



**In the Upper Tribunal
(Immigration and Asylum Chamber)**

Claim Number: JR/5881/2019

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

**Heard at Field House
On 20 - 23 October 2020 and
on 24 November 2020**

**Before
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

Between

**MW
(Anonymity direction made)**

Applicant

-and-

CROYDON LONDON BOROUGH COUNCIL

Respondent

Representation:

For the Appellant: Ms. A Benfield, Counsel, instructed by Instalaw Solicitors

For the Respondent: Mr. J Swirsky, Counsel, instructed by Legal Services, Croydon
London Borough Council

Application for judicial review: substantive decision

Introduction

1. By an order dated 5 November 2019 Rowena Collins Rice, then sitting as a Deputy Judge of the High Court, granted the applicant permission to apply for judicial review against the respondent's decision as to his age.

Issues

2. The applicant seeks a declaration that he was born on **14 September 2001**.
3. The primary issue for me to resolve in these proceedings is the appellant's age, which is in dispute between the parties. The applicant claims that he was born on 14 September 2001 and so was aged 17 both at the date of his entry into this country on 21 March 2019 and at the date of his age assessment on 2 September 2019. He asserts that he is presently aged 19. He has been consistent as to his claimed date of birth throughout. The respondent assessed the applicant to be aged over 18. Though not proceeding to determine the applicant's age, the respondent's evidence before this Tribunal identifies a belief that the applicant was an adult at the date of his age assessment and is presently aged upwards to 25 years.
4. There is no dispute between the parties that the applicant is now an adult. The applicant seeks such declaration to establish that the respondent is required to continue to provide support and accommodation to him as a 'former relevant child' pursuant to its duties under the Children Act 1989. In such circumstances, I am satisfied that if I were to grant a declaration in the terms sought, it would serve a useful purpose.
5. By means of an updated statement of issues to be determined at the substantive hearing, I am also asked by the parties to determine:
 - a) Whether the age assessment was a short-form age assessment or not.
 - b) The weight to be placed upon the respondent's age assessment including whether the age assessment was conducted in line with the requirements of a lawful and procedurally fair assessment and whether it was based upon firm grounds and reasons.
 - c) The weight to be placed upon third party evidence.

Anonymity

6. An anonymity direction was issued by Andrew Baker J by an order dated 11 September 2019 (CO/3563/2019) and neither representative sought to set it aside. I confirm the direction at the conclusion of this decision.
7. Being mindful of rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and Upper Tribunal (Immigration and Asylum Chamber) Guidance Note 2013, No. 1 concerned with anonymity, I have decided to anonymise the applicant's parents, 'AW' and 'IW'; his brothers, 'MW' and 'YW'; his sisters 'SW' and 'FW'; his half-brother, 'OA'; his half-sister, 'R'; his cousin 'M'; and his brother-in-law; 'P', who are referred to in documents before me, and his cousin 'MOA', who is also referred to in documents before me and has produced a witness statement filed with the Tribunal.

I make this decision because I am satisfied that their identification will quickly lead to the identification of the applicant, who presently seeks international protection. Such interference with open justice is necessary and proportionate in the circumstances: *A v. BBC* [2015] AC 588, at [29]-[30].

8. I have decided to anonymise 'AA', a witness who attended the hearing and gave evidence in support of the applicant, and also 'BB' whose witness statement the applicant relied upon, because they are recognised refugees and have not confirmed their willingness to being named in a judgment that will be publicly available. I am mindful that they may continue to have family members living in their home country.

Litigation Friend

9. Upon proceedings being commenced an application was made that Mr. Francesco Jeff, Senior Children's Adviser, Refugee Council, act as Litigation Friend consequent to the applicant being a minor. On the applicant reaching the age of 18, upon his own case, Mr. Jeff ceased to be a Litigation Friend in this matter: CPR 21.9(1).

Background

10. The applicant is an Iraqi national and an ethnic Kurd who hails from Iraqi Kurdistan. He has explained that his father has four wives and that he has 15 to 20 brothers and 15 to 20 sisters. Several extended family members live close by the family home.
11. The following relatives were identified by the applicant in his evidence, both written and oral:

Name	Relation to the applicant	Year of birth
AW	Father	1956
IW	Mother	1957
MW	Brother	Unknown [Contact report 5 April 2019 identifies him as 35 years old]
FW	Sister (deceased)	[Contact report 5 April 2019 identifies year of birth as 1987 or 19881]
SW	Sister	1989 [Contact report 5 April 2019 identifies ear of birth as 1990]
YW	Brother	1991

OA	Half-brother	1½ to 2 years older than the applicant
R	Half-sister	Unknown
M	Cousin	Unknown
MOA	Cousin of applicant's father	Applicant not asked
P	Brother-in-law	Unknown
H	Relative	Applicant not asked

Leaving Iraq

12. The applicant states that he left the Kurdish Region of Iraq on 20 October 2018, travelling by bus to Istanbul and subsequently flying to Europe. He is recorded as having been fingerprinted in Denmark on 25 October 2018. He states that following his arrival in Denmark a person who was with him made a phone call and after having exited immigration control and waiting for a few hours he was driven to the 'Jungle', a refugee and migrant encampment in the vicinity of Calais, France, where he stayed for over 4 months before clandestinely travelling to the United Kingdom in a lorry.

Arrival in United Kingdom

13. The applicant entered the United Kingdom on 21 March 2019 and was apprehended by the authorities. The Home Office disputed his age on the basis that his physical appearance and demeanour very strongly suggested that he was over the age of 18 and by a letter dated 21 March 2019 treated him as being born on 14 September 1997. It is appropriate to observe that such assessment was undertaken by means of the application of a policy contained at para. 55.9.3.1 of the Home Office's Enforcement Instructions and Guidance that was later confirmed by the Court of Appeal in *BF (Eritrea) v. Secretary of State for the Home Department* [2019] EWCA Civ 872, [2020] 1 All E.R. 396 to be unlawful. I further observe that the Supreme Court granted the Secretary of State permission to appeal in *BF (Eritrea)* on 11 February 2020.

Referral to the respondent

14. On 25 March 2019, the applicant was referred to the respondent as a putative child in need seeking services under the Children Act 1989 ('the 1989 Act'). He was placed into the care of the respondent as a looked after child on 27 March 2019 pursuant to sections 17 and 20 of the 1989 Act.

Age assessment

15. The respondent undertook an age assessment following meetings on two occasions between the applicant and two social workers - Ms. Gregory and Ms. Taylor - with

an appropriate adult present. On both occasions an interpreter attended. The first meeting was conducted on 31 July 2019 and ran for approximately 5¾ hours. A second, shorter, meeting was undertaken on 2 September 2019. At its conclusion the applicant was informed that the respondent did not accept his stated age and he was provided with the age assessment decision letter dated the same day.

16. The age assessment records, *inter alia*:

'Education

[The applicant] discussed his experience of the education system in Iraq. [The applicant] started school when he was 7 years of age and concluded his education in Iraq when he left to come to the UK. [The applicant] is unable to write or speak in Arabic but he can read in Arabic. He enjoys Maths and Sports and that he attended school regularly. [The applicant] was asked about his age in various classes/academic years. In class 6 he was aged 12 and this was in year 2013. In class 10 he was 16, turning 17 years of age and this was in 2017.'

17. The assessment concluded, *inter alia*:

'Based upon the information gathered during this short assessment, alongside evidence from social media, views of professionals and observations made of [the applicant's] physical appearance, demeanour & interaction, it was not felt that prolonged enquiry or a full age assessment was required in order to come to a conclusion in regard to [the applicant's] age. In fact, it was quite clear that [the applicant] is an adult who is significantly older than his stated age of 17 ...

When asked for his date of birth, [the applicant] responded directly by saying 14.09.2001, as seen on his Kurdish ID document, 4-5 times during his lifetime. [The applicant] also advised assessing social workers that he does not know which calendar is used in Iraq. Assessing social workers felt that [the applicant's] response to the question 'What is your date of birth?' was scripted and that there would be no reason why [the applicant's] date of birth would be written in English but more likely to be in Mesopotamian Arabic (Iraqi Arabic) or modified Perso-Arabic (Sorani alphabet), as spoken by Kurds. ... [The Applicant] said that he can read Arabic but is unable to speak or write it.

...

[The applicant's] journey to the UK was accompanied most of the way by a family group. He was advised by the agent to say that the family's four-year old child was his son, as this would assist him in completing his journey to the UK. Assessing social workers feel that the agent must have viewed [the applicant] to look mature enough to have fathered a four-year-old child to make this suggestion and for it to work.

When discussing education, [the applicant] gave inconsistent information about his age in relation to the class that he was in. He stated that when he was in

class 6, he was aged 12 and the year was 2013. This information would correlate to the date of birth of 14.09.97¹ which [the applicant] is claiming. [The applicant] also stated that he thought he was 14 in 2014 or 2015. This would put him in the region of 17-20 in 2019. [The applicant] also said that in class 10 he was 16 turning 17 in 2017. This would make [the applicant] 18 years of age, turning 19 years of age this year and therefore he was 18 years of age at the time he claimed asylum on 21.03.19.

It seems most likely that [the applicant] either does not know his true age/ date of birth or is older than what he has stated but has attempted to conceal this. [The applicant's] physical appearance strongly supports the latter view, as he presents as being an adult who is significantly older than his claimed age. This is a view supported by all the professionals who have worked with him, and it is rare for professionals to consistently offer the view that they believe a young person in their care to be in their mid-20s, or possibly older.

...

The professional network around [the applicant]: the allocated social workers, key worker and IRO are of the view that he could be a person significantly older than 18 years of age, with some suggestion that he could be over 25 years of age. This is based on their interaction with [the applicant] and their experience of working with adolescents.¹

18. In reaching their conclusion, the social workers addressed the applicant's use of social media:

'[The applicant] stated that he has an Instagram account but that there are no photos on that account as it was his friend Mana who set up the account. [The applicant] was shown a series of printed photographs taken from his Instagram account and confirmed his identity in these photographs. [The applicant] said that whilst he has Facebook and Instagram on his phone, he can only access these apps when he has a Wi-Fi signal. [The applicant] had previously spoken about not accessing Facebook on his mobile phone for fear of his whereabouts being disclosed, yet he uploaded the beach photograph. [The applicant] spoke about having contact with his family via Mana's Facebook account and yet he also said that Mana does not have a Facebook or Instagram account. The assessing social workers feel that the information [the applicant] has provided is contradictory in the extreme and raises serious concerns about [the applicant's] credibility.

... following the age assessment, [the applicant's] Instagram account has been checked and the account has been made private and the name has been slightly changed ...'

¹ During the course of the hearing Mr. Swirsky confirmed that the reference to '1997' was in error and it should read '2001'.

19. I was provided with colour copies of various screenshots of the applicant's Instagram account, including photographs posted from 14 April 2019 to 12 July 2020 and photographs posted on his Facebook account. Through consideration of this Facebook account, the respondent located and printed photographs originating from OA's Facebook account which were filed with the Tribunal.
20. One image from OA's Instagram account is addressed in detail below. It is identified as 'Image 7' in Appendix 2 to the age assessment, with a date stamp 13 January 2015. A clearer version is identified as 'Image 8'. It shows 5 males standing outside in the open together. The applicant accepts that he is one of the males standing in this group.

The applicant's case

21. Witnesses were called to give evidence and were examined over four days, from 20 to 23 October 2020. Whilst noting elements of the evidence in detail below I confirm that all of the oral and written evidence has been carefully considered as have counsel's submissions.
22. The applicant is presently seeking international protection and so I do not detail the substance of the claim in my decision, nor do I make any findings or observations upon the core of the claim. That is a matter to be considered by the Home Office by application of a different standard of proof to that which is to be applied in this matter. Such approach was identified to the representatives at the outset of the hearing and no complaint was made.

The applicant

23. Consequent to claiming asylum in this country, the applicant was interviewed in accordance with an 'an initial contact and asylum registration questionnaire'. This interview was subject to the Home Office's Asylum Screening and Routing Guidance which outlines the questions which are to be asked in all screening interviews. He confirmed the basis of his fear of persecution and that he left Iraq travelling to Turkey by bus. When asked whether he had any dependents, he detailed that '*the smugglers told me to take a 4-year-old boy and say he was my son. There was a family with us and [the smuggler] suggested I say he was my son to help me*'. He subsequently confirmed at the hearing that this incident occurred when crossing into Turkey.
24. The applicant relies upon a witness statement prepared in relation to his asylum claim, dated 16 May 2019, and four witness statements prepared for these proceedings.

