



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

JR/1095/2020

In the matter of an application for Judicial Review

The Queen on the application of
A S
(by his litigation friend Francesco Jeff)

Applicant

versus

LONDON BOROUGH OF HARINGEY

Respondent

ORDER

BEFORE Upper Tribunal Judge Frances

HAVING considered all documents lodged and having heard Ms Antonia Benfield for the applicant and Mr Joshua Swirsky for the respondent at a fact-finding hybrid hearing on 29 and 30 March 2021 which has been consented to by the parties.

UPON judgment being handed down on 14 June 2021.

IT IS DECLARED that the applicant's date of birth is 16th December 1999

IT IS ORDERED THAT:

1. The application for judicial review is dismissed.
2. The order for interim relief made by Mr Johnson QC on 8 September 2019 is hereby discharged.
3. There be no order for costs save that there will be a detailed assessment of the applicant's publicly funded costs.
4. Permission to appeal to the Court of Appeal is refused.

Signed: J Frances

Upper Tribunal Judge Frances

Dated: 14 June 2021

The date on which this order was sent is given below

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/1095/2020

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breems Buildings
London, EC4A 1WR

14 June 2021

Before:

UPPER TRIBUNAL JUDGE FRANCES

Between:

THE QUEEN
on the application of AS
(by his litigation friend FRANCESCO JEFF)

Applicant

- and -

LONDON BOROUGH OF HARINGEY

Respondent

Ms A Benfield

(instructed by Instalaw Solicitors) for the applicant

Mr J Swirsky

(instructed by London Borough of Haringey) for the respondent

Hearing date: 29 and 30 March 2021

J U D G M E N T

Judge FRANCES:

1. The applicant challenges the respondent's age assessment completed on 17 January and 15 April 2019. The outcome of the age assessment is dated 23 April 2019. The respondent assessed the applicant's date of birth to be 12 October 1997. The applicant claims his date of birth is 16 December 2001. Permission was granted by Deputy High Court Judge Jeremy Johnson Q.C. who transferred the claim to the Upper Tribunal for a fact-finding hearing to determine the applicant's age.
2. The applicant was born in Eritrea and lived there until he was three years old. His father was killed and he and his mother fled to Sudan

with the help of his uncle. He has lived most of his life in Khartoum, Sudan with his mother's friend [T] and her two children. The applicant is a Pentecostal Christian and speaks Amharic. He does not speak Tigrinya. The applicant claimed he stopped going to school when he was eight years old. He had to leave Sudan when he was 15 years old because he was involved in spreading anti-government propaganda and his uncle was arrested. The applicant left Sudan on 9 April 2017 and travelled, on a false passport, by plane to Turkey then onto Greece by boat where he lived in a camp in Xios for about a year.

3. The applicant was granted refugee status in Greece on 9 August 2017 and his date of birth was recorded as 16 December 1999. Information from the Greek authorities showed that the applicant was granted a residence permit from 28 December 2017 to 27 December 2020 and a travel document valid from 30 May 2018 to 29 May 2023. The applicant claimed he was unaware of this when he left Xios. The applicant went to Athens in a car and by boat and obtained another false passport to travel to France, arriving in July 2018. The applicant lived in 'the jungle' in Calais for five months before concealing himself in a lorry and travelling to the UK.
4. The applicant arrived in the UK on 28 December 2018 and presented himself at Tottenham police station on 31 December 2018. The police contacted the respondent who took the applicant into care. The child and family assessment [CFA] recorded the applicant's date of birth as 12 October 2001. The respondent conducted an age assessment and interviewed the applicant on 17 January 2019 [January IV] and 15 April 2019 [April IV]. The applicant claimed asylum and completed the initial contact and asylum registration questionnaire [ICARQ] on 6 February 2019 in which his date of birth is recorded as 12 October 2001.
5. It is the applicant's claim that he knows his date of birth is 16 December 2001 because his mother would always tell him how old he was when he was growing up. He celebrated his birthday every year and knew it was in December because people would start talking about Christmas. The applicant also knew his age from attending school. He started when he was five years old and attended for three years. He finished school at the end of third grade when his mother told him he was not allowed to go back. He could not read or write in his own language and could not follow a calendar in Sudan.

Applicant's evidence

6. The applicant relied on his witness statements dated 29 June 2020 (submitted with the application for judicial review) [witness statement] and 19 May 2020 (submitted with his asylum application) [asylum statement].

7. In cross-examination, the applicant stated his date of birth was 16 December 2001. He was asked if he had ever told anyone his date of birth was 12 October 2001. He said that since he arrived, he may have told friends at the YMCA. He had started learning and recognising numbers, but not very well. He confirmed he could find page numbers. He was referred to the respondent's placement plan dated 18 December 2018 (page 470 of the applicant's bundle volume 2 [A2]) which gave his date of birth as 12 October 2001. He was asked whether he told the police his date of birth. The applicant stated he told the police his date of birth was 16 December 2001 and he told the interpreter repeatedly during the age assessment that his date of birth was 16 December 2001. The applicant was assisted in giving his date of birth to the police by a girl who translated for him. He did not have an interpreter. The applicant told the girl, who could speak Amharic, his date of birth. He did not write it down.
8. The applicant was referred to his ICARQ in which his date of birth was recorded as 12 October 2001. He stated he told the Home Office his correct date of birth. The same calendar was used in Sudan as in the UK. The applicant recalled seeing the doctor in relation to the initial health assessment which took place on 2 April 2019 and was referred to the letter dated 12 April 2019 (page 518 A2) in which his date of birth is recorded as 12 October 2001. He remembered beginning legal proceedings and meeting his solicitor. The date of birth recorded in his judicial review application, 12 October 2001, was wrong. After he received his identity card from the Home Office, he informed the social worker his date of birth (12 October 1998) was incorrect. The applicant confirmed he gave his solicitor the correct date of birth and he did not say 12 October 2001. The applicant denied giving different dates of birth to different people. He stated he could not forget his date of birth and it was the police who had created this mistake.
9. The applicant stated he was told his date of birth by his mother. There were two calendars in Eritrea, one of which was the same as the UK. The applicant left Eritrea when he was three years old and went to Sudan. The calendar in Sudan was the same as the UK. The applicant denied telling the social workers (PA and JJ) in the age assessment that his mother calculated his date of birth using the Arabic calendar. He stated he told PA there was no such thing as an Islamic calendar. The applicant celebrated his birthday every year and his mother would give him clothes as presents. He accepted that he might not be able to remember a specific date in Sudan. He knew the months of the year in Amharic and would be able to recall which month. He could not remember when his mother told him his date of birth, but he knew his birthday. He could not recall when he was told the year was 2001. He confirmed he knew his date of birth.
10. Mr Swirsky asked the applicant questions about his education. The applicant confirmed the name of his school in Sudan and stated it was a religious school for Ethiopians and Eritreans (Habesha). It was not an Ethiopian orthodox school and most of the residents were Pentecostal

Christians. The school was a Habesha community school. The applicant went to school for three years and learned social science, maths and language. They were taught in Amharic, not Arabic and some spoke Tigrinya. The applicant stated he left school when he was eight years old. He did not know the exact reason, but at that time his mother had disappeared. He received no further education in Sudan. He could not read and writing was difficult. He did not learn English in Sudan and could not write in English when he came to the UK.

