



Neutral Citation Number: [2026] EWHC 1568 (Admin)

Case No: AC-2025-LON-004527

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Thursday, 25th June 2026

Before:
FORDHAM J

Between:
THE KING (on the application of EXR)
– and –
SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Claimant

Defendant

Stephanie Harrison KC, Shu Shin Luh and Agata Patyna
(instructed by Bindmans LLP) for the Claimant
Cathryn McGahey KC and Mark Vinall (instructed by GLD) for the Defendant

Hearing dates: 3-5.6.26
Written submissions: 8 & 10.6.26
Draft judgment: 19.6.26

Approved Judgment

FORDHAM J

This judgment was handed down at 10am on 25.6.26, by circulation to the parties and uploading to the National Archives.

FORDHAM J:

Introduction

1. This is a case about the standard of review for judicial determination of the lawfulness of the SSHD's decision to treat as an adult an unaccompanied individual proposed for removal to France under the UK-France Treaty 2025 (UFT). The UFT is an international instrument under which persons who arrive in the UK in small boats from France can be removed for readmission to France. The SSHD has arrangements (the UFT scheme) for implementing the UFT. The UFT scheme and the UK-France transfer arrangements are not designed for the transfer of unaccompanied children. France's readmission duty under the UFT does not apply to unaccompanied children. The SSHD's Selection Instructions tell decision-makers that unaccompanied asylum-seeking children are "not eligible" for detention under the UFT scheme. All of which means that, in implementing the UFT scheme, the SSHD must decide whether to treat an unaccompanied individual as an adult or as a child. If the SSHD decides to treat them as an adult, but that decision is unlawful, then the removal to France is itself unlawful. There is a right of effective judicial protection, asking the judicial review Court to consider the lawfulness of the removal, which includes the lawfulness of the SSHD's decision to treat the unaccompanied individual as an adult. All of this is accepted by the SSHD. But what is the test to be applied by the Court? Is it a reasonableness standard of review, as submitted by Cathryn McGahey KC and Mark Vinall for the SSHD? Or is it a correctness standard of review, as submitted by Stephanie Harrison KC, Shu Shin Luh and Agata Patyna for the Claimant? This issue of principle was identified as a preliminary issue of law, in this test case. I am grateful to both teams and all team members for their industry and assistance, in the quest for its determination.

Open justice

2. At my invitation, each party decided to ask their lead advocate to read out in open court at the start of the hearing a solicitor's email address, contactable by any member of the press or public who wanted to request the skeleton argument. The other open justice features of the case were these. **First**, the Claimant is a young person seeking asylum who has anonymity protection with reporting restrictions, imposed earlier in the proceedings on the grounds of necessity. **Second**, some of the documents disclosed by the SSHD were protectively released into a confidentiality ring, adopted earlier in the proceedings on the grounds of necessity. **Third**, some submissions had to be protectively made in private. But the following gist of points made in private was read out in open court:

Ms Harrison KC submitted as follows: (1) There are internal Home Office arrangements which are distinct from the published Inadmissibility Guidance and which contain criteria going beyond what is published and references to policy being implemented by the SSHD. (2) Those arrangements, criteria and references are, in various respects, informed and dictated by the UFT and its terms, or intended to promote the operational effectiveness of the UFT arrangements. (3) Points (1) and (2) support the argument that the UFT has been 'implemented by a variety of measures', including policy, in the UK, applying MS (Pakistan) v SSHD [2020] UKSC 9 [2020] 1 WLR 1373 at §20.

Nothing, in my judgment, can turn on the one further point which could be made by Ms Harrison KC only in private. No private judgment or annex will be necessary. **Fourth**, there is a remaining question about whether the protective boundary between closed and

open material has been drawn in the correct place. This will need to be addressed, whether by me or another Judge.

Late disclosure

3. A significant volume of material was disclosed by the SSHD extremely late in the day. This impaired the hearing, so that submissions could only begin in earnest at 3pm on Day 1 (but see §57(1) below). The parties' positions are reserved on all questions relating to compliance with the SSHD's duties of candour and cooperation. I may need to revisit this topic.

"Child" is legally relevant for lawful UFT scheme removal

4. A person facing removal under the UFT scheme is entitled to challenge the lawfulness of that removal. Where an unaccompanied person claims to be a child but is treated by the SSHD as an adult, the lawfulness of that treatment is legally relevant to the lawfulness of the removal. The SSHD accepts this. Ms McGahey KC gave me the following route of this acceptance. (1) An adverse decision on asylum inadmissibility (s.80B of the Nationality Immigration and Asylum Act 2002) is necessary for removal under the UFT scheme. All persons facing removal will have had their protection claim declared inadmissible (see too UFT Art 4(1)(d)). (2) The Home Office Inadmissibility Guidance – entitled Inadmissibility: Safe Third Country Cases (v.10.0, 25 June 2025) – says this (p.9): "Unaccompanied asylum-seeking children are not suitable for the inadmissibility processes set out in this guidance". (3) The Lumba duty of adherence (see R (Lumba) v SSHD [2011] UKSC 12 [2012] 1 AC 245 at §§26, 202, 313) makes it unlawful by the SSHD to depart, without good reason, from Home Office policy guidance of this kind. See too R (Begum) v SIAC [2021] UKSC 7 [2021] AC 765 at §124. (4) It follows that an unaccompanied person facing removal under the UFT scheme can successfully challenge the lawfulness of that removal, by showing that the SSHD's decision to treat them as an adult was unlawful.
5. Ms McGahey KC says this route of acceptance is sufficient. That being so, she asks the Court to put to one side – for a case where it matters – Ms Harrison KC's alternative route. It relies on the Selection Instructions, which identify unaccompanied children as ineligible, as also attracting the Lumba duty of adherence. Ms McGahey KC does not say the Lumba duty is confined to policy guidance which is made public. She is right: see R (A) v SSHD [2021] UKSC 37 [2021] 1 WLR 3931 at §3. She says that not all policy guidance attracts the Lumba duty, citing R (Riverside Park) v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 2937 (Admin) at §76. She says the Selection Instructions are in a category that does not attract the Lumba duty. I may not be able to put this controversy to one side. I may need to consider whether a criterion within policy guidance can attract the correctness standard of review. I may need to consider whether the Inadmissibility Guidance "unaccompanied child" criterion does. If it does not, I may then need to consider whether the Selections Instructions "unaccompanied child" criterion does. I will need to do what is necessary, to decide the preliminary issue.

The nature of age questions

6. The date of a person's birth is a factual question of objective historical truth. So therefore is their age. So therefore is whether they are an adult (aged 18 or over) or a child (under

18). Age is different from a question like maturity, which may involve subjective evaluative judgment and opinion. How age or adulthood are established may require an evaluation of evidence. It may be an easy question, or a difficult question. It may be a decision made by a state official, or by a judge. A policy or practice relating to age may involve a designed-in margin for error. A Home Office official could, for example, be required to treat as a child anyone who is not obviously older than 24. A decision on age or adulthood can be reasonable, and yet incorrect, as was the position in AA (Sudan) (see §13ii below).

The rubric of judicial review

7. Decisions of public authorities must be lawful, in a public law sense. That means – in broad terms – that they must be legal, reasonable and fair. To decide whether they are, the judicial review Court applies objective legal standards. Legality is really concerned with two things: whether the public authority has performed its substantive legal duties; and whether it has made correct conclusions on questions of law. Fairness is concerned with the legal legitimacy of the public authority’s decision-making process. Reasonableness asks whether an outcome of a decision was beyond the range of responses open to the public authority; and whether the reasoning process involved any recognisable public law error of approach. Sometimes there are nuances and overlaps. There is a species of public law error which involves a material error of an established fact, but nobody says that is relevant to the present case. There is a species of public law error which involves a decision as to a factual question whose lawfulness depends on its correctness, which is highly relevant to the present case.

Reasonableness standard of review

8. Deeply embedded in the philosophy of judicial review, wherever the Court is concerned with evaluative questions entrusted to the primary judgment of the public authority, is the reasonableness standard of review. The public authority’s decisions and conclusions depend, for their lawfulness, on whether they are reasonable. The standard of review is not substitutionary. There is a margin for error. The reasonableness standard of review also conventionally carries with it a restrained approach to evidence, judging reasonableness by reference to the evidence available to the public authority at the time of the impugned decision. Ms McGahey KC says that, in deciding to remove someone for readmission to France under the UFT, a finding by the SSHD that an unaccompanied person is not a child attracts the reasonableness standard of review. If she is right, it will be necessary at a subsequent hearing to consider how this works.