25. In his statement of May 2019, the applicant detailed that whilst in Iraq he lived with his parents. His eldest brother, MW, is married and has three children. The applicant stated in his statement that he did not know MW's age, but the respondent has a record of the applicant confirming in 2019 that MW was aged 35. His elder sister, SW, lives at home and the applicant observes '*I think she was born in 1989.*' The applicant confirmed that his brother YW '*was born in 1991*' and '*when I was in Kurdistan, he was trying to become a Peshmerga and he was in year 12 at school.*' The applicant confirmed that he attended school from the age of 7 and finished 'Year 9' of school before he travelled to the United Kingdom.
26. By means of this statement the appellant provided details as to his fear of persecution. After his problems arose a member of another family attended the family home, asking for him. He was not present at the time because he was out with a friend. His family called him and asked him not to return home. The applicant stayed with a cousin who spoke to the applicant's brother, MW. After four days, MOA secured a passport which had the applicant's photograph in it. The applicant was taken to the home of another relative and two days later was placed on a bus travelling to Turkey. He remained in Istanbul for two to three days before travelling to Europe by plane. An agent took his passport from him and provided another one.
27. By means of his first statement prepared for these proceedings, dated 11 September 2019, the applicant confirmed that he knows his age and date of birth because he was often told such facts by his family whilst growing up. He further detailed that whilst birthdays are not always celebrated in Iraq, he celebrated his 16th birthday in 2017 because he wanted a celebration. The applicant stated that he possessed a Kurdish ID document in Iraq which detailed his name and age. He saw the document '*probably 4-5 times.*' The last occasion when he saw it was following a request by a schoolteacher to examine it. At the hearing the applicant confirmed that this document was his Hawiye.
28. As to his journey to the United Kingdom he confirmed that he travelled part of the way with a family. On the plane a person who accompanied them, who I consider to be an agent, took their passports and documentation. Consequently, the applicant disembarked the plane with no documents. The agent contacted another person who drove the applicant to the 'Jungle', a makeshift camp situated in Calais, France, where he remained for four months before travelling to the United Kingdom in the back of a lorry.
29. The applicant detailed as to the age assessment meetings that the first lasted most of the day and he was asked '*so many questions.*' The second meeting lasted around 15 minutes and he was not permitted the chance to discuss concerns that he had with the process or to explain things. He observed that he took time during the first

meeting to answer questions because he was trying his best to answer them correctly. Further, he found the process to be a long one and struggled with answering a lot of questions that reminded him of traumatic times.

30. He explained that he did not recall saying that his friend Mana did not use social media and that he did use Mana's Facebook account to occasionally speak to his family in Iraq. As to the photographs on his Instagram account that were observed by the social workers, the applicant named some of the people shown and confirmed that they were of similar ages though he is the youngest. As for the assertion that certain photographs establish that he is working in a barber shop the applicant detailed that that is a place where a friend works, and he simply hung out there because it was somewhere nice to spend time. He detailed that as he wakes up between 11 and midday he cannot be working. His aim in life is to be a teacher and not a barber.
31. The applicant's second witness statement is dated 14 October 2019. He addressed photographs taken from the Facebook account of his half-brother, OA:

I have taken many pictures in my life and I do not remember the specific occasions that they were taken, but I think that in the picture of [OA] and me I was in school when I was about 13 years old and I think it was during Kurdish Clothes Day. I do not remember the details. The picture of me on my own taken in the mirror was taken in June. I was 17 at the time and already living in the UK. My friend Mohammed invited me for a haircut because he was learning how to do it. He said that he could give me a free haircut if I agreed for him to train on my hair. I liked how my hair looks afterwards so I decided to take a photo of it. He offered me to learn how to do haircuts too, and become a barber, but I said that I did not want to learn. I want to be a teacher, not a barber. I do not know who owns the salon or even what it was called, I did not really pay much attention to things like that.

The photo of me with a group of other boys was taken in 2015 and I think I was either 13 or 14 years old, but I am not entirely sure. I am the second person from the left - first person on the left is my brother [OA], the person in the middle is [M], who is my cousin. The fourth person is [P] and he is my brother-in-law. I am not entirely sure who the fifth person is as he was my cousin's friend and I do not know him personally. The photo was taken in Iraq, it was about 20 minutes from my house ... I do [not] know [the] ages of anyone else other than my brother, but I did not care about these things back then. I was out with my family spending time together. I do not know why that means I am lying about my age.

I am aware that the Local Authority have said that these pictures show me with facial hair, and that means I cannot be my claimed age. However, I started to grow facial hair when I was very young, probably about 11 or 12.

In my family this is quite normal ... I have between 15 and 20 brothers. All of my brothers are also very hairy. In our family everyone starts puberty quite young. One of my brothers who was 12 when I left Iraq already had quite a lot of facial hair.'

32. By means of his third witness statement, dated 20 January 2020, the applicant took the opportunity to address his ID document. He confirmed that the document was kept by his mother along with other important documents. He recalled going to a nearby town when he was aged approximately 16 to renew this document and having his fingerprints taken. He has since sought to secure this document for these proceedings but was unable to do so. A friend of MOA had agreed to bring it to him but upon his arrival at an airport the document was confiscated and destroyed.
33. The applicant is critical of both the person with whom he shares accommodation, Mohammed, and an employee of the respondent, Ms. Simpson. As to the latter he details that she delayed in securing him an optician's appointment and he suggests that she had a part in his failure to enroll at college.
34. The applicant's fourth statement was filed with the Tribunal on 5 October 2020 and is accompanied by several documents. The applicant explained that whilst in the company of a friend he was attacked on 25 March 2020. He stated that the assailants hailed from his home area in Iraq and he holds the belief that the assault originated in the circumstances from which his asylum claim arises. He confirmed that he is fearful that these people intend to kill him. After the assault he was attended to by police officers but he believed that they could not protect him and so he did not give them details of the persons who had attacked him. He informed his solicitor and social worker as to the assault. Some two or two and a half weeks later he was again assaulted when out shopping. He stated that though he spoke to his social worker, he did know how to speak to the police.
35. Following discussions with MOA he decided to leave the United Kingdom, initially travelling to Germany where he was fingerprinted. He gave false details as to his identity as he did not wish to be sent back to the United Kingdom. The agent who aided him had informed him that he should use different names to avoid being returned. In his statement the applicant details that he made up his dates of birth, seeking to identify himself as being older because he believed it would be easier for him to return to the agent and move on. He then travelled on to Sweden where he was again stopped by the police. He again gave false details as to his identity and upon his release arrangements were made for him to be taken to Norway. He spent a few weeks staying with a friend of a relative in Norway before he approached the authorities and identified himself. He was detained for approximately 3 to 4 weeks before being returned to the United Kingdom under the mechanism of the Dublin III Regulation (Regulation (EU) No. 604/2013).

36. By means of his witness statement the applicant accepted that he was fingerprinted in all three countries and that he gave different names and dates of birth. At para. 12 of the fourth statement the applicant recalled two of the false names that he provided to authorities in Europe. He explained that he took such course of action because he did not want the authorities to identify that he had claimed asylum in the United Kingdom and be returned to this country because he was fearful, detailing '*I would be killed if returned to the UK*'.
37. The applicant provided to the Tribunal a copy of a police report dated 25 March 2020 and has provided photographs of injuries. He also provided copies of GCID case record sheets disclosed by the Home Office.
38. In answer to questions from Mr. Swirsky the applicant confirmed that his mother would inform him as to when he was approaching his birthday. He observed that it was not the norm in Iraqi Kurdistan to celebrate birthdays, though he celebrated his 16th birthday because he wanted to. He detailed that he did not recall celebrating a birthday for any parent or sibling, though he thought he may have celebrated a younger brother's birthday. He confirmed that if any niece or nephew wished to celebrate their birthday they could do, and he recalled attending a party for the son of one of his sisters.
39. As to personal documents, he possessed a Hawiya whilst in Iraq. This is a national ID card which had his name and date of birth on it. It was kept by his parents and he recalled it being provided to his school for a copy to be taken. He did not have time to take it when he left Iraq.
40. He confirmed that he went to school in Iraq. He was asked as to how many years he attended school and stated that he went until 'grade 10' but was not sure as to how many years he attended. In answer to questions from Mr. Swirsky he accepted that he commenced in 'grade 1' having just turned 7, and that progress through a school was one grade a year. He further accepted that school commenced in September and ran for 9 months. When asked if he had started school in his final year, before leaving Iraq in October 2018, the applicant said no because whilst school starts at the end of September, '*by the time things start to be organised, they give you textbooks, it starts in October.*' When asked to explain dates given to the age assessors, he stated that he had given '*approximate dates*' as he could not recall what age he was in what class. He further confirmed, '*I do not know how old I was in 2015, 2016, 2017*'. He confirmed that he studied mathematics at school and accepted that he had informed the assessors that it was one of his favourite subjects, but he informed me that he was unable to recall how old he was in each grade.
41. When asked by Mr. Swirsky as to his leaving Iraq, the applicant explained that MOA told him that he had to leave immediately and that he would help him leave. The applicant confirmed that MOA is a rich man and so paid for everything to help

him leave Iraq. The applicant confirmed that he travelled to another cousin's home but was unable to recall how long he stayed there: '*one day, two days, three days, not sure.*' He further confirmed that MOA secured a passport to enable him to travel out of Iraq. When asked whether the passport detailed the correct date of birth, the applicant stated, '*I did not look*'. He confirmed that the photograph used was the same as that used for his ID card.

42. The applicant informed Mr. Swirsky that he went to Erbil with a friend and not with MOA, as stated in his May 2019 statement. He asserted that his statement was wrong on this issue. In response to the observation that he had signed the statement as true, the applicant informed me that the statement had not been read back to him.
43. When asked by Mr. Swirsky as to whether the agent thought him old enough to be able to persuade immigration officers in Turkey that the 4-year-old child was his son, the applicant asserted that he was asked to take the child '*to help the family*'.
44. The applicant stated that he remained in Istanbul for '*three to four days*' before flying out of the country. He could not identify the passport given to him by the agent and he did not look to see if it had his photograph in it. He held it only for some 40 minutes before it was taken away. Upon arrival, the applicant informed me that did not claim asylum and did not ask to stay in the country, which he acknowledges was Denmark. Having arrived without a passport, his name was taken by officials and after 20 minutes he was permitted to leave the airport and was subsequently taken in a van to the Jungle camp near Calais. The applicant confirmed that he had given the Danish authorities a false name and age on the advice of the agent.
45. At the hearing, the applicant stated that he was unable to provide the age or date of birth of any sibling. Mr. Swirsky reminded the applicant that in a statement accompanying his asylum claim he had detailed his father as being born in 1956, his mother in 1957, SW in 1989 and YW in 1991. The applicant explained that these were approximate dates and that he thought his father was born in 1956 and his mother is a year younger. He explained that before he arrived in this country, YW had informed him as to the year when YW was born and the years his sisters were born.
46. The applicant detailed that he initially kept in touch with one brother, YW, when he arrived in this country, via Facebook, but he was informed that because the family were being watched he should not continue contact with his family because if those hostile to him were aware of such contact, they would kill his family in Iraq. He stated that the other family had placed guards around the family home.
47. As to the extent of his contact with family members other than YW since arriving in this country the applicant stated that he was only in contact with a cousin, MOA, by

WhatsApp. It was his cousin who aided him to travel to Norway. He subsequently informed Mr. Swirsky that he '*may have had*' one contact with OA.

