might be subject given that, on G's account, she had already provided evidence to assist G in seeking to verify his age to the authorities in the United Kingdom.

73. In the circumstances, I consider that the Council was entitled to refuse to reassess G's age on the basis of the photograph of the Christian Identity card. The Council had been provided with no information that went to the provenance of the photograph of the Christian Identity card other than what G himself said about it. G's own credibility had already been found to be lacking in the original assessment, and the Council was entitled to decide that it could not rely solely on his say so as to what the photograph was, how it had been used, and where it had come from. As G's own account about the Christian Identity card would not lead the Council to form a different view on G's credibility as to his asserted age, the Council was entitled to be satisfied that a significantly different conclusion as to G's age might not be made.

74. It was suggested by Ms. Benfield in the course of her submissions that there were other ways in which the Christian Identity card could be verified. For instance, the Council could ask the United Kingdom Government to use its agents in Angola to visit the relevant church to obtain further information about G's baptism record. I accept that this might be possible, but it does not seem to me that this makes the Council's decision *irrational*. I do not consider that every reasonable local authority would be expected to make such a request to the Government in circumstances where it had already asked a number of proper questions about the photograph's provenance and they had not been satisfactorily answered.

(ii) Dr. Schubert's report

75. Dr. Schubert's report also contained considerable detail about the education system in Angola. In particular, Dr. Schubert explained that a polytechnic could be a post-14 provision, and that the polytechnic which G claimed to have attended catered for children between the ages of 14 and 17.
76. The Council's response to this information was to say that Dr. Schubert was not qualified to assess G's age. In addition, the Council commented that what Dr. Schubert said about educational institutions in Angola may represent the position when his report was written in 2021, but that did not mean that the same applied to the period when G was at school: the situation may have changed in the meantime. In my judgment, the Council's response did not constitute a proper engagement with the information that had been provided by Dr. Schubert about G's account of his education in Angola.
77. Dr. Schubert did not explicitly say that his observations about the education system -- including the ability to commence a polytechnic education from the age of 14 -- applied to the period when G was educated in Angola. Nevertheless, this was implicit in his report when he stated that "G's account of his schooling in Angola is credible and consistent with my knowledge of the Angolan education system". This is further supported by Dr. Schubert's reference to an article confirming that the polytechnic which G claimed to have attended was founded in 2015, and so was in existence when G claimed to have been there.
78. Mr. Harrop-Griffiths contended that this made no real difference because the age at which a student could attend a polytechnic was a subsidiary issue for the assessors. He submitted that the assessors' decision as to the education timeline was dictated by what G had said was the age of the younger girl in his Year 7 class, and Dr. Schubert could not and did not say anything about this. I agree with this contention.
79. In my judgment, on reading the assessment report carefully it is clear to me that the most significant piece of evidence for the assessors when establishing the education timeline was what G had said about the girl who was the youngest person in his Year 7 class. This point had been mentioned by G at the third interview at a time when, according to the assessors G "was more relaxed, and he provided what came more naturally and factual". The girl's age, and the impact that this had on the timeline, is



mentioned several times in the report, and is repeated several times when the assessors were constructing their timeline. According to the assessors' education timeline as the girl was 11 or 12 years old; as G was one year older than her; and as G stayed in the Year 7 class for one year, that meant that G was a minimum of 12 years old when Year 7 was completed. Given that, on G's own evidence, he continued with his schooling for a further five years, leaving before Year 13, the assessors concluded that

“This would make G between 17 or 18 before traveling to the UK. If G claims his date of birth to be 4th May this would make him at least 18 to 19 when he was accommodated by the local authority”.

This analysis was entirely unconnected to what the assessors understood to be the age at which G could have attended a polytechnic.

80. What G had said about attending a polytechnic at the age of 14 may have compounded the assessors' views about G lack of credibility (as confirmed by the various judges when refusing permission to challenge the initial assessment): the assessors thought that a polytechnic was a post-16 provision and it was not possible for G to have attended at age 14. Nevertheless, the main effect of what G had said about attending a polytechnic was to extend the timeline. It had no effect on whether G might have been under 18 when he was first accommodated by the Council. Thus the assessors stated that:

“According to G he already started attending Polytechnic before leaving for the UK. Given Polytechnics were mostly listed under higher education or universities in Angola, this further confirms that G could be age 19 or 20 before he left Angola and this would make him 20 or 21 at the time of the age assessment. . . . The age he left Angola also depends on his programme at the fourth education institute. This information was vague as the school is not traceable and this appears to be a post 16 education institute where he completed 2 years before leaving Angola.”