11. The applicant could not recall saying his date of birth was 12 October 2001 in the January IV and he asked the interpreter to write his date of birth as 16 December 2001. He denied having written his date of birth by copying what was written above contrary to the record of interview typed by social worker JJ (page 105 A1). The applicant stated he did not know much about numbers when he came to the UK.
12. The applicant confirmed his father had died when he was young and he went to Khartoum where he lived with his mother and uncle for a short while. He explained that he mostly lived with his guardian, a friend of his mother's, called T and her two children; a boy who was about the same age and a girl who was younger. His mother and uncle worked and would spend the weekends with them. The applicant confirmed he lived with T because his mother was working most of the time selling clothes. T stayed at home and the applicant went to the same school as her children until his mother stopped him going to school. His mother did not tell him why. The applicant was reminded of what he said in the January IV that his mother would tell him not to go out because Eritrean police would pick him up. He explained that his mother was afraid to let him go out because, although he lived in an area where there were many Eritreans and Ethiopians, his uncle was engaged in politics in opposition to the Eritrean government.
13. The applicant stated he left school when he was eight years old and he left Sudan when he was 15 years old. Between eight and 15 years old he spent his days inside T's house. He would help with chores. He only went out when accompanied by his uncle or others. His mother still went out even though she was worried about the Eritrean police because she had to earn a living. She was an adult and she knew how to be careful. T's children still went to school. They were in danger because her son was captured when the applicant left the country.
14. The applicant was politically active and distributed leaflets within the Habesha community in the markets with T's son [Y]. The applicant was very interested in doing this because he heard his mother and his uncle talking about it. He picked up the leaflets from where they were hiding them, in a drawer in his uncle's house, and distributed them once or twice. His mother only found out when Y was captured and his uncle was detained. He explained that the use of the word 'volunteered' in his witness statement was an interpreting error. Paragraph 11 of his asylum statement was not correct. He told the interpreter he took the papers from his uncle's room.

15. The applicant decided to leave Sudan when his uncle and Y were detained. His mother organised it with an agent. He did not know how much it cost. He was told he was going to Turkey and told to stay there. He did not know where and was only given the number of an agent who said he was going to Greece. There was confusion at the time and he had to wait for a passport to be prepared. He remained in Sudan for a month and left in April. He confirmed it was the 9 April 2017, as in his witness statement, and he knew this date because before he left, he was taught about dates and what he needed to say about himself. His mother and the agent told him what was written on the passport. He knew his own date of birth and had to be told the date of birth on the passport. He said he was 15 years old when he left Sudan and would be 16 at the end of the year. The passport was fake and the date of birth given was 1998. He was not taught how to write his date of birth. He continued to live in T's house until he left Sudan. T helped his mother to arrange his departure. He stated he was in hiding in his asylum statement because T lived in Bahran and his uncle and Y were arrested in Diem.
16. When the applicant arrived in Istanbul he went to a taxi with a paper. He did not have any money. He stated, "They called a person and he said bring me to his home and they made the arrangements with him." He didn't know if it was the agent's home but it was about an hour's taxi ride. He assumed it was in Istanbul. He contradicted paragraph 15 of his asylum statement stating that the agent did not take him by plane; he went on his own. He first went to the agent's home and then stayed in Izmir for over three months. He was reminded of paragraph 19 of his witness statement in which he made no mention of Izmir stating that he stayed at a small house where he was locked up with 40 other people. The applicant was not sure about being in Istanbul and confirmed that he stayed in Izmir. He was taken by a vehicle to the seaside and put on a boat.
17. The applicant was asked why he had stated, in his witness statement, that he left Istanbul on 28 July 2017. He confirmed he left from Izmir in a boat and did not go back to Istanbul. He knew the date from other people in the house. They all talked about how long they had been there and he remembered the date he arrived in Greece. His mother had a phone and contacted the agent in Turkey. The applicant did not have a phone in Sudan. The agent did not give him his mother's phone number when he got on the boat. The applicant was referred to paragraph 38 of his witness statement in which he stated he had his mother's phone number on a piece of paper but it got ruined in the water when he arrived in Greece. He explained the inconsistency could be an interpreter problem and stated the agent said he would give the number to him at the time he boarded the boat, but there was confusion and the agent did not give it to him.
18. The applicant was referred to social worker JJ's typed record of the interview, in which he stated he stayed in Turkey for three months and

19 days, and he said he was just estimating. Mr Swirsky pointed out that the figure was too precise to be an estimate and the applicant stated he just made up a number. He was referred to his ICARQ in which he stated he left Sudan on 9 April 2017, travelled to Turkey where he stayed for three months and 20 days and then travelled to Greece where he stayed for 11 months and two weeks in a camp. The applicant stated he was asked short questions about the whole journey and he just said approximately.

19. The applicant denied having memorised the account of his journey to the UK and stated "You remember the days when you stay in a camp and don't go out. You just count the days." He confirmed he spent 11 months to one year in the camp which was boring and dangerous. A Syrian friend who spoke Arabic helped him. They could understand each other. They went to Athens where Eritreans and Ethiopians lived. People in the camp talked about a place called 'Americast'. In preparation for leaving the camp, the applicant gathered names and numbers. He was 16 years old at the time. He contacted friends in Athens by a telephone that was given to him by a fellow refugee. He did not have to pay for calls because when he was preparing to escape from the camp people helped him top up his sim card and get credit on the phone. He was asked how he knew the telephone numbers of people in Athens if he could not recognise numbers. He stated that he asked people to help him and "someone saved the number with the name on the call."
20. The applicant stated he stayed in Athens for a week and then went to France on a Greek travel document. It was for an Eritrean person who had a Greek travel card. He was asked if he had to pay for this document. He replied, "It is like a cooperation for a community. When you are a child or pregnant, they organise support." The document was blue like a passport but he heard a person call it a travel document. It had a photo in it. He went to France because everyone goes there. He stated, "I do not know why, maybe it is safe and no accidents or dangers." His plan was to live there but when he arrived, he saw that everybody was sleeping outside and he learned that they all come to the UK. He went from Greece to France by plane and the ticket was paid for by 'community contribution'.
21. The applicant confirmed he stayed in Athens for a week and he did not know anyone well. There were people he knew from the camp living in Athens. He did not stay in Athens because the people he knew were not his parents and they were struggling. He could not stay there. They paid for him to go to another country and gave him a passport. There was cooperation for those with problems and children.
22. When asked what happened to the passport, the applicant replied that the passport was in his bag in Calais, but there were a lot of thieves around. He arrived in Paris and went straight to Calais by train. He did not have any money. He was just hiding. He confirmed the friends in

Athens bought him a ticket and gave him a passport but they did not give him money. He had no problems with the passport and it was not stamped. In answer to a question from me he said it was not his photograph in the passport but someone who looked similar.