48. As to the first attack upon him on 25 March 2020, the applicant confirmed that there was another man present with him, known as 'Shera' or 'Lion'. The police attended and the two men were kept apart as the police questioned them.
49. In answer to a question from Mr. Swirsky that he did not inform the police as to the first attack, but he did inform Ms. Simpson, the applicant stated his belief that it was unlikely the police would do anything because of the pandemic. He could not recall if he told friends about the attack, though he might have mentioned it. He did not go to see a doctor.
50. Consequent to the second attack, the applicant contacted MOA who arranged for him to leave the United Kingdom clandestinely in a lorry. The applicant did not have a passport for this journey. He accepts that he provided false details to the German authorities, on the advice of the agent to avoid being returned to the United Kingdom. He could not recall how long he stayed in Germany but accepted that he was provided with accommodation. He then travelled onto Sweden. He was in a car that was stopped by police. He could not recall if he gave his correct personal details, '*I don't know if I did or did not. I don't recall as in different countries I gave different names and different ages.*' He was told that he would be provided with accommodation but left after one or two hours as MOA arranged for someone to pick him up. He denied claiming asylum in either Germany or Sweden, simply being required to provide fingerprints. The applicant was reminded that the Home Office had noted in its GCID case records that he was recorded as having claimed asylum in both Germany and Sweden.²
51. The applicant travelled onto Norway, where he was taken to a friend of his cousin. It was his intention to remain in Norway and not return to the United Kingdom. He stayed for one or two weeks before going to a police station '*to say that I am here*'. He did not give his correct name and age. He was fingerprinted and the Norwegian authorities became aware that he had claimed asylum in the United Kingdom. He was subsequently returned to this country after two months. He confirmed that when he returned from Norway, he informed officials that he had left the United Kingdom because of problems that arose because of a sibling. He informed me that he gave this reason because he did not want to tell the whole story as he assumed that the police in the country were '*the same*' as those in Iraq who '*would kill him*'. Having been reminded by Mr. Swirsky that he had been happy to inform the Home Office as to events in Iraq when he first arrived in this country and asked why he did not tell the truth about the reasons for his assault upon his return from Norway,

² At page 222, hearing bundle 1

the applicant stated that he *'did not want to tell my story to everyone'* and *'they did not do anything first time.'*

52. When asked why he had refused the respondent's offer to rehouse him in Brighton the applicant explained that he had contacted MOA and been informed that a relative of those he feared had a business there.
53. He accepted that he had set up an Instagram account whilst in the United Kingdom. After reference was made to it in the age assessment, he locked the account as he did not want people to find him easily. He was asked about a photograph on his Facebook account, which he confirmed was the photograph of a child of his sister, F, who has died. He took the photograph from her account. He was referred to family photographs taken in Iraq. One photo was taken in 2015 and showed the applicant with his brother OA³. He confirmed that OA is aged 1 1/2 to 2 years older than him. He further confirmed that he was aged 13 or 13 1/2 when this photograph was taken.
54. Mr. Swirsky referred the applicant to 'Image 8' in Appendix 2, a photograph of five males standing together.⁴ The photograph was placed on OA's Facebook account on 13 January 2015, when the applicant states he was aged 13. The applicant accepted that he was the tallest person in the photograph, though this was because he was *'stretching'* himself. Also present were OA, his cousin M and his brother-in-law P. He could not recall the fifth person, beyond that he was a friend of M. He could not recall when the photograph was taken.
55. In re-examination, the applicant stated that he knew the years his parents and siblings were born because his father had been interviewed about his role in the Kurdish struggle and his mother had provided the details. The interview could be viewed on You Tube. He further detailed that he knew the ages of YW and his sister, S, because YW had provided details as to other family members by text whilst he was in the Jungle. YW sent this information because MOA had said that such information was necessary.
56. In addition to his Hawiya, the applicant confirmed that he was issued with a 'Jinsiya', or nationality certificate, when aged 16 or 17. He was required to travel to Sulaymaniyah to secure it.
57. Ms. Benfield asked the appellant as to how old he was each year he attended school. The applicant replied that he first attended school when aged 7. Ms. Benfield then asked, *'Would you not then be able to work out how old you were in each given year?'* The applicant responded, *'Yes'*. No further question was asked on this issue.

³ At pages 48 and 49, hearing bundle 2

⁴ At pages 50 - 51, hearing bundle 2

58. As to why he could not contact family members by Facebook, he accepted that MW had a Facebook account, but thought it better to be in contact with MOA.
59. He confirmed that he gave an adult age when in Germany, Sweden and Norway to avoid being placed in the care of a children's section or charity.
60. Following late disclosure by the respondent of various local authority contact records ('contact records') on the evening of the second day of the hearing, the applicant was recalled during the afternoon of the third day.
61. Mr. Swirsky reminded the applicant that he had previously stated that he had informed Ms. Simpson as to the attack on 25 March 2020 soon after the incident. When asked when he had notified her, he responded that it was after the assault, but he could not provide a date as he had not been well in himself for some time. When informed that the contact records detailed that Ms. Simpson was first informed of the assault on 27 April 2020, the applicant detailed that he had called her more than six times to say that his life was at risk and that she informed him that she would arrange an interpreter. When informed that he complained to Ms. Simpson on 9 April 2020 as to wanting to move from his accommodation but had not mentioned the assault, the applicant stated that he had spoken to her and she failed to get an interpreter.
62. As to the second assault, some two weeks later, the applicant stated that he informed Ms. Simpson as to both assaults at the same time.
63. The applicant was asked as to an email sent to Ms. Simpson on 2 June 2020, which followed three emails from Ms. Simpson sent between 29 May and 1 June 2020 expressing concern as to having not heard from him and asking him to respond otherwise she would have no alternative but to report him missing to the police. The applicant's response was recorded by the relevant contact record as being contained in an email subject line and stating, '*re: hello I went to swansea [sic] for eid [sic] and im [sic] with my friend he is looking after me!*'
64. The applicant explained that he did not write this email. A friend with whom he lived, called Mohammed, wrote it down for him. He stated that he had tried to phone Ms. Simpson and she had not replied. He was scared and wanted to hide so was living with his friend Shera in a property elsewhere in London. He could not recall how long he resided with Shera. When asked why he stayed with Shera, he replied that he had informed Ms. Simpson that people were trying to kill him. He asked that she change his house, and she replied that she could not do anything for him and informed him that he was to make himself safe.
65. Mr. Swirsky asked the appellant whether he still resided with Mohammed. The applicant said yes. He was then asked whether they were residing with each other

when Mohammed wrote the email on his behalf. The applicant responded, *'I don't remember whether Mohammed wrote it or [Shera]. I am not sure about it.'* In response to a question as to where the email was written, he stated, *'I do not recall if I was in my house or in the house of Shera.'*

66. He explained that upon his return from Norway, he met with Ms. Simpson in a park and they discussed matters. The contact records detail that they met on 20 July 2020 and the applicant is recorded as informing Ms. Simpson *'that the person who wants to kill him has a problem with his brother whom [sic] lives in Iraq.'* The applicant denied that he said this to Ms. Simpson, explaining *'I told her someone is trying to kill me. That is it. I cannot communicate very well because of her accent.'* When reminded that he had given the same reason for his flight to officials on his return, the applicant replied, *'I said to [Ms. Simpson] that they are trying to kill me. I have a problem. They want to kill me because of a problem with me, not with my brother.'*
67. When asked by Mr. Swirsky to confirm his evidence as detailed within his fourth witness statement, at para. 11, that he left for Germany *'maybe a couple of days before Eid, but I cannot be sure of the exact date'*, the applicant responded that he said *'maybe'* two days. Mr. Swirsky reminded the applicant that Eid-al-Fitr in 2020 began on 23 to 24 May and that on 2 June he sent an email to Ms. Simpson stating that he had travelled to Swansea for Eid. The applicant responded by saying that he was in hiding in London when the email was sent. When reminded that according to his witness statement he was in Germany at this time, the applicant replied, *'I said I went there but don't know how many days before I went.'* He confirmed that he celebrated Eid in Iraqi Kuridistan but observed that *'no-one celebrates it in this country'*.

'AA'

68. AA attended the hearing and gave evidence on behalf of the applicant. He is a young adult who has been recognised by the Home Office as a refugee. He is presently in education and has part-time employment as a barber and in sales.
69. He relied upon a witness statement dated 20 January 2020 in which he confirmed that he met the applicant for the first time when they attended the Refugee Council in Croydon in around September or October 2019. They have since become friends and see each other regularly. At the time of the statement the applicant visited two or three times a week and they remained in contact over the phone. The applicant informed AA as to his age and such information is consistent with the applicant being born in 2001.
70. AA detailed that the applicant presents as younger than him due to his behaviour and conduct. He behaves in a childish manner, is very playful and likes to play

games on his phone. AA believes the applicant to be quite immature and naïve as to his decision-making.

71. AA confirmed that the applicant has never worked in the barber shop with him. He detailed by means of his statement that:

'[The applicant] only came to visit me there once. He has never worked at my barber shop, he would not be allowed to work here. In order to work here you need to speak good English and have a Visa to work. Also, I do not believe that he knows how to cut hair.'

72. In answer to questions from Ms. Benfield, AA confirmed that he has known the applicant since the summer of 2019. He did not see the applicant during lockdown, but they remained in contact by telephone and WhatsApp. He acknowledged that the applicant could be considered to be older by others, *'his appearance is different from his behaviour. His skin is not soft. He looks older. He has a child's attitude.'* He confirmed that he spent time with the applicant on the latter's 18th birthday.
73. AA confirmed to Mr. Swirsky that the applicant had not informed him as to having been beaten up in March 2020 nor did he tell him that he was leaving the country for Norway. As to the applicant, AA noted that he is not very good with money, lacks maturity and loses control.

Ms. Brown

74. Ms. Brown is the managing director of CARAS, a charity supporting people with a refugee and asylum-seeking background. She gave evidence remotely and relied upon a witness statement dated 5 February 2020. She confirmed that the applicant was referred to CARAS in June 2019 by his key worker to undertake English language classes and that he attended CARAS activities regularly between June and September 2019. On occasion Ms. Brown observed the applicant during such activities.
75. She confirmed that the applicant attended a three-day residential trip in August 2019, held for young people aged under 18. The applicant was required to share a room with 15 to 18-year-olds. Neither the staff at CARAS nor the staff at the residential centre had concerns that the applicant was not being truthful as to his age. She further observed that the applicant interacted with other young people as a peer and there were no concerns raised by others that he was much older than he was asserting. She believes the applicant to be the age that he is asserting.
76. At the hearing she confirmed that she has not had direct contact with the applicant since preparing her statement, but she continues to have knowledge of him through staff. She confirmed that the applicant was referred to CARAS as a child and it is not the practice to ask for proof of age. She noted that she has an obligation to

protect those using the organisation's support and services and so continues to assess issues such as age.

Ms. Banelyte

77. Ms. Banelyte is the head of Youth Services at CARAS. She gave evidence remotely and relied upon a witness statement dated 4 February 2020. Ms. Banelyte detailed that the applicant regularly attended CARAS events between June and September 2019. She observed that most people attending CARAS' activities are aged between 15 and 18 and hail from a range of countries and nationalities, including young Kurdish people. She further observed that she is careful in decision-making and has on occasion asked a participant to stop attending activities for young people due to their being an inappropriate age. She did not take that step with the applicant because she believes him to have been aged 17 years when he commenced attending CARAS activities.
78. Like Ms. Brown, Ms. Banelyte opined that the applicant integrated well into youth groups and made friends. He attended a three-day residential trip in August 2019 that was for people aged under 18. Staff at the residential centre, as well as CARAS staff, who have between them years of experience of working with young people, had no concerns that the applicant was not being truthful as to his age.
79. Ms. Banelyte observed by her statement:
- 'The applicant was interacting with other young people as a peer. In our experience, young people themselves are quite likely to raise a concern if a young person in their group is significantly older than they have claimed. No such concerns have been raised by any of the applicant's peers. He is very respectful and kind and willing to engage. He joined all the activities at the residential centre and spent evenings playing card games with [a] group of young people from five different countries.'
80. Before me she confirmed that since the initial lockdown, she has engaged with the applicant by means of telephone check-ins. She accepted that a young person accessing support and services provided by CARAS would be asked their date of birth and such details would be accepted without questions. As to the applicant, she saw no reason to doubt his word. She provided one example of concern being raised as to an adult asserting that they were a minor and he was asked to leave. He was subsequently identified as being aged 24. CARAS supports young people through age assessments. As to the applicant's attendance on the residential course she observed no behaviour that raised safeguarding concerns and confirmed that no safeguarding concerns had been raised as to an adult staying in a room with persons aged under 18. She re-affirmed her belief that the applicant is the age he asserts.

Ms. Nanton

81. Ms. Nanton is an Age Dispute Adviser in the Children's Section of the Refugee Council. She gave evidence remotely and relied upon a witness statement dated 5 February 2020. She opined that the applicant's physical appearance is that of a young person and not an adult. She asserts that consequent to her meetings, discussions, and interactions with the applicant and from her experience in dealing with unaccompanied asylum-seeking children, she believes the applicant to be his claimed age.
82. At the hearing she confirmed that the applicant was brought to the Refugee Council by his keyworker and they met for a number of meetings. She detailed that she had no reason to doubt that the applicant was truthful as to his age, though she acknowledged that she had not expressly discussed the issue with him. She relied upon her observations arising from their interaction. She confirmed that she had not seen the applicant's engagement with social media, including the photographs filed with the Tribunal.

MOA

83. MOA is a national of Iraq and is the applicant's paternal cousin. He is 20 years older than the applicant and has known the applicant for all of his life. He supports the applicant as to his assertion of age.
84. By his statement dated 3 September 2020, MOA confirmed that he has sought to send documents to the applicant in this country, namely a Jinsiya and a Hawiya. The former is an Iraqi identity document. However, though they were to be brought to the United Kingdom by a business contact, they did not reach this country and so were never received by the applicant.
85. I was informed by Ms. Benfield that efforts had been undertaken to contact MOA and ascertain his willingness to attend the hearing remotely. However, there was no response for several weeks and so reliance was placed upon the witness statement.

