



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

In the matter of an application for Judicial Review

The King (on the application of HA)
(Anonymity Direction made)

Applicant

versus

Luton Borough Council

Respondent

ORDER

BEFORE Upper Tribunal Judge Kopieczek

HAVING considered all documents lodged and having heard Mr A Mackenzie of counsel, instructed by Instalaw Solicitors, for the applicant and Mr J Swirsky of counsel, instructed by Luton Borough Council, for the respondent at a hearing on 16 August 2022, there being no appearance by either party at the handing down of the judgment on 6 October 2022

IT IS DECLARED THAT the applicant's date of birth is 21 April 1998

IT IS ORDERED THAT:

1. The application for judicial review is refused for the reasons in the attached judgment.
2. The applicant shall pay the respondent's costs of the judicial review proceedings on the standard basis, to be the subject of a detailed assessment, if not agreed. The applicant having the benefit of cost protection under Section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the amount that he is to pay should be determined on an application by the respondent under Regulation 16 of the Civil Legal Aid (Costs) Regulations 2013.
3. There shall be a detailed assessment of the applicant's publicly funded costs.
4. Permission to appeal to the Court of Appeal is refused, there being no arguable error of law in the decision.

Signed: A. M. Kopieczek

Upper Tribunal Judge Kopieczek

Dated: 6/10/2022

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): *06/10/2022*

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).

IN THE UPPER TRIBUNAL

JR-2022-LON-000115

Field House,
Breams Buildings
London
EC4A 1WR

16 August 2022

**THE QUEEN
(ON THE APPLICATION OF HA)
(ANONYMITY DIRECTION MADE)**

Applicant

versus

LUTON BOROUGH COUNCIL

Respondent

BEFORE

UPPER TRIBUNAL JUDGE KOPIECZEK

- - - - -

Representation

For the Applicant: Mr A Mackenzie, Counsel instructed by
Instalaw Solicitors

For the Respondent: Mr J Swirsky, instructed by Luton Borough
Council

**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 any member of his family. This direction applies both to the applicant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

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JUDGMENT
- - - - -

INTRODUCTION

1. The applicant is a citizen of Ethiopia who asserts a date of birth of 21 April 2003. Following an age assessment undertaken by Luton Borough Council ("LBC") on 18 December 2020 the respondent assessed him as having a date of birth of 21 April 1998.
2. At the date of the LBC age assessment, on the basis of the applicant's claimed date of birth he was 17 years and 7 months old. According to the respondent he was then 22 years and 7 months old. At the date of the hearing before me, the applicant's case is that he was 19 years and 4 months old, whereas the respondent claims that he was 24 years and 4 months old.
3. Prior to the 18 December 2020 age assessment by LBC there was an assessment by the Home Office's Kent Intake Unit ("KIU") on 26 November 2020 which concluded that the applicant was born on 21 April 2000.
4. These judicial review proceedings challenge the respondent's assessment of the applicant's age.
5. In support of the applicant's claimed age, aside from his own evidence, he relies, amongst other matters, on the written evidence of Francesco Jeff in a statement dated 5 March 2021. Mr Jeff is a senior children's adviser employed by the Refugee Council's Children's Section. He also relies on the written and oral evidence of Andrew Calvert, now retired, but at the material time executive manager of a Luton-based charity which, broadly speaking, provides

support for young people. There is also a medical report by a Dr Isabel Teles, a consultant psychologist.

6. The main, agreed, bundle of documents extends to 372 pages.
7. The respondent's evidence includes the age assessments to which I have referred. Both parties provided detailed and helpful skeleton arguments.
8. I have considered all the documentary and oral evidence and have paid particular attention to those parts of the evidence to which I was specifically referred.
9. Given that the applicant has been diagnosed by Dr Teles as suffering from PTSD and depression, during the hearing he was treated as a vulnerable witness. I canvassed with the parties the measures that needed to be put in place in order to facilitate his giving oral evidence. It is only necessary for me to say further in this context that there were breaks during the course of the applicant's evidence and he was not asked to give evidence on, nor was he cross-examined about, what are said to have been traumatic events in Libya. No submissions were made to me during the course of the hearing or in closing submissions in relation to any issues arising concerning his ability to have given evidence.

THE ORAL EVIDENCE

10. The following is a summary only of the oral evidence before me.
11. In examination-in-chief the applicant adopted his witness statements dated 13 February 2021, 7 February 2022 and 17 August 2021, the latter being a witness statement in support of his asylum application.

12. In cross-examination he gave his date of birth as 21 April 2003. He was asked questions about his home in Ethiopia and about his family. He said that his father was a farmer and his mother was a housewife but she also helped his father, stating that they worked together. He was asked questions about his school. He said that he observed Ramadan after he arrived in Europe but in Ethiopia he only did half of it. They had always lived in the same house.
13. He did not know of close relatives in the town where they lived but he knew that his father had friends. His grandmother lived in another place. That was his father's mother and his (younger) brother lived with her. He does not know how far away from their home they lived and he had never been there. His brother had been to visit them with his grandmother.
14. He does not know of other close relatives and no other grandparents were alive. He had never seen any uncles or aunts.
15. His father was not educated. He does not know about his mother's education but she could write her name. His father could write but he told him that he was not educated. His sister was able to read and write.
16. He confirmed what was in a witness statement to the effect that he did not celebrate birthdays in Ethiopia. He did not notice anyone in his area doing that. He learnt about the days, months and the years at school.
17. His father told him his date of birth but he does not remember when. He does not know why he told him but he would ask him. He was aged about 8 years old when he asked. He had also been told his age before that.

18. His father had his date of birth written down in a book. It was a kind of exercise book used for writing notes. He does not know if his father was the only person who wrote in that book.
19. His mother was not able to remember his date of birth. He does not know how his father knew his date of birth.
20. They used the same calendar that the Europeans use. There is a calendar in Ethiopia which they call Habesha which is different from the European calendar. He does not know if that is the official calendar used in Ethiopia. He does not know whether that calendar is used in everyday life but they tended to use the European calendar. They would also use it at school. They would also write underneath using the Ethiopian calendar.
21. He had certificates in Oromo from school. He did see the book in which his father had written his date of birth. He was shown what he had written. He was able to read it. He cannot remember whether his father wrote his own date of birth in the book. He cannot remember exactly what was written in relation to his sister or brother. He cannot remember his brother's date of birth, although he did see it written down. He saw the book and saw his own date of birth.
22. As regards what is written in the LBC age assessment of 18 December 2020 to the effect that he had said that he had never seen the book, the applicant said that that was completely wrong. He does not know if what was written could be attributed to the barrier of interpretation but he made it clear that he had seen the book. He had told the people doing the age assessment that he had seen it. He had also told them that he did not know the dates of birth of other family members.

