In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

JR/670/2020

In the matter of an application for Judicial Review

The Queen on the application of

AM
(by his Litigation Friend, Roxanne Nanton of the Refugee Council)

Applicant

and

WIRRAL METROPOLITAN BOROUGH COUNCIL

Respondent

ORDER

BEFORE Upper Tribunal Judge O'Callaghan

HAVING considered all documents lodged and having heard Ms. A Benfield of counsel, instructed by Osbornes Law, for the applicant and Ms. C Rowlands of counsel, instructed by Legal Services, Wirral Metropolitan Borough Council, for the respondent at a hearing held at Field House on 2 and 11 December 2020

IT IS DECLARED THAT:

1. The Applicant's date of birth is 15 December 2003

IT IS ORDERED THAT:

(1) The interim relief order is hereby discharged on the basis that the Respondent will maintain support and accommodation to the Applicant under the Children Act 1989 in accordance with his age.

(2) The Applicant, and the witness MM, shall not be identified either directly or indirectly.

(3) The Respondent shall pay the Applicant's costs of the claim, to be assessed if not agreed.

(4) There shall be a detailed assessment of the Applicant's publicly funded costs.

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

Dated: **8 January 2021**

The date on which this order was sent is given <u>below</u>

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date):

Solicitors:
Ref No.
Home Office Ref:

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 point 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 appellant'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).

Case No: JR/670/2020

In the Upper Tribunal
(Immigration and Asylum Chamber)

Field House
Breams Buildings
London, EC4A 1WR

8th January 2021

Before
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

AM
(BY HIS LITIGATION FRIEND, ROXANNE NANTON)
(ANONYMITY DIRECTION MADE)

Applicant

-and-

WIRRAL METROPOLITAN BOROUGH COUNCIL

Respondent

Antonia Benfield (instructed by Osbornes Law) for the Applicant
Catherine Rowlands (instructed by Legal Services, Wirral Metropolitan Borough Council) for the Respondent

Hearing dates: 2 and 11 December 2020

JUDGMENT

Judge O'Callaghan:

The Tribunal confirms the anonymity direction 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 or the witness MM. 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 and MM from the contents of their protection claims being publicly known.

Introduction

1. By an order dated 21 January 2020 (CO/4712/2019) Dan Squires QC, 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 and transferred the claim to the Upper Tribunal.

Issues

2. The applicant seeks a declaration that he was born on **15 December 2003**.

3. The primary issue for me to resolve in these proceedings is the applicant's age, which is in dispute between the parties. In resolving this issue, I am required to identify the applicant's age at the date of both the respondent's age assessment, dated 19 August 2019, served on 12 September 2019, and its addendum assessment, dated 8 November 2019, served on 12 November 2019.

4. The applicant asserts that he was born on 15 December 2003 and so was aged 15 at both the date of his entry into this country and at the date of assessment, aged 16 at the date of the hearing before me and is presently aged 17. He has been consistent as to his claimed date of birth throughout.

5. The respondent assessed the applicant to be aged over 18 and likely to be aged 20.

6. At the hearing in early December 2020, Ms. Rowlands confirmed the respondent's position to be that the applicant was likely to be aged 21.

Anonymity

7. By his order of January 2020, Dan Squires QC issued an anonymity direction and neither representative before me sought to set it aside.

8. 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 witness MM, because he is a young person who has been granted international protection and further his identification will lead quickly to the identification of the applicant. I consider such interference with open justice is necessary and proportionate in the circumstances: *A v. BBC* [2015] AC 588, at [29]-[30].

9. I confirm the direction in relation to both the applicant and MM above.

Litigation Friend

10. Upon proceedings being commenced an application was made on behalf of the applicant that a Litigation Friend, Ms. Roxanne Nanton, an employee of the Refugee Council, act on his behalf consequent to him being a minor. Ms. Nanton continues to act as the applicant's Litigation Friend and attended the hearing before me.

Background

11. The applicant states that he is ethnically Aranga and so a member of an African identity ethnic group primarily located in western Darfur, Sudan. His primary language is Aranga, and he speaks Arabic as a second language. I observe that the applicant required a North Sudanese Arabic Darfur interpreter for the purpose of the hearing before me and I find, on balance, that he is of Aranga ethnicity, hails from Darfur, Sudan and is a Sudanese citizen.

12. He asserts that his mother informed him as to his age and date of birth when he was aged 5. He recalls sitting together with his mother at home and discussing family life when she informed him of these facts.

13. He asserts that he left his village in 2015, when aged 11, following attacks by the Janjaweed, a Sudanese Arab militia. He was aided in leaving the village by his maternal uncle and travelled initially to Libya, where he was captured and required to work on a farm for approximately 6 months. Upon his release he then proceeded to work on another farm for 3 months. He then travelled by boat to Italy, proceeding to travel onwards to Spain, France and Belgium before entering the United Kingdom on 7 February 2019.

14. Consequent to his entry into this country, the applicant was issued by the Home Office with a form IS.97M recording that he had detailed his date of birth as being 15 December 2003. The Home Office disputed the applicant's age, recording it as 1 January 1996 for the purpose of his asylum claim, thereby identifying him to be aged 23 in February 2019. I observe that such assessment was undertaken by means of the application of a policy detailed at para. 55.9.3.1 of the Home Office's Enforcement Instructions and Guidance that was later confirmed by the Court of Appeal to be unlawful: *BF (Eritrea) v. Secretary of State for the Home Department* [2019] EWCA Civ 872, [2020] 1 All E.R. 396.

15. The applicant was referred to the respondent as a putative child in their area seeking support and accommodation under the Children Act 1989 ('the 1989 Act').

'August decision'

16. An age assessment was conducted on behalf of the respondent by two social workers, Mr. Noon and Mr. Rooney, over the course of a single session on 12 July 2019 ('the July meeting'). The purpose of the assessment was to establish the applicant's chronological age.

17. The appropriate adult at the meeting on 12 July 2019 was Ms. Crockett who was employed by Active 8 Support Services, an organisation that works in partnership with local authorities to help young people and families.

18. An Arabic speaking interpreter attended the meeting. They have not been identified by the respondent as being conversant with Darfur dialect.

19. The meeting lasted two hours, with a ten-minute break.

20. An assessment decision was completed on 19 August 2019 ('the August decision') and was provided to the applicant's solicitors by email on 30 August 2019.

21. The assessors were satisfied that the applicant understood the concept of the passage of time as well as the concept of days, months and years. The assessment records that the applicant did not go to school in Darfur, though he attended a mosque where he was taught about the Qur'an. It is recorded that the applicant could not read or write at the date of assessment.

22. The applicant was identified, *inter alia*, as being 5' 5" in height and weighing 59 kg (9 st 2 lbs), which was said to be an appropriate weight for a male of such height. As to physical appearance the assessment observed that the applicant '*has features which are associated with post-pubescent males*' identified as '*strong and developed facial features*', '*developed and 'worn' hands*' and '*Adam's apple*'. The assessors adversely relied upon the applicant's appearance and demeanour.

'September meeting'

23. Mr. Noon shared the outcome of the age assessment with the applicant on 12 September 2019 ('the September meeting'). Mr. Rooney did not attend this meeting. Ms. Geggie, from Active 8, attended and acted as the appropriate adult.

24. An Arabic speaking interpreter attended the meeting. Again, they have not been identified as being conversant with Darfur dialect.

'November decision'

25. A letter before action was sent to the respondent challenging the lawfulness and procedural fairness of the age assessment, observing that there had been a

failure to put adverse matters to the applicant by means of a 'minded-to process'.

26. The respondent agreed to conduct a further interview with a view to permitting the applicant to address inconsistences within his account.

27. A follow-up meeting with the applicant was held on 7 November 2019 ('the November meeting') with Mr. Noon and Mr. Rooney attending. Ms. Crockett acted as the applicant's appropriate adult.

28. Again, the Arabic speaking interpreter who attended the meeting has not been identified as being conversant with Darfur dialect.

29. The meeting last one hour and fifteen minutes.

30. The respondent maintained its decision on age by means of supplementary, or addendum, reasons dated 8 November 2019 ('the November decision'), which was provided to the applicant at a meeting held on 12 November 2019. Adverse reliance was again placed upon the applicant's appearance and demeanour. The assessors also relied upon inconsistencies in the applicant's account of his personal history, identified as a changing story.

Referral to the NRM

31. The respondent referred the applicant to the National Referral Mechanism ('NRM') observing that he may be a victim of modern slavery. Upon undertaking the preliminary sift, the Competent Authority determined by a decision dated 15 May 2020 that there were reasonable grounds to believe that the applicant has been a victim of modern slavery. The second stage of identification has not been undertaken and the applicant awaits a conclusive grounds decision.

The legal framework

32. Thornton J observed in *AB v. Kent County Council* [2020] EWHC 109 (Admin), [2020] P.T.S.R. 746, at [18]:

> 'The law requires a wholly different treatment of young asylum seekers depending on whether they have passed their eighteenth birthday. This is of course in itself an entirely artificial and inflexible dividing line, bearing little relationship to human reality but it is built into the structure of not only domestic law but international law in this area and it has to be applied as best as can be (Underhill LJ in *BF (Eritrea) v Secretary of State for the Home Department* [2019] EWCA Civ 872 at §52). Thus: a number of rights and obligations under the Children Act depend upon the distinction. Local authorities are under a general duty to safeguard and promote the welfare of children within their area who are in need (section 17). This

> includes the provision of accommodation (s20). 'Child' means a person under the age of eighteen (s105). It is unlawful for the Secretary of State to detain asylum seeking children.'