Correctness standard of review

9. In some situations, a public authority’s decisions and conclusions depend, for their lawfulness, on whether they are correct. That includes decisions and conclusions on questions of law. But it can include decisions and conclusions on questions of fact. Here, the standard of review is substitutionary. There is no margin for error. The correctness standard of review also conventionally carries with it an unrestrained approach to evidence, judging correctness by reference to the evidence that is now available to the Court. Ms Harrison KC says that, in deciding to remove someone for readmission to France under the UFT, a finding by the SSHD that an unaccompanied person is not a child attracts the correctness standard of review. If she is right, it is common ground that the permission-stage test on judicial review is whether the material relied on by the

claimant raises a factual issue which, taken at its highest, could properly succeed at such a contested factual hearing (R (Z) v Croydon LBC [2011] EWCA Civ 59 [2011] PTSR 748).

The distinction between interpretation and application

10. Whenever public authorities and the Courts are considering an instrument having a legal effect – whether it is primary legislation or a set of rules or policy guidance – there is always an important basic distinction between interpretation and application. The interpretation of the instrument is a question of law, attracting the correctness standard of review. The application of the instrument is an evaluative question for the public authority as primary decision-maker, attracting the reasonableness standard of review. As Lady Hale explained in R (A) v Croydon LBC [2009] UKSC 8 [2009] 1 WLR 2557 (at §§21, 23), “[t]he court decides what the words mean”; but “the authority decides whether the facts fit those words”, “subject to the scrutiny of the courts on the ordinary principles of judicial review”. The same distinction applies to policy guidance. As Lord Reed explained in Begum at §124: public authority decisions can be “successfully challenged on the ground that the relevant authority ... misdirected itself as to the meaning of its policy”; whereas “the question how the policy applies to the facts of a particular case is generally treated as a matter for the authority, subject to the ... requirement of reasonableness”.
11. Importantly, this distinction between interpretation (correctness standard) and application (reasonableness standard) has been recognised in cases which are about Home Office policy in which there are protections for a “child”. R (ZS (Afghanistan)) v SSHD [2015] EWCA Civ 1137 was such a case. Burnett LJ explained (at §24), in that context, that it is “for the Court to determine the meaning of the policy” but “compliance with the policy limitations [is] reviewed on *Wednesbury* [ie. reasonableness] grounds”. Burnett LJ traced this approach through to R (AA (Afghanistan)) v SSHD [2013] 1 WLR 2224 [2013] UKSC 49. That was another case on Home Office policy guidance on detention, with protections for a “child”. The detention was lawful in AA (Afghanistan), being based on the SSHD’s reasonable but mistaken conclusion that the claimant was a child (§3).

Knock-on effect unlawfulness

12. The unlawfulness of public authority action can depend on the unlawfulness of previous public authority action. If a decision to deport or remove a person is unlawful, the exercise of the power to detain them for deportation or removal is in consequence unlawful. The detention is “for the express purpose of facilitating the deportation”. It is “artificial and unwarranted” to “divorce the detention from the deportation”. The deportation decision is “a prerequisite to” the detention and “the edifice on which the detention is founded”. The lawfulness of the detention is “referable back to the legality of the decision to deport”. It “depends for its legality on the lawfulness of the deportation”. See R (DN (Rwanda)) v SSHD [2020] UKSC 7 [2020] AC 698 (deportation) at §§17, 19 and 25; applied in R (Tazeem) v SSHD [2025] EWCA Civ 347 (removal) at §§25 and 36. Another example is where a local authority’s decision that accommodation is suitable is unlawful because it is based on an unlawful prior assessment: see R (Norton) v Haringey LBC [2025] EWCA Civ 746 [2026] PTSR 49 at §§29-31.

Leading cases on “child” and the correctness standard

13. There are two leading cases where judicial review Courts have concluded that a finding by a public authority that a person is an adult and not a child attracts the correctness standard of review. The finding depends, for its lawfulness, on whether it is correct.
- i) A (Croydon) was a decision of the Supreme Court in 2009. The claimants were two young persons each of whom had arrived in the UK unaccompanied. Each had made an asylum application. Each claimed to be a child. Immigration officers had made referrals to local authorities, who assessed whether the claimant was a “child in need” under s.20(1) of the Children Act 1989, finding each to be an adult. The Supreme Court decided, on the correct interpretation of the 1989 Act, that “child” in s.20(1) attracted the correctness standard of review, while “need” attracted the reasonableness standard (§§28, 53). So, the judicial review Court – or Upper Tribunal if the judicial review claim is transferred there – will decide the lawfulness of the local authority’s treatment of the individual as an adult, by deciding the age of the individual on the correctness standard, and on the evidence now available. That is described as a “contested factual hearing” (§9 above).
 - ii) R (AA (Sudan)) v SSHD [2017] EWCA Civ 138 [2017] 1 WLR 2894 was a decision of the Court of Appeal in 2017. The claimant was a young person who arrived in the UK unaccompanied and made an asylum application, claiming to be a child. Home Office officials decided that the claimant was an adult. There was a referral to the local authority. The asylum application was certified by the SSHD on safe third country grounds, removal directions were set, and the claimant was detained by the SSHD from 17 February 2015 to 1 March 2015 (see §12). A “Merton-compliant” age assessment undertaken the local authority then emerged, assessing the claimant to be a child (§13). The claimant was released from detention. The removal did not go ahead. It was agreed that the SSHD’s age decision had been reasonable (§12), but it had been incorrect (§16). The new Sch 2 para 18B to the Immigration Act 1971 had taken effect from 28 July 2014. By that statutory provision, Parliament had required that the detention of “an unaccompanied child” could take place only in a “short term holding facility” and only for a maximum of 24 hours (§19). The Court of Appeal decided, on the correct interpretation of the 1971 Act, that “child” in Sch 2 para 18B attracted the correctness standard of review (§§40, 46). That meant the detention had been unlawful and the claimant was entitled to damages. AA (Sudan) was treated as correct by the Supreme Court in R (BF (Eritrea)) v SSHD [2021] UKSC 38 [2021] 1 WLR 3967 at §21.

“Child” can attract the reasonableness standard of review

14. An obvious question which arises is whether “child” necessarily and automatically attracts a correctness standard, wherever the word is found within a statutory scheme or rules or policy guidance. Wherever it is found within legislation and policy guidance, “child” is always defined as a person under the age of 18. Examples are: s.105 of the 1989 Act (see A (Croydon)); Sch 2 para 18B(7) to the 1971 Act (see AA (Sudan)); s.10(11) of the Immigration and Asylum Act 1999; s.55(6) of the Borders Citizenship and Immigration Act 2009; s.56(3) of the Modern Slavery Act 2015; rule 6.2 of the Immigration Rules; and in the Glossary to the Home Office Assessing Age Guidance (see Assessing Age v.12.0, 19 December 2025 p.94). “Child” is of its nature (see §6

above) an objective question with “a right or a wrong answer”: see A (Croydon) at §27. However, as Ms Harrison KC for the Claimant accepts, it does not follow that “child” is, in law, always a question attracting the correctness standard of review. In my judgment, that concession is clearly right. To explain:

- i) **First**, neither A (Croydon) nor AA (Sudan) held that “child” is always a question attracting the correctness standard of review. It would have been easy to say so. In AA (Sudan), Davis LJ explained (see §37) that A (Croydon) only provided limited illustrative support, being concerned with “a decision on a different Act of Parliament and in a different context”. These cases involved analysing the language and structure of statutory provisions.
- ii) **Second**, in AA (Sudan) there was a discussion (at §§23-24) of the Home Office policy guidance on detention. This had also featured in AA (Afghanistan). The policy guidance provided that “unaccompanied children” were persons who “must not be detained other than in very exceptional circumstances”. That remains the position: see Detention General Instructions (v.6.0, 1 December 2025) at p.38. In AA (Sudan), the Court of Appeal did not – despite the Lumba public law duty of adherence to policy guidance, correctly interpreted (see §§4(3), 11 above) – treat “child” as having attracted a correctness standard of review, ahead of the new July 2014 statutory provisions with which that case was concerned. Nor had the Supreme Court done so in AA (Afghanistan). There, the argument for an A (Croydon) correctness standard – an argument based on the policy guidance reinforced by s.55 of the Borders Citizenship and Immigration Act 2009 – failed (see AA (Sudan) at §§21, 26-27). And so, it was the 2014 amendments to the 1971 Act which were crucial (AA (Sudan) at §§27-28 and 33).
- iii) **Third**, the context in AA (Sudan) provides a further compelling reference-point. Home Office policy guidance, dating back to at least 2011 provided that detention of an unaccompanied child pending removal could occur only on the day of removal and for the purpose of safe escort to the aircraft: see ZS (Afghanistan) at §§23, 26. That remains the position: see Detention General Instructions at p.39. That means there was a safeguard within policy guidance, of a kind which hardened into the statutory protection in July 2014 (1971 Act Sch 2 §18B). It was that hardening into primary legislation which transformed “child”, from a decision whose lawfulness depended on its reasonableness (AA (Sudan) and AA (Afghanistan)), to a decision whose lawfulness now depended on its correctness.
- iv) **Fourth**, the present case also provides a good concrete example of “child” and the two standards of review, applicable to the lawfulness of detention. Where an unaccompanied person is detained on entry to the UK for initial examination (1971 Act Sch 2 §16(1)), the “unaccompanied child” criterion in the Detention: General Instructions policy guidance applies. The Lumba adherence duty applies. The reasonableness standard applies. But once the detention becomes detention for removal (1971 Act Sch 2 §16(2); 1999 Act s.10(9)(b)), this switches to the statutory criterion attracting the AA (Sudan) correctness standard (1971 Act Sch 2 §§16(2A), 18B; 1999 Act s.10(9)(f)). An example of detention switching from examination-detention to removal-detention is Tazeem at §§32 and 36. The same switch occurred in the present case. As Ms McGahey KC points out, the legal logic is that the same issue – whether the detention is unlawful because the individual has unlawfully been treated as an adult – in the same case with the same decision-maker

can attract different standards of review on two consecutive days in the same week, when examination detention switches to being removal detention.