23. When asked why he did not tell the age assessors he had claimed asylum in Greece he replied, "I did tell them. I might have told them I was in Xios." Mr Swirsky responded stating "You didn't tell them you claimed asylum, did you?" The applicant replied, "Maybe they did not ask me that, but when they asked if I was fingerprinted, I said in Greece." Mr Swirsky asked why the applicant had said he was 'forced to claim asylum in Greece' in his witness statement. He stated, "As soon as you get off the boat, they make you give fingerprints. I had no idea about asylum." When asked if the agent had only been paid to take the applicant to Greece, the applicant replied, "I don't know exactly about the agreement. It was made between my mother and the agent but he sent me to Greece."
24. The applicant was referred to the Eurodac search result (page 55 A2). He confirmed the photograph was him. He was referred to page 58 A2 and asked if he gave the family name when he arrived in Greece. He explained it was not a family name but his grandfather's name, which was customary. That is what he told the Greek authorities. He was asked if he gave his date of birth as 16 December 1999. He replied, "The date and month is what I said, but the year, they just wrote what they think it is." He was asked what language he spoke and he said he was helped by a fellow person and found out later that it was wrong when he saw what they called the 'police paper'. It was the same as the friend in Tottenham who had got it wrong. The applicant confirmed the Greek authorities wrote his date of birth by themselves. He did not say what was recorded. When asked if the policeman in Greece said anything, he stated, "In Greece, when you arrived there, no one will let you approach them. No one will speak to you."
25. The applicant was asked if he was fingerprinted and asked his date of birth. He replied, "Someone who came on the boat with me told them what I said but they don't seem to believe. They just write what they like. I did speak to a volunteer solicitor there and he said it was difficult to correct this unless I have a passport." The applicant was asked if the police showed him what was written. He replied that it was all in Greek and he did not know what was said. He found out three or four days later when he was shown the 'police paper'.
26. The applicant was referred to paragraph 20 of his witness statement and stated, "I told them all the correct information but the policeman told me this was not my age. I didn't speak to the policeman. They don't let you come near. All I spoke to was a volunteer who said I needed a passport." Mr Swirsky asked if the police or anyone had given him a document. The applicant asked what type and Mr Swirsky said, "A residence document." The applicant replied, "I signed anything and my name was up there. I could not live one more day there as my life was

so terrible.” He was asked if he knew what a residence document was and he said, “Yes. My name was up there like everyone else but I could not stay there.”

27. The applicant was again referred to page 58 A2, a letter from the Dublin unit in Greece dated 21 May 2020, in which it stated the applicant had been granted a residence document on 28 December 2017. The applicant stated, “I did not know they were going to give me that residence document but one day I had to steal food and the Greeks had to come and pay. That is how bad it was. I have not received the residence document. Mr Swirsky pointed out that the letter also stated the applicant was given a TDV which was a travel document for people who are stateless. The applicant responded stating, “I have signed and given fingerprints but not received a travel document.”
28. The applicant confirmed he had not been to Eritrea since he was three years old. He had no passport, birth certificate or other document to show when he was born. There was nothing to prove he was born in Eritrea but he believed what his mother had told him. He did not speak Tigrinya because he grew up in Diem, Khartoum where everyone speaks Amharic and he was brought up by a woman who only speaks Amharic. The applicant accepted there was no documentary evidence to support his account.
29. The applicant stated he was upset when he received the outcome of the age assessment because he told them everything. He stated, “I told the truth. I was upset and I even cried a little.” He was asked if he understood that being a child on arrival could help his asylum claim. He replied, “No. I just gave my correct date of birth. I found people who would listen and I told them what was correct.” He was asked, “Did you know that you would get more help if you were a child rather than an adult?” He responded, “I don’t want any benefits. I just want to tell my real date of birth.”
30. In re-examination, the applicant was reminded of his earlier answer that he may have given his date of birth of 12 October 2001 to friends at the YMCA. He stated that he had told the correct date of birth to his friend at the police station. In the January IV he was asked to write his date of birth on the actual paper on which the social worker was making notes. He stated he could not write and asked the interpreter to help him. He was referred to page 98 A1. He did not recognise the handwritten note and stated, “The paper was not like that. It was like a calendar that he asked me to write on.”
31. The applicant confirmed his mother or his uncle paid for his school fees in Sudan. He was referred to paragraph 16 of his witness statement and asked if he understood what ‘volunteered’ meant. He stated, “It was not like I volunteered for someone else. I used to hear from my mother about it and I wanted to do it. That is what I wanted to say.”

32. The applicant was asked about his Syrian friend and stated they had travelled together. He had lived in the Xios camp for a long time and knew him from there. The photograph at page 55 A2 had been taken in the UK. He had an interview in Greece like the ICARQ in the UK but he could not remember when. He saw the police as soon as he came off the boat. He knew they were police because they were in uniform and had guns. He was questioned for about two hours. I asked if he had an interpreter and he said, "Yes on the telephone." He confirmed there was no interpreter when he was with the police at the beginning.
33. Ms Benfield asked about the residence permit. The applicant stated, "After people gave fingerprints, we know the time is coming to leave the camp. When I saw my name, I knew they would be getting rid of us but not that patient." Ms Benfield asked, "Why was your name posted somewhere?" He replied, "What it could mean is that I am going to be given residence. Some people say that is why my name is up there because you are about to be given residence, but life was so difficult I couldn't even stay." There were no such thing as social workers in Greece. The only people he spoke to were charitable people.

Witness evidence

34. YH gave evidence, relying on his statement dated 9 September 2020 as his evidence in chief. He stated he was 19 years old and had lived with the applicant in the YMCA for six months. They stopped living together when they were moved on about a year and a bit ago. They had not been able to meet this year but had spoken on the phone. The last time he saw the applicant was yesterday when they had a coffee.
35. In cross-examination, YH stated he was from Eritrea. He went to Ethiopia when he was five years old and stayed there for four or five years. He came to Europe when he was 10 years old. He lived in Sudan, Libya, Italy and Belgium before coming to the UK in September 2018. He lived in Diem, Khartoum for three years, but he did not meet the applicant there. He was asked if he spoke Tigrinya and he replied, "Yes, a little bit."
36. YH met the applicant at the YMCA at the end of 2018 and they lived together for six months. The applicant told YH his date of birth. YH had not forgotten it. He stated it was "2001, 12th month and the date is 16." YH was referred to paragraph 6 of his witness statement and was asked to explain why he could not fully recall the applicant's date of birth at the time he made the statement, but he could now. YH replied, "He had a birthday not so long ago and I called to wish him happy birthday." YH was asked if he discussed the applicant's case when they had coffee yesterday. He stated that they just talked about normal things and played football. The applicant did not tell YH his date of birth.

37. There were many Eritreans at the YMCA and many people from all over the world. YH, the applicant and other Eritreans were all friends, about the same age, and did things together. YH was asked if the YMCA was only for those under 18 years old. He replied, "No, we are the only ones." He confirmed there were adults there and the oldest was about 20/30. YH did not know because he did not talk to them. He accepted that some of his Eritrean friends were adults. There were about six or seven who were under 18, but YH did not know how many were over 18. YH confirmed that he thought the applicant was the same age because the applicant liked doing the same things. He was asked if he did the same things with adults in the YMCA and he said they only met during mealtimes otherwise he did not see them that much.
38. YH stated he currently had a friendship group of about six or seven friends from Eritrea. Some of his friends were over 18 and some were under. They met in college now that it had started again. They all spoke Amharic. YH agreed that it did not matter if his friends were 18, 19 or 21, if they were good people, there was no problem.
39. In re-examination he stated none of his friends were as old as 23. It was not possible that the applicant was 23 years old because the applicant had told him his age and 23 was old.