Mr. Ibrahim

86. The applicant relies upon a witness statement from Mr. Ibrahim, who is aged 18 and is an Iraqi national hailing from Iraqi Kurdistan. He presently attends college and is in the care of the respondent.
87. By a witness statement dated 5 February 2020 Mr. Ibrahim confirmed that he met the applicant at the Refugee Council in Croydon in September or October 2019, and they became friends. He stated that he knew the applicant in Iraqi Kurdistan as they played football for their schools and he saw him on one occasion. The applicant

reminded him of this when they first met in this country and he recalled the events. The applicant has informed him as to his age,

88. Mr. Ibrahim did not attend the hearing.

BB

89. The appellant relies upon a witness statement from BB, who is a 20 and is a national of Iran hailing from Iranian Kurdistan. He is a recognised refugee who is studying and working part-time as a barber.

90. BB's witness statement is dated 20 January 2020. He confirmed that he met the applicant in 2019 and they are friends. They hang out together in a Kurdish café every week or two and the applicant sometimes comes to the barber shop when he needs a haircut. BB detailed that the applicant does not work with him in the barber shop because he is not allowed to do so and further has not been trained. BB stated, *'We do not spend a lot of time together because he is younger than me and my other friends.'* He was informed by the applicant's solicitors that the applicant is aged 18. Before this time, he had not thought to ask the applicant's age.

91. BB detailed that his first impression of the applicant was that he was a kid and immature. He appears younger consequent to his behaviour. He is always playing games and is 'sat' on his phone all the time. He does not talk much and appears quite shy. BB further detailed, *'He is quite stropky and if people say something that annoys him, he storms off and goes home. He also doesn't like talking about girls or work and avoids questions about these things when we are all talking about them. These strike 'ne as the actions of a teenager who was the age of around 18.'*

92. BB did not attend the hearing.

Mr. Jeff

93. Mr. Jeff previously acted as the applicant's litigation friend. He is a senior children's advisor at the Refugee Council. He supports the applicant's assertion as to his date of birth and age. By a statement dated 11 September 2019 he observed, *inter alia:*

'From my experience of interacting with [the applicant] I find the suggestion that he could be over 25 bordering on the ridiculous. Having looked through the age assessment I see that social services rely upon such things as the fact that he is said to be sexually active and has consumed alcohol. Having spoken to [the applicant] I am aware of the traumatic circumstances in which he was forced to leave his home country ... I am also aware that [the applicant] has in the past tried alcohol. I do not find either of these things to be inconsistent with [the] behaviour and interests of most healthy 17-year-old children.'

94. Mr. Jeff attended the hearing but was not required to give oral evidence.

The respondent's case

95. The respondent relies upon the age assessment carried out by Ms. Gregory and Ms. Taylor. The conclusion was endorsed by their team manager, Mr. Martin. Reliance is also placed upon three witnesses who provided oral evidence at the hearing as well as various documents filed with the Tribunal, including case supervision notes, care plans, placement agreements and pathway plans.

Ms. Gregory

96. Ms. Gregory has been a social worker since 2005 and is employed by the respondent. By a witness statement dated 4 December 2019, she explained the process and procedure she adopted, along with Ms. Taylor, when assessing the applicant's age. She detailed at paragraphs 7 to 9:

- '7. It is my opinion that at the time of the age assessment and decision meeting, which took place on 31.07.19 with a decision given on 02.09.19, that [the applicant] was over 18 years of age and therefore he was 18 years of age at the time he claimed asylum on 21.03.19, when his age was disputed by the Home Office as significantly over 18 years of age. Given his physical appearance, the images from social media and views of professionals involved in his care, we did not feel that a full age assessment was required in order to come to the conclusion that [the applicant] is an adult who is significantly older than his stated age.
8. A referral to Croydon's Children's Services was received from Nasreen Naujeer of the Refugee Council, dated 26.03.19, requesting that [the applicant] be accommodated on the basis that he stated he was a child. Nasreen based the referral on what [the applicant] had told her nothing else. The local authority obliged with this request, pending an age assessment.
9. In [the applicant's] case the assessment was carried out by myself and Roshamba Taylor. We reach the conclusion that [the applicant] is a person significantly older than 18 years of age for the reasons set out in the age assessment decision.'

Ms. Taylor

97. Ms. Taylor has been a social worker since 2005 and is employed by the respondent. She relies upon a witness statement dated 3 January 2020, by which she explained the process and procedure she adopted, along with Miss Gregory, when assessing the applicant's age. She detailed at paragraph 8:

- ‘8. As a result of the information gathered during this age assessment, together with observations made of [the applicant's] physical appearance, demeanour & interaction; the information gathered from social media; and the views of the other professionals, it was felt that an extended enquiry or a full age assessment was not necessary in order to reach a conclusion in regards to [the applicant's] age. It became quite clear from an early stage that [the applicant] was an adult who appear to be well into his twenties. Therefore, a decision was made to follow recent case law for [the applicant's] age assessment as set out in the case of *R (K) v. Milton Keynes Council* [2019] where the judge recognised that no full assessment was required in clear cases and that it was lawful for the Local Authority to proceed in this manner. Additionally, this follows the case of *R (B) v. Merton London Borough Council* [2003] which states that in cases where it is very obvious that a person is under or over 18 there is normally no need for a prolonged inquiry. Moreover, the ADCS Age Assessment Guidance 2015 states that *'in some rare circumstances, it will be very clear that the individual is an adult well over the age of 18, so prolonging inquiry may not be required.'*

Mr. Williams

98. Mr. Williams was previously an advanced social worker employed by the respondent, He gave evidence remotely and relied upon a witness statement dated 13 January 2020. He was the applicant's allocated social worker between April and July 2019, though for part of that period he was not working for health reasons. He recalls meeting the applicant on four occasions. He further recalls having a conversation with the applicant as to his telephone contact with his sister.
99. Mr. Williams detailed that the applicant's behaviour and demeanour were indicative of someone who is significantly older than his claimed age, observing that the applicant behaves in a very assertive and confident manner which is unusual for someone who is a minor. He detailed that he was informed by the applicant's key worker that the applicant was acting independently. Mr. Williams observed that evidence as to the applicant's independence included his going out in the morning to go shopping, which is unusual in young people. He further noted that the applicant was cooking and budgeting, which are other examples of independence. He accepted at the hearing that local authority notes would have noted the applicant as presenting with problematic behaviour if such concerns had arisen.

Mr. Martin

100. Mr. Martin is the respondent's Age Assessment Team Manager. He relied upon a witness statement dated 30 December 2019 and confirmed that the evidence placed before him was compelling as to the applicant being an adult who was significantly older than his stated age.

101. As to further social media evidence relied upon the respondent. Mr. Martin detailed, at paragraphs 9 to 11 of his statement:

'9. I was surprised to hear that [the applicant] had been granted interim relief in regard to the age assessment as it appeared to me that evidence, particularly from social media, was quite clear in evidencing that [the applicant] is an adult significantly older than his claimed age.

10. After interim relief was granted, I did a further search of social media on 11 September 2019 myself and on this instance found [the applicant's] Facebook account, and the family members linked to him. These images are even more compelling in regard to evidencing that [the applicant] is an adult who is significantly older than his stated age.

11. These images are from as far back as January and April 2015, when according to [the applicant's] claimed date of birth, he would have been between 13 years old 3 and 6 months old, respectively. Despite this, the images evidence very little difference in [the applicant's] physical appearance between the time the photos were taken and how he currently presents. He is observed to have a sculpted and groomed beard, and is pictured with adults, none of whom he looks out of place alongside.'

102. Mr. Martin did not attend the hearing.

Mr. Ahmed-Idan

103. Mr. Ahmed-Idan is a social worker formerly employed by the respondent between 2017 and 2019. He gave evidence remotely and relied upon a witness statement dated 24 December 2019. He was the applicant's allocated social worker between July and November 2019, and they met a few times during such time. Mr. Ahmed-Idan observed in his witness statement, '*[The applicant] did not engage well with me. I have problems in meeting with him as he often ignored social worker and independent reviewing officer's appointments. [The applicant's] key worker told me that he did not have friends among the other young people in the placement where he lived. The key worker stated also that [the applicant] treats his housemates as children and did not have any dealings with them.*'

104. Mr. Ahmed-Idan opined that the applicant is much older than his claimed age, opining that he is an adult aged 25 and above.

105. In answer to questions from Ms. Benfield, he confirmed that he was the applicant's social worker from July to September 2019 and did not meet him until early in August of that year. When asked why he assessed the applicant as being significantly over the age of 25, he accepted that he could not be certain as to the age of any person. However, he talks to a lot of young people and has children of his own, so is capable of combining such experience with common sense. He can factor

in his understanding that people grow up in different environments and can be affected by harsh problems in life such as poverty. When considering the applicant, Mr. Ahmed-Idan noted that he looked very mature. He further observed that when showing the applicant around his new accommodation, the applicant conducted himself in a manner not expected in young people, for example looking around the premises in detail. Mr. Ahmed-Idan confirmed that he also drew upon observations from other professionals that the applicant was not associating with the young people he lived with.

Ms. Simpson

106. Ms. Simpson is a personal adviser with Children, Looked After and Care Leavers, Turnaround Centre and is employed by the respondent. Her role is to ensure that young people in the care of the local authority have a smooth transition to living independently.
107. She gave evidence remotely and relied upon her witness statement dated 6 January 2020. She was the applicant's personal adviser. By means of her statement she recalled conducting meetings with the applicant between September and November 2019. She detailed that the applicant was fully able to assert his wishes and secure responses without prompting. He clearly articulated his expectations in a consistent and mature manner.
108. Ms. Simpson's belief is that the applicant is a mature and independent adult who has his own network of friends. He socialises, travels to different places on his own, keeps his home clean and tidy, can cook and clean for himself and share accommodation with others. She further observed that the applicant receives regular weekly subsistence and appears to be budgeting well.
109. By means of her witness statement she concluded that she has not observed anything to question the outcome of the age assessment.
110. In answer to questions from Ms. Benfield, she confirmed that she has supported the applicant from September 2019, though up until December 2019 it was in a duty capacity before being allocated his case. She accepted that prior to signing her witness statement she had only seen the applicant on four occasions. She confirmed that the applicant phones her regularly, more than any other young person at the present time, and if she is in a meeting with another child, she will contact him as soon she can.
111. In relation to the contact records, she was asked if she could recall her discussion with the applicant in April 2020 where he stated that he was scared. She confirmed that she could recall the discussion and the applicant informed her that he had been attacked by a couple of men and they knew where he lived. He was scared that they

would come back and beat him up again. She spoke about the applicant's concerns with her line manager and accommodation was subsequently found for him in Brighton, which he refused.

112. As to her discussion with the applicant in a park on 20 July 2020, following his return from Norway, she confirmed that no interpreter was present because of short notice. When asked whether she understood the applicant, she replied that they did not struggle in their discussion and she understood the gist of what he was saying. She observed that the applicant appeared more concerned about receiving a pre-paid card.
113. Ms. Simpson confirmed that arrangements had been made for the applicant to undertake work experience as a barber shop.
114. She confirmed her assessment that the applicant is independent. He can be difficult because he believes that he should continue to have the same treatment he received from a previous social worker, but he is not childish. He can express himself and raises concerns on everything, though the identified concerns are normal for someone leaving care.

The legal framework

115. The law in this area is settled and is not in issue between the parties. I am required to decide in this case whether the applicant, at the date of his asserted entry into the United Kingdom on 21 March 2019, was a person under the age of 18 and whether the applicant should be treated as a person who was a child at the relevant date in relation to section 20(1) of the Children Act 1989 ('the 1989 Act') which details that '*Every local authority shall provide accommodation for any child in need within their area.*'
116. There is no statutorily prescribed manner in which local authorities are obliged to carry out age assessments. As confirmed by the Court of Appeal in *BF (Eritrea)*, at [53], the law proceeds on the basis that the most reliable means of assessing the age of a young person in circumstances where no documentary evidence is available is by the so-called 'Merton compliant' assessment: *R (B) v Merton London Borough Council* [2003] EWHC Admin 1689, [2003] 4 All ER 280 ('Merton'). Relevant requirements have been considered in several judgments, including *VS v. Home Office* [2014] EWHC 2483 QB, and were recently summarised by Thornton J in *AB v. Kent County Council* [2020] EWHC 109 (Admin), [2020] P.T.S.R. 746, at [211].
117. Lady Hale confirmed in *R (A) v. London Borough of Croydon* [2009] UKSC 8; [2009] 1 W.L.R. 2557, at [51], that the question whether a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the Tribunal and the process has to be one of assessment. This involves the

application of judgement on a variety of factors and however difficult it may be to resolve the issue it admits of only one answer.