33. There is no statutorily prescribed way identifying how 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 child or 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 1689 (Admin), [2003] 4 All ER 280 ('Merton'). Relevant requirements have been considered in several judgments, including *VS v. Home Office* [2014] EWHC 2483 QB, at [78], and were recently summarised by Thornton J in *AB v. Kent*, at [21].

34. 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 must be one of assessment. This involves the application of judgment on a variety of factors and however difficult it may be to resolve the issue it admits of only one answer.

35. 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 for the purposes of the 1989 Act 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 [37] - [38].

36. 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 a court or tribunal 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. Consequent to the claimed age, I proceed to consider whether the applicant was a young person aged under 18 at the date of assessment.

37. 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. 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].

38. 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 1989 Act 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 or young person: *R (FZ) v. London Borough of Croydon* [2011] EWCA Civ 59; [2011] P.T.S.R. 748.

39. 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].

Analysis of the evidence

Consideration of evidence

40. The parties filed four lever arch files with the Tribunal. The respondent sought for two files, '3' and '4', not to be admitted on the grounds of relevance. Having considered their contents and observing that a holistic approach was to be taken to the question to be answered, I admitted the evidence contained within those files on the first day of the hearing.

41. I have had the benefit of considering the totality of the evidence upon which the parties seek to rely, whether expressly referred to me or not at the hearing. The applicant attended the hearing on the first day of the hearing and gave evidence. Mr. Noon, Ms. Geggie, Ms. Wenton and MM gave oral evidence before me remotely. I have considered the two witness statements of Mr. Taylor, the applicant's solicitor. In addition, I have considered copies of various care and pathway plans, Looked After Child reviews and a needs assessment relating to the applicant.

42. I have also been aided by the very helpful submissions provided by counsel who attended Field House on both days of the hearing.

43. 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 hearing and no complaint was made.

44. For the avoidance of doubt, before I embark upon the search for an answer to the question now to be addressed as to the applicant's age and date of birth, I confirm that I have done so without any 'predisposition' that the applicant is or is not a young person.

Vulnerability

45. 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 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.

46. I note that the respondent, through Ms. Rowlands, accepted at the hearing that there was no reason to doubt that the applicant had been ill-treated and trafficked in Libya. Such acceptance was appropriate in the circumstances, as the applicant has been consistent as to the events that occurred in that country.

Age assessment

47. The respondent relies upon the two decisions identified above and the evidence of Mr. Noon, contained within three witness statements. Mr. Noon presented oral evidence at the hearing. No witness statement from Mr. Rooney has been provided by the respondent, though I have read copies of notes authored by him in relation to the July and November meetings.

48. I observe in passing that whilst there is no set format for a written decision in an age assessment, the use of paragraph numbers would be beneficial for those reading it.

ADCS Guidance

49. The '*Age assessment guidance to social workers and their managers on undertaking age assessments in England*' was published by the Association of Directors of Children Services in October 2015 (the 'ADCS guidance'). Section 7 of the Local Authority Social Services Act 1970 is not applicable to this document, but as observed by Lavender J when considering its relevance to local authorities in

the conduct of age assessments in R (S) v. London Borough of Croydon [2017] EWHC 265 (Admin), at [41] and [50], the authors of the guidance possessed considerable experience in the field.

Fairness of the age assessment process

50. The applicant has challenged the fairness of the age assessment process undertaken by the respondent in his matter, noting the confirmation by the High Court in AS v. London Borough of Croydon [2011] EWHC 2091 (Admin), at [19], that the procedural safeguards set out in Merton and FZ are the 'minimum standards' of fairness.

(i) Experience of the assessing social workers

51. Mr. Noon is an advanced social worker and has been working in this field for approximately 8 years. By email correspondence dated 28 November 2019 the respondent confirmed to the applicant's solicitors that Mr. Noon had completed a day's training in respect of age assessments prior to the applicant's assessment and that he had worked or been involved with five asylum-seeking individuals over the course of the previous 24 months.

52. I observe the summary grounds of defence and to the extent that it asserts that Mr. Noon has carried out age assessments throughout his time as a social worker. I find such assertion to be contradicted by Mr. Noon's own evidence at the hearing where he confirmed that this was the first age assessment he had conducted.

53. There is no written statement from Mr. Rooney detailing his professional background. The correspondence of 28 November 2019 confirms that he completed age assessment training in February 2018 and had undertaken two previous age assessments prior to conducting the applicant's assessment.

54. The applicant accepts that Mr. Rooney has some experience in age assessment but complains that Mr. Noon was clearly inexperienced as to the process. I am satisfied that the respondent was entitled to rely upon Mr. Rooney's experience and that the process permits a social worker who has experience of working with young asylum seekers the opportunity to participate in an assessment for the first time with a colleague experienced in undertaking age assessment. There is no merit to the applicant's challenge to the overall assessment on this ground.

55. However, I address below Mr. Noon's decision to conduct the September meeting on his own.

(ii) Adherence to the minded-to process

56. The August decision runs to 16 pages and covers topics ranging from 'physical appearance and demeanour' and 'social and emotional presentation' to the applicant's family history and his journey to this country. Consideration is given to the applicant's health and whether he possesses independent living skills. The assessors expressly consider documentary evidence and other sources of information.

57. Several adverse observations were drawn, for example upon demeanour and emotional presentation. The applicant was not informed as to such observations during the course of the meeting. This is not unusual, as assessors will discuss views and observations after a meeting and through such process their opinions will coalesce.

58. Neither assessor signed the August decision to formally confirm its contents. The same approach was subsequently adopted with the November decision.

59. It is not said by the respondent that the assessment was a short-form assessment, namely one where a point had been reached where an experienced social worker considered they had conducted sufficient inquiries to be confident that the person in front of them was 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: *AB v. Kent* at [35]. Such decision is usually, but not always, reached on the sole basis of appearance.

60. As a short-form assessment was not undertaken, the respondent was required to permit the applicant a fair opportunity to respond to the assessor's provisional view. I observe Stanley Burnton J's conclusion that such step is mandatory in *Merton*, at [55]:

> '55. ... If the decision maker forms the view, which must at that stage be a provisional view, that the applicant is lying as to his or her age, the applicant must be given the opportunity to address the matters that have led to that view, so that he can explain himself if he can. In other words, in the present case, the matters referred to [above] should have been put to him, to see if he had a credible response to them …'

61. The High Court confirmed in *VS*, at [78 (13)]:

> '(13) It is "axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him": FZ per Sir Anthony May P at [21]. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant "with their conclusions without first giving him the opportunity to deal with the adverse points": [22]. See also J per Coulson J at [15]; AAM per Lang J at [94(c)]; and Durani per Coulson at [84–87] (in particular, at

> [84]: "Elementary fairness requires that the crucial points which are thought to be decisive against an applicant should be identified, in case the applicant has an explanation for them").'

62. A question for me is whether the August decision identified the 'provisional' view of the assessors, or whether a conclusive, or final, decision had been reached as to the applicant's age. The decision was shared with the applicant's solicitors on 30 August 2019, though not shared with the applicant at this time. Having read the August decision with care I note that it is written in a manner consistent with a conclusive opinion having been reached, rather than a provisional view, as evidenced by the approach adopted in the concluding 'analysis' section, which is written in the first person:

> '**I do not believe** that [the applicant] is the age he claims to be. He looks older. Further, his account of coming to the UK is not coherent, detailed or entirely credible. There are gaps. Given his demeanour, and his ability to answer other questions, these gaps suggest selective, rather than lost, memory.
>
> It is possible that [the applicant] left Sudan as a child (that is, under 18), that his journey took the length of time he claims, and that it took in the countries and the route he describes. However, it is odd that, if he was an unaccompanied child in each of the countries where he was encamped, that he has not previously been assessed and documented as a child. **I do not believe** that [the applicant] left Sudan at the age he said he did, or in the circumstances he described. **I believe** it more likely that he left Sudan when he was older, closer to 16. This will put [the applicant's] age at 20, which is more consistent with his physical appearance and demeanour.' [Emphasis added]

63. I observe the confused approach adopted on behalf of the respondent by the assessors both in the run-up to the September meeting and thereafter. Mr. Noon informed me that he '*wrote the assessment primarily for internal discussion*' though this evidence is undermined by the fact that it was sent to the applicant's solicitors eleven days later. It is not the respondent's case that the decision was served in error. Importantly, such service was not accompanied by clear confirmation that it was a provisional view. Rather, confirmation was given to the solicitors that the outcome of the assessment had not yet been shared with the applicant. This is suggestive of a conclusive decision having been reached.

64. What was the purpose of the September meeting? Mr. Noon provided very confused evidence before me as to the purpose of the meeting, which was held in the absence of Mr. Rooney. Mr. Noon explained to me that there was no requirement for Mr. Rooney's attendance because the purpose of the September meeting was to see the applicant again and '*to secure further information, to inform him of the conclusion*'. When seeking to expand upon his answer, Mr. Noon detailed that '*the meeting was more to share information than*

information gathering'. The latter answer is suggestive of the meeting being one where the decision was to be conveyed to the applicant, rather than the adoption of the minded-to process. However, the expanded answer sits ill-at-ease with the notes authored by Mr. Noon in respect of the September meeting. The first page of the handwritten notes details the 'agenda' for the meeting. Included are the following eight questions:

1) Map of Sudan – point to where from
2) Scarification – tribal scars
3) Have you ever been to Belgium
4) Tell me again when and how you left Sudan
5) Tell me again what abuse you suffered
6) Where [Were] you tortured in Libya
7) Are your parents still in Sudan
8) Are you on Facebook?