Evidence given remotely

40. CJ is the applicant's English teacher at college. She gave evidence, relying on her witness statement dated 24 September 2020 as evidence in chief. She had written the statement herself and sent it to the applicant's solicitors for review.
41. CJ stated she did not think she was on duty on the day the applicant enrolled in college. He could have had to provide a care letter to enrol, but she could not remember if she was there that day. Enrolment involved a numeracy test and a short interview to establish his level of English. She had no involvement with the applicant since she stopped teaching online. CJ stated that when she taught the applicant, he was like an 18-year-old and when she saw him today, he was 19 years old. He was not like a 23-year-old when she observed him chatting with friends. He was comparable to her nephews who were of similar age.
42. In cross-examination, CJ stated she had given a statement in other age assessment proceedings and she knew the issues and understood the problems. She stated, "Sometimes students aren't believed." She accepted there was a problem with young people coming to the UK and receiving services as children when they were in fact adults, but they were a tiny minority. She could recall one student who had been taken out of college after it was discovered he was an adult. CJ did not believe he was over age, but she did not know if he had won his appeal.
43. CJ accepted that age assessments were not easy but there were some indicators. She had most contact with 16 to 19 year olds and she felt

confident in saying she believes the applicant is now 19 years old. She agreed that she thought she was best placed to give an opinion because she had a lot of contact with young people and her two nephews were of comparable age, whereas social workers had less face-to-face contact.

44. CJ was referred to paragraph 5 of her witness statement in which she compared the applicant to her nephews. She stated this was not the only indicator of age that she took into account. She also compared the applicant to others in his class, in particular those from the applicant's country of origin. She could not recall if she enrolled the applicant. She had a feeling she did not because a colleague told her there were five new students in her class. There were 17 students in her class when the applicant joined.
45. The applicant was taught by four teachers and an additional learning support teacher. He enrolled in February 2020 and had 22 days in college before lockdown. This amounted to three weeks of nine hours in a class of 17 students. CJ could not remember having had a one-to-one session with him before then. CJ confirmed that classes finished in June 2020. There were no classes during the two-week Easter holiday and one-week half term. Mr Swirsky calculated nine weeks of online teaching. CJ responded stating it was definitely more than nine weeks. Mr Swirsky recalculated and CJ agreed it was about nine or ten weeks stating, "It felt a lot longer."
46. CJ confirmed the applicant came to 65% of the classes, missing three hours a week. He attended two days of three hours per week. CJ also conducted two 20-minute one-to-one tutorials and a 30-minute exam with the applicant. There was no interpreter when teaching. The applicant's English had really improved and CJ was well versed in communicating with those who could not speak English. She would get a case history from the placement test, a copy of the test and the interview form so that she could tailor her teaching as required. Students were grouped by language level in English not by ability.
47. CJ was asked what she was told about the applicant. She could not picture what was written on the information sheet. She had not looked at this prior to preparing her witness statement because she was not allowed in college. Most of the information was on the system. She now knew where he lived for most of his life from reading the court bundle. She did not probe into a student's history. She was aware he had had minimal education before joining her class. He had moved around and not studied in the UK. It was common for students in her class to have had minimal primary education.
48. Mr Swirsky asked, "What was the applicant's English like when he first arrived?" CJ replied. "His vocabulary was good for his level and he could have been placed in a higher class but his reading and writing was so low. He was not completely literate and had issues so he had to be in the lowest class." Most of her students were also placed in the lowest

level maths class and were taught English for maths. She had no insight into the applicant's basic maths. The college taught functional maths. She had no insight into whether the applicant could work out periods of time.

49. The classes contained students aged 16 to 19 years old and a significant number were from Eritrea, about 25%. In CJ's class, eight out of 17 were from Eritrea. They spoke a mixture of Tigrinya, Amharic and Tigre. They were probably some Ethiopians in her class. She could not remember what language the applicant spoke, but she understood his first language was Amharic. When she saw him in the corridor, he would speak English to other students, but she was not able to say if the other language he conversed in was Amharic.
50. CJ stated she could tell, by observing the students in her class, who was 16 years old and who was 19 years old. She said that the applicant was firmly in the middle by the way he behaved with his friend in class. She caught them off guard during an online session and saw the applicant talking to a younger student. The applicant was very 'boyish' and giggling.
51. CJ also taught adults and did teacher training but not anymore. She taught adults up to 2014, then did teacher training and then did four weeks cover teaching adults in October 2019. The age range was 19 to 80 years old. Some were Eritreans and Ethiopians in their 20's. She could recall some people. She was asked if these young men were very different from the applicant. She replied, "Yes. They are older and more mature, definitely." CJ accepted you could have an immature young person in their 20's and a 'grown up' 16-year-old. She accepted this was all informed by life experience and was in part inherent. CJ agreed there was no magic cut off at 18 and 20 but stated this could work either way. Mr Swirsky stated that the applicant's life experience (his limited education and unpleasant experiences prior to coming to the UK) was different to that of CJ's nephews. CJ stated she had other students with similar experiences in her class and the class aim was to create a positive learning environment. The class was mixed, but CJ observed that it was mainly boys, rather than girls, who managed to reach the UK. Mr Swirsky stated that the applicant was in a class with others from the same background and there was no reason why someone in their 20's could not have fun with teenagers. CJ responded by stating that if the applicant was 23, he would stand out as older than the other students.
52. CJ was referred to paragraph 11 of her witness statement and asked what she meant by 'emotional maturity' and whether there was much opportunity to demonstrate this. She replied, "We do talk in class and there are tutorials which cover healthy lifestyles. Students may have topic free time so there is a lot of time to express oneself." CJ was asked what opportunity she had to assess the applicant's emotions. She said that some students act like toddlers and generally 16-year-olds

behaved like that rather than 19-year-olds. She defined developmental maturity as the way the applicant developed, his learning and the way he could process what she had taught him. Some students were slow to progress. It could be literacy or it could be trauma. They all progressed at a different level which was not dependant on age. CJ stated the younger ones were more likely to make progress and they generally became more confident as they got older. CJ had had no meaningful interaction with the applicant since June 2020.

Respondent's evidence given remotely

53. PA is the social worker who completed the applicant's age assessment with the social worker JJ. He relied on his witness statement dated 17 June 2020 and the age assessment at page 88 A1. He spoke to a key worker, M, to get an opinion on the applicant's age.
54. In cross-examination, PA confirmed he first met the applicant on 29 December 2018. A colleague conducted the CFA on 2 January 2019. He met the applicant twice. PA was the point of contact when the applicant first arrived and he conducted the age assessment. The applicant would occasionally come to the office with his key worker. PA, as duty manager, would often see a person even if they were not coming to speak to him.
55. PA was asked if he had had any interaction with the applicant since October 2019. PA said that he thought he had seen him, but after an age assessment he did not talk to anyone. He would have seen the applicant if he came to collect money or see his social worker. PA confirmed the document at page 80 A1 was prepared by him and JJ. He believed he wrote it, but he then stated that both he and JJ typed the assessment. He stated, "She does certain things and I do certain things. I do most of the analysis in conjunction with [JJ]. She would write a bit and I would put it on the report. I wrote the analysis. What I write she knows and she approves."
56. It then became apparent from Ms Benfield's questions that the age assessment at page 358 A2 was longer than that at page 88 A1. PA stated the final version was completed on 17 January 2019 and was in A2. Ms Benfield asked how the final assessment could be dated 17 January 2019. PA said the date was wrong and it should be 2 January 2019. PA explained that the date the assessment is conducted is the final date.
57. PA confirmed the notes at page 98 A1 were his notes of the interview and it was his handwriting. The typed notes at page 105 A1 were JJ's notes. PA stated, "I think she types. She is a good typist. I can't remember." PA confirmed there were no notes for the April IV. He explained this was because they had not changed anything. They had read everything to the applicant and put to him some issues of concern. The applicant said there was nothing to change.