118. As it is a question of fact, ultimately the question must be a matter for the Tribunal. This requires me to effectively act in an inquisitorial role determining, on the balance of probabilities, whether the applicant was or was not a child at the date of the age assessment. The approach to be taken and the burden of proof to be applied were confirmed by Stanley Burnton J in *Merton* at [371 - [381:

'It is apparent from the foregoing that, except in clear cases, the decision-maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision-maker must seek to elicit the general background of the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to his age, the decision-maker will have to make the assessment of his credibility and he will have to ask questions designed to test his credibility.'

I do not think it is helpful to apply concepts of onus of proof to the assessment of age by local authorities. Unlike cases under section 55 of the Nationality, Immigration and Asylum Act 2002 there is in the present context no legislative provision placing an onus of proof on the applicant. The local authority must make its assessment on the material available to and obtained by it. There should be no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child. Of course, if an applicant has previously stated that he was over 18, the decision maker will take that previous statement into account, and in the absence of an acceptable explanation it may, when considered with the other material available, be decisive.'

119. The Court of Appeal held in *R (CJ) v Cardiff County Council* [2011] EWCA Civ 1590; [2012] 2 All E.R. 836, at [21] and [23], that once the court is invited to make a decision upon jurisdictional fact it can do no more than apply the balance of probability to the issue without resorting to the concept of discharge of a burden of proof. I am therefore required to decide whether, on a balance of probability, the applicant was or was not at the material time a child.
120. I proceed on the basis that it may well be inappropriate to expect from the applicant conclusive evidence of age in circumstances in which he has arrived unaccompanied and without original identity documents. The nature of the evaluation of evidence depends upon the particular facts of the case.

121. In the absence of any corroborative documentary evidence as to age, the starting point is the credibility of the evidence placed before the Tribunal, as confirmed by Aikens LJ in R (AE) v. London Borough of Croydon [2012] EWCA Civ 547, at [23].
122. The Tribunal is therefore not confined to choose between the positions of the parties: R (W) v. London Borough of Croydon [2012] EWHC 1130, at [3]. The nature of my inquiry under the Children Act 1989 is inquisitorial and I must decide the applicant's age on the balance of probability. I observe that the purpose of the assessment is to establish a person's chronological age based on information derived from the young person and an assessment of the credibility and plausibility of that evidence. If the chronological information is consistent, plausible and believable then no apparent observation about chance appearance and demeanour is likely to tip the balance against the age stated by the child: R (FZ) v. London Borough of Croydon [2011] EWCA Civ 59; [2011] P.T.S.R. 748.
123. The application of the benefit of the doubt in an age assessment matter is nothing more than an acknowledgement that age assessment cannot be concluded with 100% accuracy, absent definitive documentary evidence, and as in the case of unaccompanied asylum-seeking children who may also have been traumatised, unlikely to be supported by other evidence. On such basis, its proper application is that where, having considered the evidence, it is concluded that there is doubt as to whether an individual is over 18 or not, then in those circumstances, it should be concluded that the applicant is under 18. Thus, the benefit of the doubt is not of use where a specific date or age has to be determined except insofar as it requires a sympathetic assessment of the evidence: R (AS) v. Kent County Council [2017] UKUT 446 (IAC), at [20] - [21].
124. I am mindful as to the caution that is to be exercised in respect of the applicant's evidence, as noted by Stanley Burnton J in Merton, at [28]:

'Given the impossibility of any decision maker being able to make an objectively verifiable determination of the age of an applicant who may be in the age range of, say, 16 to 20, it is necessary to take a history from him or her with a view to determining whether it is true. A history that is accepted as true and is consistent with an age below 18 will enable the decision maker in such a case to decide that the applicant is a child. Conversely, however, an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid his return to his country of origin. Furthermore, physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other.'

Vulnerability

125. The applicant seeks to be considered as a vulnerable person. He primarily relies upon a letter authored by Jassim Laftaly, MECS Counsellor, Waterloo Multi-Ethnic Counselling, dated 6 October 2020, which runs to two paragraphs and provides information over 7 lines:

'This is to inform you that [the applicant] has been receiving weekly counselling at Waterloo Community Counselling since 28/09/2020. He will have a total of 12 sessions with me.

During his assessment, [the applicant] presented with acute depression, anxiety, suicidal ideation, fear of others, insomnia, nightmares, flashbacks, anger, isolation, despair, eating disorder, lack of confidence, low self-esteem and symptoms of PTSD. [The applicant's] mental health deteriorated due to a stabbing incident several months ago.'

126. In considering this document, I observe that the applicant has filed no GP or medical notes, and no update was provided at the hearing on 24 November 2020 as to whether counselling was continuing.
127. Before me the applicant asserted that he suffers from audio hallucinations. Ms. Benfield accepted that there was no evidence in relation to such concern. I observe that there is no reference in any contact report as to such concern being conveyed by the applicant to the respondent.
128. In considering Mr. Laftaly's letter, I observe that a contact report for 5 April 2019 confirms the applicant as eating once a day and worrying about his family. He is recorded as having recently lost two sisters and reporting that he wakes up from nightmares. At the time he was not interested in counselling. Subsequent contact reports refer to investigations being undertaken as to whether he is at risk of thalassemia, an inherited condition that affects the production of haemoglobin. It can make a sufferer suffer shortness of breath and be very anemic, leading to tiredness. It is understood that the applicant lost his sisters to this illness. The contact reports also note concerns as to the applicant's emotional wellbeing. I further observe that the referral form for an initial LAC health assessment identifies the applicant as suffering from regular nightmares and also flashbacks. In the assessment he is identified as eating one meal a day consequent to his journey to this country and to have become used to eating small amounts of food. This is consistent with an eating disorder.
129. However, I am unable to identify the applicant previously referring to suicidal ideation either to members of the respondent's care team or health care professionals. Such concern is not raised at his asylum screening interview, nor is it raised in the five witness statements before me.

130. I conclude that the applicant can properly be treated as vulnerable, with symptoms associated with acute depression and anxiety. I am satisfied that he is capable for the purpose of these proceedings. I therefore have kept in mind the 'mental ill health' section of the Equal Treatment Bench Book (March 2020), commencing at page 329. Accordingly, I ensured that breaks were taken whenever the applicant requested and permitted the early conclusion of evidence on day one at his request upon being informed that he was feeling tired.
131. Whilst not satisfied that there was sufficient evidence before me establishing to the required standard that the applicant suffers suicidal ideation, and Ms. Benfield did not rely upon such concern before me, I ensured to keep myself informed as to the applicant's welfare over the course of the hearing.

Analysis of the evidence

132. When assessing the applicant's credibility, I have had particular regard to the *Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance*, and my assessment of the applicant's credibility has been considered in the round, taking due account of the evidence presented and giving due allowance for the fact that many child asylum seekers and victims of trafficking will have problems in presenting a coherent account of their personal history and travel to this country. I note that memory can be affected by mental health issues and by the order and manner in which evidence is given.
133. In reaching my decision, I have had the benefit of the totality of the evidence upon which the parties seek to rely, whether expressly referred to me or not, including the oral evidence presented by the applicant and AA who attended in person before me and Ms. Brown, Ms. Banelyte, Ms. Nanton, Mr. Williams, Mr. Ahmed-Idan and Ms. Simpson who attended remotely. I have considered statements from witnesses who were not required or able to attend the hearing, namely Mr. Jeff, MOA, Mr. Ibrahim, BB, Ms. Gregory, Mr. Martin and Ms. Taylor. I have also had the benefit of having considered copies of social care notes maintained by the respondent recording its interactions with, and decisions taken in respect of, the applicant as well as various care and pathway plans.
134. For the avoidance of doubt, before I embark upon the search for an answer to the primary question now to be addressed as to the applicant's date of birth, I confirm that I have done so without any 'predisposition' that the applicant is or is not a child.

Question 1: Whether the age assessment was a short-form age assessment or not

135. Mr. Swirsky accepted on behalf of the respondent that a short-form age assessment was undertaken. Such concession is in accordance with the age assessment's

confirmation at page 3 that it was not felt that prolonged enquiry or a full assessment was required in light of evidence gathered from social media, as well as the view of the allocated social worker, and observations of the applicant's physical appearance, demeanour and interaction.

Question 2: The weight to be placed upon the respondent's age assessment including whether the age assessment was conducted in line with the requirements of a lawful and procedurally fair assessment and whether it was based upon firm grounds and reasons.

136. I am mindful that a short-form age assessment is one that tends to depend primarily on physical appearance and demeanour, and so may well fail to adequately take into account an applicable margin of error.
137. I note Thornton J's observation in *AB v Kent County Council*, at [35], that there may come a point when an experienced social worker considers they have conducted sufficient inquiries to be confident that the person in front of them is either an adult or a child and in such circumstances, it would be pointless to nevertheless require the continuation of the inquiry process to achieve full 'Merton' compliance simply for the sake of form. However, as observed by Stanley Burnton J in *Merton* at [37], age cannot be determined solely on the basis of appearance except in clear cases.
138. I am therefore mindful that a short-form age assessment may contain a higher margin of error than a full Merton-compliant age assessment.

Question 3: The weight to be placed upon third party evidence

139. An answer to this question was not pursued with vigour by either representative before me. Ultimately the question as to the applicant's age is one of fact and it is one that I am required to answer, taking into account and giving appropriate weight to the evidence before me.
140. I adopt caution against an over-reliance on any asserted expertise of social workers in age assessment matters, being mindful that weight may also be given to third-party evidence, where persons with close or supervisory connection with an applicant can point to consistent attitudes, and I accept that a number of supporting instances over a considerable period of time is likely to carry weight that observations made in the artificial surroundings of an assessment interview cannot carry. Consequently, the decision of a social worker is not determinative and is not a 'starting point'. I am required to reach my own conclusions as to the applicant's age and date of birth based upon all the evidence before me.

141. In considering the nature of evidence that may be of aid in the process, and the weight it may enjoy, I observe the decision of the Tribunal in R (AM) v. Solihull Metropolitan Borough Council [2012] UKUT 00118 (IAC), at [19]-[21].

Question 4: The applicant's date of birth.

142. I observe the contents of the age assessment.

Third party witnesses

143. My primary focus is on the credibility of the applicant's evidence concerning his age, but I am permitted to have regard to credibility more generally, provided that my primary focus is not forgotten.

144. In this matter, as explained below, I can give some weight to evidence from the witnesses, who between them have either interacted with the applicant on a professional level or as peers. However, such evidence in this matter is not determinative as to the applicant's age but does help in the balancing exercise when assessing the applicant's evidence.

145. I observe that in this matter none of the witnesses, save for MOA, have spent significant time with the applicant. As to the witnesses residing in this country, only Ms. Simpson has interacted with the applicant to any depth since last summer. Such state of affairs is not unusual in circumstances where an asylum seeker arrives in this country asserting that they are 17 and are consequently placed in local authority care, often residing in semi-independent accommodation, possibly with a college placement, developing friendships in the local community and receiving support from charitable organisations.

146. As to the applicant's witnesses, I found those who attended the hearing to be genuine in their observations and careful to be accurate in their recollections. Whilst professional witnesses met with the applicant on occasion from the summer of 2019 to the beginning of the Covid-19 pandemic in March 2020, and friends more regularly, in general the interaction since the initial lockdown has been limited to telephone, email and WhatsApp conversations.

147. I give some weight to AA's personal belief that the applicant is the age claimed and note that over time his opinion has not changed. I observe such opinion is, in part, based upon being informed by the applicant as to his stated age. I am satisfied that the evidence of AA can be given some weight because reactions from an individuals' peers may be of assistance because it is informative as to personal interaction, in this case identifying AA's observations as to the applicant's personal behaviour.

148. I find Ms. Brown and Ms. Banelyte to have been honest and fair in their evidence before me and take into account their experience of working with asylum seeking children. Ms. Brown was open as to her limited observations of the applicant, understandable due to the constraints and pressures of her management role at CARAS. She was candid in that she relied, in part, upon the observations of her experienced staff. Such observations were detailed by Ms. Banelyte, who again presented genuine and honest evidence. I place some weight upon the opinions of both witnesses as to their assessment of the applicant's age. They operate on the basis of taking an attendee's given age at face value, though both are alive to the fact that there is a constant obligation to reassess their professional opinion consequent to safeguarding requirements. I am satisfied that neither witness has enjoyed access to the wide range of materials before me, and so when assessing their evidence and in particular their assessment of the applicant's age, I must have in mind that their professional opinion may, or may not, be amended in light of such evidence because of their continuing safeguarding obligations.
149. The height of Ms. Brown's and Ms. Banelyte's evidence is that the applicant attended a residential course last year without any safeguarding concerns being raised by several professionals.
150. I found Ms. Nanton to be an open and honest witness and I give some weight to her evidence. I observe that she relied upon a mixture of the applicant's physical appearance and her own professional experience from their interactions when reaching her conclusion that he is his claimed age. I note at this juncture her candid acceptance that she had not observed the contents of the applicant's engagement with social media.
151. I have considered the evidence of BB and Mr. Jeff and have decided not to lessen the weight to be applied to their evidence simply because they did not attend the hearing. I have read their witness statements and accept that they are honest witnesses.
152. I observe Mr. Jeff's evidence that prior to the preparation and signing of his witness statement he spent in excess of 7½ hours with the applicant. I give some weight to his assessment of the applicant's age, being mindful that he relies upon his professional experience, but note that he has not had access to the wide range of evidence before me.
153. BB's evidence is based upon what the applicant has told him and upon his personal observation of the applicant's demeanour. He accepts that the applicant looks older than 18 but is satisfied that he is his claimed age. I am satisfied that this evidence can be given some weight because it relates to the applicant's interaction with his peers.