65. On the note a tick has been placed after the first seven questions.

66. The subsequent handwritten notes of the September meeting detail answers given by the applicant to the questions identified by Mr. Noon's agenda and, in addition, as to his attendance and studies at college in this country. A confirmatory note that a map of Sudan was shown to the applicant is accompanied by a tick. There is reference to the answer 'no' in relation to a question as to whether the applicant had ever been to Belgium. Information was provided as to how the applicant travelled from Sudan to Libya and his subsequent detention. Details were also given by the applicant as to the torture inflicted upon him in Libya, as to his parents continuing to reside in Sudan and as to his scarification. The applicant was asked questions as to his presence on social media.

67. This is suggestive that despite the appearance of a conclusive approach having been adopted in the August decision, accompanied by the failure to confirm to the applicant's solicitors that it was a provisional view, Mr. Noon intended for the September meeting to be a form of minded-to meeting but conducted in the flawed manner by which he understood such process to be undertaken. He was unaware as to the basic procedural requirements of such process.

68. I find that the approach identified by the notes, and the questions asked at the September meeting, establish to the requisite standard that Mr. Noon had sought at the meeting to secure clarification from the applicant in respect of certain issues but intended to serve the August decision in any event, as confirmed by the contents of his handwritten agenda note following his questions:

'+ copy of assessment:

My opinion is that you are <u>not</u> the age you claim to be.

I believe you are older

I believe you are probably older than 18

That is the outcome of my assessment

Interpreter read conclusion

Advise right to complain or challenge

Copy sent to solicitor?

Notify Home Office'

69. Such approach is not consistent with the requirement that the applicant be fairly permitted the opportunity to deal with the adverse points.

70. I find, on balance, that the failure to identify the August decision as being a provisional view, both by its content and when it was served upon the applicant's solicitors, was because an agreed conclusion had been reached as to the applicant's age by the assessors in their August decision. I am satisfied that Mr. Noon understood that the applicant could be asked to clarify identified issues at the meeting when he was informed as to the decision but lacked sufficient experience and understanding of the process to comprehend that the meeting was part of the assessment process and any information provided by the applicant was to be fairly considered. His lack of understanding that the meeting was part of the assessment process is evidenced by his belief that Mr. Rooney was not required to attend when further questions were asked of the applicant for clarification purposes.

71. I further find that by means of his evidence before me Mr. Noon sought to downplay the substance and nature of the meeting because he was subsequently aware that he ought not to have conducted a minded-to meeting on his own. I find that Mr. Noon was not being accurate to me when asserting that the meeting was '*more to share information than information gathering*'. I find that preparation was undertaken to seek clarification prior to service of the decision at the same meeting. Indeed, the questions identified above are grouped under the sub-heading 'clarifications'. The approach adopted by Mr. Noon was a very confused one. He sought by his agenda to ask questions but had predetermined that he was going to inform the applicant as to the conclusion arrived at in the August decision. I find that such confusion was rooted in his inexperience as to the process. He exhibited an understanding of some elements relevant to various stages of the process, but the absence of detailed knowledge resulted in significant irregularity.

72. At the September meeting Mr. Noon proceeded to ask the applicant his clarification questions, in the absence of Mr. Rooney. Such action was undertaken by a social worker inexperienced in age assessment, in the absence of his more experienced colleague, contrary to the mandatory requirement that assessments, including meetings, be undertaken by two social workers. The September meeting cannot properly have been considered by Mr. Noon, or the respondent, to meet lawful procedural requirements in circumstances where Mr. Noon had sole conduct of the minded-to meeting. I find that the approach adopted at the September meeting was impermissible and constituted material irregularity.

73. I conclude that the subsequent service of the August decision at the September meeting was intended to confirm the respondent's decision as to age, despite the second social worker not having heard the applicant's observations at the meeting and therefore not considered them. Such process was fundamentally unfair as it failed to comply with the minimum standards of fairness established by *Merton*.

74. The next question is whether the November meeting and the subsequent November decision cured the identified procedural failings. I observe that following an exchange of pre-action correspondence, the respondent offered to conduct a further meeting for the purpose of '*re-addressing inconsistencies within [the applicant's] account'* and to give the applicant *'a further interview in order to clarify any matters he says were not sufficiently dealt with historically*'.

75. The November decision records several questions asked by the assessors and the answers provided. Upon reading the questions I conclude that they closely followed Mr. Noon's agenda for the September meeting. The same issues were again covered, save for on this occasion no questions were asked as to scarification.

76. The November decision details not only the information provided at the November meeting, referred to as the 'follow-up meeting', but also that provided at what is identified as the 'follow-up visit' in September 2019. The purported difference between the two terms used is not explained, but I am satisfied that it was an effort not to identify the September meeting as constituting a flawed minded-to meeting.

77. The decision itself is candid as to the information provided by the applicant to Mr. Noon at the September meeting being relied upon by the assessors, despite it having been secured by means of a procedurally unfair meeting.

78. Before me, Mr. Noon explained that he could not recall a specific date or time as to when he first doubted the applicant's age, though he confirmed that doubts started to exist 'after' the initial age assessment meeting. I find that he was not being accurate on this issue. Upon considering his evidence with care, I

am satisfied that he had strong doubts as to the applicant's age consequent to his observation over time as to the applicant's appearance and demeanour and such doubts existed prior to the July meeting.

79. I am satisfied that Mr. Noon sought by his written evidence to diminish the adverse effect of his early assessment of the applicant's appearance and demeanour so as to project to the Tribunal that his position was one of open-mindedness during the assessment process. As observed above, through inexperience he drafted the August decision as conveying the assessors' conclusion rather than identifying it as a preliminary view. I observe that before me Mr. Noon was candid in accepting that by the time of the September meeting, he did not believe the applicant to be the age asserted. Virtually the same topics were covered with the applicant at the November meeting and I find that by the time of this meeting he did not have an open mind as to the applicant's age.

80. Mr. Rooney has provided no evidence as to how he approached the information presented by the applicant at the September meeting, which he did not attend, nor as to how he engaged with Mr. Noon having concluded at the September meeting that the applicant was aged over 18. In the absence of any evidence beyond that of Mr. Noon, I find that the 'minded-to' meeting in November 2019, in which the applicant was asked to provide answers to broadly the same questions that had not persuaded Mr. Noon at the September meeting, was simply a rubber-stamp exercise in approving the August decision and not a genuine exercise of the minded-to process. There was no genuine, open-minded, consideration of the applicant's information or explanation.

81. In the circumstances, the further action undertaken by the respondent of holding the November minded-to meeting and the subsequent issuing of the addendum November decision did not result in a genuine fresh decision that can be considered to have been reached by fair methods. Consequently, the identified procedural impropriety was not cured.

82. I conclude that the age assessment undertaken by the respondent by its decisions of August and November is unlawful by application of unfair procedure in respect of the minded-to process.

(iii) Interpreter

83. The ADCS Guidance details as to the provision of an interpreter at an assessment meeting, at page 20:

> 'Social workers should check thoroughly that the interpreter speaks the correct language and dialect and that the child or young person and the interpreter understand one another properly …' [Emphasis added]

84. The applicant confirmed by means of his witness statement that he had difficulty understanding the interpreter provided at the July meeting because '*he spoke Arabic but his dialect was not clear to me and it certainly was not Sudanese. Sometimes I was not sure what he was asking me and I am unsure if [he] understood me properly either. I remember at the time of the interview, I was asked to sign a form, which I signed because I was asked to by the social workers interviewing me. My solicitors have since then told me that this was a consent form, confirming that I understood the interpreter. This was not made clear to me at the time and had I understood this I would not have signed it.*'

85. Having considered the evidence before me and heard the oral evidence of Mr. Noon I am concerned that insufficient consideration was given by the assessors to the fact that Arabic is the applicant's second language and that there was evidence before the assessors that the applicant was not fluent in the language. I observe that whilst it is possible for local authorities, as well as the Tribunal, to call upon the services of a wide range of professional, qualified interpreters with skills in many languages, it is not always possible to locate and secure the skills of interpreters in particular languages or dialects. Consequently, in such circumstances it is fair and reasonable to seek to conduct an interview in a second or third language if sufficient competence in that language is exhibited by an interviewee. However, when working in a second language care must be taken to ensure that an interviewee sufficiently understands the interpreter provided. Consequent to the duty to act fairly and noting that at age assessment meetings an interviewee will be asserting that they are a child, or young person, it is not sufficient for assessors to state, without more, a simple belief that an applicant understands a second language well enough to communicate and proceed on this basis. Though communication in a second or third language may be adequate as to general everyday conversation it may prove to be inadequate when an interviewee is pressed upon for precision in answers or to address technical matters. Such responsibility to consider the adequacy of interpretation falls upon the assessors throughout the interview(s), not simply at the outset. Consideration should properly be given to the possibility that a child or young person may confirm that they understand the interpreter in a second language at the outset of the interview through a sense of being willing to help the process proceed, or because general everyday conversation was utilized in the introductory conversation and may afterwards be reticent to cause difficulties when problems in interpretation arise during a meeting.