23. As regards the KIU age assessment on 26 November 2020, the applicant referred to problems with the interpreter and that a different interpreter was provided. He does remember answering questions about his parents but does not remember saying that his father's disappearance was related to the government wanting their land (as recorded in the KIU assessment). He thinks it was true that the government did want his father's land but the assertion that his father escaped because of that is not true.
24. It was put to him that in the KIU assessment he said that they moved to a town where they were the minority, and were discriminated against, had been called evil worshippers and called names so they "left". In evidence the applicant accepted that they had suffered problems but said that he did not accept the part where it says they "left". As to what is recorded about their having moved to a town where they were the minority, suggesting a contradiction with his earlier evidence that he had lived in the same place all his life, the applicant said that he had lived in the same place all his life apart from "seasonal time" when they would go and make a camp. That was not very far away. What he meant by saying that they were a "minority" was that they did not have relatives there.
25. Her sister had a close friend named Jamal. He was a little bit older than she was. He thinks his sister was around 15 years of age when they left Ethiopia. As to whether Jamal was her boyfriend, all he knows is that they were friends.
26. As to why he did not mention in the LBC age assessment that the government had wanted his father's land, he said that he was only responding to questions he was asked. He told them part of the problems but not all of the problems. Firstly, he found it traumatising to speak about his family and was

feeling stressed. He was only responding to the questions that they asked him.

27. The witness statement of 13 February 2021 was prepared through a solicitor and with an interpreter. He was referred to paragraph 11 where it states that both his parents "still live in Ethiopia" and that he last spoke to them before he left Ethiopia in 2015. The applicant said that what he was explaining was that even though he did not know their whereabouts because they were taken away, they were there.
28. It is not correct, as the witness statement says at paragraph 12, that his older sister left Ethiopia "and wanted to go to Sudan" and he left with her. It is not correct that his sister left; he left with her. As to why the statement does not record anything about problems with the government or the 'evil eye', the applicant said that he had previously explained "what happened to us" and the reason why they left the country. In that part of the statement he was explaining the journey and not the reason for leaving. He was not asked the reason for leaving the country.
29. He was 12 when he left Ethiopia but cannot remember the date. It was "around the half year". The journey to the UK was arranged by his sister and he followed her. He does not know how she paid for the journey.
30. It is true, as he said in his later asylum witness statement dated 17 August 2021, that his father was abducted. Referred to the asylum witness statement at paragraph 13 in which it states that his father was told by those that took him away that he was working to dismantle the government, he does not in fact know whether his father was doing that. He lived with his sister for about four or six months before leaving Ethiopia.

31. It is not true that the reason he mentioned in his second witness statement his parents' abduction but not in his first was because there was a difference in the accounts which he wanted to correct. He said that when he gave the statement at the hotel he was more relaxed and the solicitor advised him, gave him time and listened to him so he was able to give his account in detail. He was told not to worry.
32. It is true that he gave far more detail to Dr Teles about his leaving Ethiopia than previously. It is true that he had told Dr Teles about Jamal going with him and his sister. As to why he did not mention Jamal in his first witness statement, the applicant said that he had referred to him as her friend. It was pointed out to the applicant that in his first witness statement he had not referred to Jamal but had simply said that his sister arranged things and he went with her. The applicant responded that he had explained that she had a friend Jamal but he was later given the chance to explain things in detail on that point.
33. The applicant was asked why in his first witness statement of February 2021 he said that he and his sister had wanted to go to Sudan but the car took them to Libya, whereas he had told Dr Teles that they had crossed the border on foot and that they had transferred to a lorry that took them to Libya. The applicant said that the accounts are the same. What happened was that they crossed the border from Ethiopia to Sudan on foot. They were advised that they had to do that clandestinely. But apart from that, nothing was explained to them about going from Sudan to Libya. They just happened to find themselves there. When the doctor asked about this he explained how he had crossed the border from Ethiopia to Sudan and had explained how they ended up in Libya.

34. When they left Ethiopia his sister would have been around 15 years of age. At that time he was 12 years old plus a few months and she was 2 years and a bit older than he was.
35. After his parents were abducted they did not get any help from his father's friends in the town. People would ostracise their family and were scared of talking to them. Jamal was not scared. He would come to see them. His family did not help. He does not know whether or not Jamal lived with his parents. He does not know why Jamal wanted to leave and what the circumstances surrounding that were. Jamal would come to see them in the four - six months before they left and said that they should look for their parents. He was a good person. As to whether he talked to him a lot, he would not distance himself from him. As to why, therefore, he did not ask why he wanted to leave Ethiopia, he took it that he was helping them and he said he had contacts in Sudan and that they could live there as a safer place. He did not know his family.
36. They did not go and live with their grandmother (after their parents were abducted) because they do not have an intimate relationship with her and he only knows the name of the place where she lived. Asked whether it would have been better as a child to go and live with his grandmother and brother rather than go to a foreign country, the applicant said that they faced difficulties and he did not know where to go or where his grandmother lived.
37. When he was in Italy before coming to the UK he was aged 13. As to why he did not claim asylum in Italy, he was only following the other people he had been with and did not have much information about claiming asylum. He was stopped by the Italian authorities on the street and his fingerprints were taken. They told him to go and he just followed the

others. He told them his name and date of birth. The Italian police told them to go to a particular place but he just followed the others.

38. In answer to a question from me, he said that the police stopped them in the street and took them to a place where they took their fingerprints.
39. In further cross-examination he said that he was fingerprinted in France, and gave his name and date of birth when he was 13 years of age. He was stopped by the police. They were taken to a place but he does not know if it was a police station. They then let him go. In France nobody cared about other people.
40. He then went to Germany where he was also fingerprinted and he gave his name, date of birth and country of origin. He was taken to a camp for children. He was the only Oromo person there. In Germany they would come and teach them sometimes. He learnt the German alphabet and things like that. They said they would be allowed a social worker but no-one turned up. He did not have a lawyer in Germany.
41. As to whether he applied for asylum in Germany, he does not know much about the process but they would come and ask some questions, like the questions today. After one and a half years he decided to leave the children's camp because they sent him a letter saying that he should leave that area. He left because he was scared because he was given a specific date by which to leave. He was not told that he could have a lawyer to challenge the letter. He went to speak to a young Oromo man he knew and he told him that he had a similar situation and they had to leave.