58. PA was referred to the notes from the appropriate adult at page 155 A1 dated 15 April 2019 (April IV). PA stated, "We read to him what he had told us. All the responses he gave were the same as in our notes." Ms Benfield asked why PA did not keep his own notes. He replied there was a lengthy discussion and the applicant gave the same answers. The applicant was not denying anything or did not change anything so no further notes were taken. The age assessment was written after the January IV. PA confirmed that he and JJ decided the applicant was an adult after the January IV. He was asked what the purpose of the April IV was. PA replied, "We went through all the questions and he gave most of the answers... We asked questions to see if he agreed with our views as correct. It was to put to him what he had said to us and he still maintained that. We read through the assessment and gave him an opportunity to disagree with what we said."
59. PA confirmed the applicant was asked questions to clarify matters and the date on the assessment was the date it started, although the report was written afterwards. PA was asked when did the 'minded to' process happen. He replied, "Can you explain this to me?" PA was referred to the age assessment guidance to social workers [ADCS]. PA stated, "It tells us, before we come to a decision you have to put matters to [the applicant] to get a response. That is what we are saying. The second date we took him through areas such as why not at school and why abducted etc. We went through all areas of concern." Ms Benfield pointed out that the notes did not show that the applicant was told he was considered to be an adult and why. PA stated, "No, we told him he was an adult and gave him the opportunity to come to us again." PA explained that the applicant was given an opportunity, after the April IV, to contact PA/JJ if he had further information and he did not do so.
60. PA was asked if he spoke to the applicant's key worker. PA said probably after the initial age assessment. He went on to say his recollection was not clear. He may have been away and not in the office. He was not able to get a lot of material so it was not clear now. He was asked if he would have recorded any contact with placement staff in the age assessment. He replied, "Probably yes. I think it was after the age assessment was completed. I would have to check. I do not have all the information with me."
61. PA was referred to page 159 A1 and stated he did not know where the date of birth 1998 came from. He was referred to paragraph 5 of his witness statement and stated he did not make the referral to Greece. His senior manager did that after the age assessment was completed. He had not spoken to the applicant about the Greek material because the age assessment was concluded and the applicant had gone from local authority care. PA knew about the Greek material from the applicant's statement and stated, "To be fair to him, he did not mention this in his age assessment." PA confirmed that he did not speak to the applicant before PA prepared his own witness statement because it was not right to do so.

62. PA was referred to paragraph 19 of his witness statement and stated the report from MM (the complex needs worker at the YMCA) was provided to social services and not directly to him. He then changed his mind and said he had been away for a while and could not recall if it came to him directly. He then stated, "We requested information from her as a service. I cannot recollect if it was sent to me or to the service and then made available to me. We requested this after the age assessment."
63. PA was referred to page 364 A2 which were his reasons for why the applicant was considered to be an adult. He stated that credibility was not the only issue but was 'mostly part of it'. PA stated the first part was if a young person was presenting as an adult. He was mindful of the *Merton* guidelines and that demeanour can be deceptive. The remainder of PA's answer was repetitive and unclear. This gist of what he said was that he had to gather information to comply with *Merton* guidelines and credibility was a major factor. The applicant was not forthcoming with information and PA said he was able to travel on an adult passport.
64. Ms Benfield took PA through the reasons, alleging the points were inaccurate or not properly informed. PA stated that language was not a major issue and it did not matter that the applicant did not speak Tigrinya. PA denied the record of interview was inaccurate and denied the applicant said that his mother spoke Tigrinya. PA reiterated that language was not a major factor. The use of a false passport was not a factor. The point was that the applicant travelled on an adult passport. PA agreed that the applicant told him he looked like an older person and he was able to travel as an adult.
65. Ms Benfield pointed out the inconsistencies in the dates of birth recorded in the age assessment at page 84 A1, PA's notes at page 103 and JJ's typed notes at 113 in relation to the date of birth given in the false passport on which the applicant travelled from Greece to France. PA could not offer an explanation and could not reconcile the three dates respectively given as 1999, 2000 and 2002. PA accepted there was no documentation to support the conclusion that the applicant was born in 1997. He had come to that conclusion by considering the gaps in the applicant's account. It was a minimum estimate. PA and JJ believed the applicant was about 20 years old because they worked with many young people and the applicant appeared much older than those who were 20. They concluded he was 21 years old because the applicant was not forthcoming and there were gaps in his account.
66. In re-examination, PA was referred to question 4 page 85 A1 and confirmed he spoke to the key worker during the process of the age assessment. He had used the phrase 'it could be mother had a language Tigrinya' because he and JJ thought the applicant's mother would speak Tigrinya. The applicant was saying his mother spoke Amharic. PA confirmed the applicant did not say his mother spoke

Tigrinya. PA was asked if he filled in the age assessment after January 2019. He stated, "No, we finished everything in interview. There was nothing on paper until we finished everything." PA was asked what he would have done if the applicant had said something new. He replied, "We would have recorded the new information given. We would have given him another date and used the rest of the session to feed in new information brought to our attention to give us a fair chance. We would convene another date to enable us to re-think what we had done. If there was new information, we would have given him the opportunity to explain more."

Respondent's submissions

67. I indicated to the parties that I had read their skeleton arguments and there was no need to address me on the law. I asked them to direct their submissions to what conclusions I should draw from the evidence and why I should come to those conclusions.
68. Mr Swirsky relied on his skeleton argument dated 23 March 2021 and confirmed it was for the Tribunal to make its own decision about the applicant's date of birth. There was no dispute the applicant was now an adult and his date of birth was relevant to his asylum claim and any ongoing duty owed by the local authority. There was a four-year difference in the applicant's claimed age and the age assessment.
69. Mr Swirsky submitted the reasoning in the age assessment was the same in both bundles A1 and A2. The age assessment was *Merton* compliant and had been conducted by experienced social workers with an appropriate adult present. Mr Swirsky conceded there was a problem with note taking, in particular the inaccuracy of dates and the lack of notes of the April IV, which took the form of a 'minded to' interview.
70. Mr Swirsky submitted the applicant's account was not credible and the only inference to draw was that he had something to hide. The applicant had failed to give a consistent and truthful account. In his evidence, the applicant had given two different dates of birth; 12 October 2001 and 16 December 2001. The 12 October was given when he first arrived and the 16 December was given in the age assessment and in his witness statement. The October date also appeared in the ICARQ and, in case the date was imported from another document, the applicant was specifically asked about it. The applicant stated in cross-examination that he also told friends at the YMCA that he was born on 12 October 2001, but he corrected this in re-examination. The applicant issued proceedings giving the date of birth as 12 October 2001 and his instructing solicitor signed a statement asserting the same. It is the respondent's case that the applicant has given both dates of birth and had forgotten which one he was relying on.
71. Mr Swirsky submitted it was noteworthy the applicant copied his date of birth from somewhere else in the January IV, according to the note

taken by JJ. His ability to write his date of birth was inconsistent with his claim to have left school when he was eight years old. His claimed lack of education did not sit well with his evidence. The applicant was able to give exact dates for when he left Sudan and when he left Turkey. He claimed to have looked at the air ticket when leaving Sudan, but there was no explanation for why the date he left Turkey was so memorable. He could remember the names in the false passports and the dates of birth. He was able to memorise details and put them forward as part of his account.