86. In this matter there was potential for the applicant to experience difficulties in conveying information at the assessment meetings because the interpreters booked did not detail themselves as being competent in the Darfur dialect. I am satisfied from hearing Mr. Noon address this issue before me that he did not at the relevant times comprehend the variation in dialect that arises in different areas of the Arabic speaking world, with varying degrees of mutual understanding. I take judicial note that geographically modern Arabic varieties

are classified into five groups: Egyptic, Levantine, Maghrebi, Mesopotamian and Peninsular, and that Arabic spoken in Sudan is similar to Egyptian Arabic, but with some particularities.

87. I observe that the respondent has not taken issue with the applicant's assertion that the interpreter at the July meeting is understood to be an ethnic Kurd, who speaks native Gorani (or Hawrami) as well as Sorani and Arabic. Such linguistic expertise is, on balance, capable of identifying the interpreter as originating from Iraq and a speaker of Mesopotamian Arabic.

88. Upon careful consideration, I find that the applicant did experience difficulties in understanding the interpreter provided at the first meeting and, in such circumstances, it is more likely than not that the interpreter also had difficulties in understanding the applicant. I am mindful, for the reasons detailed below, that the applicant was not a credible witness before me on several issues when aided by a North Sudanese Arabic Darfur interpreter. However, neither party has been able to confirm as to whether the interpreter used at the July meeting was competent in Darfur dialect, Mr. Noon was not alert to the problem at the time of the meeting so as to be aware of any potential problems and I have not been provided with any notes from the appropriate adult. Being mindful as to the ADCS guidance, observing the difficulties that may arise between Arabic-speakers who do not converse in the same dialect and observing that the interpreter was an ethnic Kurd, I accept, on balance, that the applicant did experience the difficulties of which he complains at the July meeting.

89. I find that the respondent's conduct of the July meeting was subject to unfairness in respect of an unsuitable interpreter being used and so care is to be applied when considering any discrepancies or inconsistencies identifiable between the information provided at this meeting by the applicant and that provided by other means. Such care was not undertaken by the assessors when relying upon discrepancies and inconsistencies flowing from information provided at this meeting, when considered with other evidence, and such procedural unfairness unlawfully infected the July and November decisions.

(iv) Failure to address all issues with the applicant

90. A further concern that arises as to November decision is as to whether all relevant concerns were fairly presented to the applicant at the November meeting.

91. An example of such concern is that despite the August decision clearly relying within its 'analysis' or conclusion section that it was 'odd' that if the applicant was an unaccompanied child in each of the countries where he asserts that he was placed in a camp, he had not previously been assessed and documented as a child, the applicant was not asked about this issue at the minded-to meeting. Despite weight being placed upon it in the August decision, the question was

not identified within Mr. Noon's agenda for the September meeting, which was adopted at the November meeting.

92. The November meeting concluded upon the applicant indicating that he had a headache. It is not said in the November decision that the assessors were satisfied that all inconsistencies, discrepancies and other issues that could potentially be clarified had been put to the applicant at this point of time. I observe that no questions had been asked as to scarification, though it was noted on the agenda. If all relevant questions had not been asked, fairness dictated that a second minded-to meeting be held.

93. To meet the required procedural safeguards in this matter it was axiomatic that the applicant be given a fair and proper opportunity to deal with important points adverse to his age which the assessors thought weighed against him. Such points include those identifiable as being relied upon in the 'analysis' section of the August decision. Both issues addressed above were considered adverse to the applicant's assertion as to age, and so fairness required that he be permitted an opportunity to address them. Such opportunity was not provided. The adoption of such approach was not consistent with required procedural safeguards.

94. In evidence before me Mr. Noon confirmed that he had conducted a search and located the applicant's Facebook account prior to the July meeting, and asked the applicant as to whether he had an account at the meeting. Mr. Noon relied upon the applicant answering 'no'. He detailed to me that he had revisited the account consequent to the hearing to look for photographs exhibited by Mr. Taylor. The account appeared to Mr. Noon to be the same as when he first accessed it. By means of his witness statement, dated 27 March 2020, Mr. Noon detailed, at §13:

> '13. … Below are photographs taken from [the applicant's] Facebook account. The dates they were posted accompany each photo. I do not know who the other people are in the second photo. The photos are included here to demonstrate the long-standing existence of the Facebook page, and show his physical appearance from an earlier date. I have not had an opportunity to ask [the applicant] about these photos.'

95. Mr. Noon has considered it appropriate to present three photographs taken from the applicant's Facebook account by means of his witness statement, two of which were uploaded onto the account in May and August 2018, as establishing the applicant's physical appearance '*from an earlier date*'. I am satisfied that Mr. Noon was aware of the May and August 2018 photographs at the time of both the July and November meetings and they were images upon which he placed adverse weight when considering the applicant's stated age, but he took no steps to place them before the applicant and seek his

observations upon them. Such approach is not consistent with required procedural safeguards.

96. I am satisfied that the identified failures are consistent with Mr. Noon's inexperience in conducting an age assessment accompanied by insufficient supervision being provided by Mr. Rooney. The effect upon a child or a young person of being assessed to be an adult is serious. It is therefore essential that assessments are made by experienced, trained social workers and that all safeguards to ensure fairness are in place. Such safeguards as were put in place in this matter have been found wanting. I conclude that too great a responsibility was placed upon Mr. Noon in his first age assessment, without the benefit of adequate supervision. The consequence is that I find the age assessment in the applicant's matter to have failed to abide by the procedural safeguards set out in *Merton* and *FZ*, establishing the 'minimum standards' of fairness, and so was conducted unlawfully.

97. Whilst observing that Mr. Noon undertook the process with good intentions, I am satisfied that he exhibited such inexperience as to the conduct of an age assessment, particularly by his decision to conduct part of it on his own, as to clearly exhibit the reasons as to why an assessment should always involve the continued involvement of a social worker experienced in age assessments to ensure that the fairness requirements of a *Merton* compliant assessment are met.

Respondent's evidence

98. The fact that I have found the age assessment to have been conducted unlawfully does not mean, *per se*, that the applicant succeeds. I am required to consider the question posed in my inquisitorial role, and so consider the rest of the evidence placed before me.

99. In addition to the age assessment, the only evidence upon which the respondent relies is that presented by Mr. Noon. As such evidence is entwined with the assessment decisions of August and November, I consider it in the round, being mindful of the procedural flaws that underpin the assessment decisions.

Demeanour and appearance

100. The assessors addressed the applicant's appearance and demeanour in their August decision, identifying several characteristics associated with post-pubescent males: strong and developed facial features, developed and 'worn' hands, and Adam's apple. As the applicant detailed that he was aged 15 at the date of this decision, and so post-pubescent, such characteristics are not determinative of his age.

101. Without any adequate reasoning, these '*features which are associated with post-pubescent males*' are elevated in the 'analysis' section of the decision, where the assessors conclude their belief that the applicant, '*looks older than his claimed age. He has defined and developed facial and bodily features – his cheek bones, forehead lines, his hands and skin, his Adam's apple.*'

102. An Adam's apple develops during male puberty, usually between the ages of 9 and 14, and so is an unreliable indicator that a person is not, as claimed, aged 15 or that they are aged over 18. The reliance upon 'worn' hands fails to expressly engage with the applicant's evidence that he hails from an agrarian community and, as accepted by the respondent before me, had worked for a period of time in Libya on two farms for some nine months. No explanation is given as to why cheek bones establish the reaching of adulthood in a male or denotes that a young person cannot be aged 15. Such observations, individually or when taken together, are insufficient to aid in an assessment as to whether someone is aged 15, as claimed, or is aged over 18 and could not by themselves enable the assessors to reach the conclusion that the applicant looked older than his claimed age.

103. The development of lines on a forehead may be an indicator of the aging process, often identifying a loss of skin elasticity in adulthood. However, they can be formed consequent to spending lengthy periods of time in harsh sunshine and the assessors were aware that the applicant hails from Darfur. It is clear from their decision that the assessors have not considered alternative reasons for such lines. Indeed, no further detail as to these lines is provided elsewhere within the decision, such as their depth and extent. Little weight can therefore be placed on this observation due to the lack of detail provided, and the failure of the assessors to address the issue with the applicant at the November meeting.

104. Reliance was again placed upon the applicant's appearance in the November decision, though no additional reasons were provided save that the Home Office had documented the same view as reached by the assessors in their August decision, namely that the applicant was an adult.

105. Mr. Noon confirmed by means of his witness statement that the applicant's facial features, their definition and his hands all suggest that he is an adult rather than a child.

106. Senior courts have regularly reminded decision-makers that physical appearance is a notoriously unreliable basis for assessing chronological age. It is particularly so when based upon conjecture as to what attributes may or may not be possessed by a child or young person hailing from a different region of the world, as it may well be influenced by unintentional confirmation bias. I further observe that the applicant's appearance was not considered to be so marked as to justify a short-form age assessment. I conclude that the evidence

relied upon by the respondent as to the applicant's appearance is wholly incapable of sustaining the weight placed upon it.