42. He does not know whether the German authorities knew that he was only 14 at that time. He did tell them his date of birth. They did not say whether or not they believed him.
43. The applicant was then asked questions about what is recorded in the Initial Contact And Asylum Registration Questionnaire (dated 30 November 2020). As to question 3.3, where he was asked to outline his journey to the UK, he did not say that he was in a children's home in Germany at that point because they provided an Amharic interpreter and he does not speak Amharic fluently. He asked for an Oromo interpreter and they said they could not find one. It was pointed out to the applicant that that interview was in fact conducted with an Oromo interpreter.
44. He still does not know whether he applied for asylum in Germany (with reference to question 3.5 at which it is recorded that he said he had not applied for asylum in any other country).
45. He was fingerprinted in Belgium. For a few days he was taken to a camp and later told he was free to go. He gave his name and date of birth there. As to why the Belgian authorities responded to a request from his solicitors stating that they had no record of him there, he does not know why that would be so. No-one cared about them in Belgium. He did not know how to claim asylum then.
46. In France, the police laugh at you. In France and Belgium he had heard about asylum but no-one was concerned about them.
47. He decided to come to the UK when he went to Belgium and saw some people there. He did say in the Asylum Registration Questionnaire (question 3.1) that he had come to the UK to seek asylum and for no other reason. As to why he claimed asylum in the UK but nowhere else, when he was in Germany he

knew that they were dealing with his case but they told him to leave the country. He wanted to live there. In Belgium and France he was assisted by individuals from charities but otherwise did not know much about asylum. He was listening to what other people were saying.

48. He did not know the advantage of claiming to be a child when he came to the UK. He is not telling people that he is younger than he is. It is not true that his story has developed as time has gone on. It is true that he was angry when he heard the result of the first age assessment but that was because he had been asked question after question by different people and they were telling him that they did not accept his date of birth and gave him a different date of birth. He was stressed about that.
49. There was no re-examination. In answer to a question from me he said that in terms of his having to pay money to travel by boat from France to England, at that time he went to a place where they were given food and people were talking about collecting money from each other to buy a boat. He did not have any money but the people managed to contribute money and buy a boat and they asked him to go with them.
50. Andrew Calvert gave evidence and adopted his witness statements dated 1 August 2022 and 20 April 2021.
51. In cross-examination he said that he was formerly the executive manager at TOKKO prior to his retirement in March of this year. TOKKO is just a name chosen by the young people for the charity. He has 40 years' background in youth work. He used to be lead youth worker for half of the town of Luton.
52. TOKKO does not do a lot of work with asylum seekers. The nature of their work is that they have an open door policy,

however. In this case HA's solicitor rang the charity and said that HA needed somewhere to go.

53. His dealings with HA began in March 2021 and ended in October 2021 when he was dispersed. A period of six months.
54. It is true that COVID did interfere with the small group work but a lot of the work done with HA was one-to-one support. They had about 300 young people they were working with at that time. There were about twelve asylum seekers. HA was the only one from Ethiopia, Eritrea or Somalia.
55. He has only worked with about five or six young people from Ethiopia or Eritrea over the years. Generally they have been asylum seekers.
56. As he said in his witness statement at paragraph 8, HA had visited Tokko twelve times but they had further one-to-one meetings at the hotel he was staying at, socially distancing in the car park. On most occasions when HA went to TOKKO he saw him (the witness). He saw him for about an hour each time and on a couple of occasions for about three hours. Another time it was all day. The one-to-one meetings were to support him.
57. They build relationships with people and his job is to get involved in other projects. He and HA always spoke in English together and his English definitely improved. His comprehension now is even better.
58. He understands that the local authority has problems with people pretending to be under 18. Their activities with the young people involves trust on both sides in relation to their engagement in community and other activities.
59. Referred to his witness statement at paragraph 10, he said that HA told him his age and so did the solicitor. However,

he has 40 years' experience of looking after young people and HA fitted into the stereotypical age that he said he was. He had no reason to disagree about his age. It is true that there was no older cohort of young people for him to associate with but if HA was much older than he said he was, that would show in the way he responded to the other young people. He would come across as much older. He agreed that there was no bright line to be drawn in relation to age in terms of behaviour. It depends on the individual. He could only go on what he saw and in relation to what the needs of an individual are. It is true that HA said that he had been travelling for many years.

60. They also have an 18 to 24 age group in which there is a continuation of the work they do. They have a separate room. They have had people turning up pretending to be younger than they actually are. He gave the example of one particular group that they had had to deal with (not from Ethiopia or Eritrea) about five years ago.
61. In re-examination he was asked about the local authority deciding that he had been born in 1998, thus making him 22 or 23 years of age when he first met him. He said that if he had agreed with that assessment of his age he thought that they would still work with him. At the time he came to them he was a young person needing clothing and support and he had additional needs. He was, however, put with the younger persons' group rather than the older group. The needs of a 22 to 24 year old would be different.
62. The interactions he observed in relation to the other young people were in relation to those who were 14, 15 or 16 years of age. As to whether it would be acceptable for a young man of 23 to be interacting with 14 year olds, they do in fact have youth workers who would do so. One is aged 21.

However, they had never had that as an issue. It was the way he engaged and acted that made him come to the view that he did.

SUBMISSIONS

63. The following is a summary of the parties' submissions.
64. Mr Swirsky submitted that the starting point had to be the LBC age assessment dated 18 December 2020. At that time it was thought that short-form assessments was permissible. The position now is slightly different, however.
65. It was accepted that the KIU assessment could be criticised. Caution was therefore needed when considering it.
66. Taken together, the KIU and the LBC assessments involved four people, all of whom have experience of age assessments. All four reached the conclusion that the applicant was an adult based on his appearance, demeanour and interactions. Whether or not there were procedural defects, one cannot ignore the fact that four social workers came to the same conclusion.
67. It is true that physical appearance and demeanour have been criticised as a reliable basis for the assessment of age. However, in *R (On the Application of HAM) v London Borough of Brent* [2022] EWHC 1924 (Admin) Swift J concluded that regard can be had to physical appearance and demeanour in the assessment of age; similarly, in *R (on the application of B) v Merton Borough Council* [2003] EWHC 1689 (Admin). Caution would be needed but physical appearance and demeanour are not matters that can simply be ignored.
68. In the local authority assessment dated 18 December 2020, it is clear that physical appearance and demeanour were major factors in the assessment of the applicant's age. However,

there are also other problems with his account of events, in terms of how he knows his age, his journey to the UK and why he left Ethiopia.

