

Moot Competition Instructions

READ CAREFULLY

On the following page, you will find a document entitled 'Brief to Counsel' which forms the Moot Problem. You are asked to **prepare Grounds for Judicial Review** and **request appropriate relief**.

Please note the following:

1. Your submission **must** be solely the work of your team.
2. Your submission **cannot** exceed **1000 words** (including citations but excluding the heading).
3. Your submission **must** be submitted in a legible font and size (e.g. Arial, 11).
4. At the end of your submission, please write the following, **aligned to the right**, as follows:

COUNSEL FOR THE CLAIMANT
DATED [INSERT DATE]
Team XXX

Please note that marking will be anonymous. Accordingly, you are NOT to include the names of yourself or your partner, or any other personal information within your submission. This includes any information which may potentially suggest a personal fact about you, such as your location or background.

You should also not write your team number **anywhere else** on the document.

5. Your submission **must** be a **single file of 10MB or less**, in **Word format**, and named as follows:

'Written Submission [YOUR TEAM NUMBER]'

For example: Written Submission Team 9001

6. Your submission **must** be received by **6:00pm UK time on Friday, 21st October 2022** via this [Google Form](#).

Please allow sufficient time before the deadline to comply with these instructions in full. Last minute submissions or a failure to follow these instructions may lead to your submission being discounted.

To contact the HRLA Young Lawyers' Committee: hrla.younglawyers@gmail.com

HUMAN RIGHTS LAWYERS ASSOCIATION
HUMAN RIGHTS JUDICIAL REVIEW MOOT COMPETITION 2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT (DIVISIONAL COURT)

IN THE MATTER OF

The King, on the application of
XY

Claimant

-v-

THE LONDON BOROUGH OF ATLANTIS

Defendant

BRIEF TO COUNSEL

Instructing solicitors ("IS") act on behalf of the Claimant, XY, a national of Iran who arrived in the United Kingdom on 1 July 2022 and sought asylum. Proceedings are to be issued and pursued against the London Borough of Atlantis, the Defendant local authority with responsibility for an assessment of his age. The claim is brought before the Administrative Court, and it has been directed that any hearings in this case shall be before a Divisional Court.

AB came to the attention of the border authorities and informed them that his date of birth was 4 June 2006, making him 16 years old. He did not have any documentation with him. He was in company with others on his arrival (in the back of a lorry) but none were relations. He had traveled alone from Iran, moved by people traffickers who had been paid by his uncle to take

him to a safe country. He said that he knew his date of birth because his parents had told him what it was, and they chose to celebrate his birthday each year, as well as those of his younger siblings. The Home Office officials disputed his age, forming the opinion based on his appearance that he might be aged about 20-22, and so processed him as an adult. He was placed in accommodation at a hotel in the London Borough of Atlantis.

A support worker from a charity assisting asylum seekers met XY and referred him to the London Borough of Atlantis for support on the basis that he is an unaccompanied child and in need of the requisite support with his personal welfare, nutrition, healthcare, education, accommodation and psychological wellbeing. As a result of this referral, three days later, he was placed by the Borough into temporary accommodation suitable for a child of his stated age. However this was on the basis of accommodation pending the completion of an age assessment, because the social worker sent to an initial visit took the view his appearance cast a question over his accurate age. On 28 July 2022 two social workers employed by the Defendant local authority assessed XY's age, in order to determine its opinion as to whether or not he is a child (i.e. a person aged under 18) and therefore whether entitled to support under the Children Act 1989.