107. Consideration is given by the assessors to the applicant's demeanour in both decisions. In the August decision the following is observed:

> '[The applicant] is quietly spoken, and has a pleasant and mild demeanour …
>
> He reciprocates smiles and makes good eye contact. He is not particularly effusive in his speech (a man of few words) or expressive with his facial expressions or body language. He will sit still during meetings, often clasping hands (out of comfort or habit, rather than anxiety).
>
> He does not fidget or twitch but is able to sit calmly. He was happy to continue the age assessment without a break (although one was taken).
>
> He has always presented as emotionally calm – no negative emotions were observed. There were no signs of distress or upset. There were no signs of fear or anxiety. There were no signs of frustration at any questioning.'
>
> …
>
> '[The applicant] does not profess any negative feelings or emotions. He describes himself to be well. He does not recount any part of his journey with negativity (whether verbally or by change of demeanour). He describes the journey to the UK and his early life freely (although with limited narrative description). There is little or no darkness to his accounts or description. They contain little detail.
>
> [The applicant's] presentation does not suggest any active grief or similar emotion as regards his experiences. He says he left Sudan when he was 11 without his parent's knowledge, matter-of-factly. He showed no emotion (whether verbally or by his demeanour) when recounting the separation. When asked if he was abused, mistreated or exploited during his journey, he said no.
>
> His health assessment identifies the possibility of post-traumatic behaviour but there is no evidence of this in presentation, demeanour, or interactions to date. If anything, he presents as a pleasant, balanced and well-adjusted individual.'

108. I have found above that the July meeting was affected by procedural unfairness consequent to the use of a Mesopotamian Arabic speaking interpreter.

109. In the analysis section of the July decision, the assessors detailed:

> '[The applicant] was relaxed when answering questions. He shows no signs of nervousness or anxiety. However, he is, perhaps, a naturally shy

> person. He gave few specific details or detailed factual accounts. This could be poor memory; it being noted that trauma is believed to affect memory. That said, he did not present as unduly inhibited (by shyness, for example) or unduly impaired (by reason of trauma or other impact). He is able to recall information. The lack of detail undermined the cogency of his account. It was vague.
>
> …
>
> I do not believe that [the applicant] is the age he claims to be … Further, his account of coming to the UK is not coherent, detailed or entirely credible. There are gaps. Given his deameanour, and his ability to answer other questions, these gaps suggest selective, rather than lost, memory.'

110. In the November decision, the assessors again relied, in part, upon the applicant's demeanour observing, *inter alia*:

> 'His demeanour suggests that he is older: he possesses a placid personality, making good eye contact. he shows no sign of nerves, anxiety or stress - he has a calmness which is suggestive of maturity, rather than the awkwardness and labile emotions of adolescence. This impression of [the applicant] has been a consistent one through 5 months or so of interaction with him.'

111. By means of his witness statement Mr. Noon details, at §§6-10:

> '6. However, it was not just his physical features that made me believe he was an adult. His demeanour was not that of a teenager – typical signs of which might be (amongst others) independence and identity seeking, variable emotions, conflictual, rebellious, boundary testing, impulsive, sexually curious, social curiosity and experimentation. He shows no signs of any of these. On the contrary, he is placid and non-conflictual. Perhaps these characteristics are indicative of immaturity, however, if so, I would associate them more with pre-adolescence (the 8-12 age group, say).
>
> 7. He is, it would appear, a naturally respectful person. This could be indicative of being young - respecting elders, 'speaking when spoken to' - but the way he holds himself with adults, his body language, eye contact, tone, pitch, pace at which he speaks, vocabulary, suggest some self-assuredness. On balance, I believe him to be a shy adult, who can conduct himself appropriately in formal settings, without being overwhelmed or panicked (as a child might be).
>
> 8. I am also struck by how little his journey from Sudan, and his experiences along the way, appear to have affected him, or how little (at least) they show on the surface. If he was the age he said he was when he left Sudan, and the ages he would then have been along his journey, I would expect. A greater impact. He says he was aged

> between 11 and 15 along this journey - a key time of development for young people, especially in terms of psychosocial maturity.
>
> 9. [The applicant] appears to have taken his experiences in his stride. [The applicant] rarely shows any emotion - in fact, I cannot recall any single example. Even when talking about being separated from his family, there is little emotion. No tears or other signs of sadness, no anger, outbursts or evidence of emotional strain.
>
> 10. [The applicant] might have remarkable resilience, his trauma and emotions might be hidden, buried or dormant, he might have strong personal or cultural inhibitions about expressing feelings. However, he has shown no signs of any frailty or ill effect on him. I find this surprising. An alternative explanation might be that he was older when he left Sudan, well on his way to being an adult (if not already an adult), more emotionally developed and resilience, therefore better equipped to take on the journey he did.

112. I observe that in the initial health assessment, dated 25 June 2019, Dr. Vardak records the applicant as confirming that he was abused on his journey to the United Kingdom and having stated in previous interviews that he was very much disturbed by the abuse. The respondent has accepted that the applicant was ill-treated and trafficked in Libya.

113. I find that Mr. Noon has adopted a very narrow approach in his consideration of the applicant's expression of emotion. In answer to examples of disgruntlement and complaint identified by Ms. Benfield, Mr. Noon explained that these were verbally expressed frustrations, not emotional ones. I considered the effort to forensically differentiate such acts to be informative when undertaking my assessment, in circumstances where frustration is identifiable as a common emotional response related to anger and disappointment.

114. Mr. Noon's effort to shore up his assessment as to the applicant not showing emotion in his presence was consistent in his evidence before me. Ms. Benfield gently pushed Mr. Noon as to the accuracy of his general observation and asked him as to an interview preparation note completed in relation to the July meeting in which the answer 'Yes' was circled in response to the question 'Is the interviewee showing any signs of distress, anxiety or discomfort?' I note that 'distress', 'anxiety' and 'discomfort' are emotions. I was informed by Mr. Noon that the wrong answer had been circled. Even though some 16 months had elapsed from the July 2019 interview he informed me that he could remember the scene and if the applicant was experiencing distress and discomfort this would have caused discussion and subsequent delay in the interview. I remind myself that Mr. Noon and Mr. Rooney are experienced social workers who understood the importance of undertaking their interview preparation checklist with care. I find, on balance, that I prefer the note taken by the assessors on the day of the meeting as being accurate. Whilst the

applicant may not have shown such distress or anxiety as to delay the start of the meeting, or cause the appropriate concern, I am satisfied that he was exhibiting understandable discomfort, anxiety and/or distress which was noted by the assessors on the day. I further find that Mr. Noon is prone to shaping his evidence as to events to adapt to his general view of how he believes things to be.

115. I have considered Mr. Noon's evidence with care, observing his professional expertise as a social worker. It is a professional observation made during the course of several meetings and I therefore place some weight upon his observation as to demeanour, though for the reasons detailed above it does not enjoy significant weight. I further observe his acceptance in answer to questions from Ms. Benfield that persons who survive torture may not show emotion and that children can adopt avoidance behaviour which can be interpreted as being vague or evasive.

Scarification

116. The August decision observed scarification present upon the applicant's face:

> 'According to a support worker at Active 8 (the organisation that is currently accommodating and supporting [the applicant]) he has markings to his face: '*I have probably only noticed them as I am aware of other young Sudanese boys we have with them and these different markings can often distinguish between tribes. They are what looks like horizontal slice marks down the sides of his temples next to his eyes, there appears to be about 8 and they are approx. ¾ cm in length, but this varies. [The applicant's] mother tongue/ tribal language is Aranga so this must be the tribe he is from, there is very little online about this specific tribe or its customs, although it does confirm that this is a tribe within Darfur.*'
>
> This is possibly evidence of 'scarification', the practice of scratching, etching, burning/ branding, or superficially cutting designs, pictures, or words into the skin as a permanent body modification. This is not uncommon practice in certain parts of Africa (including Sudan) and is often associated as part of the ritual progression into 'manhood'.'

117. The applicant informed the assessors at the November meeting that the markings on his face were tribal, and he received them when he was a baby, aged under 1. He did not know what they signified.

118. The parties agreed that the applicant's scarification was not a matter that could positively help me in my assessment because the parties had been unable to locate any evidence identifying the cultural circumstances in which the Aranga undertook scarification. This was an appropriate approach to adopt at the hearing. However, when reading the August decision, I observe that adverse reliance was placed upon the scars, insofar as they suggested the applicant's evidence as to when he left Sudan was not accurate. The '*possibly evidence*'

identified earlier in the assessment decision is elevated within the analysis section as follows:

> 'He has what appeared to be tribal scars on his face. Their existence likely corroborate his place of origin. Scarification is a practice is varied but is often used to mark a child's progression into manhood. This would likely be around the age of 12 to 13.'

119. Whilst being placed in the analysis section no firm conclusion is expressly drawn as to when the applicant's scarification occurred. A general observation is made. However, I find that upon reading this section of the analysis it is implicit that adverse reliance is placed upon the existence of the applicant's scars because it is noted that it 'would likely be' that scarification occurs 'around the age of 12 to 13'. It can reasonably be read that this observation forms one of several bases for the finding later in the section that the applicant left Sudan at an age much older than 11. I observe that the approach adopted in the analysis section is singularly unhelpful where clear reasoning is expected to be provided as to whether an issue is relevant, or not, to the assessment.