72. Mr Swirsky submitted the applicant subtly changed his story or blamed someone else to explain the discrepancies in his account. The applicant was an Eritrean who did not speak Tigrinya. He lived in a Habesha area and therefore would be familiar with both languages. There was no plausible explanation for why he only went to school for three years. His mother's fear of the Eritrean police was absurd because they had no jurisdiction in Khartoum and there was no reason that he would be identified speaking Amharic in a Habesha area. He lived with T and her children went to school. There was no reason why it was not safe for the applicant to do so. He initially said the school he attended was Pentecostal, but then conceded it was orthodox. His version of events changed slightly when challenged.
73. The applicant stated the reason he left Sudan was because of his political activity, but he only engaged in this on one occasion and given he did not speak Tigrinya it was difficult to believe he did this. He also gave different versions of why his departure came about. He initially said he had not been allowed out for seven years and took it upon himself to distribute leaflets. In his witness statement he said he volunteered which he later described as doing something of his own initiative. This evidence did not sit well with the answers in his asylum statement, that his uncle asked him to do it, and his claimed lack of education. It was not credible the applicant would hide in T's house where Y lived when the applicant's uncle and Y were arrested.
74. Mr Swirsky submitted the applicant left Sudan on an international flight and therefore he must have travelled on a genuine passport that was not his. The applicant claimed to be 15 years old when he left Sudan and he could not read or write. He was not worried about travelling on a false passport and there was no back up plan if things went wrong. His account of meeting the agent in Istanbul and travelling to Greece was inconsistent. In his statement he said he went in a taxi to the agent's house in Istanbul and got on a boat to Greece. In his asylum statement he said he stayed at the agent's house in Izmir for four months and then went by boat to Greece.
75. The applicant stated he was able to speak to his mother from Turkey with the assistance of the agent and the paper upon which his mother's number was written was ruined in the water in Greece. In his oral evidence, the applicant stated the agent told him he would write down the number, but in the rush to get on the boat this did not happen. This

inconsistency was telling because it was something you would have expected him to remember given the importance of keeping in touch with his mother.

76. Mr Swirsky submitted the applicant failed to mention he had claimed asylum in Greece in his age assessment and in his ICARQ. He only stated he had been fingerprinted. In the April IV, he accepted he was fingerprinted and his date of birth was recorded as 1999. In his witness statement, the applicant stated he was forced to claim asylum. This was inconsistent with his oral evidence in which he initially stated someone took his details but he could not get close to them, then he stated someone travelled with him and gave the wrong date of birth and finally he accepted he had attended a two-hour interview. He made no mention of this in his witness statement. The applicant claimed asylum in Greece on 1 August 2017 which was consistent with his claimed departure from Turkey. He was granted asylum a few days later and given a travel document. The applicant was very unclear as to what happened and kept referring to his name being put up. The applicant's evidence was that he knew he was going to get a residence permit and a travel document but he did not get them. He left the camp in Xios because he did not like the conditions.
77. The applicant's evidence of what happened after he left the camp was vague. He met up with the Habesha community in Athens and stayed there for a short period. These people he met in the camp gave him a passport in someone else's name and paid for his air ticket to Paris. There was no plausible explanation for why they would facilitate his departure. He claimed to have travelled on a blue travel document, with the date of birth in the year 2000, which was stolen on route to the UK.
78. Mr Swirsky submitted there were so many discrepancies in the applicant's story and elements which were unlikely that his account was not credible and the social workers were entitled to reject his account in the age assessment. The applicant could not be believed and the decision that he was over 21 was open to them.
79. Mr Swirsky addressed the evidence from the applicant's friend, YH, whose age was accepted. Mr Swirsky submitted the applicant and YH were two Amharic speaking Eritreans thrown together by circumstances a long way from home. All the information from YH came from the applicant. YH was a good friend and there was no reason for YH to believe the applicant was older than he said. YH could not remember the applicant's date of birth when he gave his statement and said he remembered it in evidence because of the applicant's birthday. Mr Swirsky submitted YH gave the applicant's date of birth in oral evidence because the applicant had told him the previous day when they had coffee.
80. Mr Swirsky submitted CJ was trying to help but her evidence was of no great assistance. She said she had no reason to doubt the applicant's

age. She had taught him for three months of which only one hour and 10 minutes was one to one. There was no cliff edge at 18 or 19 years old. She stated the applicant was not out of place in the class.

81. Mr Swirsky submitted the background evidence submitted by Ms Benfield in relation to procedures in Greece was of no assistance because it was not suggested anyone carried out an age assessment in Greece. It was the applicant's evidence he gave his date of birth and the authorities wrote it down wrong.

Applicant's submissions

82. Ms Benfield submitted, in giving the applicant the benefit of the doubt, I should approach his evidence with a sympathetic eye. Notwithstanding his age, he had been through difficult circumstances and experienced trauma. Asylum seekers often had difficulties in narrating their account. There were four years of birth in evidence. The applicant stated he was born in 2001, the Greek authorities recorded 1999, the Home Office recorded 1998 and the age assessment concluded 1997. The evidence should be considered in the round and the applicant's account was the best place to start.
83. In summary, Ms Benfield submitted the applicant had given a consistent account, in all material respects, which was supported by other evidence. I should find the applicant's account credible and attach little weight to the age assessment. The applicant's asylum claim was a matter for the home office. The CFA was the first assessment and the applicant had given a clear account of his core claim up to and including his oral evidence. There was no embellishment or inconsistency and the applicant had disclosed information which was not favourable to him.
84. It was accepted the applicant had crossed borders using false passports and he had made an asylum claim in another country. These aspects did not support an inference that the applicant came to the UK to obtain preferential treatment and they did not damage the applicant's intentions. The applicant had disclosed all matters whether positive or negative and he did not present as someone who was giving a false account.
85. When the applicant presented to the police station in December 2018 there was no interpreter present. The applicant was with a young woman and between them they gave the information requested. An error could easily have occurred before the applicant reached local authority care. It was apparent from the CFA that it was not obvious the applicant was not child. In the age assessment, conducted 20 days after the applicant arrived, he gave his date of birth as 16 December 2001.
86. The 12 October 2001 was recorded at the police station and was transferred to the local authority and into the ICARQ. It was

subsequently carried over into the grounds of this application from pre-action correspondence which was an inexcusable error by one of his representatives. There was nothing to support the date of birth of 12 October 1998 given by the Home Office. The applicant has been clear in the age assessment and thereafter that his date of birth was 16 December 2001. He should not be penalised for the earlier error.