Merton-compliant age assessment

15. I have described how the Home Office referral in AA (Sudan) led to a “Merton-compliant” age assessment by a local authority (see §13ii above). The Assessing Age Guidance describes reliance by the SSHD on a “Merton-compliant” age assessment (§31vi below). “Merton-compliant” means an age assessment which complies with the standards set out in B v Merton LBC [2003] EWHC 1689 (Admin) [2003] 4 All ER 280 and subsequent case-law. See A (Croydon) at §6 and R (ZS (Afghanistan)) at §38.

Collateral Merton-compliance challenge

16. Ms McGahey KC accepted, as I understood it (but see §57(2)(a) below), the following proposition. Where the SSHD makes an inadmissibility declaration (2002 Act s.80B) for the purposes of removal (1999 Act s.10), treating an unaccompanied person as an adult in the application of the Inadmissibility Guidance by relying on a local authority age assessment as “Merton-compliant” in accordance with the Assessing Age Guidance, that person has the following legal right. They are able to challenge their removal by the SSHD as unlawful, by collaterally challenging the local authority age assessment on the basis that it did not meet the legal standards required in order to be “Merton-compliant”. This is an example of knock-on effect unlawfulness (§12 above), where the policy guidance provides for reliance on a “Merton-compliant” local authority age assessment. An example of a case where a similar argument arose in the context of the lawfulness of detention was R (ZS (Afghanistan)) at §§27, 55.

Other cases on correctness and reasonableness standards

17. I have discussed A (Croydon) and AA (Sudan). Here are some illustrations of other key cases where the judicial review Court has had to choose between the correctness standard of review and the reasonableness standard of review. In Khawaja v SSHD [1984] AC 74, “illegal entrant” in s.33(1) of the 1971 Act attracted the correctness standard of review. In Bugdaycay v SSHD [1987] AC 514, “refugee” (a well-founded fear of being persecuted) in rule 134 of the immigration rules attracted the reasonableness standard of review. In Tan Te Lam v Tai A Chau Detention Centre [1997] AC 97, “pending removal” in s.13D of Hong Kong’s Immigration Ordinance 1981 attracted the correctness standard of review. In R v Secretary of State for the Environment, ex p Alliance Against the Birmingham Northern Relief Road [1992] Env LR 447, “information relating to the environment” and “commercially confidential” in the Environmental Information Regulations 1992 attracted the correctness standard of review. In R (Bluefin Insurance Services Ltd) v Financial Ombudsman Service Ltd [2014] EWHC 3413 (Admin) [2015] Bus LR 656, the criteria for “eligible complainant” in the Financial Conduct Authority’s compulsory jurisdiction rules for the financial ombudsman scheme attracted the correctness standard of review. In R (Giri) v SSHD [2015] EWCA Civ 784 [2016] 1 WLR 4418, the question whether “deception” was used, in the immigration rules, attracted the reasonableness standard of review (see §§19, 30); whereas whether the question whether “deception” was used, in s.10 of the 1999 Act, would attract the correctness standard of review (see §§13, 20). Finally, in R (N3) v SSHD [2025] UKSC 9 [2025] AC 1473, statelessness under s.40 of the British Nationality Act attracted the reasonableness standard of review.

Age Assessment by the NAAB

18. The National Age Assessment Board (NAAB) has special age assessment decision-making functions under Part 4 of the Nationality and Borders Act 2022. The SSHD or a local authority can make a statutory age assessment referral to the NAAB (s.49(1)(b)). The NAAB's age assessment is undertaken by a designated Home Office official. It is then "binding" on the SSHD (s.51(3)). It can be challenged by judicial review (the s.54 provisions for an appeal to the FTT are not yet in force). The NAAB scheme is described in the Assessing Age Guidance at pp.10-13 and 77.

Referral to a local authority

19. As I explained, in both A (Croydon) and AA (Sudan) there were Home Office referrals to the relevant local authority. There is specific provision in s.50(2)(b) of the 2022 Act, whereby the SSHD may notify a local authority of doubts that an age-disputed person, in relation to whom that local authority has exercised or may exercise functions under relevant children's legislation, is the age that they claim (s.50(2)(b)). Pursuant to s.50(3), the local authority must then (a) refer the person to the NAAB or (b) conduct and communicate a local authority age assessment or (c) communicate that without conducting an age assessment the local authority is satisfied that the person is their claimed age. Pursuant to s.50(4), the local authority must provide such evidence as the SSHD reasonably requires for the SSHD to consider the local authority's decision under s.50(3)(b) or (c).

Age issues arising in immigration or asylum decisions

20. I have referred to situations where age is relevant to the SSHD's decisions on inadmissibility and detention. Sometimes, a question about the person's age can be relevant to a decision by the SSHD on eligibility for asylum or eligibility for leave to enter or remain. The Assessing Age Guidance states (at p.76) that, in those cases, the SSHD's asylum or immigration decision applying those eligibility criteria "must be delayed whilst a full decision on ... age remains outstanding". If there is an appeal against an adverse asylum or immigration decision by the SSHD, the individual's age can then become "a matter of relevance in an appeal against an immigration or asylum decision", so that it becomes the subject of a "judicial finding" by the FTT (p.77). An example of this is the asylum case of KA (Afghanistan) v SSHD [2012] EWCA Civ 1420 at §§14-17, where there was a referral to the local authority, a local authority age assessment, then the SSHD asylum decision and the FTT appeal. The asylum appeal raised the "child" question for resolution as a question of fact by the FTT (§§28, 33, 39).

Age issues in human trafficking decisions

21. A question about the person's age can be relevant to a decision about whether they are a victim of human trafficking. In the Slavery and Human Trafficking (Definition of Victim) Regulations 2022, the definition of victim of human trafficking (reg.3) is modified in cases where the individual "is a child at the time the method is used" (reg.3(5)(b)). This matches the modified definition in Art 4c of ECAT (the European Convention on Action against Trafficking in Human Beings 2005). The modified definition was pointed out in MS (Pakistan) at §18. Pursuant to s.51 of the Modern Slavery Act 2015, a public authority with functions under certain arrangements for providing assistance and support to victims of human trafficking (s.51(3)) must, if they

are not certain of the person's age but have reasonable grounds to believe that the person may be under 18 (s.51(1)(b)), assume for the purpose of those functions that the person is under 18, until an assessment of the person's age is carried out by a local authority or the person's age is otherwise "determined" (s.51(2)). Ms McGahey KC accepted, as I understood it (but see §57(2)(b) below), that such a determination of age would attract the correctness standard of review. Its legality would depend on its correctness.