120. The approach adopted to this issue is of concern because it is based upon a narrow understanding of scarification. I am satisfied that scarification is linked by the assessors with ritual progression into manhood, with no consideration being given to other basis for scarring in sub-Saharan Africa. Consequently, the assessors proceeded on the assumption that it is a rite of passage ritual identified as being likely to have occurred around the ages of 12 to 13. Scarification is an issue that is on occasion considered by this Tribunal in respect of establishing tribal affiliation in international protection claims and I take judicial note that amongst some sub-Sahara African indigenous groups, it is inflicted upon young children as a means of 'hardening' consequent to a belief that any physical and emotional stress exerted on young children will allow them to withstand physical and mental strain in later life. This process is undertaken early in a child's life. Amongst other groups, scarification is a process undertaken during puberty or when entering adulthood. Many groups use such scarring to exhibit tribal allegiance. Consequently, the applicant's evidence that he was scarred when a baby is as consistent with established practice as instances of members of some groups being subject to scarring as a rite of passage.

121. Both parties accept that there is presently no available evidence written in the English-language as to the use of scarification by the Aranga. In the circumstances, I find that the applicant is truthful as to the scars being inflicted whilst he was a baby, and so applied in the south-Saharan societal manner of 'hardening' a young child to the stresses of life, rather than as a rite of passage accompanying the transformation and progression from one developmental phase to another, which I take judicial note usually occurs at puberty in several south-Saharan societies. His evidence as to such scarification, identified as being horizontal slice marks down the sides of his temples next to his eyes,

being consistent with those of his fellow villagers, and such marks not being highly visible or noticeable, strongly suggest that they were tribal markings cut when he was very young. In the circumstances, the failure of the age assessment to lawfully and adequately consider the issue of scarification, and to proceed to consider it adversely when considering the applicant's personal history, is a factor that is placed into my assessment of the respondent's evidence.

Applicant's evidence

122. Ms. Rowlands cross-examined the applicant with considerable forensic skill and several inconsistencies arose during the course of his evidence. However, as previously observed the respondent has accepted that the applicant was ill-treated and trafficked in Libya and I am mindful that young asylum seekers as well as victims of trafficking will have problems in presenting a coherent account of their personal history and travel to this country, and such difficulties may be exacerbated when cross-examined skillfully by experienced counsel.

123. The applicant relied upon a witness statement dated 29 November 2019. His personal history, in summary, is that he left Sudan in 2015 when aged 11, without the knowledge of his parents, joining a group of persons who were leaving his home area. It took him four years to arrive in this country, during which time he was forced to work in Libya, lived in several refugee camps in Italy, and resided in Spain, France and Belgium.

124. He has remained consistent as to his mother informing him of his date of birth when he was aged 5. This is the primary source as to his age and the weight I give to it as part of the holistic assessment is addressed below.

125. There were significant inconsistencies and discrepancies in the applicant's evidence as to his journey to this country. I observe that following his arrival he underwent a short interview with an immigration officer and an Initial Contact and Asylum Registration Questionnaire was completed on 8 February 2019. He confirmed that he was fingerprinted in Italy and Spain. As to his journey he detailed, '*I left Sudan in August 2017. I travelled through Libya. I crossed to Europe and landed in Italy. I was fingerprinted and stayed there for approximately 3 months. After Italy I travelled to Spain by train. I was fingerprinted in Spain. I did not claim asylum there, and I stayed for about 2 months. After Spain I travelled to France. I was in France until I came to the UK yesterday in a lorry.*'

126. In his witness statement he details that he left his village in 2015 and travelled to Libya. He was captured and forced to work on a farm for six months where he was ill-treated. Consequent to his release he worked on another farm for approximately three months. He then travelled to the coast of Libya and paid an agent to secure passage on a boat to Italy. He makes no reference to working whilst on the coast but factoring in a short period of time in which to secure an

agent and arrange passage, on his evidence he remained in Libya for approximately ten months.

127. He arrived in Lampedusa, an Italian island in the Mediterranean, where he was placed in a refugee camp for approximately one month. He was then transferred by the authorities to a refugee camp in Sicily where he remained for around a month, before being transferred to another refugee camp on the Italian mainland where he stayed for around two months. He then travelled to Ventimiglia, in the region of Liguria, northern Italy where he states that he slept under a bridge for around a month with other asylum seekers. By means of his written evidence he remained in Italy for five months.

128. The applicant then travelled by train through France to Spain. He details by means of his statement, '*In Valencia, we were under the care of the Government, but we were not treated very well. We weren't beaten, but it was uncomfortable being there. I remember when I arrived, the authorities caught us and put us in a camp.*' He stated that he remained in the camp for two months before deciding to leave. He was therefore in Spain for two months and left the country for France seventeen months after leaving Sudan. Being favourable to the applicant, if he left Sudan on the day before his stated birthday in December 2015, on his evidence he would have left Spain in May 2017.

129. He details that he travelled to Paris by car where he joined an unofficial camp that was situated under a bridge. He stayed there for a little over two months and then travelled to Lille where he stayed for around two months. He then returned to Paris by train and straight away took a train to Belgium where he slept in gardens for around three months, before heading to the United Kingdom. Taking into account the seven months the applicant is said to have resided in France and Belgium and being favourable to the applicant as to his timeline, whilst observing his previous acceptance that he travelled to this country from France and not Belgium, he would have arrived in this country in December 2017. It is officially recorded that he arrived in this country on 7 February 2019. On its face, this account is inconsistent.

130. At the hearing before me, the applicant stated that he left Sudan in 2015 but did not know in which month he left. He was consistent as to the time spent in Libya. He was also consistent as to travelling to Lampedusa and the time he spent there. However, he stated that he spent three or four months in Sicily before being taken to another camp. He was consistent as to then travelling to Ventimiglia where he was released and able to move around. He stated that he remained in Ventimiglia for two to three months, before travelling to Spain. He informed me that he was present in Spain for three months.

131. Being favourable to the applicant as to his timeline and proceeding on the basis that he left Sudan on the day before his stated birthday in December 2015, his evidence at the hearing results in his having arrived in Spain in the summer of

2017. However, he informed me that he arrived in Valencia in 2018 and stayed in a camp in that city for three months. He is internally inconsistent in this version, which is itself inconsistent with previous versions.

132. The applicant confirmed that he travelled to France and remained in Paris for three months, before residing in Lille for a month. He then returned to Paris where he stayed for a month, before travelling to Brussels. This version of his travel history is inconsistent with that stated in his witness statement.

133. I am satisfied that the applicant is not being truthful as to when he left Sudan, or as to the time it took him to travel to this country. His stated timeline is wholly inconsistent with his having left Sudan in 2015. I am satisfied that he is numerate and understands the concept of months and years. I am further satisfied that he understands the concept of seasons, hailing from a farming family in an area that has dry and rainy seasons, and so would be able to identify which season he left his village to commence his journey. I therefore find to the requisite standard that he has been deliberately misleading as to elements of his journey to this country.

134. I am not required to make findings of fact on all issues concerning his journey, that is primarily a matter to be considered by means of his international protection claim. However, I observe that the applicant has been consistent as to events in Libya and the respondent accepts that applicant was ill-treated and trafficked in that country. I therefore find that he spent in the region of ten months in that country.

135. I further find that he claimed asylum in Italy, and for the reasons detailed below conclude that he was placed in several reception centres and State approved accommodation, receiving appropriate care, whilst present in that country.

136. I take judicial note that the primary route for refugees travelling from Libya to mainland Europe in recent years has been across the Mediterranean and the Italian authorities have been using the island of Lampedusa as a primary reception centre before dispersing those seeking international protection elsewhere in the country. I note the detailed consideration of the Italian asylum process and the provision of accommodation undertaken by the Tribunal in *R (on the application of SM & Others) v Secretary of State for the Home Department (Dublin Regulation – Italy)* [2018] UKUT 00429 (IAC). The Tribunal considered the use of first-line reception facilities (CARA or CDA), second-line reception facilities (SPRAR) and extraordinary reception facilities (CAS). Hotspots, such as Lampedusa, with high numbers of migrants have at various times utilized 'first aid and reception centres' (CPSA) and the Tribunal accepted that asylum seekers could spend days or weeks at such centres. I therefore find, to the requisite standard, that the applicant did arrive in Italy and contrary to his evidence did claim asylum on arrival. It is consistent with the objective

evidence considered in *SM & Others* that he would have spent some time in a reception centre on the island of Lampedusa before being transferred to another camp, on his evidence by sea to Sicily. It is also consistent with objective evidence considered by the Tribunal that he would more likely than not have been transferred to the mainland and placed in SPRAR accommodation, a network of local authorities which set up and run reception projects. The system draws upon the National Fund for asylum policies and services managed by the Ministry of the Interior. I therefore find, on balance, that the applicant was relocated to such accommodation in the Region of Liguria, in the north-west of Italy. The city of Ventimiglia is relatively small and overshadowed by Genoa, which is close by, and is unlikely to be known to an asylum-seeker from Darfur unless he resided in the city.

137. I observe that Ventimiglia is situated close to the French border and being mindful that there is corroborative evidence as to the applicant having resided in Spain, I am satisfied that he is truthful as to having journeyed across France to reach Spain.