69. His account was initially vague but then was fleshed out. There is no reason for anyone in the applicant's circumstances to be anything other than open and truthful. It is accepted that there may be circumstances where a young person would not, for example, want to identify a trafficker, which could be a reason for that person not being forthcoming about events. Otherwise, in relation to an individual's life or journey, there is no reason for them to be untruthful.
70. In the LBC assessment, aspects of it were sparse in terms of the information provided. The applicant says that he was just not asked the questions he could have been asked. However, that does not explain the applicant's first witness statement dated 13 February 2021. That statement was used as the basis for the application for judicial review and for interim relief. It was a witness statement that was also sparse in detail. Further details emerged from time to time.
71. It is true that the asylum witness statement dated 17 August 2021 was for a wholly different purpose. What is said in that witness statement is picked up in the report of Dr Teles. It was not until Dr Teles' report that the person he referred to as Jamal emerged as the organiser of the departure from Ethiopia and with whom the applicant and his sister went. There is major inconsistency between the first witness statement and the asylum witness statement. That resulted in the further witness statement dated 7 May 2022, seeking to explain the inconsistencies.

72. There were some inconsistencies in his account which in themselves would not be sufficient but in combination they were. The first related to how the applicant knew his age. His father was not educated, it seems, but could read and write and for some reason wrote the applicant's date of birth in a book, as well as the dates of birth of others. There is no explanation as to why he had done this. In the KIU assessment he said that he saw the book but in the LBC assessment he said that he did not. The notes of that assessment record that the applicant said that his father told him his age each year but that he had not seen the book ("list" in the notes). In evidence he was clear that he had seen the book. This being evidence as to how he knows his age it is significant.
73. According to the applicant his brother and sister's dates of birth were also there but he did not know what they were and only estimated their ages. Although the applicant said that the dates of birth were written in the Gregorian calendar it is well-known to the Tribunal that in Ethiopia they use their own calendar. It was accepted, however, that there was no actual evidence before the Tribunal on that issue.
74. The applicant had given different reasons as to why he left Ethiopia. In the KIU age assessment he said that he thought that his father was a farmer and the government wanted his land, so his parents escaped. That was the reason he gave for his leaving the country when he first arrived in the UK. Even though he had just arrived he was able to talk about those events. In the LBC assessment he gave no reason at all for leaving. It was only in his asylum witness statement that he gave as the reason that his parents were abducted by the authorities because his father was amongst those opposing the government.

75. In Dr Teles' report he gives the abduction of his parents as the cause for leaving.
76. The most striking thing is that the applicant claims to have left Ethiopia when he was 12 years of age, with his sister, who was 14 or 15 years old at best. They organised the journey themselves and no adults were involved. There is no explanation of this. That aspect of the story changed as well, however. In the KIU age assessment he was asked how he and his sister paid for their travel to Libya and he said he was not sure but that he assumed his sister paid for the journey and that she was the one dealing with the money. In the asylum witness statement, however, he said that his sister had a friend who helped them to leave.
77. By the time of Dr Teles' report, the person named Jamal appears. Apparently, he organised and paid for the agents and joined them until the point where they were all separated. There is, therefore, a significant change in his evidence in that respect.
78. Furthermore, Jamal himself appeared to be a teenager yet was able to organise the journey. The applicant does not know why Jamal left Ethiopia, or anything about his family. None of that is credible, it was submitted.
79. It was accepted on behalf of the respondent that the applicant may have had extremely unpleasant experiences in Libya. However, his account is focussed on events in Europe. He said that he told the Italian authorities his name and age and he was fingerprinted. However, nothing happened and he was allowed to wander off, apparently without any safeguarding concerns by the Italian authorities. The same arose in relation to the German authorities. The applicant said that he was in a children's home for one and a half years, fingerprinted and also gave

his age and name. He was vague about whether or not he had applied for asylum.

80. His account, therefore, depends on the German authorities expelling a child of the age of about 14½ years. It was submitted that that was not credible.
81. Although he claims to have been in Belgium where he gave his name, date of birth and was fingerprinted, the Belgian authorities, according to the information provided to the applicant's solicitors, have no information at all about him.
82. Although he said that he did not apply for asylum in Belgium or France, at the moment he arrived in the UK he claimed asylum and expressly said that that was the reason for coming to the UK. That contrasts with his vague account of whether or not he applied for asylum in Germany.
83. It was submitted that the applicant's story as a whole was simply not credible. It was an account of a boy aged about 14 or 15 wandering around Europe with an inconsistent account of why or how he left Ethiopia.
84. The medical evidence does not take the applicant's case anywhere. He may well be suffering from PTSD, but individuals travelling through Libya are likely to have had difficult experiences.
85. So far as Mr Calvert is concerned, he is clearly well-meaning and has dedicated his life to young people. However, he was not really sure about the applicant's age. The effect of his evidence was that age was just a number and he wanted to believe him as he clearly liked him. His evidence adds very little, it was submitted. Little weight should be afforded to the evidence of Francesco Jeff.

86. It was permissible for the Tribunal to take into account an unlawful age assessment just as much as a lawful age assessment. The criticisms of the local authority age assessment seemed to be that there was no 'minded to' process. It was accepted that there was none but if the applicant's first witness statement had filled in the missing detail and provided answers to the vagueness about his journey and so forth, there would be more to that point.
87. There was nothing in the criticism that there was no appropriate adult because there was, an employee of the hotel. In any event, it was clear from *HAM* that there is no legal requirement for an appropriate adult. There was nothing here to suggest that there was the need for an appropriate adult or, indeed, a different adult.
88. The age assessment referred to the applicant's demeanour and appearance, already addressed in submissions. Reasons were given as to the views of the age assessors.
89. Although it is argued that no regard was had to the applicant's mental health, there was no reason for the age assessors to believe that there were any mental health issues. The diagnosis of PTSD only emerged in June 2022.
90. The age assessment was lawful at the time and even if not, the Tribunal was entitled to have regard to it.
91. In answer to a question from me, Mr Swirsky said that it could not be argued that because an age assessment by the KIU by two social workers concluded that the applicant was not the age he claimed to be, could mean that subsequent social workers would be more likely to say the same thing. It was pointed out that in almost every case there was an initial age assessment which is why a later age assessment is conducted. In any event, the KIU age assessors gave a

different date of birth from that given by the local authority.