The UK-France Treaty (UFT)

22. I have explained that this case is about removals under the SSHD's UFT scheme. The UFT itself is an agreement between the UK and France. It is an international instrument which came into force on 6 August 2025. It was laid before Parliament pursuant to s.22 of the Constitutional Reform and Governance Act 2010. Chapter II of the UFT contains the terms on which France agrees to readmit relevant third country nationals (Arts 3-4), the contents of the readmission application which the UK is required to make (Arts 5-7), the agreed time-frames (Art 1(1) and 8), and agreed terms as to transfer and transport (Art 9). Chapter III of the UFT contains the terms on which the UK agrees to admit relevant third country nationals (Arts 12-15).
23. Under the provisions of the UFT, readmission to France works as follows. An individual who is not a national of France or the UK is relevantly encountered by the UK authorities after arriving from France in a small boat (Art 3). The UK has 14 days (Art 8(1)) to make a request, called a readmission application. The application is preceded by appropriate checks (Art 4(3)). It contains relevant information (Art 6) and evidence (Art 7). There are seven criteria (Art 4(1)(a)-(g)). Two criteria (Art 4(1)(a) and (c)) must be established (Art 6(1)(c)) by evidence (Art 7(1)). The other five criteria (Art 4(1)(b), (d)-(g)) require confirmation (Art 6(1)(d)). There are six exceptions to France's duty of readmission (Art 4(2)(a)-(f)). France has 14 days – extendable in exceptional circumstances to 28 days – to respond (Art 8(2)), having made appropriate checks (Art 4(4)). In the case of a positive reply, the UK must provide a statement of readiness to transfer (Art 4(6)), the target being that the individual is transferred within 3 months of UK arrival (Art 1(1)).
24. A key feature of removal to France under the terms of the UFT is that the UK authorities must have cleared the decks, giving four particular prospective confirmations (Art 4(d)-(g)), and then recording the fulfilment of those four requirements within the statement of readiness to transfer (Art 4(6)). The four requirements are these. First, any protection claim must have been declared inadmissible under domestic law (Art 4(1)(d)), a reference to s.80B of the 2002 Act. Second, any human rights claim must have been certified as clearly unfounded (Art 4(1)(e)), a reference to Sch 3 para 5(4) to the Asylum and Immigration (Treatment of Claimants etc) Act 2004. Third, there must be no suspensive judicial remedy (Art 4(1)(f)). Fourth, there must be no extant judicial order restraining removal (Art 4(1)(g)). Judicial orders restraining removal were made in the present case.

The UFT Excludes Unaccompanied Children

25. One prospective confirmation (Art 4(1)(b)) which the UFT requires must be within the UK's readmission application (Art 6(1)(d)) is this: "the United Kingdom confirms that at the time of their removal [the relevant person] will be determined by authorised officers to be an adult or an accompanied minor". One express exception to France's duty of Chapter II readmission (Art 4(2)(d)) is this: "The readmission obligation ... shall not apply to unaccompanied minors". There is an equivalent exclusion, in the case of Chapter

III admissions to the UK, of “unaccompanied minors” (see Art 12(6)). The word “minors” means “those under 18” (ie. children), as is spelled out in a provision about family visas (Art 12(3)).

The UFT Exclusion has a Child-Protection Rationale

26. The UFT does not spell out why it is that unaccompanied children have been excluded from its scope. It could reasonably be inferred that this has something to do with child protection. There is clear support for this child-protection rationale. First, the SSHD disclosed an Equality Impact Assessment for the UK arrangements implementing the UFT, dated 11 June 2025, which says (at §8) that the exclusion of unaccompanied children was:

... on the basis that there are alternative mechanisms, such as the Hague Convention, which better determine whether it is in the best interests of the child to be moved across borders. It is our position that we should be championing the use of the child protection law framework which already provides a detailed framework in which the best interests of children to cross borders can be considered on a case-by-case basis.

27. Second, Ms McGahey KC gave the Court this explanation from the Home Office (UASC is unaccompanied asylum-seeking child):

Returning a UASC from the UK to French children’s services is assessed to not potentially be in their best interests because it is felt that, given they have already made a dangerous journey to the UK, they may have undergone multiple dangerous and traumatic experiences both in terms of their safety and safeguarding across Europe to the UK. Transferring UASCs back to France has the potential and risk of creating more stress and anxiety for this cohort under this route, unless there are other factors (such as family members in France) where the children’s best interests can be properly assessed by the relevant children’s services through the Hague Convention framework.

For most, if not all, children it may be argued to be in their individual best interests to have their claim for asylum considered quickly in the country it is made (or it is made by a responsible adult, e.g. a parent) so that it can be determined if protection is needed and a clear supportive outcome can be provided to that child that gives them certainty. This applies equally to a child whether this is in the UK or France. Where an unaccompanied child is in France, it is noted that it is considered a safe third country in which UASC can receive support together from a robust child protection and international human rights framework which already considers their best interests as a primary consideration including under the UNCRC, European Convention of Human Rights (ECHR) and the Refugee Convention. Furthermore, where appropriate, it is open and available to French authorities, where they consider to be in the best interests of a child, to seek a return of a child via existing international agreements including the 1996 Hague Convention.

Inadmissibility Excludes Unaccompanied Children

28. The SSHD has power to declare a person’s protection claim inadmissible on safe third country grounds (s.80B of the 2002 Act). The UFT requires the UK to give a prospective confirmation (Art 4(1)(d)), whose fulfilment is recorded within the statement of readiness to transfer (Art 4(6)), that this has happened. The Inadmissibility Guidance identifies unaccompanied asylum-seeking children as “not suitable for the inadmissibility processes set out in this guidance”. The SSHD accepts that an unlawful decision to treat the individual as an adult means the inadmissibility decision and the UFT removal will be unlawful (see §1 above).

Access to the Court

29. I emphasise what this means in terms of access to the Court. In a disputed-age case, where the person facing removal under the UFT scheme says they are a child and the SSHD has decided to treat them as an adult, there is a recognised right of legal challenge by judicial review to (a) the inadmissibility declaration and (b) the threatened removal. That challenge can impugn as unlawful the SSHD's decision to treat the individual as an adult which contention, if it is right, would make the removal unlawful.

Age under the Inadmissibility Guidance

30. The Home Office Inadmissibility Guidance deals with children (pp.9-10). **First**, it records that unaccompanied asylum-seeking children are not suitable for the inadmissibility processes set out in this guidance. **Second**, it refers to the Assessing Age Guidance as relevant and applicable. **Third**, it says that age-dispute cases where the Home Office decides to treat the individual as a child (TAC) "must not be entered into the inadmissibility process", until a local authority or NAAB age assessment has been made and considered. **Fourth**, it says there are age-dispute cases where the Home Office decides to treat the individual as an adult (TAA). This is where "physical appearance and demeanour very strongly suggests that they are significantly over 18 years of age and there is little or no supporting evidence for their claimed age". This is called the "significantly over 18 policy" (SO18). **Fifth**, it says a person TAA (treated as an adult) under SO18 (the significantly over 18 policy) can ask the local authority for an age assessment and, if "taken into local authority care pending an age assessment", inadmissibility action must pause until the age assessment has been made and considered, and "the person is confirmed to be an adult".

The Assessing Age Guidance

31. The Home Office Assessing Age Guidance is a long and detailed document, from which I extract these key features.
- i) There is an initial procedure for an assessing officer to follow, to arrive at an initial decision (p.14). The initial decision is notified by a letter (IS97M) (p.39) which will explain its basis and inform the claimant "that they can approach their local authority for an age assessment as a possible child in need" (p.20).
 - ii) One outcome is to accept that the person is a child (AAC). That can be because the person is given the benefit of the doubt (p.25). That leaves age-dispute cases, where the Home Office disputes that the person is a child.
 - iii) One age-dispute outcome is TAC (treat as a child), until further assessment has been completed (pp.15-16). That can involve referral to the local authority for age assessment or referral to the NAAB (pp.28, 49).
 - iv) The other age-dispute outcome is TAA (treat as an adult). This outcome is a basis for detention (p.87). It can be an appropriate outcome because a Merton-compliant local authority or NAAB age assessment, concluding that the claimant is an adult, has already been undertaken and Home Office officials agree with the local authority's assessment having given it significant weight and taking all reliable evidence into account (p.15). Or it can be under the SO18 policy (significantly over 18). That is where "two Home Office members of staff, one at least of Chief Immigration Officer or Higher Executive Officer grade, have independently

assessed that the claimant is an adult because their physical appearance and demeanour very strongly suggests that they are significantly over 18 years of age and there is little or no supporting evidence for their claimed age” (p.15). The views of any social worker must be taken into account (p.20). This criterion is “specifically designed to allow a large margin of error in favour of the claimant’s claim to be a child” (p.20). It uses a “significantly over 18” threshold which is “deliberately high” (p.21).

- v) If relevant new evidence is provided, the TAA decision must be reviewed (p.20) and, if the decision is maintained, written notice should be given (p.74).
- vi) If a local authority age assessment is undertaken, it is not binding but must be given considerable weight (p.55). A Merton-compliant local authority age assessment will normally be accepted as decisive, but must be carefully considered as to whether there are deficiencies (p.56), having obtained the full reasons (p.71). It should be kept in mind that such an assessment can be overturned on a correctness standard (p.57). If new evidence emerges, this should be provided to the local authority who made the age assessment (p.73).
- vii) In the event that a court makes a finding on age (p.77), in a judicial review of a local authority age assessment, this will be binding (p.81).
- viii) If a Merton-compliant age assessment is awaited, and age is relevant, an asylum decision should be delayed (p.76). If age findings are made in an asylum appeal, these will generally be accepted (p.79).