138. The applicant's evidence as to how long he spent in Italy ranged from three months in his screening interview, five months in his witness statement and over eight months in evidence before me. Other than finding that the applicant did arrive in Lampedusa and was subsequently accommodated in camps in Sicily and somewhere on the mainland before being transferred to Ventimiglia there is insufficient cogent evidence before me to enable a finding to be made as to how long he resided in Italy, though I find that it is more likely than not he was in the country in late 2017 or early 2018 as there is corroborative photographic evidence taken from the applicant's Facebook page that he was in Valencia by at least May 2018 and there was no challenge by the respondent that this was the next stage of his journey.

139. I observe that there is corroborative evidence that the applicant was in Valencia, Spain, from a date before 1 May 2018 until at least 12 August 2018. I agree with the respondent that the photographs show the applicant to be clean, happy, and well-groomed. The photographs clearly evidence that he was not sleeping rough and unable to secure basic provisions. I therefore find that he claimed asylum in Spain and consequently received care and accommodation in that country. The applicant is inconsistent in his evidence as to how long he resided in Valencia, and the photographic evidence strongly suggests that he was present in the city for longer than the two or three months he now claims, as they confirm that he had established friendship by the beginning of May 2018.

140. I find on balance that the applicant travelled to, and resided in, France and Belgium before travelling to this country. I find the applicant to be untruthful before me as to not having received medical treatment in Belgium and not having been prescribed sleeping pills. The applicant's initial health assessment

dated 25 June 2019, records his confirmation that he had disturbed sleep and had been treated for this when in Belgium, receiving a sleeping aid. The applicant has provided no cogent reason as to why a medical doctor would err as to recording such information. I am satisfied that the applicant has sought to hide the care he received in Belgium from the respondent, and to present a picture of being homeless and sleeping rough in that country. Upon careful consideration, I am satisfied that such efforts to mislead are part of a crude attempt to prevent a true understanding as to what route(s) he took to this country, who aided him on his journey and as to where he had previously claimed asylum.

141. I have found that the applicant spent time in the care of the authorities in Italy and Spain. I also find, to the requisite standard that he claimed asylum in Belgium. I accept the submission of the respondent that the applicant did seek and receive medication for his difficulties in sleeping whilst in Belgium and I find that such care was much more likely to have been secured through being in the care of the authorities as an asylum seeker rather than as an illegal entrant who was homeless.

142. It was not disputed by the respondent that the applicant has spent time in France, and he has been consistent to residing in that country. I therefore find that he spent time in France, latterly before travelling to this country. I have insufficient evidence before me to conclude that he claimed asylum in that country. It is more likely than not that he travelled through the country on occasions, seeking to reach other countries.

143. As corroborative evidence said to establish his age, the applicant relies upon his Facebook account which is said to have been created whilst he was present in Spain. His date of birth is identified as 15 December 2003. I am satisfied that his evidence as to the opening and running of this account is not accurate. He stated that he could recall the account being set up by a friend in Spain, but he could not recall the friend's name. I find that the applicant is not being truthful as to not being able to recall who set up the account for him. This event took place two years ago and the description 'friend' strongly suggests that the applicant spent more than a short period of time in this person's company. The applicant accepts that the rest of the information provided on the 'about' page is wrong. He has not worked at Engineering & Technology Company (ETC) since 4 April 2020. He did not study at Watford Football Club. He is not from Tendelti, Darfur. I observe that some of this information clearly postdates his time in Spain, yet he informed me that it was placed onto his account by his unnamed friend in Spain. I find the applicant not to be truthful on this issue.

144. Further, I do not accept the applicant's evidence that someone simply gave him a phone which he subsequently used to set up his Facebook account. No cogent reasons were provided as to why an unnamed person would be so generous. This Tribunal is experienced as to methods used by human traffickers when

seeking to transport people around Europe and is aware that phones are regularly provided to migrants so that they can remain in contact with traffickers when crossing national borders. In the circumstances arising in this matter the evidence of the applicant's stated date of birth being placed on his Facebook account enjoys no corroborative value.

145. There was confused evidence as to whether the applicant knew the age difference between his siblings and himself. His original answer suggested that there was 20 years difference between him and his elder brother, 17 or 18 years between him and his elder sister and 11 years between him and his younger brother. However, he subsequently stated that these were the ages of his siblings and as I informed the representatives at the hearing, I am satisfied that the applicant simply misunderstood the initial question.

146. I therefore find the applicant to be truthful on some aspects of his history, but to have deliberately misled on several others. However, when undertaking my holistic assessment, I am mindful that there are complex reasons for migrants not being wholly truthful as to the aid they received from human traffickers. Whilst such reasons may arise in the context of the applicant's securing his mobile phone, and as to his vagueness as to how he was able to leave Italy and enter several countries thereafter, I am satisfied that such reasons had no part to play in the applicant's significant inconsistency in his timeline from leaving Sudan and arriving in this country.

Third party evidence

147. 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.

148. I found Ms. Wenton to be an honest and reliable witness. She taught the applicant four times a week between September 2019 and the national lockdown in late March 2020. The applicant's class consisted of between 18 and 19 students, and so I am satisfied that Ms. Wenton was spending several hours a week over several months teaching the applicant in a classroom where she would be able to observe him carefully. She continues to see him at the college and remains of the opinion that he is his stated aged. I note her evidence that the applicant is '*physically changing. He is growing and becoming more muscular. He is changing*.'

149. Having considered Ms. Wenton's evidence, I accept that a decision was taken for the applicant to be registered with his college detailing his date of birth to be 1 January 2003 simply as a mechanism of securing his enrollment at a time when he was an age disputed asylum-seeker, and consequently this is not an example of the applicant providing a different date of birth.

150. Ms. Geggie is a social worker employed by Active 8 Support Services. She commenced working with the applicant in May 2019 and continues to do so. She spends around four hours a week in contact with the applicant, and such time was not affected by lockdown save that 50% of the contact was undertaken virtually. She identified his visual presentation as being similar to the Sudanese boys with whom he resides, who are under the care of Liverpool City Council ('Liverpool'). She confirmed that Liverpool has raised no safeguarding concerns as to children in its care residing with the applicant. She identified the applicant's emotional maturity as being in line with other 16- to 18-year-olds from Sudan supported by Active 8.

151. I found Ms. Geggie to be an honest and reliable witness, who was thoughtful in presenting her evidence. I observe her professional experience and the amount of time she has spent with the applicant over the last 18 months.

152. MM is in the care of Liverpool and resides at the same property as the applicant. They attend the same college but are in different classes. MM is aged 17 and his age has been accepted by the local authority. He gave his evidence in a straightforward, honest matter confirming that he was informed by the applicant as to his age and he has accepted it as correct. They spend a lot of time together, both at home, through shopping together and their attendance at a mosque. He observed in his witness statement, '*I have never thought that [the applicant] is older than me. He acts the same age as me … I know [the applicant] very well and he is a kind, helpful and honest person who I trust fully. In my opinion, he is not someone who would lie about something. We spend most of our time together and he has never lied to me.*'

153. Regarding the evidence of these three witnesses, I observe that when assessing the core elements of the applicant's account I am required to adopt a holistic approach and so am to consider 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. However, all three witnesses have spent lengthy periods of time in the company of the applicant over several months, and two are able to rely upon professional expertise in their evaluation. In giving weight to their evidence, I note the decision in <u>*R (AM) v. Solihull Metropolitan Borough Council*</u> [2012] UKUT 00118 (IAC), at [20]-[21]:

> '20. The asserted expertise of a social worker conducting an interview is not in our judgement sufficient to counteract those difficulties. A person such as a teacher or even a family member, who can point to consistent attitudes, and a number of supporting instances over a considerable period of time, is likely to carry weight that observations made in the artificial surroundings of an interview cannot carry.

> 21. Reactions from the individual's peers are also likely to be of assistance if they are available. We do not suggest that other young people are qualified specifically to give evidence about the age of a colleague of theirs, nor should they be encouraged to do so. But those who work with groups of young people see how they react with one another and it seems to us likely that evidence of such interaction, if available, may well assist in making an age assessment, particularly if any necessary allowance for cultural differences can be made.'

Physiological evidence

Growth spurts

154. As noted above, the applicant underwent an initial health assessment with Dr. Vardak on 25 June 2019 and his height was recorded as 165.4cms. He was measured for a second time in December 2019 by Mr. Noon and his height recorded as 165.5cms. Before me Mr. Noon explained that the measurement had been taken by the unsophisticated means of marking a wall with a pencil using a ruler. An email from Alderhey NHS dated 6 January 2020 identifies the applicant height as 166.5cms. By email dated 1 October 2020 Ms. Geggie informed Mr. Noon that the applicant's height had been recorded as 171cms. In evidence before me Ms. Geggie explained that she had accompanied the applicant to a GP surgery where his height was recorded by a 'representative' of the surgery. She confirmed that it was not recorded by a doctor.

155. The applicant has therefore been recorded as growing 5.6cms in a little over 15 months, from 5 feet 5 inches to 5 feet 7 inches.