92. Mr Mackenzie relied on his skeleton argument.
93. I was invited to accept the applicant's evidence and that of Mr Calvert, who it was submitted is the sort of person whose evidence was said in *R (AM) v Solihull MBC* [2012] UKUT 00118 (IAC) is likely to be of assistance. That is a person observing the day-to-day life of a young person. Mr Calvert had the advantage of having observed the applicant, which we do not have. He has 40 years' experience and maintains that the applicant is the age that he claims. He expressly said in his witness statement that he supported the applicant's claimed date of birth. It is clear that he was not swayed because he liked the applicant or wanted to support him.
94. Although the evidence of Francesco Jeff was not the most significant evidence, it nevertheless needed to be taken into account.
95. Dr Teles' report referred to the applicant suffering from PTSD and depression which can affect the ability to give a clear account, and difficulty giving an account of traumatic events. It was submitted that this helped to explain some of the criticisms of the applicant's account.
96. It was submitted that all of the reliable evidence is consistent with the applicant's claimed date of birth and his being a child at the material time.
97. The LBC age assessment was clearly not *Merton* compliant. It was not accepted, contrary to the submission made on behalf of the respondent, that that age assessment must be the starting point. If it was conducted fairly it might be but that is not so in this case. Furthermore, there was no persuasive indication of how experienced the social workers

were and there were numerous ways in which the age assessment was flawed.

98. As suggested in the skeleton argument at paragraph 22, the age assessment was carried out in circumstances where LBC was evidently reluctant to accept responsibility for the applicant. The applicant was referred to LBC by Migrant Help on or around 3 December 2020. LBC initially and wrongly understood that the previous age assessment had been done by Kent County Council. It was at first suggested that LBC should "do our own short report confirming that we agree with the decision made by Kent". This was a single assessment, which was very brief, over a couple of hours. There was no 'minded to' stage.
99. So far as the book in which his date of birth was written by his father, the age assessment records that he did not see it but the applicant in evidence rejected that aspect of the age assessment. Furthermore, the handwritten notes of that age assessment record that the applicant said that he had seen the "list" but then recorded that he had not seen it. It was not clear why both assertions do not appear in the age assessment itself, only the note that he had not seen it. There is no indication that there was any follow-up questions in relation to that issue. That is just the sort of matter that the 'minded to' process would cover.
100. Although it is said that his account of his reasons for leaving Ethiopia was vague or sparse it was open to the age assessors to explore those matters. The applicant was not in control of the process and he was not the one deciding whether or not there would be one or more meetings.
101. There was no appropriate adult during the LBC assessment. It appears that it was only an untrained member of staff from the hotel. That is clearly not sufficient and is

contrary to the Association of Directors of Children's Services ("ADCS") and the Home Office guidance. It was submitted that it was extraordinary that trained social workers thought that an ordinary hotel worker was a suitable person to act as an appropriate adult.

102. It was accepted, however, that appearance may be relevant in clear cases but there needs to be some connection between the physical features and the age assessed. The issue of demeanour rests on an assumption about how a person would behave in the presence of strangers.
103. Furthermore, although it is said that the applicant's answers are vague, he could not be criticised for not answering questions that he was not asked.
104. It should be obvious to experienced social workers that dealing with a traumatised person may result in their account being affected, as confirmed by Dr Teles. At the very least those conducting the age assessment should have considered this as an issue.
105. It was, furthermore, clear that the age assessment was very shoddily put together, with numerous grammatical errors, including at one point referring to him as female. The report was clearly not read through before it was finalised. It was submitted that it was hard to say that the report overall was not influenced by the intention not to accept the applicant as a child.
106. As regards the KIU assessment, there was no appropriate adult, no 'minded to' process and it was conducted on the day of his arrival.
107. There were also interpreter problems at the KIU assessment. It is true that the right thing was done by changing the

interpreter but the question arises in terms of what was recorded before the interpreter was replaced.

108. There is no evidence as to how he was treated by the authorities in Europe apart from his own evidence. Although it was submitted on behalf of the respondent that it was implausible that Germany would turn a blind eye to a minor's situation and require him to leave, one simply does not know what happened. There is no evidence either way.
109. In his first witness statement dated 13 February 2021 he referred to certificates at school giving his age and date of birth. There was no cross-examination in relation to that issue.
110. As to the calendar used in Ethiopia, there was no evidence on that issue either way.
111. It was not surprising that different statements were given by the applicant for different purposes. Thus, the details in one statement may not be included in another. The February 2021 witness statement does not cover the reasons for leaving Ethiopia. The age assessment solicitors probably may not have wanted to 'tread on the toes' of the asylum solicitors. The applicant could not have been expected to volunteer information he was not asked about and not apparently relevant for the purposes of that statement.
112. His asylum statement dated 17 August 2021 does clearly give the reasons for leaving Ethiopia because there it was relevant. Furthermore, given that he was aged 12 when he left Ethiopia it is not surprising that he does not know some of the details. This is relevant to criticisms made about why he does not know the dates of birth of his siblings, or why Jamal was not asked about his reasons for

wanting to leave the country or why he did not go to live with his grandmother.

113. His case is that he was not involved in the decision-making at all and that his sister was helped by Jamal, who was aged 18 or 19. In any event, Jamal's role was not central to the issues.

114. It was submitted that the applicant's claim as to his age has been consistent throughout. It is not surprising that details would emerge later. On the contrary, it would be surprising if everything was disclosed initially.

115. His account was supported by the evidence of Mr Jeff and Mr Calvert.

ASSESSMENT AND CONCLUSIONS

116. There was no dispute between the parties as to the legal principles to be applied. There is no burden of proof on either party and the Tribunal must decide the matter of age on a balance of probabilities (*R (CJ) v Cardiff City Council* [2011] EWCA Civ 1590. The role of the court or Tribunal is inquisitorial.