Eligibility Criteria, Policy Guidance and the UFT Scheme

- 32. Daniel Hobbs is the Director General of the Migration and Borders Group at the Home Office, and the Senior Responsible Officer for the UFT. Mr Hobbs has explained in witness statement evidence (26 September 2025) that the SSHD’s decisions to remove individuals under the UFT is “based on the inadmissibility framework and is guided by the eligibility criteria set out in Articles 3 and 4 of the Treaty”. What happens first is that operational teams at the Manston arrivals and processing facility “identify those who are suitable to be detained under the scheme based on criteria set out in the Treaty”.
- 33. Mr Hobbs in his witness statement describes the operational teams as “applying relevant published policies”. That is a reference to the Inadmissibility Guidance; the Assessing Age Guidance; the Detention General Instructions; the Detention and Case Progression Review policy guidance; and the Adults at Risk in Immigration Detention policy guidance. These are identified in witness statement evidence (18 March 2026) from Simon Ridley, the Acting Permanent Secretary at the Home Office. That means there are presently no “published policies” which are specific to the operation of the UFT. Instead, there are the daily Selection Instructions which Mr Ridley has disclosed as exhibits to his witness statement. Each of these Selection Instructions describes as “Not Eligible”: “Unaccompanied Asylum-Seeking Children”.

The Facts in outline

- 34. I have explained that I am determining an issue of law. It is not fact-specific. That means the facts of the present case are only of background and illustrative relevance.

- i) The Claimant arrived in a small boat on 29.9.25. He said his country of origin was Eritrea and gave his date of birth as 22.7.00. He later came to explain that his date of birth is really 22.7.08, and that he had been told to give a false adult age, by the people providing his transport to the UK. This is recognised as something that can happen.
- ii) Applying the relevant Selection Instruction, the operational team at Manston identified the Claimant on arrival as eligible for removal under the UFT scheme. He was detained, first at Manston and then at an immigration detention centre, until eventually released on bail on 22.12.25.
- iii) The UK's readmission application (UFT Art 5) was made on 3.10.25. I have seen it. It does not, as required by Art 6(1)(d), contain any Art 4(1)(b) confirmation that, at the time of removal, authorised officers would have determined the Claimant to be an adult. I am told that the practice is simply to give, within the request, an assessed date of birth. France's positive reply (Arts 4(6) and 8(2)) was on 17.10.25. I have not seen it. There has been UK-France email traffic – which I have seen – referring to the age dispute and agreeing to extend the 3 months for transfer (Art 1(1)). There are extant injunctions whose terms prohibit the transfer (Art 4(1)(g)). There has not yet been any statement of readiness to transfer (Art 4(6)).
- iv) The Claimant was issued with the following: (1) Notice to Detainee IS8R (29.9.25) of detention under 1971 Act Sch 2 §16(1) (examination). This was backed by an internal Form IS91 detention authorisation. (2) Notice of Intent (2.10.25) of safe third country removal to France. (3) Notice IS97M (13.10.25) of Home Office decision of an allocated age (22.7.00). This recorded that this was an age-dispute TAA outcome. The box was ticked for:

[i] Two Home Office members of staff have assessed that your physical appearance and demeanour very strongly suggests that you are significantly over 18 years of age.

He was told that: “In the absence of any credible documentary evidence to the contrary, the Secretary of State does not accept that you are a child and from this point on you will be treated as an adult claimant for asylum”. He was advised that: “The Home Office's determination of your age does not prevent you from approaching your local authority's children's services department with a view to them undertaking their own assessment of your age, which may include the conducting of a Merton-compliant age assessment. If the assessment concludes that you are a child and the Home Office is provided with sufficient evidence of this, the Home Office's determination of your age will be reviewed”. This was backed by an internal Assessing Officer's Report (13.10.25).

- v) Form IS97M is a standard form which has four other boxes, not ticked in the Claimant's case. These are:

[ii] There is credible and clear documentary evidence that you are 18 years of age or over.

[iii] A Merton compliant age assessment has been conducted by a local authority with a conclusion that you are 18 years of age or over, which has been accepted by the Home Office.

[iv] A Merton compliant age assessment has been conducted by the National Age Assessment Board with a conclusion that you are 18 years of age or over.

[v] You meet all seven of the following criteria: [a] prior to detention, you gave a date of birth that would make you an adult and/or you stated you were an adult; [b] you only claimed to be a child after a decision had been taken on your asylum claim, entry to the United Kingdom or immigration status; [c] you only claimed to be a child after you had been detained; [d] credible and clear documentary evidence proving your claimed age has not been provided; [e] there is not a Merton compliant age assessment stating you are a child, which has been accepted by the Home Office; [f] there is not an unchallenged court finding indicating that you are a child; and [g] two Home Office members of staff have assessed that your physical appearance/demeanour very strongly suggests that you are significantly over 18 years of age.

- vi) Key subsequent events included these. On 5.11.25 Hillingdon LBC completed a local authority age assessment. On 24.11.25, the Home Office recorded the fact of local authority age assessment (“adult 18 or over”), but the absence of “sufficient evidence” that it was “Merton-compliant”. On 9.12.25 the SSHD made a declaration of inadmissibility, made a clearly unfounded certification and gave notice of liability to be removed. On 10.12.25 the SSHD gave notice of removal to France for 18.12.25. That removal did not proceed, because these judicial review proceedings were commenced (16.12.25) and the Court granted an injunction (17.12.25). By at least 19.12.25 (when a Form IS91R was issued), the Claimant’s detention was being authorised as 1971 Act Sch 2 §16(2) (removal) detention. The Claimant was released on bail on 22.12.25. A local authority age reassessment (22.1.26) assessed the Claimant to be an adult. On 2.2.26 the SSHD made a supplementary decision on age, taking into account the local authority age assessment, and concluded that the Claimant’s “date of birth is 22.7.00”. On 24.2.26 the SSHD issued notice of removal (on 5.3.26) and notice of detention for that removal, and the Claimant was detained. The injunction remained undischarged and he was released after 3 hours. The removal did not proceed. On 17.3.26 the SSHD wrote a supplementary decision letter on inadmissibility and gave notice of removal on 26.3.26. The Claimant was re-detained on 24.3.26 pending the outcome of the SSHD’s application to discharge the injunction. The High Court ordered that the injunction continue (25.3.26). The removal did not go ahead.

The Case for a Correctness Standard

35. I can now turn to the arguments for the Claimant, in favour of a correctness standard of review. This is how I saw the essence of the argument:
36. There are two key points as to context. (1) One is that there is no dispute that an unaccompanied person, facing UFT scheme removal on the basis that they are being treated as an adult, is entitled to effective judicial protection whereby they can impugn the lawfulness of the proposed removal by challenging the lawfulness of the decision to treat them as an adult. The sole question is the applicable standard of review. (2) The other is that the UFT scheme involves an important, deliberate and express exclusion for an unaccompanied asylum-seeker who is a “child”. Children should not be being removed to France under the UFT scheme. The exclusion has a child protection rationale. The transfer and reception arrangements between the UK and France are not appropriate for an unaccompanied child. The purpose of the exclusion is that unaccompanied children are permitted to remain here and the decision-making should take its natural course.

37. In this context, the Court should apply the correctness standard of review, for these reasons:
38. **First**, a correctness standard of review of the SSHD's decision to treat the individual as an adult for the certification and removal decisions arises from the relevant primary legislation. The legislation repeatedly and consistently uses "child" in a way which attracts a correctness review. That is true in the 1989 Act, for the very local authority age assessments which the SSHD and the individual are each entitled to request, and which are highly material to the Home Office position on the individual's age (A (Croydon)). It is true in the 1971 Act, governing the SSHD's own removal detention functions (Sch 2 §§16(2)(2A) and 18B; AA (Sudan)). It is true of a determination of age in a human trafficking context, pursuant to s.51(2) of the 2015 Act. The relevant statutory removal power (1999 Act s.10) itself contains two provisions which relate to a "child" (s.10(3)(b) and s.10(9)(f)), where it would again be true. Since these are the statutory schemes into which must fit the UFT scheme inadmissibility declarations (s.80B of the 2002 Act), UFT scheme detention (Sch 2 §16(2) of the 1971 Act), and UFT scheme removals (s.10 of the 1999 Act), it must surely follow that "child" in UFT decision-making attracts the correctness standard of review. Indeed, even in the inadmissibility provisions themselves, one of the statutory preconditions (s.80B(4)(c) of the 2002 Act) could not be satisfied for an unaccompanied child, because France has no duty to admit them (UFT Art 4(2)(d)). In the light of these features within the primary legislation, the correctness standard arises when the SSHD treats the individual as a child in deciding to remove them to France under the UFT scheme.
39. **Second**, a correctness standard of review of the SSHD's decision to treat the individual as an adult for the certification and removal decisions arises because of the relevant Home Office policy guidance as to eligibility for removal. The Inadmissibility Guidance expressly specifies the unsuitability of the inadmissibility processes for an unaccompanied "child". The Selection Instructions specify the ineligibility of an unaccompanied "child" under the UFT scheme. In each case, this means "child" is a criterion, expressed in objective language, to which the Lumba duty of adherence applies. It takes effect in the same way as do statutory criteria within the relevant primary legislation. In this statutory setting, "child" within the policy guidance has the same objective meaning – attracting the same correctness standard of review – as it does when found on the face of a statute.
40. **Third**, a correctness standard of review of the SSHD's decision to treat the individual as an adult for the certification and removal decisions arises because of the relevant Home Office policy guidance as to the decision-making process. The terms of the Inadmissibility Guidance, and the Assessing Age Guidance recognise the importance of referrals and requests for local authority age assessment; for awaiting the local authority age assessment; and for treating a subsequent judicial determination on age as binding on the SSHD. In A (Croydon) itself, Lady Hale discussed the position under Home Office policy guidance under which, in an "age disputed" category of case, the SSHD will "refer the case for assessment by the local ... authority and ... accept that assessment if it is considered to have been properly carried out" (at §6). The SSHD recognised the significance for the Home Office of the question whether the correctness standard applies to the local authority age assessment, so that "the court shall make the final determination" (§8). Lady Hale recognised that the UK Border Agency would make "its own determination in the first instance and it is only if this remains disputed that the court