87. Ms Benfield submitted the inconsistencies relied on by PA in the age assessment were in relation to memory and interpretation, not errors in relation to the details of the applicant's claim. The differences between the applicant's witness statement and his asylum statement were not unusual given that they were prepared for difference purposes. This did not mean the applicant was dishonest.
88. Ms Benfield submitted the applicant's ability to remember exact dates was not inconsistent with his lack of education and literacy skills. The applicant was told the arrangements for travel by his mother and he remembered the important facts. The date the applicant left Turkey and arrived in Greece was important. Remembering partial details was more indicative of a truthful account. The reasons given in the age assessment for rejecting the applicant's account were overstated and not relevant to assessing the applicant's age. The Home Office did not dispute the applicant's nationality and his inability to speak Tigrinya was consistent with his account that he left Eritrea when he was three years old.
89. The applicant's limited education in Sudan and his mother's concerns about him leaving the house was consistent with the displaced population living in Diem, Khartoum without permission. The applicant stated he willingly distributed leaflets in Sudan. His account of his reason for leaving was not inconsistent and his ability to travel on a false passport with the assistance of an agent was not unbelievable. None of the matters relied on by the Respondent suggest the applicant is not the age he claims to be. The inconsistencies in the applicant's account were minor and could easily have come about because of a misunderstanding.
90. Ms Benfield submitted the applicant disclosed his asylum claim in Greece in his ICARQ (Question 3.5) and the April IV according to the notes of the appropriate adult present. No notes were taken by the social workers PA and JJ. It was the applicant's case that he left Greece without knowing he had been granted a residence permit and travel document.
91. Ms Benfield submitted the applicant's account of the mistaken date of birth recorded by the Greek authorities was plausible. The evidence was unclear as to the process adopted in Greece. The country information supported the applicant's account. There were no social workers in Greece. The applicant's evidence of his date of birth has been consistent after lengthy questioning. There were some differences, but his account was broadly credible. The applicant's evidence was

supported by two other witnesses. There was no other evidence to support the respondent's age assessment. PA had limited involvement with the applicant.

92. On the contrary, CJ had spent a significant amount of time with the applicant and her evidence was persuasive given her 14 years' experience of teaching young people. It was not possible the applicant was 23 years old. YH confirmed that someone who was 23 years old was outside his peer group. YH was well equipped to distinguish between someone his age and someone significantly older.
93. Ms Benfield submitted that PA's oral evidence did not take matters much further than the age assessment. PA's analysis of the Greek material should be rejected because he had no communication with the Greek authorities and he did not speak to the applicant about it. PA's evidence on when a decision was made and the nature of the two interviews was inconsistent with the social care material. The respondent had made a decision as early as 17 January 2019. There was no 'minded to' process. There was no opportunity for the applicant to clarify matters. Ms Benfield relied on [38] to [52] of her skeleton argument and submitted the reasons upon which the respondent relied were remarkably weak and uniformed. There was a complete lack of care in note taking and writing up.
94. Ms Benfield submitted that on the totality of the evidence, the applicant was a credible witness and it was more likely than not his date of birth was 16 December 2001 as he claimed.

Conclusions and reasons

95. The issue for me to resolve is the applicant's age and date of birth. I make no determination whatsoever on the merits of the applicant's protection claim. Any finding or observation regarding the credibility of the applicant's account is in the context of the limited issue of dispute between the parties: the applicant's age and date of birth.
96. The relevant legal requirements are set out in the applicant's skeleton argument at [8] to [20] and the respondent's skeleton argument at [30] to [42]. In summary, it is for the Tribunal to determine the applicant's date of birth as a matter of fact and the Tribunal's role is inquisitorial. There is no burden of proof on either party and it is open to the Tribunal to reach a conclusion that is different from both the claimed age and the assessed age. The Tribunal should conduct a holistic assessment and decide the applicant's age on the balance of probabilities. The Tribunal should follow the *Merton* guidelines and should give the applicant the benefit of the doubt.
97. In coming to my conclusions, I have taken into account all of the evidence before me and considered it in the round. I have considered

the applicant's evidence with care making allowances for the traumatic experiences he is likely to have suffered in travelling from Sudan to the UK. I have considered the applicant's own evidence, the evidence of the other witnesses, the information set out in the contemporaneous records that form the backdrop to the age assessment completed by the local authority, and the background material. I have also made allowances for the fact that a child or young adult may have problems giving a coherent account of their history. It is agreed that, in the absence of documentary evidence of the applicant's age, the appropriate starting point is an assessment of the applicant's age on the basis of the credibility of his own evidence.

Applicant's credibility

98. I do not find the applicant to be a credible witness for the following reasons.
 - (a) He gave inconsistent evidence about significant events;
 - (b) His claim to have left school when he was eight years old was not credible;
 - (c) He gave different dates of birth to different authorities/people;
 - (d) He failed to voluntarily disclose he was granted asylum in Greece;
 - (e) He changed his account about how he was treated by the authorities in Greece.
99. It is reasonable to expect the applicant to accurately recall the following significant events, but he was unable to do so. The applicant gave inconsistent evidence in relation to three significant matters:
 - (i) The events which lead to him leaving Sudan;
 - (ii) Where he stayed in Turkey prior to travelling to Greece; and
 - (iii) How he lost contact with his mother.
100. In his witness statement, the applicant stated he was involved in spreading anti-government propaganda and had volunteered to distribute leaflets to other Eritrean families. He did not know what was written on the leaflets. In his asylum statement, he stated he had distributed leaflets in Eritrean restaurants in Sudan since 2016 and had continued to do this for one year until he left. His uncle had provided the leaflets. In his oral evidence, the applicant stated he distributed leaflets on one or two occasions just before he left in 2017. He picked up the leaflets from where they were hidden in a drawer in his uncle's room.
101. In his witness statement, the applicant stated that he landed in Istanbul and was taken by taxi to a small house where he remained with about 40 other people for three or four months. He left Istanbul on 28 July 2017 and went to a seaside resort where he boarded a small boat to Xios, Greece. In his asylum statement, he claimed to have stayed in Izmir for four months. In oral evidence, he stated he arrived in Istanbul and then took a taxi for one hour to the agent's house which he assumed was in Istanbul. From there he was taken to Izmir where he stayed for over three months. He was taken by vehicle to the seaside

and put on a boat. The applicant has given two different accounts and then attempted to reconcile them in oral evidence.

102. The applicant stated at paragraph 11 of his witness statement that the last time he spoke to his mother was in Turkey. The agent allowed him to use his phone to call his mother. He had her number written on a piece of paper. He no longer had the piece of paper because it got ruined when he had to get in the water when he arrived in Greece. In oral evidence, he said that his mother had a phone in Sudan and she contacted the agent in Turkey. The agent said he would give the number to the applicant at the time he boarded the boat, but there was confusion and the agent did not give it to him. These are two entirely different accounts which cannot not be explained by interpreter problems. The applicant declared in his witness statement that his account was true and there was no complaint made about the interpreter at any time. The applicant relied on interpreter problems when he had no plausible explanation for the differences in his account.
103. The applicant's claim that he left school in Sudan at the age of eight was not credible for the following reasons. The applicant claimed his mother told him he would be arrested by Eritrean police and he was not allowed to leave T's house which was in Khartoum, Sudan. His mother continued to work and would visit him at T's house. T's own children continued to go to school. The applicant lived with T in an area where there were many Eritreans and Ethiopians. There was no reason why the applicant could not continue to go to school with T's children given he was not politically active at that time and his mother was able to travel around Khartoum selling clothes. It was not credible the applicant remained in T's house for seven years doing chores. In oral evidence he stated that he only went out when accompanied by his uncle or others. This was inconsistent with his claim to be at risk because his uncle was well known.
104. I find the applicant's claim to have limited education to be further undermined by his ability to communicate in Arabic with his Syrian friend (whom he met at the camp in Xios and travelled with him to Athens) and his ability to specifically remember the dates when he left Sudan, Turkey and Greece. The applicant maintained he had not memorised his account.
105. The applicant accepted in cross-examination that he may have given the date of birth of 12 October 2001 to friends at the YMCA. He would have no reason to do this unless he had given this date at some point previously. The first time this date was mentioned was when the applicant arrived in the UK and gave his name and date of birth to the police. There was no evidence to support his claim that the mistake at the police station was caused by a young woman who helped him give details to the police. His date of birth is also recorded in the local authority documents as 12 October 2001. Even if this alleged mistake at the police station was carried through to the placement plan and CFA, I do not accept this occurred in relation to the ICARQ. The

applicant was asked twice about his date of birth in his ICARQ. There would be no point in doing so if the date of birth was obtained from other documents rather than the applicant himself. There was no plausible explanation for giving 12 October instead of 16 December as his date of birth when he arrived in the UK on 28 December 2018 because the applicant would still be the same age.