154. I have read the evidence of MOA with care. As to his support in enabling the applicant to leave this country in 2020 and travel to mainland Europe, he states that because of his business, *'I spoke to a contact of mine in Norway and I arranged for the applicant to travel to Norway'*. This understates his role in enabling the applicant to travel across several international borders without a passport. The applicant's own evidence confirms that MOA is a man with connections to people traffickers, people who are part of the criminal underworld. He was able to secure the services of such people in Turkey, Denmark, United Kingdom, Germany, Sweden and Norway. I further observe that the assertion that an effort was made to transport the applicant's Hawiya and Jinsiya to this country solely rests upon the evidence of MOA. It is said that instead of posting the documents, or at the very least sending copies of them, MOA arranged for a business contact of his to bring them to the United Kingdom. His witness statement details, *'I understand that there were some complications and that they were taken and therefore they were never received, and they never arrived to the UK.'* There is no detail provided as to the 'business contact' and the circumstances of their sending and confiscation is very vague. The applicant detailed in his third witness statement that MOA rang him through Facebook messenger, *'and stated that he had given the man my ID, but that man had had the ID confiscated in the airport because they were not his documents. This was over three months ago. My cousin told me that in the airport, they cut my [ID] into two pieces and threw it away.'* Such evidence as to events is again vague. I observe that no detail is given as to which airport or country the documents were confiscated, nor is it explained what subsequently happened to the courier. In the circumstances, I am not satisfied, on balance, that such events occurred. I do not find MOA to be a credible witness on this issue and in the circumstances give limited weight to his evidence on other issues.
155. The high point of Mr. Ibrahim's evidence is that he recalls playing in a school football match against the applicant whilst residing in Iraqi Kurdistan. On its face, this is significant corroborative evidence supportive of the applicant's claimed age. As such evidence is closely entwined with my consideration of the applicant's evidence as to his claimed age, I assess it in the round with the applicant's evidence.
156. Turning to the evidence relied upon by the respondent, I have considered the witness statements of Ms. Gregory and Ms. Taylor as well as the age assessment and observe that they place great reliance upon the applicant's physical appearance, images from social media and views of professionals involved in his care. Being mindful as to the inadequacies that may arise in a short-form age assessment, I proceed to assess this evidence in the round with the applicant's evidence.
157. I found Mr. Williams to be engaging, helpful and honest witness who accepted that he had relatively limited contact with the applicant. I accept that he is truthful as to his recollection of having a conversation with the applicant as to his being in

telephone contact with a sister, as such evidence is corroborated by a contact record note dated 5 April 2019 which confirms as to the applicant's communication with his family, '*[the applicant] has telephone contact with his family, through his sister.*' I give some weight to Mr. William's assessment of the applicant's age in his professional role but observe that he places reliance upon the applicant's appearance and demeanour.

158. Mr. Ahmed-Idan was an open and honest witness who had limited contact with the applicant. I am satisfied that I can give some weight to his assessment of the applicant's age, based upon his professional experience, though as with other witnesses relied upon by the respondent, he places reliance upon the applicant's appearance and demeanour.
159. Mr. Martin did not attend the hearing and for the reasons detailed above I do not make an adverse finding upon his non-attendance. His evidence is particularly helpful in explaining the identification and subsequent filing of photographs posted on social media. I am satisfied that I can give some weight to his assessment of the applicant though I observe that he also relies upon appearance and demeanour in reaching his conclusion as to the applicant's age
160. Ms. Simpson has been the applicant's personal adviser from September 2019 to the present time, whether in a duty capacity until December 2019 or in an appointed role from that time. She gave her evidence in a very fair and honest manner and it was consistent with relevant contact records. On occasion she confirmed to my satisfaction that the applicant was being honest and truthful as to certain events, for example that his work experience at a barber shop was approved by the respondent and as to why she was unable to accompany the applicant to a police station. I am required to consider the disputes in evidence that arise between the applicant and Ms. Simpson and do so below.
161. Regarding the third-party evidence considered above, I observe that when assessing the core elements of the applicant's account I am required to adopt a holistic approach and consider the evidence in the round. I am mindful that when considering the evidence of the third parties, none of them are able to expressly confirm or deny the applicant's evidence as to his date of birth. In identifying as to the majority of the third-party witnesses that I will give 'some' weight to their evidence, I have concluded that though their evidence was given honestly, it may be subject to unintentional confirmation bias. Some witnesses have adopted the applicant's assertion as to his age without more, with limited information being available to them to permit them to reassess their early conclusion, whilst others have formed opinions based upon early assumptions as to appearance and demeanour and have appeared resilient to amending their views in the light of further information. A number of witnesses have relied upon what is said to be the

applicant's 'childish' behaviour, including exhibitions of stropiness, anger and crying. Others rely upon his ability to cook and financial acumen. Such behaviour is not the preserve of adolescent children, or alternatively confirmation of adulthood. An example is BB's observation that the applicant '*is quite stroppy and if people say something that annoys him, he storms off and goes home. He also doesn't like talking about girls or work and avoids questions about these things when we are all talking about them. These strike me as the actions of a teenager who is the age of around 18.*' Loss of temper and displays of petulance are not the preserve of adolescent children and such expressions of frustration can regularly be identified in adults, particularly those who have failed to fully develop socially appropriate methods of expressing annoyance. Shyness as to discussing personal circumstances is a trait regularly seen in adults as well as in adolescents.

Applicant's evidence

Lack of corroborative documentary evidence

162. As observed above, my primary focus is on the credibility of the applicant's evidence concerning his age. In considering his credibility, I remain mindful of his vulnerability. I note that there is no challenge to the fact that he is ethnic Kurd hailing from Iraq. I place no weight in my assessment upon the inability of the applicant to produce corroborative documentary evidence as to his date of birth as he is an asylum seeker who asserts that he fled his country so as to avoid persecution and so has good reasons for not having relevant documents with him in this country.

Consistency

163. When considering the applicant's evidence, I take into account that he has been consistent as to his date of birth since his arrival in this country. I also observe that he has been consistent in his evidence that his parents, particularly his mother, informed him as his date of birth on several occasions and that he celebrated his 16th birthday with a party. He has also been consistent in his assertion that birthdays are not usually celebrated in his home area. More generally, the applicant has been consistent in his evidence as to the circumstances of his personal troubles in Iraq. Consistency in evidence is a positive factor to be placed into my assessment but is not determinative of the question I am required to answer.

Neutral matters

164. On behalf of the respondent, Mr. Swirsky skillfully sought to establish discrepancies in the applicant's evidence as to his flight from his persecutors in Iraq. However, I am satisfied that the preparation for his flight from Iraq is closely connected to his claim for international protection and arose in circumstances where expedition and

confusion reigned. In such circumstances, I consider that the appropriate approach is to consider the evidence surrounding his decision to leave Iraq neutrally. However, for reasons detailed below, it is appropriate that I consider the applicant's evidence as to how he crossed the border from Iraq into Turkey.

165. Mr. Swirksy also sought to rely upon the applicant's use of deception when crossing European borders, in particular the use of false names and dates of birth. I remind myself that persons seeking asylum often require the aid of human traffickers to cross borders and may be placed under considerable pressure not to discuss both their agents and the means taken to enter and exit countries. It may be said to be unfortunate that the applicant has decided to continue to protect people from the criminal underworld who have aided him. The applicant's evidence that having arrived at an airport in Denmark with no identification documents, including no passport, he was permitted to leave the premises after only 20 minutes may appropriately be approached with caution. However, I accept that the reasons for not being truthful in circumstances involving human traffickers may be complex and so as I informed the representatives at the hearing, I place no adverse weight upon the applicant's evidence in relation to his travels in Europe, up until his official return to the United Kingdom from Norway under the Dublin III Regulation. I treat such evidence neutrally.
166. The respondent relies upon the applicant's refusal to accept an initial placement in Leeds upon having made his asylum claim and a subsequent refusal to accept a placement in Brighton following an assault in March 2020. I find that these matters are not ones that aid in my assessment of the question before me and so treat them neutrally.

Schooling in Iraq

167. I observe the applicant's evidence as to his schooling in Iraq. He has been consistent as to starting school in 'year 1', or 'grade 1', at the age of 7. He informed me that the school year officially commences in September and runs for nine months. His evidence as to when he left school is less consistent. In his first witness statement he confirmed that he finished 'grade 10' at school but did not attend for 'grade 11' in October 2018. In his asylum statement he detailed that he finished primary school and attended secondary school until completing 'year 9' before travelling to the United Kingdom. In his evidence before me he confirmed that he attended school until 'grade 10', but then explained he did not actually start school that year because whilst term officially starts in September by the time schools begin to be organised and hand out textbooks they start in October.
168. Before me the applicant's evidence as to his schooling was very unsatisfactory. He accepted that he had studied mathematics at school and that he told the assessors that it was one of his favourite subjects, along with sport. However, having accepted

that he commenced 'grade 1' at the age of 7, and that each new academic year started in September, he consistently informed Mr. Swirsky that he was unable to recall, even approximately, what age he was in each academic year. He asserted to Mr. Swirsky, '*I do not know how old I was in 2015, 2016, 2017*'.

169. During re-examination, Ms. Benfield sought to address this issue, noting the applicant's confirmation that he started school at the age of 7. She asked the applicant '*Would you not then be able to work out how old you were in each given year.*' The applicant confirmed he could, but no detail was provided. Nor was any explanation provided as to why he had informed Mr. Swirsky that he could not undertake the simple task of adding one additional year to his age every time he progressed to a new academic year.
170. I find to the requisite standard that the applicant is numerate, as corroborated both by his acceptance that mathematics was one of his favourite subjects at school and by his ability to look after his finances in this country. I further find that he was untruthful in his answers to Mr. Swirsky. Why has the applicant adopted such an approach? I am satisfied that he is aware that there was criticism of the information he provided to the age assessors as to what age he was in different grades at school, as detailed within the age assessment, and decided to avoid answering the topic before me. Such approach must attract some adverse weight in my assessment.
171. Further, I am satisfied that the applicant was not truthful when seeking to assert that the school term starts in reality, if not officially, in October. His statement as to leaving school at the conclusion of 'Year 9' in his asylum witness statement is contradicted by his September 2019 witness statement where he details that he finished 'grade 10' of school but did not attend for 'grade 11'. I am satisfied that his evidence at the hearing before me was an unsophisticated means of trying to remedy the clear inconsistency in the timeline established by his witness statement.
172. In such circumstances, I find to the appropriate standard that the applicant has not been truthful as to when he attended school in Iraq, nor as to how long he attended.

Birth dates of family members

173. The applicant provided years of birth or ages for some members of his family. He has also asserted on occasion that he cannot provide such details for all members of his family, including his half-brother, OA, his cousin, M, and his brother-in-law, P.
174. At the hearing, the applicant denied knowing the years his parents were born and steps were taken by Mr. Swirsky to remind him of his asylum witness statement where he provided these details, The applicant clarified his evidence by detailing that the years of birth provided were approximate, though he subsequently informed me that he was aware of the years in which his parents and some siblings

were born because he had watched a recording of an interview his parents had given in relation to his father's involvement with the Peshmerga and the years were stated. The applicant further confirmed that the year of birth of some siblings was conveyed to him by a message from YW whilst he was in France.

175. I find that the applicant was truthful as to the dates of birth of his parents in his asylum statement and I am content, on balance, to accept the age provided by the applicant in relation to YW in his witness statement and to MW as detailed in the contact records. The difference of a year or so in the years of birth attributed to FW and SW are not matters that I am required to make a finding upon, save that I accept the applicant's evidence that they are older than him.
176. Whilst the identified years of birth or ages of family members are matters to be placed into my assessment, they are not determinative of the applicant's age.
177. I address the ages of OA, M and P below.