may have to intervene” (at §33). Correctly interpreted by the Court, this policy guidance requires – in any age-dispute case where the individual claims to be a child – that no inadmissibility declaration is made and no removal actioned until after age has been “determined”, including on any judicial review challenge to a local authority age assessment being relied on. The policy guidance, correctly interpreted, requires an authoritative and binding resolution, before there can be any inadmissibility declaration or removal.

41. **Fourth**, a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because such a decision is vitiated by the unlawfulness of a local authority age assessment on which it relies. This is why a collateral challenge can be mounted to whether a local authority age assessment is Merton-compliant (§16 above). That is an aspect of its legality. But the age assessment also depends for its lawfulness on its correctness (A (Croydon)). There is a parallel with the way unlawful deportation or removal decisions vitiate the detention which relies on them (§12 above). Since the individual facing removal can collaterally impugn the unlawfulness of a local authority age assessment relied on by the SSHD, it follows that the Court must apply a correctness standard of review to the question of whether the individual is or is not a child.
42. **Fifth**, a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because the decision to remove under the UFT scheme necessarily depends for its implementation on removal detention (1971 Act Sch 2 §16(2); 1999 Act s.10(9)(b)) whose lawfulness must depend on the correctness of the SSHD’s decision to treat the individual as an adult (AA (Croydon)). The correctness standard has a special importance in cases involving liberty, as emphasised in both Khawaja and Tan Te Lam. The link between removal and detention is not new. It was seen in Khawaja, which concerned “the power to detain and remove a person as an illegal entrant” (see Giri at §16), so that “the power to remove and detain” depended on the question “illegal entrant” (see Giri at §29). The same integral link is familiar from the caselaw about the detained fast-track process. The UFT scheme is, of its nature, a detain-for-removal scheme. Detention is inherent in the decision-making, just as it was with the detained fast-track. That is why “unaccompanied asylum-seeking children” are ineligible in the Selection Instructions which are used to assess individuals for “detention”. Just as detention for deportation depends on a prior deportation decision (DN (Rwanda)), so too removal under the UFT scheme depends on detention. Detention is the necessary delivery mechanism. The proposed removal puts the individual through the zone of detention for removal. If that is a legal no-go zone, the removal is unlawful. Whether it is a legal no-go zone depends on whether the individual is a child, applying a correctness standard of review. This can be tested by considering the illustrative position of the Claimant on 10.12.25, detained for removal on 18.12.25; and again on 24.2.26; re-detained for removal on 5.3.26. The detention was intimately linked to the decisions, made at the self-same time, to remove. If the Claimant is in fact a child, applying a correctness standard, the removal-detention was unlawful (AA (Sudan)). The implementation of the removal was unlawful. That makes the removal unlawful.
43. **Sixth**, a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because of the correct interpretation of the UFT. The legally correct interpretation is that the child exclusion requires that age be “determined” (Art 4(1)(b)), so as to attract a correctness standard of

review. There is, however, policy guidance which – on its proper interpretation – is intended to commit the SSHD to making decisions in accordance with the “unaccompanied minors” exclusion in Art 4(1)(b) and Art 4(2)(d) of the UFT. That makes it an implementation measure which meets the applicable test (see R (EOG) v SSHD [2022] EWCA Civ 307 [2023] QB 531 at §§32, 34), so that failure accurately to reflect the UFT is a justiciable error of law (see MS (Pakistan) v SSHD [2020] UKSC 9 [2020] 1 WLR 1373 at §20). The policy guidance whose proper interpretation means it is intended to commit the SSHD to making decisions in accordance with the UFT “unaccompanied minors” exclusion is the exclusion of “unaccompanied asylum-seeking children” in the Inadmissibility Guidance; and, in any event, the bespoke Selection Instructions for the UFT scheme. This commitment to apply the UFT “unaccompanied minors” criterion is also found in the witness statement evidence of Mr Hobbs and Mr Ridley. The arrangements for the UFT scheme including the Selection Instructions mean that the UFT takes domestic effect in the same way that ECAT was effectively implemented within domestic public law through policy guidance. That makes the interpretation of the UFT itself justiciable. It means the Art 4(1)(b) age determination function takes effect, just as the modified definition in ECAT Art 4c (see §21 above) would have done when ECAT was given domestic effect by policy guidance. This is an age criterion, also seen in Art 4(2)(d), involving an objective question. The position, in substance, is no different from what it would be if these provisions appeared on the face of domestic primary legislation.

44. **Seventh**, a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because of the practical effect of the parallel remedies which the individual facing removal is entitled to seek from the Court. In an age-dispute case where an individual is facing removal under the UFT scheme, the picture will invariably have the following three components. Component (A): The SSHD will have decided to treat the individual as an adult (TAA), for the purposes of exercising the removal detention power (1971 Act Sch 2 §16(2)). Component (B): The local authority will have age-assessed the individual as an adult and not a child. Component (C): The SSHD will have decided to treat the individual as an adult (TAA), for the purposes of making and maintaining a declaration of inadmissibility and a decision to remove. That means the individual can simultaneously mount the following three challenges. Challenge (A): I am unlawfully treated as an adult for the detention. Challenge (B): I have been unlawfully age-assessed as an adult by the local authority. Challenge (C): I have been unlawfully treated as an adult for the inadmissibility certification and removal. In Challenge (A) and (B), the individual can rely on the correctness standard of review. Challenge (A) could be pursued by application for habeas corpus. That is a relevant reference-point: see A (Croydon) at §§17-19. Furthermore, if either Challenge (A) or Challenge (B) succeeded, there would be a legally relevant – indeed binding – judicial determination of age which would necessarily need to be taken into account by the SSHD in relation to Component (C): maintaining a declaration of inadmissibility and a decision to remove. The law should promote principled coherence. The answer is straightforward. The correctness standard must govern all of these linked questions.
45. That, as I see it, is the essence of the argument on behalf of the Claimant.