The interview lasted almost two hours. XY did not have an appropriate adult present. He did not speak any English. He had an interpreter provided, whom he understood adequately but not perfectly, who attended the hearing by telephone. Often the connection was poor and the interpreter had to ask XY to repeat himself as she repeatedly missed what he had said. XY struggled to answer personal questions about the experiences that led to him fleeing Iran; he was tearful when discussing his family and experiences. He grew up in rural Iran. He confirmed that he knew his date of birth because his parents had told him, and they had birthday celebrations in his family. He cried some more. He was asked if he needed a break but said he wanted to get it over with so carry on. He was able to confirm his uncle had sent him away after his father was taken into custody by the state police. He couldn't remember exactly how long the journey to the UK took or which countries he passed through. He was often just in the back of a vehicle, and just told where to be and when and put in houses with others as they made the same journey. He explained that he arrived in the UK via lorry. The social workers told him that they found his account inconsistent and that it lacked enough detailed information to be compelling and credible. In their notes recording the meeting and the decision, which have been disclosed to IS, the interviewers also recorded their specific concern around the absence of information about the countries through which XY had traveled and how long he had spent in each one, noting that they viewed this as constituting a deliberate attempt to avoid providing an accurate timeline of his journey. The notes include reference to a member of staff in XY's original hotel saying that XY "acts like a young adult, hanging around with the others of similar

age we have here". A carer at the local authority accommodation, who brought XY to the interview room, was asked and said he did not know what age he thought XY is, and suggested other staff at the accommodation spent more time with him. The assessors noted in depth XY's physical appearance, commenting on his "facial hair, sharp jawline and weathered skin" and considered these features to be strongly indicative of XY being an adult. During the course of the assessment, in the later part of the interview, XY was given the opportunity to respond to concerns the interviewers raised that, provisionally in their view, were adverse points to his age, and he was asked to offer any response he had. (IS agree that the record shows the points minded to be held against him were put for his response). He was crying and implored them to believe him.

The social workers determined that XY was an adult, aged 20 years old. He was informed of this decision at the end of the meeting. He was told he may wish to speak to a lawyer if he disagrees. He was not given any paperwork pertaining to the decision or setting out the reasoning behind it (IS have since obtained the notes and decision). He was immediately placed back into his previous (adult) accommodation in the hotel. His application for asylum is now being dealt with by the Home Office, and due to the result of the assessment by LB Atlantis is being treated as that of an adult.

In pre-action correspondence the parties have indicated agreement to the above summary of the facts which will accordingly form the basis of the facts available to the Court.

The Defendant local authority has issued its own policy guidance entitled "*Unaccompanied asylum-seeking children and assessing age: a guide*". In relation to age assessment interviews, the policy includes, *inter alia*:

- i. The approach taken must be child-friendly. Breaks should be offered and questions repeated if not understood.
- ii. The young person being assessed should usually, if it appears appropriate, be asked if he or she requires an Appropriate Adult be present during the assessment. If he or she does not wish to have an Appropriate Adult, one does not need to be provided.
- iii. An interpreter must be used if needed. The interpreter should always be remotely present in the interview by telephone. This must never be departed from in any case. This is due to the extra costs of physical attendance, which are never justified.

- iv. Adverse points, which the decision-maker is minded to hold against the young person, should be put to the young person and he or she should be given an opportunity to respond.
- v. The young person should be told that they may be able to challenge the decision with the help of a lawyer.
- vi. Assessors must also follow the guidance in the “Age Assessment Guidance” issued in October 2015 by the Association of Directors of Children’s Services (“the ADCS guidance”).

IS consider that the way that the assessment was conducted was procedurally unfair and/or was not compliant with the caselaw, including that of R (B) v London Borough of Merton [2003] 4 All E.R. 280; [2003] EWHC 1689 (Admin).

IS further contend that the Defendant’s policy is unlawful as it does not always require a fair and lawful assessment process.

Counsel is asked to settle grounds alleging:

- (1) The assessment conducted on 28 July 2022 was (a) unlawful as a matter of common law (notably, it fails to comply with the principles identified in the case-law) and/or (b) it unlawfully failed to apply and follow the relevant policy guidance in the conduct of the assessment; and
- (2) The Defendant’s policy is (in part) unlawful.

Counsel is instructed to request appropriate relief.

NB Counsel is not required to make detailed submissions in relation to the differences in care and support afforded to unaccompanied children seeking asylum and adults seeking asylum. It is common ground between the parties, and accepted by the Court, that there is such a difference. It is also common ground between the parties, and accepted by the Court, that the law required the local authority to treat the Claimant as a child whilst the assessment of his age was pending, and that does not prejudice the outcome of any assessment of course.

October 2022
Philip Rule and Serena Sekhon
No5 Chambers