Celebration of 16th birthday

178. There was no challenge to the applicant's assertion that birthdays are not regularly celebrated in Kurdish region of Iraq, nor that they could be celebrated if desired. I find that the applicant did celebrate his 16th birthday, though this is not determinative that such birthday fell on 14 September 2017.

Contact with family members

179. I find that the applicant is not truthful as to his continuing contact with family members beyond his contact with MOA. He explained in his third witness statement as to why contact had ceased with close members of his family: *'I had been occasionally speaking with my family, specifically my brother, through Facebook messenger ... Also he (a member of the opposing family) has control over communications and so he might have been able to see who my family were speaking with. My brother told me on Facebook messenger that he would not be able to speak to me again. I have not had any communication with him since then. I still am in contact with my cousin occasionally.'* Before me the applicant initially stated that he could not recall saying that he had been in contact with his brother by Facebook Messenger. When his attention was drawn to contact reports detailing that he had created a Facebook account to keep in contact with his brother, he replied that his brother was *'not replying.'* He explained that he had not informed the respondent as to his brother directing him not to continue contact with the family because he *'did not want them to think that his family did not want to have contact with their own child.'*
180. The applicant's evidence on this issue cannot withstand even gentle scrutiny. He provides no coherent explanation as to how the other family could monitor any

contact between him and his family by social media, including telephone calls by Facebook Messenger. It is clear from the evidence that members of his family have been using social media for several years before the applicant left Iraq and they would be aware as to the security measures put in place by social media companies, for example anti-intrusion systems as well as antivirus and anti-spyware programs. I take judicial note that social media companies are publicly open as to the existence and application of such systems as a means of persuading people to sign up for their services. Further, as regards Facebook Messenger, it is a service which supports voice and video calling and the applicant provides no coherent evidence as to how he and his family believed that the other family could engage in surveillance upon encrypted data.

181. I am satisfied, to the requisite standard, that the applicant has sought to diminish the true position as to his contact with his family in Iraq, both by phone and social media, and I am satisfied that he remains in contact with them, hiding the fact by blocking access to his social media accounts. The applicant is concerned as to the poor health of his father and I find that there is no credible reason as to why he would not continue to be in contact with his family in Iraqi Kurdistan. I am satisfied that Mr. Williams is correct as to his recollection of being informed by the applicant that he was in contact with his family by telephone through his sister, though the applicant has sought to detail his limited family contact beyond that with MOA as only being with male siblings. This is another example of the applicant not being truthful. On balance I find that the applicant has asserted a lack of contact with his family a part of a calculated effort to provide a reason for his purported inability to secure genuine documentation from Iraq establishing his true date of birth.

Assaults in London

182. I accept to the requisite standard that the applicant is truthful as to having been assaulted on 25 March 2020. He has provided detailed and consistent evidence as to this incident, which is supported by police disclosure which has been filed with the Tribunal.
183. The reasons for the assault, and the applicant having been assaulted a second time some two weeks later, are subject to significant inconsistency. The second assault is relevant as it is said to be the basis for his deciding to leave this country and ultimately travel to Norway. The applicant is very vague as to the circumstances of the second assault, save that it occurred whilst he was out shopping around two or two and a half weeks after the first assault. At the latest, the assault is said to have taken place on or around 12 April 2020. By means of his fourth witness statement he states that being afraid for his life he contacted Ms. Simpson and informed her that as his life was in danger, he would be going outside of London to stay with friends. On his version of events he accepts that he misled Ms. Simpson because

such friends lived in London, but he explained that he was afraid for anyone to know where he was residing in case he got attacked again. He remained with friends for some two or three weeks before leaving the country with the aid of MOA. On the timescale identified, the latest he could have left the home of his friends was on or around 3 May 2020. He confirmed that he left the country a couple of days before Eid and I observe that Eid-al-Fitr in 2020 began on 23 to 24 May. The date he states he left this country is clearly inconsistent with the detailed timeline.

184. The contact records confirm conversations between the applicant and Ms. Simpson on 2, 9 and 14 April 2020. No mention is made of either assault. During the third conversation, the applicant confirmed that he had a cold, but no other reference to his health was made during the three telephone calls. An email from Ms. Simpson to the applicant on 15 April 2020 confirmed that a television was being delivered to his home later that day. There is no record of the television not having been delivered. On the same day, the applicant texted Ms. Simpson stating that he has no money. They spoke again on 27 April 2020, with much of the discussion being about the applicant's phone. In reference to the television, the applicant confirmed that he was very happy with it. During this call, the applicant asks Ms. Simpson to make arrangements so that he can move to a new house, because he is scared but cannot explain.
185. The applicant attended a pathway plan meeting by telephone the following day, observing that he was having trouble sleeping at night. He confirmed that because of the pandemic he was not going out much. He informed the meeting that he had been assaulted with a friend, and I find that this is a reference to the assault on 25 March 2020. No mention is made of the second assault, nor does he state that he is living away from his home.
186. On the 12 May 2020, the contact records confirm a telephone conversation between the applicant and Ms. Simpson in which he confirms that he is not leaving the house but will do so to go shopping. This is the last contact between the two of them until the applicant's email of 2 June 2020 when he informs Ms. Simpson that he had travelled to Swansea for Eid and is with a friend.
187. The applicant's evidence differs to that of Ms. Simpson. Before me he explained that he informed her as to the first assault a few days after the incident. The contact records identify the first reference by the applicant to Ms. Simpson as to being scared was over a month later, with him proceeding to inform Ms. Simpson of the assault the following day. The applicant stated that he referred to the second assault on the same occasion. This is not supported by the contact records. I found Ms. Simpson to be an impressive witness, sensitive to her professional obligations and I accept to the required standard that in accordance with such professional

obligations she would accurately record the key elements of her conversations with the applicant. On balance, I prefer her evidence to that of the applicant, for reasons detailed below.

188. The applicant's evidence before me was that he was present in this country when the email of 2 June 2020 was sent to Ms. Simpson. The applicant's evidence on this issue lacked coherency, changing whenever discrepancies were put to him. He informed me that he had initially tried to phone Ms. Simpson on six occasions, and she did not reply. I accept Ms. Simpson's evidence that if she missed a call from the applicant, she would make contact as soon as she could thereafter. This is consistent with her role as a personal adviser. I further observe the contact records which establish not only that the applicant was in communication with Ms. Simpson during this time but also the means by which Ms. Simpson sought over time to contact the applicant, both by phone and email. I therefore do not accept the applicant's evidence that he sought to be in contact with Ms. Simpson on six occasions and received no reply from her during such time.
189. He explained to me that because he could not contact Ms. Simpson by phone he decided to contact her by email. He confirmed that the 2 June 2002 email was written by Mohammed, a person with whom he lived at his home in London. He confirmed that he was still in hiding at this time and was living with Shera elsewhere in London and so was not living with Mohammed. I note that in his witness statement dated January 2020, the applicant refers to speaking to Mohammed sometimes, '*but he works a lot*' and that he did not like living at the property. In a confused passage of evidence before me, he confirmed that he could not remember whether Mohammed or Shera wrote the email or where it was written.
190. There is a clear discrepancy in the applicant's evidence that he remained in hiding in London, and so living away from his home, in early June 2020, which is inconsistent not only with the timeline identified by his witness statements, but also with the fact that by 12 June 2020 both Germany and Sweden had processed asylum applications made by him and had subsequently made requests to the United Kingdom to take him back under the mechanics of the Dublin III Regulation.
191. Throughout my assessment I have been mindful of the applicant's vulnerability. Having observed him give evidence over three days, I conclude that on certain issues he was capable of providing clear, detailed and coherent evidence. Sometimes he was recalling historic facts, such as the basis of his asylum claim, sometimes more recent events such as the assault on 25 March 2020 and sometimes he was recalling various linked historical events such as why he had been provided with four phones over a relatively short period of time. However, there was a clear and noticeable trait of presenting inconsistent evidence at the hearing and providing

incoherent explanations for such inconsistency. Even when taking into account his vulnerability, there were noticeable efforts to distort events so as to hide previous mistruths.

192. I find that the applicant was residing at home on 15 April 2020 when a television was delivered to him by the respondent. He was residing at his home when he spoke to Ms. Simpson on 27 April, 28 April and 12 May 2020. I am satisfied that he was not hiding at Shera's home for a period of two to two-and-a-half weeks from a date close to 12 April 2020 to a date in May 2020. The applicant was unaware of the contact records when seeking to advance his false story and his evidence was inconsistent and incoherent when seeking to address the content of the contact records when they were put to him. I am satisfied that the contact records, authored by professionals in the course of their employment, identify the true position.
193. I find that the applicant remained at his home interacting with Ms. Simpson before leaving the country at some point in time after 12 May 2020 and prior to Eid-al-Fitr later that month. I am satisfied that it was his intention to travel to Norway and not return to this country. I find the 2 June 2020 email was a crude attempt to placate Ms. Simpson's concerns and to delay her becoming aware that he had absconded. I am satisfied that the email was sent in response to Ms. Simpson's indication that she would have to contact the police if he did not respond. The longer the delay in the respondent identifying him as a missing person, the longer he had to travel to a country where he believed that his previous presence in this country would not come to light. I find that the email of 2 June 2020 was written by the applicant whilst outside of this country to aid his ability to travel to Norway. I am satisfied that the applicant's efforts to explain away the email at the hearing amounted to no more than saying the first thing that came into his head. As Ms. Benfield candidly accepted in her closing submissions the applicant undertook the journey unaware that the authorities in Norway could access EURODAC and through his fingerprints identify that he had claimed asylum in the United Kingdom thereby requiring this country to take him back under the provisions of the Dublin III Regulation.
194. I find, on balance, that the reason for his fleeing this country is the initial explanation he gave to the authorities upon return, and to Ms. Simpson when they subsequently met in the park, namely that he was targeted by an Iraqi national who possessed an animus towards his brother. I find that the applicant is not being truthful when asserting that men were targeting him in relation to events underpinning his asylum claim. His explanation for not telling the United Kingdom authorities the truth about the reasons for his assault upon his return from Norway, namely that he assumed the police in this country were '*the same*' as those in Iraq who '*would kill him*', is nonsensical. The police had aided him after the assault on 25 March 2020 and he raised no concerns as to their conduct. Further, on his evidence, he had wanted to report the second assault to the police and had been frustrated in

carrying out such intention by Ms. Simpson. He provides no coherent explanation for his belief that the police would kill him if he informed them that he was being targeted in this country for reasons connected to his asylum application.

195. I further find that the applicant is not truthful in asserting that Ms. Simpson is wrong in her recollection as to their conversation in the park following his return from Norway. I am satisfied that Ms. Simpson's entry on the contact record, namely '*that the person who wants to kill has a problem with his brother who lives in Iraq*' is an accurate record of their conversation. The applicant has provided no coherent explanation as to how Ms. Simpson recorded the same reason that he gave to the authorities on his return if he did not tell her. I am satisfied that the applicant has subsequently sought to use his flight to Norway as a means of bolstering his asylum application by asserting that his fears arise from being targeted in this country for reasons relating to his asylum claim.
196. Though not determinative of the question I am required to consider, I place into my assessment the fact that the applicant has been consistent in certain elements of his evidence and has been untruthful in other respects.

Social media images

197. The respondent has filed several photographs placed on social media accounts operated by the applicant and OA. They have been filed in two batches: Appendix 1 contains a series of photographs considered by the age assessors; and Appendix 2 provides further photographs collated by the respondent after the age assessment.
198. The photographs in Appendix 1 are referenced in the age assessment:

'[The applicant] was shown a series of photographs which were printed from his Instagram account (Appendix 1). [The applicant] confirmed it was him who could be seen in these photographs and identified his friends Rikar and Nariman. He said the barber shop seen in the photograph belongs to a friend of his friend Mana and [the applicant] attends this barber shop to get his own hair cut. The location of this barber shop is in Sutton. [The applicant] was asked about the photograph depicting a BBQ and bottles of beer. [The applicant] said that this was a celebration as one of his friends got decision from Home Office'. [The applicant] was asked questions about the beach photo. [The applicant] said that whilst he was there, the photo was sent to him because 'I like to have the picture' and he posted it. [The applicant's] friends Mana, Riker and Nariman are not on Facebook but on Instagram. Mana also said that he can only access Facebook and Instagram on his phone when he has Wi-Fi. [The applicant] also said that he does not like to access social media on his mobile ...'

199. Mr. Martin confirmed by a second witness statement, dated 18 September 2019, that he undertook a further search of social media on 11 September 2019 and found the

applicant's Facebook account. He then identified accounts belonging to the applicant's family members. Appendix 2 presents photographs found during this search.