117. In *R (on the application of B) v London Borough of Merton* [2003] EWHC 1689 (Admin) the following was said at paragraph 20:

"20. In a case such as the present, the applicant does not produce any reliable documentary evidence of his date of birth or age. In such circumstances, the determination of the age of the applicant will depend on the history he gives, on his physical appearance and on his behaviour."

118. Then, at paragraph 28 one finds the following:

"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."

119. Finally, at paragraph 37 it was said that:

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

120. In *R (on the application of AM) v Solihull Metropolitan Borough Council* (AAJR) [2012] UKUT 00118 (IAC) the Tribunal

at paragraph 15 said that almost all evidence of physical characteristics is likely to be of very limited value.

121. Recently, in *HAM* further useful guidance was given. Thus, for example at paragraph 21 Swift J said the following:

"21. I have considered these two matters at some length simply to emphasise that in every case when deciding whether an age assessment has been conducted consistent with the requirements of fairness, there is no substitute for testing the matter against the basic principle, by reference to the circumstances of the case under consideration, and by reference to whether the decision rested on reasonable investigation and whether that investigation was undertaken fairly. In practice, this latter requirement is likely to focus on whether any interview with the person was conducted to permit him properly to contribute, and properly to respond to matters going to his credibility which the local authority considers weigh against his contention to be a child."

122. At paragraph 24 of the same decision it was emphasised that whilst *Merton* identified relevant operating principles, it did not establish a checklist and that the issue is one of fairness in the assessment. At paragraph 34, quoting from *R (SB) v Royal Borough of Kensington and Chelsea* [2022] EWHC 308 (Admin), Swift J said that local authorities should not be "hobbled" by the courts taking a highly technical approach, demanding that every box is ticked, but should instead allow practical and flexible procedures to be deployed.

123. Further, at paragraphs 45 and 46 one finds the following:

"45. The next submission is that the interviews with the Claimant on 28 July and 4 August 2021 were conducted unfairly because the Claimant was not given the

opportunity to have an appropriate adult present. I have already said that I do not consider the case law to date supports the conclusion that fairness requires and appropriate adult be present at every age assessment interview (see above at paragraph 20). What is required depends on the circumstances of the case. The ADCS guidance includes the following passages on the role of an appropriate adult:

'The appropriate adult must be independent of the local authority, have the relevant skills and training to undertake their role, and be experienced in working with children and young people. They need to be clear and confident about their role, have the skills to support the child or young person in the interview(s) and challenge social workers if they feel the interview is not being conducted appropriately. An appropriate adult should advocate on behalf of the child or young person, represent their best interests and ensure that the child or young person's welfare needs are met during the interview process.

...

Their role is to ensure the child or young person understands the questions posed to them, and that the accessing social workers conduct the age assessment in a child-friendly, clear and transparent manner. The appropriate adult may also support a child or young person to clarify questions posed by social workers, but cannot coach or answer questions on behalf of the child or young person'.

46. A court's decision on whether fairness requires an appropriate adult to be present must take account of any relevant observations made by the social workers conducting the interview. In this case the information

at Section 7 of the standard assessment document records that the Claimant spoke confidently and was 'able to advocate for himself', and notes that the Claimant's insistence on a need for a Sudanese Arabic interpreter was also evidence of his maturity and ability to speak up for himself. In these circumstances I consider that the interviews conducted were not unfair for want of an appropriate adult. This Claimant was able to understand questions put and, when necessary, to ensure his point of view was expressed and understood. For these reasons, on the facts of this case, this ground of challenge also fails."

124. Lastly, it is useful to quote paragraphs 51 and 52, as follows:

"51. I do not accept the Council's submission on this point. I am satisfied that in this case it is artificial to seek to separate the point about the Claimant's appearance, that was put to him, from the points at (a) - (c) above that were not put to him. The latter points, which were thought to go to the Claimant's credibility feed into the conclusion that his apparent age (not his claimed age) was his real age. For that reason, those points should, in fairness, have been put to the Claimant. The Claimant's response to what was put to him, that he did not know if he was a child or not, is not to the point. The point here being the fairness of the procedure, not whether the conclusion was correct.

52. In submissions Mr Rule also suggested that the 'minded to' phase was unfair as it had taken place at the end of the 4 August 2021 interview rather than later, or on a separate occasion. There is no substance at all to this submission. There is nothing in the circumstances of this case to suggest a legal requirement that matters going to the Claimant's credibility be put to

him at a different interview or on a separate occasion. At the risk of tempting providence, it is difficult to envisage the circumstances which could plausibly found such a submission."

125. This is a case in which there is no documentary evidence of the applicant's age. Necessarily, therefore, his account of events represents a significant feature of my assessment of his age, taken together with all the other surrounding evidence.
126. There are some basic matters about which the applicant has been consistent, for example that he left Ethiopia with his sister when he was aged 12, that he had lived with his parents, that he suffered traumatic events in Libya and that he had travelled to various countries in Europe, spending some time in Europe before coming to the UK. He has also been broadly consistent in relation to how he knew his date of birth from being told by his father, who had written it down in a book.
127. His account is supported to some degree by the evidence of two witnesses, Francesco Jeff and Andrew Calvert.
128. Francesco Jeff's written statement refers to his having over fifteen years' experience working with unaccompanied and age-disputed minors from the Middle East, Africa, Afghanistan, Iraq, Iran and Syria. He is a senior children's adviser employed by the Refugee Council's Children's Section. He also acts as a litigation friend in appropriate cases and says that he has acted for a large proportion of young people in challenging age-disputed decisions and decisions to detain unaccompanied children, as well as in unlawful detention cases.

129. At paragraph 10 of his witness statement he says that in each and every case where he agrees to act as a litigation friend, as he did at one point in this case, he would conduct his own brief assessment in order to satisfy himself that on the information available the young person could be a child. He also says that he would satisfy himself that based on their appearance and interaction the young person was not obviously and clearly an adult. He states that he conducted such an assessment in this case and is satisfied that the applicant could be his claimed age and that this is not a clear and obvious case and that a decision cannot be reached weighted heavily on the applicant's appearance and demeanour. He also points out that the Refugee Council does not support each and every young person claiming to be a child and there are a considerable number of young people that present to them for help with disputed age where they do not consider on the information they have that they can properly act for them.
130. Mr Jeff clearly has experience of acting for young persons. He does not, however, explain in any detail how he conducted an assessment of the applicant's age in this case. Furthermore, he goes no further than to say that the applicant could be his claimed age. I do not accept the submission made on behalf of the respondent that Mr Jeff's evidence carries no weight at all. I consider that it has some weight, albeit very little in the light of the limitations of his evidence referred to above.
131. Mr Calvert goes further than simply saying that the applicant could be the age he claims or that he sees no reason to doubt the applicant's claimed age. He positively supports the applicant's claimed age.