Analysis

46. I have not been able to accept these submissions. I accept the two key points as to context (§36 above). But I have not been persuaded that there is a sound legal basis for concluding that the judicial review Court should apply a correctness standard of review to the SSHD's decision to treat an unaccompanied individual as an adult when deciding to make a declaration of inadmissibility (2002 Act s.80B) or when deciding to exercise the power of removal (1999 Act s.10). I accept the broad thrust of the SSHD's submissions, reflected in what I say below. I cannot accept any of the bases put forward on behalf of the Claimant, whether individually or cumulatively. My analysis is as follows:
47. **First**, I am unable to accept that a correctness standard of review of the SSHD's decision to treat the individual as an adult for the certification and removal decisions arises from the relevant primary legislation. In July 2014, Parliament introduced as 1971 Act Sch 2 §18B a statutory restriction in the case of "an unaccompanied child". That gave rise to a question of statutory interpretation, to look at the statutory language and structure, and identify the correct division of responsibility between the SSHD and the Court. The same restriction was introduced into s.10 of the 1999 Act, as s.10(9)(f). This restriction related to removal detention. Parliament has introduced no "unaccompanied adults only" restriction into the removal power (s.10). Nor into the inadmissibility-declaration power (2002 Act s.80B). There is no statutory restriction. There is no statutory provision to interpret, to see whether Parliament is to be taken as indicating that "child" is for the SSHD to assess as a primary decision-maker, or expressed objectively. The "child" restriction for inadmissibility declarations and removal decisions comes not from primary legislation – including the Human Rights Act 1998 and s.55 of the 2009 Act – but rather from Home Office policy guidance. I can see no difficulty in the application of s.80B(4)(c) of the 2002 Act.
48. **Second**, I am unable to accept that a correctness standard of review of the SSHD's decision to treat the individual as an adult for the certification and removal decisions arises because of the relevant Home Office policy guidance as to eligibility for removal, whether in the Inadmissibility Guidance or in the Selection Instructions.
- i) The Court has the role of deciding the legally correct meaning of policy guidance. But the correct interpretation of child is clear. It means a person under the age of 18. Application attracts a reasonableness standard of review. That very distinction has been emphasised by the Court of Appeal, in the context of "child" within Home Office policy guidance: ZS (Afghanistan). It has been traced back to the Supreme Court's judgment in AA (Afghanistan), another case about "child" within Home Office policy guidance. It was followed through in AA (Sudan), another case considering "child" within Home Office policy guidance, where the reasonableness standard applicable to "child" in policy guidance had given way to a correctness standard, from the moment that Parliament imposed a statutory restriction in objective terms. These were, moreover, all detention cases about the liberty of the individual, a context for which public law may reserve its strictest scrutiny. There is no case which treats "child" when used in policy guidance, with its Lumba duty of adherence, as attracting a correctness standard of review. More than that, the recognition that it could not do so was the reason why the A (Croydon) approach was being sought to be derived from s.55 of the 2009 Act: see AA (Sudan) at §§26-27.
 - ii) I remind myself that the distinction between interpretation and application applies to primary legislation as well, and that the existence of the distinction has never

precluded questions of fact from attracting a correctness standard. I also remind myself that in A (Croydon) the Supreme Court extended the law, beyond the jurisdictional error category of precedent fact – where “the exercise of executive power depends upon the precedent establishment of an objective fact” – to a wider concept of objective fact. Precedent fact was separately argued (see §29) and adopted as an additional basis of the decision (see §§32, 52). As to that, I find it very difficult to see how policy guidance can operate to identify a question on which “the exercise of [the] executive power depends”. The policy guidance cannot be the source of the relevant executive power. Ms Harrison KC was surely right to focus on the primary basis on which A (Croydon) was decided: an objective question of fact attracting the correctness standard of review, as a matter of interpretation of the instrument in question, without needing to be a question on which “the exercise of [the] executive power depends”.

- iii) I remind myself that questions of fact have attracted a correctness standard of review when they are in regulations (Alliance) and an FCA rule-book (Bluefin). But all of the situations relied on, where a question of fact has attracted a correctness review, can be attributed to the nature of the criteria for which Parliament was making provision. In Alliance this was through the European Communities Act 1972, since the regulations were giving effect to an EU Directive. In Bluefin it was through s.226(6) of the Financial Services and Markets Act 2000 (see §§13 and 67). It is much easier to see how primary legislation, including when it empowers subordinate legislation, can be taken to be a source for delineating a division of responsibility between public authorities and the Courts. The idea that policy guidance can do this is constitutionally challenging.
- iv) I accept that a legal criterion within policy guidance could, by its very nature, attract a correctness standard of review. Ms McGahey KC has accepted that Merton-compliant is an objective legal concept. If, for example, policy guidance required a “fair hearing”, I would expect the Court to ask itself whether there was a fair hearing. But that would be another objective legal concept. Even if I assume that a question of fact could attract a correctness standard of review as a question of the objectively correct interpretation of the policy guidance, I have been unable to identify any basis for interpreting any of the policy guidance documents in this case as doing so. I will not repeat their key features (see §§31-31, 33 above). They all identify “child” as a question for Home Office decision-makers to ask and answer. There are clear descriptions of determinations as to age by courts and tribunals, on a correctness standard, to decide the lawfulness of removal detention under 1971 Act Sch 2 §18B, to decide the lawfulness of a local authority age assessment under the 1989 Act, and in deciding a relevant question in an asylum appeal. But I have found nothing which describes or intends such a division of labour between the SSHD and the Courts when applying the exclusion under Inadmissibility Guidance, or when making a decision under Assessing Age Guidance, or when making a decision under the Selection Instructions.
- v) Much more would be needed than the identification of a criterion. The immigration rules stated a criterion in Giri (see §2). So did the policy guidance considered in AA (Sudan) at §§23-24. It is unsurprising that policy guidance should identify criteria for evaluative application simply by stating them. That is the essence of application, as distinct from interpretation. Policy guidance is, by its nature, telling

decision-makers what the criteria are which they need to apply; and of what it is that they need to be “satisfied”. There is no need, in a policy instruction directed at decision-makers, to use language like the decision-maker “is satisfied that”, or “considers in its opinion that”, or “appears to the decision-maker to be” (cf. A (Croydon) at §14). That can be inherent in the nature of a criterion applied by decision-makers instructed to do so under policy guidance. And so, even assuming that it can be permissible to identify a criterion as attracting a correctness standard, derived from the language and structure of policy guidance, I have been unable to do so from either the Inadmissibility Guidance; or the Selection Instructions; nor the Assessing Age Guidance.

49. **Third**, I am unable to accept that a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because of the relevant Home Office policy guidance as to the decision-making process. I accept that the Inadmissibility Guidance, and the Assessing Age Guidance recognise the importance of referrals and requests for local authority age assessment; the appropriateness of awaiting the local authority age assessment; and for treating a subsequent judicial determination on age as binding on the SSHD. I cannot accept that this policy guidance requires – in any age-dispute case where the individual claims to be a child – that no inadmissibility declaration is made and no removal actioned until after age has been “determined” by some formal or judicial process, including awaiting any judicial review challenge to any local authority age assessment. There are aspects of the policy guidance which speak of awaiting assessments and decisions. A key reason for distinguishing between age-dispute TAC and age-dispute TAA (§30-31 above) is that the age-dispute TAC category requires further steps. This was the “middle ... category” described in A (Croydon) at §6. If and insofar as the Assessing Age Guidance describes referral to the local authority and accepting an age-assessment if Merton-compliant (A (Croydon) at §6), that is because of a procedure chosen within the policy guidance. It does not mean “child” attracts a correctness standard in judicial review of the SSHD’s inadmissibility or removal decisions. The policy guidance does not – and nor does s.50 of the 2022 Act (§19 above) – require the SSHD to wait for the lawfulness of the local authority age assessment to be established by legal proceedings which have been finally determined. Put another way, proceedings impugning the local authority age assessment are not, by virtue of the terms of the policy guidance, made suspensive of removal.
50. **Fourth**, I am unable to accept that a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because such a decision is vitiated by the unlawfulness of a local authority age assessment on which it relies. Part 4 of the 2022 Act addresses age assessments. There is a statutory referral provision (s.50): see §19 above. The SSHD may notify the local authority of age doubts in relation to the age-disputed person (s.50(2)(b)). The local authority may need to conduct and communicate its local authority age assessment (s.50(3)(b)) and must provide such evidence as the SSHD reasonably requires for the SSHD to consider that decision (s.50(4)). This shows that Parliament has recognised the legal relevance of a local authority age assessment to inform the SSHD’s own independent decision on age. It shows that the SSHD must “consider the local authority’s decision” (s.50(4)). In my judgment, this statutory interrelationship does not mean there is DN (Rwanda) knock-on unlawfulness (§12 above). The local authority view certainly becomes a mandatory legally relevant consideration. Even if it is in that sense a “prerequisite”, the SSHD’s decision on inadmissibility or removal is not – by reason of

the statutory scheme – a decision whose lawfulness is “referable back to the legality of” the local authority decision, or which “depends for its legality on the lawfulness of” the local authority decision. Nor do the terms of the policy guidance support this knock-on unlawfulness. The policy guidance describes the SSHD taking into account, and considering whether to rely on, the local authority age assessment. It is the fact of such an assessment, and the fact of its outcome, which are being described in the policy guidance as relevant. Whether the age assessment is Merton-compliant is a feature which comes into the policy guidance expressly. The SSHD is entitled under the policy guidance to decide whether she agrees with the local authority. The policy guidance acknowledges that if there is a judicial determination of age, this becomes binding. It does not provide that the SSHD can proceed with certified inadmissibility or removal, only where the lawfulness (ie. correctness) is the subject of a final judicial determination.