156. The respondent submitted that no reliance should be placed upon the height recorded in October 2020 because its accuracy could not be relied upon. Two tentative arguments were advanced. The first that the measurement was not taken by a doctor and secondly that there was a possibility that the measurement erroneously included part of the applicant's Afro haircut. Neither submission enjoys any merit. I accept Ms. Geggie's evidence that the applicant attended a GP surgery and was measured by a member of staff. It will be expected that a member of staff at a surgery conducting such a role would be adequately trained. The argument is unfortunate in being advanced at the same time as I am asked by the respondent to rely upon the accuracy of Mr. Noon's measurement using a wall, pencil and ruler. I am satisfied that the latter is a more unsophisticated method of measurement than being measured at a GP surgery. As to the second contention, I am asked to find that Ms. Geggie's evidence that when the applicant was being measured '*his hair was pushed down to measure but not with force*' establishes that the measurement included additional height that belonged to an Afro haircut. I have no evidence before me in the form of a photograph as to the nature of the applicant's haircut at or around 1 October 2020, but I am satisfied to the requisite standard that a professional at a GP surgery when seeking to take an accurate measurement of

height would ensure that a measuring device reached the scalp of the patient. I am satisfied that the applicant's height was correctly measured at the GP surgery in October 2020.

157. It was submitted on behalf of the respondent that the increase in the applicant's height should enjoy no proper role in my assessment as people develop at different ages and in different ways. Reliance is placed upon the judgment of Collins J in *A v Croydon LBC* [2009] EWHC 939 (Admin), [2010] 1 F.L.R. 193, at [25]:

> '25. Dr Stern is a most distinguished paediatrician. He is consultant paediatrician emeritus to the Guy's and St Thomas' Hospitals Trust. Measurements of height and weight are in his view not completely reliable unless carried out by a properly trained paediatric auxologist. In any event, assessments of growth and maturity are in his view unacceptably unreliable. Height is particularly difficult to use as a reliable indication since much will depend on the height of each parent. There is in his view no reliable scientific basis for the estimation of age. That is a view which is entirely in accordance with the guidance given by the RCPCH. A contrary view has no scientific support. Further, as Dr Stern says, and again this accords with the general medical opinion, all the factors relied on to assess age in reality can only assess maturity and maturity and chronological age are two different things. He makes what seems to me to be a cogent point when he says this in paragraph 10.4 of his report:-
>
> > 'The large majority … are asylum seekers from developing countries. Many of them have been subjected to deprivation and some to severe, psychological stresses. I would expect these adverse events to have significant effects upon development, tending to delay it. Such effects would be particularly marked with respect to psychological maturity. The consequence of this would be that those clients would have both younger psychological profiles and/or earlier measures of physical maturity than their true chronological age.'
>
> It is Dr Stern's view that a paediatrician is unlikely to be able to reach a conclusion which is superior to that reached by an experienced social worker, provided, of course, that the social worker is properly trained.'

158. Dr Stern also presented his expert opinion in *R (R) v Croydon LBC* [2011] EWHC 1473 (Admin), [2012] 3 F.C.R. 555.

159. The respondent further relies upon the decision of the Tribunal in *R (RK) v. Birmingham City Council* [2013] UKUT 00307 (IAC), at [46]

> '46. Although Dr Birch has an impressive *curriculum vitae* relating to her work with children, she is not a paediatric auxologist nor does she

> claim to possess the expertise of such a specialist. Her measurements of height should be given weight for the reasons I have stated above and they are, perhaps, more reliable than any other measurement we have for RK but they still fall short of the "gold standard" provided by clinical auxology. Moreover, even if we had measurements of RK taken by an auxologist, then, as the judgment in A indicates, the *rate* of his growth would still not provide a reliable indicator of his chronological age. As with the eruption of molar teeth (see below), perhaps the most that can be said of an individual's growth in height as an indictor of chronological age is that proof of the *cessation* of growth tends to indicate the achievement of a physical maturity generally associated with adulthood. However, even so it is clear that some individuals continue to grow after they have reached the age of 18 whilst others have stopped growing before they achieve legal majority. Further, the rate of growth (in height and weight) of young asylum seekers may be distorted by their having access to, for example, a better diet in the United Kingdom. In the case of RK, the fact that he continued to grow between the two measurements taken by Dr Birch offers some support for his claimed age but that the value of that support is severely limited by the caveats I have indicated. Those same caveats apply equally to what Mr. Singh (see paragraph 48 *et seq* below) says in his age assessment as they do to the evidence of Dr Birch.'

160. I am not being asked to assess age solely by considering the applicant's height. The folly of seeking to identify the age of a young person by sole reference to whether someone is 5 feet 2 inches or alternatively 6 feet tall may be established simply by looking at a class photograph of any secondary school particularly from Year 8 onwards. Rather, I am required to consider the issue of adolescence growth spurt for which height and weight are indicators as to such spurt having occurred.

161. In *R (AM) v. Solihull Metropolitan Borough Council*, at [17], the Tribunal observed:

> '17. We have used the word "mostly" in those observations. Looking at the authorities and the literature as we have, it appears to us that there are two physical indicators which may be of some assistance, but only at the very top end of the range. The first is general growth. As an individual matures, he increases in height, and then his body fills out, so he increases in weight. When his body is mature, the rate of increase of both height and weight drops very considerably. Unless he is becoming obese, there comes a point when there is little change in either. That is a matter that cannot be assessed by a single measurement. Nor do we think that very much assistance can be gained by attempting to assess any perceived difference or levelling off in the individual's increase in height or weight. Where, on the other hand, accurate measurements of the claimant's height and weight are available extending back over a considerable period of time (say 18 months or more) and show no, or no significant, change,

> we think that that is likely to be a sign that the individual is now over about 18.'

162. It is trite that human beings grow at various paces during childhood with particular developments in physical growth during adolescence. I was not taken to any medical or expert evidence directly concerned with growth spurts but indicated at the hearing that it was a matter that I was being asked to make a finding upon. Neither party demurred. I take judicial note that adolescent growth spurt is the fast and intense increase in the rate of growth in height and weight that occurs during the adolescent stage of the human life cycle. Whilst changes in adolescents' bodies occur, they do so gradually and over time, rather than as a single event, hence the general reference to 'spurt'. Growth spurts occur later for boys than girls, and may commence around the age of 12, but there is considerable variation between individuals and populations. I note the intensity and duration of the spurt is, on average, greater for boys than for girls, and this accounts for the average sexual dimorphism of 11-13 cm in height between adult men and women. I further note that it is relatively unusual for growth in height to continue in a male at 20 years of age and beyond, though I observe this may occur consequent to hormone-related disorders.

163. When considering this issue, I am mindful that late growth can possibly occur where a person has had inadequate nutrition during their youth. Such circumstances may possibly apply to a person who has grown up in Darfur and arrives in this country to be met with a healthy diet and good accommodation. I observe in this matter that the applicant's weight was measured by Dr. Vardak during the initial health assessment in June 2019, some four months after his arrival in this country, as being 59kgs (9.3 stone) which placed him in the 53 centile which is close to average. This is not strongly suggestive of recent malnutrition. I have accepted above that the applicant spent time in Italy, Spain and Belgium, much of which was in the care of those respective States. I have accepted that Ms. Rowlands was correct to observe that the applicant looked well-groomed, fit and healthy in the photographs taken in Valencia in 2018. Consequently, for a time before his arrival in this country the applicant was either being cared for by a State or able to look after himself to such extent that he was fit and healthy when arriving in this country. In the circumstances, I am satisfied that there is simply insufficient basis for concluding, on balance, that the identified growth is consistent with late growth in a male aged between 19 and 21, consequent to an improved diet. In such circumstances, and being mindful of the requisite standard of proof, I am satisfied that the increase in height and weight since June 2019 is the result of an adolescent growth spurt and not a rare instance of growth as a 20+ year-old.

164. Though not determinative of the question I am required to answer, on the facts arising in this matter I can appropriately place weight upon the applicant having recently experienced an adolescent growth spurt leading to an increase

in height, and as observed by Ms. Wenton such growth being accompanied by the applicant becoming visibly more muscular.

Conclusion

165. 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.'

166. I have reminded myself that the applicant has been accepted by the respondent to be a victim of trafficking and to have previously been subjected to harm. I have found the applicant to be truthful on some aspects of his history. I further observe that he has been identified above as having deliberately sought to deceive as to several aspects of his journey from Italy to the United Kingdom.

167. I observe that the applicant has been consistent as to his claimed age throughout and consistent to the circumstances in which his mother informed him as to his age.

168. I have given weight to Mr. Noon's observations as to demeanour, as addressed above, but note that Ms. Geggie and Ms. Wenton, who have spent significantly longer periods of time with the applicant, hold the opinion that his appearance and demeanour is consistent with his claimed age.

169. I place into my assessment my finding that the applicant has undergone an adolescent growth spurt resulting in his both growing taller, and as observed by Ms. Wenton, becoming more muscular.

170. In the circumstances and being aware that an assessment as to age cannot be concluded with 100% accuracy I find, on balance, that the applicant is a young person aged under 18 and that he is truthful as to his date of birth.

171. To the requisite standard I find the following findings of fact:

i. The applicant is of Aranga ethnicity, hails from Darfur, Sudan and is a Sudanese citizen.

ii. The applicant was informed as to his age by his mother when he was aged 5.

iii. The applicant's mother was being truthful to the applicant as to her recollection of his date and year of birth.

iv. The applicant was born on 15 December 2003.

v. The applicant was aged 15 when he entered the United Kingdom on 7 February 2019

vi. The applicant was aged 15 at the date of the August and November decisions

vii. The applicant was aged 16 at the date of the hearing before the Tribunal.

viii. The applicant is now aged 17.

Summary of Decision

172. It is declared that the applicant's date of birth is **15 December 2003**.

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

Date: 8 January 2021