200. 'Image 1' of Appendix 1 identifies account information relating to the applicant's Instagram account and confirms that the account was not locked at the point in time the screenshot was taken. 'Image 2' confirms that the account was subsequently locked, and the account name changed.
201. 'Image 3' is a photograph of the applicant taken in a shop in this country and posted on Instagram on 14 April 2019.
202. 'Image 4' and 'Image 5' are photographs taken by the applicant whilst present in a barber shop. 'Image 4' was posted on 25 June 2019 and 'Image 5' on 24 June 2019. I accept the applicant's evidence that the photographs were taken on the same day but posted on different days.
203. 'Image 6' is a photograph of the applicant and another male, posted on 25 June 2019. The applicant is wearing the same shirt as in 'Image 4' and 'Image 5' but the presence of a lit BBQ suggests that this photograph was taken outside.
204. 'Image 7' is a photograph of the applicant with two males and appears to be taken at the same property as 'Image 6'. Food and alcohol are present on the table. It was posted on 12 July 2019.
205. 'Image 8' is selfie taken by the applicant and posted on 19 June 2019.
206. 'Image 9' is a photograph of the applicant posted on 28 April 2019.
207. 'Image 10' is a photograph of a table of food and alcohol posted on 18 June 2019.
208. 'Image 11' is a photograph of beer cans and a beach posted on 22 April 2019. The applicant confirmed that this photograph was taken in Brighton.
209. 'Image 12' is a selfie of the applicant posted on 14 April 2019.
210. Appendix 2 comprises photographs taken from the Facebook accounts of the applicant and OA.
211. 'Image 1' is a screenshot of the applicant's Facebook profile page. The applicant confirmed to me that the photograph shown is of a nephew, the son of one of his deceased sisters, which he obtained from her Facebook account.

212. 'Image 2' comprises two photographs, one of which is the same as 'Image 5' of Appendix 1. This photograph is said by the respondent to be one of several present on both the applicant's Instagram and Facebook accounts.
213. 'Image 3' comprises 10 photographs located on OA's Facebook account, including four photographs of the applicant present in the United Kingdom.
214. 'Image 4' is a photograph of the applicant present in the United Kingdom posted on OA's Facebook account on 1 May 2019.
215. 'Image 5' is composite photograph of OA and the applicant posted on OA's Facebook account on 8 April 2015. 'Image 6' is a clearer capture of 'Image 5'.
216. 'Image 7' is a photograph of five males standing outside. It was posted by OA on his account in January 2015. 'Image 8' is a clearer capture of 'Image 7'.
217. I accept the evidence of the applicant, corroborated by Ms. Simpson, that arrangements were made for him to undertake work experience at a barber shop and so do not accept the respondent's contention that 'Image 4' and 'Image 5' of Appendix 1 and 'Image 2' of Appendix 2 show the applicant in employment.
218. I find that photographs of the applicant in the presence of alcohol do not establish that he is an adult. The consumption of alcohol in a public place is not by itself an indicator of age.
219. I have carefully considered 'Image 7' and 'Image 8' of Appendix 2. The applicant addressed this photograph in his second witness statement for these proceedings:
- 'The photo of me with a group of other boys was taken in 2015 and I think I was either 13 or 14 years old, but I am not entirely sure. I am the second person from the left, - the first person on the left is my brother [OA], the person in the middle is [M], who is my cousin, the fourth person is [P] and he is my brother-in-law. I am not entirely sure who the fifth person is as he was my cousin's friend and I do not know him personally. The photo was taken in Iraq, it was about 20 minutes from my house. If I remember correctly this was the day when we went out for a walk, we gathered some wood and made fire. We boiled some water on the fire and made tea, and then ate sunflower seeds. I do [not] know [the] ages of anyone else other than my brother, but I did not care about these things back then. I was out with my family spending time together. I do not know why that would mean I am lying about my age.'
220. I observe that the applicant refers to P, his brother-in-law, as being a 'boy'. I note that when asked OA's age at the hearing, the applicant was not specific, observing that he was '*1½ to 2 years older than me*'.

221. Standing from left to right in the photograph are OA, the applicant, M, P and an unknown friend of M. The applicant is the tallest person in the photograph, though he explained to me that he was '*stretching myself*'. Upon looking at the photograph, I was unable to see any evidence that the applicant was stretching, and I find that there was no reason for him to do so in a photograph taken with several family members. I conclude that when asked the question at the hearing the applicant realised that the photograph was not helpful to his case and so sought to advance a reason as to why he is the tallest person in the photograph at a time when he claims to be 13 or 13½ years old.
222. The applicant is either vague as to the age of a family member present in the photograph, OA, or states that he does not know the ages of other family members, P and M. He does accept that P is his brother-in-law, married to an older sister whose age is unknown to him. I find, on balance, that the photograph was taken a short time before it was posted on OA's Facebook account on 13 January 2015 and I am satisfied that P was an adult at this time, being a married man, and the applicant's effort to persuade me that P was a 'boy' was a calculated effort to mislead. I further find, to the requisite standard, that the other males in the photograph were adults at the time the photograph was taken. They are present in a group, are well-dressed, and are of similar height. I find that the appellant has been deliberately vague as to the ages of his relatives, even his brother-in-law, in this photograph in an effort to diminish the fact that he is the tallest person in a group of adults at a time when he asserts that he was 13 years and 4 months old. I find that the appellant knows the ages of these men, deliberately denied such knowledge and is aware that they were adults in January 2015.
223. Though observing my findings as to the age of the other males, I proceed to consider whether there is evidence that aids my holistic consideration of the appellant's age.

Iraq/Turkey border crossing

224. I return to the applicant's evidence as to how he crossed the Iraq/Turkey border. In his initial interview with the Home Office, the applicant confirmed at Q1.18 that '*the smugglers told me to take a 4-year-old boy and say he was my son. There was a family with us and he suggested I say he was my son to help me*' [Emphasis added]. In evidence before me, the applicant confirmed that he showed his passport to officials at the border crossing. As for being asked to say that the 4-year-old boy was his son, the applicant detailed, '*There was a family with us. There was a woman who had 3 or 4 children with her. Once of the children was not hers. She had a man with her. The child belonged to that man ... The smuggler asked me to help the family.*' [Emphasis added]. I observe the change in emphasis as to why the applicant was asked to claim the boy as his own. The second version provided at the hearing as to the applicant being

asked to help the family is incoherent as the child's father was present with the child. On balance, it is much more likely than not that the agent thought the presence of the child would aid the applicant to cross the border into Turkey. However, the striking element of this evidence, on either version, is that both the smuggler and the applicant believed that a border official would be satisfied upon production of the applicant's passport that he was the father of a 4-year-old child. This strongly suggests that the passport did not record the applicant as having just turned 17, as he asserts, because if that were the true position a border official would have to accept that the applicant became a father at around the age of 12.

225. I observe that the applicant is unable to confirm as to whether the passport used to cross the border was genuinely issued or not. I find, on balance, that it was genuine as the intention was to cross the border through immigration control, rather than other means, and the Iraqi authorities would be more likely than not to identify a false Iraqi passport. I observe that it is not the applicant's case that officials at the Iraq/Turkey border were bribed. His evidence is that he passed through using his passport.
226. In evidence before me the applicant stated that the passport was in his name, that he recalled his photograph was in it but that he '*did not look*' to see if the correct date of birth was recorded. I am satisfied that the applicant is not being truthful as to his observing only certain elements of the passport's identity page. I am satisfied to the requisite standard that the passport was genuine and enabled him to travel across both the Iraqi and Turkish borders via official immigration posts. As a genuine passport it contained his true date of birth. Importantly, both the applicant and the smuggler were satisfied that the date of birth detailed in the passport permitted him to pass off the four-year-old child as being his child. I am satisfied that such subterfuge was primarily designed to enable the applicant to cross the Turkish border by hiding the fact that he was a single male. In making such finding, I am satisfied that the applicant was truthful in his initial asylum interview following his arrival in this country when he stated that the boy was to be identified as his son '*to help me.*' The applicant has since sought to change his story because he now realises that his original statement as to the role of the child significantly undermines his evidence as to his age. I find that the date of birth in the passport must have identified him as being at least 20 years of age, resulting in his being 15 or 16 when his 'son' was born, and I am satisfied to the requisite standard that the passport identified the applicant as being older than that age.
227. Returning to Images 7 and 8 of Appendix 2, I have found that the other men in the photograph were adults. On balance, having considered all the evidence in the round, I am satisfied that the applicant was an adult at the time the photograph was taken. It was posted on social media in January 2015. Being generous to the applicant I proceed by assessing him to be aged 18 in January 2015 and accept that

he was born in the month of September. Consequently, he would have been aged 22 when he crossed the Iraq/Turkey border in October 2018. This is an age where the applicant and a smuggler could reasonably believe that an immigration officer would accept that the applicant was of sufficient age to have a 4-year-old son.

Conclusion

228. I have found that the applicant was aged 18 at the date the photograph identified as 'Image 7' and 'Image 8' in Appendix 2 was taken and then posted on social media in January 2015. I therefore find that the photograph of the applicant identified as 'Image 5' and 'Image 6' in Appendix 2 which was placed by OA on a social media account on 8 April 2015 is one taken when he was an adult.
229. In light of my findings above I find, on balance, that if Ms. Brown and Ms. Banelyte had been in possession of the evidence now before me at the time of the residential trip in August 2019 there would have been sufficient safeguarding concerns to result in the applicant not being permitted to attend and share a room with persons under the age of 18.
230. I further find, to the requisite standard, that Ms. Nanton's opinion as to the applicant's claimed age, which she accepts was made in the absence of knowledge of the social media posts before me as well as the wider evidence, would be different in light of the findings made above.
231. Consequent to the findings of fact made above, I find that the applicant's parents did not regularly, or at all, inform him that he was born on 14 September 2001.
232. I find that the appellant's officially issued Hawiye and Jinsiya do not record his date of birth as 14 September 2001 but record his true date of birth.
233. I find that Mr. Ibrahim is not correct as to his recollection of playing in a school football match against the applicant in Iraq. I am satisfied that he has confused the applicant with someone else.
234. Having considered all of the evidence in the round, applying appropriate weight to individual evidence, I find, on balance, that the applicant was born on 14 September 1996.
235. The applicant was 22 years old when he crossed the Iraq/Turkey border in October 2018.
236. The applicant was aged 22 when he arrived in this country on 21 March 2019.
237. Having entered the United Kingdom as an adult I find that the applicant was an adult when the following photographs were taken in this country and placed on

social media accounts: 'Image 3', 'Image 4', 'Image 5', 'Image 6', 'Image 7', 'Image 8', 'Image 9', and 'Image 12' of Appendix 1; 'Image 2', 'Image 3' and 'Image 4' of Appendix 2.

238. The applicant was aged 22 on 2 September 2019, the date of the age assessment.

239. The applicant is presently aged 24.

240. In all of the circumstances, this is a matter where an experienced social worker could, as in this case, be confident that the person in front of them is an adult and be permitted to conduct a short-form age assessment without concern as to margin of error.

Summary of Decision

241. It is declared that the applicant's date of birth is **14 September 1996**

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure Upper Tribunal Rules 2008

242. The Tribunal confirms the anonymity direction of Andrew Baker J in the following terms:

Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the applicant, his family members and the witnesses 'AA' and 'BB'. This direction applies to, amongst others, the applicant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the applicant from the contents of his protection claim being publicly known.

Signed: *D O'Callaghan*

Upper Tribunal Judge O'Callaghan

Date: 21 December 2020



JR/5881/2019

**Upper Tribunal
Immigration and Asylum Chamber
Judicial Review Order**

The Queen

on the application of

**MW
(Anonymity Direction Made)**

Applicant

v

CROYDON LONDON BOROUGH COUNCIL

Respondent

Before Upper Tribunal Judge O'Callaghan

UPON the fact-finding hearing on the Applicant's application for judicial review held on 20th - 23rd October 2020 and 24th November 2020

UPON hearing Ms. Antonia Benfield for the Applicant and Mr. Joshua Swirsky for the Respondent

AND UPON judgment being handed down at Field House, London, on 21 December 2020 with no attendance by the parties.

IT IS DECLARED THAT the Applicant's date of birth is 14th September 1996

IT IS ORDERED THAT

- (1) The application for judicial review is dismissed.
- (2) The order for interim relief made on 11th September 2019 is hereby discharged.

- (3) The Applicant will pay the Respondent its costs of the judicial review and proceedings in the Upper Tribunal. This order is not to be enforced without the permission of the Upper Tribunal and subject to the costs protection provided by section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- (4) There will be a detailed assessment of the Applicant's publicly funded costs.

Permission to appeal to the Court of Appeal

- (5) No application was made for permission to appeal. I refuse permission to appeal to the Court of Appeal in any event because I am satisfied that there is no arguable error of law in the Tribunal's decision.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Dated: 21 December 2020

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on: 21/12/2020

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an applicant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).