51. **Fifth**, I am unable to accept that a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because the decision to remove under the UFT scheme necessarily depends for its implementation on removal detention. Removal and detention for removal are closely related. The 1971 Act Sch 2 §16(2) power to detain is detention for the express purpose of removal. It applies to 1999 Act s.10 removal, by reason of s.10(9)(b). There is a clear statutory interconnectedness. The SSHD makes the linked decisions to remove (s.10) and to detain for removal (s.10(9)(b)) together, and in parallel. That is illustrated by what happened in the present case. It is established that, if the removal decision is unlawful, then so is the detention for removal: see Tazeem (§12 above). The question is whether the legal logic of knock-on unlawfulness works in reverse. I have not been persuaded that it does. I can see that deportation is why the individual is detained, and that detention is an aspect of how they are removed. But I am unable to accept that the lawfulness of the removal is “referable to” the legality of the detention. Putting it another way, I do not think detention in breach of the partial prohibition in Sch 2 §18B to the 1971 Act is to be taken as having an intended vitiating consequence for removal. The remedies for unlawful detention are an order for release, and compensation. I will need to return to the idea of an urgent application for habeas corpus. My analysis on this point does not turn on the fact that this argument could have been advanced at any time since July 2014. Neither party showed me an authority, since then, which assists either way. Nor does my analysis rely on Ms McGahey KC’s submission that unlawful detention for UFT scheme removal is analogous to an assault by a Home Office employee on the way to board the plane. Detention is statutorily connected, and planned, as the mode of implementation for removal. But I do not think unlawful detention automatically vitiates removal.
52. **Sixth**, I am unable to accept that a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because of the correct interpretation of the UFT. The language and structure of the UFT recognise that unaccompanied “minor” is for determination “by authorised officers” (Art 4(1)(b)). It is also contemplated that France could refuse admission because it assesses the individual as being a child (Art 4(2)(d)), if for example it conducts checks from when the individual was in France (Art 4(4)) or because of information from the UK (Art 6(2)(b)). The UFT makes several references to domestic UK law (eg. Art 4(1)(d)(e)). It makes reference to the role of the domestic UK court (Art 4(1)(f)(g)). It says, and assumes, nothing about effective judicial protection. There is no provision or indication of a right of factual review. In Bugdaycay, an argument was mounted (see pp.523G-524E) that a factual appeal was required for lawful implementation of the Refugee

Convention. In Alliance, the successful “reasons advanced” (see §467) included the fact that the EU Directive required “an effective appeal, on both fact and law” (see §466). Whether or not such an argument could be mounted in relation to ECAT Art 4c (see §21 above), on which I express no view, no argument of that nature can be mounted in this case based on the terms of the UFT. Viewed in the context of the nature and purpose of the UFT as an international agreement, the criteria are not framed in a way which can give any legally relevant indication about any standard of review. To illustrate this, the child as “determined by” the UK’s “authorised officers” (Art 4(1)(b)) is not framed materially differently from national security threat “considered” by the UK (Art 4(2)(b)).

53. **Seventh**, I am unable to accept that a correctness standard of review of the SSHD’s decision to treat the individual as an adult for the certification and removal decisions arises because of the practical effect of the parallel remedies which the individual facing removal is entitled to seek from the Court. I can take the position in the present case as it stood at 10.12.25 or 24.2.26 (see §34vi above). I accept that, in such a situation, there could be judicial review proceedings which challenged as unlawful: (A) the detention by the SSHD, relying on Sch 2 §18B to the 1971 Act; (B) the local authority age assessment, relying on A (Croydon); and (C) the SSHD’s inadmissibility declaration and proposed removal action, relying on the Inadmissibility Guidance and Selection Instructions. I accept that (A) would invoke a correctness standard of review (AA (Sudan)) and (B) would invoke a correctness standard of review (A (Croydon)). But I cannot see that this justifies the adoption of a correctness standard of review for (C). It is rightly recognised that “child” does not always and invariably attract a correctness standard (see §14 above). To turn it round, the reasonableness standard for (C) would not support a reasonableness standard for (A) or (B). A question which is asked for legally distinct purposes may involve the application of different legal standards, even where it is asked in parallel. That leaves Ms Harrison KC’s point about claim (A) being speedily determined by a Court which makes a finding of fact that the individual is in fact a child and not an adult. That would be an application of AA (Sudan), to decide lawfulness by reference to correctness. If it happened, the logical consequence would be that the individual would need to be released from detention and only detained compatibly with Sch 2 §18B. But it would be a change of circumstances obviously relevant to the SSHD maintaining the inadmissibility and removal decisions. The Lumba adherence duty would arise, based on the Inadmissibility Guidance and Selection Instructions. The position on habeas corpus was a reference-point in A (Croydon): see §§17-19. The fact that it raises distinct considerations was seen in AA (Afghanistan), where it was left open by the Supreme Court: see §§52-53, 59. I have not, in this judgment, addressed the substantive and procedural questions about dealing with habeas corpus, nor did I hear argument on the point which the Supreme Court left open. I do not know whether subsequent authorities have similarly left it open.

Conclusion

54. My conclusion, on the preliminary issue of law, is that judicial review of the SSHD’s decision to treat the individual as an adult for UFT scheme certification and removal decisions does not attract a correctness standard of review. The standard of review is reasonableness. In the light of my analysis, it has been unnecessary to decide whether the Lumba duty of adherence applies to the Selection Instructions (see §5 above). What are now left over are questions about how the reasonableness standard operates in the context, including (a) the closeness of scrutiny (b) the approach to fresh evidence (c) the

approach to Merton-compliance collateral challenge (§16 above) and (d) whether reasonableness is being applied to test (i) a decision that the individual is significantly over 18 (SO18: see §§30, 31iv above) or (ii) a decision that the individual is over 18. As I see it, these points will all arise for consideration at the next hearing in this case, scheduled for Thursday 2 July 2026 (see §56 below).

Justiciability

55. In the light of my analysis, nothing turns on a dispute which arose between the parties about non-justiciability. That is because the terms of the UFT cannot assist. It is right to record that Mr Vinall submitted that the UFT as an undomesticated international instrument is non-justiciable, so that this Court should not be considering any question about its contents or meaning. He says the administrative arrangements, reflected in the Selection Instructions and the witness statement evidence of Mr Hobbs and Mr Ridley (§§32-33 above), are no more than what is the inevitable expected consequence of implementing arrangements for an international instrument. He submitted that these fall decisively short of meeting the rigours of the EOG test (§43 above), which in any event is restricted to a particular class of international human rights instrument. On this topic, I will confine myself to these brief observations:

- i) **First**, whatever the position on justiciability, and whatever the correct interpretation, the UFT is and remains an agreement between the UK and France. As an undomesticated international treaty it is not part of UK law. It does not have direct effect. Nor would it even have been a human rights instrument for the purpose of the dissenting Lord Kerr's suggested dualism-exception in R (JS) v Secretary of State for Work and Pensions [2015] UKSC 16 [2015] 1 WLR 1449 at §254. A good illustration of the lack of direct enforceability is that the Court would not grant judicial review on the basis that the SSHD failed to provide the Art 4(1)(b) confirmation within the Art 4(1) application: see §34iii above.
- ii) **Second**, I would for my part be very reluctant to assume that the UFT is incapable of having any legal relevance at all in public law terms. What if the SSHD decided that unaccompanied children were suitable for inadmissibility declarations (2002 Act s.80B), relying on the UFT to provide a claimed good reason to depart, for the purposes of the Lumba adherence duty (see §4(3) above), from the unsuitability criterion in the Inadmissibility Guidance? Or what if the SSHD refused to keep under review a conclusion about adulthood, in the run up to UFT transfer, claiming that it was reasonable under the UFT scheme to assess age on arrival only? I would be very surprised if the Court, in considering the lawfulness of such positions, were required to ignore Art 4(1)(b): an exclusion for unaccompanied children, with adulthood to be determined at the time of removal. Also, I remind myself that the UFT frequently features when the SSHD reminds the Court of its objective and terms, when the Court is considering issues such as expedition or the balance of justice and convenience. There is I think a "sauce for the goose" point (with which the SSHD agrees) and I would be surprised to find that nuanced public law relevance of the UFT could only cut one way.

Consequential matters

56. Given the upcoming further hearing on 2 July 2026, the parties have sensibly agreed to defer consequential matters, including consideration of any application for permission to

appeal. That is what I will do. The parties will now need to cooperate and produce, promptly, a menu of questions which the Court may wish and be able to address at the next hearing and any future hearings (see §§3, 54 above and 57 below).

57. Some controversies emerged, on the eve of hand-down of this judgment, after circulation of this judgment in draft. They were raised too late for any fair resolution. I record what they were. (1) The SSHD asked me to attribute the impairment to the hearing (§3 above) not to her extremely late disclosure, but to adjustment of the confidentiality ring. (2) The SSHD asked me to revisit the way I recorded what I understood her to accept as to (a) Merton-compliance and collateral challenge (see §§16, 54c above); and (b) s.51 (see §21 above). There is an upcoming further hearing in this case on 2 July 2026. In a sequel judgment, I will be able to explain what remained contentious, and how I dealt with it. Nobody asked me to defer hand-down of this judgment. Nobody suggests that these points affect my conclusions or the essence of my reasoning.