132. Mr Calvert is clearly someone of considerable experience of dealing with young people and I regard him as an honest witness, doing his best to assist the Tribunal and offering his impartial opinion as to the applicant's age.
133. However, the focus of his work, and his work with the applicant, was not on assessing his age, albeit that he expressed the view that his interactions and so forth with other young people supported the claimed age. His focus was plainly on the nature of the support that the applicant needed as a young person regardless of his exact age within the parameters of the young persons they deal with.
134. Nevertheless, irrespective of the primary focus of Mr Calvert's work with the applicant, the weight to be attributed to his evidence is much greater than that which can be attributed to the evidence of Mr Jeff, given Mr Calvert's greater involvement with the applicant. His evidence is plainly not decisive but it deserves to be given more than minimal weight.
135. In my determination of the issue of the applicant's age, I have taken into account the evidence of Dr Teles.
136. I accept that the applicant is suffering from PTSD and depression. I also accept that that is likely to have affected the extent to which he is, and was at material times, able to give a clear and consistent account of events surrounding his departure from Ethiopia and arrival in the UK. On any view, on arrival in the UK he was a very young person who, it is accepted by the respondent, experienced traumatic events in Libya. Those are all significant aspects of the applicant's background which need to be taken into account in assessing his credibility which is at the heart of this case. I also bear in mind that on his account he would have been 12 years of age when he left Ethiopia, a

matter that would also have an effect on his ability to recall events, if true.

137. There were undoubted deficiencies in the two age assessments conducted firstly by the KIU shortly after the applicant's arrival in the UK, and then by the LBC.

138. So far as the KIU assessment is concerned, there was no appropriate adult. There were clearly problems with the first interpreter, who was replaced. There was no express 'minded to' process by which the applicant could challenge the conclusions of the age assessment.

139. As regards what is said in that assessment about the applicant's physical appearance and demeanour, I treat those aspects of the assessment with caution, given that this is not a case in my judgement where the matter of appearance can be decisive. As to what is said about the applicant's demeanour, for example being someone who "spoke with authority and maturity", if the applicant had indeed left Ethiopia when he was aged about 12 and spent five years more or less having to fend for himself or dealing with authorities in Europe over a period of about five years, he may well be someone who developed a certain maturity or authority.

140. Although it is said that he was not forthcoming with information, it is difficult to discern from the age assessment the basis of that conclusion in terms of the questions asked and any apparent lack of response from the applicant. Some limited assistance on that issue can be seen where it is said in the age assessment that he was not forthcoming with information even when prompted and that on occasions when he was prompted further often said he could not remember. On the other hand, it is evident that the

applicant did provide some detail in response to many of the questions.

141. The LBC age assessment is also one that is deficient in some respects. The 'appropriate adult' appears to have been an adult working at the hotel, with whom the applicant was familiar. There is little or no indication on the face of the age assessment as to what instructions he was given or guidance in terms of the assistance that he might render to the applicant during the age assessment.
142. Similarly, there was no 'minded to' process. Furthermore, there is something to be said for the argument advanced on behalf of the applicant to the effect that the record of the age assessment betrays some lack of care in its presentation, evident in very many grammatical and like errors in the written assessment.
143. Nevertheless, it is also true to say that there is no legal requirement for an appropriate adult (with reference to either assessment) or for a 'minded to' process. It is not necessary for me to determine whether the age assessments were lawful in terms of *Merton* compliance. The deficiencies in the assessments to which I have referred reflect the weight to be attached to them.
144. Notwithstanding the allowances to be afforded to the applicant in terms of any inconsistency in his account for the various reasons advanced, including with respect to the medical evidence, there are matters of significance in the applicant's respective accounts which adversely affect his credibility.
145. In the KIU assessment, the applicant was asked why his parents allowed him to leave the country at such a young age (12) and the applicant is recorded to having said that his

parents were not around, so he left with his older sister. This answer was apparently given just before a change of interpreter. After the new interpreter was provided this matter was explored again, with the applicant being asked where his parents were and when they left. He is recorded as saying "I don't remember but I think my father was a farmer and the government wanted his land, so he and my mother escaped, and we were left on our own just before I turned 12".

146. Although in evidence the applicant rejected the suggestion that he said his parents escaped, what is recorded there is plainly inconsistent with his claim that his parents were abducted or kidnapped by the authorities in Ethiopia.

147. This inconsistency cannot feasibly be explained on the basis of the applicant suffering from PTSD or depression, or indeed in terms of his recent arrival. He was able to give an account but that account was starkly inconsistent with what he now asserts. The age assessment is clear in relation to what the applicant said.

148. Likewise, in the KIU assessment the applicant went on to state that "we moved to a town where we were the minority and we were discriminated against". When asked for more information he said that "we were called evil worshippers, in school, we were called names so we left". He also said that they were told that they had "evil eyes" by various people in the community and that they were blamed for every bad thing that happened. Again, as a reason for leaving Ethiopia, that is not consistent with his now stated account. The inconsistency includes the assertion that they moved to a town where they were the minority. His oral evidence was that they had always lived in the same place, apart from at "seasonal time".