81. Ms. Benfield quite rightly contended that the Council needed to keep an “open mind” when considering the further information provided by G, including the information from Dr. Schubert. Nevertheless, that did not mean that the Council needed to keep an “empty mind”. The Council did not need to consider that it might have misunderstood

what G had said about the age of the girl in Year 7 as G subsequently claimed. Rather, the Council was entitled to take as its starting point what it had understood G to have told the assessors about her age and to consider the further information in that context.

82. In light of what G had said about the younger girl's age in the Year 7 class, what Dr. Schubert said about the commencement of polytechnic provision did not matter: in *Wednesbury* terms, it was not a relevant consideration for the Council.

83. Accordingly, whilst I consider that the Council did not engage properly with Dr. Schubert's evidence (see paragraphs 76-77 above), this did not mean that the Council acted *irrationally* and therefore unlawfully. The Council was entitled to conclude that Dr. Schubert's evidence about the education system in Angola did not address what was really troubling the assessors about G's account of his age: that G must have been at least 12 when he completed Year 7, and had five more years of education before he left Angola and must therefore have been at least 18 to 19 if his birthday was May 4<sup>th</sup> when he was accommodated by the Council.

84. On its own, therefore, I do not consider that the evidence in Dr. Schubert's report required a reasonable local authority carry out a reassessment.

(iii) The evidence from those who had had dealings with G

85. The Council was provided further information from three individuals who had had dealings with G: the letter from Edyta Janczak at Croydon College dated February 8<sup>th</sup> 2021, the letter from Carlotta Zanello of the British Red Cross dated February 15<sup>th</sup> 2021, and the further written opinion on G's age from Alex Johnson, his ESOL Tutor at Middlesbrough College provided on February 18<sup>th</sup> 2021. This information did represent the maintained view of three individuals that G had been under the age of 18 when the Council initially assessed him.

86. The Council specifically addressed the further information from Ms. Janczak and Ms. Zanello, commenting that it added nothing new, relevant or significant. In my judgment, this was a response which a reasonable local authority in the Council's

position could have arrived at. This kind of information had been considered previously, and had been specifically dealt with by the Courts when refusing G permission to challenge the initial assessment by way of judicial review. On its own, it could not justify a reassessment, and the Council was entitled to say that.

87. The Council does not appear to have responded specifically to the evidence from Alex Johnson. This is not a material error, however, as that evidence was of the same type as that from Ms. Janczak and Ms. Zanello and could not have justified a reassessment.

(iv) The measurement of height

88. The Council was presented with evidence that G had grown 3 centimetres in a period of twenty months. The Council's response was that the difference in measurement was not "significant" and that there were questions as to the process adopted in carrying out the measurement, including that those measuring him were not experts in physical growth. A reasonable local authority in the Council's position was entitled to decide that this further information did not justify a reassessment. Although this amount of growth was more consistent with an individual aged under 18 it was not necessarily so.

(v) Looking at the further information cumulatively

89. The Council did look at the further information presented to it in the round, and did not just evaluate each piece of information in isolation. The conclusion that it reached that looking at all of the further information cumulatively did not justify a reassessment of G's age was, in my judgment, one which fell within the bands of reasonable response.

90. The new material certainly supported G's version of events that he had been born on May 4<sup>th</sup> 2003 and was therefore under 18 when first accommodated by the Council. However, in circumstances where the original assessment of age had been based primarily on a timeline drawn from what G had himself said, and where G's credibility had been found to be lacking in so many respects, the further information that G needed to put forward to justify a reassessment needed to be quite compelling. The Council was entitled to conclude that the further information provided failed to meet that

**Judgment Approved by the court for handing down.**

threshold; that it could not be said that a “significantly different conclusion” might be reached.

### Conclusion

91. Accordingly, I dismiss this application for judicial review.