106. The application for permission for judicial review was issued on 19 June 2019 stating the applicant's date of birth is 12 October 2001. The applicant's solicitor submitted a witness statement in support of this application in which he stated he had 12 years' experience in age dispute cases and, at paragraph 14, "The Claimant instructs that he knows his date of birth is the 12/10/01". The pre-action protocol letter dated 21 May 2019 gives the applicant's date of birth as 12 October 2001. In the absence of evidence from the applicant's solicitor in relation to this alleged error, it is inconceivable the applicant's solicitor did not confirm the applicant's date of birth when issuing proceedings challenging the age assessment.
107. The applicant did not disclose his asylum claim in Greece in the January IV. In the April IV, the applicant stated that he was fingerprinted in Greece and his date of birth was recorded as 1999. In the ICARQ, dated 6 February 2019, the applicant stated he claimed asylum in Greece, but it took too long and so he left. The applicant's evidence was inconsistent with the letter from the Dublin unit in Greece dated 21 May 2020. The applicant claimed asylum on 1 August 2017 and granted refugee status on 9 August 2017.
108. In his asylum statement, dated 19 May 2020, the applicant stated he claimed asylum but never received a decision. In his witness statement, dated 29 June 2020, he stated he was forced to claim asylum in Greece and he left Xios before he knew his asylum claim was granted. On his own evidence, the applicant left Xios and stayed for one week in Athens before travelling to France in July 2018. Therefore, the applicant left Xios Greece after he had been granted a residence document in December 2017 and a travel document in May 2018. His claim to be unaware of these documents was not credible for the following reasons.
109. The applicant slightly changed his evidence on each occasion and his evidence was inconsistent with the information from the Greek authorities. The applicant was evasive in his oral evidence when confronted with this information from Greece. He initially claimed he was not allowed to approach anyone and his date of birth had been wrongly recorded because there was no interpreter and the police recorded what they wanted to believe. In re-examination, he disclosed that he had an interview in Greece, like the ICARQ, when he was questioned for two hours with an interpreter on the telephone.

110. In addition, the applicant's explanation that he was unaware he had been granted a residence document and travel document was vague in the extreme. In re-examination he was unable to explain what he meant by 'his name was up there.'
111. I have considered the background material submitted by Ms Benfield at the hearing. I have no doubt the applicant was living in poor conditions in the camp in Greece and he wanted to leave. The applicant was granted a travel document valid from 30 May 2018. He left Greece and travelled to France by plane in July 2018 on a blue travel document containing a photograph of someone who looked similar to him. I do not find it credible that friends in the camp in Xios gave the applicant a mobile phone pre-loaded with names and numbers or that he was given a false passport and plane ticket by the Habesha community in Athens. The applicant was in Athens for one week and he claimed he had no money. I infer he has fabricated this part of his claim in order to conceal he was in possession of a valid travel document.
112. I do not accept the applicant gave his date of birth as 16 December 2001 to the police or to the local authority when he arrived in the UK in December 2018. Nor do I accept the police and the local authority wrongly recorded the applicant's date of birth as 12 October 2001. The logical inference to be drawn from this is that the applicant gave 12 October 2001 as his date of birth on arrival in the UK in order to conceal his asylum claim in Greece where he gave his date of birth as 16 December 1999. I acknowledge that the applicant's motivation for failing to disclose his successful asylum claim could be because he was in fear of return to poor conditions in the camp in Greece, but that does not alter the fact that the applicant gave misleading information on arrival in the UK.

Witness' evidence

113. I attach little weight to the evidence of YH because it was not independent of the applicant. YH could not remember the applicant's date of birth when he made his statement. His explanation for being able to remember the applicant's date of birth at the hearing was not credible and tainted by his meeting with the applicant the day before the hearing. In any event, YH accepted the applicant told YH his date of birth. YH's knowledge was not independent.
114. I attach little weight to the evidence of CJ. I accept she has considerable teaching experience, but she taught the applicant for a very limited time, the majority of which was online due to the global pandemic. The applicant's class comprised 17 students who were 16 to 19 years old. CJ maintained the applicant was 'firmly in the middle' of this age range. On his own evidence, he was 18 years and six months old at that time he attended her classes.

Respondent's evidence

115. I attach little weight to the age assessment. It was not *Merton* compliant and the note taking was totally inadequate. There was no 'minded to' process and the applicant was not given an opportunity to respond to the conclusion that he was an adult.
116. I attach little weight to the evidence of PA. He met the applicant twice and had little interaction with him save for the two age assessment interviews. He was very unclear about the process for completing the age assessment and appeared to be unaware of the ADCS guidance. The date the age assessment was completed was ambiguous and there were clear errors in recording what was said. The notes of PA, JJ and the appropriate adult gave three different dates for the alleged date of birth in the false passport used by the applicant to travel from Greece to France.

Summary of conclusions

117. The task of the Tribunal is not simply to choose between the credible attempts to assess the applicant's age, but to reach my own assessment, informed by all of the evidence. There is no hurdle which the applicant must overcome, and I have to decide whether, on a balance of probability, the applicant was a child when he arrived in the UK.
118. Looking at all the evidence in the round, I do not accept the applicant's year of birth is 2001 as he claimed because his account is not credible and I attach little weight to the evidence of his supporting witnesses. I do not accept that the year of birth is 1997 because I attach little weight to the age assessment which was not *Merton* compliant. That conclusion was supported by the respondent's own evidence from PA.
119. For the reasons given above, I find it more likely than not that the applicant's date of birth is that given to the Greek authorities: 16 December 1999.
120. It is determined that the applicant's date of birth is 16 December 1999 so that on arrival in the United Kingdom on 28 December 2018, he was 19 years of age.
121. There was no application for permission to appeal to the Court of Appeal. I refuse permission to appeal to the Court of Appeal because there is no arguable case that I have erred in law or there is some other reason that requires consideration by the Court of Appeal.
122. I have considered the applicant's submissions on costs dated 6 June 2021 and the respondent's costs submissions dated 4 June 2021. Given my findings that the applicant is not credible and the age assessment is not *Merton* compliant, I make no order as to costs.

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

Unless and until a Tribunal or court directs otherwise, the applicant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or his witness. This direction applies both to the applicant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed: _____

Upper Tribunal Judge Frances