149. When asked in that age assessment about his journey from Ethiopia, his account was that his sister made all the arrangements, notwithstanding that she was about 14 or 15 years of age. He made no mention there of her having any friend who assisted, still less giving the name of the person, which he did for the first time when speaking to Dr Teles. That was the first time when the name of Jamal was mentioned. Again, I do not accept that the deficiencies in the age assessment process or the applicant's particular circumstances, including his medical condition, explain that inconsistency.
150. As regards the applicant's first witness statement, whilst accepting that it was prepared for the purposes of challenging the age assessment, that does not mean that any fundamental inconsistencies in it in terms of his account can be ignored. In this respect I am referring to paragraph 11 of the witness statement under the subheading "My life in Ethiopia". In that paragraph the applicant states that "both of my parents still live in Ethiopia, I last spoke to them before I left Ethiopia in 2015". That witness statement was made about two and a half months after the applicant arrived in the UK. The applicant's statement that his parents still live in Ethiopia, on his present account could literally be true. Likewise, that he last spoke to them before he left Ethiopia in 2015. However, given the applicant's claim now that his parents were kidnapped or abducted by the authorities, it is not credible that if that was true he would have failed to make at least some, however minimal, reference to that fact at that point in the statement. Whilst, again, I accept what is said in the report of Dr Teles about the need to take into account the difficulties that someone suffering from PTSD may experience in giving an account of events, it is not as if that witness

statement contains nothing related to any trauma which the applicant could be said to have avoided mentioning. At paragraph 13 he refers to having been separated from his sister during a shooting and that he had not spoken to her since. He referred to being in Libya for about six months, where he was beaten and put in prison, and food provided to him being limited.

151. Again, although under the subheading "My journey to the UK" he states that he is not sure how his journey was arranged as everything was done by his sister and that he did not know if and how she paid for the journey. That fails to include what he now says was the assistance given to them by her friend Jamal.
152. In my view these are noteworthy facts, given the applicant's claim that he left Ethiopia at the age of 12, which it is reasonable to expect would require some cogent explanation. An alternative to the applicant's claim is that he left Ethiopia when he was much older.
153. As regards the book in which his father is said to have written the applicant's name, in the KIU assessment (under the subheading "Analysis") the applicant is recorded as having said that he saw his date of birth where his father wrote it in his journal. The age assessors discounted that account "especially as he could not remember seeing the dates of birth of his siblings in the same journal".
154. In the LBC age assessment, it states under the subheading "Social History and Family Composition" that the applicant had said that he had never seen the book, which is why he did not know the dates of birth of his family members, but he was aware of it. On the face of it, this aspect of his account is inconsistent in terms of whether or not he saw the book in which his date of birth was written. However,

it was pointed out on behalf of the applicant that the following is in the handwritten notes of the age assessors in relation to that age assessment: "I've seen the list. - He has not seen the list but father tells him his age each year." The point made on behalf of the applicant is that it appears that the applicant did say that he had seen the 'list' but that aspect of the notes is not faithfully reflected in the written age assessment.

155. The three pages of notes do not reflect fully the detail given; they are notes only. The way the notes are recorded, stating that the applicant said that he had seen the 'list', then stating that he had not seen it but his father told him his age each year, suggests that the applicant's actual final position at that time was that he had not seen the book/list. It would probably be otherwise if the notes first said that he had not seen the list and then that he had. There would be more substance to the point that could then be made to the effect that the age assessment did not reflect the applicant's actual position.
156. On any view, whether in terms of the notes or in terms of what is in the actual age assessment, his account in this respect is inconsistent as to whether or not he saw the book. That is not an inconsistency that one would expect on this issue if the applicant had actually seen the book that he says recorded his date of birth.
157. I do not regard there as being any significance in whether or not the applicant saw or remembered his siblings' dates of birth from the book. If the applicant is right and birthdays were not celebrated, it is reasonable to conclude that he would not have concentrated, particularly at a young age, on the dates of birth of his siblings, or that he would have reason to remember them.

158. Similarly, there is no evidence to support the contention on behalf of the respondent that in Ethiopia the Gregorian calendar is not used. I do not regard this as a matter about which I can take judicial notice. Accordingly, I do not regard that as a matter that adversely affects the applicant's credibility.
159. The applicant says that in Belgium, as well as in Italy, Germany and France, he gave his details in terms of his name and date of birth. He said that he was fingerprinted in Belgium and in oral evidence said that he was taken to a camp for a few days. At question 5.4 of the Initial Contact And Asylum Registration Questionnaire, dated 30 November 2020, he said that he was in Belgium in 2019 and detained for fifteen days.
160. Having been detained by the authorities and having his details taken, it is reasonable to expect that there would have been some record of him in Belgium kept by the authorities. However, in response to an enquiry from his solicitors the Belgian authorities said in a document dated 8 August 2022 that there was a search on the basis of all personal data mentioned in the request and that further searches were conducted by combining and/or omitting the personal data given in various ways. It goes on to state that "finally, phonetic searches were performed in combination with the stated nationality and a wide range of the given year of birth". It states that the result of the search "indicates that there are no personal data processed on behalf of [HA]".
161. It was accepted on behalf of the applicant in submissions that this is a matter that could be taken into account in circumstances where evidence of a particular fact could be expected to be provided, yet was not.

162. I do consider that the absence of any official record of the applicant's presence in Belgium is significant with respect to his credibility, given the contact the applicant said he had with the authorities, not only in terms of giving his details and his date of birth but also his detention by them for a period of fifteen days.
163. I do also consider that there is some merit in the proposition advanced on behalf of the respondent in terms of the likelihood of the authorities in various European countries seemingly, to a greater or lesser extent, leaving the applicant to his own devices at such a very young age. True, his claim is that he was given accommodation for about a year and a half in Germany with other children. But in Italy, France and Belgium that apparently was not done. When he arrived in Italy he claims to have been 13 years of age.
164. Standing back and considering the evidence as a whole, whilst the applicant has provided some supporting evidence in terms of the witnesses called on his behalf, and that there is some consistency in his account, overall I am not satisfied that he has given a credible account of his age. There are significant inconsistencies in his account which have not been satisfactorily explained, whether by the medical evidence, his claimed age, or other circumstances. Added to which, I do attach some weight to the age assessments, accepting as I have that there were nevertheless deficiencies in those age assessments. They were, after all, undertaken by qualified social workers. The contrary has not been suggested. Four of the social workers came to the same conclusion, namely that the applicant was older than he claimed to be. In addition, the applicant's claim of his journey through Europe and the time he spent there is inconsistent with the fact that there is

no record of him in Belgium kept by the authorities, in circumstances where one can reasonably have expected there to be an official record of him.

165. I find that the applicant's likely date of birth is 21 April 1998 as assessed by the social workers in the LBC assessment. I reject the applicant's assertion that his date of birth is 21 April 2003. There is no evidential basis from which to conclude that a date of birth other than those proposed by the parties, respectively, should be found. ~~~0~~~~